

## FRANCHISE DISCLOSURE DOCUMENT



Kahala Franchising, L.L.C.  
an Arizona limited liability company  
9311 E. Via De Ventura  
Scottsdale, Arizona 85258  
Telephone: (480) 362-4800  
Website: [www.kahalamgmt.com](http://www.kahalamgmt.com)  
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Facebook: [www.facebook.com/Frullati](http://www.facebook.com/Frullati)  
Twitter: @Frullati\_Cafe

We offer *Frullati Cafe & Bakery*™ franchises. As a franchisee, you will operate a restaurant called *Frullati Cafe & Bakery*, specializing in freshly prepared Paninis, sandwiches, salads, soups, fresh baked goods, blended fruit drinks, and proprietary nutritional products and supplements.

The total investment necessary to begin operation of a *Frullati Cafe & Bakery* franchise ranges from \$145,410 to \$516,000 for a traditional franchise unit constructed as a free-standing restaurant; from \$145,410 to \$446,000 for a traditional franchise unit located within a shopping mall, strip center, or similar venue; and \$134,010 to \$336,500 for a non-traditional franchise unit. This includes \$27,500 to \$110,650 for a traditional location and \$14,100 to \$85,150 for a non-traditional location that must be paid to the franchisor or its 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 Kahala Franchising, L.L.C., Attn: John Wuycheck, 9311 E. Via De Ventura, Scottsdale, Arizona 85258 and (480) 362-4800.

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.

Issuance Date: April 1, 2019

## STATE COVER PAGE

Your state may have a franchise law that requires a franchisor to register or file with a state franchise administrator before offering or selling your state. REGISTRATION OF A FRANCHISE BY A STATE DOES NOT MEAN THAT THE STATE RECOMMENDS THE FRANCHISE OR HAS VERIFIED THE INFORMATION IN THIS DISCLOSURE DOCUMENT.

Call the state franchise administrator listed in Exhibit A for information about the franchisor, or about franchising in your state.

MANY FRANCHISE AGREEMENTS DO NOT ALLOW YOU TO RENEW UNCONDITIONALLY AFTER THE INITIAL TERM EXPIRES. YOU MAY HAVE TO SIGN A NEW AGREEMENT WITH DIFFERENT TERMS AND CONDITIONS IN ORDER TO CONTINUE TO OPERATE YOUR BUSINESS. BEFORE YOU BUY, CONSIDER WHAT RIGHTS YOU HAVE TO RENEW YOUR FRANCHISE, IF ANY, AND WHAT TERMS YOU MIGHT HAVE TO ACCEPT IN ORDER TO RENEW.

Please consider the following RISK FACTORS before you buy this franchise:

1. THE FRANCHISE AGREEMENT REQUIRES YOU TO RESOLVE DISPUTES WITH US BY LITIGATION, MEDIATION AND ARBITRATION ONLY IN ARIZONA. OUT-OF-STATE LITIGATION, MEDIATION AND ARBITRATION MAY FORCE YOU TO ACCEPT A LESS FAVORABLE SETTLEMENT FOR DISPUTES. IT MAY ALSO COST YOU MORE TO LITIGATE, MEDIATE OR ARBITRATE WITH US IN ARIZONA THAN IN YOUR OWN STATE.
2. THE FRANCHISE AGREEMENT STATES THAT ARIZONA LAW GOVERNS THE AGREEMENT, AND THIS LAW MAY NOT PROVIDE THE SAME PROTECTIONS AND BENEFITS AS LOCAL LAW. YOU MAY WANT TO COMPARE THESE LAWS.
3. FRANCHISE OWNERS (DIRECT AND INDIRECT) AND THEIR SPOUSES MUST SIGN A PERSONAL GUARANTEE MAKING SUCH SPOUSES JOINTLY AND SEVERALLY LIABLE FOR ALL OBLIGATIONS OF THE FRANCHISE, WHETHER OR NOT SUCH OWNERS AND SPOUSES ARE INVOLVED IN THE OPERATION OF THE FRANCHISED BUSINESS. THIS REQUIREMENT PLACES THE PERSONAL AND MARITAL ASSETS OF THE FRANCHISE OWNERS AND SPOUSES AT RISK.
4. APPROXIMATELY 95% OF FRANCHISOR'S PARENT'S, MTY FRANCHISING USA, INC., ASSETS ARE INTANGIBLE OR INVESTMENTS IN SUBSIDIARIES. YOU MAY WANT TO TAKE THIS INTO CONSIDERATION WHEN MAKING A DECISION TO PURCHASE THIS FRANCHISE OPPORTUNITY.
5. MUCH OF THE SUPPORT, TRAINING, AND PRE AND POST OPENING OBLIGATIONS TO FRANCHISEES, AND MARKETING AND ADVERTISING SUPPORT SERVICES WILL BE PROVIDED BY AN AFFILIATE OF THE FRANCHISOR, KAHALA MANAGEMENT, L.L.C. THE FINANCIAL STATEMENTS OF KAHALA MANAGEMENT, L.L.C. ARE NOT CONTAINED IN THE FRANCHISE DISCLOSURE DOCUMENT AND WILL NOT BE PROVIDED TO FRANCHISEES.
6. THERE MAY BE OTHER RISKS CONCERNING THIS FRANCHISE.

We use the services of one or more FRANCHISE BROKERS or referral sources to assist us in selling our franchise. A franchise broker or referral source represents us, not you. We pay this person a fee for selling our franchise or referring you to us. You should be sure to do your own investigation of the franchise.

Effective Date: See the next page for state effective dates.

**FRULLATI CAFE & BAKERY™**  
**FRANCHISE DISCLOSURE DOCUMENT EFFECTIVE DATES**

The following states require that the Franchise Disclosure Document be registered or filed with the state, or be exempt from registration: California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington and Wisconsin.

The Franchise Disclosure Document is registered, on file or exempt from registration, or otherwise effective in the following states having franchise registration and disclosure (or business opportunity\*) laws, as of the dates listed:

California	4/1/2019
Florida	4/1/2019
Hawaii	Not Registered
Illinois	4/1/2019
Indiana	4/1/2019
Kentucky*	July 1, 2015*
Maryland	Not Registered
Michigan	4/1/2019
Minnesota	Pending
Nebraska*	5/8/2017*
New York	4/1/2019
North Dakota	Not Registered
Rhode Island	4/1/2019
South Dakota	Not Registered
Texas*	July 12, 2010*
Utah	4/1/2019
Virginia	4/1/2019
Washington	4/1/2019
Wisconsin	Not Registered

In all the other states, the effective date of this Franchise Disclosure Document is the issuance date of April 1, 2019.

\* Denotes one-time filing.

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### EXHIBITS:

- A State Addenda to Franchise Disclosure Document
- B Directory of State Agencies and Administrators

C	Franchisor's Agent for Service of Process
D	Asset Purchase and Sale Agreement (For Sale of a Corporate Store to a Franchisee) with Promissory Note and Security Agreement and Guaranty (if applicable)
E-1	Franchise Agreement (New) and Franchisee Questionnaire
E-2	Franchise Agreement (Renewal) and Franchisee Questionnaire
E-3	Franchise Agreement (Transfer) and Franchisee Questionnaire
F-1	Guaranty of Franchise Agreement
F-2	Non-Disclosure and Non-Competition Agreement
G	Collateral Assignment and Irrevocable Special Power of Attorney
H	Amendment to Franchise Agreement (for non-traditional locations excluding those co-branded with another affiliated brand)
I	Amendment to Franchise Agreement (for co-branded non-traditional locations)
J	Intentionally Omitted
K	Intentionally Omitted
L	Required Lease Terms (Lease Addendum to Lease Agreement)
M	Lease Guaranty Acknowledgment
N	Lease Review and/or Negotiation Agreement and Release and State Addenda
O-1	Sublease and Guaranty of Sublease (Franchisee pays rent directly to Landlord)
O-2	Sublease and Guaranty of Sublease (Kahala collects rent from Franchisee and pays to Landlord)
P	Pre-Authorized Electronic Funds Transfer Form
Q	General Release for Renewal of Franchise Agreement
R-1	Consent to Transfer and Release Agreement (without Sublease)
R-2	Consent to Transfer and Release Agreement (with Sublease)
S	State Addenda to Franchise Documents
T	Table of Contents – Confidential Operations Manual
U	List of Franchise Owners
V	Financial Statements
W	Performance Guaranty
X	Addendum for Sale of Company-Affiliated Owned Stores
Y	Receipts

## ITEM 1: THE FRANCHISOR AND ANY PARENTS, PREDECESSORS, AND AFFILIATES

The franchisor is Kahala Franchising, L.L.C. To simplify the language in this "Disclosure Document," Kahala Franchising, L.L.C. may be referred to as "Kahala Franchising," "we," "us," "our" and "Franchisor." "You" and "our" mean the person(s), partnership, corporation, limited liability company, or other entity that buys the *Frullati Cafe & Bakery*™ unit franchise. If "you" are a business entity, "you" includes the shareholders, members or owners of the business to the extent each guaranties or otherwise agrees to perform or be bound by the obligations of the business entity.

### The Franchisor, Parents and Predecessors

Kahala Franchising is an Arizona limited liability company which was formed on December 29, 2008. Kahala Franchising is in the business of franchising to others the right to own and operate quick service restaurants.

Our parent company is Kahala Brands, Ltd., which is a Delaware corporation ("Kahala Brands"). Kahala Brands was formerly known as Kahala Corp. but changed its name to Kahala Brands in December 2014. Prior to that, Kahala Corp. was a Florida corporation and was re-domiciled in Delaware on December 31, 2012.

On July 26, 2016, Kahala Brands merged with a wholly-owned subsidiary of MTY Food Group, Inc. ("MTY Food Group") having an address at 8150 Transcanada Highway, Suite 200, Saint Laurent, Québec H4S 1M5. Kahala Brands' parent company became MTY Franchising USA, Inc. ("MTY USA"), a Delaware corporation incorporated originally as The Extreme Pita Franchising USA, Inc. on March 14, 2001, and having an address of 9311 E Via De Ventura, Scottsdale, AZ 85258. MTY USA's parent corporation is MTY Tiki Ming Enterprises Inc. ("MTY Canada"), a Canada corporation incorporated on February 13, 1979, and a wholly owned subsidiary of MTY Food Group, Inc., and having an address at 8150 Route Transcanadienne, Suite 200, Ville Saint-Laurent, Quebec, H4S 1M5, Canada.

In addition to the concepts franchised by Kahala Franchising or its current or former affiliates, MTY Food Group, Inc. or one or more of its subsidiaries ("MTY") franchises over fifty (50) different restaurant concepts under the following trademarks in Canada and the United States including: Au Vieux Duluth Express, Big Smoke Burger, Café Depot, Country Style, Croissant Plus, Cultures, Extreme Pita, Ginger Sushi Boutique, Jugo Juice, Kim Chi, Koryo, Koya, La Crémère, Madisons, Manchu Wok, Mr. Souvlaki, Mr. Sub, Mucho Burrito, Muffin Plus, O'Burger, Sukiyaki, Sushi Go, Sushiman, Sushi Shop, Tandori, Thai Express, Thaizone, Tiki Ming, Tosto, Tutti Frutti, Valentine, Van Houtte, Vanellis, Vie & Nam, Villa Madina, Giorgio, Steak Frites, Houston, Industria Pizza and Wasabi Grill & Noodle trademarks. MTY also sub-franchises two (2) other different restaurant concepts: TCBY and TacoTime. MTY is a publicly-traded company headquartered in Montreal, Québec, Canada.

Effective March 1, 2018 MTY Food Group Inc. through the merger of a wholly-owned subsidiary with Invescor Restaurant Group Inc. ("IRG"), acquired all the outstanding shares of IRG. At closing IRG operated 5 brands in Canada and had 261 locations in operation.

The name and principal business address of any predecessors for the *Frullati Cafe & Bakery* brand during the 10-year period immediately before the close of Kahala Franchising's most recent fiscal year is: Kahala Franchise Corp., 9311 E. Via De Ventura, Scottsdale, Arizona 85258. Our predecessor, Kahala Franchise Corp., did not conduct the type of business the franchisee will operate, but its affiliate, Kahala Holdings, L.L.C., an Arizona limited

liability company ("Kahala Holdings"), did conduct the type of business the franchisee will operate by operating corporate *Frullati Cafe & Bakery* restaurants since 2004, and another affiliate, Kahala Restaurants, L.L.C., an Arizona limited liability company ("Kahala Restaurants"), has been conducting the type of business the franchisee will operate by operating any corporate *Frullati Cafe & Bakery* restaurants since January 2010. Kahala Franchise Corp. offered franchises providing the type of business the franchisee will operate from 2004 until March 2010. The name and principal business address of another predecessor for *Frullati Cafe & Bakery* during the 10-year period immediately before the close of Kahala Franchising's most recent fiscal year is: Frullati Franchise Systems, Inc., 7730 E. Greenway Road, Suite 104, Scottsdale, Arizona 85260. Predecessor, Frullati Franchise Systems, Inc., did not conduct the type of business the franchisee will operate, but two of its affiliates, Fru-Cor, Inc., a Texas corporation, and Frullati Enterprises, Inc., a Texas corporation, did conduct the type of business the franchisee will operate from 1985 until 2004 by operating corporate *Frullati Cafe & Bakery* restaurants. We have been offering franchises providing the type of business the franchisee will operate from 1999 until 2004 under the name of Frullati Franchise Systems, Inc., from 2004 until March 2010 under the name of Kahala Franchise Corp., and since August 2010 under the name of Kahala Franchising. Frullati Franchise Systems, Inc. had no predecessors. Neither Frullati Franchise Systems, Inc. nor its affiliates had offered franchises in any other line of business.

As of November 30, 2018, there were 14 *Frullati Cafe & Bakery* franchises. We have been offering *Frullati Cafe & Bakery* franchises from 1999 until 2004 under the name of Frullati Franchise Systems, Inc., from 2004 until March 2010 under the name of Kahala Franchise Corp., and since August 2010 under the name of Kahala Franchising. Kahala Franchising does not operate businesses of the type being franchised, but rather, Kahala Holdings and Kahala Restaurants, affiliates of Kahala Franchising, operate many of our corporate-owned restaurants, including businesses of the type being franchised. Any corporate-owned *Frullati Cafe & Bakery* restaurants may compete with franchised restaurants in its vicinity.

#### Other Franchises Offered by Kahala Franchising or its affiliate

KAHALA FRANCHISING IS ONLY OFFERING A *FRULLATI CAFE & BAKERY* UNIT FRANCHISE UNDER THIS DISCLOSURE DOCUMENT. EACH OF THE FRANCHISES DETAILED BELOW ARE OFFERED BY KAHALA FRANCHISING UNDER SEPARATE DISCLOSURE DOCUMENTS FOR EACH BRAND.

The following summarizes these other quick service restaurant brands as of November 30, 2018, including the type of restaurant business, number of franchised units in operation as of November 30, 2018, and the date Kahala Franchising or its current or former affiliates offered franchises in those brands:

Brand Name	Type of Restaurant Business	Number of Units as of November 30, 2018	Dates unit franchises began being offered by us or our affiliate
America's Taco Shop®	Restaurants serving freshly prepared Mexican food including tacos, burritos, and quesadillas	0 franchises (plus 2 licensed and 2 company-owned units)	November 2011 under Kahala Franchising

Brand Name	Type of Restaurant Business	Number of Units as of November 30, 2018	Dates unit franchises began being offered by us or our affiliate
Blimpie®	Restaurants serving submarine sandwiches and salads	233 franchises (228 in the United States and 6 International) (plus 5 company-owned units)	From 2006 until March 2010 by Kahala Franchise Corp. and since August 2010 under Kahala Franchising
Cereality cereal bar & cafe™	Restaurants serving hot and cold cereals and cereal blends with toppings, oatmeal, and parfaits	1 franchises	From July 2007 until March 2010 by Kahala Franchise Corp. and since August 2010 under Kahala Franchising
Cold Stone Creamery®	Restaurants serving super-premium freshly made ice cream, frozen yogurt, cakes, pies, smoothies, shakes, and other frozen dessert products	1237 franchises (899 in the United States and 338 International) (plus 79 licensed and 4 company-owned units) (93 Cold Stone Creamery franchises also sell Rocky Mountain Chocolate Factory® products and 1 Cold Stone Creamery franchise also sells Tim Hortons® products)	From May 2007 until April 2008 by Cold Stone Creamery, Inc., from April 2008 until March 2010 by Kahala Franchise Corp., and since August 2010 under Kahala Franchising
Frullati Cafe & Bakery™	Restaurants serving sandwiches, salads, smoothies and baked goods	14 franchises	From 1999 until 2004 by Frullati Franchise Systems, Inc., from 2004 until March 2010 by Kahala Franchise Corp., and since August 2010 under Kahala Franchising
Great Steak™	Restaurants serving Philadelphia cheesesteak sandwiches, chicken sandwiches and French fries	59 franchises (46 franchises in the United States and 13 International) (plus 1 licensed unit)	From 2004 until March 2010 by Kahala Franchise Corp. and since August 2010 under Kahala Franchising
Johnnie's New York Pizzeria™	Restaurants serving New York style pizza, calzones, salads, and related Italian cuisine menu items	5 franchises	From 2006 until March 2010 by Kahala Franchise Corp. and since August 2010 under Kahala Franchising



Brand Name	Type of Restaurant Business	Number of Units as of November 30, 2018	Dates unit franchises began being offered by us or our affiliate
Kahala Coffee Traders®	Restaurants serving coffee and espresso, tea, baked goods, parfaits, sandwiches and merchandise	6 franchises (plus 1 licensed units)	November 2011 under Kahala Franchising
Maui Wowi®	Store fronts or portable units serving fruit smoothies, Hawaiian coffee and espresso	150 franchises (148 in the United States and 2 International)	Since November 2015 under Kahala Franchising
NrGize Lifestyle Cafe™	Cafes serving smoothies, fruit drinks and nutritional supplements	79 franchises	From 2006 until March 2010 by Kahala Franchise Corp. and since August 2010 under Kahala Franchising
Pinkberry®	Restaurants serving frozen yogurt, yogurt drinks, smoothies and frozen desserts	91 franchises (plus 2 company-owned units)	From July 2008 until April 2016 under Pinkberry Ventures, Inc. and since June 2016 under Kahala Franchising
Planet Smoothie®	Restaurants serving smoothies, juices and nutritional supplements	136 franchises (plus 13 TDL).	From March 2012 to April 2016 under Tasti D-Lite LLC and since June 2016 under Kahala Franchising
Ranch One®	Restaurants specializing in grilled and crispy breaded chicken sandwiches	4 franchises	From 2001 until 2004 by Ranch *1 Group, Inc., from 2004 until March 2010 by Kahala Franchise Corp., and since August 2010 under Kahala Franchising
Rollerz Rolled Sandwiches™	Restaurants serving gourmet rolled sandwiches, salads, soups and baked goods	1 franchises	From 2000 until 2004 by Rollerz Franchise Systems, L.L.C., from 2004 until March 2010 by Kahala Franchise Corp., and since August 2010 under Kahala Franchising

Brand Name	Type of Restaurant Business	Number of Units as of November 30, 2018	Dates unit franchises began being offered by us or our affiliate
Samurai Sam's Teriyaki Grill®	Restaurants serving Japanese rice bowls and noodle bowls	18 franchises (plus 1 company-owned unit)	From 2003 until 2004 by SP Franchising, Inc., from 2004 until March 2010 by Kahala Franchise Corp., and since August 2010 under Kahala Franchising
Surf City Squeeze®	Juice bars serving smoothies, fruit drinks and nutritional supplements	85 franchises (82 franchises in the United States and 3 international)	From 1994 until 2004 by Malibu Smoothie Franchise Corp. and Surf City Squeeze Franchise Corp., from 2004 until March 2010 by Kahala Franchise Corp., and since August 2010 under Kahala Franchising
TacoTime™	Restaurants serving freshly-prepared Mexican food including burritos, taco, quesadillas and nachos	259 franchises and subfranchises (130 franchises in the United States and 129 international restaurants) (plus 75 licensed units)	From 2003 until 2004 by Taco Time International, Inc., from 2004 until March 2010 by Kahala Franchise Corp., and since August 2010 under Kahala Franchising

Brand Name	Type of Restaurant Business	Number of Units as of November 30, 2018	Dates unit franchises began being offered by us or our affiliate
Extreme Pita®	Restaurants serving wrap-style hot and cold pita and wrap sandwiches	5 franchises	From March 2001
Grabbagreen®	Restaurants serving healthy food, juice, smoothies and related products	24 franchises (23 franchise and 1 company-owned)	From April 2015 Grabbagreen Franchising, LLC and since February 2018 under MTY Franchising USA, Inc.
Ginger Sushi Boutique™	Restaurant serving a variety of sushi menu items and drinks	1 Franchise	From September 2015 under MTY Franchising USA, Inc.

Brand Name	Type of Restaurant Business	Number of Units as of November 30, 2018	Dates unit franchises began being offered by us or our affiliate
Mucho Burrito ®	Restaurants offering burritos, quesadillas, tacos, nachos, and other assorted food and drinks	1 Franchise	From January 2010 under Mucho Burrito Franchising USA, Inc. Then from March 2019 under MTY Franchising USA, Inc.
Thai Express®	Restaurant serving “Thai-style” foods and drinks	11 Franchises(10 franchises 1 company owned)	From February 2015 under MTY Franchising USA, Inc.
La Diperie	Restaurant serving retail sale of an icecream product and various dips and toppings	0 Franchises	From April 2019 under MTY Franchising USA, Inc.
Baja Fresh	Restaurant offering a limited menu featuring fresh high quality Mexican-style food products	131 Franchises (121 in the United States and 4 international) plus 6 corporate-owned	From 2009 under Triune, LLC until July 2017 and since BF Acquisition Holdings, LLC
La Salsa	Restaurant offering a limited menu featuring fresh high quality Mexican-style food products	15 Franchises	From 1988 to 2006 under La Salsa Franchise, Inc. 2007 under La Salsa Franchise, LLC.
The Counter	Full service restaurant featuring build-your-own burgers, signature burgers, side dishes, sandwiches, and salads	33 Franchises(25 franchises and 3 company owned)	From June 2005 under CB Franchise Systems, LLC. Then from March 2019 under MTY Franchising, USA.
Built custom burgers	Fast casual restaurant featuring build-your-own burgers, signature burgers, side dishes, sandwiches, and salads	5 Franchises	From 2014 under Built Franchise Systems, LLC. Then from March 2019 under MTY Franchising, USA

Brand Name	Type of Restaurant Business	Number of Units as of November 30, 2018	Dates unit franchises began being offered by us or our affiliate
sweetFrog	Restaurant offering frozen yogurt using a self-serve delivery format	267 Franchises(258 in the United States and 9 international)	From 2009 under sweetFrog Enterprises, LLC then from April 2012 under its SFF. Then from September 2018 under MTY Franchising USA, Inc.

Kahala Franchising was also in the business of franchising to others the right to purchase a defined geographic area to become an area representative in order to (i) recruit third parties to become unit franchisees; and (ii) provide support services to the unit franchisees, using the applicable trademarks for the particular brand and according to the terms, conditions, methods, and system standards in the area representative agreement and corresponding operations manual. Kahala Franchising or its predecessor affiliate, Kahala Franchise Corp., began offering area representative franchise agreements for the America's Taco Shop, Blimpie, Cereality cereal bar & cafe, Cold Stone Creamery, Frullati Cafe & Bakery, Great Steak, Johnnie's New York Pizzeria, Kahala Coffee Traders, NrGize Lifestyle Cafe, Ranch One, Rollerz Rolled Sandwiches, Samurai Sam's Teriyaki Grill, Surf City Squeeze and TacoTime brands at the same time it began offering unit franchises for each of the brands. Prior to our acquisition of the company, Tasti D-Lite LLC had offered area representative franchise agreements for the Tasti D-Lite and Planet Smoothie brands. We stopped selling area representative agreements for the following brands as of April 30, 2015: Cereality cereal bar & cafe, Frullati Cafe & Bakery, Johnnie's New York Pizzeria, Kahala Coffee Traders, Ranch One, Rollerz Rolled Sandwiches and Surf City Squeeze. We stopped selling area representative agreements for the following brands as of April 30, 2016: America's Taco Shop, Blimpie, Cold Stone Creamery, Great Steak, NrGize Lifestyle Cafe, Tasti D-Lite / Planet Smoothie, Samurai Sam's Teriyaki Grill and TacoTime. As of August 1, 2017, we again began selling area representative agreements for Blimpie, Planet Smoothie, and Samurai Sam's Teriyaki Grill. As of the issuance date of this Disclosure Document, we are not offering area representative agreements under a separate Area Representative Franchise Disclosure Document for any of our other brands, but may do so in the future under a separate disclosure document.

#### Franchises offered by MTY USA or its affiliates

MTY USA sells and grants franchises in the United States for the operation of master franchises and unit franchises under the Thai Express brand; for the operation of retail restaurant businesses under the Extreme Pita brand; for the operation of retail restaurant businesses under the Manchu Wok brand; for the operation and retail restaurant under the Grabbagreen brand, for the operation and retail restaurant under the sweetFrog brand; and for the operation of retail restaurant businesses using the Ginger Sushi Boutique brand.

MTY USA began offering Thai Express unit franchises in the United States in February 2015. MTY USA has offered Extreme Pita franchises in the United States since March 2001. As of November 30, 2018, MTY USA had 5 Extreme Pita franchised restaurants in the United States. MTY USA does not operate any company-owned Extreme Pita restaurants. On December 18, 2014, MTY USA acquired the United States operations of the Manchu Wok franchise system. MTY USA began offering Manchu Wok franchises in March 2015. As of November 30, 2018, there were 28 Manchu Wok restaurants and 1 company-owned stores in the United States. MTY USA began

offering Ginger Sushi Boutique franchises in September 2015. As of November 30, 2018, there were no Ginger Sushi Boutique restaurants in the United States. As of March 15, 2018 MTY USA began offering Grabbagreen franchises. As of November 30, 2018 there were 23 franchise and 1 company-owned\_Grabbagreen restaurants. MTY USA began to offer sweetFrog franchises as of September 25, 2018. As of November 30, 2018 there were 267sweetFrog franchises (258 in the United States and 9 international).

On January 2, 2019 MTY USA, acquired all assets of Mucho Burrito Franchising USA, Inc. ("MBUSA") wherein MTY USA became the franchisor for the Mucho Burrito brand in the United States. Its predecessor, MBUSA is a Delaware corporation incorporated on January 19, 2010. On September 24, 2013, MTY USA's parent, MTY Canada, acquired the stock of MBUSA. MBUSA's principal business address in the United States is 9311 E Via De Ventura, Scottsdale, Arizona 85258. MBUSA has been offering Mucho Burrito unit franchises since February 2010, and offered area developer franchises in the United States from February 2010 to January 2013. However, as of January 2013, MBUSA no longer offers Area Developer franchises. As of November 2018, there was 1 franchised Mucho Burrito restaurant and no company-owned Mucho Burrito restaurants in the United States.

On November 30, 2016 MTY USA, acquired all assets of BSB Franchising USA, Inc. a Delaware corporation wherein MTY USA became the franchisor of Big Smoke Burger. The predecessor BSB is a Delaware corporation that was incorporated on August 18, 2015 with offices at 9311 E Via De Ventura, Scottsdale, Arizona 85258. BSB offered Big Smoke Burger unit franchises from February 2016 to November 30, 2016. As of November 30, 2018, there was no Big Smoke Burger restaurant in the United States.

#### Affiliates That Provide Products or Services to Franchisees

Kahala Management, L.L.C. ("Kahala Management"), an affiliate of Kahala Franchising, is an Arizona limited liability company that provides administrative, legal, accounting, sales, POS phone support, real estate and marketing support services to Kahala Franchising. Kahala Holdings and Kahala Restaurants are affiliates of Kahala Franchising that own and operate company-owned outlets detailed above. Cold Stone Creamery Restaurants, LLC, an Arizona limited liability company ("CSC Restaurants"), is an affiliate of Kahala Franchising that, along with Kahala Holdings and Kahala Restaurants, owns and operates the Cold Stone Creamery company-owned outlets. Kahala Advertising, LLC, an Arizona limited liability company ("Kahala Advertising"), is an affiliate of Kahala Franchising that began administering the national advertising funds for each of the brands and the regional cooperatives in 2008. Vires Media, LLC, an Arizona limited liability company ("Vires"), is an affiliate of Kahala Franchising that was formed for the purpose of buying media for Kahala Franchising's brands. Neptune Equipment Services, LLC, an Arizona limited liability company ("Neptune Equipment"), is an affiliate of Kahala Franchising that is an approved retailer of equipment that sells, distributes, and coordinates logistics of equipment, menu boards, interior and exterior signage, and smallwares to Kahala Franchising franchisees and licensees. KGC, LLC, a Colorado limited liability company ("KGC"), is an affiliate of Kahala Franchising that administers the gift card program.

Cold Stone Creamery Leasing Company, Inc. ("CSC Leasing"), another affiliate of Kahala Franchising, was incorporated for the purpose of leasing sites for Cold Stone Creamery restaurants and subleasing them to franchisees. CSC Real Estate Management, LLC, an Arizona limited liability company ("CSC Real Estate") provides real estate management services to Cold Stone and Cold Stone Leasing. Cold Stone Leasing does not operate businesses of the type being franchised nor does it offer or sell franchises of Cold Stone Creamery restaurants. Another affiliate of ours is Cold Stone Creamery International, LLC ("International"), an Arizona limited liability company, which

was organized on April 14, 2004 for our international expansion and franchisees outside of the United States.

Some Blimpie restaurants are leased by subsidiaries of our affiliate (“Blimpie Leasing Affiliates”) KRES Holdings, L.L.C., an Arizona limited liability company (“KRES”), and in turn, subleased by such entities to Blimpie franchisees.

Some existing Cold Stone Creamery restaurants are leased by either of our affiliates, CSC Leasing or Cold Stone (collectively, “Cold Stone Leasing Affiliates”). Blimpie Leasing Affiliates and Cold Stone Leasing Affiliates shall collectively be referred to in this Disclosure Document as the “Leasing Affiliates.”

#### Other Agreements

Kahala Franchising previously offered franchises for a take and bake pizza concept called “Pizza Fresh Take●N●Bake.” It began franchising Pizza Fresh Take●N●Bake in November 2011 and ceased offering Pizza Fresh Take●N●Bake franchises in December 2014. During that time period, there were no Pizza Fresh Take●N●Bake franchises sold. Two corporately owned Pizza Fresh Take●N●Bake restaurants were opened in 2011 but both closed in 2014 and there are no Pizza Fresh Take●N●Bake restaurants currently in operation. Kahala Franchise Corp. previously offered franchises for a kiosk-style ice cream dessert concept called “Wafflō.” It began franchising Wafflō in 2005 and ceased offering Wafflō franchises in December 2007. During that time period, there were 21 Wafflō franchises sold. As of November 30, 2018, no Wafflō restaurants were open. Additionally, Kahala Franchise Corp. previously offered franchises for a premium soft serve frozen dessert product called “Tango.” It began offering Tango franchises in May 2007 and ceased selling Tango franchises in November 2007. During that time, there were no Tango franchises sold, and there are no Tango franchise locations currently in operation. Tasti D-Lite LLC is an affiliate of Kahala Franchising that previously franchised the Tasti D-Lite frozen dessert brand. Kahala Franchising is now offering Tasti D-Lite products as a menu offering in Planet Smoothie restaurants. As of November 30, 2018 there were 13 Tasti D-Lite franchises in the United States.

Taco Time International, Inc. (“TTI”) was a predecessor franchisor of the TacoTime brand. TTI’s rights and obligations under a Master Franchise Agreement it entered into on March 13, 1978 (“MFA”) were assigned to Kahala Franchising. Under the MFA, MTY TIKI MING Enterprises Inc. (“MTY”) operates as the master franchisor of the TacoTime brand for the entire country of Canada. MTY is not an affiliate of Kahala Franchising. As of November 30, 2018, there were 129 TacoTime franchises in operation in Canada. As of the date of this Disclosure Document, the MFA is still in effect.

TTI also entered into a Western Washington Area Franchise Agreement with Accord, Inc. (“Accord”) dated April 30, 1979, as amended (“Western Washington Agreement”) under which TTI assigned its rights to franchise TacoTime in several counties and cities in the state of Washington to Accord (“Accord Territory”). The Western Washington Agreement was ultimately assigned from TTI to Kahala Franchising. Accord is not an affiliate of Kahala Franchising. As of November 30, 2018 there were 75 TacoTime licensed restaurants in operation in the Accord Territory. As of the date of this Disclosure Document, the Western Washington Agreement is still in effect. TTI did not enter into any other territory agreements that are currently in effect. We are not offering TacoTime franchises under this Disclosure Document.

Blimpie International, Inc. (“BI”) was a predecessor franchisor of the Blimpie brand. BI entered into a trademark distribution agreement with Blimpie of California, Inc. dated July 18, 1984, as amended (“TDA”) under which Blimpie of California, Inc. operates as a subfranchisor for the

Blimpie brand in a portion of Southern California. The TDA was ultimately assigned from BI to Kahala Franchising. Blimpie of California, Inc. is not an affiliate of Kahala Franchising. As of November 30, 2018, there were 6 Blimpie franchises in operation in Blimpie of California, Inc.'s territory. As of the date of this Disclosure Document, the TDA is still in effect. BI did not enter into any other trademark distribution agreements that are currently in effect. We are not offering any Blimpie franchises under this Disclosure Document.

Except as described above, neither we nor any of our affiliates, have offered any other franchises in any other line of business.

The principal place of business of Kahala Franchising and all of its affiliates, including leasing affiliates, Kahala Management, Kahala Advertising, KRES, Kahala Holdings, Kahala Restaurants, Cold Stone, CSC Restaurants, CSC Leasing, CSC International, CSC Real Estate, KGC, Neptune Equipment, Vires Media and Kahala Brands is 9311 E. Via De Ventura, Scottsdale, Arizona 85258. The identity and principal business address of Kahala Franchising's agent for service of process is listed in Exhibit C to this Disclosure Document.

Effective as of September 9, 2016, MTY USA entered into an agreement to purchase all outstanding membership interests of BF Acquisition Holdings, LLC ("BFAH"), a Delaware limited liability company having an address at 320 Commerce, Suite 100, Irvine, California 92602, including the rights to franchise the Baja Fresh® and La Salsa Mexican Grill® brands. The transaction closed on October 5, 2016. BFAH or its affiliate companies offer unit, multi-unit and area development Baja Fresh and La Salsa Mexican Grill 131 Baja Fresh restaurants (121 franchised and 4 international and 6 company-owned) and 15 La Salsa Mexican Grill restaurants (franchised and company-owned) in the United States.

On January 2, 2019 MTY USA, acquired all assets of CB Franchise Systems, LLC wherein MTY USA became the franchisor for The Counter. Effective as of November 14, 2017, MTY USA entered into agreement to purchase all outstanding membership interests of CB Franchise Systems, LLC, ("The Counter"), a California limited liability company and Built Franchise Systems, LLC, a California limited liability company, both having an address at 8571 Higuera Street, Culver City, California 90232, including the rights to franchise The Counter® and Built Custom Burgers® brands. The transaction closed December 1, 2017. CB Franchise Systems, LLC, Built Franchise Systems, LLC, and or its affiliate companies offer the unit, and area development The Counter and Built franchises under separate disclosure documents As of November 30, 2018 there were 33 (25 franchise, 8 international and 3 corporate) The Counter restaurants and 5 Built restaurants.

On January 2, 2019 MTY USA, acquired all assets of Built Franchise Systems, LLC wherein MTY USA became the franchisor for Built custom burgers. On December 1, 2017, Built Franchise Systems, LLC. was acquired by a wholly-owned subsidiary of MTY Food Group, Inc. ("MTY Food Group") having an address at 8150 Transcanada Highway, Suite 200, Saint Laurent, Québec H4S 1M5. Built Franchise Systems, LLC parent company became MTY Franchising USA, Inc. ("MTY USA"), a Delaware corporation incorporated originally as The Extreme Pita Franchising USA, Inc. on March 14, 2001, and having an address of 9311 E Via De Ventura, Scottsdale, Arizona 85258. MTY USA's parent corporation is MTY Tiki Ming Enterprises Inc. ("MTY Canada"), a Canada corporation incorporated on February 13, 1979, and a wholly owned subsidiary of MTY Food Group, Inc., and having an address at 8150 Route Transcanadienne, Suite 200, Ville Saint-Laurent, Quebec, H4S 1M5, Canada. MTY USA became the franchisor of The Counter effective January 2, 2019

Effective as of November 14, 2017, MTY USA entered into agreement to purchase all outstanding membership interests of CB Franchise Systems, LLC, ("The Counter"), a California

limited liability company and Built Franchise Systems, LLC, a California limited liability company, both having an address at 8571 Higuera Street, Culver City, California 90232, including the rights to franchise The Counter® and Built Custom Burgers® brands. The transaction closed December 1, 2017. CB Franchise Systems, LLC, Built Franchise Systems, LLC, and or its affiliate companies offer the unit, and area development The Counter and Built franchises under separate disclosure documents. As of November 30, 2018, The Counter has 33 franchised locations( 25 franchised and 8 international) and 3 corporate-owned locations. Built has # franchise locations.

Effective as of February 16, 2018, MTY USA entered into an agreement to acquire the assets of the Grabbagreen® brand from Eat Clean Holdings, LLC, an Arizona limited liability company having an address at 10789 North 90<sup>th</sup> Street, Suite 202, Scottsdale, Arizona 85260 and certain of its affiliated entities, including the rights to franchise the Grabbagreen brand. The transaction closed on March 15, 2018. The current franchisor, MTY USA, currently offers Grabbagreen unit franchises which sell or offer for sale products that are similar to those of *Frullati Cafe & Bakery*, and, prior to 2017, the previous franchisor, Grabbagreen Franchising, LLC, had offered area representative Grabbagreen franchises. As of November 30, 2018, there are 24 Grabbagreen restaurants (23 franchised and 1 company-owned) open and operating in the United States.

Effective as of September 1, 2018, MTY USA entered into an agreement to acquire the assets of, and in particular the rights to franchise, the sweetFrog® brand from SFF, LLC, a Virginia limited liability company having an address at 10800 Midlothian Turnpike, Suite 300, Richmond, VA 23235, and certain of its affiliates. SFF, LLC, offered sweetFrog unit franchises and had licensed sweetFrog Shops. As of September 1, 2018, there were 332 sweet Frog Shops (254 franchised and 78 company-owned 2 of which were joint ventures) open and operating in the United States. The transaction closed on September 25, 2018, MTY became the franchisor and will not operate any corporate Shops, as SFF or its affiliates retained the 78 company-owned stores referenced above.

## The Franchise

If you qualify, you may (i) construct a new *Frullati Cafe & Bakery* restaurant; (ii) purchase one of our *Frullati Cafe & Bakery* franchises by acquiring an existing business from another franchisee or from us; or (iii) convert all of your existing retail operations from another brand to our *Frullati Cafe & Bakery* brand.

The business you will operate is a single traditional or non-traditional *Frullati Cafe & Bakery* ("*Frullati Cafe & Bakery*" or "*Frullati Cafe*") restaurant specializing in freshly prepared Panini's, sandwiches, salads, soups, fresh baked goods, blended fruit drinks, and proprietary nutritional products and supplements, at a specific location approved by us, and using the trademarks, trade names, service marks, logotypes, and other commercial symbols we adopt and authorize. A "traditional" *Frullati Cafe & Bakery* restaurant is a *Frullati Cafe & Bakery* restaurant that is easily accessible by the general public, such as a free-standing building, inline retail shop, shopping mall and street front location. A traditional *Frullati Cafe & Bakery* restaurant normally offers a full *Frullati Cafe & Bakery* menu. A "non-traditional" *Frullati Cafe & Bakery* restaurant is a restaurant that is located in a non-traditional marketplace (in franchisor's sole discretion) such as an airport, amusement park, sports or entertainment venue, train station, travel plaza, toll roads, cafeteria, retail store, convenience store, military base, hospital, office building, movie theater, hotel, casino, kiosk, cart or high school or college campus. A non-traditional *Frullati Cafe & Bakery* generally offers a limited version of the full *Frullati Cafe & Bakery* menu. A *Frullati Cafe & Bakery* restaurant, whether traditional or non-traditional, is also referred to as the "Franchised Business."



*Frullati Cafe & Bakery* restaurants serve the general public, and people of all ages consume the products offered by *Frullati Cafe & Bakery* restaurants. Most *Frullati Cafe & Bakery* restaurants may be operated throughout the year; however, sales may fluctuate during the year. You will have to compete with other restaurants, fast food outlets, supermarkets and other food retailers located in your venue or market area. Some of your competitors may include *Frullati Cafe & Bakery* restaurants operated by other franchisees or by our affiliates. The extent to which you may succeed at any particular location cannot be predicted. Because of the highly competitive nature of the business involved, successful operation of the *Frullati Cafe & Bakery* restaurant will depend in part upon the best efforts, capabilities, management, and efficient operation by the franchisee; as well as the general economic trend and other local marketing conditions.

You must comply with all federal, state, and local laws that regulate commerce in general and the food service industry in particular. In addition to laws and regulations that apply to businesses and restaurant operations generally, *Frullati Cafe & Bakery* franchised businesses are subject to: (i) federal, state, and local health codes regarding health, sanitation, and food safety; and (ii) menu labeling and nutrition laws.

## **ITEM 2: BUSINESS EXPERIENCE**

### Chairman of the Board and Chief Executive Officer: Eric Lefebvre

Mr. Lefebvre was promoted and became the Chief Executive Officer of MTY Canada effective November 2, 2018. Mr. Lefebvre was the Chief Financial Officer of Kahala Brands' ultimate parent, MTY Food Group, since June 2012. Mr. Lefebvre served as Vice President of Finance of MTY Food Group from November 2009 until June 2012.

### Chief Financial Officer: Renee St-Onge

Ms. St-Onge was promoted to Chief Financial Officer of MTY Canada effective November 2, 2018. Ms. St-Onge joined MTY in 2012 as Controller. Prior to MTY, Ms. St-Onge was employed by Bell Canada as associated director in corporate finance and Raymond Chabot Grant Thornton as an auditor.

### Executive Vice President and Chief Operating Officer: Jeff Smit

Mr. Smit has been the Chief Operating Officer of Kahala Brands since June 2009 and was the Blimpie Brand President from November 2007 until December 2014.

### Senior Vice President of Restaurant Operations: Anthony Crosby

Mr. Crosby joined our team in October 2009 as the Vice President of Restaurant Operations. In addition, from January 2010 through December 2012, Mr. Crosby was the Johnnie's New York Pizzeria Brand President. In August 2011, Mr. Crosby became the Senior Vice President of Restaurant Operations for Kahala Brands and the Senior Vice President of Operations for the Kahala Coffee Traders, Great Steak, and Samurai Sam's Teriyaki Grill brands.

### Senior Vice President of Development: John Wuycheck

Mr. Wuycheck has served as Kahala Brands' Senior Vice President of Development since September 2014. From September 2013 until September 2014, Mr. Wuycheck was Vice President of Franchising for HomeSmart Realty in Phoenix, Arizona. From January 2013 through August 2013, Mr. Wuycheck was Vice President of Franchise Sales for Edible Arrangements in Wallingford, Connecticut. Prior to that, Mr. Wuycheck was a Risk Consultant for Wick Pilcher Insurance in Phoenix, Arizona from March 2012 until January 2013 and was Vice President, New Business Development for Starbucks Corporation in Seattle, Washington from August 2009 through October.

Senior Vice President of Operations Services: Kevin Burnett

Mr. Burnett has worked with the Cold Stone Creamery brand since joining Cold Stone Creamery, Inc. in Scottsdale, Arizona, as the Senior Director of Operations in August 2008. Mr. Burnett became our Vice President of Operations Services in November 2008 and was promoted to Senior Vice President of Operations Services in August 2011.

Sr. Vice President and Deputy General Counsel: Kimberly Lane

Ms. Lane has been an Assistant General Counsel of Kahala Brands since March 2012, then became the Vice President of Real Estate in February 2013 and became the Sr. Vice President and Deputy General Counsel in September of 2016. Prior to joining Kahala Brands, Ms. Lane was an Associate Trial Attorney at Fidelity National Law Group in Phoenix, Arizona from July 2010 until March 2012. From February 2007 through June 2010, Ms. Lane was an Associate Attorney at Palecek & Palecek, PLLC in Scottsdale, Arizona.

Sr. Vice President and Deputy General Counsel: Jenny Moody

Mrs. Moody has been with Kahala Legal department since June 2010. In August 2012 she was named Corporate Counsel, in September 2013 she was named Vice President and International Counsel, and in September 2016 became the Sr. Vice President and Deputy General Counsel.

Vice President of Training and Customer Service: Kerri Kudla

Ms. Kudla joined the Cold Stone Creamery, Inc. training team in Scottsdale, Arizona in June 2002. In January 2009, Ms. Kudla became our Director of Operations & Training Development and was promoted to Senior Director of Operations & Training Development in October 2012. In June 2014, Ms. Kudla became Vice President of Training and Customer Service where she manages the Training Program for the Kahala Training & Education Center (KTEC) in Scottsdale, Arizona for all of our brands and also oversees customer feedback channels for all of our brands.

Senior Vice President of Marketing: Steven Evans

Mr. Evans joined our marketing team in October 2007 as a National Marketing Manager for the Blimpie brand. In October 2009, Mr. Evans also became the Director of Marketing for the NrGize Lifestyle Cafe and Surf City Squeeze brands, and in January 2010, Mr. Evans also became the Director of Marketing for the TacoTime brand. In March 2011, Mr. Evans was promoted to Senior Director of Marketing, and in August 2011, Mr. Evans became the Vice President of Marketing. In January 2017 Mr. Evans was promoted to Senior Vice President of Marketing.

Vice President of Operations Cold Stone Creamery: Blake Borwick

Mr. Borwick began working as a Cold Stone Creamery franchisee in Cedar Falls and Waterloo, Iowa in April 2005 to March 2014. In March of 2014 to January 2017 he was the Director of Operations of Cold Stone Creamery and Blimpie Regional. He was promoted to Vice President of Operations for the Blimpie brand in January 2017. Mr. Borwick was promoted to Vice President of Operations for the Cold Stone Creamery brand in March 2018.

Vice President of Operations - America's Taco Shop, Thai Express & Ginger Sushi: Nicolette Petrillo

Ms. Petrillo became the Vice President of Operations for the America's Taco Shop brand in May 2014. From May 2010 until May 2013, Ms. Petrillo was the Senior Director of Operations for Papa Murphy's in Vancouver, Washington.

Vice President of Operations (Surf City Squeeze and Johnnie's New York Pizzeria brands): Jeffery Wallace

Mr. Wallace became the Vice President of Operations for the Johnnie's New York Pizzeria, Surf City Squeeze and Blimpie brands in December 2012 and transitioned to only the Surf City Squeeze and Johnnie's New York Pizzeria brands in December 2014. He was also the Vice President of Operations for the Pizza Fresh Take•N•Bake brand from December 2012 until we ceased offering it as a franchise in December 2014. Mr. Wallace worked with the Blimpie brand from April 2001 through December 2014, originally with Blimpie International, Inc. in Atlanta, Georgia, and then with Kahala Franchising after the acquisition of the Blimpie brand where he was promoted to Senior Director of Operations and promoted again to Regional Vice President of the Blimpie brand.

Vice President of Operations - NrGize Lifestyle Café and Blimpie : Michael Rana

Michael Rana became the Vice President of Operations of the Nrgize Lifestyle Café brand in December 2016. Prior to that, he was a Regional Director of Operation of the Blimpie brand from January 2008 to 2014.

Vice President of Operations - Pinkberry and sweet Frog brand: Tom O'Dear

Mr. O'Dear was a Regional Director of Operations for Blimpie International, Inc. in Atlanta, Georgia from June 2002 until our purchase of the Blimpie Assets in January 2006, and was a Regional Director of Operations for Kahala Franchising from January 2006 until September 2009. Mr. O'Dear was the Vice President of Operations for the Frullati Cafe & Bakery, Ranch One and Rollerz Rolled Sandwiches brands from September 2009 until April 2016 when he became the Vice President of Operations for the Pinkberry brand. Tom became the Vice President of Operations for the sweetFrog brand in September of 2018.

Vice President of Operations – Planet Smoothie and Tasti-D-Lite: Stacey Wopnford

Ms. Wopnford has served as the Brand President of the Planet Smoothie brand since June 2015. From January 2015 until June 2015, she served as Brand President of the NrGize Lifestyle Cafe brand. From September 2008 until January 2015, she was a Vice President of Operations, International.

Vice President of Operations – Baja Fresh and La Salsa: Timothy Koch

Mr. Koch joined the Baja Fresh team in March 2007 as Director of Purchasing. In November 2009, Timothy was promoted to Senior Director of Purchasing & Quality Management. In August 2015, Timothy was promoted to Vice President of Operations & Development. Timothy continued his role

as Vice President of Restaurant Operations for Baja Fresh effective with the acquisition in October 2016.

Vice President of Restaurant Operations (Blimpie, Ranch One, Rollerz Rolled Sandwiches and Frullati Café & Bakery brands): Thomas Ciomek

Mr. Ciomek began working for Kahala Brands in Scottsdale, Arizona in January 2005 as a Regional Director of Operations and was promoted to Regional Vice President of Operations in February 2009. In September 2011, he became a Vice President of Restaurant Operations for the Blimpie, Ranch One, Rollerz Rolled Sandwiches and Frullati Café & Bakery brands.

Vice President of Operations (Grabbagreen): Jesse Schwarz

Mr. Schwarz joined MTY's affiliate, Kahala Brands in November 2016 as the Director of Operations of Baja Fresh and La Salsa Brands. Prior to joining Kahala Brands Jesse served as Director of Operations for Applebee's Franchisee RMH Holdings/Thomas & King Inc. since 2007. Upon the acquisition of the Grabbagreen brand in March of 2018, Jesse became the Vice President of Operations for the Grabbagreen brand.

Vice President of Operations (Built /The Counter): April Fogel

Ms. Fogel became Vice President of Operations for Built and The Counter December 2017. Prior Ms. Fogel was Kahala Brands Franchise Director of Operations from November 2016 to December 2017. Ms. Fogel previously worked for Briad Restaurant Group as Director of Operations from June 2007 to November 2016.

TacoTime Brand President: Kevin Gingrich

Mr. Gingrich has served as the Brand President of the TacoTime brand since February 2005. Mr. Gingrich is also a TacoTime franchisee.

Director Business Development: USA: Robert S. Cook, Jr.

Robert has been the Director of Business Development for the Manchu Wok brand since January 2010. He also serves in the same position for our parent, MTY, and has done so since December 2014. He has been performing the same role with Kahala Brands since April of 2017.

VP of Operations Misty Hartner

Ms. Hartner became the VP of Operations for Maui Wowi since December, 2018. Her previous experience includes the Director of Franchise Support of Maui Wowi since November 2015. Previously, she was the Director of Franchise Support for Maui Wowi Hawaiian Coffees and Smoothies from February 2010 to November 2015.

MTY USA Brands: Brand Vice President of Operations- Michelle Vander Werff

Michelle joined MTY's affiliate, Kahala Brands, in March of 2010 as a Regional Director of Operations for Cold Stone Creamery, bringing a wealth of knowledge as a previous Cold Stone Creamery franchisee. In 2012, Michelle became a Senior Regional Director and assisted with operational support of additional territories. In 2014, Michelle became the Director of Operations for Cold Stone Creamery and was based out of our Scottsdale office. Michelle moved to the Extreme Pita and Mucho Burrito brands in 2016.

## **Franchise Sales**

### Vice President of Franchise Development: Jay Goldstein

Mr. Goldstein has worked with the Cold Stone Creamery brand since joining Cold Stone Creamery in Scottsdale, Arizona in October 2005. In January 2008, Mr. Goldstein became the Senior Director of Development for Kahala Franchising, and from January 2008 until November 2008, Mr. Goldstein served as Senior Director of Operations. Mr. Goldstein was promoted to Vice President of Franchise Development in May 2009. As the Vice President of Franchise Development, Mr. Goldstein is involved in the sales of all of our brands.

### Vice President of Franchise Development: Nicole J. Rayborn

Ms. Rayborn joined our sales team in March 1999 as the Director of Franchising and was promoted to Vice President of Franchise Development in November 2008.

### Director of Franchise Development: Doug Merenda

Mr. Merenda joined our sales team in October 2015 as a Director of Franchise Development and was a franchise broker for us from April 2015 through October 2015. From October 2014 to April 2015, Mr. Merenda was a Franchise Sales Executive for Caring Transitions in Cincinnati, Ohio, and prior to that, Mr. Merenda was a Franchise Sales Executive for Tutor Doctor in Toronto, Canada from February 2011 until October 2014. From January 2010 until February 2011, Mr. Merenda was a Franchise Salesperson for Kumon in Teaneck, NY.

### Director of Franchise Development: Ron Filian

Ron has served as Kahala Brands' Director of Franchise Development since November 2016. From January 2011 to December 2015, Mr. Filian served as Franchise Sales Manager for TBC Corporation, franchisor of Big O tires, Midas and Speedee, among others.

### Director of Franchise Development: Adam Benshoof

Adam Benshoof joined Kahala Brands as Director of Franchise Development in August 2017. Prior to Kahala Brands, Adam was the Director of Franchise Sales & Development with Wyndham Hotel group from April 2015 to January 2017. Before this, he was a Franchise Area Developer with Radio Shack Corp from February 2014 to March 2015. Adam was a Development Manager with Maui Wowi Hawaiian Coffees & Smoothies from October 2011 to February 2014.

### Director of Franchise Development: Shemar Pucel

Ms. Pucel joined our team as Director of Franchise Development September 2018. She previously was the Director of Franchise Marketing & Development from August 2016 with SFF, LLC. From October 2015 to July 2016 she was a franchise Development Manager. From April 2012 to October 2015 Ms. Pucel was franchise Development Marketing Coordinator for Outdoor Living Brands in Richmond, Virginia.

### Director of Franchise Development: Robert DiBartolomeo

Mr. DiBartolomeo joined our team as Vice President of Franchise Development January 2019. He was previously employed by MatchU Franchise Consultants, LLC as president from February 2017 to January 2019. From June 2016 to February 2017 he was the National Director of Franchising for TGI Fridays. From March 2015 to June 2016, Mr. DiBartolomeo was employed by UFood Grill as

VP Franchising. From February 2009 to March 2015 he was employed by Brix Holdings as the Sr. Director of Franchising.

Director of Franchise Development: Rick Howard

Mr. Howard joined our team in January 2019. He was previously employed by Lunch Box Franchising, LLC as the Director of Development & Real Estate from May 2018 to November 2018. From September 2015 to May 2018 he was the Director of Franchise Development & Real Estate for Massage Envy Franchising, LLC. His prior employment from January 2014 to September 2015, was the VP of Development & Real Estate for Fun Brands, LLC.

Franchise Development Manager: Claudia Alaniz

Ms. Alaniz joined our team in March 2016. She was previously employed as the Field Marketing Manager for Pinkberry Ventures Inc. from May 2015 to March 2016. From September 2014 to April 2015 Ms. Alaniz was a Field Marketing Manager by Maverick Brands LLC. From April 2014 to September 2014 she was the Assistant Marketing Manager for Icelanic Glacial. From January 2014 to April 2014 she was the Brand Ambassador for Bai Brand and from August 2012 to December the Brand Ambassador for Vita Coco.

MTY Brands : Vice President of Development – USA – Ramin (Ray) Zandi

Ray is the Vice President of Development – USA of Extreme Pita, located in Scottsdale, Arizona, a position he has held since February 2009. Concurrently, Ray serves as Vice President of Development for our parent, MTY, in Scottsdale, Arizona, a position he has held since September 2013. Since February 2005, Ray has also served as the President of our former Northern California regional director, Desertbay Development, Inc., in Scottsdale, Arizona.

Franchise Development Manager - Traci Zandi

Traci has been assisting the V.P. of US Business Development in awarding Extreme Pita, Mucho burrito, Ginger Sushi and Poke shops and Thai Express franchise units since October 2016. She has also served as Office Manager and Executive Assistance for Extreme Pita from April 2011 until October 2016. As well as the Administrative Manager for our parent, MTY, in Scottsdale, Arizona, a position she has held since September 2013. From April 2005 through September 2013, Traci was the Director of Administrative Operations for our former Northern California regional director, DesertBay Development, Inc.

### **ITEM 3: LITIGATION**

Pending Arbitration and Litigation Involving Kahala Franchising, L.L.C.

Kahala Franchising, LLC v. Hoboken #1 Blimpie, Inc. d/b/a Blimpie Subs and Salads Restaurant #11726; Garnish It, Inc. d/b/a Blimpie Subs and Salads Restaurant #10913; Damigreg, LLC d/b/a Hoboken Heroes; and David Pierro; United States District Court Southern District of New York; Civil Action No.: 1:17-cv-04686; subsequently amended on March 8, 2018 to remove Garnish, It, Inc. as a named Defendant amending the caption to: Kahala Franchising, LLC v. Hoboken #1 Blimpie, Inc. d/b/a Blimpie Subs and Salads Restaurant #11726; Damigreg, LLC d/b/a Hoboken Heroes; and David Pierro; United States District Court Southern District of New York; Civil Action No.: 1:17-cv-04686. On June 21, 2017, Kahala Franchising, L.L.C. (Plaintiff/ Counter Defendant), filed a Complaint against Hoboken #1 Blimpie, Inc. d/b/a Blimpie Subs and Salads Restaurant #11726;

Garnish It, Inc. d/b/a Blimpie Subs and Salads Restaurant #10913 and Damigreg, LLC d/b/a Hoboken Heroes; and David Pierro (collectively "Defendants/ Counter Claimants"). Plaintiff/ Counter Defendant alleged: (i) Infringement of Federally Registered Trademark; (ii) Federal Unfair Competition – False Designation of Origin; (iii) New York Common Law Trademark Infringement and Misappropriation; (iv) New York Common Law Unfair Competition; and (v) New York Common Law Breach of Contract and Implied Covenant of Good Faith and Fair Dealing. Plaintiff / Counter Defendant is seeking: (i) Enjoinment from using any of the marks in the Blimpie® family of marks; (ii) Enjoinment from using any of the Blimpie® System trade secrets and confidential information in any manner; (iii) Enjoinment from operating a competing business for a period of five years within the protected franchise territory; (iv) Each Defendant be found liable for Federal Trademark Infringement and Federal Unfair Competition resulting from its use of one or more of the Blimpie® family of marks; (v) An award of judgment for damages against each of the named Defendants; jointly and severally from their violation of Section 32(a) of the Lanham Act and 43(a) of the Lanham Act for Federal Trademark Infringement and Federal Unfair Competition in an amount to be fixed by the Court; (vi) Awarded judgment for damages resulting from each named Defendant's common law trademark infringement; (vii) Award for judgment for damages from each named Defendant's common law unfair competition and such damages be trebled; (viii) Award of damages resulting from each named Defendant's common law breach of contract; (ix) Any other relief the Court deems fit; (x) Costs and attorneys' fees; and (xi) That all triable issues be brought before a jury. On February 15, 2017, Defendants / Counter Claimants filed their Motion to Dismiss. In turn the Court executed an Order on February 18, 2018, ordering Plaintiff/ Counter Defendant to file its Amended Complaint by March 9, 2018, or file a response to the Motion to Dismiss by April 3, 2018. On March 8, 2018, Plaintiff/ Counter Defendant filed its Amended Complaint in which it dismissed Garnish It, Inc. as a Defendant. The other Defendants remained named in the litigation. Plaintiff/Counter Defendant alleges: (i) Infringement of Federally Registered Trademark (15 U.S.C. § 1114); (ii) Federal Unfair Competition - False Designation of Origin (15 U.S.C. §1125); (iii) New York Common Law Trademark Infringement & Misappropriation; (iv) New York Common Law Unfair Competition; and (v) New York Common Law Breach of Contract & Implied Covenant of Good Faith & Fair Dealing. On April 27, 2018, Defendants / Counter Claimants filed their Answer, Affirmative Defenses, Counter Claims and Jury Demand. Defendants/ Counter Claimants allege (i) The Agreement is Unconscionable; (ii) Negligent Misrepresentation; and (iii) Fraudulent and Unlawful Practices. Defendants/ Counter Claimants are seeking: (i) Judgment in Counter-Claimants favor declaring the franchise agreement is void as unconscionable and an impermissible restraint against trade; (ii) Judgment in Defendants / Counter Claimant's favor awarding a money judgment including compensatory damages and pre and post judgment interest; (iii) Judgment in Defendants / Counter Claimant's favor pursuant to NY GBL §687(2)(b) for compensatory damages, rescission and return of Pierro and Damigreg's purchase and lease price at six percent per year from the date of purchase of the franchise agreement and lease of the location; and (iv) Judgment in Defendants / Counter Claimant's favor for attorneys' fees, disbursements and any other relief the Court deems fit. On June 14, 2018 Plaintiff / Counter Defendant filed its Answer to Defendants/ Claimant's Counter Claim and vehemently denied the allegations made. A Settlement Conference is set for January 10, 2019.

Kahala Franchising L.L.C. and KBI Holdings, L.L.C. v. AFSA Food, Inc. and Arshad Khan; Supreme Court of the State of New York; County of Westchester; Index No.: 59688/2018. On June 21, 2018, Kahala Franchising, L.L.C. and KBI Holdings, L.L.C. (collectively "Plaintiffs / Counter Defendants") filed a Complaint against AFSA Food, Inc. and Arshad Khan (collectively "Defendants/ Counter Claimants"). Plaintiffs/ Counter Defendants allege breach of contract and are seeking: (i) Judgment in the sum of \$95,692.37, plus interest from January 3, 2017; (ii) Costs and disbursements incurred by the Plaintiffs/ Counter Defendants in connection with the action; (iii) Any other relief the Court deems just and proper. On October 18, 2018, Defendants/ Counter Claimants filed their Notice of Appearance; Answer and Counterclaims. Defendants/ Counter Claimants allege: (i) Plaintiffs/Counter Defendants acted in bad faith and fraudulently induced Defendants/ Counter Claimants into purchasing the Franchised Business; (ii) Plaintiffs/ Counter Defendants, as a foreign

entity, acted in bad faith and violated the General Business Laws of New York. Defendants/ Counter Claimants are seeking: (i) Twenty-five thousand (\$25,000.00); for monies placed in the store and paid by Defendants/Counter Claimants to attain the franchise; (ii) An order that the Court direct Plaintiffs/ Counter Defendants' conduct to the Attorney General's office and seek one million dollars in fees as damages due.

Kahala Franchising, L.L.C. v. Madhat Hayek and Osama Hayek; Superior Court of New Jersey; Morris County; Law Division; Docket No.: MRS-L-001200-18. On June 20, 2018, Kahala Franchising, L.L.C. ("Plaintiff / Counter Defendant") filed a complaint against Madhat Hayek ("Defendant Hayek / Counter Claimant") and Osama Hayek ("Defendant Osama") Plaintiff/ Counter Defendant alleges: (i) Breach of Contract; and (ii) Account Stated. Plaintiff/ Counter Defendant is seeking: Judgment against both Defendants in the sum of \$16,182.84; (ii) Attorney's fees pursuant to Contract; and (iii) Costs of suit incurred. On August 7, 2018, Defendant Hayek/ Counter Claimant filed his Answer, Affirmative Defenses and Counterclaim against Plaintiff / Counter Defendant. Defendant Hayek / Counter Claimant alleged: (i) Plaintiff/ Counter Defendant had not performed its obligations to Defendant Hayek/ Counter Claimant under the franchise and verbal contract; (ii) Plaintiff/ Counter Defendant failed and refused to relocate the restaurant after repeated requests and providing ideas on new locations which led to the loss of all equipment; (iii) Plaintiff / Counter Defendant negotiated the lease in its interest and refused to renegotiate with the landlord about repairs to the building; and (iv) Plaintiff/ Counter Defendant failed to provide a full copy of the franchise agreement prior to the signing of the lease agreement. Defendant Hayek / Counter Claimant sought \$85,000 in damages. Defendant Osama failed to file an Answer to the Complaint. On September 6, 2018, Plaintiff/ Counter Defendant filed its Answer to the Counterclaim; Separate Defenses and Jury Demand. Plaintiff/ Counter Defendant vehemently denied any and all claims alleged in Defendant Hayek / Counter Claimant's Counterclaim. Plaintiff/ Counter Defendant further served its First Set of discovery on Defendant Hayek / Counter Claimant. On November 30, 2018, Plaintiff/ Counter Defendant filed its Motion to Dismiss Counterclaim Per R. 4:23-5(a)(1). Plaintiff/ Counter Defendant sought an Order Dismissing the Counterclaim for Defendant Hayak/ Counter Claimant's failure to provide discovery responses. On December 24, 2018, the Court granted Plaintiff/ Counter Defendant's Motion to Dismiss Counterclaim due to Defendant Hayek / Counter Claimant's failure to provide discovery responses.

#### Concluded Arbitration and Litigation Involving Kahala Franchising, L.L.C.

KOHO, Inc. v. Kahala Franchising, L.L.C.; Superior Court of the State of California for the County of Los Angeles, Case No. BC572565. On or about February 17, 2015, Koho, Inc. ("Plaintiff Koho" or "Plaintiff/Cross Defendant Koho") filed a Complaint against Kahala Franchising, L.L.C. ("Defendant Kahala" or "Defendant/Cross Claimant Kahala"); alleging: (i) Breach of Contract; (ii) Unjust Enrichment; and (iii) Declaratory Relief. Plaintiff was seeking: (i) no less than \$540,000.00 in special and general damages; (ii) Litigation costs; (iii) Prejudgment interest; (iv) Reasonable attorney's fees; and (v) Declaratory relief. On or about May 5, 2015, Defendant Kahala filed a Cross-Complaint against Koho, Inc.; Heeyong Kyle Chung; and Hannah Kim; alleging: (i) Breach of Contract; (ii) Unjust Enrichment; (iii) Disgorgement and Restitution; (iv) Fraud-Deceit and Concealment; (v) Negligent Misrepresentation; (vi) Conversion; (vii) Negligence; and (viii) Declaratory Relief. Defendant Kahala sought: (i) Breach of Contract; (ii) Damages; (iii) Restitution; (iv) Judicial Determination; (v) Costs; (vi) Attorneys' Fees; (vii) Punitive Damages; and (viii) Prejudgment Interest. On or about June 2, 2015, Defendant/Cross Claimant Kahala filed its Objection to Plaintiff/Cross Defendant Koho, Inc.'s Notice of Taking Deposition of the Person Most Knowledgeable at Kahala Franchising, L.L.C.. On or about June 15, 2015, Plaintiff/Cross Defendant Koho's filed a Notice of Hearing on Demurrer and Demurrer to Defendant/Cross Claimant Kahala's Cross-Complaint; Memorandum of Points and Authorities; Declaration of Daniel D. Hoffman and Exhibits in Support Thereof. Plaintiff/Cross Defendant Koho filed its Notice of Motion and Motion to Strike Certain Portions of Defendant/Cross Claimant Kahala's Cross Complaint; Memorandum of Points and Authorities on June 17, 2015. On October 16, 2015, the Court overruled Plaintiff / Cross



Defendant Koho's Demurrer to Defendant / Cross Claimant Kahala's Cross Complaint in its entirety and denied their motion to strike Defendant/ Cross Claimant Kahala's punitive damages claims; the Court sustained the Demurrer as to Cross-Defendant Hannah Kim. Mediation was held on May 3, 2016 which failed to yield a settlement between the two parties. On May 5, 2016, Defendant/Cross Claimant Kahala dismissed the Counter Claim against Koho, Inc. and Kyle Chung, as Plaintiff had fulfilled its debt previously owed to it, and; therefore, the claims were moot. Hannah Kim was subsequently awarded attorney's fees on June 15, 2016 in the amount of \$10,233.04. Bench Trial commenced on June 15, 2016 and ended on June 16, 2016. Upon the conclusion of Plaintiff Koho, Inc.'s case, Defendant Kahala presented its Case –in- Chief and moved for Judgment pursuant to Code of Civil Procedure section 631.8. The Court granted Defendant's Judgment as Plaintiff Koho failed to establish the requisite elements of "breach" and "damages" on the three causes of action asserted in the Complaint. On July 18, 2016, the Court awarded Defendant Kahala's attorneys' fees in the amount of Two Hundred and Five Thousand Dollars and 00/100 Cents, (\$205,000.00). On September 22, 2016 Plaintiff Koho, Inc. filed a Notice of Filing of Notice of Appeal and requested that Defendant participate in a Mediation to resolve the outstanding award to Defendant. Plaintiff Koho, Inc. failed to post an appeal bond. On February 13, 2017 Defendant Kahala commenced its self-help pursuant to Section 8 (i) and (j) of the ARA and began withholding 100% of the Area Representative fees that Plaintiff Koho would have otherwise been entitled to. On June 19, 2017 the parties entered into a settlement agreement whereby Defendant Kahala repurchased Plaintiff's Area Developer territory for the sum of \$75,000 and forgave the remaining damages in the amount of \$130,000 owed to it.

Franchisor-Initiated Lawsuits Filed by Franchisor Kahala Franchising, L.L.C. Against Franchisees During Fiscal Year December 1, 2017 through November 31, 2018:

Suits for Trademark Infringement; Royalty and Advertising Fees

*Kahala Franchising, LLC v. Bokjo Bros, Inc.; Seung Nam Park and Does 1-10*; United States District Court, Central District of California – Western Division; Case No.: 2:18-cv-01504-RGK- JC.

Suits to collect on Royalty Fees, Product Purchases and Promissory Note

*Kahala Franchising, LLC v. A & H Ice Cream Store, Inc.; Hiba Rashid and Abdul Rashid*; Supreme Court of the State of New York; County of New York; Index No: 2018-651951.

Suits to collect Early Termination Fees, Royalty and Advertising Fees

*Kahala Franchising, L.L.C. v. Y & N Food Service Corp. and Mohammed Zaynour*; Superior Court of New Jersey; Passaic County; Law Division; Docket No.: PAS-L-002080-18;

*Kahala Franchising, L.L.C. v. Lies Enterprises, LLC; David Lies; Natasha Lies; James Grice and Amanda Grice*; Douglas County District Court; Douglas County, CO; Case No.: 2018CV30754.

Suits to collect on Early Termination Fees

*Kahala Franchising, L.L.C. v. Nasim Patel, Javid Dal, Munaf Patel and Samim Dal*; Supreme Court of the State of New York County of Queens; Index No.: 713818/2018.

Suits to collect on Early Termination Fee per the Franchise Agreement; Wal-Mart Early Termination Fee and License Fee

*Kahala Franchising L.L.C. and KBI Holdings L.L.C. v. Michael Tonry*; Circuit Court of the Nineteenth Judicial Circuit in and for St. Lucie County, FL; Case No.: 562018CA000931AXXXHC.

Suits to collect on Early Termination Fee; Unpaid rent; Royalty and Advertising Fees; Wal-Mart Early Termination Fee

*Kahala Franchising, L.L.C. v. Christopher Tadros*; Superior Court of the State of Arizona County of Maricopa; Case No.: CV2018-012924.

Suit to collect on Early Termination Fee and Reimbursement of Relocation Fee

*Kahala Franchising, L.L.C. v. Surinder Singh Kheepal and Gurpreet K. Kheepal*; State Court of Douglas County State of Georgia; Civil Action File No.: 18SV00359EB.

#### LITIGATION INVOLVING PREDECESSORS AND AFFILIATES

##### Concluded Litigation Involving Predecessor Pinkberry Ventures, Inc.:

*Pinkberry Ventures, Inc. v. Sam Lewis, Jackie Gardner* (United States District Court, Central District of California, Case No. SC122940, filed August 7, 2014). On August 7, 2014, Pinkberry Ventures, Inc. ("Plaintiff") filed a complaint against Sam Lewis and Jackie Gardner ("Defendants") who were guarantors of four Pinkberry Franchise Agreements between Plaintiff and Penninsular Group, L.L.C. ("Penninsular"). Plaintiff terminated the Franchise Agreements for failure to pay royalties and marketing fees and filed this action to enforce the Continuing Guaranties signed by Defendants. Plaintiff alleged breach of written guaranty. Plaintiff sought: (i) amounts due and payable under the Franchise Agreements in excess of \$75,000; (ii) costs of suit; (iii) reasonable attorney's fees; and (iv) all other relief as the Court deemed just and proper. On August 29, 2014 Penninsular filed a Complaint against Howard Schultz, Ron Graves, Michael J. Dixon and Michael Beck, all of which were former Directors and employees of Pinkberry Ventures, Inc. The matter was filed in the United States District Court, Middle District of Florida Tampa Division; Case No.: 8:14-CV-2152-F23TGW. Penninsular alleged: (i) fraudulent inducement; (ii) negligent misrepresentation, (iii) civil conspiracy, and (iv) violation of the Racketeer Influenced and Corrupt Organizations Act. Penninsular sought: (i) rescission of the Franchise Agreements; (ii) damages; (iii) attorney's fees; (iv) costs; (v) post-judgment interest; and (vi) any other further relief as the Court deemed just and proper. Plaintiff and Penninsular entered into a Settlement Agreement dated February 15, 2015, under which Plaintiff agreed to pay Defendant \$60,000 (that was distributed to defendant's creditors), less any cancellation fees charged by the Special Master, and to dismiss this action. None of the parties admitted liability or wrongdoing.

##### Pending Arbitration and Litigation Involving Predecessor Cold Stone Creamery, Inc.:

*Cecil Rolle v. Cold Stone Creamery, Inc., Kahala Corp., Cold Stone Franchisee National Advisory Board, L.L.C., Robert Zarco, Esq. and Zarco Einhorn, Salkowski & Brito P.A.*; Eighth Judicial Circuit Court, Alachua County, Florida, Case No. 2011-CA-5004 subsequently amended and removed to *Cecil Rolle v. Cold Stone Creamery, Inc.; The Kahala Corp.; The NIACCF, Inc.; Robert Zarco, Esq.; and Zarco Einhorn Salkowski & Brito, P.A., Daniel Beem; Rodolfo Puig; Frank Caperino and Edward Reesman*; County Court of the Eleventh Judicial Circuit in and for Miami-Dade County, FL; Case No.: 2012-19002CA02. On or about September 30, 2011, Cecil Rolle, a former Cold Stone Creamery franchisee ("Plaintiff"), filed a Complaint and Demand for Jury Trial against Cold Stone Creamery, Inc., Kahala Corp. (collectively "Defendants Cold Stone"), Cold Stone Franchisee National Advisory Board, L.L.C., Robert Zarco, Esq., and Zarco Einhorn Salkowski & Brito, P.A. The complaint alleged defamation per se and defamation per quod. Plaintiff sought an award in an

unspecified amount for all damages, including interest, costs and any other relief the Court deemed proper. On November 21, 2011 Defendants Cold Stone filed a Motion to Dismiss Plaintiff's Complaint and/or for More Definite Statement. The National Advisory Board, LLC also filed a Motion to Dismiss Plaintiff's Complaint on November 21, 2011. On January 3, 2012 Defendant Robert Zarco filed his Motion to Dismiss Plaintiff's Complaint with Prejudice. On January 4, 2012 Defendants NIACCF and Zarco, Einhorn, Salkowski & Brito P.A. filed their Motion to Dismiss Plaintiff's Complaint With Prejudice and/or for a More Definite Statement. Plaintiff filed an Amended Complaint on or about January 17, 2012. Plaintiff amended the original claims and added conspiracy to defame. The Amended Complaint no longer named the National Advisory Board as a Defendant but it did include Dan Beem ("Defendant Beem"), NIACCF, Inc., Rodolfo Puig, Frank Caperino, and Edward Reesman as additional Defendants (hereinafter "Defendants Puig, Caperino and Reesman"). On February 1, 2012 Defendants NIACCF, Robert Zarco, Esq., and Zarco Einhorn, Salkowski & Brito, PA filed a Motion to Dismiss along with a Motion to Transfer Venue. On February 2, 2012 Defendants Cold Stone filed a Motion to Dismiss and Motion for Sanctions. On February 16, 2012, Defendants Puig, Caperino and Reesman filed their Motion to Dismiss. On February 16, 2012 Plaintiff filed his Response to Defendants NIACCF, Robert Zarco, Esq. and Zarco Einhorn Salkowski & Brito, P.A.'s Motion to Dismiss and Motion to Transfer Venue pleading the Court to keep the venue in Alachua County, FL. On March 13, 2012 Plaintiff filed a Request to Enter Default against Defendant Beem for failure to respond to the Complaint. On April 9, 2012 Defendant Beem filed a Motion to Quash Service of Process and Motion to Set Aside Clerk's Default for lack of personal jurisdiction pursuant to Fla. R. Civ. P. 1.140. He also moved to set aside the clerk's default entered against him on March 14, 2012 on the grounds that (i) he was entitled to notice prior to entry of the default and (ii) his alleged failure to timely answer was due to excusable neglect, he has meritorious defenses, and he acted with diligence in moving to set aside the default. In April 12, 2012, the Alachua County Eighth Circuit District Court denied Defendants NIACCF, Robert Zarco, Esq., and Zarco Einhorn, Salkowski & Brito, PA Motion to Dismiss, but granted the Motion to Transfer Venue to the Miami – Dade Eleventh Circuit District Court. On May 4, 2012 Plaintiff (hereinafter Plaintiff or Plaintiff/ Appellant") filed an Appeal in the First District Court of Appeal; State of Florida; Case No.: 12-2112. Plaintiff/Appellant sought that the Court reverse the trial Court's Order to Transfer Venue. On June 29, 2012 Defendants Cold Stone, and Defendant Beem (collectively "Defendants Cold Stone/ Appellees") filed their Answer Brief requesting that the Court affirm the trial Court's order granting the defense motions to transfer venue. On July 18, 2012 Plaintiff/ Appellant filed his Reply again requesting that the trial court's Order to Transfer Venue be reversed. On November 28, 2012 the District Court of Appeal First District of Florida issued its Opinion and affirmed the trial court's order to transfer the venue from Alachua County to Miami-Dade County. On January 22, 2013 Plaintiff filed his reply to Defendant Beem's Motion to Quash Service of Process and Motion to Set Aside the Clerk's Default and requested that the Court deny both motions. On January 23, 2013 the Court issued its Order that Defendant Beem's Motion to set aside the Clerk's Default was granted and the Clerk's Default of March 13, 2012 be set aside; (ii) Defendant's Beem's Motion to Quash Service for lack of personal jurisdiction was denied; and (iii) Defendant Beem's arguments with regard to personal jurisdiction were preserved and would be heard with his Motion to Dismiss. On January 15, 2013 Plaintiff filed a Motion for Default against Defendants NIACCF, Robert Zarco, Esq. and Zarco Einhorn Salkowski & Brito , P.A. for failure to plead or otherwise defend within the specified time frame. On January 28, 2012 Defendants NIACCF, Robert Zarco and Zarco Einhorn, Salkowski & Brito P.A. filed a Corrected Motion to Vacate the Portion of the Order Dated April 12, 2012 Denying Defendants' Motion to Dismiss. On June 18, 2013 The Court Order was issued and it granted without prejudice Defendant Beem's Amended Motion to Dismiss based on a lack of personal Jurisdiction. On June 24, 2013 the Court granted Defendants NIACCF, Robert Zarco, Esq. and Zarco, Einhorn Salkowski & Brito P.A.'s Corrected Motion to Vacate the Portion of the Order Dated April 12, 2012 Denying Defendants' Motion to Dismiss. The Court further ordered on June 24, 2013 an Order granting (i) Defendants NIACCF, Inc., Robert Zarco, Esq. and Zarco Einhorn Salkowski & Brito P.A.'s Motion to Dismiss the First Amended Complaint; (ii) Defendants NIACCF, Inc. Robert Zarco and Zarco Einhorn Salkowski & Brito P.A.'s Supplemental Motion to Dismiss; (iii) Defendants Cold Stone Creamery Amended

Motion to Dismiss First Amended Complaint and (iv) Defendant Beem's Motion to Dismiss Amended Complaint. On July 15, 2013, Plaintiff/Appellant filed a Notice of Appeal with the Florida Third District Court of Appeal, Case No. 3D13-1821, to appeal the June 24 2013 Order granting Defendant Cold Stone's Motion to Dismiss. On July 19, 2013, Defendants Cold Stone/ Appellees filed their Notice of Appearance. On July 24, 2013, the Court granted Defendants Puig, Caperino and Reesman's Motion to Dismiss First Amended Complaint. On July 24, 2013, Plaintiff/Appellant filed an Amended Notice of Appeal to the aforementioned June 24, 2013 Order and the July 24, 2013 Order. On August 27, 2013 Defendants Cold Stone/Appellees filed their Motion to Dismiss Appeal and Alternative Motion to Strike Notice of Appeal. On March 31, 2014, oral argument of the Appeal took place in which Defendants Cold Stone presented its authorities and arguments in favor of affirming the lower court's decision. On June 24, 2016, Plaintiff filed its Notice of Substitution of Counsel for Appellant. On July 8, 2016 Defendants NIACCF, Robert Zarco, Esq., and Zarco Einhorn, Salkowski & Brito, PA, filed Appellees' Motion to Strike Appellant's Notice of Supplemental Authority. On July 11, 2016, Plaintiff filed its Response in Opposition to Appellees' Motion to Strike Defendants' Notice of Supplemental Authority. Defendants Cold Stone filed its Notice of Supplemental Authority on July 21, 2016. On March 1, 2017, the Third District Court of Appeals issued its decision reversing the trial court's decision to dismiss Plaintiff's defamation lawsuit based on technical procedural grounds. On May 18, 2017, Defendants Cold Stone filed its Answer and Affirmative Defenses. Discovery is ongoing and a date for trial has not been set. Defendants Cold Stone will continue to vigorously defend the claims against it.

Franchisor-Initiated Lawsuits Filed by Predecessor Cold Stone Creamery, Inc. Against Franchisees During Fiscal Year 2018:

None

Concluded Arbitration and Litigation Involving Parent Company (Kahala Brands, Ltd. formerly known as Kahala Corp.)

Ronald Williams and Jennifer Clayton v. Kahala Corp.; Third Judicial Circuit Court, Madison County, Illinois, Case No. 2010 L 000166. In February 2010, Ronald Williams and Jennifer Clayton Blimpie customers, individually and on behalf of all others similarly situated (collectively, the "Plaintiffs") filed a Class Action Complaint against Kahala Corp. ("Defendant"), incorrectly naming Kahala Corp. as the franchisor of the Blimpie brand. In the Complaint, Plaintiffs alleged violation of the Illinois Consumer Fraud and Deceptive Business Practices Act arising from a claim that the Blimpie restaurants in the state of Illinois do not put double the meat in the Super Stacked sandwiches. The Plaintiffs sought: (i) certification of the class; (ii) designation of Plaintiffs as representatives of the class; (iii) and counsel as class counsel; (iv) damages to be determined at trial, but in no event greater than \$75,000 per person, (v) plus reasonable attorneys' fees; and (vi) allowable costs, including reasonable fees and expenses of any necessary expert witnesses, (vii) a permanent injunction enjoining Defendant from advertising that its Super Stacked sandwiches contain double portions of meat without including double portions of meat in such sandwiches, and (viii) any other relief the Court deems appropriate. Defendant denied all allegations. In May, 2010, the parties reached a settlement whereby Defendant agreed to donate \$5,000 to a local food bank in exchange for Plaintiffs' dismissal of all claims against Defendant.

Concluded Arbitration and Litigation Involving Predecessor Kahala Franchise Corp.

Texas Nrgize #1, Inc. v. Kahala Franchise Corp. and Kahala Holdings, L.L.C.; 67<sup>th</sup> Judicial District Court, Tarrant County, Texas; Civil Action No.: 067-272652-14. On or about June 18, 2014, Texas NRGIZE #1, Inc., a current Nrgize franchisee ("Plaintiff"), filed a Summons and Petition and Request for Disclosure against Kahala Franchise Corp and Kahala Holdings, L.L.C. (collectively, "Defendants") alleging (i) violations of the Texas Business Opportunities Act, Tex. Bus. & Comm.

Code §§ 51.001 and the Texas Deceptive Trade Practices Consumer Protection Act, Tex. Bus. & Comm. Code §17.46, and (ii) Breach of Contract and Warranties. Plaintiff sought (i) economic damages in excess of \$200,000 plus treble damages and pre- and post-judgment interest at the maximum rates allowed by law; (ii) attorneys' fees and costs; and (iii) such other relief to which the Plaintiff may be justly entitled. On July 16, 2014, Defendants filed a Notice of Removal to the United States District Court for the Northern District of Texas; Civil Case No.: 4:14-cv-544. On July 24, 2014 the Judge executed the Order Granting the Unopposed Motion to Substitute Parties and Changing Case Style. Kahala Franchising, L.L.C. was substituted in as a Defendant instead of Kahala Franchise Corporation. On July 28, 2014, Defendants filed a Motion to Transfer Pursuant to 28 U.S.C. §(A) and Brief in Support. This motion sought an order to transfer the litigation to the United States District Court for the District of Arizona pursuant to the parties forum selection clause contained in the franchise agreement. On August 1, 2014, Defendants filed its Answer, Counterclaim and Third Party Claim. The Counterclaim was against Plaintiff and the Third-Party Claim was filed against Duane W. Martin, Argentina Saldivar, and Margena Wood, ("Third Party Defendants"). Defendants alleged: (i) Breach of Franchise Agreement against Plaintiff, and (ii) Breach of Guaranty against Third Party Defendants. Defendants sought: (i) judgment against Plaintiff and the Third Party Defendants in an amount to be proven at trial; (ii) attorneys' fees; (iii) costs pursuant to A.R.S. §§12-341 and 12-341.01 and the parties contractual agreements; and (iv) any other relief the Court deemed fit. Plaintiff filed its Response to Defendants' Motion to Transfer Pursuant to 28 U.S. C. §1404 (A) and Brief in Support on August 18, 2014, then filed its Answer to Defendant's Counterclaim on August 22, 2014. On August 28, 2014, Defendants filed its Reply in Support of Motion to Transfer Pursuant to 28 U.S. C. § 1404(A) and Brief in Support. On September 24, 2014, the United States District Court for the Northern District of Texas Court requested that each party submit a supplemental brief to benefit the Court in resolving the Defendants' Motion to Transfer. Mediation was held on September 29, 2014, but the parties failed to come to an agreement. On October 17, 2014, the Third Party Defendants filed their Answer and Counterclaim. The Third Party Defendants alleged: (i) violations of the Texas Business Opportunities Act, Tex. Bus. & Comm. Code §§ 51.001 and the Texas Deceptive Trade Practices Consumer Protection Act, Tex. Bus. & Comm. Code §17.46, and (ii) Breach of Contract and Warranties and sought: (i) economic damages in excess of \$200,000 plus treble damages under the Code and pre and post judgment interest at the maximum rates allowed by law; (ii) attorney's fees; (iii) costs; and (iv) any other relief general or special that the Court deems fit. On October 24, 2014, Defendants filed its Supplemental Briefing In Support of Its Motion to Transfer Pursuant to 28 U.S.C. §1404(A). On November 10, 2014, the Defendants filed its Answer to the Third Party Counterclaims. On November 13, 2014, Defendants filed its Notice of Dismissal Without Prejudice as to Third Party Defendant Argentina Saldivar only. On November 14, 2014, Plaintiffs filed its Response to Defendants Supplemental Briefing In Support of Their Motion to Transfer Pursuant to 28 U.S.C. §1404(A). On November 26, 2014, Defendants filed its Reply to Plaintiff's Response to Defendants' Supplemental Briefing in Support of Its Motion to Transfer Pursuant to 28 U.S.C. §1404 (A) On February 24, 2015, the Court granted Defendants' Motion to Transfer the case to the United States District Court of the District of Arizona; Phoenix Division; Case No.: CV15-0337 PHX DGC. In April 2015 Plaintiff moved to compel arbitration which was ultimately denied by the Court. The parties participated in a mediation in August 2015 which proved to be unsuccessful. In December 2015 the parties executed a settlement agreement in which Defendant paid Plaintiff the sum of \$35,000. The parties filed a Stipulation to Dismiss With Prejudice on December 18, 2015.

Richard Kim and Falcon Capital Investment Group, L.L.C. v. Kahala Franchise Corp., Kevin Blackwell, and Kyle Chung; Superior Court of California, County of Los Angeles, Case No. BC408903. In March 2009, Richard Kim and Falcon Capital Investment Group, L.L.C. (collectively, the "Plaintiffs"), a Johnnie's New York Pizzeria franchisee, filed a lawsuit against Kahala Franchise Corp., Kevin Blackwell (collectively "Defendants Kahala") and Kyle Chung ("Defendant Chung"), alleging breach of written contract and the covenant of good faith and fair dealing, fraud and deceit, negligent misrepresentation, violation of the California Franchise Investment Law, California Corporations Code Sections 31110 and 31202, and unfair trade practices under the California

Business & Professions Code Section 17200, the FTC Act and the FTC Franchise Disclosure Rule. Specifically, Plaintiffs alleged the Defendants Kahala and Defendant Chung failed to provide required assistance and advice, improperly debited the Plaintiff's bank account, collected national advertising fees from Plaintiffs but did not provide national advertising, and that Defendants Kahala and Defendant Chung. lacked a support structure and national advertising program. Plaintiffs sought general and special damages according to proof; a permanent injunction enjoining Defendants from illegal, fraudulent and unfair acts or practices and equitable relief of rescission, full restitution, and ancillary damages; punitive, exemplary or treble damages according to proof; reasonable attorneys' fees and costs; and an order requiring Defendants disgorge all ill-gotten gains. Defendants Kahala and Defendant Chung denied all allegations against them. The parties entered into a Settlement Agreement on June 30, 2010 whereby Defendants Kahala and Defendant Chung paid Plaintiffs the sum of \$375,000 and amended Plaintiffs' Franchise Agreement to reflect, among other things, Defendants' limited involvement in Plaintiffs' Johnnie's New York Pizzeria franchise. The action was dismissed with prejudice on July 19, 2010.

*Bay Area Cereal, L.L.C., Larry Schaadt and Laila Fields v. Kahala Franchise Corp.*; Santa Clara County Superior Court, California, Case No. 109CV136483. In March 2009, Bay Area Cereal, L.L.C., Larry Schaadt and Laila Fields (collectively, the "Plaintiffs"), Cereality cereal bar & cafe area representatives and franchisees, filed a lawsuit against Kahala Franchise Corp. (the "Defendant") alleging fraud, negligent misrepresentation, violation of Corporations Code § 3121 *et seq.*, and breach of contract (both Franchise Agreement and Area Representative Agreement). Specifically, Plaintiffs alleged that Defendant misrepresented the maturity of the Cereality cereal bar & cafe brand, the expansion of the brand, and the success of franchised restaurants. Plaintiffs sought monetary damages in excess of \$500,000, special, punitive and exemplary damages, pre-judgment interest, attorneys' fees and costs, and rescission of the Franchise Agreement, Area Representative Agreement and guaranties. The action was removed on April 7, 2009 to the United State District Court for the Northern District of California, Case No. CV 09 1516 RS, at which time Kahala Franchise Corp. filed a counter-claim. The parties entered into a Settlement Agreement on January 12, 2010 whereby Kahala Franchise Corp. paid Plaintiffs the sum of \$250,000 and the Franchise Agreement and Area Representative Agreements were terminated.

Concluded Arbitration and Litigation Involving Predecessor Cold Stone Creamery, Inc.:

*Kenneth J. Kirwin., Plaintiff v. Cold Stone Creamery/Kahala Corp.* ("Defendant"), Superior Court of the Commonwealth of Massachusetts, Plymouth, Civil Action No. 13-1126A. On March 27, 2014, Kenneth A. Kirwin, a former Cold Stone Creamery, Inc. franchisee ("Plaintiff"), served a Summons and Verified Complaint which he had filed in October 2013 against Cold Stone Creamery/Kahala Corp. ("Defendant") in the Superior Court of Massachusetts. Plaintiff alleged he sustained financial losses, and sought an award of actual, consequential, and punitive damages stemming from Defendant's alleged actions in failing to compensate Plaintiff for two (2) Cold Stone Creamery stores Plaintiff had operated and voluntarily turned over to the Defendant. Plaintiff alleged in multiple causes of action asserted in the complaint, (1) Promissory Estoppel; Breach of Contract; Breach of the Implied Covenant of Good Faith and Fair Dealing, (2) Misrepresentation, Fraud and Deceit Violation of M.G.L. Chap. 93A,11, (3) Promissory Estoppel; Breach of Contract; Breach of the Implied Covenant of Good Faith and Fair Dealing, Unjust Enrichment of the Defendant, (4) Misrepresentation and Deceit in Violation of M.G.L. Chap. 93A §11, and (5) Intentional Infliction of Emotional Distress. Defendant denied all of Plaintiff's allegations, including, without limitation, that it had any obligation to compensate Plaintiff for its alleged losses or that it had failed to comply with the requirements of the Massachusetts statutes. On April 7, 2014, Defendant filed its Notice of Removal to the United States District Court for the District of Massachusetts on the grounds of jurisdiction and venue. Defendant filed a motion on April 16, 2014, seeking to dismiss Plaintiff's action or, alternatively, transfer venue of the lawsuit to the United States District Court of Arizona, and to stay the lawsuit and compel the Plaintiff to arbitrate its claims in accordance with the terms of Plaintiff's Franchise Agreement. Defendant filed a Petition to Compel Arbitration in the United

States District Court of Arizona; Civil Action No.: 2:14-cv-01059-NVW, on May 16, 2014. However, an Order was entered in the United States District Court of Massachusetts on May 23, 2014, referring the case to Alternative Dispute Resolution for Mediation. On May 29, 2014, Plaintiff filed his Declaration with Consent to Relief Requested in the United States District Court of Arizona, in which he agreed to arbitrate his claims before the American Arbitration Association in Arizona should the Mediation fail. In turn Defendant filed its Notice of Voluntary Dismissal on June 3, 2014, dismissing Civil Action No.: 2:14-cv-01059-NVW. On July 15, 2014, a mediation was held in Boston, MA where the parties came to a settlement. Under the terms of the Settlement Agreement, Defendant paid Plaintiff \$37,500.

Gregory Fowler, and Doubri Enterprises, L.L.C. v. Cold Stone Creamery, Inc.; U.S. District Court, AZ; C. A. No.: 2:13-cv-02414. On September 18, 2013, Cold Stone Creamery, Inc. ("Defendant") was served a Summons and Complaint filed by Gregory Fowler and Doubri Enterprises, Inc. ("Plaintiff") in the Kent County Superior Court of Rhode Island. Plaintiff alleged: (i) breach of sublease; (ii) breach of franchise agreement; (iii) breach of good faith and fair dealing; (iv) tortious interference with contractual relationships; (v) fraud; (vi) defamation of business character; and (vii) negligent infliction of emotional distress. Plaintiff sought (i) damages, (ii) punitive damages and (iii) attorney fees, interest and costs. On September 17, 2013, Defendant filed a Notice of Removal, removing the lawsuit to the United States District Court for the District of Rhode Island. On October 9, 2013, Defendant filed a Motion to Dismiss the Complaint, or alternatively, to transfer the lawsuit to the United States District Court for the District of Arizona. The Motion was granted on November 25, 2013, and the matter was transferred to the Arizona court. On December 9, 2013, Defendant filed its Answer to the Complaint. On March 5, 2014, the Court entered a scheduling order establishing dates for completion of discovery and pre-trial motions and setting the matter down for trial on October 28, 2014. The parties agreed to mediate the matter which was held in Boston, MA on August 1, 2014. The parties came to an agreement and Plaintiff and Defendant entered into a settlement agreement whereby Defendant paid Plaintiff \$250,000.

Cindy Kilman, Joseph "Buck" Kilman, and BCEK, L.L.C. v. Cold Stone Creamery, Inc. (AAA Case No. 76 114 Y 00252 09 LGB). On or about August 17, 2009, Cindy Kilman, Joseph "Buck" Kilman, and BCEK, L.L.C. (collectively, the "Claimants" or "Claimants/Respondents"), former Cold Stone Creamery franchisees, filed a Demand for Arbitration with the American Arbitration Association against Cold Stone Creamery, Inc. (hereinafter "Cold Stone", "Respondent" or "Respondent/Plaintiff"). Claimants alleged (i) intentional fraud/fraudulent inducement ;(ii) negligent misrepresentations and omissions; (iii) wrongful termination of four Franchise Agreements and Subleases; (iv) breach of implied covenant of good faith and fair dealing; (v) breach of contract; (vi) violations of Federal Anti-Trust law including "illegal tying" claims and "exclusive arrangements" under the Sherman Act and Clayton Act; (vii) violations of the Arizona Uniform State Antitrust Act, A.R.S. §§ 44-1401, *et seq.*; (viii) violations of the Texas Free Enterprise and Antitrust Act of 1983, Tex. Bus. & Com. Code Ann. §§15.01 – 15.26 (TFEAA); (ix) violations of Arizona's Consumer Fraud Act, A.R.S. §§ 44-1521, *et seq.*; (x) and violations of Texas' Deceptive Trade Practices-Consumer Protection Act, Texas Bus. & Comm. Code Ann. §17.41, *et seq.* Claimants sought: (i) damages in excess of \$1,100,000, which included their investment, (ii) future profits, (iii) future earnings; (iv) interest; (v) costs and expenses of the arbitration proceeding;(vi) attorneys' fees; (vii) rescission of their four franchise agreements and subleases; and (viii) declaratory relief that "None of the Kilmans (BCEK, L.L.C., Cindy Kilman or Joseph "Buck" Kilman), shall be responsible to Cold Stone Creamery, Inc. for contribution, or otherwise, relating to any rent or additional rent which Cold Stone Creamery, Inc. (or any of its affiliates) may owe or may have been adjudged to owe to any landlord in connection with any of the premises from which the Kilmans (or any one of them) operated their Cold Stone Franchises." Claimants filed an Amended Demand for Arbitration on or about February 9, 2010, stating with more specificity the allegations of each alleged misrepresentation. Respondent filed a Response to the Amended Demand for Arbitration and Counterclaim in which it alleged breach of contract and sought a dismissal of all claims raised by Claimants with prejudice and damages in the amount of \$85,000 plus reasonable attorneys' fees

and costs. The arbitration occurred in March 2011 with the American Arbitration Association. The arbitrator awarded Claimants \$349,542.07 on or about May 6, 2011. On or about May 20, 2011, Respondent filed a Notice of Appeal with the American Arbitration Association. On or about June 15, 2011, the American Arbitration Association asked to set up a conference call to initiate the appeal. When, as of June 17, 2011, Counsel for the Claimants had not indicated any availability for or an agreement to participate in the conference call, Respondent appealed the decision to the Arizona District Court by filing a Complaint, Case No. 2:11-cv-01192, alleging breach of contract. Respondent/Plaintiff sought an order compelling the Claimants/Defendants to submit to AAA jurisdiction for an appeal of the award, reasonable attorneys' fees and costs, and any other relief the court deemed proper. On August 5, 2011, Respondent/Plaintiff filed a Motion to Vacate and Modify Arbitration Award in which it sought an order amending the arbitration award in favor of Respondent/Plaintiff in the amount of \$85,000 plus pre- and post-judgment interest, or alternatively, an order vacating the arbitration award, and reasonable attorneys' fees and costs incurred and such other relief as the court deemed just and proper. On or about September 6, 2011, Claimants/Defendants filed a Motion for Temporary Restraining Order and Preliminary Injunction seeking the court to disallow Cold Stone from any further activity in the appeal of the arbitration award and to disallow Cold Stone from enforcing the appeal of arbitration provision in the franchise agreement. Claimants/Defendants filed an Answer and Counterclaims seeking an Order confirming the final arbitration award, a declaration that the appeal provision in the franchise agreement is unconscionable, and injunctive relief. On September 16, 2011, Respondent/Plaintiff filed a Motion to Stay its earlier filed Petition to Vacate and Modify the Arbitration Award until the Court ruled on the underlying merits of the Complaint. On September 20, 2011, Claimants/Defendants filed an Amended Answer to the Complaint asserting counter-claims against Respondent/Plaintiff. Respondent/Plaintiff filed a response to Claimant/Defendants' Motion seeking a temporary restraining order. On October 3, 2011, Claimant/Defendant filed a response to Respondent/Plaintiff's Motion to Stay. On October 26, 2011, the United States District Court of Arizona Order granted Claimant/Defendants Motion for Temporary Restraining Order and Preliminary Injunction as well as its cross-motion seeking to confirm the arbitration award. The Order further denied Respondent/Plaintiff's Motion to Stay as well as its Motion seeking to Vacate and/or Modify the arbitration. Following the October 2011 Order Claimants/Defendants filed a Motion for Attorneys' Fees and Non-Taxable Expenses in the amount of \$160,000. In May 2012 the Court ordered Respondent/Plaintiff to pay Claimants/Defendants \$70,000 in fees. Respondent/Plaintiff appealed the United States District Court of Arizona's Order to the United States Court of Appeals for the Ninth Circuit in February 2012 and Claimants/Defendants cross-appealed the May 2012 Order. While the appeal was pending, the parties continued to explore settlement discussions. In December 2012 the parties wished to settle all the issues and claims arising out of and/or relating to the (i) AAA Proceeding; (ii) the District Court Action; (III) The AAA Appeal Proceeding, and (iv) the Court of Appeals Actions. Respondent/Plaintiff agreed to pay Claimants/Defendants \$371,160 in full satisfaction of the claims and attorneys' fees along with \$3,381 in AAA fees. In exchange Claimants/Defendants agreed to release and forever discharge Respondent/Plaintiff from any and all claims related to or arising from the Dispute. On January 17, 2013, the United States District Court executed an Order that dismissed all claims and counter claims with prejudice with each party bearing its own costs and attorneys' fees.

Cold Stone Creamery, Inc. v. Reid & Andrew, Inc., Tate & Petey, Inc., Gil Schmitt, Ruthann Schmitt, Does 1-10; Superior Court of Maricopa County, Arizona, Case No. CV2010-00348. In January 2010, Cold Stone Creamery, Inc. ("Plaintiff") filed a Complaint against Reid & Andrew, Inc. and Tate & Petey, Inc. (Cold Stone Creamery franchisees) and Gil Schmitt and Ruthann Schmitt (guarantors) (collectively, the "Defendants"). Plaintiff alleged breach of two Franchise Agreements for two Cold Stone Creamery restaurants, and violation of the Arizona Trade Secrets Act, A.R.S. §§44-401 through 44-407. Plaintiffs sought (i) a preliminary injunction and permanent injunction requiring Defendants to cease and desist using Plaintiff's confidential and proprietary information; (ii) operating their current ice cream restaurant or otherwise competing with Plaintiff for a period of two years; (iii) manufacturing frozen dessert products at a non-Cold Stone Creamery location (iv)



equitable relief and damages in an undisclosed amount; (v) attorneys' fees; and (vi) costs. Defendant Tate & Petey, Inc. asserted a counterclaim against Plaintiff alleging breach of contract and tortious interference with contractual relations. Plaintiff's application for a Preliminary Injunction was denied after a hearing in March 2010. Plaintiff denied all allegations of the counterclaim. In November 2011, the parties reached an agreement on the terms of the settlement and entered into a Settlement Agreement and Mutual Release of all Claims whereby Plaintiff agreed to pay the Defendants the sum of \$70,000 to dismiss all claims and counterclaims in the lawsuit with prejudice. The settlement payment has been made in full and the case was dismissed with prejudice.

Fredy Buraye, Elizabeth Buraye, Eddie Buraye, and Buraye Group, Inc. v. Cold Stone Creamery, Inc., Cold Stone Creamery Leasing Company, Inc., R & C Global, Inc., Miae Chung, and Conehead Investments, L.L.C. (Superior Court of California, County of Los Angeles-North Valley District, Case No. PC043905). On October 23, 2008, Fredy Buraye, Elizabeth Buraye, Eddie Buraye and Buraye Group, Inc. (collectively, the "Plaintiffs") filed a lawsuit in the Superior Court of California against Cold Stone Creamery, Inc. and Cold Stone Creamery Leasing Company, Inc. (collectively, "Cold Stone"), as well as Conehead Investments, L.L.C., a Cold Stone Creamery Area Developer in Southern California. The lawsuit stems from Cold Stone Creamery, Inc.'s termination of the Plaintiffs' Franchise Agreements. Plaintiffs alleged that the termination was unlawful and that Cold Stone Creamery, Inc. made inaccurate and improper representations to the Plaintiffs in order to induce them to enter into the Franchise Agreements with Cold Stone Creamery, Inc. Plaintiffs alleged (i) intentional fraud; (ii) breach of contract; (iii) violation of the California Franchise Investment Law, Corporations Code §§ 31201 and 31303; (iv) violation of the California Franchise Relations Act, Business & Professions Code §§ 20020, 20021 and 20040.5; (v) Violation of the California Unfair Competition Law; and (vi) Accounting. Cold Stone filed a Motion for Demurrer on several causes of action which the Judge granted with leave to amend and Plaintiffs filed an amended complaint on or about February 17, 2009. Plaintiffs sought (i) compensatory damages in excess of \$1,300,000 plus interest, (ii) punitive damages, (iii) reasonable attorneys' fees, (iv) costs of the lawsuit, and (v) a complete accounting. In September, 2010, the parties reached an agreement on the terms of settlement and entered into a Mutual Release and Settlement Agreement whereby the Cold Stone defendants agreed to pay the Plaintiff the sum of \$420,000, in exchange for the dismissal of all of Plaintiff's claims against Cold Stone with prejudice. The settlement payment was made in full and the case was dismissed with prejudice.

Concluded Arbitration and Litigation Involving Affiliate Cold Stone Creamery Leasing Company, Inc.

Afsana Alekozai v. Cold Stone Creamery Leasing Company, Inc.; United States District Court for the Northern District of California, San Francisco Division, Case No. CV-10 1254. In March 2010, Afsana Alekozai ("Plaintiff, Claimant or Respondent Alekozai"), a former Cold Stone Creamery franchisee, filed a Complaint against Cold Stone Creamery Leasing Company, Inc. ("Defendant or Respondent Cold Stone") alleging violation of the California Franchise Relations Act (Cal Bus & P C §§2000-20043) for (i) terminating Plaintiff Alekozai's Franchise Agreement without providing Plaintiff Alekozai with an opportunity to cure; (ii) violation of the California Franchise Investment Law (California Corporations Code §§31000-31516); (iii) deceit (as defined in California Civil Code §§1709-1710); (iv) violation of the California Unfair Competition Law (Bus & P C §§17200-17210); (v) fraud; (vi) breach of an express contract provision; (vii) breach of fiduciary duty; and (viii) breach of the implied covenant of good faith and fair dealing. Plaintiff sought monetary and punitive damages in an unspecified amount and restitution. Defendant Cold Stone filed a Motion to Dismiss and to Stay Proceedings Pending Arbitration. On June 25, 2010, the United States District Court entered an Order Granting Defendant Cold Stone's Motion to Dismiss and to Stay Pending Arbitration, which dismissed with prejudice Plaintiff Alekozai's causes of action regarding violation of the California Franchise Relations Act and California Franchise Investment Law. The remaining claims against Defendant Cold Stone were stayed pending arbitration of the dispute in Arizona. On or around August 13, 2010, Cold Stone Creamery Leasing Company, Inc. and

Cold Stone Creamery, Inc. (collectively, "Petitioner Cold Stone") filed a Petition to Compel Arbitration, in the United States District Court for the District of Arizona, Case No. CV 10-1762-PHX-JAT, against Respondent Alekozai. On December 21, 2010, the Court entered an Order Granting Petitioner Cold Stone's Motion for Default Judgment, and further Order Granting the Petition to Compel Arbitration. On March 12, 2012, Claimant Alekozai filed a Demand for Arbitration, Case No. 76-114-J00048-12 02 NOLG-R, with the American Arbitration Association against Respondent Cold Stone alleging that Claimant Alekozai's Franchise Agreement was wrongfully terminated in 2009. In the demand, Claimant Alekozai failed to properly identify any existing Cold Stone entity against which relief was to be sought. It was not determinable from the demand whether the Arbitration was filed pursuant to the Order Granting the Petition to Compel Arbitration issued by the United States District Court for the District of Arizona, Case No. CV 10-1762-PHX-JAT. In the Arbitration, Claimant Alekozai sought: (i) damages in the amount of \$830,000; (ii) attorneys' fees, (iii) interest, (iv) arbitration costs, (v) punitive/exemplary damages, and (vi) lost wages. Although it was indeterminable from the demand which Cold Stone entity Claimant Alekozai sought relief from, Respondent Cold Stone filed its Answer and Counterclaim on April 9, 2012, in which it sought recovery of \$12,000 in landlord fees paid by Respondent Cold Stone. In August 2012, the parties settled Case No. CV 10-1762 PHX-JAT and American Arbitration Association Case No. 76-114-J00048-12 02 NOLG-R in mediation. Respondent Cold Stone agreed to pay Claimant Alekozai \$75,000 in settlement of all claims. The amount was paid in full in August 2012.

Concluded Arbitration and Litigation Involving Predecessor Blimpie Associates, Ltd.:

*Emfore Corp., v. Blimpie Associates, Ltd., Peter DeCarlo and Louis Gioia*.- Supreme Court of The State of New York, County of New York, Index No. 601400/04. On May 10, 2004, Emfore Corp., a Blimpie Associates franchisee filed suit against Blimpie Associates alleging breach of contract, common law fraud and violations of the New York General Business Law. Also named as defendants in the lawsuit were Peter DeCarlo, one of Blimpie Associates' founders and Louis Gioia, Blimpie Associates' Franchise Sales Director. Blimpie Associates, Ltd., Peter DeCarlo and Louis Gioia are collectively referred to as the "Defendants." Specifically, the complaint alleged various material misrepresentations and false earnings claims, and a failure to furnish required training services. The Plaintiff sought monetary damages in excess of \$180,000, attorneys' fees and rescission. Blimpie Associates denied all of Respondent's claims. An order granting Summary Judgment dismissing the Plaintiff's complaint in its entirety was awarded by the NYS Supreme Court on September 18, 2006. On May 6, 2008, the Appellate court affirmed the Supreme Court's dismissal of Plaintiff's common law fraud claims and breach of contract claims and reinstated Emfore's statutory claims. Defendants filed a motion for leave to appeal to the New York Court of Appeals which was denied. On or about May 20, 2009, a Stipulation of Settlement was entered into between the parties and the action was discontinued with prejudice. Under the terms of the settlement, Defendants paid Emfore Corp. \$150,000 as follows: \$100,000 on or before June 20, 2009 and the remaining \$50,000 on or before December 1, 2009. Defendants did not admit or acknowledge any liability, breach of contract, misrepresentation, fraud, or any other wrongdoing alleged by Plaintiff. In the event of a default of the settlement payments, Plaintiff could enter judgment in the amount of \$250,000 less payments made by Defendants to Plaintiff. The settlement payments required to be paid were the sole obligation of the predecessor Blimpie Associates, Ltd.

Concluded Arbitration and Litigation Involving Predecessor Blimpie International, Inc.:

*Bixy, Inc. f/k/a Blimpie International, Inc. and X2Y1, Inc. v. KBI Holdings, L.L.C. and Kahala Corp.*.; United States District Court, Northern District of Georgia, Atlanta Division, Civil Action File No. 1:07-CV-0780. On March 2, 2007, X2Y1 and Bixy ("Plaintiffs") filed a lawsuit against KBI Holdings, L.L.C. and Kahala Corp. ("Defendants") arising out of the Asset Purchase Agreement between X2Y1 and KBI for the purchase of certain assets of Blimpie International and the assumption of

certain liabilities. Plaintiff's alleged breach of the Asset Purchase Agreement for a) failing to pay the full purchase price; b) breach of contract and indemnification regarding allegations that KBI failed to pay certain alleged assumed liabilities under the Asset Purchase Agreement; c) breach of contract alleging that KBI failed to provide information and failed to confer with Plaintiffs regarding certain purchase price allocation issues; d) alleged breach of contract and request for specific performance regarding certain alleged obligations of KBI to provide access to certain records; e) allegations regarding alleged breach of an agreement regarding a collection agreement for certain Smoothie Island collections; f) allegations of fraud for allegedly failing to discharge certain liabilities after closing; and g) allegations regarding specific performance and request for injunctive relief to enforce certain provisions of the Asset Purchase Agreement which Plaintiffs contended were not being performed. There were also claims for indemnification under the Asset Purchase Agreement and claims that there had been conversions of certain monies from certain bank accounts relating to the acquisition. There was also a claim of breach of the Asset Purchase Agreement for an article that was published regarding the asset purchase transaction which Plaintiffs contended was defamatory and was not authorized under the Asset Purchase Agreement. Plaintiff sought: (i) \$500,000 in damages;(ii) punitive damages in excess of \$10,000,000(iii) attorneys' fees;(iv) court costs (v) interest, and (vi) an injunction to prevent any further breaches of agreement. Kahala Corp. and KBI denied all allegations. In addition, KBI filed counterclaims against the Plaintiffs for indemnification for various obligations paid and for Plaintiffs breach of warranty under the Asset Purchase Agreement. The case was settled in February 2009 with no admission of fault by either party and Defendants paid the Plaintiffs \$1,257,000. The case was dismissed with prejudice.

#### Concluded Arbitration and Litigation Involving KBI Holdings, L.L.C.

KBI Holdings, L.L.C. v. Mackly Monestime and Oscar Chavarria: Circuit Court of the Twentieth Judicial Circuit, Collier County, FL, Case No. 1004623CA. In July 2010, KBI Holdings, L.L.C. ("Plaintiff"), the owner of the Blimpie Trademarks and certain Blimpie Assets, filed a Complaint against Mackly Monestime (a Blimpie franchisee) and Oscar Chavarria (a Blimpie franchisee) (collectively, the "Defendants") alleging breach of sublicense and breach of contract. Plaintiff sought: (i) eviction and ejectment of Defendants; (ii) demand for judgment for damages;(iii) attorneys' fees and costs; and (iv) such other and further relief as the Court deemed just and proper. On October 19, 2010 the Defendants were evicted from the store location after they failed to comply with a Court Order to pay the arrears owed for the store location. On November 30, 2010 the Defendants filed a Counterclaim against Plaintiff in which they alleged: (i) Breach of the Naples Franchise Agreement; (ii) Breach of the Ft. Myers Franchise Agreement; (iii) Rescission of the Fort Myers Franchise Agreement; (iv) Negligent Misrepresentation; (v) Fraudulent Misrepresentation; and Deceptive and Unfair Trade Practices Act. They sought: (i) Rescission of the Franchise Agreement; (ii)Refund of the purchase price of the Franchised Stores; (iii) Compensatory economic damages; (iv) Attorneys' fees; and (v) Court Costs. On November 18, 2010, Plaintiff filed a Motion to Stay and Compel Arbitration. The Court granted the Motion to Compel Arbitration and Stay Proceedings on or about April 21, 2011. Defendants had one year to pursue arbitration or the Court would dismiss the case due to non-activity. Defendants chose not to pursue arbitration.

#### Concluded Arbitration and Litigation Involving Predecessor Maui Wowi Franchising, Inc.:

George & Terri Lamperez, et al. v. Maui Wowi Franchising, Inc., AAA Case No. 77-114-00367-10 02 LGB-R: On November 30, 2009, GTWK Enterprises, L.L.C., George Lamperez and Terri Lamperez (collectively, "Lamperez"), then franchisees of Maui Wowi Franchising, Inc. ("MWF"), filed an action entitled GTWK Enterprises, Inc., et al v. Maui Wowi Franchising, Inc, et. al., Number 584,853, ("Lawsuit"), against MWF, Pacific Breeze, L.L.C. ("Pacific Breeze"), a franchisee of MWF, and SMG Food and Beverage, L.L.C. ("SMG"), the food and beverage operator of the Baton Rouge River Center ("Center"). Lamperez alleged that they had an agreement with SMG to operate their franchise at the Center, and that MWF infringed Lamperez' agreement by permitting Pacific Breeze to operate its franchise at the Center. The complaint sought damages of \$114,000, which included

their initial franchise fees, equipment costs, loss of future income, interest and other unspecified damages. MWF obtained a dismissal of the Lawsuit based on the arbitration clause in the Lamperez' franchise agreement. Lamperez subsequently filed this arbitration action, asserting the same allegations as were set forth in the Lawsuit. MWF defended on the basis that Lamperez had not taken the necessary steps within our system to reserve the Center and that it was SMG's decision to choose Pacific Breeze for future events, not MWF's. On February 1, 2011, MWF settled with Lamperez under which they agreed to dismiss the action with prejudice, terminate their franchise rights, and honor all post termination covenants, for which MWF agreed to pay them \$25,334.

Concluded Action Brought by a Public Agency Involving Predecessor Blimpie Associates, Ltd.:

In May 1992, Blimpie Associates, Ltd. and Joseph Dornbush (formerly the President of Blimpie Associates, Ltd.) (collectively "Respondents") , responded to a claim by the New York Department of Law that it had sold franchises during a period of time when its prospectus had not been updated by amendment. Without the admission of any wrongdoing, Respondents consented to the entry of an order in which Respondents agreed (i) to entry of a judgment enjoining them from further violations of the New York Franchise Sales Act, and (ii) to pay the sum of \$18,000 to the State of New York as an additional allowance. Respondents paid the \$18,000 in May 1992 and executed the consent judgment on August 25, 1992.

Concluded Action Brought by a Public Agency Involving Predecessor Maui Wowi Franchising, Inc.:

In the Matter of Maui Wowi Franchising, Inc., Before the Securities Commissioner of Maryland, Case No. 2005-0651. On November 11, 2005, Maui Wowi Franchising, Inc., the predecessor franchisor of the Maui Wowi brand ("MWF") entered into a Consent Order with the Securities Commissioner of Maryland ("Commissioner") resulting from MWF inadvertently entering into four franchise agreements with Maryland residents after its registration in Maryland expired on June 9, 2004 ("Maryland Franchisees"). The Consent Order required MWF to cease and desist from the offer and sale of unregistered franchises in Maryland, to diligently pursue the completion of its then pending application to register its Offering Circular in Maryland; to develop and implement new franchise law compliance procedures to ensure future compliance with the registration and disclosure provisions of Maryland Franchise Law, and to enroll an officer and a franchise compliance person in a franchise law compliance training program. Upon notification by the Commissioner, MWF sent to the Maryland Franchisees the registered Offering Circular, a copy of the Consent Order, and a letter notifying the Maryland Franchisees that they could rescind their franchise agreements. At this time, MWF is in full compliance with the Consent Order.

In the Matter of Maui Wowi Franchising, Inc., Before the Securities Commissioner of Maryland, Case No. 2007-0194. On September 12, 2007, MWF entered into a Consent Order with the Maryland Commissioner resulting from MWF inadvertently entering into two franchise agreements with two Maryland residents (the "Second Maryland Franchisees") without delivering to them the appropriate Offering Circular. MWF was registered in the State of Maryland at the time of the offer and sale with an Offering Circular containing certain specific information required only by Maryland law. At the same time, MWF used a second form of Offering Circular in other states that did not contain all of the information required by Maryland law. Prior to the execution of the franchise agreements with the Second Maryland Franchisees, MWF accidentally delivered to them the Offering Circular that did not contain the Maryland-specific information. We subsequently reported these mistakes to the Commissioner. The Consent Order required MWF to cease and desist from the offer and sale of franchises in Maryland in violation of the Maryland Franchise Law; to diligently pursue the completion of its then pending application to register its Offering Circular in Maryland; to implement additional compliance measures to ensure future compliance with the Maryland Franchise Law; to employ an approved franchise law compliance training program or trainer to

monitor MWF's franchise activities in Maryland for two years; and to reimburse the Maryland Attorney General for its investigation and resolution costs in the total amount of \$2,500. Additionally, MWF was required to provide to the Second Maryland Franchisees the registered Offering Circular, a copy of the Consent Order, and a letter notifying the Second Maryland Franchisees that they have a right to rescind their franchise agreements. The Commissioner and MWF subsequently entered into an Amended Consent Order in which MWF elected to withdraw from the State of Maryland instead of employing a compliance monitor, with the agreement to employ a monitor if MWF was to re-register in the State of Maryland. MWF fully complied with the Amended Consent Order, and subsequently employed a compliance monitor and was granted registration in the State of Maryland.

There is no pending or concluded litigation involving MTY Franchising USA, Inc that is required to be disclosed in the Item 3 of the Franchise Disclosure Document.

### **LITIGATION INVOLVING PREDECESSORS AND AFFILIATES**

#### **Pending Arbitration and Litigation Involving Extreme Pita Franchising USA, Inc.**

None

#### **Concluded Arbitration and Litigation Involving Extreme Pita Franchising USA, Inc.**

***Purav Enterprises, LLC, Balwant Bahia, and Paramjit Samra v. The Extreme Pita Franchising USA, Inc., EP Development, Inc., and Feisal Ramjee; Superior Court of the State of Washington for King County; Case No. 15-2-15120-7.***

On June 22, 2015, Purav Enterprises, LLC, Balwant Bahia, and Paramjit Samra, (collectively "Plaintiffs"), filed a complaint against The Extreme Pita Franchising USA, Inc., EP Development, Inc. and Feisal Ramjee, (collectively "Defendants"). Plaintiffs alleged (i) Violations under the Franchise Investment Protection Act in the State of Washington ("FIPA"); (ii) Misrepresentation by the area developer of the financial performance of the franchise, omissions of mandatory and material information and inherently misleading information that were material factors in the Plaintiff's purchase of the franchise; and (iii) The Area Developer was not a registered broker in the State of Washington. The Plaintiff sought: (i) Rescission of the franchise agreement, the corresponding personal guarantee and related agreements; (ii) Treble damages under FIPA; and (iii) Costs and attorney's fees. The parties entered into a settlement agreement on March 11, 2016, in which Defendant paid Plaintiff the sum of \$20,000. The matter was dismissed on March 16, 2016.

#### **Lawsuits Filed by Extreme Pita Franchising USA, Inc. Against Franchisees During Fiscal Year 2018:**

None

#### **Pending Arbitration and Litigation Involving MTY Tiki Ming Enterprises Inc.**

***9299-7626 Quebec Inc., Martin Belley and Carole Tremblay vs. Les Entreprises MTY Tiki Ming Inc.***

On August 4, 2017, 9299-7626 Quebec, Inc., Martin Belley and Carole Tremblay (collectively "Plaintiffs") filed a Statement of Claim against MTY Tiki Ming Enterprises, Inc. ("Defendant"). Plaintiffs allege (i) Misrepresentation; and (ii) Failure to act in good faith and fair dealing. Defendant denies the allegations and will continue to vigorously defend itself in the action. Mediation occurred in January 2018 but was not successful. On January 28, 2019 Defendant filed its Answer and

vehemently denied the allegations made. Defendant will continue to vigorously defend the claims in this action.

***B&B Read, Inc. and Mr. Brian Read Sr. v. MTY Tiki Ming Enterprises, Inc.; Stanley Ma and Claude St. Pierre; Superior Court of Ontario; Court No.: CV-18-00599132-0000***

On June 5, 2018, B&B Read, Inc. and Brian Read Sr. (collectively “Applicants”) filed a Notice of Application in the Superior Court of Ontario against MTY Tiki Ming Enterprises, Inc. (“Respondent MTY”); Stanley Ma; and Claude St. Pierre (“Respondents Ma and St. Pierre”) (Respondent MTY and Respondents Ma and St. Pierre will collectively be referred to as (“Respondents”). Applicants allege (i) Misrepresentation by the Respondents; and (ii) Rescission of the Franchise Agreement based on the alleged infringements of the disclosure laws by the Respondents and its directors, failure to provide information and failure to provide notice of material changes. Applicants are seeking (i) A declaration that Respondent MTY is a franchisor as defined by Section 1 of the Arthur Wishart Act (“Wishart Act”); (ii) Declaration that Respondents Ma and St. Pierre are Franchisor’s Associates as defined in Section 1 of the Wishart Act; (iii) Declaration that Respondents had an obligation to provide the Applicants with a disclosure document in accordance with Section 5 of the Wishart Act; (iv) Declaration that any agreement relating to the franchise agreement between the Franchisor or the Franchisor’s Associates and the Franchisee were rescinded by Notice of Rescission dated July 29, 2016; (v) An Order requiring the Franchisor and/or the Franchisor’s Associates indemnify the Applicants for all payments due to the Respondents or to be made to third parties; (vi) Damages against Respondents in the amount of \$435,051 to compensate Applicants for their entitlement under subsection 6(6) of the Wishart Act; (vii) In the alternative damages of \$435,051 for Respondents failure to comply with section 5 of the Wishart Act; (viii) Declaration stating that the Respondents are jointly and severally liable to the Applicants pursuant to sections 7 and 9 of the Wishart Act for the damages cited resulting from the failure of the Franchisor to comply with Section 5 of the Wishart Act; (ix) Pre and post judgment interest; (x) Costs of the application on a full indemnity basis; (xi) Any other relief the Court deems fit. Respondents vehemently deny the allegations made and will continue to vigorously defend the matter.

***9276-2665 Quebec Inc., Lynda Larrivée v. MTY Tiki Ming Enterprises Inc., lad (Eddy) Hassan, Habitations Matrik Inc.; Superior Court of Quebec 500-17-104982-189.***

On August 6, 2018, 9276-2665 Quebec Inc., Lynda Larrivée (collectively “Plaintiffs”) filed a Statement of Claim against MTY Tiki Ming Enterprises Inc., lad (Eddy) Hassan and Habitations Matrik Inc. (collectively “Defendants”). Plaintiffs allege: (i) False representations regarding system sales and projected sales for the outlet and business values; (ii) Defendants withheld material information and that as a result the Plaintiffs suffered damages; and (iii) Representatives of the Franchisor are responsible for defects in the construction of the outlet. Defendants vehemently deny the allegations made and will continue to vigorously defend the matter.

**Concluded Arbitration and Litigation Involving MTY Tiki Ming Enterprises Inc.**

***2423950 Ontario, Inc. and Sylvie Louchez v. MTY Tiki Ming Enterprises, Inc., Stanley Ma and Claude St-Pierre; Ontario Superior Court of Justice; Court File No.: CV-17-584365***

On October 13, 2017, 2423950 Ontario, Inc. and Sylvie Louchez (“Applicants”) filed a Notice of Application against MTY Tiki Ming Enterprises, Inc., Stanley Ma and Claude St-Pierre (collectively “Respondents”). Applicants alleged (i) Breach of the Wishart Act. Applicants sought: (i) A declaration that MTY Tiki Ming Enterprises, Inc. is a franchisor as defined in the Wishart Act; (ii) A declaration that Stanley Ma and Claude St Pierre are each “franchisor’s associates” as defined in the Wishart Act; (iii) A declaration that the Respondents were obligated to provide Applicants with a disclosure document and failed to do so; therefore, giving rise to a right to rescind the agreement; (iv) A declaration that any agreement, (including the franchise agreement and sublease) relating to

the franchise between the Parties was rescinded by Notice of Rescission dated April 14, 2016; (v) An Order requiring Respondents to indemnify Applicants for any payments due to Respondents; (vi) Damages jointly and severally in the amount of \$269,863.00; (vii) In addition or in the alternative damages in the amount of \$269,863.00 from the Respondents jointly and severally pursuant to Sections 7 and 8 of the Wishart Act for failure to comply with Section 5 of the Wishart Act; (viii) A declaration stating that the Respondents are jointly and severally liable to the Applicants pursuant to Sections 7 and 8 of the Wishart Act; (ix) Pre-judgment interest and post-judgment interest in accordance with the provisions of the Courts of Justice Act, RSO 1990 c. C-43; (x) Costs of the application on a full indemnity basis, including HST and any other applicable taxes; and (xi) Any other relief the Court deems fit. On December 6, 2018 the parties executed a full and final mutual release in which the Applicants assigned the assets of the Franchised Business over to the Respondents and the Respondents agreed to pay Applicants \$120,000 to settle the matter in full.

#### **Pending Arbitration and Litigation Involving Canada, Inc.**

***8314535 Canada Inc. vs. MTY Tiki Ming Enterprises Inc./ LES Enterprises MTY Tiki Ming, Inc., Calloway REIT (Ottawa Laurentian) Inc., I.G. Investment Management, Ltd.; Ontario Superior Court of Justice; Court File No.: 16-70570.***

On June 13, 2017, 8314535 Canada Inc. ("Plaintiff") filed a Statement of Claim against MTY Tiki Ming Enterprises, Inc./ LES Enterprises MTY Tiki Ming, Inc. ("Defendant MTY"); Calloway REIT (Ottawa Laurentian), Inc., and I.G. Investment Management, Ltd. ("Defendants Calloway and I.G"). Plaintiff is alleging: (i) Breach of Contract; (ii) Unjust Enrichment; (iii) Negligent Misrepresentation; (iv) Negligence; (v) Omissions & Improper Disclosure. Plaintiff is seeking: (i) Declaration that the Franchise Agreement between the Plaintiff and Defendant MTY is null and void; (ii) Reimbursement of the Franchise Fee in the sum of \$340,525.00; (iii) Reimbursement of the Eco Unit Fee in the sum of \$31,640.00; (iv) Special damages including damages for lost income and lost profits (past and future) in an amount to be determined prior to trial; (v) Aggravated, exemplary and punitive damages in the amount of \$500,000.00; (vi) Pre-judgment and post-judgment interest in accordance with s. 128 and s. 129 of the Courts of Justice Act RSO 1990, c. C. 43.; (vii) Costs of the action on a substantial indemnity basis; (viii) Any other relief the Court deems fit. In November 2017 Defendant MTY filed its Answer in which it denied the allegations made in the Statement of Claims and further filed a Cross Claim against Defendant Calloway and I.G. seeking: (i) Contribution and indemnity under sections 2 and 3 of the Negligence Act; R.S. O. 1990, c. N-1 for any amounts which Defendant MTY may be held responsible for; (ii) Contribution and indemnity under the common law and equity for any amount which Defendant MTY may be held responsible for; (iii) Costs of the main action plus applicable taxes; (iv) Costs of the crossclaims plus all applicable taxes; (v) Any other relief the Court deems fit. On November 22, 2017, Cross Claimant MTY filed its Answer and Cross Claim against Defendants Calloway and I.G. for contribution and indemnity for any amounts that it may be found liable to the Plaintiff.

#### **Pending Arbitration and Litigation Involving SFF, LLC**

None

#### **Concluded Arbitration and Litigation Involving SFF, LLC**

***In the Matter of SweetFrog Enterprises, LLC f.k.a. Imagination Enterprises, Inc., d/b/a Sweet Frog, Administrative Proceeding Before the Securities Commissioner of Maryland, Case No. 2012-0055.***

As a result of an inquiry into the franchise related activities of SweetFrog Enterprises, LLC, ("SFE") the Maryland Securities Commissioner ("Commissioner") concluded that grounds existed to allege that SFE violated the registration and disclosure provisions of the Maryland Franchise Law in

relation to the offer and sale of certain license agreements. SFE acknowledged that those license agreements constituted franchises as defined under the Maryland Franchise Law. SFE represented that it entered into license agreements with eight Maryland licensees during the time it was not registered to offer and sell franchises in Maryland. On August 29, 2012, the Commissioner and SFE agreed to enter into a consent order whereby SFE, without admitting or denying any violations of the law, agreed to: (i) Immediately and permanently cease from the offer and sale of franchises in violation of the Maryland Franchise Law; (ii) File and diligently pursue an application for an initial franchise registration in Maryland relating to the license agreements it offered and sold to Maryland licensees; and, (iii) To offer to rescind the license agreements of all Maryland licensees to whom it sold unregistered franchises.

***Sun Yop Cho v. Imagination Enterprises, Inc., American Arbitration Association, Case No. 16 114 Y 00250 13.***

On May 15, 2013, Sun Yop Cho, ("Claimant"), a sweetFrog licensee, filed an arbitration action against Imagination Enterprises, Inc., predecessor to SweetFrog Enterprises, LLC ("Respondent"). Claimant asserted that: (i) Respondent breached the license agreement by violating the territorial exclusivity provision in the license agreement. (ii) Respondent violated the Virginia Retail Franchising Act, and (iii) Respondent breached an alleged oral promise to partner with Claimant in developing a sweetFrog Shop in Leesburg, Virginia. Claimant sought: (i) Damages in the amount of \$900,000; (ii) Attorneys' fees; (iii) Reformation of the license agreement ; and (iv) Injunctive relief. Respondent vehemently disputed Claimant's claims. On December 13, 2013, Claimant and Respondent entered into an agreement pursuant to which (1) the parties settled their disputes and jointly dismissed the arbitration proceeding with prejudice, and (2) Respondent repurchased Claimant's License Agreement and acquired the assets of his sweetFrog shop for a total price of \$504,162.63.

***Sweet Frog Stony Brook Inc. and Sweet Frog Babylon, Inc. v. SweetFrog Enterprises, LLC; SFF, LLC and Ki Young Cha a/k/a Derek Cha; Case No. 2:14-cv-02356-JS-WDW, United States District Court, Eastern District of New York.***

On April 11, 2014, Sweet Frog Stony Brook, Inc. and Sweet Frog Babylon, Inc., (collectively "Plaintiffs"), two sweetFrog franchisees, filed a lawsuit against SweetFrog Enterprises, LLC, SFF, LLC ("Franchisor"), and Ki Young Cha a/k/a Derek Cha (collectively "Defendants"). The Plaintiffs alleged that Defendants: (i) violated the New York Franchise Sales Act, (ii) violated the New York General Business Law § 680, *et seq.* ("NYFSA") by making unauthorized and fraudulent pre-sale financial performance representations; and (iii) failed to register the franchise offering with the New York Attorney General prior to entering into franchise agreements with the Plaintiffs. The Plaintiffs demanded: (i) damages in excess of \$685,000; (ii) rescission of their franchise agreements; (iii) and recovery of their attorneys' fees. Defendants disputed the Plaintiffs' claims but agreed to mediate the dispute. Prior to the deadline to answer or otherwise respond to the complaint, on July 29, 2014, the parties entered into an agreement pursuant to which (1) the Plaintiffs would attempt to sell their franchised shops and transfer their franchise agreements to any third party(ies) approved by Franchisor before November 1, 2014, and (2) if the Plaintiffs were unable to identify a suitable buyer for their franchised shops by November 1, 2014, the parties agreed to mutual termination of the franchise agreements and that Franchisor would purchase the equipment from each Plaintiff's shop for an agreed price of \$50,000 for each shop. The case was dismissed with prejudice on August 6, 2014.

***Tri Star Consulting Group, Inc. and Sweet Frog Hauppauge, Inc. v. SweetFrog Enterprises, LLC, SFF, LLC, Ki Young Cha a/k/a Derek Cha; Case No. 2:14-cv-02228-ADS-AKT, United States District Court, Eastern District of New York.***



On April 9, 2014, Tri Star Consulting Group, Inc., a licensee and area developer of SweetFrog Enterprises, LLC ("Plaintiff Tri Star"), and Sweet Frog Hauppauge, Inc., a licensee of SweetFrog Enterprises, LLC ("Plaintiff Hauppauge"); (Plaintiff Tri Star and Plaintiff Hauppauge will collectively be referred to as "Plaintiffs"); filed a lawsuit against SweetFrog Enterprises, LLC, ("Defendant SweetFrog"), SFF, LLC ("Defendant SFF") and Ki Young Cha a/k/a Derek Cha (collectively "Defendants"). Plaintiff Tri Star alleged Defendant SweetFrog breached its license/area development agreement with Plaintiff Tri Star by: (i) terminating the license agreement/area development agreement for nonpayment of royalty fees; (ii) licensing to Defendant SFF the right to sell franchises in New York City, Plaintiff Tri Star's development territory; and (iii) failing to pay fees allegedly owed to Plaintiff Tri Star related to the operation of franchised sweetFrog locations within Plaintiff Tri Star's development territory. Plaintiff Tri Star sought: (i) damages in excess of \$75,000; (ii) a declaration that it was not in default of the license/area development agreement; (iii) declaration that Defendant sweetFrog was obligated to pay fees to Plaintiff Tri Star based on revenues of all franchised sweetFrog locations in New York City; (iv) an order enjoining Defendant SFF from selling franchises in New York City; (v) and recovery of its attorneys' fees. Prior to the deadline to answer or otherwise respond to the complaint, on September 9, 2014, Plaintiff Tri Star, on the one hand, and Defendants on the other hand, entered into an agreement pursuant to which (1) the parties agreed to mutual termination of Plaintiff Tri Star's license/area development agreement; (2) Plaintiff sweetFrog agreed to pay Plaintiff Tri Star \$19,830.58; (3) Defendant SFF agreed to pay Plaintiff Tri Star an ongoing commission equal to 2% of the net sales of all franchised sweetFrog locations in New York City through November 2031; and (4) Plaintiff Tri Star agreed not to operate any competitive business in New York City for so long as Defendant SFF was obligated to make commission payments to Plaintiff Tri Star.

Plaintiff Hauppauge asserted that Defendants: (i) violated the New York Franchise Sales Act, (ii) violated the New York General Business Law § 680, *et seq.* ("NYFSA"); (iii) committed fraudulent and negligent representations by making unauthorized and fraudulent pre-sale financial performance representations; and (iv) failed to register the franchise offering with the New York Attorney General prior to entering into franchise agreements with the Plaintiffs. Plaintiff Hauppauge sought (i) damages in excess of \$330,000; (ii) rescission of its license agreement, and (iii) recovery of its attorneys' fees. Defendants disputed the Plaintiffs' claims but agreed to mediate the dispute. Prior to the deadline to answer or otherwise respond to the complaint, on September 9, 2014, Plaintiff Hauppauge, on the one hand, and Defendants on the other hand, entered into an agreement pursuant to which (1) the parties agreed to mutual termination of Plaintiff Hauppauge's license agreement; and (2) Defendant sweetFrog agreed to pay Plaintiff Hauppauge \$75,000. The case was dismissed with prejudice on September 20, 2014.

***Urquieta Sweet Frog, LLC and Ana Urquieta v. Sweet Frog Enterprises, LLC d/b/a SFF, LLC, American Arbitration Association, Case No. 01 14 0001 8086***

On December 23, 2014, Urquieta Sweet Frog, LLC and Ana Urquieta, a former sweetFrog franchisee and its owner (collectively "Plaintiffs"), filed a Demand for Arbitration against SweetFrog Enterprises, LLC ("Defendant"). Plaintiffs alleged: (i) Defendant engaged in fraud; (ii) unfair practices; and (iii) deceptive actions. On February 2, 2015, Defendant timely filed an Answer and Counterclaim and denied all allegations, and asserted a counterclaim against Plaintiff for unpaid royalties. This matter was settled in December of 2015. Under the settlement, Defendant agreed to pay Plaintiff \$300,000 and the parties executed mutual releases.

***SFF, LLC v. Carmel Village Yogurt Company LLC, Case No. CL16-3927, City of Richmond, Virginia Circuit Court.***

On August 29, 2016, SFF, LLC ("Plaintiff") filed a lawsuit against three sweetFrog franchisee entities, Carmel Village Yogurt Company LLC ("Defendant Carmel YC"), Huntersville Yogurt Company, LLC ("Defendant Huntersville YC"), and Mooresville Yogurt Co, LLC ("Defendant Mooresville YC"), and their main member, Steve Anto ("Defendant Anto") (All named Defendants will be collectively referred to as, the "Anto Defendants"). Plaintiff alleged: Defendant Carmel YC breached its franchise agreement through its unauthorized closure of its franchised shop; (ii) as a result of the breach Plaintiff had the contractual right to terminate Defendant Carmel YC's franchise agreement, and cross terminate the franchise agreements of Defendant Huntersville YC and Defendant Mooresville YC's franchise agreements. Plaintiff SFF sought (i) declaratory judgment that the three franchise agreements had terminated; (ii) specific performance of the Anto Defendants post-termination obligations; (iii) damages for past due fees; (iv) lost future royalties in excess of \$116,000, and (v) recovery of its attorneys' fees. In response to Defendant SFF's complaint, the Anto Defendants denied Plaintiff SFF's claims and asserted counterclaims against Plaintiff SFF and alleged: (i) the Carmel YC franchise agreement was unenforceable and, alternatively, that Plaintiff SFF was in breach of Defendant Carmel YC's franchise agreement due to Plaintiff SFF's allowance of another franchisee to open a shop within three miles of Defendant Carmel YC's shop. The Anto Defendants sought: (i) a declaratory judgment that they were not in default of their franchise agreements; (ii) damages of not less than \$425,000; and (iii) recovery of their attorneys' fees. Plaintiff SFF denied the Anto Defendants' claims and filed a demurrer and pleas in bar seeking to have those claims dismissed. Prior to the court hearing and ruling on Plaintiff SFF's motion, the parties entered into an agreement pursuant to which (1) the parties acknowledged the valid termination of Defendant Carmel YC's franchise agreement; (2) Defendant Carmel YC transferred the assets of its business to Plaintiff SFF and Plaintiff SFF paid Defendant Carmel YC \$25,000; (3) Plaintiff SFF reinstated Defendant Huntersville YC's and Defendant Mooresville YC's terminated franchise agreements; and (4) Plaintiff SFF granted Defendant Anto the right to develop a new SWEETFROG shop at a mutually acceptable location on or before November 8, 2018. The case was dismissed with prejudice on December 15, 2016.

#### **Lawsuits Filed by SFF, LLC Against Franchisees During Fiscal Year 2018:**

None

#### **Pending Arbitration and Litigation Involving CB Franchising Systems, LLC**

None

#### **Concluded Arbitration and Litigation Involving CB Franchising Systems, LLC**

**Adonai Investors, Inc. and Kevin Fitzpatrick v. Craig Albert, Michael Bernstein, Larry Schwartz, CM Franchise Systems, Inc., CM Franchise Systems, LLC, and CB Franchise Systems, LLC, CK Franchise Systems, Inc., Los Angeles Superior Court Case No: BC409892.**

Plaintiffs, a regional director of "Tacone" (the restaurant concept franchised by CM Franchise Systems, LLC) and Kevin Fitzpatrick ("Plaintiffs"), filed a complaint against Craig Albert, Michael Bernstein, Larry Schwartz, CM Franchise Systems, Inc., CM Franchise Systems, LLC, and CB Franchise Systems, LLC, CK Franchise Systems, Inc. ("Defendants"). Plaintiffs alleged: 1) breach of written contract; 2) breach of implied covenant of good faith and fair dealing; 3) alter ego liability; 4) fraud; 5) negligent misrepresentation; 6) tortious interference with contract; 7) intentional interference with prospective economic advantage; 8) fraudulent transfer; 9) negligent interference with prospective economic advantage; 10) anticipatory breach; and 11) unjust enrichment. The lawsuit was based on the allegation that Defendant CM Franchise Systems failed to pay royalties that Plaintiffs alleged were owed to them under an area director agreement between the parties.

Although the lawsuit stemmed from a relationship with Tacone and not The Counter, Plaintiffs contended that Defendant CB Franchise Systems, Craig Albert, and certain other defendants were liable under “alter ego” theories. The Defendants denied all liability for Plaintiff’s claims. The case was settled in December of 2009 pursuant to a confidential settlement agreement which included a dismissal with prejudice of all of Plaintiffs’ claims and the exchange of full and final releases. Under the settlement agreement, Defendant CM Franchise Systems agreed to sell the Tacone franchise system to an entity owned by Plaintiff Fitzpatrick. The Defendants were not required to make any payments to Plaintiffs under the settlement agreement.

**Double Play Restaurants, LLC v. Craig Albert, Michael Bernstein, Mark Bailey, Larry Schwartz, CM Franchise Systems, Inc., CM Franchise Systems, LLC, Flavor Firm, LLC, CB Franchise Systems, LLC, CK Franchise Systems, Inc., and Premiere Management Consultants, Inc., Los Angeles Superior Court Case No: SC105206.**

On October 9, 2009, Double Play Restaurants, LLC (“Plaintiff”), a former Texas-based master franchisee and franchisee of “Tacone” (the restaurant concept franchised by defendants CM Franchise Systems, LLC, and formerly franchised by CM Franchise Systems, Inc.) filed a complaint against Craig Albert, Michael Bernstein, Mark Bailey, Larry Schwartz, CM Franchise Systems, Inc., CM Franchise Systems, LLC, Flavor Firm, LLC, CB Franchise Systems, LLC, CK Franchise Systems, Inc., and Premiere Management Consultants, Inc. Plaintiff alleged 1) breach of written contract; 2) breach of implied covenant of good faith and fair dealing; 3) money had and received; 4) fraud and conspiracy; 5) negligent misrepresentation; 6) conversion and conspiracy; 7) violations of the California Franchise Investment Law; 8) fraudulent transfer; 9) violations of the federal RICO statute; 10) unfair business practices; and 11) unjust enrichment and constructive trust. At the core of Plaintiff’s complaint was the allegation that Defendant Schwartz, as an agent for Defendant CM Franchise Systems, Inc., agreed that Defendant CM Franchise Systems, Inc. would refund Plaintiff’s initial subfranchise and franchise fee of \$150,000 if Plaintiff was unable to procure suitable commercial financing to open its first Tacone restaurant, for which Plaintiff was ultimately unsuccessful. This action was settled in October 2011 pursuant to a negotiated settlement pursuant to which Defendants paid Plaintiff a total of \$225,000 to settle all claims.

**CBO Foods, LLC, Roger Brunello and Craig Cappai v. CB Franchise Systems, LLC, Craig B. Albert, Tom and Grace Byers, Wells Fargo Bank, N.A. Harold Quigley, William H. Simon, Jr. and Staton Simon in capacities as co-trustees of the William Simon Trust Under the Will of William H. Simon, deceased and of the Fanchon Simon Trust under the Will of Fanchon Simon, Studio City Shopping Center Association, et al., Los Angeles Superior Court, Case No. EC048441.**

On or about November 3, 2008, CBO Foods, LLC, Roger Brunello, and Craig Cappai, (collectively the “Plaintiffs”) filed a complaint in Los Angeles Superior Court against CB Franchise Systems, LLC, (“CB Defendant”), Craig Albert, (“Albert Defendant”), Tom and Grace Byers (“Byers Defendants”), Wells Fargo Bank, N.A. Harold Quigley, William H. Simon, Jr. and Staton Simon in capacities as co-trustees of the William Simon Trust Under the Will of William H. Simon, deceased and of the Fanchon Simon Trust under the Will of Fanchon Simon, (collectively the “Landlord Defendants”), Studio City Shopping Center Association (“Studio City Defendant”), (all collectively the “Defendants”). In December 2006 Plaintiffs signed a Franchise Agreement with CB Franchise Systems, LLC, for a “The Counter” restaurant to be located in Pasadena, California. The Plaintiffs subsequently purchased a separate territory from Tom and Grace Byers for a location in Studio City, California. After encountering delays in connection with the Studio City location, CBO Foods, LLC filed suit in November 2008, asserting a variety of claims against the landlord, the local tenant association, Tom and Grace Byers, CB Franchise Systems, LLC, and Craig Albert. Plaintiff alleged: (i) damages for violation of franchise investment law by CB, Albert, and Byers Defendants; (ii) rescission of the franchise agreement for violation of franchise investment law by CB, Albert, and

Byers Defendants; (iii) negligence by CB Defendant; (iv) declaratory relief from Landlord Defendants, (v) breach of lease by the Landlord Defendants, (vi) breach of covenant of good faith and fair dealing by the Landlord Defendants; (vii) breach of asset purchase agreement against Byers Defendants; (viii) for contractual indemnification against the Byers Defendants; (ix) fraud (omission to disclose material fact) against CB, Byers, and Landlord Defendants, (x) rescission for fraud (omission to disclose material fact) by CB, Byers, and Landlord Defendants, and (xi) unfair business practices under business & professions code sections 17200 ET SEQ against all Defendants. Plaintiffs sought (i) damages, (ii) interest as allowed by law, (iii) attorney's fees, (iv) other costs of suit, and (v) such other and further relief as the Court deems just and proper. Plaintiffs and Defendants negotiated their disputes through mediation and a Settlement and Release Agreement was executed in February 2009. Pursuant to the Settlement and Release Agreement, royalties for the Studio City franchise were reduced until the reduction totaled \$93,750, at which time the royalty rate would revert to the amount contained in the applicable Franchise Agreement. Six months later Tom and Grace Byers asserted claims against CBO Foods, the Landlord Defendant, CB Franchise Systems, and Craig Albert, the tenant association, and another restaurant owner, alleging numerous alternative theories. With respect to CB Franchise Systems, LLC, the Byers alleged CB Franchise Systems, LLC and Craig Albert conspired with CBO Foods, LLC to breach CBO Foods, LLC's agreement to purchase rights from the Byers. These additional claims by the Byers were resolved in August 2010 by means of a global settlement in which the Byers were paid the balance due on their sales contract with CBO Foods, plus a limited portion of their attorney's fees. The settlement was funded equally by all of the parties against whom the Byers filed claims.

**Fori Owurowa and Paula Owurowa v. Craig B. Albert and CB Franchise Systems, LLC, Los Angeles Superior Court, Case No. SC099998.**

On October 1, 2008, Fori Owurowa and Paula Owurowa (collectively the "Plaintiffs"), who were prior The Counter franchisees, filed a lawsuit in Los Angeles Superior Court against Craig Albert ("Albert Defendant") and CB Franchise Systems, LLC, ("CB Defendant"), (collectively the "Defendants") alleging (1) breach of written contract and the covenant of good faith and fair dealing arising under the terms of the franchise agreement dated April 10, 2007, between Plaintiffs and CB Defendant; (2) fraud and deceit – intentional misrepresentation; (3) fraud and deceit – negligent misrepresentation; (4) intentional interference with contract or other economic advantage; and (5) negligent interference with contract or other economic advantage. Plaintiffs sought: (i) a trial by jury, (ii) compensatory, general and special damages in an amount totaling \$1,227,000, (iii) exemplary and punitive damages, (iv) costs of suit, (v) reasonable attorneys' fees, and (vi) any other and further relief as the court may deem proper. On May 25, 2010, prior to trial, pursuant to California Code of Civil Procedure Section 998, Defendants made a statutory compromise offer of \$200,000 to be paid over eighteen (18) months in exchange for a dismissal of all of Plaintiff's claims against the Defendants with prejudice and termination of all prior agreements between Plaintiff and Defendant, including the franchise agreement dated April 10, 2006. Plaintiff accepted the statutory offer in June 2010.

**There is no pending or concluded litigation involving Mucho Burrito Franchising USA, Inc. that is required to be disclosed in the Item 3 of the Franchise Disclosure Document.**

**There is no pending or concluded litigation involving BSB Franchising USA, Inc., that is required to be disclosed in the Item 3 of the Franchise Disclosure Document.**

**Pending Arbitration and Litigation Involving BF Acquisition Holdings, LLC and/or its predecessors**

**BF Acquisition Holdings, LLC v. Saath Five, Inc., Sejal Patel, Dhrubesh Patel, Ashish Patel, Hetal Patel, Hetal C. Patel, Chirag Patel, Jigar Patel, Tejal Patel, Amit Patel and Shivani Patel; United States District Court for the Eastern District of Pennsylvania; Civil Action No.: 2:18-cv-03312-MSG.**

On August 3, 2018 BF Acquisition Holdings, LLC ("Plaintiff / Counter Defendant or BFAH") filed a Complaint against .Saath Five, Inc., Sejal Patel, Dhrubesh Patel, Ashish Patel, Hetal Patel, Hetal C. Patel, Chirag Patel, Jigar Patel, Tejal Patel, Amit Patel and Shivani Patel ("Defendants / Counter Claimant"). Plaintiff/ Counter Defendant alleges: (i) Trademark Infringement; (ii) Unfair Competition; (iii) Breach of Franchise Agreements; Specific Performance; (iv) Misappropriation of Trade Secrets 12 PA.C.S.A. §5301, Et Seq.; (v) Contribution and Indemnity; (vi) Breach of Contract against all Defendants; and (vii) Unjust Enrichment. Plaintiff/ Counter Defendant is seeking: (A) Preliminary and permanent injunction enjoining Defendants, their agents, servants and employees, and those people in active concert or participation with them from: (i) using the Baja Fresh Marks or any trademarks, service mark logo, or trade name that is confusingly similar to any of the Baja Fresh Marks; (ii) Otherwise infringing the Baja Fresh Marks or using any similar designation, alone or in combination with any other components; (iii) passing off any of their products or services as those of BFAH or its authorized franchisees; (iv) causing a likelihood of confusion or misunderstanding as to their affiliation, connection or association with BFAH and its franchisees or any of BFAH's products or services; and (v) an order pursuant to 15 U.S.C. §1118 that all labels, signs, prints, packages, wrappers, receptacles, logo items, and advertisements in the possession of Defendants, their agents, servants and employees, and those people in active concert or participation with them bearing any of the Baja Fresh Marks, and all plates, molds, and other means of making the same, if any be delivered to BFAH at Defendants' sole costs; (B) That Defendants/ Counter Claimant be required to promptly eliminate all advertising under the Baja Fresh Marks or any other confusingly similar designation from all media at its sole cost; (C) Preliminary and permanent injunctive relief ordering Defendants to specifically perform their post-expiration obligations to: (i) Cease using and return to Franchisor its proprietary System and equipment, including all operating manuals and other confidential and proprietary information and instructions and recipes provided to them; (ii) Cease all advertising under the Baja Fresh Marks and return to Franchisor all materials containing the Baja Fresh Marks and logos; (iii) Take all steps necessary to delete any public listing under the Baja Fresh Marks (D) Preliminary and permanent injunctive relief pursuant to ARS §44-401, et seq. enjoining Defendants from using BFAH's trade secret and proprietary Baja Fresh System and ordering Defendants to return all operating manuals and other confidential trade secret and proprietary information and instructions and recipes provided to them; (E) That Defendants be required to file with the Court and to serve upon BFAH's counsel within ten days after entry of any injunction or order issued herein a written report under oath setting forth in detail the manner in which they have complied with such injunction or order; (F) Defendants account and pay over to BFAH all gains, profits and advantages derived by them as a result of their infringement of the Baja Fresh Marks and unfair competition to the full extent provided for by Section 35 of the Lanham Act 15 U.S.C. §11117, and by the controlling principles of common law; (G) Defendants pay to BFAH such damages as BFAH has sustained by reason of said trademark infringement and unfair competition; (H) Defendants pay to BFAH such damages as it has sustained by reason of Defendants' breach of the Franchise Agreements; (I) Award of costs and expenses, including reasonable attorneys' fees incurred by BFAH in connection with this action as provided for by the Franchise Agreements and statute; (J) Damages resulting from Defendants wrongful conduct in excess of \$150,000; (K) Costs of suit; (L) Interest at the maximum legal rate; and (M) Any other relief the Court deems fit. On October 17, 2018, Defendants Saath Five, Inc., Jigar Patel ("Defendant J. Patel/ Counter Claimant") and Tejal Patel filed their Answer and Affirmative Defenses. Defendant J. Patel/ Counter Claimant further filed a Counterclaim against Plaintiff/

Counter Defendant. He alleges: (i) Fraud in the Inducement; (ii) Breach of the Duty of Good Faith and Fair Dealing; (iii) Unjust Enrichment; (iv) Quantum Meruit. Defendant J. Patel/ Counter Claimant is seeking: (i) Judgment against Plaintiff/ Counter Defendant for compensatory damages; (ii) punitive damages; (iii) attorney's fees; and (iv) costs of suit. Defendant J. Patel/ Counter Claimant also filed a Crossclaim for Contribution against any other Defendants together with interest, costs of suit and counsel fees. On December 12, 2018, Plaintiff / Counter Defendant filed its Answer with Affirmative Defenses to the Counterclaim of Defendant J Patel/ Counter Claimant. On December 21, 2019 Defendants Sejal Patel, Dhrubesh Patel, Ashish Patel, Hetal Patel, Hetal C. Patel, Chirag Pagel, Amit Patel and Shivani Patel (collectively "Defendants Patel") filed their Answer, Affirmative Defenses and Cross-Claim against Defendant J. Patel, Tejal Patel and Saath Five for (i) contribution; (ii) interest; (iii) costs of suit; and (iv) counsel fees. Plaintiff/ Counter Defendant will continue to vehemently defend itself in this action.

**Triune, LLC v. PNA RANDHAWA, Inc.; Kanwal Randhawa a/k/a Kay Randhawa; Superior Court of California County of Orange- Central Justice Center; Case No.: 30-2017-00933731-CU-BC-CJC** and **A+ XYZ Food, Inc. v. Triune, LLC; Superior Court of the State of California for the County Orange, Central District; Case No.: 30-2017-00958732-CU-BC-CJC** consolidated per an October 23, 2018 Court Order to fall under Case No.: 30-2017-00933731-CU-BC-CJC.

On July 25, 2017 Triune, LLC ("Plaintiff Triune") filed a Complaint against PNA Randhawa, Inc.; and Kanwal Randhawa a/k/a/ Kay Randhawa ("Defendant Randhawa"). Plaintiff Triune alleges: (i) Breach of Contract (Promissory Note); (ii) Breach of Contract (Security Agreement); (iii) Account Stated; and (iv) Money Lent. Plaintiff Triune is seeking: (i) Damages against Defendant Randhawa in the amount of at least \$49,950.07; (ii) Award of interest in the amount of 18% per annum or the maximum amount allowed by law; (iii) Possession of collateral described above, or if the personal property cannot be delivered for its value; (iv) Attorneys' fees; (v) Costs of suit incurred; and (vi) Any other relief the Court deems fit. On November 28, 2017, Plaintiff Triune amended its Complaint to include A+ XYZ Food, Inc. ("Defendant A+ or Plaintiff A+") as a Defendant. On November 30, 2017, Defendant Randhawa filed its Answer and Affirmative Defenses to Plaintiff Triune's complaint. On November 30, 2017 Plaintiff A+ filed a Complaint against Triune, LLC ("Defendant Triune"). Plaintiff A+ alleges: (i) Breach of Contract; (ii) Intentional Interference with Contractual Relations; (iii) Intentional Interference with Prospective Economic Relations; (iv) Negligent Interference with Prospective Economic Relations; and (v) Unjust Enrichment. Plaintiff A+ is seeking: (i) Compensatory damages in the amount to be determined at trial but no less than \$325,000 and all other consequential damages; (ii) Punitive damages; (iii) Restitution of the transfer fee of \$16,000 plus interest at the legal rate of 10% from 2014; (iv) Reasonable attorneys' fees; (v) Costs of the suit incurred; and (vi) Any other damages as may be allowed by law. On January 26, 2018, Defendant Triune filed its Answer to Plaintiff A+'s Complaint and denied the allegations therein. Discovery has commenced and a Mandatory Settlement Conference is currently set for February 8, 2019 and Jury Trial is set for March 11, 2019.

**Concluded Litigation involving BF Acquisition Holdings, LLC and/or its predecessors:**

**State of Maryland Determination; Case Number 2012-0073.**

In February 2012, the State of Maryland alleged that during the period January 1, 2009 to November 26, 2009 Triune, LLC ("Triune") (i) did not retain signed acknowledgements of receipt reflecting the dates that its Franchise Disclosure Document was delivered to certain Maryland residents and non-residents; (ii) sold franchises to certain Maryland residents and non-residents without providing them with a copy of a 2009 Franchise Disclosure Document; (iii) sold franchises to certain Maryland residents and non-residents without providing them with a copy of a 2009 Franchise Disclosure Document that contained its 2008 financial statements with a going concern note from its auditors resulting from the unfavorable financial condition of its parent company; and

(iv) sold franchises to certain Maryland residents and non-residents without including, or abiding with, a deferral condition in their Franchise Agreements that was imposed upon it by the State of Maryland, all as required by the Maryland Franchise Registration and Disclosure Law (the "Maryland Law") and in violation of the Maryland Law. Without admitting or denying the allegations, in September 2012, Triune voluntarily entered into a Consent Order with the Office of the Attorney General of Maryland and agreed to: (i) not violate the Maryland Law in the future, (ii) pay the Office of the Attorney General the sum of \$50,000 as a civil penalty, (iii) retain copies of all acknowledgments of receipt confirming dates that prospective Maryland franchisees received any Maryland Franchise Disclosure Documents, (iv) comply with the disclosure and antifraud provisions of the Maryland Franchise Law and the record keeping and escrow requirements of the Code of Maryland Regulations; and (iv) send a copy of the Consent Order to certain Maryland franchisees.

**State of Virginia Determination; Case Number SEC-2012-00027.**

In February 2012, the Division of Securities and Retail Franchising of the State Corporation Commission (the "Commission") alleged that during 2009 Triune, LLC ("Triune") (i) offered or sold franchises in Virginia in 2009 that were not registered under the Virginia Retail Franchising Act (the "Virginia Act"); (ii) offered or sold franchises in Virginia without disclosing that it was not registered to do so; (iii) failed to provide material information regarding the parent company's unfavorable financial condition and the potential impact that it could have on Triune as stated in a going concern note in its 2008 financial statements from its auditors; and (iv) Triune failed to provide a prospective franchisee with a copy of its Franchise Disclosure Document as required by rule or order of the Commission at least 14 calendar days before the prospective franchisee signed a binding agreement or made any payment to it in connection with the sale or offer to sell a franchise in Virginia. Without admitting or denying the allegations, on November 26, 2012, Triune voluntarily entered into a Settlement Order with the Commission and agreed (i) to not violate the Virginia Act in the future, (ii) to pay Virginia the sum of \$25,000 as a penalty and the sum of \$5,000 to defray the Commission's costs of investigation, (iii) to offer certain Virginia franchisees a refund of their initial franchise fees, and (iv) to send a copy of the Settlement Order to certain Virginia franchisees.

**Fresh Enterprises v. Ledang Investment Group, LLC, Vincent Tienn Le, Ho Tien Le and Hue Thi Dang Superior Court of the State of California, County of Santa Clara, Case No. 1-13-CV-257219.**

On July 2, 2013, Fresh Enterprises, as successor-in-interest to Baja Fresh Westlake Village, Inc. ("Plaintiff"), filed a complaint against Ledang Investment Group, LLC; Vincent Tien Le, Ho Tien Le and Hue Thi Dang (collectively "Defendants Ledang or Cross Claimants Ledang") for: (i) implied indemnity, (ii) equitable indemnity; (iii) express indemnity, (iv) breach of contract, (v) declaratory relief seeking unspecified damages, (vi) indemnification, (viii) a judgment of unlawful detainer; and (ix) declaration that Defendants were obligated to reimburse Plaintiff. for various expenses. On January 6, 2014, Cross Claimants Ledang filed a Cross-Complaint against Plaintiff, Baja Fresh Westlake Village, LLC, Triune Corporation and National Franchise Sales, Inc. (collectively "Counter Defendants") for: (i) breach of contract; (ii) breach of covenant of good faith and fair dealing; (iii) negligent misrepresentation; and (iv) intentional misrepresentation. On February 19, 2014, Counter Defendants filed a Motion to Compel Arbitration, which was granted. The disputes between the parties were then arbitrated before the American Arbitration Association (Case Number 72-20-1400-0126). On February 2, 2015, the Arbitrator issued an award in favor of Cross Claimants Ledang in the amount of \$660,620.84. The parties entered into a Settlement and Release Agreement on July 20, 2015, under which Counter Defendants paid the Cross Claimants Ledang the sum of \$585,000 and the matter was dismissed with prejudice.

**Lawsuits initiated by BF Acquisition Holdings, LLC Against Franchisees during Fiscal Year December 1, 2017 through November 31, 2018**

None

There is no pending or concluded litigation that is required to be disclosed for La Salsa Franchise, LLC

Except for these actions, no other litigation is required to be disclosed in this Disclosure Document.

#### **ITEM 4: BANKRUPTCY**

On July 3, 2001, Ranch \*1, Inc. and each of its wholly-owned subsidiaries, including Ranch \*1 Group, Inc., who are affiliates of Kahala Franchising, filed a petition to reorganize under Chapter 11 of the Federal Bankruptcy Code (United States Bankruptcy Court for the Southern District of New York, Case Nos. 01-41853 through 01-41881 (AJG)). On April 4, 2002, the United States Bankruptcy Court for the Southern District of New York entered an Order confirming the Plan of Reorganization jointly filed by Ranch \*1, Inc. and its Affiliates, the Official Committee of Unsecured Creditors, and R 1 Franchise Systems, L.L.C. (the "Ranch Plan"). The Ranch Plan, which became effective May 1, 2002, provided for R 1 Franchise Systems, L.L.C., a subsidiary of Kahala Brands, to own one hundred percent (100%) of Ranch \*1, Inc. and its subsidiaries (including Ranch \*1 Group, Inc.). Ranch \*1, Inc. and its subsidiaries operated under the Ranch Plan until the Case was permanently closed on January 13, 2011. Kahala Franchising is not directly affected by this bankruptcy.

Other than these actions, no bankruptcy information is required to be disclosed in this Item.

#### **ITEM 5: INITIAL FEES**

The initial franchise fee ("Initial Franchise Fee") for your first traditional *Frullati Cafe & Bakery* restaurant is \$30,000. The Initial Franchise Fee is reduced for your second and each subsequent traditional restaurant to \$17,500. The Initial Franchise Fee for your first non-traditional *Frullati Cafe & Bakery* restaurant is \$7,500. The Initial Franchise Fee is reduced for your second and each subsequent non-traditional *Frullati Cafe & Bakery* restaurant to \$5,000.

If you are currently an active or active reserve member of the U.S. Armed Forces, have been honorably discharged from the U.S. Armed Forces ("Eligible Military"), or are a 501(c)(3) organization ("501(c)(3)"), you will receive a 20% discount on the Initial Franchise Fee.

The initial fees to be paid to us and/or our affiliate(s) before the franchisee's business opens are indicated on the chart below and in the notes to the chart. The initial fees to be paid to us and/or our affiliate(s) before the franchisee's business opens are the total of the Initial Franchise Fee, Grand Opening Marketing, lease review fee (if any) and the cost of equipment, furniture, menu boards, wall decor and smallwares, and ranges from \$14,100 to \$85,150 for a non-traditional location, and from \$27,500 to \$110,650 for a traditional location. These amounts do not include the optional lease guarantee fee that is variable based upon the amount of the underlying guarantee , or the Document Administration Fee, which is only required if there is less than a 50% change in the ownership of Franchisee.

For the 2018 fiscal year, the formula used to calculate the range of initial fees paid to us and/or our affiliate(s) before the franchisee's business opened was: the total of the initial franchise fee, lease review fee (if any), lease guarantee fee (if any) and the cost of equipment, furniture,



menu boards, wall décor and/or smallwares purchased from Neptune Equipment. The factors that determined these amounts were: (i) if the Initial Franchise Fee was discounted or waived; (ii) if the restaurant was traditional or non-traditional (for the 2018 fiscal year, the cost of a non-traditional franchise was \$9,500 and was reduced to \$7,600 for the third and subsequent restaurant); (iii) if the restaurant was the franchisee's first, second, or subsequent franchise (the initial franchise fee was reduced for the third and subsequent restaurant during the 2018 fiscal year); (iv) the lease review fee, if the franchisee requested a full lease review; (v) the lease guarantee fee if the franchisee requested we guarantee their lease and Kahala Franchising or its affiliate agreed to be a guarantor on their lease; and (vi) the cost of equipment, interior and exterior signage, menu boards, and smallwares purchased from our affiliate, Neptune Equipment, which depended on the equipment purchased.

There are no refunds of Initial Franchise Fees under any circumstances. We may periodically reduce the Initial Franchise Fee in connection with limited time promotions, new concepts and/or operational programs. If you sign the Franchise Agreement in connection with a transfer or renewal, you will not pay the Initial Franchise Fee.

We may offer you the option to purchase a license to sell additional signature products in your *Frullati Cafe & Bakery* restaurant and to use the signature products trademark(s) as signature products are developed. The signature products that would be available for *Frullati Cafe & Bakery* franchisees to sell in their restaurants are currently under development. We estimate that the fees associated with acquiring license(s) to sell additional products will be between \$2,500 and \$5,000 although these license fees may be modified from time to time.

CATEGORY	AMOUNT	METHOD OF PAYMENT	DUE DATE	TO WHOM PMT IS MADE	REFUNDABILITY
Initial Franchise Fee – first traditional location	\$30,000  (reduced to \$24,000 for Eligible Military and 501(c)(3))	Lump Sum	Signing of the Franchise Agreement	Kahala Franchising	See Note (1)
Initial Franchise Fee – second traditional location and each afterward	\$17,500  (reduced to \$14,000 for Eligible Military and 501(c)(3))	Lump Sum	Signing of the Franchise Agreement	Kahala Franchising	See Note (1)
Initial Franchise Fee – first non-traditional location (Note 2)	\$9,500  (reduced to \$7,600 for Eligible Military and 501(c)(3))	Lump Sum	Signing of the Franchise Agreement	Kahala Franchising	See Note (1)
Initial Franchise Fee – second non-traditional location and each afterward	\$7,000  (reduced to \$5,600 for Eligible	Lump Sum	Signing of the Franchise Agreement	Kahala Franchising	See Note (1)

CATEGORY	AMOUNT	METHOD OF PAYMENT	DUE DATE	TO WHOM PMT IS MADE	REFUNDABILITY
	Military and 501(c)(3))				
Grand Opening Marketing	\$10,000 for a traditional store and \$5,000 for a non-traditional store	Lump Sum	Earlier of; prior to execution of a lease or prior to construction of premise	Kahala Franchising or its affiliate	See Note (1)
Lease Guarantee Fee (optional)	10% of the total amount guaranteed, up to a maximum payment of \$10,000 (if applicable) (Note 2)	Lump Sum	Signing of the Lease Agreement (if applicable)	Kahala Franchising or its affiliate who guarantees the lease	See Note (1)
Lease Review Fee (optional)	\$2,500 (Note 3)	Lump Sum	Signing of the Franchise Agreement	Kahala Franchising	See Note (1)
Equipment, furniture, menu boards wall decor and/or smallwares	\$3,500 to \$68,150 (Note 4)	Lump sum	When invoiced	Neptune Equipment and/or third party vendor	See Note (1)

The above fees will be used for franchise support, training and working capital.

Notes:

(1) There are no refunds under any circumstances. Kahala Franchising does not offer any financing of the Initial Franchise Fee. We may periodically reduce the Initial Franchise Fee in connection with limited time promotions, new concepts and/or operational programs.

(2) If, after a request by you, Kahala Franchising or any of its affiliates agree, in their sole and absolute discretion, to guarantee your lease with the applicable third party landlord for the *Frullati Cafe & Bakery* restaurant you are developing, you will pay Kahala Franchising or its affiliate a lease guarantee fee in the amount of 10% of the total amount of the rental obligations being guaranteed under the lease upon the execution of the lease and associated guarantee with the third party landlord, up to a maximum payment of \$10,000. This fee is not refundable (See Exhibit M: Lease Guaranty Acknowledgement).

(3) If, prior to executing the lease, you request Kahala Management's real estate department review your lease and provide suggested changes to you, a \$2,500 lease review fee shall be paid by you to Kahala Franchising ("Lease Review Fee") upon your request to Kahala Management's real estate department. The Lease Review Fee is non-refundable. This is an optional service, with the determination of whether to utilize Kahala Management's real estate department to be made in your sole discretion.

(4) The majority of your equipment, furniture, menu boards, wall graphics and smallwares will be purchased from Neptune Equipment, an affiliate of Kahala Franchising, and approved third party vendors.

#### ITEM 6: OTHER FEES

Column 1	Column 2	Column 3	Column 4
Type of Fee	Amount	Due Date	Remarks
Royalty Fee and Surcharge (Notes 1 and 9)	Royalty Fee is the greater of the following: (i) 6% of total weekly Gross Sales or (ii) \$200 per week. Surcharge is a maximum of \$10 per week in addition to the Royalty Fee. (Note 2)	Withdrawn electronically from your designated bank account each Wednesday (Note 3)	"Gross Sales" include all revenue from the franchised business excluding sales tax and authorized refunds, credits and allowances.
Advertising Fees (Note 1)	Up to 4% of weekly Gross Sales	Same as Royalty Fee (Note 3)	Currently, Advertising Fee is 1% of weekly Gross Sales, which goes to the advertising fund (Note 4).
Additional Persons Training Fee (Note 1)	\$1,750 per person (\$500 per person for the In-Store portion of the Training Program, and \$750 per person for the New Owner Training portion of the Training Program)	2 weeks prior to beginning of training	The training of two individuals is included in the Initial Franchise Fee. The Additional Persons Training Fee is for any additional persons who attend the Training Program.
Additional Training Fee (Note 1)	\$300 per person per day	At time of training	Payable if you request additional training after attending the Training Program.
Annual Meeting Registration Fee (Notes 1 and 5)	Up to \$1,000 plus incidental costs to attend	60-90 days prior to the Meeting	We will debit your Depository Account for this fee, which is non-refundable. This fee is charged to all franchisees whether or not they attend the Meeting.
Depository Account	\$3,000 (Must be replenished on a regular basis)	At signing of Franchise Agreement	(Note 3)
Data Fees (Notes 1 and 6)	Up to \$75 per month (Subject to reasonable annual and/or service enhancement increases)	Same as Royalty	Fee for collecting or polling data from your POS System.
POS Help Desk Phone Support Maintenance Contract Fee	\$55 per month	Last Thursday of each month	We will debit your Depository Account for this fee.

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Type of Fee</b>	<b>Amount</b>	<b>Due Date</b>	<b>Remarks</b>
Renewal Franchise Fee (Note 1)	50% of the then-current initial franchise fee	When new Franchise Agreement is signed at renewal	Applicable if you are renewing your Franchise Agreement.
Transfer Franchise Fee – traditional locations (Note 1)	\$7,500	Prior to consummation of transfer	Payable if you are purchasing your Franchised Business as a result of a full transfer from another franchisee. A full transfer is, including, but not limited to, a transfer of 50% or more ownership or control.
Transfer Franchise Fee – non-traditional locations (Note 1)	\$5,000	Prior to consummation of transfer	Payable if you are purchasing your Franchised Business as a result of a full transfer from another franchisee.
Relocation Fee (Note 1)	\$500	At signing of relocation amendment to Franchise Agreement	Payable if we approve the relocation of your store.
Transfer Training Fee (Note 1)	\$2,500 for two (2) individuals (\$500 for each additional individual)	Prior to consummation of transfer	Payable if you purchase your Franchised Business as a result of a full transfer from another franchisee.
Document Administration Fee	\$500 (Note 7)	Lump Sum	Applicable for an Affiliate Transfer, including, but not limited to, a transfer of less than 50% of ownership or control.
Default Interest (Notes 1 and 8)	\$50 plus interest at 1-1/2% per month or maximum legal rate, if less ("Default Rate")	Payable upon assessment	Payable on all overdue amounts.
Late Report Fee (Note 1)	\$100 per report	Payable upon assessment	Payable if any required financial statement or report is delinquent.
Sublease Late Charge	5% of the late or unpaid amount plus any late charges and interest incurred under the Master Lease as a result of the late payment (where applicable).	As incurred	Payable to our affiliate if you are subleasing your restaurant space from our affiliate.

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Type of Fee</b>	<b>Amount</b>	<b>Due Date</b>	<b>Remarks</b>
Collection Costs (Note 1)	All collection costs including reasonable attorneys' fees	Payable upon assessment	Payable only if we are required to retain an attorney or collection agency to collect delinquent payments from you. We will also collect as damages any attorneys' fees and costs incurred by us in defending claims that arise due to your actions as a <i>Frullati Cafe &amp; Bakery</i> franchisee.
Non-Sufficient Funds Fee (Note 1)	\$50 for each electronic funds transfer returned for non-sufficient funds; \$25 for each check or draft returned for non-sufficient funds	Payable upon assessment	Payable only if your electronic funds transfer from your depository account or any check you remit to us is returned for non-sufficient funds.
Audit (Note 1)	Cost of Audit plus interest at Default Rate on underpayments or the maximum rate permissible by law (Note 9)	Payable upon assessment	Payable only if audit is caused by your failure to furnish reports or if audit reveals an understatement of fees or assessment of 5% or more.
New Supplier Approval Fee (Note 1)	A charge not to exceed the reasonable cost of the inspection and the actual cost of the test not to exceed \$5,000.	Payable upon assessment	Payable by either you or the proposed supplier if you request our approval of a new or alternative supplier.
Non-Participation Fee (Note 1)	\$100 per day	Payable upon assessment	For failure to participate in local, regional, seasonal, promotional and other programs, initiative and campaigns
Early Termination Damages(Note 1)	The average monthly Royalty and Advertising Fees paid for any consecutive 12 month period within the preceding 48 month period multiplied by the number of months remaining in the term of the Franchise Agreement, and the product is divided by 2.	30 days prior to the early closing of the restaurant	You must provide us with 90 days prior written notice of the termination of your Franchise Agreement.

Column 1	Column 2	Column 3	Column 4
Type of Fee	Amount	Due Date	Remarks
Management Fee	6% of the Franchised Business' Gross Sales (in addition to the Royalty Fee and Advertising Fee) plus our direct out-of-pocket costs and expenses.	Payable with Royalty and Advertising Fee	If we assume the management of your Franchised Business for any period of time.

Notes:

(1) These fees are collected by Kahala Franchising, are payable to Kahala Franchising, and are non-refundable. These fees are uniformly imposed by Kahala Franchising; however, Kahala Franchising, in its sole discretion, may reduce or waive a one-time fee (*i.e.*, transfer franchise fee, renewal franchise fee, etc.) or may waive or reduce an ongoing fee (*i.e.*, Royalty Fee or Advertising Fees) for a defined period of time.

(2) For traditional *Frullati Cafe & Bakery* restaurants, the Royalty Fee will be the greater of: (i) 6% of the total weekly Gross Sales or (ii) \$200 per week. For non-traditional *Frullati Cafe & Bakery* restaurants, the Royalty Fee is 6% of total weekly Gross Sales with no minimum royalty. In our sole discretion, we may charge, in addition to the Royalty Fee, a Surcharge of up to \$10 per week if your franchised business is located in a state that imposes additional reporting requirements on a franchisor. Currently, New York is the only state that has imposed the additional reporting requirements (for example, see [http://www.tax.state.ny.us/pdf/memos/sales/m09\\_9s.pdf](http://www.tax.state.ny.us/pdf/memos/sales/m09_9s.pdf) for information franchisors are required to report to the State of New York regarding its franchisees).

(3) At the time you sign the Franchise Agreement, you will set up a depository account of \$3,000 with your local banking institution. You are required to maintain a balance of \$3,000 in this account at all times. This will mean that you must replenish the depository account to \$3,000 after Kahala Franchising makes any withdrawals. (An Electronic Funds Transfer Agreement by and payable to Kahala Franchising is attached as Exhibit P).

(4) Kahala Franchising directs that Advertising Fees be paid to us, a national advertising fund designated by us, or, in our sole discretion, to a designated approved regional advertising fund. We encourage the formation of franchisee cooperative advertising associations (each a "Cooperative"). Currently, there are no *Frullati Cafe & Bakery* Cooperatives, and therefore; no fees imposed by Cooperatives. Kahala Franchising reserves the right to require Cooperative contributions in the future. If a Cooperative is formed for your region, you must contribute to the Cooperative or lose your right to vote on decisions the Cooperative makes. The membership of the Cooperative is defined by us according to your market area. For each of our company-owned or affiliate-owned restaurants located within the Cooperative, we will make contributions to the regional advertising fund on the same basis as required of the other *Frullati Cafe & Bakery* franchise owners in the same geographic market. Corporate or affiliate-owned outlets have the same voting power as franchisee-owned outlets.

(5) If we hold an annual meeting ("Meeting"), the Meeting will be held at various locations throughout the United States as we may designate in our sole discretion, and may offer valuable continuing education programs. Because the planning and funding of the Meeting must be done well in advance and requires a substantial financial commitment, we have the right to debit your Depository Account for the Annual Meeting Registration Fee up to \$1,000 at any time 60 to 90 days prior to the first day of the Meeting. This fee is not refundable and will be debited from all

franchisees' accounts (even if you do not attend the Meeting). If you do not attend the Meeting, we will send to you one full set of the substantive materials that were presented at the Meeting.

(6) We may collect a weekly data polling fee for the collection of data from your restaurant sales for the POS System for your restaurant. Currently, the fee is up to \$75 per month, and is subject to reasonable annual and/or service enhancement increases.

(7) The Document Administration Fee in the amount of \$500 will only be charged to you if an amendment to your franchise documents must be prepared due to a change in the name of franchisee or to add or remove an owner who has less than a 50% ownership interest in franchisee, or a change in the ownership due to divorce or separation.

(8) Interest begins from the date of the underpayment.

(9) Franchisor has the absolute right to charge Franchisee the greater of: three (3) times the fixed Royalty fee; or, if on a percentage Royalty fee the Royalties will be increased up to eighteen percent (18%) of Gross Sales, with respect to any period during which Franchisee is in breach or default of its/his/her obligations under this Agreement. The Royalties paid or owing to Franchisor with respect to the period during which Franchisee is in breach or default are referred to as "Breaching Royalties." Breaching Royalties will be charged for a minimum fourteen (14) day period, regardless of the length of the actual breach or default.

## ITEM 7: ESTIMATED INITIAL INVESTMENT

### YOUR ESTIMATED INITIAL INVESTMENT

Traditional Frullati Cafe & Bakery Restaurant - (conversion of a free-standing restaurant)

Column 1 Type of Expenditure	Column 2 Amount	Column 3 Method of Payment	Column 4 When Due	Column 5 To Whom Payment is to be Made
Initial Franchise Fee (Note 1)	\$14,000 to \$30,000 (Note 1)	Lump Sum	At Signing of Franchise Agreement	Us
Lease Review Fee	\$0 to \$2,500	Lump Sum	At Signing of Franchise Agreement	Us
Rent/Security Deposit (for 3 months) (Note 2)	\$6,000 to \$30,000	As Incurred	Prior to Opening	Landlord(s)
Travel and Living Expenses (2 persons) while training, not including salaries, if any, for you and your employees	\$2,500 to \$5,000	As Incurred	During Training	Airlines, Hotels, Restaurants, etc.
Real Estate	(Note 2)	(Note 2)	(Note 2)	(Note 2)
Architectural and Project Management Fees	\$5,000 to \$15,000	As Incurred	Prior to Opening	Licensed and Approved Architect
Leasehold Improvements	\$40,000 to \$250,000 (Note 3)	As Incurred	Prior to Opening	Approved Contractors and Vendors
Restaurant Equipment, Furniture, and Small Wares (Note 4)	\$40,000 to \$80,000	Lump Sum	Prior to Opening	Approved Vendors and Suppliers

<b>Column 1</b> <b>Type of Expenditure</b>	<b>Column 2</b> <b>Amount</b>	<b>Column3</b> <b>Method of Payment</b>	<b>Column 4</b> <b>When Due</b>	<b>Column 5</b> <b>To Whom Payment is to be Made</b>
Interior and Exterior Signage and menu panels	\$8,000 to \$35,000	As Incurred	Prior to Opening	Approved Sign Company
Computer Hardware, Software (POS System)	\$2,510-\$10,000	Lump Sum	Prior to Opening	Approved Suppliers
PCI Compliance Costs	\$150 to \$1,300	As billed by third party vendor	As billed by third party vendor	Approved Vendor
Opening Inventory (food and paper) (Note 5)	\$3,500 to \$7,000	As Incurred	Prior to Opening	Approved Suppliers
Business Insurance (Note 6)	\$1,000 to \$5,000	Lump Sum	Prior to Opening	Insurance Company/Agent
Miscellaneous Opening Costs (Note 7)	\$4,750 to \$17,200	As Incurred	As Incurred	Approved Suppliers, Utilities, etc.
Grand Opening Marketing	\$10,000	Lump Sum	Earlier of; prior to execution of a lease or prior to construction of premise	US(Note 8)
Depository Account (Note 9)	\$3,000	Lump Sum; Must be replenished on a regular basis	At signing of Franchise Agreement	Your bank (We have the right to withdraw from this account)
Additional Funds - 3 month initial period	\$5,000 to \$15,000 (Note 10)	As Incurred	As Incurred	Us, Employees, Various Third Parties
TOTAL (Note 11)	\$145,410 to \$516,000	<i>(Does not include real estate costs, construction of the building, or rent for the business location except for the initial security deposit.)</i>		

**YOUR ESTIMATED INITIAL INVESTMENT**  
Traditional Frullati Cafe & Bakery Restaurant  
 (located within a Shopping Mall, Strip Center, or similar venue)

<b>Column 1</b> <b>Type of Expenditure</b>	<b>Column 2</b> <b>Amount</b>	<b>Column3</b> <b>Method of Payment</b>	<b>Column 4</b> <b>When Due</b>	<b>Column 5</b> <b>To Whom Payment is to be Made</b>
Initial Franchise Fee (Note 1)	\$14,000 to \$30,000 (Note 1)	Lump Sum	At Signing of Franchise Agreement	Us
Lease Review Fee	\$ 0 to \$2,500	Lump Sum	At Signing of Franchise Agreement	Us
Rent/Security Deposit (for 3 months) (Note 2)	\$6,000 to \$30,000	As Incurred	Prior to Opening	Landlord(s)
Travel and Living Expenses (2 persons) while training, not including salaries, if any, for you and your employees	\$2,500 to \$5,000	As Incurred	During Training	Airlines, Hotels, Restaurants, etc.



<b>Column 1</b>	<b>Column 2</b>	<b>Column3</b>	<b>Column 4</b>	<b>Column 5</b>
<b>Type of Expenditure</b>	<b>Amount</b>	<b>Method of Payment</b>	<b>When Due</b>	<b>To Whom Payment is to be Made</b>
Real Estate	(Note 2)	(Note 2)	(Note 2)	(Note 2)
Architectural and Project Management Fees	\$5,000 to \$15,000	As Incurred	Prior to Opening	Licensed and Approved Architect
Leasehold Improvements	\$40,000 to \$200,000 (Note 3)	As Incurred	Prior to Opening	Approved Contractors and Vendors
Restaurant Equipment, Furniture, and Small Wares (Note 4)	\$40,000 to \$60,000	Lump Sum	Prior to Opening	Approved Vendors and Suppliers
Interior and Exterior Signage and menu panels	\$8,000 to \$35,000	As Incurred	Prior to Opening	Approved Sign Company
Computer Hardware, Software (POS System)	\$2,510 to \$10,000	Lump Sum	Prior to Opening	Approved Suppliers
PCI Compliance Costs	\$150 to \$1,300	As billed by third party vendor	As billed by third party vendor	Approved Vendor
Opening Inventory (food and paper) (Note 5)	\$3,500 to \$7,000	As Incurred	Prior to Opening	Approved Suppliers
Business Insurance (Note 6)	\$1,000 to \$5,000	Lump Sum	Prior to Opening	Insurance Company/Agent
Miscellaneous Opening Costs (Note 7)	\$4,750 to \$17,200	As Incurred	As Incurred	Approved Suppliers, Utilities, etc.
Grand Opening Marketing	\$10,000	Lump Sum	Earlier of; prior to execution of a lease or prior to construction of premise	US(Note 8)
Depository Account (Note 9)	\$3,000	Lump Sum; Must be replenished on a regular basis	At signing of Franchise Agreement	Your bank (We have the right to withdraw from this account)
Additional Funds - 3 month initial period	\$5,000 to \$15,000 (Note 10)	As Incurred	As Incurred	Us, Employees, Various Third Parties
TOTAL (Note 11)	\$145,410 to \$446,000	<i>(Does not include real estate costs and/or rent for the business location except for the initial security deposit.)</i>		

**YOUR ESTIMATED INITIAL INVESTMENT**  
Non-Traditional Frullati Cafe & Bakery Restaurant

<b>Column 1</b>	<b>Column 2</b>	<b>Column3</b>	<b>Column 4</b>	<b>Column 5</b>
<b>Type of Expenditure</b>	<b>Amount</b>	<b>Method of Payment</b>	<b>When Due</b>	<b>To Whom Payment is to be Made</b>
Initial Franchise Fee (Note 1)	\$5,600 to \$9,500 (Note 1)	Lump Sum	At Signing of Franchise Agreement	Us
Lease Review Fee	\$ 0 to \$2,500	Lump Sum	At Signing of Franchise Agreement	Us
Rent/Security Deposit (for 3 months) (Note 2)	\$6,000 to \$30,000	As Incurred	Prior to Opening	Landlord(s)

<b>Column 1</b>	<b>Column 2</b>	<b>Column3</b>	<b>Column 4</b>	<b>Column 5</b>
<b>Type of Expenditure</b>	<b>Amount</b>	<b>Method of Payment</b>	<b>When Due</b>	<b>To Whom Payment is to be Made</b>
Travel and Living Expenses (2 persons) while training, not including salaries, if any, for you and your employees	\$2,500 to \$5,000	As Incurred	During Training	Airlines, Hotels, Restaurants, etc.
Real Estate	(Note 2)	(Note 2)	(Note 2)	(Note 2)
Architectural and Project Management Fees	\$5,000 to \$15,000	As Incurred	Prior to Opening	Licensed and Approved Architect
Leasehold Improvements	\$40,000 to \$125,000 (Note 3)	As Incurred	Prior to Opening	Approved Contractors and Vendors
Restaurant Equipment, Furniture, and Small Wares (Note 4)	\$40,000 to \$45,000	Lump Sum	Prior to Opening	Approved Vendors and Suppliers
Interior and Exterior Signage and menu panels	\$8,000 to \$35,000	As Incurred	Prior to Opening	Approved Sign Company
Computer Hardware, Software (POS System)	\$2,510 to \$10,000	Lump Sum	Prior to Opening	Approved Suppliers
PCI Compliance Costs	\$150 to \$1,300	As billed by third party vendor	As billed by third party vendor	Approved Vendor
Opening Inventory (food and paper) (Note 5)	\$3,500 to \$7,000	As Incurred	Prior to Opening	Approved Suppliers
Business Insurance (Note 6)	\$1,000 to \$5,000	Lump Sum	Prior to Opening	Insurance Company/Agent
Miscellaneous Opening Costs (Note 7)	\$4,750 to \$17,200	As Incurred	As Incurred	Approved Suppliers, Utilities, etc.
Grand Opening Marketing	\$5,000	Lump Sum	Earlier of; prior to execution of a lease or prior to construction of premise	US (Note 8)
Depository Account (Note 9)	\$3,000	Lump Sum; Must be replenished on a regular basis	At signing of Franchise Agreement	Your bank (We have the right to withdraw from this account)
Additional Funds - 3 month initial period	\$5,000 to \$15,000 (Note 10)	As Incurred	As Incurred	Us, Employees, Various Third Parties
TOTAL (Note 11)	\$134,010 to \$336,500	<i>(Does not include real estate costs and/or rent for the business location except for the initial security deposit.)</i>		

Notes:

- (1) The Initial Franchise Fee includes the training fee for two individuals.

(2) If you do not own a suitable premises approved by us, you must lease or purchase the premises for your *Frullati Cafe & Bakery* restaurant. If you decide to lease the premises, the landlord will generally require a security deposit, the amount of which generally ranges from one month of monthly rent to six months of monthly rent. The amount of your security deposit will vary according to your area, the type of location (enclosed mall, strip center, or free-standing building), and various other factors. A lease security deposit may be non-refundable and is paid directly to the landlord of the premises. If you decide to purchase land and construct your own building or buy an existing building, you can expect to add the cost of the real estate to the total investment. Real estate costs vary considerably depending on fair market values in your area; size, condition, and location of the premises; and municipal requirements.

(3) The Landlord may provide some leasehold improvements, but if not, they will be at your expense. The total amount of leasehold improvements for your *Frullati Cafe & Bakery* restaurant will vary greatly, depending on the type of premises for your restaurant (pad site with drive-thru on the high end versus modular kiosk or retrofitted existing restaurant on the low end), condition of the premises, and what improvements you require. Construction costs also vary considerably depending on fair market values in your area; size, condition, and location of the premises; labor costs (union versus non-union); and equipment requirements. The minimum square footage needed to establish your *Frullati Cafe & Bakery* is approximately 800 square feet for a traditional restaurant and 500 square feet for a non-traditional restaurant. There is a wide range of probable locations that a *Frullati Cafe & Bakery* restaurant could be in, and therefore, a wide range for the approximate size of the property and building. The probable locations for a *Frullati Cafe & Bakery* restaurant are shopping mall food courts, hospitals, fitness centers, office buildings, and airports with sizes of the property and building the *Frullati Cafe & Bakery* restaurant could be located in ranging from 1,000 square feet for a stand-alone location to over one million square feet for a large regional shopping mall.

(4) This amount includes estimated costs of furniture, furnishings, installations, equipment, trade fixtures, and certain other items on the restaurant premises, the amount and specific items of which will vary depending upon the location, size and condition of a particular restaurant. You must purchase restaurant equipment for your *Frullati Cafe & Bakery* restaurant from approved vendors and according to our specifications. A list of approved distributors for our approved vendors is maintained by our purchasing department and will be provided to you during the pre-opening and/or construction phase for your Franchised Business. Updates will be provided to you as changes are made (i.e., additions and deletions) to the list of approved distributors for our approved vendors.

(5) As with any retail business, you will purchase inventory continuously as long as you operate your *Frullati Cafe & Bakery* restaurant.

(6) Initial premiums for commercial general liability insurance are subject to change due to market forces beyond either of our control. The cost of other coverages, including workers' compensation and employer liability coverage and your discretionary purchases, varies widely.

(7) The breakdown of the miscellaneous opening costs is as follows:

MISCELLANEOUS OPENING COSTS	ESTIMATED TYPICAL RANGE	
Pre-opening Employee Training Payroll	\$1,000	\$3,000
Utility Deposits (e.g., gas, water)	\$1,000	\$3,500
Petty Cash (including cash register "opening banks")	\$250	\$700
Licenses and Permits (including any required deposits)	\$500	\$3,000

MISCELLANEOUS OPENING COSTS	ESTIMATED TYPICAL RANGE	
Miscellaneous Expenses (e.g., food safety manager certification training fees, uniforms, menus, security system, interior/exterior landscaping, sound system, business telephone deposit (phone additional), banking pre-opening costs, accountants, lawyers)	\$2,000	\$7,000
ESTIMATED TOTAL	\$4,750	\$17,200

The telephone and utility deposits will generally be refundable in accordance with the terms fixed by the telephone company and the utility companies, respectively.

(8) You are required, to pay a Grand Opening Marketing fee of \$10,000 for a Traditional store or \$5,000 for a Non Traditional store payable to US on the earlier of (i) prior to you executing a lease for the premises where the Franchised Business will be located; or (ii) prior to construction commencing at the premises where the Franchised Business will be located. We or our designated affiliate will create a marketing plan for (i) a grand opening event at your Franchised Business, and (ii) the initial advertising of your Franchised Business, and will work with you to obtain your input on the marketing plan. We or our designated affiliate will use the Grand Opening Marketing to pay for the grand opening and initial advertising, but may, in our sole discretion, reimburse you for some local store marketing expenses that you pay if you received our prior approval. The Grand Opening Marketing should be used within six (6) months of the opening of your Franchised Business to the public. However, if a portion of the Grand Opening Marketing is not used within those six (6) months, we may, in our discretion, spend the remaining portion of the Grand Opening Marketing after six (6) months from the opening of your Franchised Business to the public.

(9) At the time you sign the Franchise Agreement, you will set up a depository account of \$3,000 with your local banking institution. You are required to maintain a balance of \$3,000 in this account at all times.

(10) Cash flow from your operations may not be adequate to cover operating and other costs during the initial phase of business. The range shown estimates your expenses during the first three months of operation. These expenses include payroll costs (excluding any wage or salary paid to you), other miscellaneous expenses and working capital. We cannot guarantee that you will not have additional expenses starting the business. Your costs will depend on factors such as: how closely you follow our methods and procedures; your management skill, experience and business acumen; local economic conditions; the local market for our product; the prevailing wage rate; competition; and the sales level achieved during the initial period. The amount required for additional funds was formulated based upon our years of experience as a franchisor and our affiliate's years of experience operating company restaurants in addition to information provided by other franchisees.

(11) Your initial investment for a new *Frullati Cafe & Bakery* restaurant depends primarily upon the size, configuration, location, who pays the costs to develop the real estate and/or construction of the restaurant, and the amount and terms of financing, if any. The initial funds required must be estimated as most costs are not within our control and may change at frequent intervals. These estimated ranges are based on our experience and information provided by franchisees.

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

Except as stated in this Item 8, you have no obligation to purchase or lease goods, services, supplies, fixtures, equipment, inventory or computer hardware relating to the establishment or operation of your *Frullati Cafe & Bakery* restaurant from us or from any of our designees.

The Franchise Agreement requires that all food products, ingredients, equipment, computer hardware and software, furniture, fixtures, décor, signs, computer equipment, supplies and other products, services and materials which you will use in the operation of your restaurant meet our standards and be purchased only from approved distributors and suppliers. You may use any operational service providers, such as exterminators, refrigeration services companies, refuse removal companies, and similar service providers that you desire. If we organize a rollout for a new approved product or a new supplier of an approved product, you will be required to purchase such approved product(s) from our approved distributors of the approved supplier within 60 days of notification from us. We are not an approved supplier of any products or services. Kahala Brands is not a supplier of any products or services. Neptune Equipment, an affiliate of Kahala Franchising, is currently one of the approved suppliers of certain equipment, interior and exterior signage menu boards, computer hardware and smallwares. You are required to purchase the grand opening kit, menu boards, custom slicer stand and furniture from Neptune Equipment. Kahala Management, an affiliate of Kahala Franchising, is currently the only approved service provider of phone support maintenance for the software and hardware of the POS system ("POS Help Desk Phone Support Maintenance"). You are required to purchase the POS Help Desk Phone Support Maintenance from Kahala Management. Kahala Management is also an approved service provider of real estate services, including negotiating a term sheet, negotiating the lease terms, and locating a site for a franchisee upon request from a franchisee. You may, but are not required, to use Kahala Management for real estate services. There are other approved suppliers who are not affiliated with us for each of the items you will purchase to operate your *Frullati Cafe & Bakery* restaurant. We currently have other non-affiliated approved suppliers of all equipment, smallwares, furniture, POS Systems, beverage equipment, sound systems and certain ingredients and other logo items utilized in your *Frullati Cafe & Bakery* restaurant. None of our officers own an interest in any of the approved suppliers not affiliated with us. To become approved, a supplier must demonstrate, to our reasonable satisfaction, it can meet all of our standards and has adequate capacity to supply franchisee's quantity and delivery needs. We will provide you with a list of approved distributors of the approved suppliers for your market area during the pre-opening and/or construction phase for your Franchised Business. You can expect that the items you will purchase in accordance with our specifications will represent over 90% of the total purchases you will make to begin operations and over 80% of your annual operating expense for raw materials, products and supplies.

All requests for approving new or alternative suppliers must be submitted in writing by you and/or the supplier to our Purchasing Department. Each request will be reviewed in accordance with our then-current procedures and the supplier must meet our then-current requirements, which may include that our representatives be allowed to inspect the facilities of the proposed supplier, and that samples from the proposed supplier be delivered, at no charge to us, either to us or to our designee for testing. Our criteria for approving suppliers is available to franchisees upon written request to our Purchasing Department. A charge not to exceed the reasonable cost of the inspection and the actual cost of the test not to exceed \$5,000 must be paid to us either by you or by the proposed supplier. If approved, in our sole reasonable discretion, we will notify you and/or the supplier in writing within 60 days of our receipt of an approval request. You must not offer for sale or sell any of the proposed alternative supplier's products until you receive our written approval of the proposed alternative supplier. We may, at our option, re-inspect the facilities and products of any approved supplier and revoke its approval upon the supplier's failure to meet any of our then-current minimum standards and specifications. If you receive a written notice of revocation from us, you must stop selling disapproved products and stop purchasing from the disapproved supplier.

We will provide you with one set of our confidential “ops package” which may consist of the operations manual, “ops toolkit” and related printed and electronic documents (collectively, the “Confidential Manual.”) We provide all specifications and standards to you in the Confidential Manual, which we may modify from time to time by providing you with “rollout guides” for limited time offers, amendments, modifications or supplemental inserts through notices or bulletins, or by amending the Confidential Manual. A list of approved distributors for our approved vendors is maintained by our purchasing department and will be provided to you during the pre-opening and/or construction phase for your Franchised Business. Updates will be provided to you as changes are made (i.e., additions and deletions) to the list of approved distributors for our approved vendors. We may acquire certain used equipment and signage and offer it for sale to prospective or existing franchisees at a price that we believe to be equal to or less than the fair market value of that equipment and signage. If we make that offer to you, you have the option of purchasing that equipment and signage from us or purchasing new equipment and signage from the approved third parties.

We have negotiated special pricing arrangements or discounts with some of our suppliers. The arrangements may include special contract pricing, volume discounts, and specific discounts from regular wholesale prices. These discounts are typically passed on to our franchisees. We do not provide any other material special benefits to franchisees based on their purchase of particular approved supplies or their use of particular approved suppliers.

We or our affiliates may also receive rebates and/or allowances, usually ranging between 1% and 5%, from certain suppliers on purchases made by you and other franchisees. The rebates and/or allowances are generally based upon a percentage of franchisee purchases, will be included in our general revenue, and may be used by us for salaries of personnel that assist franchisees increase their sales, maintaining the customer service hotline, handling of inquiries and complaints from our franchisees’ customers, tracking consumer service hotline trends, product research and development, franchisee crew training, supply chain information management systems, and a variety of ongoing programs, including education, marketing, advertising, and franchisee meetings, seminars, conventions, conferences, and events. These rebates are usually based on an amount per unit, per case, per gallon, or per pound of product (i.e., properly specified and approved meat, dairy products, paper products, smallwares, beverages and apparel) purchased. We may use rebate and allowance funds received from our suppliers to benefit the *Frullati Cafe & Bakery* restaurant in our sole and absolute discretion.

Pursuant to the merger as fully described in Item 1, the total revenues and expenses of Kahala Franchising and its subsidiaries have been consolidated with MTY USA’s since July 26, 2016, as reflected in the audited consolidated financial statements presented in this disclosure document. For the year ending November 30, 2018 MTY USA and its subsidiaries derived revenues from the sales of products, services, and product allowances to MTY USA franchisees in the amount of \$20,485,025, which was approximately 19% of MTY USA and its subsidiaries total recognized revenue in the amount of \$107,121,584.

Various suppliers and vendors of MTY USA and its subsidiaries contribute marketing and other revenues to MTY USA and its affiliates based upon system-wide purchases from those suppliers and vendors. During our last fiscal year, MTY USA and its subsidiaries earned a total of \$16,714,928 of the \$20,485,025 from such vendors. Other, received revenues in the amount of \$731,610 are not applicable to your franchise.

A subsidiary of MTY USA that earned revenue from purchases of equipment, furniture, menu boards, interior and exterior signage, wall décor and smallwares made by us, our franchisees, and licensees is Neptune Equipment. Neptune Equipment provides the following services: purchases your equipment from various approved manufacturers; provides logistics services by arranging for

bundled delivery to you; and assists with warranty support of the equipment purchased. Neptune Equipment charges a markup on the equipment and a handling fee for its services. During our last fiscal year, Neptune Equipment earned a total of \$2,379,697 of the \$20,485,025 from required franchisee purchases.

Another subsidiary of MTY USA that earned revenue from required POS help desk phone support maintenance services is Kahala Management. During our last fiscal year, Kahala Management earned a total of \$658,790 of the \$20,485,025 from POS help desk phone support maintenance fees.

The processing fees received by KGC do not currently cover the costs of the gift card program.

Our Leasing Affiliates do not derive revenue as a result of their leasing activities.

In 2018, Vires purchased media for TacoTime, Cold Stone Creamery, Blimpie, , The Counter, Ginger Sushi, sweetFrog and Samurai Sam's Teriyaki Grill, Thai Express. All after tax profits are rebated to the National Advertising Fund or media cooperatives.

We have not arranged any purchasing or distribution cooperatives among our franchisees.

We have a master beverage agreement with the Coca-Cola Company ("Coke") (the "Coke Agreement") under which Coke products are the only approved carbonated fountain soft drinks for your *Frullati Cafe & Bakery* restaurant. Coke may pay allowances to you, the Advertising Fund, and/or us based on Coke products purchased. Coke may also: (i) subsidize or provide your financing for approved Coke dispensing and ice making equipment (your subsidy or financing will be offset by some or all of your allowances from Coke); (ii) service the Coke dispensing equipment (to be paid for out of your allowance, if available); and (iii) subsidize or provide your financing to us or third party service providers for certain promotional and advertising materials, including menu panels (your contribution, subsidy or financing will be offset by some or all of your allowances from Coke). Your allowances and equipment support payments may be terminated if you or we do not comply with the Coke Agreement. Coke and/or us may also provide you or make available to you for purchase selected promotional and marketing materials, which shall be paid for with all or a portion of your allowances earned from Coke. Additional information is available on request from us. We reserve the right to amend, modify or terminate the Coke Agreement as we deem appropriate.

You must, at your own cost and expense, use our designated and approved third party design architect, as detailed in the Operations Manual, to prepare the initial design drawings for your Franchised Business. Except for the design architect designated and approved by us, no other architect may be used by you for the design of your restaurant. You must also, at your own cost and expense, retain a licensed architect of record to prepare the permitted construction set of drawings.

You must purchase an interior and exterior sign package and menu panels in accordance with our specifications indicated in the Operations Manual and related documents provided to all franchisees. In addition, you must have your *Frullati Cafe & Bakery* restaurant be consistent in color, design and style with the standards and specifications adopted and approved by us, and as we may modify those standards periodically. You must maintain the appearance and atmosphere of your *Frullati Cafe & Bakery* restaurant, and the equipment and premises used in connection with your *Frullati Cafe & Bakery* restaurant, in accordance with the standards we may adopt from time to time. Any variations in color, design, style, appearance or atmosphere must be approved in writing by us. Our current standards and specifications are included in our Operations Manual.

You are required to acquire, from an approved supplier, and exclusively use an approved cash register/point of sale computer system and software during the operation of your *Frullati Cafe & Bakery* restaurant. The components and specifications of this system are specifically identified in the Operations Manual. You shall also be required to own a personal computer or similar device that allows you to send and receive e-mails with us, and a fax machine to allow communication with us.

You are required to accept all approved debit and credit cards, along with Kahala Franchising's Stored Value Gift Cards, Loyalty Cards, Frequency Cards, and any other similar Kahala Franchising sponsored electronic card and/or payment program (collectively, the "Gift/Loyalty Card") from consumers at your *Frullati Cafe & Bakery* restaurant. Prior to the opening of your restaurant, you will be required to acquire an approved debit, credit and Gift/Loyalty card processing system to use during the operation of your *Frullati Cafe & Bakery* restaurant. The components and specifications of this system are specifically identified in the Operations Manual. Additionally, you must utilize our approved third party payment card processor, as identified in the Operations Manual, for processing all such debit, credit, rewards, and Gift/Loyalty card transactions.

You must complete a food safety manager training program at your cost. We will accept your local county or state required program or any other nationally recognized food safety program. You must provide us with a copy of your certificate prior to attending our Training Program.

We may, from time to time, provide referral incentives to franchisees, employees and others for qualified referrals of prospective franchisees. We may, from time to time, pay membership fees to public, quasi-public and private service providers who refer potential franchisees from identified groups (e.g. veterans or military personnel planning to leave the service).

We may vary the terms of our franchises in connection with testing new marketing, branding, research and development of new menu offerings, and/or operational programs. These tests are generally conducted with experienced, existing franchisees and may include incentives and other rights which are not available to all franchisees. We reserve the right to sell some of the products associated with the *Frullati Cafe & Bakery* brand to different retail outlets such as grocery chains or membership-based retailers.

You may not maintain a World Wide Web site, an App (application), social medium site, or otherwise maintain a presence or advertise on the Internet or any other public computer network in connection with the Franchised Business without our prior written approval.

Although not bound to do so, Kahala Franchising may conduct, from time to time, additional research and development with regard to its specifications and standards. The criteria for evaluating any changes in these specifications will be whether such changes in the specifications will improve quality, be more efficient and have greater customer appeal, thus enhancing the *Frullati Cafe & Bakery* brand name and image.

You must provide commercial general liability insurance in minimum liability limits of One Million Dollars (\$1,000,000) (or greater if applicable state laws or regulations require) for each occurrence and with an aggregate of not less than Two Million Dollars (\$2,000,000) and maintain other insurance in accordance with state law requirements. Some property owners may require higher levels of public liability insurance under their leases. You must obtain all insurance we require from an insurer having an A.M. Best's financial strength rating of "A-VIII" or better. Such insurance must: (i) insure you; (ii) name us, MTY Franchising USA, Inc., Kahala Franchising, L.L.C. and their parents, subsidiaries, affiliates, officers, directors, and employees as additional insured; (iii) contain a waiver by the



insurance carrier of all subrogation rights against us and our affiliates for casualty losses; (iv) provide that we will receive by an endorsement 30 days' prior written notice of cancellation; and (v) provide that failure by franchisee to comply with any term, condition or provision of the contract, or other conduct by franchisee, will NOT void or otherwise affect the coverage afforded us.

The minimum insurance coverage requirements (subject to increase) are as follows:

TYPE OF COVERAGE	LIMITS/SPECIFICATIONS
General Liability	\$1,000,000 Bodily Injury/Property Damage Per Occurrence / \$2,000,000 Aggregate
Building Improvements and Betterments	100% of Full Replacement Cost – No Coinsurance (minimum of \$100,000)
Business Personal Property	100% of Full Replacement Cost – No Coinsurance – Special Form or equivalent (minimum of \$100,000)
Spoilage	\$5,000
Business Income	Actual Loss Sustained or at least 50% of Annual Sales
Flood, Earthquake and Volcanic Eruption	Subject to Territory Limitations – required if in a designated Flood Zone
Workers' Compensation	Statutory Requirements
Stop Gap or Employer Liability	Bodily Injury by Accident: \$1,000,000 each accident Bodily Injury by Disease: \$1,000,000 policy limit Bodily Injury by Disease: \$1,000,000 each employee
Hired and Non-Owned Automobile Liability	\$1,000,000 Combined Single Limit per accident

You must always keep the required insurance coverage in force, and you must comply with any changes we make periodically to our insurance requirements. If your restaurant is located in a flood zone or an area subject to earthquakes, hurricanes, tornadoes, other similar hazards, you may want or be required to obtain additional specific insurance to cover these risks; such insurance may increase your premiums significantly. Upon 30 days' notice to you, we may require you to increase the minimum coverage of the insurance referred to above as of the next renewal date of any policy, and require different or additional kinds of insurance at any time, including excess liability (umbrella) insurance, to reflect inflation, identification of special risks, changes in law or standards of liability, higher damage awards or other relevant changes in circumstances.

At the time you sign your lease and annually, at least 10 days prior to renewal of your insurance coverage, and at any other time on our request, you must provide us with certificates of insurance or copies of insurance policies confirming that you are in compliance with our insurance requirements, as well as evidence that you have paid the premiums you owe for the insurance we require. You will pay your insurance premiums directly to your insurance broker or to the insurance company issuing the policy. You must have insurance and have provided a copy of your certificate of insurance to us which meets our requirements before you may open your *Frullati Cafe & Bakery* restaurant. Your insurance premiums may be refundable to the extent of the unexpired portion of the coverage. In the event you fail to obtain or maintain the required insurance coverage, we reserve the right, but are not obligated to, obtain the required insurance on your behalf and charge the insurance premium to you.

We want to ensure that our franchisees comply with their leases for the premises where their restaurants are located, the limitations on their use of the approved location, and their

obligations to us. Thus, if you open and operate a traditional restaurant, one of our Leasing Affiliates may enter into a Master Lease for your traditional restaurant and will then Sublease it back to you, using one of our approved Sublease forms (See Exhibit O-1: Sublease and Guaranty of Sublease (Franchisee pays rent directly to Landlord); and Exhibit O-2: Sublease and Guaranty of Sublease (Kahala collects rent from Franchisee and pays to Landlord) (the proceeding two subleases collectively known as "Exhibit O: Sublease and Guaranty of Sublease")). The Sublease will contain substantially the same terms as the Master Lease. The term of the Sublease will be for the entire term of the Master Lease, less one day. You will sign the Sublease at the time our Leasing Affiliate signs the Master Lease for the premises. You must provide all security deposits, guaranties, and other assurances the landlord of the premises requires. We or our Leasing Affiliate will try to negotiate favorable terms under the Master Lease, but we cannot guarantee that the lease terms, including rent, will be the most favorable terms available in the market. We encourage you to participate in the lease negotiation process, with the assistance of your attorney. Our attorneys represent us, not you.

We may, at our option, require you to enter into a lease for the restaurant premises directly with the landlord ("Direct Lease"). You and your attorneys must negotiate the terms of the Direct Lease. We have no liability to you regarding the terms or negotiations of the Direct Lease. The Direct Lease for the premises is subject to our final approval. You and the landlord under the Direct Lease must sign our approved Lease Addendum (See Exhibit L: Required Lease Terms). If we require you to enter into a Direct Lease, you must provide us with a copy of the Direct Lease and the Lease Addendum for our approval at least 10 days before you sign the Direct Lease, and you must provide us with a copy of the executed Direct Lease and Lease Addendum within 10 days after signing. If you do not provide us with all of the required documents, we will not approve your Direct Lease.

A non-traditional restaurant will generally be located inside an existing primary business. As a result, if you open and operate a non-traditional restaurant, there may not be a Sublease between you and our Leasing Affiliate. If the circumstances make a Sublease appropriate, then you would sign a Sublease with our Leasing Affiliate.

You should carefully read the Direct Lease, or the Sublease and Master Lease, and, if applicable, the sublicense agreement. The Sublease provides that a default under your Franchise Agreement is a default under the Sublease. It also provides that you will not raise any defense or counterclaim in any action we or our Leasing Affiliates commence, other than a defense of payment.

## ITEM 9: FRANCHISEE'S OBLIGATIONS

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

Obligation	Article or Section in Franchise Agreement	Section in Sublease	Disclosure Document Item
a. Site selection and acquisition/lease	2.1 and 2.2	Preamble	7 and 11
b. Pre-opening purchases/leases	2.2, 3.3, 4.6 and 9.3	Not Applicable	5, 7 and 11
c. Site development and other pre-opening requirements	2.3 and 2.4	1.2	7, 8 and 11

<b>Obligation</b>	<b>Article or Section in Franchise Agreement</b>	<b>Section in Sublease</b>	<b>Disclosure Document Item</b>
d. Initial and ongoing training	4.1, 4.2 and 4.3	Not Applicable	11
e. Opening	3.1 (Note 1)	Not Applicable	11
f. Fees	5	3, 4, 5 and 18	5, 6, 7 and 10
g. Compliance with standards and policies/Operations Manual	1.4, 3.2, 4.5 and 9	Not Applicable	8, 11 and 14
h. Trademarks and proprietary information	6 and 7	Not Applicable	13 and 14
i. Restrictions on products/ services offered	2.6, 3.2 and 9.2	6	8 and 16
j. Warranty and customer service requirements	No obligation imposed	Not Applicable	Not applicable
k. Territorial development and sales quotas	No obligation imposed	Not Applicable	Not applicable
l. Ongoing product/service purchases	3.2, 9.2 and 9.3	Not Applicable	8
m. Maintenance, appearance, and remodeling requirements	1.4, 2.3, 12.3 and 13.	8	7 and 11
n. Insurance	9.5	12	7
o. Advertising	5.3 and 10	Not Applicable	6, 7 and 11
p. Indemnification	8.2, 8.3 and 16.9	11	13 and 14
q. Owner's participation/management/ staffing	4.1, 4.2, 4.3, 9.1 and 9.6	Not Applicable	11 and 15
r. Records and reports	5.2 and 11.1	3	6 and 11
s. Inspections and audits	4.3, 4.4, 5.18, 9.7 and 11.2	3.3 and 13	6 and 11
t. Transfer	12	9	6, 16 and 17
u. Renewal	13	2.2	6, 16 and 17
v. Post-termination obligations	14.5	Not Applicable	17
w. Non-competition covenants	14.6	Not Applicable	15 and 17
x. Dispute resolution	16.3	Not Applicable	17
y. Other			
Personal Acceptance; Personal and Spousal Guarantees; Non-Disclosure and Non-Competition	9.8; Personal Acceptance of Sections 7.1, 7.2, 14.6 and 14.8; Guaranty of Franchise Agreement; and Non-Disclosure and Non-Competition Agreement	Guaranty of Sublease	10, 15

Note 1: Not applicable for renewal Franchise Agreements.

## ITEM 10: FINANCING

We do not offer any direct or indirect financing or financing arrangement, nor will we guaranty your obligations under any note or other obligation, except potentially for the lease for your site or if you purchase a restaurant corporate-owned “as-is” by one of our affiliates, and only in our sole and absolute discretion.

If you are an individual and married, your spouse must execute and deliver to us a Guaranty of Franchise Agreement (see Exhibit F-1: Guaranty of Franchise Agreement) and a Non-Disclosure and Non-Competition Agreement (see Exhibit F-2: Non-Disclosure and Non-Competition Agreement) at the same time that you sign the Franchise Agreement unless your spouse is also signing the Agreement as an individual. If you are a corporation, limited liability company, or other business entity, each of your shareholders, members, or other owners (and their respective spouses, if married) must execute and deliver to us a Guaranty of Franchise Agreement, and their respective spouses must execute and deliver to us a Non-Disclosure and Non-Competition Agreement, at the same time that you sign this Agreement. In the event any person who has not previously signed a Guaranty of Franchise Agreement or a Non-Disclosure and Non-Competition Agreement becomes your spouse or the holder of any class of your stock or ownership interests or a spouse of such holder, at any time after the execution of this Agreement, you must cause such person(s) to immediately execute and deliver a Guaranty of Franchise Agreement and a Non-Disclosure and Non-Competition Agreement to us as appropriate.

If, in order to obtain the lease agreement for the site of your *Frullati Cafe & Bakery* restaurant, the landlord requires you to obtain a third party lease guaranty, and we or one of our affiliates agrees to serve as such guarantor (with such determination to be made in our sole and absolute discretion), you will pay to us a lease guaranty fee in the amount of 10% of the total amount of the rental obligations being guaranteed under the lease during its term up to a maximum payment of \$10,000. If the franchisee is an individual, the individual franchisee (and his/her spouse, if married) must personally guarantee the debt. If the franchisee is a corporation, limited liability company, partnership, or other entity, each of the principals of the entity (and each of their respective spouses, if married) must personally guarantee the debt. Once paid, the lease guaranty fee is non-refundable under all circumstances. We do not offer financing for the lease guaranty fee as it is payable in full upon the execution of the guaranty. Neither we, nor any of our affiliates, are required to serve as a guarantor of your lease for the site of your restaurant. The decision of whether to serve as a guarantor of your lease shall be made at our sole and absolute discretion.

If you purchase a corporate restaurant “as-is” that is owned and operated by one of our affiliates, we may finance up to 100% of the purchase price, at our sole discretion. When you purchase a corporate-owned restaurant from one of our affiliates, you will enter into an “Asset Purchase Agreement” (see Exhibit D: Asset Purchase Agreement (For Sale of a Corporate Store to a Franchisee)). If you finance any portion of the purchase price of the corporate-owned restaurant through Kahala Holdings or Kahala Restaurants, you will also enter into a Promissory Note and Security Agreement and a Guaranty, which are exhibits to the Asset Purchase Agreement. The purchase price includes the initial franchise fee and all leasehold improvements including furniture, fixtures, and equipment that are contained in the restaurant at the time of purchase, along with any inventory that is in the restaurant at the time of purchase. The lender providing the financing is one of our affiliates, Kahala Holdings or Kahala Restaurants, whichever entity owns the restaurant. The annual rate of interest charged will be between 0% and 12% and will depend on the creditworthiness of the franchisee, the amount being financed, and the dollar amount being paid up-front by the franchisee. There are no finance charges associated with the Promissory Note and

Security Agreement. The amount being financed will be required to be re-paid in equal monthly installments and the period of repayment will be between 12 months and 60 months, depending on the amount being financed. The security interest required by us is a first position lien on all equipment. If the franchisee is an individual, the individual franchisee (and his/her spouse, if married) must personally guarantee the debt. If the franchisee is a corporation, limited liability company, partnership, or other entity, each of the principals of the entity (and their respective spouses, if married) must personally guarantee the debt. The Promissory Note and Security Agreement may be pre-paid in full or in part at any time and from time to time without penalty. The franchisee's potential liabilities upon default include: (i) an accelerated obligation to pay the entire amount due, including all accrued and unpaid interest, if the default is not cured within ten calendar days; and the interest rate will be increased to an annual rate of 18%; (ii) obligation to pay costs and attorneys' fees incurred in collecting the debt; (iii) termination of the franchise; and (iv) liabilities from cross defaults resulting from non-payment or from the loss of business property; on franchisee's other restaurants name in the Promissory Note and Security Agreement and granting either Kahala Holdings or Kahala Restaurants the right to take back the restaurant(s). The Promissory Note and Security Agreement requires franchisees to waive the following legal rights: demand, notice, diligence protest, presentment for payment, and notice of extension, dishonor, protest, demand and nonpayment of the promissory note; any release or discharge as a result in any change in security given or change in person or entity who may become liable for the note or any modification of the note; rights to contest or appeal our exercise of the take back rights; and not receiving compensation for the restaurant after the take back rights have been exercised. The Promissory Note and Security Agreement also bars the franchisee's right to contest the take back rights.

We require a first lien position in all equipment as a security interest to be given by the franchisee. We do not intend to sell, assign or discount to a third party any financing arrangement. We do not arrange financing from other sources; therefore, we do not receive direct or indirect payments from placing financing.

The lease for a corporate restaurant is entered into by one of our affiliates. When you purchase the corporate restaurant, you will enter into a Sublease with our affiliate using our standard form of Sublease where you pay all monies owing under the Master Lease directly to the property owner, or our standard form of Sublease in which you pay all monies owing under the Master Lease to our affiliate and the affiliate will pay the property owner, which are exhibits to the Asset Purchase Agreement. The Sublease will contain substantially the same terms as the Master Lease. The term of the Sublease will be for the entire term of the Master Lease, less one day. If you are an individual, you (and your spouse, if married) must sign the Guaranty of Sublease (see Exhibit O: Guaranty of Sublease). If you are a corporation, limited liability company, partnership or other business entity, each of your shareholders, members, partners or other owners (and their respective spouses, if married) must sign the Guaranty of Sublease.

We will, within 60 days after we receive the proposed Master Lease (and additional materials required by us), review the Master Lease to make sure it meets our minimum site requirements.

Upon submission of a proposed Master Lease, you must provide us with any additional documentation and information that we may require regarding the proposed site, the proposed lease, your financial condition and your Principals' financial condition. If we determine that you do not have the financial capacity to perform your obligations with respect to the site or the Master Lease, we may deny approval of the site and/or Master Lease. That disapproval will be deemed to be reasonable. In that event, we or our affiliates or franchisees may operate a *Frullati Cafe & Bakery* restaurant at that site.

We or our affiliates may, in our sole discretion, lease the site approved by us for your *Frullati Cafe & Bakery* restaurant and sublease the site to you. If we lease your site, you will be subject to a Location Review Fee payable when you sign your Franchise Agreement. In addition, if and when you sign the Sublease, you must pay to us an amount equal to two month's base rent under the Master Lease, plus a security deposit in an amount equal to the security deposit required under the Master Lease. (We reserve the right, however, to require a greater security deposit, based upon your creditworthiness.)

Please note, if you intend to lease the site of your restaurant, the lease must include certain required provisions (See Exhibit L: Required Lease Terms; Exhibit E-1: Franchise Agreement (New) – Section 2.2; Exhibit E-2: Franchise Agreement (Renewal) – Section 2.2; Exhibit E-3: Franchise Agreement (Transfer) – Section 2.2 (all the proceeding three franchise agreements collectively known as "Exhibit E: Franchise Agreement")).

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

**Except as disclosed below, Kahala Franchising is not required to provide you with any assistance.**

If your Franchised Business will be located in an area that is serviced under an Area Representative Agreement, the Area Representative in that area may be responsible for providing to you some or all of the services required to be provided by us, other than in store and new owner training. However, Area Representatives are not authorized to make promises or agreements on our behalf or to agree to modifications to your Franchise Agreement or other agreements relating to your Franchised Business.

### **Pre-Opening Assistance**

Before you open your business, we will provide the following assistance to you:

#### **Site Selection**

1. You will be required to lease or purchase the premises for your *Frullati Cafe & Bakery* restaurant from a third party. Generally, we do not own or lease the premises and Sublease it to you. Most restaurants are developed by franchisees who find their own locations and negotiate their own real estate interests. We may, upon your written request, assist you in selecting a site for your *Frullati Cafe & Bakery* restaurant. You must select, and we must approve, an acceptable location that you open within one year after you sign the Franchise Agreement. The lease or purchase agreement will be subject to our prior approval, and you must provide us with a copy of the lease or purchase agreement at least 30 days prior to execution. We will notify you if we do not approve the site within 30 days of receiving your site selection information. We will not unreasonably withhold our approval of the location. The location must be within a geographic area identified in Section 1.1 of the Franchise Agreement. The factors that we will consider in approving your proposed location include, among other things: occupancy costs, proximity to major retail activity and other *Frullati Cafe & Bakery* restaurants, sign visibility, traffic volume and speeds, parking availability, neighborhood economic profile, population density, accessibility, competition and other tenants in the shopping center, mall, or applicable retail structure. If you cannot secure a location acceptable to us and open it within 1 year after you sign the Franchise Agreement, we may terminate your Franchise Agreement after giving you written notice (See Exhibit E-1: Franchise Agreement (New) —Section 2.1). The decision to establish and operate your *Frullati Cafe & Bakery* restaurant at the location will be made solely by you, without any reliance upon any information provided (if any), recommendation made (if any) or approval given (if

any) by us, any Area Representative or any of our or their respective shareholders, directors, officers, employees, representatives, agents or affiliates. You must purchase or lease your business location from independent third parties. If you intend to lease your business location, the lease must include certain required provisions (See Exhibit K: Required Lease Terms; Exhibit E: Franchise Agreement—Section 2.2).

2. If we determine that you do not have the financial capacity to perform your obligations with respect to the location or the Master Lease, we may deny approval of the location and/or Master Lease. Our disapproval will be deemed to be reasonable. In that event, we or our affiliates or franchisees may operate a *Frullati Cafe & Bakery* restaurant at that site.

## **Construction and Furnishings**

1. We will provide you with a copy of the design drawings, which is the detailed plans and specifications including landscaping and parking space, if applicable, for your Franchised Business upon our approval of the plans. You must hire and use, at your sole cost and expense, our designated and approved third party architect (See Exhibit E: Franchise Agreement—Section 2.3). You are solely responsible for conforming the premises to all codes and ordinances, including the Americans with Disabilities Act (the “ADA”), and obtaining all required permits. You are solely responsible for constructing or remodeling and decorating the location to our system standards and subject to our approval. We do not provide assistance with conforming the premises to codes and ordinances, including the ADA, obtaining permits, or constructing, remodeling or decorating your restaurant. You must provide us with one copy of the plans for your restaurant within 30 days after selection of the site. We will then have 30 days to approve or disapprove of the plans. We must approve any and all changes or revisions to the plans required for your site before you begin construction. Our approval of the plans is solely for complying with our system standards, and not for determining compliance with codes, ordinances, or the ADA.

2. We will identify the furnishings, fixtures, and equipment (including cash registers, point of sale systems, and computer hardware and software), signs, products, materials, and supplies necessary or authorized for the restaurant to begin operation (See Exhibit E: Franchise Agreement—Sections 2.4, 3.2, 3.3, 4.5, 4.6, and 9.3).

3. We will provide you with all standards of operation that you must use or satisfy before you open the restaurant (See Exhibit E: Franchise Agreement—Sections 4.5 and 9.1).

4. We will provide you with the names and contact information of any distributors and/or suppliers you are required or authorized to use to supply you with products or services complying with our standards and specifications. The names and contact information of the approved distributors and suppliers and the written specifications for the approved equipment, signs, fixtures, opening inventory and supplies will be provided to you during the pre-opening and/or construction phase for your Franchised Business. Updates will be provided to you as changes are made (i.e., additions and deletions) to the list of approved distributors for our approved suppliers. We do not deliver or install any of these approved items (See Exhibit E: Franchise Agreement—Section 9.3).

## **Operations Manual**

We will provide you, as part of the Operations Manual, with operating procedures to assist you in complying with our standard methods of controls, production methods, and with policies procedures and resources to support brand consistency and compliance. The Operations Manual is collectively 113 pages. The Operations Manual is confidential and remains our property. We may modify the Operations Manual as and when we desire, but no modification will materially alter your status and rights under the Franchise Agreement (See Exhibit E: Franchise Agreement—

Section 4.5). The Table of Contents of the Operations Manual is attached to this Disclosure Document as Exhibit T.

### Time to Open

The typical length of time between the earlier of the signing of the Franchise Agreement or the first payment of consideration for the franchise and the opening of the franchisee's business is 4-8 months for both traditional and non-traditional *Frullati Cafe & Bakery* restaurants. The factors that may affect this time are: lease or purchase negotiations; zoning procedures; financing applications; local ordinances and approvals; obtaining licenses and permits; construction delays; weather conditions; shortages; delayed installation of equipment, fixtures and signs; development or construction not in accordance with our requirements; labor disputes; Acts of God; and other reasons.

### Training

1. We will make a Training Program available to you and your designated representative after you sign the Franchise Agreement. The following Table indicates the general subject matter, the number of hours of classroom training, and the number of hours of on-the-job training for each subject to be covered during the Training Program, and the location of the training. Our instructors have been adequately trained in the ownership and operation of a *Frullati Cafe & Bakery* franchise, including having, at a minimum, completed the entire *Frullati Cafe & Bakery* Training Program, and having experience in training each of the subjects listed in the table below, with some trainers having five years' experience or more in training each of the subjects. Other personnel involved with on-the-job training of franchisees are Regional Directors of Operation, all who have more than one year experience with on-the-job training. During the classroom portion of the Training Program, New Owner Training will be taught using the following instructional materials: manuals, videos, and tests. In-store training will be taught in a *Frullati Cafe & Bakery* restaurant using the following instructional materials: manuals, job aids and tests. Certain portions of the entire Training Program may be adjusted as necessary as determined by us and based upon your skill sets. Further, substitute instructors may present certain portions of the Training Program.

#### TRAINING PROGRAM

Column 1  Subject	Column 2  Hours of Classroom Training	Column 3  Hours of on-the-job training	Column 4  Location
New Owner Training	40	---	KTEC (Kahala Training & Education Center) in Scottsdale, AZ
In-Store Training	---	40	Franchisee's restaurant location or such other location designated by us

2. The training of two individuals is included in the Initial Franchise Fee. You or another partner, shareholder or member of your business organization must have successfully completed our Training Program to our satisfaction. Your manager, at your sole discretion, may be one of the two individuals you bring to training, or you may bring your manager in addition to the two individuals and pay the Additional Persons Training Fee. You and your restaurant managers must be able to read and write English adequately, in our good faith opinion, to satisfactorily complete our Training Program and to communicate with employees, customers and suppliers. Notwithstanding the foregoing, Franchisor has the right to require Franchisee and/or its



managers(s) to attend additional in-store training in the event Franchisee is not operating the Franchised Business pursuant to Franchisor's Systems Standards.

3. The classroom portion of the Training Program will be held at KTEC, which is located at our corporate offices in Scottsdale, Arizona, and the in-store portion of the Training Program will be held at the franchisee's restaurant location or at such other location(s) as we may designate in our sole discretion. You will need to arrange for transportation (such as flights and car rental), food, and lodging for you and your designated attendee. The costs you incur will depend on factors such as the distance you must travel, the type of accommodations you choose and the time of year you attend training. The estimated cost for travel and living expenses for two persons while training, not including salaries, if any, ranges from \$2,500 to \$5,000 (See Exhibit E: Franchise Agreement—Sections 4.1 and 9.6).

4. You must complete the Training Program no more than three months and no less than one day prior to the opening of your *Frullati Cafe & Bakery* restaurant. The New Owner Training will be conducted once a month. The In Store Training portions of the Training Program is scheduled as needed and determined by the Franchisor. Kahala Franchising does not currently require you to attend additional training courses or refresher courses. However, if you would like additional training after completing the Training Program, we will provide additional training to you at a cost of \$300 per person per day. Notwithstanding the foregoing, Franchisor has the right to require Franchisee and/or its managers(s) to attend additional in-store training in the event Franchisee is not operating the Franchised Business pursuant to Franchisor's Systems Standards.

5. In addition to the Training Program, you must ensure that all of your employees are trained in *Frullati Cafe & Bakery* restaurant procedures. You are solely responsible for hiring and training your employees. You must also ensure that the manager(s) and all employees whose duties include customer service are able to speak and read English and any other language that may be required to adequately meet the public needs in your restaurant. We believe training is important to the success of the *Frullati Cafe & Bakery* System, and from time to time, we may offer informal training sessions to franchisees. We believe it is in your best interest to attend any such training sessions.

6. We will provide one of our representatives to come to your restaurant during opening week for up to three days at our expense to work with you and your manager on your grand opening, and on operating and marketing your restaurant. We may, in the future, hold refresher or additional training programs, conferences and seminars. Your attendance at these programs is mandatory. To help us defray the cost of sponsoring these programs, there may be a nominal registration fee, and you will also be required to pay the cost of transportation, food, lodging and other personal expenses of your attendance and those of your personnel at any such program. These programs will be held at locations within the United States that we will specify in our sole discretion (See Exhibit E: Franchise Agreement—Section 4.3).

### **Post-Opening Assistance**

During the operation of the franchised business:

1. If you are opening a new restaurant, we or our designated affiliate will create a marketing plan for (i) a grand opening event and (ii) the initial advertising of your Franchised Business and will work with you to obtain your input on the marketing plan. (See Exhibit E: Franchise Agreement—Sections 5.3 and 10.2).

2. We will maintain a continuing advisory relationship with you, including consulting with you in marketing, merchandising and general business operations which may help you in improving

and developing your franchised business (See Exhibit E: Franchise Agreement – Sections 4.3 and 9.1).

3. We will provide you with information on our operating and other standards for your restaurant. We may modify these as, and when, we desire (See Exhibit E: Franchise Agreement – Sections 4.5 and 9.1).

4. We will continue our efforts to maintain high and uniform standards of quality, cleanliness, appearance and service at all restaurants in the System, including making periodic inspections and quality service checks of your restaurant (See Exhibit E: Franchise Agreement – Section 4.3, 9.1, and 9.7).

5. We may make you aware of software available for purchase from an approved third party vendor to assist you in administrative, bookkeeping, accounting, and inventory control procedures. (See Exhibit E: Franchise Agreement – Section 1.5).

6. We must review substitute locations for your restaurant and you must obtain our prior approval if you desire to relocate your restaurant (See Exhibit E: Franchise Agreement – Section 2.5).

7. We must offer you the option for a one-time renewal of your Franchise Agreement prior to its expiration for a maximum term of five years, if you meet our requirements. Upon renewal, you must execute our form of Franchise Agreement being used at the time of your renewal and pay us the applicable Renewal Franchise Fee (See Exhibit E-1: Franchise Agreement (New) – Article 13; Exhibit E-2: Franchise Agreement (Transfer) – Article 13).

### **Optional Assistance**

1. Upon your request, we will reasonably assist you or provide recommendations regarding establishing pricing for the products you sell in your restaurant; however, the ultimate decision on the prices you charge is yours. We will not establish the prices for you.

2. Upon your request, we will reasonably assist you in resolving operating problems you may encounter.

### **Advertising**

1. We (or, at our election, a third party that may be an affiliate of ours) will establish and administer an Advertising Fund (the “Fund”) that will include your Advertising Fees and those of other franchise owners in the System, in accordance with the Franchise Agreement. The Advertising Fee, which is a percentage of your weekly Gross Sales (See Exhibit E: Franchise Agreement – Section 5.3) shall be due and payable with the Royalty Fee (See Exhibit E: Franchise Agreement – Section 5.2). All *Frullati Cafe & Bakery* franchisees must contribute to the Fund at the same rate, which is currently 1% of your weekly Gross Sales to national advertising. If an affiliate of ours administers the Fund or places advertising in connection with the System, such affiliate may be paid a fee that will not exceed the fee that would be payable to unrelated third parties for comparable services. For each of our company-owned or affiliated restaurants, we will make contributions to the Fund on the same basis as required of the other *Frullati Cafe & Bakery* franchise owners in the same geographic market. Unless required by applicable law, we will have no obligation to create a trust account, escrow account or other special account for the Fund, and the monies comprising the Fund may be placed in our general account(s) if we desire. We may also reserve portions of the Fund for use in a subsequent year.

2. The Fund will be used for marketing, advertising, production and media expenses to promote the *Frullati Cafe & Bakery* name, System, products and services. The Fund may be used to pay any and all costs of maintaining, administering, directing and preparing advertising, including the cost of preparing and conducting television, radio, magazine and newspaper advertising campaigns and other public relations activities, employing advertising agencies to assist in such campaigns or other activities, and providing promotional brochures and other marketing materials to franchise owners. We are entitled to receive the following from the Fund: reimbursement of our expenses, overhead, and employee salaries for services, materials, supplies, facilities, equipment or capital provided to the Fund, and rent for office space provided to the Fund. Advertising funds not spent in the fiscal year in which they accrue are rolled over to the next fiscal year. We have no fiduciary responsibility to you on our management of the Fund, and no obligation to you to spend the Fund in your market area and/or in your Cooperative area, if applicable. Franchisees in a Cooperative area determine how the funds they contribute to the Cooperative are spent. The Fund is not audited, and the financial statements for the Fund and accounting of the Fund are not available to franchisees.

3. We, or our designee, will direct all advertising programs to be undertaken through the use of the Fund. We will have sole discretion over all creative concepts, materials and media used in such programs and the placement and allocation of such programs. Advertisements generally will be in both print and broadcast media, initially with local coverage. We are not required to use any specific amounts from the Fund in your market. However, we will use all amounts contributed by you to any approved regional advertising funds, if any, in the same geographic area in which your restaurant is located. We may use an outside advertising agency to create and place advertising or we may use our in-house marketing department. The Fund will be used to create new marketing material and promote the products and services offered by Frullati Cafe & Bakery restaurants. In the fiscal year ending November 30, 2018, for the Advertising Fees we collected, we spent 1.4% on production, 0.0% on media placement, 62.4% on administrative expenses and 0.7% on other marketing activities. The "other" expenses included public relations, research, concept development and communications. The remaining 35% of the Marketing Fund contributions collected were retained and carried forward. None of the Fund was used for the solicitation of franchises.

4. Unless your *Frullati Cafe & Bakery* restaurant is located in an enclosed shopping mall or other enclosed structure identified in Section 1.1 of the Franchise Agreement, you will be required to insert a regular (white pages) listing and a classified (yellow pages) telephone directory advertisement in the main telephone directories serving the geographical area in which the franchised business is located, or you must participate in a multiple insertion in the event there is more than one franchise owner in such area. In either case, the telephone directory advertisement must be approved by us in advance (See Exhibit E: Franchise Agreement—Section 10.2).

5. In addition to contributions to the Fund and the telephone directory advertisements, if applicable, described above, we strongly recommend that you spend not less than 2% of your monthly Gross Sales on local advertising (See Exhibit E: Franchise Agreement—Section 5.3).

6. All advertising by you in any medium must be conducted in a professional manner, must conform to the standards and requirements in our Operations Manual, and must display our proprietary marks only in those forms approved by us. We may make available to you, from time to time, approved advertising, promotional plans and materials for purchase. (See Exhibit E: Franchise Agreement—Section 3.2 and 10.2).

7. You may not maintain a World Wide Web site, an App (application), or otherwise maintain a presence or advertise on the Internet or any other public computer network in connection with the franchised business without our prior written approval (See Exhibit E: Franchise Agreement – Section 3.4).

8. We will not prevent the formation of franchisee Cooperatives. Currently, there are no regional or national marketing Cooperatives for *Frullati Cafe & Bakery* franchisees. We encourage our franchisees to form and operate Cooperatives. If a Cooperative is formed for your region, you must participate in the Cooperative or lose your right to vote as to Cooperative matters. The membership of the Cooperative would be defined by us according to your market area. We reserve the right at any time, in our sole discretion, to form, change, dissolve, or merge Cooperatives.

9. Currently, there is no advertising council composed of *Frullati Cafe & Bakery* franchisees that advises us on advertising policies.

## **Computer System**

1. We require you to exclusively use an approved electronic point-of-sale system to record all your sales during the operation of the franchised business, the components of which are identified in the Operations Manual (the "POS System"). Prior to the opening of your restaurant, you will be required to acquire and to exclusively use an approved cash register/computer system ("POS System") during the operation of the Franchised Business. We require that the manufacturer or its authorized representative on an ongoing basis service the POS System, at your cost. You will be required to maintain the POS System in good working order at all times, and to upgrade or update the POS System during the term of your Franchise Agreement as we may require from time to time. There are no contractual limitations on the frequency or cost for the franchisee to upgrade or update the POS System during the term of the Franchise Agreement. It will be your responsibility to enter into contracts for the maintenance, upgrades and updates to the POS System with an approved supplier of such services identified by us on the list of approved vendors and distributors or other notification to you from us advising of suppliers for your market area. Your POS System cost per restaurant will depend, among other things, on your restaurant's size and configuration, the system options you choose and/or we determine (such as drive-thru needs (if any), and printer needs), and the types of telephone and internet access services available. You may be required to obtain a high-speed/always-on internet connection service for your POS System. This requirement shall be defined by the then-current Operations Manual, which may change from time to time. If high-speed/always-on internet connection service is not available in your area, dial-up Internet access may be used until high-speed/always-on internet connection service becomes available in your area. You may be required, from time to time, to upgrade the POS System's hardware and/or software, at your sole cost and expense, in order to maintain the POS System in conformity with our then-current requirements. You must complete training for the POS System as we require. If you are buying an existing restaurant with an older cash register system, it is a requirement for the transfer that you purchase and install the then-current POS System in the restaurant. (See Exhibit E: Franchise Agreement – Section 4.6).

a. We require you to use a POS System that meets our specifications in order to: (i) assist you in the operation of your *Frullati Cafe & Bakery* restaurant; (ii) allow us to monitor your gross sales; (iii) enable us to develop chain-wide statistics that may improve purchasing; (iv) assist us in the development of new authorized products or the removal of existing unsuccessful authorized products; (v) enable us to refine existing authorized products; (vi) generally improve system-wide understanding of our marketing efforts; and (vii) obtain new types of information. The POS System must be configured so that we have independent and remote access to the information and data stored in it. We must also have independent access to your computer system. This access allows us to exchange/collect data and other information on such basis as we shall from time to time communicate to you. There are no contractual limitations on our right to access the information in your POS System. All approved cash registers are capable of recording accumulated sales and cannot be turned back or reset, and must be able to retain data in the event of power loss. You must purchase the approved electronic POS System from an approved vendor, as we have required our approved supplier to make special modifications to their equipment and systems to comply with our requirements (See Exhibit E: Franchise Agreement – Section 4.6).

You must also purchase approved software for your restaurant. The cost of purchasing the POS System, including the software, ranges from \$2,5100 to \$10,000. You must also purchase from us a POS Help Desk Phone Support Maintenance contract on both the software and hardware for your POS System, the cost of which is currently \$55 per month and subject to increase. It is recommended that you also purchase the hardware support for all modules for the first year you operate your restaurant. The cost is approximately \$150 to \$1,300 per year depending on the equipment installed. This cost is subject to change by the supplier. You are also required to validate with Kahala that your store is PCI compliant to show validation you must send Kahala your Passing Certificate showing your store is PCI compliant and also verify that you have a PCI compliant firewall appliance installed at your location if you process credit cards via high speed internet connectivity.

b. The approved POS System has in its specifications integrated “card swipe” systems that process debit card, credit card, or other non-cash payment systems including Kahala Franchising’s stored value gift cards, loyalty cards, frequency cards, gift certificates, vouchers, and any other similar Kahala Franchising sponsored electronic card and/or payment programs (collectively, the “Gift/Loyalty Card”). You must obtain credit card and gift card processing services from our approved vendors. The charges associated with credit card and gift card transactions are compiled per transaction and therefore will vary from restaurant to restaurant. We estimate that the costs associated with credit card transactions will be between 1% and 4% of your gross sales. Gift card transactions will cost you between 5% to 9% of the gift card redemption and may increase at any time with a 30 day notice. The Payment Card Industry (“PCI”) requires all companies that process, store, or transmit credit card information to protect the cardholders’ information by complying with the PCI Data Security Standard (“PCI DSS”). Therefore, as a franchisee who accepts credit cards, you are required to be PCI compliant by following and adhering to PCI DSS, completing an annual questionnaire and quarterly network PCI scans and installing a network firewall appliance for logging, tracking, reporting, and security assessment. The PCI compliance is mandated by the Payment Card Industry. The cost for the quarterly network security scans, network firewall appliance and annual questionnaire ranges from \$150 to \$1,300 per year. The cost is subject to change by supplier.

c. You must purchase a computer and connect to the Internet so that you can report your gross sales online, so that we can communicate by email, so that you can use Internet and Extranet services, and so that you can receive other electronic information we send. You also must, at your cost, maintain membership in a designated third party network, and maintain an active email account. We may revise our computer specifications. If we do so, we may require you to upgrade or update your computer. There is no contractual limitation on the frequency and cost of this obligation. You are responsible for backing up and otherwise protecting your data on your computer. You are also responsible for recording and restoring all software license keys. We may require you to upgrade the hardware and software as reasonably necessary to provide reports and information required by us.

2. We require that you permit us to poll your sales information on a daily basis, and that you execute an Electronic Funds Transfer Agreement by and payable to Kahala Franchising (which is attached to this Disclosure Document as Exhibit P), permitting us to weekly debit your account for payment of weekly royalty and advertising fees and debit your account as necessary for product purchases from us or our affiliates. (See Exhibit E: Franchise Agreement – Sections 5.2, 5.3 and 5.4). We may require you to enter weekly inventory information, and if so, would require that you permit us have remote access to that information (See Exhibit E: Franchise Agreement – Section 4.6).

3. The POS System and personal computers contain sales and labor data that can be generated and stored in the systems and that allows for the generation of financial and payroll reports.

## ITEM 12: TERRITORY

The franchise is granted only for the location specified in the Franchise Agreement or a location to be approved by us. The specific site of your *Frullati Cafe & Bakery* restaurant is subject to our approval. We will not unreasonably withhold our approval of the location.

You will not receive an exclusive territory. You may face competition from other franchisees, from restaurants that we own, or from other channels of distribution or competitive brands that we control. You will not receive an option, right of first refusal or other rights under the Franchise Agreement to acquire additional franchises. We (and/or our affiliates) may establish other franchised or company-owned *Frullati Cafe & Bakery* restaurants that may compete with your location, including across the street from your location or in the same venue as your location. We (and/or our affiliates) may co-brand *Frullati Cafe & Bakery* with one or more of our other quick service restaurants or allow approved *Frullati Cafe & Bakery* stores to sell additional approved menu items under a trademark license agreement we may have with other third-party restaurant concepts. We presently intend to develop *Frullati Cafe & Bakery* restaurants throughout the United States. Except as expressly limited in the Franchise Agreement, we (for ourselves, our affiliates and our designees) retain all rights with respect to *Frullati Cafe & Bakery* restaurants, the Service Marks, all confidential and proprietary information, all copyrighted materials and the sale of *Frullati Cafe & Bakery* products anywhere in the world, including, without limitation, the right to implement multi-area marketing programs that may allow us or others to solicit or sell to customers anywhere. We also reserve the right to issue mandatory policies to coordinate such multi-area marketing programs. One or more future *Frullati Cafe & Bakery* restaurants may have an adverse effect on the revenues and profitability of existing *Frullati Cafe & Bakery* restaurants, including your *Frullati Cafe & Bakery* restaurant.

In addition, we (and/or our affiliates) may market and/or test, directly or indirectly, *Frullati Cafe & Bakery* products or services through channels of distribution other than *Frullati Cafe & Bakery* restaurants operated by us, our affiliates and franchisees, including through the Internet, catalog sales, telemarketing, grocery stores, movie theaters, limited access highway food facilities, mobile units, off-site sales accounts, electronic mail, converting other chains and other distribution opportunities, or vending machines and similar automated dispensing systems ("Other Channels") which generally are not available for us to franchise to you, and typically involve trademark licensing and/or the sale of our branded products. We may also distribute, sell and/or license other persons or entities to distribute and/or sell products through all Other Channels. Where tests prove to be successful, we may expand our sale of products in similar businesses on a regional, national or international level. We reserve the right to establish Other Channels to make sales that may compete with your location using our principal trademarks. These Other Channels could compete with you in the sale of your products. Kahala Franchising is under no obligation to compensate its franchisees on sales Kahala Franchising makes using Other Channels. Kahala Franchising is under no obligation to compensate franchisees for soliciting or accepting orders in the franchisee's territory as the franchisee is granted no exclusive territory. Franchisees may not use Other Channels, including the Internet, catalog sales or telemarketing to make sales except that the Franchisee may provide catering services anywhere as long as such services comply with the current version of our Operations Manual. All sales made from catering services must be included in the franchisee's Gross Sales. We reserve the right, directly or through third parties, to manufacture or sell, or both, anywhere, other products which are the same as or similar to those sold in *Frullati Cafe & Bakery* restaurants, but which bear trademarks that are not confusingly similar to any of the trademarks you are authorized to use under the Franchise Agreement.

We reserve the right, either directly or through affiliated entities, to operate or license others to operate businesses other than *Frullati Cafe & Bakery* restaurants anywhere, including, but not limited to, locations of our other quick service restaurant concepts, and you agree that we or our

affiliates may do so anywhere. The NrGize Lifestyle Cafe brand is a business that we franchise under a different trademark than *Frullati Cafe & Bakery* that sells smoothies similar to the blended fruit drinks offered by *Frullati Cafe & Bakery*. In addition, the Surf City Squeeze brand is a business that we franchise under a different trademark than *Frullati Cafe & Bakery* that also sells smoothies. The Maui Wowi brand is a business that we franchise under a different trademark than *Frullati Cafe & Bakery* that sells smoothies similar to those offered by *Frullati Cafe & Bakery*. Rollerz Rolled Sandwiches is also a brand that sells rolled sandwiches, soups and salads similar to those offered by *Frullati Cafe & Bakery*; Blimpie is a brand that sells rolled sandwiches, soups and salads similar to those offered by *Frullati Cafe & Bakery*; and the Cold Stone Creamery brand is a business that we franchise under a different trademark than *Frullati Cafe & Bakery* that sells smoothies similar to the blended fruit drinks offered by *Frullati Cafe & Bakery*. The Planet Smoothie brand is a business our affiliate franchises under a different trademark than *Frullati Cafe & Bakery* that sells smoothies and blended fruit drinks similar to those offered by *Frullati Cafe & Bakery*. The Pinkberry brand is a business our affiliate franchises under a different trademark than *Frullati Cafe & Bakery* that sells smoothies similar to those offered by *Frullati Cafe & Bakery*. The NrGize Lifestyle Cafe franchises are offered under the NrGize Lifestyle Cafe word and design trademarks, the Surf City Squeeze franchises are offered under the Surf City Squeeze word and design trademarks, the Maui Wowi franchises are offered under the Maui Wowi word and design trademarks, the Rollerz Rolled Sandwiches franchisees are offered under the Rollerz Rolled Sandwiches design trademarks, the Blimpie franchises are offered under the Blimpie word and design trademarks, the Cold Stone Creamery franchises are offered under the Cold Stone Creamery word and design trademarks, the Planet Smoothie franchises are offered under the Planet Smoothie trademark and the Pinkberry franchises are offered by our affiliate under the Pinkberry trademark. The NrGize Lifestyle Cafe restaurants, Surf City Squeeze restaurants, Rollerz Rolled Sandwiches restaurants, Maui Wowi mobile and fixed operating units, Blimpie restaurants, Cold Stone Creamery restaurants are primarily franchised, but may also be operated by one of our affiliates. Planet Smoothie restaurants are primarily franchised, but may also be operated by our affiliate, Tasti D-Lite LLC. Pinkberry restaurants are primarily franchised but may also be operated by an affiliate of PVI. NrGize Lifestyle Cafe franchises have been offered by us from 2006 until March 2010 under the name of Kahala Franchise Corp. and since August 2010 under the name of Kahala Franchising; Surf City Squeeze franchises have been offered by us from 1994 until 2004 under the name of Malibu Smoothie Franchise Corp. and Surf City Squeeze Franchise Corp., from 2004 until March 2010 under the name of Kahala Franchise Corp., and since August 2010 under the name of Kahala Franchising; Rollerz Rolled Sandwiches franchises have been offered by us from 2000 until 2004 under the name of Rollerz Franchise Systems, L.L.C., from 2004 until March 2010 under the name of Kahala Franchise Corp., and since August 2010 under the name of Kahala Franchising; Blimpie franchises have been offered by us from 2006 until March 2010 under the name of Kahala Franchise Corp. and since August 2010 under the name of Kahala Franchising; Cold Stone Creamery franchises have been offered by us from May 2007 until April 2008 under the name of Cold Stone Creamery, Inc., from April 2008 until March 2010 under the name of Kahala Franchise Corp., and since August 2010 under the name of Kahala Franchising; Maui Wowi franchises have been offered by us since November 2015; Planet Smoothie franchises have been offered by our affiliate from March 2012 until April 2015 under the name Tasti D-Lite LLC and by us since June 2016; and Pinkberry franchises have been offered by our affiliate from July 2008 until April 2015 under the name Pinkberry Ventures, Inc. and by us since June 2016. A Maui Wowi mobile and/or fixed operating unit, an NrGize Lifestyle Cafe, Surf City Squeeze, Rollerz Rolled Sandwiches, Blimpie, Cold Stone Creamery, a Planet Smoothie and/or a Pinkberry restaurant may be located within the vicinity of your *Frullati Cafe & Bakery* restaurant. Franchisees of the NrGize Lifestyle Cafe brand, Surf City Squeeze brand, Maui Wowi brand, Rollerz Rolled Sandwiches brand, Blimpie brand, Cold Stone Creamery brand and Pinkberry brand are not currently given an exclusive territory, but traditional Planet Smoothie franchises do have an exclusive territory pertaining to other traditional Planet Smoothie franchises. Kahala Franchising will provide support to all of its concepts regardless of the vicinity of a concept to another concept that sells similar products, Tasti will provide support to its concept, and PVI will provide support to

its concept. The principal business address of these similar concepts is the same as Kahala Franchising's address. Kahala Franchising, Tasti and PVI do not maintain separate offices or separate training facilities for the similar competing business.

We may merge with, acquire and/or be acquired by any other business, including, without limitation, a business that competes with your *Frullati Cafe & Bakery* restaurant, or acquire and convert any retail stores, including, without limitation, retail stores operated by competitors, or otherwise operated independently or as part of, or in association with, any other system or chain, whether franchised or corporately owned.

On July 26, 2016, Franchisor's parent company, Kahala Brands, merged with a wholly-owned subsidiary of MTY. MTY's address is 8150 Transcanada Highway, Suite 200, Saint Laurent, Québec H4S 1MF. As described in Item 1, subsequent to the merger, in addition to the concepts franchised by Kahala Franchising or its current or former affiliates, MTY franchises over fifty (50) different restaurant concepts and sub-franchises two (2) other different restaurant concepts. MTY operates only one (1) corporate location in the United States under the Manchu Wok trademark.

Certain of the restaurant concepts franchised by MTY offer goods or services that are the same or similar to those that you will offer under the *Frullati Cafe & Bakery* brand. MTY offers the same or similar goods or services under the Cafe Depot, Country Style, Croissant Plus, Muffin Plus, Mr. Sub, Tutti Frutti, Van Houtte and Cultures trademarks. At this time, the Cafe Depot, Country Style, Croissant Plus, Muffin Plus, Mr. Sub, Tutti Frutti, Van Houtte and Cultures concepts are not franchised in the United States and are only offered in Canada by MTY subsidiary, MTY Tiki Ming Enterprises, Inc., with no plans at this time to expand to the United States.

You must obtain our prior approval to relocate your *Frullati Cafe & Bakery* restaurant. The approval or rejection by us of any proposed relocation shall be in our sole discretion. In order to relocate your restaurant, you must be in compliance with your Franchise Agreement, the relocation must be for a legitimate business reason, and we must approve the new location. In connection with any relocation, your *Frullati Cafe & Bakery* restaurant may not be closed for business for more than 30 days.

Your Franchise Agreement is for a specific location only, so you may not open additional *Frullati Cafe & Bakery* restaurants under the same Franchise Agreement. You must obtain our prior approval to purchase and open additional *Frullati Cafe & Bakery* restaurants. The approval or rejection by us shall be in our sole discretion. In order to purchase an additional *Frullati Cafe & Bakery* restaurant(s), you must be in compliance with your existing Franchise Agreement(s), you must qualify to operate additional restaurants, you must enter into our then-current form of Franchise Agreement and pay the Initial Franchise Fee, and we must approve the location.

### **ITEM 13: TRADEMARKS**

We will grant you the non-exclusive right to operate the *Frullati Cafe & Bakery* restaurant specified in your Franchise Agreement or any amendments to your Franchise Agreement under the *Frullati Cafe & Bakery* trademark. You will also be granted the right to use our other current or future trademarks that we may from time to time designate as being available for use by franchisees in the *Frullati Cafe & Bakery* System. By "trademarks" we mean trade names, trademarks, service marks, logos, Trade Dress (as defined below), and product identifiers used to identify your Franchised Business. "Trade Dress" is defined as the total appearance and image of the *Frullati Cafe & Bakery* restaurant; salad, sandwich, soup, fresh baked goods, and blended fruit drink combinations and packaging; graphics of *Frullati Cafe & Bakery* restaurants and the salad, sandwich, soup, fresh baked goods, and blended fruit drink combinations and packaging; and all advertising and marketing techniques used to promote the franchise, as well as specifically



including all signage, menu boards, product displays, and any color schemes and designs utilized in connection with *Frullati Cafe & Bakery* restaurants' interior walls, counters, table tops, chairs, and floors. You must not directly or indirectly contest our right to our trademarks.

You will not have the exclusive right to use the trademarks, nor will you acquire, by use or otherwise, any right, title or interest in or to the trademarks, other than as expressly contained in, and limited by, the Franchise Agreement. Your right to use the trademarks is limited and temporary. Upon expiration or termination of the Franchise Agreement, you may not, directly or indirectly, use the trademarks in any manner or for any purpose, and you may be required by us to renovate the premises of your *Frullati Cafe & Bakery* restaurant to eliminate the trademarks and de-identify such premises to remove all Trade Dress, returning it to a "vanilla shell," at your expense.

The following trademarks have been registered with the United States Patent and Trademark Office on the Principal Register:

TRADEMARK	REGISTRATION DATE	REGISTRATION NUMBER
Frullati	November 10, 1992	1,731,865
Frullati Cafe & Bakery & Design	June 22, 1999	2,255,749
Frullati Cafe & Design	September 27, 2005	3,001,849

All affidavits of use required to be filed to maintain these registrations have been filed.

There are no applications pending with the U.S. Patent and Trademark Office at this time.

No one other than us or our affiliates has an ownership interest in the above-referenced trademarks. Kahala Franchising is the sole owner of the above-referenced trademarks and has all right, title, and interest in and to the trademarks and the goodwill symbolized thereby in accordance with an Assignment Agreement made effective as of January 1, 2011 by and between Kahala Franchise Corp., the Assignor, and Kahala Franchising, the Assignee. This Assignment Agreement transferred the ownership of these trademarks to Kahala Franchising. In addition, the Assignment Agreement is binding upon the parties and under no conditions can this Assignment Agreement be terminated.

No agreements limit our right to use or license the use of our trademarks. You must follow our rules when you use our trademarks. Use of the service marks or trademarks must be accompanied by the registration (®), service mark (SM), trademark (TM) in close proximity to the trademark. You cannot use our trademarks as part of your corporate, partnership, limited liability company or other entity name, or register it as a trade name. You may not use our trademarks in connection with the sale of an unauthorized product or service or in a manner not authorized in writing by us. You may not directly or indirectly contest or aid in contesting the validity of the trademarks or the ownership of the trademarks by us, nor may you directly or indirectly apply to register or otherwise seek to use or control our trademarks or any confusingly similar variation or form in the United States or any other country, nor may you assist any others to do so. You must modify or discontinue the use of a trademark if we modify or discontinue it, at your sole cost.

You must immediately notify us of any apparent infringement of, or challenge to your use of, any of our trademarks, or any claim by any person of any rights in any of our trademarks. You must not communicate with any person other than us and our legal counsel in connection with any such infringement, challenge or claim. We will have the sole discretion to take such action as we may deem appropriate to protect our trademarks and the right to exclusively control any litigation, United States Patent and Trademark Office proceeding, or other proceeding arising out of any such

infringement, challenge or claim or otherwise relating to our trademarks. The Franchise Agreement does not require us to take affirmative action when notified of these uses or claims, but indicates we have the sole discretion to take such action as we may deem appropriate. You must execute such documents, render such assistance, and do such acts and things as may, in the opinion of our counsel, be necessary or advisable to protect and maintain our interests in connection with any such litigation or proceeding, or to otherwise protect and maintain our interests in our trademarks.

The Franchise Agreement requires that we will indemnify and hold you harmless for, from and against any and all claims, liabilities, causes of action, demands, obligations, costs and expenses, including reasonable attorneys' fees, arising out of any claim of infringement or unfair competition in connection with your use of our trademarks, provided that such use is in accordance with the provisions of the Franchise Agreement.

We may, in our sole discretion, modify or discontinue use of any of the above-referenced trademarks and/or use one or more additional or substitute service marks or trademarks. If we decide to do so, you must do so also, at your own expense. The Franchise Agreement does not provide you any additional rights if we require you to modify or discontinue using a trademark. However, if we require you to modify or discontinue use of our trademarks and/or use other trademarks in its place at any time other than upon renewal of the Franchise Agreement, and that requirement is a direct result of proceedings or litigation that determined that our and our franchisees' use of the trademarks infringed upon a third party's rights, we will bear the cost of those modifications or discontinuances.

We do not know of any superior prior rights or infringing uses or effective material determinations of the United States Patent and Trademark Office, Trademark Trial and Appeal Board, trademark administrator of this state or of any court, nor do we know of any pending infringement, opposition or cancellation proceeding that could materially affect your use of our trademark. We do not know of any pending material federal or state court litigation regarding our use or ownership rights in the above registered trademarks or pending applications.

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

We own proprietary information and rights in numerous items, such as menu formats, advertising designs, processes, techniques, recipes for Frullati drinks, the method of production and storage of products and information contained in the Operations Manual and related documents. In connection with the operation of the franchise, we may disclose to you certain information in which we claim proprietary rights. For example, our Operations Manual incorporate certain information that we believe is protected under the law of trade secrets, including sales and marketing techniques and restaurant operations. In addition, although we have not registered the copyright with the United States Copyright Office, the Operations Manual are protected against unauthorized copying under United States Copyright laws for 100 years from the date of creation or 75 years from the date of publication, whichever is shorter. You must use the proprietary information only in the manner required by us and in no other manner. This information is strictly confidential and you may not disclose it to any person, or use any of that information for any purpose, except disclosure to a person who has signed and delivered to us the "Confidentiality Agreement" included in the Operations Manual, and you may only use this information as necessary in connection with the operation of your Franchised Business. In addition, you must fully and strictly comply with all security measures required by us for maintaining the confidentiality of all information designated by us as trade secrets.

No agreements limit our right to use or license the use of our statutory copyright of the Operations Manual.

If you reproduce any items or materials suitable for copyright protection, you must make sure that each item bears a copyright notice in the form specified by us. You must use the

proprietary information only in the manner required by us and in no other manner. This information is strictly confidential and you may not disclose to any person or use any of that information for any purpose, except disclosure to a person who has signed and delivered to us a confidentiality agreement, and use as necessary in connection with the operation of your Franchised Business. In addition, you must fully and strictly comply with all security measures required by us for maintaining the confidentiality of all information designated by us as trade secrets.

You will not have the exclusive right to use the innovations or any of our patents or patent applications, copyrights or proprietary information, nor will you acquire, by use or otherwise, any right, title or interest in or to the innovations, the copyrights or the proprietary information, other than as expressly contained in, and limited by, the Franchise Agreement. Your right to use the innovations, the claimed subject matter of any patents or patent applications, the copyrights and the proprietary information is limited and temporary. Upon expiration or termination of the Franchise Agreement, you may not, directly or indirectly, use the innovations, the claimed subject matter of any patents or patent applications, the copyrights or the proprietary information in any manner or for any purpose.

You must immediately notify us of any conduct that could constitute infringement of or challenge to the innovations, the patents or patent applications, the copyrights and our proprietary information. We will decide, in our sole discretion, whether to institute any action in connection with infringement of or challenge to the innovations, the patents or patent applications, the copyrights and our proprietary information, and will control all proceedings and litigation. The Franchise Agreement does not require us to take affirmative action when notified of infringement, but indicates we have the sole discretion to take such action as we may deem appropriate. We are not required to protect your right to use the innovations, the patents or patent applications, the copyrights and proprietary information. As indicated in the Franchise Agreement, we will indemnify you for all damages for which you are held liable in any lawsuit arising out of your proper use of the innovations, the patents or patent applications, the copyrights and our proprietary information in compliance with the Franchise Agreement.

We may, in our sole discretion, modify or discontinue use of the innovations, the patents or patent applications, the copyrights and our proprietary information and/or use other information and/or rights in its place. If we decide to do so, you must do so also, at your expense. The Franchise Agreement does not provide you any additional rights if we require you to modify or discontinue use of the innovations, the patents or patent applications, the copyrights and our proprietary information. However, if we require you to modify or discontinue use of the innovations, the patents or patent applications, the copyrights and our proprietary information and/or use other information and/or rights in its place at any time other than upon renewal of the Franchise Agreement, and that requirement is a direct result of proceedings or litigation that determined that our and our franchisees' use of the innovations, the patents or patent applications, the copyrights and the proprietary information infringed upon a third party's rights, we will bear the cost of those modifications or discontinuances.

We do not own any rights in any patents that are material to the franchise of your *Frullati Cafe & Bakery* restaurant. We have no pending patent applications that are material to the franchise. We do not know of any current material determinations of the United States Patent and Trademark Office, United States Copyright Office, or of any court, nor do we know of any effective determinations or any material proceedings pending in the United States Patent and Trademark Office or of any court regarding the patent application. We do not know of any patent or copyright infringement that could materially affect the franchisee.

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

While the Franchise Agreement does not specifically require you or your principals to personally participate in the direct operation of the franchise, it is our intention to select as *Frullati Cafe & Bakery* franchisees only those who plan to actively participate in the direct operation and daily affairs of the *Frullati Cafe & Bakery* restaurant. The franchise must be personally managed with on-premises supervision and directly operated by you or another partner, shareholder or member of your business organization, or a manager who must have successfully completed the Training Program.

If you are an individual and married, your spouse must: sign the Guaranty of Franchise Agreement in which your spouse agrees to perform, and guarantees, all of the franchisee's obligations to us and our affiliates contained in the Franchise Agreement (see Exhibit F-1) and a Non-Disclosure and Non-Competition Agreement (see Exhibit F-2); if applicable; sign the Guaranty of Sublease in which your spouse agrees to perform, and guarantees, all of the sublessee's obligations to us and our affiliates contained in the Sublease (see Exhibit O); and, if you purchase a corporate restaurant, sign the Guaranty of Promissory Note and Security Agreement and Guaranty of Sublease in which your spouse agrees to perform, and guarantees, all of the franchisee's obligations to us and our affiliates contained in the Promissory Note and Security Agreement, and all of the sublessee's obligations to us and our affiliates contained in the Sublease (see Exhibit D: Guaranty of Promissory Note and Security Agreement and Exhibit O: Guaranty of Sublease). Each person, corporation, partnership, limited liability company or other entity that owns, directly or indirectly, an equity interest in the franchised entity ("Principal"), and each executive officer must sign the Personal Acceptance attached to the Franchise Agreement ("Personal Acceptance") in which the Principal agrees to be bound by the restrictive covenants, the confidentiality provisions and certain other provisions contained in the Franchise Agreement. Each Principal (and his/her spouse, if married) must also: sign the Guaranty of Franchise Agreement in which the Principal (and his/her spouse, if married) agree to perform, and guarantee, all of the franchisee's obligations to us and our affiliates contained in the Franchise Agreement; his/her spouse, if married, sign the Non-disclosure and Non-Competition Agreement; if applicable, sign the Guaranty of Sublease in which the Principal (and his/her spouse, if married) agree to perform, and guarantee, all of the sublessee's obligations to us and our affiliates contained in the Sublease; and if purchasing a corporate restaurant, sign the Guaranty of Promissory Note and Security Agreement and Guaranty of Sublease in which each Principal (and his or her spouse, if married) agrees to perform, and guarantees, all of the franchisee's obligations to us and our affiliates contained in the Promissory Note and Security Agreement and all of the sublessee's obligations to us and our affiliates contained in the Sublease. In the event that any person who has not signed an appropriate guaranty becomes your spouse or the holder of any class or your stock or ownership interests or a spouse of such holder, at any time after the execution of the respective agreement as referenced above, you must cause such person(s) to immediately execute and deliver the required guaranty to us.

We are not seeking to license you to operate a *Frullati Cafe & Bakery* restaurant if your principals are merely seeking a passive investment.

We strongly recommend that you devote a substantial amount of time to your *Frullati Cafe & Bakery* restaurant, whether or not you hire a manager. Franchisees that do not devote their full time efforts to the establishment and operation of their restaurants may have lower gross sales, higher operating costs and lesser name recognition in their areas than those franchisees that do devote their full efforts to the business. Examples of the types of functions that you might perform include training and supervision of employees, inventory checks, review of sales

and food costs, local store marketing, bookkeeping and all reasonable efforts to ensure smooth and efficient operations.

Additionally, you must employ on a full time basis at least one on-premises supervisor ("Manager") for the restaurant. The Manager of the restaurant must at all times be a person who meets our criteria as a qualified restaurant operator. The Manager is not required to have any equity interest in the Franchised Business. The Manager must devote his or her entire time during normal business hours to the management, operation and development of the Franchised Business and must maintain the confidentiality of the trade secrets and proprietary information, comply with the use of the proprietary marks, conform with the covenants not to compete, and conform with the operating standards in the Franchise Agreement and Operations Manual. The Manager is required to sign a Confidentiality Agreement included in the confidential Operations Manual.

In the interest of safe and efficient job performance, business operation and public health and safety, you must have a Manager on each shift who is able to read and understand our written materials and communicate with your employees and customers in the English language. This requirement will not restrict the Manager or your employees from speaking in any other language with you, other employees or customers, and shall not apply to any employee while on personal time or breaks.

All personnel employed by you in connection with the operation of your *Frullati Cafe & Bakery* restaurant must maintain standards of sanitation, cleanliness and demeanor as may be established by us. All personnel must wear a uniform or other clothing approved by us. In addition, you must ensure that all employees whose duties include customer service have sufficient literacy and fluency in the English language (or such other language that is the primary language in your market) to adequately serve the public at your *Frullati Cafe & Bakery* restaurant.

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

We require that your business is solely that of a *Frullati Cafe & Bakery* restaurant, and you may not conduct any other business or activity at the site of the restaurant without our prior written approval. For traditional *Frullati Cafe & Bakery* franchises, you must offer the full menu prescribed by us, subject to change from time to time in our sole discretion. Non-traditional *Frullati Cafe & Bakery* franchises may offer a more limited menu than the traditional *Frullati Cafe & Bakery* franchises, as detailed in the Operations Manual. We have the right to require you to sell additional authorized products and services from time to time that we believe will be successful. You will be obligated to offer and sell those new products and to participate in all local, regional, seasonal and promotional programs, initiatives and campaigns adopted by us in which we require you to participate. We reserve the right to designate which of our franchisees may, or will be required to, participate in new product or service tests, new or modified product or service offerings and other programs and initiatives that we may periodically develop. If we designate you for participation in any such program, initiative or campaign, you must participate when and as required by us. There are no limits on our right to require you to offer and sell those new products or to participate in those programs, initiatives and campaigns. You may not add any item to your menu unless it is first researched and tested through our research and development center and approved by us in writing. In addition, you may not offer or sell any products or services specified by us in any configuration, form or manner (including items for resale) other than those specifically approved by us. You are prohibited from offering or selling any products or services not authorized or approved by us. You may only use products, materials, ingredients, supplies, paper goods, uniforms, fixtures, furnishings, signs, equipment, POS System, debit and credit card and Gift/Loyalty Card processing service, and methods of product preparation and delivery that meet our requirements as specified in the Confidential Manual.

If we believe in good faith that any product offered by you may be unhealthy, unsafe or unsanitary, and we request that you discard that product, you must do so immediately. In addition, we may require you to close your *Frullati Cafe & Bakery* restaurant until we are satisfied that any unhealthy, unsafe or unsanitary condition has been completely corrected.

## 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 Agreement	Summary
a. Length of the Term of the Franchise	Section 1.3	<u>If you are purchasing a new or existing non-operating Frullati Cafe &amp; Bakery restaurant</u> , the term is 10 years from the date the restaurant opens to the public if you own the property, or enter into a lease directly with the landlord <sup>1</sup> or other third party, or (ii) the term of the sublease if you enter into a sublease with a Kahala Franchising affiliate excluding any extensions or renewal options. <u>If you are purchasing an existing and operating Frullati Cafe &amp; Bakery restaurant</u> , the term is 10 years from the effective date of the franchise agreement if you own the property, or enter into a lease directly with the landlord or other third party, or (ii) the term of the sublease if you enter into a sublease with a Kahala Franchising affiliate excluding any extensions or renewal options <sup>1</sup> . . <u>If you are purchasing a Frullati Cafe &amp; Bakery restaurant that will be co-branded into another Kahala-brand restaurant</u> , the term of your franchise agreement for this brand will equal the remaining term of the existing franchise agreement for the store which this brand will be co-branded into, so both franchise agreements will expire concurrently.
b-1. Renewal or extension of the Term	Section 13 (New & Transfer)	If you are not in default and satisfy certain conditions, you may renew for a single renewal term of 5 years, with no further right to renew at the end of the renewal term.
c-1. Requirements for you to renew or extend	Section 13 (New & Transfer)	“Renewal” means to sign a renewal Franchise Agreement (which will be in the form of the Franchise Agreement then customarily used by us in renewing franchises) and all other agreements then customarily used by us in the granting of franchises. The renewal Franchise Agreement may have materially different terms and conditions than the original Franchise Agreement, including higher royalty and advertising fees. If offered, you must:

Provision	Section in Franchise Agreement	Summary
		<p>give 120 days' notice prior to the expiration date of the term; not be in default; be in compliance with the terms of the Franchise Agreement and Operations Manual; not have received more than 3 notices of default or breach of the Franchise Agreement during its term, nor more than 2 such notices during the 5 years immediately before the proposed renewal date; have a premises; sign a new Franchise Agreement which may have materially different terms and conditions than the original Franchise Agreement; pay a renewal franchise fee; remodel or refurbish if necessary; and be current on all financial obligations to us. You must also sign the General Release in form attached to the Disclosure Document as <u>Exhibit Q</u>.</p>
b-2. Successor Term	b-2. Successor Term (Renewal)	<p>If at the end of your renewal term, you are not in default and satisfy certain conditions, you may apply for a successor term.</p>
c-2 Requirements for you to obtain a successor term		<p>Applying for and entering into a "successor" term means to sign a new Franchise Agreement (which will be in the form of the Franchise Agreement then customarily used by us in entering into new franchises) and all other agreements then customarily used by us in the granting of franchises. The successor term Franchise Agreement may have materially different terms and conditions than the original Franchise Agreement, including higher royalty and advertising fees. In the event you desire to apply to us to extend your rights to operate the Franchised Business for a successor term, you must: give 120 days' notice prior to the expiration date of the renewal term; not be in default; be in compliance with the terms of the Franchise Agreement and Operations Manual; not have received more than 3 notices of default or breach of the Franchise Agreement during its term, nor more than 2 such notices during the 5 years immediately before the proposed successor term effective date; have a premises; sign a Franchise Agreement which may have materially different terms and conditions than the original Franchise Agreement; pay an initial franchise fee; remodel or refurbish if necessary; and be current on all financial obligations to us. You must also sign the General Release in form attached to the Disclosure Document as <u>Exhibit Q</u>. We reserve the right to reject your application for a successor term, at our sole discretion, for any reason, without limitation, failure to meet our then-current standards or requirements for new franchisees. If we decide to</p>

Provision	Section in Franchise Agreement	Summary
		reject your application for a successor term to operate the Franchise Business, we will give you a notice to that effect within sixty (60) days after you deliver to us your notice of intent to apply for a successor term.
d. Termination by you	Not Applicable	-----
e. Termination by us without cause	Not Applicable	-----
f. Termination by us with cause	Sections 3.1 and 14.1	We can terminate only if you are in default under the Franchise Agreement or any other Franchise Agreements between you and us.
g. "Cause" defined—defaults that can be cured	Section 14.2	You have an immediate cure period of less than 24 hours to cure defaults of your violation of our social media policy regarding posting content containing public displays of affection, confidential information, violations of health or safety standards, foul or obscene language, or images that have not been consented to. You have 24 hours to cure defaults of your violation of (i) any law, regulation, or order; (ii) our standards relating to health, sanitation, or safety; or (iii) our policy regarding posting defamatory or offensive comments on social medium sites. You have 48 hours to cure defaults of your violation of our social media policy where you hold out your social medium site to be the official site of <i>Frullati Cafe &amp; Bakery</i> . You have 7 days to cure defaults of failure to (i) pay us monies owing; or (ii) maintain insurance. You have 14 days to cure other defaults, except those which have no cure period. If a statute in the state or municipality in which the Franchised Business is located requires application of that state or municipal law, and that statute requires a cure period for the applicable default which is longer than the cure period listed in the Franchise Agreement, the statutory cure period will apply.
h. "Cause" defined—defaults that cannot be cured	Sections 12.1, 14.1 and 14.2	Non-curable defaults: failure to open your restaurant within the time period listed in your Franchise Agreement, transferring or attempting to transfer your Franchise Agreement or Franchised Business to a third, bankruptcy, insolvency and similar events; conviction of felony; repeated defaults even if previously cured; abandonment; trademark misuse; breach of confidentiality or non-competition covenants; fraud with respect to obligations under the Franchise Agreement; and intentionally underreporting weekly Gross Sales.



<b>Provision</b>	<b>Section in Franchise Agreement</b>	<b>Summary</b>
i. Your obligations on termination/non-renewal	Section 14.5, 14.9	Obligations include complete de-identification and payment of amounts due us (also see “r” below)
j. Assignment of contract by us	Section 12.5	No restriction on our right to assign.
k. "Transfer" by you—definition	Section 12.1	Any voluntary, involuntary (including by operation of law), direct or indirect assignment, sale, gift or other transfer by you.
l. Our approval of transfer by franchise owner	Section 12.1	We have the right to approve all transfers, but we will not unreasonably withhold approval.
m. Conditions for our approval of transfer	Section 12.3	New franchise owner qualifies, no existing defaults, transfer franchise fee and transfer training fee paid, new franchisee completes training for two individuals (additional fee for additional individuals trained), release signed by you, new agreements signed.
n. Our right of first refusal to acquire your business	Section 12.2	We can match any offer for your business.
o. Our option to purchase your business	Section 12.2	We can match any offer for your business.
p. Your death or disability	Section 12.4	If representative of franchisee wants the Franchised Business to continue operating, it must be transferred within 90 days to an approved buyer. Upon non-compliance, all of franchisee’s rights under the Franchise Agreement will be automatically terminated.
q. Non-competition covenants during the term of the franchise	Section 14.6	No involvement in any competing business.
r. Non-competition covenants after the Franchise Agreement is terminated or expires	Section 14.6	No competing business for 2 years, within 10 miles of another <i>Frullati Cafe &amp; Bakery</i> restaurant.
s. Modification of the Agreement	Sections 4.5 and 16.13	Confidential Operations Manual subject to change at any time; otherwise no modifications unless in writing and signed by both parties.
t. Integration/merger clause	Section 16.14	Only the terms of the Franchise Agreement are binding (subject to state law). Any representations or promises outside the Disclosure Document and Franchise Agreement may not be enforceable.

<b>Provision</b>	<b>Section in Franchise Agreement</b>	<b>Summary</b>
u. Dispute resolution by arbitration or mediation	Section 16.3	Any dispute that cannot be resolved by, or is not subject to, mediation shall be settled by arbitration administered by the American Arbitration Association in Maricopa County, Arizona. This does not apply to a dispute where we bring an action for an express obligation to pay monies, declaratory relief, preliminary or permanent equitable relief, any action at law for damage to Kahala Franchising's goodwill, the proprietary information, the trademarks or other property or for fraudulent conduct by franchisee, or if a delay in the mediation process may adversely affect the public. Either party may appeal the arbitrator's final award to the appropriate U.S. District Court.
v. Choice of forum	Section 16.4	Litigation must be in Maricopa County, Arizona.
w. Choice of law	Section 16.4	Except to the extent governed by the United States trademark laws or the franchise laws of any state, Arizona law applies.

### **Sublease**

**This table lists certain important provisions of the Sublease. You should read these provisions in the agreements attached to this disclosure document.**

<b>Provision</b>	<b>Section in Sublease</b>	<b>Summary</b>
a. Term of the Sublease	2.1	Ends one day before expiration of Master Lease, including any renewals of Master Lease.
b. Renewal or extension of the term	2.2 and 2.3	If the Master Lease contains a renewal option, you must notify us to exercise it.
c. Requirements for you to renew or extend	2.2 and 2.3	You must be in good standing and you must notify us of your intent to renew at least 60 (but not more than 90) days before we are required to notify the Master Landlord of intent to renew.
d. Termination by you	Not Applicable	You have no right to terminate the Sublease.
e. Termination by us without cause	Not Applicable	There is no right to terminate the Sublease without cause.
f. Termination by us with cause	15	Our Leasing Affiliate may terminate the Sublease for cause. Our Leasing Affiliate can terminate only if you default under the Master Lease, Sublease or the Franchise Agreement.
g. "Cause" defined – curable defaults	15.1	Our Leasing Affiliate can terminate if you default in the: (i) payment of any sums you owe; (ii) performance of any of the terms, covenants, or conditions of the Master Lease or Sublease; or (iii) default under the Franchise Agreement or any other agreement between you or your affiliates and us or our affiliates.

<b>Provision</b>	<b>Section in Sublease</b>	<b>Summary</b>
h. "Cause" defined – defaults that cannot be cured	15.1	Failure to pay amounts due under Master Lease or Sublease; Bankruptcy of, or general assignment for the benefit of creditors by, franchisee; defaults under the Master Lease that are not curable
i. Your obligations on termination/nonrenewal	15	Our Leasing Affiliate may enter and take possession of the premises and all of the furniture, fixtures, equipment, signage, inventory and other items covered by our lien under Section 4.2 of the Sublease; you are not relieved of further obligations under the Sublease.
j. Assignment of agreement by us	22	Our Leasing Affiliate has the right to assign under the Master Lease.
k. "Transfer" by you – defined	9 and 22	Approval of Leasing Affiliate is required.
l. Our approval of transfer by you	9	Approval of Leasing Affiliate is required and will not be unreasonably withheld and approval of landlord.
m. Conditions for our approval of transfer	9	Our Leasing Affiliate must consent.
n. Our right of first refusal to acquire your business	Not Applicable	None. Our Leasing Affiliate already holds the Master Lease.
o. Our option to purchase your business	Not Applicable	None. Our Leasing Affiliate already holds the Master Lease.
p. Your death or disability	Not Applicable	None
q. Non-competition covenants during the term of the franchise	Not Applicable	None
r. Non-competition covenants after the franchise is terminated or expires	Not Applicable	None
s. Modification of the agreement	Not Applicable	None
t. Integration/merger clause	24	The Sublease, including any exhibits, contains the entire agreement of the parties.
u. Dispute resolution by arbitration or mediation	Not Applicable	None
v. Choice of forum	Not Applicable	None
w. Choice of law	20	Arizona law applies

## **ITEM 18: PUBLIC FIGURES**

We currently do not use any public figure to promote our *Frullati Cafe & Bakery* franchise System.

## 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 John Wuycheck, Kahala Franchising, L.L.C., 9311 E. Via De Ventura, Scottsdale, Arizona 85258; (480) 362-4800, the Federal Trade Commission, and the appropriate state regulatory agencies.

## ITEM 20: OUTLETS AND FRANCHISEE INFORMATION

Table No. 1

### Systemwide Outlet Summary For years 2016 to 2018

Column 1 Outlet Type	Column 2 Year	Column 3 Outlets at the Start of the Year	Column 4 Outlets at the End of the Year	Column 5 Net Change
Franchised	2016	16	14	-2
	2017	14	14	0
	2018	14	14	0
Company- Owned	2016	0	0	0
	2017	0	0	0
	2018	0	0	0
Total Outlets	2016	16	14	-2
	2017	14	14	0
	2018	14	14	0

Table No. 2

**Transfers of Outlets from Franchisees to New Owners (other than the Franchisor)  
For years 2016 to 2018**

Column 1 Outlet Type	Column 2 Year	Column 3 Outlets at the Start of the Year	Column 4 Outlets at the End of the Year	Column 5 Net Change
Franchised	2016	16	14	-2
	2017	14	14	0
	2018	14	14	0
Company- Owned	2016	0	0	0
	2017	0	0	0
	2018	0	0	0
Total Outlets	2016	16	14	-2
	2017	14	14	0
	2018	14	14	0

Table No. 3

**Status of Franchised Outlets  
For years 2016 to 2018**

Col. 1  State	Col.2  Year	Col.3  Outlets at Start of Year	Col.4  Outlets Opened	Col. 5  Termi- nations	Col. 6  Non- renewals	Col. 7  Reacquired by Franchisor	Col. 8  Ceased Operations – Other Reasons	Col. 9  Outlets at End of the Year
Arizona	2016	2	0	0	0	0	1	1
	2017	1	0	0	0	0	0	1
	2018	1	0	0	0	0	0	1
Arkansas	2016	0	0	0	0	0	0	0
	2017	0	0	0	0	0	0	0
	2018	0	0	0	0	0	0	0
Illinois	2016	0	0	0	0	0	0	0
	2017	0	0	0	0	0	0	0
	2018	0	0	0	0	0	0	0
Indiana	2016	1	0	0	0	0	0	1
	2017	1	0	0	0	0	0	1
	2018	1	0	0	0	0	0	1
Michigan	2016	1	0	0	0	0	0	1
	2017	1	0	0	0	0	0	1
	2018	1	0	0	0	0	0	1
Ohio	2016	2	0	0	0	0	0	2
	2017	2	0	0	0	0	0	2
	2018	2	0	0	0	0	0	2
Oklahoma	2016	0	0	0	0	0	0	0
	2017	0	0	0	0	0	0	0
	2018	0	0	0	0	0	0	0
South Carolina	2016	1	0	0	0	0	0	1
	2017	1	0	0	0	0	0	1
	2018	1	0	1	0	0	0	0
Texas	2016	9	0	0	0	0	1	8
	2017	8	0	0	0	0	0	8
	2018	8	1	0	0	0	0	9
TOTAL	2016	16	0	0	0	0	2	14
	2017	14	0	0	0	0	0	14
	2018	14	1	1	0	0	0	14

Table No. 4

**Status of Company Owned Outlets  
For years 2016 to 2018**

Col. 1  State	Col.2  Year	Col.3  Outlets at Start of Year	Col.4  Outlets Opened	Col. 5  Outlets Reacquired from Franchisee	Col. 6  Outlets Closed	Col. 7  Outlets Sold to Franchisee	Col. 8  Outlets at End of the Year
All states	2015	0	0	0	0	0	0
	2016	0	0	0	0	0	0
	2017	0	0	0	0	0	0
Totals	2015	0	0	0	0	0	0
	2016	0	0	0	0	0	0
	2017	0	0	0	0	0	0

Table No. 5

**Projected Openings As Of November 30, 2018**

Column 1  State	Column 2  Franchise Agreements Signed But Outlet Not Opened	Projected New Franchised Outlets In The Next Fiscal Year	Column 4  Projected New Company-Owned Outlets in the Next Fiscal Year
Ohio	1	1	0
Total	1	1	0

A list of the names of all franchisees and the address and telephone number of each of their outlets is attached to this Disclosure Document as Exhibit U.

We had no franchise owners who had an outlet terminated, canceled, not renewed, or otherwise voluntarily or involuntarily ceased to do business under the Franchise Agreements during the year ending November 30, 2018. We had no franchise owners transfer an outlet during the year ending November 30, 2018. We have not had any franchisees who have not communicated with us for the 10-week period before the date of this Disclosure Document.

We had no franchisees who had their Franchise Agreements terminated during the year ending November 30, 2018 for a restaurant that never opened. We had no franchisees that transferred their Franchise Agreement during the year ending November 30, 2018 for a restaurant that was not yet open.

If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system. Some of our franchisees have signed confidentiality clauses during the last three fiscal years. In some instances, current and former franchisees sign provisions restricting their ability to speak openly about their experience with the *Frullati Cafe & Bakery* franchise system. You may wish to speak with current and former franchisees, but be aware that not all such franchisees will be able to communicate with you.

If you are purchasing a company-owned outlet from one of our affiliates that was previously owned by a franchisee but is now owned and operated corporately by our affiliate, we will provide you with an addendum to this Disclosure Document disclosing additional information for that outlet for the last five fiscal years. A sample form of the addendum is attached to this Disclosure Document as Exhibit X.

There are no trademark-specific franchisee organizations associated with the franchise system being offered under this Disclosure Document that have been created, sponsored or endorsed by us.

## **ITEM 21: FINANCIAL STATEMENTS**

Attached to this Disclosure Document as Exhibit V are the audited consolidated financial statements of Franchisor's parent company, MTY Franchising USA, Inc. ("Guarantor"), for the fiscal years ended November 30, 2018 and November 30, 2017, along with the independent auditor's reports for the years ended November 30, 2017 and November 30, 2018.

Guarantor absolutely and unconditionally guarantees to assume the duties and obligations of Franchisor under its franchise registration in each state where the franchise is registered, and under the Franchise Agreement, as it may be amended, and as that Franchise Agreement may be entered into with franchisees and amended, modified or extended from time to time. This guarantee continues until all such obligations of the Franchisor under its franchise registrations and the Franchise Agreement are satisfied or until the liability of Franchisor to its franchisees under the Franchise Agreement has been completely discharged, whichever first occurs. Guarantor is not discharged from liability if a claim by a franchisee against the Franchisor remains outstanding. Notice of acceptance is waived. Guarantor does not waive receipt of notice of default on the part of the Franchisor. This guarantee is binding on the Guarantor and its successors and assigns. (See Exhibit W: Performance Guaranty).

## **ITEM 22: CONTRACTS**

Attached to this Disclosure Document are the following franchise-related contracts:

- |             |   |
|-------------|---|
| Exhibit D   | Asset Purchase Agreement (For Sale of a Corporate Store to a Franchisee) with Promissory Note and Security Agreement and Guaranty (if applicable) |
| Exhibit E-1 | Franchise Agreement (New) and Franchisee Questionnaire  |
| Exhibit E-2 | Franchise Agreement (Renewal) and Franchisee Questionnaire  |



Exhibit E-3	Franchise Agreement (Transfer) and Franchisee Questionnaire
Exhibit F-1	Guaranty of Franchise Agreement
Exhibit F-2	Non-Disclosure and Non-Competition Agreement
Exhibit G	Collateral Assignment and Irrevocable Special Power of Attorney
Exhibit H	Amendment to Franchise Agreement (for non-traditional locations excluding those co-branded with another affiliated brand)
Exhibit I	Amendment to Franchise Agreement (for co-branded non-traditional locations)
Exhibit L	Required Lease Terms (Lease Addendum to Lease Agreement)
Exhibit M	Lease Guaranty Acknowledgment
Exhibit N	Lease Review and/or Negotiation Agreement and Release and State Addenda
Exhibit O-1	Sublease and Guaranty of Sublease (Franchisee pays rent directly to Landlord)
Exhibit O-2	Sublease and Guaranty of Sublease (Kahala collects rent from Franchisee and pays to Landlord)
Exhibit P	Pre-Authorized Electronic Funds Transfer Form
Exhibit Q	General Release for Renewal of Franchise Agreement
Exhibit R-1	Consent to Transfer and Release Agreement (without Sublease)
Exhibit R-2	Consent to Transfer and Release Agreement (with Sublease)
Exhibit S	State Addenda to Franchise Documents
Exhibit W	Performance Guaranty
Exhibit X	Addendum for Sale of Company-Affiliated Owned Stores
Exhibit Y	Receipts

## ITEM 23: RECEIPTS

Exhibit Y to this Disclosure Document is a detachable receipt. You are to keep one copy and return the other copy to us.

**EXHIBIT A**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**State Addenda to Franchise Disclosure Document**

**ADDENDUM TO THE KAHALA FRANCHISING, L.L.C.  
DISCLOSURE DOCUMENT REQUIRED BY THE STATE OF CALIFORNIA**

- A. THE CALIFORNIA FRANCHISE INVESTMENT LAW REQUIRES THAT A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE FRANCHISE BE DELIVERED TOGETHER WITH THE DISCLOSURE DOCUMENT.**
- B. Neither the franchisor, franchise broker nor any person in Item 2 of the Disclosure Document are subject to any currently effective order of any National Securities Association or National Securities Exchange, as defined in the Securities Exchange Act of 1934, 15 U.S.C.A. 78A et seq., suspending or expelling such person from membership in such association or exchange.**
- C. The Franchise Agreement provides for termination upon bankruptcy. This provision may not be enforceable under Federal Bankruptcy Law. (11 U.S.C.A. Sec. 101 et seq.).**
- D. The Franchise Agreement contains a covenant not to compete which extends beyond the termination of the agreements. This provision may not be enforceable under California law.**
- E. The Franchise Agreement requires application of the laws of the State of Arizona. This provision may not be enforceable under California Law.**
- F. Section 31125 of the California Corporations Code requires us to give you a disclosure document, in a form containing the information that the commissioner may by rule or order require, before a solicitation of a proposed material modification of an existing franchise.**
- G. YOU MUST SIGN A GENERAL RELEASE IF YOU RENEW OR TRANSFER YOUR FRANCHISE. CALIFORNIA CORPORATIONS CODE §31512 VOIDS A WAIVER OF YOUR RIGHTS UNDER THE FRANCHISE INVESTMENT LAW (CALIFORNIA CORPORATIONS CODE §§31000 THROUGH 31516).**
- H. BUSINESS AND PROFESSIONS CODE §20010 VOIDS A WAIVER OF YOUR RIGHTS UNDER THE FRANCHISE RELATIONS ACT (BUSINESS AND PROFESSIONS CODE §§20000 THROUGH 20043).**
- I. California Business and Professions Code Sections 20000 through 20043 provide rights to the franchisee concerning termination or non-renewal of a franchise. If the Franchise Agreement contains a provision that is inconsistent with the law, the law will control.**
- J. If the Franchisee resides in the State of California or the franchised business is located within the State of California, the venue for any dispute may be within the State of California. Business and Professions Code Section 20040.5 voids restricting a venue to a forum outside California with respect to any claim arising under or relating to a Franchise Agreement involving a franchise business operating in California.**
- K. OUR WEBSITE HAS NOT BEEN REVIEWED OR APPROVED BY THE CALIFORNIA DEPARTMENT OF BUSINESS OVERSIGHT. ANY COMPLAINTS CONCERNING THE CONTENTS OF THIS WEBSITE MAY BE DIRECTED TO THE CALIFORNIA DEPARTMENT OF BUSINESS OVERSIGHT at [www.dbo.ca.gov](http://www.dbo.ca.gov).**

**ADDENDUM TO THE KAHALA FRANCHISING, L.L.C.  
DISCLOSURE DOCUMENT REQUIRED BY THE STATE OF HAWAII**

These franchises will be/have been filed under the Franchise Investment Law of the State of Hawaii. Filing does not constitute approval, recommendation or endorsement by the Director of Commerce and Consumer Affairs or a finding by the Director of Commerce and Consumer Affairs that the information provided herein is true, complete and not misleading.

The Franchise Investment Law makes it unlawful to offer or sell any franchise in this state without first providing to the prospective franchisee, or subfranchisor, at least seven days prior to the execution by the prospective franchisee of any binding franchise or other agreement, or at least seven days prior to the payment of any consideration by the franchisee, or subfranchisor, whichever occurs first, a copy of the Disclosure Document, together with a copy of all proposed agreements relating to the sale of the franchise.

This Disclosure Document contains a summary only of certain material provisions of the Franchise Agreement. The contract or agreement should be referred to for a statement of all rights, conditions, restrictions and obligations of both the franchisor and the franchisee.

A Federal Trade Commission rule makes it unlawful to offer or sell any franchise without first providing this Disclosure Document to the prospective franchisee at the earlier of (1) fourteen calendar days before the signing of any franchise or related agreement; or (2) fourteen calendar days before any payment. The prospective franchisee must also receive a Franchise Agreement containing all material terms at least seven calendar days prior to the signing of the Franchise Agreement.

If this Disclosure Document is not delivered on time, or if it contains a false, incomplete, inaccurate or misleading statement, a violation of federal and state law may have occurred and should be reported to the Federal Trade Commission, Washington D.C. 20580 and to Hawaii Department of Commerce and Consumer Affairs which administers and enforces the Hawaii Franchise Disclosure Act.

Registered agent in the state authorized to receive service of process:

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

1. The following paragraph is added to Item 17:

Section 482E-6(3) of the Hawaii Revised Statutes provides that upon termination or refusal to renew the Franchise Agreement, Kahala Franchising, L.L.C. is obligated to compensate you for the fair market value, at the time of the termination or expiration of the Franchise Agreement, of your inventory, supplies, equipment and furnishings purchased from Kahala Franchising, L.L.C. or a supplier designated by Kahala Franchising, L.L.C.; provided that personalized materials which have no value to us need not be compensated for. If Kahala Franchising, L.L.C. refuses to renew a Franchise Agreement for the purpose of converting your business to one owned and operated by Kahala Franchising, L.L.C., in addition to the remedies provided above, shall compensate you for the loss of goodwill. Kahala Franchising, L.L.C. may deduct from such compensation reasonable costs incurred in removing, transporting and disposing of your inventory, supplies, equipment and furnishings pursuant to this requirement, and may offset from such compensation any monies due Kahala Franchising, L.L.C.

2. The following list reflects the status of the franchise registration of the Franchisor in the states which require registration:

- A. The states in which this proposed registration is effective: None.
- B. The states in which this proposed registration is or will be shortly on file: California, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington, Wisconsin.
- C. The states, if any, which have refused, by order or otherwise, to register these franchises: None.
- D. The states, if any, which have revoked or suspended the right to offer these franchises: None.
- E. The states, if any, in which the proposed registration of these franchises has been withdrawn by the Franchisor: None.

3. Section 482E-3(a) of the Hawaii Franchise Investment Law requires the franchisor to give you a copy of the Franchise Disclosure Document at least 7 calendar days prior to signing the franchise agreement. The Receipt is amended to reflect the 7 calendar-day waiting period.

**ADDENDUM TO THE KAHALA FRANCHISING, L.L.C.  
DISCLOSURE DOCUMENT REQUIRED BY THE STATE OF ILLINOIS**

1. Items 17.f and 17.i are supplemented with the following language:

The conditions under which your Franchise Agreement may be terminated and your rights upon non-renewal may be affected by Illinois Law, 815 ILCS 705/19 and 705/20.

2. Items 17.f, 17.g, 17.t, 17.v, and 17.w are supplemented with the following language:

This summary applies to both the Franchise Agreement and the Area Representative Agreement.

3. The Summary in Item 17.v is deleted and replaced by the following Summary:

Litigation in Illinois.

4. The Summary in Item 17.w is deleted and replaced by the following Summary:

Illinois law applies.

5. Section 41 of the Illinois Franchise Disclosure Act states that “any condition, stipulation, or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of this Act is void.”

**ADDENDUM TO THE KAHALA FRANCHISING, L.L.C.  
DISCLOSURE DOCUMENT REQUIRED BY THE STATE OF INDIANA**

1. Item 17.c may be modified by Indiana Code § 23-2-2.7.
2. The Summary in Item 17.r. is deleted and replaced with the following Summary:

For one year after the termination of your Franchise Agreement, you may not establish a similar type of business within your exclusive territory.
3. Item 17.t is supplemented with the following language:

However, you do not waive any rights under the Indiana Statutes with regard to prior representations made by Kahala Franchising, L.L.C. in the Disclosure Document.
4. Items 17.v and 17.w are supplemented with the following language:

Except that under Indiana law, you may have the right to bring an action in Indiana, and have Indiana law apply.
5. The Indiana Deceptive Franchise Practices Act, IC 23-2-2.7-1 (10) prohibits the limitation of litigation brought for breach of a Franchise Agreement including any limitation on the forum chosen. Any provision in the Franchise Agreement, specifying a forum contrary to Indiana law, shall not apply to any claims brought under the Indiana Deceptive Franchise Practices Act and/or the Indiana Franchise Act, Ind. Code ANN. §§ 1-51 (1994).
6. The Indiana Deceptive Franchise Practices Act, IC 23-2-2.7-1 (10) prohibits the limitation of litigation brought for breach of a Franchise Agreement. Any provision in the Franchise Agreement requiring the application of another state's law shall not apply to any claims brought under the Indiana Deceptive Franchise Practices Act and/or the Indiana Franchise Act, Ind. Code ANN. §§ 1-51 (1994).
7. Indiana Code § 23-2-2.5-9 (2) requires a franchisor to give you a copy of the Franchise Disclosure Document at the earlier of: (i) 10 days prior to signing the franchise agreement; or (ii) 10 days prior to franchisor's receipt of any consideration. The Receipt is amended to reflect the 10 day waiting period.

**ADDENDUM TO THE KAHALA FRANCHISING, L.L.C.  
DISCLOSURE DOCUMENT REQUIRED BY THE STATE OF MARYLAND**

1. Item 5 of the Franchise Disclosure Document and all agreements in this offering are amended to disclose the following:

All initial fees and payments shall be deferred until such time as the franchisor completes its initial obligations under the Franchise Agreement.

2. The following amends Item 11 and replaces the last sentence of paragraph 8.a. under the section titled "During the operation of the Franchised Business:"

A Franchisee may, at any time after 120 days following the end of the calendar year, obtain an accounting of expenditures for the Advertising Fund and any Cooperative Regional Funds for the entire preceding calendar year by submitting a written request to Kahala Franchising, L.L.C.'s Chief Financial Officer at the principal business address listed in Item 1 of the Franchise Disclosure Document.

3. The Summary in Item 17.v is deleted, and the following Summary is inserted in its place:

A Franchisee may file a civil lawsuit in Maryland for claims arising under the Maryland Franchise Registration and Disclosure Law. Any claims arising under the Maryland Franchise Registration and Disclosure Law must be brought within three years after the grant of the franchise.

4. Item 17 is amended to disclose the following:

Any general release required as a condition of renewal, sale, and/or assignment/transfer shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law.

5. The following paragraph is added to the end of Item 17:

The Franchise Agreement provides for termination upon Franchisee's bankruptcy. This provision may not be enforceable under Federal Bankruptcy Law (11 U.S.C. Section 101 et seq.).



**ADDENDUM TO KAHALA FRANCHISING, L.L.C.  
DISCLOSURE DOCUMENT  
FOR THE STATE OF MICHIGAN**

Section 445.1508(1) of the Michigan Franchise Investment Law requires franchisor to give you a copy of the Franchise Disclosure Document earlier of: (i) 10 business days prior to signing the Agreement; or (ii) 10 business days prior to franchisor's receipt of any consideration.

**THE STATE OF MICHIGAN PROHIBITS CERTAIN UNFAIR PROVISIONS THAT ARE SOMETIMES IN FRANCHISE DOCUMENTS. IF ANY OF THE FOLLOWING PROVISIONS ARE IN THESE FRANCHISE DOCUMENTS, THE PROVISIONS ARE VOID AND CANNOT BE ENFORCED AGAINST YOU:**

- (A) A prohibition on the right of a franchisee to join an association of franchisees.
- (B) A requirement that a franchisee assent to a release, assignment, novation, waiver, or estoppel which deprives a franchisee of rights and protections provided in this act. This shall not preclude a franchisee, after entering into a Franchise Agreement, from settling any and all claims.
- (C) A provision that permits a franchisor to terminate a Franchise Agreement prior to the expiration of its term except for good cause. Good cause shall include the failure of the franchisee to comply with any lawful provision of the Franchise Agreement and to cure such failure after being given written notice thereof and a reasonable opportunity, which in no event need be more than 30 days, to cure such failure.
- (D) A provision that permits a franchisor to refuse to renew a Franchise Agreement without fairly compensating the franchisee by repurchase or other means for the fair market value at the time of expiration, of the franchisee's inventory, supplies, equipment, fixtures, and furnishings. Personalized materials which have no value to the franchisor and inventory, supplies, equipment, fixtures, and furnishings not reasonably required in the conduct of the franchised business are not subject to compensation. This subsection applies only if: (i) the term of the Franchise Agreement is less than five (5) years; and (ii) the franchisee is prohibited by the Franchise Agreement or other agreement from continuing to conduct substantially the same business under another trademark, service mark, trade name, logotype, advertising, or other commercial symbol in the same area subsequent to the expiration of the Franchise Agreement or the franchisee does not receive at least six (6) months advance notice of franchisor's intent not to renew the Franchise Agreement.
- (E) A provision that permits the franchisor to refuse to renew a Franchise Agreement on terms generally available to other franchisees of the same class or type under similar circumstances. This section does not require a renewal provision.
- (F) A provision requiring that arbitration or litigation be conducted outside this state. This shall not preclude the franchisee from entering into an agreement, at the time of arbitration, to conduct arbitration at a location outside this state.
- (G) A provision which permits a franchisor to refuse to permit a transfer of ownership of a franchise, except for good cause. This subdivision does not prevent a franchisor from exercising a right of first refusal to purchase the franchise. Good cause shall include, but is not limited to:

- (i) The failure of the proposed transferee to meet the franchisor's then current reasonable qualifications or standards.
- (ii) The fact that the proposed transferee is a competitor of the franchisor or subfranchisor.
- (iii) The unwillingness of the proposed transferee to agree in writing to comply with all lawful obligations.
- (iv) The failure of the franchisee or proposed transferee to pay any sums owing to the franchisor or to cure any default in the Franchise Agreement existing at the time of the proposed transfer.

(H) A provision that requires the franchisee to resell to the franchisor items that are not uniquely identified with the franchisor. This subdivision does not prohibit a provision that grants to a franchisor a right of first refusal to purchase the assets of a franchise on the same terms and conditions as a bona fide third party willing and able to purchase those assets, nor does this subdivision prohibit a provision that grants the franchisor the right to acquire the assets of a franchise for the market or appraised value of such assets if the franchisee has breached the lawful provisions of the Franchise Agreement and has failed to cure the breach in the manner provided in subdivision (c).

(I) A provision which permits the franchisor to directly or indirectly convey, assign, or otherwise transfer its obligations to fulfill contractual obligations to the franchisee unless provision has been made for providing the required contractual services.

**THE FACT THAT THERE IS A NOTICE OF THIS OFFERING ON FILE WITH THE ATTORNEY GENERAL DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION, OR ENDORSEMENT BY THE ATTORNEY GENERAL.**

Any questions regarding this notice shall be directed to:

STATE OF MICHIGAN  
DEPARTMENT OF THE ATTORNEY GENERAL  
ATTENTION: FRANCHISE SECTION  
P.O. BOX 30213  
LANSING, MICHIGAN 48909  
(517) 373-7117

**ADDENDUM TO THE KAHALA FRANCHISING, L.L.C.  
DISCLOSURE DOCUMENT REQUIRED BY THE STATE OF MINNESOTA**

1. The following legends are added to the Risk Factors on the Cover Page:

**THESE FRANCHISES HAVE BEEN REGISTERED UNDER THE MINNESOTA FRANCHISE ACT. REGISTRATION DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION, OR ENDORSEMENT BY THE COMMISSIONER OF SECURITIES OF MINNESOTA OR A FINDING BY THE COMMISSIONER THAT THE INFORMATION PROVIDED HEREIN IS TRUE, COMPLETE, AND NOT MISLEADING.**

**THE MINNESOTA FRANCHISE ACT MAKES IT UNLAWFUL TO OFFER OR SELL ANY FRANCHISE IN THIS STATE WHICH IS SUBJECT TO REGISTRATION WITHOUT FIRST PROVIDING TO THE PROSPECTIVE FRANCHISEE AT LEAST 7 DAYS PRIOR TO THE PAYMENT OF ANY CONSIDERATION, BY THE FRANCHISEE, WHICHEVER OCCURS FIRST, A COPY OF THIS PUBLIC OFFERING STATEMENT, TOGETHER WITH A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE FRANCHISE. THIS PUBLIC OFFERING STATEMENT CONTAINS A SUMMARY ONLY OF CERTAIN MATERIAL PROVISIONS OF THE FRANCHISE AGREEMENT. THE CONTRACT OR AGREEMENT SHOULD BE REFERRED TO FOR AN UNDERSTANDING OF ALL RIGHTS AND OBLIGATIONS OF BOTH THE FRANCHISOR AND THE FRANCHISEE.**

**IF THIS DISCLOSURE DOCUMENT IS NOT DELIVERED ON TIME, OR IF IT CONTAINS A FALSE, INCOMPLETE, INACCURATE OR MISLEADING STATEMENT, A VIOLATION OF FEDERAL AND STATE LAW MAY HAVE OCCURRED AND SHOULD BE REPORTED TO THE FEDERAL TRADE COMMISSION, WASHINGTON, D.C. 20580 AND TO THE COMMISSIONER OF SECURITIES, DEPARTMENT OF COMMERCE, SECURITIES DIVISION, 85 7<sup>TH</sup> PLACE EAST, SUITE 500, ST. PAUL, MINNESOTA 55101, WHICH ADMINISTERS AND ENFORCES THE MINNESOTA FRANCHISE ACT.**

2. Pursuant to Minnesota Rules 604.113, in Item 6, the table entry in the second column pertaining to "Amount" for "Non-Sufficient Funds Fee" is hereby deleted and replaced with the following:

\$30 for each electronic funds transfer returned for non-sufficient funds; \$25 for each check or draft returned for non-sufficient funds

3. The following paragraph is added to Item 13:

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

Minnesota considers it unfair to not protect the franchisee's right to use the trademarks. Refer to Minnesota Statutes, Section 80C.12, Subd. 1(g).

4. The following statement is added at the end of Item 17.c and 17.m:

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

5. The following statement is added at the end of 17.v and 17.w.:

Minnesota Statutes, Section 80C.21 and Minnesota Rules 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 (1) any of the franchisee's rights as provided for in Minnesota Statutes, Chapter 80C or (2) franchisee's rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction.

The franchisee cannot consent to the franchisor obtaining injunctive relief. The franchisor may seek injunctive relief. See Minn. Rules 2860.4400J.

Also, a court will determine if a bond is required.

6. The following statement is added at the end of Item 17:

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

7. The Summary in Item 17.v is deleted, and the following Summary is inserted in its place:

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

**ADDENDUM TO THE KAHALA FRANCHISING, L.L.C.  
DISCLOSURE DOCUMENT REQUIRED BY THE STATE OF NEW YORK**

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

**INFORMATION COMPARING FRANCHISORS IS AVAILABLE. CALL THE STATE ADMINISTRATORS LISTED IN EXHIBIT B OR YOUR PUBLIC LIBRARY FOR SOURCES OF INFORMATION. REGISTRATION OF THIS FRANCHISE BY NEW YORK STATE DOES NOT MEAN THAT NEW YORK STATE RECOMMENDS IT OR HAS VERIFIED THE INFORMATION IN THIS DISCLOSURE DOCUMENT. IF YOU LEARN THAT ANYTHING IN THE DISCLOSURE DOCUMENT IS UNTRUE, CONTACT THE FEDERAL TRADE COMMISSION AND NEW YORK STATE DEPARTMENT OF LAW, BUREAU OF INVESTOR PROTECTION AND SECURITIES, 120 BROADWAY, 23<sup>RD</sup> FLOOR, NEW YORK, NEW YORK 10271.**

2. The following is added at the end of Item 3:

Except as provided above, with regard to the franchisor, its predecessor, a person identified in Item 2, or an affiliate offering franchises under the franchisor's principal trademark:

A. No such party has an administrative, criminal or civil action pending against that person alleging: a felony, a violation of a franchise, antitrust, or securities law, fraud, embezzlement, fraudulent conversion, misappropriation of property, unfair or deceptive practices, or comparable civil or misdemeanor allegations.

B. No such party has pending actions, other than routine litigation incidental to the business, which are significant in the context of the number of franchisees and the size, nature or financial condition of the franchise system or its business operations.

C. No such party has been convicted of a felony or pleaded nolo contendere to a felony charge or, within the 10 year period immediately preceding the application for registration, has been convicted of or pleaded nolo contendere to a misdemeanor charge or has been the subject of a civil action alleging: violation of a franchise, antifraud, or securities law; fraud; embezzlement; fraudulent conversion or misappropriation of property; or unfair or deceptive practices or comparable allegations.

D. No such party is subject to a currently effective injunctive or restrictive order or decree relating to the franchise, or under a Federal, State, or Canadian franchise, securities, antitrust, trade regulation or trade practice law, resulting from a concluded or pending action or proceeding brought by a public agency; or is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities and Exchange Act of 1934, suspending or expelling such person from membership in such association or exchange; or is subject to a currently effective injunctive or restrictive order relating to any other business activity as a result of an action brought by a public agency or department, including, without limitation, actions affecting a license as a real estate broker or sales agent.

3. The following is added to the end of Item 5:

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

4. The following is added to the end of the “Summary” sections of Item 17(c), titled “Requirements for franchisee to renew or extend,” and Item 17(m), entitled “Conditions for franchisor approval of transfer”:

However, to the extent required by applicable law, all rights you enjoy and any causes of action arising in your favor from the provisions of Article 33 of the General Business Law of the State of New York and the regulations issued thereunder shall remain in force; it being the intent of this proviso that the non-waiver provisions of General Business Law Sections 687.4 and 687.5 be satisfied.

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

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

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

The foregoing choice of law should not be considered a waiver of any right conferred upon the franchisor or upon the franchisee by Article 33 of the General Business Law of the State of New York.

7. The franchisor may, if it chooses, negotiate with you about items covered in the prospectus. However, the franchisor cannot use the negotiating process to prevail upon a prospective franchisee to accept terms which are less favorable than those set forth in this prospectus.

8. The Franchise Agreement and the other documents to be signed by the franchisee provide that we do not grant you any exclusive or protected territory for your restaurant.

9. The Franchise Agreement and the other documents to be signed by you further allow the franchisor to locate franchised or corporate-owned locations of food concepts similar to *Frullati Cafe & Bakery* in the immediate vicinity of your restaurant. There may also be locations of food concepts similar to *Frullati Cafe & Bakery* that are owned by affiliates of the franchisor already open and operating in the immediate vicinity of your restaurant.

10. Section 683.8 of the General Business Law of the State of New York requires franchisor to give you a copy of the Franchise Disclosure Document at the earlier of: (i) the first personal meeting; (ii) 10 business days before the execution of the Franchise Agreement; or (iii) 10 business days before the payment of any consideration that relates to the franchise relationship.

#### FACTORS TO BE CONSIDERED:

Any disputes, differences or controversies that arise pursuant to the Franchise Agreement or breach thereof which cannot be settled by mediation shall be settled by arbitration. All such proceedings shall be held in Maricopa County, Arizona. This information should be taken into consideration in determining whether or not to purchase this franchise.

The franchisor represents that this prospectus does not knowingly omit any material fact or contain any untrue statement of a material fact.

**ADDENDUM TO THE KAHALA FRANCHISING, L.L.C.  
DISCLOSURE DOCUMENT REQUIRED BY THE STATE OF NORTH DAKOTA**

**ALTHOUGH THESE FRANCHISES HAVE BEEN REGISTERED UNDER THE FRANCHISE INVESTMENT LAW OF THE STATE OF NORTH DAKOTA, REGISTRATION DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION, OR ENDORSEMENT BY THE STATE OF NORTH DAKOTA THAT THE INFORMATION PROVIDED IN THIS DISCLOSURE DOCUMENT IS TRUE, COMPLETE, ACCURATE, OR NOT MISLEADING.**

**NORTH DAKOTA LAW MODIFICATIONS**

1. The North Dakota Securities Commissioner requires that certain provisions contained in franchise documents be amended to be consistent with North Dakota Law, including the North Dakota Franchise Investment Law, North Dakota Century Code Annotated Chapter 51-19, Sections 51-19-01 through 51-19-17 (1993). To the extent that the Franchise Agreement contains provisions that are inconsistent with the following, such provisions are hereby amended:

- a. If the Franchisee is required in the Franchise Agreement to execute a release of claims or to acknowledge facts that would negate or remove from judicial review any statement, misrepresentation or action that would violate the Law, or a rule or order under the Law, such release shall exclude claims arising under the North Dakota Franchise Investment Law, and such acknowledgements shall be void with respect to claims under the Law.
- b. Covenants not to compete during the term and upon termination or expiration of the Franchise Agreement are enforceable only under certain conditions according to North Dakota Law. If the Franchise Agreement contains a covenant not to compete which is inconsistent with North Dakota Law, the covenant may be unenforceable.
- c. If the Franchise Agreement requires litigation to be conducted in a forum other than the State of North Dakota, the requirement is void with respect to claims under the North Dakota Franchise Investment Law.
- d. If the Franchise Agreement requires that it be governed by a state's law, other than the State of North Dakota, to the extent that such law conflicts with the North Dakota Franchise Investment Law, the North Dakota Franchise Investment Law will control.
- e. If the Franchise Agreement requires mediation or arbitration to be conducted in a forum other than the State of North Dakota, the requirement may be unenforceable under the North Dakota Franchise Investment Law. Arbitration involving a franchise purchased in the State of North Dakota must be held either in a location mutually agreed upon prior to the arbitration or if the parties cannot agree on a location, the location will be determined by the arbitrator.
- f. If the Franchise Agreement requires payment of a termination penalty, the requirement may be unenforceable under the North Dakota Franchise Investment Law.

- g. Section 51-19-08 of the North Dakota Franchise Investment Law requires franchisor to give you a copy of the Franchise Disclosure Document at the earlier of: (i) seven days prior to signing the franchise agreement; or (ii) seven days prior to franchisor's receipt of any consideration.

**2. THE SECURITIES COMMISSIONER HAS HELD THE FOLLOWING TO BE UNFAIR, UNJUST OR INEQUITABLE TO NORTH DAKOTA FRANCHISEES (SECTION 51-19-09, N.D.C.C.):**

- A. Restrictive Covenants: Franchise Disclosure Documents which disclose the existence of covenants restricting competition contrary to Section 9-08-06, N.D.C.C., without further disclosing that such covenants will be subject to the statute.
- B. Situs of Arbitration Proceedings: Franchise agreements providing that the parties must agree to the arbitration of disputes at a location that is remote from the site of the franchisee's business.
- C. Restrictions on Forum: Requiring North Dakota franchisees to consent to the jurisdiction of courts outside of North Dakota.
- D. Liquidated Damages and Termination Penalties: Requiring North Dakota franchisees to consent to liquidated damages or termination penalties.
- E. Applicable Laws: Franchise agreements which specify that they are to be governed by the laws of a state other than North Dakota.
- F. Waiver of Trial by Jury: Requiring North Dakota Franchises to consent to the waiver of a trial by jury.
- G. Waiver of Exemplary & Punitive Damages: Requiring North Dakota Franchisees to consent to a waiver of exemplary and punitive damage.
- H. General Release: Franchise Agreements that require the franchisee to sign a general release upon renewal of the franchise agreement.
- I. Limitation of Claims: Franchise Agreements that require the franchisee to consent to a limitation of claims. The statute of limitations under North Dakota law applies.
- J. Enforcement of Agreement: Franchise Agreements that require the franchisee to pay all costs and expenses incurred by the franchisor in enforcing the agreement. The prevailing party in any enforcement action is entitled to recover all costs and expenses including attorney's fees.

3. Each provision of this Amendment shall be effective only to the extent that the jurisdictional requirements of the North Dakota Franchise Investment Law, with respect to each such provision, are met independent of this Amendment. This Amendment shall have no force or effect if such jurisdictional requirements are not met.



**ADDENDUM TO THE KAHALA FRANCHISING, L.L.C.  
DISCLOSURE DOCUMENT REQUIRED BY THE STATE OF RHODE ISLAND**

**RHODE ISLAND LAW MODIFICATIONS**

1. The Rhode Island Securities Division requires that certain provisions contained in franchise documents be amended to be consistent with Rhode Island law, including the Franchise Investment Act, R.I. Gen. Law. ch. 395 Sec. 19-28.1-1 – 19-28.1-34. To the extent that the Franchise Agreement contains provisions that are inconsistent with the following, such provisions are hereby amended:

- a. If the Franchise Agreement restricts jurisdiction or venue to a forum other than the State of Rhode Island, the requirement is void under Rhode Island Franchise Investment Act Sec. 19-28.1-14.
- b. If the Franchise Agreement requires that it be governed by a state's law, other than the State of Rhode Island, to the extent that such law conflicts with Rhode Island Franchise Investment Act it is void under Sec. 19-28.1-14.
- c. If the Franchisee is required in the Franchise Agreement to execute a release of claims or to acknowledge facts that would negate or remove from judicial review any statement, misrepresentation or action that would violate the Act, or a rule or order under the Act, such release shall exclude claims arising under the Rhode Island Franchise Investment Act, and such acknowledgements shall be void with respect to claims under the Act.

2. Each provision of this Amendment shall be effective only to the extent that the jurisdictional requirements of the Rhode Island Franchise Investment Act, with respect to each such provision, are met independent of this Amendment. This Amendment shall have no force or effect if such jurisdictional requirements are not met.

**ADDENDUM TO KAHALA FRANCHISING, L.L.C. DISCLOSURE DOCUMENT  
FOR THE STATE OF SOUTH DAKOTA**

1. The Director of the South Dakota Division of Securities requires that certain provisions contained in franchise documents be amended to be consistent with South Dakota law, including the South Dakota Franchise Investment Law, South Dakota Codified Laws, Title 37, Chapter 37-5B, Sections 37-5B-1 through 37-5B-53 (2008). To the extent that the Agreement contains provisions that are inconsistent with the following, such provisions are hereby amended:

- a. If the Franchisee is required in the Agreement to execute a release of claims or to acknowledge facts that would negate or remove from judicial review any statement, misrepresentation or action that would violate the Law, or a rule or order under the Law, such release shall exclude claims arising under the South Dakota Franchise Investment Law, and such acknowledgements shall be void with respect to claims under the Law.
- b. Covenants not to compete upon termination or expiration of the Agreement are generally unenforceable in the state of South Dakota, except in certain limited instances as provided by law. If this Agreement contains a covenant not to compete which is inconsistent with South Dakota Law, the covenant may be unenforceable.
- c. Regardless of the terms of the Agreement concerning termination, if Franchisee fails to meet performance and quality standards or fails to make any royalty payments under the Agreement, Franchisee will be afforded thirty (30) days' written notice with an opportunity to cure the default before termination.
- d. If the Agreement requires payment of liquidated damages that are inconsistent with South Dakota law, the liquidated damage clause may be void under SDCL 53-9-5.
- e. If the Agreement requires litigation to be conducted in a forum other than the State of South Dakota, the requirement is void with respect to any cause of action otherwise enforceable under South Dakota Law.
- f. If the Agreement requires that it be governed by a state's law, other than the State of South Dakota, matters regarding franchise registration, employment, covenants not to compete, and other matters of local concern will be governed by the laws of the State of South Dakota; but as to contractual and all other matters, the Agreement and all provisions of this Amendment will be and remain subject to the application, construction, enforcement, interpretation under the governing law set forth in the Agreement.
- g. If the Agreement requires that disputed between Franchisor and Franchisee be mediated/arbitrated at a location that is outside the State of South Dakota, the mediation/arbitration will be conducted at a location mutually agreed upon by the parties. If the parties cannot agree on location for the mediation/arbitration, the location shall be determined by the mediator/arbitrator selected.

- h. Any condition, stipulation or provision in the Agreement requiring Franchisee to waive compliance of a provision under the South Dakota Franchise Investment Law is void.

2. Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the South Dakota Franchise Investment Law, with respect to each such provision, are met independent of this Addendum. This Addendum shall have no force or effect if such jurisdictional requirements are not met.

**ADDENDUM TO KAHALA FRANCHISING, L.L.C. DISCLOSURE DOCUMENT  
FOR THE STATE OF VIRGINIA**

1. The following amends Item 17 and is stated at the end of Item 17:

Pursuant to Section 13.1-564 of the Virginia Retail Franchising Act, it is unlawful for a franchisor to cancel a franchise without reasonable cause. If any grounds for default or termination stated in the Franchise Agreement does not constitute "reasonable cause," as that term may be defined in the Virginia Retail Franchising Act or the laws of Virginia, that provision may not be enforceable.

**ADDENDUM TO THE KAHALA FRANCHISING, L.L.C.**  
**DISCLOSURE DOCUMENT REQUIRED BY THE STATE OF WASHINGTON**

The State of Washington has a statute, RCW 19.100.180, which may supersede the Franchise Agreement in your relationship with the Franchisor, including the areas of termination and renewal of your Franchise Agreement. There may also be court decisions which may supersede the Franchise Agreement in your relationship with the Franchisor, including the areas of termination and renewal of your Franchise Agreement.

1. If any provisions governing termination or non-renewal disclosed herein are inconsistent with Washington law, then Washington law shall apply. The applicable law reads as follows:

Section 19.100.180. Without limiting the other provisions of this chapter, the following specific rights and prohibitions shall govern the relation between the franchisor or subfranchisor and the franchisees:

(2) For the purpose of this chapter and without limiting its general application, it shall be an unfair or deceptive act or practice or an unfair method of competition and therefore unlawful and violation of this chapter for any person to:

(a) Restrict or inhibit the right of the franchisees to join an association of franchisees.

(b) Require a franchisee to purchase or lease goods or services of the franchisor or from approved sources of supply unless and to the extent that the franchisor satisfies the burden of proving that such restrictive purchasing agreements are reasonably necessary for a lawful purpose justified on business grounds, and do not substantially affect competition: PROVIDED, That this provision shall not apply to the initial inventory of the franchise. In determining whether a requirement to purchase or lease goods or services constitutes an unfair or deceptive act or practice or an unfair method of competition the courts shall be guided by the decisions of the courts of the United States interpreting and applying the anti-trust laws of the United States.

(c) Discriminate between franchisees in the charges offered or made for royalties, goods, services, equipment, rentals, advertising services, or in any other business dealing, unless and to the extent that the franchisor satisfies the burden of proving that any classification of or discrimination between franchisees is: (i) Reasonable, (ii) based on franchises granted at materially different times and such discrimination is reasonably related to such difference in time, or is based on other proper and justifiable distinctions considering the purposes of this chapter, and (iii) is not arbitrary. However, nothing in (c) of this subsection precludes negotiation of the terms and conditions of a franchise at the initiative of the franchisees.

(d) Sell, rent, or offer to sell to a franchisee any product or service for more than a fair and reasonable price.

(e) Obtain money, goods, services, anything of value, or any other benefit from any other person with whom the franchisee does business on account of such business unless such benefit is disclosed to the franchisee.

(f) If the franchise provides that the franchisee has an exclusive territory, which exclusive territory shall be specified in the franchise agreement, for the franchisor or subfranchisor to compete with the franchisee in an exclusive territory or to grant

competitive franchises in the exclusive territory area previously granted to another franchisee.

(g) Require franchisee to assent to a release, assignment, novation, or waiver which would relieve any person from liability imposed by this chapter, except as otherwise permitted by RCW 19.100.220.

(h) Impose on a franchisee by contract, rule, or regulation, whether written or oral, any standard of conduct unless the person so doing can sustain the burden of proving such to be reasonable and necessary.

(i) Refuse to renew a Franchise Agreement without fairly compensating the franchisee for the fair market value, at the time of expiration of the Franchise Agreement, or the franchisee's inventory, supplies, equipment, and furnishings purchased from the franchisor and good will, exclusive of personalized materials which have no value to the franchisor, and inventory, supplies, equipment and furnishings not reasonably required in the conduct of the franchised business: PROVIDED, that compensation need not be made to a franchisee for good will if: (i) the franchisee has been given one year's notice of nonrenewal; and (ii) the franchisor agrees in writing not to enforce any covenant which restrains the franchisee from competing with the franchisor: PROVIDED FURTHER, that a franchisor may offset against amounts owed to a franchisee under this subsection any amounts owed by such franchisee to franchisor.

(j) Terminate a franchise prior to the expiration of its term except for good cause. Good cause shall include, without limitation, the failure of the franchisee to comply with lawful material provisions of the franchise or other agreement between the franchisor and the franchisee and to cure such default after being given written notice thereof and a reasonable opportunity, which in no event need be more than thirty days, to cure such default, or if such default cannot reasonably be cured within thirty days, the failure of the franchisee to initiate within thirty days substantial and continuing action to cure such default: PROVIDED, that after three willful and material breaches of the same term of the Franchise Agreement occurring within a twelve month period, for which the franchisee has been given notice and an opportunity to cure as provided in this subsection, the franchisor may terminate the Franchise Agreement upon any subsequent month period without providing notice or opportunity cure: PROVIDED FURTHER, that a franchisor may terminate a Franchise Agreement without prior notice or opportunity to cure a default if the franchisee: (i) is adjudicated bankrupt or insolvent; (ii) makes an assignment for the benefit of creditors or similar disposition of the assets of the franchised business; (iii) voluntarily abandons the franchised business; or (iv) is convicted of or pleads guilty or no contest to a charge of violating any law relating to the franchised business. Upon termination for good cause the franchisor shall purchase from the franchisee at a fair market value at the time of termination, the franchisee's inventory and supplies, exclusive of: (i) personalized materials which have no value to the franchisor; (ii) inventory and supplies not reasonably required in the conduct of the franchised business; and (iii) if the franchisee is to retain control of the premises of the franchised business, any inventory and supplies not purchased from the franchisor or on his express requirement: PROVIDED, that a franchisor may offset against amounts owed to a franchisee under this subsection any amounts owed by such franchisee to the franchisor."

2. In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW shall prevail.

3. A release or waiver of rights executed by a franchisee shall not include rights under the Washington Franchise Investment Protection Act except when executed pursuant to a negotiated settlement after the agreement is in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act, rights or remedies under the Act such as a right to a jury trial may not be enforceable.

4. Transfer fees are collectable to the extent that they reflect the Franchisor's reasonable estimated or actual costs in effecting a transfer.

5. Ranch\*1, Inc. and its subsidiaries, all affiliates of Kahala Franchising, L.L.C., filed for Bankruptcy Protection Code Chapter 11 of the United States Bankruptcy Code on July 3, 2001. Full disclosure of the particulars of this filing is in Item 4 of this Disclosure Document.

**ADDENDUM TO THE KAHALA FRANCHISING, L.L.C.**  
**DISCLOSURE DOCUMENT REQUIRED BY THE STATE OF WISCONSIN**

**THESE FRANCHISES HAVE BEEN REGISTERED UNDER THE WISCONSIN FRANCHISE INVESTMENT LAW. REGISTRATION DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION, OR ENDORSEMENT BY THE COMMISSIONER THAT THE INFORMATION PROVIDED HEREIN IS TRUE, COMPLETE, AND NOT MISLEADING.**

**WISCONSIN LAW MODIFICATIONS**

1. The Securities Commissioner of the State of Wisconsin requires that certain provisions contained in franchise documents be amended to be consistent with Wisconsin Fair Dealership Law, Wisconsin Statutes, Chapter 135 ("Fair Dealership Law") and the Wisconsin franchise Investment Law, Chapter 553. To the extent that the Franchise Agreement contains provisions that are inconsistent with the following, such provisions are hereby amended:

- a. The Wisconsin Fair Dealership Law, among other things, grants you the right, in most circumstances, to 90 days' prior written notice of non-renewal and 60 days within which to remedy any claimed deficiencies. If the Franchise Agreement contains a provision that is inconsistent with the Wisconsin Fair Dealership Law, the provisions of the Franchise Agreement shall be superseded by the Law's requirements and shall have no force or effect.
- b. The Wisconsin Fair Dealership Law, among other things, grants you the right, in most circumstances, to 90 days' prior written notice of termination and 60 days within which to remedy any claimed deficiencies. If the Franchise Agreement contains a provision that is inconsistent with the Wisconsin Fair Dealership Law, the provisions of the Franchise Agreement shall be superseded by the Law's requirements and shall have no force or effect.
- c. If the Franchise Agreement requires that it be governed by a state's law, other than the State of Wisconsin, to the extent that any provision of the Franchise Agreement conflicts with the Wisconsin Fair Dealership Law such provision shall be superseded by the law's requirements.
- d. Any condition, stipulation or provision in the Agreement requiring Franchisee to waive compliance with any provision under the Wisconsin Franchise Investment law may be void.

2. Each provision of this Amendment shall be effective only to the extent that the jurisdictional requirements of the Wisconsin law applicable to the provision are met independent of this Amendment. This Amendment shall have no force or effect if such jurisdictional requirements are not met.





**EXHIBIT B**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**Directory of State Agencies and Administrators**

## DIRECTORY OF STATE AGENCIES AND ADMINISTRATORS

<p><b><u>CALIFORNIA</u></b>  Department of Business Oversight  320 4<sup>th</sup> Street, #750  Los Angeles, CA 90013  (213) 576-7500</p> <p><b><u>HAWAII</u></b>  Commissioner of Securities  Dept. of Commerce and Consumer Affairs  Business Registration Division  Securities Compliance Branch  335 Merchant Street, Room 203  Honolulu, Hawaii 96813  (808) 586-2722</p> <p><b><u>ILLINOIS</u></b>  Office of the Attorney General  Franchise Division  500 South Second Street  Springfield, IL 62706  (217) 782-4465</p> <p><b><u>INDIANA</u></b>  Indiana Secretary of State  Securities Division  302 W. Washington St, Room E111  Indianapolis, IN 46204  (317) 232-6681</p> <p><b><u>MARYLAND</u></b>  Office of the Attorney General  Securities Division  200 St. Paul Place  Baltimore, Maryland 21202  (410) 576-6360</p> <p><b><u>MICHIGAN</u></b>  Michigan Department of Attorney General  Consumer Protection Division  Antitrust and Franchise Unit  525 W. Ottawa Street, 6<sup>th</sup> Floor  Lansing, MI 48933  (517) 373-7117</p>	<p><b><u>MINNESOTA</u></b>  Department of Commerce  Securities Unit  85 Seventh Place East, #500  St. Paul, MN 55101-2198  (651) 539-1638</p> <p><b><u>NEW YORK</u></b>  Office of the Attorney General  Bureau of Investor Protection &amp; Securities  New York State Department of Law  28 Liberty Street  New York, NY 10005  (212) 416-8222</p> <p><b><u>NORTH DAKOTA</u></b>  Securities Commissioner  State Capitol, 5<sup>th</sup> Floor  600 E. Boulevard Ave  Bismarck, North Dakota 58505  (701) 328-2910</p> <p><b><u>RHODE ISLAND</u></b>  Department of Business Regulation, Securities Division  John O. Pastore Complex,  Building 69-1  1511 Pontiac Avenue  Cranston, Rhode Island 02920  (401) 462-9500</p> <p><b><u>SOUTH DAKOTA</u></b>  Division of Insurance  Securities Regulation  124 S. Euclid Ave., Suite 104  Pierre, SD 57501-3185  (605) 773-3563</p>	<p><b><u>VIRGINIA</u></b>  State Corporation Commission  Division of Securities and Retail Franchising  P.O. Box 1197  Richmond, VA 23218  (804) 371-9051</p> <p><b><u>WASHINGTON</u></b>  Department of Financial Institutions  Securities Division  150 Israel Rd SW  Tumwater, WA 98501  (360) 902-8760</p> <p><b><u>WISCONSIN</u></b>  State of Wisconsin  Department of Financial Institutions  Division of Securities  201 W Washington Ave, Suite 300  Madison, WI 53703  (608) 267-9140</p>
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**EXHIBIT C**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**Franchisor's Agent for Service of Process**

## **FRANCHISOR'S AGENT FOR SERVICE OF PROCESS**

### **ARIZONA**

CT CORPORATION SYSTEM  
2394 E. Camelback Road  
Phoenix, AZ 85016

### **CALIFORNIA**

COMMISSIONER OF BUSINESS OVERSIGHT  
320 4<sup>th</sup> Street, #750  
Los Angeles, CA 90013

### **HAWAII**

COMMISSIONER OF SECURITIES  
335 Merchant Street, Room 203  
Honolulu, Hawaii 96813

### **ILLINOIS**

ILLINOIS ATTORNEY GENERAL  
500 South Second Street  
Springfield, Illinois 62706

### **INDIANA**

SECRETARY OF STATE  
302 W. Washington St, Room E111  
Indianapolis, IN 46204

### **MARYLAND**

MARYLAND SECURITIES COMMISSIONER  
200 St. Paul Place  
Baltimore, Maryland 21202-2020

### **MINNESOTA**

COMMISSIONER OF COMMERCE  
85 Seventh Place East, Suite 500  
St. Paul, Minnesota 55101-2198

### **NEW YORK**

SECRETARY OF STATE  
One Commerce Plaza  
99 Washington Avenue  
Albany, NY 12231

### **NORTH DAKOTA**

SECURITIES COMMISSIONER  
600 E. Boulevard Ave  
Bismarck, North Dakota 58505

### **RHODE ISLAND**

Director Of The Rhode Island Department Of  
Business Regulation, Securities Division  
John O. Pastore Complex, Building 69-1  
1511 Pontiac Avenue  
Cranston, Rhode Island 02920

### **SOUTH DAKOTA**

Director of Department of Labor and Regulation  
Division of Securities  
124 S. Euclid Ave., Suite 104  
Pierre, South Dakota 57501

### **VIRGINIA**

CLERK OF THE STATE CORPORATION  
COMMISSION  
1300 East Main Street, 1<sup>st</sup> Floor  
Richmond, Virginia 23219

### **WASHINGTON**

DIRECTOR OF FINANCIAL INSTITUTIONS  
150 Israel Rd SW  
Tumwater, WA 98501

### **WISCONSIN**

ADMINISTRATOR, DIVISION OF SECURITIES,  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
201 W Washington Ave, Suite 300  
Madison, WI 53703

If a state is not listed, Kahala Franchising, L.L.C. has not appointed an agent for service of process in that state in connection with the requirements of franchise laws. There may be states in addition to those listed above in which Kahala Franchising, L.L.C. has appointed an agent for service of process. There may also be additional agents appointed in some of the states listed.

**EXHIBIT D**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**Asset Purchase Agreement  
(For Sale of a Corporate Store to a Franchisee)  
with  
Promissory Note and Security Agreement and Guaranty (if applicable)**

## ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT ("Agreement"), dated \_\_\_\_\_ ("Effective Date") by and between [SELLING ENTITY], a [state] [Corporation/Limited Liability Company, etc.] ("Seller"), and \_\_\_\_\_, a [state] [Corporation/Limited Liability Company, etc.] ("Purchaser"). Seller and Purchaser may also be referred to in this Agreement as a "Party" and collectively as "Parties."

### Recitals

A. Seller owns and operates *Frullati Cafe & Bakery* restaurant no. \_\_\_\_\_ ("Franchised Business") located at [store address, city and state] ("Premises").

B. LEASING ENTITY,] a(n) \_\_\_\_\_ affiliated with Seller ("Sublessor"), has executed a lease with respect to the Premises. [MONTH TO MONTH LANGUAGE IF APPLICABLE: Notwithstanding the foregoing, the Lease Agreement is currently on a month-to-month basis, and Purchaser is currently in direct negotiations with the landlord for the Premises to enter into a new lease directly with the landlord. Upon execution of said newly negotiated lease, the Lease Agreement shall be terminated and become null and void.]]

C. Seller desires to sell and transfer to Purchaser, and Purchaser desires to purchase and acquire from Seller, substantially all of the assets owned by Seller and to be used in connection with the operation of the Franchised Business.

D. In conjunction with the execution of this Agreement, Purchaser executed a franchise agreement[, as amended,] effective \_\_\_\_\_ 20\_\_ ("Franchise Agreement") with Kahala Franchising, L.L.C., an Arizona limited liability company, affiliated with Seller ("Franchisor").

E. In conjunction with the execution of this Agreement, Purchaser executed a sublease effective \_\_\_\_\_ 20\_\_ ("Sublease Agreement") with Sublessor and shall comply with all terms and conditions in the Sublease, including but not limited to, paying any additional security deposits, if required. [MONTH TO MONTH LANGUAGE IF APPLICABLE: Notwithstanding the foregoing, the Sublease Agreement is currently on a month-to-month basis and may be terminated by Sublessor with thirty (30) days prior written notice to Purchaser. As stated above, Purchaser is currently in direct negotiations with the landlord for the Premises to enter into a new lease directly with the landlord and upon execution of said newly negotiated lease, the Sublease Agreement shall be terminated and become null and void.]]

### Agreement

NOW, THEREFORE, in consideration of the foregoing promises and the mutual covenants and agreements contained herein, the Parties hereby agree as follows:

1. **Sale of Assets.** At Closing (as defined in Section 5(a), below), Seller shall sell, transfer, convey, assign and deliver to Purchaser, and Purchaser shall purchase and acquire from Seller, all of the furniture, fixtures and equipment and other items owned by Seller and to be used in connection with the Franchised Business (excluding cash, company record books and tax

records) (collectively, "Transferred Assets")], and to Seller's knowledge, free and clear of all liens, claims, charges, encumbrances and security interests of any nature or type whatsoever][OR][subject to the terms of the Franchise Agreement]. A list of the Transferred Assets is attached hereto as **Schedule 1** to **Exhibit A**. Seller makes no representation or warranty, express or implied, regarding the merchantability of the Transferred Assets or the condition or quality thereof AND HEREBY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE and the Parties hereby agree that the Transferred Assets are being purchased in as "**AS IS**" condition.

## **2. Purchase Price.**

(a) In consideration of the sale of the Transferred Assets, Purchaser shall pay:

[ Simultaneously with the execution and delivery of this Agreement, the Purchase Price (as defined in Section 2(b) below) by electronic funds transfer, wire or cashiers' or certified check in immediately available funds.]

[OR]

[ Simultaneously with the execution and delivery of this Agreement, the Purchase Price (as defined in Section 2(b) below) payable as set forth in the attached Promissory Note ("Deferred Payment").]

[OR

[(i) Simultaneously with the execution and delivery of this Agreement, a non-refundable deposit in the amount of XX Thousand Dollars (**\$XX,000**) ("Deposit"), by electronic funds transfer, wire or cashiers' or certified check in immediately available funds; and

(ii) At Closing, an amount equal to the difference between the Purchase Price (as defined in Section 2(b) below) minus the Deposit (such difference is referred to as "Purchase Price Balance"), by electronic funds transfer, wire or cashiers' or certified check in immediately available funds.] OR [At Closing, XX Thousand Dollars (**\$XX,000**) ("Deferred Payment"), payable as set forth in the attached Promissory Note.]

(b) The "Purchase Price" is XX Thousand Dollars (**\$XX,000**), which shall be allocated as follows: [(i) XX Thousand Dollars (**\$XX,000**) to the leasehold improvements at the Premises;] [(ii) XX Thousand Dollars (**\$XX,000**) to the Transferred Assets, including all furniture, fixtures and equipment, as more fully described in **Schedule 1** to the Bill of Sale, attached hereto as **Exhibit A**, and incorporated herein by reference.

[The Purchase Price does not include: (i) consumable inventory including food products, perishables and paper products; or (ii) cash on hand.]

## **3. Representations and Warranties.**

(a) To induce Purchaser to enter into this Agreement and to perform Purchaser's



obligations hereunder, and with full knowledge that Purchaser will rely thereon, Seller represents and warrants as follows:

- (i) Seller has title to and rightful possession to the Transferred Assets, and each of the Transferred Assets is and shall, upon the delivery thereof to Purchaser, be free and clear of recorded and publicly available liens, claims, charges, encumbrances and security interests.
  - (ii) Seller is a limited liability company duly organized, validly existing and in good standing under the law of the State of Arizona.
  - (iii) Seller has full right, power and authority to execute and deliver this Agreement, and to consummate the transactions contemplated hereby.
  - (iv) This Agreement has been duly executed and delivered by Seller and constitutes the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms.
  - (v) Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will conflict with, violate or result in a breach of or default under (with or without the giving of notice or the passage of time, or both): (a) any license, instrument, contract or agreement to which Seller is a party or by which Seller is bound, or (b) the articles of incorporation or the bylaws of Seller. Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will result in the creation of any lien, claim, charge, encumbrance or security interest of any nature or type whatsoever with respect to the Transferred Assets. Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will require any consent or approval of, or any filing with, any governmental entity or other person.
  - (vi) At Closing, the Transferred Assets are being purchased in “**AS IS**” condition and will comprise all of the assets and property necessary to conduct the Franchised Business in accordance with Franchisor’s operations manual (“Manual”).
  - (vii) The development and/or conduct of the Franchised Business, and the ownership and use of the Transferred Assets in accordance with Franchisor’s Manual, complies, or will (as of the date of Closing) comply, with all applicable federal, foreign, state and local laws, regulations and ordinances; provided, however, that Purchaser may be required to obtain certain licenses and permits in connection with the operation of the Franchised Business.
- (b) To induce Seller to enter into this Agreement and to perform Seller’s obligations hereunder, and with full knowledge that Seller will rely thereon, Purchaser represents and warrants as follows:
- (i) Purchaser is a [type of entity] duly organized, validly existing and in good

standing under the law of the State of [state].

- (ii) Purchaser has full right, power and authority to execute and deliver this Agreement, and to consummate the transactions contemplated hereby.
- (iii) This Agreement has been duly executed and delivered by Purchaser and constitutes the legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms.
- (iv) Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will conflict with, violate or result in a breach of or default under (with or without the giving of notice or the passage of time, or both): (a) any license, instrument, contract or agreement to which Purchaser is a party or by which Purchaser is bound, or (b) the certificate of incorporation or the bylaws (or other comparable charter documents) of Purchaser. Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will require any consent or approval of, or any filing with, any governmental entity or other person.
- (v) Purchaser acknowledges that:
  - (a) There are several potential locations for the location of Purchaser's *Frullati Cafe & Bakery* restaurant;
  - (b) The decision to establish and operate Purchaser's *Frullati Cafe & Bakery* restaurant at the Premises was made solely by Purchaser, without any reliance upon any information provided (if any), recommendation made (if any) or approval given by Seller, any area representative, Sublessor, or any of their respective shareholders, directors, officers, employees, representatives, agents or affiliates;
  - (c) Seller's selection and approval of the Premises as a site for a *Frullati Cafe & Bakery* restaurant provides no assurance or guaranty as to Purchaser's results of operations in connection with its *Frullati Cafe & Bakery* restaurant at the Premises;
  - (d) Purchaser has reviewed the lease (including all amendments and addendums) with respect to the Premises and approves of the terms thereof, including rental payment amounts;
  - (e) Purchaser accepts full responsibility for the consequences of Purchaser's decision to open and operate a *Frullati Cafe & Bakery* restaurant at the Premises.

#### **4. Interim Period.**

- (a) Between the date hereof and the Closing, Seller has operated the Franchised Business, in accordance with Seller's standard operating procedures for operating *Frullati Cafe & Bakery* restaurants and the Franchised Business is open to the public for business.

- (b) Purchaser shall attend Seller's training program, if so required by Seller in the Franchise Agreement.

## 5. **Closing.**

- (a) Subject to the conditions set forth in Sections 5(b) and 5(c) hereof, the transactions contemplated by this Agreement shall be consummated on the Effective Date ("Closing") at Seller's office or at another mutually agreeable location.
- (b) The obligations of Seller to consummate the transactions contemplated by this Agreement are subject to the satisfaction at or prior to the Closing of the following conditions, any of which may be waived by Seller, in its sole discretion. Purchaser shall use its best efforts to cause each and every one of the following conditions to be satisfied at or before the Closing.

- [(i) Purchaser shall have delivered to Seller the [Purchase Price] or [Purchase Price Balance], as set forth in Section 2 of this Agreement;]

[OR]

- [(i) Purchaser shall have executed and delivered to Seller the Promissory Note and Security Agreement attached hereto as **Exhibit B** ("Promissory Note") in the amount of the Deferred Payment and a portion of the Purchase Price in the form of cash or by cashiers' or certified check; ]

- (ii) Purchaser shall have executed and delivered to Franchisor the Franchise Agreement and to Sublessor the Sublease with respect to the Premises, in the forms then being executed by new franchisees of Franchisor and sublessees of Sublessor;

- (iii) Purchaser shall have delivered to Sublessor the Sublease Security Deposit in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) as defined in the Sublease [and a Lease Security Deposit in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) as defined in the Sublease in connection with the Premises as contemplated by the Sublease and pursuant to Section 5(d) below, as applicable;

- (iv) Purchaser shall have delivered to Franchisor the Initial Franchise Fee in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) as defined in the Franchise Agreement; and

- (v) The representations and warranties of Purchaser contained in this Agreement shall be true and correct on and as of Closing, with the same effect as though such representations and warranties had been made on and as of the date of Closing; and each and all of the terms, covenants, conditions and agreements to be performed

or complied with by Purchaser on or before Closing shall have been performed or complied with. This provision shall be self-executing, and the consummation of the transactions contemplated by this Agreement by Purchaser shall constitute Purchaser's certification of the conditions stated herein.

Assuming that Seller has satisfied all of the conditions precedent contained in Section 5(c), if any of the requirements of this Section 5(b) have not been satisfied by Closing, Purchaser shall be in breach of its obligations hereunder.

- (c) The obligations of Purchaser to consummate the transactions contemplated by this Agreement are subject to the satisfaction at or prior to Closing of the following conditions, any of which may be waived by Purchaser, in its sole discretion. Seller shall use its best efforts to cause each and every one of the following conditions to be satisfied at or before Closing.
  - (i) As of Closing, there shall have been no material adverse change in the Franchised Business, the Transferred Assets or the Premises, or the condition thereof, since the date of this Agreement, other than changes contemplated by Section 5;
  - (ii) Seller shall have delivered to Purchaser the Bill of Sale executed by Seller; and
  - (iii) The representations and warranties of Seller contained in this Agreement shall be true and correct on and as of Closing, with the same effect as though such representations and warranties had been made on and as of the date of Closing; and each and all of the terms, covenants, conditions and agreements to be performed or complied with by Seller on or before Closing shall have been performed or complied with. This provision shall be self-executing, and the consummation of the transactions contemplated by this Agreement by Seller shall constitute Seller's certification of the conditions stated herein.

Assuming that Purchaser has satisfied all of the conditions precedent contained in Section 5(b) if any of the requirements of this Section 5(c) (other than the requirement contained in clause (i) if such material adverse change shall be beyond the control of Seller) has not been satisfied by Closing, Seller shall be in breach of its obligations hereunder.

- (d) The rent payable pursuant to the lease for the Premises shall be paid by Seller for the month in which the Closing occurs and Purchaser shall pay to Seller (on a per diem basis, based upon a thirty (30)-day month) an amount equal to the rent prepaid by Seller with respect to the period on and after the date of Closing, via an ACH debit or Seller will bill Purchaser for such pro-rated rent amount.
- (e) Seller shall be responsible for all compensation to employees of the Franchised Business for the period through the date immediately preceding the Closing. Purchaser shall be responsible for all compensation to employees of the Franchised Business for the period on and after the date of Closing.

Notwithstanding anything contained in this Agreement to the contrary, Purchaser shall not be obligated to employ any of Seller's employees after Closing.

- (f) Seller shall be responsible for all costs, fees and expenses relating to the Franchised Business, including but not limited to CAM reconciliation charges, and property taxes, on a pro-rated basis for the period through the date immediately preceding the Closing. Purchaser shall be responsible for all costs, fees and expenses relating to the Franchised Business, including but not limited to, CAM reconciliation charges, property taxes, etc., on a pro-rated basis for the period on and after the date of Closing.

**6. Notices.** All notices, consents, approvals or other instruments required or permitted to be given by either Party pursuant to this Agreement shall be in writing and given by (a) hand delivery, (b) facsimile, (c) express overnight delivery service or (d) certified or registered mail, return receipt requested, and shall be deemed to have been delivered upon (i) receipt, if hand-delivered, (ii) transmission, if delivered by facsimile, (iii) the next business day following the date of deposit with the delivery service, if delivered by express overnight delivery service, or (iv) the third business day following the day of deposit of such notice with the United States Postal Service, if sent by certified or registered mail, return receipt requested. Notices shall be provided to the Parties at the addresses and facsimile numbers specified below:

If to Seller: [Selling Entity]  
Attention: Legal Department  
9311 East Via De Ventura  
Scottsdale, Arizona 85258  
Telephone Number: (480) 362-4800  
Facsimile Number: (480) 362-4819

If to Purchaser: [Purchaser]  
[address]  
Telephone Number:  
Facsimile Number: OR Email:

Any Party may change its address or facsimile number by giving notice in writing, stating its new address or facsimile number, to the other Party to this Agreement as provided in the foregoing manner.

**7. [USE ONLY IF BROKER INVOLVED WITH SALE, OTHERWISE RESERVE][Brokers' Fees.** Seller has retained Broker Entity ("Broker") as broker in connection with the sale of the Transferred Assets contemplated hereby. The Seller shall be solely responsible for the payment of any fees due Broker in connection with the sale of the Transferred Assets contemplated hereby.]

**8. Survival.** Each of the representations, warranties and covenants contained herein shall survive Closing, irrespective of any investigation or inquiry made by, or any knowledge of, any Party.

**9. Successors and Assigns.** This Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective assigns, legal representatives, executors, heirs and successors.

**10. Amendment, Modification or Waiver.**

- (a) No amendment, modification or waiver of any condition, provision or term of this Agreement shall be valid or of any effect unless made in writing, signed by the Parties and specifying with particularity the nature and extent of the amendment, modification or waiver. Waiver of any matter shall not be deemed a waiver of the same or any other matter on any future occasion.
- (b) Failure on the part of any Party to complain of any act or failure to act of the other Party or to declare the other Party in default, irrespective of how long the failure continues, shall not constitute a waiver by that Party of its rights under this Agreement.

**11. Entire Agreement.** This Agreement, including the exhibits hereto, contains the entire understanding and agreement of the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings between the Parties with respect to such subject matter. Each of the exhibits is incorporated in this Agreement by this reference and constitutes a part of this Agreement.

**12. Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Party.

**13. Dispute Resolution.**

- (a) Except as otherwise provided herein, any dispute, claim or controversy arising out of or relating to this Agreement, the breach hereof, the rights and obligations of the Parties hereto or the relationship between the Parties, or the entry, making, interpretation, or performance of either Party under this Agreement ("Dispute"), which cannot be resolved by mediation under Section 13(d) below or is not subject to mediation under the terms of this Agreement, shall be settled by arbitration administered by the American Arbitration Association ("AAA") in accordance with its Commercial Arbitration Rules as modified below.
- (b) Any arbitration shall take place before a sole arbitrator in Maricopa County, Arizona or, if our headquarters are no longer located in Maricopa County, Arizona, then the arbitration shall take place in the county in which our principal place of business is located at the time the arbitration is commenced. Purchaser agrees to conducting the arbitration where Seller is located is appropriate. The Parties agree that the arbitrator shall be an attorney licensed to practice law in the United States and must have a minimum of five (5) years of experience in franchise law. Judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The arbitrator shall, in the award, allocate all of the costs of the arbitration, including the fees of the arbitrator and the reasonable attorney's fees of the prevailing Party, against the Party who did not prevail. To the extent permitted by applicable law, no issue of fact or law shall be given preclusive or collateral estoppel effect in any other dispute, arbitration proceeding or litigation, except to the extent such issue may have been specifically determined in another proceeding between the Parties. This agreement to arbitrate shall survive any termination or expiration of this Agreement, however effected. The Parties agree that any arbitration shall be

solely between them (including any affiliates) and shall not include as a Party, by consolidation, joinder, or in any other manner, any other person or entity, unless both Parties consent in writing. Both Parties shall have the absolute right to refuse such consent. Further, the Parties expressly waive any right to bring and/or participate in any class or other consolidated, joined or multi-party arbitration claim or proceeding, whether or not permissible under the AAA Commercial Arbitration Rules, including, but not limited to, any claim brought on their behalf by an association of which it, he or she is a member. At the request of any Party, the arbitration shall be conducted in a manner that maintains the confidentiality of the proceedings.

- (c) The arbitrator(s) will issue a reasoned award, with findings of fact and conclusions of law. Actions to enforce an express obligation to pay monies may be brought under the Expedited Procedures of the AAA's Commercial Arbitration Rules. The Federal Arbitration Act shall govern, excluding all state arbitration laws. Arizona law will govern all other issues. With respect to discovery, the arbitrator shall require each Party to make a good cause showing before any discovery exceeding that specifically authorized by the AAA Commercial Arbitration Rules will be granted.
- (d) Prior to the commencement of an arbitration proceeding, the Parties must first submit any Dispute to non-binding mediation. At the request of any Party, the mediation will be confidential. The mediation shall be conducted in Maricopa County, Arizona or in the county in which our headquarters are located at the time of mediation, unless the Parties shall mutually agree to a different location. The Parties to the mediation will share equally in its costs and expenses, except those costs and expenses incurred separately by each Party, including, without limitation, counsel fees and expenses. The mediation process will be deemed "Completed" when the Parties agree that it has been completed, the mediator declares that any impasse exists or sixty (60) days have elapsed since the date of the initiating Party's notice to the other Party that it is initiating the mediation process, whichever occurs first.
- (e) Notwithstanding anything contained in this Agreement to the contrary, the provisions of Sections 13(a), 13(b), 13(c) and 13(d) do not apply to a Dispute where: (i) Seller brings an action for an express obligation to pay monies, declaratory relief, preliminary or permanent equitable relief, any action at law for damage to Seller's goodwill, the confidential information, the proprietary marks or for fraudulent conduct by Purchaser; or (ii) the delay resulting from the mediation process may endanger or adversely affect the public (for example, unhealthy, unsafe or unsanitary conditions would continue to exist). For such disputes, Seller may bring an action in any federal or state court having jurisdiction, whether for monetary damages and/or for temporary preliminary and permanent injunctive relief or specific performance in addition to, and not exclusive of, any other remedies available to Seller. Purchaser hereby consents to and waives any objection or defense and agrees not to contest venue, forum non conveniens or jurisdiction of such court or arbitration.
- (f) Disputes concerning the validity or scope of arbitration, including whether a dispute is subject to arbitration, are beyond the authority of the arbitrator(s) and will be determined by a court of competent jurisdiction pursuant to the Federal Arbitration Act, 9 U.S.C. § 1 et seq., as amended from time to time.

- (g) Either Party may appeal the final award of the arbitrator, if it is over One Hundred Thousand Dollars (\$100,000), to the appropriate U.S. District Court. The Court's review of the arbitrator's findings of fact will be under the clearly erroneous standard, and the Court's review of all legal rulings will be *de novo*. If it should be determined that this provision for federal court review is not enforceable, then either Party may appeal the arbitrator's final award, if it is over One Hundred Thousand Dollars (\$100,000), to a panel of three arbitrators chosen under AAA procedures, which will employ the same standards of review stated immediately above.

**14. Applicable Law and Forum; Waiver of Jury; Statute of Limitations.**

Except to the extent that the United States Trademark Act of 1946, as amended (15 U.S.C., § 1051 et seq.) or the franchising laws of any state that may be applicable, the laws of the State of Arizona govern all rights and obligations of the Parties under this Agreement. Seller and Purchaser agree, subject to the mandatory mediation and arbitration provisions of Section 13 of this Agreement, that any appropriate state or federal court located in Maricopa County, Arizona has exclusive jurisdiction over any Dispute arising under or in connection with this Agreement and is the proper forum in which to adjudicate the case or controversy. Notwithstanding the foregoing, any action initiated by Seller may, at Seller's election, be brought in any jurisdiction where Purchaser is domiciled or that has jurisdiction over Purchaser. The Parties hereto irrevocably submit to the jurisdiction of, and venue in, any such court, and hereby waive any objection or defense thereto. THE PARTIES AGREE THAT ALL DISPUTES SUBMITTED TO THE COURT PURSUANT TO THIS SECTION SHALL BE TRIED TO THE COURT SITTING WITHOUT A JURY, NOTWITHSTANDING ANY STATE OR FEDERAL CONSTITUTIONAL OR STATUTORY RIGHTS OR PROVISIONS.

Notwithstanding anything contained in this Agreement to the contrary, the Parties agree that any claims under, arising out of, or related to, this Agreement must be brought within two (2) years of the date on which the underlying cause of action accrued, and Seller and Purchaser hereby waive any right to bring any such action after such two-year period except for the collection of any unpaid amounts due to Seller or its affiliate.

**15. Attorneys' Fees.** In the event of any claim, controversy or dispute arising out of or relating to this Agreement, or the breach thereof, the prevailing Party may recover reasonable attorneys' fees incurred in connection with any court or arbitration proceeding.

**16. Remedies Cumulative.** The remedies of the Parties under this Agreement are cumulative and shall not exclude any other remedies to which any Party may be lawfully entitled.

**17. Captions.** Captions used throughout this Agreement are for convenience of reference only and shall not be considered in any manner in the construction or interpretation hereof.

**18. Additional Actions.** Each Party agrees to do all acts and things and to make, execute and deliver such written instruments as may from time to time be reasonably required to carry out the terms and provisions of this Agreement.



**19. Construction.** The Parties acknowledge that each Party was represented (or had the opportunity to be represented) by legal counsel in connection with this Agreement, the exhibits hereto and the transactions contemplated by this Agreement and that each of them and its counsel have reviewed this Agreement, or have had an opportunity to do so, and that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any amendments or any exhibits hereto or thereto.

***[SIGNATURE PAGE FOLLOWS]***

IN WITNESS WHEREOF, the Parties hereto, by and through its respective representatives with full rights, power and authority to enter into and bind his or her respective Party without further consent or approval of any kind, has duly executed and delivered this Agreement as of the Effective Date.

**SELLER:**

[SELLING ENTITY,]

a(n) \_\_\_\_\_

By: \_\_\_\_\_  
[Name,] [Title]

**PURCHASER:**

[PURCHASER],

a(n) \_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

By: \_\_\_\_\_  
[Name, Title]

**EXHIBIT A**  
**TO ASSET PURCHASE AGREEMENT**  
**(BILL OF SALE)**

## BILL OF SALE

This BILL OF SALE, dated \_\_\_\_\_, executed by [SELLING ENTITY], a(n) \_\_\_\_\_ ("Grantor") in favor of [PURCHASER], a(n) \_\_\_\_\_ ("Grantee").

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, Grantor does hereby convey, grant, bargain, sell, transfer, set over, assign, alien, remise, release, deliver and confirm unto Grantee, its successors and assigns forever, free and clear of all liens, security interests, claims, charges or encumbrances of any kind, the assets listed on **Schedule 1** attached hereto (collectively, "Assets"), TO HAVE AND TO HOLD all of the Assets unto Grantee, its successors and assigns to their own use and behoof forever.

The following are excluded assets and are excluded from **Schedule 1**:

- a. Cash deposits, including, but not limited to, any utility and security deposits, banks accounts, certificates of deposit, securities or evidences of indebtedness received prior to and including the date of this Bill of Sale;
- b. Credit card or house accounts receivable from sales generated from the Franchised Business and constituting a part thereof, prior to and including the date of this Bill of Sale, any other accounts receivable, or choses of action accruing on or before Closing, as defined in the Asset Purchase Agreement; and
- c. Consumable inventory including, but not limited to, food products, perishables, paper products, cash on hand and other goods.

**EXECUTED** as of the date first set forth above.

### GRANTOR:

[SELLING ENTITY],  
a(n) \_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

## **Schedule 1 to Bill of Sale**

### **List of Assets**

1. All telephone numbers used in connection with the Franchised Business, including, without limitation, the following:
2. All leasehold improvements associated with the Franchised Business.
3. All goodwill associated with the Franchised Business.
4. All of Grantor's furniture, fixtures and equipment, appliances and personal property located at the Franchised Business, including, without limitation, the following:

**Quantity**

**Description**

**Serial Number**

**EXHIBIT B**  
**TO ASSET PURCHASE AGREEMENT**

(PROMISSORY NOTE AND SECURITY AGREEMENT)

[Attached]

[Not Applicable] [OR] [Applicable only if Purchaser enters into a Promissory Note and Security Agreement]

## PROMISSORY NOTE AND SECURITY AGREEMENT

Note Amount:  
[\$AMOUNT]

Scottsdale, Arizona  
[DATE]

1. Promise to Pay. For value received, [NAME], a(n) [\_\_\_\_\_] corporation / limited liability company / individual] ("Maker"), promises to pay to the order of [Holder Entity], a [state] [Corporation/Limited Liability Company, etc.] ("Holder"), at 9311 East Via De Ventura, Scottsdale, Arizona 85258, or at such other address as Holder may designate at any time by written notice to Maker, in lawful money of the United States of America, the principal sum of XX Thousand Dollars (\$XX,000.00) together with all then-accrued and unpaid interest and other amounts that are Maker's obligations under this Promissory and Security Agreement ("Note"), if any. Maker and Holder may also be referred to in this Agreement as a "Party" and collectively as "Parties." The Note balance represents the principal amount owing by Maker to Holder for the purchase price of the Store (as defined below) due under the Asset Purchase Agreement in the aggregate amount of XX Thousand Dollars (\$XX,000.00) [plus the UCC-1 filing fee (as described in Section 7) in the amount of One Hundred Dollars (\$100)](collectively,"Debt") for the *Frullati Cafe & Bakery* store number \_\_\_\_ at the following location \_\_\_\_\_ ("Store").

2. Computation of Interest. Except as otherwise set forth in this Note, this Note shall [not bear interest OR bear interest at the rate of \_\_\_\_% per annum] based on a \_\_\_\_ [month/year] amortization schedule.

3. Required Payments; Method of Payment. Principal and interest, if any, shall be repaid to Holder in a total of \_\_\_\_\_ (XX) [weekly/monthly] installments, which installments shall be due and payable in \_\_\_\_\_ (XX) equal installments each in the amount of \$\_\_\_\_\_, with the first installment due on [DATE OF] and the remaining \_\_\_\_\_ (XX) installments due on the [DAY OF THE WEEK or DATE OF THE MONTH] of each consecutive [week / month] thereafter, with a final payment in the amount of \$\_\_\_\_ due on [MATURITY DATE], all as set forth on the Amortization Schedule attached hereto as EXHIBIT "1" and incorporated herein by reference. Maker authorizes Holder (or one of its affiliates) to deduct payments owed by Maker (or one of its affiliates) to Holder under this Note out of Maker's bank accounts via electronic funds transfer in the same way Holder (or one of its affiliates) is authorized to collect payment under the Franchise Agreement entered into by and between Holder and Maker dated \_\_\_\_\_, 20\_\_\_\_ or other franchise documents that Maker (or a related entity) entered into with Holder (or one of its affiliates) for the Store (individually and collectively, "Franchise Agreement"). All payments due under this Note shall be deducted by Holder's close of business from Maker's Depository Account (as defined in the Franchise Agreement) on the day they are due (or the preceding banking business day if such date is a holiday or falls on a weekend). Holder shall not be responsible for any interest charges for any overage collected due to Maker's failure to timely authorize payment. Additionally, Holder shall not be responsible for any bank service charges incurred by Maker which result in the withdrawal of funds from Maker's Depository Account. Maker shall pay Holder FIFTY AND 00/100 DOLLARS (\$50.00) for each withdrawal attempted from Maker's Depository Account pursuant to this Section 3 that is returned for non-sufficient funds. Maker shall also reimburse Holder for all other costs incurred by Holder in collecting or attempting to collect funds due Holder from the Depository Account (for example, without limitation, charges for non-sufficient funds, uncollected funds or other discrepancies in deposits or maintenance of the Depository Account balance in accordance with the terms of the Franchise Agreement). Holder does not have to make or give "presentment, demand, protest or notice" to get paid. Maker hereby waives any right to "presentment, demand, protest and notice" as set forth in Section 10 below.

4. Application of Payments. All payments and other credits due under this Note shall be applied: [if part of Note balance a non-refundable fee (i) first to the amount of principal allocated to the Initial Franchisee Fee/Renewal Fee/Transfer Fee,] [(i) first][[(ii) second,] to fees, costs and expenses payable by Maker under this Note, [(ii) second,][(iii) third,] to accrued and unpaid interest, if any, and [(iii) third][(iv) fourth,] to principal.

5. Collection Costs. If suit, arbitration, or other legal proceeding or any non-judicial foreclosure proceeding is instituted or any other action is taken by Holder to collect all or any part of the indebtedness evidenced hereby or to proceed against the Collateral (as defined below) for any portion of such indebtedness or against any guarantor of the payment of any portion of the indebtedness, Maker promises to pay Holder's attorneys' fees and other costs (to be determined by the court and not by a jury) incurred thereby. Such fees and costs shall be included in any judgment or arbitration award obtained by Holder, and shall bear interest at the default rate set forth in Section 12.

6. Optional Prepayments. Maker shall have the option to prepay this Note, in full or in part, at any time and from time to time, without penalty. Maker shall identify each optional prepayment of principal as such by written notice to Holder at the time of payment, and no such prepayment shall decrease or defer the monthly installment payments required by Section 3 above.

7. Security Interest. The indebtedness evidenced by this Note shall be secured by, and Maker hereby grants to Holder, a security interest in the equipment, inventory, leasehold improvements, and all proceeds thereof, and all increases, additions, accessories, accessions, substitutions, and replacements thereto located at the Store including, without limitation, insurance proceeds ("Collateral"). A description of the Collateral is attached hereto as **EXHIBIT "2"** and incorporated herein by reference. Concurrent with the execution of this Note or at any time after the execution of this Note so long as a balance remains outstanding under this Note, Maker shall execute and deliver to Holder, or alternatively Maker gives Holder permission to file, at Maker's expense, a UCC-1 financing statement, evidencing the security interest granted by this Section 7.

8. Guaranty of Promissory Note and Security Agreement. If Maker is an individual and married, Maker represents and warrants that Maker's obligations under this Note are guaranteed by Maker's spouse and/or any other individuals requested by Holder as consideration for its agreements herein (together, "Guarantors"), pursuant to the Guaranty of Promissory Note and Security Agreement attached hereto as **EXHIBIT "3"** and incorporated herein by reference. If Maker is a corporation, limited liability company, or other business entity, Maker represents and warrants that Maker's obligations under this Note are guaranteed by each of the persons who are shareholders, members, or other owners, direct or indirect, of Maker (and their respective spouses, if married); and/or any other individuals requested by Holder as consideration for its agreements herein (together, also "Guarantors"), pursuant to the Guaranty of Promissory Note and Security Agreement. In the event any person who has not previously signed a Guaranty of Promissory Note and Security Agreement becomes Maker's spouse; person who is a shareholder, member, or other owner, direct or indirect, of Maker (or their respective spouses, if married); and/or any other individual requested by Holder as consideration for its agreements herein, at any time after the execution of this Agreement, Maker must cause such person(s) to immediately execute and deliver a Guaranty of Franchise Agreement to Holder.



9. Maker's Representations and Warranties. Maker represents and warrants the following:

A. Collateral.

(i) Maker will make sure that the Collateral is maintained and in good operating condition, necessary to the conduct of Maker's business. All maintenance must also comply with any legal or regulatory requirements.

(ii) Maker will make sure that Maker has not suffered any material adverse change in Maker's financial condition or operations.

(iii) Maker will protect and preserve the Collateral and Holder's security interest therein, and assist Holder in all ways in enforcing Holder's security interests in the Collateral.

(iv) Maker will not incur any debts beyond Maker's ability to pay such debts as they mature.

(v) Maker will pay, before they become delinquent, all taxes and claims, assessments, charges, and the like, as well as all amounts due under all agreements with third parties.

(vi) Maker will take all actions necessary or appropriate to protect the Collateral that consists of technology and proprietary information. This includes, without limitation, filing all applicable documentation with the United States and foreign patent and trademark offices.

(vii) Holder will give Maker prior notice if Holder, or Holder's agents, want to inspect the Collateral. Holder may inspect the Collateral during regular business hours. Holder will take reasonable steps not to interfere with Maker's business operations during any such inspection. If Holder finds during an inspection that Maker is not complying with this Note or if Maker is otherwise in default under this Note, Maker (and not Holder) will pay Holder's reasonable travel, meals and lodging costs, Holder's salary costs, and Holder's costs and fees and those of Holder's agents for re-inspection. Maker will promptly cure any problems with the Collateral that are discovered during Holder's inspections.

(viii) Maker will use the Collateral only for business purposes. Maker will obey all legal and regulatory requirements in Maker's use of the Collateral and the conduct of Maker's business.

(ix) Maker will make all additions, modifications and improvements to the Collateral to the extent necessary. Otherwise, Maker will not alter the Collateral without Holder's written permission.

(x) Maker will not remove the Collateral from the Store location.

(xi) Maker has and will continue to have good and merchantable title to all of the Collateral, free and clear of all security interests, liens and other encumbrances, with the exception of Holder's lien described in Section 7 above.

(xii) Maker will not convey, assign, sell, mortgage, transfer, encumber, pledge, hypothecate, grant a security interest in, grant options with respect to, lease or otherwise dispose of all or any part of any interest whatsoever in or to any or all of the Collateral, or any interest therein.

B. Insurance.

(i) Until Maker has made all payments to Holder under this Note in full, Maker will keep the Collateral insured. The amount of insurance, the coverage, and the insurance company must be acceptable to Holder.

(ii) If Maker does not provide Holder with written evidence of insurance that is acceptable to Holder, Holder may buy the insurance, at Maker's expense. Maker will promptly pay Holder the cost of this insurance. Holder has no obligation to purchase any insurance. Any insurance that Holder purchases will be Holder's insurance, and not Maker's, and Holder may insure the Collateral beyond the date of satisfaction of the Debt.

(iii) Insurance proceeds may be used to repair or replace damaged or lost Collateral or to pay Holder the present value of the payments described herein.

(iv) Maker appoints Holder as Maker's "attorney-in-fact" to make claims under the insurance policies, to receive payments under the insurance policies, and to endorse Maker's name on all documents, checks or drafts relating to insurance claims for Collateral. Upon request by Maker, Holder will provide Maker with copies of any and all documents signed as Maker's attorney-in-fact. Holder agrees to pay Maker any insurance proceeds received by Holder in excess of the any and all amounts due Holder under this Note.

10. Waivers and Acknowledgments. Maker, and any sureties, endorsers and guarantors of all or any portion of the indebtedness evidenced by this Note waive: (a) demand, notice, diligence, protest, presentment for payment, and notice of extension, dishonor, protest, demand and nonpayment of this Note; and (b) any release or discharge by reason of (i) any release or substitution of, or other change in, any security given for the indebtedness evidenced by this Note or the obligation of any other person or entity who or which is now or may become directly or indirectly liable for all or any portion of the indebtedness evidenced by this Note, or (ii) any extension or other modification of the time or terms of payment of all or any portion of the indebtedness evidenced by this Note. Maker, and any sureties, endorsers and guarantors agree that their liability for the indebtedness evidenced hereby shall be joint and several.

11. Default, Take-Back Rights and Additional Remedies.

A. Default. Maker will be in default if any of the following occurs:

(i) Maker does not pay Holder, within seven (7) days after written notice is received by Maker from Holder, any payment that Maker owes Holder under this Note, the Franchise Agreement (including, but not limited to, royalty and advertising fees) or any other agreement, loan, debt, lease or other financial arrangement that Maker has with Holder or one of its affiliates (each a "Payment Default").

(ii) Any of the financial information that Maker gives Holder is not materially true and complete, or Maker fails to tell Holder anything that would make the financial information not materially misleading.

(iii) Maker does something it is not permitted to do, or Maker fails to do anything that is required of them, under this Note, the Franchise Agreement or any other lease, loan, debt or other financial arrangement that Maker has with Holder and such breach continues uncured for a period of seven (7) days after Holder has given written notice of such default to Maker, provided that such cure period shall not apply to any covenant relating to insurance covering the Collateral described in Section 7.

(iv) An event of default occurs under the Franchise Agreement, or under any other lease, loan, debt or obligation of Maker (or any guarantor) that exceeds Fifty Thousand Dollars (\$50,000) in the aggregate that results in the acceleration or mandatory prepayment thereof.

(v) Maker files bankruptcy, or involuntary bankruptcy is filed against Maker or any guarantor and such involuntary bankruptcy is not dismissed within sixty (60) days.

(vi) Maker is subject to any other insolvency proceeding other than bankruptcy (for example, a receivership action or an assignment for the benefit of creditors) and such proceeding that is involuntary is not dismissed within sixty (60) days.

(vii) Without Holder's permission, Maker sells all or a substantial part of Maker's assets, merges or consolidates (other than with an affiliate where Maker is the surviving entity), or a majority of Maker's voting stock or interests (or any guarantor's voting stock or interests) is transferred.

(viii) There is a material adverse change in Maker's financial condition, business or operations.

B. "Take Back Rights." In the event of a Payment Default, Maker hereby grants Holder the following "Take Back Rights" (as defined below in this Section 11.B.) with respect to the Store. Maker shall have seven (7) days after receipt of written notice from Holder to cure any such Payment Default. If Maker does not timely cure the Payment Default, Maker hereby grants Holder the irrevocable right to immediately enter the Store and take possession and full ownership of the Store going forward, and further agrees to execute any and all reasonably necessary documents to transfer ownership of the Store, including all assets located therein, to Holder or its designee and to assign the lease for the premises of the Store to Holder or its designee ("Take Back Rights"). In the event of an uncured Payment Default, Maker further acknowledges and agrees to the following: (i) the Take Back Rights represent Holder's liquidated damages for Maker's Payment Default; (ii) that such damages are reasonable under the circumstances; (iii) that Maker shall have no right to contest, and hereby waives any such rights to contest or appeal, Holder's Take Back Rights, including Holder's entry into the Store and subsequent possession, control; and ownership of the Store thereafter; and (iv) that Maker shall receive no compensation or other monetary consideration from Holder for the Store. For purposes of the Take Back Rights under this Section 11, all notices shall be sent by certified mail, return receipt requested, or via overnight delivery service, to the other Party at the addresses listed in Section 16.

C. Acceleration in the Event of Default. In the event of any default, including a Payment Default, under this Note which is not cured within seven (7) calendar days after receipt of written notice from Holder, the principal sum hereof, together with all accrued and unpaid interest, shall, at the option of the Holder (and without limiting any remedies available to

Holder), become immediately due and payable without further notice or demand by the Holder.

D. Consent to Credit Reports. Maker hereby agrees that upon notice of default or upon an uncured default of this Note, the Franchise Agreement or any other agreement between Maker (or a legal entity thereof) and Holder or its affiliates, and with no prior notice, Maker consents to Holder's (or its affiliates' or third-party contractors') acquisition and use of non-business consumer credit reports on Maker in order to evaluate as necessary the financial condition of Maker as principal(s), member(s), manager(s), franchisee(s), and/or guarantor(s) in connection with the collection of monetary obligations as contemplated by this Note, Maker's Franchise Agreement, the Guaranty of Agreement, or any other agreements between Maker (or a legal entity thereof), and Holder or its affiliates.

12. Default Interest. After maturity, including maturity upon acceleration as described in Section 11 above, or at any time that Maker is more than seven (7) calendar days delinquent in the payment of money as required by this Note (whether or not Holder has given any notice of default or any cure period has expired), then all amounts outstanding hereunder and any advances thereafter made from the Debt evidenced hereby and any accruing costs and reasonable attorneys' fees which are the obligation of Maker shall thereafter bear interest at the rate of eighteen percent (**18%**) per annum until paid.

13. Indemnity. Maker shall indemnify, defend and hold Holder harmless for, from and against any and all claims, expenses and reasonable attorneys' fees actually incurred by Holder concerning or arising from the Collateral, this Note, or Maker's breach of any material representation, warranty or covenant. It includes, without limitation, any claims, losses or charges actually incurred concerning, arising out of or in connection with the manufacture, selection, delivery, possession, use, operation or return of the Collateral and any claims, losses or damages actually incurred concerning, arising out of or in connection with this Note. This obligation of Maker's to indemnify Holder continues even after satisfaction of this Note.

14. No Waiver by Holder. Failure of the Holder to exercise any option hereunder shall not constitute a waiver of the right to exercise the same in the event of any subsequent default or in the event of continuance of any existing default after demand for strict performance thereof.

15. Time of Essence. Time is of the essence of this Note.

16. Notices. All notices required or permitted to be given by either Party pursuant to this Note shall be in writing and given by (a) hand delivery, (b) express overnight delivery service or (c) certified or registered mail, return receipt requested, and shall be deemed to have been delivered upon (i) receipt, if hand delivered, (ii) the next business day following the date of deposit with the delivery service, if delivered by express overnight delivery service, or (iii) the third business day following the day of deposit of such notice with the United States Postal Service, if sent by certified or registered mail, return receipt requested. Notices shall be provided to the Parties at the addresses and facsimile numbers specified below:

If to Holder:	[Seller Entity]
	Attention: Legal Department
	9311 East Via De Ventura
	Scottsdale, Arizona 85258
	Telephone Number: (480) 362-4800
	Facsimile Number: (480) 362-4819

If to Maker:

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Telephone Number:

Facsimile Number:

17. Governing Law. This Note shall be construed according to the substantive laws and judicial decisions of the State of Arizona, without regard to any conflict of laws principles. Any action brought to enforce this Note may be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa. Maker and any sureties, endorsers and guarantors irrevocably consent to jurisdiction and venue in such court for such purposes.

18. RELEASE. IN EXCHANGE FOR HOLDER'S AGREEMENT TO ARRANGE FOR MAKER'S PAYMENT OF THE DEBT, MAKER AND EACH OF ITS CURRENT, PAST AND FUTURE PREDECESSORS, SUCCESSORS AND ASSIGNS, AND EACH OF ITS AND THE FOREGOING ENTITIES' RESPECTIVE PARENTS, SUBSIDIARIES, SHAREHOLDERS, MEMBERS, MANAGERS, OWNERS, PARTNERS, DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNS, GUARANTORS, INSURERS, SPOUSES, HEIRS, EXECUTORS, TRUSTEES, AND ESTATES, IF ANY, OF ANY AND ALL SUCH ENTITIES (COLLECTIVELY WITH MAKER "MAKER PARTIES"), HEREBY IRREVOCABLY AND UNCONDITIONALLY RELEASE, REMISE AND FOREVER DISCHARGE HOLDER AND EACH OF ITS CURRENT, PAST AND FUTURE PREDECESSORS, SUCCESSORS AND ASSIGNS, AND EACH OF ITS AND THE FOREGOING ENTITIES RESPECTIVE PARENTS, SUBSIDIARIES, SHAREHOLDERS, MEMBERS, MANAGERS, OWNERS, PARTNERS, DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNS, GUARANTORS, INSURERS, SPOUSES, HEIRS, EXECUTORS, TRUSTEES, AND ESTATES, IF ANY, OF ANY AND ALL SUCH ENTITIES (COLLECTIVELY WITH HOLDER "HOLDER PARTIES"), FROM ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, SUITS, DEBTS, DUTIES, ACCOUNTS, COVENANTS, CONTRACTS, AGREEMENTS, PROMISES, DAMAGES, JUDGMENTS, TAXES, LIABILITIES AND OBLIGATIONS, BOTH CONTINGENT AND FIXED, KNOWN AND UNKNOWN, NOW EXISTING OR HEREAFTER, OF EVERY KIND AND NATURE WHATSOEVER, IN LAW OR EQUITY, OR OTHERWISE, UNDER LOCAL, STATE, OR FEDERAL LAW OR THE LAW OF ANY OTHER APPLICABLE JURISDICTION, THAT ANY OF THE MAKER PARTIES HAVE AGAINST ANY OF THE HOLDER PARTIES, INCLUDING, WITHOUT LIMITATION, THOSE ARISING FROM, IN CONNECTION WITH OR RELATING TO: (I) THE FRANCHISE AGREEMENT (INCLUDING ANY AMENDMENTS OR MODIFICATIONS THERETO); (II) THE OPERATION, LEASING OR SUBLEASING OF THE STORE; AND (III) THE OFFERING AND SALE OF THE FRANCHISE FOR THE STORE; ARISING FROM AN ACT, OMISSION, CONDUCT OR ACTIVITY OCCURRING BEFORE AND INCLUDING THE DATE OF THIS NOTE WRITTEN ABOVE.

IT IS UNDERSTOOD BY MAKER THAT IF THE FACTS OR LAW WITH RESPECT TO THE FOREGOING RELEASE HEREAFTER TURN OUT TO BE DIFFERENT FROM THE FACTS OR LAW KNOWN TO BE OR BELIEVED BY MAKER TO BE TRUE AT THE TIME OF EXECUTION OF THIS NOTE, THEN MAKER EXPRESSLY ASSUMES THE RISK OF THE FACTS OR LAW TURNING OUT TO BE SO DIFFERENT, AND AGREES THAT THE

FOREGOING RELEASE SHALL BE IN ALL RESPECTS EFFECTIVE AND NOT SUBJECT TO TERMINATION OR RESCISSION, IN WHOLE OR IN PART, BASED UPON SUCH DIFFERENCES.

19. Counterparts; Signatures. This Note may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Note and all of which, when taken together, shall be deemed to constitute one and the same Note. The signatures required for execution may be transmitted to the other Party via facsimile or a scanned .pdf file sent via email and such signature shall be deemed a duplicate original, shall be effective upon receipt by the other Party, may be admitted in evidence and shall fully bind the Party and person making such signature.

***[SIGNATURE PAGE FOLLOWS]***

IN WITNESS WHEREOF, Maker, by and through its respective representative with full rights, power and authority to enter into and bind his or her respective Party without further consent or approval of any kind, has duly executed and delivered this Note as of the date first written above.

**MAKER:**

\_\_\_\_\_, a(n) \_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

**EXHIBIT “1” TO PROMISSORY NOTE**

**AMORTIZATION SCHEDULE**

**(Attached)**



## **EXHIBIT "2" TO PROMISSORY NOTE**

### **COLLATERAL**

All assets owned by [NAME], a(n) [State] [corporation / limited liability company] ("Borrower"), whether now owned or hereafter acquired by Borrower and located at the following location: [Store Address], including, without limitation, the following properties of Borrower:

- (a) All accounts, contract rights, rights to payment, accounts receivable, chattel paper, leases, instruments, notes, securities, documents of title, deposit accounts, certificates of deposit and general intangibles;
- (b) All inventory, including, without limitation, raw materials, work-in-process or materials used or consumed in the business of Borrower, whether in the possession of Borrower, warehouseman, bailee or any other person or entity;
- (c) All machinery, furniture, fixtures and other equipment;
- (d) All negotiable and nonnegotiable documents of title;
- (e) All proceeds of any of the above-described property;
- (f) All books and records pertaining to any of the above-described property, including, without limitation, any computer readable memory and any computer hardware or software necessary to process such memory;
- (g) All rights under contracts of insurance covering any of the above-described property;
- (h) All attachments, accessions, tools, parts, supplies, increases and additions to and all replacements of and substitutions for any of the above-described property; and
- (i) All products of any of the above-described property.

**EXHIBIT “3” TO PROMISSORY NOTE**

**[GUARANTY OF PROMISSORY NOTE AND SECURITY AGREEMENT] or [NOT  
APPLICABLE]**

## GUARANTY OF PROMISSORY NOTE AND SECURITY AGREEMENT

This GUARANTY OF PROMISSORY NOTE AND SECURITY AGREEMENT ("Guaranty") is dated as of [Date] ("Effective Date"), and is executed by each of the undersigned ([individually and collectively, ]"Guarantor") in favor of [SELLING ENTITY], a [state] [Corporation/Limited Liability Company, etc.] ("Seller"). To the extent this Guaranty contains terms and conditions that differ from those contained in the Note (as defined in Recital A below), this Guaranty shall control. All capitalized terms not otherwise defined in this Guaranty will have the same meanings ascribed to such terms in the Note.

### Recitals

A. As an inducement for Seller to provide debt to [Franchisee], a [State] [corporation/limited liability company], ("Franchisee"), and to perform Seller's obligations under the Promissory Note and Security Agreement dated [Start Date] ("Note") in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_), Guarantor has agreed to jointly and severally guarantee the obligations of Franchisee under the Note.

B. Franchisee and Seller OR Kahala Franchising, L.L.C. signed a Franchise Agreement, as amended, with respect to *Frullati Cafe & Bakery* Store No. \_\_\_\_\_ ("Franchise") dated [Franchise Agreement Date] ("Franchise Agreement").

C. Guarantor is Franchisee's spouse; owns, directly or indirectly, a five percent (5%) or greater equity interest in the Franchise; or has agreed to guarantee the Franchisee's obligations pursuant to the Franchise Agreement and Note.

NOW THEREFORE, in consideration of the foregoing, the execution and delivery of the Note by Seller, and the performance of Seller's obligations under the Note, Guarantor agrees, for the benefit of Seller and its affiliates as follows:

### Agreement

1. Guarantor unconditionally guarantees and promises to pay to Seller and/or its affiliates and to perform, for the benefit of Seller and/or its affiliates, on demand, any and all obligations and liabilities of Franchisee in connection with, with respect to, or arising out of, the Note and all Schedules entered into in connection therewith ("Obligations").

2. This is a guaranty of payment and not of collection. This Guaranty will remain in full force and effect until all amounts payable by Guarantor have been validly, finally and irrevocably paid-in-full and all Obligations will have been validly, finally and irrevocably satisfied or performed-in-full.

3. Guarantor's Obligations under this Guaranty are joint and several and are independent of the obligations of Franchisee. A separate action or actions may be brought and prosecuted against Guarantor regardless of whether an action is brought against the Franchisee or whether the Franchisee (or, if more than one Guarantor, the other Guarantors) is joined in any such action. Guarantor waives the benefit of any statute of limitations affecting Guarantor's liability under this Guaranty or the enforcement of this Guaranty. Guarantor waives its rights under A.R.S. Section 12-1641, *et seq.* and Rule 17(f) of the Arizona Rules of Civil Procedure for the Superior Courts of Arizona, which set forth certain rights and obligations among guarantors, debtors and creditors, if applicable, including the right to require Seller to bring an action against the Franchisee prior to enforcing its rights under this Guaranty. Guarantor waives any right to require Seller to proceed against or exhaust any security interest held in the property of Franchisee or to pursue any other remedies that Seller may have. Guarantor waives all

requirements as to presentment, demand for performance, notice of non-performance, protest, notice of protest, notice of dishonor, and notice of acceptance of this Guaranty and of the existence, creation or incurring of new or additional Obligations or indebtedness.

4. Guarantor authorizes Seller, without notice or demand and without affecting Guarantor's liability under this Guaranty to renew, compromise, modify, extend, accelerate or otherwise change the terms of any present or future Obligations and/or agreements between Franchisee and Seller or Seller's affiliates. Any change in the Obligations and/or agreements will have no effect on Guarantor's liability under this Guaranty. Guarantor will remain liable for the Obligations as set forth in this Guaranty if Franchisee fails to satisfy any of its obligations.

5. If any one or more of the provisions in this Guaranty will be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision of this Guaranty, and this Guaranty will be construed as if such provision had never been contained herein. Notwithstanding the foregoing, if the provision held invalid, illegal or unenforceable is a material part of this Guaranty, as determined by Seller, the Parties shall promptly negotiate a substitute provision consistent with then-current law and the Parties' original intent to replace the provision held to be invalid, illegal or unenforceable.

6. If Seller is required to take any legal action to enforce its rights under this Guaranty, Seller may recover from Guarantor Seller's costs and expenses in connection therewith, including, without limitation, reasonable attorneys' fees, whether or not suit is filed, and all costs of collection, suit, and preparation for suit (whether at the trial or appellate level).

7. Nothing in this Guaranty will constitute a waiver or limitation of any other rights or remedies of Seller or its affiliates against Franchisee or Guarantor. No failure or delay on the part of Seller or its affiliates in exercising its rights under this Guaranty will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any right will be effective unless given in writing, specifying with particularity the nature of the waiver. No waiver of any right will be deemed a waiver of any other right. The rights provided for in this Guaranty are cumulative and are not exclusive of any other rights, powers, privileges or remedies provided by law.

8. Guarantor agrees that it will not exercise any rights of subrogation that Guarantor may acquire due to any payment or performance of the Obligations of the Franchisee pursuant to this Guaranty unless and until all amounts payable to Seller or its affiliates, and all Obligations for the benefit of Seller or its affiliates, due under the Note will have been validly, finally and irrevocably paid and performed in full.

9. This Guaranty will be binding upon Guarantor and its respective successors, heirs and assigns, and will inure to the benefit of Seller, its affiliates and their respective successors and assigns.

10. If more than one person signs this Guaranty, each Guarantor's obligations will be joint and several. Guarantor acknowledges and agrees that Seller will materially rely upon Guarantor's promises and obligations under this Guaranty.

[11. Guarantor [if multiple guarantors, include names here, \_\_\_\_\_,] hereby represents that he or she is not married as of the Effective Date.]

**This Guaranty will be governed by, and construed and enforced in accordance with, the law of the State of Arizona, notwithstanding any conflict of law provisions to the contrary.**

**Guarantor agrees that any litigation in connection with this Guaranty will be commenced and maintained only in the courts located in Maricopa County, Arizona, and Guarantor consents to the jurisdiction of such courts.**

**GUARANTOR:**

\_\_\_\_\_  
[Name], an individual

\_\_\_\_\_  
[Name], an individual

\_\_\_\_\_  
[Name], an individual

\_\_\_\_\_  
[Name], an individual

**EXHIBIT E-1**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**Franchise Agreement (New) and Franchisee Questionnaire**

***FRULLATI CAFE & BAKERY***

**FRANCHISE AGREEMENT  
(New)**

**between**

**KAHALA FRANCHISING, L.L.C.**

**and**

\_\_\_\_\_, a(n) \_\_\_\_\_

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### Exhibits

Exhibit 1      Franchisee Questionnaire



**FRULLATI CAFE & BAKERY**  
**FRANCHISE AGREEMENT**  
("Agreement")

**PARTIES:**

KAHALA FRANCHISING, L.L.C.,  
an Arizona limited liability company  
Attn: Legal Department  
9311 E. Via De Ventura  
Scottsdale, Arizona 85258

("Franchisor")

\_\_\_\_\_  
a(n) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone No.: \_\_\_\_\_

([individually and collectively,] "Franchisee")

**RESTAURANT NO.:** \_\_\_\_\_

**EFFECTIVE DATE:** \_\_\_\_\_ ("Effective Date")

**TRADITIONAL RESTAURANT (YES or NO):** \_\_\_\_\_

**RESTAURANT DESCRIPTION IF NON-TRADITIONAL:** \_\_\_\_\_

A "traditional" restaurant is a restaurant that is easily accessible by the general public, such as a free-standing building, inline retail shop, shopping mall and street front location. A traditional *Frullati Cafe & Bakery* restaurant normally offers a full menu. A "non-traditional" restaurant is a *Frullati Cafe & Bakery* restaurant that is located in a non-traditional marketplace, as determined by us (in our sole discretion), such as an airport, amusement park, sports or entertainment venue, train station, travel plaza, toll roads, cafeteria, retail store, convenience store, military base, hospital, office building, movie theater, hotel, casino, kiosk, cart, or high school or college campus. A non-traditional restaurant may also be a *Frullati Cafe & Bakery* restaurant that is co-branded into another brand restaurant, at Franchisor's sole discretion. A non-traditional *Frullati Cafe & Bakery* restaurant normally offers a limited version of the full *Frullati Cafe & Bakery* menu.

To simplify the language in this Agreement, the terms "we," "us," "our" and the like may be used to refer to the Franchisor, and the terms "you," "your" and the like may be used to refer to the Franchisee. The term "you" as used herein is applicable to one (1) or more persons, a corporation, partnership, trust, other entity, association or form of organization as the case may be, and the singular usage includes the plural, masculine, neuter, feminine, and possessive usages. Franchisor and Franchisee may individually be referred to as a "party" and collectively referred to as the "parties."

## **RECITALS:**

This Agreement is entered into with reference to the following facts and circumstances:

A. We have, over a period of time and at considerable expense, developed and established a uniform and unique method of operation, customer service, advertising, publicity, processes, recipes, techniques and technical knowledge in connection with the restaurant business, specializing in freshly prepared Panini, sandwiches, salads, soups, fresh baked goods, blended fruit drinks, proprietary nutritional products and supplements and other related beverage and food items. These restaurants do business under the trade name "*Frullati Cafe & Bakery*". These Frullati Cafe & Bakery recipes, techniques, processes and methods constitute our "Trade Secrets." All of our knowledge, experience, Trade Secrets, processes, methods, specifications, techniques, Proprietary Marks (as defined in Recital B.), System Standards (as defined in *Section 1.4*) and information are referred to in this Agreement as the "System." The System may be changed, supplemented, improved and further developed by us from time to time.

B. We have owned and issued franchises to others for the operation of franchised restaurants in the United States and in other countries. We have registered and applied for proprietary marks with the United States Patent and Trademark Office and with offices in other countries serving similar functions. These proprietary interests, trademarks, service marks, logos, insignias, trade names and trade dress are referred to in this Agreement as the "Proprietary Marks."

C. We are engaged in the business of licensing the right to use the Proprietary Marks in connection with the operation and promotion of the System.

D. You understand and recognize that: (1) our Trade Secrets, Proprietary Marks, developments and other properties as recited above are of considerable value; and (2) it is of importance to us and all of our franchisees to maintain the development of the System in a uniform and distinctive manner, allowing you and our other franchisees to enjoy a public image and reputation greater than most single franchisees could establish.

E. You desire to make use of the "*Frullati Cafe & Bakery*" trademark and to enjoy the benefits of that mark, the other Proprietary Marks, and the System; and to establish a "*Frullati Cafe & Bakery*" franchise to be operated in accordance with System Standards set forth from time to time by us. System Standards are set forth in, without limitation, the confidential "ops package," which consists of the "operations manual" ("Operations Manual"), "ops toolkit" and related printed and electronic documents, both now existing and hereinafter developed (individually and collectively, "Confidential Manual"). We are willing to grant you the right to do so under the terms, conditions and provisions set forth in this Agreement, which includes any and all appendices, addenda, amendments, attachments and exhibits.

F. You recognize the necessity and desirability of protecting our reputation, goodwill, Trade Secrets, and other confidential business information; and that disclosure of Trade Secrets and confidential business information, including specifics of the System to any third-party, will cause irreparable damage and harm to us.

## **AGREEMENT:**

The parties agree as follows:

## ARTICLE 1. GRANT OF FRANCHISE; TERM; SYSTEM STANDARDS

### 1.1 Franchise Grant.

We hereby grant to you a *Frullati Cafe & Bakery* franchise that includes the right to use the System ("Franchised Business") as provided in this Agreement, at the following location:

Arena, Mall, Facility, or Center Name: \_\_\_\_\_  
(if applicable)

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

City/State/Zip Code: \_\_\_\_\_ ("Location")

### 1.2 Location of the Franchised Business; No Exclusive Territory or Other Rights.

You must operate the Franchised Business only from the Location, including any catering services of *Frullati Cafe & Bakery* menu items you provide. You acknowledge that the *Frullati Cafe & Bakery* franchise granted under this Agreement is non-exclusive, that we are not granting you any territorial protection or any other exclusive rights, and that we, directly or through one (1) or more affiliates, reserve the right in our sole discretion, and without compensating you or seeking your prior approval: (i) to establish, and grant to other franchisees or licensees the right to establish, a *Frullati Cafe & Bakery* restaurant or any other business using the Proprietary Marks, the *Frullati Cafe & Bakery* System or any variation thereof, in any location other than the approved Location (including locations in the immediate vicinity of your Location), on any terms and conditions that we deem appropriate; (ii) to establish, and grant to other franchisees or licensees the right to establish, any restaurant concept other than *Frullati Cafe & Bakery* in any location on any terms and conditions that we deem appropriate (including locations in the immediate vicinity of the Location); (iii) to sell products identified by the Proprietary Marks or other trademarks, service marks or commercial symbols in any location through any distribution channels, including grocery stores, convenience stores, supermarkets, club stores, vending machines, delivery services and restaurants other than *Frullati Cafe & Bakery* restaurants; and (iv) to take any other action that we are not expressly prohibited from taking under this Agreement.

We hereby grant to you during the term of this Agreement, a non-exclusive right and license to operate a single restaurant at the Location only, according to the System Standards and subject to the terms, conditions and restrictions contained in this Agreement. This Agreement is limited to the operation of one traditional restaurant, unless otherwise amended, and does not grant you the right to buy, own or operate additional restaurants.

Except as expressly limited in this Agreement, we (for ourselves and our affiliates and designees) retain all rights with respect to all Proprietary Marks and the sale of *Frullati Cafe & Bakery* products anywhere in the world with no compensation or liability to you, including the right to:

a. Establish and operate (or license to any other person or entity the right to establish and operate) *Frullati Cafe & Bakery* restaurants owned or licensed by us at any location;

b. Develop, market, own, operate and participate in any other business under the Proprietary Marks or any other trademarks (including trademarks identified in the Uniform Franchise Disclosure Document ("Disclosure Document") and other trademarks we or our affiliates own or have the right to license);

c. Develop, lease and license the use of, at any location, trademarks other than the Proprietary Marks, in connection with the operation of a system that offers products or services that are the same as, or similar to, those offered by us under this Agreement on any terms or conditions that we deem advisable, in our sole discretion;

d. Merge with, acquire or be acquired by any other business, including a business that competes with your Franchised Business, or acquire and convert any retail stores, including retail stores operated by competitors, or otherwise operated independently or as part of, or in association with, any other system or chain, whether franchised or corporate-owned;

e. Distribute, sell and license other persons or entities to distribute and sell products through all other channels of distribution, including catalog sales, telemarketing, grocery stores, warehouses, big box shops, specialty shops, limited access highway food facilities, vending machines and similar automated dispensing systems, mobile units, off-site sales accounts, electronic mail, Internet sales, and movie theaters (individually and collectively, "Other Channels"); and

f. Implement multi-area marketing programs that may allow us or others to solicit or sell to customers anywhere. We also reserve the right to issue mandatory policies to coordinate such multi-area marketing programs.

### **1.3 Term of Agreement.**

This Agreement will commence on the Effective Date and continue as set forth in either *Section 1.3a.* or *1.3b.* below ("Term").

a. If you are purchasing a new or existing non-operating Franchised Business, the Term will expire on either: (1) the ten (10) year anniversary of the date you open this Franchised Business to the public if you own the property where this Franchised Business is located or if you enter into a lease directly with the landlord or other third-party for the property where this Franchised Business is located; or (2) if you have entered into a sublease with one of our affiliates, the expiration of the term of the sublease for the Location excluding any extensions or renewal options, unless terminated earlier in accordance with *Article 14* or any other provisions of this Agreement, renewed in accordance with *Article 13*, or transferred in accordance with *Article 12*; or

b. If you are purchasing an existing and operating Franchised Business, the Term will expire on either: (1) the ten (10) year anniversary of the Effective Date if you own the property where this Franchised Business is located or if you enter into a lease directly with the landlord or other third-party for the property where this Franchised Business is located; or (2) if you have entered into a sublease with one of our affiliates, the expiration of the term of the sublease for the Location excluding any extensions or renewal options, unless terminated earlier in accordance with *Article 14* or any other provisions of this Agreement, renewed in accordance with *Article 13*, or transferred in accordance with *Article 12*.

#### 1.4 System Standards.

You shall operate the restaurant in accordance with our standards, including the following:

- a. restaurant design, maintenance, health and safety and remodeling;
- b. types, models, brands and suppliers of required fixtures, furnishings, equipment, signs, materials and supplies;
- c. recipes and ingredients, menu items and menu design;
- d. cooperation with and participation in sales, marketing, advertising and promotional programs (including discount coupons, discount gift cards, special menu promotions, and entering into product and service agreements directly with third-party vendors and service providers as required by us) and materials and media used in those programs, including discontinued use and removal of promotional materials as directed by us;
- e. use and display of the Proprietary Marks;
- f. restaurant operations, including matters related to the management of the restaurant; training of your employees consistent with the System Standards; and commercial impression of the Franchised Business to the public;
- g. cooperation with and participation consistent with our responses and resolutions in response to customer feedback;
- h. cooperation with and participation in: (i) market research and testing; and (ii) product and service development programs;
- i. acceptance of our stored value gift cards, including gift cards sold at a discount, loyalty cards, frequency cards, gift certificates, vouchers, and any other similar electronic card and payment programs (individually and collectively, "Gift/Loyalty Card"), credit and debit cards, other payment systems, check verification services and use of point of sale computer systems; You agree to enter into a separate participation agreement with the approved vendor for data processing services;
- j. bookkeeping, accounting, data processing and record keeping systems; computer hardware and software; connections to the Internet or to proprietary networks; forms, methods, formats, content and frequency of reports to us of Gross Sales (as defined in *Article 5*), financial performance and condition; and providing tax returns and other operating and financial information to us; and
- k. conduct and maintain the Franchised Business and Location so as not to distract from or interfere with the integrity of the System (individually and collectively, "System Standards"). We may, in whole or in part, change, improve, update and further develop the System Standards, from time to time during the term. You shall comply with the updated System Standards as directed by us.

The operation and maintenance of your restaurant according to the System Standards are essential to the well-being and vitality of the System and to preserve the goodwill of the

Proprietary Marks for us and for all other franchisees operating under the System. It is critical to the *Frullati Cafe & Bakery* System for all restaurants operating under the *Frullati Cafe & Bakery* System to present a uniform and professional image to *Frullati Cafe & Bakery* customers regardless of which location the customer visits. Any information regarding the operation of the restaurant will be considered a mandatory System Standard, unless it is clear from the express language of our communication that the information is merely optional or is intended by us as a suggestion, rather than a requirement.

You agree that System Standards constitute binding provisions of this Agreement as if they were an integral part of this Agreement.

## **ARTICLE 2. SELECTION OF LOCATION; CONSTRUCTION AND RELOCATION**

### **2.1 Location Selection Procedures.**

You must select a Location that satisfies our minimum site requirements (such confirmation will be provided to you by us in writing), for your Franchised Business within one (1) year from the Effective Date. If you cannot secure an acceptable Location for your Franchised Business within one (1) year from the Effective Date, then we may terminate this Agreement by giving you notice to that effect. You are ultimately responsible for the selection of the Location. We will not have any liability to you with respect to your selection of the Location, any assistance we provide you in making your selection, our recommendation of any location, or our allowing you to move forward on any location. You agree that your selection of the Location will be based on your own independent investigation of the suitability of the Location.

### **2.2 Lease and Purchase Approval.**

If you intend to lease the Location for your Franchised Business, the lease will be subject to our prior limited review and acknowledgment so that we can confirm that certain lease terms are incorporated into the lease. You must provide us, at least thirty (30) days prior to executing the lease, a copy of the lease and details relating to square footage, rent per square foot, the term of the lease, and either confirmation that such other terms as we reasonably require are incorporated into the lease or that you and the landlord agree to incorporate the lease addendum to lease agreement as an exhibit to the lease. You or your attorney shall be responsible for negotiating the terms of the lease, which shall be subject to our final limited review and acknowledgment. If you do not submit all of the required documents to us, we will not allow you to move forward with your lease. We have no liability to you regarding the terms or negotiations of the lease.

If, prior to executing the lease, you or your attorney request a full review of your lease, including any and all exhibits attached thereto, and we or our designated affiliate review your entire lease and exhibits and provide to you or your attorney its review of the entire lease and suggested changes to the lease ("Lease Review"), you must pay a Lease Review Fee (as defined in *Section 5.7*) to compensate for time and effort in reviewing the lease. The Lease Review is optional and only completed by us or our designated affiliate at your or your attorney's request. The Lease Review Fee is due only in the event that you or your attorney request us or our affiliate to complete a Lease Review. Each lease must contain the required lease terms set forth in the Lease Addendum to Lease Agreement, and must specifically state that we are a third-party beneficiary of the lease. If we cure any default by you under the lease, any amounts that we pay to cure the default will be payable by you to us on demand, together with interest

thereon, at the lesser rate of one and one-half percent (1½%) or the maximum rate that does not violate applicable state usury laws ("Default Rate") per month from the date we make such payment.

You acknowledge and agree that on the earlier of thirty (30) days after: (i) you receive a fully executed copy of your lease for the Location of your Franchised Business; or (ii) you open your Franchised Business to the public, you must provide a fully-executed copy of your lease for the Location to us. Failure to timely provide us with a fully-executed copy of the lease will result in a default under this Agreement.

If you intend to purchase the Location for your Franchised Business, the terms of such purchase shall be subject to our prior approval, and you must provide us, at least thirty (30) days prior to executing the purchase agreement, a copy of the purchase agreement and details relating to square footage, price per square foot and such other terms as we reasonably require.

You acknowledge and understand that our confirmation that you may move forward with any specific location, lease or purchase agreement does not in any way guarantee or ensure the success or profitability of the Franchised Business, or the conformity of the Location, lease or purchase agreement to applicable laws, and such confirmations are only for our own benefit.

## **2.3 Construction.**

a. You must, at your sole cost and expense, construct, furnish, make improvements to and equip, if necessary, the Franchised Business at the Location selected by you and meeting our minimum site requirements, in accordance with plans and specifications approved by us or our third-party approved architect, if applicable. Our approval of plans is solely for complying with our System Standards and not for determining compliance with codes, ordinances and other legal requirements, including the Americans with Disabilities Act ("ADA"). You are solely responsible for ensuring that your Location conforms to all codes and ordinances, including the ADA. You must, at your sole cost and expense, use our designated and approved third-party design architect ("Design Architect") to prepare the initial design drawings for any construction, alterations or improvements, as applicable, for your Franchised Business. The Design Architect must provide us with one (1) set of the design drawings, including landscaping and parking spaces if applicable, which are the detailed plans and specifications ("Plans") for your Franchised Business. We will provide you with a copy of the Plans upon our approval of the Plans. You must also, at your sole cost and expense, retain a licensed architect of record to prepare the permitted construction set of drawings for any construction, alterations or improvements. The permitted construction set of drawings must be submitted to us for our files prior to the start of construction, alterations or improvements. In addition, you must obtain the appropriate construction documents and all mechanical, plumbing, electrical and architectural plans must be sealed and stamped, as we may require, even if local laws in the jurisdiction where your restaurant is located do not require same.

b. Any material modifications to the approved Plans must be submitted to us for approval and you will not undertake any construction, alterations or improvements until such modifications have been approved by us. Approval of such modifications does not constitute any representation by us of compliance with applicable zoning laws, building codes or other laws.

c. You will be solely responsible for the cost and expense of obtaining all necessary governmental construction permits and licenses, and you must, at your sole cost and expense, comply with all laws, zoning ordinances, rules and regulations of any governmental agencies that may govern any construction, alterations or improvements of the Franchised Business in accordance with the approved Plans. We will have the right, but are not required, to meet with the Design Architect and to inspect any construction, alterations or improvements during its course to ensure that the provisions of this *Section 2.3* are being observed; and you agree to allow our authorized representatives, at any and all times while construction, alterations or improvements are in progress, to meet with the licensed architect and general contractor and enter onto the Location for this purpose. If we determine in good faith that the provisions of this *Section 2.3* are not being observed, you will, at your sole cost and expense, immediately take all necessary corrective action.

d. You must, at your sole cost and expense, use a general contractor that is licensed, and if applicable, registered in the state and local jurisdiction where your restaurant is located for any and all construction, alterations and improvements. The general contractor must have prior experience in the construction, alterations and improvement of quick-service restaurants.

e. You acknowledge that the design and appearance of the *Frullati Cafe & Bakery* restaurant is part of the System, and that uniformity is essential to the System. Therefore, you agree that after the restaurant has been constructed, altered or improved, you will not make any material changes to the building plan or design or its appearance without our prior written consent, and you will, at your sole cost and expense, maintain the interior and exterior décor of the restaurant in a first class condition and in such manner as we may reasonably prescribe from time to time. In addition to any remodeling required by us upon the transfer of the Franchised Business and upon the renewal of this Agreement, as set forth in *Articles 12* and *13*, respectively, you will, upon thirty (30) days' prior notice from us, and at your sole cost and expense, remodel and make all alterations and improvements in and to your Franchised Business as reasonably determined by us to reflect the then-current *Frullati Cafe & Bakery* System specifications, standards, format, image and appearance.

f. A certificate of occupancy for your Franchised Business must be submitted to us approximately six (6) days prior to the day you open your Franchised Business to the public and as otherwise requested by us throughout the Term.

## **2.4 Signage.**

You will acquire, repair and replace, as necessary, and maintain in a first class condition throughout the Term, signs for advertising and identifying the Franchised Business as a *Frullati Cafe & Bakery* restaurant. All signs must be in accordance with the System Standards, specifications and any local governing body (i.e., city or county governments), as well as any other applicable laws, including the Americans with Disabilities Act ("ADA"), and exterior signage must be the maximum size allowed by the landlord and local governing body. You acknowledge that quality control is essential to protect and promote our Proprietary Marks, standards, and uniform image, and you shall acquire all signs only from approved suppliers. In addition, you shall prominently display on all communications, forms, advertising, business stationery and business cards, and in a sign easily visible to consumers at the Franchised Business, the following words: "INDEPENDENTLY OWNED AND OPERATED."



## 2.5 Relocation.

a. If you desire to relocate the Franchised Business, you may request our consent upon the following conditions:

(i) Not less than sixty (60) days prior to the desired date of relocation (unless prior notice is impractical because of a required relocation, due to a third-party or our request, in which event notice shall be made as soon as possible), you must make a written request for consent to relocate, describing the reasons for the relocation and providing details respecting any proposed new location.

(ii) Within twenty-one (21) days after receiving your written request, we shall advise you in writing if the proposed new location meets our minimum real estate site requirements as provided in *Section 2.1* and if you have our authorization to proceed with the relocation. In the event of our denial to proceed with the relocation, you may request an alternative proposed new location pursuant to the provisions of this *Section 2.5*.

(iii) The Term will not be extended in connection with the requested relocation.

b. At the time you request to relocate the Franchised Business, you must also meet each of the following requirements:

(i) You must not be in default under this Agreement or any other agreement or note then in effect between us or you and any affiliate of ours, and no event shall have occurred that, with the giving of notice, the passage of time, or both, would constitute a default under this Agreement;

(ii) You must neither have received more than three (3) notices of default or breach during the Term; nor more than two (2) notices of default or breach during the five (5) years immediately preceding the effective date of the proposed relocation;

(iii) The equipment, fixtures and signage used in connection with the operation of the Franchised Business must either meet our then-existing System specifications and System Standards, or you must agree, within a timeframe required by us, to replace or refurbish such items, and otherwise modify the methods of operation of the Franchised Business at your cost and expense, in order to comply with our System specifications and System Standards then applicable to new franchise owners; and

(iv) You shall have paid to us a Relocation Fee (as defined in *Section 5.14*).

c. If we approve the relocation of your Franchised Business, (i) you and we must execute an amendment to this Agreement indicating the address for your relocated Franchised Business, and (ii) you must open your Franchised Business at the new location within ninety (90) days after you close your Franchised Business at the current Location. During the period of time between the closure of your Franchised Business at the current Location, and the opening of the Franchised Business at the approved relocation address, you will not owe the Royalty Fee (as defined in *Section 5.2*).

## **2.6 Restricted Use of Restaurant Location.**

You may not wholly or partially sublet the Location without our prior written consent. The Location may be used only for the operation of a *Frullati Cafe & Bakery* restaurant in compliance with this Agreement and the System Standards. You shall not conduct other businesses or activities at the Location without our prior written consent.

## **2.7 Not Applicable.**

# **ARTICLE 3. OPERATIONS**

## **3.1 Commencing Operations.**

You agree to start operating your *Frullati Cafe & Bakery* restaurant at the confirmed Location within one (1) year from the Effective Date. You acknowledge that before starting operations you must, at your own expense, do the following (in addition to any other requirements set forth in this Agreement):

- a. Complete a food safety training program at your sole cost and expense. We will accept the certificate for the required program through your local county or state health department or any other nationally recognized food safety program. You must provide us with a copy of your certificate prior to commencing training;
- b. Successfully complete the Training Program described in *Section 4.1*;
- c. Purchase, lease or otherwise acquire from the list of approved sources provided by us all the signage, supplies, equipment, fixtures, inventory and other items necessary to operate the *Frullati Cafe & Bakery* Franchised Business; and
- d. Obtain liability insurance in accordance with the requirements described in *Section 9.5* and provide to us evidence that such insurance has been obtained.

Prior to opening the Franchised Business, you must notify us that you have satisfied all requirements to begin operations, and provide us with such documents as we may reasonably request that show your compliance with all such requirements. Upon receipt of our acknowledgment that such requirements have been satisfied, you will have five (5) days to begin operations of your *Frullati Cafe & Bakery* restaurant. If you do not begin operations of your restaurant at the confirmed Location before the expiration of the one (1) year period from the Effective Date, then we may terminate this Agreement by giving you notice to that effect.

## **3.2 Supplies and Promotional Materials; Rollouts.**

You agree to sell only those menu items, products and services authorized under the terms of this Agreement and as specified in the Confidential Manual, and you shall use only supplies and ingredients in making those menu items that are in compliance with the standards as set forth in the Confidential Manual or other documents provided by, or approved by, us as they presently exist or may exist in the future. You shall purchase all such services, supplies and ingredients only from approved vendors and utilize approved distributor(s) as specified in the documents provided by, or approved by, us as they presently exist or may exist in the future. You must purchase promotional materials containing the Proprietary Marks, including stationery, business

cards, promotional and advertising materials and similar items, from suppliers approved by us, except that we must first approve all such promotional and advertising materials before you use them, and all such printed materials containing any of the Proprietary Marks shall be accompanied by the words "INDEPENDENTLY OWNED AND OPERATED." Additionally, during the Term, you agree to participate in any Rollout of new products and suppliers, as defined in *Section 9.3*.

### **3.3 Fixtures, Furnishings, and Equipment.**

Unless otherwise approved by us in writing, you will: (1) acquire, repair and replace, as necessary, and maintain in a first class condition throughout the Term, fixtures, furnishings, and equipment to be used in the operation of your Franchised Business that is in accordance with the System Standards, specifications set forth by us in the Confidential Manual or other documents provided by, or approved by, us as they presently exist or may exist in the future, and with applicable laws including, without limitation, including the Americans with Disabilities Act ("ADA"); and (2) procure the fixtures, furnishings, and equipment from suppliers or vendors previously approved in writing by us.

### **3.4 Online Presence.**

You may not maintain a website, software application, an App (application), social media account (including an account, group or page on Facebook®, Flickr®, Foursquare®, Google+®, Instagram®, LinkedIn®, Pinterest®, Snapchat®, Tumblr®, Twitter®, YouTube®, Vine®, VKontakte or Weibo®), or otherwise maintain a presence or advertise on the Internet or any other public computer network (individually and collectively, "Site") in connection with the Franchised Business without our prior written approval, which we may withhold in our sole discretion. If we grant you written approval, you agree to submit to us for approval before use, true and correct printouts, of all Site pages you propose to use in connection with the Franchised Business. You understand and agree that our right of approval of all such Site pages is necessitated by the fact that such Site pages will include and be inextricably linked with our Proprietary Marks. If we approve your use of a Site, you may only use Site pages that we have approved. Your Site must conform to all of online presence requirements, policies and procedures per our System Standards. You agree to provide all information regarding your online presence that we require. If we grant approval for a Site, you may not use any of the Proprietary Marks on the Site except as we expressly permit. You may not post any of our proprietary, confidential or copyrighted material or information on the Site without our prior written permission. If you wish to modify your approved Site, all proposed modifications must also receive our prior written approval. You explicitly understand that you may not post on any Site (whether yours or someone else's) any material in which a third-party has any direct or indirect ownership interest (including video clips, photographs, sound bites, copyrighted text, trademarks or service marks, or any other text or image which any third-party may claim intellectual property or other rights in). If we grant approval, you agree to list on the Site any website and social media account maintained by us, and any other information we require in the manner we dictate. You agree to obtain our prior written approval for any Internet domain name, home page address and Uniform Resource Locator. The requirement for our prior approval set forth in this *Section 3.4* will apply to all activities on the Internet or other communications network to be conducted by you, except that you may maintain one (1) or more e-mail addresses and may conduct individual e-mail communications without our prior written approval. You agree to obtain our prior approval as provided above if you propose to send advertising to multiple addressees via e-mail or text messages. You may not use a Site to represent that: (1) the Site is an official account,

application, page or group of, or video produced by us; or (2) you are the owner of the *Frullati Cafe & Bakery* brand. On any Site you use in connection with the Franchised Business, you must affirmatively state: (a) that you are a franchisee and the opinion and content being expressed are your own and not that of the *Frullati Cafe & Bakery* brand; and (b) the Location of your Franchised Business.

### **3.5 Not Applicable.**

## **ARTICLE 4. TRAINING, ASSISTANCE AND START-UP MATERIALS**

### **4.1 Training Program.**

We will provide up to two (2) natural persons (individually and collectively, "Trainees") with a training program designed to inform the participants as to the fundamentals of operating the Franchised Business prior to your opening of the Franchised Business. At minimum, one (1) of the two (2) natural persons must have an ownership interest in the Franchised Business. The remaining position may be filled by a natural person with an ownership interest in or management responsibility for the Franchised Business. The training program is made up of the "In-Store Training," which is approximately forty (40) hours, and "New Owner Training," which is approximately forty (40) hours (collectively, "Training Program"). You will be solely responsible for all transportation costs, food, lodging and other personal expenses incurred by you and your employees in connection with the Training Program. The New Owner Training will be conducted at the Franchisor training and education center in Scottsdale, Arizona and the In-Store Training will be conducted at a training store in Arizona or such other location as we may designate at our sole discretion. You acknowledge that adequate knowledge regarding the operation of the Franchised Business is essential to the growth of your franchise and to the promotion of the System. Notwithstanding the foregoing, Franchisor has the right to require Franchisee and/or its manager(s) to attend additional In-Store Training (as defined below), as provided for in this *Section 4.1* and *Section 5.9*, in the event Franchisee is not operating the Franchised Business pursuant to Franchisor's Systems Standards.

### **4.2 Employee Training.**

You acknowledge that the employees of your *Frullati Cafe & Bakery* Franchised Business are an integral and important part of the Franchised Business, as they will have substantial contact with customers. You alone are responsible, and acknowledge that we have no direct or indirect control and no right or authority, for the hiring, firing, training, supervising, setting the terms and conditions of employment (including employee tasks and work schedules), compensation of your employees, or maintaining employment records, for the safety of your employees and for your employees' compliance with the System Standards. The System Standards are in place to protect our interests in the System and not for exercising any control over you, your employees or your Franchised Business. You must ensure that your employees who have direct interaction with the public are able to speak and read English and any other language that may be required to adequately meet the public needs in your Franchised Business.

### **4.3 Additional Programs; Continuing Assistance.**

We will provide one (1) of our representatives to come to your restaurant during opening week for up to three (3) days, at our expense, to work with you or your manager on your grand

opening, and on operating and marketing your restaurant. We may, in the future, request that Trainees participate in refresher or additional training programs. We may also hold an annual conference to introduce new products, discuss sales and marketing techniques, personnel training, advertising programs, merchandising procedures and other subjects. You may be charged a nominal registration fee for these programs and you will be solely responsible for the cost of transportation, food, lodging and other expenses incurred by Trainees at any such program. Attendance at these additional training programs and conferences is mandatory. They will be held in the metropolitan Phoenix, Arizona area, or at other locations in the United States chosen by us, at our sole discretion.

In addition to the initial training available under *Section 4.1*, we shall provide such periodic evaluations or inspections as we deem appropriate, utilizing our field representatives who may visit the Franchised Business from time to time. The frequency and duration of such visits to a Franchised Business by our representatives shall be in our sole discretion. Any such evaluation or inspection is not intended to exercise any control over your employees or the daily operation of your Franchised Business. In addition, we will be available on an ongoing basis at our offices for consultation and guidance with respect to the operation and management of the Franchised Business. In addition to the Operations Manual, we may, but are not required to, from time to time provide you with additional materials relating to the Franchised Business.

#### **4.4 Area Representatives.**

We may retain the services of an independent third-party area representative ("Area Representative") to represent us in the area in which the restaurant is located and perform some or all of the services we provide under this Agreement. The services the Area Representative may perform could include: (i) assistance in location selection and evaluating and confirming that the Location meets our minimum site requirements; (ii) advice and guidance regarding lease negotiations; (iii) assistance in opening new *Frullati Cafe & Bakery* locations; (iv) assistance with training on the approved POS System (as defined in *Section 4.6a.*); (v) assistance with marketing advice; (vi) periodic Quality Service Cleanliness and Experience ("QSCE") evaluations; (vii) assistance with collection of the various sums due to us from *Frullati Cafe & Bakery* franchisees; and (viii) coordination with other *Frullati Cafe & Bakery* franchisees in your area and general supervision and monitoring of your Franchised Business on our behalf. You agree in advance to our delegation to an Area Representative of some or all of our obligations, and assignment to an Area Representative of some or all of our rights under this Agreement. You agree that we may require you to submit to an Area Representative any reports you are required to submit to us. Upon our request, you will provide the Area Representative with access, inspection and audit rights to the same extent we have those rights under this Agreement. You are not a third-party beneficiary of any agreement between us and any Area Representative. If we have designated an Area Representative for your restaurant as of the Effective Date, the name and contact information of the Area Representative is shown in *Section 17.3h*. We reserve the right in our sole discretion to remove any Area Representative in your area at any time and to appoint any other Area Representative for your area. We have no obligation to appoint an Area Representative in the area in which your restaurant is located, and we have no obligation to appoint a new Area Representative after we have removed an Area Representative.

You acknowledge that Area Representatives and their owners and employees may not contractually bind us without our express written authorization. You further acknowledge no Area Representative has the authority to: (i) enter into agreements or execute any agreements

on our behalf; or (ii) bind us in any way without our prior written consent. Unless expressly authorized and agreed to by us in writing, we disavow any agreements, whether verbal or written, entered into by an Area Representative that in any way attempts to bind us. In any litigation or arbitration proceeding, you agree to waive any claim or defense that an Area Representative is our express or implied agent and such an assertion by you constitutes a material default under this Agreement.

#### **4.5 Confidential Manual.**

To protect the reputation and goodwill of the System and to maintain the uniform standards of operation under the Proprietary Marks, you must conduct your business in accordance with our Confidential Manual. The Confidential Manual is confidential and remains our property.

The Operations Manual will be provided to you at the New Owner Training referred to in *Section 4.1*.

So that you may benefit from new knowledge gained by us as to improved techniques in the operation of the Franchised Business, we may from time to time revise, amend, restate or supplement the content of the Confidential Manual or other documents provided by, or approved by, us as they presently exist or may exist in the future. You will at all times ensure that your copy of the Confidential Manual is kept current and up to date. In the event of a dispute regarding any of the content of the Confidential Manual, the master copies maintained by us at our corporate office will control.

#### **4.6 Computer Systems; Debit and Credit Card Processing.**

a. Prior to the opening of your restaurant, you will be required to acquire, to maintain, and to exclusively use an approved cash register/computer system ("POS System") during the operation of the Franchised Business. You and your employees must complete training for the POS System as we require, and you will be required to use the POS System to produce sales reports, keep inventory control and post sales tax, refunds, credits and allowances and submit that information to us immediately upon our request. You are required to obtain DSL/high-speed Internet connection service for your POS System. If neither DSL nor cable is available in your area, dial-up Internet access may be used until DSL or cable service becomes available in your area. The POS System must be configured so that we will have remote access to the information and data stored in the POS System, which may include inventory information. This access will allow us to exchange/collect data and other information on such bases as we will communicate to you from time to time. You will be required to maintain the POS System in good working order at all times, and to upgrade or update the POS System during the Term as we may require from time to time. It will be your responsibility to enter into contracts for the maintenance, upgrades and updates to the POS System with an approved supplier of such services identified by us on the list of approved vendors and distributors or other notification to you from us advising of suppliers for your market area. You shall also be required to own a personal computer or similar device with access to the Internet that allows you to report your Gross Sales (as defined in *Section 5.2*) online, send and receive e-mails with us, and receive online orders. If implemented by us, all *Frullati Cafe & Bakery* franchisees of traditional restaurants will be required to participate in an online ordering program. We may provide specifications that you must follow for the hardware, software, and Internet

provider for such computer equipment. We may require you to upgrade the hardware and software as reasonably necessary to provide reports and information required by us.

b. You are required to accept debit and credit cards and Gift/Loyalty Cards from consumers at the Franchised Business. Prior to the opening of your restaurant, you will be required to acquire and maintain an approved debit, credit and Gift/Loyalty Card processing system to use during the operation of the Franchised Business. Additionally, you must utilize our approved third-party Gift/Loyalty payment card processor for processing all such Gift/Loyalty Card transactions, including entering into a Gift Card Participation Agreement with one of our affiliates, or its successors or assigns, or other approved vendor for the Gift/Loyalty Card processing services. The Payment Card Industry (“PCI”) requires all companies that process, store, or transmit credit card information to protect the cardholders’ information by complying with the PCI Data Security Standard (“PCI DSS”). Therefore, as a franchisee who accepts credit cards, you are required to be PCI compliant by following and adhering to PCI DSS, which includes ensuring that your POS System, back office computer (if supplied), and any other device that is plugged into the network is **only** used for business purposes. You are also required to complete an annual questionnaire and quarterly network PCI scans and install a network firewall appliance for logging, tracking, reporting, and security assessment. You are also required to validate with Franchisor that your store is PCI compliant. To show such validation you must send us your Passing Certificate showing your store is PCI compliant. You are also required to verify that you have a PCI compliant firewall appliance installed at your location if you process credit cards via high speed internet connectivity. We require your Franchised Business’ POS System, including terminals, computers, and software to be in compliance with the PCI DSS at all times. The PCI DSS is often updated, and you are required to obtain and comply with all updated standards. You must also be PCI compliant in order to obtain cyber liability/data breach insurance coverage.

## **ARTICLE 5. FEES AND DEPOSITS**

You agree to pay each of the following amounts to us via a lump sum, with each and every amount being non-refundable because of our investment in time and money, in addition to any other benefits conferred upon you, including processing your application, reviewing your documents, and providing you with relevant information, unless otherwise expressly specified below, in accordance with the provisions set forth in this *Article 5*. Notwithstanding your designation to the contrary, we have the sole discretion to apply any of your payments, in part or in whole, to any of your indebtedness to us.

### **5.1 Initial Franchise Fee.**

The initial franchise fee is Thirty Thousand Dollars (\$30,000) (“Initial Franchise Fee”). The Initial Franchise Fee will be due and payable by you to us by cashier’s check, wire transfer or other form of immediately available funds acceptable to us, upon your execution of this Agreement. You and we agree that our grant of the franchise and your payment of the Initial Franchise Fee provided for in this *Section 5.1* does not give you any rights with respect to other franchises, if any, as we in our sole discretion may elect to make available in the future.

### **5.2 Royalty Fee and Surcharge.**

For the period of time commencing on the later of the Effective Date or the date the Franchised Business opens to the public, and for the duration of the Term, you must pay to us a

weekly royalty fee equal to the greater of the following: (i) six percent (6%) of total Gross Sales (as defined below); or (ii) Two Hundred Dollars (\$200) ("Royalty Fee"). If we or the landlord of the Location require you to remodel your Franchised Business in such a way that your Franchised Business (including catering) stops offering items to the public, or if there is a disaster at your Franchised Business, such as a fire, flood or damage caused by an act of God, that requires you to temporarily close your Franchised Business, you are not required to pay the Royalty Fee during the period of time of such temporary closure; provided you provide us or our authorized representative with notice of such temporary closure as soon as reasonably possible, but in no event more than twenty-four (24) hours after such closure begins. Notwithstanding the above, all amounts owed to us under this Agreement prior to the temporary closure shall still be fully due and payable. The temporary closure of your Franchised Business shall not exceed ninety (90) days, but may be extended on a case-by-case basis at our sole discretion and with our prior written approval.

In our sole discretion, we may charge, in addition to the Royalty Fee, a surcharge of up to Ten Dollars (\$10) per week if your Franchised Business is located in a state that imposes additional reporting requirements on a franchisor ("Surcharge"). The Royalty Fee and applicable Surcharge shall be due and payable no later than Wednesday of each week, which day may be modified by us without prior notice to or approval from you, for the week ending on the preceding Sunday in which applicable Gross Sales (as defined below) were earned from the Franchised Business. The weekly Royalty Fee and applicable Surcharge shall be paid by electronic funds transfer, as detailed below.

For the period of time commencing on the later of the Effective Date or the date the Franchised Business opens to the public, and for the duration of the Term, you are required to report Gross Sales to our designated accounting office via the Internet at <http://franchisee.kahalamgmt.com>, as set forth in *Section 5.6*. You shall be required to establish a Depository Account (as defined in *Section 5.6*) at the time you execute this Agreement as set forth in *Section 5.6*. Payment of the Royalty Fee, Advertising Fee (as defined in *Section 5.3*), and all other fees due under this Agreement to us shall be made via electronic transfer of funds from the Depository Account. To accomplish this electronic transfer of funds from the Depository Account, you must complete, sign and deliver to us, and maintain for the duration of the Term, a current Electronic Funds Transfer Authorization in a form that we provide.

As used in this Agreement, "Gross Sales" means all sales, money or things of value, received or receivable, directly or indirectly, by Franchisee on account of the Franchised Business, less applicable sales taxes and any properly documented refunds, credits and allowances given by you to customers in accordance with the System Standards, but without deducting any of your income taxes, costs and other expenses. All sales made from catering services must be included in the Gross Sales.

### **5.3 Advertising Fee.**

a. Unless your Franchised Business is located in an enclosed shopping mall or other enclosed structure identified in *Section 1.1*, and in addition to the Advertising Fees under *Section 5.3b.*, you shall spend on advertising and on promotion at least Five Thousand Dollars (\$5,000) within the first six (6) months following the opening of the Franchised Business.

b. You must pay to us, or directly into a national advertising fund or also any regional advertising funds, as designated by us at our sole discretion, (individually and



collectively, "Advertising Fund") a weekly advertising fee of one percent (1%) of the Gross Sales for the preceding week ("Advertising Fee"). Upon thirty (30) days' notice by us to you, we may unilaterally increase the Advertising Fee from its current level not to exceed four percent (4%) of your weekly Gross Sales. The Advertising Fee shall be due and payable with the Royalty Fee under *Section 5.2*. The Advertising Fee is our property and may be deposited by us into our general operating account.

c. The Advertising Funds will be used for marketing, advertising, production and media expenses to promote the *Frullati Cafe & Bakery* name, System, products and services. We are entitled to deduct, free of charge the following from the Advertising Fund: (i) reimbursement of expenses, overhead, and employee salaries for services provided; and (ii) rent for office space provided to the Advertising Fund. We have no fiduciary obligation to you in connection with the operation of any Advertising Fund. No interest on an unexpended Advertising Fee shall be imputed or otherwise charged for the benefit of, or payable to, you. You understand and agree that the only obligations we have regarding the collection and spending of the Advertising Fee or the administration of the Advertising Fund are the express contractual obligations in this *Section 5.3*. We are not acting as a trustee, fiduciary, agent or in any other special capacity. We do not give any representation or warranty regarding the quality or effectiveness of the advertising and marketing activities funded by the Advertising Fee or of the Advertising Fund, and we will have no liability to you with respect to how these funds are spent.

d. Your own local marketing and advertising should be developed to maximize your particular customer base.

#### **5.4 Not Applicable.**

#### **5.5 Not Applicable.**

#### **5.6 Depository Account; Payment Procedures.**

You are required to establish, at the time you execute this Agreement, and maintain for the duration of the Term a depository account ("Depository Account") at a bank or other federally insured financial institution ("Depository"). You will initially deposit no less than Three Thousand Dollars (\$3,000) into the Depository Account and are required to maintain a balance of at least Three Thousand Dollars (\$3,000) in the Depository Account at all times during the Term by replenishing the Depository Account to at minimum Three Thousand Dollars (\$3,000) after any withdrawals. We shall not be responsible for any bank service charges incurred by you which result from the withdrawal of funds from your Depository Account.

On Monday of each week, you must submit a report to us regarding the weekly period which ended on the preceding Sunday, including details on Gross Sales and other statistical data as provided in this Agreement, Confidential Manual, or as otherwise specified from time to time by us. We will withdraw funds electronically on Wednesday of each week from the Depository Account. The withdrawals are based upon the figures you report and constitute the Royalty Fee and Advertising Fee as described in *Sections 5.2* and *5.3*. If you do not submit a report on any Monday, we may estimate the Royalty Fee and Advertising Fee based upon prior reports and withdraw the estimated amounts up to the entire Three Thousand Dollars (\$3,000). We will return or credit back to you, in our sole discretion, any overage within thirty (30) days after our receipt of your report(s). We shall not be responsible to you for any interest charges for any overage collected due to your failure to timely report your sales. You shall instruct the

Depository to disburse each week to our designated bank, via electronic funds transfer by the close of business on Wednesday (or preceding banking business day, if Wednesday is a bank holiday), the weekly Royalty Fee and Advertising Fee and other fees due for that week, which week shall end on the preceding Sunday.

We will also withdraw the monthly POS Help Desk Phone Support Maintenance Fee (as defined in *Section 5.20*) from the Depository Account on the last Thursday of each month. Under no circumstances shall such access to the Depository Account be deemed control or joint control of the Depository Account by us.

Subject to reasonable advance notice for non-recurring payment amounts, we have the right to debit your Depository Account, or any other depository account you have with us, according to the terms of your Electronic Funds Transfer Authorization for any of the payments described in this *Article 5*. If you do not pay all amounts due by the due date, we may suspend our and our affiliates' services and support until your payment default is cured. Repeated failure to pay all amounts when due, whether or not the defaults are subsequently cured, may be cause for termination under *Article 14*.

You shall pay us Fifty Dollars (\$50) for each electronic funds transfer attempted from your Depository Account pursuant to this *Section 5.6* that is returned for non-sufficient funds. You shall also reimburse us for all other costs and expenses incurred by us in collecting or attempting to collect funds due to us from the Depository Account (for example, without limitation, charges for non-sufficient funds, uncollected funds or other discrepancies in deposits or maintenance of the Depository Account balance in accordance with the terms hereof). The Depository Account shall be established and maintained solely for the purposes set forth in this *Section 5.6* and any other fees authorized under this Agreement and any other agreements between you and us or any of our affiliates.

#### **5.7 Lease Review Fee.**

If you request us or one of our designated affiliates to complete a Lease Review, you are required to pay us or our designated affiliate a lease review fee in the amount of Two Thousand Five Hundred Dollars (\$2,500) ("Lease Review Fee") for reviewing and providing comments to your proposed lease.

#### **5.8 Lease Guarantee Fee.**

If, in order to obtain the lease agreement for the Location of your Franchised Business, the landlord requires you to obtain a lease guarantee, and we or one of our affiliates agree to serve as such guarantor, you will pay us or our affiliate a fee in the amount of ten percent (10%) of the total amount of the rental obligations being guaranteed under the lease during its term up to a maximum fee of Ten Thousand Dollars (\$10,000) ("Lease Guarantee Fee"). The Lease Guarantee Fee will be due and payable upon our or our affiliate's execution of the applicable lease guarantee agreement with the landlord. Neither we nor any of our affiliates are required to serve as a guarantor of your lease for the Location of your Franchised Business; rather, the decision of whether to serve as a guarantor shall be made in our sole discretion. In the event that you request us or our affiliate to either agree to be the tenant under the lease or execute a separate guarantee to the lease, and you pay the required Lease Guarantee Fee, you agree and acknowledge that payment of the Lease Guarantee Fee shall not, in any manner, be deemed as an insurance policy which limits your liability in connection with the Franchised

Business, including any and all financial liability under the sublease or lease related to the Location. You further agree and acknowledge that our or our affiliate's agreement to act as tenant or guarantor under the lease, and your payment of the Lease Guarantee Fee to us or our affiliate, does not result in the assumption or transfer of your liability, in connection with the Franchised Business, by or to us or our affiliate.

#### **5.9 Additional Persons Training Fee.**

The training of two (2) individuals is included in the Initial Franchise Fee. If you desire to have more than two (2) people attend the Training Program, you must pay an additional training fee of Five Hundred Dollars (\$500) for each such person to attend the In-Store Training and an additional Five Hundred Dollars (\$500) for each such person to attend the New Owner Training (individually and collectively, "Additional Persons Training Fee") (see *Section 4.1*).

#### **5.10 Additional Training Fee.**

If, after attending the Training Program, you desire to receive additional training, we will provide additional training time to you for a fee of Three Hundred Dollars (\$300) per person per day. Such additional training will be at a time reasonably agreed to by you and us, and will be conducted at Franchisor's headquarters or such other location as we may designate in our sole discretion. You will be solely responsible for all transportation costs and expenses, food, lodging and other personal costs and expenses incurred by you and your employees in connection with this additional training.

#### **5.11 Document Administration Fee.**

A document administration fee of Five Hundred Dollars (\$500) ("Document Administration Fee") is payable to us when we must prepare an amendment to your franchise documents (see *Section 12.3g*).

#### **5.12 Renewal Franchise Fee.**

A renewal franchise fee of fifty percent (50%) of the then-current initial franchise fee not including any discounts or reductions ("Renewal Franchise Fee") is payable to us when you renew this Agreement (see *Section 13.i*).

#### **5.13 Transfer Franchise Fee.**

- a. Not applicable.
- b. A Potential Transferee (as defined in *Section 12.1c*.) receiving this Agreement, as may be amended, in connection with a Full Transfer (as defined in *Section 12.1a.1*.), must pay to us a transfer franchise fee of Seven Thousand Five Hundred Dollars (\$7,500) ("Transfer Franchise Fee").

#### **5.14 Relocation Fee.**

A relocation fee of Five Hundred Dollars (\$500) ("Relocation Fee") is payable to us when you sign the amendment to your Franchise Agreement for your relocation (see *Section 2.5*).

### **5.15 Transfer Training Fee.**

A Potential Transferee receiving this Agreement, as may be amended, in connection with a Full Transfer, must pay to us, in addition to the Transfer Franchise Fee, a transfer training fee of Two Thousand Five Hundred Dollars (\$2,500) ("Transfer Training Fee"). The Transfer Training Fee is used to provide training for two (2) individuals, and a fee of Five Hundred Dollars (\$500) will be charged for each additional individual trained over two (2).

### **5.16 Annual Meeting Registration Fee.**

If we hold an annual meeting ("Meeting"), the Meeting may be held at various locations throughout the United States as we may designate in our sole discretion. Because the planning and funding of the Meeting must be done well in advance and requires a substantial financial commitment, we have the right to debit your Depository Account for up to One Thousand Dollars (\$1,000) for the Meeting registration fee at any time sixty (60) to ninety (90) days prior to the first day of the Meeting. This fee may be debited from your account (even if you do not attend the Meeting). If you do not attend the Meeting, we will make available to you one (1) full set of the substantive materials that were presented at the Meeting.

### **5.17 Late Report, Default and Non-Sufficient Funds Fees, Breaching Royalties and Collection Costs and Expenses.**

If you fail to submit to us any financial statements, forms, reports or records required to be provided under this Agreement by its due date, including your weekly Gross Sales report for calculating your Royalty Fee and Advertising Fee, you must pay to us a non-refundable late report charge of One Hundred Dollars (\$100) per report.

If any fees or assessments due under this Agreement, including the Royalty Fee and Advertising Fee, are not paid when due, interest shall accrue on the late payment (from the date payment is due until the date it is paid) at the Default Rate or the maximum legal interest rate (whichever is higher), which amount, plus a Fifty Dollar (\$50) late fee, shall be added to each late payment. For any payments made by you to us under this Agreement which are returned for non-sufficient funds of a processed check, you shall be charged a non-sufficient funds fee of Twenty-Five Dollars (\$25) per occurrence. Pursuant to *Section 5.6*, for each electronic funds transfer that is attempted from the Depository Account but returned for non-sufficient funds, you shall be charged a non-sufficient funds fee of Fifty Dollars (\$50) per occurrence.

Franchisor has the absolute right to charge Franchisee the greater of: three (3) times the fixed Royalty fee; or, if on a percentage Royalty fee the Royalties will be increased up to eighteen percent (18%) of Gross Sales, with respect to any period during which Franchisee is in breach or default of its/his/her obligations under this Agreement. The Royalties paid or owing to Franchisor with respect to the period during which Franchisee is in breach or default are referred to as "Breaching Royalties." Breaching Royalties will be charged for a minimum fourteen (14) day period, regardless of the length of the actual breach or default.

If, as a result of your failure to remit payments required under any provision of this Agreement, we retain an attorney or a collection agency to collect such payments, you must pay all collection costs and expenses, including reasonable attorneys' fees and expenses, whether or not legal proceedings are initiated. Our rights under this *Section 5.17* are in addition to any other rights or remedies that we may have as a result of your default under this Agreement.

### **5.18 Audit Fees.**

For the purpose of this *Section 5.18*, we have the right, at any time during business hours, and with or without prior notice to you, to inspect and audit, or cause to be inspected and audited, the business records, cash control devices, bookkeeping and accounting records, sales and income tax records and returns and other records of the Franchised Business and your entity's books and records.

You hereby grant us access to any computers utilized by you for such purposes and we will have the ability, at all times, via modem, to obtain daily and weekly sales reports and other financial records that the POS System provides. You will fully cooperate with our representatives, the Area Representative, if applicable, and independent accountants hired by us to conduct any such inspection or audit. In addition, in the event such inspection or audit is made necessary by your failure to furnish reports, supporting records or other information, as required herein, or to furnish such reports, records or information on a timely basis, or if an understatement of Gross Sales, resulting in an underpayment of the Royalty Fee or Advertising Fee for the period of any audit (which shall not be for less than one (1) month) is determined by any such audit or inspection to be five percent (5%) or greater, you will pay to us, immediately after receipt of the inspection or audit report, any additional Royalty Fee and Advertising Fee and other amounts due as a result of any such understatement, plus interest at the Default Rate from the date originally due until the date of payment and you must reimburse us for such audit or inspection, including the charges of any independent accountants, and the travel expenses, room, board and compensation of such accountants and our employees.

The remedies in this *Section 5.18* will be in addition to all other remedies and rights available to us under this Agreement or otherwise available.

### **5.19 Data Fee.**

We may require you to pay us or a third-party we designate a data fee of up to Seventy-Five Dollars (\$75) per month for polling or collecting data from your POS System.

### **5.20 POS Help Desk Phone Support Maintenance Service Fee.**

You must purchase from us a help desk phone support maintenance service that covers phone support for both the software and hardware of your POS System that is supported by the help desk, the cost of which is currently Fifty-Five Dollars (\$55) monthly, and subject to increase upon thirty (30) days' notice ("POS Help Desk Phone Support Maintenance Service Fee"). The POS Help Desk Phone Support Maintenance Service Fee shall be paid by electronic funds transfer, as detailed in *Section 5.6*, and debited from your account on the last Thursday of each month.

### **5.21 New Supplier Approval Fee.**

All requests for approving new or alternative suppliers must be submitted in writing by you or the supplier to our Purchasing Department. Each request will be reviewed in accordance with our then-current procedures and the supplier must meet our then-current requirements, which may include that our representatives be allowed to inspect the facilities of the proposed supplier, and that samples from the proposed supplier be delivered, at no charge, either to us or to our designee for testing. A charge not to exceed the amounts incurred in connection with the

inspection and the test, with such cumulative amount not to exceed Five Thousand Dollars (\$5,000), must be paid to us either by you or by the proposed supplier. If approved, in our sole discretion, we will notify you or the supplier in writing within sixty (60) days after our receipt of an approval request. You must not offer or sell in any manner any of the proposed alternative supplier's products until you receive our written approval of the proposed alternative supplier.

#### **5.22 Reserved.**

#### **5.23 Non-participation Fee.**

You must offer and sell at the Location of the Franchised Business all products designated by us, consistent with our System Standards. In addition, you must immediately incorporate into the Franchised Business all new products and services designated by us and must fully participate in all local, regional, seasonal, promotional and other programs, initiatives and campaigns adopted by us in which we require you to participate. If you fail or refuse to fully participate in any such program, initiative or campaign, you may, in our sole discretion, be required to pay a non-participation fee of One Hundred Dollars (\$100) per day that you are not in compliance ("Non-participation Fee").

#### **5.24 Grand Opening Marketing.**

Ten Thousand Dollars (\$10,000) ("Grand Opening Marketing") is payable to us on the earlier of: (i) prior to you executing a lease for the premises where the Franchised Business will be located; or (ii) prior to construction commencing at the premises where the Franchised Business will be located. We or our designated affiliate will create a marketing plan for (i) a grand opening event at your Franchised Business, and (ii) the initial advertising of your Franchised Business, and will work with you to obtain your input on the marketing plan. We or our designated affiliate will use the Grand Opening Marketing to pay for the grand opening and initial advertising, but may, in our sole discretion, reimburse you for some local store marketing expenses that you pay if you received our prior approval. The Grand Opening Marketing should be used within six (6) months of the opening of your Franchised Business to the public. However, if a portion of the Grand Opening Marketing is not used within those six (6) months, we may, in our discretion, spend the remaining portion of the Grand Opening Marketing after six (6) months from the opening of your Franchised Business to the public.

#### **5.25 through 5.35 Not Applicable.**

### **ARTICLE 6. PROPRIETARY MARKS**

#### **6.1 Ownership and Right to Use.**

We warrant to you that:

- a. We are the owner of all right, title and interest in and to the Proprietary Marks;
- b. We have granted to you the personal, non-exclusive, limited, revocable right and license to use the Proprietary Marks in connection with the operation of your Franchised Business;

c. We have taken and will take all steps reasonably necessary to preserve and protect our rights in the Proprietary Marks; and

d. We will only permit you to use the Proprietary Marks in accordance with the System Standards.

## **6.2 Covenants of Franchise Owners.**

a. You acknowledge our ownership of the Proprietary Marks, and you agree that during the Term and after its expiration or termination, you will not directly or indirectly contest, or aid in contesting, the validity of the Proprietary Marks or our ownership of the Proprietary Marks, nor will you take any action which might impair or prejudice our ownership of the Proprietary Marks. You shall not, directly or indirectly, apply to register, register or otherwise seek to own or control any of the Proprietary Marks, or any confusingly similar mark thereto, whether in whole or in part, in any place or jurisdiction either within or outside of the United States; nor will you assist any others to do so.

b. You agree that the license granted pursuant to this Agreement authorizes you to use the Proprietary Marks solely in connection with the Franchised Business only at the Location, and for no other purpose. You have no right to license or sublicense any aspect of the System Standards or any of the Proprietary Marks.

c. You agree to use the Proprietary Marks only in the manner and to the extent specifically licensed by this Agreement. You further agree that any unauthorized use or continued use of the Proprietary Marks after the termination or expiration of this Agreement will constitute irreparable harm subject to injunctive relief.

d. The license granted by this Agreement includes only the Proprietary Marks, now existing or which may exist in the future. This license does not include the right to use any other trademarks, service marks, trade name or trade dress owned by us or our licensor anywhere in the world. You agree that any and all goodwill associated with and identified by your use of the Proprietary Marks will inure directly and exclusively to our benefit, and that, on the expiration or termination of this Agreement, no monetary amount will be due or payable to you as a result of any goodwill associated with your ownership or operation of the Franchised Business.

## **6.3 Limitations on Franchisee's Use of Proprietary Marks.**

To develop and maintain high and uniform standards of quality and service and thereby protect our reputation and goodwill and that of the System, you agree:

a. To operate and advertise the Franchised Business only under the Proprietary Marks authorized by us;

b. To adopt and use the Proprietary Marks licensed by this Agreement solely in the manner prescribed by us;

c. That your corporate, partnership or other entity name including trade name, will not include any of the Proprietary Marks, in whole or in part, or any terms confusingly similar thereto, unless first authorized by us in writing;

d. To submit all advertising, promotional materials and all printed matter, including stationery, business cards, and any materials to be used on the Internet to us for our written approval before you use any of these items; and

e. That we may from time to time change or modify the System Standards, including modifying existing Proprietary Marks or adopting new marks. You agree, at your own expense, to adopt, use and display any such new or modified Proprietary Marks within ninety (90) days after notification from us. However, if we require you to modify or discontinue use of our proprietary information or use other information or rights in its place at any time other than upon renewal of this Agreement, and that requirement is a direct result of proceedings or litigation that determined that our and our franchisees' use of the proprietary information infringed upon a third-party's rights, we or our affiliate will bear the cost of those modifications or discontinuances.

Upon your abandonment of the Franchised Business (whether voluntary or involuntary), termination or expiration of this Agreement, you must immediately cease to use, in any manner whatsoever, any of the Proprietary Marks or any other marks which, in whole or in part, may be confusingly similar to any of the Proprietary Marks.

#### **6.4 Non-Exclusive License of Proprietary Marks.**

You understand and agree that your license to use the Proprietary Marks is non-exclusive; that we, in our sole discretion, can grant to other franchisees the right to use the Proprietary Marks and obtain the benefits of the System Standards, in addition to the licenses and rights granted to you under this Agreement; and that we or our affiliates may develop and license other proprietary marks in conjunction with concepts other than the Frullati Cafe & Bakery concept, on any terms and conditions we deem advisable. You will have no right or interest in any such other licenses, proprietary marks or systems.

#### **6.5 Notification of Infringement and Claims.**

You agree that you will notify us immediately of any apparent infringement of, or challenge to your use of any of the Proprietary Marks, or any claim by any person of any rights in any of the Proprietary Marks. You agree that you will not communicate with any person, other than us and our legal counsel, in connection with any such infringement, challenge or claim. We will have the sole discretion to take such action as we may deem appropriate to protect the Proprietary Marks and the exclusive right to control any litigation, United States Patent and Trademark Office proceeding, or other proceeding arising out of any such infringement, challenge, claim or otherwise relating to any Proprietary Marks. You agree to execute any and all instruments and documents, render such assistance, and do such acts and things as may, in the opinion of our counsel, be necessary or advisable to protect and maintain our interests in connection with any such litigation or proceeding, or to otherwise protect and maintain our interests in the Proprietary Marks.

### **ARTICLE 7. TRADE SECRETS AND PROPRIETARY INFORMATION**

#### **7.1 Innovations.**

During the Term, you and your principals, officers, managers and employees may conceive, invent, create, design or develop various ideas, techniques, methods, processes and procedures, recipes, formulae, products, packaging or other concepts and features relating to



restaurant operations, business practices or the manufacturing, production, marketing and sale of Panini, sandwiches, salads, soups, fresh baked goods, blended fruit drinks, and other food and beverage items, and related goods now in existence or later developed, adopted, or improved in connection with the Franchised Business (individually and collectively, "Innovations"). You, without further consideration, hereby assign any and all of your rights, title and interest in the Innovations, including any intellectual property rights, to us, and also agree to cooperate with us and our counsel in the protection of the Innovations, including the perfecting of title thereto in us. In addition, you will require all of your principals, officers, managers and employees to sign an agreement in the form set forth in our System Standards and incorporated herein by reference ("Confidentiality Agreement"), and shall be liable to us for obligating your principals, officers, managers and employees to assign all of their rights, title and interest to the Innovations to us and requiring your principals, officers, managers and employees to cooperate in obtaining, protecting, maintaining and enforcing our right, title and interest in the Innovations.

## **7.2 Confidentiality Agreement.**

a. In connection with the operation of the Franchised Business, you will from time to time receive, have access to, or learn certain information and materials that are proprietary to us or our affiliate. You and any person signing this Agreement under the heading "Personal Acceptance of *Sections 7.1, 7.2, 14.6 and 14.8*" agree that you will keep confidential, and will not use for your own purposes, nor supply or divulge to any other person, any of our Trade Secrets, including our methods of operation, processes, techniques, formulae and procedures, information a reasonable person would believe to be confidential and any other proprietary information regardless of whether such is expressly marked as confidential ("Confidential Information"). You acknowledge that much of the information imparted to you by us is confidential, constitutes Trade Secrets, are unique to us, and remains our sole exclusive property. Our Confidential Information includes the following:

1. The Confidential Manual and any amendments thereto;
2. Ingredients, recipes, and methods of preparation of food products;
3. Methods of operation of *Frullati Cafe & Bakery* restaurants;
4. Information about products, services, or procedures before they become public knowledge;
5. Information which relates in any manner to our business or the System Standards, whether oral or reduced to writing, and which is not generally known to, or readily ascertainable by, other persons who might derive economic benefit from its disclosure or use; and
6. Any other information which may be imparted to you from time to time and designated by us as confidential.

b. You and any person signing this Agreement under the heading "Personal Acceptance of *Sections 7.1, 7.2, 14.6 and 14.8*" acknowledge and agree that the Confidential Information and any business goodwill of the Franchised Business is our sole and exclusive property, and that you will preserve the confidentiality thereof. Upon termination or expiration of this Agreement, all items, records or documentation recording or incorporating any Confidential

Information, including any copies thereof, will be immediately turned over by you to us or our authorized representative.

c. You agree to take all steps necessary, at your own expense, to protect the Confidential Information, including our Trade Secrets, and to adopt and implement all reasonable procedures prescribed by us from time to time to prevent the unauthorized use or disclosure of any of the Confidential Information. We require that all of your executive officers, agents, directors, shareholders, trustees, beneficiaries, partners and managers who may or are likely to obtain knowledge concerning the Proprietary Information (and who do not sign this Agreement under the heading "Personal Acceptance of Sections 7.1, 7.2, 14.6 and 14.8") sign the Confidentiality Agreement binding such person to preserve the confidentiality of the Confidential Information as part of the terms and conditions of such person's employment or association with you. You must obtain a Confidentiality Agreement signed by any such person prior to or at the same time that you begin employment of, or association with, that person. This will be a continuing obligation on your part throughout the Term. You must keep each original signed Confidentiality Agreement and provide us with a copy of each Confidentiality Agreement when requested by us or our authorized representative.

d. Notwithstanding the above, Confidential Information shall not include information which you can reasonably prove: (i) entered the public domain through no breach by you or your affiliate of any duty of confidentiality, or (ii) you received our prior express written consent to disclose in the manner in which you disclosed it.

e. If anyone under a Confidentiality Agreement is legally compelled or required by a regulatory body to disclose any Confidential Information, he/she/it will notify us as soon as possible and will use his/her/its best efforts to obtain, and give us an opportunity to obtain, appropriate assurances of confidential treatment.

f. The requirements under this Section 7.2 will remain in full force and effect during the Term and after termination or expiration of this Agreement.

## **ARTICLE 8. RELATIONSHIP OF THE PARTIES AND INDEMNIFICATION**

### **8.1 Relationship of the Parties.**

You and we agree that this Agreement does not create any fiduciary or employment relationship between you, or any of your employees, and us, that you are an independent contractor, and that nothing in this Agreement is intended to make either you or us a general or special agent, legal representative, subsidiary, joint venture, partner, employee or servant of the other for any purpose. You shall not enter into any agreement on behalf of or otherwise bind us for any purpose.

### **8.2 Indemnification of Franchisor.**

You agree to indemnify, defend and hold us and our affiliates (including our parent and subsidiary companies, current, past and future predecessors, successors and assigns), and each of our shareholders, owners, directors, officers, members, managers, partners, joint venturers, attorneys, employees, contractors, agents, representatives, guarantors, insurers, spouses, heirs, executors, trustees and estates (collectively with us, "Indemnified Parties") harmless for, from and against any and all claims, liabilities, causes of action, suits, debts,

duties, accounts, covenants, contracts, agreements, promises, taxes, demands, obligations, costs and expenses, including reasonable attorneys' fees, damages, judgments, and proceedings, of every kind and nature whatsoever, in law or equity, or otherwise, under local, state or federal law including, without limitation the Americans with Disabilities Act ("ADA"), or the law of any other applicable jurisdiction (individually and collectively, "Claims") suffered or incurred by any of the Indemnified Parties arising out of or relating to your construction, ownership, marketing, Promotions (as defined in *Article 10*), operation, including your failure to comply with PCI DSS or any law, statute, regulation, order, rule, or ordinance, or management of the Franchised Business, except for Claims held to have resulted solely from our gross negligence or willful misconduct. Notwithstanding the foregoing, we will have the right, at our option, to defend any Claim, but you must reimburse us upon demand for the costs and expenses of such defense. You shall immediately give us notice of any demand, investigation, written inquiry, action, suit, proceeding, or claim in any way related to us or the *Frullati Cafe & Bakery* brand.

### **8.3 Indemnification of Franchisee.**

We agree to indemnify, defend and hold you and your affiliates, and their shareholders, directors, officers, members, managers, partners, employees, agents, successors and assignees harmless for, from and against any and all Claims, arising out of any Claim of infringement or unfair competition in connection with your authorized use of the Proprietary Marks or Confidential Information, provided that such use is in accordance with the provisions of this Agreement. However, if we require you to modify or discontinue use of our Proprietary Marks or Confidential Information or use other information or rights in its place at any time other than upon renewal of this Agreement, and that requirement is a direct result of proceedings or litigation that determined that our and our franchisees' use of the Proprietary Marks or Confidential Information infringed upon a third-party's rights, we will bear the cost of those modifications or discontinuances.

### **8.4 Special Power of Attorney.**

You agree to cooperate with and assist us as we may request from time to time to obtain, protect, maintain or enforce our intellectual property and Proprietary Marks, including executing documents and appearing as a witness. You hereby appoint us as your attorney-in-fact and hereby grant us an irrevocable Special Power of Attorney, coupled with an interest, with full power and authority for the purpose of executing documents or taking such action as necessary or appropriate as you might or could do if personally present, hereby ratifying all that we, as your attorney-in-fact, shall lawfully do or cause to be done by virtue of this Special Power of Attorney to obtain, protect, maintain or enforce our intellectual property and Proprietary Marks if we are, for any reason, unable to obtain your cooperation or assistance. The Special Power of Attorney granted by this *Section 8.4*, shall survive your dissolution, death, incompetence or disability and the termination or expiration of this Agreement.

## **ARTICLE 9. OPERATING STANDARDS AND DUTIES OF FRANCHISE OWNER**

### **9.1 Compliance with System Standards and Confidential Manual.**

You understand and acknowledge that every detail of the operation of the Franchised Business is important in order to develop and maintain high and uniform standards of quality, cleanliness, appearance, service, facilities and techniques; to increase the demand for the System; and to protect our reputation and goodwill and that of other *Frullati Cafe & Bakery*

franchisees. You also acknowledge that the operation of the Franchised Business is your sole responsibility, and that neither we nor our affiliates have any responsibility to obtain customers for you. The System Standards will constitute provisions of this Agreement as if fully set forth herein.

## **9.2 Authorized Products and Services.**

a. You agree that you will not, without our prior written approval, offer at the Location any menu items, beverages, products or services that are not authorized by us for the Franchised Business, as set forth in the System Standards.

b. You have complete discretion in establishing the minimum price you charge for your products. Although we may suggest pricing strategy, you will have the final pricing decision.

c. Notwithstanding the terms of *Section 9.2b.*, we may conduct periodic promotional campaigns during which a specified product or products are promoted at a specified price. During the promotional period, you may not charge your customers more than the specified promotional price, although you may charge less than the promotional price.

d. We may conduct new marketing, research and development, branding and operational program tests, which will generally be conducted with experienced, existing franchisees and may include incentives and other rights that are not available to all franchisees.

e. You hereby consent to third-party vendors, suppliers and distributors sharing with us any and all information, reports, invoices and related documentation covering and otherwise detailing your purchases for the Franchised Business.

f. You are required to accept debit and credit cards (including Visa®, MASTERCARD® and AMERICAN EXPRESS®) and Gift/Loyalty Cards from consumers at the Franchised Business. Prior to the opening of your Franchised Business, you are required to acquire, and maintain during the Term, an approved debit, credit and Gift/Loyalty Card processing system ("Card Processing System") to use during the operation of the Franchised Business. Additionally, you must utilize our approved third-party payment card processor, as identified in the System Standards, for processing all Card Processing System transactions.

## **9.3 Specifications and Standards for Supplies; Approved Suppliers; Rollouts.**

a. You must purchase or otherwise acquire certain proprietary or required equipment and supplies utilized in the Franchised Business only from our designated approved distributors or suppliers. If, during the Term, we change designated approved distributors or suppliers for any of the proprietary or required equipment and supplies utilized in the Franchised Business, you shall change to the new designated approved distributor or supplier within sixty (60) days after written notification of such change from us.

b. If you desire to purchase or otherwise acquire any equipment, supplies or inventory items required by the System Standards but not previously approved by us, or from sources not previously approved by us, you must submit to us sufficient specifications, photographs, drawings and other information sufficient to allow us to determine whether such equipment, supplies or inventory items meet our System Standards. We may require that our

representatives be allowed to inspect the facilities of the proposed supplier and revoke its approval upon the supplier's failure to meet any of our then-current minimum System Standards. We may also require that samples from the proposed supplier be delivered, at no charge to us, either to us or to our designee for testing. A charge not to exceed the reasonable cost and expense of the inspection and the actual cost and expense of the test must be paid to us either by you or by the proposed supplier. We will notify you within sixty (60) days after your request of our approval or disapproval of the proposed product or supplier, with such determination to be made at our sole discretion. You acknowledge and agree that our approval of any item or supplier of equipment, supplies or inventory not previously approved by us will not, in and of itself, make the supplier of that item an approved supplier for other *Frullati Cafe & Bakery* franchise owners in the System. We may, in our sole discretion, at any time and from time to time, re-inspect the facilities and products of any approved supplier and revoke its approval upon the supplier's failure to meet any of our then-current System Standards. If you receive a notice of revocation from us, you must immediately stop selling disapproved products and purchasing from the disapproved supplier.

c. We will provide to you a list of all recommended and required items of equipment, fixtures, supplies, smallwares and interior decor. This list will be included in the System Standards.

d. At any time and from time to time, we may in our sole option engage in new product rollouts to add to or change the menu items offered for sale in the Franchised Business and the ingredients or supplier of ingredients utilized in the preparation of the menu items sold in the Franchised Business ("Rollout"). If we engage in a Rollout, you shall participate in the changes that are the subject of such Rollout, including offering the new menu items, changing the menu items, changing to the new supplier of the ingredients utilized in the preparation of the menu items, and changing to the new ingredients utilized in the preparation of the menu items. If we engage in a Rollout, we will notify you of the details of the Rollout and provide you sixty (60) days from said notification to take the applicable actions required by the Rollout.

#### **9.4 Compliance with Legal Requirements and Good Business Practices.**

You must, at your sole expense, operate the Franchised Business in full compliance with all applicable Federal, state and local statutes, laws, ordinances and regulations, including health and safety regulations, food and drug laws, disability laws, labor and employment laws and data privacy laws, as may be amended, supplemented or enacted from time to time. You must pay all costs and expenses incurred by, and in the conduct of, the Franchised Business, including all rent, salaries, taxes (excluding our income taxes), disbursements, license or permit fees, insurance premiums, traveling expenses and any other business expenses. If you receive any demand, action, suit or proceeding, or the issuance of any order, writ, injunction, award or decree of any court, agency or other governmental instrumentality relating to your Franchised Business, you must immediately notify us, and in no event, later than three (3) days after your receipt. Any such notice must be accompanied by a copy of the demand, complaint, order, writ, injunction, award, decree or other similar document. You must, in all dealings with your customers, suppliers, the public and us adhere to the highest standards of honesty, integrity, fair dealing and ethical conduct. You agree to refrain from any business practice that may be injurious to the System or the goodwill associated with the Proprietary Marks.

## 9.5 Maintenance of Insurance.

At all times during the Term, you must maintain in full force and effect commercial general liability insurance against claims for bodily and personal injury, death and property damage caused by or occurring in connection with the construction, ownership, operation or conduct of the Franchised Business. The insurance must also include coverage for product liability and fire claims.

Such liability insurance coverage must be maintained under one (1) or more policies of insurance (each of which shall be primary coverage and shall not be contributory or secondary to any other coverage maintained by us) containing minimum liability limits of One Million Dollars (\$1,000,000) (or greater if applicable state laws or regulations require) for each occurrence and with an aggregate of not less than Two Million Dollars (\$2,000,000). Such insurance policy or policies must be "occurrence" policies and not "claims made" policies; must not provide for a deductible greater than One Thousand Dollars (\$1,000) in the aggregate and must provide that no act or omission of ours or of any officer, director or employee of ours or any affiliate of ours shall invalidate or diminish any coverage thereunder.

Such insurance policies must be issued by insurers acceptable to us having an A.M. Best's financial strength rating of at minimum "A-." The general liability insurance required by this Agreement must: (i) name Kahala Franchising, L.L.C. as the certificate holder; (ii) name Kahala Franchising, L.L.C. and MTY Franchising USA, Inc. and their parents, subsidiaries, affiliates, officers, directors, and employees as additional insureds; (iii) contain a waiver by the insurance carrier of all subrogation rights against us and our affiliates and our affiliates' respective officers, directors and employees for casualty losses; (iv) indicate the address of the Franchised Business being insured; and (v) provide that we will receive, via an endorsement, thirty (30) days' prior notice of cancellation of any such policy. Our minimum insurance coverage requirements (subject to increase in our sole discretion) are as follows:

Type of Coverage	Limits/Specifications
General Liability	\$1,000,000 bodily injury/property damage per occurrence / \$2,000,000 aggregate
Building Improvements and Betterments	100% of full replacement cost – no coinsurance (minimum of \$100,000)
Business Personal Property	100% of full replacement cost – no coinsurance – special form or equivalent (minimum of \$100,000)
Spoilage	\$5,000
Business Income	actual loss sustained or at least 50% of annual sales
Flood, Earthquake and Volcanic Eruption	subject to territory limitations – required if in a designated flood zone
Workers' Compensation	statutory requirements
Stop Gap or Employer Liability	bodily injury by accident: \$1,000,000 each accident bodily injury by disease: \$1,000,000 policy limit bodily injury by disease: \$1,000,000 each employee
Hired and Non-Owned Automobile Liability	\$1,000,000 combined single limit per accident

In addition, we recommend that you obtain cyber liability/data breach insurance coverage.

You are responsible for maintaining insurance coverage and limits as required by us, at minimum, pursuant to this *Section 9.5*, provided, if your landlord requires additional coverage, higher limits, or any other requirements not required by us, then you are responsible for maintaining such additional items as well. You must always keep the required insurance coverage in force at all times during the operation of the Franchised Business, and you must comply with any changes we make periodically to our insurance requirements. If your restaurant is located in a flood zone or an area subject to earthquakes, hurricanes, tornadoes, other similar hazards, you may want to obtain additional specific insurance to cover these risks. Such insurance may significantly increase your premiums. Upon thirty (30) days' notice to you, we may require you to increase the minimum coverage of the insurance referred to above as of the next renewal date of any policy, and require different or additional kinds of insurance at any time, including excess liability (umbrella) insurance, to reflect inflation, identification of special risks, changes in law or standards of liability, higher damage awards or other relevant changes in circumstances.

Subject to *Section 3.1*, and annually thereafter, at least ten (10) days prior to renewal of your insurance coverage, and at any other time on our request, you must provide us with certificates of insurance or copies of insurance policies showing that you are in compliance with our insurance requirements, as well as proof that you have paid the premiums you owe for the insurance we require. You will pay your insurance premiums to your insurance broker or to the insurance company issuing the policy. You must have insurance and provide a copy of your certificate of insurance to us which meets our requirements before you may open your restaurant. We or our affiliate may, at our option and in addition to our other rights and remedies under this Agreement, obtain such insurance coverage on your behalf, and you must promptly execute any applications or other forms or instruments required to obtain any such insurance and pay to us, on demand, any costs, expenses and premiums incurred by us. Your obligation to obtain and maintain the insurance described above will not be limited in any way by reason of any insurance maintained by us, nor will your performance of such obligations relieve you of any obligations under *Section 8.2*.

## **9.6 Management of the Franchised Business.**

You are directly responsible for all aspects of operating the Franchised Business, and you agree that you will, at all times, operate the Franchised Business and use your best efforts to enhance your Franchised Business and the System. The Franchised Business must be personally managed and directly operated by either you or another partner, shareholder or member of your business organization, or a manager.

## **9.7 Inspections by Franchisor.**

For the purpose of this *Section 9.7*, you must make available to us or our authorized representatives such financial and other information concerning the Franchised Business, and you must permit us or our authorized representatives to have full and free access to such information at your Franchised Business Location during regular business hours without prior notice. We and our authorized representatives will have the right to communicate freely with your employees, and make extracts from, and copies of, all such information. Our authorized representative may make announced or unannounced inspections of your Franchised Business to ensure compliance with all of the requirements of this Agreement.

## **9.8 Personal Guaranty; Non-Disclosure and Non-Competition Agreement.**

If you are an individual and married, your spouse must execute and deliver to us a Guaranty of Franchise Agreement and a Non-Disclosure and Non-Competition Agreement at the same time that you sign the Agreement unless your spouse is also signing the Agreement as an individual.

If you are a corporation, limited liability company, or other business entity, each of your shareholders, members, or other owners, whether direct or indirect (and their respective spouses, if married) must execute and deliver to us a Guaranty of Franchise Agreement and a Non-Disclosure and Non-Competition Agreement at the same time that you sign this Agreement.

In the event any person who has not previously signed a Guaranty of Franchise Agreement or a Non-Disclosure and Non-Competition Agreement becomes your spouse or shareholder, member, or other owner, direct or indirect or a spouse of such shareholders, members, or other owner, at any time after the execution of this Agreement, you must cause such person(s) to immediately execute and deliver a Guaranty of Franchise Agreement and a Non-Disclosure and Non-Competition Agreement to us.

Failure to provide a Guaranty of Franchise Agreement or a Non-Disclosure and Non-Competition Agreement to us may, in our sole discretion, be grounds for termination of this Agreement as set forth in *Section 14.2a*.

## **9.9 Not Applicable.**

# **ARTICLE 10. ADVERTISING AND PROMOTION**

## **10.1 Advertising by Franchisor.**

We (or at our election a third-party which may be an affiliate of ours) will administer the Advertising Fund that will include your Advertising Fee and those of other franchise owners in the System. If an affiliate of ours administers the Advertising Fund or places advertising in connection with the System, such affiliate may be paid a fee that will not exceed the fee that would be payable to unrelated third-parties for comparable services. Unless required by applicable law, we will have no obligation to create a trust account, escrow account or other special account for the Advertising Fund, and the monies comprising the Advertising Fund may be placed in our general account. We may also reserve the Advertising Fee for use in a subsequent year.

We will direct all advertising and promotional programs. We will have sole discretion over all creative concepts, materials and media used in such programs and the placement and allocation of such programs. The Advertising Fund will be used for marketing, advertising, production and media expenses to promote the *Frullati Cafe & Bakery* trade name, System, products and services. We are entitled to deduct, free of charge, the following from the Advertising Fund: reimbursement of expenses, overhead, and employee salaries for services provided; and rent for office space provided to the Advertising Fund. We are not required to use any specific amounts from the Advertising Fund in your market. However, we will use all amounts contributed by you to any Advertising Fund, if any (see *Section 5.3*), in the same geographic area in which your Franchised Business is located.



## **10.2 Advertising by Franchisee.**

In addition to your Advertising Fee, if applicable, and your grand opening promotional advertising program required under *Section 5.24*, and unless your Franchised Business is located in an enclosed shopping mall or other enclosed structure identified in *Section 1.1*, you agree to pay for a regular (white pages) and classified (yellow pages) telephone directory advertisement in the main directory distributed in the area where your Franchised Business is located, in such directory categories as we specify, utilizing forms of listing and classified directory advertisements approved by us. We also recommend that, in addition to your Advertising Fee, you spend at least two percent (2%) of your monthly Gross Sales on local advertising.

Your own local marketing and advertising plan should be developed to maximize your particular customer base. You should not rely upon a marketing program or plan by us as the sole means of obtaining customers. All marketing and advertising materials must be reviewed by the marketing department for look and feel. The marketing department's review is not for determining compliance with federal, state and local laws.

All advertising by you in any medium must be conducted in a professional manner and must conform to the System Standards. We may make available to you, from time to time, advertising, promotional plans and materials for purchase.

Under no circumstances may you use, without limitation, the name, image, or voice of a celebrity, public figure, character or other person in connection with the Proprietary Marks or the Franchised Business without our prior written consent. We retain the sole and exclusive right to use, without limitation, the name, services or image of any celebrity, public figure, character or other person in advertising, endorsing or recommending the System.

## **ARTICLE 11. ACCOUNTING PROCEDURES AND REPORTS**

### **11.1 Maintenance of Records.**

You shall keep full, complete, and accurate books and accounts in accordance with generally accepted accounting principles, and in the form and manner indicated below or as from time to time further required by us. You agree to submit reports and data to us electronically if we advise you to do so. You agree:

- a. to submit to us electronically the weekly Gross Sales as set forth in *Section 5.6*;
- b. to submit to us, on or before the thirtieth (30th) day of each month, commencing with the opening of the Franchised Business, on a form approved by us, a profit and loss statement of the Franchised Business for the preceding calendar month prepared in accordance with generally accepted accounting principles;
- c. to submit to us, within ninety (90) days after the end of each calendar year, commencing with the opening of the Franchised Business, on a form approved by us, a profit and loss statement and balance sheet (including a statement of retained earnings or partnership account) for the preceding calendar year;
- d. to submit to us, at the times required, such other periodic forms, reports and information as may from time to time be required by us;

e. to preserve, in the English language and for the time periods set forth below, all accounting records and supporting documents related to the Franchised Business (individually and collectively, "Records"), including:

1. daily cash reports;
2. cash receipts journal and general ledger;
3. cash disbursements journal and weekly payroll register;
4. monthly bank statements, daily deposit slips and canceled checks;
5. all tax returns, including your personal returns and those of your officers, shareholders, partners and members;
6. suppliers invoices (paid and unpaid);
7. dated cash register tapes (detailed and summary);
8. semi-annual balance sheets and monthly profit and loss statements;
9. daily production, throwaway and finishing records and weekly inventories;
10. records of promotion and coupon redemptions;
11. records of all outside sales; and
12. such other records as we may from time to time request.

f. to record all sales on cash registers approved by us, as specified in the Confidential Manual;

g. to file all of your federal and state tax returns on a timely basis and to provide copies of them to us. We may, where applicable, require that tax returns from all of your shareholders, members or partners be provided to us, if you are other than an individual;

h. During the Term, you shall preserve the Records for at least the current fiscal year and for the three (3) immediately preceding fiscal years. For three (3) years after the date of any transfer of an interest in this Agreement, the transferor of such interest will preserve the Records for its last three (3) fiscal years of operation under this Agreement. For three (3) years after the expiration of the Term (or after any earlier termination), you shall preserve the Records for the last three (3) fiscal years of operation of the Franchised Business; and

i. In connection with our efforts to attract additional franchise owners to the System, we will have the right to use (without identifying you, except as required or allowed by law) any financial statements, sales reports, profit and loss statements or balance sheets provided by you and, in connection therewith, you authorize us to disclose any information contained on such financial reports as may be required by any federal or state registration or disclosure law.

## **11.2 Audit by Franchisor.**

We will have the right, at any time during business hours, and with or without prior notice to you, to inspect and audit, or cause to be inspected and audited, the Records and cash control devices of the Franchised Business, and your corporate, partnership or limited liability company books and records (if you are a corporation, partnership, limited liability company, or other entity). You agree that we may access any computers utilized by you for such purposes.

You will fully cooperate with our authorized representatives and independent accountants hired by us to conduct any such inspection or audit. In the event any such inspection or audit discloses an understatement of your Gross Sales for any period in question, you will pay to us, immediately after receipt of the inspection or audit report, any additional Royalty Fee or Advertising Fee due as a result of any such understatement, plus interest at the Default Rate from the date originally due until the date such understatement is paid in full.

In addition, in the event such inspection or audit is made necessary by your failure to timely furnish Records, or if an understatement of the Royalty Fee or Advertising Fee for the period of any audit (which period shall not be for less than one (1) month) is determined by any such audit or inspection to be five percent (5%) or greater, you must reimburse us all amounts incurred in connection with such audit or inspection including our employee costs and expenses, any independent accountants' and attorneys' fees, transportation, room, and meal expenses.

The remedies in this *Section 11.2* will be in addition to all our other remedies and rights under this Agreement or under applicable law.

## **ARTICLE 12. TRANSFER**

*Sections 12.1 through 12.4* apply to all transfers, except transfers by us, which are described in *Section 12.5*.

### **12.1 Prior Consent of Franchisor.**

a. As used in this Agreement, "Transfer" means any voluntary, involuntary (including by operation of law), direct or indirect assignment, sale, gift or other transfer by you, including:

1. "Full Transfer," which is any act or circumstance, except those set forth in *Section 12.1.a.2.*, by which fifty percent (50%) or more of the ownership or control is shifted from any individual or corporation, partnership or other business entity (individually and collectively, "Entity") to another, including:

(i) Transfer of this Agreement or the Franchised Business, or any right or interest granted by this Agreement;

(ii) Transfer of an interest in you, if you are an Entity;

(iii) Merger, consolidation or issuance of additional ownership interests or redemption of ownership interests in you, if you are an Entity; or

(iv) Transfer of an interest in any other Entity holding an interest in this Agreement or you, if you are an Entity.

2. "Affiliate Transfer," which includes:

(i) Transfer in a separation or divorce, regardless of how much of the ownership or control is shifted from any individual or Entity to another;

(ii) Transfer of this Agreement or the Franchised Business, or any right or interest granted by this Agreement from your name as an individual(s) to your Entity name in which you are the sole owner(s) of the Entity;

(iii) Transfer of this Agreement or the Franchised Business, or any right or interest granted by this Agreement, from your Entity name in which you are the sole owner(s) to your name as an individual(s);

(iv) Transfer of this Agreement or the Franchised Business, or any right or interest granted by this Agreement from one Entity name to another Entity name in which the owners of the entities are the same;

(v) Removing an owner from the Franchisee (unless the person has a fifty percent (50%) or more ownership interest);

(vi) Adding an owner to the Franchisee (unless the person has a fifty percent (50%) or more ownership interest); or

(vii) Transfer by which less than fifty percent (50%) of the ownership or control is shifted from any individual or entity to another for any act or circumstance listed in *Section 12.1.a.1.*

b. We are entering into this Agreement based upon our knowledge of and faith in your ability. Therefore, the Franchised Business and all the rights granted by this Agreement are personal to you and you may not Transfer without our prior written consent. Any attempted Transfer without our prior written consent will be null and void, and will give us the right to terminate this Agreement and your rights under it, in addition to any remedies which we may have for the breach of this covenant by reason of an attempted Transfer.

c. We shall not unreasonably withhold or delay our consent to a Transfer, so long as it is shown to our satisfaction that the potential transferee ("Potential Transferee") can perform a franchisee's obligations under the then-current form of franchise agreement and all other agreements, legal instruments and documents required of new franchisees.

## **12.2 Advance Notice of Proposed Terms and Right of First Refusal.**

a. If you, or any of your shareholders, members or partners, have received and desire to accept a signed bona fide written offer from a third-party to Transfer, you shall notify us and provide us with a complete copy of the offer (letter of intent) which must include the name, address and telephone number for every Potential Transferee. You must also include information as to the identity of all who will own an interest in this Agreement or in the Franchised Business after the completion of the Transfer, their respective interests, and the proposed terms and conditions of sale and payment.

b. We shall have the right and option, exercisable within thirty (30) days after the date we receive a copy of the offer, to purchase the interest proposed to be transferred, at the price and upon the same terms and conditions specified in the notice.

c. If we do not exercise our option, and the terms of the unaccepted offer are altered, you must, in each such instance, notify us of the changed offer; and we will again have thirty (30) days to exercise our right to purchase on the altered terms. If we do not exercise our option, then the Transfer may take place on the terms and price set forth in the notice; provided: (i) we give our written consent; (ii) the Transfer takes place no later than six (6) months from receipt of our written refusal to exercise our option to purchase; and (iii) all the conditions set forth in *Section 12.3* are satisfied.

### **12.3 Requirement for Consent to Transfer.**

If a Transfer is proposed and we do not exercise our right of first refusal pursuant to *Section 12.2*, then we will consent to the Transfer, provided that:

a. All your obligations under this Agreement are fully paid and satisfied, including the Royalty Fee and Advertising Fee; you are not in default under any provisions of this Agreement or any other agreement, legal instrument or document with us or any of our affiliates; and you enter into written agreements with us, including (except where prohibited by law) a general release by you of all claims against us;

b. Potential Transferee provides to us a completed application and financial documents, is financially acceptable, is not associated with any of our competitors, is of good moral character and reputation, and meets our criteria, which includes: work experience and aptitude; ability to devote time and best efforts to the Franchised Business; equity interest in the Franchised Business; ability to speak and read English sufficient in our opinion to communicate with employees, customers and suppliers and to satisfactorily complete our training; no conflicting interests; and other criteria and conditions that we apply to new franchisees;

c. Potential Transferee provides us with copies of all governing documents of Potential Transferee (e.g., certificate of incorporation or organization, by-laws, stock certificates, operating agreement, membership certificates (if any)) which must be reasonably satisfactory to us in our sole discretion;

d. You provide to us a copy of the purchase and sale agreement, if a Full Transfer, or other documentation evidencing the Transfer, if an Affiliate Transfer, and following our analysis of the terms and conditions of the proposed Transfer, we, in our sole discretion, conclude that such terms and conditions will not interfere with the financial feasibility of the future operation of the Franchised Business;

e. Potential Transferee enters into all agreements, legal instruments and other documents, whether our then-current agreements, legal instruments and documents or a transfer of this Agreement and related legal instruments and documents, as determined by us (individually and collectively, "Transfer Documents"). The terms of the Transfer Documents may vary materially from the current agreements used by us, including the payment of a higher Royalty Fee and Advertising Fee;

f. Not Applicable;

g. Potential Transferee pays to us the transfer franchise fee set forth in the Transfer Documents, if a Full Transfer; or Potential Transferee pays us the Document Administration Fee, if an Affiliate Transfer; Franchisee shall be liable to the Franchisor for the transfer franchise fee or Document Administration Fee in the event the Potential Transferee fails to pay such fee that is owing in full;

h. Potential Transferee pays to us the transfer training fee set forth in the Transfer Documents, if a Full Transfer; Franchisee shall be liable to Franchisor for the training fee if Potential Transferee fails to pay the training fee owing in full; If Potential Transferee or any of its employees or representatives cancel or reschedule participation in any training course or program which Potential Transferee schedules with Franchisor, Potential Transferee or Franchisee must reimburse Franchisor for all of its employee's travel expenses, wages and other expenses incurred as a result of such cancellation or rescheduling;

i. Potential Transferee successfully completes the training program required by the Transfer Documents, if a Full Transfer;

j. Potential Transferee agrees to complete all remodeling and improvements as required by us, and must upgrade the POS System to the then-current required POS System, within the time period specified by us, if a Full Transfer;

k. You and Potential Transferee agree not to assert any security interest, lien, right or claim now or in the future, in the Franchised Business. Any security interest, lien, claim or right asserted with respect to any personal property at the Location must not include any after-acquired property and must be subject, junior and subordinate to any security interest, lien, right or claim now or in the future, asserted by us, our successors or assigns; and

l. You agree to complete and sign a letter of agency, letter of authorization, or equivalent and provide it to Potential Transferee so that Potential Transferee may keep the existing telephone number when the store is transferred to Potential Transferee.

#### **12.4 Death or Incapacity of Individual Franchisee; Change in Entity.**

a. Death or incapacity of Franchisee when Franchisee is an individual:

(i) In the event of your death or incapacity, your legal representative may, for a period of ninety (90) days from the date of death or incapacitation, continue to operate the Franchised Business, provided that the operation is conducted in accordance with this Agreement and any other agreements with us.

(ii) If your representative desires to continue the operation of the Franchised Business beyond the ninety (90) day period, then, prior to the expiration of this period, your legal representative must apply in writing for the right to transfer the Franchised Business to the person or persons (whether spouse, heir, devisee, purchaser, or any other person), as the legal representative may specify. The application for transfer will be treated in the same manner as any other proposed Transfer under this Agreement.

(iii) If your legal representative does not comply with the provisions of the preceding paragraph, or does not propose a Potential Transferee acceptable to us under the standards set forth in this Agreement, all rights licensed to you under this Agreement will

terminate immediately and automatically revert to us. We shall have the right and option, in our sole discretion, exercisable upon such termination, to purchase all removable furniture, fixtures, signs, equipment and other chattels, but not leasehold improvements, at a price to be agreed upon by the parties or, if no agreement as to price is reached by the parties, at such price as may be determined by a qualified appraiser, approved by both parties, such approval not to be unreasonably withheld. We shall give notice of our intent to exercise the option no later than twenty-one (21) days prior to termination.

b. Death or incapacity of any shareholder, partner, or member in Franchisee when Franchisee is a business entity:

(i) In the event of the death or incapacity of any of your shareholders, partners, or members, the surviving shareholders, partners, or members may, for a period of ninety (90) days from the date of death or incapacitation, continue to operate the Franchised Business, provided that the operation is conducted in accordance with this Agreement and any other agreements with us.

(ii) If your shareholders, partners or members desire to continue the operation of the Franchised Business beyond the ninety (90) day period, then, prior to the expiration of this period, your shareholders, partners, or members must apply jointly with all surviving shareholders, partners or members in writing, for the right to transfer the Franchised Business (or the interest of the deceased or incapacitated shareholder, partner, or member in the Franchised Business), to the person or business entity as the surviving shareholders, partners, or members may specify. The application for transfer will be treated in the same manner as any other proposed Transfer under this Agreement.

(iii) If all surviving shareholders, partners or members do not comply with the provisions of the preceding paragraph, or do not propose a Potential Transferee acceptable to us under the standards set forth in this Agreement, all rights licensed to you under this Agreement will terminate immediately and automatically revert to us. We shall have the right and option, in our sole discretion, exercisable upon such termination, to purchase all removable furniture, fixtures, signs, equipment and other chattels, but not leasehold improvements, at a price to be agreed upon by the parties or, if no agreement as to price is reached by the parties, at such price as may be determined by a qualified appraiser, approved by both parties, such approval not to be unreasonably withheld. We shall give notice of our intent to exercise the option no later than twenty-one (21) days prior to termination.

## **12.5 Assignment by Franchisor.**

You agree and affirm that we may, without your prior consent, sell our business, our assets, or our System, in whole or in part, to a third-party; may issue a public offering of our securities; may engage in private placement of some or all of our securities; may merge with or acquire other corporations, or be acquired by another corporation; and may undertake a refinancing, recapitalization, leveraged buyout or other economic or financial restructuring. You further agree and affirm that we have the right, now and in the future, without your prior consent, to purchase, merge, acquire or affiliate with an existing competitive or non-competitive franchise network, chain or any other business regardless of the location of such franchise network, chain or business, which you acknowledge may be proximate to your Franchised Business, and to operate, franchise or license such franchise networks, chains or businesses operating under the Proprietary Marks or any other marks following our purchase, merger, acquisition or affiliation.

With regard to any of the above sales, assignments and dispositions, you expressly and specifically waive any claims, demands or damages against us arising from or related to the loss of your rights to use the System as authorized under this Agreement.

This Agreement will inure to the benefit of our successors and assigns. In conjunction with one (1) or more of the transactions contemplated above, or as otherwise determined by us, we have the right to assign our rights and obligations under this Agreement to any person or entity, without your prior consent. Upon such assignment, we will be relieved of all obligations or liabilities then existing or thereafter able to be asserted under this Agreement.

## **12.6 Restrictions on Security Interests and Subfranchising.**

Except as otherwise set forth in this *Section 12.6*, you shall not have any rights to pledge, encumber, hypothecate or otherwise give any third-party a security interest in this Agreement in any manner whatsoever, nor subfranchise or otherwise transfer, or attempt to subfranchise or transfer the Franchised Business, in whole or in part, so long as it is operated as the Franchised Business, without our express prior written permission, which permission may be withheld for any reason whatsoever in our sole discretion. Notwithstanding anything contained herein to the contrary, you shall have the right to pledge your accounts receivable, net of royalties and rent, without our prior written consent for the sole purpose of obtaining financing for the operation of the Franchised Business, provided you are in full compliance with this Agreement and any other agreement, arrangement or understanding with us.

## **ARTICLE 13. RENEWAL**

Subject to the terms and conditions described below, you will have the right to renew your license to operate the Franchised Business for an additional term of five (5) years. In the event you desire to renew your license, you must give us notice to that effect at least one hundred twenty (120) days prior to the expiration date of the Term. In addition to giving the notice of renewal referred to above in a timely manner, in order to have the right to renew the license to operate the Franchised Business for an additional term, you must also meet each of the following requirements:

a. You must not then be in default under this Agreement or any other agreement, legal instrument or document with us or any of our affiliates, and no event shall have occurred that, with the giving of notice, the passage of time, or both, would constitute a default under this Agreement, including all financial obligations to us;

b. You must be in complete compliance with the terms of this Agreement, including all financial obligations to us, and the then-current Confidential Manual;

c. You must not have received more than three (3) notices of default or breach of this Agreement during its term, nor more than two (2) notices of default or breach during the five (5) years immediately preceding the effective date of the proposed renewal;

d. You must have the existing right to maintain possession of the Location or you must have secured and developed a suitable substitute location that meets our then-current minimum site requirements (such confirmation will be provided to you by us in writing);

e. You must sign a general release provided by us;



f. You and we must execute all agreements, legal instruments and other documents (individually and collectively, "Renewal Documents") then used by us in the renewal of franchises and then being required of new franchise owners in connection with the System. The Renewal Documents will supersede this Agreement, but will not terminate your liability to perform any obligations which you have not yet performed under this Agreement, or which survive the termination of this Agreement; nor will the Renewal Documents terminate or supersede any Guaranty of Franchise Agreement, Confidentiality Agreement, or Non-Disclosure and Non-Competition Agreement executed pursuant to this Agreement. The terms of the Renewal Documents may vary materially from the current agreements used by us, including the payment of a higher Royalty Fee and Advertising Fee;

g. The equipment, fixtures and signage used in connection with the operation of the Franchised Business must either meet our then-existing System specifications and standards, or you must agree, within a timeframe required by us, to replace or refurbish such items, and otherwise modify the methods of operation of the Franchised Business at your cost and expense, in order to comply with our System specifications and standards then applicable to new franchise owners;

h. You agree to complete all remodeling and improvements as required by us, and must upgrade the POS System to the then-current required POS System, within the time period specified by us; and

i. You shall have paid to us the Renewal Franchise Fee as required under *Section 5.12*.

If you do not meet any of the requirements for renewal, we will give you a notice to that effect which will specify the requirements not met. The notice will be given to you within sixty (60) days after you deliver to us your notice of intent to renew.

## **ARTICLE 14. DEFAULT AND TERMINATION**

### **14.1 Default; Termination.**

a. You will be in default under this Agreement:

(i) If: (a) you become insolvent or make an assignment for the benefit of creditors; (b) you file a petition in bankruptcy, or if such a petition is filed against and consented to by you, and such petition is not dismissed within thirty (30) days from the filing date of such petition; (c) you are adjudicated bankrupt; (d) a bill in equity or other proceeding for the appointment of your receiver or other custodian for your business or assets is filed and is consented to by you or is not dismissed within thirty (30) days from the filing date of such bill or other proceeding; (e) a receiver or other custodian is appointed; (f) proceedings for composition with creditors under any state or federal law is instituted by or against you; (g) the real or personal property of the Franchised Business is sold at levy thereupon by any sheriff, marshal or constable, or sold by a secured party under any state's Commercial Code;

(ii) If you fail to pay, perform, observe or comply with any of your duties and obligations under this Agreement or the Confidential Manual, including failure to provide a fully-executed copy of the lease to us when due and failure to pay when due, any sum due to us under this Agreement (including the Royalty Fee and Advertising Fee); or if you breach any of

your obligations under any lease, sublease, mortgage, equipment agreement, promissory note, vendor account, conditional sales contract or other contract arising from, or in connection with, the Franchised Business, to which you are a party or by which you are bound, whether or not we are a party thereto;

(iii) If your lease or sublease for the Location of the Franchised Business is either: (a) in default and you fail to cure such default as provided in the lease or sublease; (b) is terminated for reason of default by you; or (c) the Location is lost as a result of your failure to comply with the lease or sublease;

(iv) If you fail, within thirty (30) days of the entry of a final judgment against you in an amount exceeding Two Thousand Dollars (\$2,000), to discharge, vacate or reverse the judgment or to stay its execution pending appeal, or to discharge any judgment which is not vacated or reversed within thirty (30) days after expiration of the stay of execution;

(v) If we determine that a serious health or safety problem exists at the Franchised Business, in which case, we may require you to immediately correct the problem or cease operating until the problem is corrected;

(vi) If you, or any owner, co-owner or principal of the Franchised Business, is convicted of a felony, a crime involving moral turpitude, or any other crime or offense that is reasonably likely to adversely affect the System, the goodwill associated therewith, or our interest therein;

(vii) Except for any reason provided in *Section 5.2*, if you abandon the Franchised Business, which abandonment shall conclusively be deemed established if the Franchised Business is closed for more than three (3) consecutive days;

(viii) Except for any reason provided in *Section 5.2*, if you close or relocate the Franchised Business, without our express advance written consent;

(ix) If you fail to maintain an independent contractor relationship with us;

(x) If you either negligently or knowingly inaccurately report, or fail to report, any information in your franchise application;

(xi) If you or any owner, co-owner or principal of the Franchised Business commits an act, or permits an act to be committed, that violates any federal, state or local law that adversely impacts the Franchised Business;

(xii) If you fail to participate in any Rollout detailed in *Section 9.3*;

(xiii) If you violate any of the provisions of *Sections 2.3, 3.2, 9.2, 9.3 or 9.4* including the requirement that you: (a) sell or offer for sale only those products and services authorized by us; (b) purchase such authorized products and services only from suppliers or service providers who are approved in writing by us; and (c) utilize or switch to any of our designated approved suppliers, including a supplier who has entered into a national or regional master supplier agreement with us;

(xiv) If you transfer or attempt to transfer any rights or obligations under this Agreement or any other property or assets to any third-party in violation of the provisions of *Article 12*;

(xv) If you or any of your owners, officers, directors, managers, members, or partners (as applicable): (a) become subject to U.S. Executive Order 13224 or are involved in any activity that violates the U.S. Foreign Corrupt Practices Act or any other anti-corruption, bribery or any other laws, orders or governmental notices affecting your ability to conduct business in or with the United States, as may be amended and whether in effect as of the Effective Date or at any time during the Term, (b) are identified on the U.S. Department of the Treasury's Office of Foreign Assets Control Specialty Designated National and Blocked Persons list, or (c) receive any funding from any country that is subject to an embargo by the United States, any foreign government or government official, political party; or

(xvi) If you intentionally made any false representations and warranties under *Section 17.1*.

b. Cross-default: A default by you under this Agreement will be deemed a default of all agreements between: (i) you and your principals in his or her individual capacity or any other entity in which your principals are owners, members, managers, shareholders or partners (individually and collectively, "Franchisee Entity"); and (ii) us or any of our affiliates or predecessors (individually and collectively, "Franchisor Entity"). A Franchisee Entity's default of any other agreement, legal instrument or other document between the Franchisee Entity and a Franchisor Entity will be deemed a default under this Agreement. A default by any guarantor of your obligations under this Agreement or any agreement, legal instrument or document between a Franchisee Entity and a Franchisor Entity will be deemed a default of this Agreement.

c. Termination: If you fail to cure any default to our satisfaction, within the applicable period following notice from us, if applicable, or otherwise breach this Agreement, we may, in addition to all other remedies at law or in equity or as otherwise set forth in this Agreement, immediately terminate this Agreement. This termination will be effective immediately upon the giving of notice pursuant to *Article 15*.

d. Cross-termination: If this Agreement is terminated as a result of your default of this Agreement or any other agreement related to the Franchised Business, we may, at our option, elect to terminate any or all other agreements, legal instruments or documents between a Franchisee Entity and a Franchisor Entity. If any agreement, legal instrument or document between a Franchisee Entity and a Franchisor Entity is terminated as a result of a default by the Franchisee Entity, we may, at our sole discretion, elect to terminate this Agreement. It is agreed that an incurable or uncured default under this Agreement or any other agreement, legal instrument or document between a Franchisee Entity and a Franchisor Entity will be grounds for termination of this Agreement or any other agreement, legal instrument or document between a Franchisee Entity and a Franchisor Entity, without additional notice or opportunity to cure.

## **14.2 Opportunity to Cure.**

a. Fourteen-Day Cure Period - Except as otherwise provided in this *Section 14.2*, you will have the right to cure your default under this Agreement within fourteen (14) days after notice of default is given by us pursuant to *Article 15*. Notwithstanding the foregoing, the following lesser periods will apply under the circumstances described:

b. Seven-Day Cure Period - A seven (7) day cure period will apply if you fail, refuse, or neglect to pay when due, any monies owing to us (including the Royalty Fee and Advertising Fee), or to any Advertising Fund, or if you fail to maintain the insurance coverage set forth in this Agreement;

c. 48-Hour Cure Period – A forty-eight (48) hour cure period will apply (1) if you are in default of *Section 3.4* or (2) if you fail to participate in any limited time product offering, value offering, contest, promotion or charity event. You must initiate your participation in such offering, contest, promotion or event within forty-eight (48) hours and fully participate in such offering, contest, promotion or event as soon as reasonably possible, in our sole discretion, thereafter;

d. 24-Hour Cure Period - A twenty-four (24) hour cure period will apply to your violation of any law, regulation, order or our standards relating to health, sanitation or safety; or, except as provided in *Section 5.2*, if you cease to operate the Franchised Business for a period of forty-eight (48) hours without our prior written consent. In addition, a twenty-four (24) hour cure period will apply if you post on any Site or direct others to any site or page, post, blog or other social medium site where there are posted any defamatory or offensive comments about: other franchisees; the *Frullati Cafe & Bakery* brand; other brands franchised by us or one of our affiliates; your or other franchisees' customers; any of our, your or franchisees' vendors; us or any of our affiliates; or any of our, your or franchisees' competitors;

e. Immediate Cure Period (less than 24 hours) – An immediate cure period (less than twenty-four (24) hours) will apply if you post any content to a Site in which the content includes any inappropriate public displays of affection, our or others' confidential information or materials, violations of health or safety standards, foul or obscene language, or any images of or information about any persons from whom you did not obtain prior written consent;

f. No Cure Period - No cure period will be available: (1) if you are in default of *Sections 3.1, 9.4, 14.1a.(i), 14.1a.(iii), 14.1a.(vi), 14.1a.(vii), 14.1a.(viii), 14.1a.(xiv), 14.1a.(xv)*, or *14.6*; (2) if you intentionally underreport weekly Gross Sales, falsify financial data, fail to promptly provide upon our request financial data and records specified in this Agreement, or otherwise commit an act of fraud with respect to your rights or obligations under this Agreement; (3) if you repeatedly fail to comply with the provisions of this Agreement, whether or not subsequently cured; (4) if you, having twice previously cured a default of this Agreement, commit the default again; or (5) if you made any false representations and warranties under *Sections 17.1f., 17.1g., 17.1m. or 17.1n.*;

g. Statutory Cure Period - If a statute in the state or municipality in which the Franchised Business is located requires application of that state or municipal law, and that statute requires a cure period for the applicable default which is longer than any cure period specified in this *Article 14*, the statutory cure period will apply.

### **14.3 Our Right to Take Over Management.**

We have the right (but not the obligation), under the circumstances described below, to enter the Franchised Business and assume the Franchised Business' management for any period of time we feel is appropriate. If we assume the Franchised Business' management, you must pay us, in addition to the Royalty Fee and Advertising Fee, six percent (6%) of the Gross Sales, plus our direct out-of-pocket cost and expenses, for the period of time we assume the

Franchised Business' management. If we assume the Franchised Business' management, you acknowledge that our duty is limited to using our reasonable efforts, and we will not be liable to you or your owners for any debts, losses or obligations the Franchised Business incurs, or to any of your creditors for any supplies or services the Franchised Business purchases. We may assume the Franchised Business' management if you abandon the Franchised Business or if you fail to comply with any provision of this Agreement and did not cure the failure within the time period we specify in our notice to you. You agree to complete and sign a letter of agency, letter of authorization, or equivalent and provide it to us upon our request if we assume the Franchised Business' management so that we may keep the existing telephone, facsimile, alarm, and credit card machine numbers (as applicable) in operation under our phone service provider. You also agree to keep the phone, water, gas, electric service (as applicable) turned on and active for one (1) week after we assume the Franchised Business's management to allow us to switch the services over to us or our affiliate. Our exercise of our management rights under this *Section 14.3* will not affect our right to terminate this Agreement.

#### **14.4 Remedies.**

a. Interest, Costs and Damages - If you fail to remit when due any payments required under this Agreement, you agree to pay, in addition to the unpaid amounts, all of our collection costs and expenses, expert fees, reasonable attorneys' fees, and costs and expenses, including all fees, costs and expenses of court, including all appeals, with interest on the unpaid amounts at the Default Rate or the highest permissible rate. If you fail to cure a default, following notice, within the applicable time period set forth in *Section 14.2*, or if this Agreement is terminated as a result of your default, you shall pay to us all damages of any kind and nature whatsoever and all collection costs and expenses, expert fees, reasonable attorneys' fees, and costs and expenses, including all fees, costs and expenses of court, including all appeals, together with interest at the Default Rate or the highest permissible rate. If you fail to report Gross Sales in accordance with *Sections 5.2* and *5.6*, we may estimate your Royalty Fee and Advertising Fee based on prior reports, and may sue for and obtain judgment for such estimates unless you prove, prior to the entry of any default order or judgment, that your Royalty Fee and Advertising Fee are different than the estimates.

b. Waiver of Punitive Damages - Both we and you waive, to the full extent permitted by law, any right they otherwise may have had to claim, pursue, demand or receive any exemplary or punitive damages arising out of or related in any way to this Agreement and its addenda, amendments, appendices, exhibits and attachments.

c. If you breach any of the terms of this Agreement, including if you are in default of this Agreement, we may enforce our rights by injunction, specific performance, or any other remedy available under this Agreement, at law or in equity, including termination. These remedies are cumulative and not exclusive and we may use all remedies available. In addition, we may elect to terminate this Agreement and all your rights under it as set forth in *Section 14.5*.

d. If you breach any of the terms of this Agreement, including if you are in default of this Agreement, we have the right to have a receiver appointed to take possession, manage and control the assets of the Franchised Business, collect the profits, and pay the net income for the operation of the Franchised Business as ordered by a court of competent jurisdiction. The right to appoint a receiver will be available regardless of whether waste or danger of loss or destruction of the assets exists.

## 14.5 Effect of Termination or Expiration.

Upon termination or expiration of this Agreement, we can advise all suppliers of *Frullati Cafe & Bakery* proprietary food items and other supplies bearing any of the Proprietary Marks or service marks to cease delivering the items and products to you.

Upon your abandonment of the Franchised Business (whether voluntary or involuntary), any termination of this Agreement (whether pursuant to *Sections 14.1, 14.2, 14.4*, or otherwise), or upon expiration of the Term, you must immediately cease to hold yourself out to the public as a franchise owner of the System, and you must comply with the following:

a. Immediately pay to us or any affiliate of ours all sums owing from you to us or such affiliate, including the Royalty Fee and Advertising Fee, for any period prior to the date of termination, the applicable Early Termination Damages (as defined in Section 14.9 below), and all amounts owed for services, supplies or other items purchased by you from us or any affiliate of ours, or that were financed by us or any affiliate of ours, or which we or any affiliate of ours loaned to you, together with any interest or late fees accrued thereon, together with all other sums due us under this Agreement, and all damages of any kind or nature whatsoever that may be allowed by law;

b. Immediately cease to use, in any manner whatsoever, including in all advertising, the Proprietary Marks, any Trade Secrets, any Confidential Information, any benefits of the System or any part thereof, any methods associated with the System, any forms, recipes, Confidential Manual, slogans, signs, sign posts, marks, symbols, or devices used in connection with the operation of the Franchised Business; and you must deliver or destroy all of the above-mentioned materials, including any materials containing or referencing any of the foregoing, to us as directed by us. If we do not recover any such items, such items shall be valued at their then-current replacement cost, for purposes of determining the damages owing by you to us for failure to return such items, if we pursue a damage claim as a result thereof;

c. Immediately discontinue all advertising as a franchisee of the System, and thereafter refrain from any advertising that would indicate that you are or ever were a franchisee or licensee of ours, or otherwise were affiliated with us or the System;

d. Immediately take such steps as may be necessary or appropriate to:

(i) delete your listing in all telephone directories, if applicable, and terminate any other listings that indicate that you are or were a franchisee or licensee of ours, or otherwise were affiliated with us or the System; and

(ii) transfer to our designee or us all telephone numbers used by you in connection with the Franchised Business. You acknowledge that between you and us, we have the sole right and interest in all telephone numbers and directory listings associated with any Proprietary Marks, and you authorize us and appoint us and any officer or agent of ours, as your attorney-in-fact, to direct the telephone company and all listings agencies to accept such direction, or this Agreement, as conclusive evidence of our exclusive rights in such telephone numbers and directory listings and our authority to direct their transfer;

e. Immediately take such action as may be required to cancel all fictitious or assumed names, amend any entity name, or dissolve any entity that contains any Proprietary

Mark, in whole or in part, regardless of whether the entity name was authorized by us, and amend or cancel any and all equivalent registrations relating to your use of any Proprietary Mark. You acknowledge that between you and us, we have the sole right and interest in all such fictitious or assumed names, entity name, and equivalent registrations, and you authorize us and appoint us and any officer or agent of ours as your attorney-in-fact, to effect the termination or cancellation of such fictitious or assumed names or equivalent registrations should you fail or refuse to do so, and the appropriate federal, state, and local agencies may accept your direction or this Agreement as conclusive evidence of our exclusive rights in such fictitious or assumed names or equivalent registrations, and our authority to direct their termination or cancellation;

f. Comply with the confidentiality requirements and the covenant against competition in this Agreement for the specified period. You acknowledge that you, or (if an entity) your authorized representative, has carefully reviewed the confidentiality requirements and the covenant against competition in this Agreement; and that you have agreed to be bound by all the requirements and covenants; and

g. Maintain at a place made known to us all books, records and reports required under this Agreement for a period of not less than three (3) years after the date of termination or expiration of this Agreement, to allow us to make a final inspection of your books and records for the purpose of verifying that all amounts owing have been paid.

If you fail to do any of the foregoing, we may pursue any remedy available at law or in equity against: (i) you; (ii) any or all guarantors of your obligations under this Agreement; and (iii) you and any or all guarantors of your obligations under this Agreement.

We have the right, but not the obligation, to purchase from you any assets or property (but not leasehold improvements) used in the operation of the Franchised Business for an amount equal to the Value (as defined below), as of the termination date. If we are required, by law, regulation or court order, to purchase the equipment and other tangible assets used in connection with the Franchised Business, the purchase price will be equal to the Value. For purposes of this Agreement, the term "Value" means, subject to applicable law, an amount equal to your cost for such assets, less depreciation and amortization using a two hundred percent (200%) declining balance method over a five (5) year period. If all, or any portion of, your assets that are being purchased by us or our authorized representative are subject to lien(s), we or our authorized representative may pay, on your behalf, the lienholder(s) that portion of the purchase price for your assets (which may be the entire purchase price) that is necessary to obtain the release of those assets from the lien(s), in lieu of paying you those funds. Further, we may offset any amounts payable to you pursuant to this *Section 14.5*, or otherwise pursuant to this Agreement, against any unpaid amounts payable to us or our affiliates pursuant to this Agreement or any agreement executed in connection with this Agreement.

#### **14.6 Covenant Not to Compete; Conflicting Interests.**

a. During the Term and for a period of two (2) years after your abandonment of the Franchised Business, expiration of this Agreement, or termination of this Agreement (whether voluntary or involuntary), you shall not engage in any Competing Business (as defined in *Section 14.6c.*) with any *Frullati Cafe & Bakery* restaurant, nor shall you have any Conflicting Interest (as defined in *Section 14.6d.*) in a Competing Business. The provisions of this

Agreement bind you in any capacity, including as a franchisee, sole proprietor, partner, limited partner, member, employer, franchisor, shareholder, officer, director or employee.

b. During the Term, and for a period of two (2) years after your abandonment of the Franchised Business, expiration of this Agreement, or termination of this Agreement (whether voluntary or involuntary), you shall not divert or attempt to divert any business, customers, or potential customers of the *Frullati Cafe & Bakery* System to any Competing Business, by direct or indirect inducement or otherwise. In addition, you shall not at any time do or perform any act, directly or indirectly, which harms the goodwill or reputation of us or the System.

c. For purposes of this *Section 14.6*, "Competing Business" means a business which is primarily engaged in the sale of gourmet sandwiches and salads, and all variations thereof, within a geographical area consisting of: (1) during the Term, anywhere else; and (2) after abandonment, expiration or termination of this Agreement, within a ten (10) mile radius from the Location or location of any *Frullati Cafe & Bakery* restaurant of ours, our third-party licensees or our third-party franchisees. The term "*Frullati Cafe & Bakery* restaurant" includes not only the restaurants now in existence, but also those established at a later date. The term of this covenant will be extended by any time consumed in litigation to enforce it in both trial and appellate courts. If a court of competent jurisdiction determines that the restrictions in this paragraph are excessive in time, geographic scope, or otherwise, the court may reduce the restriction to the level that provides the maximum restriction allowed by law.

d. For purposes of this *Section 14.6*, "Conflicting Interest" means an interest by which you, or your executive officers, directors and shareholders (if you are a corporation), or your partners (if you are a partnership), or your members (if you are a limited liability company), or your designated manager, directly or indirectly, have a controlling interest in, lend money to, consult with or otherwise assist any Competing Business. If any of the persons named above do not sign this Agreement under the heading "*Personal Acceptance of Sections 7.1, 7.2, 14.6 and 14.8*," then you agree to obtain the execution by such person of a written agreement setting forth the foregoing in a form acceptable to us.

#### **14.7 Continuing Obligations.**

All your obligations that expressly survive the expiration or termination of this Agreement, including *Sections 14.5* and *14.6*, or by the implicit nature thereof require performance after the expiration or termination of this Agreement, will continue in full force and effect (subsequent to, and notwithstanding, your abandonment of the Franchised Business (whether voluntary or involuntary) the expiration of the Term, or termination of this Agreement), until they are satisfied in full or by their nature expire. The indemnities and obligations set forth in *Article 8* will continue in full force and effect subsequent to, and notwithstanding, the expiration or termination of this Agreement.

#### **14.8 Remedies.**

You acknowledge and agree that the restrictions contained in this Agreement, including in this *Article 14*, are fair and reasonable and necessary for the protection of our legitimate business interests and you intend and agree that such restrictions be enforceable and enforced to their fullest extent. You further understand and agree that, notwithstanding any other provision of this Agreement, your breach of your obligations under this *Article 14*, will cause us irreparable harm for which recovery of monetary damages alone would not be an adequate



remedy. Both parties shall be entitled to obtain timely injunctive relief, including a temporary restraining order, preliminary and permanent injunctions, to protect their rights under this Agreement, in addition to and not exclusive of any and all other remedies available to each party.

#### **14.9 Early Termination Damages.**

If you discontinue operating your Franchised Business before this Agreement expires, with or without obtaining our prior written consent, or in the event of a termination of this Agreement arising from or related to your default and breach of its provisions, you will become obligated to pay Franchisor early termination damages ("Early Termination Damages"). The Early Termination Damages shall be considered damages and not a penalty, are not in lieu of other damages, and your payment of these damages shall not constitute a release of any other obligation owed to us. Franchisor, Franchisee, each individual signing on behalf of Franchisee, and each guarantor guaranteeing Franchisee's obligations hereunder, hereby acknowledge and agree that Franchisor's losses due to Franchisee's unilateral closure of the Franchised Business or termination of this Agreement would be highly difficult or impossible to calculate with reasonable certainty and, therefore, have agreed at the outset of this Agreement that the Early Termination Damages, and the formula for calculating these damages, constitutes a reasonable, good faith forecast of Franchisor's estimated losses and damages due to the premature closure of the Franchised Business or termination of this Agreement.

The amount of the Early Termination Damages is calculated as follows:

- a. Compute the average monthly Royalty Fee and Advertising Fee due for any consecutive twelve (12) month period within the forty-eight (48) months immediately preceding the date we receive notification of the closure, or if you failed to timely notify us of the closure then the date the Franchise Business closed, or, if the Franchised Business has been open for less than twelve (12) months, the average monthly Royalty Fee and Advertising Fee due since the opening of the Franchised Business ("Monthly Average");
- b. Multiply the Monthly Average by the number of months remaining in the Term;  
and
- c. Divide the resulting total computed in b. above by two (2).

For example purposes only: If the average monthly Royalty Fee and Advertising Fee were collectively \$1,000 and there were five years (60 months) remaining in the Term, the Early Termination Damages would be \$30,000, calculated as follows:  $\$1,000 \times 60 \text{ months} = \$60,000 \div 2 = \$30,000$ .

If you unilaterally terminate this Agreement prior to the end of the Term, you must give us ninety (90) days prior notice of the early termination ("Early Termination Notice"). Within ten (10) days after our receipt of your Early Termination Notice, we will calculate the Early Termination Damages, which will be due and payable thirty (30) days prior to the closure of your Franchised Business. In the event of a termination arising from or related to your default under this Agreement, or that you do not: (i) provide us with the Early Termination Notice at least ninety (90) days prior to the early termination of your Franchised Business and this Agreement; (ii) remain open for at least ninety (90) days after providing us with the Early Termination Notice; and (iii) pay the Early Termination Damages in full at least thirty (30) days prior to closing of the

Franchised Business, the Early Termination Damages due may, in our sole discretion, be increased as follows: it will be calculated by multiplying the Monthly Average by the number of months remaining in the Term, and will not be divided by two (2).

If you have not paid your Royalty Fee and Advertising Fee for any period(s) within the forty-eight (48) months prior to notifying us of your early termination, or if you have not reported your Gross Sales for any period(s) within the forty-eight (48) months prior to notifying us of your intended early termination, we will estimate the Royalty Fee and Advertising Fee based upon prior reports to calculate the Monthly Average.

## **ARTICLE 15. NOTICES**

Unless otherwise provided in this *Article 15*, all notices specified by this Agreement or required by law must be in writing and given by personal delivery, sent by carrier (i.e., FedEx®, UPS®, etc.), U.S. certified mail, return receipt requested. All notices to us must be given at the address set forth on page 1 of this Agreement or to such other address as we may designate in writing from time to time in accordance with this *Article 15*. All notices to you may be given at the address set forth on page 1 of this Agreement, at the address of the Franchised Business, at any of your franchised restaurants, at your residence (if an individual), or at the residence of your principal shareholder(s), partner(s), or member(s) (if a business entity). Notices will be conclusively deemed to be given, delivered, and effective when sent pre-paid and actually left in the custody of an adult agent, employee or resident at a place of business or residence if given by personal delivery; or if given by carrier, twenty-four (24) hours after deposited with carrier, or if by U.S. mail or certified mail, three (3) days after deposited with the U.S. Postal Service. You have an obligation to promptly notify us pursuant to this *Article 15* whenever your mailing address, phone number or email address change. Notwithstanding the foregoing, we may give you written notice via email to the email address you provide us regarding updates or information related to System Standards, including compliance matters, with such email notification to be deemed received by you twenty-four (24) hours after we send it, unless you otherwise earlier acknowledge receipt.

## **ARTICLE 16. CONSTRUCTION AND ENFORCEMENT; MISCELLANEOUS**

### **16.1 Independent Contractors.**

The relationship between you and us is that of independent contractors. You are in no way to be deemed our partner, joint venturer, agent, employee, or servant. You have no authority to bind us to any contractual obligation or incur any liability for or on our behalf. You shall identify yourself as an independent owner of the Franchised Business in all dealings with customers, lessors, contractors, suppliers, public officials, employees, and others.

### **16.2 Severability and Substitution of Provisions.**

Except as provided to the contrary in this Agreement, each article, section, term and provision of this Agreement, and any portion thereof, will be considered severable, and if, for any reason, any such portion of this Agreement is held to be invalid, contrary to, or in conflict with any applicable present or future law or regulation, or as a result of a final, non-appealable ruling issued by any court, agency or tribunal with competent jurisdiction in a proceeding to which we are a party, that regulation or ruling will not impair the operation of, or have any other effect upon, such other portions of this Agreement as may otherwise remain valid, and such other portions will continue to be given full force and effect and bind the parties to this

Agreement. If the severed provision is material to this Agreement, we shall promptly provide a substitute provision to replace the invalid severed provision consistent with then-current law and the original intent of the parties.

If any applicable and binding law or rule of any jurisdiction requires a greater prior notice of the termination of, or refusal to renew, this Agreement than is required under this Agreement, or the taking of some other action not required under this Agreement, or if under any applicable law, regulation, or court ruling of any jurisdiction, any provision of this Agreement or any specification, standard or operating procedure prescribed by us is invalid or unenforceable, the prior notice or other action required by such law, regulation, or court ruling will be substituted for the comparable provisions of this Agreement, and we will have the right, in our sole discretion, to modify such invalid or unenforceable provision, specification, standard or operating procedure to the extent required to be valid and enforceable. Such modifications to this Agreement shall be effective only in such jurisdiction, unless we elect to give them greater applicability, and otherwise shall be enforced as originally made and entered into in all other jurisdictions.

### **16.3 Dispute Resolution.**

a. Except as otherwise provided herein, any dispute, claim or controversy arising out of or relating to this Agreement, the breach hereof, the rights and obligations of the parties hereto or the relationship between the parties, or the entry, making, interpretation, or performance of either party under this Agreement ("Dispute"), which cannot be resolved by mediation under *Section 16.3d.* or is not subject to mediation under the terms of this Agreement, shall be settled by arbitration administered by the American Arbitration Association ("AAA") in accordance with its Commercial Arbitration Rules as modified below.

b. Any arbitration shall take place before a sole arbitrator in Maricopa County, Arizona or, if our headquarters are no longer located in Maricopa County, Arizona, then the arbitration shall take place in the county in which our headquarters are located at the time the arbitration is commenced. You agree that conducting the arbitration where we are located is appropriate due to the multiple locations throughout the United States where our franchisees are located. The parties agree that the arbitrator shall be an attorney licensed to practice law in the United States and must have a minimum of five (5) years of experience in franchise law. Judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The arbitrator shall, in the award, allocate all of the costs and expenses of the arbitration, including the fees of the arbitrator and the reasonable attorneys' fees of the prevailing party, against the party who did not prevail. To the extent permitted by applicable law, no issue of fact or law shall be given preclusive or collateral estoppel effect in any other dispute, arbitration proceeding or litigation, except to the extent such issue may have been specifically determined in another proceeding between the parties. This agreement to arbitrate shall survive any termination or expiration of this Agreement, however effected. The parties agree that any arbitration shall be solely between them (including any affiliates) and shall not include as a party, by consolidation, joinder, or in any other manner, any other person or entity, unless both parties consent in writing. Both parties shall have the absolute right to refuse such consent. Further, the parties expressly waive any right to bring or participate in any class or other consolidated, joined or multi-party arbitration claim or proceeding, whether or not permissible under the AAA Commercial Arbitration Rules, including any claim brought on their behalf by an association of which it, he or she is a member. At the request of any party, the arbitration shall be conducted in a manner that maintains the confidentiality of the proceedings.

c. The arbitrator will issue a reasoned award, with findings of fact and conclusions of law. Actions to enforce an express obligation to pay monies may be brought under the Expedited Procedures of the AAA's Commercial Arbitration Rules. The Federal Arbitration Act shall govern, excluding all state arbitration laws. Arizona law will govern all other issues. With respect to discovery, the arbitrator shall require each party to make a good cause showing before any discovery exceeding that specifically authorized by the AAA Commercial Arbitration Rules will be granted.

d. Prior to the commencement of an arbitration proceeding, the parties must first submit any Dispute to non-binding mediation. At the request of any party, the mediation will be confidential. The mediation shall be conducted in Maricopa County, Arizona or in the county in which our headquarters are located at the time of mediation, unless the parties shall mutually agree to a different location. The parties to the mediation will share equally in its costs and expenses, except those costs and expenses incurred separately by each party, including counsel fees and expenses. The mediation process will be deemed "Completed" when the parties agree that it has been completed, the mediator declares that any impasse exists, or sixty (60) days have elapsed since the date of the initiating party's notice to the other party that it is initiating the mediation process, whichever occurs first.

e. Notwithstanding anything contained in this Agreement to the contrary, the provisions of Sections 16.3a., 16.3b., 16.3c. and 16.3d. do not apply to a Dispute where: (i) we bring an action for an express obligation to pay monies, declaratory relief, preliminary or permanent equitable relief, any action at law for damage to our goodwill, the Confidential Information, the Proprietary Marks or for fraudulent conduct by you; or (ii) the delay resulting from the mediation process may endanger or adversely affect the public (for example, unhealthy, unsafe or unsanitary conditions would continue to exist). For such disputes, we may bring an action in any federal or state court having jurisdiction, whether for monetary damages, temporary preliminary and permanent injunctive relief or specific performance in addition to, and not exclusive of, any other remedies available to us. You hereby consent to and waive any objection or defense and agree not to contest venue, forum non conveniens or jurisdiction of such court or arbitration.

f. Disputes concerning the validity or scope of arbitration, including whether the Dispute is subject to arbitration, are beyond the authority of the arbitrator and will be determined by a court of competent jurisdiction pursuant to the Federal Arbitration Act, 9 U.S.C. §1 et seq., as amended from time to time.

g. Either party may appeal the final award of the arbitrator, if it is over One Hundred Thousand Dollars (\$100,000), to the appropriate U.S. District Court. The Court's review of the arbitrator's findings of fact will be under the clearly erroneous standard, and the Court's review of all legal rulings will be *de novo*. If it should be determined that this provision for federal court review is not enforceable, then either party may appeal the arbitrator's final award, if it is over One Hundred Thousand Dollars (\$100,000), to a panel of three (3) arbitrators chosen under AAA Optional Appellate Arbitration Rules , which will employ the same standards of review stated immediately above.

#### **16.4 Applicable Law and Forum; Waiver of Jury; Statute of Limitations.**

a. Except to the extent that the United States Trademark Act of 1946, as amended (15 U.S.C., § 1051 et seq.) or the franchising laws of any state that may be applicable, the laws

of the State of Arizona govern all rights and obligations of the parties under this Agreement without regard to conflict of law. The parties agree, subject to the mandatory mediation and arbitration provisions of *Section 16.3*, that any appropriate state or federal court located in Maricopa County, Arizona has exclusive jurisdiction over any Dispute arising under or in connection with this Agreement and is the proper forum in which to adjudicate the case or controversy. Notwithstanding the foregoing any action initiated by us may, at our election, be brought in any jurisdiction where you are domiciled or that has jurisdiction over you. The parties hereto irrevocably submit to the jurisdiction of, and venue in, any such court, and hereby waive any objection or defense thereto. THE PARTIES AGREE THAT ALL DISPUTES SUBMITTED TO THE COURT PURSUANT TO THIS SECTION SHALL BE TRIED TO THE COURT SITTING WITHOUT A JURY, NOTWITHSTANDING ANY STATE OR FEDERAL CONSTITUTIONAL OR STATUTORY RIGHTS OR PROVISIONS.

b. Notwithstanding anything contained in this Agreement to the contrary, the parties agree that any claims under, arising out of, or related to, this Agreement must be brought within two (2) years of the date on which the underlying cause of action accrued, and the parties hereby waive any right to bring any such action after such two (2)-year period, except for the collection of any unpaid Royalty Fee, Advertising Fee, and any other amount due to us or our affiliate.

c. **YOU HEREBY WAIVE THE RIGHT TO SEEK OR COLLECT PUNITIVE, MULTIPLE, CONSEQUENTIAL AND SPECIAL DAMAGES IN ANY FORUM, INCLUDING ARBITRATION. YOU HEREBY FURTHER WAIVE THE RIGHT, IF ANY, OF ANY ASSOCIATION OR MEMBERSHIP GROUP TO ASSERT CLAIMS ON YOUR BEHALF IN ANY ACTION.**

d. **YOU HEREBY WAIVE THE RIGHT TO ANY DAMAGES IN CONNECTION WITH OR RESULTING FROM THE WRONGFUL ISSUANCE OF AN INJUNCTION.**

e. The parties agree that the maximum damages that you may recover in connection with a wrongful termination of your franchise and this Agreement will be an amount equal to the product of:

(i) the annual net profit (as defined below) multiplied by

(ii) the lesser of:

(a) The number of full years existing between the date on which the franchise and this agreement were wrongfully terminated and the date on which the Term would have otherwise expired; or

(b) Three.

For purposes of this Agreement, the term "net profit" means an amount equal to the net profits of your Franchised Business, as reflected on your tax return filed with the Internal Revenue Service prior to such termination; provided, however, that if such tax return reflects the operations of your Franchised Business for a period less than one (1) year, such net profits will be annualized based upon the net profits reflected in such tax return.

### **16.5 No Guarantee of Franchisee's Success.**

You have been informed of and acknowledge the highly competitive nature of the business involved, and agree that the successful operation of your Franchised Business will depend in part, upon your best efforts, capabilities, management, and efficient operation; as well as the general economic trend and other market conditions.

### **16.6 Existence of Various Forms of Franchise Agreements.**

You acknowledge that our present and future franchisees operate under a number of forms of franchise agreements and consequently, our obligations and rights with respect to our various franchisees may differ materially in certain instances. The existence of different forms or versions of the franchise agreement does not entitle you to benefit from any such difference; nor does it operate to alter or amend the agreement of the parties set forth in this Agreement.

### **16.7 Franchise Owner May Not Withhold Payments.**

You agree that you will not, on grounds of alleged or actual nonperformance or breach by us of any of our obligations under this Agreement, withhold payment of any Royalty Fee, Advertising Fee, amounts due to us or any of our affiliates for goods or services purchased by you, or any other amounts due to us or any of our affiliates.

### **16.8 Remedies Are Cumulative.**

The rights and remedies of the parties to this Agreement are cumulative and not exclusive, and no exercise or enforcement by either party of any right or remedy under this Agreement shall preclude the exercise or enforcement by such party of any other right or remedy under this Agreement or otherwise available at law or in equity to such party.

### **16.9 Interpretation.**

All the terms and provisions of this Agreement will be binding upon and inure to the benefit of the successors and assigns of the parties. However, nothing in this *Section 16.9* may be construed as our consent to the Transfer of this Agreement or any rights by you.

### **16.10 Waiver.**

Our failure to insist upon the strict performance of any term, covenant or condition contained in this Agreement will not constitute or be construed as a waiver or relinquishment of our right to enforce thereafter any such term, covenant or condition and such term, covenant or condition will continue in full force and effect.

### **16.11 Litigation Expense.**

If an action at law or suit in equity is brought to establish, obtain or enforce any right by either of the parties to this Agreement, the prevailing party in the suit or action, in the trial and appellate courts, will be entitled to recover from the non-prevailing party reasonable attorneys' fees, costs and expenses and disbursements incurred in such suit or action.

#### **16.12 No Third-Party Beneficiaries.**

This Agreement is not intended to benefit any other person or entity except the named parties hereto and no other person or entity shall be entitled to any rights hereunder by virtue of so-called “third-party beneficiary rights” or otherwise.

#### **16.13 Binding Effect; Modification.**

This Agreement is binding upon the parties to this Agreement and their respective executors, administrators, personal representatives, heirs, permitted assigns and successors in interest. No amendment, change, or modification of this Agreement shall be binding on any party unless executed in writing by you and us.

#### **16.14 Entire Agreement; Nature and Scope; Construction.**

This Agreement, all exhibits, attachments, addendums, and amendments, constitute the entire understanding and agreement between the parties, and there are no other oral or written understandings or agreements between us and you relating to the subject matter of this Agreement. If required to be signed, any state specific addendums are incorporated herein by reference. Any representation not specifically contained in this Agreement made prior to entering into this Agreement does not survive subsequent to the execution of this Agreement. We and you have entered into this Agreement for the sole purpose of authorizing you to use the System licensed by this Agreement in the operation of the Franchised Business during the Term in which those specific items designated by us for sale and use in such locations are offered for sale and use in individual, face-to-face transactions with patrons visiting the Franchised Business (and equivalent telephone or mail transactions accepted as a convenience to that customer group). All consideration being furnished by us to you during the course of performance of this Agreement has been determined based on the limited rights and other limitations expressed herein. No other rights have been bargained for or paid for. This provision is intended to define the nature and extent of the parties' mutual contractual intent, there being no mutual intent to enter into contract relations, whether by agreement or by implication, other than as set forth in this Agreement. The parties further acknowledge that these limitations are intended to achieve the highest possible degree of certainty in the definition of the contract being formed, in recognition of the fact that uncertainty creates economic risks for both parties which, if not addressed as provided in this Agreement, would affect the economic terms of this bargain.

Nothing in this Agreement or in any related agreement is intended to disclaim the representations we made in the Disclosure Document. Nothing in this Agreement is intended, nor shall be deemed, to confer any rights or remedies upon any person or legal entity not a party hereto.

#### **16.15 Terminology.**

In addition to the terms defined elsewhere in this Agreement, the following terms defined below are incorporated in this Agreement by reference and shall be deemed to include all persons who succeed to the interest of the original, where applicable:

The term “affiliate” means any person who, directly or indirectly through one (1) or more intermediaries, controls, is controlled by, or is under common control with any person;

The term “Dollars” means United States Dollars and all amounts due under this Agreement shall be paid in United States currency;

The use of the terms “includes” and “including” in any provision of this Agreement followed by specific examples used shall not be construed to limit application of the provision to only the specific examples used;

The term “person” means any natural person, corporation, partnership, trust, other entity, association or form of organization;

The term “will” and “shall” shall be synonymous, and shall be mandatory and not discretionary, unless otherwise specifically provided herein; and

Any references to articles or sections refer to articles and sections in this Agreement unless specified otherwise.

#### **16.16 Counterparts.**

This Agreement may be executed in one (1) or more original counterparts, and all of which, when taken together, shall be deemed to be one (1) original Agreement. A fully-executed copy of this Agreement shall be of the same force and effect as the original.

#### **16.17 Offerings.**

If you are a corporation, partnership or other entity, and if you intend to offer securities, partnership interests or other ownership interests in you through any public or private offering, you shall not use any Proprietary Marks in such public or private offering, except to reflect your franchise relationship with us; nor shall you misrepresent your relationship with us by any statement or omission of an essential statement. You shall indemnify and hold us harmless from any liability in connection with such offering. Nothing in the foregoing shall modify the provisions of *Article 12*, and no such offering shall be made without first complying with any applicable provisions of *Article 12*.

#### **16.18 Time.**

Time is of the essence of each and every provision of this Agreement.

#### **16.19 Force Majeure.**

Neither of the parties will be liable for loss or damage or be deemed to be in breach of this Agreement if the failure to perform the party's obligations results from: (a) transportation shortages, inadequate supply of equipment, merchandise, supplies, labor, material or energy, or the voluntary foregoing of the right to acquire or use any of the foregoing in order to accommodate or comply with the orders, requests, regulations, recommendations or instructions of any government or any department or agency thereof; or (b) acts of God. Any delay resulting from any of these causes will extend performance accordingly or excuse performance, in whole or in part, as may be reasonable, except that no such cause will excuse payments of amounts owed at the time of such occurrence or payment of the Royalty Fee and all other amounts due to us and our affiliates thereafter.



## **16.20 Plurals and Captions.**

Words in the singular number include the plural when the context requires (and vice-versa). The table of contents and the captions are inserted only for convenience and are not a part of this Agreement or a limitation of the scope of the particular article or section to which each refers.

## **16.21 Joint and Several Liability.**

If you consist of two (2) or more individuals, whether in the form of separate individuals or a business entity controlled by the individuals, then each individual will be jointly and severally liable under the provisions of this Agreement.

## **16.22 Trademark Notice.**

All trademarks referenced in this Agreement are those of their respective owners.

## **16.23 No Accord or Satisfaction.**

If you pay, or we otherwise receive, a lesser amount than the full amount provided for under this Agreement for any payment due hereunder, such payment or receipt shall be applied against the earliest amount due us. In addition, if interest or late fees are owed, we may apply any amounts paid to the late fees and interest before such amounts are applied to the principal amount owed. We may accept any check or other payment in any amount without prejudice to our right to recover the entire balance of the amount due or to pursue any other right or remedy. No endorsement or statement by you on any check or payment or in any letter accompanying any check or payment or elsewhere shall constitute or be construed as an accord or satisfaction.

# **ARTICLE 17. ACKNOWLEDGMENTS AND REPRESENTATIONS OF FRANCHISEE**

## **17.1 Certain Representations and Warranties of Franchisee.**

You represent and warrant that the following statements are true and complete as of the Effective Date:

a. You do not seek to obtain the Franchised Business for speculative or investment purposes and have no present intention to sell or transfer or attempt to sell or transfer the Franchised Business except as previously approved by Franchisor and subject and conditioned to Article 12 of this Agreement.

b. You understand and acknowledge the value to the System of uniform and ethical standards of quality, appearance and service described in and required by the Confidential Manual and the necessity of operating the Franchised Business under the System Standards. You represent that you have the capabilities, professionally, financially and otherwise, to comply with our System Standards.

c. If you are a corporation, limited liability company, partnership, or other form of entity, you are duly incorporated, organized, or formed and are qualified to do business in the state and any other applicable jurisdiction within which the Franchised Business is located, and you are and shall remain duly organized and in good standing during the Term.

d. You represent and warrant that: (i) if you are an individual, you are; or (ii) if you are an entity, that each of your owners, shareholders, partners, and members are, a United States citizen or a lawful resident alien of the United States.

e. All financial and other information that you have provided to us in connection with your application for this franchise is true and accurate.

f. The execution of this Agreement by you will not constitute or violate any other agreement or commitment to which you are a party.

g. Any individual executing this Agreement on your behalf is duly authorized to do so and the Agreement shall constitute your valid and binding obligation and, if applicable, all of your partners, members, or shareholders, if you are a partnership, limited liability company, or corporation.

h. You have, or if you are a partnership, corporation or other entity, your partners or principals have, carefully read this Agreement and all other related documents to be executed by you concurrently or in conjunction with the execution hereof; that you have obtained, or had the opportunity to obtain, the advice of counsel in connection with the execution and delivery of this Agreement; that you understand the nature of this Agreement and that you intend to comply with and be bound by this Agreement.

i. You have read and understand the information and disclosures made in the Disclosure Document provided to you as acknowledged in *Section 17.3e*. You understand and acknowledge that: (i) estimates for initial start-up expenses are estimates only and there can be additional start-up expenses; and (ii) your sales may differ substantially from any sales provided in Item 19 of the Disclosure Document, and there is no assurance that your sales will meet or exceed any sales listed in Item 19 of the Disclosure Document. You have had the opportunity to and have consulted or elected not to consult with your attorney, accountant and business advisors before entering into this Agreement.

j. You understand and agree that, while not applicable in every case, our past experience indicates that owner-operated restaurants generally perform better than absentee owners with hired managers. The food business is a personal business and is dependent upon your business skill and judgment. This includes your choice of employees. Your skill in hiring the right people to work in your Franchised Business is very important in determining whether people decide to purchase menu items from your Franchised Business or from another restaurant in the same vicinity.

k. You understand and agree that ownership of a franchise and the Franchised Business carries certain risks. These risks include the loss of your initial investment, other continued financial losses such as rent payments due under lease obligations and other contractual obligations, the loss of your time and energy in starting up and running your Franchised Business, and loss of earnings and investment income from your investment in the Franchised Business. You understand and agree that the Franchised Business may make money and may lose money and are entering this business venture with this express understanding. You are not relying upon anything which is not contained within this Agreement or the Disclosure Document in determining and deciding to become a franchisee.

l. Notwithstanding the foregoing, you understand and agree that the System must

not remain static if it is to meet (without limitation) presently unforeseen changes in technology, competitive circumstances, demographics, populations, consumer trends, social trends and other market place variables, and if it is to best serve the interests of us, you and all other franchisees. Accordingly, you expressly understand and agree that we may from time to time change the components of the System, including altering the products, programs, services, methods, standards, forms, policies and procedures of that System; abandoning the System altogether in favor of another system in connection with a merger, acquisition or other business combination or for other reasons; adding to, deleting from or modifying those products, programs and services which your Franchised Business is authorized and required to offer, modifying or substituting entirely the equipment, signage, trade dress, décor, color schemes and uniform System Standards and specifications and all other unit constructions, design, appearance and operation attributes which you are required to observe under this Agreement; and, abandoning, changing, improving, modifying or substituting the Proprietary Marks. You expressly agree to comply with any such modifications, changes, additions, deletions, substitutions and alterations. You shall accept, use and effectuate any such changes or modifications to, or substitution of, the System as if they were part of the System at the time that this Agreement was executed. Except as provided herein, we shall not be liable to you for any expenses, losses or damages sustained by you as a result of any of the modifications contemplated hereby.

m. You represent that neither you nor any of your affiliates, officers, directors, managers, members, or partners (as applicable) or funding sources are subject to U.S. Executive Order 13224, identified on the U.S. Department of the Treasury's Office of Foreign Assets Control Specially Designated National and Blocked Persons list, or any terrorist list or other blocked persons list. In addition, you represent that you have not received funding from, nor are you owned, controlled, or acting on behalf of the government of any country that is subject to an embargo by the United States, any foreign government official, political party or international organization, and that no foreign government or government official, political party or international organization has any financial interest in the Franchised Business or any monies earned by the Franchised Business.

n. You represent, warrant and agree that you, your officers, directors, managers, members, or partners (as applicable) will each at all times conduct themselves in an ethical manner and avoid any activity that might result in a violation of the U.S. Foreign Corrupt Practices Act, Anti-Terrorism Laws, or any other applicable anti-corruption or bribery laws.

## **17.2 Additional Information Respecting Franchisee.**

a. You have delivered to us or will deliver concurrent herewith, complete and accurate copies of all of your organizational documents, including all partnership agreements, certificates of partnership, articles of organization, operating agreements, articles or certificates of incorporation, by-laws and shareholder agreements, including all amendments, side letters and other items modifying such documents.

b. You have completed and signed the Franchisee Questionnaire attached hereto as Exhibit 1 and incorporated herein by reference.

### 17.3 Acknowledgements of Franchisee.

a. You acknowledge that you have conducted an independent investigation of the business venture contemplated by this Agreement and recognize that this business venture involves substantial business risks and will largely depend upon your ability. Other than the financial performance representation contained in Item 19 of the Disclosure Document, if any, we expressly disclaim making, and you acknowledge that you have not received or relied on, any warranty or guarantee, express or implied, as to the potential volume, profits, or success of the Franchised Business contemplated by this Agreement.

Franchisee Initials \_\_\_\_/\_\_\_\_

b. You hereby certify that none of our employees, no other person speaking on our behalf, and no Area Representative, if applicable, have: (i) made any oral, written, visual, or other representation, agreement, 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 other than any financial performance representation contained in Item 19 of the Disclosure Document; or (ii) made any oral, written, visual, or other representation, agreement, 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 *Frullati Cafe & Bakery* franchise, that is different from, contrary to, or not contained in the *Frullati Cafe & Bakery* Disclosure Document; or (iii) made any representation, agreement, commitment, claim or statement to you that is different from, contrary to, or not contained in, the *Frullati Cafe & Bakery* Disclosure Document. You acknowledge and agree that we do not make or endorse, nor do we allow any of our employees or other persons speaking on our behalf to make or endorse, any additional oral, written, visual, or other representation, agreement, commitment, claim, or statement that states or suggests any level or range of actual or potential sales, costs, income, expenses, profits, cash flow, or otherwise with respect to a *Frullati Cafe & Bakery* franchise other than any financial performance representation contained in Item 19 of the Disclosure Document.

Franchisee Initials \_\_\_\_/\_\_\_\_

c. You acknowledge that you have received, read and understand this Agreement and the related exhibits, attachments and agreements and that we have afforded you sufficient time and opportunity to consult with advisors selected by you about the potential benefits and risks of entering into this Agreement.

Franchisee Initials \_\_\_\_/\_\_\_\_

d. You understand that this Agreement, including any amendments and exhibits, contains the entire agreement between the parties concerning the Franchised Business, and that any prior oral or written statements that are not set out in this Agreement, including any amendments, exhibits and attachments will not be binding. You acknowledge and agree that we do not permit any representations, agreements, commitments, claims, or statements or approve any changes in this Agreement or any of the amendments, exhibits and attachments to this Agreement, except by means of a written amendment or addendum signed by all parties to this Agreement. You acknowledge that nothing in this Agreement or in any related agreement is intended to disclaim the representations we made in the Disclosure Document.

Franchisee Initials \_\_\_\_/\_\_\_\_

e. You acknowledge receipt of our Disclosure Document fourteen (14) days prior to the execution of this Agreement or your payment of any monies to us or our agent (or sooner if required by applicable state law).

Franchisee Initials \_\_\_\_/\_\_\_\_

f. You acknowledge that, other than what was previously disclosed to you in our Disclosure Document to which you acknowledge receipt thereof, you have not: (1) received any financial statements for any of our parent or affiliated companies; or (2) relied on the financial condition of any of our parent or affiliated companies when making the decision to purchase the Franchised Business.

Franchisee Initials \_\_\_\_/\_\_\_\_

g. You acknowledge, as detailed in *Section 2.3*, that you must, at your own cost and expense, use only our designated and approved Design Architect for the design of your Franchised Business.

Franchisee Initials \_\_\_\_/\_\_\_\_

h. You acknowledge that the following is your Area Representative (if applicable):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Franchisee Initials \_\_\_\_/\_\_\_\_

i. If an Area Representative is identified in *Section 17.3h.*, you make the following representations with respect to the Area Representative:

(i) You have met or spoken to only \_\_\_\_\_, the Area Representative;

(ii) Other than any financial performance representation contained in Item 19 of the Disclosure Document, at no time did the Area Representative make any promises or statements, or projections or forecasts, or estimates or warranties or representations or other statement or agreement concerning profits or expenses or costs or actual or projected sales of any kind directly or by implication about *Frullati Cafe & Bakery* restaurants or about the Franchised Business that we desire to develop under this Agreement or about obtaining the confirmed Location or about any other matter other than what is contained in the *Frullati Cafe & Bakery* Disclosure Document or *Frullati Cafe & Bakery* restaurant brochure.

(iii) You acknowledge that you have not received any written materials from us or the Area Representative except for the *Frullati Cafe & Bakery* brochure and Disclosure Document; and

If there are any exceptions to *Sections 17.3i.(i) – (iii)*, identify the item number and list the exception here:

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Franchisee Initials \_\_\_\_/\_\_\_\_

j. You acknowledge there have been no other inducements made with any person or entity, including the Identified Area Representative, encouraging you to purchase the Franchised Business, such as a “side deal” or other promise or agreement not included in the Agreement.

Franchisee Initials \_\_\_\_/\_\_\_\_

k. You acknowledge and understand that *Article 6* covers the use of the *Frullati Cafe & Bakery* trademark and prohibition on registration of our Proprietary Marks. You acknowledge the ownership of the Proprietary Marks by us, and you agree that during the Term and after its expiration or termination, you will not, directly or indirectly, apply to register, register or otherwise seek to use or control or in any way use “*Frullati Cafe & Bakery*”, or any other of our proprietary marks, or any confusingly similar form or variation, in any place or jurisdiction either within or outside the United States; nor will you assist any others to do so. You further agree that your corporate, partnership or other entity name will not include any of the Proprietary Marks or phrases similar thereto as a part thereof. Furthermore, you acknowledge and understand that you are prohibited from filing applications for the registration of our trade names used in connection with your Franchised Business.

Franchisee Initials \_\_\_\_/\_\_\_\_

l. You acknowledge and understand that in the event you have registered a trade name or entity name containing our trademarks, you will be required to immediately discontinue all further use of the trademark, all Proprietary Marks and any other marks or names confusingly similar thereto in your entity name. Furthermore, you will take such action as may be required to amend your entity name and affirmatively cancel or terminate and dissolve all fictitious or assumed names or other registrations that contain our Proprietary Marks. In the event you do not comply and execute any and all instruments and documents necessary to protect and maintain our interests in the Proprietary Marks, we will then have power of attorney to execute any documents necessary to protect and maintain our interests in the Proprietary Marks.

Franchisee Initials \_\_\_\_/\_\_\_\_

## **ARTICLE 18. SUBMISSION OF AGREEMENT**

The submission of this Agreement to you does not constitute an offer and this Agreement shall become effective only upon the execution thereof by the parties. THIS AGREEMENT SHALL NOT BE BINDING ON US UNLESS AND UNTIL IT SHALL HAVE BEEN ACCEPTED AND SIGNED BY OUR PRESIDENT OR ONE OF OUR OTHER EXECUTIVE OFFICERS.

***[SIGNATURE PAGE FOLLOWS]***



**IN WITNESS WHEREOF**, each party hereto, by and through its respective representative with full rights, power and authority to enter into and bind his or her respective party without further consent or approval of any kind, has duly executed and delivered this Agreement as of the Effective Date.

**FRANCHISEE:**

\_\_\_\_\_, a(n) \_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

By: \_\_\_\_\_  
[Name, Title]

**FRANCHISOR:**

KAHALA FRANCHISING, L.L.C., an  
Arizona limited liability company

By: \_\_\_\_\_  
[Name, Title]



**PERSONAL ACCEPTANCE OF SECTIONS 7.1, 7.2, 14.6, AND 14.8**

Each of the undersigned individually and personally accepts and agrees to be bound by the provisions of Sections 7.1, 7.2, 14.6, and 14.8 of the foregoing Franchise Agreement.

\_\_\_\_\_, \_\_\_\_\_, an individual  
(signature) Date: \_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_, an individual  
(signature) Date: \_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_, an individual  
(signature) Date: \_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_, an individual  
(signature) Date: \_\_\_\_\_

**EXHIBIT 1**

**FRANCHISEE QUESTIONNAIRE**

## FRANCHISEE QUESTIONNAIRE

The undersigned is in the process of negotiating and consummating the purchase of a Kahala Franchising, L.L.C. ("Kahala") Franchise Agreement ("Agreement") for Frullati Cafe & Bakery.

We have been informed that since the laws of franchising limit the type of information that may be provided to prospective franchisees, the Kahala Legal Department has established a compliance audit program to ensure that all pre-sale negotiations have been lawfully completed.

We understand that if improper sales practices have occurred, the Kahala Legal Department, with appropriate notice prior to Agreement execution, will be able to either rectify and cure the violation, or in the alternative, reject the franchise sale.

In order to comply with your compliance audit program we hereby make the following acknowledgments and representations concerning events during the course of the negotiations and offer of sale of the Agreement knowing that Kahala will rely thereon in agreeing to accept the franchise sale.

1. In the course of the negotiations and the offer and sale of the Agreement we have met or spoken only to: \_\_\_\_\_

List any additional people: \_\_\_\_\_  
\_\_\_\_\_

2. Did any of the individuals identified in paragraph number one (1) or any other person or entity acting on behalf of or at the direction of Kahala make any promises, statements, projections, forecasts, estimates, warranties or representations or other statement or agreement (a) concerning the actual or potential financial performance of the franchised or franchisor owned-outlets, profits or expenses or actual or projected sales of any kind directly or by implication concerning Frullati Cafe & Bakery restaurants or about the Frullati Cafe & Bakery restaurant that is to be developed or about obtaining the approved location or about any other matter relating to the prospect for financial performance to the prospective franchisee, or (b) about any other matter other than what is contained in the Franchise Disclosure Document ("FDD"), and as stated in ITEM 19 of the Frullati Cafe & Bakery FDD?

Check one:                    ☐ Yes                    ☐ No

If yes, please state in detail the oral, written, or visual claim or representation:

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3. Other than what was previously disclosed to you in the Frullati Cafe & Bakery FDD to which you acknowledge receipt thereof, did you: (1) receive any financial statements for any of Franchisor's parent or affiliated companies; or (2) rely on the financial condition of any of Franchisor's parent or affiliated companies when making the decision to purchase the Franchised Business?

Check one:                    ☐ Yes                    ☐ No

If yes, please comment, in detail:

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4. Have there been any other inducements made with any person or entity encouraging you to purchase the Agreement such as a “side deal” or other promise or agreement not included in the Agreement?

Check one: ☐ Yes ☐ No

If yes, please comment, in detail:

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5. Did you receive a copy of the Frullati Cafe & Bakery FDD at least fourteen (14) calendar days prior to signing any binding agreement with, or making a payment to Kahala or any of its affiliates in connection with the proposed franchise sale? If you reside in New York, or if the location of your prospective franchise is located within one of those states, did you receive a copy of the Frullati Cafe & Bakery FDD at the earlier of (i) the first personal meeting; or (ii) ten (10) business days prior to signing any binding agreement or payment of any consideration? If you reside in Michigan or Washington, or if the location of your prospective business is located within one of those states, did you receive the Frullati Cafe & Bakery FDD at least ten (10) business days before the execution of any binding franchise or other agreement or the payment of any consideration?

Check one: ☐ Yes ☐ No

If no, please comment:

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6. Have you received, studied, and reviewed carefully the Frullati Cafe & Bakery FDD and Franchise Agreement?

Check one: ☐ Yes ☐ No

If no, please comment:

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7. Do you understand that the license granted in the Franchise Agreement is for the right to operate a franchise at the authorized location only and includes no exclusive area or protected territory, and that we and our affiliates have the right to issue franchises or operate competing businesses for or at locations, as we may determine, near your authorized location? In addition, do you understand that these locations may include freestanding buildings, strip centers, shopping malls, and other similar locations, as well as non-traditional locations such as office buildings, petroleum stations, food courts, transportation terminals, sports facilities, airports, hotels, hospitals, and college and university student unions, dormitories, and food service areas?

Check one:            ☐ Yes                      ☐ No

If no, please comment:

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8. Do you understand that the success or failure of your franchise will depend in large part upon your adherence to the Frullati Cafe & Bakery System Standards, your skills and experience, your business acumen, your location, the local market for products under our trademarks, interest rates, the economy, inflation, the number of employees you hire and their compensation, competition, and other economic and business factors? Further, do you understand that the economic and business factors that exist at the time you open your franchise may change?

Check one:            ☐ Yes                      ☐ No

If no, please comment:

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*All representations requiring prospective franchisees to assent to a release, estoppel or waiver of liability are not intended to nor shall they act as a release, estoppel or waiver of any liability incurred under the Maryland Franchise Registration and Disclosure Law.*

[NAME OF FRANCHISEE]

By: \_\_\_\_\_  
      [Name]  
      [Title]

\_\_\_\_\_ Date

**EXHIBIT E-2**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**Franchise Agreement (Renewal) and Franchisee Questionnaire**

***FRULLATI CAFE & BAKERY***

**FRANCHISE AGREEMENT  
(Renewal)**

**between**

**KAHALA FRANCHISING, L.L.C.**

**and**

\_\_\_\_\_, a(n) \_\_\_\_\_

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### Exhibits

Exhibit 1      Franchisee Questionnaire



**FRULLATI CAFE & BAKERY**  
**FRANCHISE AGREEMENT**  
("Agreement")

**PARTIES:**

KAHALA FRANCHISING, L.L.C.,  
an Arizona limited liability company  
Attn: Legal Department  
9311 E. Via De Ventura  
Scottsdale, Arizona 85258

("Franchisor")

\_\_\_\_\_  
a(n) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone No.: \_\_\_\_\_

([individually and collectively,] "Franchisee")

**RESTAURANT NO.:** \_\_\_\_\_

**EFFECTIVE DATE:** \_\_\_\_\_ ("Effective Date")

**TRADITIONAL RESTAURANT (YES or NO):** \_\_\_\_\_

**RESTAURANT DESCRIPTION IF NON-TRADITIONAL:** \_\_\_\_\_

A "traditional" restaurant is a restaurant that is easily accessible by the general public, such as a free-standing building, inline retail shop, shopping mall and street front location. A traditional *Frullati Cafe & Bakery* restaurant normally offers a full menu. A "non-traditional" restaurant is a *Frullati Cafe & Bakery* restaurant that is located in a non-traditional marketplace, as determined by us (in our sole discretion), such as an airport, amusement park, sports or entertainment venue, train station, travel plaza, toll roads, cafeteria, retail store, convenience store, military base, hospital, office building, movie theater, hotel, casino, kiosk, cart, or high school or college campus. A non-traditional restaurant may also be a *Frullati Cafe & Bakery* restaurant that is co-branded into another brand restaurant, at Franchisor's sole discretion. A non-traditional *Frullati Cafe & Bakery* restaurant normally offers a limited version of the full *Frullati Cafe & Bakery* menu.

To simplify the language in this Agreement, the terms "we," "us," "our" and the like may be used to refer to the Franchisor, and the terms "you," "your" and the like may be used to refer to the Franchisee. The term "you" as used herein is applicable to one (1) or more persons, a corporation, partnership, trust, other entity, association or form of organization as the case may be, and the singular usage includes the plural, masculine, neuter, feminine, and possessive usages. Franchisor and Franchisee may individually be referred to as a "party" and collectively referred to as the "parties."

## **RECITALS:**

This Agreement is entered into with reference to the following facts and circumstances:

A. We have, over a period of time and at considerable expense, developed and established a uniform and unique method of operation, customer service, advertising, publicity, processes, recipes, techniques and technical knowledge in connection with the restaurant business, specializing in freshly prepared Panini, sandwiches, salads, soups, fresh baked goods, blended fruit drinks, proprietary nutritional products and supplements and other related beverage and food items. These restaurants do business under the trade name "*Frullati Cafe & Bakery*". These Frullati Cafe & Bakery recipes, techniques, processes and methods constitute our "Trade Secrets." All of our knowledge, experience, Trade Secrets, processes, methods, specifications, techniques, Proprietary Marks (as defined in Recital B.), System Standards (as defined in *Section 1.4*) and information are referred to in this Agreement as the "System." The System may be changed, supplemented, improved and further developed by us from time to time.

B. We have owned and issued franchises to others for the operation of franchised restaurants in the United States and in other countries. We have registered and applied for proprietary marks with the United States Patent and Trademark Office and with offices in other countries serving similar functions. These proprietary interests, trademarks, service marks, logos, insignias, trade names and trade dress are referred to in this Agreement as the "Proprietary Marks."

C. We are engaged in the business of licensing the right to use the Proprietary Marks in connection with the operation and promotion of the System.

D. You understand and recognize that: (1) our Trade Secrets, Proprietary Marks, developments and other properties as recited above are of considerable value; and (2) it is of importance to us and all of our franchisees to maintain the development of the System in a uniform and distinctive manner, allowing you and our other franchisees to enjoy a public image and reputation greater than most single franchisees could establish.

E. You desire to make use of the "*Frullati Cafe & Bakery*" trademark and to enjoy the benefits of that mark, the other Proprietary Marks, and the System; and to establish a "*Frullati Cafe & Bakery*" franchise to be operated in accordance with System Standards set forth from time to time by us. System Standards are set forth in, without limitation, the confidential "ops package," which consists of the "operations manual" ("Operations Manual"), "ops toolkit" and related printed and electronic documents, both now existing and hereinafter developed (individually and collectively, "Confidential Manual"). We are willing to grant you the right to do so under the terms, conditions and provisions set forth in this Agreement, which includes any and all appendices, addenda, amendments, attachments and exhibits.

F. You recognize the necessity and desirability of protecting our reputation, goodwill, Trade Secrets, and other confidential business information; and that disclosure of Trade Secrets and confidential business information, including specifics of the System to any third-party, will cause irreparable damage and harm to us.

## **AGREEMENT:**

The parties agree as follows:

## ARTICLE 1. GRANT OF FRANCHISE; TERM; SYSTEM STANDARDS

### 1.1 Franchise Grant.

We hereby grant to you a *Frullati Cafe & Bakery* franchise that includes the right to use the System ("Franchised Business") as provided in this Agreement, at the following location:

Arena, Mall, Facility, or Center Name: \_\_\_\_\_  
(if applicable)

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

City/State/Zip Code: \_\_\_\_\_ ("Location")

### 1.2 Location of the Franchised Business; No Exclusive Territory or Other Rights.

You must operate the Franchised Business only from the Location, including any catering services of *Frullati Cafe & Bakery* menu items you provide. You acknowledge that the *Frullati Cafe & Bakery* franchise granted under this Agreement is non-exclusive, that we are not granting you any territorial protection or any other exclusive rights, and that we, directly or through one (1) or more affiliates, reserve the right in our sole discretion, and without compensating you or seeking your prior approval: (i) to establish, and grant to other franchisees or licensees the right to establish, a *Frullati Cafe & Bakery* restaurant or any other business using the Proprietary Marks, the *Frullati Cafe & Bakery* System or any variation thereof, in any location other than the approved Location (including locations in the immediate vicinity of your Location), on any terms and conditions that we deem appropriate; (ii) to establish, and grant to other franchisees or licensees the right to establish, any restaurant concept other than *Frullati Cafe & Bakery* in any location on any terms and conditions that we deem appropriate (including locations in the immediate vicinity of the Location); (iii) to sell products identified by the Proprietary Marks or other trademarks, service marks or commercial symbols in any location through any distribution channels, including grocery stores, convenience stores, supermarkets, club stores, vending machines, delivery services and restaurants other than *Frullati Cafe & Bakery* restaurants; and (iv) to take any other action that we are not expressly prohibited from taking under this Agreement.

We hereby grant to you during the term of this Agreement, a non-exclusive right and license to operate a single restaurant at the Location only, according to the System Standards and subject to the terms, conditions and restrictions contained in this Agreement. This Agreement is limited to the operation of one traditional restaurant, unless otherwise amended, and does not grant you the right to buy, own or operate additional restaurants.

Except as expressly limited in this Agreement, we (for ourselves and our affiliates and designees) retain all rights with respect to all Proprietary Marks and the sale of *Frullati Cafe & Bakery* products anywhere in the world with no compensation or liability to you, including the right to:

a. Establish and operate (or license to any other person or entity the right to establish and operate) *Frullati Cafe & Bakery* restaurants owned or licensed by us at any location;

b. Develop, market, own, operate and participate in any other business under the Proprietary Marks or any other trademarks (including trademarks identified in the Uniform Franchise Disclosure Document ("Disclosure Document") and other trademarks we or our affiliates own or have the right to license);

c. Develop, lease and license the use of, at any location, trademarks other than the Proprietary Marks, in connection with the operation of a system that offers products or services that are the same as, or similar to, those offered by us under this Agreement on any terms or conditions that we deem advisable, in our sole discretion;

d. Merge with, acquire or be acquired by any other business, including a business that competes with your Franchised Business, or acquire and convert any retail stores, including retail stores operated by competitors, or otherwise operated independently or as part of, or in association with, any other system or chain, whether franchised or corporate-owned;

e. Distribute, sell and license other persons or entities to distribute and sell products through all other channels of distribution, including catalog sales, telemarketing, grocery stores, warehouses, big box shops, specialty shops, limited access highway food facilities, vending machines and similar automated dispensing systems, mobile units, off-site sales accounts, electronic mail, Internet sales, and movie theaters (individually and collectively, "Other Channels"); and

f. Implement multi-area marketing programs that may allow us or others to solicit or sell to customers anywhere. We also reserve the right to issue mandatory policies to coordinate such multi-area marketing programs.

### **1.3 Term of Agreement.**

The term for this Agreement is for a single renewal term that will commence on the Effective Date and will expire on the five (5) year anniversary of the Effective Date, unless terminated earlier in accordance with *Article 14* or any other provisions of this Agreement, or transferred in accordance with *Article 12* ("Term").

### **1.4 System Standards.**

You shall operate the restaurant in accordance with our standards, including the following:

- a. restaurant design, maintenance, health and safety and remodeling;
- b. types, models, brands and suppliers of required fixtures, furnishings, equipment, signs, materials and supplies;
- c. recipes and ingredients, menu items and menu design;
- d. cooperation with and participation in sales, marketing, advertising and promotional programs (including discount coupons, discount gift cards, special menu promotions, and entering into product and service agreements directly with third-party vendors and service providers as required by us) and materials and media used in those programs, including discontinued use and removal of promotional materials as directed by us;

- e. use and display of the Proprietary Marks;
- f. restaurant operations, including matters related to the management of the restaurant; training of your employees consistent with the System Standards; and commercial impression of the Franchised Business to the public;
- g. cooperation with and participation consistent with our responses and resolutions in response to customer feedback;
- h. cooperation with and participation in: (i) market research and testing; and (ii) product and service development programs;
- i. acceptance of our stored value gift cards, including gift cards sold at a discount, loyalty cards, frequency cards, gift certificates, vouchers, and any other similar electronic card and payment programs (individually and collectively, "Gift/Loyalty Card"), credit and debit cards, other payment systems, check verification services and use of point of sale computer systems; You agree to enter into a separate participation agreement with the approved vendor for data processing services;
- j. bookkeeping, accounting, data processing and record keeping systems; computer hardware and software; connections to the Internet or to proprietary networks; forms, methods, formats, content and frequency of reports to us of Gross Sales (as defined in *Article 5*), financial performance and condition; and providing tax returns and other operating and financial information to us; and
- k. conduct and maintain the Franchised Business and Location so as not to distract from or interfere with the integrity of the System (individually and collectively, "System Standards"). We may, in whole or in part, change, improve, update and further develop the System Standards, from time to time during the term. You shall comply with the updated System Standards as directed by us.

The operation and maintenance of your restaurant according to the System Standards are essential to the well-being and vitality of the System and to preserve the goodwill of the Proprietary Marks for us and for all other franchisees operating under the System. It is critical to the *Frullati Cafe & Bakery* System for all restaurants operating under the *Frullati Cafe & Bakery* System to present a uniform and professional image to *Frullati Cafe & Bakery* customers regardless of which location the customer visits. Any information regarding the operation of the restaurant will be considered a mandatory System Standard, unless it is clear from the express language of our communication that the information is merely optional or is intended by us as a suggestion, rather than a requirement.

You agree that System Standards constitute binding provisions of this Agreement as if they were an integral part of this Agreement.

## **ARTICLE 2.                   SELECTION OF LOCATION; CONSTRUCTION AND RELOCATION**

### **2.1     Location Selection Procedures.**

You are ultimately responsible for the selection of the Location. We will not have any liability to you with respect to your selection of the Location, any assistance we provide you in

making your selection, our recommendation of any location, or our allowing you to move forward on any location. You agree that your selection of the Location will be based on your own independent investigation of the suitability of the Location.

## **2.2 Lease and Purchase Approval.**

If you intend to lease the Location for your Franchised Business, the lease will be subject to our prior limited review and acknowledgment so that we can confirm that certain lease terms are incorporated into the lease. You must provide us, at least thirty (30) days prior to executing the lease, a copy of the lease and details relating to square footage, rent per square foot, the term of the lease, and either confirmation that such other terms as we reasonably require are incorporated into the lease or that you and the landlord agree to incorporate the lease addendum to lease agreement as an exhibit to the lease. You or your attorney shall be responsible for negotiating the terms of the lease, which shall be subject to our final limited review and acknowledgment. If you do not submit all of the required documents to us, we will not allow you to move forward with your lease. We have no liability to you regarding the terms or negotiations of the lease.

If, prior to executing the lease, you or your attorney request a full review of your lease, including any and all exhibits attached thereto, and we or our designated affiliate review your entire lease and exhibits and provide to you or your attorney its review of the entire lease and suggested changes to the lease ("Lease Review"), you must pay a Lease Review Fee (as defined in *Section 5.7*) to compensate for time and effort in reviewing the lease. The Lease Review is optional and only completed by us or our designated affiliate at your or your attorney's request. The Lease Review Fee is due only in the event that you or your attorney request us or our affiliate to complete a Lease Review. Each lease must contain the required lease terms set forth in the Lease Addendum to Lease Agreement, and must specifically state that we are a third-party beneficiary of the lease. If we cure any default by you under the lease, any amounts that we pay to cure the default will be payable by you to us on demand, together with interest thereon, at the lesser rate of one and one-half percent (1½%) or the maximum rate that does not violate applicable state usury laws ("Default Rate") per month from the date we make such payment.

You acknowledge and agree that on the earlier of thirty (30) days after: (i) you receive a fully executed copy of your lease for the Location of your Franchised Business; or (ii) you open your Franchised Business to the public, you must provide a fully-executed copy of your lease for the Location to us. Failure to timely provide us with a fully-executed copy of the lease will result in a default under this Agreement.

If you intend to purchase the Location for your Franchised Business, the terms of such purchase shall be subject to our prior approval, and you must provide us, at least thirty (30) days prior to executing the purchase agreement, a copy of the purchase agreement and details relating to square footage, price per square foot and such other terms as we reasonably require.

You acknowledge and understand that our confirmation that you may move forward with any specific location, lease or purchase agreement does not in any way guarantee or ensure the success or profitability of the Franchised Business, or the conformity of the Location, lease or purchase agreement to applicable laws, and such confirmations are only for our own benefit.

## 2.3 Construction.

a. You must, at your sole cost and expense, construct, furnish, make improvements to and equip, if necessary, the Franchised Business at the Location selected by you and meeting our minimum site requirements, in accordance with plans and specifications approved by us or our third-party approved architect, if applicable. Our approval of plans is solely for complying with our System Standards and not for determining compliance with codes, ordinances and other legal requirements, including the Americans with Disabilities Act ("ADA"). You are solely responsible for ensuring that your Location conforms to all codes and ordinances, including the ADA. You must, at your sole cost and expense, use our designated and approved third-party design architect ("Design Architect") to prepare the initial design drawings for any construction, alterations or improvements, as applicable, for your Franchised Business. The Design Architect must provide us with one (1) set of the design drawings, including landscaping and parking spaces if applicable, which are the detailed plans and specifications ("Plans") for your Franchised Business. We will provide you with a copy of the Plans upon our approval of the Plans. You must also, at your sole cost and expense, retain a licensed architect of record to prepare the permitted construction set of drawings for any construction, alterations or improvements. The permitted construction set of drawings must be submitted to us for our files prior to the start of construction, alterations or improvements. In addition, you must obtain the appropriate construction documents and all mechanical, plumbing, electrical and architectural plans must be sealed and stamped, as we may require, even if local laws in the jurisdiction where your restaurant is located do not require same.

b. Any material modifications to the approved Plans must be submitted to us for approval and you will not undertake any construction, alterations or improvements until such modifications have been approved by us. Approval of such modifications does not constitute any representation by us of compliance with applicable zoning laws, building codes or other laws.

c. You will be solely responsible for the cost and expense of obtaining all necessary governmental construction permits and licenses, and you must, at your sole cost and expense, comply with all laws, zoning ordinances, rules and regulations of any governmental agencies that may govern any construction, alterations or improvements of the Franchised Business in accordance with the approved Plans. We will have the right, but are not required, to meet with the Design Architect and to inspect any construction, alterations or improvements during its course to ensure that the provisions of this *Section 2.3* are being observed; and you agree to allow our authorized representatives, at any and all times while construction, alterations or improvements are in progress, to meet with the licensed architect and general contractor and enter onto the Location for this purpose. If we determine in good faith that the provisions of this *Section 2.3* are not being observed, you will, at your sole cost and expense, immediately take all necessary corrective action.

d. You must, at your sole cost and expense, use a general contractor that is licensed, and if applicable, registered in the state and local jurisdiction where your restaurant is located for any and all construction, alterations and improvements. The general contractor must have prior experience in the construction, alterations and improvement of quick-service restaurants.

e. You acknowledge that the design and appearance of the *Frullati Cafe & Bakery* restaurant is part of the System, and that uniformity is essential to the System. Therefore, you

agree that after the restaurant has been constructed, altered or improved, you will not make any material changes to the building plan or design or its appearance without our prior written consent, and you will, at your sole cost and expense, maintain the interior and exterior décor of the restaurant in a first class condition and in such manner as we may reasonably prescribe from time to time. In addition to any remodeling required by us upon the transfer of the Franchised Business and upon the granting of a successor term to operate the Franchised Business, as set forth in *Articles 12 and 13*, respectively, you will, upon thirty (30) days' prior notice from us, and at your sole cost and expense, remodel and make all alterations and improvements in and to your Franchised Business as reasonably determined by us to reflect the then-current *Frullati Cafe & Bakery* System specifications, standards, format, image and appearance.

f. You must submit to us a certificate of occupancy for your Franchised Business at any time upon our request.

## **2.4 Signage.**

You will acquire, repair and replace, as necessary, and maintain in a first class condition throughout the Term, signs for advertising and identifying the Franchised Business as a *Frullati Cafe & Bakery* restaurant. All signs must be in accordance with the System Standards, specifications and any local governing body (i.e., city or county governments), as well as any other applicable laws, including the Americans with Disabilities Act ("ADA"), and exterior signage must be the maximum size allowed by the landlord and local governing body. You acknowledge that quality control is essential to protect and promote our Proprietary Marks, standards, and uniform image, and you shall acquire all signs only from approved suppliers. In addition, you shall prominently display on all communications, forms, advertising, business stationery and business cards, and in a sign easily visible to consumers at the Franchised Business, the following words: "INDEPENDENTLY OWNED AND OPERATED."

## **2.5 Relocation.**

a. If you desire to relocate the Franchised Business, you may request our consent upon the following conditions:

(i) Not less than sixty (60) days prior to the desired date of relocation (unless prior notice is impractical because of a required relocation, due to a third-party or our request, in which event notice shall be made as soon as possible), you must make a written request for consent to relocate, describing the reasons for the relocation and providing details respecting any proposed new location.

(ii) Within twenty-one (21) days after receiving your written request, we shall advise you in writing if the proposed new location meets our minimum real estate site requirements as provided in *Section 2.1* and if you have our authorization to proceed with the relocation. In the event of our denial to proceed with the relocation, you may request an alternative proposed new location pursuant to the provisions of this *Section 2.5*.

(iii) The Term will not be extended in connection with the requested relocation.

b. At the time you request to relocate the Franchised Business, you must also meet



each of the following requirements:

(i) You must not be in default under this Agreement or any other agreement or note then in effect between us or you and any affiliate of ours, and no event shall have occurred that, with the giving of notice, the passage of time, or both, would constitute a default under this Agreement;

(ii) You must neither have received more than three (3) notices of default or breach during the Term; nor more than two (2) notices of default or breach during the five (5) years immediately preceding the effective date of the proposed relocation;

(iii) The equipment, fixtures and signage used in connection with the operation of the Franchised Business must either meet our then-existing System specifications and System Standards, or you must agree, within a timeframe required by us, to replace or refurbish such items, and otherwise modify the methods of operation of the Franchised Business at your cost and expense, in order to comply with our System specifications and System Standards then applicable to new franchise owners; and

(iv) You shall have paid to us a Relocation Fee (as defined in *Section 5.14*).

c. If we approve the relocation of your Franchised Business, (i) you and we must execute an amendment to this Agreement indicating the address for your relocated Franchised Business, and (ii) you must open your Franchised Business at the new location within ninety (90) days after you close your Franchised Business at the current Location. During the period of time between the closure of your Franchised Business at the current Location, and the opening of the Franchised Business at the approved relocation address, you will not owe the Royalty Fee (as defined in *Section 5.2*).

## **2.6 Restricted Use of Restaurant Location.**

You may not wholly or partially sublet the Location without our prior written consent. The Location may be used only for the operation of a *Frullati Cafe & Bakery* restaurant in compliance with this Agreement and the System Standards. You shall not conduct other businesses or activities at the Location without our prior written consent.

## **2.7 Not Applicable.**

# **ARTICLE 3. OPERATIONS**

## **3.1 Not Applicable.**

## **3.2 Supplies and Promotional Materials; Rollouts.**

You agree to sell only those menu items, products and services authorized under the terms of this Agreement and as specified in the Confidential Manual, and you shall use only supplies and ingredients in making those menu items that are in compliance with the standards as set forth in the Confidential Manual or other documents provided by, or approved by, us as they presently exist or may exist in the future. You shall purchase all such services, supplies and ingredients only from approved vendors and utilize approved distributor(s) as specified in the documents provided by, or approved by, us as they presently exist or may exist in the future. You must

purchase promotional materials containing the Proprietary Marks, including stationery, business cards, promotional and advertising materials and similar items, from suppliers approved by us, except that we must first approve all such promotional and advertising materials before you use them, and all such printed materials containing any of the Proprietary Marks shall be accompanied by the words "INDEPENDENTLY OWNED AND OPERATED." Additionally, during the Term, you agree to participate in any Rollout of new products and suppliers, as defined in *Section 9.3*.

### **3.3 Fixtures, Furnishings, and Equipment.**

Unless otherwise approved by us in writing, you will: (1) acquire, repair and replace, as necessary, and maintain in a first class condition throughout the Term, fixtures, furnishings, and equipment to be used in the operation of your Franchised Business that is in accordance with the System Standards, specifications set forth by us in the Confidential Manual or other documents provided by, or approved by, us as they presently exist or may exist in the future, and with applicable laws including, without limitation, including the Americans with Disabilities Act ("ADA"); and (2) procure the fixtures, furnishings, and equipment from suppliers or vendors previously approved in writing by us.

### **3.4 Online Presence.**

You may not maintain a website, software application, an App (application), social media account (including an account, group or page on Facebook®, Flickr®, Foursquare®, Google+®, Instagram®, LinkedIn®, Pinterest®, Snapchat®, Tumblr®, Twitter®, YouTube®, Vine®, VKontakte or Weibo®), or otherwise maintain a presence or advertise on the Internet or any other public computer network (individually and collectively, "Site") in connection with the Franchised Business without our prior written approval, which we may withhold in our sole discretion. If we grant you written approval, you agree to submit to us for approval before use, true and correct printouts, of all Site pages you propose to use in connection with the Franchised Business. You understand and agree that our right of approval of all such Site pages is necessitated by the fact that such Site pages will include and be inextricably linked with our Proprietary Marks. If we approve your use of a Site, you may only use Site pages that we have approved. Your Site must conform to all of online presence requirements, policies and procedures per our System Standards. You agree to provide all information regarding your online presence that we require. If we grant approval for a Site, you may not use any of the Proprietary Marks on the Site except as we expressly permit. You may not post any of our proprietary, confidential or copyrighted material or information on the Site without our prior written permission. If you wish to modify your approved Site, all proposed modifications must also receive our prior written approval. You explicitly understand that you may not post on any Site (whether yours or someone else's) any material in which a third-party has any direct or indirect ownership interest (including video clips, photographs, sound bites, copyrighted text, trademarks or service marks, or any other text or image which any third-party may claim intellectual property or other rights in). If we grant approval, you agree to list on the Site any website and social media account maintained by us, and any other information we require in the manner we dictate. You agree to obtain our prior written approval for any Internet domain name, home page address and Uniform Resource Locator. The requirement for our prior approval set forth in this *Section 3.4* will apply to all activities on the Internet or other communications network to be conducted by you, except that you may maintain one (1) or more e-mail addresses and may conduct individual e-mail communications without our prior written approval. You agree to obtain our prior approval as provided above if you propose to send advertising to multiple addressees via e-mail or text

messages. You may not use a Site to represent that: (1) the Site is an official account, application, page or group of, or video produced by us; or (2) you are the owner of the *Frullati Cafe & Bakery* brand. On any Site you use in connection with the Franchised Business, you must affirmatively state: (a) that you are a franchisee and the opinion and content being expressed are your own and not that of the *Frullati Cafe & Bakery* brand; and (b) the Location of your Franchised Business.

### **3.5 Not Applicable.**

## **ARTICLE 4. TRAINING, ASSISTANCE AND START-UP MATERIALS**

### **4.1 Training Program.**

The training program is made up of the “In-Store Training,” which is approximately forty (40) hours, and “New Owner Training,” which is approximately forty (40) hours (collectively, “Training Program”). You will be solely responsible for all transportation costs, food, lodging and other personal expenses incurred by you and your employees in connection with the Training Program. The New Owner Training will be conducted at the Franchisor training and education center in Scottsdale, Arizona and the In-Store Training will be conducted at a training store in Arizona or such other location as we may designate at our sole discretion. You acknowledge that adequate knowledge regarding the operation of the Franchised Business is essential to the growth of your franchise and to the promotion of the System. Notwithstanding the foregoing, Franchisor has the right to require Franchisee and/or its manager(s) to attend additional In-Store Training (as defined below), as provided for in this *Section 4.1*, in the event Franchisee is not operating the Franchised Business pursuant to Franchisor’s Systems Standards. Notwithstanding the foregoing, because Franchisee has prior experience in the food service industry, and in particular with the operation of a *Frullati Cafe & Bakery* restaurant, Franchisor hereby waives the requirement for Franchisee to attend and successfully complete the Training Program at the time Franchisee executes this Agreement. Franchisor and Franchisee hereby agree that Franchisor has no obligation to provide the Training Program to Franchisee, or any persons who have an ownership interest in the Franchised Business, prior to, or in connection with Franchisee’s continuing operations of the Franchised Business. Franchisee understands and agrees that the foregoing waiver is not a permanent waiver by Franchisor and Franchisor does not waive and hereby reserves the right to require Franchisee to later attend and successfully complete any training as may be prescribed by Franchisor at any time during the Term. Furthermore, Franchisor has the right to require Franchisee and/or its manager(s) to attend additional In-Store Training, as provided for in this *Section 4.1*, in the event Franchisee is not operating the Franchised Business pursuant to Franchisor’s Systems Standards.

### **4.2 Employee Training.**

You acknowledge that the employees of your *Frullati Cafe & Bakery* Franchised Business are an integral and important part of the Franchised Business, as they will have substantial contact with customers. You alone are responsible, and acknowledge that we have no direct or indirect control and no right or authority, for the hiring, firing, training, supervising, setting the terms and conditions of employment (including employee tasks and work schedules), compensation of your employees, or maintaining employment records, for the safety of your employees and for your employees’ compliance with the System Standards. The System Standards are in place to protect our interests in the System and not for exercising any control

over you, your employees or your Franchised Business. You must ensure that your employees who have direct interaction with the public are able to speak and read English and any other language that may be required to adequately meet the public needs in your Franchised Business.

#### **4.3 Additional Programs; Continuing Assistance.**

We may, in the future, request that you participate in refresher or additional training programs. We may also hold an annual conference to introduce new products, discuss sales and marketing techniques, personnel training, advertising programs, merchandising procedures and other subjects. You may be charged a nominal registration fee for these programs and you will be solely responsible for the cost of transportation, food, lodging and other expenses incurred by you at any such program. Attendance at these additional training programs and conferences is mandatory. They will be held in the metropolitan Phoenix, Arizona area, or at other locations in the United States chosen by us, at our sole discretion.

We shall provide such periodic evaluations or inspections as we deem appropriate, utilizing our field representatives who may visit the Franchised Business from time to time. The frequency and duration of such visits to a Franchised Business by our representatives shall be in our sole discretion. Any such evaluation or inspection is not intended to exercise any control over your employees or the daily operation of your Franchised Business. In addition, we will be available on an ongoing basis at our offices for consultation and guidance with respect to the operation and management of the Franchised Business. In addition to the Operations Manual, we may, but are not required to, from time to time provide you with additional materials relating to the Franchised Business.

#### **4.4 Area Representatives.**

We may retain the services of an independent third-party area representative ("Area Representative") to represent us in the area in which the restaurant is located and perform some or all of the services we provide under this Agreement. The services the Area Representative may perform could include: (i) assistance in location selection and evaluating and confirming that the Location meets our minimum site requirements; (ii) advice and guidance regarding lease negotiations; (iii) assistance in opening new *Frullati Cafe & Bakery* locations; (iv) assistance with training on the approved POS System (as defined in *Section 4.6a.*); (v) assistance with marketing advice; (vi) periodic Quality Service Cleanliness and Experience ("QSCE") evaluations; (vii) assistance with collection of the various sums due to us from *Frullati Cafe & Bakery* franchisees; and (viii) coordination with other *Frullati Cafe & Bakery* franchisees in your area and general supervision and monitoring of your Franchised Business on our behalf. You agree in advance to our delegation to an Area Representative of some or all of our obligations, and assignment to an Area Representative of some or all of our rights under this Agreement. You agree that we may require you to submit to an Area Representative any reports you are required to submit to us. Upon our request, you will provide the Area Representative with access, inspection and audit rights to the same extent we have those rights under this Agreement. You are not a third-party beneficiary of any agreement between us and any Area Representative. If we have designated an Area Representative for your restaurant as of the Effective Date, the name and contact information of the Area Representative is shown in *Section 17.3h*. We reserve the right in our sole discretion to remove any Area Representative in your area at any time and to appoint any other Area Representative for your area. We have no obligation to appoint an Area Representative in the area in which your restaurant is located, and

we have no obligation to appoint a new Area Representative after we have removed an Area Representative.

You acknowledge that Area Representatives and their owners and employees may not contractually bind us without our express written authorization. You further acknowledge no Area Representative has the authority to: (i) enter into agreements or execute any agreements on our behalf; or (ii) bind us in any way without our prior written consent. Unless expressly authorized and agreed to by us in writing, we disavow any agreements, whether verbal or written, entered into by an Area Representative that in any way attempts to bind us. In any litigation or arbitration proceeding, you agree to waive any claim or defense that an Area Representative is our express or implied agent and such an assertion by you constitutes a material default under this Agreement.

#### **4.5 Confidential Manual.**

To protect the reputation and goodwill of the System and to maintain the uniform standards of operation under the Proprietary Marks, you must conduct your business in accordance with our Confidential Manual. The Confidential Manual is confidential and remains our property.

A new Operations Manual will be sent to Franchisee within approximately six (6) weeks of the Effective Date.

So that you may benefit from new knowledge gained by us as to improved techniques in the operation of the Franchised Business, we may from time to time revise, amend, restate or supplement the content of the Confidential Manual or other documents provided by, or approved by, us as they presently exist or may exist in the future. You will at all times ensure that your copy of the Confidential Manual is kept current and up to date. In the event of a dispute regarding the content of the Confidential Manual, the master copy maintained by us at our corporate office will control.

#### **4.6 Computer Systems; Debit and Credit Card Processing.**

a. You are required to acquire, as necessary, to maintain, and to exclusively use an approved cash register/computer system ("POS System") during the operation of the Franchised Business. You and your employees must complete training for the POS System as we require, and you will be required to use the POS System to produce sales reports, keep inventory control and post sales tax, refunds, credits and allowances and submit that information to us immediately upon our request. You are required to obtain DSL/high-speed Internet connection service for your POS System. If neither DSL nor cable is available in your area, dial-up Internet access may be used until DSL or cable service becomes available in your area. The POS System must be configured so that we will have remote access to the information and data stored in the POS System, which may include inventory information. This access will allow us to exchange/collect data and other information on such bases as we will communicate to you from time to time. You will be required to maintain the POS System in good working order at all times, and to upgrade or update the POS System during the Term as we may require from time to time. It will be your responsibility to enter into contracts for the maintenance, upgrades and updates to the POS System with an approved supplier of such services identified by us on the list of approved vendors and distributors or other notification to you from us advising of suppliers for your market area. You shall also be required to own a

personal computer or similar device with access to the Internet that allows you to report your Gross Sales (as defined in *Section 5.2*) online, send and receive e-mails with us, and receive online orders. If implemented by us, all *Frullati Cafe & Bakery* franchisees of traditional restaurants will be required to participate in an online ordering program. We may provide specifications that you must follow for the hardware, software, and Internet provider for such computer equipment. We may require you to upgrade the hardware and software as reasonably necessary to provide reports and information required by us.

b. You are required to accept debit and credit cards and Gift/Loyalty Cards from consumers at the Franchised Business. You are required to acquire, as necessary, and to maintain an approved debit, credit and Gift/Loyalty Card processing system to use during the operation of the Franchised Business. Additionally, you must utilize our approved third-party Gift/Loyalty payment card processor for processing all such Gift/Loyalty Card transactions, including entering into a Gift Card Participation Agreement with one of our affiliates, or its successors or assigns, or other approved vendor for the Gift/Loyalty Card processing services. The Payment Card Industry ("PCI") requires all companies that process, store, or transmit credit card information to protect the cardholders' information by complying with the PCI Data Security Standard ("PCI DSS"). Therefore, as a franchisee who accepts credit cards, you are required to be PCI compliant by following and adhering to PCI DSS, which includes ensuring that your POS System, back office computer (if supplied), and any other device that is plugged into the network is **only** used for business purposes. You are also required to complete an annual questionnaire and quarterly network PCI scans and install a network firewall appliance for logging, tracking, reporting, and security assessment. You are also required to validate with Franchisor that your store is PCI compliant. To show such validation you must send us your Passing Certificate showing your store is PCI compliant. You are also required to verify that you have a PCI compliant firewall appliance installed at your location if you process credit cards via high speed internet connectivity. We require your Franchised Business' POS System, including terminals, computers, and software to be in compliance with the PCI DSS at all times. The PCI DSS is often updated, and you are required to obtain and comply with all updated standards. You must also be PCI compliant in order to obtain cyber liability/data breach insurance coverage.

## **ARTICLE 5. FEES AND DEPOSITS**

You agree to pay each of the following amounts to us via a lump sum, with each and every amount being non-refundable because of our investment in time and money, in addition to any other benefits conferred upon you, including processing your application, reviewing your documents, and providing you with relevant information, unless otherwise expressly specified below, in accordance with the provisions set forth in this *Article 5*. Notwithstanding your designation to the contrary, we have the sole discretion to apply any of your payments, in part or in whole, to any of your indebtedness to us.

### **5.1 Not Applicable.**

### **5.2 Royalty Fee and Surcharge.**

For the period of time commencing on the later of the Effective Date or the date the Franchised Business opens to the public, and for the duration of the Term, you must pay to us a weekly royalty fee equal to the greater of the following: (i) six percent (6%) of total Gross Sales (as defined below); or (ii) Two Hundred Dollars (\$200) ("Royalty Fee"). If we or the landlord of the Location require you to remodel your Franchised Business in such a way that you

Franchised Business (including catering) stops offering items to the public, or if there is a disaster at your Franchised Business, such as a fire, flood or damage caused by an act of God, that requires you to temporarily close your Franchised Business, you are not required to pay the Royalty Fee during the period of time of such temporary closure; provided you provide us or our authorized representative with notice of such temporary closure as soon as reasonably possible, but in no event more than twenty-four (24) hours after such closure begins. Notwithstanding the above, all amounts owed to us under this Agreement prior to the temporary closure shall still be fully due and payable. The temporary closure of your Franchised Business shall not exceed ninety (90) days, but may be extended on a case-by-case basis at our sole discretion and with our prior written approval.

In our sole discretion, we may charge, in addition to the Royalty Fee, a surcharge of up to Ten Dollars (\$10) per week if your Franchised Business is located in a state that imposes additional reporting requirements on a franchisor ("Surcharge"). The Royalty Fee and applicable Surcharge shall be due and payable no later than Wednesday of each week, which day may be modified by us without prior notice to or approval from you, for the week ending on the preceding Sunday in which applicable Gross Sales (as defined below) were earned from the Franchised Business. The weekly Royalty Fee and applicable Surcharge shall be paid by electronic funds transfer, as detailed below.

For the period of time commencing on the later of the Effective Date or the date the Franchised Business opens to the public, and for the duration of the Term, you are required to report Gross Sales to our designated accounting office via the Internet at <http://franchisee.kahalamgmt.com>, as set forth in *Section 5.6*. You shall be required to establish a Depository Account (as defined in *Section 5.6*) at the time you execute this Agreement as set forth in *Section 5.6*. Payment of the Royalty Fee, Advertising Fee (as defined in *Section 5.3*), and all other fees due under this Agreement to us shall be made via electronic transfer of funds from the Depository Account. To accomplish this electronic transfer of funds from the Depository Account, you must complete, sign and deliver to us, and maintain for the duration of the Term, a current Electronic Funds Transfer Authorization in a form that we provide.

As used in this Agreement, "Gross Sales" means all sales, money or things of value, received or receivable, directly or indirectly, by Franchisee on account of the Franchised Business, less applicable sales taxes and any properly documented refunds, credits and allowances given by you to customers in accordance with the System Standards, but without deducting any of your income taxes, costs and other expenses. All sales made from catering services must be included in the Gross Sales.

### **5.3 Advertising Fee.**

a. Not applicable.

b. You must pay to us, or directly into a national advertising fund or also any regional advertising funds, as designated by us at our sole discretion, (individually and collectively, "Advertising Fund") a weekly advertising fee of one percent (1%) of the Gross Sales for the preceding week ("Advertising Fee"). Upon thirty (30) days' notice by us to you, we may unilaterally increase the Advertising Fee from its current level not to exceed four percent (4%) of your weekly Gross Sales. The Advertising Fee shall be due and payable with the Royalty Fee under *Section 5.2*. The Advertising Fee is our property and may be deposited by us into our general operating account.

c. The Advertising Funds will be used for marketing, advertising, production and media expenses to promote the *Frullati Cafe & Bakery* name, System, products and services. We are entitled to deduct, free of charge the following from the Advertising Fund: (i) reimbursement of expenses, overhead, and employee salaries for services provided; and (ii) rent for office space provided to the Advertising Fund. We have no fiduciary obligation to you in connection with the operation of any Advertising Fund. No interest on an unexpended Advertising Fee shall be imputed or otherwise charged for the benefit of, or payable to, you. You understand and agree that the only obligations we have regarding the collection and spending of the Advertising Fee or the administration of the Advertising Fund are the express contractual obligations in this *Section 5.3*. We are not acting as a trustee, fiduciary, agent or in any other special capacity. We do not give any representation or warranty regarding the quality or effectiveness of the advertising and marketing activities funded by the Advertising Fee or of the Advertising Fund, and we will have no liability to you with respect to how these funds are spent.

d. Your own local marketing and advertising should be developed to maximize your particular customer base.

#### **5.4 Not Applicable.**

#### **5.5 Not Applicable.**

#### **5.6 Depository Account; Payment Procedures.**

As of the Effective Date, you are required to maintain for the duration of the Term a depository account ("Depository Account") at a bank or other federally insured financial institution ("Depository"). You are required to maintain a balance of at least Three Thousand Dollars (\$3,000) in the Depository Account at all times during the Term by replenishing the Depository Account to at minimum Three Thousand Dollars (\$3,000) after any withdrawals. We shall not be responsible for any bank service charges incurred by you which result from the withdrawal of funds from your Depository Account.

On Monday of each week, you must submit a report to us regarding the weekly period which ended on the preceding Sunday, including details on Gross Sales and other statistical data as provided in this Agreement, Confidential Manual, or as otherwise specified from time to time by us. We will withdraw funds electronically on Wednesday of each week from the Depository Account. The withdrawals are based upon the figures you report and constitute the Royalty Fee and Advertising Fee as described in *Sections 5.2* and *5.3*. If you do not submit a report on any Monday, we may estimate the Royalty Fee and Advertising Fee based upon prior reports and withdraw the estimated amounts up to the entire Three Thousand Dollars (\$3,000). We will return or credit back to you, in our sole discretion, any overage within thirty (30) days after our receipt of your report(s). We shall not be responsible to you for any interest charges for any overage collected due to your failure to timely report your sales. You shall instruct the Depository to disburse each week to our designated bank, via electronic funds transfer by the close of business on Wednesday (or preceding banking business day, if Wednesday is a bank holiday), the weekly Royalty Fee and Advertising Fee and other fees due for that week, which week shall end on the preceding Sunday.

We will also withdraw the monthly POS Help Desk Phone Support Maintenance Fee (as defined in *Section 5.20*) from the Depository Account on the last Thursday of each month.



Under no circumstances shall such access to the Depository Account be deemed control or joint control of the Depository Account by us.

Subject to reasonable advance notice for non-recurring payment amounts, we have the right to debit your Depository Account, or any other depository account you have with us, according to the terms of your Electronic Funds Transfer Authorization for any of the payments described in this *Article 5*. If you do not pay all amounts due by the due date, we may suspend our and our affiliates' services and support until your payment default is cured. Repeated failure to pay all amounts when due, whether or not the defaults are subsequently cured, may be cause for termination under *Article 14*.

You shall pay us Fifty Dollars (\$50) for each electronic funds transfer attempted from your Depository Account pursuant to this *Section 5.6* that is returned for non-sufficient funds. You shall also reimburse us for all other costs and expenses incurred by us in collecting or attempting to collect funds due to us from the Depository Account (for example, without limitation, charges for non-sufficient funds, uncollected funds or other discrepancies in deposits or maintenance of the Depository Account balance in accordance with the terms hereof). The Depository Account shall be established and maintained solely for the purposes set forth in this *Section 5.6* and any other fees authorized under this Agreement and any other agreements between you and us or any of our affiliates.

#### **5.7 Lease Review Fee.**

If you request us or one of our designated affiliates to complete a Lease Review, you are required to pay us or our designated affiliate a lease review fee in the amount of Two Thousand Five Hundred Dollars (\$2,500) ("Lease Review Fee") for reviewing and providing comments to your proposed lease.

#### **5.8 Lease Guarantee Fee.**

If, in order to obtain the lease agreement for the Location of your Franchised Business, the landlord requires you to obtain a lease guarantee, and we or one of our affiliates agree to serve as such guarantor, you will pay us or our affiliate a fee in the amount of ten percent (10%) of the total amount of the rental obligations being guaranteed under the lease during its term up to a maximum fee of Ten Thousand Dollars (\$10,000) ("Lease Guarantee Fee"). The Lease Guarantee Fee will be due and payable upon our or our affiliate's execution of the applicable lease guarantee agreement with the landlord. Neither we nor any of our affiliates are required to serve as a guarantor of your lease for the Location of your Franchised Business; rather, the decision of whether to serve as a guarantor shall be made in our sole discretion. In the event that you request us or our affiliate to either agree to be the tenant under the lease or execute a separate guarantee to the lease, and you pay the required Lease Guarantee Fee, you agree and acknowledge that payment of the Lease Guarantee Fee shall not, in any manner, be deemed as an insurance policy which limits your liability in connection with the Franchised Business, including any and all financial liability under the sublease or lease related to the Location. You further agree and acknowledge that our or our affiliate's agreement to act as tenant or guarantor under the lease, and your payment of the Lease Guarantee Fee to us or our affiliate, does not result in the assumption or transfer of your liability, in connection with the Franchised Business, by or to us or our affiliate.

#### **5.9 Not Applicable.**

#### **5.10 Additional Training Fee.**

If you desire to receive additional training, we will provide additional training time to you for a fee of Three Hundred Dollars (\$300) per person per day. Such additional training will be at a time reasonably agreed to by you and us, and will be conducted at Franchisor's headquarters or such other location as we may designate in our sole discretion. You will be solely responsible for all transportation costs and expenses, food, lodging and other personal costs and expenses incurred by you and your employees in connection with this additional training.

#### **5.11 Document Administration Fee.**

A document administration fee of Five Hundred Dollars (\$500) ("Document Administration Fee") is payable to us when we must prepare an amendment to your franchise documents (see *Section 12.3g.*).

#### **5.12 Not Applicable.**

#### **5.13 Transfer Franchise Fee.**

a. Not applicable.

b. A Potential Transferee (as defined in *Section 12.1c.*) receiving this Agreement, as may be amended, in connection with a Full Transfer (as defined in *Section 12.1a.1.*), must pay to us a transfer franchise fee of Seven Thousand Five Hundred Dollars (\$7,500) ("Transfer Franchise Fee").

#### **5.14 Relocation Fee.**

A relocation fee of Five Hundred Dollars (\$500) ("Relocation Fee") is payable to us when you sign the amendment to your Franchise Agreement for your relocation (see *Section 2.5*).

#### **5.15 Transfer Training Fee.**

A Potential Transferee receiving this Agreement, as may be amended, in connection with a Full Transfer, must pay to us, in addition to the Transfer Franchise Fee, a transfer training fee of Two Thousand Five Hundred Dollars (\$2,500) ("Transfer Training Fee"). The Transfer Training Fee is used to provide training for two (2) individuals, and a fee of Five Hundred Dollars (\$500) will be charged for each additional individual trained over two (2).

#### **5.16 Annual Meeting Registration Fee.**

If we hold an annual meeting ("Meeting"), the Meeting may be held at various locations throughout the United States as we may designate in our sole discretion. Because the planning and funding of the Meeting must be done well in advance and requires a substantial financial commitment, we have the right to debit your Depository Account for up to One Thousand Dollars (\$1,000) for the Meeting registration fee at any time sixty (60) to ninety (90) days prior to the first day of the Meeting. This fee may be debited from your account (even if you do not attend the Meeting). If you do not attend the Meeting, we will make available to you one (1) full set of the substantive materials that were presented at the Meeting.

### **5.17 Late Report, Default and Non-Sufficient Funds Fees, Breaching Royalties and Collection Costs and Expenses.**

If you fail to submit to us any financial statements, forms, reports or records required to be provided under this Agreement by its due date, including your weekly Gross Sales report for calculating your Royalty Fee and Advertising Fee, you must pay to us a non-refundable late report charge of One Hundred Dollars (\$100) per report.

If any fees or assessments due under this Agreement, including the Royalty Fee and Advertising Fee, are not paid when due, interest shall accrue on the late payment (from the date payment is due until the date it is paid) at the Default Rate or the maximum legal interest rate (whichever is higher), which amount, plus a Fifty Dollar (\$50) late fee, shall be added to each late payment. For any payments made by you to us under this Agreement which are returned for non-sufficient funds of a processed check, you shall be charged a non-sufficient funds fee of Twenty-Five Dollars (\$25) per occurrence. Pursuant to *Section 5.6*, for each electronic funds transfer that is attempted from the Depository Account but returned for non-sufficient funds, you shall be charged a non-sufficient funds fee of Fifty Dollars (\$50) per occurrence.

Franchisor has the absolute right to charge Franchisee the greater of: three (3) times the fixed Royalty fee; or, if on a percentage Royalty fee the Royalties will be increased up to eighteen percent (18%) of Gross Sales, with respect to any period during which Franchisee is in breach or default of its/his/her obligations under this Agreement. The Royalties paid or owing to Franchisor with respect to the period during which Franchisee is in breach or default are referred to as "Breaching Royalties." Breaching Royalties will be charged for a minimum fourteen (14) day period, regardless of the length of the actual breach or default.

If, as a result of your failure to remit payments required under any provision of this Agreement, we retain an attorney or a collection agency to collect such payments, you must pay all collection costs and expenses, including reasonable attorneys' fees and expenses, whether or not legal proceedings are initiated. Our rights under this *Section 5.17* are in addition to any other rights or remedies that we may have as a result of your default under this Agreement.

### **5.18 Audit Fees.**

For the purpose of this *Section 5.18*, we have the right, at any time during business hours, and with or without prior notice to you, to inspect and audit, or cause to be inspected and audited, the business records, cash control devices, bookkeeping and accounting records, sales and income tax records and returns and other records of the Franchised Business and your entity's books and records.

You hereby grant us access to any computers utilized by you for such purposes and we will have the ability, at all times, via modem, to obtain daily and weekly sales reports and other financial records that the POS System provides. You will fully cooperate with our representatives, the Area Representative, if applicable, and independent accountants hired by us to conduct any such inspection or audit. In addition, in the event such inspection or audit is made necessary by your failure to furnish reports, supporting records or other information, as required herein, or to furnish such reports, records or information on a timely basis, or if an understatement of Gross Sales, resulting in an underpayment of the Royalty Fee or Advertising Fee for the period of any audit (which shall not be for less than one (1) month) is determined by any such audit or inspection to be five percent (5%) or greater, you will pay to us, immediately

after receipt of the inspection or audit report, any additional Royalty Fee and Advertising Fee and other amounts due as a result of any such understatement, plus interest at the Default Rate from the date originally due until the date of payment and you must reimburse us for such audit or inspection, including the charges of any independent accountants, and the travel expenses, room, board and compensation of such accountants and our employees.

The remedies in this *Section 5.18* will be in addition to all other remedies and rights available to us under this Agreement or otherwise available.

#### **5.19 Data Fee.**

We may require you to pay us or a third-party we designate a data fee of up to Seventy-Five Dollars (\$75) per month for polling or collecting data from your POS System.

#### **5.20 POS Help Desk Phone Support Maintenance Service Fee.**

You must purchase from us a help desk phone support maintenance service that covers phone support for both the software and hardware of your POS System that is supported by the help desk, the cost of which is currently Fifty-Five Dollars (\$55) monthly, and subject to increase upon thirty (30) days' notice ("POS Help Desk Phone Support Maintenance Service Fee"). The POS Help Desk Phone Support Maintenance Service Fee shall be paid by electronic funds transfer, as detailed in *Section 5.6*, and debited from your account on the last Thursday of each month.

#### **5.21 New Supplier Approval Fee.**

All requests for approving new or alternative suppliers must be submitted in writing by you or the supplier to our Purchasing Department. Each request will be reviewed in accordance with our then-current procedures and the supplier must meet our then-current requirements, which may include that our representatives be allowed to inspect the facilities of the proposed supplier, and that samples from the proposed supplier be delivered, at no charge, either to us or to our designee for testing. A charge not to exceed the amounts incurred in connection with the inspection and the test, with such cumulative amount not to exceed Five Thousand Dollars (\$5,000), must be paid to us either by you or by the proposed supplier. If approved, in our sole discretion, we will notify you or the supplier in writing within sixty (60) days after our receipt of an approval request. You must not offer or sell in any manner any of the proposed alternative supplier's products until you receive our written approval of the proposed alternative supplier.

#### **5.22 Reserved.**

#### **5.23 Non-participation Fee.**

You must offer and sell at the Location of the Franchised Business all products designated by us, consistent with our System Standards. In addition, you must immediately incorporate into the Franchised Business all new products and services designated by us and must fully participate in all local, regional, seasonal, promotional and other programs, initiatives and campaigns adopted by us in which we require you to participate. If you fail or refuse to fully participate in any such program, initiative or campaign, you may, in our sole discretion, be required to pay a non-participation fee of One Hundred Dollars (\$100) per day that you are not in compliance ("Non-participation Fee").

**5.24 Not Applicable.**

**5.25 through 5.35 Not Applicable.**

**ARTICLE 6. PROPRIETARY MARKS**

**6.1 Ownership and Right to Use.**

We warrant to you that:

- a. We are the owner of all right, title and interest in and to the Proprietary Marks;
- b. We have granted to you the personal, non-exclusive, limited, revocable right and license to use the Proprietary Marks in connection with the operation of your Franchised Business;
- c. We have taken and will take all steps reasonably necessary to preserve and protect our rights in the Proprietary Marks; and
- d. We will only permit you to use the Proprietary Marks in accordance with the System Standards.

**6.2 Covenants of Franchise Owners.**

- a. You acknowledge our ownership of the Proprietary Marks, and you agree that during the Term and after its expiration or termination, you will not directly or indirectly contest, or aid in contesting, the validity of the Proprietary Marks or our ownership of the Proprietary Marks, nor will you take any action which might impair or prejudice our ownership of the Proprietary Marks. You shall not, directly or indirectly, apply to register, register or otherwise seek to own or control any of the Proprietary Marks, or any confusingly similar mark thereto, whether in whole or in part, in any place or jurisdiction either within or outside of the United States; nor will you assist any others to do so.
- b. You agree that the license granted pursuant to this Agreement authorizes you to use the Proprietary Marks solely in connection with the Franchised Business only at the Location, and for no other purpose. You have no right to license or sublicense any aspect of the System Standards or any of the Proprietary Marks.
- c. You agree to use the Proprietary Marks only in the manner and to the extent specifically licensed by this Agreement. You further agree that any unauthorized use or continued use of the Proprietary Marks after the termination or expiration of this Agreement will constitute irreparable harm subject to injunctive relief.
- d. The license granted by this Agreement includes only the Proprietary Marks, now existing or which may exist in the future. This license does not include the right to use any other trademarks, service marks, trade name or trade dress owned by us or our licensor anywhere in the world. You agree that any and all goodwill associated with and identified by your use of the Proprietary Marks will inure directly and exclusively to our benefit, and that, on the expiration or termination of this Agreement, no monetary amount will be due or payable to you as a result of any goodwill associated with your ownership or operation of the Franchised Business.

### **6.3 Limitations on Franchisee's Use of Proprietary Marks.**

To develop and maintain high and uniform standards of quality and service and thereby protect our reputation and goodwill and that of the System, you agree:

- a. To operate and advertise the Franchised Business only under the Proprietary Marks authorized by us;
- b. To adopt and use the Proprietary Marks licensed by this Agreement solely in the manner prescribed by us;
- c. That your corporate, partnership or other entity name including trade name, will not include any of the Proprietary Marks, in whole or in part, or any terms confusingly similar thereto, unless first authorized by us in writing;
- d. To submit all advertising, promotional materials and all printed matter, including stationery, business cards, and any materials to be used on the Internet to us for our written approval before you use any of these items; and
- e. That we may from time to time change or modify the System Standards, including modifying existing Proprietary Marks or adopting new marks. You agree, at your own expense, to adopt, use and display any such new or modified Proprietary Marks within ninety (90) days after notification from us. However, if we require you to modify or discontinue use of our proprietary information or use other information or rights in its place at any time other than upon us granting you a successor term to operate the Franchised Business pursuant to *Article 13*, and that requirement is a direct result of proceedings or litigation that determined that our and our franchisees' use of the proprietary information infringed upon a third-party's rights, we or our affiliate will bear the cost of those modifications or discontinuances.

Upon your abandonment of the Franchised Business (whether voluntary or involuntary), termination or expiration of this Agreement, you must immediately cease to use, in any manner whatsoever, any of the Proprietary Marks or any other marks which, in whole or in part, may be confusingly similar to any of the Proprietary Marks.

### **6.4 Non-Exclusive License of Proprietary Marks.**

You understand and agree that your license to use the Proprietary Marks is non-exclusive; that we, in our sole discretion, can grant to other franchisees the right to use the Proprietary Marks and obtain the benefits of the System Standards, in addition to the licenses and rights granted to you under this Agreement; and that we or our affiliates may develop and license other proprietary marks in conjunction with concepts other than the Frullati Cafe & Bakery concept, on any terms and conditions we deem advisable. You will have no right or interest in any such other licenses, proprietary marks or systems.

### **6.5 Notification of Infringement and Claims.**

You agree that you will notify us immediately of any apparent infringement of, or challenge to your use of any of the Proprietary Marks, or any claim by any person of any rights in any of the Proprietary Marks. You agree that you will not communicate with any person, other than us and our legal counsel, in connection with any such infringement, challenge or

claim. We will have the sole discretion to take such action as we may deem appropriate to protect the Proprietary Marks and the exclusive right to control any litigation, United States Patent and Trademark Office proceeding, or other proceeding arising out of any such infringement, challenge, claim or otherwise relating to any Proprietary Marks. You agree to execute any and all instruments and documents, render such assistance, and do such acts and things as may, in the opinion of our counsel, be necessary or advisable to protect and maintain our interests in connection with any such litigation or proceeding, or to otherwise protect and maintain our interests in the Proprietary Marks.

## **ARTICLE 7. TRADE SECRETS AND PROPRIETARY INFORMATION**

### **7.1 Innovations.**

During the Term, you and your principals, officers, managers and employees may conceive, invent, create, design or develop various ideas, techniques, methods, processes and procedures, recipes, formulae, products, packaging or other concepts and features relating to restaurant operations, business practices or the manufacturing, production, marketing and sale of Panini, sandwiches, salads, soups, fresh baked goods, blended fruit drinks, and other food and beverage items, and related goods now in existence or later developed, adopted, or improved in connection with the Franchised Business (individually and collectively, "Innovations"). You, without further consideration, hereby assign any and all of your rights, title and interest in the Innovations, including any intellectual property rights, to us, and also agree to cooperate with us and our counsel in the protection of the Innovations, including the perfecting of title thereto in us. In addition, you will require all of your principals, officers, managers and employees to sign an agreement in the form set forth in our System Standards and incorporated herein by reference ("Confidentiality Agreement"), and shall be liable to us for obligating your principals, officers, managers and employees to assign all of their rights, title and interest to the Innovations to us and requiring your principals, officers, managers and employees to cooperate in obtaining, protecting, maintaining and enforcing our right, title and interest in the Innovations.

### **7.2 Confidentiality Agreement.**

a. In connection with the operation of the Franchised Business, you will from time to time receive, have access to, or learn certain information and materials that are proprietary to us or our affiliate. You and any person signing this Agreement under the heading "Personal Acceptance of *Sections 7.1, 7.2, 14.6 and 14.8*" agree that you will keep confidential, and will not use for your own purposes, nor supply or divulge to any other person, any of our Trade Secrets, including our methods of operation, processes, techniques, formulae and procedures, information a reasonable person would believe to be confidential and any other proprietary information regardless of whether such is expressly marked as confidential ("Confidential Information"). You acknowledge that much of the information imparted to you by us is confidential, constitutes Trade Secrets, are unique to us, and remains our sole exclusive property. Our Confidential Information includes the following:

1. The Confidential Manual and any amendments thereto;
2. Ingredients, recipes, and methods of preparation of food products;
3. Methods of operation of *Frullati Cafe & Bakery* restaurants;

4. Information about products, services, or procedures before they become public knowledge;

5. Information which relates in any manner to our business or the System Standards, whether oral or reduced to writing, and which is not generally known to, or readily ascertainable by, other persons who might derive economic benefit from its disclosure or use; and

6. Any other information which may be imparted to you from time to time and designated by us as confidential.

b. You and any person signing this Agreement under the heading "Personal Acceptance of *Sections 7.1, 7.2, 14.6 and 14.8*" acknowledge and agree that the Confidential Information and any business goodwill of the Franchised Business is our sole and exclusive property, and that you will preserve the confidentiality thereof. Upon termination or expiration of this Agreement, all items, records or documentation recording or incorporating any Confidential Information, including any copies thereof, will be immediately turned over by you to us or our authorized representative.

c. You agree to take all steps necessary, at your own expense, to protect the Confidential Information, including our Trade Secrets, and to adopt and implement all reasonable procedures prescribed by us from time to time to prevent the unauthorized use or disclosure of any of the Confidential Information. We require that all of your executive officers, agents, directors, shareholders, trustees, beneficiaries, partners and managers who may or are likely to obtain knowledge concerning the Proprietary Information (and who do not sign this Agreement under the heading "Personal Acceptance of *Sections 7.1, 7.2, 14.6 and 14.8*") sign the Confidentiality Agreement binding such person to preserve the confidentiality of the Confidential Information as part of the terms and conditions of such person's employment or association with you. You must obtain a Confidentiality Agreement signed by any such person prior to or at the same time that you begin employment of, or association with, that person. This will be a continuing obligation on your part throughout the Term. You must keep each original signed Confidentiality Agreement and provide us with a copy of each Confidentiality Agreement when requested by us or our authorized representative.

d. Notwithstanding the above, Confidential Information shall not include information which you can reasonably prove: (i) entered the public domain through no breach by you or your affiliate of any duty of confidentiality, or (ii) you received our prior express written consent to disclose in the manner in which you disclosed it.

e. If anyone under a Confidentiality Agreement is legally compelled or required by a regulatory body to disclose any Confidential Information, he/she/it will notify us as soon as possible and will use his/her/its best efforts to obtain, and give us an opportunity to obtain, appropriate assurances of confidential treatment.

f. The requirements under this *Section 7.2* will remain in full force and effect during the Term and after termination or expiration of this Agreement.



## **ARTICLE 8. RELATIONSHIP OF THE PARTIES AND INDEMNIFICATION**

### **8.1 Relationship of the Parties.**

You and we agree that this Agreement does not create any fiduciary or employment relationship between you, or any of your employees, and us, that you are an independent contractor, and that nothing in this Agreement is intended to make either you or us a general or special agent, legal representative, subsidiary, joint venture, partner, employee or servant of the other for any purpose. You shall not enter into any agreement on behalf of or otherwise bind us for any purpose.

### **8.2 Indemnification of Franchisor.**

You agree to indemnify, defend and hold us and our affiliates (including our parent and subsidiary companies, current, past and future predecessors, successors and assigns), and each of our shareholders, owners, directors, officers, members, managers, partners, joint venturers, attorneys, employees, contractors, agents, representatives, guarantors, insurers, spouses, heirs, executors, trustees and estates (collectively with us, "Indemnified Parties") harmless for, from and against any and all claims, liabilities, causes of action, suits, debts, duties, accounts, covenants, contracts, agreements, promises, taxes, demands, obligations, costs and expenses, including reasonable attorneys' fees, damages, judgments, and proceedings, of every kind and nature whatsoever, in law or equity, or otherwise, under local, state or federal law including, without limitation the Americans with Disabilities Act ("ADA"), or the law of any other applicable jurisdiction (individually and collectively, "Claims") suffered or incurred by any of the Indemnified Parties arising out of or relating to your construction, ownership, marketing, Promotions (as defined in *Article 10*), operation, including your failure to comply with PCI DSS or any law, statute, regulation, order, rule, or ordinance, or management of the Franchised Business, except for Claims held to have resulted solely from our gross negligence or willful misconduct. Notwithstanding the foregoing, we will have the right, at our option, to defend any Claim, but you must reimburse us upon demand for the costs and expenses of such defense. You shall immediately give us notice of any demand, investigation, written inquiry, action, suit, proceeding, or claim in any way related to us or the *Frullati Cafe & Bakery* brand.

### **8.3 Indemnification of Franchisee.**

We agree to indemnify, defend and hold you and your affiliates, and their shareholders, directors, officers, members, managers, partners, employees, agents, successors and assignees harmless for, from and against any and all Claims, arising out of any Claim of infringement or unfair competition in connection with your authorized use of the Proprietary Marks or Confidential Information, provided that such use is in accordance with the provisions of this Agreement. However, if we require you to modify or discontinue use of our Proprietary Marks or Confidential Information or use other information or rights in its place at any time other than upon us granting you a successor term to operate the Franchised Business pursuant to *Article 13*, and that requirement is a direct result of proceedings or litigation that determined that our and our franchisees' use of the Proprietary Marks or Confidential Information infringed upon a third-party's rights, we will bear the cost of those modifications or discontinuances.

#### **8.4 Special Power of Attorney.**

You agree to cooperate with and assist us as we may request from time to time to obtain, protect, maintain or enforce our intellectual property and Proprietary Marks, including executing documents and appearing as a witness. You hereby appoint us as your attorney-of-fact and hereby grant us an irrevocable Special Power of Attorney, coupled with an interest, with full power and authority for the purpose of executing documents or taking such action as necessary or appropriate as you might or could do if personally present, hereby ratifying all that we, as your attorney-in-fact, shall lawfully do or cause to be done by virtue of this Special Power of Attorney to obtain, protect, maintain or enforce our intellectual property and Proprietary Marks if we are, for any reason, unable to obtain your cooperation or assistance. The Special Power of Attorney granted by this *Section 8.4*, shall survive your dissolution, death, incompetence or disability and the termination or expiration of this Agreement.

### **ARTICLE 9. OPERATING STANDARDS AND DUTIES OF FRANCHISE OWNER**

#### **9.1 Compliance with System Standards and Confidential Manual.**

You understand and acknowledge that every detail of the operation of the Franchised Business is important in order to develop and maintain high and uniform standards of quality, cleanliness, appearance, service, facilities and techniques; to increase the demand for the System; and to protect our reputation and goodwill and that of other *Frullati Cafe & Bakery* franchisees. You also acknowledge that the operation of the Franchised Business is your sole responsibility, and that neither we nor our affiliates have any responsibility to obtain customers for you. The System Standards will constitute provisions of this Agreement as if fully set forth herein.

#### **9.2 Authorized Products and Services.**

a. You agree that you will not, without our prior written approval, offer at the Location any menu items, beverages, products or services that are not authorized by us for the Franchised Business, as set forth in the System Standards.

b. You have complete discretion in establishing the minimum price you charge for your products. Although we may suggest pricing strategy, you will have the final pricing decision.

c. Notwithstanding the terms of *Section 9.2b.*, we may conduct periodic promotional campaigns during which a specified product or products are promoted at a specified price. During the promotional period, you may not charge your customers more than the specified promotional price, although you may charge less than the promotional price.

d. We may conduct new marketing, research and development, branding and operational program tests, which will generally be conducted with experienced, existing franchisees and may include incentives and other rights that are not available to all franchisees.

e. You hereby consent to third-party vendors, suppliers and distributors sharing with us any and all information, reports, invoices and related documentation covering and otherwise detailing your purchases for the Franchised Business.

f. You are required to accept debit and credit cards (including Visa®, MASTERCARD® and AMERICAN EXPRESS®) and Gift/Loyalty Cards from consumers at the Franchised Business. You are required to acquire, as necessary, and maintain during the Term, an approved debit, credit and Gift/Loyalty Card processing system ("Card Processing System") to use during the operation of the Franchised Business. Additionally, you must utilize our approved third-party payment card processor, as identified in the System Standards, for processing all Card Processing System transactions.

### **9.3 Specifications and Standards for Supplies; Approved Suppliers; Rollouts.**

a. You must purchase or otherwise acquire certain proprietary or required equipment and supplies utilized in the Franchised Business only from our designated approved distributors or suppliers. If, during the Term, we change designated approved distributors or suppliers for any of the proprietary or required equipment and supplies utilized in the Franchised Business, you shall change to the new designated approved distributor or supplier within sixty (60) days after written notification of such change from us.

b. If you desire to purchase or otherwise acquire any equipment, supplies or inventory items required by the System Standards but not previously approved by us, or from sources not previously approved by us, you must submit to us sufficient specifications, photographs, drawings and other information sufficient to allow us to determine whether such equipment, supplies or inventory items meet our System Standards. We may require that our representatives be allowed to inspect the facilities of the proposed supplier and revoke its approval upon the supplier's failure to meet any of our then-current minimum System Standards. We may also require that samples from the proposed supplier be delivered, at no charge to us, either to us or to our designee for testing. A charge not to exceed the reasonable cost and expense of the inspection and the actual cost and expense of the test must be paid to us either by you or by the proposed supplier. We will notify you within sixty (60) days after your request of our approval or disapproval of the proposed product or supplier, with such determination to be made at our sole discretion. You acknowledge and agree that our approval of any item or supplier of equipment, supplies or inventory not previously approved by us will not, in and of itself, make the supplier of that item an approved supplier for other *Frullati Cafe & Bakery* franchise owners in the System. We may, in our sole discretion, at any time and from time to time, re-inspect the facilities and products of any approved supplier and revoke its approval upon the supplier's failure to meet any of our then-current System Standards. If you receive a notice of revocation from us, you must immediately stop selling disapproved products and purchasing from the disapproved supplier.

c. We will provide to you a list of all recommended and required items of equipment, fixtures, supplies, smallwares and interior decor. This list will be included in the System Standards.

d. At any time and from time to time, we may in our sole option engage in new product rollouts to add to or change the menu items offered for sale in the Franchised Business and the ingredients or supplier of ingredients utilized in the preparation of the menu items sold in the Franchised Business ("Rollout"). If we engage in a Rollout, you shall participate in the changes that are the subject of such Rollout, including offering the new menu items, changing the menu items, changing to the new supplier of the ingredients utilized in the preparation of the menu items, and changing to the new ingredients utilized in the preparation of the menu items.

If we engage in a Rollout, we will notify you of the details of the Rollout and provide you sixty (60) days from said notification to take the applicable actions required by the Rollout.

#### **9.4 Compliance with Legal Requirements and Good Business Practices.**

You must, at your sole expense, operate the Franchised Business in full compliance with all applicable Federal, state and local statutes, laws, ordinances and regulations, including health and safety regulations, food and drug laws, disability laws, labor and employment laws and data privacy laws, as may be amended, supplemented or enacted from time to time. You must pay all costs and expenses incurred by, and in the conduct of, the Franchised Business, including all rent, salaries, taxes (excluding our income taxes), disbursements, license or permit fees, insurance premiums, traveling expenses and any other business expenses. If you receive any demand, action, suit or proceeding, or the issuance of any order, writ, injunction, award or decree of any court, agency or other governmental instrumentality relating to your Franchised Business, you must immediately notify us, and in no event, later than three (3) days after your receipt. Any such notice must be accompanied by a copy of the demand, complaint, order, writ, injunction, award, decree or other similar document. You must, in all dealings with your customers, suppliers, the public and us adhere to the highest standards of honesty, integrity, fair dealing and ethical conduct. You agree to refrain from any business practice that may be injurious to the System or the goodwill associated with the Proprietary Marks.

#### **9.5 Maintenance of Insurance.**

At all times during the Term, you must maintain in full force and effect commercial general liability insurance against claims for bodily and personal injury, death and property damage caused by or occurring in connection with the construction, ownership, operation or conduct of the Franchised Business. The insurance must also include coverage for product liability and fire claims.

Such liability insurance coverage must be maintained under one (1) or more policies of insurance (each of which shall be primary coverage and shall not be contributory or secondary to any other coverage maintained by us) containing minimum liability limits of One Million Dollars (\$1,000,000) (or greater if applicable state laws or regulations require) for each occurrence and with an aggregate of not less than Two Million Dollars (\$2,000,000). Such insurance policy or policies must be "occurrence" policies and not "claims made" policies; must not provide for a deductible greater than One Thousand Dollars (\$1,000) in the aggregate and must provide that no act or omission of ours or of any officer, director or employee of ours or any affiliate of ours shall invalidate or diminish any coverage thereunder.

Such insurance policies must be issued by insurers acceptable to us having an A.M. Best's financial strength rating of at minimum "A-." The general liability insurance required by this Agreement must: (i) name Kahala Franchising, L.L.C. as the certificate holder; (ii) name Kahala Franchising, L.L.C. and MTY Franchising USA, Inc. and their parents, subsidiaries, affiliates, officers, directors, and employees as additional insureds; (iii) contain a waiver by the insurance carrier of all subrogation rights against us and our affiliates and our affiliates' respective officers, directors and employees for casualty losses; (iv) indicate the address of the Franchised Business being insured; and (v) provide that we will receive, via an endorsement, thirty (30) days' prior notice of cancellation of any such policy. Our minimum insurance coverage requirements (subject to increase in our sole discretion) are as follows:

<b>Type of Coverage</b>	<b>Limits/Specifications</b>
General Liability	\$1,000,000 bodily injury/property damage per occurrence / \$2,000,000 aggregate
Building Improvements and Betterments	100% of full replacement cost – no coinsurance (minimum of \$100,000)
Business Personal Property	100% of full replacement cost – no coinsurance – special form or equivalent (minimum of \$100,000)
Spoilage	\$5,000
Business Income	actual loss sustained or at least 50% of annual sales
Flood, Earthquake and Volcanic Eruption	subject to territory limitations – required if in a designated flood zone
Workers' Compensation	statutory requirements
Stop Gap or Employer Liability	bodily injury by accident: \$1,000,000 each accident bodily injury by disease: \$1,000,000 policy limit bodily injury by disease: \$1,000,000 each employee
Hired and Non-Owned Automobile Liability	\$1,000,000 combined single limit per accident

In addition, we recommend that you obtain cyber liability/data breach insurance coverage.

You are responsible for maintaining insurance coverage and limits as required by us, at minimum, pursuant to this *Section 9.5*, provided, if your landlord requires additional coverage, higher limits, or any other requirements not required by us, then you are responsible for maintaining such additional items as well. You must always keep the required insurance coverage in force at all times during the operation of the Franchised Business, and you must comply with any changes we make periodically to our insurance requirements. If your restaurant is located in a flood zone or an area subject to earthquakes, hurricanes, tornadoes, other similar hazards, you may want to obtain additional specific insurance to cover these risks. Such insurance may significantly increase your premiums. Upon thirty (30) days' notice to you, we may require you to increase the minimum coverage of the insurance referred to above as of the next renewal date of any policy, and require different or additional kinds of insurance at any time, including excess liability (umbrella) insurance, to reflect inflation, identification of special risks, changes in law or standards of liability, higher damage awards or other relevant changes in circumstances.

As of the Effective Date and annually thereafter, at least ten (10) days prior to renewal of your insurance coverage, and at any other time on our request, you must provide us with certificates of insurance or copies of insurance policies showing that you are in compliance with our insurance requirements, as well as proof that you have paid the premiums you owe for the insurance we require. You will pay your insurance premiums to your insurance broker or to the insurance company issuing the policy. You must have insurance and provide a copy of your certificate of insurance to us which meets our requirements before you may open your restaurant. We or our affiliate may, at our option and in addition to our other rights and remedies under this Agreement, obtain such insurance coverage on your behalf, and you must promptly execute any applications or other forms or instruments required to obtain any such insurance and pay to us, on demand, any costs, expenses and premiums incurred by us. Your obligation to obtain and maintain the insurance described above will not be limited in any way by reason of any insurance maintained by us, nor will your performance of such obligations relieve you of any obligations under *Section 8.2*.

## **9.6 Management of the Franchised Business.**

You are directly responsible for all aspects of operating the Franchised Business, and you agree that you will, at all times, operate the Franchised Business and use your best efforts to enhance your Franchised Business and the System. The Franchised Business must be personally managed and directly operated by either you or another partner, shareholder or member of your business organization, or a manager.

## **9.7 Inspections by Franchisor.**

For the purpose of this *Section 9.7*, you must make available to us or our authorized representatives such financial and other information concerning the Franchised Business, and you must permit us or our authorized representatives to have full and free access to such information at your Franchised Business Location during regular business hours without prior notice. We and our authorized representatives will have the right to communicate freely with your employees, and make extracts from, and copies of, all such information. Our authorized representative may make announced or unannounced inspections of your Franchised Business to ensure compliance with all of the requirements of this Agreement.

## **9.8 Personal Guaranty; Non-Disclosure and Non-Competition Agreement.**

If you are an individual and married, your spouse must execute and deliver to us a Guaranty of Franchise Agreement and a Non-Disclosure and Non-Competition Agreement at the same time that you sign the Agreement unless your spouse is also signing the Agreement as an individual.

If you are a corporation, limited liability company, or other business entity, each of your shareholders, members, or other owners, whether direct or indirect (and their respective spouses, if married) must execute and deliver to us a Guaranty of Franchise Agreement and a Non-Disclosure and Non-Competition Agreement at the same time that you sign this Agreement.

In the event any person who has not previously signed a Guaranty of Franchise Agreement or a Non-Disclosure and Non-Competition Agreement becomes your spouse or shareholder, member, or other owner, direct or indirect or a spouse of such shareholders, members, or other owner, at any time after the execution of this Agreement, you must cause such person(s) to immediately execute and deliver a Guaranty of Franchise Agreement and a Non-Disclosure and Non-Competition Agreement to us.

Failure to provide a Guaranty of Franchise Agreement or a Non-Disclosure and Non-Competition Agreement to us may, in our sole discretion, be grounds for termination of this Agreement as set forth in *Section 14.2a*.

## **9.9 Not Applicable.**

## **ARTICLE 10.           ADVERTISING AND PROMOTION**

### **10.1   Advertising by Franchisor.**

We (or at our election a third-party which may be an affiliate of ours) will administer the Advertising Fund that will include your Advertising Fee and those of other franchise owners in the System. If an affiliate of ours administers the Advertising Fund or places advertising in connection with the System, such affiliate may be paid a fee that will not exceed the fee that would be payable to unrelated third-parties for comparable services. Unless required by applicable law, we will have no obligation to create a trust account, escrow account or other special account for the Advertising Fund, and the monies comprising the Advertising Fund may be placed in our general account. We may also reserve the Advertising Fee for use in a subsequent year.

We will direct all advertising and promotional programs. We will have sole discretion over all creative concepts, materials and media used in such programs and the placement and allocation of such programs. The Advertising Fund will be used for marketing, advertising, production and media expenses to promote the *Frullati Cafe & Bakery* trade name, System, products and services. We are entitled to deduct, free of charge, the following from the Advertising Fund: reimbursement of expenses, overhead, and employee salaries for services provided; and rent for office space provided to the Advertising Fund. We are not required to use any specific amounts from the Advertising Fund in your market. However, we will use all amounts contributed by you to any Advertising Fund, if any (see *Section 5.3*), in the same geographic area in which your Franchised Business is located.

### **10.2   Advertising by Franchisee.**

In addition to your Advertising Fee, if applicable, and unless your Franchised Business is located in an enclosed shopping mall or other enclosed structure identified in *Section 1.1*, you agree to pay for a regular (white pages) and classified (yellow pages) telephone directory advertisement in the main directory distributed in the area where your Franchised Business is located, in such directory categories as we specify, utilizing forms of listing and classified directory advertisements approved by us. We also recommend that, in addition to your Advertising Fee, you spend at least two percent (2%) of your monthly Gross Sales on local advertising.

Your own local marketing and advertising plan should be developed to maximize your particular customer base. You should not rely upon a marketing program or plan by us as the sole means of obtaining customers. All marketing and advertising materials must be reviewed by the marketing department for look and feel. The marketing department's review is not for determining compliance with federal, state and local laws.

All advertising by you in any medium must be conducted in a professional manner and must conform to the System Standards. We may make available to you, from time to time, advertising, promotional plans and materials for purchase.

Under no circumstances may you use, without limitation, the name, image, or voice of a celebrity, public figure, character or other person in connection with the Proprietary Marks or the Franchised Business without our prior written consent. We retain the sole and exclusive right to

use, without limitation, the name, services or image of any celebrity, public figure, character or other person in advertising, endorsing or recommending the System.

## **ARTICLE 11. ACCOUNTING PROCEDURES AND REPORTS**

### **11.1 Maintenance of Records.**

You shall keep full, complete, and accurate books and accounts in accordance with generally accepted accounting principles, and in the form and manner indicated below or as from time to time further required by us. You agree to submit reports and data to us electronically if we advise you to do so. You agree:

- a. to submit to us electronically the weekly Gross Sales as set forth in *Section 5.6*;
- b. to submit to us, on or before the thirtieth (30th) day of each month, commencing with the opening of the Franchised Business, on a form approved by us, a profit and loss statement of the Franchised Business for the preceding calendar month prepared in accordance with generally accepted accounting principles;
- c. to submit to us, within ninety (90) days after the end of each calendar year, commencing with the opening of the Franchised Business, on a form approved by us, a profit and loss statement and balance sheet (including a statement of retained earnings or partnership account) for the preceding calendar year;
- d. to submit to us, at the times required, such other periodic forms, reports and information as may from time to time be required by us;
- e. to preserve, in the English language and for the time periods set forth below, all accounting records and supporting documents related to the Franchised Business (individually and collectively, "Records"), including:
  1. daily cash reports;
  2. cash receipts journal and general ledger;
  3. cash disbursements journal and weekly payroll register;
  4. monthly bank statements, daily deposit slips and canceled checks;
  5. all tax returns, including your personal returns and those of your officers, shareholders, partners and members;
  6. suppliers invoices (paid and unpaid);
  7. dated cash register tapes (detailed and summary);
  8. semi-annual balance sheets and monthly profit and loss statements;
  9. daily production, throwaway and finishing records and weekly inventories;
  10. records of promotion and coupon redemptions;
  11. records of all outside sales; and



12. such other records as we may from time to time request.

f. to record all sales on cash registers approved by us, as specified in the Confidential Manual;

g. to file all of your federal and state tax returns on a timely basis and to provide copies of them to us. We may, where applicable, require that tax returns from all of your shareholders, members or partners be provided to us, if you are other than an individual;

h. During the Term, you shall preserve the Records for at least the current fiscal year and for the three (3) immediately preceding fiscal years. For three (3) years after the date of any transfer of an interest in this Agreement, the transferor of such interest will preserve the Records for its last three (3) fiscal years of operation under this Agreement. For three (3) years after the expiration of the Term (or after any earlier termination), you shall preserve the Records for the last three (3) fiscal years of operation of the Franchised Business; and

i. In connection with our efforts to attract additional franchise owners to the System, we will have the right to use (without identifying you, except as required or allowed by law) any financial statements, sales reports, profit and loss statements or balance sheets provided by you and, in connection therewith, you authorize us to disclose any information contained on such financial reports as may be required by any federal or state registration or disclosure law.

## **11.2 Audit by Franchisor.**

We will have the right, at any time during business hours, and with or without prior notice to you, to inspect and audit, or cause to be inspected and audited, the Records and cash control devices of the Franchised Business, and your corporate, partnership or limited liability company books and records (if you are a corporation, partnership, limited liability company, or other entity). You agree that we may access any computers utilized by you for such purposes.

You will fully cooperate with our authorized representatives and independent accountants hired by us to conduct any such inspection or audit. In the event any such inspection or audit discloses an understatement of your Gross Sales for any period in question, you will pay to us, immediately after receipt of the inspection or audit report, any additional Royalty Fee or Advertising Fee due as a result of any such understatement, plus interest at the Default Rate from the date originally due until the date such understatement is paid in full.

In addition, in the event such inspection or audit is made necessary by your failure to timely furnish Records, or if an understatement of the Royalty Fee or Advertising Fee for the period of any audit (which period shall not be for less than one (1) month) is determined by any such audit or inspection to be five percent (5%) or greater, you must reimburse us all amounts incurred in connection with such audit or inspection including our employee costs and expenses, any independent accountants' and attorneys' fees, transportation, room, and meal expenses.

The remedies in this *Section 11.2* will be in addition to all our other remedies and rights under this Agreement or under applicable law.

## ARTICLE 12. TRANSFER

Sections 12.1 through 12.4 apply to all transfers, except transfers by us, which are described in Section 12.5.

### 12.1 Prior Consent of Franchisor.

a. As used in this Agreement, “Transfer” means any voluntary, involuntary (including by operation of law), direct or indirect assignment, sale, gift or other transfer by you, including:

1. “Full Transfer,” which is any act or circumstance, except those set forth in Section 12.1.a.2., by which fifty percent (50%) or more of the ownership or control is shifted from any individual or corporation, partnership or other business entity (individually and collectively, “Entity”) to another, including:

(i) Transfer of this Agreement or the Franchised Business, or any right or interest granted by this Agreement;

(ii) Transfer of an interest in you, if you are an Entity;

(iii) Merger, consolidation or issuance of additional ownership interests or redemption of ownership interests in you, if you are an Entity; or

(iv) Transfer of an interest in any other Entity holding an interest in this Agreement or you, if you are an Entity.

2. “Affiliate Transfer,” which includes:

(i) Transfer in a separation or divorce, regardless of how much of the ownership or control is shifted from any individual or Entity to another;

(ii) Transfer of this Agreement or the Franchised Business, or any right or interest granted by this Agreement from your name as an individual(s) to your Entity name in which you are the sole owner(s) of the Entity;

(iii) Transfer of this Agreement or the Franchised Business, or any right or interest granted by this Agreement, from your Entity name in which you are the sole owner(s) to your name as an individual(s);

(iv) Transfer of this Agreement or the Franchised Business, or any right or interest granted by this Agreement from one Entity name to another Entity name in which the owners of the entities are the same;

(v) Removing an owner from the Franchisee (unless the person has a fifty percent (50%) or more ownership interest);

(vi) Adding an owner to the Franchisee (unless the person has a fifty percent (50%) or more ownership interest); or

(vii) Transfer by which less than fifty percent (50%) of the ownership or control is shifted from any individual or entity to another for any act or circumstance listed in *Section 12.1.a.1*.

b. We are entering into this Agreement based upon our knowledge of and faith in your ability. Therefore, the Franchised Business and all the rights granted by this Agreement are personal to you and you may not Transfer without our prior written consent. Any attempted Transfer without our prior written consent will be null and void, and will give us the right to terminate this Agreement and your rights under it, in addition to any remedies which we may have for the breach of this covenant by reason of an attempted Transfer.

c. We shall not unreasonably withhold or delay our consent to a Transfer, so long as it is shown to our satisfaction that the potential transferee ("Potential Transferee") can perform a franchisee's obligations under the then-current form of franchise agreement and all other agreements, legal instruments and documents required of new franchisees.

## **12.2 Advance Notice of Proposed Terms and Right of First Refusal.**

a. If you, or any of your shareholders, members or partners, have received and desire to accept a signed bona fide written offer from a third-party to Transfer, you shall notify us and provide us with a complete copy of the offer (letter of intent) which must include the name, address and telephone number for every Potential Transferee. You must also include information as to the identity of all who will own an interest in this Agreement or in the Franchised Business after the completion of the Transfer, their respective interests, and the proposed terms and conditions of sale and payment.

b. We shall have the right and option, exercisable within thirty (30) days after the date we receive a copy of the offer, to purchase the interest proposed to be transferred, at the price and upon the same terms and conditions specified in the notice.

c. If we do not exercise our option, and the terms of the unaccepted offer are altered, you must, in each such instance, notify us of the changed offer; and we will again have thirty (30) days to exercise our right to purchase on the altered terms. If we do not exercise our option, then the Transfer may take place on the terms and price set forth in the notice; provided: (i) we give our written consent; (ii) the Transfer takes place no later than six (6) months from receipt of our written refusal to exercise our option to purchase; and (iii) all the conditions set forth in *Section 12.3* are satisfied.

## **12.3 Requirement for Consent to Transfer.**

If a Transfer is proposed and we do not exercise our right of first refusal pursuant to *Section 12.2*, then we will consent to the Transfer, provided that:

a. All your obligations under this Agreement are fully paid and satisfied, including the Royalty Fee and Advertising Fee; you are not in default under any provisions of this Agreement or any other agreement, legal instrument or document with us or any of our affiliates; and you enter into written agreements with us, including (except where prohibited by law) a general release by you of all claims against us;

b. Potential Transferee provides to us a completed application and financial documents, is financially acceptable, is not associated with any of our competitors, is of good moral character and reputation, and meets our criteria, which includes: work experience and aptitude; ability to devote time and best efforts to the Franchised Business; equity interest in the Franchised Business; ability to speak and read English sufficient in our opinion to communicate with employees, customers and suppliers and to satisfactorily complete our training; no conflicting interests; and other criteria and conditions that we apply to new franchisees;

c. Potential Transferee provides us with copies of all governing documents of Potential Transferee (e.g., certificate of incorporation or organization, by-laws, stock certificates, operating agreement, membership certificates (if any)) which must be reasonably satisfactory to us in our sole discretion;

d. You provide to us a copy of the purchase and sale agreement, if a Full Transfer, or other documentation evidencing the Transfer, if an Affiliate Transfer, and following our analysis of the terms and conditions of the proposed Transfer, we, in our sole discretion, conclude that such terms and conditions will not interfere with the financial feasibility of the future operation of the Franchised Business;

e. Potential Transferee enters into all agreements, legal instruments and other documents, whether our then-current agreements, legal instruments and documents or a transfer of this Agreement and related legal instruments and documents, as determined by us (individually and collectively, "Transfer Documents"). The terms of the Transfer Documents may vary materially from the current agreements used by us, including the payment of a higher Royalty Fee and Advertising Fee;

f. Not Applicable;

g. Potential Transferee pays to us the transfer franchise fee set forth in the Transfer Documents, if a Full Transfer; or Potential Transferee pays us the Document Administration Fee, if an Affiliate Transfer; Franchisee shall be liable to the Franchisor for the transfer franchise fee or Document Administration Fee in the event the Potential Transferee fails to pay such fee that is owing in full;

h. Potential Transferee pays to us the transfer training fee set forth in the Transfer Documents, if a Full Transfer; Franchisee shall be liable to Franchisor for the training fee if Potential Transferee fails to pay the training fee owing in full; If Potential Transferee or any of its employees or representatives cancel or reschedule participation in any training course or program which Potential Transferee schedules with Franchisor, Potential Transferee or Franchisee must reimburse Franchisor for all of its employee's travel expenses, wages and other expenses incurred as a result of such cancellation or rescheduling;

i. Potential Transferee successfully completes the training program required by the Transfer Documents, if a Full Transfer;

j. Potential Transferee agrees to complete all remodeling and improvements as required by us, and must upgrade the POS System to the then-current required POS System, within the time period specified by us, if a Full Transfer;

k. You and Potential Transferee agree not to assert any security interest, lien, right or claim now or in the future, in the Franchised Business. Any security interest, lien, claim or right asserted with respect to any personal property at the Location must not include any after-acquired property and must be subject, junior and subordinate to any security interest, lien, right or claim now or in the future, asserted by us, our successors or assigns; and

l. You agree to complete and sign a letter of agency, letter of authorization, or equivalent and provide it to Potential Transferee so that Potential Transferee may keep the existing telephone number when the store is transferred to Potential Transferee.

#### **12.4 Death or Incapacity of Individual Franchisee; Change in Entity.**

a. Death or incapacity of Franchisee when Franchisee is an individual:

(i) In the event of your death or incapacity, your legal representative may, for a period of ninety (90) days from the date of death or incapacitation, continue to operate the Franchised Business, provided that the operation is conducted in accordance with this Agreement and any other agreements with us.

(ii) If your representative desires to continue the operation of the Franchised Business beyond the ninety (90) day period, then, prior to the expiration of this period, your legal representative must apply in writing for the right to transfer the Franchised Business to the person or persons (whether spouse, heir, devisee, purchaser, or any other person), as the legal representative may specify. The application for transfer will be treated in the same manner as any other proposed Transfer under this Agreement.

(iii) If your legal representative does not comply with the provisions of the preceding paragraph, or does not propose a Potential Transferee acceptable to us under the standards set forth in this Agreement, all rights licensed to you under this Agreement will terminate immediately and automatically revert to us. We shall have the right and option, in our sole discretion, exercisable upon such termination, to purchase all removable furniture, fixtures, signs, equipment and other chattels, but not leasehold improvements, at a price to be agreed upon by the parties or, if no agreement as to price is reached by the parties, at such price as may be determined by a qualified appraiser, approved by both parties, such approval not to be unreasonably withheld. We shall give notice of our intent to exercise the option no later than twenty-one (21) days prior to termination.

b. Death or incapacity of any shareholder, partner, or member in Franchisee when Franchisee is a business entity:

(i) In the event of the death or incapacity of any of your shareholders, partners, or members, the surviving shareholders, partners, or members may, for a period of ninety (90) days from the date of death or incapacitation, continue to operate the Franchised Business, provided that the operation is conducted in accordance with this Agreement and any other agreements with us.

(ii) If your shareholders, partners or members desire to continue the operation of the Franchised Business beyond the ninety (90) day period, then, prior to the expiration of this period, your shareholders, partners, or members must apply jointly with all surviving shareholders, partners or members in writing, for the right to transfer the Franchised Business (or the interest of

the deceased or incapacitated shareholder, partner, or member in the Franchised Business), to the person or business entity as the surviving shareholders, partners, or members may specify. The application for transfer will be treated in the same manner as any other proposed Transfer under this Agreement.

(iii) If all surviving shareholders, partners or members do not comply with the provisions of the preceding paragraph, or do not propose a Potential Transferee acceptable to us under the standards set forth in this Agreement, all rights licensed to you under this Agreement will terminate immediately and automatically revert to us. We shall have the right and option, in our sole discretion, exercisable upon such termination, to purchase all removable furniture, fixtures, signs, equipment and other chattels, but not leasehold improvements, at a price to be agreed upon by the parties or, if no agreement as to price is reached by the parties, at such price as may be determined by a qualified appraiser, approved by both parties, such approval not to be unreasonably withheld. We shall give notice of our intent to exercise the option no later than twenty-one (21) days prior to termination.

## **12.5 Assignment by Franchisor.**

You agree and affirm that we may, without your prior consent, sell our business, our assets, or our System, in whole or in part, to a third-party; may issue a public offering of our securities; may engage in private placement of some or all of our securities; may merge with or acquire other corporations, or be acquired by another corporation; and may undertake a refinancing, recapitalization, leveraged buyout or other economic or financial restructuring. You further agree and affirm that we have the right, now and in the future, without your prior consent, to purchase, merge, acquire or affiliate with an existing competitive or non-competitive franchise network, chain or any other business regardless of the location of such franchise network, chain or business, which you acknowledge may be proximate to your Franchised Business, and to operate, franchise or license such franchise networks, chains or businesses operating under the Proprietary Marks or any other marks following our purchase, merger, acquisition or affiliation. With regard to any of the above sales, assignments and dispositions, you expressly and specifically waive any claims, demands or damages against us arising from or related to the loss of your rights to use the System as authorized under this Agreement.

This Agreement will inure to the benefit of our successors and assigns. In conjunction with one (1) or more of the transactions contemplated above, or as otherwise determined by us, we have the right to assign our rights and obligations under this Agreement to any person or entity, without your prior consent. Upon such assignment, we will be relieved of all obligations or liabilities then existing or thereafter able to be asserted under this Agreement.

## **12.6 Restrictions on Security Interests and Subfranchising.**

Except as otherwise set forth in this *Section 12.6*, you shall not have any rights to pledge, encumber, hypothecate or otherwise give any third-party a security interest in this Agreement in any manner whatsoever, nor subfranchise or otherwise transfer, or attempt to subfranchise or transfer the Franchised Business, in whole or in part, so long as it is operated as the Franchised Business, without our express prior written permission, which permission may be withheld for any reason whatsoever in our sole discretion. Notwithstanding anything contained herein to the contrary, you shall have the right to pledge your accounts receivable, net of royalties and rent, without our prior written consent for the sole purpose of obtaining

financing for the operation of the Franchised Business, provided you are in full compliance with this Agreement and any other agreement, arrangement or understanding with us.

### **ARTICLE 13. SUCCESSOR TERM**

We have no obligation under any circumstances to extend your rights to operate the Franchised Business beyond the Term. Notwithstanding the foregoing, in the event the Term expires in accordance with *Section 1.3*, you may apply to us to extend your rights to operate the Franchised Business for a successor term. In the event you desire to apply to us to extend your rights to operate the Franchised Business for a successor term, you must give us notice to that effect at least one hundred twenty (120) days prior to the expiration date of the Term. In addition to giving the notice of intent to apply for a successor term referred to above in a timely manner, in order to qualify for a license to operate the Franchised Business for a successor term, you must also, at a minimum, meet each of the following requirements:

a. You must successfully complete the then-current application process required of new franchisees;

b. You must not then be in default under this Agreement or any other agreement, legal instrument or document with us or any of our affiliates, and no event shall have occurred that, with the giving of notice, the passage of time, or both, would constitute a default under this Agreement, including all financial obligations to us;

c. You must be in complete compliance with the terms of this Agreement, including all financial obligations to us, and the then-current Confidential Manual;

d. You must not have received more than three (3) notices of default or breach of this Agreement during its term, nor more than two (2) notices of default or breach during the five (5) years immediately preceding the effective date of the proposed successor term;

e. You must have the existing right to maintain possession of the Location or you must have secured and developed a suitable substitute location that meets our then-current minimum site requirements (such confirmation will be provided to you by us in writing);

f. You must sign a general release provided by us;

g. You and we must execute all agreements, legal instruments and other documents (individually and collectively, "Successor Franchise Documents") then used by us in the granting of franchises and then being required of new franchise owners in connection with the System. The Successor Franchise Documents will supersede this Agreement, but will not terminate your liability to perform any obligations which you have not yet performed under this Agreement, or which survive the termination of this Agreement; nor will the Successor Franchise Documents terminate or supersede any Guaranty of Franchise Agreement, Confidentiality Agreement, or Non-Disclosure and Non-Competition Agreement executed pursuant to this Agreement. The terms of the Successor Franchise Documents may vary materially from the current agreements used by us, including the payment of a higher Royalty Fee and Advertising Fee;

h. The equipment, fixtures and signage used in connection with the operation of the Franchised Business must either meet our then-existing System specifications and standards,

or you must agree, within a timeframe required by us, to replace or refurbish such items, and otherwise modify the methods of operation of the Franchised Business at your cost and expense, in order to comply with our System specifications and standards then applicable to new franchise owners;

i. You agree to complete all remodeling and improvements as required by us, and must upgrade the POS System to the then-current required POS System, within the time period specified by us; and

j. You shall have paid to us the then-current initial franchise fee.

We reserve the right to reject your application for a successor term, at our sole discretion, for any reason, without limitation, failure to meet our then-current standards or requirements for new franchisees. If we decide to reject your application for a successor term to operate the Franchise Business, we will give you a notice to that effect within sixty (60) days after you deliver to us your notice of intent to apply for a successor term.

## **ARTICLE 14. DEFAULT AND TERMINATION**

### **14.1 Default; Termination.**

a. You will be in default under this Agreement:

(i) If: (a) you become insolvent or make an assignment for the benefit of creditors; (b) you file a petition in bankruptcy, or if such a petition is filed against and consented to by you, and such petition is not dismissed within thirty (30) days from the filing date of such petition; (c) you are adjudicated bankrupt; (d) a bill in equity or other proceeding for the appointment of your receiver or other custodian for your business or assets is filed and is consented to by you or is not dismissed within thirty (30) days from the filing date of such bill or other proceeding; (e) a receiver or other custodian is appointed; (f) proceedings for composition with creditors under any state or federal law is instituted by or against you; (g) the real or personal property of the Franchised Business is sold at levy thereupon by any sheriff, marshal or constable, or sold by a secured party under any state's Commercial Code;

(ii) If you fail to pay, perform, observe or comply with any of your duties and obligations under this Agreement or the Confidential Manual, including failure to provide a fully-executed copy of the lease to us when due and failure to pay when due, any sum due to us under this Agreement (including the Royalty Fee and Advertising Fee); or if you breach any of your obligations under any lease, sublease, mortgage, equipment agreement, promissory note, vendor account, conditional sales contract or other contract arising from, or in connection with, the Franchised Business, to which you are a party or by which you are bound, whether or not we are a party thereto;

(iii) If your lease or sublease for the Location of the Franchised Business is either: (a) in default and you fail to cure such default as provided in the lease or sublease; (b) is terminated for reason of default by you; or (c) the Location is lost as a result of your failure to comply with the lease or sublease;

(iv) If you fail, within thirty (30) days of the entry of a final judgment against you in an amount exceeding Two Thousand Dollars (\$2,000), to discharge, vacate or reverse



the judgment or to stay its execution pending appeal, or to discharge any judgment which is not vacated or reversed within thirty (30) days after expiration of the stay of execution;

(v) If we determine that a serious health or safety problem exists at the Franchised Business, in which case, we may require you to immediately correct the problem or cease operating until the problem is corrected;

(vi) If you, or any owner, co-owner or principal of the Franchised Business, is convicted of a felony, a crime involving moral turpitude, or any other crime or offense that is reasonably likely to adversely affect the System, the goodwill associated therewith, or our interest therein;

(vii) Except for any reason provided in *Section 5.2*, if you abandon the Franchised Business, which abandonment shall conclusively be deemed established if the Franchised Business is closed for more than three (3) consecutive days;

(viii) Except for any reason provided in *Section 5.2*, if you close or relocate the Franchised Business, without our express advance written consent;

(ix) If you fail to maintain an independent contractor relationship with us;

(x) If you either negligently or knowingly inaccurately report, or fail to report, any information in your franchise application;

(xi) If you or any owner, co-owner or principal of the Franchised Business commits an act, or permits an act to be committed, that violates any federal, state or local law that adversely impacts the Franchised Business;

(xii) If you fail to participate in any Rollout detailed in *Section 9.3*;

(xiii) If you violate any of the provisions of *Sections 2.3, 3.2, 9.2, 9.3 or 9.4* including the requirement that you: (a) sell or offer for sale only those products and services authorized by us; (b) purchase such authorized products and services only from suppliers or service providers who are approved in writing by us; and (c) utilize or switch to any of our designated approved suppliers, including a supplier who has entered into a national or regional master supplier agreement with us;

(xiv) If you transfer or attempt to transfer any rights or obligations under this Agreement or any other property or assets to any third-party in violation of the provisions of *Article 12*;

(xv) If you or any of your owners, officers, directors, managers, members, or partners (as applicable): (a) become subject to U.S. Executive Order 13224 or are involved in any activity that violates the U.S. Foreign Corrupt Practices Act or any other anti-corruption, bribery or any other laws, orders or governmental notices affecting your ability to conduct business in or with the United States, as may be amended and whether in effect as of the Effective Date or at any time during the Term, (b) are identified on the U.S. Department of the Treasury's Office of Foreign Assets Control Specialty Designated National and Blocked Persons list, or (c) receive any funding from any country that is subject to an embargo by the United States, any foreign government or government official, political party; or

(xvi) If you intentionally made any false representations and warranties under *Section 17.1*.

b. Cross-default: A default by you under this Agreement will be deemed a default of all agreements between: (i) you and your principals in his or her individual capacity or any other entity in which your principals are owners, members, managers, shareholders or partners (individually and collectively, "Franchisee Entity"); and (ii) us or any of our affiliates or predecessors (individually and collectively, "Franchisor Entity"). A Franchisee Entity's default of any other agreement, legal instrument or other document between the Franchisee Entity and a Franchisor Entity will be deemed a default under this Agreement. A default by any guarantor of your obligations under this Agreement or any agreement, legal instrument or document between a Franchisee Entity and a Franchisor Entity will be deemed a default of this Agreement.

c. Termination: If you fail to cure any default to our satisfaction, within the applicable period following notice from us, if applicable, or otherwise breach this Agreement, we may, in addition to all other remedies at law or in equity or as otherwise set forth in this Agreement, immediately terminate this Agreement. This termination will be effective immediately upon the giving of notice pursuant to *Article 15*.

d. Cross-termination: If this Agreement is terminated as a result of your default of this Agreement or any other agreement related to the Franchised Business, we may, at our option, elect to terminate any or all other agreements, legal instruments or documents between a Franchisee Entity and a Franchisor Entity. If any agreement, legal instrument or document between a Franchisee Entity and a Franchisor Entity is terminated as a result of a default by the Franchisee Entity, we may, at our sole discretion, elect to terminate this Agreement. It is agreed that an incurable or uncured default under this Agreement or any other agreement, legal instrument or document between a Franchisee Entity and a Franchisor Entity will be grounds for termination of this Agreement or any other agreement, legal instrument or document between a Franchisee Entity and a Franchisor Entity, without additional notice or opportunity to cure.

## **14.2 Opportunity to Cure.**

a. Fourteen-Day Cure Period - Except as otherwise provided in this *Section 14.2*, you will have the right to cure your default under this Agreement within fourteen (14) days after notice of default is given by us pursuant to *Article 15*. Notwithstanding the foregoing, the following lesser periods will apply under the circumstances described:

b. Seven-Day Cure Period - A seven (7) day cure period will apply if you fail, refuse, or neglect to pay when due, any monies owing to us (including the Royalty Fee and Advertising Fee), or to any Advertising Fund, or if you fail to maintain the insurance coverage set forth in this Agreement;

c. 48-Hour Cure Period - A forty-eight (48) hour cure period will apply (1) if you are in default of *Section 3.4* or (2) if you fail to participate in any limited time product offering, value offering, contest, promotion or charity event. You must initiate your participation in such offering, contest, promotion or event within forty-eight (48) hours and fully participate in such offering, contest, promotion or event as soon as reasonably possible, in our sole discretion, thereafter;

d. 24-Hour Cure Period - A twenty-four (24) hour cure period will apply to your violation of any law, regulation, order or our standards relating to health, sanitation or safety; or, except as provided in *Section 5.2*, if you cease to operate the Franchised Business for a period of forty-eight (48) hours without our prior written consent. In addition, a twenty-four (24) hour cure period will apply if you post on any Site or direct others to any site or page, post, blog or other social medium site where there are posted any defamatory or offensive comments about: other franchisees; the *Frullati Cafe & Bakery* brand; other brands franchised by us or one of our affiliates; your or other franchisees' customers; any of our, your or franchisees' vendors; us or any of our affiliates; or any of our, your or franchisees' competitors;

e. Immediate Cure Period (less than 24 hours) – An immediate cure period (less than twenty-four (24) hours) will apply if you post any content to a Site in which the content includes any inappropriate public displays of affection, our or others' confidential information or materials, violations of health or safety standards, foul or obscene language, or any images of or information about any persons from whom you did not obtain prior written consent;

f. No Cure Period - No cure period will be available: (1) if you are in default of *Sections 3.1, 9.4, 14.1a.(i), 14.1a.(iii), 14.1a.(vi), 14.1a.(vii), 14.1a.(viii), 14.1a.(xiv), 14.1a.(xv), or 14.6*; (2) if you intentionally underreport weekly Gross Sales, falsify financial data, fail to promptly provide upon our request financial data and records specified in this Agreement, or otherwise commit an act of fraud with respect to your rights or obligations under this Agreement; (3) if you repeatedly fail to comply with the provisions of this Agreement, whether or not subsequently cured; (4) if you, having twice previously cured a default of this Agreement, commit the default again; or (5) if you made any false representations and warranties under *Sections 17.1f., 17.1g., 17.1m. or 17.1n.*;

g. Statutory Cure Period - If a statute in the state or municipality in which the Franchised Business is located requires application of that state or municipal law, and that statute requires a cure period for the applicable default which is longer than any cure period specified in this *Article 14*, the statutory cure period will apply.

### **14.3 Our Right to Take Over Management.**

We have the right (but not the obligation), under the circumstances described below, to enter the Franchised Business and assume the Franchised Business' management for any period of time we feel is appropriate. If we assume the Franchised Business' management, you must pay us, in addition to the Royalty Fee and Advertising Fee, six percent (6%) of the Gross Sales, plus our direct out-of-pocket cost and expenses, for the period of time we assume the Franchised Business' management. If we assume the Franchised Business' management, you acknowledge that our duty is limited to using our reasonable efforts, and we will not be liable to you or your owners for any debts, losses or obligations the Franchised Business incurs, or to any of your creditors for any supplies or services the Franchised Business purchases. We may assume the Franchised Business' management if you abandon the Franchised Business or if you fail to comply with any provision of this Agreement and did not cure the failure within the time period we specify in our notice to you. You agree to complete and sign a letter of agency, letter of authorization, or equivalent and provide it to us upon our request if we assume the Franchised Business' management so that we may keep the existing telephone, facsimile, alarm, and credit card machine numbers (as applicable) in operation under our phone service provider. You also agree to keep the phone, water, gas, electric service (as applicable) turned on and active for one (1) week after we assume the Franchised Business's management to

allow us to switch the services over to us or our affiliate. Our exercise of our management rights under this *Section 14.3* will not affect our right to terminate this Agreement.

#### **14.4 Remedies.**

a. Interest, Costs and Damages - If you fail to remit when due any payments required under this Agreement, you agree to pay, in addition to the unpaid amounts, all of our collection costs and expenses, expert fees, reasonable attorneys' fees, and costs and expenses, including all fees, costs and expenses of court, including all appeals, with interest on the unpaid amounts at the Default Rate or the highest permissible rate. If you fail to cure a default, following notice, within the applicable time period set forth in *Section 14.2*, or if this Agreement is terminated as a result of your default, you shall pay to us all damages of any kind and nature whatsoever and all collection costs and expenses, expert fees, reasonable attorneys' fees, and costs and expenses, including all fees, costs and expenses of court, including all appeals, together with interest at the Default Rate or the highest permissible rate. If you fail to report Gross Sales in accordance with *Sections 5.2* and *5.6*, we may estimate your Royalty Fee and Advertising Fee based on prior reports, and may sue for and obtain judgment for such estimates unless you prove, prior to the entry of any default order or judgment, that your Royalty Fee and Advertising Fee are different than the estimates.

b. Waiver of Punitive Damages - Both we and you waive, to the full extent permitted by law, any right they otherwise may have had to claim, pursue, demand or receive any exemplary or punitive damages arising out of or related in any way to this Agreement and its addenda, amendments, appendices, exhibits and attachments.

c. If you breach any of the terms of this Agreement, including if you are in default of this Agreement, we may enforce our rights by injunction, specific performance, or any other remedy available under this Agreement, at law or in equity, including termination. These remedies are cumulative and not exclusive and we may use all remedies available. In addition, we may elect to terminate this Agreement and all your rights under it as set forth in *Section 14.5*.

d. If you breach any of the terms of this Agreement, including if you are in default of this Agreement, we have the right to have a receiver appointed to take possession, manage and control the assets of the Franchised Business, collect the profits, and pay the net income for the operation of the Franchised Business as ordered by a court of competent jurisdiction. The right to appoint a receiver will be available regardless of whether waste or danger of loss or destruction of the assets exists.

#### **14.5 Effect of Termination or Expiration.**

Upon termination or expiration of this Agreement, we can advise all suppliers of *Frullati Cafe & Bakery* proprietary food items and other supplies bearing any of the Proprietary Marks or service marks to cease delivering the items and products to you.

Upon your abandonment of the Franchised Business (whether voluntary or involuntary), any termination of this Agreement (whether pursuant to *Sections 14.1*, *14.2*, *14.4*, or otherwise), or upon expiration of the Term, you must immediately cease to hold yourself out to the public as a franchise owner of the System, and you must comply with the following:

a. Immediately pay to us or any affiliate of ours all sums owing from you to us or such affiliate, including the Royalty Fee and Advertising Fee, for any period prior to the date of termination, the applicable Early Termination Damages (as defined in Section 14.9 below), and all amounts owed for services, supplies or other items purchased by you from us or any affiliate of ours, or that were financed by us or any affiliate of ours, or which we or any affiliate of ours loaned to you, together with any interest or late fees accrued thereon, together with all other sums due us under this Agreement, and all damages of any kind or nature whatsoever that may be allowed by law;

b. Immediately cease to use, in any manner whatsoever, including in all advertising, the Proprietary Marks, any Trade Secrets, any Confidential Information, any benefits of the System or any part thereof, any methods associated with the System, any forms, recipes, Confidential Manual, slogans, signs, sign posts, marks, symbols, or devices used in connection with the operation of the Franchised Business; and you must deliver or destroy all of the above-mentioned materials, including any materials containing or referencing any of the foregoing, to us as directed by us. If we do not recover any such items, such items shall be valued at their then-current replacement cost, for purposes of determining the damages owing by you to us for failure to return such items, if we pursue a damage claim as a result thereof;

c. Immediately discontinue all advertising as a franchisee of the System, and thereafter refrain from any advertising that would indicate that you are or ever were a franchisee or licensee of ours, or otherwise were affiliated with us or the System;

d. Immediately take such steps as may be necessary or appropriate to:

(i) delete your listing in all telephone directories, if applicable, and terminate any other listings that indicate that you are or were a franchisee or licensee of ours, or otherwise were affiliated with us or the System; and

(ii) transfer to our designee or us all telephone numbers used by you in connection with the Franchised Business. You acknowledge that between you and us, we have the sole right and interest in all telephone numbers and directory listings associated with any Proprietary Marks, and you authorize us and appoint us and any officer or agent of ours, as your attorney-in-fact, to direct the telephone company and all listings agencies to accept such direction, or this Agreement, as conclusive evidence of our exclusive rights in such telephone numbers and directory listings and our authority to direct their transfer;

e. Immediately take such action as may be required to cancel all fictitious or assumed names, amend any entity name, or dissolve any entity that contains any Proprietary Mark, in whole or in part, regardless of whether the entity name was authorized by us, and amend or cancel any and all equivalent registrations relating to your use of any Proprietary Mark. You acknowledge that between you and us, we have the sole right and interest in all such fictitious or assumed names, entity name, and equivalent registrations, and you authorize us and appoint us and any officer or agent of ours as your attorney-in-fact, to effect the termination or cancellation of such fictitious or assumed names or equivalent registrations should you fail or refuse to do so, and the appropriate federal, state, and local agencies may accept your direction or this Agreement as conclusive evidence of our exclusive rights in such fictitious or assumed names or equivalent registrations, and our authority to direct their termination or cancellation;

f. Comply with the confidentiality requirements and the covenant against competition in this Agreement for the specified period. You acknowledge that you, or (if an entity) your authorized representative, has carefully reviewed the confidentiality requirements and the covenant against competition in this Agreement; and that you have agreed to be bound by all the requirements and covenants; and

g. Maintain at a place made known to us all books, records and reports required under this Agreement for a period of not less than three (3) years after the date of termination or expiration of this Agreement, to allow us to make a final inspection of your books and records for the purpose of verifying that all amounts owing have been paid.

If you fail to do any of the foregoing, we may pursue any remedy available at law or in equity against: (i) you; (ii) any or all guarantors of your obligations under this Agreement; and (iii) you and any or all guarantors of your obligations under this Agreement.

We have the right, but not the obligation, to purchase from you any assets or property (but not leasehold improvements) used in the operation of the Franchised Business for an amount equal to the Value (as defined below), as of the termination date. If we are required, by law, regulation or court order, to purchase the equipment and other tangible assets used in connection with the Franchised Business, the purchase price will be equal to the Value. For purposes of this Agreement, the term "Value" means, subject to applicable law, an amount equal to your cost for such assets, less depreciation and amortization using a two hundred percent (200%) declining balance method over a five (5) year period. If all, or any portion of, your assets that are being purchased by us or our authorized representative are subject to lien(s), we or our authorized representative may pay, on your behalf, the lienholder(s) that portion of the purchase price for your assets (which may be the entire purchase price) that is necessary to obtain the release of those assets from the lien(s), in lieu of paying you those funds. Further, we may offset any amounts payable to you pursuant to this *Section 14.5*, or otherwise pursuant to this Agreement, against any unpaid amounts payable to us or our affiliates pursuant to this Agreement or any agreement executed in connection with this Agreement.

#### **14.6 Covenant Not to Compete; Conflicting Interests.**

a. During the Term and for a period of two (2) years after your abandonment of the Franchised Business, expiration of this Agreement, or termination of this Agreement (whether voluntary or involuntary), you shall not engage in any Competing Business (as defined in *Section 14.6c.*) with any *Frullati Cafe & Bakery* restaurant, nor shall you have any Conflicting Interest (as defined in *Section 14.6d.*) in a Competing Business. The provisions of this Agreement bind you in any capacity, including as a franchisee, sole proprietor, partner, limited partner, member, employer, franchisor, shareholder, officer, director or employee.

b. During the Term, and for a period of two (2) years after your abandonment of the Franchised Business, expiration of this Agreement, or termination of this Agreement (whether voluntary or involuntary), you shall not divert or attempt to divert any business, customers, or potential customers of the *Frullati Cafe & Bakery* System to any Competing Business, by direct or indirect inducement or otherwise. In addition, you shall not at any time do or perform any act, directly or indirectly, which harms the goodwill or reputation of us or the System.

c. For purposes of this *Section 14.6*, “Competing Business” means a business which is primarily engaged in the sale of gourmet sandwiches and salads, and all variations thereof, within a geographical area consisting of: (1) during the Term, anywhere else; and (2) after abandonment, expiration or termination of this Agreement, within a ten (10) mile radius from the Location or location of any *Frullati Cafe & Bakery* restaurant of ours, our third-party licensees or our third-party franchisees. The term “*Frullati Cafe & Bakery* restaurant” includes not only the restaurants now in existence, but also those established at a later date. The term of this covenant will be extended by any time consumed in litigation to enforce it in both trial and appellate courts. If a court of competent jurisdiction determines that the restrictions in this paragraph are excessive in time, geographic scope, or otherwise, the court may reduce the restriction to the level that provides the maximum restriction allowed by law.

d. For purposes of this *Section 14.6*, “Conflicting Interest” means an interest by which you, or your executive officers, directors and shareholders (if you are a corporation), or your partners (if you are a partnership), or your members (if you are a limited liability company), or your designated manager, directly or indirectly, have a controlling interest in, lend money to, consult with or otherwise assist any Competing Business. If any of the persons named above do not sign this Agreement under the heading “Personal Acceptance of *Sections 7.1, 7.2, 14.6 and 14.8*,” then you agree to obtain the execution by such person of a written agreement setting forth the foregoing in a form acceptable to us.

#### **14.7 Continuing Obligations.**

All your obligations that expressly survive the expiration or termination of this Agreement, including *Sections 14.5* and *14.6*, or by the implicit nature thereof require performance after the expiration or termination of this Agreement, will continue in full force and effect (subsequent to, and notwithstanding, your abandonment of the Franchised Business (whether voluntary or involuntary) the expiration of the Term, or termination of this Agreement), until they are satisfied in full or by their nature expire. The indemnities and obligations set forth in *Article 8* will continue in full force and effect subsequent to, and notwithstanding, the expiration or termination of this Agreement.

#### **14.8 Remedies.**

You acknowledge and agree that the restrictions contained in this Agreement, including in this *Article 14*, are fair and reasonable and necessary for the protection of our legitimate business interests and you intend and agree that such restrictions be enforceable and enforced to their fullest extent. You further understand and agree that, notwithstanding any other provision of this Agreement, your breach of your obligations under this *Article 14*, will cause us irreparable harm for which recovery of monetary damages alone would not be an adequate remedy. Both parties shall be entitled to obtain timely injunctive relief, including a temporary restraining order, preliminary and permanent injunctions, to protect their rights under this Agreement, in addition to and not exclusive of any and all other remedies available to each party.

#### **14.9 Early Termination Damages.**

If you discontinue operating your Franchised Business before this Agreement expires, with or without obtaining our prior written consent, or in the event of a termination of this Agreement arising from or related to your default and breach of its provisions, you will become

obligated to pay Franchisor early termination damages ("Early Termination Damages"). The Early Termination Damages shall be considered damages and not a penalty, are not in lieu of other damages, and your payment of these damages shall not constitute a release of any other obligation owed to us. Franchisor, Franchisee, each individual signing on behalf of Franchisee, and each guarantor guaranteeing Franchisee's obligations hereunder, hereby acknowledge and agree that Franchisor's losses due to Franchisee's unilateral closure of the Franchised Business or termination of this Agreement would be highly difficult or impossible to calculate with reasonable certainty and, therefore, have agreed at the outset of this Agreement that the Early Termination Damages, and the formula for calculating these damages, constitutes a reasonable, good faith forecast of Franchisor's estimated losses and damages due to the premature closure of the Franchised Business or termination of this Agreement.

The amount of the Early Termination Damages is calculated as follows:

- a. Compute the average monthly Royalty Fee and Advertising Fee due for any consecutive twelve (12) month period within the forty-eight (48) months immediately preceding the date we receive notification of the closure, or if you failed to timely notify us of the closure then the date the Franchise Business closed, or, if the Franchised Business has been open for less than twelve (12) months, the average monthly Royalty Fee and Advertising Fee due since the opening of the Franchised Business ("Monthly Average");
- b. Multiply the Monthly Average by the number of months remaining in the Term;  
and
- c. Divide the resulting total computed in b. above by two (2).

For example purposes only: If the average monthly Royalty Fee and Advertising Fee were collectively \$1,000 and there were five years (60 months) remaining in the Term, the Early Termination Damages would be \$30,000, calculated as follows:  $\$1,000 \times 60 \text{ months} = \$60,000 \div 2 = \$30,000$ .

If you unilaterally terminate this Agreement prior to the end of the Term, you must give us ninety (90) days prior notice of the early termination ("Early Termination Notice"). Within ten (10) days after our receipt of your Early Termination Notice, we will calculate the Early Termination Damages, which will be due and payable thirty (30) days prior to the closure of your Franchised Business. In the event of a termination arising from or related to your default under this Agreement, or that you do not: (i) provide us with the Early Termination Notice at least ninety (90) days prior to the early termination of your Franchised Business and this Agreement; (ii) remain open for at least ninety (90) days after providing us with the Early Termination Notice; and (iii) pay the Early Termination Damages in full at least thirty (30) days prior to closing of the Franchised Business, the Early Termination Damages due may, in our sole discretion, be increased as follows: it will be calculated by multiplying the Monthly Average by the number of months remaining in the Term, and will not be divided by two (2).

If you have not paid your Royalty Fee and Advertising Fee for any period(s) within the forty-eight (48) months prior to notifying us of your early termination, or if you have not reported your Gross Sales for any period(s) within the forty-eight (48) months prior to notifying us of your intended early termination, we will estimate the Royalty Fee and Advertising Fee based upon prior reports to calculate the Monthly Average.



## **ARTICLE 15. NOTICES**

Unless otherwise provided in this *Article 15*, all notices specified by this Agreement or required by law must be in writing and given by personal delivery, sent by carrier (i.e., FedEx®, UPS®, etc.), U.S. certified mail, return receipt requested. All notices to us must be given at the address set forth on page 1 of this Agreement or to such other address as we may designate in writing from time to time in accordance with this *Article 15*. All notices to you may be given at the address set forth on page 1 of this Agreement, at the address of the Franchised Business, at any of your franchised restaurants, at your residence (if an individual), or at the residence of your principal shareholder(s), partner(s), or member(s) (if a business entity). Notices will be conclusively deemed to be given, delivered, and effective when sent pre-paid and actually left in the custody of an adult agent, employee or resident at a place of business or residence if given by personal delivery; or if given by carrier, twenty-four (24) hours after deposited with carrier, or if by U.S. mail or certified mail, three (3) days after deposited with the U.S. Postal Service. You have an obligation to promptly notify us pursuant to this *Article 15* whenever your mailing address, phone number or email address change. Notwithstanding the foregoing, we may give you written notice via email to the email address you provide us regarding updates or information related to System Standards, including compliance matters, with such email notification to be deemed received by you twenty-four (24) hours after we send it, unless you otherwise earlier acknowledge receipt.

## **ARTICLE 16. CONSTRUCTION AND ENFORCEMENT; MISCELLANEOUS**

### **16.1 Independent Contractors.**

The relationship between you and us is that of independent contractors. You are in no way to be deemed our partner, joint venturer, agent, employee, or servant. You have no authority to bind us to any contractual obligation or incur any liability for or on our behalf. You shall identify yourself as an independent owner of the Franchised Business in all dealings with customers, lessors, contractors, suppliers, public officials, employees, and others.

### **16.2 Severability and Substitution of Provisions.**

Except as provided to the contrary in this Agreement, each article, section, term and provision of this Agreement, and any portion thereof, will be considered severable, and if, for any reason, any such portion of this Agreement is held to be invalid, contrary to, or in conflict with any applicable present or future law or regulation, or as a result of a final, non-appealable ruling issued by any court, agency or tribunal with competent jurisdiction in a proceeding to which we are a party, that regulation or ruling will not impair the operation of, or have any other effect upon, such other portions of this Agreement as may otherwise remain valid, and such other portions will continue to be given full force and effect and bind the parties to this Agreement. If the severed provision is material to this Agreement, we shall promptly provide a substitute provision to replace the invalid severed provision consistent with then-current law and the original intent of the parties.

If any applicable and binding law or rule of any jurisdiction requires a greater prior notice of the termination of, or refusal to renew or grant a successor term to, this Agreement than is required under this Agreement, or the taking of some other action not required under this Agreement, or if under any applicable law, regulation, or court ruling of any jurisdiction, any provision of this Agreement or any specification, standard or operating procedure prescribed by us is invalid or unenforceable, the prior notice or other action required by such law, regulation,

or court ruling will be substituted for the comparable provisions of this Agreement, and we will have the right, in our sole discretion, to modify such invalid or unenforceable provision, specification, standard or operating procedure to the extent required to be valid and enforceable. Such modifications to this Agreement shall be effective only in such jurisdiction, unless we elect to give them greater applicability, and otherwise shall be enforced as originally made and entered into in all other jurisdictions.

### **16.3 Dispute Resolution.**

a. Except as otherwise provided herein, any dispute, claim or controversy arising out of or relating to this Agreement, the breach hereof, the rights and obligations of the parties hereto or the relationship between the parties, or the entry, making, interpretation, or performance of either party under this Agreement ("Dispute"), which cannot be resolved by mediation under *Section 16.3d*. or is not subject to mediation under the terms of this Agreement, shall be settled by arbitration administered by the American Arbitration Association ("AAA") in accordance with its Commercial Arbitration Rules as modified below.

b. Any arbitration shall take place before a sole arbitrator in Maricopa County, Arizona or, if our headquarters are no longer located in Maricopa County, Arizona, then the arbitration shall take place in the county in which our headquarters are located at the time the arbitration is commenced. You agree that conducting the arbitration where we are located is appropriate due to the multiple locations throughout the United States where our franchisees are located. The parties agree that the arbitrator shall be an attorney licensed to practice law in the United States and must have a minimum of five (5) years of experience in franchise law. Judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The arbitrator shall, in the award, allocate all of the costs and expenses of the arbitration, including the fees of the arbitrator and the reasonable attorneys' fees of the prevailing party, against the party who did not prevail. To the extent permitted by applicable law, no issue of fact or law shall be given preclusive or collateral estoppel effect in any other dispute, arbitration proceeding or litigation, except to the extent such issue may have been specifically determined in another proceeding between the parties. This agreement to arbitrate shall survive any termination or expiration of this Agreement, however effected. The parties agree that any arbitration shall be solely between them (including any affiliates) and shall not include as a party, by consolidation, joinder, or in any other manner, any other person or entity, unless both parties consent in writing. Both parties shall have the absolute right to refuse such consent. Further, the parties expressly waive any right to bring or participate in any class or other consolidated, joined or multi-party arbitration claim or proceeding, whether or not permissible under the AAA Commercial Arbitration Rules, including any claim brought on their behalf by an association of which it, he or she is a member. At the request of any party, the arbitration shall be conducted in a manner that maintains the confidentiality of the proceedings.

c. The arbitrator will issue a reasoned award, with findings of fact and conclusions of law. Actions to enforce an express obligation to pay monies may be brought under the Expedited Procedures of the AAA's Commercial Arbitration Rules. The Federal Arbitration Act shall govern, excluding all state arbitration laws. Arizona law will govern all other issues. With respect to discovery, the arbitrator shall require each party to make a good cause showing before any discovery exceeding that specifically authorized by the AAA Commercial Arbitration Rules will be granted.

d. Prior to the commencement of an arbitration proceeding, the parties must first submit any Dispute to non-binding mediation. At the request of any party, the mediation will be confidential. The mediation shall be conducted in Maricopa County, Arizona or in the county in which our headquarters are located at the time of mediation, unless the parties shall mutually agree to a different location. The parties to the mediation will share equally in its costs and expenses, except those costs and expenses incurred separately by each party, including counsel fees and expenses. The mediation process will be deemed "Completed" when the parties agree that it has been completed, the mediator declares that any impasse exists, or sixty (60) days have elapsed since the date of the initiating party's notice to the other party that it is initiating the mediation process, whichever occurs first.

e. Notwithstanding anything contained in this Agreement to the contrary, the provisions of Sections 16.3a., 16.3b., 16.3c. and 16.3d. do not apply to a Dispute where: (i) we bring an action for an express obligation to pay monies, declaratory relief, preliminary or permanent equitable relief, any action at law for damage to our goodwill, the Confidential Information, the Proprietary Marks or for fraudulent conduct by you; or (ii) the delay resulting from the mediation process may endanger or adversely affect the public (for example, unhealthy, unsafe or unsanitary conditions would continue to exist). For such disputes, we may bring an action in any federal or state court having jurisdiction, whether for monetary damages, temporary preliminary and permanent injunctive relief or specific performance in addition to, and not exclusive of, any other remedies available to us. You hereby consent to and waive any objection or defense and agree not to contest venue, forum non conveniens or jurisdiction of such court or arbitration.

f. Disputes concerning the validity or scope of arbitration, including whether the Dispute is subject to arbitration, are beyond the authority of the arbitrator and will be determined by a court of competent jurisdiction pursuant to the Federal Arbitration Act, 9 U.S.C. §1 et seq., as amended from time to time.

g. Either party may appeal the final award of the arbitrator, if it is over One Hundred Thousand Dollars (\$100,000), to the appropriate U.S. District Court. The Court's review of the arbitrator's findings of fact will be under the clearly erroneous standard, and the Court's review of all legal rulings will be *de novo*. If it should be determined that this provision for federal court review is not enforceable, then either party may appeal the arbitrator's final award, if it is over One Hundred Thousand Dollars (\$100,000), to a panel of three (3) arbitrators chosen under AAA Optional Appellate Arbitration Rules , which will employ the same standards of review stated immediately above.

#### **16.4 Applicable Law and Forum; Waiver of Jury; Statute of Limitations.**

a. Except to the extent that the United States Trademark Act of 1946, as amended (15 U.S.C., § 1051 et seq.) or the franchising laws of any state that may be applicable, the laws of the State of Arizona govern all rights and obligations of the parties under this Agreement without regard to conflict of law. The parties agree, subject to the mandatory mediation and arbitration provisions of *Section 16.3*, that any appropriate state or federal court located in Maricopa County, Arizona has exclusive jurisdiction over any Dispute arising under or in connection with this Agreement and is the proper forum in which to adjudicate the case or controversy. Notwithstanding the foregoing any action initiated by us may, at our election, be brought in any jurisdiction where you are domiciled or that has jurisdiction over you. The parties hereto irrevocably submit to the jurisdiction of, and venue in, any such court, and hereby waive

any objection or defense thereto. THE PARTIES AGREE THAT ALL DISPUTES SUBMITTED TO THE COURT PURSUANT TO THIS SECTION SHALL BE TRIED TO THE COURT SITTING WITHOUT A JURY, NOTWITHSTANDING ANY STATE OR FEDERAL CONSTITUTIONAL OR STATUTORY RIGHTS OR PROVISIONS.

b. Notwithstanding anything contained in this Agreement to the contrary, the parties agree that any claims under, arising out of, or related to, this Agreement must be brought within two (2) years of the date on which the underlying cause of action accrued, and the parties hereby waive any right to bring any such action after such two (2)-year period, except for the collection of any unpaid Royalty Fee, Advertising Fee, and any other amount due to us or our affiliate.

c. **YOU HEREBY WAIVE THE RIGHT TO SEEK OR COLLECT PUNITIVE, MULTIPLE, CONSEQUENTIAL AND SPECIAL DAMAGES IN ANY FORUM, INCLUDING ARBITRATION. YOU HEREBY FURTHER WAIVE THE RIGHT, IF ANY, OF ANY ASSOCIATION OR MEMBERSHIP GROUP TO ASSERT CLAIMS ON YOUR BEHALF IN ANY ACTION.**

d. **YOU HEREBY WAIVE THE RIGHT TO ANY DAMAGES IN CONNECTION WITH OR RESULTING FROM THE WRONGFUL ISSUANCE OF AN INJUNCTION.**

e. The parties agree that the maximum damages that you may recover in connection with a wrongful termination of your franchise and this Agreement will be an amount equal to the product of:

- (i) the annual net profit (as defined below) multiplied by
- (ii) the lesser of:

(a) The number of full years existing between the date on which the franchise and this agreement were wrongfully terminated and the date on which the Term would have otherwise expired; or

(b) Three.

For purposes of this Agreement, the term "net profit" means an amount equal to the net profits of your Franchised Business, as reflected on your tax return filed with the Internal Revenue Service prior to such termination; provided, however, that if such tax return reflects the operations of your Franchised Business for a period less than one (1) year, such net profits will be annualized based upon the net profits reflected in such tax return.

#### **16.5 No Guarantee of Franchisee's Success.**

You have been informed of and acknowledge the highly competitive nature of the business involved, and agree that the successful operation of your Franchised Business will depend in part, upon your best efforts, capabilities, management, and efficient operation; as well as the general economic trend and other market conditions.

#### **16.6 Existence of Various Forms of Franchise Agreements.**

You acknowledge that our present and future franchisees operate under a number of forms of franchise agreements and consequently, our obligations and rights with respect to our various franchisees may differ materially in certain instances. The existence of different forms or versions of the franchise agreement does not entitle you to benefit from any such difference; nor does it operate to alter or amend the agreement of the parties set forth in this Agreement.

#### **16.7 Franchise Owner May Not Withhold Payments.**

You agree that you will not, on grounds of alleged or actual nonperformance or breach by us of any of our obligations under this Agreement, withhold payment of any Royalty Fee, Advertising Fee, amounts due to us or any of our affiliates for goods or services purchased by you, or any other amounts due to us or any of our affiliates.

#### **16.8 Remedies Are Cumulative.**

The rights and remedies of the parties to this Agreement are cumulative and not exclusive, and no exercise or enforcement by either party of any right or remedy under this Agreement shall preclude the exercise or enforcement by such party of any other right or remedy under this Agreement or otherwise available at law or in equity to such party.

#### **16.9 Interpretation.**

All the terms and provisions of this Agreement will be binding upon and inure to the benefit of the successors and assigns of the parties. However, nothing in this *Section 16.9* may be construed as our consent to the Transfer of this Agreement or any rights by you.

#### **16.10 Waiver.**

Our failure to insist upon the strict performance of any term, covenant or condition contained in this Agreement will not constitute or be construed as a waiver or relinquishment of our right to enforce thereafter any such term, covenant or condition and such term, covenant or condition will continue in full force and effect.

#### **16.11 Litigation Expense.**

If an action at law or suit in equity is brought to establish, obtain or enforce any right by either of the parties to this Agreement, the prevailing party in the suit or action, in the trial and appellate courts, will be entitled to recover from the non-prevailing party reasonable attorneys' fees, costs and expenses and disbursements incurred in such suit or action.

#### **16.12 No Third-Party Beneficiaries.**

This Agreement is not intended to benefit any other person or entity except the named parties hereto and no other person or entity shall be entitled to any rights hereunder by virtue of so-called "third-party beneficiary rights" or otherwise.

### **16.13 Binding Effect; Modification.**

This Agreement is binding upon the parties to this Agreement and their respective executors, administrators, personal representatives, heirs, permitted assigns and successors in interest. No amendment, change, or modification of this Agreement shall be binding on any party unless executed in writing by you and us.

### **16.14 Entire Agreement; Nature and Scope; Construction.**

This Agreement, all exhibits, attachments, addendums, and amendments, constitute the entire understanding and agreement between the parties, and there are no other oral or written understandings or agreements between us and you relating to the subject matter of this Agreement. If required to be signed, any state specific addendums are incorporated herein by reference. Any representation not specifically contained in this Agreement made prior to entering into this Agreement does not survive subsequent to the execution of this Agreement. We and you have entered into this Agreement for the sole purpose of authorizing you to use the System licensed by this Agreement in the operation of the Franchised Business during the Term in which those specific items designated by us for sale and use in such locations are offered for sale and use in individual, face-to-face transactions with patrons visiting the Franchised Business (and equivalent telephone or mail transactions accepted as a convenience to that customer group). All consideration being furnished by us to you during the course of performance of this Agreement has been determined based on the limited rights and other limitations expressed herein. No other rights have been bargained for or paid for. This provision is intended to define the nature and extent of the parties' mutual contractual intent, there being no mutual intent to enter into contract relations, whether by agreement or by implication, other than as set forth in this Agreement. The parties further acknowledge that these limitations are intended to achieve the highest possible degree of certainty in the definition of the contract being formed, in recognition of the fact that uncertainty creates economic risks for both parties which, if not addressed as provided in this Agreement, would affect the economic terms of this bargain.

Nothing in this Agreement or in any related agreement is intended to disclaim the representations we made in the Disclosure Document. Nothing in this Agreement is intended, nor shall be deemed, to confer any rights or remedies upon any person or legal entity not a party hereto.

### **16.15 Terminology.**

In addition to the terms defined elsewhere in this Agreement, the following terms defined below are incorporated in this Agreement by reference and shall be deemed to include all persons who succeed to the interest of the original, where applicable:

The term "affiliate" means any person who, directly or indirectly through one (1) or more intermediaries, controls, is controlled by, or is under common control with any person;

The term "Dollars" means United States Dollars and all amounts due under this Agreement shall be paid in United States currency;

The use of the terms “includes” and “including” in any provision of this Agreement followed by specific examples used shall not be construed to limit application of the provision to only the specific examples used;

The term “person” means any natural person, corporation, partnership, trust, other entity, association or form of organization;

The term “will” and “shall” shall be synonymous, and shall be mandatory and not discretionary, unless otherwise specifically provided herein; and

Any references to articles or sections refer to articles and sections in this Agreement unless specified otherwise.

#### **16.16 Counterparts.**

This Agreement may be executed in one (1) or more original counterparts, and all of which, when taken together, shall be deemed to be one (1) original Agreement. A fully-executed copy of this Agreement shall be of the same force and effect as the original.

#### **16.17 Offerings.**

If you are a corporation, partnership or other entity, and if you intend to offer securities, partnership interests or other ownership interests in you through any public or private offering, you shall not use any Proprietary Marks in such public or private offering, except to reflect your franchise relationship with us; nor shall you misrepresent your relationship with us by any statement or omission of an essential statement. You shall indemnify and hold us harmless from any liability in connection with such offering. Nothing in the foregoing shall modify the provisions of *Article 12*, and no such offering shall be made without first complying with any applicable provisions of *Article 12*.

#### **16.18 Time.**

Time is of the essence of each and every provision of this Agreement.

#### **16.19 Force Majeure.**

Neither of the parties will be liable for loss or damage or be deemed to be in breach of this Agreement if the failure to perform the party’s obligations results from: (a) transportation shortages, inadequate supply of equipment, merchandise, supplies, labor, material or energy, or the voluntary foregoing of the right to acquire or use any of the foregoing in order to accommodate or comply with the orders, requests, regulations, recommendations or instructions of any government or any department or agency thereof; or (b) acts of God. Any delay resulting from any of these causes will extend performance accordingly or excuse performance, in whole or in part, as may be reasonable, except that no such cause will excuse payments of amounts owed at the time of such occurrence or payment of the Royalty Fee and all other amounts due to us and our affiliates thereafter.

## **16.20 Plurals and Captions.**

Words in the singular number include the plural when the context requires (and vice-versa). The table of contents and the captions are inserted only for convenience and are not a part of this Agreement or a limitation of the scope of the particular article or section to which each refers.

## **16.21 Joint and Several Liability.**

If you consist of two (2) or more individuals, whether in the form of separate individuals or a business entity controlled by the individuals, then each individual will be jointly and severally liable under the provisions of this Agreement.

## **16.22 Trademark Notice.**

All trademarks referenced in this Agreement are those of their respective owners.

## **16.23 No Accord or Satisfaction.**

If you pay, or we otherwise receive, a lesser amount than the full amount provided for under this Agreement for any payment due hereunder, such payment or receipt shall be applied against the earliest amount due us. In addition, if interest or late fees are owed, we may apply any amounts paid to the late fees and interest before such amounts are applied to the principal amount owed. We may accept any check or other payment in any amount without prejudice to our right to recover the entire balance of the amount due or to pursue any other right or remedy. No endorsement or statement by you on any check or payment or in any letter accompanying any check or payment or elsewhere shall constitute or be construed as an accord or satisfaction.

# **ARTICLE 17. ACKNOWLEDGMENTS AND REPRESENTATIONS OF FRANCHISEE**

## **17.1 Certain Representations and Warranties of Franchisee.**

You represent and warrant that the following statements are true and complete as of the Effective Date:

a. You do not seek to obtain the Franchised Business for speculative or investment purposes and have no present intention to sell or transfer or attempt to sell or transfer the Franchised Business except as previously approved by Franchisor and subject and conditioned to Article 12 of this Agreement.

b. You understand and acknowledge the value to the System of uniform and ethical standards of quality, appearance and service described in and required by the Confidential Manual and the necessity of operating the Franchised Business under the System Standards. You represent that you have the capabilities, professionally, financially and otherwise, to comply with our System Standards.

c. If you are a corporation, limited liability company, partnership, or other form of entity, you are duly incorporated, organized, or formed and are qualified to do business in the state and any other applicable jurisdiction within which the Franchised Business is located, and you are and shall remain duly organized and in good standing during the Term.



d. You represent and warrant that: (i) if you are an individual, you are; or (ii) if you are an entity, that each of your owners, shareholders, partners, and members are, a United States citizen or a lawful resident alien of the United States.

e. All financial and other information that you have provided to us in connection with your application for this franchise is true and accurate.

f. The execution of this Agreement by you will not constitute or violate any other agreement or commitment to which you are a party.

g. Any individual executing this Agreement on your behalf is duly authorized to do so and the Agreement shall constitute your valid and binding obligation and, if applicable, all of your partners, members, or shareholders, if you are a partnership, limited liability company, or corporation.

h. You have, or if you are a partnership, corporation or other entity, your partners or principals have, carefully read this Agreement and all other related documents to be executed by you concurrently or in conjunction with the execution hereof; that you have obtained, or had the opportunity to obtain, the advice of counsel in connection with the execution and delivery of this Agreement; that you understand the nature of this Agreement and that you intend to comply with and be bound by this Agreement.

i. You have read and understand the information and disclosures made in the Disclosure Document provided to you as acknowledged in *Section 17.3e*. You understand and acknowledge that: (i) estimates for initial start-up expenses are estimates only and there can be additional start-up expenses; and (ii) your sales may differ substantially from any sales provided in Item 19 of the Disclosure Document, and there is no assurance that your sales will meet or exceed any sales listed in Item 19 of the Disclosure Document. You have had the opportunity to and have consulted or elected not to consult with your attorney, accountant and business advisors before entering into this Agreement.

j. You understand and agree that, while not applicable in every case, our past experience indicates that owner-operated restaurants generally perform better than absentee owners with hired managers. The food business is a personal business and is dependent upon your business skill and judgment. This includes your choice of employees. Your skill in hiring the right people to work in your Franchised Business is very important in determining whether people decide to purchase menu items from your Franchised Business or from another restaurant in the same vicinity.

k. You understand and agree that ownership of a franchise and the Franchised Business carries certain risks. These risks include the loss of your initial investment, other continued financial losses such as rent payments due under lease obligations and other contractual obligations, the loss of your time and energy in starting up and running your Franchised Business, and loss of earnings and investment income from your investment in the Franchised Business. You understand and agree that the Franchised Business may make money and may lose money and are entering this business venture with this express understanding. You are not relying upon anything which is not contained within this Agreement or the Disclosure Document in determining and deciding to become a franchisee.

l. Notwithstanding the foregoing, you understand and agree that the System must

not remain static if it is to meet (without limitation) presently unforeseen changes in technology, competitive circumstances, demographics, populations, consumer trends, social trends and other market place variables, and if it is to best serve the interests of us, you and all other franchisees. Accordingly, you expressly understand and agree that we may from time to time change the components of the System, including altering the products, programs, services, methods, standards, forms, policies and procedures of that System; abandoning the System altogether in favor of another system in connection with a merger, acquisition or other business combination or for other reasons; adding to, deleting from or modifying those products, programs and services which your Franchised Business is authorized and required to offer, modifying or substituting entirely the equipment, signage, trade dress, décor, color schemes and uniform System Standards and specifications and all other unit constructions, design, appearance and operation attributes which you are required to observe under this Agreement; and, abandoning, changing, improving, modifying or substituting the Proprietary Marks. You expressly agree to comply with any such modifications, changes, additions, deletions, substitutions and alterations. You shall accept, use and effectuate any such changes or modifications to, or substitution of, the System as if they were part of the System at the time that this Agreement was executed. Except as provided herein, we shall not be liable to you for any expenses, losses or damages sustained by you as a result of any of the modifications contemplated hereby.

m. You represent that neither you nor any of your affiliates, officers, directors, managers, members, or partners (as applicable) or funding sources are subject to U.S. Executive Order 13224, identified on the U.S. Department of the Treasury's Office of Foreign Assets Control Specially Designated National and Blocked Persons list, or any terrorist list or other blocked persons list. In addition, you represent that you have not received funding from, nor are you owned, controlled, or acting on behalf of the government of any country that is subject to an embargo by the United States, any foreign government official, political party or international organization, and that no foreign government or government official, political party or international organization has any financial interest in the Franchised Business or any monies earned by the Franchised Business.

n. You represent, warrant and agree that you, your officers, directors, managers, members, or partners (as applicable) will each at all times conduct themselves in an ethical manner and avoid any activity that might result in a violation of the U.S. Foreign Corrupt Practices Act, Anti-Terrorism Laws, or any other applicable anti-corruption or bribery laws.

## **17.2 Additional Information Respecting Franchisee.**

a. You have delivered to us or will deliver concurrent herewith, complete and accurate copies of all of your organizational documents, including all partnership agreements, certificates of partnership, articles of organization, operating agreements, articles or certificates of incorporation, by-laws and shareholder agreements, including all amendments, side letters and other items modifying such documents.

b. You have completed and signed the Franchisee Questionnaire attached hereto as Exhibit 1 and incorporated herein by reference.

### 17.3 Acknowledgements of Franchisee.

a. You acknowledge that you have conducted an independent investigation of the business venture contemplated by this Agreement and recognize that this business venture involves substantial business risks and will largely depend upon your ability. Other than the financial performance representation contained in Item 19 of the Disclosure Document, if any, we expressly disclaim making, and you acknowledge that you have not received or relied on, any warranty or guarantee, express or implied, as to the potential volume, profits, or success of the Franchised Business contemplated by this Agreement.

Franchisee Initials \_\_\_\_/\_\_\_\_

b. You hereby certify that none of our employees, no other person speaking on our behalf, and no Area Representative, if applicable, have: (i) made any oral, written, visual, or other representation, agreement, 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 other than any financial performance representation contained in Item 19 of the Disclosure Document; or (ii) made any oral, written, visual, or other representation, agreement, 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 *Frullati Cafe & Bakery* franchise, that is different from, contrary to, or not contained in the *Frullati Cafe & Bakery* Disclosure Document; or (iii) made any representation, agreement, commitment, claim or statement to you that is different from, contrary to, or not contained in, the *Frullati Cafe & Bakery* Disclosure Document. You acknowledge and agree that we do not make or endorse, nor do we allow any of our employees or other persons speaking on our behalf to make or endorse, any additional oral, written, visual, or other representation, agreement, commitment, claim, or statement that states or suggests any level or range of actual or potential sales, costs, income, expenses, profits, cash flow, or otherwise with respect to a *Frullati Cafe & Bakery* franchise other than any financial performance representation contained in Item 19 of the Disclosure Document.

Franchisee Initials \_\_\_\_/\_\_\_\_

c. You acknowledge that you have received, read and understand this Agreement and the related exhibits, attachments and agreements and that we have afforded you sufficient time and opportunity to consult with advisors selected by you about the potential benefits and risks of entering into this Agreement.

Franchisee Initials \_\_\_\_/\_\_\_\_

d. You understand that this Agreement, including any amendments and exhibits, contains the entire agreement between the parties concerning the Franchised Business, and that any prior oral or written statements that are not set out in this Agreement, including any amendments, exhibits and attachments will not be binding. You acknowledge and agree that we do not permit any representations, agreements, commitments, claims, or statements or approve any changes in this Agreement or any of the amendments, exhibits and attachments to this Agreement, except by means of a written amendment or addendum signed by all parties to this Agreement. You acknowledge that nothing in this Agreement or in any related agreement is intended to disclaim the representations we made in the Disclosure Document.

Franchisee Initials \_\_\_\_/\_\_\_\_

e. You acknowledge receipt of our Disclosure Document fourteen (14) days prior to the execution of this Agreement or your payment of any monies to us or our agent (or sooner if required by applicable state law).

Franchisee Initials \_\_\_\_/\_\_\_\_

f. You acknowledge that, other than what was previously disclosed to you in our Disclosure Document to which you acknowledge receipt thereof, you have not: (1) received any financial statements for any of our parent or affiliated companies; or (2) relied on the financial condition of any of our parent or affiliated companies when making the decision to purchase the Franchised Business.

Franchisee Initials \_\_\_\_/\_\_\_\_

g. You acknowledge, as detailed in *Section 2.3*, that you must, at your own cost and expense, use only our designated and approved Design Architect for the design of your Franchised Business.

Franchisee Initials \_\_\_\_/\_\_\_\_

h. You acknowledge that the following is your Area Representative (if applicable):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Franchisee Initials \_\_\_\_/\_\_\_\_

i. If an Area Representative is identified in *Section 17.3h.*, you make the following representations with respect to the Area Representative:

(i) You have met or spoken to only \_\_\_\_\_, the Area Representative;

(ii) Other than any financial performance representation contained in Item 19 of the Disclosure Document, at no time did the Area Representative make any promises or statements, or projections or forecasts, or estimates or warranties or representations or other statement or agreement concerning profits or expenses or costs or actual or projected sales of any kind directly or by implication about *Frullati Cafe & Bakery* restaurants or about the Franchised Business that we desire to develop under this Agreement or about obtaining the confirmed Location or about any other matter other than what is contained in the *Frullati Cafe & Bakery* Disclosure Document or *Frullati Cafe & Bakery* restaurant brochure.

(iii) You acknowledge that you have not received any written materials from us or the Area Representative except for the *Frullati Cafe & Bakery* brochure and Disclosure Document; and

If there are any exceptions to *Sections 17.3i.(i) – (iii)*, identify the item number and list the exception here:

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Franchisee Initials \_\_\_\_/\_\_\_\_

j. You acknowledge there have been no other inducements made with any person or entity, including the Identified Area Representative, encouraging you to purchase the Franchised Business, such as a “side deal” or other promise or agreement not included in the Agreement.

Franchisee Initials \_\_\_\_/\_\_\_\_

k. You acknowledge and understand that *Article 6* covers the use of the *Frullati Cafe & Bakery* trademark and prohibition on registration of our Proprietary Marks. You acknowledge the ownership of the Proprietary Marks by us, and you agree that during the Term and after its expiration or termination, you will not, directly or indirectly, apply to register, register or otherwise seek to use or control or in any way use “*Frullati Cafe & Bakery*”, or any other of our proprietary marks, or any confusingly similar form or variation, in any place or jurisdiction either within or outside the United States; nor will you assist any others to do so. You further agree that your corporate, partnership or other entity name will not include any of the Proprietary Marks or phrases similar thereto as a part thereof. Furthermore, you acknowledge and understand that you are prohibited from filing applications for the registration of our trade names used in connection with your Franchised Business.

Franchisee Initials \_\_\_\_/\_\_\_\_

l. You acknowledge and understand that in the event you have registered a trade name or entity name containing our trademarks, you will be required to immediately discontinue all further use of the trademark, all Proprietary Marks and any other marks or names confusingly similar thereto in your entity name. Furthermore, you will take such action as may be required to amend your entity name and affirmatively cancel or terminate and dissolve all fictitious or assumed names or other registrations that contain our Proprietary Marks. In the event you do not comply and execute any and all instruments and documents necessary to protect and maintain our interests in the Proprietary Marks, we will then have power of attorney to execute any documents necessary to protect and maintain our interests in the Proprietary Marks.

Franchisee Initials \_\_\_\_/\_\_\_\_

## **ARTICLE 18. SUBMISSION OF AGREEMENT**

The submission of this Agreement to you does not constitute an offer and this Agreement shall become effective only upon the execution thereof by the parties. THIS AGREEMENT SHALL NOT BE BINDING ON US UNLESS AND UNTIL IT SHALL HAVE BEEN ACCEPTED AND SIGNED BY OUR PRESIDENT OR ONE OF OUR OTHER EXECUTIVE OFFICERS.

***[SIGNATURE PAGE FOLLOWS]***



**IN WITNESS WHEREOF**, each party hereto, by and through its respective representative with full rights, power and authority to enter into and bind his or her respective party without further consent or approval of any kind, has duly executed and delivered this Agreement as of the Effective Date.

**FRANCHISEE:**

\_\_\_\_\_, a(n) \_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

By: \_\_\_\_\_  
[Name, Title]

**FRANCHISOR:**

KAHALA FRANCHISING, L.L.C., an  
Arizona limited liability company

By: \_\_\_\_\_  
[Name, Title]

**PERSONAL ACCEPTANCE OF SECTIONS 7.1, 7.2, 14.6, AND 14.8**

Each of the undersigned individually and personally accepts and agrees to be bound by the provisions of Sections 7.1, 7.2, 14.6, and 14.8 of the foregoing Franchise Agreement.

\_\_\_\_\_, \_\_\_\_\_, an individual  
(signature) Date: \_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_, an individual  
(signature) Date: \_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_, an individual  
(signature) Date: \_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_, an individual  
(signature) Date: \_\_\_\_\_



**EXHIBIT 1**

**FRANCHISEE QUESTIONNAIRE**

## FRANCHISEE QUESTIONNAIRE

The undersigned is in the process of negotiating and consummating the purchase of a Kahala Franchising, L.L.C. ("Kahala") Franchise Agreement ("Agreement") for Frullati Cafe & Bakery.

We have been informed that since the laws of franchising limit the type of information that may be provided to prospective franchisees, the Kahala Legal Department has established a compliance audit program to ensure that all pre-sale negotiations have been lawfully completed.

We understand that if improper sales practices have occurred, the Kahala Legal Department, with appropriate notice prior to Agreement execution, will be able to either rectify and cure the violation, or in the alternative, reject the franchise sale.

In order to comply with your compliance audit program we hereby make the following acknowledgments and representations concerning events during the course of the negotiations and offer of sale of the Agreement knowing that Kahala will rely thereon in agreeing to accept the franchise sale.

1. In the course of the negotiations and the offer and sale of the Agreement we have met or spoken only to: \_\_\_\_\_

List any additional people: \_\_\_\_\_  
\_\_\_\_\_

2. Did any of the individuals identified in paragraph number one (1) or any other person or entity acting on behalf of or at the direction of Kahala make any promises, statements, projections, forecasts, estimates, warranties or representations or other statement or agreement (a) concerning the actual or potential financial performance of the franchised or franchisor owned-outlets, profits or expenses or actual or projected sales of any kind directly or by implication concerning Frullati Cafe & Bakery restaurants or about the Frullati Cafe & Bakery restaurant that is to be developed or about obtaining the approved location or about any other matter relating to the prospect for financial performance to the prospective franchisee, or (b) about any other matter other than what is contained in the Franchise Disclosure Document ("FDD"), and as stated in ITEM 19 of the Frullati Cafe & Bakery FDD?

Check one:                    ☐ Yes                    ☐ No

If yes, please state in detail the oral, written, or visual claim or representation:

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3. Other than what was previously disclosed to you in the Frullati Cafe & Bakery FDD to which you acknowledge receipt thereof, did you: (1) receive any financial statements for any of Franchisor's parent or affiliated companies; or (2) rely on the financial condition of any of Franchisor's parent or affiliated companies when making the decision to purchase the Franchised Business?

Check one:                    ☐ Yes                    ☐ No

If yes, please comment, in detail:

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4. Have there been any other inducements made with any person or entity encouraging you to purchase the Agreement such as a “side deal” or other promise or agreement not included in the Agreement?

Check one: ☐ Yes ☐ No

If yes, please comment, in detail:

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5. Did you receive a copy of the Frullati Cafe & Bakery FDD at least fourteen (14) calendar days prior to signing any binding agreement with, or making a payment to Kahala or any of its affiliates in connection with the proposed franchise sale? If you reside in New York, or if the location of your prospective franchise is located within one of those states, did you receive a copy of the Frullati Cafe & Bakery FDD at the earlier of (i) the first personal meeting; or (ii) ten (10) business days prior to signing any binding agreement or payment of any consideration? If you reside in Michigan or Washington, or if the location of your prospective business is located within one of those states, did you receive the Frullati Cafe & Bakery FDD at least ten (10) business days before the execution of any binding franchise or other agreement or the payment of any consideration?

Check one: ☐ Yes ☐ No

If no, please comment:

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6. Have you received, studied, and reviewed carefully the Frullati Cafe & Bakery FDD and Franchise Agreement?

Check one: ☐ Yes ☐ No

If no, please comment:

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7. Do you understand that the license granted in the Franchise Agreement is for the right to operate a franchise at the authorized location only and includes no exclusive area or protected territory, and that we and our affiliates have the right to issue franchises or operate competing businesses for or at locations, as we may determine, near your authorized location? In addition, do you understand that these locations may include freestanding buildings, strip centers, shopping malls, and other similar locations, as well as non-traditional locations such as office buildings, petroleum stations, food courts, transportation terminals, sports facilities, airports, hotels, hospitals, and college and university student unions, dormitories, and food service areas?

Check one:            ☐ Yes                      ☐ No

If no, please comment:

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8. Do you understand that the success or failure of your franchise will depend in large part upon your adherence to the Frullati Cafe & Bakery System Standards, your skills and experience, your business acumen, your location, the local market for products under our trademarks, interest rates, the economy, inflation, the number of employees you hire and their compensation, competition, and other economic and business factors? Further, do you understand that the economic and business factors that exist at the time you open your franchise may change?

Check one:            ☐ Yes                      ☐ No

If no, please comment:

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*All representations requiring prospective franchisees to assent to a release, estoppel or waiver of liability are not intended to nor shall they act as a release, estoppel or waiver of any liability incurred under the Maryland Franchise Registration and Disclosure Law.*

[NAME OF FRANCHISEE]

By: \_\_\_\_\_  
      [Name]  
      [Title]

\_\_\_\_\_ Date

**EXHIBIT E-3**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**Franchise Agreement (Transfer) and Franchisee Questionnaire**

***FRULLATI CAFE & BAKERY***

**FRANCHISE AGREEMENT  
(Transfer)**

**between**

**KAHALA FRANCHISING, L.L.C.**

**and**

\_\_\_\_\_, a(n) \_\_\_\_\_

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### Exhibits

Exhibit 1      Franchisee Questionnaire

**FRULLATI CAFE & BAKERY**  
**FRANCHISE AGREEMENT**  
("Agreement")

**PARTIES:**

KAHALA FRANCHISING, L.L.C.,  
an Arizona limited liability company  
Attn: Legal Department  
9311 E. Via De Ventura  
Scottsdale, Arizona 85258

("Franchisor")

\_\_\_\_\_  
a(n) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone No.: \_\_\_\_\_

([individually and collectively,] "Franchisee")

**RESTAURANT NO.:** \_\_\_\_\_

**EFFECTIVE DATE:** \_\_\_\_\_ ("Effective Date")

**TRADITIONAL RESTAURANT (YES or NO):** \_\_\_\_\_

**RESTAURANT DESCRIPTION IF NON-TRADITIONAL:** \_\_\_\_\_

A "traditional" restaurant is a restaurant that is easily accessible by the general public, such as a free-standing building, inline retail shop, shopping mall and street front location. A traditional *Frullati Cafe & Bakery* restaurant normally offers a full menu. A "non-traditional" restaurant is a *Frullati Cafe & Bakery* restaurant that is located in a non-traditional marketplace, as determined by us (in our sole discretion), such as an airport, amusement park, sports or entertainment venue, train station, travel plaza, toll roads, cafeteria, retail store, convenience store, military base, hospital, office building, movie theater, hotel, casino, kiosk, cart, or high school or college campus. A non-traditional restaurant may also be a *Frullati Cafe & Bakery* restaurant that is co-branded into another brand restaurant, at Franchisor's sole discretion. A non-traditional *Frullati Cafe & Bakery* restaurant normally offers a limited version of the full *Frullati Cafe & Bakery* menu.

To simplify the language in this Agreement, the terms "we," "us," "our" and the like may be used to refer to the Franchisor, and the terms "you," "your" and the like may be used to refer to the Franchisee. The term "you" as used herein is applicable to one (1) or more persons, a corporation, partnership, trust, other entity, association or form of organization as the case may be, and the singular usage includes the plural, masculine, neuter, feminine, and possessive usages. Franchisor and Franchisee may individually be referred to as a "party" and collectively referred to as the "parties."



## **RECITALS:**

This Agreement is entered into with reference to the following facts and circumstances:

A. We have, over a period of time and at considerable expense, developed and established a uniform and unique method of operation, customer service, advertising, publicity, processes, recipes, techniques and technical knowledge in connection with the restaurant business, specializing in freshly prepared Panini, sandwiches, salads, soups, fresh baked goods, blended fruit drinks, proprietary nutritional products and supplements and other related beverage and food items. These restaurants do business under the trade name "*Frullati Cafe & Bakery*". These Frullati Cafe & Bakery recipes, techniques, processes and methods constitute our "Trade Secrets." All of our knowledge, experience, Trade Secrets, processes, methods, specifications, techniques, Proprietary Marks (as defined in Recital B.), System Standards (as defined in *Section 1.4*) and information are referred to in this Agreement as the "System." The System may be changed, supplemented, improved and further developed by us from time to time.

B. We have owned and issued franchises to others for the operation of franchised restaurants in the United States and in other countries. We have registered and applied for proprietary marks with the United States Patent and Trademark Office and with offices in other countries serving similar functions. These proprietary interests, trademarks, service marks, logos, insignias, trade names and trade dress are referred to in this Agreement as the "Proprietary Marks."

C. We are engaged in the business of licensing the right to use the Proprietary Marks in connection with the operation and promotion of the System.

D. You understand and recognize that: (1) our Trade Secrets, Proprietary Marks, developments and other properties as recited above are of considerable value; and (2) it is of importance to us and all of our franchisees to maintain the development of the System in a uniform and distinctive manner, allowing you and our other franchisees to enjoy a public image and reputation greater than most single franchisees could establish.

E. You desire to make use of the "*Frullati Cafe & Bakery*" trademark and to enjoy the benefits of that mark, the other Proprietary Marks, and the System; and to establish a "*Frullati Cafe & Bakery*" franchise to be operated in accordance with System Standards set forth from time to time by us. System Standards are set forth in, without limitation, the confidential "ops package," which consists of the "operations manual" ("Operations Manual"), "ops toolkit" and related printed and electronic documents, both now existing and hereinafter developed (individually and collectively, "Confidential Manual"). We are willing to grant you the right to do so under the terms, conditions and provisions set forth in this Agreement, which includes any and all appendices, addenda, amendments, attachments and exhibits.

F. You recognize the necessity and desirability of protecting our reputation, goodwill, Trade Secrets, and other confidential business information; and that disclosure of Trade Secrets and confidential business information, including specifics of the System to any third-party, will cause irreparable damage and harm to us.

## **AGREEMENT:**

The parties agree as follows:

## ARTICLE 1. GRANT OF FRANCHISE; TERM; SYSTEM STANDARDS

### 1.1 Franchise Grant.

We hereby grant to you a *Frullati Cafe & Bakery* franchise that includes the right to use the System ("Franchised Business") as provided in this Agreement, at the following location:

Arena, Mall, Facility, or Center Name: \_\_\_\_\_  
(if applicable)

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

City/State/Zip Code: \_\_\_\_\_ ("Location")

### 1.2 Location of the Franchised Business; No Exclusive Territory or Other Rights.

You must operate the Franchised Business only from the Location, including any catering services of *Frullati Cafe & Bakery* menu items you provide. You acknowledge that the *Frullati Cafe & Bakery* franchise granted under this Agreement is non-exclusive, that we are not granting you any territorial protection or any other exclusive rights, and that we, directly or through one (1) or more affiliates, reserve the right in our sole discretion, and without compensating you or seeking your prior approval: (i) to establish, and grant to other franchisees or licensees the right to establish, a *Frullati Cafe & Bakery* restaurant or any other business using the Proprietary Marks, the *Frullati Cafe & Bakery* System or any variation thereof, in any location other than the approved Location (including locations in the immediate vicinity of your Location), on any terms and conditions that we deem appropriate; (ii) to establish, and grant to other franchisees or licensees the right to establish, any restaurant concept other than *Frullati Cafe & Bakery* in any location on any terms and conditions that we deem appropriate (including locations in the immediate vicinity of the Location); (iii) to sell products identified by the Proprietary Marks or other trademarks, service marks or commercial symbols in any location through any distribution channels, including grocery stores, convenience stores, supermarkets, club stores, vending machines, delivery services and restaurants other than *Frullati Cafe & Bakery* restaurants; and (iv) to take any other action that we are not expressly prohibited from taking under this Agreement.

We hereby grant to you during the term of this Agreement, a non-exclusive right and license to operate a single restaurant at the Location only, according to the System Standards and subject to the terms, conditions and restrictions contained in this Agreement. This Agreement is limited to the operation of one traditional restaurant, unless otherwise amended, and does not grant you the right to buy, own or operate additional restaurants.

Except as expressly limited in this Agreement, we (for ourselves and our affiliates and designees) retain all rights with respect to all Proprietary Marks and the sale of *Frullati Cafe & Bakery* products anywhere in the world with no compensation or liability to you, including the right to:

a. Establish and operate (or license to any other person or entity the right to establish and operate) *Frullati Cafe & Bakery* restaurants owned or licensed by us at any location;

b. Develop, market, own, operate and participate in any other business under the Proprietary Marks or any other trademarks (including trademarks identified in the Uniform Franchise Disclosure Document ("Disclosure Document") and other trademarks we or our affiliates own or have the right to license);

c. Develop, lease and license the use of, at any location, trademarks other than the Proprietary Marks, in connection with the operation of a system that offers products or services that are the same as, or similar to, those offered by us under this Agreement on any terms or conditions that we deem advisable, in our sole discretion;

d. Merge with, acquire or be acquired by any other business, including a business that competes with your Franchised Business, or acquire and convert any retail stores, including retail stores operated by competitors, or otherwise operated independently or as part of, or in association with, any other system or chain, whether franchised or corporate-owned;

e. Distribute, sell and license other persons or entities to distribute and sell products through all other channels of distribution, including catalog sales, telemarketing, grocery stores, warehouses, big box shops, specialty shops, limited access highway food facilities, vending machines and similar automated dispensing systems, mobile units, off-site sales accounts, electronic mail, Internet sales, and movie theaters (individually and collectively, "Other Channels"); and

f. Implement multi-area marketing programs that may allow us or others to solicit or sell to customers anywhere. We also reserve the right to issue mandatory policies to coordinate such multi-area marketing programs.

### **1.3 Term of Agreement.**

This Agreement will commence on the Effective Date and will expire on either: (1) the ten (10) year anniversary of the Effective Date if you own the property where this Franchised Business is located or if you enter into a lease directly with the landlord or other third-party for the property where this Franchised Business is located; or (2) if you have entered into a sublease with one of our affiliates, the expiration of the term of the sublease for the Location excluding any extensions or renewal options, unless terminated earlier in accordance with *Article 14* or any other provisions of this Agreement, renewed in accordance with *Article 13*, or transferred in accordance with *Article 12* ("Term").

### **1.4 System Standards.**

You shall operate the restaurant in accordance with our standards, including the following:

- a. restaurant design, maintenance, health and safety and remodeling;
- b. types, models, brands and suppliers of required fixtures, furnishings, equipment, signs, materials and supplies;
- c. recipes and ingredients, menu items and menu design;

d. cooperation with and participation in sales, marketing, advertising and promotional programs (including discount coupons, discount gift cards, special menu promotions, and entering into product and service agreements directly with third-party vendors and service providers as required by us) and materials and media used in those programs, including discontinued use and removal of promotional materials as directed by us;

e. use and display of the Proprietary Marks;

f. restaurant operations, including matters related to the management of the restaurant; training of your employees consistent with the System Standards; and commercial impression of the Franchised Business to the public;

g. cooperation with and participation consistent with our responses and resolutions in response to customer feedback;

h. cooperation with and participation in: (i) market research and testing; and (ii) product and service development programs;

i. acceptance of our stored value gift cards, including gift cards sold at a discount, loyalty cards, frequency cards, gift certificates, vouchers, and any other similar electronic card and payment programs (individually and collectively, "Gift/Loyalty Card"), credit and debit cards, other payment systems, check verification services and use of point of sale computer systems; You agree to enter into a separate participation agreement with the approved vendor for data processing services;

j. bookkeeping, accounting, data processing and record keeping systems; computer hardware and software; connections to the Internet or to proprietary networks; forms, methods, formats, content and frequency of reports to us of Gross Sales (as defined in *Article 5*), financial performance and condition; and providing tax returns and other operating and financial information to us; and

k. conduct and maintain the Franchised Business and Location so as not to distract from or interfere with the integrity of the System (individually and collectively, "System Standards"). We may, in whole or in part, change, improve, update and further develop the System Standards, from time to time during the term. You shall comply with the updated System Standards as directed by us.

The operation and maintenance of your restaurant according to the System Standards are essential to the well-being and vitality of the System and to preserve the goodwill of the Proprietary Marks for us and for all other franchisees operating under the System. It is critical to the *Frullati Cafe & Bakery* System for all restaurants operating under the *Frullati Cafe & Bakery* System to present a uniform and professional image to *Frullati Cafe & Bakery* customers regardless of which location the customer visits. Any information regarding the operation of the restaurant will be considered a mandatory System Standard, unless it is clear from the express language of our communication that the information is merely optional or is intended by us as a suggestion, rather than a requirement.

You agree that System Standards constitute binding provisions of this Agreement as if they were an integral part of this Agreement.

## **ARTICLE 2.                   SELECTION OF LOCATION; CONSTRUCTION AND RELOCATION**

### **2.1       Location Selection Procedures.**

You are ultimately responsible for the selection of the Location. We will not have any liability to you with respect to your selection of the Location, any assistance we provide you in making your selection, our recommendation of any location, or our allowing you to move forward on any location. You agree that your selection of the Location will be based on your own independent investigation of the suitability of the Location.

### **2.2       Lease and Purchase Approval.**

If you intend to lease the Location for your Franchised Business, the lease will be subject to our prior limited review and acknowledgment so that we can confirm that certain lease terms are incorporated into the lease. You must provide us, at least thirty (30) days prior to executing the lease, a copy of the lease and details relating to square footage, rent per square foot, the term of the lease, and either confirmation that such other terms as we reasonably require are incorporated into the lease or that you and the landlord agree to incorporate the lease addendum to lease agreement as an exhibit to the lease. You or your attorney shall be responsible for negotiating the terms of the lease, which shall be subject to our final limited review and acknowledgment. If you do not submit all of the required documents to us, we will not allow you to move forward with your lease. We have no liability to you regarding the terms or negotiations of the lease.

If, prior to executing the lease, you or your attorney request a full review of your lease, including any and all exhibits attached thereto, and we or our designated affiliate review your entire lease and exhibits and provide to you or your attorney its review of the entire lease and suggested changes to the lease ("Lease Review"), you must pay a Lease Review Fee (as defined in *Section 5.7*) to compensate for time and effort in reviewing the lease. The Lease Review is optional and only completed by us or our designated affiliate at your or your attorney's request. The Lease Review Fee is due only in the event that you or your attorney request us or our affiliate to complete a Lease Review. Each lease must contain the required lease terms set forth in the Lease Addendum to Lease Agreement, and must specifically state that we are a third-party beneficiary of the lease. If we cure any default by you under the lease, any amounts that we pay to cure the default will be payable by you to us on demand, together with interest thereon, at the lesser rate of one and one-half percent (1½%) or the maximum rate that does not violate applicable state usury laws ("Default Rate") per month from the date we make such payment.

You acknowledge and agree that on the earlier of thirty (30) days after: (i) you receive a fully executed copy of your lease for the Location of your Franchised Business; or (ii) you open your Franchised Business to the public, you must provide a fully-executed copy of your lease for the Location to us. Failure to timely provide us with a fully-executed copy of the lease will result in a default under this Agreement.

If you intend to purchase the Location for your Franchised Business, the terms of such purchase shall be subject to our prior approval, and you must provide us, at least thirty (30) days prior to executing the purchase agreement, a copy of the purchase agreement and details relating to square footage, price per square foot and such other terms as we reasonably require.

You acknowledge and understand that our confirmation that you may move forward with any specific location, lease or purchase agreement does not in any way guarantee or ensure the success or profitability of the Franchised Business, or the conformity of the Location, lease or purchase agreement to applicable laws, and such confirmations are only for our own benefit.

## **2.3 Construction.**

a. You must, at your sole cost and expense, construct, furnish, make improvements to and equip, if necessary, the Franchised Business at the Location selected by you and meeting our minimum site requirements, in accordance with plans and specifications approved by us or our third-party approved architect, if applicable. Our approval of plans is solely for complying with our System Standards and not for determining compliance with codes, ordinances and other legal requirements, including the Americans with Disabilities Act ("ADA"). You are solely responsible for ensuring that your Location conforms to all codes and ordinances, including the ADA. You must, at your sole cost and expense, use our designated and approved third-party design architect ("Design Architect") to prepare the initial design drawings for any construction, alterations or improvements, as applicable, for your Franchised Business. The Design Architect must provide us with one (1) set of the design drawings, including landscaping and parking spaces if applicable, which are the detailed plans and specifications ("Plans") for your Franchised Business. We will provide you with a copy of the Plans upon our approval of the Plans. You must also, at your sole cost and expense, retain a licensed architect of record to prepare the permitted construction set of drawings for any construction, alterations or improvements. The permitted construction set of drawings must be submitted to us for our files prior to the start of construction, alterations or improvements. In addition, you must obtain the appropriate construction documents and all mechanical, plumbing, electrical and architectural plans must be sealed and stamped, as we may require, even if local laws in the jurisdiction where your restaurant is located do not require same.

b. Any material modifications to the approved Plans must be submitted to us for approval and you will not undertake any construction, alterations or improvements until such modifications have been approved by us. Approval of such modifications does not constitute any representation by us of compliance with applicable zoning laws, building codes or other laws.

c. You will be solely responsible for the cost and expense of obtaining all necessary governmental construction permits and licenses, and you must, at your sole cost and expense, comply with all laws, zoning ordinances, rules and regulations of any governmental agencies that may govern any construction, alterations or improvements of the Franchised Business in accordance with the approved Plans. We will have the right, but are not required, to meet with the Design Architect and to inspect any construction, alterations or improvements during its course to ensure that the provisions of this *Section 2.3* are being observed; and you agree to allow our authorized representatives, at any and all times while construction, alterations or improvements are in progress, to meet with the licensed architect and general contractor and enter onto the Location for this purpose. If we determine in good faith that the provisions of this *Section 2.3* are not being observed, you will, at your sole cost and expense, immediately take all necessary corrective action.

d. You must, at your sole cost and expense, use a general contractor that is licensed, and if applicable, registered in the state and local jurisdiction where your restaurant is located for any and all construction, alterations and improvements. The general contractor must

have prior experience in the construction, alterations and improvement of quick-service restaurants.

e. You acknowledge that the design and appearance of the *Frullati Cafe & Bakery* restaurant is part of the System, and that uniformity is essential to the System. Therefore, you agree that after the restaurant has been constructed, altered or improved, you will not make any material changes to the building plan or design or its appearance without our prior written consent, and you will, at your sole cost and expense, maintain the interior and exterior décor of the restaurant in a first class condition and in such manner as we may reasonably prescribe from time to time. In addition to any remodeling required by us upon the transfer of the Franchised Business and upon the renewal of this Agreement, as set forth in *Articles 12 and 13*, respectively, you will, upon thirty (30) days' prior notice from us, and at your sole cost and expense, remodel and make all alterations and improvements in and to your Franchised Business as reasonably determined by us to reflect the then-current *Frullati Cafe & Bakery* System specifications, standards, format, image and appearance.

f. A certificate of occupancy for your Franchised Business must be submitted to us approximately six (6) days prior to the day you open your Franchised Business to the public and as otherwise requested by us throughout the Term.

## **2.4 Signage.**

You will acquire, repair and replace, as necessary, and maintain in a first class condition throughout the Term, signs for advertising and identifying the Franchised Business as a *Frullati Cafe & Bakery* restaurant. All signs must be in accordance with the System Standards, specifications and any local governing body (i.e., city or county governments), as well as any other applicable laws, including the Americans with Disabilities Act ("ADA"), and exterior signage must be the maximum size allowed by the landlord and local governing body. You acknowledge that quality control is essential to protect and promote our Proprietary Marks, standards, and uniform image, and you shall acquire all signs only from approved suppliers. In addition, you shall prominently display on all communications, forms, advertising, business stationery and business cards, and in a sign easily visible to consumers at the Franchised Business, the following words: "INDEPENDENTLY OWNED AND OPERATED."

## **2.5 Relocation.**

a. If you desire to relocate the Franchised Business, you may request our consent upon the following conditions:

(i) Not less than sixty (60) days prior to the desired date of relocation (unless prior notice is impractical because of a required relocation, due to a third-party or our request, in which event notice shall be made as soon as possible), you must make a written request for consent to relocate, describing the reasons for the relocation and providing details respecting any proposed new location.

(ii) Within twenty-one (21) days after receiving your written request, we shall advise you in writing if the proposed new location meets our minimum real estate site requirements as provided in *Section 2.1* and if you have our authorization to proceed with the relocation. In the event of our denial to proceed with the relocation, you may request an alternative proposed new location pursuant to the provisions of this *Section 2.5*.

(iii) The Term will not be extended in connection with the requested relocation.

b. At the time you request to relocate the Franchised Business, you must also meet each of the following requirements:

(i) You must not be in default under this Agreement or any other agreement or note then in effect between us or you and any affiliate of ours, and no event shall have occurred that, with the giving of notice, the passage of time, or both, would constitute a default under this Agreement;

(ii) You must neither have received more than three (3) notices of default or breach during the Term; nor more than two (2) notices of default or breach during the five (5) years immediately preceding the effective date of the proposed relocation;

(iii) The equipment, fixtures and signage used in connection with the operation of the Franchised Business must either meet our then-existing System specifications and System Standards, or you must agree, within a timeframe required by us, to replace or refurbish such items, and otherwise modify the methods of operation of the Franchised Business at your cost and expense, in order to comply with our System specifications and System Standards then applicable to new franchise owners; and

(iv) You shall have paid to us a Relocation Fee (as defined in *Section 5.14*).

c. If we approve the relocation of your Franchised Business, (i) you and we must execute an amendment to this Agreement indicating the address for your relocated Franchised Business, and (ii) you must open your Franchised Business at the new location within ninety (90) days after you close your Franchised Business at the current Location. During the period of time between the closure of your Franchised Business at the current Location, and the opening of the Franchised Business at the approved relocation address, you will not owe the Royalty Fee (as defined in *Section 5.2*).

## **2.6 Restricted Use of Restaurant Location.**

You may not wholly or partially sublet the Location without our prior written consent. The Location may be used only for the operation of a *Frullati Cafe & Bakery* restaurant in compliance with this Agreement and the System Standards. You shall not conduct other businesses or activities at the Location without our prior written consent.

## **2.7 Not Applicable.**

# **ARTICLE 3. OPERATIONS**

## **3.1 Commencing Operations.**

You agree to start operating your *Frullati Cafe & Bakery* restaurant at the Location as of the Effective Date. You acknowledge that before starting operations you must, at your own expense, do the following (in addition to any other requirements set forth in this Agreement):

a. Complete a food safety training program at your sole cost and expense. We will accept the certificate for the required program through your local county or state health



department or any other nationally recognized food safety program. You must provide us with a copy of your certificate prior to commencing training;

b. Successfully complete the Training Program described in *Section 4.1*;

c. Purchase, lease or otherwise acquire from the list of approved sources provided by us all the signage, supplies, equipment, fixtures, inventory and other items necessary to operate the *Frullati Cafe & Bakery* Franchised Business; and

d. Obtain liability insurance in accordance with the requirements described in *Section 9.5* and provide to us evidence that such insurance has been obtained.

Prior to starting operations of the Franchised Business, you must notify us that you have satisfied all requirements to begin operations, and provide us with such documents as we may reasonably request that show your compliance with all such requirements. If you do not begin operations of your restaurant at the Location as of the Effective Date, then we may terminate this Agreement by giving you notice to that effect.

### **3.2 Supplies and Promotional Materials; Rollouts.**

You agree to sell only those menu items, products and services authorized under the terms of this Agreement and as specified in the Confidential Manual, and you shall use only supplies and ingredients in making those menu items that are in compliance with the standards as set forth in the Confidential Manual or other documents provided by, or approved by, us as they presently exist or may exist in the future. You shall purchase all such services, supplies and ingredients only from approved vendors and utilize approved distributor(s) as specified in the documents provided by, or approved by, us as they presently exist or may exist in the future. You must purchase promotional materials containing the Proprietary Marks, including stationery, business cards, promotional and advertising materials and similar items, from suppliers approved by us, except that we must first approve all such promotional and advertising materials before you use them, and all such printed materials containing any of the Proprietary Marks shall be accompanied by the words "INDEPENDENTLY OWNED AND OPERATED." Additionally, during the Term, you agree to participate in any Rollout of new products and suppliers, as defined in *Section 9.3*.

### **3.3 Fixtures, Furnishings, and Equipment.**

Unless otherwise approved by us in writing, you will: (1) acquire, repair and replace, as necessary, and maintain in a first class condition throughout the Term, fixtures, furnishings, and equipment to be used in the operation of your Franchised Business that is in accordance with the System Standards, specifications set forth by us in the Confidential Manual or other documents provided by, or approved by, us as they presently exist or may exist in the future, and with applicable laws including, without limitation, including the Americans with Disabilities Act ("ADA"); and (2) procure the fixtures, furnishings, and equipment from suppliers or vendors previously approved in writing by us.

### **3.4 Online Presence.**

You may not maintain a website, software application, an App (application), social media account (including an account, group or page on Facebook®, Flickr®, Foursquare®, Google+®,

Instagram®, LinkedIn®, Pinterest®, Snapchat®, Tumblr®, Twitter®, YouTube®, Vine®, VKontakte or Weibo®), or otherwise maintain a presence or advertise on the Internet or any other public computer network (individually and collectively, "Site") in connection with the Franchised Business without our prior written approval, which we may withhold in our sole discretion. If we grant you written approval, you agree to submit to us for approval before use, true and correct printouts, of all Site pages you propose to use in connection with the Franchised Business. You understand and agree that our right of approval of all such Site pages is necessitated by the fact that such Site pages will include and be inextricably linked with our Proprietary Marks. If we approve your use of a Site, you may only use Site pages that we have approved. Your Site must conform to all of online presence requirements, policies and procedures per our System Standards. You agree to provide all information regarding your online presence that we require. If we grant approval for a Site, you may not use any of the Proprietary Marks on the Site except as we expressly permit. You may not post any of our proprietary, confidential or copyrighted material or information on the Site without our prior written permission. If you wish to modify your approved Site, all proposed modifications must also receive our prior written approval. You explicitly understand that you may not post on any Site (whether yours or someone else's) any material in which a third-party has any direct or indirect ownership interest (including video clips, photographs, sound bites, copyrighted text, trademarks or service marks, or any other text or image which any third-party may claim intellectual property or other rights in). If we grant approval, you agree to list on the Site any website and social media account maintained by us, and any other information we require in the manner we dictate. You agree to obtain our prior written approval for any Internet domain name, home page address and Uniform Resource Locator. The requirement for our prior approval set forth in this *Section 3.4* will apply to all activities on the Internet or other communications network to be conducted by you, except that you may maintain one (1) or more e-mail addresses and may conduct individual e-mail communications without our prior written approval. You agree to obtain our prior approval as provided above if you propose to send advertising to multiple addressees via e-mail or text messages. You may not use a Site to represent that: (1) the Site is an official account, application, page or group of, or video produced by us; or (2) you are the owner of the *Frullati Cafe & Bakery* brand. On any Site you use in connection with the Franchised Business, you must affirmatively state: (a) that you are a franchisee and the opinion and content being expressed are your own and not that of the *Frullati Cafe & Bakery* brand; and (b) the Location of your Franchised Business.

### **3.5 Not Applicable.**

## **ARTICLE 4. TRAINING, ASSISTANCE AND START-UP MATERIALS**

### **4.1 Training Program.**

We will provide up to two (2) natural persons (individually and collectively, "Trainees") with a training program designed to inform the participants as to the fundamentals of operating the Franchised Business prior to your opening of the Franchised Business. At minimum, one (1) of the two (2) natural persons must have an ownership interest in the Franchised Business. The remaining position may be filled by a natural person with an ownership interest in or management responsibility for the Franchised Business. The training program is made up of the "In-Store Training," which is approximately forty (40) hours, and "New Owner Training," which is approximately forty (40) hours (collectively, "Training Program"). You will be solely responsible for all transportation costs, food, lodging and other personal expenses incurred by you and your employees in connection with the Training Program. The New Owner Training will

be conducted at the Franchisor training and education center in Scottsdale, Arizona and the In-Store Training will be conducted at a training store in Arizona or such other location as we may designate at our sole discretion. You acknowledge that adequate knowledge regarding the operation of the Franchised Business is essential to the growth of your franchise and to the promotion of the System. Notwithstanding the foregoing, Franchisor has the right to require Franchisee and/or its manager(s) to attend additional In-Store Training (as defined below), as provided for in this *Section 4.1* and *Section 5.9*, in the event Franchisee is not operating the Franchised Business pursuant to Franchisor's Systems Standards.

## **4.2 Employee Training.**

You acknowledge that the employees of your *Frullati Cafe & Bakery* Franchised Business are an integral and important part of the Franchised Business, as they will have substantial contact with customers. You alone are responsible, and acknowledge that we have no direct or indirect control and no right or authority, for the hiring, firing, training, supervising, setting the terms and conditions of employment (including employee tasks and work schedules), compensation of your employees, or maintaining employment records, for the safety of your employees and for your employees' compliance with the System Standards. The System Standards are in place to protect our interests in the System and not for exercising any control over you, your employees or your Franchised Business. You must ensure that your employees who have direct interaction with the public are able to speak and read English and any other language that may be required to adequately meet the public needs in your Franchised Business.

## **4.3 Additional Programs; Continuing Assistance.**

We will provide one (1) of our representatives to come to your restaurant during opening week for up to three (3) days, at our expense, to work with you or your manager on operating your restaurant. We may, in the future, request that Trainees participate in refresher or additional training programs. We may also hold an annual conference to introduce new products, discuss sales and marketing techniques, personnel training, advertising programs, merchandising procedures and other subjects. You may be charged a nominal registration fee for these programs and you will be solely responsible for the cost of transportation, food, lodging and other expenses incurred by Trainees at any such program. Attendance at these additional training programs and conferences is mandatory. They will be held in the metropolitan Phoenix, Arizona area, or at other locations in the United States chosen by us, at our sole discretion.

In addition to the initial training available under *Section 4.1*, we shall provide such periodic evaluations or inspections as we deem appropriate, utilizing our field representatives who may visit the Franchised Business from time to time. The frequency and duration of such visits to a Franchised Business by our representatives shall be in our sole discretion. Any such evaluation or inspection is not intended to exercise any control over your employees or the daily operation of your Franchised Business. In addition, we will be available on an ongoing basis at our offices for consultation and guidance with respect to the operation and management of the Franchised Business. In addition to the Operations Manual, we may, but are not required to, from time to time provide you with additional materials relating to the Franchised Business.

#### **4.4 Area Representatives.**

We may retain the services of an independent third-party area representative ("Area Representative") to represent us in the area in which the restaurant is located and perform some or all of the services we provide under this Agreement. The services the Area Representative may perform could include: (i) assistance in location selection and evaluating and confirming that the Location meets our minimum site requirements; (ii) advice and guidance regarding lease negotiations; (iii) assistance in opening new *Frullati Cafe & Bakery* locations; (iv) assistance with training on the approved POS System (as defined in *Section 4.6a.*); (v) assistance with marketing advice; (vi) periodic Quality Service Cleanliness and Experience ("QSCE") evaluations; (vii) assistance with collection of the various sums due to us from *Frullati Cafe & Bakery* franchisees; and (viii) coordination with other *Frullati Cafe & Bakery* franchisees in your area and general supervision and monitoring of your Franchised Business on our behalf. You agree in advance to our delegation to an Area Representative of some or all of our obligations, and assignment to an Area Representative of some or all of our rights under this Agreement. You agree that we may require you to submit to an Area Representative any reports you are required to submit to us. Upon our request, you will provide the Area Representative with access, inspection and audit rights to the same extent we have those rights under this Agreement. You are not a third-party beneficiary of any agreement between us and any Area Representative. If we have designated an Area Representative for your restaurant as of the Effective Date, the name and contact information of the Area Representative is shown in *Section 17.3h*. We reserve the right in our sole discretion to remove any Area Representative in your area at any time and to appoint any other Area Representative for your area. We have no obligation to appoint an Area Representative in the area in which your restaurant is located, and we have no obligation to appoint a new Area Representative after we have removed an Area Representative.

You acknowledge that Area Representatives and their owners and employees may not contractually bind us without our express written authorization. You further acknowledge no Area Representative has the authority to: (i) enter into agreements or execute any agreements on our behalf; or (ii) bind us in any way without our prior written consent. Unless expressly authorized and agreed to by us in writing, we disavow any agreements, whether verbal or written, entered into by an Area Representative that in any way attempts to bind us. In any litigation or arbitration proceeding, you agree to waive any claim or defense that an Area Representative is our express or implied agent and such an assertion by you constitutes a material default under this Agreement.

#### **4.5 Confidential Manual.**

To protect the reputation and goodwill of the System and to maintain the uniform standards of operation under the Proprietary Marks, you must conduct your business in accordance with our Confidential Manual. The Confidential Manual is confidential and remains our property.

The Operations Manual will be provided to you at the New Owner Training referred to in *Section 4.1*.

So that you may benefit from new knowledge gained by us as to improved techniques in the operation of the Franchised Business, we may from time to time revise, amend, restate or supplement the content of the Confidential Manual or other documents provided by, or approved

by, us as they presently exist or may exist in the future. You will at all times ensure that your copy of the Confidential Manual is kept current and up to date. In the event of a dispute regarding the content of the Confidential Manual, the master copy maintained by us at our corporate office will control.

#### **4.6 Computer Systems; Debit and Credit Card Processing.**

a. You will be required to acquire, to maintain, and to exclusively use, an approved cash register/computer system ("POS System") during the operation of the Franchised Business. You and your employees must complete training for the POS System as we require, and you will be required to use the POS System to produce sales reports, keep inventory control and post sales tax, refunds, credits and allowances and submit that information to us immediately upon our request. You are required to obtain DSL/high-speed Internet connection service for your POS System. If neither DSL nor cable is available in your area, dial-up Internet access may be used until DSL or cable service becomes available in your area. The POS System must be configured so that we will have remote access to the information and data stored in the POS System, which may include inventory information. This access will allow us to exchange/collect data and other information on such bases as we will communicate to you from time to time. You will be required to maintain the POS System in good working order at all times, and to upgrade or update the POS System during the Term as we may require from time to time. It will be your responsibility to enter into contracts for the maintenance, upgrades and updates to the POS System with an approved supplier of such services identified by us on the list of approved vendors and distributors or other notification to you from us advising of suppliers for your market area. You shall also be required to own a personal computer or similar device with access to the Internet that allows you to report your Gross Sales (as defined in *Section 5.2*) online, send and receive e-mails with us, and receive online orders. If implemented by us, all *Frullati Cafe & Bakery* franchisees of traditional restaurants will be required to participate in an online ordering program. We may provide specifications that you must follow for the hardware, software, and Internet provider for such computer equipment. We may require you to upgrade the hardware and software as reasonably necessary to provide reports and information required by us.

b. You are required to accept debit and credit cards and Gift/Loyalty Cards from consumers at the Franchised Business. You will be required to acquire and maintain an approved debit, credit and Gift/Loyalty Card processing system to use during the operation of the Franchised Business. Additionally, you must utilize our approved third-party Gift/Loyalty payment card processor for processing all such Gift/Loyalty Card transactions, including entering into a Gift Card Participation Agreement with one of our affiliates, or its successors or assigns, or other approved vendor for the Gift/Loyalty Card processing services. The Payment Card Industry ("PCI") requires all companies that process, store, or transmit credit card information to protect the cardholders' information by complying with the PCI Data Security Standard ("PCI DSS"). Therefore, as a franchisee who accepts credit cards, you are required to be PCI compliant by following and adhering to PCI DSS, which includes ensuring that your POS System, back office computer (if supplied), and any other device that is plugged into the network is **only** used for business purposes. You are also required to complete an annual questionnaire and quarterly network PCI scans and install a network firewall appliance for logging, tracking, reporting, and security assessment. You are also required to validate with Franchisor that your store is PCI compliant. To show such validation you must send us your Passing Certificate showing your store is PCI compliant. You are also required to verify that you have a PCI compliant firewall appliance installed at your location if you process credit cards via high speed internet connectivity. We require your Franchised Business' POS System, including terminals,

computers, and software to be in compliance with the PCI DSS at all times. The PCI DSS is often updated, and you are required to obtain and comply with all updated standards. You must also be PCI compliant in order to obtain cyber liability/data breach insurance coverage.

## **ARTICLE 5. FEES AND DEPOSITS**

You agree to pay each of the following amounts to us via a lump sum, with each and every amount being non-refundable because of our investment in time and money, in addition to any other benefits conferred upon you, including processing your application, reviewing your documents, and providing you with relevant information, unless otherwise expressly specified below, in accordance with the provisions set forth in this *Article 5*. Notwithstanding your designation to the contrary, we have the sole discretion to apply any of your payments, in part or in whole, to any of your indebtedness to us.

### **5.1 Not Applicable.**

### **5.2 Royalty Fee and Surcharge.**

For the period of time commencing on the later of the Effective Date or the date the Franchised Business opens to the public, and for the duration of the Term, you must pay to us a weekly royalty fee equal to the greater of the following: (i) six percent (6%) of total Gross Sales (as defined below); or (ii) Two Hundred Dollars (\$200) ("Royalty Fee"). If we or the landlord of the Location require you to remodel your Franchised Business in such a way that your Franchised Business (including catering) stops offering items to the public, or if there is a disaster at your Franchised Business, such as a fire, flood or damage caused by an act of God, that requires you to temporarily close your Franchised Business, you are not required to pay the Royalty Fee during the period of time of such temporary closure; provided you provide us or our authorized representative with notice of such temporary closure as soon as reasonably possible, but in no event more than twenty-four (24) hours after such closure begins. Notwithstanding the above, all amounts owed to us under this Agreement prior to the temporary closure shall still be fully due and payable. The temporary closure of your Franchised Business shall not exceed ninety (90) days, but may be extended on a case-by-case basis at our sole discretion and with our prior written approval.

In our sole discretion, we may charge, in addition to the Royalty Fee, a surcharge of up to Ten Dollars (\$10) per week if your Franchised Business is located in a state that imposes additional reporting requirements on a franchisor ("Surcharge"). The Royalty Fee and applicable Surcharge shall be due and payable no later than Wednesday of each week, which day may be modified by us without prior notice to or approval from you, for the week ending on the preceding Sunday in which applicable Gross Sales (as defined below) were earned from the Franchised Business. The weekly Royalty Fee and applicable Surcharge shall be paid by electronic funds transfer, as detailed below.

For the period of time commencing on the later of the Effective Date or the date the Franchised Business opens to the public, and for the duration of the Term, you are required to report Gross Sales to our designated accounting office via the Internet at <http://franchisee.kahalamgmt.com>, as set forth in *Section 5.6*. You shall be required to establish a Depository Account (as defined in *Section 5.6*) at the time you execute this Agreement as set forth in *Section 5.6*. Payment of the Royalty Fee, Advertising Fee (as defined in *Section 5.3*), and all other fees due under this Agreement to us shall be made via electronic transfer of funds

from the Depository Account. To accomplish this electronic transfer of funds from the Depository Account, you must complete, sign and deliver to us, and maintain for the duration of the Term, a current Electronic Funds Transfer Authorization in a form that we provide.

As used in this Agreement, "Gross Sales" means all sales, money or things of value, received or receivable, directly or indirectly, by Franchisee on account of the Franchised Business, less applicable sales taxes and any properly documented refunds, credits and allowances given by you to customers in accordance with the System Standards, but without deducting any of your income taxes, costs and other expenses. All sales made from catering services must be included in the Gross Sales.

### **5.3 Advertising Fee.**

- a. Not applicable.
- b. You must pay to us, or directly into a national advertising fund or also any regional advertising funds, as designated by us at our sole discretion, (individually and collectively, "Advertising Fund") a weekly advertising fee of one percent (1%) of the Gross Sales for the preceding week ("Advertising Fee"). Upon thirty (30) days' notice by us to you, we may unilaterally increase the Advertising Fee from its current level not to exceed four percent (4%) of your weekly Gross Sales. The Advertising Fee shall be due and payable with the Royalty Fee under *Section 5.2*. The Advertising Fee is our property and may be deposited by us into our general operating account.
- c. The Advertising Funds will be used for marketing, advertising, production and media expenses to promote the *Frullati Cafe & Bakery* name, System, products and services. We are entitled to deduct, free of charge the following from the Advertising Fund: (i) reimbursement of expenses, overhead, and employee salaries for services provided; and (ii) rent for office space provided to the Advertising Fund. We have no fiduciary obligation to you in connection with the operation of any Advertising Fund. No interest on an unexpended Advertising Fee shall be imputed or otherwise charged for the benefit of, or payable to, you. You understand and agree that the only obligations we have regarding the collection and spending of the Advertising Fee or the administration of the Advertising Fund are the express contractual obligations in this *Section 5.3*. We are not acting as a trustee, fiduciary, agent or in any other special capacity. We do not give any representation or warranty regarding the quality or effectiveness of the advertising and marketing activities funded by the Advertising Fee or of the Advertising Fund, and we will have no liability to you with respect to how these funds are spent.
- d. Your own local marketing and advertising should be developed to maximize your particular customer base.

### **5.4 Not Applicable.**

### **5.5 Not Applicable.**

### **5.6 Depository Account; Payment Procedures.**

You are required to establish, at the time you execute this Agreement, and maintain for the duration of the Term a depository account ("Depository Account") at a bank or other federally insured financial institution ("Depository"). You will initially deposit no less than Three

Thousand Dollars (\$3,000) into the Depository Account and are required to maintain a balance of at least Three Thousand Dollars (\$3,000) in the Depository Account at all times during the Term by replenishing the Depository Account to at minimum Three Thousand Dollars (\$3,000) after any withdrawals. We shall not be responsible for any bank service charges incurred by you which result from the withdrawal of funds from your Depository Account.

On Monday of each week, you must submit a report to us regarding the weekly period which ended on the preceding Sunday, including details on Gross Sales and other statistical data as provided in this Agreement, Confidential Manual, or as otherwise specified from time to time by us. We will withdraw funds electronically on Wednesday of each week from the Depository Account. The withdrawals are based upon the figures you report and constitute the Royalty Fee and Advertising Fee as described in *Sections 5.2 and 5.3*. If you do not submit a report on any Monday, we may estimate the Royalty Fee and Advertising Fee based upon prior reports and withdraw the estimated amounts up to the entire Three Thousand Dollars (\$3,000). We will return or credit back to you, in our sole discretion, any overage within thirty (30) days after our receipt of your report(s). We shall not be responsible to you for any interest charges for any overage collected due to your failure to timely report your sales. You shall instruct the Depository to disburse each week to our designated bank, via electronic funds transfer by the close of business on Wednesday (or preceding banking business day, if Wednesday is a bank holiday), the weekly Royalty Fee and Advertising Fee and other fees due for that week, which week shall end on the preceding Sunday.

We will also withdraw the monthly POS Help Desk Phone Support Maintenance Fee (as defined in *Section 5.20*) from the Depository Account on the last Thursday of each month. Under no circumstances shall such access to the Depository Account be deemed control or joint control of the Depository Account by us.

Subject to reasonable advance notice for non-recurring payment amounts, we have the right to debit your Depository Account, or any other depository account you have with us, according to the terms of your Electronic Funds Transfer Authorization for any of the payments described in this *Article 5*. If you do not pay all amounts due by the due date, we may suspend our and our affiliates' services and support until your payment default is cured. Repeated failure to pay all amounts when due, whether or not the defaults are subsequently cured, may be cause for termination under *Article 14*.

You shall pay us Fifty Dollars (\$50) for each electronic funds transfer attempted from your Depository Account pursuant to this *Section 5.6* that is returned for non-sufficient funds. You shall also reimburse us for all other costs and expenses incurred by us in collecting or attempting to collect funds due to us from the Depository Account (for example, without limitation, charges for non-sufficient funds, uncollected funds or other discrepancies in deposits or maintenance of the Depository Account balance in accordance with the terms hereof). The Depository Account shall be established and maintained solely for the purposes set forth in this *Section 5.6* and any other fees authorized under this Agreement and any other agreements between you and us or any of our affiliates.

## **5.7 Lease Review Fee.**

If you request us or one of our designated affiliates to complete a Lease Review, you are required to pay us or our designated affiliate a lease review fee in the amount of Two Thousand



Five Hundred Dollars (\$2,500) ("Lease Review Fee") for reviewing and providing comments to your proposed lease.

#### **5.8 Lease Guarantee Fee.**

If, in order to obtain the lease agreement for the Location of your Franchised Business, the landlord requires you to obtain a lease guarantee, and we or one of our affiliates agree to serve as such guarantor, you will pay us or our affiliate a fee in the amount of ten percent (10%) of the total amount of the rental obligations being guaranteed under the lease during its term up to a maximum fee of Ten Thousand Dollars (\$10,000) ("Lease Guarantee Fee"). The Lease Guarantee Fee will be due and payable upon our or our affiliate's execution of the applicable lease guarantee agreement with the landlord. Neither we nor any of our affiliates are required to serve as a guarantor of your lease for the Location of your Franchised Business; rather, the decision of whether to serve as a guarantor shall be made in our sole discretion. In the event that you request us or our affiliate to either agree to be the tenant under the lease or execute a separate guarantee to the lease, and you pay the required Lease Guarantee Fee, you agree and acknowledge that payment of the Lease Guarantee Fee shall not, in any manner, be deemed as an insurance policy which limits your liability in connection with the Franchised Business, including any and all financial liability under the sublease or lease related to the Location. You further agree and acknowledge that our or our affiliate's agreement to act as tenant or guarantor under the lease, and your payment of the Lease Guarantee Fee to us or our affiliate, does not result in the assumption or transfer of your liability, in connection with the Franchised Business, by or to us or our affiliate.

#### **5.9 Additional Persons Training Fee.**

The training of two (2) individuals is included in the Transfer Training Fee (as defined in *Section 5.15*). If you desire to have more than two (2) people attend the Training Program, you must pay an additional training fee of Five Hundred Dollars (\$500) for each such person to attend the In-Store Training and an additional Five Hundred Dollars (\$500) for each such person to attend the New Owner Training (individually and collectively, "Additional Persons Training Fee") (see *Section 4.1*).

#### **5.10 Additional Training Fee.**

If, after attending the Training Program, you desire to receive additional training, we will provide additional training time to you for a fee of Three Hundred Dollars (\$300) per person per day. Such additional training will be at a time reasonably agreed to by you and us, and will be conducted at Franchisor's headquarters or such other location as we may designate in our sole discretion. You will be solely responsible for all transportation costs and expenses, food, lodging and other personal costs and expenses incurred by you and your employees in connection with this additional training.

#### **5.11 Document Administration Fee.**

A document administration fee of Five Hundred Dollars (\$500) ("Document Administration Fee") is payable to us when we must prepare an amendment to your franchise documents (see *Section 12.3g*).

### **5.12 Renewal Franchise Fee.**

A renewal franchise fee of fifty percent (50%) of the then-current initial franchise fee not including any discounts or reductions ("Renewal Franchise Fee") is payable to us when you renew this Agreement (see *Section 13.i*).

### **5.13 Transfer Franchise Fee.**

a. A transfer franchise fee and other applicable initial fees, as set forth in the Consent to Transfer and Release Agreement executed contemporaneously herewith and to which Franchisee is also a party, are payable to us when you sign this Agreement.

b. If, following the Effective Date, Franchisee desires to complete a Full Transfer (as defined in *Section 12.1.a.1.*) of this Agreement, we will require the Potential Transferee (as defined in *Section 12.1.c.*) to pay us Seven Thousand Five Hundred Dollars (\$7,500) ("Transfer Franchise Fee") as one of the conditions for Franchisee to receive Franchisor's consent for such Transfer (as required in *Section 12.1b.*).

### **5.14 Relocation Fee.**

A relocation fee of Five Hundred Dollars (\$500) ("Relocation Fee") is payable to us when you sign the amendment to your Franchise Agreement for your relocation (see *Section 2.5*).

### **5.15 Transfer Training Fee.**

a. In connection with a Full Transfer and in addition to the Transfer Franchise Fee, a training fee of Two Thousand Five Hundred Dollars (\$2,500) ("Transfer Training Fee") is payable to us when you sign this Agreement. The Transfer Training Fee is used to provide training for two (2) individuals, and a fee of Five Hundred Dollars (\$500) will be charged for each additional individual trained over two (2).

b. A Potential Transferee receiving this Agreement, as may be amended, as Potential Transferee's Transfer Documents in connection with a Full Transfer must pay to us, in addition to the Transfer Franchise Fee, the Transfer Training Fee. The Transfer Training Fee is used to provide training for two (2) individuals, and a fee of Five Hundred Dollars (\$500) will be charged for each additional individual trained over two (2).

### **5.16 Annual Meeting Registration Fee.**

If we hold an annual meeting ("Meeting"), the Meeting may be held at various locations throughout the United States as we may designate in our sole discretion. Because the planning and funding of the Meeting must be done well in advance and requires a substantial financial commitment, we have the right to debit your Depository Account for up to One Thousand Dollars (\$1,000) for the Meeting registration fee at any time sixty (60) to ninety (90) days prior to the first day of the Meeting. This fee may be debited from your account (even if you do not attend the Meeting). If you do not attend the Meeting, we will make available to you one (1) full set of the substantive materials that were presented at the Meeting.

### **5.17 Late Report, Default and Non-Sufficient Funds Fees, Breaching Royalties and Collection Costs and Expenses.**

If you fail to submit to us any financial statements, forms, reports or records required to be provided under this Agreement by its due date, including your weekly Gross Sales report for calculating your Royalty Fee and Advertising Fee, you must pay to us a non-refundable late report charge of One Hundred Dollars (\$100) per report.

If any fees or assessments due under this Agreement, including the Royalty Fee and Advertising Fee, are not paid when due, interest shall accrue on the late payment (from the date payment is due until the date it is paid) at the Default Rate or the maximum legal interest rate (whichever is higher), which amount, plus a Fifty Dollar (\$50) late fee, shall be added to each late payment. For any payments made by you to us under this Agreement which are returned for non-sufficient funds of a processed check, you shall be charged a non-sufficient funds fee of Twenty-Five Dollars (\$25) per occurrence. Pursuant to *Section 5.6*, for each electronic funds transfer that is attempted from the Depository Account but returned for non-sufficient funds, you shall be charged a non-sufficient funds fee of Fifty Dollars (\$50) per occurrence.

Franchisor has the absolute right to charge Franchisee the greater of: three (3) times the fixed Royalty fee; or, if on a percentage Royalty fee the Royalties will be increased up to eighteen percent (18%) of Gross Sales, with respect to any period during which Franchisee is in breach or default of its/his/her obligations under this Agreement. The Royalties paid or owing to Franchisor with respect to the period during which Franchisee is in breach or default are referred to as "Breaching Royalties." Breaching Royalties will be charged for a minimum fourteen (14) day period, regardless of the length of the actual breach or default.

If, as a result of your failure to remit payments required under any provision of this Agreement, we retain an attorney or a collection agency to collect such payments, you must pay all collection costs and expenses, including reasonable attorneys' fees and expenses, whether or not legal proceedings are initiated. Our rights under this *Section 5.17* are in addition to any other rights or remedies that we may have as a result of your default under this Agreement.

### **5.18 Audit Fees.**

For the purpose of this *Section 5.18*, we have the right, at any time during business hours, and with or without prior notice to you, to inspect and audit, or cause to be inspected and audited, the business records, cash control devices, bookkeeping and accounting records, sales and income tax records and returns and other records of the Franchised Business and your entity's books and records.

You hereby grant us access to any computers utilized by you for such purposes and we will have the ability, at all times, via modem, to obtain daily and weekly sales reports and other financial records that the POS System provides. You will fully cooperate with our representatives, the Area Representative, if applicable, and independent accountants hired by us to conduct any such inspection or audit. In addition, in the event such inspection or audit is made necessary by your failure to furnish reports, supporting records or other information, as required herein, or to furnish such reports, records or information on a timely basis, or if an understatement of Gross Sales, resulting in an underpayment of the Royalty Fee or Advertising Fee for the period of any audit (which shall not be for less than one (1) month) is determined by any such audit or inspection to be five percent (5%) or greater, you will pay to us, immediately

after receipt of the inspection or audit report, any additional Royalty Fee and Advertising Fee and other amounts due as a result of any such understatement, plus interest at the Default Rate from the date originally due until the date of payment and you must reimburse us for such audit or inspection, including the charges of any independent accountants, and the travel expenses, room, board and compensation of such accountants and our employees.

The remedies in this *Section 5.18* will be in addition to all other remedies and rights available to us under this Agreement or otherwise available.

#### **5.19 Data Fee.**

We may require you to pay us or a third-party we designate a data fee of up to Seventy-Five Dollars (\$75) per month for polling or collecting data from your POS System.

#### **5.20 POS Help Desk Phone Support Maintenance Service Fee.**

You must purchase from us a help desk phone support maintenance service that covers phone support for both the software and hardware of your POS System that is supported by the help desk, the cost of which is currently Fifty-Five Dollars (\$55) monthly, and subject to increase upon thirty (30) days' notice ("POS Help Desk Phone Support Maintenance Service Fee"). The POS Help Desk Phone Support Maintenance Service Fee shall be paid by electronic funds transfer, as detailed in *Section 5.6*, and debited from your account on the last Thursday of each month.

#### **5.21 New Supplier Approval Fee.**

All requests for approving new or alternative suppliers must be submitted in writing by you or the supplier to our Purchasing Department. Each request will be reviewed in accordance with our then-current procedures and the supplier must meet our then-current requirements, which may include that our representatives be allowed to inspect the facilities of the proposed supplier, and that samples from the proposed supplier be delivered, at no charge, either to us or to our designee for testing. A charge not to exceed the amounts incurred in connection with the inspection and the test, with such cumulative amount not to exceed Five Thousand Dollars (\$5,000), must be paid to us either by you or by the proposed supplier. If approved, in our sole discretion, we will notify you or the supplier in writing within sixty (60) days after our receipt of an approval request. You must not offer or sell in any manner any of the proposed alternative supplier's products until you receive our written approval of the proposed alternative supplier.

#### **5.22 Reserved.**

#### **5.23 Non-participation Fee.**

You must offer and sell at the Location of the Franchised Business all products designated by us, consistent with our System Standards. In addition, you must immediately incorporate into the Franchised Business all new products and services designated by us and must fully participate in all local, regional, seasonal, promotional and other programs, initiatives and campaigns adopted by us in which we require you to participate. If you fail or refuse to fully participate in any such program, initiative or campaign, you may, in our sole discretion, be required to pay a non-participation fee of One Hundred Dollars (\$100) per day that you are not in compliance ("Non-participation Fee").

**5.24 Not Applicable.**

**5.25 through 5.35 Not Applicable.**

**ARTICLE 6. PROPRIETARY MARKS**

**6.1 Ownership and Right to Use.**

We warrant to you that:

- a. We are the owner of all right, title and interest in and to the Proprietary Marks;
- b. We have granted to you the personal, non-exclusive, limited, revocable right and license to use the Proprietary Marks in connection with the operation of your Franchised Business;
- c. We have taken and will take all steps reasonably necessary to preserve and protect our rights in the Proprietary Marks; and
- d. We will only permit you to use the Proprietary Marks in accordance with the System Standards.

**6.2 Covenants of Franchise Owners.**

- a. You acknowledge our ownership of the Proprietary Marks, and you agree that during the Term and after its expiration or termination, you will not directly or indirectly contest, or aid in contesting, the validity of the Proprietary Marks or our ownership of the Proprietary Marks, nor will you take any action which might impair or prejudice our ownership of the Proprietary Marks. You shall not, directly or indirectly, apply to register, register or otherwise seek to own or control any of the Proprietary Marks, or any confusingly similar mark thereto, whether in whole or in part, in any place or jurisdiction either within or outside of the United States; nor will you assist any others to do so.
- b. You agree that the license granted pursuant to this Agreement authorizes you to use the Proprietary Marks solely in connection with the Franchised Business only at the Location, and for no other purpose. You have no right to license or sublicense any aspect of the System Standards or any of the Proprietary Marks.
- c. You agree to use the Proprietary Marks only in the manner and to the extent specifically licensed by this Agreement. You further agree that any unauthorized use or continued use of the Proprietary Marks after the termination or expiration of this Agreement will constitute irreparable harm subject to injunctive relief.
- d. The license granted by this Agreement includes only the Proprietary Marks, now existing or which may exist in the future. This license does not include the right to use any other trademarks, service marks, trade name or trade dress owned by us or our licensor anywhere in the world. You agree that any and all goodwill associated with and identified by your use of the Proprietary Marks will inure directly and exclusively to our benefit, and that, on the expiration or termination of this Agreement, no monetary amount will be due or payable to you as a result of any goodwill associated with your ownership or operation of the Franchised Business.

### **6.3 Limitations on Franchisee's Use of Proprietary Marks.**

To develop and maintain high and uniform standards of quality and service and thereby protect our reputation and goodwill and that of the System, you agree:

- a. To operate and advertise the Franchised Business only under the Proprietary Marks authorized by us;
- b. To adopt and use the Proprietary Marks licensed by this Agreement solely in the manner prescribed by us;
- c. That your corporate, partnership or other entity name including trade name, will not include any of the Proprietary Marks, in whole or in part, or any terms confusingly similar thereto, unless first authorized by us in writing;
- d. To submit all advertising, promotional materials and all printed matter, including stationery, business cards, and any materials to be used on the Internet to us for our written approval before you use any of these items; and
- e. That we may from time to time change or modify the System Standards, including modifying existing Proprietary Marks or adopting new marks. You agree, at your own expense, to adopt, use and display any such new or modified Proprietary Marks within ninety (90) days after notification from us. However, if we require you to modify or discontinue use of our proprietary information or use other information or rights in its place at any time other than upon renewal of this Agreement, and that requirement is a direct result of proceedings or litigation that determined that our and our franchisees' use of the proprietary information infringed upon a third-party's rights, we or our affiliate will bear the cost of those modifications or discontinuances.

Upon your abandonment of the Franchised Business (whether voluntary or involuntary), termination or expiration of this Agreement, you must immediately cease to use, in any manner whatsoever, any of the Proprietary Marks or any other marks which, in whole or in part, may be confusingly similar to any of the Proprietary Marks.

### **6.4 Non-Exclusive License of Proprietary Marks.**

You understand and agree that your license to use the Proprietary Marks is non-exclusive; that we, in our sole discretion, can grant to other franchisees the right to use the Proprietary Marks and obtain the benefits of the System Standards, in addition to the licenses and rights granted to you under this Agreement; and that we or our affiliates may develop and license other proprietary marks in conjunction with concepts other than the Frullati Cafe & Bakery concept, on any terms and conditions we deem advisable. You will have no right or interest in any such other licenses, proprietary marks or systems.

### **6.5 Notification of Infringement and Claims.**

You agree that you will notify us immediately of any apparent infringement of, or challenge to your use of any of the Proprietary Marks, or any claim by any person of any rights in any of the Proprietary Marks. You agree that you will not communicate with any person, other than us and our legal counsel, in connection with any such infringement, challenge or claim. We will have the sole discretion to take such action as we may deem appropriate to

protect the Proprietary Marks and the exclusive right to control any litigation, United States Patent and Trademark Office proceeding, or other proceeding arising out of any such infringement, challenge, claim or otherwise relating to any Proprietary Marks. You agree to execute any and all instruments and documents, render such assistance, and do such acts and things as may, in the opinion of our counsel, be necessary or advisable to protect and maintain our interests in connection with any such litigation or proceeding, or to otherwise protect and maintain our interests in the Proprietary Marks.

## **ARTICLE 7. TRADE SECRETS AND PROPRIETARY INFORMATION**

### **7.1 Innovations.**

During the Term, you and your principals, officers, managers and employees may conceive, invent, create, design or develop various ideas, techniques, methods, processes and procedures, recipes, formulae, products, packaging or other concepts and features relating to restaurant operations, business practices or the manufacturing, production, marketing and sale of Panini, sandwiches, salads, soups, fresh baked goods, blended fruit drinks, and other food and beverage items, and related goods now in existence or later developed, adopted, or improved in connection with the Franchised Business (individually and collectively, "Innovations"). You, without further consideration, hereby assign any and all of your rights, title and interest in the Innovations, including any intellectual property rights, to us, and also agree to cooperate with us and our counsel in the protection of the Innovations, including the perfecting of title thereto in us. In addition, you will require all of your principals, officers, managers and employees to sign an agreement in the form set forth in our System Standards and incorporated herein by reference ("Confidentiality Agreement"), and shall be liable to us for obligating your principals, officers, managers and employees to assign all of their rights, title and interest to the Innovations to us and requiring your principals, officers, managers and employees to cooperate in obtaining, protecting, maintaining and enforcing our right, title and interest in the Innovations.

### **7.2 Confidentiality Agreement.**

a. In connection with the operation of the Franchised Business, you will from time to time receive, have access to, or learn certain information and materials that are proprietary to us or our affiliate. You and any person signing this Agreement under the heading "Personal Acceptance of Sections 7.1, 7.2, 14.6 and 14.8" agree that you will keep confidential, and will not use for your own purposes, nor supply or divulge to any other person, any of our Trade Secrets, including our methods of operation, processes, techniques, formulae and procedures, information a reasonable person would believe to be confidential and any other proprietary information regardless of whether such is expressly marked as confidential ("Confidential Information"). You acknowledge that much of the information imparted to you by us is confidential, constitutes Trade Secrets, are unique to us, and remains our sole exclusive property. Our Confidential Information includes the following:

1. The Confidential Manual and any amendments thereto;
2. Ingredients, recipes, and methods of preparation of food products;
3. Methods of operation of *Frullati Cafe & Bakery* restaurants;

4. Information about products, services, or procedures before they become public knowledge;

5. Information which relates in any manner to our business or the System Standards, whether oral or reduced to writing, and which is not generally known to, or readily ascertainable by, other persons who might derive economic benefit from its disclosure or use; and

6. Any other information which may be imparted to you from time to time and designated by us as confidential.

b. You and any person signing this Agreement under the heading "Personal Acceptance of *Sections 7.1, 7.2, 14.6 and 14.8*" acknowledge and agree that the Confidential Information and any business goodwill of the Franchised Business is our sole and exclusive property, and that you will preserve the confidentiality thereof. Upon termination or expiration of this Agreement, all items, records or documentation recording or incorporating any Confidential Information, including any copies thereof, will be immediately turned over by you to us or our authorized representative.

c. You agree to take all steps necessary, at your own expense, to protect the Confidential Information, including our Trade Secrets, and to adopt and implement all reasonable procedures prescribed by us from time to time to prevent the unauthorized use or disclosure of any of the Confidential Information. We require that all of your executive officers, agents, directors, shareholders, trustees, beneficiaries, partners and managers who may or are likely to obtain knowledge concerning the Proprietary Information (and who do not sign this Agreement under the heading "Personal Acceptance of *Sections 7.1, 7.2, 14.6 and 14.8*") sign the Confidentiality Agreement binding such person to preserve the confidentiality of the Confidential Information as part of the terms and conditions of such person's employment or association with you. You must obtain a Confidentiality Agreement signed by any such person prior to or at the same time that you begin employment of, or association with, that person. This will be a continuing obligation on your part throughout the Term. You must keep each original signed Confidentiality Agreement and provide us with a copy of each Confidentiality Agreement when requested by us or our authorized representative.

d. Notwithstanding the above, Confidential Information shall not include information which you can reasonably prove: (i) entered the public domain through no breach by you or your affiliate of any duty of confidentiality, or (ii) you received our prior express written consent to disclose in the manner in which you disclosed it.

e. If anyone under a Confidentiality Agreement is legally compelled or required by a regulatory body to disclose any Confidential Information, he/she/it will notify us as soon as possible and will use his/her/its best efforts to obtain, and give us an opportunity to obtain, appropriate assurances of confidential treatment.

f. The requirements under this *Section 7.2* will remain in full force and effect during the Term and after termination or expiration of this Agreement.



## **ARTICLE 8. RELATIONSHIP OF THE PARTIES AND INDEMNIFICATION**

### **8.1 Relationship of the Parties.**

You and we agree that this Agreement does not create any fiduciary or employment relationship between you, or any of your employees, and us, that you are an independent contractor, and that nothing in this Agreement is intended to make either you or us a general or special agent, legal representative, subsidiary, joint venture, partner, employee or servant of the other for any purpose. You shall not enter into any agreement on behalf of or otherwise bind us for any purpose.

### **8.2 Indemnification of Franchisor.**

You agree to indemnify, defend and hold us and our affiliates (including our parent and subsidiary companies, current, past and future predecessors, successors and assigns), and each of our shareholders, owners, directors, officers, members, managers, partners, joint venturers, attorneys, employees, contractors, agents, representatives, guarantors, insurers, spouses, heirs, executors, trustees and estates (collectively with us, "Indemnified Parties") harmless for, from and against any and all claims, liabilities, causes of action, suits, debts, duties, accounts, covenants, contracts, agreements, promises, taxes, demands, obligations, costs and expenses, including reasonable attorneys' fees, damages, judgments, and proceedings, of every kind and nature whatsoever, in law or equity, or otherwise, under local, state or federal law including, without limitation the Americans with Disabilities Act ("ADA"), or the law of any other applicable jurisdiction (individually and collectively, "Claims") suffered or incurred by any of the Indemnified Parties arising out of or relating to your construction, ownership, marketing, Promotions (as defined in *Article 10*), operation, including your failure to comply with PCI DSS or any law, statute, regulation, order, rule, or ordinance, or management of the Franchised Business, except for Claims held to have resulted solely from our gross negligence or willful misconduct. Notwithstanding the foregoing, we will have the right, at our option, to defend any Claim, but you must reimburse us upon demand for the costs and expenses of such defense. You shall immediately give us notice of any demand, investigation, written inquiry, action, suit, proceeding, or claim in any way related to us or the *Frullati Cafe & Bakery* brand.

### **8.3 Indemnification of Franchisee.**

We agree to indemnify, defend and hold you and your affiliates, and their shareholders, directors, officers, members, managers, partners, employees, agents, successors and assignees harmless for, from and against any and all Claims, arising out of any Claim of infringement or unfair competition in connection with your authorized use of the Proprietary Marks or Confidential Information, provided that such use is in accordance with the provisions of this Agreement. However, if we require you to modify or discontinue use of our Proprietary Marks or Confidential Information or use other information or rights in its place at any time other than upon renewal of this Agreement, and that requirement is a direct result of proceedings or litigation that determined that our and our franchisees' use of the Proprietary Marks or Confidential Information infringed upon a third-party's rights, we will bear the cost of those modifications or discontinuances.

#### **8.4 Special Power of Attorney.**

You agree to cooperate with and assist us as we may request from time to time to obtain, protect, maintain or enforce our intellectual property and Proprietary Marks, including executing documents and appearing as a witness. You hereby appoint us as your attorney-of-fact and hereby grant us an irrevocable Special Power of Attorney, coupled with an interest, with full power and authority for the purpose of executing documents or taking such action as necessary or appropriate as you might or could do if personally present, hereby ratifying all that we, as your attorney-in-fact, shall lawfully do or cause to be done by virtue of this Special Power of Attorney to obtain, protect, maintain or enforce our intellectual property and Proprietary Marks if we are, for any reason, unable to obtain your cooperation or assistance. The Special Power of Attorney granted by this *Section 8.4*, shall survive your dissolution, death, incompetence or disability and the termination or expiration of this Agreement.

### **ARTICLE 9. OPERATING STANDARDS AND DUTIES OF FRANCHISE OWNER**

#### **9.1 Compliance with System Standards and Confidential Manual.**

You understand and acknowledge that every detail of the operation of the Franchised Business is important in order to develop and maintain high and uniform standards of quality, cleanliness, appearance, service, facilities and techniques; to increase the demand for the System; and to protect our reputation and goodwill and that of other *Frullati Cafe & Bakery* franchisees. You also acknowledge that the operation of the Franchised Business is your sole responsibility, and that neither we nor our affiliates have any responsibility to obtain customers for you. The System Standards will constitute provisions of this Agreement as if fully set forth herein.

#### **9.2 Authorized Products and Services.**

a. You agree that you will not, without our prior written approval, offer at the Location any menu items, beverages, products or services that are not authorized by us for the Franchised Business, as set forth in the System Standards.

b. You have complete discretion in establishing the minimum price you charge for your products. Although we may suggest pricing strategy, you will have the final pricing decision.

c. Notwithstanding the terms of *Section 9.2b.*, we may conduct periodic promotional campaigns during which a specified product or products are promoted at a specified price. During the promotional period, you may not charge your customers more than the specified promotional price, although you may charge less than the promotional price.

d. We may conduct new marketing, research and development, branding and operational program tests, which will generally be conducted with experienced, existing franchisees and may include incentives and other rights that are not available to all franchisees.

e. You hereby consent to third-party vendors, suppliers and distributors sharing with us any and all information, reports, invoices and related documentation covering and otherwise detailing your purchases for the Franchised Business.

f. You are required to accept debit and credit cards (including Visa®, MASTERCARD® and AMERICAN EXPRESS®) and Gift/Loyalty Cards from consumers at the Franchised Business. Prior to the opening of your Franchised Business, you are required to acquire, and maintain during the Term, an approved debit, credit and Gift/Loyalty Card processing system ("Card Processing System") to use during the operation of the Franchised Business. Additionally, you must utilize our approved third-party payment card processor, as identified in the System Standards, for processing all Card Processing System transactions.

### **9.3 Specifications and Standards for Supplies; Approved Suppliers; Rollouts.**

a. You must purchase or otherwise acquire certain proprietary or required equipment and supplies utilized in the Franchised Business only from our designated approved distributors or suppliers. If, during the Term, we change designated approved distributors or suppliers for any of the proprietary or required equipment and supplies utilized in the Franchised Business, you shall change to the new designated approved distributor or supplier within sixty (60) days after written notification of such change from us.

b. If you desire to purchase or otherwise acquire any equipment, supplies or inventory items required by the System Standards but not previously approved by us, or from sources not previously approved by us, you must submit to us sufficient specifications, photographs, drawings and other information sufficient to allow us to determine whether such equipment, supplies or inventory items meet our System Standards. We may require that our representatives be allowed to inspect the facilities of the proposed supplier and revoke its approval upon the supplier's failure to meet any of our then-current minimum System Standards. We may also require that samples from the proposed supplier be delivered, at no charge to us, either to us or to our designee for testing. A charge not to exceed the reasonable cost and expense of the inspection and the actual cost and expense of the test must be paid to us either by you or by the proposed supplier. We will notify you within sixty (60) days after your request of our approval or disapproval of the proposed product or supplier, with such determination to be made at our sole discretion. You acknowledge and agree that our approval of any item or supplier of equipment, supplies or inventory not previously approved by us will not, in and of itself, make the supplier of that item an approved supplier for other *Frullati Cafe & Bakery* franchise owners in the System. We may, in our sole discretion, at any time and from time to time, re-inspect the facilities and products of any approved supplier and revoke its approval upon the supplier's failure to meet any of our then-current System Standards. If you receive a notice of revocation from us, you must immediately stop selling disapproved products and purchasing from the disapproved supplier.

c. We will provide to you a list of all recommended and required items of equipment, fixtures, supplies, smallwares and interior decor. This list will be included in the System Standards.

d. At any time and from time to time, we may in our sole option engage in new product rollouts to add to or change the menu items offered for sale in the Franchised Business and the ingredients or supplier of ingredients utilized in the preparation of the menu items sold in the Franchised Business ("Rollout"). If we engage in a Rollout, you shall participate in the changes that are the subject of such Rollout, including offering the new menu items, changing the menu items, changing to the new supplier of the ingredients utilized in the preparation of the menu items, and changing to the new ingredients utilized in the preparation of the menu items.

If we engage in a Rollout, we will notify you of the details of the Rollout and provide you sixty (60) days from said notification to take the applicable actions required by the Rollout.

#### **9.4 Compliance with Legal Requirements and Good Business Practices.**

You must, at your sole expense, operate the Franchised Business in full compliance with all applicable Federal, state and local statutes, laws, ordinances and regulations, including health and safety regulations, food and drug laws, disability laws, labor and employment laws and data privacy laws, as may be amended, supplemented or enacted from time to time. You must pay all costs and expenses incurred by, and in the conduct of, the Franchised Business, including all rent, salaries, taxes (excluding our income taxes), disbursements, license or permit fees, insurance premiums, traveling expenses and any other business expenses. If you receive any demand, action, suit or proceeding, or the issuance of any order, writ, injunction, award or decree of any court, agency or other governmental instrumentality relating to your Franchised Business, you must immediately notify us, and in no event, later than three (3) days after your receipt. Any such notice must be accompanied by a copy of the demand, complaint, order, writ, injunction, award, decree or other similar document. You must, in all dealings with your customers, suppliers, the public and us adhere to the highest standards of honesty, integrity, fair dealing and ethical conduct. You agree to refrain from any business practice that may be injurious to the System or the goodwill associated with the Proprietary Marks.

#### **9.5 Maintenance of Insurance.**

At all times during the Term, you must maintain in full force and effect commercial general liability insurance against claims for bodily and personal injury, death and property damage caused by or occurring in connection with the construction, ownership, operation or conduct of the Franchised Business. The insurance must also include coverage for product liability and fire claims.

Such liability insurance coverage must be maintained under one (1) or more policies of insurance (each of which shall be primary coverage and shall not be contributory or secondary to any other coverage maintained by us) containing minimum liability limits of One Million Dollars (\$1,000,000) (or greater if applicable state laws or regulations require) for each occurrence and with an aggregate of not less than Two Million Dollars (\$2,000,000). Such insurance policy or policies must be "occurrence" policies and not "claims made" policies; must not provide for a deductible greater than One Thousand Dollars (\$1,000) in the aggregate and must provide that no act or omission of ours or of any officer, director or employee of ours or any affiliate of ours shall invalidate or diminish any coverage thereunder.

Such insurance policies must be issued by insurers acceptable to us having an A.M. Best's financial strength rating of at minimum "A-." The general liability insurance required by this Agreement must: (i) name Kahala Franchising, L.L.C. as the certificate holder; (ii) name Kahala Franchising, L.L.C. and MTY Franchising USA, Inc. and their parents, subsidiaries, affiliates, officers, directors, and employees as additional insureds; (iii) contain a waiver by the insurance carrier of all subrogation rights against us and our affiliates and our affiliates' respective officers, directors and employees for casualty losses; (iv) indicate the address of the Franchised Business being insured; and (v) provide that we will receive, via an endorsement, thirty (30) days' prior notice of cancellation of any such policy. Our minimum insurance coverage requirements (subject to increase in our sole discretion) are as follows:

<b>Type of Coverage</b>	<b>Limits/Specifications</b>
General Liability	\$1,000,000 bodily injury/property damage per occurrence / \$2,000,000 aggregate
Building Improvements and Betterments	100% of full replacement cost – no coinsurance (minimum of \$100,000)
Business Personal Property	100% of full replacement cost – no coinsurance – special form or equivalent (minimum of \$100,000)
Spoilage	\$5,000
Business Income	actual loss sustained or at least 50% of annual sales
Flood, Earthquake and Volcanic Eruption	subject to territory limitations – required if in a designated flood zone
Workers' Compensation	statutory requirements
Stop Gap or Employer Liability	bodily injury by accident: \$1,000,000 each accident bodily injury by disease: \$1,000,000 policy limit bodily injury by disease: \$1,000,000 each employee
Hired and Non-Owned Automobile Liability	\$1,000,000 combined single limit per accident

In addition, we recommend that you obtain cyber liability/data breach insurance coverage.

You are responsible for maintaining insurance coverage and limits as required by us, at minimum, pursuant to this *Section 9.5*, provided, if your landlord requires additional coverage, higher limits, or any other requirements not required by us, then you are responsible for maintaining such additional items as well. You must always keep the required insurance coverage in force at all times during the operation of the Franchised Business, and you must comply with any changes we make periodically to our insurance requirements. If your restaurant is located in a flood zone or an area subject to earthquakes, hurricanes, tornadoes, other similar hazards, you may want to obtain additional specific insurance to cover these risks. Such insurance may significantly increase your premiums. Upon thirty (30) days' notice to you, we may require you to increase the minimum coverage of the insurance referred to above as of the next renewal date of any policy, and require different or additional kinds of insurance at any time, including excess liability (umbrella) insurance, to reflect inflation, identification of special risks, changes in law or standards of liability, higher damage awards or other relevant changes in circumstances.

Subject to *Section 3.1*, and annually thereafter, at least ten (10) days prior to renewal of your insurance coverage, and at any other time on our request, you must provide us with certificates of insurance or copies of insurance policies showing that you are in compliance with our insurance requirements, as well as proof that you have paid the premiums you owe for the insurance we require. You will pay your insurance premiums to your insurance broker or to the insurance company issuing the policy. You must have insurance and provide a copy of your certificate of insurance to us which meets our requirements before you may open your restaurant. We or our affiliate may, at our option and in addition to our other rights and remedies under this Agreement, obtain such insurance coverage on your behalf, and you must promptly execute any applications or other forms or instruments required to obtain any such insurance and pay to us, on demand, any costs, expenses and premiums incurred by us. Your obligation to obtain and maintain the insurance described above will not be limited in any way by reason of any insurance maintained by us, nor will your performance of such obligations relieve you of any obligations under *Section 8.2*.

## **9.6 Management of the Franchised Business.**

You are directly responsible for all aspects of operating the Franchised Business, and you agree that you will, at all times, operate the Franchised Business and use your best efforts to enhance your Franchised Business and the System. The Franchised Business must be personally managed and directly operated by either you or another partner, shareholder or member of your business organization, or a manager.

## **9.7 Inspections by Franchisor.**

For the purpose of this *Section 9.7*, you must make available to us or our authorized representatives such financial and other information concerning the Franchised Business, and you must permit us or our authorized representatives to have full and free access to such information at your Franchised Business Location during regular business hours without prior notice. We and our authorized representatives will have the right to communicate freely with your employees, and make extracts from, and copies of, all such information. Our authorized representative may make announced or unannounced inspections of your Franchised Business to ensure compliance with all of the requirements of this Agreement.

## **9.8 Personal Guaranty; Non-Disclosure and Non-Competition Agreement.**

If you are an individual and married, your spouse must execute and deliver to us a Guaranty of Franchise Agreement and a Non-Disclosure and Non-Competition Agreement at the same time that you sign the Agreement unless your spouse is also signing the Agreement as an individual.

If you are a corporation, limited liability company, or other business entity, each of your shareholders, members, or other owners, whether direct or indirect (and their respective spouses, if married) must execute and deliver to us a Guaranty of Franchise Agreement and a Non-Disclosure and Non-Competition Agreement at the same time that you sign this Agreement.

In the event any person who has not previously signed a Guaranty of Franchise Agreement or a Non-Disclosure and Non-Competition Agreement becomes your spouse or shareholder, member, or other owner, direct or indirect or a spouse of such shareholders, members, or other owner, at any time after the execution of this Agreement, you must cause such person(s) to immediately execute and deliver a Guaranty of Franchise Agreement and a Non-Disclosure and Non-Competition Agreement to us.

Failure to provide a Guaranty of Franchise Agreement or a Non-Disclosure and Non-Competition Agreement to us may, in our sole discretion, be grounds for termination of this Agreement as set forth in *Section 14.2a*.

## **9.9 Not Applicable.**

## **ARTICLE 10.           ADVERTISING AND PROMOTION**

### **10.1   Advertising by Franchisor.**

We (or at our election a third-party which may be an affiliate of ours) will administer the Advertising Fund that will include your Advertising Fee and those of other franchise owners in the System. If an affiliate of ours administers the Advertising Fund or places advertising in connection with the System, such affiliate may be paid a fee that will not exceed the fee that would be payable to unrelated third-parties for comparable services. Unless required by applicable law, we will have no obligation to create a trust account, escrow account or other special account for the Advertising Fund, and the monies comprising the Advertising Fund may be placed in our general account. We may also reserve the Advertising Fee for use in a subsequent year.

We will direct all advertising and promotional programs. We will have sole discretion over all creative concepts, materials and media used in such programs and the placement and allocation of such programs. The Advertising Fund will be used for marketing, advertising, production and media expenses to promote the *Frullati Cafe & Bakery* trade name, System, products and services. We are entitled to deduct, free of charge, the following from the Advertising Fund: reimbursement of expenses, overhead, and employee salaries for services provided; and rent for office space provided to the Advertising Fund. We are not required to use any specific amounts from the Advertising Fund in your market. However, we will use all amounts contributed by you to any Advertising Fund, if any (see *Section 5.3*), in the same geographic area in which your Franchised Business is located.

### **10.2   Advertising by Franchisee.**

In addition to your Advertising Fee, if applicable, and unless your Franchised Business is located in an enclosed shopping mall or other enclosed structure identified in *Section 1.1*, you agree to pay for a regular (white pages) and classified (yellow pages) telephone directory advertisement in the main directory distributed in the area where your Franchised Business is located, in such directory categories as we specify, utilizing forms of listing and classified directory advertisements approved by us. We also recommend that, in addition to your Advertising Fee, you spend at least two percent (2%) of your monthly Gross Sales on local advertising.

Your own local marketing and advertising plan should be developed to maximize your particular customer base. You should not rely upon a marketing program or plan by us as the sole means of obtaining customers. All marketing and advertising materials must be reviewed by the marketing department for look and feel. The marketing department's review is not for determining compliance with federal, state and local laws.

All advertising by you in any medium must be conducted in a professional manner and must conform to the System Standards. We may make available to you, from time to time, advertising, promotional plans and materials for purchase.

Under no circumstances may you use, without limitation, the name, image, or voice of a celebrity, public figure, character or other person in connection with the Proprietary Marks or the Franchised Business without our prior written consent. We retain the sole and exclusive right to

use, without limitation, the name, services or image of any celebrity, public figure, character or other person in advertising, endorsing or recommending the System.

## **ARTICLE 11. ACCOUNTING PROCEDURES AND REPORTS**

### **11.1 Maintenance of Records.**

You shall keep full, complete, and accurate books and accounts in accordance with generally accepted accounting principles, and in the form and manner indicated below or as from time to time further required by us. You agree to submit reports and data to us electronically if we advise you to do so. You agree:

- a. to submit to us electronically the weekly Gross Sales as set forth in *Section 5.6*;
- b. to submit to us, on or before the thirtieth (30th) day of each month, commencing with the opening of the Franchised Business, on a form approved by us, a profit and loss statement of the Franchised Business for the preceding calendar month prepared in accordance with generally accepted accounting principles;
- c. to submit to us, within ninety (90) days after the end of each calendar year, commencing with the opening of the Franchised Business, on a form approved by us, a profit and loss statement and balance sheet (including a statement of retained earnings or partnership account) for the preceding calendar year;
- d. to submit to us, at the times required, such other periodic forms, reports and information as may from time to time be required by us;
- e. to preserve, in the English language and for the time periods set forth below, all accounting records and supporting documents related to the Franchised Business (individually and collectively, "Records"), including:
  1. daily cash reports;
  2. cash receipts journal and general ledger;
  3. cash disbursements journal and weekly payroll register;
  4. monthly bank statements, daily deposit slips and canceled checks;
  5. all tax returns, including your personal returns and those of your officers, shareholders, partners and members;
  6. suppliers invoices (paid and unpaid);
  7. dated cash register tapes (detailed and summary);
  8. semi-annual balance sheets and monthly profit and loss statements;
  9. daily production, throwaway and finishing records and weekly inventories;
  10. records of promotion and coupon redemptions;
  11. records of all outside sales; and



12. such other records as we may from time to time request.

f. to record all sales on cash registers approved by us, as specified in the Confidential Manual;

g. to file all of your federal and state tax returns on a timely basis and to provide copies of them to us. We may, where applicable, require that tax returns from all of your shareholders, members or partners be provided to us, if you are other than an individual;

h. During the Term, you shall preserve the Records for at least the current fiscal year and for the three (3) immediately preceding fiscal years. For three (3) years after the date of any transfer of an interest in this Agreement, the transferor of such interest will preserve the Records for its last three (3) fiscal years of operation under this Agreement. For three (3) years after the expiration of the Term (or after any earlier termination), you shall preserve the Records for the last three (3) fiscal years of operation of the Franchised Business; and

i. In connection with our efforts to attract additional franchise owners to the System, we will have the right to use (without identifying you, except as required or allowed by law) any financial statements, sales reports, profit and loss statements or balance sheets provided by you and, in connection therewith, you authorize us to disclose any information contained on such financial reports as may be required by any federal or state registration or disclosure law.

## **11.2 Audit by Franchisor.**

We will have the right, at any time during business hours, and with or without prior notice to you, to inspect and audit, or cause to be inspected and audited, the Records and cash control devices of the Franchised Business, and your corporate, partnership or limited liability company books and records (if you are a corporation, partnership, limited liability company, or other entity). You agree that we may access any computers utilized by you for such purposes.

You will fully cooperate with our authorized representatives and independent accountants hired by us to conduct any such inspection or audit. In the event any such inspection or audit discloses an understatement of your Gross Sales for any period in question, you will pay to us, immediately after receipt of the inspection or audit report, any additional Royalty Fee or Advertising Fee due as a result of any such understatement, plus interest at the Default Rate from the date originally due until the date such understatement is paid in full.

In addition, in the event such inspection or audit is made necessary by your failure to timely furnish Records, or if an understatement of the Royalty Fee or Advertising Fee for the period of any audit (which period shall not be for less than one (1) month) is determined by any such audit or inspection to be five percent (5%) or greater, you must reimburse us all amounts incurred in connection with such audit or inspection including our employee costs and expenses, any independent accountants' and attorneys' fees, transportation, room, and meal expenses.

The remedies in this *Section 11.2* will be in addition to all our other remedies and rights under this Agreement or under applicable law.

## ARTICLE 12. TRANSFER

Sections 12.1 through 12.4 apply to all transfers, except transfers by us, which are described in Section 12.5.

### 12.1 Prior Consent of Franchisor.

a. As used in this Agreement, “Transfer” means any voluntary, involuntary (including by operation of law), direct or indirect assignment, sale, gift or other transfer by you, including:

1. “Full Transfer,” which is any act or circumstance, except those set forth in Section 12.1.a.2., by which fifty percent (50%) or more of the ownership or control is shifted from any individual or corporation, partnership or other business entity (individually and collectively, “Entity”) to another, including:

(i) Transfer of this Agreement or the Franchised Business, or any right or interest granted by this Agreement;

(ii) Transfer of an interest in you, if you are an Entity;

(iii) Merger, consolidation or issuance of additional ownership interests or redemption of ownership interests in you, if you are an Entity; or

(iv) Transfer of an interest in any other Entity holding an interest in this Agreement or you, if you are an Entity.

2. “Affiliate Transfer,” which includes:

(i) Transfer in a separation or divorce, regardless of how much of the ownership or control is shifted from any individual or Entity to another;

(ii) Transfer of this Agreement or the Franchised Business, or any right or interest granted by this Agreement from your name as an individual(s) to your Entity name in which you are the sole owner(s) of the Entity;

(iii) Transfer of this Agreement or the Franchised Business, or any right or interest granted by this Agreement, from your Entity name in which you are the sole owner(s) to your name as an individual(s);

(iv) Transfer of this Agreement or the Franchised Business, or any right or interest granted by this Agreement from one Entity name to another Entity name in which the owners of the entities are the same;

(v) Removing an owner from the Franchisee (unless the person has a fifty percent (50%) or more ownership interest);

(vi) Adding an owner to the Franchisee (unless the person has a fifty percent (50%) or more ownership interest); or

(vii) Transfer by which less than fifty percent (50%) of the ownership or control is shifted from any individual or entity to another for any act or circumstance listed in *Section 12.1.a.1*.

b. We are entering into this Agreement based upon our knowledge of and faith in your ability. Therefore, the Franchised Business and all the rights granted by this Agreement are personal to you and you may not Transfer without our prior written consent. Any attempted Transfer without our prior written consent will be null and void, and will give us the right to terminate this Agreement and your rights under it, in addition to any remedies which we may have for the breach of this covenant by reason of an attempted Transfer.

c. We shall not unreasonably withhold or delay our consent to a Transfer, so long as it is shown to our satisfaction that the potential transferee ("Potential Transferee") can perform a franchisee's obligations under the then-current form of franchise agreement and all other agreements, legal instruments and documents required of new franchisees.

## **12.2 Advance Notice of Proposed Terms and Right of First Refusal.**

a. If you, or any of your shareholders, members or partners, have received and desire to accept a signed bona fide written offer from a third-party to Transfer, you shall notify us and provide us with a complete copy of the offer (letter of intent) which must include the name, address and telephone number for every Potential Transferee. You must also include information as to the identity of all who will own an interest in this Agreement or in the Franchised Business after the completion of the Transfer, their respective interests, and the proposed terms and conditions of sale and payment.

b. We shall have the right and option, exercisable within thirty (30) days after the date we receive a copy of the offer, to purchase the interest proposed to be transferred, at the price and upon the same terms and conditions specified in the notice.

c. If we do not exercise our option, and the terms of the unaccepted offer are altered, you must, in each such instance, notify us of the changed offer; and we will again have thirty (30) days to exercise our right to purchase on the altered terms. If we do not exercise our option, then the Transfer may take place on the terms and price set forth in the notice; provided: (i) we give our written consent; (ii) the Transfer takes place no later than six (6) months from receipt of our written refusal to exercise our option to purchase; and (iii) all the conditions set forth in *Section 12.3* are satisfied.

## **12.3 Requirement for Consent to Transfer.**

If a Transfer is proposed and we do not exercise our right of first refusal pursuant to *Section 12.2*, then we will consent to the Transfer, provided that:

a. All your obligations under this Agreement are fully paid and satisfied, including the Royalty Fee and Advertising Fee; you are not in default under any provisions of this Agreement or any other agreement, legal instrument or document with us or any of our affiliates; and you enter into written agreements with us, including (except where prohibited by law) a general release by you of all claims against us;

b. Potential Transferee provides to us a completed application and financial documents, is financially acceptable, is not associated with any of our competitors, is of good moral character and reputation, and meets our criteria, which includes: work experience and aptitude; ability to devote time and best efforts to the Franchised Business; equity interest in the Franchised Business; ability to speak and read English sufficient in our opinion to communicate with employees, customers and suppliers and to satisfactorily complete our training; no conflicting interests; and other criteria and conditions that we apply to new franchisees;

c. Potential Transferee provides us with copies of all governing documents of Potential Transferee (e.g., certificate of incorporation or organization, by-laws, stock certificates, operating agreement, membership certificates (if any)) which must be reasonably satisfactory to us in our sole discretion;

d. You provide to us a copy of the purchase and sale agreement, if a Full Transfer, or other documentation evidencing the Transfer, if an Affiliate Transfer, and following our analysis of the terms and conditions of the proposed Transfer, we, in our sole discretion, conclude that such terms and conditions will not interfere with the financial feasibility of the future operation of the Franchised Business;

e. Potential Transferee enters into all agreements, legal instruments and other documents, whether our then-current agreements, legal instruments and documents or a transfer of this Agreement and related legal instruments and documents, as determined by us (individually and collectively, "Transfer Documents"). The terms of the Transfer Documents may vary materially from the current agreements used by us, including the payment of a higher Royalty Fee and Advertising Fee;

f. Not Applicable;

g. Potential Transferee pays to us the Transfer Franchise Fee, if a Full Transfer; or Potential Transferee pays us the Document Administration Fee, if an Affiliate Transfer; Franchisee shall be liable to the Franchisor for the transfer franchise fee or Document Administration Fee in the event the Potential Transferee fails to pay such fee that is owing in full;

h. Potential Transferee pays to us the transfer training fee set forth in the Transfer Documents, if a Full Transfer; Franchisee shall be liable to Franchisor for the training fee if Potential Transferee fails to pay the training fee owing in full; If Potential Transferee or any of its employees or representatives cancel or reschedule participation in any training course or program which Potential Transferee schedules with Franchisor, Potential Transferee or Franchisee must reimburse Franchisor for all of its employee's travel expenses, wages and other expenses incurred as a result of such cancellation or rescheduling;

i. Potential Transferee successfully completes the training program required by the Transfer Documents, if a Full Transfer;

j. Potential Transferee agrees to complete all remodeling and improvements as required by us, and must upgrade the POS System to the then-current required POS System, within the time period specified by us, if a Full Transfer;

k. You and Potential Transferee agree not to assert any security interest, lien, right or claim now or in the future, in the Franchised Business. Any security interest, lien, claim or

right asserted with respect to any personal property at the Location must not include any after-acquired property and must be subject, junior and subordinate to any security interest, lien, right or claim now or in the future, asserted by us, our successors or assigns; and

I. You agree to complete and sign a letter of agency, letter of authorization, or equivalent and provide it to Potential Transferee so that Potential Transferee may keep the existing telephone number when the store is transferred to Potential Transferee.

#### **12.4 Death or Incapacity of Individual Franchisee; Change in Entity.**

a. Death or incapacity of Franchisee when Franchisee is an individual:

(i) In the event of your death or incapacity, your legal representative may, for a period of ninety (90) days from the date of death or incapacitation, continue to operate the Franchised Business, provided that the operation is conducted in accordance with this Agreement and any other agreements with us.

(ii) If your representative desires to continue the operation of the Franchised Business beyond the ninety (90) day period, then, prior to the expiration of this period, your legal representative must apply in writing for the right to transfer the Franchised Business to the person or persons (whether spouse, heir, devisee, purchaser, or any other person), as the legal representative may specify. The application for transfer will be treated in the same manner as any other proposed Transfer under this Agreement.

(iii) If your legal representative does not comply with the provisions of the preceding paragraph, or does not propose a Potential Transferee acceptable to us under the standards set forth in this Agreement, all rights licensed to you under this Agreement will terminate immediately and automatically revert to us. We shall have the right and option, in our sole discretion, exercisable upon such termination, to purchase all removable furniture, fixtures, signs, equipment and other chattels, but not leasehold improvements, at a price to be agreed upon by the parties or, if no agreement as to price is reached by the parties, at such price as may be determined by a qualified appraiser, approved by both parties, such approval not to be unreasonably withheld. We shall give notice of our intent to exercise the option no later than twenty-one (21) days prior to termination.

b. Death or incapacity of any shareholder, partner, or member in Franchisee when Franchisee is a business entity:

(i) In the event of the death or incapacity of any of your shareholders, partners, or members, the surviving shareholders, partners, or members may, for a period of ninety (90) days from the date of death or incapacitation, continue to operate the Franchised Business, provided that the operation is conducted in accordance with this Agreement and any other agreements with us.

(ii) If your shareholders, partners or members desire to continue the operation of the Franchised Business beyond the ninety (90) day period, then, prior to the expiration of this period, your shareholders, partners, or members must apply jointly with all surviving shareholders, partners or members in writing, for the right to transfer the Franchised Business (or the interest of the deceased or incapacitated shareholder, partner, or member in the Franchised Business), to the person or business entity as the surviving shareholders, partners, or members may specify. The

application for transfer will be treated in the same manner as any other proposed Transfer under this Agreement.

(iii) If all surviving shareholders, partners or members do not comply with the provisions of the preceding paragraph, or do not propose a Potential Transferee acceptable to us under the standards set forth in this Agreement, all rights licensed to you under this Agreement will terminate immediately and automatically revert to us. We shall have the right and option, in our sole discretion, exercisable upon such termination, to purchase all removable furniture, fixtures, signs, equipment and other chattels, but not leasehold improvements, at a price to be agreed upon by the parties or, if no agreement as to price is reached by the parties, at such price as may be determined by a qualified appraiser, approved by both parties, such approval not to be unreasonably withheld. We shall give notice of our intent to exercise the option no later than twenty-one (21) days prior to termination.

## **12.5 Assignment by Franchisor.**

You agree and affirm that we may, without your prior consent, sell our business, our assets, or our System, in whole or in part, to a third-party; may issue a public offering of our securities; may engage in private placement of some or all of our securities; may merge with or acquire other corporations, or be acquired by another corporation; and may undertake a refinancing, recapitalization, leveraged buyout or other economic or financial restructuring. You further agree and affirm that we have the right, now and in the future, without your prior consent, to purchase, merge, acquire or affiliate with an existing competitive or non-competitive franchise network, chain or any other business regardless of the location of such franchise network, chain or business, which you acknowledge may be proximate to your Franchised Business, and to operate, franchise or license such franchise networks, chains or businesses operating under the Proprietary Marks or any other marks following our purchase, merger, acquisition or affiliation. With regard to any of the above sales, assignments and dispositions, you expressly and specifically waive any claims, demands or damages against us arising from or related to the loss of your rights to use the System as authorized under this Agreement.

This Agreement will inure to the benefit of our successors and assigns. In conjunction with one (1) or more of the transactions contemplated above, or as otherwise determined by us, we have the right to assign our rights and obligations under this Agreement to any person or entity, without your prior consent. Upon such assignment, we will be relieved of all obligations or liabilities then existing or thereafter able to be asserted under this Agreement.

## **12.6 Restrictions on Security Interests and Subfranchising.**

Except as otherwise set forth in this *Section 12.6*, you shall not have any rights to pledge, encumber, hypothecate or otherwise give any third-party a security interest in this Agreement in any manner whatsoever, nor subfranchise or otherwise transfer, or attempt to subfranchise or transfer the Franchised Business, in whole or in part, so long as it is operated as the Franchised Business, without our express prior written permission, which permission may be withheld for any reason whatsoever in our sole discretion. Notwithstanding anything contained herein to the contrary, you shall have the right to pledge your accounts receivable, net of royalties and rent, without our prior written consent for the sole purpose of obtaining financing for the operation of the Franchised Business, provided you are in full compliance with this Agreement and any other agreement, arrangement or understanding with us.

## ARTICLE 13. RENEWAL

Subject to the terms and conditions described below, you will have the right to renew your license to operate the Franchised Business for an additional term of five (5) years. In the event you desire to renew your license, you must give us notice to that effect at least one hundred twenty (120) days prior to the expiration date of the Term. In addition to giving the notice of renewal referred to above in a timely manner, in order to have the right to renew the license to operate the Franchised Business for an additional term, you must also meet each of the following requirements:

- a. You must not then be in default under this Agreement or any other agreement, legal instrument or document with us or any of our affiliates, and no event shall have occurred that, with the giving of notice, the passage of time, or both, would constitute a default under this Agreement, including all financial obligations to us;
- b. You must be in complete compliance with the terms of this Agreement, including all financial obligations to us, and the then-current Confidential Manual;
- c. You must not have received more than three (3) notices of default or breach of this Agreement during its term, nor more than two (2) notices of default or breach during the five (5) years immediately preceding the effective date of the proposed renewal;
- d. You must have the existing right to maintain possession of the Location or you must have secured and developed a suitable substitute location that meets our then-current minimum site requirements (such confirmation will be provided to you by us in writing);
- e. You must sign a general release provided by us;
- f. You and we must execute all agreements, legal instruments and other documents (individually and collectively, "Renewal Documents") then used by us in the renewal of franchises and then being required of new franchise owners in connection with the System. The Renewal Documents will supersede this Agreement, but will not terminate your liability to perform any obligations which you have not yet performed under this Agreement, or which survive the termination of this Agreement; nor will the Renewal Documents terminate or supersede any Guaranty of Franchise Agreement, Confidentiality Agreement, or Non-Disclosure and Non-Competition Agreement executed pursuant to this Agreement. The terms of the Renewal Documents may vary materially from the current agreements used by us, including the payment of a higher Royalty Fee and Advertising Fee;
- g. The equipment, fixtures and signage used in connection with the operation of the Franchised Business must either meet our then-existing System specifications and standards, or you must agree, within a timeframe required by us, to replace or refurbish such items, and otherwise modify the methods of operation of the Franchised Business at your cost and expense, in order to comply with our System specifications and standards then applicable to new franchise owners;
- h. You agree to complete all remodeling and improvements as required by us, and must upgrade the POS System to the then-current required POS System, within the time period specified by us; and

i. You shall have paid to us the Renewal Franchise Fee as required under *Section 5.12*.

If you do not meet any of the requirements for renewal, we will give you a notice to that effect which will specify the requirements not met. The notice will be given to you within sixty (60) days after you deliver to us your notice of intent to renew.

## **ARTICLE 14. DEFAULT AND TERMINATION**

### **14.1 Default; Termination.**

a. You will be in default under this Agreement:

(i) If: (a) you become insolvent or make an assignment for the benefit of creditors; (b) you file a petition in bankruptcy, or if such a petition is filed against and consented to by you, and such petition is not dismissed within thirty (30) days from the filing date of such petition; (c) you are adjudicated bankrupt; (d) a bill in equity or other proceeding for the appointment of your receiver or other custodian for your business or assets is filed and is consented to by you or is not dismissed within thirty (30) days from the filing date of such bill or other proceeding; (e) a receiver or other custodian is appointed; (f) proceedings for composition with creditors under any state or federal law is instituted by or against you; (g) the real or personal property of the Franchised Business is sold at levy thereupon by any sheriff, marshal or constable, or sold by a secured party under any state's Commercial Code;

(ii) If you fail to pay, perform, observe or comply with any of your duties and obligations under this Agreement or the Confidential Manual, including failure to provide a fully-executed copy of the lease to us when due and failure to pay when due, any sum due to us under this Agreement (including the Royalty Fee and Advertising Fee); or if you breach any of your obligations under any lease, sublease, mortgage, equipment agreement, promissory note, vendor account, conditional sales contract or other contract arising from, or in connection with, the Franchised Business, to which you are a party or by which you are bound, whether or not we are a party thereto;

(iii) If your lease or sublease for the Location of the Franchised Business is either: (a) in default and you fail to cure such default as provided in the lease or sublease; (b) is terminated for reason of default by you; or (c) the Location is lost as a result of your failure to comply with the lease or sublease;

(iv) If you fail, within thirty (30) days of the entry of a final judgment against you in an amount exceeding Two Thousand Dollars (\$2,000), to discharge, vacate or reverse the judgment or to stay its execution pending appeal, or to discharge any judgment which is not vacated or reversed within thirty (30) days after expiration of the stay of execution;

(v) If we determine that a serious health or safety problem exists at the Franchised Business, in which case, we may require you to immediately correct the problem or cease operating until the problem is corrected;

(vi) If you, or any owner, co-owner or principal of the Franchised Business, is convicted of a felony, a crime involving moral turpitude, or any other crime or offense that is



reasonably likely to adversely affect the System, the goodwill associated therewith, or our interest therein;

(vii) Except for any reason provided in *Section 5.2*, if you abandon the Franchised Business, which abandonment shall conclusively be deemed established if the Franchised Business is closed for more than three (3) consecutive days;

(viii) Except for any reason provided in *Section 5.2*, if you close or relocate the Franchised Business, without our express advance written consent;

(ix) If you fail to maintain an independent contractor relationship with us;

(x) If you either negligently or knowingly inaccurately report, or fail to report, any information in your franchise application;

(xi) If you or any owner, co-owner or principal of the Franchised Business commits an act, or permits an act to be committed, that violates any federal, state or local law that adversely impacts the Franchised Business;

(xii) If you fail to participate in any Rollout detailed in *Section 9.3*;

(xiii) If you violate any of the provisions of *Sections 2.3, 3.2, 9.2, 9.3 or 9.4* including the requirement that you: (a) sell or offer for sale only those products and services authorized by us; (b) purchase such authorized products and services only from suppliers or service providers who are approved in writing by us; and (c) utilize or switch to any of our designated approved suppliers, including a supplier who has entered into a national or regional master supplier agreement with us;

(xiv) If you transfer or attempt to transfer any rights or obligations under this Agreement or any other property or assets to any third-party in violation of the provisions of *Article 12*;

(xv) If you or any of your owners, officers, directors, managers, members, or partners (as applicable): (a) become subject to U.S. Executive Order 13224 or are involved in any activity that violates the U.S. Foreign Corrupt Practices Act or any other anti-corruption, bribery or any other laws, orders or governmental notices affecting your ability to conduct business in or with the United States, as may be amended and whether in effect as of the Effective Date or at any time during the Term, (b) are identified on the U.S. Department of the Treasury's Office of Foreign Assets Control Specialty Designated National and Blocked Persons list, or (c) receive any funding from any country that is subject to an embargo by the United States, any foreign government or government official, political party; or

(xvi) If you intentionally made any false representations and warranties under *Section 17.1*.

b. Cross-default: A default by you under this Agreement will be deemed a default of all agreements between: (i) you and your principals in his or her individual capacity or any other entity in which your principals are owners, members, managers, shareholders or partners (individually and collectively, "Franchisee Entity"); and (ii) us or any of our affiliates or predecessors (individually and collectively, "Franchisor Entity"). A Franchisee Entity's default of

any other agreement, legal instrument or other document between the Franchisee Entity and a Franchisor Entity will be deemed a default under this Agreement. A default by any guarantor of your obligations under this Agreement or any agreement, legal instrument or document between a Franchisee Entity and a Franchisor Entity will be deemed a default of this Agreement.

c. Termination: If you fail to cure any default to our satisfaction, within the applicable period following notice from us, if applicable, or otherwise breach this Agreement, we may, in addition to all other remedies at law or in equity or as otherwise set forth in this Agreement, immediately terminate this Agreement. This termination will be effective immediately upon the giving of notice pursuant to *Article 15*.

d. Cross-termination: If this Agreement is terminated as a result of your default of this Agreement or any other agreement related to the Franchised Business, we may, at our option, elect to terminate any or all other agreements, legal instruments or documents between a Franchisee Entity and a Franchisor Entity. If any agreement, legal instrument or document between a Franchisee Entity and a Franchisor Entity is terminated as a result of a default by the Franchisee Entity, we may, at our sole discretion, elect to terminate this Agreement. It is agreed that an incurable or uncured default under this Agreement or any other agreement, legal instrument or document between a Franchisee Entity and a Franchisor Entity will be grounds for termination of this Agreement or any other agreement, legal instrument or document between a Franchisee Entity and a Franchisor Entity, without additional notice or opportunity to cure.

## **14.2 Opportunity to Cure.**

a. Fourteen-Day Cure Period - Except as otherwise provided in this *Section 14.2*, you will have the right to cure your default under this Agreement within fourteen (14) days after notice of default is given by us pursuant to *Article 15*. Notwithstanding the foregoing, the following lesser periods will apply under the circumstances described:

b. Seven-Day Cure Period - A seven (7) day cure period will apply if you fail, refuse, or neglect to pay when due, any monies owing to us (including the Royalty Fee and Advertising Fee), or to any Advertising Fund, or if you fail to maintain the insurance coverage set forth in this Agreement;

c. 48-Hour Cure Period – A forty-eight (48) hour cure period will apply (1) if you are in default of *Section 3.4* or (2) if you fail to participate in any limited time product offering, value offering, contest, promotion or charity event. You must initiate your participation in such offering, contest, promotion or event within forty-eight (48) hours and fully participate in such offering, contest, promotion or event as soon as reasonably possible, in our sole discretion, thereafter;

d. 24-Hour Cure Period - A twenty-four (24) hour cure period will apply to your violation of any law, regulation, order or our standards relating to health, sanitation or safety; or, except as provided in *Section 5.2*, if you cease to operate the Franchised Business for a period of forty-eight (48) hours without our prior written consent. In addition, a twenty-four (24) hour cure period will apply if you post on any Site or direct others to any site or page, post, blog or other social medium site where there are posted any defamatory or offensive comments about: other franchisees; the *Frullati Cafe & Bakery* brand; other brands franchised by us or one of our affiliates; your or other franchisees' customers; any of our, your or franchisees' vendors; us or any of our affiliates; or any of our, your or franchisees' competitors;

e. Immediate Cure Period (less than 24 hours) – An immediate cure period (less than twenty-four (24) hours) will apply if you post any content to a Site in which the content includes any inappropriate public displays of affection, our or others' confidential information or materials, violations of health or safety standards, foul or obscene language, or any images of or information about any persons from whom you did not obtain prior written consent;

f. No Cure Period - No cure period will be available: (1) if you are in default of Sections 3.1, 9.4, 14.1a.(i), 14.1a.(iii), 14.1a.(vi), 14.1a.(vii), 14.1a.(viii), 14.1a.(xiv), 14.1a.(xv), or 14.6; (2) if you intentionally underreport weekly Gross Sales, falsify financial data, fail to promptly provide upon our request financial data and records specified in this Agreement, or otherwise commit an act of fraud with respect to your rights or obligations under this Agreement; (3) if you repeatedly fail to comply with the provisions of this Agreement, whether or not subsequently cured; (4) if you, having twice previously cured a default of this Agreement, commit the default again; or (5) if you made any false representations and warranties under Sections 17.1f., 17.1g., 17.1m. or 17.1n.;

g. Statutory Cure Period - If a statute in the state or municipality in which the Franchised Business is located requires application of that state or municipal law, and that statute requires a cure period for the applicable default which is longer than any cure period specified in this Article 14, the statutory cure period will apply.

### **14.3 Our Right to Take Over Management.**

We have the right (but not the obligation), under the circumstances described below, to enter the Franchised Business and assume the Franchised Business' management for any period of time we feel is appropriate. If we assume the Franchised Business' management, you must pay us, in addition to the Royalty Fee and Advertising Fee, six percent (6%) of the Gross Sales, plus our direct out-of-pocket cost and expenses, for the period of time we assume the Franchised Business' management. If we assume the Franchised Business' management, you acknowledge that our duty is limited to using our reasonable efforts, and we will not be liable to you or your owners for any debts, losses or obligations the Franchised Business incurs, or to any of your creditors for any supplies or services the Franchised Business purchases. We may assume the Franchised Business' management if you abandon the Franchised Business or if you fail to comply with any provision of this Agreement and did not cure the failure within the time period we specify in our notice to you. You agree to complete and sign a letter of agency, letter of authorization, or equivalent and provide it to us upon our request if we assume the Franchised Business' management so that we may keep the existing telephone, facsimile, alarm, and credit card machine numbers (as applicable) in operation under our phone service provider. You also agree to keep the phone, water, gas, electric service (as applicable) turned on and active for one (1) week after we assume the Franchised Business's management to allow us to switch the services over to us or our affiliate. Our exercise of our management rights under this Section 14.3 will not affect our right to terminate this Agreement.

### **14.4 Remedies.**

a. Interest, Costs and Damages - If you fail to remit when due any payments required under this Agreement, you agree to pay, in addition to the unpaid amounts, all of our collection costs and expenses, expert fees, reasonable attorneys' fees, and costs and expenses, including all fees, costs and expenses of court, including all appeals, with interest on the unpaid amounts at the Default Rate or the highest permissible rate. If you fail to cure a

default, following notice, within the applicable time period set forth in *Section 14.2*, or if this Agreement is terminated as a result of your default, you shall pay to us all damages of any kind and nature whatsoever and all collection costs and expenses, expert fees, reasonable attorneys' fees, and costs and expenses, including all fees, costs and expenses of court, including all appeals, together with interest at the Default Rate or the highest permissible rate. If you fail to report Gross Sales in accordance with *Sections 5.2* and *5.6*, we may estimate your Royalty Fee and Advertising Fee based on prior reports, and may sue for and obtain judgment for such estimates unless you prove, prior to the entry of any default order or judgment, that your Royalty Fee and Advertising Fee are different than the estimates.

b. Waiver of Punitive Damages - Both we and you waive, to the full extent permitted by law, any right they otherwise may have had to claim, pursue, demand or receive any exemplary or punitive damages arising out of or related in any way to this Agreement and its addenda, amendments, appendices, exhibits and attachments.

c. If you breach any of the terms of this Agreement, including if you are in default of this Agreement, we may enforce our rights by injunction, specific performance, or any other remedy available under this Agreement, at law or in equity, including termination. These remedies are cumulative and not exclusive and we may use all remedies available. In addition, we may elect to terminate this Agreement and all your rights under it as set forth in *Section 14.5*.

d. If you breach any of the terms of this Agreement, including if you are in default of this Agreement, we have the right to have a receiver appointed to take possession, manage and control the assets of the Franchised Business, collect the profits, and pay the net income for the operation of the Franchised Business as ordered by a court of competent jurisdiction. The right to appoint a receiver will be available regardless of whether waste or danger of loss or destruction of the assets exists.

#### **14.5 Effect of Termination or Expiration.**

Upon termination or expiration of this Agreement, we can advise all suppliers of *Frullati Cafe & Bakery* proprietary food items and other supplies bearing any of the Proprietary Marks or service marks to cease delivering the items and products to you.

Upon your abandonment of the Franchised Business (whether voluntary or involuntary), any termination of this Agreement (whether pursuant to *Sections 14.1, 14.2, 14.4*, or otherwise), or upon expiration of the Term, you must immediately cease to hold yourself out to the public as a franchise owner of the System, and you must comply with the following:

a. Immediately pay to us or any affiliate of ours all sums owing from you to us or such affiliate, including the Royalty Fee and Advertising Fee, for any period prior to the date of termination, the applicable Early Termination Damages (as defined in *Section 14.9* below), and all amounts owed for services, supplies or other items purchased by you from us or any affiliate of ours, or that were financed by us or any affiliate of ours, or which we or any affiliate of ours loaned to you, together with any interest or late fees accrued thereon, together with all other sums due us under this Agreement, and all damages of any kind or nature whatsoever that may be allowed by law;

b. Immediately cease to use, in any manner whatsoever, including in all advertising, the Proprietary Marks, any Trade Secrets, any Confidential Information, any benefits of the System or any part thereof, any methods associated with the System, any forms, recipes, Confidential Manual, slogans, signs, sign posts, marks, symbols, or devices used in connection with the operation of the Franchised Business; and you must deliver or destroy all of the above-mentioned materials, including any materials containing or referencing any of the foregoing, to us as directed by us. If we do not recover any such items, such items shall be valued at their then-current replacement cost, for purposes of determining the damages owing by you to us for failure to return such items, if we pursue a damage claim as a result thereof;

c. Immediately discontinue all advertising as a franchisee of the System, and thereafter refrain from any advertising that would indicate that you are or ever were a franchisee or licensee of ours, or otherwise were affiliated with us or the System;

d. Immediately take such steps as may be necessary or appropriate to:

(i) delete your listing in all telephone directories, if applicable, and terminate any other listings that indicate that you are or were a franchisee or licensee of ours, or otherwise were affiliated with us or the System; and

(ii) transfer to our designee or us all telephone numbers used by you in connection with the Franchised Business. You acknowledge that between you and us, we have the sole right and interest in all telephone numbers and directory listings associated with any Proprietary Marks, and you authorize us and appoint us and any officer or agent of ours, as your attorney-in-fact, to direct the telephone company and all listings agencies to accept such direction, or this Agreement, as conclusive evidence of our exclusive rights in such telephone numbers and directory listings and our authority to direct their transfer;

e. Immediately take such action as may be required to cancel all fictitious or assumed names, amend any entity name, or dissolve any entity that contains any Proprietary Mark, in whole or in part, regardless of whether the entity name was authorized by us, and amend or cancel any and all equivalent registrations relating to your use of any Proprietary Mark. You acknowledge that between you and us, we have the sole right and interest in all such fictitious or assumed names, entity name, and equivalent registrations, and you authorize us and appoint us and any officer or agent of ours as your attorney-in-fact, to effect the termination or cancellation of such fictitious or assumed names or equivalent registrations should you fail or refuse to do so, and the appropriate federal, state, and local agencies may accept your direction or this Agreement as conclusive evidence of our exclusive rights in such fictitious or assumed names or equivalent registrations, and our authority to direct their termination or cancellation;

f. Comply with the confidentiality requirements and the covenant against competition in this Agreement for the specified period. You acknowledge that you, or (if an entity) your authorized representative, has carefully reviewed the confidentiality requirements and the covenant against competition in this Agreement; and that you have agreed to be bound by all the requirements and covenants; and

g. Maintain at a place made known to us all books, records and reports required under this Agreement for a period of not less than three (3) years after the date of termination or

expiration of this Agreement, to allow us to make a final inspection of your books and records for the purpose of verifying that all amounts owing have been paid.

If you fail to do any of the foregoing, we may pursue any remedy available at law or in equity against: (i) you; (ii) any or all guarantors of your obligations under this Agreement; and (iii) you and any or all guarantors of your obligations under this Agreement.

We have the right, but not the obligation, to purchase from you any assets or property (but not leasehold improvements) used in the operation of the Franchised Business for an amount equal to the Value (as defined below), as of the termination date. If we are required, by law, regulation or court order, to purchase the equipment and other tangible assets used in connection with the Franchised Business, the purchase price will be equal to the Value. For purposes of this Agreement, the term "Value" means, subject to applicable law, an amount equal to your cost for such assets, less depreciation and amortization using a two hundred percent (200%) declining balance method over a five (5) year period. If all, or any portion of, your assets that are being purchased by us or our authorized representative are subject to lien(s), we or our authorized representative may pay, on your behalf, the lienholder(s) that portion of the purchase price for your assets (which may be the entire purchase price) that is necessary to obtain the release of those assets from the lien(s), in lieu of paying you those funds. Further, we may offset any amounts payable to you pursuant to this *Section 14.5*, or otherwise pursuant to this Agreement, against any unpaid amounts payable to us or our affiliates pursuant to this Agreement or any agreement executed in connection with this Agreement.

#### **14.6 Covenant Not to Compete; Conflicting Interests.**

a. During the Term and for a period of two (2) years after your abandonment of the Franchised Business, expiration of this Agreement, or termination of this Agreement (whether voluntary or involuntary), you shall not engage in any Competing Business (as defined in *Section 14.6c.*) with any *Frullati Cafe & Bakery* restaurant, nor shall you have any Conflicting Interest (as defined in *Section 14.6d.*) in a Competing Business. The provisions of this Agreement bind you in any capacity, including as a franchisee, sole proprietor, partner, limited partner, member, employer, franchisor, shareholder, officer, director or employee.

b. During the Term, and for a period of two (2) years after your abandonment of the Franchised Business, expiration of this Agreement, or termination of this Agreement (whether voluntary or involuntary), you shall not divert or attempt to divert any business, customers, or potential customers of the *Frullati Cafe & Bakery* System to any Competing Business, by direct or indirect inducement or otherwise. In addition, you shall not at any time do or perform any act, directly or indirectly, which harms the goodwill or reputation of us or the System.

c. For purposes of this *Section 14.6*, "Competing Business" means a business which is primarily engaged in the sale of gourmet sandwiches and salads, and all variations thereof, within a geographical area consisting of: (1) during the Term, anywhere else; and (2) after abandonment, expiration or termination of this Agreement, within a ten (10) mile radius from the Location or location of any *Frullati Cafe & Bakery* restaurant of ours, our third-party licensees or our third-party franchisees. The term "*Frullati Cafe & Bakery* restaurant" includes not only the restaurants now in existence, but also those established at a later date. The term of this covenant will be extended by any time consumed in litigation to enforce it in both trial and appellate courts. If a court of competent jurisdiction determines that the restrictions in this

paragraph are excessive in time, geographic scope, or otherwise, the court may reduce the restriction to the level that provides the maximum restriction allowed by law.

d. For purposes of this *Section 14.6*, “Conflicting Interest” means an interest by which you, or your executive officers, directors and shareholders (if you are a corporation), or your partners (if you are a partnership), or your members (if you are a limited liability company), or your designated manager, directly or indirectly, have a controlling interest in, lend money to, consult with or otherwise assist any Competing Business. If any of the persons named above do not sign this Agreement under the heading “Personal Acceptance of *Sections 7.1, 7.2, 14.6 and 14.8*,” then you agree to obtain the execution by such person of a written agreement setting forth the foregoing in a form acceptable to us.

#### **14.7 Continuing Obligations.**

All your obligations that expressly survive the expiration or termination of this Agreement, including *Sections 14.5 and 14.6*, or by the implicit nature thereof require performance after the expiration or termination of this Agreement, will continue in full force and effect (subsequent to, and notwithstanding, your abandonment of the Franchised Business (whether voluntary or involuntary) the expiration of the Term, or termination of this Agreement), until they are satisfied in full or by their nature expire. The indemnities and obligations set forth in *Article 8* will continue in full force and effect subsequent to, and notwithstanding, the expiration or termination of this Agreement.

#### **14.8 Remedies.**

You acknowledge and agree that the restrictions contained in this Agreement, including in this *Article 14*, are fair and reasonable and necessary for the protection of our legitimate business interests and you intend and agree that such restrictions be enforceable and enforced to their fullest extent. You further understand and agree that, notwithstanding any other provision of this Agreement, your breach of your obligations under this *Article 14*, will cause us irreparable harm for which recovery of monetary damages alone would not be an adequate remedy. Both parties shall be entitled to obtain timely injunctive relief, including a temporary restraining order, preliminary and permanent injunctions, to protect their rights under this Agreement, in addition to and not exclusive of any and all other remedies available to each party.

#### **14.9 Early Termination Damages.**

If you discontinue operating your Franchised Business before this Agreement expires, with or without obtaining our prior written consent, or in the event of a termination of this Agreement arising from or related to your default and breach of its provisions, you will become obligated to pay Franchisor early termination damages (“Early Termination Damages”). The Early Termination Damages shall be considered damages and not a penalty, are not in lieu of other damages, and your payment of these damages shall not constitute a release of any other obligation owed to us. Franchisor, Franchisee, each individual signing on behalf of Franchisee, and each guarantor guaranteeing Franchisee’s obligations hereunder, hereby acknowledge and agree that Franchisor’s losses due to Franchisee’s unilateral closure of the Franchised Business or termination of this Agreement would be highly difficult or impossible to calculate with reasonable certainty and, therefore, have agreed at the outset of this Agreement that the Early Termination Damages, and the formula for calculating these damages, constitutes a

reasonable, good faith forecast of Franchisor's estimated losses and damages due to the premature closure of the Franchised Business or termination of this Agreement.

The amount of the Early Termination Damages is calculated as follows:

- a. Compute the average monthly Royalty Fee and Advertising Fee due for any consecutive twelve (12) month period within the forty-eight (48) months immediately preceding the date we receive notification of the closure, or if you failed to timely notify us of the closure then the date the Franchise Business closed, or, if the Franchised Business has been open for less than twelve (12) months, the average monthly Royalty Fee and Advertising Fee due since the opening of the Franchised Business ("Monthly Average");
- b. Multiply the Monthly Average by the number of months remaining in the Term;  
and
- c. Divide the resulting total computed in b. above by two (2).

For example purposes only: If the average monthly Royalty Fee and Advertising Fee were collectively \$1,000 and there were five years (60 months) remaining in the Term, the Early Termination Damages would be \$30,000, calculated as follows:  $\$1,000 \times 60 \text{ months} = \$60,000 \div 2 = \$30,000$ .

If you unilaterally terminate this Agreement prior to the end of the Term, you must give us ninety (90) days prior notice of the early termination ("Early Termination Notice"). Within ten (10) days after our receipt of your Early Termination Notice, we will calculate the Early Termination Damages, which will be due and payable thirty (30) days prior to the closure of your Franchised Business. In the event of a termination arising from or related to your default under this Agreement, or that you do not: (i) provide us with the Early Termination Notice at least ninety (90) days prior to the early termination of your Franchised Business and this Agreement; (ii) remain open for at least ninety (90) days after providing us with the Early Termination Notice; and (iii) pay the Early Termination Damages in full at least thirty (30) days prior to closing of the Franchised Business, the Early Termination Damages due may, in our sole discretion, be increased as follows: it will be calculated by multiplying the Monthly Average by the number of months remaining in the Term, and will not be divided by two (2).

If you have not paid your Royalty Fee and Advertising Fee for any period(s) within the forty-eight (48) months prior to notifying us of your early termination, or if you have not reported your Gross Sales for any period(s) within the forty-eight (48) months prior to notifying us of your intended early termination, we will estimate the Royalty Fee and Advertising Fee based upon prior reports to calculate the Monthly Average.

## **ARTICLE 15. NOTICES**

Unless otherwise provided in this *Article 15*, all notices specified by this Agreement or required by law must be in writing and given by personal delivery, sent by carrier (i.e., FedEx®, UPS®, etc.), U.S. certified mail, return receipt requested. All notices to us must be given at the address set forth on page 1 of this Agreement or to such other address as we may designate in writing from time to time in accordance with this *Article 15*. All notices to you may be given at the address set forth on page 1 of this Agreement, at the address of the Franchised Business, at any of your franchised restaurants, at your residence (if an individual), or at the residence of your



principal shareholder(s), partner(s), or member(s) (if a business entity). Notices will be conclusively deemed to be given, delivered, and effective when sent pre-paid and actually left in the custody of an adult agent, employee or resident at a place of business or residence if given by personal delivery; or if given by carrier, twenty-four (24) hours after deposited with carrier, or if by U.S. mail or certified mail, three (3) days after deposited with the U.S. Postal Service. You have an obligation to promptly notify us pursuant to this *Article 15* whenever your mailing address, phone number or email address change. Notwithstanding the foregoing, we may give you written notice via email to the email address you provide us regarding updates or information related to System Standards, including compliance matters, with such email notification to be deemed received by you twenty-four (24) hours after we send it, unless you otherwise earlier acknowledge receipt.

## **ARTICLE 16. CONSTRUCTION AND ENFORCEMENT; MISCELLANEOUS**

### **16.1 Independent Contractors.**

The relationship between you and us is that of independent contractors. You are in no way to be deemed our partner, joint venturer, agent, employee, or servant. You have no authority to bind us to any contractual obligation or incur any liability for or on our behalf. You shall identify yourself as an independent owner of the Franchised Business in all dealings with customers, lessors, contractors, suppliers, public officials, employees, and others.

### **16.2 Severability and Substitution of Provisions.**

Except as provided to the contrary in this Agreement, each article, section, term and provision of this Agreement, and any portion thereof, will be considered severable, and if, for any reason, any such portion of this Agreement is held to be invalid, contrary to, or in conflict with any applicable present or future law or regulation, or as a result of a final, non-appealable ruling issued by any court, agency or tribunal with competent jurisdiction in a proceeding to which we are a party, that regulation or ruling will not impair the operation of, or have any other effect upon, such other portions of this Agreement as may otherwise remain valid, and such other portions will continue to be given full force and effect and bind the parties to this Agreement. If the severed provision is material to this Agreement, we shall promptly provide a substitute provision to replace the invalid severed provision consistent with then-current law and the original intent of the parties.

If any applicable and binding law or rule of any jurisdiction requires a greater prior notice of the termination of, or refusal to renew, this Agreement than is required under this Agreement, or the taking of some other action not required under this Agreement, or if under any applicable law, regulation, or court ruling of any jurisdiction, any provision of this Agreement or any specification, standard or operating procedure prescribed by us is invalid or unenforceable, the prior notice or other action required by such law, regulation, or court ruling will be substituted for the comparable provisions of this Agreement, and we will have the right, in our sole discretion, to modify such invalid or unenforceable provision, specification, standard or operating procedure to the extent required to be valid and enforceable. Such modifications to this Agreement shall be effective only in such jurisdiction, unless we elect to give them greater applicability, and otherwise shall be enforced as originally made and entered into in all other jurisdictions.

### 16.3 Dispute Resolution.

a. Except as otherwise provided herein, any dispute, claim or controversy arising out of or relating to this Agreement, the breach hereof, the rights and obligations of the parties hereto or the relationship between the parties, or the entry, making, interpretation, or performance of either party under this Agreement ("Dispute"), which cannot be resolved by mediation under *Section 16.3d.* or is not subject to mediation under the terms of this Agreement, shall be settled by arbitration administered by the American Arbitration Association ("AAA") in accordance with its Commercial Arbitration Rules as modified below.

b. Any arbitration shall take place before a sole arbitrator in Maricopa County, Arizona or, if our headquarters are no longer located in Maricopa County, Arizona, then the arbitration shall take place in the county in which our headquarters are located at the time the arbitration is commenced. You agree that conducting the arbitration where we are located is appropriate due to the multiple locations throughout the United States where our franchisees are located. The parties agree that the arbitrator shall be an attorney licensed to practice law in the United States and must have a minimum of five (5) years of experience in franchise law. Judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The arbitrator shall, in the award, allocate all of the costs and expenses of the arbitration, including the fees of the arbitrator and the reasonable attorneys' fees of the prevailing party, against the party who did not prevail. To the extent permitted by applicable law, no issue of fact or law shall be given preclusive or collateral estoppel effect in any other dispute, arbitration proceeding or litigation, except to the extent such issue may have been specifically determined in another proceeding between the parties. This agreement to arbitrate shall survive any termination or expiration of this Agreement, however effected. The parties agree that any arbitration shall be solely between them (including any affiliates) and shall not include as a party, by consolidation, joinder, or in any other manner, any other person or entity, unless both parties consent in writing. Both parties shall have the absolute right to refuse such consent. Further, the parties expressly waive any right to bring or participate in any class or other consolidated, joined or multi-party arbitration claim or proceeding, whether or not permissible under the AAA Commercial Arbitration Rules, including any claim brought on their behalf by an association of which it, he or she is a member. At the request of any party, the arbitration shall be conducted in a manner that maintains the confidentiality of the proceedings.

c. The arbitrator will issue a reasoned award, with findings of fact and conclusions of law. Actions to enforce an express obligation to pay monies may be brought under the Expedited Procedures of the AAA's Commercial Arbitration Rules. The Federal Arbitration Act shall govern, excluding all state arbitration laws. Arizona law will govern all other issues. With respect to discovery, the arbitrator shall require each party to make a good cause showing before any discovery exceeding that specifically authorized by the AAA Commercial Arbitration Rules will be granted.

d. Prior to the commencement of an arbitration proceeding, the parties must first submit any Dispute to non-binding mediation. At the request of any party, the mediation will be confidential. The mediation shall be conducted in Maricopa County, Arizona or in the county in which our headquarters are located at the time of mediation, unless the parties shall mutually agree to a different location. The parties to the mediation will share equally in its costs and expenses, except those costs and expenses incurred separately by each party, including counsel fees and expenses. The mediation process will be deemed "Completed" when the parties agree that it has been completed, the mediator declares that any impasse exists, or sixty

(60) days have elapsed since the date of the initiating party's notice to the other party that it is initiating the mediation process, whichever occurs first.

e. Notwithstanding anything contained in this Agreement to the contrary, the provisions of Sections 16.3a., 16.3b., 16.3c. and 16.3d. do not apply to a Dispute where: (i) we bring an action for an express obligation to pay monies, declaratory relief, preliminary or permanent equitable relief, any action at law for damage to our goodwill, the Confidential Information, the Proprietary Marks or for fraudulent conduct by you; or (ii) the delay resulting from the mediation process may endanger or adversely affect the public (for example, unhealthy, unsafe or unsanitary conditions would continue to exist). For such disputes, we may bring an action in any federal or state court having jurisdiction, whether for monetary damages, temporary preliminary and permanent injunctive relief or specific performance in addition to, and not exclusive of, any other remedies available to us. You hereby consent to and waive any objection or defense and agree not to contest venue, forum non conveniens or jurisdiction of such court or arbitration.

f. Disputes concerning the validity or scope of arbitration, including whether the Dispute is subject to arbitration, are beyond the authority of the arbitrator and will be determined by a court of competent jurisdiction pursuant to the Federal Arbitration Act, 9 U.S.C. §1 et seq., as amended from time to time.

g. Either party may appeal the final award of the arbitrator, if it is over One Hundred Thousand Dollars (\$100,000), to the appropriate U.S. District Court. The Court's review of the arbitrator's findings of fact will be under the clearly erroneous standard, and the Court's review of all legal rulings will be *de novo*. If it should be determined that this provision for federal court review is not enforceable, then either party may appeal the arbitrator's final award, if it is over One Hundred Thousand Dollars (\$100,000), to a panel of three (3) arbitrators chosen under AAA Optional Appellate Arbitration Rules, which will employ the same standards of review stated immediately above.

#### **16.4 Applicable Law and Forum; Waiver of Jury; Statute of Limitations.**

a. Except to the extent that the United States Trademark Act of 1946, as amended (15 U.S.C., § 1051 et seq.) or the franchising laws of any state that may be applicable, the laws of the State of Arizona govern all rights and obligations of the parties under this Agreement without regard to conflict of law. The parties agree, subject to the mandatory mediation and arbitration provisions of *Section 16.3*, that any appropriate state or federal court located in Maricopa County, Arizona has exclusive jurisdiction over any Dispute arising under or in connection with this Agreement and is the proper forum in which to adjudicate the case or controversy. Notwithstanding the foregoing any action initiated by us may, at our election, be brought in any jurisdiction where you are domiciled or that has jurisdiction over you. The parties hereto irrevocably submit to the jurisdiction of, and venue in, any such court, and hereby waive any objection or defense thereto. THE PARTIES AGREE THAT ALL DISPUTES SUBMITTED TO THE COURT PURSUANT TO THIS SECTION SHALL BE TRIED TO THE COURT SITTING WITHOUT A JURY, NOTWITHSTANDING ANY STATE OR FEDERAL CONSTITUTIONAL OR STATUTORY RIGHTS OR PROVISIONS.

b. Notwithstanding anything contained in this Agreement to the contrary, the parties agree that any claims under, arising out of, or related to, this Agreement must be brought within two (2) years of the date on which the underlying cause of action accrued, and the parties

hereby waive any right to bring any such action after such two (2)-year period, except for the collection of any unpaid Royalty Fee, Advertising Fee, and any other amount due to us or our affiliate.

c. **YOU HEREBY WAIVE THE RIGHT TO SEEK OR COLLECT PUNITIVE, MULTIPLE, CONSEQUENTIAL AND SPECIAL DAMAGES IN ANY FORUM, INCLUDING ARBITRATION. YOU HEREBY FURTHER WAIVE THE RIGHT, IF ANY, OF ANY ASSOCIATION OR MEMBERSHIP GROUP TO ASSERT CLAIMS ON YOUR BEHALF IN ANY ACTION.**

d. **YOU HEREBY WAIVE THE RIGHT TO ANY DAMAGES IN CONNECTION WITH OR RESULTING FROM THE WRONGFUL ISSUANCE OF AN INJUNCTION.**

e. The parties agree that the maximum damages that you may recover in connection with a wrongful termination of your franchise and this Agreement will be an amount equal to the product of:

(i) the annual net profit (as defined below) multiplied by

(ii) the lesser of:

(a) The number of full years existing between the date on which the franchise and this agreement were wrongfully terminated and the date on which the Term would have otherwise expired; or

(b) Three.

For purposes of this Agreement, the term "net profit" means an amount equal to the net profits of your Franchised Business, as reflected on your tax return filed with the Internal Revenue Service prior to such termination; provided, however, that if such tax return reflects the operations of your Franchised Business for a period less than one (1) year, such net profits will be annualized based upon the net profits reflected in such tax return.

#### **16.5 No Guarantee of Franchisee's Success.**

You have been informed of and acknowledge the highly competitive nature of the business involved, and agree that the successful operation of your Franchised Business will depend in part, upon your best efforts, capabilities, management, and efficient operation; as well as the general economic trend and other market conditions.

#### **16.6 Existence of Various Forms of Franchise Agreements.**

You acknowledge that our present and future franchisees operate under a number of forms of franchise agreements and consequently, our obligations and rights with respect to our various franchisees may differ materially in certain instances. The existence of different forms or versions of the franchise agreement does not entitle you to benefit from any such difference; nor does it operate to alter or amend the agreement of the parties set forth in this Agreement.

#### **16.7 Franchise Owner May Not Withhold Payments.**

You agree that you will not, on grounds of alleged or actual nonperformance or breach by us of any of our obligations under this Agreement, withhold payment of any Royalty Fee, Advertising Fee, amounts due to us or any of our affiliates for goods or services purchased by you, or any other amounts due to us or any of our affiliates.

#### **16.8 Remedies Are Cumulative.**

The rights and remedies of the parties to this Agreement are cumulative and not exclusive, and no exercise or enforcement by either party of any right or remedy under this Agreement shall preclude the exercise or enforcement by such party of any other right or remedy under this Agreement or otherwise available at law or in equity to such party.

#### **16.9 Interpretation.**

All the terms and provisions of this Agreement will be binding upon and inure to the benefit of the successors and assigns of the parties. However, nothing in this *Section 16.9* may be construed as our consent to the Transfer of this Agreement or any rights by you.

#### **16.10 Waiver.**

Our failure to insist upon the strict performance of any term, covenant or condition contained in this Agreement will not constitute or be construed as a waiver or relinquishment of our right to enforce thereafter any such term, covenant or condition and such term, covenant or condition will continue in full force and effect.

#### **16.11 Litigation Expense.**

If an action at law or suit in equity is brought to establish, obtain or enforce any right by either of the parties to this Agreement, the prevailing party in the suit or action, in the trial and appellate courts, will be entitled to recover from the non-prevailing party reasonable attorneys' fees, costs and expenses and disbursements incurred in such suit or action.

#### **16.12 No Third-Party Beneficiaries.**

This Agreement is not intended to benefit any other person or entity except the named parties hereto and no other person or entity shall be entitled to any rights hereunder by virtue of so-called "third-party beneficiary rights" or otherwise.

#### **16.13 Binding Effect; Modification.**

This Agreement is binding upon the parties to this Agreement and their respective executors, administrators, personal representatives, heirs, permitted assigns and successors in interest. No amendment, change, or modification of this Agreement shall be binding on any party unless executed in writing by you and us.

#### **16.14 Entire Agreement; Nature and Scope; Construction.**

This Agreement, all exhibits, attachments, addendums, and amendments, constitute the entire understanding and agreement between the parties, and there are no other oral or written

understandings or agreements between us and you relating to the subject matter of this Agreement. If required to be signed, any state specific addendums are incorporated herein by reference. Any representation not specifically contained in this Agreement made prior to entering into this Agreement does not survive subsequent to the execution of this Agreement. We and you have entered into this Agreement for the sole purpose of authorizing you to use the System licensed by this Agreement in the operation of the Franchised Business during the Term in which those specific items designated by us for sale and use in such locations are offered for sale and use in individual, face-to-face transactions with patrons visiting the Franchised Business (and equivalent telephone or mail transactions accepted as a convenience to that customer group). All consideration being furnished by us to you during the course of performance of this Agreement has been determined based on the limited rights and other limitations expressed herein. No other rights have been bargained for or paid for. This provision is intended to define the nature and extent of the parties' mutual contractual intent, there being no mutual intent to enter into contract relations, whether by agreement or by implication, other than as set forth in this Agreement. The parties further acknowledge that these limitations are intended to achieve the highest possible degree of certainty in the definition of the contract being formed, in recognition of the fact that uncertainty creates economic risks for both parties which, if not addressed as provided in this Agreement, would affect the economic terms of this bargain.

Nothing in this Agreement or in any related agreement is intended to disclaim the representations we made in the Disclosure Document. Nothing in this Agreement is intended, nor shall be deemed, to confer any rights or remedies upon any person or legal entity not a party hereto.

#### **16.15 Terminology.**

In addition to the terms defined elsewhere in this Agreement, the following terms defined below are incorporated in this Agreement by reference and shall be deemed to include all persons who succeed to the interest of the original, where applicable:

The term "affiliate" means any person who, directly or indirectly through one (1) or more intermediaries, controls, is controlled by, or is under common control with any person;

The term "Dollars" means United States Dollars and all amounts due under this Agreement shall be paid in United States currency;

The use of the terms "includes" and "including" in any provision of this Agreement followed by specific examples used shall not be construed to limit application of the provision to only the specific examples used;

The term "person" means any natural person, corporation, partnership, trust, other entity, association or form of organization;

The term "will" and "shall" shall be synonymous, and shall be mandatory and not discretionary, unless otherwise specifically provided herein; and

Any references to articles or sections refer to articles and sections in this Agreement unless specified otherwise.

#### **16.16 Counterparts.**

This Agreement may be executed in one (1) or more original counterparts, and all of which, when taken together, shall be deemed to be one (1) original Agreement. A fully-executed copy of this Agreement shall be of the same force and effect as the original.

#### **16.17 Offerings.**

If you are a corporation, partnership or other entity, and if you intend to offer securities, partnership interests or other ownership interests in you through any public or private offering, you shall not use any Proprietary Marks in such public or private offering, except to reflect your franchise relationship with us; nor shall you misrepresent your relationship with us by any statement or omission of an essential statement. You shall indemnify and hold us harmless from any liability in connection with such offering. Nothing in the foregoing shall modify the provisions of *Article 12*, and no such offering shall be made without first complying with any applicable provisions of *Article 12*.

#### **16.18 Time.**

Time is of the essence of each and every provision of this Agreement.

#### **16.19 Force Majeure.**

Neither of the parties will be liable for loss or damage or be deemed to be in breach of this Agreement if the failure to perform the party's obligations results from: (a) transportation shortages, inadequate supply of equipment, merchandise, supplies, labor, material or energy, or the voluntary foregoing of the right to acquire or use any of the foregoing in order to accommodate or comply with the orders, requests, regulations, recommendations or instructions of any government or any department or agency thereof; or (b) acts of God. Any delay resulting from any of these causes will extend performance accordingly or excuse performance, in whole or in part, as may be reasonable, except that no such cause will excuse payments of amounts owed at the time of such occurrence or payment of the Royalty Fee and all other amounts due to us and our affiliates thereafter.

#### **16.20 Plurals and Captions.**

Words in the singular number include the plural when the context requires (and vice-versa). The table of contents and the captions are inserted only for convenience and are not a part of this Agreement or a limitation of the scope of the particular article or section to which each refers.

#### **16.21 Joint and Several Liability.**

If you consist of two (2) or more individuals, whether in the form of separate individuals or a business entity controlled by the individuals, then each individual will be jointly and severally liable under the provisions of this Agreement.

#### **16.22 Trademark Notice.**

All trademarks referenced in this Agreement are those of their respective owners.

### **16.23 No Accord or Satisfaction.**

If you pay, or we otherwise receive, a lesser amount than the full amount provided for under this Agreement for any payment due hereunder, such payment or receipt shall be applied against the earliest amount due us. In addition, if interest or late fees are owed, we may apply any amounts paid to the late fees and interest before such amounts are applied to the principal amount owed. We may accept any check or other payment in any amount without prejudice to our right to recover the entire balance of the amount due or to pursue any other right or remedy. No endorsement or statement by you on any check or payment or in any letter accompanying any check or payment or elsewhere shall constitute or be construed as an accord or satisfaction.

## **ARTICLE 17. ACKNOWLEDGMENTS AND REPRESENTATIONS OF FRANCHISEE**

### **17.1 Certain Representations and Warranties of Franchisee.**

You represent and warrant that the following statements are true and complete as of the Effective Date:

a. You do not seek to obtain the Franchised Business for speculative or investment purposes and have no present intention to sell or transfer or attempt to sell or transfer the Franchised Business except as previously approved by Franchisor and subject and conditioned to Article 12 of this Agreement.

b. You understand and acknowledge the value to the System of uniform and ethical standards of quality, appearance and service described in and required by the Confidential Manual and the necessity of operating the Franchised Business under the System Standards. You represent that you have the capabilities, professionally, financially and otherwise, to comply with our System Standards.

c. If you are a corporation, limited liability company, partnership, or other form of entity, you are duly incorporated, organized, or formed and are qualified to do business in the state and any other applicable jurisdiction within which the Franchised Business is located, and you are and shall remain duly organized and in good standing during the Term.

d. You represent and warrant that: (i) if you are an individual, you are; or (ii) if you are an entity, that each of your owners, shareholders, partners, and members are, a United States citizen or a lawful resident alien of the United States.

e. All financial and other information that you have provided to us in connection with your application for this franchise is true and accurate.

f. The execution of this Agreement by you will not constitute or violate any other agreement or commitment to which you are a party.

g. Any individual executing this Agreement on your behalf is duly authorized to do so and the Agreement shall constitute your valid and binding obligation and, if applicable, all of your partners, members, or shareholders, if you are a partnership, limited liability company, or corporation.



h. You have, or if you are a partnership, corporation or other entity, your partners or principals have, carefully read this Agreement and all other related documents to be executed by you concurrently or in conjunction with the execution hereof; that you have obtained, or had the opportunity to obtain, the advice of counsel in connection with the execution and delivery of this Agreement; that you understand the nature of this Agreement and that you intend to comply with and be bound by this Agreement.

i. You have read and understand the information and disclosures made in the Disclosure Document provided to you as acknowledged in *Section 17.3e*. You understand and acknowledge that: (i) estimates for initial start-up expenses are estimates only and there can be additional start-up expenses; and (ii) your sales may differ substantially from any sales provided in Item 19 of the Disclosure Document, and there is no assurance that your sales will meet or exceed any sales listed in Item 19 of the Disclosure Document. You have had the opportunity to and have consulted or elected not to consult with your attorney, accountant and business advisors before entering into this Agreement.

j. You understand and agree that, while not applicable in every case, our past experience indicates that owner-operated restaurants generally perform better than absentee owners with hired managers. The food business is a personal business and is dependent upon your business skill and judgment. This includes your choice of employees. Your skill in hiring the right people to work in your Franchised Business is very important in determining whether people decide to purchase menu items from your Franchised Business or from another restaurant in the same vicinity.

k. You understand and agree that ownership of a franchise and the Franchised Business carries certain risks. These risks include the loss of your initial investment, other continued financial losses such as rent payments due under lease obligations and other contractual obligations, the loss of your time and energy in starting up and running your Franchised Business, and loss of earnings and investment income from your investment in the Franchised Business. You understand and agree that the Franchised Business may make money and may lose money and are entering this business venture with this express understanding. You are not relying upon anything which is not contained within this Agreement or the Disclosure Document in determining and deciding to become a franchisee.

l. Notwithstanding the foregoing, you understand and agree that the System must not remain static if it is to meet (without limitation) presently unforeseen changes in technology, competitive circumstances, demographics, populations, consumer trends, social trends and other market place variables, and if it is to best serve the interests of us, you and all other franchisees. Accordingly, you expressly understand and agree that we may from time to time change the components of the System, including altering the products, programs, services, methods, standards, forms, policies and procedures of that System; abandoning the System altogether in favor of another system in connection with a merger, acquisition or other business combination or for other reasons; adding to, deleting from or modifying those products, programs and services which your Franchised Business is authorized and required to offer, modifying or substituting entirely the equipment, signage, trade dress, décor, color schemes and uniform System Standards and specifications and all other unit constructions, design, appearance and operation attributes which you are required to observe under this Agreement; and, abandoning, changing, improving, modifying or substituting the Proprietary Marks. You expressly agree to comply with any such modifications, changes, additions, deletions, substitutions and alterations. You shall accept, use and effectuate any such changes or

modifications to, or substitution of, the System as if they were part of the System at the time that this Agreement was executed. Except as provided herein, we shall not be liable to you for any expenses, losses or damages sustained by you as a result of any of the modifications contemplated hereby.

m. You represent that neither you nor any of your affiliates, officers, directors, managers, members, or partners (as applicable) or funding sources are subject to U.S. Executive Order 13224, identified on the U.S. Department of the Treasury's Office of Foreign Assets Control Specially Designated National and Blocked Persons list, or any terrorist list or other blocked persons list. In addition, you represent that you have not received funding from, nor are you owned, controlled, or acting on behalf of the government of any country that is subject to an embargo by the United States, any foreign government official, political party or international organization, and that no foreign government or government official, political party or international organization has any financial interest in the Franchised Business or any monies earned by the Franchised Business.

n. You represent, warrant and agree that you, your officers, directors, managers, members, or partners (as applicable) will each at all times conduct themselves in an ethical manner and avoid any activity that might result in a violation of the U.S. Foreign Corrupt Practices Act, Anti-Terrorism Laws, or any other applicable anti-corruption or bribery laws.

## **17.2 Additional Information Respecting Franchisee.**

a. You have delivered to us or will deliver concurrent herewith, complete and accurate copies of all of your organizational documents, including all partnership agreements, certificates of partnership, articles of organization, operating agreements, articles or certificates of incorporation, by-laws and shareholder agreements, including all amendments, side letters and other items modifying such documents.

b. You have completed and signed the Franchisee Questionnaire attached hereto as Exhibit 1 and incorporated herein by reference.

## **17.3 Acknowledgements of Franchisee.**

a. You acknowledge that you have conducted an independent investigation of the business venture contemplated by this Agreement and recognize that this business venture involves substantial business risks and will largely depend upon your ability. Other than the financial performance representation contained in Item 19 of the Disclosure Document, if any, we expressly disclaim making, and you acknowledge that you have not received or relied on, any warranty or guarantee, express or implied, as to the potential volume, profits, or success of the Franchised Business contemplated by this Agreement.

Franchisee Initials \_\_\_\_\_/\_\_\_\_\_

b. You hereby certify that none of our employees, no other person speaking on our behalf, and no Area Representative, if applicable, have: (i) made any oral, written, visual, or other representation, agreement, 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 other than any financial performance representation contained in Item 19 of the Disclosure Document; or (ii) made any oral, written, visual, or other representation, agreement, 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 *Frullati Cafe & Bakery* franchise, that is different from, contrary to, or not contained in the *Frullati Cafe & Bakery* Disclosure Document; or (iii) made any representation, agreement, commitment, claim or statement to you that is different from, contrary to, or not contained in, the *Frullati Cafe & Bakery* Disclosure Document. You acknowledge and agree that we do not make or endorse, nor do we allow any of our employees or other persons speaking on our behalf to make or endorse, any additional oral, written, visual, or other representation, agreement, commitment, claim, or statement that states or suggests any level or range of actual or potential sales, costs, income, expenses, profits, cash flow, or otherwise with respect to a *Frullati Cafe & Bakery* franchise other than any financial performance representation contained in Item 19 of the Disclosure Document.

Franchisee Initials \_\_\_\_/\_\_\_\_

c. You acknowledge that you have received, read and understand this Agreement and the related exhibits, attachments and agreements and that we have afforded you sufficient time and opportunity to consult with advisors selected by you about the potential benefits and risks of entering into this Agreement.

Franchisee Initials \_\_\_\_/\_\_\_\_

d. You understand that this Agreement, including any amendments and exhibits, contains the entire agreement between the parties concerning the Franchised Business, and that any prior oral or written statements that are not set out in this Agreement, including any amendments, exhibits and attachments will not be binding. You acknowledge and agree that we do not permit any representations, agreements, commitments, claims, or statements or approve any changes in this Agreement or any of the amendments, exhibits and attachments to this Agreement, except by means of a written amendment or addendum signed by all parties to this Agreement. You acknowledge that nothing in this Agreement or in any related agreement is intended to disclaim the representations we made in the Disclosure Document.

Franchisee Initials \_\_\_\_/\_\_\_\_

e. You acknowledge receipt of our Disclosure Document fourteen (14) days prior to the execution of this Agreement or your payment of any monies to us or our agent (or sooner if required by applicable state law).

Franchisee Initials \_\_\_\_/\_\_\_\_

f. You acknowledge that, other than what was previously disclosed to you in our Disclosure Document to which you acknowledge receipt thereof, you have not: (1) received any financial statements for any of our parent or affiliated companies; or (2) relied on the financial condition of any of our parent or affiliated companies when making the decision to purchase the

Franchised Business.

Franchisee Initials \_\_\_\_/\_\_\_\_

g. You acknowledge, as detailed in *Section 2.3*, that you must, at your own cost and expense, use only our designated and approved Design Architect for the design of your Franchised Business.

Franchisee Initials \_\_\_\_/\_\_\_\_

h. You acknowledge that the following is your Area Representative (if applicable):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Franchisee Initials \_\_\_\_/\_\_\_\_

i. If an Area Representative is identified in *Section 17.3h.*, you make the following representations with respect to the Area Representative:

(i) You have met or spoken to only \_\_\_\_\_, the Area Representative;

(ii) Other than any financial performance representation contained in Item 19 of the Disclosure Document, at no time did the Area Representative make any promises or statements, or projections or forecasts, or estimates or warranties or representations or other statement or agreement concerning profits or expenses or costs or actual or projected sales of any kind directly or by implication about *Frullati Cafe & Bakery* restaurants or about the Franchised Business that we desire to develop under this Agreement or about obtaining the confirmed Location or about any other matter other than what is contained in the *Frullati Cafe & Bakery* Disclosure Document or *Frullati Cafe & Bakery* restaurant brochure.

(iii) You acknowledge that you have not received any written materials from us or the Area Representative except for the *Frullati Cafe & Bakery* brochure and Disclosure Document; and

If there are any exceptions to *Sections 17.3i.(i) – (iii)*, identify the item number and list the exception here:

\_\_\_\_\_  
\_\_\_\_\_

Franchisee Initials \_\_\_\_/\_\_\_\_

j. You acknowledge there have been no other inducements made with any person or entity, including the Identified Area Representative, encouraging you to purchase the Franchised Business, such as a “side deal” or other promise or agreement not included in the Agreement.

Franchisee Initials \_\_\_\_/\_\_\_\_

k. You acknowledge and understand that *Article 6* covers the use of the *Frullati Cafe & Bakery* trademark and prohibition on registration of our Proprietary Marks. You acknowledge the ownership of the Proprietary Marks by us, and you agree that during the Term and after its expiration or termination, you will not, directly or indirectly, apply to register, register or otherwise seek to use or control or in any way use "*Frullati Cafe & Bakery*", or any other of our proprietary marks, or any confusingly similar form or variation, in any place or jurisdiction either within or outside the United States; nor will you assist any others to do so. You further agree that your corporate, partnership or other entity name will not include any of the Proprietary Marks or phrases similar thereto as a part thereof. Furthermore, you acknowledge and understand that you are prohibited from filing applications for the registration of our trade names used in connection with your Franchised Business.

Franchisee Initials \_\_\_\_/\_\_\_\_

l. You acknowledge and understand that in the event you have registered a trade name or entity name containing our trademarks, you will be required to immediately discontinue all further use of the trademark, all Proprietary Marks and any other marks or names confusingly similar thereto in your entity name. Furthermore, you will take such action as may be required to amend your entity name and affirmatively cancel or terminate and dissolve all fictitious or assumed names or other registrations that contain our Proprietary Marks. In the event you do not comply and execute any and all instruments and documents necessary to protect and maintain our interests in the Proprietary Marks, we will then have power of attorney to execute any documents necessary to protect and maintain our interests in the Proprietary Marks.

Franchisee Initials \_\_\_\_/\_\_\_\_

## **ARTICLE 18. SUBMISSION OF AGREEMENT**

The submission of this Agreement to you does not constitute an offer and this Agreement shall become effective only upon the execution thereof by the parties. THIS AGREEMENT SHALL NOT BE BINDING ON US UNLESS AND UNTIL IT SHALL HAVE BEEN ACCEPTED AND SIGNED BY OUR PRESIDENT OR ONE OF OUR OTHER EXECUTIVE OFFICERS.

***[SIGNATURE PAGE FOLLOWS]***

**IN WITNESS WHEREOF**, each party hereto, by and through its respective representative with full rights, power and authority to enter into and bind his or her respective party without further consent or approval of any kind, has duly executed and delivered this Agreement as of the Effective Date.

**FRANCHISEE:**

\_\_\_\_\_, a(n) \_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

By: \_\_\_\_\_  
[Name, Title]

**FRANCHISOR:**

KAHALA FRANCHISING, L.L.C., an  
Arizona limited liability company

By: \_\_\_\_\_  
[Name, Title]

**PERSONAL ACCEPTANCE OF SECTIONS 7.1, 7.2, 14.6, AND 14.8**

Each of the undersigned individually and personally accepts and agrees to be bound by the provisions of Sections 7.1, 7.2, 14.6, and 14.8 of the foregoing Franchise Agreement.

\_\_\_\_\_, \_\_\_\_\_, an individual  
(signature) Date: \_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_, an individual  
(signature) Date: \_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_, an individual  
(signature) Date: \_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_, an individual  
(signature) Date: \_\_\_\_\_

**EXHIBIT 1**

**FRANCHISEE QUESTIONNAIRE**



## FRANCHISEE QUESTIONNAIRE

The undersigned is in the process of negotiating and consummating the purchase of a Kahala Franchising, L.L.C. ("Kahala") Franchise Agreement ("Agreement") for Frullati Cafe & Bakery.

We have been informed that since the laws of franchising limit the type of information that may be provided to prospective franchisees, the Kahala Legal Department has established a compliance audit program to ensure that all pre-sale negotiations have been lawfully completed.

We understand that if improper sales practices have occurred, the Kahala Legal Department, with appropriate notice prior to Agreement execution, will be able to either rectify and cure the violation, or in the alternative, reject the franchise sale.

In order to comply with your compliance audit program we hereby make the following acknowledgments and representations concerning events during the course of the negotiations and offer of sale of the Agreement knowing that Kahala will rely thereon in agreeing to accept the franchise sale.

1. In the course of the negotiations and the offer and sale of the Agreement we have met or spoken only to: \_\_\_\_\_

List any additional people: \_\_\_\_\_  
\_\_\_\_\_

2. Did any of the individuals identified in paragraph number one (1) or any other person or entity acting on behalf of or at the direction of Kahala make any promises, statements, projections, forecasts, estimates, warranties or representations or other statement or agreement (a) concerning the actual or potential financial performance of the franchised or franchisor owned-outlets, profits or expenses or actual or projected sales of any kind directly or by implication concerning Frullati Cafe & Bakery restaurants or about the Frullati Cafe & Bakery restaurant that is to be developed or about obtaining the approved location or about any other matter relating to the prospect for financial performance to the prospective franchisee, or (b) about any other matter other than what is contained in the Franchise Disclosure Document ("FDD"), and as stated in ITEM 19 of the Frullati Cafe & Bakery FDD?

Check one:                    ☐ Yes                    ☐ No

If yes, please state in detail the oral, written, or visual claim or representation:

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3. Other than what was previously disclosed to you in the Frullati Cafe & Bakery FDD to which you acknowledge receipt thereof, did you: (1) receive any financial statements for any of Franchisor's parent or affiliated companies; or (2) rely on the financial condition of any of Franchisor's parent or affiliated companies when making the decision to purchase the Franchised Business?

Check one:                    ☐ Yes                    ☐ No

If yes, please comment, in detail:

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4. Have there been any other inducements made with any person or entity encouraging you to purchase the Agreement such as a “side deal” or other promise or agreement not included in the Agreement?

Check one: ☐ Yes ☐ No

If yes, please comment, in detail:

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5. Did you receive a copy of the Frullati Cafe & Bakery FDD at least fourteen (14) calendar days prior to signing any binding agreement with, or making a payment to Kahala or any of its affiliates in connection with the proposed franchise sale? If you reside in New York, or if the location of your prospective franchise is located within one of those states, did you receive a copy of the Frullati Cafe & Bakery FDD at the earlier of (i) the first personal meeting; or (ii) ten (10) business days prior to signing any binding agreement or payment of any consideration? If you reside in Michigan or Washington, or if the location of your prospective business is located within one of those states, did you receive the Frullati Cafe & Bakery FDD at least ten (10) business days before the execution of any binding franchise or other agreement or the payment of any consideration?

Check one: ☐ Yes ☐ No

If no, please comment:

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6. Have you received, studied, and reviewed carefully the Frullati Cafe & Bakery FDD and Franchise Agreement?

Check one: ☐ Yes ☐ No

If no, please comment:

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7. Do you understand that the license granted in the Franchise Agreement is for the right to operate a franchise at the authorized location only and includes no exclusive area or protected territory, and that we and our affiliates have the right to issue franchises or operate competing businesses for or at locations, as we may determine, near your authorized location? In addition, do you understand that these locations may include freestanding buildings, strip centers, shopping malls, and other similar locations, as well as non-traditional locations such as office buildings, petroleum stations, food courts, transportation terminals, sports facilities, airports, hotels, hospitals, and college and university student unions, dormitories, and food service areas?

Check one:            ☐ Yes                      ☐ No

If no, please comment:

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8. Do you understand that the success or failure of your franchise will depend in large part upon your adherence to the Frullati Cafe & Bakery System Standards, your skills and experience, your business acumen, your location, the local market for products under our trademarks, interest rates, the economy, inflation, the number of employees you hire and their compensation, competition, and other economic and business factors? Further, do you understand that the economic and business factors that exist at the time you open your franchise may change?

Check one:            ☐ Yes                      ☐ No

If no, please comment:

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*All representations requiring prospective franchisees to assent to a release, estoppel or waiver of liability are not intended to nor shall they act as a release, estoppel or waiver of any liability incurred under the Maryland Franchise Registration and Disclosure Law.*

[NAME OF FRANCHISEE]

By: \_\_\_\_\_  
      [Name]  
      [Title]

\_\_\_\_\_ Date

**EXHIBIT F-1**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**Guaranty of Franchise Agreement**

## GUARANTY OF FRANCHISE AGREEMENT

This GUARANTY OF FRANCHISE AGREEMENT ("Guaranty") is entered into as of \_\_\_\_\_ by each of the undersigned ([individually and collectively, ]"Guarantor") in favor of KAHALA FRANCHISING, L.L.C., an Arizona limited liability company ("Franchisor"). To the extent this Guaranty contains terms and conditions that differ from those contained in the Franchise Agreement (as defined in Recital A below), this Guaranty shall control. All capitalized terms not otherwise defined in this Guaranty will have the same meanings ascribed to such terms in the Franchise Agreement.

### Recitals

A. Franchisor and \_\_\_\_\_, a(n) \_\_\_\_\_ ("Franchisee") entered into a Franchise Agreement dated \_\_\_\_\_, 20\_\_\_\_[, as amended,] for a *Frullati Cafe & Bakery* restaurant located at \_\_\_\_\_ ("Franchise Agreement").

B. Guarantor is a shareholder, partner, member, or other person or entity interested in effecting the grant or transfer of the Franchise Agreement.

C. Without this Guaranty, Franchisor cannot be assured that there are sufficient assets to operate the franchise or to protect Franchisor in the event of a default by Franchisee.

D. Franchisor is willing to enter into the Franchise Agreement only if Guarantor personally guarantees faithful performance of all the terms of the Franchise Agreement.

E. Guarantor acknowledges Guarantor has received and read the Franchise Agreement and agrees to be bound to the obligations in this Guaranty with regard to the Franchise Agreement.

### Agreement

1. In consideration of the above recitals, Guarantor personally guarantees, for the benefit of Franchisor, its parent, subsidiary, affiliates and successors and assigns, the prompt and complete performance of all the covenants and conditions contained in the foregoing Franchise Agreement.

2. This Guaranty is effective until all terms of the Franchise Agreement have been fully and completely performed by Franchisee. No release of Franchisee or discharge of Franchisee under bankruptcy law, or any other law, shall impair or effect the obligations of Guarantor to Franchisor hereunder.

3. Franchisor is not required to proceed first against the Franchisee, but may proceed first against the Guarantor alone or concurrent with proceeding against Franchisee. The obligations of Guarantor hereunder are absolute and unconditional.

4. Franchisee and Franchisor may from time to time alter or modify the Franchise Agreement between themselves, possibly changing or increasing the extent of Guarantor's obligation under this Guaranty. Guarantor consents to any and all modifications or amendments of the Franchise Agreement and the documents and Operations Manuals referred to in the Franchise Agreement, without requiring notice to Guarantor or Guarantor's consent.

5. Guarantor agrees specifically to be bound by the confidentiality requirements and the covenant against competition in the Franchise Agreement.

6. Guarantor waives notice of acceptance of this Guaranty and notice of non-performance or non-payment by Franchisee of any of its obligations or liabilities under the Franchise Agreement.

7. A default by Guarantor under this Guaranty will be deemed a default under all Franchise Agreements guaranteed by the Guarantor.

8. Guarantor agrees to pay all attorneys' fees, costs and expenses (including any and all Royalty Fees and Advertising Fees and associated interest on such amounts, that are determined to be owing to Franchisor due to underreporting by Franchisee) incurred by Franchisor in enforcing this Guaranty, whether or not suit or action is filed, and if suit or action is filed, then through trial and all appeals, and also in any proceedings or matter in Bankruptcy Court; Guarantor assumes all liability for all losses, costs, attorneys' fees, and expenses that Franchisor incurs as a result of a default by Franchisee, including those fees and expenses incurred in a bankruptcy proceeding involving Franchisee.

9. Guarantor hereby agrees that upon notice of default or upon an uncured default of the Franchise Agreement or any other agreement between Guarantor (or a legal entity thereof) and Franchisor or its affiliates, and with no prior notice, Guarantor consents to Franchisor's (or any of its affiliate's or third-party contractor's) acquisition and use of non-business consumer credit reports on Guarantor in order to evaluate as necessary the financial condition of Guarantor as principal, member, manager, franchisee, and/or guarantor in connection with the collection of monetary obligations as contemplated by the Franchise Agreement, this Guaranty, a promissory note, or any other agreements between Guarantor (or a legal entity thereof), and Franchisor or its affiliates. Guarantor as an individual or individuals hereby knowingly consent to the use of such credit reports consistent with the Federal Fair Credit Reporting Act as contained in 15 U.S.C. § 1681 et seq.

10. This Guaranty is personal to Guarantor and the obligations and duties imposed herein may not be delegated or assigned; provided, however, that this Guaranty shall be binding upon the successors, assigns, heirs, estate, trustee(s) and personal representative(s) of Guarantor. This Guaranty shall inure to the benefit of Franchisor, its affiliates, successors and assigns.

11. In the event that any one or more provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Guaranty shall be construed to bind Guarantor to the maximum extent permitted by law that is subsumed within the terms of such provision as though it were separately articulated herein.

12. This Guaranty shall be interpreted and construed under the laws of the State of Arizona, which laws shall prevail in the event of any conflict of law. Any appropriate state or federal court located in Maricopa County, Arizona has exclusive jurisdiction over any case or controversy arising under or in connection with this Agreement and is the proper forum in which to adjudicate the case or controversy, and the parties hereto irrevocably submit to the jurisdiction of any such court. THE PARTIES AGREE THAT ALL DISPUTES ADMITTED TO THE COURT PURSUANT TO THIS SECTION 12 SHALL BE TRIED TO THE COURT SITTING WITHOUT A JURY, NOTWITHSTANDING ANY STATE OR FEDERAL CONSTITUTIONAL OR STATUTORY RIGHTS OR PROVISIONS.

13. If Guarantor consists of two (2) or more persons, then each person will be jointly and severally liable under the provisions of this Guaranty.

14. [Guarantor, \_\_\_\_\_[include name here], represents that he or she is not married as of the Effective Date.]

15. Guarantor acknowledges that (i) it is a condition to the granting of the Franchise Agreement to Franchisee that Guarantor shall execute and deliver this Guaranty to Franchisor, (ii) that Franchisor has entered into the Franchise Agreement in reliance upon the agreement of Guarantor to do so, and (iii) that, as owner of the Franchisee, Guarantor has received adequate consideration to support its execution of this Guaranty. This Guaranty does not grant or create in Guarantor any interests, rights or privileges in any franchise or Franchise Agreement.

16. This Guaranty may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Guaranty and all of which, when taken together, shall be deemed to constitute one and the same Guaranty.

17. Words in the singular number include the plural when the context requires (and vice-versa), and defined terms include the possessive when the context requires (and vice-versa).

**GUARANTOR:**

\_\_\_\_\_  
[Name], an individual

\_\_\_\_\_  
[Name], an individual

\_\_\_\_\_  
[Name], an individual

\_\_\_\_\_  
[Name], an individual

**EXHIBIT F-2**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**Non-Disclosure and Non-Competition Agreement**



## NON-DISCLOSURE AND NON-COMPETITION AGREEMENT

This NON-DISCLOSURE AND NON-COMPETITION AGREEMENT (“Agreement”) is made and entered into as of the last date set forth below (“Effective Date”), by and between KAHALA FRANCHISING, L.L.C., an Arizona limited liability company, having an office located at 9311 East Via De Ventura, Scottsdale, Arizona 85258 (“Franchisor”) and the undersigned, \_\_\_\_\_, an individual, \_\_\_\_\_, having an address of \_\_\_\_\_. Franchisor and the undersigned may also be referred to in this Agreement individually as “Party” and collectively as “Parties.”

### Recitals

A. Franchisor is in the business of licensing franchise systems in the quick service restaurant market and is the owner and/or licensee of certain proprietary, confidential and/or trade secret information related to its business.

B. The undersigned is the spouse of the franchisee or spouse of an employee, officer, director, member, manager, partner or owner of an interest in the equity or voting interests of [Franchisee], the “Franchisee” under and signatory to, that certain “Franchise Agreement” dated \_\_\_\_\_, 20\_\_ entered into with Franchisor granting Franchisee the right to own and operate one *Frullati Cafe & Bakery* restaurant (“Franchised Business”) on the terms and conditions stated therein.

C. The undersigned acknowledges that, in order to induce Franchisor to enter into the Franchise Agreement, Franchisee must cause certain persons who are the spouse of the franchisee or spouse of an employee, officer, director, member, manager, partner or owner of an interest in the equity or voting interests of Franchisee to execute this Agreement for the benefit of Franchisor.

NOW, THEREFORE, in consideration of the foregoing and of the representations, terms, covenants, conditions and agreements set forth in this Agreement and intending to be legally bound, the Parties hereby agree as follows:

### Agreement

1. **Definition of Confidential Information.** “Confidential Information” includes, without limitation, knowledge and information which Franchisee knows, or should reasonably know, Company regards as confidential concerning: (i) formulation, ingredients, raw materials, recipes, and food preparation processes for Proprietary Products, Non-Proprietary Products, Collateral Logo Merchandise or other items or services that Company permits Franchisee to sell at or from the Franchised Business; (ii) Company’s supply relationships, inventory requirements and control procedures; (iii) pricing, sales, profit performance or other results of operations of any and all *Frullati Cafe & Bakery* restaurants, including the Franchised Business; (iv) demographic data for determining sites and territories; (v) the results of customer surveys and promotional programs; and (vi) in general, business methods, trade secrets, specifications, customer data, cost data, procedures, information systems and knowledge about the operation of *Frullati Cafe & Bakery* restaurants or the *Frullati Cafe & Bakery* System, whether it is now known or exists or is acquired or created in the future, and whether or not the information is included in the

Confidential Manual or Franchisor expressly designates the information as confidential. Confidential Information does not include (x) information which the undersigned can demonstrate came to his or her attention independent of entering into this Agreement; and (y) information that Franchisor agrees is, or has become, generally known in the public domain, except where public knowledge is the result of the undersigned's wrongful disclosure (whether or not deliberate or inadvertent).

2. **Non-Disclosure of Confidential Information.**

a. The undersigned agrees not to possess, obtain, or seek to obtain, either directly or indirectly, any Confidential Information from any person or other source, unless authorized in writing by Franchisor. In the event that the undersigned does possess, or comes to possess, any Confidential Information, the undersigned shall immediately notify Franchisor of that fact and return the Confidential Information, and all copies and portions thereof, to Franchisor.

b. The undersigned agrees not to disclose, duplicate, sell, reveal, divulge, publish, furnish or communicate, either directly or indirectly, any Confidential Information to any other person, firm or entity, unless authorized in writing by Franchisor.

c. The undersigned agrees not to use any Confidential Information for his or her own personal gain or to further the purposes of others, whether or not the Confidential Information has been conceived, originated, discovered or developed, in whole or in part, by the undersigned or represents the undersigned's work product. To the extent the undersigned has assisted in the preparation of any information that Franchisor considers Confidential Information or has prepared or created such information by himself or herself, the undersigned hereby assigns any rights that he or she may have in such information as creator to Franchisor, including all ideas made or conceived by the undersigned.

d. The undersigned acknowledges that the use, publication or duplication of the Confidential Information for any purpose not authorized by this Agreement constitutes an unfair method of competition by the undersigned.

e. The provisions of this Section 2 shall apply forever, surviving the expiration or termination of all contracts between Franchisor and Franchisee.

f. The provisions concerning non-disclosure of Confidential Information shall not apply if disclosure of Confidential Information is legally compelled in a judicial or administrative proceeding, provided the undersigned shall have used its best efforts, and shall have afforded Franchisor the opportunity, to obtain an appropriate protective order or other assurance satisfactory to Franchisor of confidential treatment for the information required to be disclosed. If the undersigned is required to disclose Confidential Information, whether in whole or in part, to any third party pursuant to a subpoena or a court or agency order, the undersigned agrees to only disclose the minimum amount of Confidential Information required to be disclosed.

3. **Agreements Regarding Competition.**

a. For as long as Franchisee is a party to any Franchise Agreement with Franchisor, the undersigned agrees that he or she shall not, directly or indirectly, own (neither beneficially nor of record), engage in or render services to, whether as an investor, partner, lender, director, officer, manager, employee, consultant, representative or agent, any Competitive Business (as defined in *Section 3.f* below); provided, however, the restrictions stated in this paragraph shall not apply to the undersigned after two (2) years from the date that the undersigned ceases to be a spouse of the Franchisee or spouse of an employee, officer, director, member, manager, partner or owner of an interest in the equity or voting interests of Franchisee or otherwise associated in any capacity with Franchisee.

b. For a period of two (2) years after expiration or termination of the last Franchise Agreement between Franchisee and Franchisor, it shall be a breach of this Agreement for the undersigned to directly or indirectly, own, engage in or render services to, whether as an investor, partner, lender, director, officer, manager, employee, consultant, representative or agent, any Competitive Business; provided, however, the restrictions stated in this paragraph shall not apply to the undersigned after two (2) years from the date that the undersigned ceases to be a spouse of the Franchisee or spouse of an employee, officer, director, member, manager, partner or owner of an interest in the equity or voting interests of Franchisee or otherwise associated in any capacity with Franchisee.

c. The undersigned may engage in any activities not expressly prohibited by this Agreement. However, in connection with permitted activities, the undersigned shall not (i) use the Confidential Information or any of *Frullati Cafe & Bakery* intellectual property including without limitation, any and all rights currently existing or that may come into being which Franchisor or Franchisor's affiliates now own or later acquire in *Frullati Cafe & Bakery* trademarks, proprietary products and/or Confidential Information arising under any patent, trade secret, copyright, trade dress, design protection, database protection, trademark, or similar laws of the United States or any other country in which Franchisor or its affiliates operate (collectively "*Frullati Cafe & Bakery Intellectual Property*"); (ii) engage in any conduct or activity which suggests or implies that Franchisor endorses, or authorizes, the undersigned's activities; or (iii) induce any person to engage in conduct prohibited by this Agreement.

d. The undersigned acknowledges that the covenants regarding competition are independent of the other covenants and provisions of this Agreement. If any provision regarding competition is void or unenforceable under California law, but would be enforceable as written or as modified under the laws of the state in which the Franchised Business is located (the "Local Laws"), the parties agree that the Local Laws shall govern any dispute concerning or involving the construction, interpretation, validity or enforcement of the provisions regarding competition. Franchisee expressly authorizes Franchisor to conform the scope of any void or unenforceable covenant in order to conform it to the Local Laws.

e. For purposes of this *Section 3*, "*Frullati Cafe & Bakery System*" means, collectively, all of the distinctive business methods, proprietary products, Confidential Information and *Frullati Cafe & Bakery Intellectual Property* which Franchisor now or in the

future authorizes or requires Franchisee to use as a condition of the Franchise Agreement, as Franchisor may modify in its sole discretion at any time.

f. For purposes of this *Section 3*, “Competitive Business” means a business which is primarily engaged in the sale of gourmet sandwiches and salads, and all variations thereof within a geographical area consisting of: (1) for as long as Franchisee is a party to any Franchise Agreement with Franchisor, anywhere including the location of the Franchised Business; and (2) after expiration or termination of the last Franchise Agreement between Franchisee and Franchisor, within a ten (10) mile radius from the location of the Franchised Business or location of any *Frullati Cafe & Bakery* restaurant of Franchisor, Franchisor’s third-party licensees or Franchisor’s third-party franchisees. The term “*Frullati Cafe & Bakery* restaurant” includes not only the restaurants now in existence, but also those established at a later date. The term of this covenant will be extended by any time consumed in litigation to enforce it in both trial and appellate courts. If a court of competent jurisdiction determines that the restrictions in this paragraph are excessive in time, geographic scope, or otherwise, the court may reduce the restriction to the level that provides the maximum restriction allowed by law.

g. For purposes of this *Section 3*, “Confidential Manual” refers collectively to all of the confidential operating manuals, recipe manuals, operations guides and other instructions loaned or delivered to the Franchisee during the term of the Franchise Agreement, which may be memorialized in written or electronic format and modified periodically to reflect changes in the *Frullati Cafe & Bakery* System.

#### 4. **Interference.**

The undersigned agrees not to, directly or indirectly, for himself or herself or on behalf of any other person: divert, or attempt to divert, any business or customer of any *Frullati Cafe & Bakery* restaurant to any competitor by direct or indirect inducement or perform any act which directly or indirectly could, or may, injure or prejudice the goodwill and reputation of *Frullati Cafe & Bakery* Intellectual Property or *Frullati Cafe & Bakery* System.

#### 5. **Irreparable Harm to Franchisor.**

The undersigned understands and agrees that if the undersigned breaches or threatens to breach any of his or her obligations under this Agreement, Franchisor will be irreparably harmed and an award of monetary damages alone would be inadequate. Therefore, the undersigned agrees that Franchisor shall be entitled to seek equitable relief, including, without limitation, temporary, preliminary and permanent injunctive relief and specific performance for any actual or threatened breach by the undersigned, his or her affiliates or their respective officers, directors, shareholders, employees or agents. The remedies provided under this *Section 5* shall be in addition to and not exclusive of any other right or remedy available to Franchisor under this Agreement or otherwise, including, without limitation, an award of attorneys’ fees, expert witness fees and costs incurred by Franchisor or its affiliates in connection with any dispute arising from or related to this Agreement.

#### 6. **Validity; Conformity With Applicable Law.**

Wherever possible, each provision of this Agreement shall be interpreted in a manner as to be valid under applicable law, but if any provision of this Agreement shall be invalid or prohibited

thereunder, the provision shall be ineffective only to the extent of the prohibition or invalidity without invalidating the remainder of this Agreement.

7. **Miscellaneous.**

a. *Waiver.* Any waiver granted to the undersigned by Franchisor excusing or reducing any obligation or restriction imposed under this Agreement shall be evidenced by a writing executed by Franchisor in order to be effective and shall only be effective to the extent specifically allowed in such writing. No waiver granted by Franchisor shall constitute a continuing waiver. Any waiver granted by Franchisor shall be without prejudice to any other rights Franchisor may have. The rights and remedies granted to Franchisor are cumulative. No delay on the part of Franchisor in exercising any right or remedy shall preclude Franchisor from fully exercising such right or remedy or any other right or remedy.

b. *Entire Agreement; Amendment.* This Agreement sets forth the entire agreement made by the undersigned pertaining to the subject matter hereof, fully superseding any and all prior agreements or understandings that may exist between the undersigned and the Franchisor pertaining to such subject matter. No amendment, change, modification or variance to or from the terms and conditions set forth in this Agreement shall be binding on the undersigned unless it is set forth in writing and duly executed by the undersigned and Franchisor.

c. This Agreement shall be binding on the undersigned's heirs, executors, successors and assigns as though originally executed by such persons.

d. *Notices.* All notices permitted or required under this Agreement shall be in writing and shall be delivered by personal delivery, courier, such as FedEx<sup>®</sup> or UPS<sup>®</sup>, or by U.S. Mail, sent certified or registered mail, return receipt requested, to the address set forth in the first paragraph of this Agreement, with a courtesy copy sent via email or facsimile (to the address set forth on the signature page below) for the respective Party to be noticed, which address may be amended from time to time pursuant to the terms of this *Section 7.d*. Notices provided under this *Section 7.d* shall be deemed received upon personal delivery or delivery by courier and within five (5) days after deposit in the U.S. Mail.

e. *Governing Law and Venue.* This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona without reference to conflict of laws principles. Except for actions seeking injunctive relief (which may be brought in any appropriate jurisdiction) suit under this Agreement shall only be brought in the state or federal courts located in Maricopa County, Arizona. This choice of jurisdiction and venue is intended by the Parties to be mandatory and not permissive in nature, and to preclude the possibility of litigation between the Parties with respect to, or arising out of, this Agreement in any jurisdiction other than as specified in this *Section 7.e*. Each Party waives any right it may have to assert the doctrine of forum non conveniens or similar doctrine or to object to the jurisdiction and venue with respect to any proceeding brought in accordance with this *Section 7.e*.

f. *No Assignment.* The undersigned shall not assign or transfer any rights or obligations under this Agreement without Franchisor's prior written consent, which may be

withheld in Franchisor's sole discretion. Any assignment made in violation of this *Section 7.f* shall be void.

g. *Counterparts; Facsimile Signatures.* This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original document as against the Party whose signature appears thereon, and all of which shall together constitute one and the same Agreement. The signatures required for execution may be transmitted to the other Party via facsimile or email and such signature shall be deemed a duplicate original, shall be effective upon receipt by the other Party, may be admitted in evidence and shall fully bind the Party and person making such signature.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their duly authorized representatives with full rights, power and authority to enter into and bind the respective Party and to perform all obligations under this Agreement.

[NAME]

By: \_\_\_\_\_  
[Name], an individual

Date: \_\_\_\_\_

Address: [Street Address]  
[City, State Zip]

Phone: (xxx) xxx-xxxx

Email: xxxxxxxx@xxxx.xxx

**EXHIBIT G**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**Collateral Assignment and Irrevocable Special Power of Attorney**

**COLLATERAL ASSIGNMENT AND**  
**IRREVOCABLE SPECIAL POWER OF ATTORNEY**

This COLLATERAL ASSIGNMENT AND IRREVOCABLE SPECIAL POWER OF ATTORNEY ("Assignment") is entered into on \_\_\_\_\_ ("Effective Date") in accordance with the terms of that certain Franchise Agreement dated \_\_\_\_\_ [, as amended] ("Franchise Agreement") by and between \_\_\_\_\_, a(n) \_\_\_\_\_ ("Franchisee") and KAHALA FRANCHISING, L.L.C., an Arizona limited liability company ("Franchisor"), executed concurrently with this Assignment and under which Franchisor granted Franchisee the right to own and operate a *Frullati Cafe & Bakery* restaurant located at \_\_\_\_\_ ("Restaurant").

FOR VALUE RECEIVED, Franchisee hereby assigns to Franchisor, its affiliates, subsidiaries, successors and assigns, all of Franchisee's right, title and interest in and to: (i) the "Telephone Numbers and Listings" which include those certain telephone numbers and regular, yellow-pages, special, classified or other telephone directory listings used at any time in connection with the operation of the Restaurant; (ii) any website page or social media addresses and accounts, including, but not limited to, a Facebook® page or Twitter® account that contains any term or any mark confusingly similar to a trademark or other intellectual property owned or licensed by Franchisor; and (iii) any corporation, limited liability company, partnership, or other entity name or trade name filed or formed by Franchisee that contains any trademark or other intellectual property owned or licensed by Franchisor (each an "Entity Name"). This Assignment is for collateral purposes only, and except as specified herein, Franchisor shall have no liability or obligation of any kind whatsoever arising from or in connection with this Assignment unless Franchisor shall notify the (i) telephone company and/or the listing agencies with which Franchisee has placed telephone directory listings (all such entities are collectively referred to herein as the "Telephone Company"); (ii) webmaster/webhost for the website or social media account; and (iii) Secretary of State, Corporation Commission or other state government agency that handles the filing of entity formation documents, to effectuate the assignment pursuant to the terms hereof.

Franchisee hereby appoints Franchisor as his/her/its attorney-of-fact and grants Franchisor an irrevocable Special Power of Attorney, coupled with an interest, with full power and authority for the purpose of executing documents or taking such action as necessary or appropriate as Franchisee might or could do if personally present, hereby ratifying all that Franchisor, as Franchisee's attorney-in-fact, shall lawfully do or cause to be done by virtue of this Special Power of Attorney to obtain, protect, maintain or enforce Franchisor's intellectual property rights if Franchisor is, for any reason, unable to obtain Franchisee's cooperation or assistance. The Special Power of Attorney granted by this Assignment, shall survive the dissolution, death, incompetence or disability of Franchisee and the termination or expiration of the Franchise Agreement or this Assignment.

Upon (i) termination of the Franchise Agreement for any reason, or (ii) expiration of the Franchise Agreement without renewal or extension, Franchisor shall have the right and is hereby empowered to effectuate the assignment of the Telephone Numbers and Listings, website and/or social media account, and Entity Name. In such event Franchisee shall have no further right, title or interest in the Telephone Numbers and Listings or the website and/or social media account, and shall remain liable to the Telephone Company for all past due fees and charges owing to the Telephone Company on or before the effective date of the assignment hereunder.

Franchisee agrees and acknowledges that as between Franchisor and Franchisee, Franchisor shall have the sole right to and interest in the Telephone Numbers and Listings, website and/or social media accounts and Entity Name upon termination or expiration of the Franchise Agreement. Franchisee appoints Franchisor as Franchisee's true and lawful attorney-in-fact to direct the Telephone Company, webmaster/webhost, and state government agency to assign same to Franchisor and execute such documents and take such actions as may be necessary to effectuate the assignment. Upon such event Franchisee shall immediately instruct the (i) Telephone



Company to assign the Telephone Numbers and Listings to Franchisor; the webmaster/webhost to assign the website and/or social media account to Franchisor; and (iii) state government agency to allow Franchisor to file the necessary documents to change the Entity Name. If Franchisee fails to promptly direct the (i) Telephone Company to assign the Telephone Numbers and Listings to Franchisor; (ii) webmaster/webhost to assign the website or social media account(s) to Franchisor; and/or (iii) file the necessary documents with the appropriate state government agency to remove Franchisor's trademarks or other intellectual property from the Franchisee's Entity Name, Franchisor shall direct the appropriate parties to effectuate the assignment contemplated hereunder to Franchisor.

The parties agree that the Telephone Company, webmaster/webhost, and appropriate state government agency may accept Franchisor's written direction, the Franchise Agreement or this Assignment as conclusive proof of Franchisor's exclusive rights in and to the Telephone Numbers and Listings, website and/or social media accounts, and Franchisor's authority to file the necessary documents to remove Franchisor's trademark or other intellectual property from the Entity Name and that such assignment shall be made automatically and effective immediately upon Telephone Company's, webmaster's/webhost's or state government agency's receipt of such notice from Franchisor or Franchisee. The parties further agree that if the Telephone Company, webmaster/webhost, or state government agency requires that the parties execute an assignment form or other documentation at the time of termination or expiration of the Franchise Agreement Franchisor's execution of such forms or documentation on behalf of Franchisee shall effectuate Franchisee's consent and agreement to the assignment. The parties agree that at any time after the date hereof they will perform such acts and execute and deliver such documents as may be necessary to assist in or accomplish the assignment described herein upon termination or expiration of the Franchise Agreement.

IN WITNESS WHEREOF, each party hereto, by and through its respective representative with full rights, power and authority to enter into and bind his or her respective party, without further consent or approval of any kind, has duly executed and delivered this Assignment as of the Effective Date.

**ASSIGNOR (Franchisee):**

\_\_\_\_\_, a(n) \_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

State of \_\_\_\_\_  
County of \_\_\_\_\_

On \_\_\_\_\_ before me, personally appeared \_\_\_\_\_ known to me (or proved to me on the oath of \_\_\_\_\_ or through \_\_\_\_\_) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her/their authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of \_\_\_\_\_ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
(Signature of Notary Public)

(Seal)

Acknowledged by:

**ASSIGNEE (Franchisor):**

KAHALA FRANCHISING, L.L.C., an Arizona  
limited liability company

By: \_\_\_\_\_  
[Name, Title]

**EXHIBIT H**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**Amendment to Franchise Agreement**

(for non-traditional locations excluding those co-branded with another  
affiliated brand)

## [FIRST] AMENDMENT TO FRANCHISE AGREEMENT

[for non-traditional locations excluding those co-branded with another affiliated brand]

This [FIRST] AMENDMENT TO FRANCHISE AGREEMENT (“[First] Amendment”) dated \_\_\_\_\_, 20\_\_\_\_ (“[First] Amendment Effective Date”), to the Franchise Agreement dated \_\_\_\_\_, 20\_\_\_\_ for the non-traditional *Frullati Cafe & Bakery* location at \_\_\_\_\_ (“Agreement”) by and between KAHALA FRANCHISING, L.L.C., an Arizona limited liability company (“Franchisor”) and \_\_\_\_\_ (“Franchisee”), is entered into by such parties to amend the Agreement as set forth in this [First] Amendment. To the extent this [First] Amendment contains terms and conditions that differ from those contained in the Agreement, this [First] Amendment shall control. The parties agree that a concept or principle covered in this [First] Amendment shall apply and be incorporated into all other provisions of the Agreement in which the concept or principle is also applicable, notwithstanding the absence of any specific cross-reference thereto. All capitalized terms not otherwise defined in this [First] Amendment will have the same meanings ascribed to such terms in the Agreement.

1. The last sentence of the second unnumbered paragraph in Section **1.2**, “**Location of the Franchised Business; No Exclusive Territory or Other Rights**,” is hereby deleted and replaced with the following: “This Agreement is limited to the operation of one non-traditional restaurant, unless otherwise amended, and does not grant you the right to buy, own or operate additional restaurants.”

2. Section **4.1**, “**Training Program**,” is hereby amended to add the following after the last sentence in Section 4.1: “Notwithstanding the foregoing, for non-traditional locations, the total number of days of training and related assistance will be a total of three (3) days.”

3. The first sentence in Section **5.1**, “**Initial Franchise Fee**,” is hereby deleted and replaced with the following: “The initial franchise fee is [Seven Thousand Five Hundred Dollars (\$7,500)] [Five Thousand Dollars (\$5,000)] (“Initial Franchise Fee”).”

4. The first sentence in the first paragraph in Section **5.2**, “**Royalty Fee and Surcharge**,” is hereby deleted in its entirety and replaced with the following:

For the period of time commencing on the later of the Effective Date or the date the Franchised Business opens to the public, and for the duration of the Term, you must pay to us a weekly royalty fee equal to six percent (6%) of total Gross Sales (as defined below) (“Royalty Fee”).

5. Paragraph a. in Section **5.3**, “**Advertising Fee**,” is hereby deleted in its entirety and replaced with the following: “a. Not applicable.”

6. Paragraph b. of Section **5.13**, “**Transfer Franchise Fee**,” is hereby deleted and replaced with the following:

b. A Potential Transferee (as defined in *Section 12.1c.*) receiving this Agreement, as may be amended, in connection with a Full Transfer (as defined in *Section 12.1a.1.*), must pay to us a transfer franchise fee of Five Thousand Dollars (\$5,000) (“Transfer Franchise Fee”).

7. The first sentence in Section **5.24, "Grand Opening Marketing,"** is hereby deleted and replaced with the following:

Five Thousand Dollars (\$5,000) ("Grand Opening Marketing") is payable to us on the earlier of: (i) prior to you executing a lease for the premises where the Franchised Business will be located; or (ii) prior to construction commencing at the premises where the Franchised Business will be located.

8. Except as set forth in this [First] Amendment, the terms and provisions of the Agreement shall remain in full force and effect.

***[SIGNATURE PAGE FOLLOWS]***

IN WITNESS WHEREOF, each party hereto, by and through its respective representative with full rights, power and authority to enter into and bind his or her respective party without further consent or approval of any kind, has duly executed and delivered this [First] Amendment as of the [First] Amendment Effective Date.

**FRANCHISOR:**

KAHALA FRANCHISING, L.L.C., an Arizona  
limited liability company

By: \_\_\_\_\_  
[Name, Title]

**FRANCHISEE:**

\_\_\_\_\_, a(n) \_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

By: \_\_\_\_\_  
[Name, Title]

**EXHIBIT I**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**Amendment to Franchise Agreement  
(for co-branded non-traditional locations)**

## [FIRST] AMENDMENT TO FRANCHISE AGREEMENT

[for non-traditional locations co-branded with an affiliated brand]

This [FIRST] AMENDMENT TO FRANCHISE AGREEMENT ("[First] Amendment") dated \_\_\_\_\_ ("[First] Amendment Effective Date"), to the Franchise Agreement dated \_\_\_\_\_, 20\_\_\_\_ for the non-traditional *Frullati Cafe & Bakery* restaurant being co-branded in the *[name of original brand]* restaurant located at \_\_\_\_\_ ("Agreement") by and between KAHALA FRANCHISING, L.L.C., an Arizona limited liability company ("Franchisor") and \_\_\_\_\_ ("Franchisee"), is entered into by such parties to amend the Agreement as set forth in this [First] Amendment. To the extent this [First] Amendment contains terms and conditions that differ from those contained in the Agreement, this [First] Amendment shall control. The parties agree that a concept or principle covered in this [First] Amendment shall apply and be incorporated into all other provisions of the Agreement in which the concept or principle is also applicable, notwithstanding the absence of any specific cross reference thereto. All capitalized terms not otherwise defined in this [First] Amendment will have the same meanings ascribed to such terms in the Agreement.

1. Franchisee agrees that Franchisee shall enter into this Agreement under the same Franchisee name as the \_\_\_\_\_ *[name of original brand]* franchise agreement.

2. Franchisee hereby represents that it has reviewed the underlying lease agreement for the Location to ensure the lease agreement does not contain any provisions that prevent or restrict Franchisee from serving salads; sandwiches; soups; fresh baked goods; blended fruit and vegetable drinks; proprietary nutritional products and supplements; other beverage and snack items and other *Frullati Cafe & Bakery* menu items at the Location. Franchisee shall be responsible for all costs and expenses, fees, penalties, attorneys' fees, claims, demands and damages incurred relating to Franchisee offering *Frullati Cafe & Bakery* menu items at the Location.

3. Franchisee agrees that the Agreement may only be transferred in conjunction with a transfer of the *[name of original brand]* franchise agreement.

4. The last sentence of the second unnumbered paragraph in Section **1.2, "Location of the Franchised Business; No Exclusive Territory or Other Rights,"** is hereby deleted and replaced with the following: "This Agreement is limited to the operation of one non-traditional restaurant, unless otherwise amended, and does not grant you the right to buy, own or operate additional restaurants."

5. Section **1.3, "Term of Agreement,"** is hereby deleted in its entirety and replaced with the following:

### **1.3 Term of Agreement.**

The term of this Agreement will commence on the Effective Date and expire concurrently with the term of the franchise agreement of the traditional brand in which this store is co-branded, unless terminated earlier in accordance with *Article 14* or any other provisions of this Agreement, renewed in accordance with *Article 13*, or transferred in accordance with *Article 12* ("Term").

6. Section **4.1, "Training Program,"** is hereby amended to add the following after the last sentence in Section 4.1: "Notwithstanding the foregoing, for non-traditional restaurants, the total number of days of training and related assistance will be a total of three (3) days."

7. Section **4.6, "Computer Systems; Debit and Credit Card Processing,"** is hereby deleted in its entirety and replaced with the following:

**4.6 Computer Systems; Debit and Credit Card Processing.**

You hereby agree to use the same POS System for the Franchised Business under the same terms and conditions as provided in the [name of original brand] franchise agreement.

8. The first sentence of Section **5.1 "Initial Franchise Fee,"** is hereby deleted and replaced with the following: "The initial franchise fee for this non-traditional location is [Seven Thousand Five Hundred Dollars (\$7,500)] [Five Thousand Dollars (\$5,000)] ("Initial Franchise Fee")."

9. The first sentence in the first paragraph in Section **5.2, "Royalty Fee and Surcharge,"** is hereby deleted in its entirety and replaced with the following:

For the period of time commencing on the later of the Effective Date or the date the Franchised Business opens to the public, and for the duration of the Term, you must pay to us a weekly royalty fee equal to six percent (6%) of total Gross Sales (as defined below) ("Royalty Fee").

10. Franchisee agrees that the Gross Sales for this *Frullati Cafe & Bakery* restaurant shall be reported separately from the gross sales reported under the [name of original brand] franchise agreement. Franchisee further agrees that the Royalty Fee and Advertising Fee for this *Frullati Cafe & Bakery* restaurant shall be paid separately from the royalty fee and advertising fee payable under the [name of original brand] franchise agreement.

11. Paragraph a. in Section **5.3, "Advertising Fee,"** is hereby deleted in its entirety and replaced with the following: "a. Not applicable."

12. Section **5.6, "Depository Account; Payment Procedures,"** is hereby deleted in its entirety and replaced with the following:

**5.6 Depository Account; Payment Procedures.**

You hereby agree to use the same Depository Account for the Franchised Business under the same terms and conditions as provided in the [name of original brand] franchise agreement.

13. Section **5.7, "Lease Review Fee,"** is hereby deleted in its entirety and replaced with the following: "**5.7 Not Applicable.**"

14. Section **5.8, "Lease Guarantee Fee,"** is hereby deleted in its entirety and replaced with the following: "**5.8 Not Applicable .**"



15. Section **5.11, “Document Administration Fee,”** is hereby deleted in its entirety and replaced with the following: **“5.11 Not Applicable.”**

16. Section **5.13 “Transfer Franchise Fee,”** is hereby deleted in its entirety and replaced with the following:

**5.13 Transfer Franchise Fee.**

A Potential Transferee (as defined in *Section 12.1c.*) receiving this Agreement, as may be amended, in connection with a Full Transfer (as defined in *Section 12.1a.1.*), must pay us a transfer franchise fee of Five Thousand Dollars (\$5,000) (“Transfer Franchise Fee”).]

17. Section **5.16, “Annual Meeting Registration Fee,”** is hereby deleted in its entirety and replaced with the following: **“5.16 Not Applicable.”**

18. Section **5.19, “Data Fees,”** is hereby deleted in its entirety and replaced with the following: **“5.19 Not Applicable.”**

19. Section **5.20, “POS Help Desk Phone Support Maintenance Service Fee,”** is hereby deleted in its entirety and replaced with the following: **“5.20 Not Applicable.”**

20. The first sentence in Section **5.24, “Grand Opening Marketing,”** is hereby deleted and replaced with the following:

Five Thousand Dollars (\$5,000) (“Grand Opening Marketing”) is payable to us on the earlier of: (i) prior to you executing a lease for the premises where the Franchised Business will be located; or (ii) prior to construction commencing at the premises where the Franchised Business will be located.

21. Except as set forth in this [First] Amendment, the terms and provisions of the Agreement shall remain in full force and effect.

***[SIGNATURE PAGE FOLLOWS]***

IN WITNESS WHEREOF, each party hereto, by and through its respective representative with full rights, power and authority to enter into and bind his or her respective party without further consent or approval of any kind, has duly executed and delivered this [First] Amendment as of the [First] Amendment Effective Date.

**FRANCHISOR:**

KAHALA FRANCHISING, L.L.C., an Arizona  
limited liability company

By: \_\_\_\_\_  
[Name, Title]

**FRANCHISEE:**

\_\_\_\_\_, a(n) \_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

By: \_\_\_\_\_  
[Name, Title]

**EXHIBIT J**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**INTENTIONALLY OMITTED**

**EXHIBIT L**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**INTENTIONALLY OMITTED**

**EXHIBIT L**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**Required Lease Terms  
(Lease Addendum to Lease Agreement)**

## **REQUIRED LEASE TERMS**

**The Terms and Conditions in the Attached Lease Addendum to Lease Agreement (“Lease Addendum”) must be included in the Franchisee’s Lease for the location of the Franchised Business via execution of the attached Lease Addendum or through modifications to the actual Lease**

## LEASE ADDENDUM TO LEASE AGREEMENT

("Lease Addendum")

Dated: \_\_\_\_\_, 20\_\_

between

\_\_\_\_\_ and \_\_\_\_\_  
(Landlord Name) (Tenant Name)

\_\_\_\_\_  
(Address of "Premises")

### 1. Use of Premises.

During the term of the Lease, the Premises may be used only for the operation of a quick service restaurant located at \_\_\_\_\_ ("Restaurant") under the *Frullati Cafe & Bakery* system, trademarks, trade names, and logos, which specialize in the sale of salads; sandwiches; soups; fresh baked goods; blended fruit and vegetable drinks; proprietary nutritional products and supplements; other beverage and snack items and any other items sold under the *Frullati Cafe & Bakery* system. Landlord consents to Tenant's use of such trademarks, trade names, logos, tag lines, signs, décor items, color schemes, and related components of the *Frullati Cafe & Bakery* franchise system as Kahala Franchising, L.L.C., franchisor of the *Frullati Cafe & Bakery* brand ("Franchisor"), or any of its affiliates, may prescribe for *Frullati Cafe & Bakery* franchisees and which may be altered or changed by Franchisor from time to time.

### 2. Assignment and Notices.

a. Notwithstanding anything to the contrary in the Lease, Tenant shall have the right to assign the Lease and all amendments thereto, as applicable, including this Lease Addendum (collectively, "Lease"), and all rights hereunder to Franchisor, or to a third-party *Frullati Cafe & Bakery* franchisee approved by Franchisor upon the expiration or termination of the current franchise agreement by and between Franchisor and Tenant ("Franchise Agreement"), without obtaining Landlord's consent and without the imposition of any assignment fee or similar charge. Landlord shall not accelerate the rent owed hereunder in connection with such assignment(s), so long as Franchisor, its affiliate(s) or its third-party franchisee(s) assumes in writing the obligations of Tenant under the Lease. Nothing in this Section 2.a shall serve to extend the term of the Lease or provide Franchisor any occupancy rights, options to renew or other rights not expressly set forth to Tenant in the Lease.

b. Landlord agrees to furnish Franchisor with copies of any and all letters and notices to Tenant pertaining to the Lease and the Premises at the same time that such letters and notices are sent to Tenant. Landlord further agrees that, if it intends to terminate the Lease, the Landlord will give Franchisor the same advance written notice of such intent as provided to Tenant, specifying in such notice all defaults that are the cause of the proposed termination. Franchisor shall have the right to cure, at its sole option, any such default within the time periods granted to Tenant under the Lease. If neither Tenant nor Franchisor cures all such defaults within said time periods (or such longer cure periods as may be specifically permitted by the Lease), then the Landlord may terminate the Lease, re-enter the Premises and/or exercise all other rights as set forth in the Lease.

c. Prior to the expiration or termination of the Lease, Franchisor shall have the right to enter the Premises to make any reasonable modifications or reasonable alterations necessary to protect Franchisor's interest in the *Frullati Cafe & Bakery* brand and its trademarks, trade names, logos, tag lines, signs, décor items, color schemes, and related components of the *Frullati Cafe & Bakery* franchise system, or to cure any default under the Lease, and Landlord agrees that Franchisor shall not be liable for trespass or any other crimes or tort.

### 3. Notices.

All notices and demands required to be given hereunder shall be in writing and shall be sent by personal delivery, expedited delivery service, certified or registered mail, return receipt requested, first-class postage prepaid, email or facsimile (provided that the sender confirm the facsimile by sending an original confirmation copy by certified transmission), to the respective parties at the following addresses unless and until a different address has been designated by written notice to the other parties.

If directed to Tenant, the notice shall be addressed to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

If directed to Landlord, the notice shall be address to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

If directed to Franchisor, the notices shall be addressed to:

Kahala Franchising, L.L.C.  
9311 E. Via De Ventura  
Scottsdale, AZ 85258  
Attn: Real Estate Department  
Facsimile: (480) 362-4792  
Email: [realestate@kahalamgmt.com](mailto:realestate@kahalamgmt.com)

Any notices sent by personal delivery shall be deemed given upon receipt. Any notices given by email or facsimile shall be deemed given on the business day of transmission, provided confirmation is made as provided above. Any notice sent by expedited delivery service or registered or certified mail shall be deemed given three (3) business days after the time of mailing. Any change in the foregoing addresses shall be effected by giving fifteen (15) days written notice of such change to the other parties.



4. **Amendments.**

Landlord and Tenant will not amend, renew, extend or otherwise modify this Lease in any manner which would materially affect any of the foregoing provisions without Franchisor's prior written consent.

5. **Third Party Beneficiary.**

Landlord and Tenant agree that Franchisor is a third party beneficiary of the Lease.

6. **Miscellaneous.**

The terms and conditions of this Lease Addendum will supersede any conflicting terms of the Lease. Any capitalized term not specifically defined in this Addendum shall have the meaning ascribed to such term in the Lease.

IN WITNESS WHEREOF, the parties hereto, by and through their respective representatives authorized to enter into and bind each respective party without further consent or authorization, have duly executed and delivered this Lease Addendum in duplicate as of the date set forth above.

**LANDLORD:**

\_\_\_\_\_, a(n) \_\_\_\_\_  
\_\_\_\_\_

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

Name: \_\_\_\_\_

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

**TENANT:**

\_\_\_\_\_, a(n) \_\_\_\_\_

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

Name: \_\_\_\_\_

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

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

Name: \_\_\_\_\_

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

**EXHIBIT M**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**Lease Guaranty Acknowledgment**

### **Lease Guaranty Acknowledgment**

You have informed Kahala Franchising, L.L.C. (the "Company") that the landlord of the location which you have selected for the operation of your Franchised Business requires, as a condition for you to obtain a lease agreement, that you obtain a lease guaranty from the Company or any affiliate of the Company of your obligations under the lease. You have requested that the Company or any affiliate of the Company execute and deliver a lease guaranty in favor of the premises landlord for the location you have selected or are considering for your Franchised Business. You acknowledge that neither the Company nor any of its affiliates is required to serve as guarantor of your lease for the site of your Franchised Business and that a decision whether to serve as guarantor is within the sole and absolute discretion of the Company.

We are willing to undertake to assist you in obtaining a lease by agreeing to execute and deliver a lease guaranty, in form and substance satisfactory to the Company and its counsel. In consideration for the execution and delivery of a lease guaranty, you hereby acknowledge that you have agreed to pay a lease guaranty fee to the Company in an amount equal to the lesser of (i) ten percent (10%) of the total amount of the rental obligations to be guaranteed under the lease during its term, and any renewal term (inclusive of any charges for real estate taxes, common area maintenance, insurance), or (ii) Ten Thousand (\$10,000) Dollars (the "Lease Guaranty Fee"). The Lease Guaranty Fee will be due and payable to the Company upon the Company's (or any affiliate of the Company) execution of the applicable lease guaranty agreement with the landlord.

Any capitalized terms not specifically defined in this Lease Guaranty Acknowledgment shall have the meaning ascribed to such terms in your *Frullati Cafe & Bakery* Franchise Agreement dated \_\_\_\_\_.

The undersigned understands and acknowledges that: (i) notwithstanding the agreement of the Company to execute and deliver a lease guaranty, the execution and delivery of such guaranty and any participation of the Company and/or its agents or employees, including, without limitation, its Area Representatives, and/or brand presidents in the negotiation of an LOI or a lease, and analyzing and/or approving site(s) for the Location of the Franchised Business, you are solely responsible for conducting a review of the proposed site, the LOI and lease terms, and for final Location selection and approval based upon your review, your business plan and model; (ii) you have not relied upon the assistance of the Company in procuring, or in the approval of, an LOI or lease for the Franchised Business, or in its decision to select any proposed site; (iii) each potential site for the Franchised Business is unique and provides different risks and benefits, which may impact the performance of the Franchised Business; and, (iv) as part of analyzing the proposed site, it is your responsibility to meet with the local officials to determine, among other things whether any street, highway, interchange, city, or other changes are planned in the area or access to the proposed site that could negatively affect the performance of the Franchised Business.

Acknowledged and accepted:

Corporation or Entity: \_\_\_\_\_

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

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

Brand Concept: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT N**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**Lease Review and/or Negotiation Agreement and Release  
and State Addenda**

## **LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE**

You have requested that the real estate department of Kahala Management, L.L.C. ("Company") assist you in the review of the Lease for your Franchised Business ("Location"), which may include participation in the negotiation of the business terms of a lease with the landlord and/or broker/agent of the landlord for the Location ("Lease Assistance"). You have agreed to pay the Company a fee of One Thousand Two Hundred Fifty Dollars (\$1,250) for Lease Assistance. The Company is willing to undertake to assist you in the review and related negotiations.

Any capitalized terms not specifically defined in this LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE shall have the meaning ascribed to such terms in your *Frullati Cafe & Bakery* Franchise Agreement dated \_\_\_\_\_, 20\_\_ for store number \_\_\_\_\_.

Although, Company must review your selection of a Location and the Lease to confirm it meets our minimum site requirements, the provisions, final approval and execution of the Lease remain your sole responsibility. You may require or elect to seek additional information or guidance of others, including, without limitation, independent business and legal advisors of your own choosing, other than what is provided by Company. This would be your sole responsibility. The services provided by the Company's real estate department will include only those certain services as detailed in your Franchise Agreement.

The undersigned understands and acknowledges that: (i) notwithstanding any provision by Company and/or its subsidiaries, parent, or affiliated companies, agents or employees, including, without limitation, its Area Representatives, Brand Presidents or Vice President of Operations, in the Lease Assistance for the location of the Franchised Business, you are solely responsible for conducting a review of the proposed site, the Letter Of Intent ("LOI") and Lease terms, and for final site selection based upon your review, your individual business plan and model; (ii) you have not relied solely upon the Lease Assistance of Company in reviewing, negotiating, or approving if an LOI or Lease for the Franchised Business, or in your decision to select any proposed site; (iii) each site for the Franchised Business is unique and provides different risks and benefits, which may impact the performance of the Franchised Business; and (iv) as part of your analysis of the proposed site for the operation of the Franchised Business, it is your sole responsibility to conduct such due diligence reviews of the geographic area and the shopping center in which the Franchised Business is to be located as you, in your sole discretion, deem necessary and advisable, including, without limitation, meeting with the local officials to determine, among other things, whether any street, highway, interchange, city, or other changes are planned in the area or access to the proposed site that could negatively affect the performance of the Franchised Business.

In consideration of the agreement of Company to provide Lease Assistance to you, the undersigned hereby fully releases, discharges, and acquits Kahala Franchising, L.L.C., Company, and its respective predecessors, successors and assigns, parents, subsidiaries and affiliated corporations, their respective officers, directors, agents, employees and representatives, past and present, of any and all of such corporations (collectively "Franchisor Parties"), and/or their Area Representatives, Brand Presidents and/or Vice President of Operations, from and against any and all claims, demands and causes of action (whether now existing or hereafter arising, known or unknown) that he/she/it, or any of his/her/its parent, affiliate, or subsidiary companies, agents, representatives, members, officers, directors, or employees, may now or in the future have against Franchisor Parties, and/or their Area

Representatives, Brand Presidents and/or Vice President of Operations (or any of them), including, without limitation, claims, demands and causes of action that resulted, result or may result from, arise out of or relate to, in whole or in part, directly or indirectly, the Lease Assistance.

Acknowledged and accepted:

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

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

Corporation or Entity: \_\_\_\_\_

Date: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

**ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE**  
(FOR THE STATE OF CALIFORNIA)

This ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE (FOR THE STATE OF CALIFORNIA) ("Addendum") hereby amends the Lease Review and/or Negotiation Agreement and Release dated \_\_\_\_\_, 20\_\_\_\_ ("Lease Review Agreement") from the undersigned to Franchisor Parties. All capitalized terms not otherwise defined in this Addendum will have the same meanings ascribed to such terms in the Lease Review Agreement. The Lease Review Agreement is hereby amended by the addition of the following language, which shall be considered an integral part of the Lease Review Agreement:

1. A general release is incorporated in the Lease Review Agreement. California Corporations Code §31512 voids a waiver of your rights under the Franchise Investment Law (California Corporations Code §§31000 through 31516).

2. Business and Professions Code §20010 voids a waiver of your rights under the Franchise Relations Act (Business and Professions Code §§20000 through 20043).

3. Except as set forth in this Addendum, the terms and provisions of the Lease Review Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned, by and through its respective representative with full rights, power and authority to enter into and bind the undersigned without further consent or approval of any kind, has duly executed and delivered this Addendum on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_, a(n) \_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

**ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE**  
(FOR THE STATE OF HAWAII)

This ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE (FOR THE STATE OF HAWAII) ("Addendum") hereby amends the Lease Review and/or Negotiation Agreement and Release dated \_\_\_\_\_, 20\_\_\_\_ ("Lease Review Agreement") from the undersigned to Franchisor Parties. All capitalized terms not otherwise defined in this Addendum will have the same meanings ascribed to such terms in the Lease Review Agreement. The Lease Review Agreement is hereby amended by the addition of the following language, which shall be considered an integral part of the Lease Review Agreement:

1. A general release is incorporated in the Lease Review Agreement. If the Franchisee is required to execute a release of claims, such release shall exclude claims arising under the Hawaii Franchise Investment Law. Any condition, stipulation or provision binding the Franchisee to waive compliance with any provision of Section 482E-6 of the Hawaii Franchise Investment Law shall be void.

2. Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the Hawaii Franchise Investment Law applicable to the provision are met independent of this Addendum. This Addendum shall have no force or effect if such jurisdictional requirements are not met.

3. Except as set forth in this Addendum, the terms and provisions of the Lease Review Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned, by and through its respective representative with full rights, power and authority to enter into and bind the undersigned without further consent or approval of any kind, have duly executed and delivered this Addendum on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_, a(n) \_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]



**ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE**  
(FOR THE STATE OF ILLINOIS)

This ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE (FOR THE STATE OF ILLINOIS) ("Addendum") hereby amends the Lease Review and/or Negotiation Agreement and Release dated \_\_\_\_\_, 20\_\_\_\_ ("Lease Review Agreement") from the undersigned to Franchisor Parties. All capitalized terms not otherwise defined in this Addendum will have the same meanings ascribed to such terms in the Lease Review Agreement. The Lease Review Agreement is hereby amended by the addition of the following language, which shall be considered an integral part of the General Release:

1. A general release is incorporated in the Lease Review Agreement. If the Franchisee is required to execute a release of claims or to acknowledge facts that would negate or remove from judicial review any statement, misrepresentation or action that would violate the Illinois Franchise Disclosure Act of 1987, 815 ILCS 705/20, or a rule of order under the Act, such release shall exclude claims arising under the Illinois Franchise Disclosure Act, and such acknowledgements shall be void with respect to claims under the Act.

2. Section 41 of the Illinois Franchise Disclosure Act states that "any condition, stipulation, or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of this Act is void."

3. Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the Illinois Franchise Disclosure Act, with respect to each such provision, are met independent of this Addendum. This Addendum shall have no force or effect if such jurisdictional requirements are not met.

4. Except as set forth in this Addendum, the terms and provisions of the Lease Review Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned, by and through its respective representative with full rights, power and authority to enter into and bind the undersigned without further consent or approval of any kind, has duly executed and delivered this Addendum on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_, a(n) \_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

**ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE**  
**(FOR THE STATE OF INDIANA)**

This ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE (FOR THE STATE OF INDIANA) ("Addendum") hereby amends the Lease Review and/or Negotiation Agreement and Release dated \_\_\_\_\_, 20\_\_\_\_ ("Lease Review Agreement") from the undersigned to Franchisor Parties. All capitalized terms not otherwise defined in this Addendum will have the same meanings ascribed to such terms in the Lease Review Agreement. The Lease Review Agreement is hereby amended by the addition of the following language, which shall be considered an integral part of the Lease Review Agreement:

1. A general release is incorporated in the Lease Review Agreement. If the Franchisee is required to execute a release of claims or to acknowledge facts that would negate or remove from judicial review any statement, misrepresentation or action that would violate the Act, or a rule of order under the Act, such release shall exclude claims arising under the Indiana Franchises Act, Ind. Code Ann. §§ 23-2-2.5 and the Indiana Deceptive Franchise Practices Act, Ind. Code Ann. § 23-2-2.7-1, and such acknowledgements shall be void with respect to claims under the Act.

2. Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the Indiana Deceptive Practices Act and the Indiana Franchises Act, with respect to each such provision, are met independent of this Addendum. This Addendum shall have no force or effect if such jurisdictional requirements are not met.

3. Except as set forth in this Addendum, the terms and provisions of the Lease Review Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned, by and through its respective representative with full rights, power and authority to enter into and bind the undersigned without further consent or approval of any kind, has duly executed and delivered this Addendum on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_, a(n) \_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

**ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE**  
(FOR THE STATE OF MARYLAND)

This ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE (FOR THE STATE OF MARYLAND) ("Addendum") hereby amends the Lease Review and/or Negotiation Agreement and Release dated \_\_\_\_\_, 20\_\_\_\_ ("Lease Review Agreement") from the undersigned to Franchisor Parties. All capitalized terms not otherwise defined in this Addendum will have the same meanings ascribed to such terms in the Lease Review Agreement. The Lease Review Agreement is hereby amended by the addition of the following language, which shall be considered an integral part of the Lease Review Agreement:

1. A general release is incorporated in the Lease Review Agreement. The general release required as a condition of renewal shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law.

2. Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the Maryland Franchise Registration and Disclosure Law, with respect to each such provision, are met independent of this Addendum. This Addendum shall have no force or effect if such jurisdictional requirements are not met.

3. Except as set forth in this Addendum, the terms and provisions of the Lease Review Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned, by and through its respective representative with full rights, power and authority to enter into and bind the undersigned without further consent or approval of any kind, has duly executed and delivered this Addendum on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_, a(n) \_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

**ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE**  
**(FOR THE STATE OF MICHIGAN)**

This ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE (FOR THE STATE OF MICHIGAN) ("Addendum") hereby amends the Lease Review and/or Negotiation Agreement and Release dated \_\_\_\_\_, 20\_\_\_\_ ("Lease Review Agreement") from the undersigned to Franchisor Parties. All capitalized terms not otherwise defined in this Addendum will have the same meanings ascribed to such terms in the Lease Review Agreement. The Lease Review Agreement is hereby amended by the addition of the following language, which shall be considered an integral part of the Lease Review Agreement:

1. A general release is incorporated in the Lease Review Agreement. The following provision is void and unenforceable under the Michigan Franchise Investment Law § 445.1527 if contained in any documents relating to a franchise: A requirement that a franchisee assent to a release, assignment, novation, waiver, or estoppel which deprives franchisee of rights and protections provided in the Act. This shall not preclude a franchisee, after entering into a franchise agreement, from settling any and all claims.

2. Except as set forth in this Addendum, the terms and provisions of the Lease Review Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned, by and through its respective representative with full rights, power and authority to enter into and bind the undersigned without further consent or approval of any kind, has duly executed and delivered this Addendum on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_, a(n) \_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

**ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE**  
(FOR THE STATE OF MINNESOTA)

This ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE (FOR THE STATE OF MINNESOTA) ("Addendum") hereby amends the Lease Review and/or Negotiation Agreement and Release dated \_\_\_\_\_, 20\_\_\_\_ ("Lease Review Agreement") from the undersigned to Franchisor Parties. All capitalized terms not otherwise defined in this Addendum will have the same meanings ascribed to such terms in the Lease Review Agreement. The Lease Review Agreement is hereby amended by the addition of the following language, which shall be considered an integral part of the Lease Review Agreement:

1. A general release is incorporated in the Lease Review Agreement. Minnesota Rules 2860.4400.D prohibits a franchisor from requiring a franchisee to assent to a release, assignment, novation, or waiver that would relieve any person from liability imposed by Minnesota Statutes 1973 Supplement, sections 80C.01 to 80C.22; provided, that this part shall not bar the voluntary settlement of disputes.

2. Any condition, stipulation or provision, including any choice of law provision, purporting to bind any person who, at the time of acquiring a franchise is a resident of this state, or, in the case of a partnership or corporation, organized or incorporated under the laws of this state, or purporting to bind a person acquiring any franchise to be operated in this state to waive compliance or which has the effect of waiving compliance with any provision of sections 80C.01 to 80C.22 or any rule or order thereunder is void under the Minnesota Franchise Act, Minn. Stat. § 80C.21.

3. Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the Minnesota law applicable to the provision are met independent of this Addendum. This Addendum shall have no force or effect if such jurisdictional requirements are not met.

4. Except as set forth in this Addendum, the terms and provisions of the Lease Review Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned, by and through its respective representative with full rights, power and authority to enter into and bind the undersigned without further consent or approval of any kind, has duly executed and delivered this Addendum on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_, a(n) \_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

**ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE**  
(FOR THE STATE OF NORTH DAKOTA)

This ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE (FOR THE STATE OF NORTH DAKOTA) ("Addendum") hereby amends the Lease Review and/or Negotiation Agreement and Release dated \_\_\_\_\_, 20\_\_\_\_ ("Lease Review Agreement") from the undersigned to Franchisor Parties. All capitalized terms not otherwise defined in this Addendum will have the same meanings ascribed to such terms in the Lease Review Agreement. The Lease Review Agreement is hereby amended by the addition of the following language, which shall be considered an integral part of the Lease Review Agreement:

1. A general release is incorporated in the Lease Review Agreement. Under North Dakota Franchise Investment Law, North Dakota Century Code Annotated Chapter 51-19-16, any condition, stipulation, or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of this chapter or any rule order hereunder is void.

**2. THE SECURITIES COMMISSIONER HAS HELD THE FOLLOWING TO BE UNFAIR, UNJUST OR INEQUITABLE TO NORTH DAKOTA FRANCHISEES (SECTION 51-19-09, N.D.C.C.):**

a. General Release: Franchise Agreements that require the franchisee to sign a general release upon renewal of the franchise agreement.

3. Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the North Dakota Franchise Investment Law, with respect to each such provision, are met independent of this Addendum. This Addendum shall have no force or effect if such jurisdictional requirements are not met.

4. Except as set forth in this Addendum, the terms and provisions of the Lease Review Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned, by and through its respective representative with full rights, power and authority to enter into and bind the undersigned without further consent or approval of any kind, has duly executed and delivered this Addendum on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_, a(n) \_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

**ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE**  
(FOR THE STATE OF NEW YORK)

This ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE (FOR THE STATE OF NEW YORK) ("Addendum") hereby amends the Lease Review and/or Negotiation Agreement and Release dated \_\_\_\_\_, 20\_\_\_\_ ("Lease Review Agreement") from the undersigned to Franchisor Parties. All capitalized terms not otherwise defined in this Addendum will have the same meanings ascribed to such terms in the Lease Review Agreement. The Lease Review Agreement is hereby amended by the addition of the following language, which shall be considered an integral part of the Lease Review Agreement:

1. A general release is incorporated in the Lease Review Agreement. Under New York General Business Law, Article 33, Section 687, it is unlawful to require a franchisee to assent to a release, assignment, novation, waiver or estoppel which would relieve a person from any duty or liability imposed by this Article.

2. Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of New York General Business Law, with respect to each such provision are met.

3. Except as set forth in this Addendum, the terms and provisions of the Lease Review Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned, by and through its respective representative with full rights, power and authority to enter into and bind the undersigned without further consent or approval of any kind, has duly executed and delivered this Addendum on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_, a(n) \_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

**ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE**  
(FOR THE STATE OF RHODE ISLAND)

This ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE (FOR THE STATE OF RHODE ISLAND) ("Addendum") hereby amends the Lease Review and/or Negotiation Agreement and Release dated \_\_\_\_\_, 20\_\_\_\_ ("Lease Review Agreement") from the undersigned to Franchisor Parties. All capitalized terms not otherwise defined in this Addendum will have the same meanings ascribed to such terms in the Lease Review Agreement. The Lease Review Agreement is hereby amended by the addition of the following language, which shall be considered an integral part of the Lease Review Agreement:

1. A general release is incorporated in the Lease Review Agreement. Under the Franchise Investment Act, R.I. Gen. Law. ch. 395 Sec. 19-28.1-15, a condition, stipulation or provision requiring a franchisee to waive compliance with or relieving a person of a duty of liability imposed by or a right provided by this act or a rule or order under this act is void. An acknowledgement provision, disclaimer or integration clause or a provision having a similar effect in a franchise agreement does not negate or act to remove from judicial review any statement, misrepresentations or action that would violate this act or a rule or order under this act. This section shall not affect the settlement of disputes, claims or civil lawsuits arising or brought under this act.

2. Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the Rhode Island Franchise Investment Act, with respect to each such provision, are met independent of this Addendum. This Addendum shall have no force or effect if such jurisdictional requirements are not met.

3. Except as set forth in this Addendum, the terms and provisions of the Lease Review Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned, by and through its respective representative with full rights, power and authority to enter into and bind the undersigned without further consent or approval of any kind, has duly executed and delivered this Addendum on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_, a(n) \_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]



**ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE**  
(FOR THE STATE OF SOUTH DAKOTA)

This ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE (FOR THE STATE OF SOUTH DAKOTA) ("Addendum") hereby amends the Lease Review and/or Negotiation Agreement and Release dated \_\_\_\_\_, 20\_\_\_\_ ("Lease Review Agreement") from the undersigned to Franchisor Parties. All capitalized terms not otherwise defined in this Addendum will have the same meanings ascribed to such terms in the Lease Review Agreement. The Lease Review Agreement is hereby amended by the addition of the following language, which shall be considered an integral part of the Lease Review Agreement:

1. A general release is incorporated in the Lease Review Agreement. Under the South Dakota Franchise Investment Law, South Dakota Codified Laws, Title 37, Chapter 37-5B, Sections 37-5B-26, No person may, directly or indirectly, in connection with the offer or sale of a franchise: (8) Disclaim or require a prospective franchisee to waive reliance on any representation made in the disclosure document or in its exhibits or amendments. However, this provision is not intended to prevent a prospective franchisee from voluntarily waiving specific contractual terms and conditions set forth in his or her disclosure document during the course of franchise sale negotiations.

2. Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the South Dakota Franchise Investment Law, with respect to each such provision, are met independent of this Addendum. This Addendum shall have no force or effect if such jurisdictional requirements are not met.

3. Except as set forth in this Addendum, the terms and provisions of the Lease Review Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned, by and through its respective representative with full rights, power and authority to enter into and bind the undersigned without further consent or approval of any kind, has duly executed and delivered this Addendum on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_, a(n) \_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

**ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE**  
(FOR THE STATE OF VIRGINIA)

This ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE (FOR THE STATE OF VIRGINIA) ("Addendum") hereby amends the Lease Review and/or Negotiation Agreement and Release dated \_\_\_\_\_, 20\_\_\_\_ ("Lease Review Agreement") from the undersigned to Franchisor Parties. All capitalized terms not otherwise defined in this Addendum will have the same meanings ascribed to such terms in the Lease Review Agreement. The Lease Review Agreement is hereby amended by the addition of the following language, which shall be considered an integral part of the Lease Review Agreement:

1. A general release is incorporated in the Lease Review Agreement. Under the Virginia Retail Franchising Act, VA. Code Ann. §13.1-571(c), Any condition, stipulation or provision binding any person to waive compliance with any provision of this chapter or of any rule or order thereunder shall be void; provided, however, that nothing contained herein shall bar the right of a franchisor and franchisee to agree to binding arbitration of disputes consistent with the provisions of this chapter.

2. Except as set forth in this Addendum, the terms and provisions of the Lease Review Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned, by and through its respective representative with full rights, power and authority to enter into and bind the undersigned without further consent or approval of any kind, has duly executed and delivered this Addendum on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_, a(n) \_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

**ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE**  
(FOR THE STATE OF WASHINGTON)

This ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE (FOR THE STATE OF WASHINGTON) ("Addendum") hereby amends the Lease Review and/or Negotiation Agreement and Release dated \_\_\_\_\_, 20\_\_\_\_ ("Lease Review and Agreement") from the undersigned to Franchisor Parties. All capitalized terms not otherwise defined in this Addendum will have the same meanings ascribed to such terms in the Lease Review Agreement. The Lease Review Agreement is hereby amended by the addition of the following language, which shall be considered an integral part of the Lease Review Agreement:

1. A general release is incorporated in the Lease Review Agreement. The state of Washington has a statute, RCW 19.100.180, which may supersede the Franchise Agreement in your relationship with the Franchisor, including the areas of termination and renewal of your franchise. There may also be court decisions which may supersede the Franchise Agreement in your relationship with the Franchisor, including the areas of termination and renewal of your Franchise.

2. A release or waiver of rights executed by a franchisee shall not include rights under the Washington Franchise Investment Protection Act, except when executed pursuant to a negotiated settlement after the agreement is in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act or rights or remedies under the Act, such as a right to a jury trial, may not be enforceable.

3. Except as set forth in this Addendum, the terms and provisions of the Lease Review Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned, by and through its respective representative with full rights, power and authority to enter into and bind the undersigned without further consent or approval of any kind, has duly executed and delivered this Addendum on \_\_\_\_\_, 20\_\_\_\_.

**FRANCHISEE**

\_\_\_\_\_, a(n) \_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

**ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE**  
**(FOR THE STATE OF WISCONSIN)**

This ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE (FOR THE STATE OF WISCONSIN) ("Addendum") hereby amends the Lease Review and/or Negotiation Agreement and Release dated \_\_\_\_\_, 20\_\_\_\_ ("Lease Review Agreement") from the undersigned to Franchisor Parties. All capitalized terms not otherwise defined in this Addendum will have the same meanings ascribed to such terms in the Lease Review Agreement. The Lease Review Agreement is hereby amended by the addition of the following language, which shall be considered an integral part of the Lease Review Agreement:

1. A general release is incorporated in the Lease Review Agreement. Under the Wisconsin Franchise Investment Law, Wis. Stat. Ann. § 553.76, Any condition, stipulation or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of this chapter or any rule or order under this chapter is void. This section does not affect the settlement of disputes, claims or civil lawsuits arising or brought under this chapter.

2. Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the Wisconsin law applicable to the provision are met independent of this Addendum. This Addendum shall have no force or effect if such jurisdictional requirements are not met.

3. Except as set forth in this Addendum, the terms and provisions of the Lease Review Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned, by and through its respective representative with full rights, power and authority to enter into and bind the undersigned without further consent or approval of any kind, have duly executed and delivered this Addendum on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_, a(n) \_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

**EXHIBIT O-1**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**Sublease and Guaranty of Sublease**  
(Franchisee pays rent directly to Landlord)

## SUBLEASE

This SUBLEASE ("Sublease") is effective as of the date set forth in Exhibit A attached hereto and incorporated herein by reference, executed by [LEASING ENTITY] an Arizona \_\_\_\_\_ ("Sublessor"), and the sublessee identified in Exhibit A to this Sublease ("Sublessee").

WHEREAS, Sublessor, as tenant, previously entered into, or intends to enter into, that certain lease ("Lease") in the form of Exhibit B attached hereto and incorporated herein by reference, as may be amended from time to time, pursuant to which Sublessor leases certain premises ("Premises") as described in the Lease from the landlord under such Lease ("Landlord");

WHEREAS, Sublessee has entered into that certain Franchise Agreement for Frullati Cafe & Bakery Store No. \_\_\_\_\_ ("Franchise Agreement") with Kahala Franchising, L.L.C. ("Franchisor");

WHEREAS, pursuant to the Franchise Agreement, the parties and Franchisor intend that Sublessee will establish and operate a Frullati Cafe & Bakery restaurant at the location identified in the Franchise Agreement;

WHEREAS, Sublessee may only use and occupy the Premises as a Frullati Cafe & Bakery restaurant selling Frullati Cafe & Bakery-authorized products pursuant to the terms of the Franchise Agreement, and for no other purpose. Sublessee may not sell any other items at the Premises unless first authorized in writing by the Sublessor;

WHEREAS, Sublessee has selected the Premises for the location of the Frullati Cafe & Bakery restaurant to be established and operated by Sublessee;

WHEREAS, in accordance with the Franchise Agreement, Sublessor desires to sublease to Sublessee, and Sublessee desires to sublease from Sublessor, the Premises and Sublessor's rights in the Premises pursuant to the Lease, upon the terms and conditions contained herein;

NOW, THEREFORE, in consideration of the foregoing premises, and the terms, conditions and covenants set forth in this Sublease, the parties hereby agree as follows:

1. Agreement to Sublease. Sublessor hereby demises and sublets to Sublessee the Premises, and Sublessor grants Sublessee all of its respective rights, privileges and appurtenances related to the Premises, and Sublessee takes from Sublessor, the Premises, for the Term (as defined in Section 2.1).

1.1. Assumption. As of the Effective Date (as defined in Exhibit A and attached hereto), Sublessee assumes, and agrees to abide by, all terms and conditions of the Lease with respect to the Premises, and will faithfully perform all obligations required thereunder to be performed by Sublessor during the Term and any obligations to be performed by Sublessor under the Lease prior to, as of and after the Commencement Date of the Lease (as defined in Exhibit A attached hereto) to the extent the same have not been fully performed by Sublessor as of the Effective Date hereof (including without limitation, any initial construction obligations).

1.2. Compliance with Lease. Notwithstanding anything to the contrary contained herein, the terms of this Sublease and Sublessee's use, occupancy, maintenance, repair and restoration of the Premises are subject and subordinate to the terms, covenants, conditions, agreements and requirements of the Lease. Sublessee will not commit or permit to be committed on the Premises any act or omission which will violate any term or condition of the Lease. To enforce the rights of Sublessor hereunder, Sublessor may exercise any and all remedies available to Landlord under the Lease, in addition to any other remedies provided hereunder or available at law or in equity.

## 2. Term; Renewal Options.

2.1. Term. This Sublease will be effective as of the Effective Date and will continue for the full term of the Lease ("Term"), as the same may be amended, earlier terminated, or renewed or extended from time to time pursuant to Section 2.2 below, minus one day.

2.2. Renewal Options. If the Lease, as may be amended by Sublessor from time to time, contains renewal options, Sublessee may exercise such options in accordance with this Section 2.2, provided that as of the time of the giving of the Renewal Notice, no event of default exists or would exist hereunder or under the Lease but for the passage of time or the giving of notice, or both. ***To exercise a renewal option, Sublessee must notify Sublessor in writing in accordance with Section 17 herein of Sublessee's intent to exercise such option ("Renewal Notice") not more than 90 days, or less than 60 days, before the date that Sublessor is required to notify Landlord pursuant to the Lease of its intention to exercise such option. Time is of the essence.*** Notwithstanding the foregoing, Sublessee acknowledges and agrees that the decision to exercise any renewal option in connection with the Lease is solely at the discretion of Sublessor.

2.3. Failure to Timely Deliver Renewal Notice. If Sublessee does not deliver the Renewal Notice within the time period set forth above, Sublessee's right to exercise the renewal option pursuant to this Section 2 will automatically become null and void and of no further force or effect. Sublessee's exercise of a renewal option, as evidenced by the Renewal Notice, will be irrevocable in all events. Upon receipt of an effective Renewal Notice, Sublessor will undertake to renew the Lease for the applicable renewal term and Sublessee will indemnify, defend and hold Sublessor and the Indemnified Parties (as defined in Section 11) harmless with respect to the exercise of the renewal term. Notwithstanding the foregoing, Sublessee acknowledges and agrees that the decision to exercise any renewal option in connection with the Lease is solely at the discretion of Sublessor.

## 3. Rent, Taxes, and Insurance.

3.1. Payment of Rent. The first month's Rent (as such term is hereinafter defined) and the Sublease Security Deposit (as defined in Section 4.1 and set forth on Exhibit A) will be due and payable on the date hereof. Sublessee promises to timely pay to Landlord, without demand, deduction or set-off, regular installments of: (a) all base, minimum or fixed rent payable under the Lease ("Base Rent"), (b) any percentage rent or other rent based upon sales in, at, or from the Premises ("Percentage Rent") and (c) any other payments payable under the Lease for operating expenses, common area expenses, utilities, marketing funds, merchants associations, sprinkler fees and any other costs and expenses, including any annual reconciliation(s) of the same, as applicable (collectively, "Operating Expenses"), together with all sales, rental and privilege taxes due thereon, as required under the Lease. The foregoing costs are collectively referred to as "Rent."

3.2. Payment of Taxes and Insurance. Sublessee promises to timely pay any and all taxes and insurance covering or incurred during the Term of this Sublease and due as required under the Lease or in connection with the Premises, when billed or invoiced from the respective taxing authority or insurance company, whether addressed to Sublessor or its affiliate or Sublessee, without demand, deduction or set-off, including any annual reconciliation(s), as applicable.

3.3. Sales Reports. Not later than the tenth (10<sup>th</sup>) day after the end of each calendar month in the Term and the fifteenth (15<sup>th</sup>) day after the end of each calendar year in the Term (including the last year in the Term), or such sooner periods as may be set forth in the Lease, Sublessee will submit to Sublessor (and Landlord, if the Lease requires the delivery of sales reports) an itemized and accurate written statement signed by Sublessee or its duly authorized officer, setting forth in reasonable detail the full amount of Lease Gross Sales made during the preceding calendar month or year, as applicable, and certifying to Sublessor and Landlord that the same is true and correct. If the total amount of Percentage Rent paid by Sublessee for any week, month or calendar year during the Term (including the last calendar year of the Term) shall be less than the actual amount due from Sublessee for such period, Sublessee will pay to Landlord the difference between the amount paid by Sublessee and the actual amount due upon demand, but in no event later than what is required under the Lease. Upon three (3) days' notice to Sublessee, Sublessor or its representatives will have the right to conduct an audit of Sublessee's books and records relating to Lease Gross Sales at the Premises at any time during the Term. If such audit reveals that Sublessee understated Lease Gross Sales, then Sublessee will pay to Sublessor the costs and expenses of the audit, together with Interest (as defined in Section 3.4

below) from the date Percentage Rent should have been paid hereunder and any interest, late fees or other penalties incurred by Sublessor under the Lease as a result of such underpayment. Sublessee will maintain all books and records relating to sales at the Premises for a minimum of three (3) years. The obligations under this Section 3.3 will survive the expiration or sooner termination of this Sublease.

3.4. Lease Gross Sales. As used herein, the term "Lease Gross Sales" will mean the total gross sales in, on, from or originating within the Premises on which percentage rent, if any, is payable under the terms of the Lease or, if not defined therein, will mean Gross Sales (as defined in the Franchise Agreement).

3.5. Late Charge. Sublessee acknowledges that any late payment by Sublessee to Landlord of any rent or other payment due hereunder may cause may result in the assessment of late charges as allowed under the Lease, if any, and that Sublessee shall be solely liable for the payment of such late charges.

#### 4. Sublease Security Deposit.

4.1. Cash Deposit. Contemporaneously with Sublessee's execution hereof, Sublessee will deposit with Sublessor a sublease security deposit, which shall not be less than one month's base rent, in the amount set forth on Exhibit A ("Sublease Security Deposit"). The Sublease Security Deposit will be held by Sublessor as security for the performance of Sublessee's obligations under this Sublease and Sublessee's Franchise Agreement with Franchisor. The Sublease Security Deposit is not an advance rental deposit or a measure of Sublessor's damages in case of Sublessee's default. Upon each occurrence of an Event of Default hereunder (as defined in Section 15 below), or monies owed to Sublessor, Franchisor or any of its affiliates under the Franchise Agreement, Sublessor, Franchisor or its affiliates may use all or part of the Sublease Security Deposit to pay delinquent payments due under this Sublease and the Franchise Agreement, and the cost of any damage, injury, expense or liability caused by such default, without prejudice to any other remedy provided herein or provided by law. Sublessee will pay Sublessor on demand the amount that will restore the Sublease Security Deposit to its original amount. Sublessor's obligation respecting the Sublease Security Deposit is that of a debtor, not a trustee; no interest will accrue thereon unless otherwise required by law. The Sublease Security Deposit will be the property of Sublessee, but will be refunded to Sublessee when Sublessee's obligations under this Sublease and the Franchise Agreement have been completely fulfilled. Sublessee agrees and acknowledges that the Sublease Security Deposit is separate and distinct from the security deposit held by the Landlord in the amount set forth on Exhibit A ("Lease Security Deposit"). Sublessee further agrees and acknowledges that it will be required to deposit with Sublessor the Sublease Security Deposit and may be required to reimburse Sublessor for the Lease Security Deposit.

4.2. Security Agreement. Sublessee hereby grants Sublessor a security interest, and this Sublease constitutes a security agreement within the meaning of and pursuant to the Uniform Commercial Code of the state in which the Premises is located, in and to all of Sublessee's property situated in, or upon, or used in connection with the Premises (except merchandise sold in the ordinary course of business) (collectively, "Collateral") as security for all of Sublessee's obligations hereunder, including, without limitation, the obligation to pay Rent and other monetary amounts hereunder. Such property thus encumbered includes specifically all trade fixtures and any other fixtures removable by Sublessor, as tenant, pursuant to the Lease, inventory, equipment, signage, small wares, furniture, contract rights, accounts receivable and the proceeds thereof. Sublessee hereby irrevocably authorizes Sublessor to file such financing statements and other Uniform Commercial Code filings as Sublessor deems appropriate in order to perfect such security interest. Sublessee further agrees to execute such other financing statements as reasonably requested by Sublessor to further secure Sublessor's interest under this Section 4.2 as often as Sublessor in its discretion shall require.

5. Utilities. Sublessee will arrange for and pay for, prior to delinquency, the cost of any and all electricity, water, gas, sewer, telephone and other utilities consumed in the Premises commencing on the date Sublessee is permitted to access the Premises and continuing during the Term hereof (collectively, "Utilities"), unless Landlord expressly pays for the same pursuant to the Lease or the cost thereof is paid by Sublessee as Operating Expenses. Such payments will be made directly to the utility provider unless the Lease provides otherwise. Notwithstanding the foregoing, Sublessor may elect to arrange for and/or pay the cost of such Utilities directly to the utility provider. If Sublessor so elects, then Sublessee will pay to Sublessor any and all amounts due for such Utilities upon demand. Any failure to pay the cost of Utilities to any utility provider, as applicable, when due will be deemed a failure to pay Rent hereunder and will entitle Sublessor to exercise its remedies hereunder.



6. Use. Sublessee will use the Premises solely for the operation of a Frullati Cafe & Bakery restaurant in accordance with the terms and conditions of the Lease, this Sublease and all applicable federal, state and local laws, and for no other purpose whatsoever.

7. Sublessor's Obligations. Subject to the terms of this Sublease, Sublessor is conveying to Sublessee only those rights to the Premises that it has acquired by virtue of the Lease respectively. Sublessee acknowledges that the Lease sets forth certain Landlord obligations, which, as between Sublessor and Sublessee, Sublessor is not obligated to perform. Sublessee waives and releases Sublessor from any and all claims Sublessee may now or hereafter have against Sublessor with respect to any and all such obligations and/or the contents of the Lease or any provision thereof, all of which have been read and approved by Sublessee. If Landlord fails to perform its obligations under the Lease, Sublessee will promptly send Sublessor written notice specifically describing the default in detail. Upon receipt of such notice, Sublessor will promptly notify Landlord of the alleged default. Sublessor will not be obligated to bring or defend any claim or action against Landlord and, if it declines to do so, Sublessee, at Sublessee's sole expense, will have the right to do so, in which event Sublessee will indemnify, defend and hold harmless the Indemnified Parties (as defined in Section 11 below) against the same.

8. Maintenance, Repair, and Alterations. Without limiting the generality of Section 1.1 herein, Sublessee will maintain the Premises in good condition and repair and will perform all of "Tenant's" (as defined in Exhibit A) maintenance, repair and replacement obligations under the Lease. Sublessee acknowledges that Sublessor will have no repair or maintenance obligations with respect to the Premises or the shopping center/development ("Project") in which the Premises is located. Sublessee will not perform any construction or make any alterations, additions or changes to the Premises without Sublessor's prior written consent and, if required by the Lease, Landlord's written approval. Upon the expiration of the Term or the sooner termination of this Sublease, Sublessee will surrender the Premises in good condition and repair, in as good a condition or better than required at the time of Sublessor's surrender under the Lease.

9. Assignment and Subletting. Without the prior written consent of Sublessor, which consent may be withheld in Sublessor's sole and absolute discretion, (a) Sublessee will not assign, transfer, convey, pledge or mortgage this Sublease or any interest therein, whether by operation of law or otherwise, (b) no interest in Sublessee may be assigned, transferred, conveyed, pledged or mortgaged, whether by operation of law or otherwise, including without limitation, a merger or consolidation of Sublessee with another entity or the dissolution of Sublessee, and (c) Sublessee will not sublet all or any part of the Premises. No assignment of this Sublease or subletting of the Premises consented to will relieve Sublessee of its obligations under this Sublease. Any assignment, transfer, conveyance, pledge, mortgage or subletting in violation of this Section 9 will be voidable at the sole option of Sublessor. Sublessee acknowledges that any assignment or subletting to which Sublessor may consent will be conditioned upon Landlord's consent thereto, if Landlord's consent is required under the Lease. Any assignment of this Lease or sublease of the Premises by Sublessee will be subject to the provisions of Section 6 above.

Risk of Loss. Except to the extent caused by the intentional misconduct of Sublessor and to the fullest extent permitted by law, (a) Sublessee assumes all risk of loss of or damage to Sublessee's property located within the Premises or the Project, including any loss or damage caused by water leakage, fire, windstorm, explosion, theft, vandalism, earthquake, act of God or act of any other tenant or third party; and (b) Sublessee waives any claim, demand and action against Sublessor for injury, death or property damage occurring in or around the Premises or Project during the Term.

10. Indemnification. To the fullest extent permitted by law, Sublessee hereby indemnifies, defends (with counsel acceptable to Sublessor), releases and holds harmless Sublessor, and each of its officers, directors, affiliates, contractors, agents, attorneys and employees (collectively, "Indemnified Parties"), against all claims, demands, damages, losses, causes of action and actions of any kind or nature whatsoever, and all related costs and expenses (including reasonable attorneys' fees) (a) for injury, death, disability, or illness of any person or damage to property, occurring in or around the Premises or Project or arising out of Sublessee's use of the Premises or Project, (b) in connection with or arising from the terms conditions, requirements and provisions of the Lease (or Sublessor's negotiation or documentation thereof) and this Sublease and (c) in connection with or arising from any mechanics' or materialmen's lien or claim filed against the Premises for work performed or materials furnished by or on behalf of Sublessee, except to the extent caused by the intentional misconduct of

Sublessor. It is expressly agreed that Sublessee's obligations under this Section 11 will survive the expiration or earlier termination of this Sublease for any reason.

11. Insurance. Sublessee will provide such commercial general liability, property and other insurance coverages as Sublessor may reasonably request with respect to the operation of Sublessee's business in the Premises, but in no event less than the insurance coverage required to be carried by Tenant pursuant to the Lease (including loss of rent insurance, etc.). The insurance will be with companies reasonably acceptable to Sublessor, written on an occurrence basis, provide primary coverage, and name Sublessor (and Sublessor's area representative, if any) and Landlord as additional insureds or loss payees as their interests may appear, as applicable and as otherwise required of the Tenant under the Lease. The liability policy will contain a contractual liability endorsement. Sublessee will deliver certificates evidencing the insurance required by this Section 12, which provide that the insurance may not be cancelled or materially changed in the scope or amount of coverage unless thirty (30) days advance written notice is given to Sublessor and Landlord.

12. Right to Inspect. Sublessor and its agents, employees or representatives will have the right to inspect the Premises during business hours to determine Sublessee's compliance with the terms of this Sublease and the Lease.

13. Acceptance of Premises; Sublessee's Representations. Upon the date that Landlord delivers possession of the Premises to Sublessor and Sublessor delivers possession of the Premises to Sublessee (which may occur simultaneously), Sublessee agrees to accept the Premises in an "AS IS" condition, without representation or warranty. Sublessee represents and confirms to Sublessor that Sublessee has selected the Premises for the location of the Frullati Cafe & Bakery restaurant to be established and operated by Sublessee and that: (a) no representative, agent, attorney or employee of Sublessor made any representations, inducements or promises about the Premises, the Lease or the entry into this Sublease; (b) no representative, agent, attorney or employee of Sublessor made any representations, inducements or promises about the characteristics or conditions regarding or pertaining to the Premises or the shopping center/development in which the Premises is situated; (c) Sublessee has independently investigated the potential for the success of its operations in the Premises and has not relied upon any representations, inducements or promises by Sublessor's representatives, agents, attorney or employees, or any area representative; (d) Sublessee has concluded that the Premises has a reasonable opportunity for success as a Frullati Cafe & Bakery restaurant; (e) Sublessee has inspected the Premises and finds the same in acceptable condition; (f) Sublessor has made no representation or warranty as to the suitability of the Premises for the conduct of Sublessor's business; (g) Sublessee waives any implied warranty that the Premises are suitable for Sublessee's intended purposes; (h) Sublessee accepts full responsibility for the consequences of Sublessee's decision to operate a Frullati Cafe & Bakery restaurant at the Premises in accordance with the terms of this Sublease, the Lease and the Franchise Agreement; and (i) Sublessee has thoroughly reviewed the Lease and this Sublease and has been advised by its legal counsel regarding the Lease and this Sublease, or Sublessee has made a reasoned and fully informed decision not to be so represented by counsel and understands and acknowledges the significance and consequences of such decision, and Sublessee is fully knowledgeable about and is fully satisfied with the terms and provisions, and assumes all of its obligations as tenant under, the Lease and this Sublease. Sublessee acknowledges that the foregoing representations by Sublessee are a material inducement to Sublessor's execution of this Sublease.

14. Default.

14.1. An "Event of Default" will occur if at any time during the Term: (a) Sublessee defaults in the payment of Rent or other payment due hereunder and the same is not cured within three (3) days after written notice thereof; provided, however, Sublessor will be obligated to give only two (2) such notices in any calendar year, with subsequent payment default to be an Event of Default if such failure to pay continues for a period of three (3) days or more from the date such payment is due (without any notice); (b) Sublessee defaults in any other obligation under this Sublease, including, but not limited to causing or permitting the occurrence of any event which, but for the passage of time or the giving of notice, or both, would constitute a default under the Lease, and the same is not cured within ten (10) days after written notice thereof or such shorter cure period as may be set forth in the Lease; (c) Sublessee defaults in any obligation under the Franchise Agreement or any other agreement between Sublessor (or its affiliates) and Sublessee (or its affiliates), and the same is not cured within ten (10) days after written notice thereof; (d) any proceeding is begun by or against Sublessee to subject the assets of Sublessee to any bankruptcy or insolvency law or for an appointment of a receiver of Sublessee or

for any of Sublessee's asset;, or (e) Sublessee makes a general assignment of Sublessee's assets for the benefit of its creditors.

14.2. Upon an Event of Default, Sublessor may at any time thereafter at its election: (a) terminate this Sublease; (b) terminate Sublessee's right of possession in the Premises; (c) cure any such default and receive from Sublessee, as additional rent, all costs incurred in doing so, plus interest at the lesser of fifteen percent (15%) per annum or the highest rate permitted by law; (d) exercise any remedy available to Landlord under the Lease; and/or (e) pursue any other remedies available at law or in equity. All Sublessor remedies provided herein will be cumulative and non-exclusive. Upon the termination of this Sublease or termination of Sublessee's right of possession, it will be lawful for Sublessor, without formal demand or notice of any kind, to re-enter the Premises, by summary dispossession proceedings or otherwise, and to remove Sublessee and all persons and property therefrom. If Sublessor re-enters the Premises following an Event of Default, Sublessor will have the right to keep in place and use, or remove and store, all of the furniture, fixtures, equipment, signage, inventory and other items covered by Sublessor's lien pursuant to Section 4.2 hereof. No action taken by Sublessor pursuant to this Section 15 will relieve Sublessee of its obligations under this Sublease or will be deemed an act terminating this Sublease or declaring the Term hereof ended unless notice is served upon Sublessee by Sublessor expressly setting forth therein that Sublessor elects to terminate this Sublease or declare the Term ended.

14.3. If, following an Event of Default, Sublessor terminates this Sublease, Sublessor may recover from Sublessee the sum of: (a) all Rent and all other amounts accrued hereunder to the date of such termination; (b) the cost of reletting the whole or any part of the Premises, including without limitation brokerage fees and/or leasing commissions incurred by Sublessor, and costs of removing and storing Sublessee's or any other occupant's property, and repairing, altering, remodeling, or otherwise putting the Premises into condition acceptable to a new tenant or tenants and the Landlord; (c) all reasonable expenses incurred by Sublessor in pursuing its remedies, including reasonable attorneys' fees and court costs; and (d) an amount in cash equal to the then present value of the Rent and other amounts payable by Sublessee under this Sublease as would otherwise have been required to be paid by Sublessee to Sublessor during the period following the termination of this Sublease measured from the date of such termination to the expiration date stated in this Sublease. Such present value will be calculated at a discount rate equal to the 90-day U.S. Treasury bill rate at the date of such termination.

14.4. If, following an Event of Default, Sublessor terminates Sublessee's right of possession (but not this Sublease), Sublessor may, but will be under no obligation to, relet the Premises for the account of Sublessee for such rent and upon such terms as shall be satisfactory to Sublessor without thereby releasing Sublessee from any liability hereunder and without demand or notice of any kind to Sublessee. If the Premises are not relet, then Sublessee will pay to Sublessor as damages a sum equal to the amount of the rental reserved in this Sublease for such period or periods, plus the cost of recovering possession of the Premises (including attorneys' fees and costs of suit), the unpaid Rent and other amounts accrued hereunder at the time of repossession, and the costs incurred in any attempt by Sublessor to relet the Premises. If the Premises are relet and a sufficient sum shall not be realized from such reletting after first deducting therefrom, for retention by Sublessor, the unpaid Rent and other amounts accrued hereunder at the time of reletting, the cost of recovering possession (including attorneys' fees and costs of suit), all of the costs and expense of repairs, changes, alterations, and additions, the expense of such reletting (including without limitation brokerage fees and leasing commissions) and the cost of collection of the rent accruing therefrom] to satisfy the rent provided for in this Sublease to be paid, then Sublessee will immediately satisfy and pay any such deficiency. Any such payments due Sublessor will be made upon demand therefor from time to time and Sublessee agrees that Sublessor may file suit to recover any sums falling due from time to time. Notwithstanding any such reletting without termination, Sublessor may at any time thereafter elect in writing to terminate this Sublease for such previous breach.

15. Brokerage. Sublessee represents and warrants that, other than the "Sublessee's Broker" listed on Exhibit A attached hereto, if any, it has dealt with no broker, agent or other person in connection with this transaction and that no broker, agent or other person brought about this transaction. Sublessee will pay to Broker all commissions and other compensation due as a result of this leasing transaction and will indemnify, defend and hold Sublessor harmless from and against any claims by the Broker or any other broker, agent or other person claiming a commission or other form of compensation by virtue of having dealt with Sublessee with regard to this leasing transaction.

16. Notices. All communications or notices required or permitted to be given or served under this Sublease must be in writing and will be deemed to have been duly given or made if (a) delivered in person or by courier (including by Federal Express or other courier); (b) deposited in the United States mail, postage prepaid, for mailing by certified or registered mail, return receipt requested; or (c) faxed with confirmed transmission, followed by a hard copy in the mail on the next business day, and addressed as follows:

If to Sublessor: [LEASING ENTITY]  
Attention: Real Estate Department  
9311 E. Via de Ventura  
Scottsdale, Arizona 85258  
Facsimile: (480) 362-4792

with a copy to: [FRANCHISING ENTITY]  
Attention: Legal Department  
9311 E. Via de Ventura  
Scottsdale Arizona 85258  
Facsimile: (480) 362-4819

If to Sublessee: At the Premises  
Facsimile: See Exhibit A

All communications and notices will be effective upon delivery in person or by courier to the address set forth in this Sublease, upon being deposited in the United States mail in the manner set forth above or upon being faxed in the manner set forth above. Any party may change his, her or its address or fax number by giving notice in writing, stating his, her or its new address, to the other party to this Sublease as provided in the foregoing manner.

17. Personal Property Taxes. Sublessee will comply with all legal requirements for filing a personal property tax return for, and paying all taxes assessed against, all personal property, equipment and fixtures located within the Premises during the Term hereof, such payment to be made by Sublessee directly to the taxing authority on or before the due date thereof.

18. Quiet Enjoyment. So long as Sublessee pays all amounts due hereunder and performs all other covenants and agreements herein set forth, and so long as no Event of Default exists, Sublessee will peaceably and quietly have, hold and enjoy the Premises for the term hereof without hindrance from Sublessor subject to the terms and provisions of this Sublease. As this is a Sublease, Sublessee agrees to take the Premises subject to the terms of the Lease and all matters of record.

19. Governing Law. This Sublease and all questions relating to its validity, interpretation, performance and enforcement will be governed by and construed, interpreted and enforced in accordance with the laws of the State of Arizona, notwithstanding any Arizona or other conflict of laws provisions to the contrary.

20. Attorneys' Fees. If either party should prevail in any litigation or other legal proceeding instituted by or against the other related to this Sublease, the prevailing party, as determined by the court or the like, will receive from the non-prevailing party all costs and reasonable attorneys' fees (payable at standard hourly rates) incurred in such litigation or other legal proceeding, including costs on appeal, as determined by the court or the like. Sublessee will also pay to Sublessor, as additional rent, Sublessor's reasonable attorneys' fees incurred as a result of any breach or default by Sublessee under this Sublease.

21. Successors and Assigns. Subject to Section 9 hereof, which restricts Sublessee's rights to assign this Sublease and its rights hereunder, this Sublease will be binding upon and inure to the benefit of the parties and their respective assigns, legal representatives, executors, heirs and successors. Any attempt by Sublessee to assign this Sublease, or any of his rights hereunder, or to delegate his obligations hereunder, without compliance with the terms of Section 9 will be void. Notwithstanding anything contained in this Sublease to the contrary, Sublessor may assign this Sublease, or any of its rights hereunder, or delegate any of its obligations hereunder without the consent of Sublessee or any other person.

22. Joint and Several Liability. If Sublessee consists of more than one person or entity, the obligations hereunder will be joint and several.

23. Entire Agreement. This Sublease, including the exhibits hereto and the other agreements contained as exhibits to Franchisor's operations manual, contains the entire understanding and agreement of the parties with respect to the subject matter hereof and supersedes, replaces and extinguishes all prior agreements and understandings between the parties with respect to that subject matter. Each of the exhibits and other agreements (whether between the current parties or a former sublessee) is incorporated in this Sublease by this reference and constitute a part of this Sublease. This Sublease supersedes all Subleases and Agreements of Intent to Sublet between the parties (or their respective affiliates) with respect to the Premises.

24. Counterparts. This Sublease may be executed in two or more counterparts, each of which will be considered one and the same agreement and will become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties.

25. Time is of the Essence. Time is of the essence as to the performance of the parties' obligations under this Sublease.

27. Waiver of Right to Jury Trial, Class Action and Certain Damages. IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, BETWEEN SUBLESSOR AND SUBLESSEE ARISING OUT OF THIS SUBLEASE OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED IN CONNECTION HERewith OR THE TRANSACTIONS RELATED HERETO, SUBLESSEE HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, (A) THE RIGHT TO A JURY TRIAL OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, (B) THE RIGHT TO INITIATE OR PARTICIPATE IN A CLASS ACTION IN ANY FORUM, INCLUDING ARBITRATION, AND (C) THE RIGHT TO SEEK OR COLLECT PUNITIVE, CONSEQUENTIAL AND SPECIAL DAMAGES IN ANY FORUM, INCLUDING ARBITRATION.

28. Personal Guaranty. If Sublessee is an individual and married, the obligations and liabilities of Sublessee under this Sublease shall be personally guaranteed by the Sublessee's spouse, in the form of guaranty attached hereto as Exhibit D and incorporated herein by reference. If the Sublessee is a corporation, limited liability company, or other business entity, the obligations and liabilities of Sublessee shall be personally guaranteed by each of the Sublessee's shareholders, members, or other owners, direct or indirect (and their respective spouses, if married) in the form of a guaranty attached hereto as Exhibit D and incorporated herein by reference. In the event any person who has not previously signed said guaranty becomes Sublessee's spouse or Sublessee's shareholder, member, or other owner, direct or indirect, or a spouse of such owner, at any time after the execution of this Sublease, Sublessee must cause such person(s) to immediately execute and deliver said guaranty of the Sublease to Sublessor.

29. Plurals, Possessives and Captions. Words in the singular number include the plural when the context requires (and vice-versa), and defined terms include the possessive when the context requires (and vice-versa).

***[SIGNATURE PAGE FOLLOWS]***

Store No. \_\_\_\_\_

**SUBLESSEE'S SIGNATURE PAGE**

SUBLESSEE: \_\_\_\_\_, a(n) \_\_\_\_\_

EXECUTED BY: \_\_\_\_\_  
[Name, Title]

EXECUTED BY: \_\_\_\_\_  
[Name, Title]

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) SS:

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public (Seal)

My Commission Expires

\_\_\_\_\_

Store No. \_\_\_\_\_

**SUBLESSOR’S SIGNATURE PAGE**

SUBLESSOR: [LEASING ENTITY], an Arizona \_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

STATE OF ARIZONA            )  
  ) SS:  
COUNTY OF MARICOPA        )

The foregoing Sublease was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of [LEASING ENTITY], an Arizona \_\_\_\_\_, on behalf of said entity.

\_\_\_\_\_(Seal)

Notary Public

My Commission Expires  
\_\_\_\_\_

Store No. \_\_\_\_\_

**Exhibit A  
to  
Sublease**

Effective Date of Sublease:	_____
Name of Sublessee:	_____, a(n) _____
Lease:	By and between [LEASING ENTITY] ("Tenant") and [LANDLORD] (" <u>Landlord</u> ")
Premises:	[Address City, State Zip]
Commencement Date of Lease:	_____, 20__
Expiration Date of Lease:	_____, 20__
How many option(s) to extend the Lease are remaining and Option Terms:	___ ( ) ___ ( )-year option(s) remaining [or N/A]
Lease Security Deposit currently held by Landlord:	\$X,XXX.XX - Amount set forth in Lease [verified by] [but not verified] by Landlord [or N/A]
Sublease Security Deposit:	\$X,XXX.XX [or N/A]
Exercise Renewal Option(s) Notice Date to Landlord:	No earlier than _____, 20__, no later than _____, 20__



**Exhibit B  
to  
Sublease**

**LEASE AGREEMENT**

**Exhibit C  
to  
Sublease**

**Lease Verification Checklist**

By initialing below, Sublessee hereby acknowledges reviewing the attached Lease for the Premises, including all amendments and addendums (**Exhibit B**), and accepts to be bound by all the terms contained therein:

Sublessee acknowledges and agrees to be bound by all of the terms of the Lease, including, but not limited to, the following:

INITIALS:

Current monthly rental payment amounts (Purchaser acknowledges are subject to periodic increases as detailed in the Lease), including CAM, NNN, taxes and related fees

\_\_\_\_\_  
\_\_\_\_\_

Lease term, including any renewal options

\_\_\_\_\_  
\_\_\_\_\_

**Exhibit D  
to  
Sublease**

**GUARANTY OF SUBLEASE**

## GUARANTY OF SUBLEASE

In order to induce Kahala Franchising, L.L.C. ("Franchisor") to enter into that certain Franchise Agreement dated \_\_\_\_\_ ("Franchise Agreement") with \_\_\_\_\_ ("Franchisee"), and to induce [LEASING ENTITY], an affiliate company of Franchisor ("Sublessor") to enter into that certain sublease ("Sublease") dated \_\_\_\_\_, 20\_\_ with Franchisee, as "Sublessee", covering the Frullati Cafe & Bakery store located at: \_\_\_\_\_, the undersigned ([individually and collectively, ]"Guarantor"), hereby personally guarantees the payment and performance of and agrees to pay and perform as a primary obligor all liabilities, obligations and duties (including, but not limited to, payment of rent) imposed upon Franchisee as Sublessee under the terms of the Sublease, as if Guarantor had executed the Sublease as Sublessee thereunder.

### Recitals

A. Guarantor is a shareholder, partner, member, or other person or entity interested in effecting the grant of the Sublease.

B. Without this Guaranty of Sublease ("Guaranty"), Sublessor cannot be assured that there are sufficient assets to operate the Frullati Cafe & Bakery store or to protect Sublessor in the event of a default by Sublessee.

C. Sublessor is willing to enter into the Sublease only if Guarantor personally guarantees faithful performance of all the terms of the Sublease.

D. Guarantor acknowledges Guarantor has received and read the Sublease, and all exhibits thereto, and agrees to be bound to the obligations in this Guaranty with regard to the Sublease.

### Agreement

1. In consideration of the above recitals, Guarantor personally guarantees, for the benefit of Sublessor, its parent, subsidiary, affiliates and successors and assigns, the prompt and complete performance of all the covenants and conditions contained in the foregoing Sublease.

2. This Guaranty is effective until all terms of the Sublease have been fully and completely performed by Sublessee. No release of Sublessee or discharge of Sublessee under bankruptcy law, or any other law, shall impair or effect the obligations of Guarantor to Sublessor hereunder.

3. Sublessor is not required to proceed first against the Sublessee, but may proceed first against the Guarantor alone or concurrent with proceeding against Sublessee. The obligations of Guarantor hereunder are absolute and unconditional.

4. Sublessee and Sublessor may from time to time alter or modify the Sublease between themselves, possibly changing or increasing the extent of Guarantor's obligation under this Guaranty. Guarantor consents to any and all modifications or amendments of the Sublease and related documents, without requiring notice to Guarantor or Guarantor's consent.

5. Guarantor agrees specifically to be bound by any confidentiality requirements in the Sublease.

6. Guarantor waives notice of acceptance of this Guaranty and notice of non-performance or non-payment by Sublessee of any of its obligations or liabilities under the Sublease.

7. Guarantor agrees to pay all attorneys' fees, costs and expenses incurred by Sublessor in enforcing this Guaranty, whether or not suit or action is filed, and if suit or action is filed, then through trial and all appeals, and also in any proceedings or matter in Bankruptcy Court; Guarantor assumes all liability for all losses, costs, attorney's fees, and expenses that Sublessor incurs as a result of a default by Sublessee, including those fees and expenses incurred in a bankruptcy proceeding involving Sublessee.

8. Guarantor hereby agrees that upon notice of default or upon an uncured default of the Sublease or any other agreement between Guarantor (or a legal entity thereof) and Sublessor or its affiliates, and with no prior notice, Guarantor consents to Sublessor's (or its affiliates' or third-party contractors') acquisition and use of non-business consumer credit reports on Guarantor in order to evaluate as necessary the financial condition of Guarantor as principal, member, manager, franchisee, and/or guarantor in connection with the collection of monetary obligations as contemplated by the Sublease, this Guaranty, a promissory note, or any other agreements between Guarantor (or a legal entity thereof), and Sublessor or its affiliates. Guarantor hereby knowingly consents to the use of such credit reports consistent with the Federal Fair Credit Reporting Act as contained in 15 U.S.C. § 1681 et seq.

9. This Guaranty is personal to Guarantor and the obligations and duties imposed herein may not be delegated or assigned; provided, however, that this Guaranty shall be binding upon the successors, assigns and personal representatives of Guarantor. This Guaranty shall inure to the benefit of Sublessor, its affiliates, successors and assigns.

10. [Guarantor, \_\_\_\_\_[include name here], represents that he or she is not married as of the date first set forth above.]

11. In the event that any one or more provisions contained herein shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Guaranty shall be construed to bind Guarantor to the maximum extent permitted by law that is subsumed within the terms of such provision as though it were separately articulated herein.

12. This Guaranty shall be interpreted and construed under the laws of the State of Arizona, which laws shall prevail in the event of any conflict of law. Any appropriate state or federal court located in Maricopa County, Arizona has exclusive jurisdiction over any case or controversy arising under or in connection with this Agreement and is the proper forum in which to adjudicate the case or controversy, and the parties hereto irrevocably submit to the jurisdiction of any such court. THE PARTIES AGREE THAT ALL DISPUTES ADMITTED TO THE COURT PURSUANT TO THIS SECTION 12 SHALL BE TRIED TO THE COURT SITTING WITHOUT A JURY, NOTWITHSTANDING ANY STATE OR FEDERAL CONSTITUTIONAL OR STATUTORY RIGHTS OR PROVISIONS.

13. If Guarantor consists of two (2) or more persons, then each person will be jointly and severally liable under the provisions of this Guaranty.

14. Guarantor acknowledges that (i) it is a condition to the granting of the Sublease to Sublessee that Guarantor shall execute and deliver this Guaranty to Sublessor, (ii) that Sublessor has entered into the Sublease in reliance upon the agreement of Guarantor to do so, and (iii) that, as owners of the Sublessee, if applicable, Guarantor has received adequate consideration to support its execution of this Guaranty. This Guaranty does not grant or create in Guarantor any interests, rights or privileges in any franchise or the Franchise Agreement.

**GUARANTOR:**

\_\_\_\_\_  
[Name], an individual

\_\_\_\_\_  
[Name], an individual

**EXHIBIT O-2**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**Sublease and Guaranty of Sublease**

(Franchisor collects rent from Franchisee and pays to Landlord)

## SUBLEASE

This SUBLEASE ("Sublease") is effective as of the date set forth in Exhibit A attached hereto and incorporated herein by reference, executed by [LEASING ENTITY], an Arizona \_\_\_\_\_ ("Sublessor"), and the sublessee identified in Exhibit A to this Sublease ("Sublessee").

WHEREAS, Sublessor, as tenant, previously entered into, or intends to enter into, that certain lease ("Lease") in the form of Exhibit B attached hereto and incorporated herein by reference, as may be amended from time to time, pursuant to which Sublessor leases certain premises ("Premises") as described in the Lease from the landlord under such Lease ("Landlord");

WHEREAS, Sublessee has entered into that certain Franchise Agreement for Frullati Cafe & Bakery Store No. \_\_\_\_\_ ("Franchise Agreement") with Kahala Franchising, L.L.C. ("Franchisor");

WHEREAS, pursuant to the Franchise Agreement, the parties and Franchisor intend that Sublessee will establish and operate a Frullati Cafe & Bakery restaurant at the location identified in the Franchise Agreement;

WHEREAS, Sublessee may only use and occupy the Premises as a Frullati Cafe & Bakery restaurant selling Frullati Cafe & Bakery-authorized products pursuant to the terms of the Franchise Agreement, and for no other purpose. Sublessee may not sell any other items at the Premises unless first authorized in writing by the Sublessor;

WHEREAS, Sublessee has selected the Premises for the location of the Frullati Cafe & Bakery restaurant to be established and operated by Sublessee;

WHEREAS, in accordance with the Franchise Agreement, Sublessor desires to sublease to Sublessee, and Sublessee desires to sublease from Sublessor, the Premises and Sublessor's rights in the Premises pursuant to the Lease, upon the terms and conditions contained herein;

NOW, THEREFORE, in consideration of the foregoing premises, and the terms, conditions and covenants set forth in this Sublease, the parties hereby agree as follows:

1. Agreement to Sublease. Sublessor hereby demises and sublets to Sublessee the Premises, and Sublessor grants Sublessee all of its respective rights, privileges and appurtenances related to the Premises, and Sublessee takes from Sublessor, the Premises, for the Term (as defined in Section 2.1).

1.1. Assumption. As of the Effective Date (as defined in Exhibit A and attached hereto), Sublessee assumes, and agrees to abide by, all terms and conditions of the Lease with respect to the Premises, and will faithfully perform all obligations required thereunder to be performed by Sublessor during the Term and any obligations to be performed by Sublessor under the Lease prior to, as of and after the Commencement Date of the Lease (as defined in Exhibit A attached hereto) to the extent the same have not been fully performed by Sublessor as of the Effective Date hereof (including without limitation, any initial construction obligations).

1.2. Compliance with Lease. Notwithstanding anything to the contrary contained herein, the terms of this Sublease and Sublessee's use, occupancy, maintenance, repair and restoration of the Premises are subject and subordinate to the terms, covenants, conditions, agreements and requirements of the Lease. Sublessee will not commit or permit to be committed on the Premises any act or omission which will violate any term or condition of the Lease. To enforce the rights of Sublessor hereunder, Sublessor may exercise any and all remedies available to Landlord under the Lease, in addition to any other remedies provided hereunder or available at law or in equity.

2. Term; Renewal Options.

2.1. Term. This Sublease will be effective as of the Effective Date and will continue for the full term of the Lease ("Term"), as the same may be amended, earlier terminated, or renewed or extended from time to time pursuant to Section 2.2 below, minus one day.

2.2. Renewal Options. If the Lease, as may be amended by Sublessor from time to time, contains renewal options, Sublessee may exercise such options in accordance with this Section 2.2, provided that as of the time of the giving of the Renewal Notice, no event of default exists or would exist hereunder or under the Lease but for the passage of time or the giving of notice, or both. ***To exercise a renewal option, Sublessee must notify Sublessor in writing in accordance with Section 17 herein of Sublessee's intent to exercise such option ("Renewal Notice") not more than 90 days, or less than 60 days, before the date that Sublessor is required to notify Landlord pursuant to the Lease of its intention to exercise such option. Time is of the essence.*** Notwithstanding the foregoing, Sublessee acknowledges and agrees that the decision to exercise any renewal option in connection with the Lease is solely at the discretion of Sublessor.

2.3. Failure to Timely Deliver Renewal Notice. If Sublessee does not deliver the Renewal Notice within the time period set forth above, Sublessee's right to exercise the renewal option pursuant to this Section 2 will automatically become null and void and of no further force or effect. Sublessee's exercise of a renewal option, as evidenced by the Renewal Notice, will be irrevocable in all events. Upon receipt of an effective Renewal Notice, Sublessor will undertake to renew the Lease for the applicable renewal term and Sublessee will indemnify, defend and hold Sublessor and the Indemnified Parties (as defined in Section 11) harmless with respect to the exercise of the renewal term. Notwithstanding the foregoing, Sublessee acknowledges and agrees that the decision to exercise any renewal option in connection with the Lease is solely at the discretion of Sublessor.

3. Rent, Taxes and Insurance.

3.1. Payment of Rent. The first month's Base Rent (as defined in this Section 3.1), the Sublease Security Deposit (as defined in Section 4.1 and set forth on Exhibit A) and the first monthly installment of estimated Operating Expenses (as defined in this Section 3.1) will be due and payable on the date hereof. Sublessee promises to pay to Sublessor in advance, without demand, deduction or set-off, regular installments of: (a) all base, minimum or fixed rent payable under the Lease ("Base Rent"), (b) any percentage rent or other rent based upon sales in, at, or from the Premises ("Percentage Rent") and (c) any other payments payable under the Lease for operating expenses, common area expenses, utilities, marketing funds, merchants associations, sprinkler fees and any other costs and expenses, including any annual reconciliation(s) of the same, as applicable (collectively, "Operating Expenses"), together with all sales, rental and privilege taxes due thereon. The foregoing costs are collectively referred to as "Rent."

3.1.1. From and after the Commencement Date and through the Term hereof, Sublessee will pay to Sublessor on the earlier of: (i) the 25<sup>th</sup> day of the month, or (ii) the fourth (4<sup>th</sup>) Friday of the month; or (ii) on a day reasonably set by Sublessor to ensure timely payment of Rent under the Lease (as applicable, "Due Date"), an amount equal to 1/12<sup>th</sup> of the annual Base Rent and 1/12<sup>th</sup> of the estimated Operating Expenses and all applicable taxes thereon, as applicable, for the following month (i.e., Sublessee's first Base Rent and estimated Operating Expense payments payable under this Section 3.1.1 will be applied to the second month of the Term, so that Base Rent and Operating Expenses will always be paid one month in advance.) To the extent Sublessee has paid Base Rent and estimated Operating Expenses in advance, Sublessee will not be obligated to pay the same on the Due Date the last month of the Term. If any of Sublessee's Base Rent and Operating Expenses payments are returned for non-sufficient funds, Sublessor has the option, at its sole discretion, to collect the Base Rent and Operating Expenses payments on a weekly basis one month in arrears without prior notice to Sublessee. If Sublessor exercises this option, Sublessee will pay to Sublessor on each Friday for the remainder of the Term an amount equal to 1/52<sup>nd</sup> of the annual Base Rent and 1/52<sup>nd</sup> of the estimated Operating Expenses and all applicable taxes thereon, at least four (4) weeks in advance of the first of the month for which it is paid by Sublessor to Landlord.

3.1.2. In addition to Base Rent and estimated Operating Expenses paid in accordance with Section 3.1.1 above, commencing on the date of this Sublease, Sublessee will pay Percentage Rent and any other amounts due hereunder or under the Lease in the amounts and the same number of installments due from Sublessor, as tenant, to Landlord under the Lease, which payment will be made by Sublessee to Sublessor at least ten (10) days before the same is due to Landlord under the Lease;



provided, however, at Sublessor's election, Percentage Rent will be paid by Sublessee in arrears on a weekly basis, in which event Sublessee will also submit along with each payment of Percentage Rent, a sales report of Lease Gross Sales (as defined below) for the previous week in the form described in Section 3.2 below.

3.1.3. If requested by Sublessor, concurrently with Sublessee's execution hereof or at any time thereafter, Sublessee will sign a pre-authorization enabling Sublessor to draw against Sublessee's bank account for the full amount of the Rent and any other amounts due hereunder as and when the same become due. All Rent and other payments required to be made by Sublessee to Sublessor hereunder may be drawn against Sublessee's bank account by Sublessor, or at Sublessor's election, will be payable at such address as Sublessor may specify from time to time by written notice delivered in accordance herewith. Further, Sublessor may direct Sublessee to make full or partial payments of Base Rent, Percentage Rent, and/or Operating Expenses directly to Landlord, and Sublessee will immediately comply with such direction.

3.2. Payment of Taxes and Insurance. Sublessee promises to timely pay any and all taxes and insurance covering or incurred during the Term of this Sublease and due as required under the Lease or in connection with the Premises, when billed or invoiced from the respective taxing authority or insurance company, whether addressed to Sublessor or its affiliate or Sublessee, without demand, deduction or set-off, including any annual reconciliation(s), as applicable. Sublessee agrees and acknowledges that taxes and insurance may be collected by Sublessor either pursuant to Section 3.1.1 above or in such a manner reasonably determined by Sublessor to ensure timely payment of any and all taxes and insurance due under the Lease or in connection with the Premises to the requisite taxing authorities or insurance companies.

3.3. Sales Reports. Not later than the tenth (10<sup>th</sup>) day after the end of each calendar month in the Term and the fifteenth (15<sup>th</sup>) day after the end of each calendar year in the Term (including the last year in the Term), or such sooner periods as may be set forth in the Lease, Sublessee will submit to Sublessor (and Landlord, if the Lease requires the delivery of sales reports) an itemized and accurate written statement signed by Sublessee or its duly authorized officer, setting forth in reasonable detail the full amount of Lease Gross Sales made during the preceding calendar month or year, as applicable, and certifying to Sublessor and Landlord that the same is true and correct. If the total amount of Percentage Rent paid by Sublessee for any week, month or calendar year during the Term (including the last calendar year of the Term) shall be less than the actual amount due from Sublessee for such period, Sublessee will pay to Sublessor the difference between the amount paid by Sublessee and the actual amount due upon demand, but in no event later than fifteen (15) days after the end of such calendar year; and if the total amount of Percentage Rent paid by Sublessee for any such week, month or year shall exceed such actual amount due from Sublessee for such period, then such excess will be credited against the next installment(s) of Rent due from Sublessee to Sublessor under this Sublease, or promptly refunded to Sublessee if this Sublease has expired or otherwise terminated and Sublessee is not then in default hereunder. Upon three (3) days' notice to Sublessee, Sublessor or its representatives will have the right to conduct an audit of Sublessee's books and records relating to Lease Gross Sales at the Premises at any time during the Term. If such audit reveals that Sublessee understated Lease Gross Sales, then Sublessee will pay to Sublessor the costs and expenses of the audit, together with Interest (as defined in Section 3.4 below) from the date Percentage Rent should have been paid hereunder and any interest, late fees or other penalties incurred by Sublessor under the Lease as a result of such underpayment. Sublessee will maintain all books and records relating to sales at the Premises for a minimum of three (3) years. The obligations under this Section 3.3 will survive the expiration or sooner termination of this Sublease.

3.4. Lease Gross Sales. As used herein, the term "Lease Gross Sales" will mean the total gross sales in, on, from or originating within the Premises on which percentage rent, if any, is payable under the terms of the Lease or, if not defined therein, will mean Gross Sales (as defined in the Franchise Agreement).

3.5. Late Charge. Sublessee acknowledges that late payment by Sublessee to Sublessor of any rent or other payment due hereunder will cause Sublessor to incur costs not contemplated by this Sublease, the exact amount of such costs being extremely difficult and impractical to determine. Therefore, if Sublessee is delinquent in any installment of Base Rent, Percentage Rent, Operating Expenses or other sums due and payable hereunder for more than three (3) days, Sublessee will pay to Sublessor on demand a late charge equal to five percent (5%) of such delinquent sum, *plus* any late charges and interest incurred by Sublessor under the Lease as a result of such late payment. The parties agree that such late charge represents a fair and reasonable estimate of the costs that Sublessor will incur by reason of such late payment by Sublessee. The provision for such late charge will be in addition

to all of Sublessor's other rights and remedies hereunder or at law and will not be construed as a penalty. In addition to the foregoing late charge, if Sublessee is delinquent in any installment of Rent or other payments due hereunder for more than ten (10) days, then such delinquent sum will bear interest at the rate of eighteen percent (18%) per annum or the highest rate permitted by law, whichever is less ("Interest"), from the due date until paid in full.

#### 4. Sublease Security Deposit.

4.1. Cash Deposit. Contemporaneously with Sublessee's execution hereof, Sublessee will deposit with Sublessor a sublease security deposit, which shall not be less than one month's base rent, in the amount set forth on Exhibit A ("Sublease Security Deposit"). The Sublease Security Deposit will be held by Sublessor as security for the performance of Sublessee's obligations under this Sublease and Sublessee's Franchise Agreement with Franchisor. The Sublease Security Deposit is not an advance rental deposit or a measure of Sublessor's damages in case of Sublessee's default. Upon each occurrence of an Event of Default hereunder (as defined in Section 15 below), or monies owed to Sublessor, Franchisor or any of its affiliates under the Franchise Agreement, Sublessor, Franchisor or its affiliates may use all or part of the Sublease Security Deposit to pay delinquent payments due under this Sublease and the Franchise Agreement, and the cost of any damage, injury, expense or liability caused by such default, without prejudice to any other remedy provided herein or provided by law. Sublessee will pay Sublessor on demand, or Sublessor may draw on Sublessee's bank account, the amount that will restore the Sublease Security Deposit to its original amount. Sublessor's obligation respecting the Sublease Security Deposit is that of a debtor, not a trustee; no interest will accrue thereon unless otherwise required by law. The Sublease Security Deposit will be the property of Sublessee, but will be refunded to Sublessee when Sublessee's obligations under this Sublease and the Franchise Agreement have been completely fulfilled. Sublessee agrees and acknowledges that the Sublease Security Deposit is separate and distinct from the security deposit held by the Landlord in the amount set forth on Exhibit A ("Lease Security Deposit"). Sublessee further agrees and acknowledges that it will be required to deposit with Sublessor the Sublease Security Deposit and may be required to reimburse Sublessor for the Lease Security Deposit.

4.2. Security Agreement. Sublessee hereby grants Sublessor a security interest, and this Sublease constitutes a security agreement within the meaning of and pursuant to the Uniform Commercial Code of the state in which the Premises is located, in and to all of Sublessee's property situated in, or upon, or used in connection with the Premises (except merchandise sold in the ordinary course of business) (collectively, "Collateral") as security for all of Sublessee's obligations hereunder, including, without limitation, the obligation to pay Rent and other monetary amounts hereunder. Such property thus encumbered includes specifically all trade fixtures and any other fixtures removable by Sublessor, as tenant, pursuant to the Lease, inventory, equipment, signage, small wares, furniture, contract rights, accounts receivable and the proceeds thereof. Sublessee hereby irrevocably authorizes Sublessor to file such financing statements and other Uniform Commercial Code filings as Sublessor deems appropriate in order to perfect such security interest. Sublessee further agrees to execute such other financing statements as reasonably requested by Sublessor to further secure Sublessor's interest under this Section 4.2 as often as Sublessor in its discretion shall require.

5. Utilities. Sublessee will arrange for and pay for, prior to delinquency, the cost of any and all electricity, water, gas, sewer, telephone and other utilities consumed in the Premises commencing on the date Sublessee is permitted to access the Premises and continuing during the Term hereof (collectively, "Utilities"), unless Landlord expressly pays for the same pursuant to the Lease or the cost thereof is paid by Sublessee as Operating Expenses. Such payments will be made directly to the utility provider unless the Lease provides otherwise. Notwithstanding the foregoing, Sublessor may elect to arrange for and/or pay the cost of such Utilities directly to the utility provider. If Sublessor so elects, then Sublessee will pay to Sublessor any and all amounts due for such Utilities upon demand. Sublessor may draw against Sublessee's bank account from time to time for the full amount of the cost of such Utilities or Sublessee's reasonable estimate of the costs thereof. Any failure to pay the cost of Utilities to Sublessor or any utility provider, as applicable, when due will be deemed a failure to pay Rent hereunder and will entitle Sublessor to exercise its remedies hereunder.

6. Use. Sublessee will use the Premises solely for the operation of a Frullati Cafe & Bakery restaurant in accordance with the terms and conditions of the Lease, this Sublease and all applicable federal, state and local laws, and for no other purpose whatsoever.

7. Sublessor's Obligations. Subject to the terms of this Sublease, Sublessor is conveying to Sublessee only those rights to the Premises that it has acquired by virtue of the Lease respectively. Sublessee acknowledges that the Lease sets forth certain Landlord obligations, which, as between Sublessor and Sublessee, Sublessor is not obligated to perform. Sublessee waives and releases Sublessor from any and all claims Sublessee may now or hereafter have against Sublessor with respect to any and all such obligations and/or the contents of the Lease or any provision thereof, all of which have been read and approved by Sublessee. If Landlord fails to perform its obligations under the Lease, Sublessee will promptly send Sublessor written notice specifically describing the default in detail. Upon receipt of such notice, Sublessor will promptly notify Landlord of the alleged default. Sublessor will not be obligated to bring or defend any claim or action against Landlord and, if it declines to do so, Sublessee, at Sublessee's sole expense, will have the right to do so, in which event Sublessee will indemnify, defend and hold harmless the Indemnified Parties (as defined in Section 11 below) against the same.

8. Maintenance, Repair, and Alterations. Without limiting the generality of Section 1.1 herein, Sublessee will maintain the Premises in good condition and repair and will perform all of "Tenant's" (as defined in Exhibit A) maintenance, repair and replacement obligations under the Lease. Sublessee acknowledges that Sublessor will have no repair or maintenance obligations with respect to the Premises or the shopping center/development ("Project") in which the Premises is located. Sublessee will not perform any construction or make any alterations, additions or changes to the Premises without Sublessor's prior written consent and, if required by the Lease, Landlord's written approval. Upon the expiration of the Term or the sooner termination of this Sublease, Sublessee will surrender the Premises in good condition and repair, in as good a condition or better than required at the time of Sublessor's surrender under the Lease.

9. Assignment and Subletting. Without the prior written consent of Sublessor, which consent may be withheld in Sublessor's sole and absolute discretion, (a) Sublessee will not assign, transfer, convey, pledge or mortgage this Sublease or any interest therein, whether by operation of law or otherwise, (b) no interest in Sublessee may be assigned, transferred, conveyed, pledged or mortgaged, whether by operation of law or otherwise, including without limitation, a merger or consolidation of Sublessee with another entity or the dissolution of Sublessee, and (c) Sublessee will not sublet all or any part of the Premises. No assignment of this Sublease or subletting of the Premises consented to will relieve Sublessee of its obligations under this Sublease. Any assignment, transfer, conveyance, pledge, mortgage or subletting in violation of this Section 9 will be voidable at the sole option of Sublessor. Sublessee acknowledges that any assignment or subletting to which Sublessor may consent will be conditioned upon Landlord's consent thereto, if Landlord's consent is required under the Lease. Any assignment of this Lease or sublease of the Premises by Sublessee will be subject to the provisions of Section 6 above.

10. Risk of Loss. Except to the extent caused by the intentional misconduct of Sublessor and to the fullest extent permitted by law, (a) Sublessee assumes all risk of loss of or damage to Sublessee's property located within the Premises or the Project, including any loss or damage caused by water leakage, fire, windstorm, explosion, theft, vandalism, earthquake, act of God or act of any other tenant or third party; and (b) Sublessee waives any claim, demand and action against Sublessor for injury, death or property damage occurring in or around the Premises or Project during the Term.

11. Indemnification. To the fullest extent permitted by law, Sublessee hereby indemnifies, defends (with counsel acceptable to Sublessor), releases and holds harmless Sublessor, and each of its officers, directors, affiliates, contractors, agents, attorneys and employees (collectively, "Indemnified Parties"), against all claims, demands, damages, losses, causes of action and actions of any kind or nature whatsoever, and all related costs and expenses (including reasonable attorneys' fees) (a) for injury, death, disability, or illness of any person or damage to property, occurring in or around the Premises or Project or arising out of Sublessee's use of the Premises or Project, (b) in connection with or arising from the terms conditions, requirements and provisions of the Lease (or Sublessor's negotiation or documentation thereof) and this Sublease and (c) in connection with or arising from any mechanics' or materialmen's lien or claim filed against the Premises for work performed or materials furnished by or on behalf of Sublessee, except to the extent caused by the intentional misconduct of Sublessor. It is expressly agreed that Sublessee's obligations under this Section 11 will survive the expiration or earlier termination of this Sublease for any reason.

12. Insurance. Sublessee will provide such commercial general liability, property and other insurance coverages as Sublessor may reasonably request with respect to the operation of Sublessee's business in the Premises, but in no event less than the insurance coverage required to be carried by "Tenant"

pursuant to the Lease (including loss of rent insurance, etc.). The insurance will be with companies reasonably acceptable to Sublessor, written on an occurrence basis, provide primary coverage, and name Sublessor (and Sublessor's area representative, if any) and Landlord as additional insureds or loss payees as their interests may appear, as applicable and as otherwise required of the "Tenant" under the Lease. The liability policy will contain a contractual liability endorsement. Sublessee will deliver certificates evidencing the insurance required by this Section 12, which provide that the insurance may not be cancelled or materially changed in the scope or amount of coverage unless thirty (30) days advance written notice is given to Sublessor and Landlord.

13. Right to Inspect. Sublessor and its agents, employees or representatives will have the right to inspect the Premises during business hours to determine Sublessee's compliance with the terms of this Sublease and the Lease.

14. Acceptance of Premises; Sublessee's Representations. Upon the date that Landlord delivers possession of the Premises to Sublessor and Sublessor delivers possession of the Premises to Sublessee (which may occur simultaneously), Sublessee agrees to accept the Premises in an "AS IS" condition, without representation or warranty. Sublessee represents and confirms to Sublessor that Sublessee has selected the Premises for the location of the Frullati Cafe & Bakery restaurant to be established and operated by Sublessee and that: (a) no representative, agent, attorney or employee of Sublessor made any representations, inducements or promises about the Premises, the Lease or the entry into this Sublease; (b) no representative, agent, attorney or employee of Sublessor made any representations, inducements or promises about the characteristics or conditions regarding or pertaining to the Premises or the shopping center/development in which the Premises is situated; (c) Sublessee has independently investigated the potential for the success of its operations in the Premises and has not relied upon any representations, inducements or promises by Sublessor's representatives, agents, attorney or employees, or any area representative; (d) Sublessee has concluded that the Premises has a reasonable opportunity for success as a Frullati Cafe & Bakery restaurant; (e) Sublessee has inspected the Premises and finds the same in acceptable condition; (f) Sublessor has made no representation or warranty as to the suitability of the Premises for the conduct of Sublessor's business; (g) Sublessee waives any implied warranty that the Premises are suitable for Sublessee's intended purposes; (h) Sublessee accepts full responsibility for the consequences of Sublessee's decision to operate a Frullati Cafe & Bakery restaurant at the Premises in accordance with the terms of this Sublease, the Lease and the Franchise Agreement; and (i) Sublessee has thoroughly reviewed the Lease and this Sublease and has been advised by its legal counsel regarding the Lease and this Sublease, or Sublessee has made a reasoned and fully informed decision not to be so represented by counsel and understands and acknowledges the significance and consequences of such decision, and Sublessee is fully knowledgeable about and is fully satisfied with the terms and provisions, and assumes all of its obligations as tenant under, the Lease and this Sublease. Sublessee acknowledges that the foregoing representations by Sublessee are a material inducement to Sublessor's execution of this Sublease.

15. Default.

15.1. An "Event of Default" will occur if at any time during the Term: (a) Sublessee defaults in the payment of Base Rent, Percentage Rent, Operating Expenses or any other Rent or other payment due hereunder and the same is not cured within three (3) days after written notice thereof; provided, however, Sublessor will be obligated to give only two (2) such notices in any calendar year, with subsequent payment default to be an Event of Default if such failure to pay continues for a period of three (3) days or more from the date such payment is due (without any notice); (b) Sublessee defaults in any other obligation under this Sublease, including, but not limited to causing or permitting the occurrence of any event which, but for the passage of time or the giving of notice, or both, would constitute a default under the Lease, and the same is not cured within ten (10) days after written notice thereof or such shorter cure period as may be set forth in the Lease; (c) Sublessee defaults in any obligation under the Franchise Agreement or any other agreement between Sublessor (or its affiliates) and Sublessee (or its affiliates), and the same is not cured within ten (10) days after written notice thereof; (d) any proceeding is begun by or against Sublessee to subject the assets of Sublessee to any bankruptcy or insolvency law or for an appointment of a receiver of Sublessee or for any of Sublessee's assets; or (e) Sublessee makes a general assignment of Sublessee's assets for the benefit of its creditors.

15.2. Upon an Event of Default, Sublessor may at any time thereafter at its election: (a) terminate this Sublease; (b) terminate Sublessee's right of possession in the Premises; (c) cure any such default and receive from Sublessee, as additional rent, all costs incurred in doing so, plus interest at the lesser of fifteen percent (15%) per annum or the highest rate permitted by law; (d) exercise any remedy

available to Landlord under the Lease; and/or (e) pursue any other remedies available at law or in equity. All Sublessor remedies provided herein will be cumulative and non-exclusive. Upon the termination of this Sublease or termination of Sublessee's right of possession, it will be lawful for Sublessor, without formal demand or notice of any kind, to re-enter the Premises, by summary dispossession proceedings or otherwise, and to remove Sublessee and all persons and property therefrom. If Sublessor re-enters the Premises following an Event of Default, Sublessor will have the right to keep in place and use, or remove and store, all of the furniture, fixtures, equipment, signage, inventory and other items covered by Sublessor's lien pursuant to Section 4.2 hereof. No action taken by Sublessor pursuant to this Section 15 will relieve Sublessee of its obligations under this Sublease or will be deemed an act terminating this Sublease or declaring the Term hereof ended unless notice is served upon Sublessee by Sublessor expressly setting forth therein that Sublessor elects to terminate this Sublease or declare the Term ended.

15.3. If, following an Event of Default, Sublessor terminates this Sublease, Sublessor may recover from Sublessee the sum of: (a) all Rent and all other amounts accrued hereunder to the date of such termination; (b) the cost of reletting the whole or any part of the Premises, including without limitation brokerage fees and/or leasing commissions incurred by Sublessor, and costs of removing and storing Sublessee's or any other occupant's property, and repairing, altering, remodeling, or otherwise putting the Premises into condition acceptable to a new tenant or tenants and the Landlord; (c) all reasonable expenses incurred by Sublessor in pursuing its remedies, including reasonable attorneys' fees and court costs; and (d) an amount in cash equal to the then present value of the Rent and other amounts payable by Sublessee under this Sublease as would otherwise have been required to be paid by Sublessee to Sublessor during the period following the termination of this Sublease measured from the date of such termination to the expiration date stated in this Sublease. Such present value will be calculated at a discount rate equal to the 90-day U.S. Treasury bill rate at the date of such termination.

15.4. If, following an Event of Default, Sublessor terminates Sublessee's right of possession (but not this Sublease), Sublessor may, but will be under no obligation to, relet the Premises for the account of Sublessee for such rent and upon such terms as shall be satisfactory to Sublessor without thereby releasing Sublessee from any liability hereunder and without demand or notice of any kind to Sublessee. If the Premises are not relet, then Sublessee will pay to Sublessor as damages a sum equal to the amount of the rental reserved in this Sublease for such period or periods, plus the cost of recovering possession of the Premises (including attorneys' fees and costs of suit), the unpaid Rent and other amounts accrued hereunder at the time of repossession, and the costs incurred in any attempt by Sublessor to relet the Premises. If the Premises are relet and a sufficient sum shall not be realized from such reletting after first deducting therefrom, for retention by Sublessor, the unpaid Rent and other amounts accrued hereunder at the time of reletting, the cost of recovering possession (including attorneys' fees and costs of suit), all of the costs and expense of repairs, changes, alterations, and additions, the expense of such reletting (including without limitation brokerage fees and leasing commissions) and the cost of collection of the rent accruing therefrom] to satisfy the rent provided for in this Sublease to be paid, then Sublessee will immediately satisfy and pay any such deficiency. Any such payments due Sublessor will be made upon demand therefor from time to time and Sublessee agrees that Sublessor may file suit to recover any sums falling due from time to time. Notwithstanding any such reletting without termination, Sublessor may at any time thereafter elect in writing to terminate this Sublease for such previous breach.

16. Brokerage. Sublessee represents and warrants that, other than the "Sublessee's Broker" listed on Exhibit A attached hereto, if any, it has dealt with no broker, agent or other person in connection with this transaction and that no broker, agent or other person brought about this transaction. Sublessee will pay to Broker all commissions and other compensation due as a result of this leasing transaction and will indemnify, defend and hold Sublessor harmless from and against any claims by the Broker or any other broker, agent or other person claiming a commission or other form of compensation by virtue of having dealt with Sublessee with regard to this leasing transaction.

17. Notices. All communications or notices required or permitted to be given or served under this Sublease must be in writing and will be deemed to have been duly given or made if (a) delivered in person or by courier (including by Federal Express or other courier); (b) deposited in the United States mail, postage prepaid, for mailing by certified or registered mail, return receipt requested; or (c) faxed with confirmed transmission, followed by a hard copy in the mail on the next business day, and addressed as follows:

If to Sublessor: [LEASING ENTITY]  
Attention: Real Estate Department  
9311 E. Via de Ventura  
Scottsdale, Arizona 85258  
Facsimile: (480) 362-4792

with a copy to: [FRANCHISING ENTITY]  
Attention: Legal Department  
9311 E. Via de Ventura  
Scottsdale Arizona 85258  
Facsimile: (480) 362-4819

If to Sublessee: At the Premises  
Facsimile: See Exhibit A

All communications and notices will be effective upon delivery in person or by courier to the address set forth in this Sublease, upon being deposited in the United States mail in the manner set forth above or upon being faxed in the manner set forth above. Any party may change his, her or its address or fax number by giving notice in writing, stating his, her or its new address, to the other party to this Sublease as provided in the foregoing manner.

18. Personal Property Taxes. Sublessee will comply with all legal requirements for filing a personal property tax return for, and paying all taxes assessed against, all personal property, equipment and fixtures located within the Premises during the Term hereof, such payment to be made by Sublessee directly to the taxing authority on or before the due date thereof.

19. Quiet Enjoyment. So long as Sublessee pays all amounts due hereunder and performs all other covenants and agreements herein set forth, and so long as no Event of Default exists, Sublessee will peaceably and quietly have, hold and enjoy the Premises for the term hereof without hindrance from Sublessor subject to the terms and provisions of this Sublease. As this is a Sublease, Sublessee agrees to take the Premises subject to the terms of the Lease and all matters of record.

20. Governing Law. This Sublease and all questions relating to its validity, interpretation, performance and enforcement will be governed by and construed, interpreted and enforced in accordance with the laws of the State of Arizona, notwithstanding any Arizona or other conflict of laws provisions to the contrary.

21. Attorneys' Fees. If either party should prevail in any litigation or other legal proceeding instituted by or against the other related to this Sublease, the prevailing party, as determined by the court or the like, will receive from the non-prevailing party all costs and reasonable attorneys' fees (payable at standard hourly rates) incurred in such litigation or other legal proceeding, including costs on appeal, as determined by the court or the like. Sublessee will also pay to Sublessor, as additional rent, Sublessor's reasonable attorneys' fees incurred as a result of any breach or default by Sublessee under this Sublease.

22. Successors and Assigns. Subject to Section 9 of this Sublease, which restricts Sublessee's rights to assign this Sublease and its rights hereunder, this Sublease will be binding upon and inure to the benefit of the parties and their respective assigns, legal representatives, executors, heirs and successors. Any attempt by Sublessee to assign this Sublease, or any of his rights hereunder, or to delegate his obligations hereunder, without compliance with the terms of Section 9 will be void. Notwithstanding anything contained in this Sublease to the contrary, Sublessor may assign this Sublease, or any of its rights hereunder, or delegate any of its obligations hereunder without the consent of Sublessee or any other person.

23. Joint and Several Liability. If Sublessee consists of more than one person or entity, the obligations hereunder will be joint and several.

24. Entire Agreement. This Sublease, including the exhibits hereto and the other agreements contained as exhibits to Franchisor's operations manual, contains the entire understanding and agreement of the parties with respect to the subject matter hereof and supersedes, replaces and extinguishes all prior agreements and understandings between the parties with respect to that subject matter. Each of the exhibits and other agreements (whether between the current parties or a former

sublessee) is incorporated in this Sublease by this reference and constitute a part of this Sublease. This Sublease supersedes all Subleases and Agreements of Intent to Sublet between the parties (or their respective affiliates) with respect to the Premises.

25. Counterparts. This Sublease may be executed in two or more counterparts, each of which will be considered one and the same agreement and will become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties.

26. Time is of the Essence. Time is of the essence as to the performance of the parties' obligations under this Sublease.

27. Waiver of Right to Jury Trial, Class Action and Certain Damages. IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, BETWEEN SUBLESSOR AND SUBLESSEE ARISING OUT OF THIS SUBLEASE OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED IN CONNECTION HERewith OR THE TRANSACTIONS RELATED HERETO, SUBLESSEE HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, (A) THE RIGHT TO A JURY TRIAL OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, (B) THE RIGHT TO INITIATE OR PARTICIPATE IN A CLASS ACTION IN ANY FORUM, INCLUDING ARBITRATION, AND (C) THE RIGHT TO SEEK OR COLLECT PUNITIVE, CONSEQUENTIAL AND SPECIAL DAMAGES IN ANY FORUM, INCLUDING ARBITRATION.

28. Personal Guaranty. If Sublessee is an individual and married, the obligations and liabilities of Sublessee under this Sublease shall be personally guaranteed by the Sublessee's spouse, in the form of guaranty attached hereto as Exhibit D and incorporated herein by reference. If the Sublessee is a corporation, limited liability company, or other business entity, the obligations and liabilities of Sublessee shall be personally guaranteed by each of the Sublessee's shareholders, members, or other owners, direct or indirect (and their respective spouses, if married) in the form of a guaranty attached hereto as Exhibit D and incorporated herein by reference. In the event any person who has not previously signed said guaranty becomes Sublessee's spouse or Sublessee's shareholder, member, or other owner, direct or indirect, or a spouse of such owner, at any time after the execution of this Sublease, Sublessee must cause such person(s) to immediately execute and deliver said guaranty of the Sublease to Sublessor.

29. Plurals, Possessives and Captions. Words in the singular number include the plural when the context requires (and vice-versa), and defined terms include the possessive when the context requires (and vice-versa).

***[SIGNATURE PAGE FOLLOWS]***

**SUBLESSEE'S SIGNATURE PAGE**

SUBLESSEE: \_\_\_\_\_, a(n) \_\_\_\_\_

EXECUTED BY: \_\_\_\_\_  
\_\_\_\_\_  
[Name, Title]

EXECUTED BY: \_\_\_\_\_  
\_\_\_\_\_  
[Name, Title]

STATE OF \_\_\_\_\_)  
\_\_\_\_\_) SS:  
COUNTY OF \_\_\_\_\_)

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. WITNESS my hand and official seal.

Notary Public \_\_\_\_\_ (Seal)  
My Commission Expires \_\_\_\_\_  
\_\_\_\_\_



**SUBLESSOR'S SIGNATURE PAGE**

SUBLESSOR: LEASING ENTITY, an Arizona \_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

STATE OF ARIZONA            )  
  ) SS:  
COUNTY OF MARICOPA        )

The foregoing Sublease was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by  
\_\_\_\_\_, the \_\_\_\_\_ of [LEASING ENTITY], an Arizona  
\_\_\_\_\_, on behalf of said entity.

\_\_\_\_\_ (Seal)  
My Commission Expires \_\_\_\_\_  
Notary Public

Store No. \_\_\_\_\_

**Exhibit A  
to  
Sublease**

Effective Date of Sublease:	_____
Name of Sublessee:	_____, a(n) _____
Lease:	By and between [LEASING ENTITY] ("Tenant") and [LANDLORD] (" <u>Landlord</u> ")
Premises:	Address City, State Zip
Commencement Date Of Lease:	_____, 20__
Expiration Date of Lease:	_____, 20__
How many option(s) to extend the Lease are remaining and Option Terms:	___ ( ) ___ ( )-year option(s) remaining [or N/A]
Lease Security Deposit currently held by Landlord:	X,XXX.XX - Amount set forth in Lease [verified by] [but not verified] by Landlord [or N/A]
Sublease Security Deposit:	\$X,XXX.XX [or N/A]
Exercise Renewal Option(s) Notice Date to Landlord:	No earlier than _____, 20__, no later than _____, 20__

**Exhibit B  
to  
Sublease**

**LEASE AGREEMENT**

**Exhibit C  
to  
Sublease**

**Lease Verification Checklist**

By initialing below, Sublessee hereby acknowledges reviewing the attached Lease for the Premises, including all amendments and addendums (Exhibit B), and accepts to be bound by all the terms contained therein:

Sublessee acknowledges and agrees to be bound by all of the terms of the Lease, including, but not limited to, the following:

INITIALS:

Current monthly rental payment amounts (Purchaser acknowledges are subject to periodic increases as detailed in the Lease), including CAM, NNN, taxes and related fees

\_\_\_\_\_  
\_\_\_\_\_

Lease term, including any renewal options

\_\_\_\_\_  
\_\_\_\_\_

**Exhibit D  
to  
Sublease**

**GUARANTY OF SUBLEASE**

## GUARANTY OF SUBLEASE

In order to induce Kahala Franchising, L.L.C. ("Franchisor") to enter into that certain Franchise Agreement dated \_\_\_\_\_, 20\_\_ ("Franchise Agreement") with \_\_\_\_\_ ("Franchisee"), and to induce [LEASING ENTITY], an affiliate company of Franchisor ("Sublessor") to enter into that certain sublease ("Sublease") dated \_\_\_\_\_, 20\_\_ with Franchisee, as "Sublessee", covering the Frullati Cafe & Bakery store located at: \_\_\_\_\_, the undersigned ([individually and collectively, ]"Guarantor"), hereby personally guarantees the payment and performance of and agrees to pay and perform as a primary obligor all liabilities, obligations and duties (including, but not limited to, payment of rent) imposed upon Franchisee as Sublessee under the terms of the Sublease, as if Guarantor had executed the Sublease as Sublessee thereunder.

### Recitals

A. Guarantor is a shareholder, partner, member, or other person or entity interested in effecting the grant of the Sublease.

B. Without this Guaranty of Sublease ("Guaranty"), Sublessor cannot be assured that there are sufficient assets to operate the Frullati Cafe & Bakery store or to protect Sublessor in the event of a default by Sublessee.

C. Sublessor is willing to enter into the Sublease only if Guarantor personally guarantees faithful performance of all the terms of the Sublease.

D. Guarantor acknowledges Guarantor has received and read the Sublease, and all exhibits thereto, and agrees to be bound to the obligations in this Guaranty with regard to the Sublease.

### Agreement

1. In consideration of the above recitals, Guarantor personally guarantees, for the benefit of Sublessor, its parent, subsidiary, affiliates and successors and assigns, the prompt and complete performance of all the covenants and conditions contained in the foregoing Sublease.

2. This Guaranty is effective until all terms of the Sublease have been fully and completely performed by Sublessee. No release of Sublessee or discharge of Sublessee under bankruptcy law, or any other law, shall impair or effect the obligations of Guarantor to Sublessor hereunder.

3. Sublessor is not required to proceed first against the Sublessee, but may proceed first against Guarantor alone or concurrent with proceeding against Sublessee. The obligations of Guarantor hereunder are absolute and unconditional.

4. Sublessee and Sublessor may from time to time alter or modify the Sublease between themselves, possibly changing or increasing the extent of Guarantor's obligation under this Guaranty. Guarantor consents to any and all modifications or amendments of the Sublease related documents, without requiring notice to Guarantor or Guarantor's consent.

5. Guarantor agrees specifically to be bound by any confidentiality requirements in the Sublease.

6. Guarantor waives notice of acceptance of this Guaranty and notice of non-performance or non-payment by Sublessee of any of its obligations or liabilities under the Sublease.

7. Guarantor agrees to pay all attorneys' fees, costs and expenses incurred by Sublessor in enforcing this Guaranty, whether or not suit or action is filed, and if suit or action is filed, then through trial and all appeals, and also in any proceedings or matter in Bankruptcy Court; Guarantor assumes all liability for all

losses, costs, attorney's fees, and expenses that Sublessor incurs as a result of a default by Sublessee, including those fees and expenses incurred in a bankruptcy proceeding involving Sublessee.

8. Guarantor hereby agrees that upon notice of default or upon an uncured default of the Sublease or any other agreement between Guarantor (or a legal entity thereof) and Sublessor or its affiliates, and with no prior notice, Guarantor consents to Sublessor's (or its affiliates' or third-party contractors') acquisition and use of non-business consumer credit reports on Guarantor in order to evaluate as necessary the financial condition of Guarantor as principal, member, manager, franchisee, and/or guarantor in connection with the collection of monetary obligations as contemplated by the Franchise Agreement, the Sublease, this Guaranty, a promissory note, or any other agreements between Guarantor (or a legal entity thereof), and Sublessor or its affiliates. Guarantor hereby knowingly consents to the use of such credit reports consistent with the Federal Fair Credit Reporting Act as contained in 15 U.S.C. § 1681 et seq.

9. This Guaranty is personal to Guarantor and the obligations and duties imposed herein may not be delegated or assigned; provided, however, that this Guaranty shall be binding upon the successors, assigns and personal representatives of Guarantor. This Guaranty shall inure to the benefit of Sublessor, its affiliates, successors and assigns.

10. [Guarantor, \_\_\_\_\_[include name here], represents that he or she is not married as of the date first set forth above.

11. In the event that any one or more provisions contained herein shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Guaranty shall be construed to bind Guarantor to the maximum extent permitted by law that is subsumed within the terms of such provision as though it were separately articulated herein.

12. This Guaranty shall be interpreted and construed under the laws of the State of Arizona, which laws shall prevail in the event of any conflict of law. Any appropriate state or federal court located in Maricopa County, Phoenix, Arizona has exclusive jurisdiction over any case or controversy arising under or in connection with this Agreement and is the proper forum in which to adjudicate the case or controversy, and the parties hereto irrevocably submit to the jurisdiction of any such court. THE PARTIES AGREE THAT ALL DISPUTES ADMITTED TO THE COURT PURSUANT TO THIS SECTION 12 SHALL BE TRIED TO THE COURT SITTING WITHOUT A JURY, NOTWITHSTANDING ANY STATE OR FEDERAL CONSTITUTIONAL OR STATUTORY RIGHTS OR PROVISIONS.

13. If Guarantor consists of two (2) or more persons, then each person will be jointly and severally liable under the provisions of this Guaranty.

14. Guarantor acknowledges that (i) it is a condition to the granting of the Sublease to Sublessee that Guarantor shall execute and deliver this Guaranty to Sublessor, (ii) that Sublessor has entered into the Sublease in reliance upon the agreement of Guarantor to do so, and (iii) that, as owners of the Sublessee, if applicable, Guarantor has received adequate consideration to support its execution of this Guaranty. This Guaranty does not grant or create in the undersigned any interests, rights or privileges in any franchise or the Franchise Agreement.

GUARANTOR:

\_\_\_\_\_  
[Name], an individual

\_\_\_\_\_  
[Name], an individual

**EXHIBIT P**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**Pre-Authorized Electronic Funds Transfer Form**



## ELECTRONIC FUNDS TRANSFER (EFT) AUTHORIZATION

### FRANCHISEE INFORMATION

Franchisee Name	Store No.	Franchisee Phone No.
Franchisee Mailing Address (street, city, state, zip)		
Contact Name, Address and Phone number (if different than above)		
Employer Identification Number (if applicable)	Principal's Name and Social Security Number	

### BANK ACCOUNT INFORMATION

Bank Name	Bank Account Number	Bank Routing Number <div style="text-align: center; font-size: small;">[:            [: 9 Characters</div>
Bank Mailing Address (street, city, state, zip)		
Bank Phone Number		

### PAYMENT AUTHORIZATION

Franchisee hereby authorizes Kahala Franchising, L.L.C., its affiliates or agents ("Payee"), to initiate withdrawals from the Bank Account indicated on this form, and hereby authorizes the Bank to honor and debit the Bank Account for electronic funds transfers or drafts drawn on the Bank Account and payable to Payee. The amount of such charge shall be set forth in a notice from the Payee presented to the Bank on the day(s) of the week set forth in Franchisee's franchise agreement, promissory note and security agreement, gift card participation agreement (or similar agreement for the gift card program), and any other agreement Franchisee signs that authorizes Payee, its affiliate or agent to debit Franchisee's account for the fees, which may be modified by Kahala Franchising, L.L.C., its affiliates or agents, for the payment of royalty fees, advertising fees, POS support fees, gift card and e-gifting program fees and funds flow, and any other fees, charges and other amounts payable to Payee, its affiliates or agents for any services Payee, its affiliates or agents provide or facilitate. Franchisee agrees to execute such additional documents as may be reasonably requested by Payee or the Bank to evidence the interest of this EFT Authorization. This authority shall remain in full force and effect until Payee has received written notification from Franchisee in such time and manner as to afford Payee and the Bank to act on such notice. Franchisee understands that the termination of this authorization does not relieve Franchisee of its obligations to make payments to Payee. Payee may assign its rights and obligations under this EFT Authorization to Payee's affiliates or agents. Payee may change its designated affiliates or agents at Payee's discretion.

Signature:	Date:
------------	-------

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

**ATTACH VOIDED OR COMPLETED CHECK HERE**

# ELECTRONIC FUNDS TRANSFER (EFT) AUTHORIZATION

## Voided Check Requirements

Starter checks may not be used.

### DBA or Legal Name

The DBA name or legal name of the business must be preprinted, included on the check and match the merchant account.

### Check Number

Check number must be present on the top right and bottom of the check.

The diagram shows a check with the word "VOID" in large letters. Annotations point to various fields:

- DBA or Legal Name:** Points to "Your Name: 1234 Oak Anytown, USA".
- Check Number:** Points to "1001" in the top right corner.
- ABA Check Routing Number:** Points to "123456789" at the bottom left.
- Account Number:** Points to "000123456789" at the bottom center.
- Check Number:** Points to "1001" at the bottom right.
- ACH Routing/Transit Number:** Points to "123456789" at the bottom right.

Other text on the check includes: "PAY TO THE ORDER OF", "DOLLARS", "ACH/R 123456789", and "FOR".

## Bank Letter Requirements

### Bank Letter Requirements

The diagram shows a bank letter from "Generic Bank & Trust". Annotations point to various fields:

- DBA or Legal Name:** Points to "Regattini, Anthony/Anthony".
- Banker Signature:** Points to the signature of "Tim Teller".
- Contact Information:** Points to the address and phone number of "Generic Bank & Trust".
- Bank Letterhead:** Points to the header "Generic Bank & Trust".
- Routing & Account #:** Points to the routing and account numbers.

The letter text includes: "To whom it may concern:", "The letter is to verify that the business named above has a business checking account with Generic Bank and Trust. The account number is 9999999999 and the ABA number is 888888888. (It was opened on 01/01/2017. If you need any additional information on this account, please contact the ABA number below.)", "Thank you.", and "Tim Teller".

**EXHIBIT Q**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**General Release for Renewal of Franchise Agreement**

**GENERAL RELEASE  
FOR RENEWAL OF FRANCHISE AGREEMENT**

("General Release")

\_\_\_\_\_, a(n) \_\_\_\_\_ ("Franchisee") and each of its current, past and future predecessors, successors and assigns, and each of its and the foregoing entities' respective parents, subsidiaries, shareholders, members, managers, owners, partners, directors, officers, employees, representatives, agents, successors, assigns, guarantors, insurers, spouses, heirs, executors, trustees and estates, if any, of any and all such entities (collectively with Franchisee, "Franchisee Parties"), hereby irrevocably and unconditionally release, remise and forever discharge Kahala Franchising, L.L.C., an Arizona limited liability company ("Franchisor") and each of its current, past and future predecessors, successors and assigns, and of its and the foregoing entities respective parents, subsidiaries, shareholders, members, managers, owners, partners, directors, officers, employees, representatives, agents, successors, assigns, guarantors, insurers, spouses, heirs, executors, trustees, and estates, if any, of any and all such entities (collectively with Franchisor "Franchisor Parties"), from any and all claims, demands, causes of action suits, debts, duties, accounts, covenants, contracts, agreements, promises, damages, judgments, taxes, liabilities and obligations, both contingent and fixed, known and unknown, now existing or hereafter, of every kind and nature whatsoever, in law or equity, or otherwise, under local state, or federal law including, without limitation the Americans with Disabilities Act ("ADA"), or the law of any other applicable jurisdiction, that any of the Franchisee Parties have against any of the Franchisor Parties, including, without limitation, those arising from, in connection with or relating to: (i) the Franchise Agreement dated \_\_\_\_\_, 20\_\_\_\_ (including any amendments or modifications thereto) for *Frullati Cafe & Bakery* Store No. \_\_\_\_\_ ("Store"); (ii) the operation, leasing or subleasing of the Store; and (iii) the offering and sale of the franchise for the Store; arising from an act, omission, conduct or activity occurring before and including the date hereof.

It is understood by Franchisee that if the facts or law with respect to the foregoing release hereafter turn out to be different from the facts or law known to be or believed by Franchisee to be true at the time of the date hereof, then Franchisee expressly assumes the risk of the facts or law turning out to be so different, and agrees that the foregoing release shall be in all respects effective and not subject to termination or rescission, in whole or in part, based upon such differences.

**[SIGNATURE PAGE FOLLOWS]**

Dated: \_\_\_\_\_

**FRANCHISEE**

\_\_\_\_\_, a(n) \_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a notary public in and for said state, personally appeared \_\_\_\_\_, personally known to me or who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of \_\_\_\_\_ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public Signature

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

My commission expires: \_\_\_\_\_

Notary Public Seal

**EXHIBIT R-1**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**Consent to Transfer and Release Agreement without Sublease**

## CONSENT TO TRANSFER AND RELEASE AGREEMENT

(Store #; City, State)

This CONSENT TO TRANSFER AND RELEASE AGREEMENT ("Agreement") is entered into on \_\_\_\_\_ ("Effective Date") by and between \_\_\_\_\_, a(n) \_\_\_\_\_ ("Assignor"), and \_\_\_\_\_, a(n) \_\_\_\_\_ ("Assignee"), and KAHALA FRANCHISING, L.L.C., an Arizona limited liability company [, as ultimate assignee of \_\_\_\_\_] ("Franchisor"). All capitalized terms not defined expressly in this Agreement shall have the meaning assigned to such terms in the Franchise Agreement (as defined in Recital A. below).

### Recitals

A. [Franchisor or name of previous franchisor] and Assignor are parties to a Franchise Agreement dated \_\_\_\_\_, 20\_\_\_\_[, as amended], ("collectively the ]Franchise Agreement") for the *Frullati Cafe & Bakery* restaurant located at \_\_\_\_\_ ("Restaurant"). The *Frullati Cafe & Bakery* franchise located at the address listed in the foregoing sentence will hereinafter be referred to as the "Franchised Business."

B. Assignor desires to assign the Franchised Business to Assignee, and Assignee desires to accept the assignment. [The assignment of the Franchised Business is supported by the \_\_\_\_\_, attached to this Agreement as Exhibit 1 and incorporated in this Agreement by reference.]

C. [FOR CHANGE IN OWNERSHIP INTEREST THAT IS NOT A TRANSFER] Assignor hereby agrees that Assignor is the responsible franchisee under the Franchise Agreement from \_\_\_\_\_, 20\_\_\_\_ until the date immediately preceding the Effective Date. Assignee hereby agrees that Assignee is the responsible franchisee under the Franchise Agreement as of and after the Effective Date and continuing through the Term of the Franchise Agreement[, as amended by the [First] Amendment to Franchise Agreement].

D. [*FOR CHANGE IN OWNERSHIP INTEREST THAT IS NOT A TRANSFER*] Assignee acknowledges receipt of a copy of the Franchise Agreement from Assignor.

[OR FOR FULL TRANSFER AND ASSIGNEE ENTERS INTO A NEW FA] Assignee and Assignor each acknowledges that upon assignment, Assignee must execute Franchisor's current form of franchise agreement, which includes its current royalty fee and advertising contributions that may be greater than the amount of such corresponding fees in Assignor's Franchise Agreement. The Franchise Agreement shall be deemed expired as of and after the effective date of Assignee's current form of franchise agreement executed concurrently with this Agreement.

E. Franchisor agrees to consent to the assignment of the Franchised Business from Assignor to Assignee, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants, conditions and terms contained in this Agreement, the parties agree as follows:

### Agreement

1. The foregoing Recitals are hereby incorporated in and made a part of this Agreement.

2. Pursuant to Section \_\_\_\_ of the Franchise Agreement, Assignor requested Franchisor's prior written consent to assign the Franchised Business [*FOR CHANGE IN OWNERSHIP INTEREST THAT IS NOT A TRANSFER*: and Franchise Agreement] from Assignor to Assignee. Franchisor hereby consents to the transfer of the Franchised Business [*FOR CHANGE IN OWNERSHIP INTEREST THAT IS NOT A TRANSFER*: and Franchise Agreement] to Assignee subject to the terms and conditions of this Agreement being fully met by both Assignor and Assignee.

3. Assignor agrees to transfer the Franchised Business [*FOR CHANGE IN OWNERSHIP INTEREST THAT IS NOT A TRANSFER*: and Franchise Agreement] to Assignee pursuant to the transfer provisions in Assignor's Franchise Agreement, and Assignee accepts the transfer of the Franchised Business pursuant to the transfer provisions in Assignor's Franchise Agreement, including, but not limited to, the payment of the applicable transfer fees.

4. [*FOR CHANGE IN OWNERSHIP INTEREST THAT IS NOT A TRANSFER*] Assignor and Assignee agree that, pursuant to Section \_\_\_\_ of the Franchise Agreement, Assignee is required to execute Franchisor's then-current form of franchise agreement and all exhibits attached thereto prior to the closing of the transfer of the Franchised Business. Franchisor hereby waives Assignee's obligation to execute Franchisor's then-current form of franchise agreement and all exhibits attached thereto as required by Section \_\_\_\_ of the Franchise Agreement. Assignor hereby acknowledges and agrees that Franchisor's waiver of Assignor's obligations under Section \_\_\_\_ of the Franchise Agreement is not a permanent waiver and that Franchisor, its assigns and their respective affiliates hereby reserve the right to require Assignor, Assignee or their respective affiliates, authorized assignees or principals to sign Franchisor's then-current form of franchise agreement and all exhibits attached thereto in connection with other transfers that may be requested by and between the parties.

5. Subject to Section 13 below, Assignor hereby agrees to continue to be bound by the terms and conditions set forth in the Franchise Agreement until the date immediately preceding the Effective Date.

6. [*FOR CHANGE IN OWNERSHIP INTEREST THAT IS NOT A TRANSFER*] Assignee hereby agrees to be bound by the terms and conditions set forth in the Franchise Agreement.

[*OR FOR FULL TRANSFER AND ASSIGNEE ENTERS INTO A NEW FA*] Assignee hereby agrees to execute Franchisor's current form of franchise agreement with Franchisor, and to be bound by the terms and conditions set forth in the current form of franchise agreement.

7. [*USE WHEN BUYER IS PAYING THE TRANSFER [FRANCHISE] FEE*] Assignor hereby agrees that, pursuant to Sections \_\_\_\_ and \_\_\_\_ of the Franchise Agreement, Assignor owes Franchisor a Transfer [Franchise] Fee in the amount of \_\_\_\_\_ Thousand \_\_\_\_\_ Hundred and 00/100 Dollars (\$XX,X00.00). Assignor, Assignee and Franchisor hereby agree that the Transfer [Franchise] Fee will be paid by Assignee to Franchisor, contemporaneous with the execution of this Agreement, on behalf of Assignor. Assignor shall be liable to Franchisor for the Transfer [Franchise] Fee if Assignee fails to pay the Transfer [Franchise] Fee in full.

[*OR USE WHEN SELLER IS PAYING THE TRANSFER [FRANCHISE] FEE*] Assignor hereby agrees that, pursuant to Sections \_\_\_\_ and \_\_\_\_ of the Franchise Agreement, Assignor is obligated to pay Franchisor, contemporaneous with execution of this Agreement, the Transfer [Franchise] Fee in the amount of \_\_\_\_\_ Thousand \_\_\_\_\_ Hundred and 00/100 Dollars (\$XX,X00.00).



8. [USE IF **BUYER** IS PAYING THE [TRANSFER] TRAINING FEE] Assignor hereby agrees that, pursuant to Sections \_\_\_ and \_\_\_ of the Franchise Agreement, Assignor is obligated to pay Franchisor the [Transfer] Training Fee in the amount of \_\_\_\_\_ Thousand \_\_\_\_\_ Hundred and 00/100 Dollars (\$X,X00.00). Assignor, Assignee and Franchisor hereby agree that the [Transfer] Training Fee will be paid by Assignee to Franchisor, contemporaneous with the execution of this Agreement, on behalf of Assignor. Assignor shall remain liable to Franchisor for the [Transfer] Training Fee if Assignee fails to pay the [Transfer] Training Fee in full.

[OR USE IF **SELLER** IS PAYING THE [TRANSFER] TRAINING FEE] Assignor hereby agrees that, pursuant to Sections \_\_\_ and \_\_\_ of the Franchise Agreement, Assignor is obligated to pay Franchisor, contemporaneous with execution of this Agreement, the [Transfer] Training Fee in the amount of \_\_\_\_\_ Thousand \_\_\_\_\_ Hundred and 00/100 Dollars (\$X,X00.00).

9. Assignor agrees to cure any and all monetary defaults due and payable under their phone service agreement, complete and sign a letter of agency, letter of authorization or equivalent form, and provide the form to Assignee at least one week prior to the transfer of the Franchised Business to allow Assignee to retain the telephone number of the Franchised Business.

10. Assignee agrees to provide the letter of agency, letter of authorization or equivalent form to their phone service provider in an effort to retain the telephone number of the Franchised Business.

11. Assignor agrees to cure any and all defaults and/or debts of any monetary consideration due and payable to Franchisor (or its affiliates) prior to the execution of this Agreement, including, without limitation, any past due and current royalties and advertising contributions under the Franchise Agreement through the date immediately preceding the Effective Date, along with any accruing interest, late fees or other penalties as allowed under the Franchise Agreement and/or applicable law. Notwithstanding the foregoing, in the event Assignor fails to cure any and all defaults and/or fully satisfy any debts as required, Franchisor has the sole and absolute discretion to move forward with the transfer as contemplated by this Agreement but without waiving any amounts due and owing to Franchisor and/or its affiliates and reserves all rights to pursue such defaults and debts and charges against Assignor at a later time.

12. Assignor represents and warrants that it has not failed to disclose to Franchisor any information, which, if known by Franchisor, might provide grounds for Franchisor to reasonably withhold its consent to this Agreement, and that Assignor has disclosed all of the terms of the transfer to Franchisor.

13. Assignor ratifies and reaffirms any and all provisions and/or agreements with Franchisor intended to survive the assignment and/or termination of the Franchise Agreement and agrees to remain bound by them, including but not limited to any provisions pertaining to confidential information and covenant against competition.

14. Assignor agrees that it has no rights in any of the trademarks, trade names, or service marks of Franchisor, except in connection with other *Frullati Cafe & Bakery* franchises owned by Assignor, if any. Assignor also stipulates that such trademarks, trade names, service marks and the like are the sole property of Franchisor and that Assignor has no rights in them, except as authorized by Franchisor in connection with other *Frullati Cafe & Bakery* franchises owned by Assignor, if any. Assignor quitclaims to Franchisor any rights in any trademarks, trade names, and service marks of Franchisor, in the event Assignor has any such rights, except those rights acquired through other *Frullati Cafe & Bakery* franchises authorized by Franchisor and owned by Assignor, if any.

15. Assignee acknowledges that Franchisor has not made any express or implied verbal or written representations or promises whatsoever that:

- a. future assignments will be approved;
- b. Assignee will have financial success operating the Franchised Business;
- c. the consideration, if any, paid for the Franchised Business represents the true value of the Franchised Business; or
- d. Assignor is not in default under the terms of the Franchise Agreement.

16. Assignee acknowledges that Franchisor has made no representations whatsoever concerning the value of the Franchised Business.

17. All notices required or permitted under this Agreement shall be in writing and shall be delivered by personal delivery, courier, such as FedEx® or UPS®, or by U.S. Mail, sent certified or registered mail, return receipt requested to the address set forth below, which address may be amended from time to time pursuant to the terms of this Section 17. Notices provided under this Section 17 shall be deemed received upon personal delivery or delivery by courier and within five (5) days after deposit in the U.S. Mail. Notices shall be provided to the parties at the address specified below:

If to Assignee:                    [Name]  
   [Attn:]  
   [Address]  
   [City, State, Zip]  
   Telephone Number:  
   Facsimile Number:

If to Assignor:                    [Name]  
   [Attn:]  
   [Address]  
   [City, State, Zip]  
   Telephone Number:  
   Facsimile Number:

If to Franchisor:                    KAHALA FRANCHISING, L.L.C.  
   Attn: Legal Department  
   9311 E Via de Ventura  
   Scottsdale, Arizona 85258  
   Telephone Number: (480) 362-4800  
   Facsimile Number: (480) 362-4819

18. Franchisor hereby consents to the transfer of the Franchised Business to Assignee subject to the terms and conditions of this Agreement being fully met by both Assignor and Assignee.

19. Assignor and Assignee understand the Effective Date is the closing date indicated on the escrow statement/closing statement.

20. IN CONSIDERATION OF FRANCHISOR'S AGREEMENTS SET FORTH IN THIS AGREEMENT, ASSIGNOR REPRESENTS THAT FRANCHISOR HAS NOT FAILED TO PERFORM, AND IS NOT IN ANY RESPECT IN DEFAULT IN THE PERFORMANCE OF, ANY OF ITS OBLIGATIONS UNDER THE FRANCHISE AGREEMENT, AND ASSIGNOR AND EACH OF ITS CURRENT, PAST AND FUTURE PREDECESSORS, SUCCESSORS AND ASSIGNS, AND EACH OF ITS AND THE FOREGOING ENTITIES RESPECTIVE PARENTS, SUBSIDIARIES, SHAREHOLDERS, MEMBERS, MANAGERS, OWNERS, PARTNERS, DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNS, GUARANTORS, INSURERS, SPOUSES, HEIRS, EXECUTORS, TRUSTEES, AND ESTATES, IF ANY, OF ANY AND ALL SUCH ENTITIES (COLLECTIVELY WITH ASSIGNOR, "ASSIGNOR AFFILIATES") HEREBY IRREVOCABLY AND UNCONDITIONALLY RELEASE, REMISE AND FOREVER DISCHARGE FRANCHISOR AND EACH OF ITS CURRENT, PAST AND FUTURE PREDECESSORS, SUCCESSORS AND ASSIGNS, AND EACH OF ITS AND THE FOREGOING ENTITIES RESPECTIVE PARENTS, SUBSIDIARIES, SHAREHOLDERS, MEMBERS, MANAGERS, OWNERS, PARTNERS, DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNS, GUARANTORS, INSURERS, SPOUSES, HEIRS, EXECUTORS, TRUSTEES, AND ESTATES, IF ANY, OF ANY AND ALL SUCH ENTITIES (COLLECTIVELY WITH FRANCHISOR, "FRANCHISOR AFFILIATES"), FROM ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, SUITS, DEBTS, DUTIES, ACCOUNTS, COVENANTS, CONTRACTS, AGREEMENTS, PROMISES, DAMAGES, JUDGMENTS, TAXES, LIABILITIES AND OBLIGATIONS, BOTH CONTINGENT AND FIXED, KNOWN AND UNKNOWN, NOW EXISTING OR HEREAFTER, OF EVERY KIND AND NATURE WHATSOEVER, IN LAW OR EQUITY, OR OTHERWISE, UNDER LOCAL STATE, OR FEDERAL LAW OR THE LAW OF ANY OTHER APPLICABLE JURISDICTION, THAT ANY OF THE ASSIGNOR AFFILIATES HAVE AGAINST ANY OF THE FRANCHISOR AFFILIATES, INCLUDING, WITHOUT LIMITATION, THOSE ARISING FROM, IN CONNECTION WITH OR RELATING TO: (I) THE FRANCHISEE AGREEMENT (INCLUDING ANY AMENDMENTS OR MODIFICATIONS THERETO); (II) THE OPERATION OF THE RESTAURANT, INCLUDING ANY LEASING OR SUBLEASING RELATED THERETO; AND (III) THE OFFERING AND SALE OF THE FRANCHISED BUSINESS; ARISING FROM AN ACT, OMISSION, CONDUCT OR ACTIVITY OCCURRING BEFORE AND INCLUDING THE EFFECTIVE DATE.

IT IS UNDERSTOOD BY ASSIGNOR THAT IF THE FACTS OR LAW WITH RESPECT TO THE FOREGOING RELEASE HEREAFTER TURN OUT TO BE DIFFERENT FROM THE FACTS OR LAW KNOWN TO BE OR BELIEVED BY ASSIGNOR TO BE TRUE AT THE TIME OF THE DATE HEREOF, THEN ASSIGNOR EXPRESSLY ASSUMES THE RISK OF THE FACTS OR LAW TURNING OUT TO BE SO DIFFERENT, AND AGREES THAT THE FOREGOING RELEASE SHALL BE IN ALL RESPECTS EFFECTIVE AND NOT SUBJECT TO TERMINATION OR RESCISSION IN WHOLE OR IN PART BASED UPON SUCH DIFFERENCES.

21. Assignor and Assignee hereby agree to protect, defend and indemnify each of the Franchisor Affiliates and hold them harmless from and against any and all costs and expenses actually incurred by them or for which they are liable, including, without limitation, attorney's fees, court costs, expert witness fees and costs, losses, liabilities, damages, claims and demands of every kind or nature, and including those incurred pursuant to a settlement entered into in good faith, arising out of or in connection with the Franchised Business, including specifically without limitation any claim or controversy arising out of (i) this Agreement, (ii) the Franchise Agreement, (iii) any transfer of the Franchised Business by Assignee or Assignor, (iv) acts or omissions of Assignee and/or Assignor which are not in strict compliance with this Agreement, the Franchise Agreement, and/or the Operations Manual in respect of use or display of the Proprietary Marks, or (v) acts or omissions of Assignee and/or Assignor which tend to create an impression that the relationship between the parties hereto is other than one of Franchisor and Franchisee. Franchisor Affiliates, at their sole discretion, may hire legal counsel to defend any actions brought against any

Franchisor Affiliates which arise out of Assignor's obligations under all agreements entered into between Assignor and any of the Franchisor Affiliates, including, without limitation, this Agreement, and Assignee's obligations herein. Assignor and Assignee hereby agree to pay any and all attorneys' fees, expert costs, and any other fees and costs incurred by Franchisor Affiliates to said selected counsel upon the request of Franchisor Affiliates. Assignor and Assignee will, if requested by any Franchisor Affiliates, defend any suits at the sole cost and expense of Assignor and Assignee. Assignor and Assignee hereby agree to defend said suits with the use of attorneys requested by Franchisor Affiliates. For purposes of this provision, requests shall be made pursuant to the notice provisions set forth above in Section 17 above. Notwithstanding the other provisions of this Section 21 to the contrary, if any, [and subject to Sections \_\_\_\_ and \_\_\_\_ above,] Assignor shall not be responsible for any of the acts or omissions of Assignee after the Effective Date.

22. Assignor agrees for itself and its successors and assigns that it will not disparage, denigrate, defame or comment in any manner upon Franchisor Affiliates, or any of their business dealings, financial condition, pending litigation and arbitrations, officers, directors, employees, agents, representatives or attorneys, either publicly or privately, by any means whatsoever (including electronic means), and will, if asked to comment on Franchisor Affiliates, refuse to and refrain from doing so (collectively, "Non Disparagement Provision"). In the event such a communication is made to anyone, including, but not limited to, third party legal counsel adverse to Franchisor Affiliates in any fashion, former employees of Franchisor Affiliates, former shareholders of Franchisor Affiliates, current or former vendors, franchisees, licensees, or area representatives of Franchisor Affiliates' quick service restaurant brands, media government agencies, public interest groups, and publishing companies, it will be considered a material breach of the terms of this Agreement and Franchisor Affiliates shall be entitled to bring a legal action for appropriate equitable relief as well as damages. In addition to any other rights or remedies available at law, in equity, or by statute, Assignor consents to the specific enforcement of this Non Disparagement Provision through an injunction or restraining order issued by an appropriate court, without the requirement of posting a bond. Notwithstanding the above, nothing in this provision shall prevent or prohibit Assignor from testifying in any legal proceeding, including a deposition, hearing or trial, from cooperating in good faith in any governmental investigation or action, or from making any report required by law.

23. Each individual executing this Agreement on behalf of a partnership, limited liability company or corporation represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of the partnership, limited liability company, or corporation, and agrees to deliver evidence of his or her authority to Franchisor upon request by Franchisor.

24. The provisions of this Agreement are severable, and if any one or more provisions may be determined to be unenforceable, in whole or in part, the remaining provisions shall nevertheless be binding and enforceable. If the provision found to be unenforceable was material to this Agreement, the parties agree to promptly negotiate the terms of a substitute provision to replace the severed provision consistent with the then-current law and the parties' original intent.

25. This Agreement shall be construed under and according to the laws of the State of Arizona, without regard to conflict of laws principles.

26. ANY AND ALL COURT PROCEEDINGS ARISING FROM THIS AGREEMENT SHALL BE BROUGHT IN, AND ONLY IN, A COURT OF COMPETENT JURISDICTION LOCATED IN MARICOPA COUNTY, ARIZONA. THE PARTIES CONSENT TO THE EXERCISE OF SUBJECT MATTER AND PERSONAL JURISDICTION BY SUCH COURTS AND HEREBY WAIVE ANY OBJECTIONS OR DEFENSE THERETO.

27. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

28. No amendment, addendum, modification, supplement or waiver of this Agreement or any of its provisions shall be binding on the parties unless made in writing and duly executed by an authorized representative of Franchisor and Assignor and Assignee. A failure of any party to enforce at any time any of the provisions of this Agreement or to require at any time performance by another party or any provision of this Agreement, shall in no way be construed as a continuing waiver of those provisions or of any other rights under this Agreement.

29. [Subject to Sections \_\_\_ and \_\_\_ above,] [T/t]his Agreement shall not be construed in any way as modifying, waiving, or affecting any of the terms, covenants, conditions, or agreements contained in the Franchise Agreement executed by Assignor, or the current form of franchise agreement to be executed by Assignee.

30. This Agreement shall inure to the benefit of and shall be binding upon each of the parties hereto and their respective successors and assigns.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, each party hereto has executed this Agreement by and through its duly authorized representative with full rights, power and authority to enter into and bind his or her respective party, without further consent or approval of any kind, as of the Effective Date of this Agreement.

**ASSIGNOR:**

**ASSIGNEE:**

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

By: \_\_\_\_\_  
[Name, Title]

By: \_\_\_\_\_  
[Name, Title]

By: \_\_\_\_\_  
[Name, Title]

**FRANCHISOR:**

KAHALA FRANCHISING, L.L.C., an Arizona  
limited liability company

By: \_\_\_\_\_  
[Name, Title]

**EXHIBIT R-2**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**Consent to Transfer and Release Agreement with Sublease**

## CONSENT TO TRANSFER AND RELEASE AGREEMENT

(Store #; City, State)

This CONSENT TO TRANSFER AND RELEASE AGREEMENT ("Agreement") is entered into on \_\_\_\_\_ ("Effective Date") by and between \_\_\_\_\_, a(n) \_\_\_\_\_ ("Assignor"), and \_\_\_\_\_, a(n) \_\_\_\_\_ ("Assignee"), and KAHALA FRANCHISING, L.L.C., an Arizona limited liability company[, as ultimate assignee of \_\_\_\_\_] ("Franchisor") and \_\_\_\_\_, a(n) \_\_\_\_\_ ("Sublessor") (Franchisor and Sublessor may collectively be referred to in this Agreement as "Company"). All capitalized terms not defined expressly in this Agreement shall have the meaning assigned to such terms in the Franchise Agreement (as defined in Recital A. below) or the Sublease (as defined in Recital B. below).

### Recitals

A. [Franchisor or name of previous franchisor] and Assignor are parties to a Franchise Agreement dated \_\_\_\_\_, 20\_\_\_\_[, as amended], ([collectively the ]"Franchise Agreement") for the *Frullati Cafe & Bakery* restaurant located at \_\_\_\_\_ ("Restaurant"). The *Frullati Cafe & Bakery* franchise located at the address listed in the foregoing sentence will hereinafter be referred to as the "Franchised Business."

B. Sublessor and Assignor are parties to a Sublease Agreement dated \_\_\_\_\_, 20\_\_\_\_ ("Sublease") for the Franchised Business.

C. Assignor desires to assign the Franchised Business to Assignee, and Assignee desires to accept the assignment. [The assignment of the Franchised Business is supported by the \_\_\_\_\_, attached to this Agreement as Exhibit 1 and incorporated in this Agreement by reference.]

D. [*FOR CHANGE IN OWNERSHIP INTEREST THAT IS NOT A TRANSFER*] Assignee acknowledges receipt of a copy of the Franchise Agreement from Assignor.

[*OR FOR FULL TRANSFER AND ASSIGNEE ENTERS INTO A NEW FA*] Assignee acknowledges that upon assignment, Assignee must execute Franchisor's current form of franchise agreement, which includes its current royalty fee and advertising contributions that may be greater than the amount of such corresponding fees in Assignor's Franchise Agreement. The Franchise Agreement shall be deemed expired as of and after the effective date of Assignee's current form of franchise agreement executed concurrently with this Agreement.

E. [*FOR CHANGE IN OWNERSHIP INTEREST THAT IS NOT A TRANSFER*] Assignor hereby agrees that Assignor is the responsible franchisee under the Franchise Agreement from \_\_\_\_\_, 20\_\_\_\_ until the date immediately preceding the Effective Date. Assignee hereby agrees that Assignee is the responsible franchisee under the Franchise Agreement as of and after the Effective Date and continuing through the Term of the Franchise Agreement[, as amended by the [First] Amendment to Franchise Agreement].

F. [*FOR CHANGE IN OWNERSHIP INTEREST THAT IS NOT A TRANSFER*] Assignee acknowledges receipt of a copy of the Sublease from Assignor, together with all amendments, supplements, riders, exhibits, and revisions, including a copy of the underlying Master Lease, and fully understands and acknowledges the obligations under the Sublease.

[*OR FOR FULL TRANSFER AND ASSIGNEE ENTERS INTO A NEW SUBLEASE*] Assignee acknowledges that upon assignment, Assignee must execute Sublessor's current form of



sublease. The Sublease shall be deemed expired as of and after the effective date of Assignee's current form of sublease executed concurrently with this Agreement.

G. [FOR CHANGE IN OWNERSHIP INTEREST THAT IS NOT A TRANSFER] Assignor hereby agrees that Assignor is the responsible sublessee under the Sublease from \_\_\_\_\_, 20\_\_\_\_ until the date immediately preceding the Effective Date. Assignee hereby agrees that Assignee is the responsible sublessee under the Sublease as of and after the Effective Date and continuing through the Term of the Sublease[, as amended by the [First] Amendment to Franchise Sublease].

H. Franchisor agrees to consent to the assignment of the Franchised Business from Assignor to Assignee, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants, conditions and terms contained in this Agreement, the parties agree as follows:

#### Agreement

1. The foregoing Recitals are hereby incorporated in and made a part of this Agreement.

2. Pursuant to Section \_\_\_\_ of the Franchise Agreement, Assignor requested Franchisor's prior written consent to assign the Franchised Business [FOR CHANGE IN OWNERSHIP INTEREST THAT IS NOT A TRANSFER: and Franchise Agreement] from Assignor to Assignee. Franchisor hereby consents to the transfer of the Franchised Business [FOR CHANGE IN OWNERSHIP INTEREST THAT IS NOT A TRANSFER: and Franchise Agreement] to Assignee subject to the terms and conditions of this Agreement being fully met by both Assignor and Assignee.

3. [FOR CHANGE IN OWNERSHIP INTEREST THAT IS NOT A TRANSFER] Pursuant to Section \_\_\_\_ of the Sublease, Assignor has requested Sublessor's prior written consent to assign the Sublease from Assignor to Assignee. Sublessor hereby consents to the transfer of the Sublease to Assignee, subject to the terms and conditions of this Agreement being fully met by both Assignor and Assignee.

4. Assignor agrees to transfer the Franchised Business [FOR CHANGE IN OWNERSHIP INTEREST THAT IS NOT A TRANSFER: and Franchise Agreement and Sublease] to Assignee pursuant to the transfer provisions in Assignor's Franchise Agreement, and Assignee accepts the transfer of the Franchised Business [FOR CHANGE IN OWNERSHIP INTEREST THAT IS NOT A TRANSFER: and Franchise Agreement and Sublease], pursuant to the transfer provisions in Assignor's Franchise Agreement, including, but not limited to, the payment of the applicable transfer fees.

5. [FOR CHANGE IN OWNERSHIP INTEREST THAT IS NOT A TRANSFER] Assignor and Assignee agree that, pursuant to Section \_\_\_\_ of the Franchise Agreement, Assignee is required to execute Franchisor's then-current form of franchise agreement and all exhibits attached thereto prior to the closing of the transfer of the Franchised Business. Franchisor hereby waives Assignee's obligation to execute Franchisor's then-current form of franchise agreement and all exhibits attached thereto as required by Section \_\_\_\_ of the Franchise Agreement. Assignor hereby acknowledges and agrees that Franchisor's waiver of Assignor's obligations under Section \_\_\_\_ of the Franchise Agreement is not a permanent waiver and that Franchisor, its assigns and their respective affiliates hereby reserve the right to require Assignor, Assignee or their respective affiliates, authorized assignees or principals to sign Franchisor's then-current form of franchise

agreement and all exhibits attached thereto in connection with other transfers that may be requested by and between the parties.

6. Subject to Section 18 below, Assignor hereby agrees to continue to be bound by the terms and conditions set forth in the Franchise Agreement until the date immediately preceding the Effective Date.

7. *[FOR CHANGE IN OWNERSHIP INTEREST THAT IS NOT A TRANSFER]* Assignee hereby agrees to be bound by the terms and conditions set forth in the Franchise Agreement.

*[OR FOR FULL TRANSFER AND ASSIGNEE ENTERS INTO A NEW FA]* Assignee hereby agrees to execute Franchisor's current form of franchise agreement with Franchisor, and to be bound by the terms and conditions set forth in the current form of franchise agreement.

8. *[USE WHEN **BUYER** IS PAYING THE TRANSFER [FRANCHISE] FEE]* Assignor hereby agrees that, pursuant to Sections \_\_\_ and \_\_\_ of the Franchise Agreement, Assignor owes Franchisor a Transfer [Franchise] Fee in the amount of \_\_\_\_\_ Thousand \_\_\_\_\_ Hundred and 00/100 Dollars (\$XX,X00.00). Assignor, Assignee and Franchisor hereby agree that the Transfer [Franchise] Fee will be paid by Assignee to Franchisor, contemporaneous with the execution of this Agreement, on behalf of Assignor. Assignor shall be liable to Franchisor for the Transfer [Franchise] Fee if Assignee fails to pay the Transfer [Franchise] Fee in full.

*[OR USE WHEN **SELLER** IS PAYING THE TRANSFER [FRANCHISE] FEE]* Assignor hereby agrees that, pursuant to Sections \_\_\_ and \_\_\_ of the Franchise Agreement, Assignor is obligated to pay Franchisor, contemporaneous with execution of this Agreement, the Transfer [Franchise] Fee in the amount of \_\_\_\_\_ Thousand \_\_\_\_\_ Hundred and 00/100 Dollars (\$XX,X00.00).

9. *[USE IF **BUYER** IS PAYING THE [TRANSFER] TRAINING FEE]* Assignor hereby agrees that, pursuant to Sections \_\_\_ and \_\_\_ of the Franchise Agreement, Assignor is obligated to pay Franchisor the [Transfer] Training Fee in the amount of \_\_\_\_\_ Thousand \_\_\_\_\_ Hundred and 00/100 Dollars (\$X,X00.00). Assignor, Assignee and Franchisor hereby agree that the [Transfer] Training Fee will be paid by Assignee to Franchisor, contemporaneous with the execution of this Agreement, on behalf of Assignor. Assignor shall remain liable to Franchisor for the [Transfer] Training Fee if Assignee fails to pay the [Transfer] Training Fee in full.

*[OR USE IF **SELLER** IS PAYING THE [TRANSFER] TRAINING FEE]* Assignor hereby agrees that, pursuant to Sections \_\_\_ and \_\_\_ of the Franchise Agreement, Assignor is obligated to pay Franchisor, contemporaneous with execution of this Agreement, the [Transfer] Training Fee in the amount of \_\_\_\_\_ Thousand \_\_\_\_\_ Hundred and 00/100 Dollars (\$X,X00.00).

10. Assignor agrees to the assignment of Assignor's interest in and to the lease security deposit, if any, currently held by the Landlord to the Assignee.

11. Subject to Section 18 below, Assignor hereby agrees to continue to be bound by the terms and conditions set forth in the Sublease through the date immediately preceding the Effective Date.

12. *[IF ASSIGNEE IS NOT SIGNING A NEW SUBLEASE]* Assignee hereby agrees to be bound by the terms and conditions set forth in the Sublease.

[OR IF ASSIGNEE IS SIGNING A NEW SUBLEASE] Assignee hereby agrees to execute Sublessor's current form of sublease, and to be bound by the terms and conditions set forth in the current form of sublease.

13. Assignor agrees to cure any and all monetary defaults due and payable under their phone service agreement, complete and sign a letter of agency, letter of authorization or equivalent form, and provide the form to Assignee at least one week prior to the transfer of the Franchised Business to allow Assignee to retain the telephone number of the Franchised Business.

14. Assignee agrees to provide the letter of agency, letter of authorization or equivalent form to their phone service provider in an effort to retain the telephone number of the Franchised Business.

15. Assignor agrees to cure any and all defaults and/or debts of any monetary consideration due and payable to Franchisor (or its affiliates) prior to the execution of this Agreement, including, without limitation, any past due and current royalties and advertising contributions under the Franchise Agreement through the date immediately preceding the Effective Date and any rental and other occupancy charges under the Sublease through the date immediately preceding the Effective Date, along with any accruing interest, late fees or other penalties as allowed under the Franchise Agreement, Sublease and/or applicable law. Notwithstanding the foregoing, in the event Assignor fails to cure any and all defaults, fully satisfy any debts and/or pay any charges as required, Franchisor has the sole and absolute discretion to move forward with the transfer as contemplated by this Agreement but without waiving any amounts due and owing to Franchisor and/or its affiliates and reserves all rights to pursue such defaults, debts and charges against Assignor at a later time.

16. Assignor and Assignee hereby understand and agree that there may be additional charges and/or credits under the Lease and/or Sublease for rent including, without limitation, common area and maintenance charges/reconciliations, insurance, and/or taxes, related to the Franchised Business. Assignor and Assignee further hereby agree that Assignee shall be entitled to receive the credits and/or pay the actual charges incurred to the Landlord or Sublessor, as directed by Sublessor, within ten (10) days from receipt of Sublessor's notice of such charges and/or credits to Assignee. Assignor and Assignee hereby represent and warrant to Sublessor that Assignor and Assignee have taken such actions as necessary to account for such charges and/or credits in the purchase price for the Franchised Business.

17. Assignor represents and warrants that it has not failed to disclose to Company any information, which, if known by Company, might provide grounds for Company to reasonably withhold its consent to this Agreement, and that Assignor has disclosed all of the terms of the transfer to Company.

18. Assignor ratifies and reaffirms any and all provisions and/or agreements with Company intended to survive the assignment and/or termination of the Franchise Agreement and Sublease and agrees to remain bound by them, including but not limited to any provisions pertaining to confidential information and covenant against competition.

19. Assignor agrees that it has no rights in any of the trademarks, trade names, or service marks of Franchisor, except in connection with other *Frullati Cafe & Bakery* franchises owned by Assignor, if any. Assignor also stipulates that such trademarks, trade names, service marks and the like are the sole property of Franchisor and that Assignor has no rights in them, except as authorized by Franchisor in connection with other *Frullati Cafe & Bakery* franchises owned by Assignor, if any. Assignor quitclaims to Franchisor any rights in any trademarks, trade names, and service marks of Franchisor, in the event Assignor has any such rights, except those

rights acquired through other *Frullati Cafe & Bakery* franchises authorized by Franchisor and owned by Assignor, if any.

20. Assignee acknowledges that Company has not made any express or implied verbal or written representations or promises whatsoever that:

- a. future assignments will be approved;
- b. Assignee will have financial success operating the Franchised Business;
- c. the landlord will grant an extension of the Master Lease where the Franchised Business is located and operates;
- d. the consideration, if any, paid for the Franchised Business represents the true value of the Franchised Business; or
- e. Assignor is not in default under the terms of the Franchise Agreement and/or the Sublease.

21. Assignee acknowledges that Company has made no representations whatsoever concerning the value of the Franchised Business.

22. All notices required or permitted under this Agreement shall be in writing and shall be delivered by personal delivery, courier, such as FedEx® or UPS®, or by U.S. Mail, sent certified or registered mail, return receipt requested to the address set forth below, which address may be amended from time to time pursuant to the terms of this Section 22. Notices provided under this Section 22 shall be deemed received upon personal delivery or delivery by courier and within five (5) days after deposit in the U.S. Mail. Notices shall be provided to the parties at the address specified below:

If to Assignee:

[Name]  
[Attn:]  
[Address]  
[City, State, Zip]  
Telephone Number:  
Facsimile Number:

If to Assignor:

[Name]  
[Attn:]  
[Address]  
[City, State, Zip]  
Telephone Number:  
Facsimile Number:

If to Franchisor: KAHALA FRANCHISING, L.L.C.  
Attn: Legal Department  
9311 E Via de Ventura  
Scottsdale, Arizona 85258  
Telephone Number: (480) 362-4800  
Facsimile Number: (480) 362-4819

If to Sublessor: [NAME OF SUBLESSOR]  
Attn: Real Estate Department  
9311 E Via de Ventura  
Scottsdale, Arizona 85258  
Telephone Number: (480) 362-4800  
Facsimile Number: (480) 362-4792

23. Franchisor hereby consents to the transfer of the Franchised Business to Assignee subject to the terms and conditions of this Agreement being fully met by both Assignor and Assignee.

24. Assignor and Assignee understand the Effective Date is the closing date indicated on the escrow statement/closing statement.

25. IN CONSIDERATION OF COMPANY'S AGREEMENTS SET FORTH IN THIS AGREEMENT, ASSIGNOR REPRESENTS THAT COMPANY HAS NOT FAILED TO PERFORM, AND IS NOT IN ANY RESPECT IN DEFAULT IN THE PERFORMANCE OF, ANY OF ITS OBLIGATIONS UNDER THE SUBLEASE AND/OR THE FRANCHISE AGREEMENT, AND ASSIGNOR AND EACH OF ITS CURRENT, PAST AND FUTURE PREDECESSORS, SUCCESSORS AND ASSIGNS, AND EACH OF ITS AND THE FOREGOING ENTITIES RESPECTIVE PARENTS, SUBSIDIARIES, SHAREHOLDERS, MEMBERS, MANAGERS, OWNERS, PARTNERS, DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNS, GUARANTORS, INSURERS, SPOUSES, HEIRS, EXECUTORS, TRUSTEES, AND ESTATES, IF ANY, OF ANY AND ALL SUCH ENTITIES (COLLECTIVELY WITH ASSIGNOR, "ASSIGNOR AFFILIATES") HEREBY IRREVOCABLY AND UNCONDITIONALLY RELEASE, REMISE AND FOREVER DISCHARGE COMPANY AND EACH ITS CURRENT, PAST AND FUTURE PREDECESSORS, SUCCESSORS AND ASSIGNS, AND EACH OF ITS AND THE FOREGOING ENTITIES RESPECTIVE PARENTS, SUBSIDIARIES, SHAREHOLDERS, MEMBERS, MANAGERS, OWNERS, PARTNERS, DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNS, GUARANTORS, INSURERS, SPOUSES, HEIRS, EXECUTORS, TRUSTEES, AND ESTATES, IF ANY, OF ANY AND ALL SUCH ENTITIES (COLLECTIVELY WITH COMPANY "FRANCHISOR AFFILIATES"), FROM ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, SUITS, DEBTS, DUTIES, ACCOUNTS, COVENANTS, CONTRACTS, AGREEMENTS, PROMISES, DAMAGES, JUDGMENTS, TAXES, LIABILITIES AND OBLIGATIONS, BOTH CONTINGENT AND FIXED, KNOWN AND UNKNOWN, NOW EXISTING OR HEREAFTER, OF EVERY KIND AND NATURE WHATSOEVER, IN LAW OR EQUITY, OR OTHERWISE, UNDER LOCAL STATE, OR FEDERAL LAW OR THE LAW OF ANY OTHER APPLICABLE JURISDICTION, THAT ANY OF THE ASSIGNOR AFFILIATES HAVE AGAINST ANY OF THE FRANCHISOR AFFILIATES, INCLUDING, WITHOUT LIMITATION, THOSE ARISING FROM, IN CONNECTION WITH OR RELATING TO: (I) THE SUBLEASE AND/OR FRANCHISEE AGREEMENT (INCLUDING ANY AMENDMENTS OR MODIFICATIONS THERETO); (II) THE OPERATION OF THE RESTAURANT, INCLUDING ANY LEASING OR SUBLEASING RELATED THERETO; AND (III) THE OFFERING

AND SALE OF THE FRANCHISED BUSINESS; ARISING FROM AN ACT, OMISSION, CONDUCT OR ACTIVITY OCCURRING BEFORE AND INCLUDING THE EFFECTIVE DATE.

IT IS UNDERSTOOD BY ASSIGNOR THAT IF THE FACTS OR LAW WITH RESPECT TO THE FOREGOING RELEASE HEREFTER TURN OUT TO BE DIFFERENT FROM THE FACTS OR LAW KNOWN TO BE OR BELIEVED BY ASSIGNOR TO BE TRUE AT THE TIME OF THE DATE HEREOF, THEN ASSIGNOR EXPRESSLY ASSUMES THE RISK OF THE FACTS OR LAW TURNING OUT TO BE SO DIFFERENT, AND AGREES THAT THE FOREGOING RELEASE SHALL BE IN ALL RESPECTS EFFECTIVE AND NOT SUBJECT TO TERMINATION OR RESCISSION IN WHOLE OR IN PART BASED UPON SUCH DIFFERENCES.

26. Assignor and Assignee hereby agree to protect, defend and indemnify each of the Franchisor Affiliates and hold them harmless from and against any and all costs and expenses actually incurred by them or for which they are liable, including, without limitation, attorney's fees, court costs, expert witness fees and costs, losses, liabilities, damages, claims and demands of every kind or nature, and including those incurred pursuant to a settlement entered into in good faith, arising out of or in connection with the Franchised Business, including specifically without limitation any claim or controversy arising out of (i) this Agreement, (ii) the Franchise Agreement, (iii) Sublease and/or Master Lease, (iv) any transfer of the Franchised Business by Assignee or Assignor, (v) acts or omissions of Assignee and/or Assignor which are not in strict compliance with this Agreement, the Franchise Agreement, Sublease and/or the Operations Manual in respect of use or display of the Proprietary Marks, or (vi) acts or omissions of Assignee and/or Assignor which tend to create an impression that the relationship between the parties hereto is other than one of Franchisor and Franchisee. Franchisor Affiliates, at their sole discretion, may hire legal counsel to defend any actions brought against any Franchisor Affiliates which arise out of Assignor's obligations under all agreements entered into between Assignor and any of the Franchisor Affiliates, including, without limitation, this Agreement, and Assignee's obligations herein. Assignor and Assignee hereby agree to pay any and all attorneys' fees, expert costs, and any other fees and costs incurred by any Franchisor Affiliates to said selected counsel upon the request of any Franchisor Affiliates. Assignor and Assignee will, if requested by any Franchisor Affiliates, defend any suits at the sole cost and expense of Assignor and Assignee. Assignor and Assignee hereby agree to defend said suits with the use of attorneys requested by any Franchisor Affiliates. For purposes of this provision, requests shall be made pursuant to the notice provisions set forth in Section 22 above. Notwithstanding the other provisions of this Section 26 to the contrary, if any, [and subject to Sections \_\_\_\_ and \_\_\_\_ above,] Assignor shall not be responsible for any of the acts or omissions of Assignee after the Effective Date.

27. Assignor agrees for itself and its successors and assigns that it will not disparage, denigrate, defame or comment in any manner upon Franchisor Affiliates, or any of their business dealings, financial condition, pending litigation and arbitrations, officers, directors, employees, agents, representatives or attorneys, either publicly or privately, by any means whatsoever (including electronic means), and will, if asked to comment on Franchisor Affiliates, refuse to and refrain from doing so (collectively, "Non Disparagement Provision"). In the event such a communication is made to anyone, including, but not limited to, third party legal counsel adverse to Franchisor Affiliates in any fashion, former employees of Franchisor Affiliates, former shareholders of Franchisor Affiliates, current or former vendors, franchisees, licensees, or area representatives of Franchisor Affiliates' quick service restaurant brands, media government agencies, public interest groups, and publishing companies, it will be considered a material breach of the terms of this Agreement and Franchisor Affiliates shall be entitled to bring a legal action for appropriate equitable relief as well as damages. In addition to any other rights or remedies available at law, in equity, or by statute, Assignor consents to the specific enforcement of this Non Disparagement Provision through an injunction or restraining order issued by an appropriate court, without the requirement of posting a bond. Notwithstanding the above, nothing in this provision shall prevent or prohibit

Assignor from testifying in any legal proceeding, including a deposition, hearing or trial, from cooperating in good faith in any governmental investigation or action, or from making any report required by law.

28. Each individual executing this Agreement on behalf of a partnership, limited liability company or corporation represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of the partnership, limited liability company, or corporation, and agrees to deliver evidence of his or her authority to Company upon request by Company.

29. The provisions of this Agreement are severable, and if any one or more provisions may be determined to be unenforceable, in whole or in part, the remaining provisions shall nevertheless be binding and enforceable. If the provision found to be unenforceable was material to this Agreement, the parties agree to promptly negotiate the terms of a substitute provision to replace the severed provision consistent with the then-current law and the parties' original intent.

30. This Agreement shall be construed under and according to the laws of the State of Arizona, without regard to conflict of laws principles.

31. ANY AND ALL COURT PROCEEDINGS ARISING FROM THIS AGREEMENT SHALL BE BROUGHT IN, AND ONLY IN, A COURT OF COMPETENT JURISDICTION LOCATED IN MARICOPA COUNTY, ARIZONA. THE PARTIES CONSENT TO THE EXERCISE OF SUBJECT MATTER AND PERSONAL JURISDICTION BY SUCH COURTS AND HEREBY WAIVE ANY OBJECTIONS OR DEFENSE THERETO.

32. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

33. No amendment, addendum, modification, supplement or waiver of this Agreement or any of its provisions shall be binding on the parties unless made in writing and duly executed by an authorized representative of Company and Assignor and Assignee. A failure of any party to enforce at any time any of the provisions of this Agreement or to require at any time performance by another party or any provision of this Agreement, shall in no way be construed as a continuing waiver of those provisions or of any other rights under this Agreement.

34. [Subject to Sections \_\_\_ and \_\_\_ above,] [T/t]his Agreement shall not be construed in any way as modifying, waiving, or affecting any of the terms, covenants, conditions, or agreements contained in the Franchise Agreement and Sublease executed by Assignor, or the current form of franchise agreement or sublease to be executed by Assignee.

35. This Agreement shall inure to the benefit of and shall be binding upon each of the parties hereto and their respective successors and assigns.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, each party hereto has executed this Agreement by and through its duly authorized representative with full rights, power and authority to enter into and bind his or her respective party, without further consent or approval of any kind, as of the Effective Date of this Agreement.

**ASSIGNOR:**

\_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

By: \_\_\_\_\_  
[Name, Title]

**ASSIGNEE:**

\_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

By: \_\_\_\_\_  
[Name, Title]

**FRANCHISOR:**

KAHALA FRANCHISING, L.L.C., an Arizona  
limited liability company

By: \_\_\_\_\_  
[Name, Title]

**SUBLESSOR:**

\_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]



**EXHIBIT S**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**State Addenda to Franchise Documents**

## **ADDENDUM TO FRANCHISE DOCUMENTS**

(FOR THE STATE OF CALIFORNIA)

This ADDENDUM TO FRANCHISE DOCUMENTS (FOR THE STATE OF CALIFORNIA) ("Addendum") dated \_\_\_\_\_ ("Addendum Effective Date") to the [Franchise Agreement[, as amended], [Consent to Transfer and Release Agreement,] [General Release,] [Promissory Note and Security Agreement] [Sublease] [each] dated \_\_\_\_\_, and including any and all exhibits attached thereto (individually and collectively, "Franchise Documents") between \_\_\_\_\_ ("Franchisee") and KAHALA FRANCHISING, L.L.C., an Arizona limited liability company ("Franchisor") [and LEASING ENTITY, a[n] \_\_\_\_\_ "Sublessor"] hereby amends the Franchise Documents by the addition of the following language, which shall be considered an integral part of the Agreement. To the extent this Addendum contains terms and conditions that differ from those contained in the Franchise Documents, this Addendum shall control. The parties agree that a concept or principle covered in this Addendum shall apply and be incorporated into all other provisions of the Franchise Documents in which the concept or principle is also applicable, notwithstanding the absence of any specific cross-reference thereto. All capitalized terms not otherwise defined in this Addendum will have the same meanings ascribed to such terms in the Franchise Documents.

### **1. CALIFORNIA LAW MODIFICATIONS**

- A. The California Franchise Investment Law requires that a copy of all proposed agreements relating to the sale of the franchise be delivered together with the Disclosure Document.
- B. The Franchise Agreement provides for termination upon bankruptcy. This provision may not be enforceable under Federal Bankruptcy Law. (11 U.S.C.A. Sec. 101 et seq.).
- C. The Franchise Agreement contains a covenant not to compete which extends beyond the termination of the franchise. This provision may not be enforceable under California Law.
- D. The Franchise Documents require application of the laws of the State of Arizona. This provision may not be enforceable under California Law.
- E. Section 31125 of the California Corporations Code requires us to give you a Disclosure Document, in a form containing the information that the Commissioner may by rule or order require, before a solicitation of a proposed material modification of an existing franchise.
- F. California Corporations Code §31512 voids a waiver of your rights under the Franchise Investment Law (California Corporations Code §§31000 through 31516). Business and Professions Code §20010 voids a waiver of your rights under the Franchise Relations Act (Business and Professions Code §§20000 through 20043).
- G. The Franchise Agreement requires binding arbitration. The arbitration will occur at the American Arbitration Association office in Maricopa County, Arizona, or, if our headquarters are no longer located in Maricopa County, Arizona, then the arbitration shall take place in the county in which our headquarters are located at the time the arbitration is commenced, with all of the costs of the arbitration, including the fees of

the arbitrator and the reasonable attorney's fees of the prevailing party to be paid by the party that did not prevail. Prospective franchisees are encouraged to consult private legal counsel to determine the applicability of California and federal laws (such as Business and Professions Code Section 20040.5, Code of Civil Procedure Section 1281, and the Federal Arbitration Act) to any provisions of a franchise agreement restricting venue to a forum outside the State of California.

- H. California Business and Professions Code Sections 20000 through 20043 provide rights to the franchisee concerning transfer, termination or non-renewal of a franchise. If the Franchise Agreement contains a provision that is inconsistent with the law, the law will control.
- I. If the franchisee resides in the State of California or the franchised business is located within the State of California, the venue for any dispute may be within the State of California. Business and Professions Code Section 20040.5 voids restricting a venue to a forum outside California with respect to any claim arising under or relating to a franchise involving a franchise business operating in California.

2. Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the California law applicable to the provision are met independent of this Addendum. This Addendum shall have no force or effect if such jurisdictional requirements are not met. Except as set forth in this Addendum, the terms and provisions of the Franchise Documents shall remain in full force and effect.

IN WITNESS WHEREOF, each party hereto, by and through its respective representative with full rights, power and authority to enter into and bind his or her respective party without further consent or approval of any kind, have duly executed and delivered this Addendum as of the Addendum Effective Date.

**FRANCHISOR:**

KAHALA FRANCHISING, L.L.C., an Arizona  
limited liability company

By: \_\_\_\_\_  
[Name, Title]

**[SUBLESSOR:**

\_\_\_\_\_,  
\_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

**FRANCHISEE:**

\_\_\_\_\_,  
\_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

By: \_\_\_\_\_  
[Name, Title]

## ADDENDUM TO FRANCHISE DOCUMENTS

(FOR THE STATE OF HAWAII)

This ADDENDUM TO FRANCHISE DOCUMENTS (FOR THE STATE OF HAWAII) ("Addendum") dated \_\_\_\_\_ ("Addendum Effective Date") to the [Franchise Agreement[, as amended], [Consent to Transfer and Release Agreement,] [General Release,] [Promissory Note and Security Agreement] [Sublease] [each] dated \_\_\_\_\_, and including any and all exhibits attached thereto (individually and collectively, "Franchise Documents") between \_\_\_\_\_ ("Franchisee") and KAHALA FRANCHISING, L.L.C., an Arizona limited liability company ("Franchisor") [and LEASING ENTITY, a[n] \_\_\_\_\_ "Sublessor"] hereby amends the Franchise Documents by the addition of the following language, which shall be considered an integral part of the Agreement. To the extent this Addendum contains terms and conditions that differ from those contained in the Franchise Documents, this Addendum shall control. The parties agree that a concept or principle covered in this Addendum shall apply and be incorporated into all other provisions of the Franchise Documents in which the concept or principle is also applicable, notwithstanding the absence of any specific cross-reference thereto. All capitalized terms not otherwise defined in this Addendum will have the same meanings ascribed to such terms in the Franchise Documents.

1. The Director of the Hawaii Department of Commerce and Consumer Affairs requires that certain provisions contained in franchise documents be amended to be consistent with Hawaii law, including the Hawaii Franchise Investment Law, Hawaii Revised Statutes, Title 26, Chapter 482E-1 through 482E-12 (1988). To the extent that the Agreement contains provisions that are inconsistent with the following, such provisions are hereby amended:

- a. The Hawaii Franchise Investment Law provides rights to you concerning non-renewal, termination and transfer of the Franchise Agreement. If the Franchise Agreement contains a provision that is inconsistent with the Law, the Law will control. Among those rights, the law may require that upon termination or non-renewal Franchisor purchase for fair market value Franchisee's inventory, supplies, equipment and furnishings purchased from Franchisor or a supplier designated by Franchisor; provided that personalized materials which have no value to Franchisor need not be compensated for. If the non-renewal or termination is for the purpose of converting the Franchisee's business to one owned and operated by Franchisor, Franchisor may, additionally, be obligated to compensate the Franchisee for loss of goodwill. Franchisor may deduct all amounts due from Franchisee and any costs related to the transportation or disposition of items purchased against any payment for those items. If the parties cannot agree on fair market value, fair market value shall be determined in the manner set forth in the Franchise Agreement. If the Franchise Agreement does not provide for determination of fair market value of assets for purchase by Franchisor, such amount will be determined by an independent appraiser approved by both parties, and the costs of the appraisal shall be shared equally by the parties.
- b. If the Franchisee is required in the Franchise Documents to execute a release of claims, such release shall exclude claims arising under the Hawaii Franchise Investment Law. Any condition, stipulation or provision binding the Franchisee to waive compliance with any provision of Section 482E-6 of the Hawaii Franchise Investment Law shall be void.

- c. The requirement of a franchisee to purchase or lease goods or services of the franchisor or from designated sources may not be enforceable under Hawaii Franchise Investment law unless it is reasonably necessary for a lawful purpose, and does not substantially affect competition.
- d. The Hawaii Franchise Investment Law prohibits the Franchisor from establishing a similar business or granting a franchise for the establishment of a similar business to that of the Franchisee's within the Franchisee's exclusive territory. To the extent the Franchise Documents contain a provision that is inconsistent with the Act, the Act will control.

2. Section 482E-3(a) of the Hawaii Franchise Investment Law requires us to give you a copy of the Franchise Disclosure Document at least 7 calendar days prior to signing the Agreement.

3. The Franchise Documents permits us to terminate the Agreement upon your bankruptcy. This provision may not be enforceable under Federal Bankruptcy Law. (11 U.S.C. §101, et seq.).

4. Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the Hawaii Franchise Investment Law applicable to the provision are met independent of this Addendum. This Addendum shall have no force or effect if such jurisdictional requirements are not met. Except as set forth in this Addendum, the terms and provisions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, each party hereto, by and through its respective representative with full rights, power and authority to enter into and bind his or her respective party without further consent or approval of any kind, have duly executed and delivered this Addendum as of the Addendum Effective Date.

**FRANCHISOR:**

KAHALA FRANCHISING, L.L.C., an Arizona  
limited liability company

By: \_\_\_\_\_  
[Name, Title]

**[SUBLESSOR:**

\_\_\_\_\_,  
\_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

**FRANCHISEE:**

\_\_\_\_\_,  
\_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

By: \_\_\_\_\_  
[Name, Title]

## **ADDENDUM TO FRANCHISE DOCUMENTS**

(FOR THE STATE OF ILLINOIS)

This ADDENDUM TO FRANCHISE DOCUMENTS (FOR THE STATE OF ILLINOIS) ("Addendum") dated \_\_\_\_\_ ("Addendum Effective Date") to the [Franchise Agreement[, as amended], [Consent to Transfer and Release Agreement,] [General Release,] [Promissory Note and Security Agreement] [Sublease] [each] dated \_\_\_\_\_, and including any and all exhibits attached thereto (individually and collectively, "Franchise Documents") between \_\_\_\_\_ ("Franchisee") and KAHALA FRANCHISING, L.L.C., an Arizona limited liability company ("Franchisor") [and LEASING ENTITY, a[n] \_\_\_\_\_ "Sublessor"] hereby amends the Franchise Documents by the addition of the following language, which shall be considered an integral part of the Agreement. To the extent this Addendum contains terms and conditions that differ from those contained in the Franchise Documents, this Addendum shall control. The parties agree that a concept or principle covered in this Addendum shall apply and be incorporated into all other provisions of the Franchise Documents in which the concept or principle is also applicable, notwithstanding the absence of any specific cross-reference thereto. All capitalized terms not otherwise defined in this Addendum will have the same meanings ascribed to such terms in the Franchise Documents.

### **ILLINOIS LAW MODIFICATIONS**

1. The Illinois Attorney General's Office requires that certain provisions contained in franchise documents be amended to be consistent with Illinois law, including the Franchise Disclosure Act of 1987, Ill. Comp. Stat. Ch. 815 para. 705/1 –705/44 (1994). To the extent that the Franchise Documents contain provisions that are inconsistent with the following, such provisions are hereby amended:

- a. Illinois Franchise Disclosure Act Sections 19 and 20 provide rights to the Franchisee concerning non-renewal and termination of the Franchise Agreement. If the Franchise Agreement contains a provision that is inconsistent with the Act, the Act will control.
- b. If the Franchisee is required in the Franchise Documents to execute a release of claims or to acknowledge facts that would negate or remove from judicial review any statement, misrepresentation or action that would violate the Act, or a rule of order under the Act, such release shall exclude claims arising under the Illinois Franchise Disclosure Act, and such acknowledgements shall be void with respect to claims under the Act.
- c. If the Franchise Documents designate jurisdiction or venue in a forum other than the State of Illinois, the requirement is void under the Illinois Franchise Disclosure Act except that the Franchise Documents may provide for arbitration in a forum outside the State of Illinois.
- d. If the Franchise Documents requires that it be governed by a state's law, other than the State of Illinois, to the extent that such law conflicts with the Illinois Franchise Disclosure Act, the Act will control.

- e. Section 41 of the Illinois Franchise Disclosure Act states that “any condition, stipulation, or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of this Act is void.”

2. Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the Illinois Franchise Disclosure Act, with respect to each such provision, are met independent of this Addendum. This Addendum shall have no force or effect if such jurisdictional requirements are not met. Except as set forth in this Addendum, the terms and provisions of the Franchise Documents shall remain in full force and effect.

IN WITNESS WHEREOF, each party hereto, by and through its respective representative with full rights, power and authority to enter into and bind his or her respective party without further consent or approval of any kind, have duly executed and delivered this Addendum as of the Addendum Effective Date.

**FRANCHISOR:**

KAHALA FRANCHISING, L.L.C., an Arizona  
limited liability company

By: \_\_\_\_\_  
[Name, Title]

**[SUBLESSOR:**

\_\_\_\_\_,  
\_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]]

**FRANCHISEE:**

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

By: \_\_\_\_\_  
[Name, Title]

## **ADDENDUM TO FRANCHISE DOCUMENTS**

(FOR THE STATE OF INDIANA)

This ADDENDUM TO FRANCHISE DOCUMENTS (FOR THE STATE OF INDIANA) ("Addendum") dated \_\_\_\_\_ ("Addendum Effective Date") to the [Franchise Agreement[, as amended], [Consent to Transfer and Release Agreement,] [General Release,] [Promissory Note and Security Agreement] [Sublease] [each] dated \_\_\_\_\_, and including any and all exhibits attached thereto (individually and collectively, "Franchise Documents") between \_\_\_\_\_ ("Franchisee") and KAHALA FRANCHISING, L.L.C., an Arizona limited liability company ("Franchisor") [and LEASING ENTITY, a[n] \_\_\_\_\_ "Sublessor"] hereby amends the Franchise Documents by the addition of the following language, which shall be considered an integral part of the Agreement. To the extent this Addendum contains terms and conditions that differ from those contained in the Franchise Documents, this Addendum shall control. The parties agree that a concept or principle covered in this Addendum shall apply and be incorporated into all other provisions of the Franchise Documents in which the concept or principle is also applicable, notwithstanding the absence of any specific cross-reference thereto. All capitalized terms not otherwise defined in this Addendum will have the same meanings ascribed to such terms in the Franchise Documents.

### **INDIANA LAW MODIFICATIONS**

1. The Indiana Securities Commissioner requires that certain provisions contained in franchise documents be amended to be consistent with Indiana law, including the Indiana Franchises Act, Ind. Code Ann. §§ 1-51 (1994) and the Indiana Deceptive Franchise Practices Act, Ind. Code Ann. § 23-27 (1985). To the extent that the Agreement contains provisions that are inconsistent with the following, such provisions are hereby amended:

- a. The Indiana Deceptive Franchise Practices Act provides rights to Franchisee concerning non-renewal and termination of the Franchise Agreement. To the extent the Franchise Agreement contains a provision that is inconsistent with the Act, the Act will control.
- b. If the Franchisee is required in the Franchise Documents to execute a release of claims or to acknowledge facts that would negate or remove from judicial review any statement, misrepresentation or action that would violate the Act, or a rule of order under the Act, such release shall exclude claims arising under the Indiana Deceptive Franchise Practices Act and the Indiana Franchises Act, and such acknowledgements shall be void with respect to claims under the Act.
- c. If the Franchise Agreement contains covenants not to compete upon expiration or termination of the Franchise Agreement that are inconsistent with the Indiana Deceptive Franchise Practices Act, the requirements of the Act will control.
- d. The Indiana Deceptive Franchise Practices Act provides that substantial modification of the Agreement by Franchisor requires written consent of the Franchisee. If the Agreement contains provisions that are inconsistent with this requirement, the Act will control.



- e. If the Franchise Documents requires litigation/arbitration to be conducted in a forum other than the State of Indiana, the requirement may be unenforceable as a limitation on litigation under the Indiana Deceptive Franchise Practices Act §§ 23-2.2.7(10).
- f. If the Franchise Documents requires that it be governed by a state's law, other than the State of Indiana, to the extent that such law conflicts with the Indiana Deceptive Franchise Practices Act and the Indiana Franchises Act, the Acts will control.
- g. The Indiana Deceptive Franchise Practices Act provides rights to Franchisee concerning the waiver of claims or rights. To the extent the Franchise Documents contains a provision that is inconsistent with the Act, the Act will control.
- h. The Indiana Deceptive Franchise Practices Act provides rights to Franchisee concerning the time period to bring an action against the Franchisor. To the extent the Agreement contains a provision that is inconsistent with the Act, the Act will control.
- i. The Indiana Deceptive Franchise Practices Act prohibits the Franchisor from operating a substantially identical business to that of the Franchisee's within the Franchisee's territory, regardless of trade name. To the extent the Agreement contains a provision that is inconsistent with the Act, the Act will control.
- j. The Indiana Deceptive Franchise Practice Act excludes any indemnification for liability caused by the Franchisee's proper reliance on or use of procedures or materials provided by the Franchisor. To the extent the Agreement contains a provision that is inconsistent with the Act, the Act will control.
- k. If the Franchise Agreement requires goods, supplies, inventories, or services to be purchased exclusively from the franchisor or sources designated by the franchisor where such goods, supplies, inventories or services of comparable quality are available from sources other than those designated by the franchisor, to the extent that such law conflicts with the Indiana Deceptive Franchise Practices Act and the Indiana Franchises Act, the Acts will control. Providing a list of approved suppliers to comply with specifications and standards prescribed by Franchisor does not constitute designation of a source under the Indiana Deceptive Franchise Practices Act.

2. Indiana Code § 23-2-2.5-9(2) requires us to give you a copy of the Franchise Disclosure Document at the earlier of: (i) 10 days prior to signing the Agreement; or (ii) 10 days prior to our receipt of any consideration.

3. Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the Indiana Deceptive Practices Act and the Indiana Franchises Act, with respect to each such provision, are met independent of this Addendum. This Addendum shall have no force or effect if such jurisdictional requirements are not met. Except as set forth in this Addendum, the terms and provisions of the Franchise Documents shall remain in full force and effect.

store #  
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IN WITNESS WHEREOF, each party hereto, by and through its respective representative with full rights, power and authority to enter into and bind his or her respective party without further consent or approval of any kind, has duly executed and delivered this Addendum as of the Addendum Effective Date.

**FRANCHISOR:**

KAHALA FRANCHISING, L.L.C., an Arizona  
limited liability company

By: \_\_\_\_\_  
[Name, Title]

**[SUBLESSOR:**

\_\_\_\_\_,  
\_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]]

**FRANCHISEE:**

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

By: \_\_\_\_\_  
[Name, Title]

## **ADDENDUM TO FRANCHISE DOCUMENTS**

(FOR THE STATE OF MARYLAND)

This ADDENDUM TO FRANCHISE DOCUMENTS (FOR THE STATE OF MARYLAND) ("Addendum") dated \_\_\_\_\_ ("Addendum Effective Date") to the [Franchise Agreement[, as amended], [Consent to Transfer and Release Agreement,] [General Release,] [Promissory Note and Security Agreement] [Sublease] [each] dated \_\_\_\_\_, and including any and all exhibits attached thereto (individually and collectively, "Franchise Documents") between \_\_\_\_\_ ("Franchisee") and KAHALA FRANCHISING, L.L.C., an Arizona limited liability company ("Franchisor") [and LEASING ENTITY, a[n] \_\_\_\_\_ "Sublessor"] hereby amends the Franchise Documents by the addition of the following language, which shall be considered an integral part of the Agreement. To the extent this Addendum contains terms and conditions that differ from those contained in the Franchise Documents, this Addendum shall control. The parties agree that a concept or principle covered in this Addendum shall apply and be incorporated into all other provisions of the Franchise Documents in which the concept or principle is also applicable, notwithstanding the absence of any specific cross-reference thereto. All capitalized terms not otherwise defined in this Addendum will have the same meanings ascribed to such terms in the Franchise Documents.

### **MARYLAND LAW MODIFICATIONS**

1. The Maryland Securities Division requires that certain provisions contained in franchise documents be amended to be consistent with Maryland law, including the Maryland Franchise Registration and Disclosure Law. To the extent that the Agreement contains provisions that are inconsistent with the following, such provisions are hereby amended:

- a. The general release required as a condition of assignment/transfer shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law.
- b. The general release required as a condition of renewal shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law.
- c. The Franchise Documents requires litigation to be conducted in the State of Arizona. The Franchise Documents are amended to state that the requirement for litigation to be conducted in a forum other than the State of Maryland shall not be interpreted to limit any rights Franchisee may have to bring suit in the state of Maryland. A Franchisee may file a civil lawsuit in Maryland for claims arising under the Maryland Franchise Registration and Disclosure Law. Any claims arising under the Maryland Franchise Registration and Disclosure Law must be brought within three years after the grant of the franchise.
- d. All initial fees and payments payable to Franchisor before the business opens shall be deferred until such time as all initial obligations owed to the Franchisee under the Franchise Agreement or other agreements have been fulfilled by the Franchisor and the Franchisee has commenced doing business in accordance with the Franchise Agreement.

- e. All representations requiring prospective franchisees to assent to a release, estoppel or waiver of liability are not intended to nor shall they act as a release, estoppel or waiver of any liability incurred under the Maryland Franchise Registration and Disclosure Law.

2. Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the Maryland Franchise Registration and Disclosure Law, with respect to each such provision, are met independent of this Addendum. This Addendum shall have no force or effect if such jurisdictional requirements are not met. Except as set forth in this Addendum, the terms and provisions of the Franchise Documents shall remain in full force and effect.

IN WITNESS WHEREOF, each party hereto, by and through its respective representative with full rights, power and authority to enter into and bind his or her respective party without further consent or approval of any kind, have duly executed and delivered this Addendum as of the Addendum Effective Date.

**FRANCHISOR:**

KAHALA FRANCHISING, L.L.C., an Arizona  
limited liability company

By: \_\_\_\_\_  
[Name, Title]

**[SUBLESSOR:**

\_\_\_\_\_,  
\_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]]

**FRANCHISEE:**

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

By: \_\_\_\_\_  
[Name, Title]

## **ADDENDUM TO FRANCHISE DOCUMENTS**

(FOR THE STATE OF MICHIGAN)

Section 445.1508(1) of the Michigan Franchise Investment Law requires franchisor to give you a copy of the Franchise Disclosure Document earlier of: (i) 10 business days prior to signing the Franchise Agreement; or (ii) 10 business days prior to franchisor's receipt of any consideration.

**THE STATE OF MICHIGAN PROHIBITS CERTAIN UNFAIR PROVISIONS THAT ARE SOMETIMES IN THE FRANCHISE DOCUMENTS. IF ANY OF THE FOLLOWING PROVISIONS ARE IN THESE FRANCHISE DOCUMENTS, THE PROVISIONS ARE VOID AND CANNOT BE ENFORCED AGAINST YOU:**

- (a) A prohibition on the right of a franchisee to join an association of franchisees.
- (b) A requirement that a franchisee assent to a release, assignment, novation, waiver, or estoppel which deprives a franchisee of rights and protections provided in this act. This shall not preclude a franchisee, after entering into a franchise agreement, from settling any and all claims.
- (c) A provision that permits a franchisor to terminate a franchise prior to the expiration of its term except for good cause. Good cause shall include the failure of the franchisee to comply with any lawful provision of the franchise agreement and to cure such failure after being given written notice thereof and a reasonable opportunity, which in no event need be more than 30 days, to cure such failure.
- (d) A provision that permits a franchisor to refuse to renew a franchise without fairly compensating the franchisee by repurchase or other means for the fair market value at the time of expiration of the franchisee's inventory, supplies, equipment, fixtures, and furnishings. Personalized materials which have no value to the franchisor and inventory, supplies, equipment, fixtures, and furnishings not reasonably required in the conduct of the franchise business are not subject to compensation. This subsection applies only if:
  - (i) The term of the franchise is less than 5 years and
  - (ii) the franchisee is prohibited by the franchise or other agreement from continuing to conduct substantially the same business under another trademark, service mark, trade name, logotype, advertising, or other commercial symbol in the same area subsequent to the expiration of the franchise or the franchisee does not receive at least 6 months advance notice of franchisor's intent not to renew the franchise.
- (e) A provision that permits the franchisor to refuse to renew a franchise on terms generally available to other franchisees of the same class or type under similar circumstances. This section does not require a renewal provision.
- (f) A provision requiring that arbitration or litigation be conducted outside this state. This shall not preclude the franchisee from entering into an agreement, at the time of arbitration, to conduct arbitration at a location outside this state.
- (g) A provision which permits a franchisor to refuse to permit a transfer of ownership of a franchise, except for good cause. This subdivision does not prevent a franchisor from exercising a right of first refusal to purchase the franchise. Good cause shall include, but is not limited to:

- (i) The failure of the proposed transferee to meet the franchisor's then-current reasonable qualifications or standards.
  - (ii) The fact that the proposed transferee is a competitor of the franchisor or subfranchisor.
  - (iii) The unwillingness of the proposed transferee to agree in writing to comply with all lawful obligations.
  - (iv) The failure of the franchisee or proposed transferee to pay any sums owing to the franchisor or to cure any default in the franchise agreement existing at the time of the proposed transfer.
- (h) A provision that requires the franchisee to resell to the franchisor items that are not uniquely identified with the franchisor. This subdivision does not prohibit a provision that grants to a franchisor a right of first refusal to purchase the assets of a franchise on the same terms and conditions as a bona fide third party willing and able to purchase those assets, nor does this subdivision prohibit a provision that grants the franchisor the right to acquire the assets of a franchise for the market or appraised value of such assets if the franchisee has breached the lawful provisions of the franchise agreement and has failed to cure the breach in the manner provided in subdivision (c).
- (i) A provision which permits the franchisor to directly or indirectly convey, assign, or otherwise transfer its obligations to fulfill contractual obligations to the franchisee unless provision has been made for providing the required contractual services.

**THE FACT THAT THERE IS A NOTICE OF THIS OFFERING ON FILE WITH THE ATTORNEY GENERAL DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION, OR ENDORSEMENT BY THE ATTORNEY GENERAL.**

Any questions regarding this Notice shall be directed to :

STATE OF MICHIGAN  
DEPARTMENT OF THE ATTORNEY GENERAL  
ATTENTION: FRANCHISE SECTION  
P.O. BOX 30213  
LANSING, MICHIGAN 48909  
(517) 373-7117

**ADDENDUM TO FRANCHISE DOCUMENTS**  
(FOR THE STATE OF MINNESOTA)

This ADDENDUM TO FRANCHISE DOCUMENTS (FOR THE STATE OF MINNESOTA) ("Addendum") dated \_\_\_\_\_ ("Addendum Effective Date") to the [Franchise Agreement[, as amended], [Consent to Transfer and Release Agreement,] [General Release,] [Promissory Note and Security Agreement] [Sublease] [each] dated \_\_\_\_\_, and including any and all exhibits attached thereto (individually and collectively, "Franchise Documents") between \_\_\_\_\_ ("Franchisee") and KAHALA FRANCHISING, L.L.C., an Arizona limited liability company ("Franchisor") [and LEASING ENTITY, a[n] \_\_\_\_\_ "Sublessor"] hereby amends the Franchise Documents by the addition of the following language, which shall be considered an integral part of the Agreement. To the extent this Addendum contains terms and conditions that differ from those contained in the Franchise Documents, this Addendum shall control. The parties agree that a concept or principle covered in this Addendum shall apply and be incorporated into all other provisions of the Franchise Documents in which the concept or principle is also applicable, notwithstanding the absence of any specific cross-reference thereto. All capitalized terms not otherwise defined in this Addendum will have the same meanings ascribed to such terms in the Franchise Documents.

**MINNESOTA LAW MODIFICATIONS**

1. The Commissioner of Commerce for the State of Minnesota requires that certain provisions contained in franchise documents be amended to be consistent with Minnesota Franchise Act, Minn. Stat. Section 80.01 et seq., and of the Rules and Regulations promulgated under the Act (collectively "Franchise Act"). To the extent that the Franchise Documents and Disclosure Document contain provisions that are inconsistent with the following, such provisions are hereby amended:

- a. Minnesota Statutes, Section 80C.21 and Minnesota Rules 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 (1) any of the franchisee's rights as provided for in Minnesota Statutes, Chapter 80C or (2) franchisee's rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction. Any condition, stipulation or provision, including any choice of law provision, purporting to bind any person who, at the time of acquiring a franchise is a resident of this state, or, in the case of a partnership or corporation, organized or incorporated under the laws of this state, or purporting to bind a person acquiring any franchise to be operated in this state to waive compliance or which has the effect of waiving compliance with any provision of sections 80C.01 to 80C.22 or any rule or order thereunder is void under the Minnesota Franchise Act, Minn. Stat. § 80C.21.
- b. With respect to franchises governed by Minnesota law, the franchisor will comply with Minnesota Statutes, Section 80C.14, Subd. 3-5, which require (except in certain specified cases) (1) that a franchisee be given 90 days' notice of termination (with 60 days to cure) and 180 days' notice for non-renewal of the franchise agreement and (2) that consent to the transfer of the franchise will not be unreasonably withheld.

- c. Minnesota considers it unfair to not protect the franchisee's right to use the trademarks. Refer to Minnesota Statutes, Section 80C.12, Subd. 1(g). The franchisor will protect the franchisee's rights to use the trademarks, service marks, trade names, logotypes or other commercial symbols or indemnify the franchisee from any loss, costs or expenses arising out of any claim, suit or demand regarding the use of the name.
- d. Minnesota Rules 2860.4400(D) prohibits a franchisor from requiring a franchisee to assent to a general release, assignment, novation, or waiver that would relieve any person from liability imposed by Minnesota Statutes 1973 Supplement, sections 80C.01 to 80C.22; provided, that this part shall not bar the voluntary settlement of disputes.
- e. The franchisee cannot consent to the franchisor obtaining injunctive relief. The franchisor may seek injunctive relief. See Minn. Rules 2860.4400J. Also, a court will determine if a bond is required.
- f. The Limitations of Claims section must comply with Minnesota Statutes, Section 80C.17, Subd. 5.
- g. Minnesota limits a service charge not to exceed \$30 for any dishonored check by the payee or holder of the check. See Minn. Rules 604.113.

2. Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the Minnesota law applicable to the provision are met independent of this Addendum. This Addendum shall have no force or effect if such jurisdictional requirements are not met. Except as set forth in this Addendum, the terms and provisions of the Franchise Documents shall remain in full force and effect.

IN WITNESS WHEREOF, each party hereto, by and through its respective representative with full rights, power and authority to enter into and bind his or her respective party without further consent or approval of any kind, have duly executed and delivered this Addendum as of the Addendum Effective Date.

**FRANCHISOR:**

KAHALA FRANCHISING, L.L.C., an Arizona  
limited liability company

By: \_\_\_\_\_  
[Name, Title]

**[SUBLESSOR:**

\_\_\_\_\_,  
\_\_\_\_\_

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

**FRANCHISEE:**

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

By: \_\_\_\_\_  
[Name, Title]



[Name, Title]

## **ADDENDUM TO FRANCHISE DOCUMENTS**

(FOR THE STATE OF NORTH DAKOTA)

This ADDENDUM TO FRANCHISE DOCUMENTS (FOR THE STATE OF NORTH DAKOTA) ("Addendum") dated \_\_\_\_\_ ("Addendum Effective Date") to the [Franchise Agreement[, as amended], [Consent to Transfer and Release Agreement,] [General Release,] [Promissory Note and Security Agreement] [Sublease] [each] dated \_\_\_\_\_, and including any and all exhibits attached thereto (individually and collectively, "Franchise Documents") between \_\_\_\_\_ ("Franchisee") and KAHALA FRANCHISING, L.L.C., an Arizona limited liability company ("Franchisor") [and LEASING ENTITY, a[n] \_\_\_\_\_ "Sublessor"] hereby amends the Franchise Documents by the addition of the following language, which shall be considered an integral part of the Agreement. To the extent this Addendum contains terms and conditions that differ from those contained in the Franchise Documents, this Addendum shall control. The parties agree that a concept or principle covered in this Addendum shall apply and be incorporated into all other provisions of the Franchise Documents in which the concept or principle is also applicable, notwithstanding the absence of any specific cross-reference thereto. All capitalized terms not otherwise defined in this Addendum will have the same meanings ascribed to such terms in the Franchise Documents.

### **NORTH DAKOTA LAW MODIFICATIONS**

1. The North Dakota Securities Commissioner requires that certain provisions contained in franchise documents be amended to be consistent with North Dakota Law, including the North Dakota Franchise Investment Law, North Dakota Century Code Annotated Chapter 51-19, Sections 51-19-01 through 51-19-17 (1993). To the extent that the Agreement contains provisions that are inconsistent with the following, such provisions are hereby amended:

- a. If the Franchisee is required in the Franchise Documents to execute a release of claims or to acknowledge facts that would negate or remove from judicial review any statement, misrepresentation or action that would violate the Law, or a rule or order under the Law, such release shall exclude claims arising under the North Dakota Franchise Investment Law, and such acknowledgements shall be void with respect to claims under the Law.
- b. Covenants not to compete during the term and upon termination or expiration of the Franchise Agreement are enforceable only under certain conditions according to North Dakota Law. If the Agreement contains a covenant not to compete which is inconsistent with North Dakota Law, the covenant may be unenforceable.
- c. If the Franchise Documents require litigation to be conducted in a forum other than the State of North Dakota, the requirement is void with respect to claims under the North Dakota Franchise Investment Law.
- d. If the Franchise Documents require that it be governed by a state's law, other than the State of North Dakota, to the extent that such law conflicts with the North Dakota Franchise Investment Law, the North Dakota Franchise Investment Law will control.

- e. If the Franchise Documents require mediation or arbitration to be conducted in a forum other than the State of North Dakota, the requirement may be unenforceable under the North Dakota Franchise Investment Law. Arbitration involving a franchise purchased in the State of North Dakota must be held either in a location mutually agreed upon prior to the arbitration or if the parties cannot agree on a location, the location will be determined by the arbitrator.
- f. If the Franchise Agreement requires payment of a termination penalty, the requirement may be unenforceable under the North Dakota Franchise Investment Law.
- g. Section 51-19-08 of the North Dakota Franchise Investment Law requires Franchisor to give you a copy of the Franchise Disclosure Document at the earlier of: (i) seven days prior to signing the Franchise Agreement; or (ii) seven days prior to Franchisor's receipt of any consideration.

**2. THE SECURITIES COMMISSIONER HAS HELD THE FOLLOWING TO BE UNFAIR, UNJUST OR INEQUITABLE TO NORTH DAKOTA FRANCHISEES (NDCC SECTION 51-19-09):**

- A. Restrictive Covenants: Franchise disclosure documents which disclose the existence of covenants restricting competition contrary to NDCC Section 9-08-06, without further disclosing that such covenants will be subject to the statute.
- B. Situs of Arbitration Proceedings: Franchise agreements providing that the parties must agree to the arbitration of disputes at a location that is remote from the site of the franchisee's business.
- C. Restrictions on Forum: Requiring North Dakota franchisees to consent to the jurisdiction of courts outside of North Dakota.
- D. Liquidated Damages and Termination Penalties: Requiring North Dakota franchisees to consent to liquidated damages or termination penalties.
- E. Applicable Laws: Franchise agreements which specify that they are to be governed by the laws of a state other than North Dakota.
- F. Waiver of Trial by Jury: Requiring North Dakota Franchises to consent to the waiver of a trial by jury.
- G. Waiver of Exemplary & Punitive Damages: Requiring North Dakota Franchisees to consent to a waiver of exemplary and punitive damage.
- H. General Release: Franchise Agreements that require the franchisee to sign a general release upon renewal of the franchise agreement.
- I. Limitation of Claims: Franchise Agreements that require the franchisee to consent to a limitation of claims. The statute of limitations under North Dakota law applies.
- J. Enforcement of Agreement: Franchise Agreements that require the franchisee to pay all costs and expenses incurred by the franchisor in enforcing the

agreement. The prevailing party in any enforcement action is entitled to recover all costs and expenses including attorney's fees.

3. Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the North Dakota Franchise Investment Law, with respect to each such provision, are met independent of this Addendum. This Addendum shall have no force or effect if such jurisdictional requirements are not met. Except as set forth in this Addendum, the terms and provisions of the Franchise Documents shall remain in full force and effect.

IN WITNESS WHEREOF, each party hereto, by and through its respective representative with full rights, power and authority to enter into and bind his or her respective party without further consent or approval of any kind, have duly executed and delivered this Addendum as of the Addendum Effective Date.

**FRANCHISOR:**

KAHALA FRANCHISING, L.L.C., an Arizona  
limited liability company

By: \_\_\_\_\_  
[Name, Title]

**[SUBLESSOR:**

\_\_\_\_\_,  
\_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]]

**FRANCHISEE:**

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

By: \_\_\_\_\_  
[Name, Title]

## **ADDENDUM TO FRANCHISE DOCUMENTS**

(FOR THE STATE OF NEW YORK)

This ADDENDUM TO FRANCHISE DOCUMENTS (FOR THE STATE OF NEW YORK) ("Addendum") dated \_\_\_\_\_ ("Addendum Effective Date") to the [Franchise Agreement[, as amended], [Consent to Transfer and Release Agreement,] [General Release,] [Promissory Note and Security Agreement] [Sublease] [each] dated \_\_\_\_\_, and including any and all exhibits attached thereto (individually and collectively, "Franchise Documents") between \_\_\_\_\_ ("Franchisee") and KAHALA FRANCHISING, L.L.C., an Arizona limited liability company ("Franchisor") [and LEASING ENTITY, a[n] \_\_\_\_\_ "Sublessor"] hereby amends the Franchise Documents by the addition of the following language, which shall be considered an integral part of the Agreement. To the extent this Addendum contains terms and conditions that differ from those contained in the Franchise Documents, this Addendum shall control. The parties agree that a concept or principle covered in this Addendum shall apply and be incorporated into all other provisions of the Franchise Documents in which the concept or principle is also applicable, notwithstanding the absence of any specific cross-reference thereto. All capitalized terms not otherwise defined in this Addendum will have the same meanings ascribed to such terms in the Franchise Documents

### **NEW YORK LAW MODIFICATIONS**

1. The New York Department of Law requires that certain provisions contained in franchise documents be amended to be consistent with New York law, including the General Business Law, Article 33, Section 680 through 695 (1989). To the extent that the Agreement contains provisions that are inconsistent with the following, such provisions are hereby amended:

- a. If the Franchisee is required in the Franchise Documents to execute a release of claims or to acknowledge facts that would negate or remove from judicial review any statement, misrepresentation or action that would violate the General Business Law, regulation, rule or order under the Law, such release shall exclude claims arising under the New York General Business Law, Article 33, Section 680 through 695 and the regulations promulgated thereunder, and such acknowledgements shall be void. It is the intent of this provision that non-waiver provisions of Sections 687.4 and 687.5 of the General Business Law be satisfied.
- b. If the Franchise Documents requires that it be governed by a state's law, other than the State of New York, the choice of law provision shall not be considered to waive any rights conferred upon the Franchisee under the New York General Business Law, Article 33, Sections 680 through 695.
- c. If the Franchisee is required in the Franchise Documents to waive compliance with General Business Law or rule under the Law, such condition, stipulation or provision shall be void.

2. Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of New York General Business Law, with respect to each such provision are met.

3. Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the New York law applicable to the provision are met independent of this Addendum. This Addendum shall have no force or effect if such jurisdictional requirements are not met. Except as set forth above, the terms and provisions of the Franchise Documents shall remain in full force and effect.

IN WITNESS WHEREOF, each party hereto, by and through its respective representative with full rights, power and authority to enter into and bind his or her respective party without further consent or approval of any kind, have duly executed and delivered this Addendum as of the Addendum Effective Date.

**FRANCHISOR:**

KAHALA FRANCHISING, L.L.C., an Arizona  
limited liability company

By: \_\_\_\_\_  
[Name, Title]

**[SUBLESSOR:**

\_\_\_\_\_,

By: \_\_\_\_\_  
[Name, Title]]

**FRANCHISEE:**

\_\_\_\_\_,  
\_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

By: \_\_\_\_\_  
[Name, Title]

## **ADDENDUM TO FRANCHISE DOCUMENTS**

(FOR THE STATE OF RHODE ISLAND)

This ADDENDUM TO FRANCHISE DOCUMENTS (FOR THE STATE OF RHODE ISLAND) ("Addendum") dated \_\_\_\_\_ ("Addendum Effective Date") to the [Franchise Agreement[, as amended], [Consent to Transfer and Release Agreement,] [General Release,] [Promissory Note and Security Agreement] [Sublease] [each] dated \_\_\_\_\_, and including any and all exhibits attached thereto (individually and collectively, "Franchise Documents") between \_\_\_\_\_ ("Franchisee") and KAHALA FRANCHISING, L.L.C., an Arizona limited liability company ("Franchisor") [and LEASING ENTITY, a[n] \_\_\_\_\_ "Sublessor"] hereby amends the Franchise Documents by the addition of the following language, which shall be considered an integral part of the Agreement. To the extent this Addendum contains terms and conditions that differ from those contained in the Franchise Documents, this Addendum shall control. The parties agree that a concept or principle covered in this Addendum shall apply and be incorporated into all other provisions of the Franchise Documents in which the concept or principle is also applicable, notwithstanding the absence of any specific cross-reference thereto. All capitalized terms not otherwise defined in this Addendum will have the same meanings ascribed to such terms in the Franchise Documents.

### **RHODE ISLAND LAW MODIFICATIONS**

1. The Rhode Island Securities Division requires that certain provisions contained in franchise documents be amended to be consistent with Rhode Island law, including the Franchise Investment Act, R.I. Gen. Law. ch. 395 Sec. 19-28.1-1 – 19-28.1-34. To the extent that the Agreement contains provisions that are inconsistent with the following, such provisions are hereby amended:

- a. If the Franchise Documents restricts jurisdiction or venue to a forum other than the State of Rhode Island, the requirement is void under Rhode Island Franchise Investment Act Sec. 19-28.1-14.
- b. If the Franchise Documents requires that it be governed by a state's law, other than the State of Rhode Island, to the extent that such law conflicts with Rhode Island Franchise Investment Act it is void under Sec. 19-28.1-14.
- c. If the Franchisee is required in the Franchise Documents to execute a release of claims or to acknowledge facts that would negate or remove from judicial review any statement, misrepresentation or action that would violate the Act, or a rule or order under the Act, such release shall exclude claims arising under the Rhode Island Franchise Investment Act, and such acknowledgements shall be void with respect to claims under the Act.

2. Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the Rhode Island Franchise Investment Act, with respect to each such provision, are met independent of this Addendum. This Addendum shall have no force or effect if such jurisdictional requirements are not met.

3. Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the Rhode Island Franchise Investment Act applicable to the

provision are met independent of this Addendum. This Addendum shall have no force or effect if such jurisdictional requirements are not met. Except as set forth in this Addendum, the terms and provisions of the Franchise Documents shall remain in full force and effect.

IN WITNESS WHEREOF, each party hereto, by and through its respective representative with full rights, power and authority to enter into and bind his or her respective party without further consent or approval of any kind, have duly executed and delivered this Addendum as of the Addendum Effective Date.

**FRANCHISOR:**

KAHALA FRANCHISING, L.L.C., an Arizona  
limited liability company

By: \_\_\_\_\_  
[Name, Title]

**FRANCHISEE:**

\_\_\_\_\_,  
\_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

By: \_\_\_\_\_  
[Name, Title]

**[SUBLESSOR:**

\_\_\_\_\_, a[n]  
\_\_\_\_\_

By: \_\_\_\_\_]  
[Name, Title]]



## **ADDENDUM TO FRANCHISE DOCUMENTS**

(FOR THE STATE OF SOUTH DAKOTA)

This ADDENDUM TO FRANCHISE DOCUMENTS (FOR THE STATE OF SOUTH DAKOTA) ("Addendum") dated \_\_\_\_\_ ("Addendum Effective Date") to the [Franchise Agreement[, as amended], [Consent to Transfer and Release Agreement,] [General Release,] [Promissory Note and Security Agreement] [Sublease] [each] dated \_\_\_\_\_, and including any and all exhibits attached thereto (individually and collectively, "Franchise Documents") between \_\_\_\_\_ ("Franchisee") and KAHALA FRANCHISING, L.L.C., an Arizona limited liability company ("Franchisor") [and LEASING ENTITY, a[n] \_\_\_\_\_ "Sublessor"] hereby amends the Franchise Documents by the addition of the following language, which shall be considered an integral part of the Agreement. To the extent this Addendum contains terms and conditions that differ from those contained in the Franchise Documents, this Addendum shall control. The parties agree that a concept or principle covered in this Addendum shall apply and be incorporated into all other provisions of the Franchise Documents in which the concept or principle is also applicable, notwithstanding the absence of any specific cross-reference thereto. All capitalized terms not otherwise defined in this Addendum will have the same meanings ascribed to such terms in the Franchise Documents.

### **SOUTH DAKOTA LAW MODIFICATIONS**

1. The Director of the South Dakota Division of Securities requires that certain provisions contained in franchise documents be amended to be consistent with South Dakota law, including the South Dakota Franchise Investment Law, South Dakota Codified Laws, Title 37, Chapter 37-5B, Sections 37-5B-1 through 37-5B-53 (2008). To the extent that the Agreement contains provisions that are inconsistent with the following, such provisions are hereby amended:

- a. If the Franchisee is required in the Franchise Documents to execute a release of claims or to acknowledge facts that would negate or remove from judicial review any statement, misrepresentation or action that would violate the Law, or a rule or order under the Law, such release shall exclude claims arising under the South Dakota Franchise Investment Law, and such acknowledgements shall be void with respect to claims under the Law.
- b. Covenants not to compete upon termination or expiration of the Franchise Agreement are generally unenforceable in the state of South Dakota, except in certain limited instances as provided by law. If the Agreement contains a covenant not to compete which is inconsistent with South Dakota Law, the covenant may be unenforceable.
- c. Regardless of the terms of the Franchise Agreement concerning termination, if Franchisee fails to meet performance and quality standards or fails to make any royalty payments under the Franchise Agreement, Franchisee will be afforded thirty (30) days' written notice with an opportunity to cure the default before termination.
- d. If the Franchise Documents require payment of liquidated damages that are inconsistent with South Dakota law, the liquidated damage clause may be void under SDCL 53-9-5.

- e. If the Franchise Documents require litigation to be conducted in a forum other than the State of South Dakota, the requirement is void with respect to any cause of action otherwise enforceable under South Dakota Law.
- f. If the Franchise Documents require that it be governed by a state's law, other than the State of South Dakota, matters regarding franchise registration, employment, covenants not to compete, and other matters of local concern will be governed by the laws of the State of South Dakota; but as to contractual and all other matters, the Agreement and all provisions of this Addendum will be and remain subject to the application, construction, enforcement, interpretation under the governing law set forth in the Agreement.
- g. If the Franchise Documents require that disputed between Franchisor and Franchisee be mediated/arbitrated at a location that is outside the State of South Dakota, the mediation/arbitration will be conducted at a location mutually agreed upon by the parties. If the parties cannot agree on location for the mediation/arbitration, the location shall be determined by the mediator/arbitrator selected.
- h. Any condition, stipulation or provision in the Franchise Documents requiring Franchisee to waive compliance of a provision under the South Dakota Franchise Investment Law may be void.

2. Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the South Dakota Franchise Investment Law, with respect to each such provision, are met independent of this Addendum. This Addendum shall have no force or effect if such jurisdictional requirements are not met. Except as set forth in this Addendum, the terms and provisions of the Franchise Documents shall remain in full force and effect.

IN WITNESS WHEREOF, each party hereto, by and through its respective representative with full rights, power and authority to enter into and bind his or her respective party without further consent or approval of any kind, have duly executed and delivered this Addendum as of the Addendum Effective Date.

**FRANCHISOR:**

KAHALA FRANCHISING, L.L.C., an Arizona  
limited liability company

By: \_\_\_\_\_  
[Name, Title]

**FRANCHISEE:**

\_\_\_\_\_,  
\_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

By: \_\_\_\_\_  
[Name, Title]

**[SUBLESSOR:**

\_\_\_\_\_, a[n]  
\_\_\_\_\_

By: \_\_\_\_\_]  
[Name, Title]]

## ADDENDUM TO FRANCHISE DOCUMENTS

(FOR THE STATE OF VIRGINIA)

This ADDENDUM TO FRANCHISE DOCUMENTS (FOR THE STATE OF VIRGINIA ("Addendum") dated \_\_\_\_\_ ("Addendum Effective Date") to the [Franchise Agreement[, as amended], [Consent to Transfer and Release Agreement,] [General Release,] [Promissory Note and Security Agreement] [Sublease] [each] dated \_\_\_\_\_, and including any and all exhibits attached thereto (individually and collectively, "Franchise Documents") between \_\_\_\_\_ ("Franchisee") and KAHALA FRANCHISING, L.L.C., an Arizona limited liability company ("Franchisor") [and LEASING ENTITY, a[n] \_\_\_\_\_ "Sublessor"] hereby amends the Franchise Documents by the addition of the following language, which shall be considered an integral part of the Agreement. To the extent this Addendum contains terms and conditions that differ from those contained in the Franchise Documents, this Addendum shall control. The parties agree that a concept or principle covered in this Addendum shall apply and be incorporated into all other provisions of the Franchise Documents in which the concept or principle is also applicable, notwithstanding the absence of any specific cross-reference thereto. All capitalized terms not otherwise defined in this Addendum will have the same meanings ascribed to such terms in the Franchise Documents.

1. Pursuant to Section 13.1-564 of the Virginia Retail Franchising Act, it is unlawful for a franchisor to cancel a franchise without reasonable cause. If any grounds for default or termination stated in the Franchise Agreement does not constitute "reasonable cause," as that term may be defined in the Virginia Retail Franchising Act or the laws of Virginia, that provision may not be enforceable.

2. Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the Virginia Retail Franchising Act applicable to the provision are met independent of this Addendum. This Addendum shall have no force or effect if such jurisdictional requirements are not met. Except as set forth in this Addendum, the terms and provisions of the Franchise Documents shall remain in full force and effect.

IN WITNESS WHEREOF, each party hereto, by and through its respective representative with full rights, power and authority to enter into and bind his or her respective party without further consent or approval of any kind, have duly executed and delivered this Addendum as of the Addendum Effective Date.

**FRANCHISOR:**

KAHALA FRANCHISING, L.L.C., an Arizona  
limited liability company

By: \_\_\_\_\_  
[Name, Title]

**FRANCHISEE:**

\_\_\_\_\_,  
\_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

By: \_\_\_\_\_  
[Name, Title]

**[SUBLESSOR:**

\_\_\_\_\_, a[n]  
\_\_\_\_\_

By: \_\_\_\_\_]  
[Name, Title]]

**ADDENDUM TO THE FRANCHISE DOCUMENTS**  
(REQUIRED BY THE STATE OF WASHINGTON)

The state of Washington has a statute, RCW 19.100.180, which may supersede the Franchise Documents in your relationship with the Franchisor, including the areas of termination and renewal of your franchise. There may also be court decisions which may supersede the Franchise Documents in your relationship with the Franchisor, including the areas of termination and renewal of your Franchise.

1. If any provisions governing termination or non-renewal disclosed herein are inconsistent with Washington law, then Washington law shall apply. The applicable law reads as follows:

Section 19.100.180. Without limiting the other provisions of this chapter, the following specific rights and prohibitions shall govern the relation between the franchisor or subfranchisor and the franchisees:

(2) For the purpose of this chapter and without limiting its general application, it shall be an unfair or deceptive act or practice or an unfair method of competition and therefore unlawful and violation of this chapter for any person to:

(a) Restrict or inhibit the right of the franchisees to join an association of franchisees.

(b) Require a franchisee to purchase or lease goods or services of the franchisor or from approved sources of supply unless and to the extent that the franchisor satisfies the burden of proving that such restrictive purchasing agreements are reasonably necessary for a lawful purpose justified on business grounds, and do not substantially affect competition: PROVIDED, That this provision shall not apply to the initial inventory of the franchise. In determining whether a requirement to purchase or lease goods or services constitutes an unfair or deceptive act or practice or an unfair method of competition the courts shall be guided by the decisions of the courts of the United States interpreting and applying the anti-trust laws of the United States.

(c) Discriminate between franchisees in the charges offered or made for royalties, goods, services, equipment, rentals, advertising services, or in any other business dealing, unless and to the extent that the franchisor satisfies the burden of proving that any classification of or discrimination between franchisees is: (i) Reasonable, (ii) based on franchises granted at materially different times and such discrimination is reasonably related to such difference in time, or is based on other proper and justifiable distinctions considering the purposes of this chapter, and (iii) is not arbitrary. However, nothing in (c) of this subsection precludes negotiation of the terms and conditions of a franchise at the initiative of the franchisees.

(d) Sell, rent, or offer to sell to a franchisee any product or service for more than a fair and reasonable price.

(e) Obtain money, goods, services, anything of value, or any other benefit from any other person with whom the franchisee does business on account of such business unless such benefit is disclosed to the franchisee.

(f) If the franchise provides that the franchisee has an exclusive territory, which exclusive territory shall be specified in the franchise agreement, for the franchisor or subfranchisor to compete with the franchisee in an exclusive territory or to grant competitive franchises in the exclusive territory area previously granted to another franchisee.

(g) Require franchisee to assent to a release, assignment, novation, or waiver which would relieve any person from liability imposed by this chapter, except as otherwise permitted by RCW 19.100.220.

(h) Impose on a franchisee by contract, rule, or regulation, whether written or oral, any standard of conduct unless the person so doing can sustain the burden of proving such to be reasonable and necessary.

(i) Refuse to renew a Franchise Agreement without fairly compensating the franchisee for the fair market value, at the time of expiration of the Franchise Agreement, or the franchisee's inventory, supplies, equipment, and furnishings purchased from the franchisor and good will, exclusive of personalized materials which have no value to the franchisor, and inventory, supplies, equipment and furnishings not reasonably required in the conduct of the franchised business: PROVIDED, that compensation need not be made to a franchisee for good will if: (i) the franchisee has been given one year's notice of nonrenewal; and (ii) the franchisor agrees in writing not to enforce any covenant which restrains the franchisee from competing with the franchisor: PROVIDED FURTHER, that a franchisor may offset against amounts owed to a franchisee under this subsection any amounts owed by such franchisee to franchisor.

(j) Terminate a franchise prior to the expiration of its term except for good cause. Good cause shall include, without limitation, the failure of the franchisee to comply with lawful material provisions of the franchise or other agreement between the franchisor and the franchisee and to cure such default after being given written notice thereof and a reasonable opportunity, which in no event need be more than thirty days, to cure such default, or if such default cannot reasonably be cured within thirty days, the failure of the franchisee to initiate within thirty days substantial and continuing action to cure such default: PROVIDED, that after three willful and material breaches of the same term of the Franchise Agreement occurring within a twelve month period, for which the franchisee has been given notice and an opportunity to cure as provided in this subsection, the franchisor may terminate the Franchise Agreement upon any subsequent month period without providing notice or opportunity cure: PROVIDED FURTHER, that a franchisor may terminate a Franchise Agreement without prior notice or opportunity to cure a default if the franchisee: (i) is adjudicated bankrupt or insolvent; (ii) makes an assignment for the benefit of creditors or similar disposition of the assets of the franchised business; (iii) voluntarily abandons the franchised business; or (iv) is convicted of or pleads guilty or no contest to a charge of violating any law relating to the franchised business. Upon termination for good cause the franchisor shall purchase from the franchisee at a fair market value at the time of termination, the franchisee's inventory and supplies, exclusive of: (i) personalized materials which have no value to the franchisor; (ii) inventory and supplies not reasonably required in the conduct of the franchised business; and (iii) if the franchisee is to retain control of the premises of the franchised business, any inventory and supplies not purchased from the franchisor or on his express requirement: PROVIDED, that a franchisor may offset against amounts owed to a franchisee under this subsection any amounts owed by such franchisee to the franchisor."

2. In any arbitration involving a franchise purchased in Washington, the arbitration site shall be either in the State of Washington or in a place mutually agreed upon at the time of the arbitration, or as determined by the arbitrator.

3. In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW shall prevail.

4. A release or waiver of rights executed by a franchisee shall not include rights under the Washington Franchise Investment Protection Act, except when executed pursuant to a negotiated settlement after the agreement is in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act or rights or remedies under the Act, such as a right to a jury trial, may not be enforceable.

5. Transfer fees are collectable to the extent that they reflect the Franchisor's reasonable estimated or actual costs in effecting a transfer.

Each provision of this Addendum to Franchise Documents shall be effective only to the extent that the jurisdictional requirements of the Washington law applicable to the provision are met independent of this Addendum. This Addendum to Franchise Documents shall have no force or effect if such jurisdictional requirements are not met. Except as set forth in this Addendum to Franchise Documents, the terms and provisions of the Franchise Documents shall remain in full force and effect.

IN WITNESS WHEREOF, each party hereto, by and through its respective representative with full rights, power and authority to enter into and bind his or her respective party without further consent or approval of any kind, have duly executed and delivered this Addendum to the Franchise Documents on \_\_\_\_\_.

**FRANCHISOR:**

KAHALA FRANCHISING, L.L.C., an Arizona  
limited liability company

By: \_\_\_\_\_  
[Name, Title]

**FRANCHISEE:**

\_\_\_\_\_,  
\_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

By: \_\_\_\_\_  
[Name, Title]

**[SUBLESSOR:**

\_\_\_\_\_, a[n]  
\_\_\_\_\_

By: \_\_\_\_\_]  
[Name, Title]]



## **ADDENDUM TO FRANCHISE DOCUMENTS**

(FOR THE STATE OF WISCONSIN)

This ADDENDUM TO FRANCHISE DOCUMENTS (FOR THE STATE OF WISCONSIN) ("Addendum") dated \_\_\_\_\_ ("Addendum Effective Date") to the [Franchise Agreement[, as amended], [Consent to Transfer and Release Agreement,] [General Release,] [Promissory Note and Security Agreement] [Sublease] [each] dated \_\_\_\_\_, and including any and all exhibits attached thereto (individually and collectively, "Franchise Documents") between \_\_\_\_\_ ("Franchisee") and KAHALA FRANCHISING, L.L.C., an Arizona limited liability company ("Franchisor") [and LEASING ENTITY, a[n] \_\_\_\_\_ "Sublessor"] hereby amends the Franchise Documents by the addition of the following language, which shall be considered an integral part of the Agreement. To the extent this Addendum contains terms and conditions that differ from those contained in the Franchise Documents, this Addendum shall control. The parties agree that a concept or principle covered in this Addendum shall apply and be incorporated into all other provisions of the Franchise Documents in which the concept or principle is also applicable, notwithstanding the absence of any specific cross-reference thereto. All capitalized terms not otherwise defined in this Addendum will have the same meanings ascribed to such terms in the Franchise Documents.

### **WISCONSIN LAW MODIFICATIONS**

1. The Securities Commissioner of the State of Wisconsin requires that certain provisions contained in franchise documents be amended to be consistent with Wisconsin Fair Dealership Law, Wisconsin Statutes, Chapter 135 ("Fair Dealership Law") and the Wisconsin Franchise Investment Law, Chapter 553. To the extent that the Agreement contains provisions that are inconsistent with the following, such provisions are hereby amended:

- a. The Wisconsin Fair Dealership Law, among other things, grants you the right, in most circumstances, to 90 days' prior written notice of non-renewal and 60 days within which to remedy any claimed deficiencies. If the Franchise Agreement contains a provision that is inconsistent with the Wisconsin Fair Dealership Law, the provisions of the Agreement shall be superseded by the Law's requirements and shall have no force or effect.
- b. The Wisconsin Fair Dealership Law, among other things, grants you the right, in most circumstances, to 90 days' prior written notice of termination and 60 days within which to remedy any claimed deficiencies. If the Franchise Agreement contains a provision that is inconsistent with the Wisconsin Fair Dealership Law, the provisions of the Agreement shall be superseded by the Law's requirements and shall have no force or effect.
- c. If the Franchise Documents require that they be governed by a state's law, other than the State of Wisconsin, to the extent that any provision of the Franchise Documents conflicts with the Wisconsin Fair Dealership Law such provision shall be superseded by the law's requirements.
- d. Any condition, stipulation or provision in the Franchise Documents requiring Franchisee to waive compliance with any provision under the Wisconsin Franchise Investment law may be void.

2. Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the Wisconsin law applicable to the provision are met independent of this Addendum. This Addendum shall have no force or effect if such jurisdictional requirements are not met. Except as set forth in this Addendum, the terms and provisions of the Franchise Documents shall remain in full force and effect.

IN WITNESS WHEREOF, each party hereto, by and through its respective representative with full rights, power and authority to enter into and bind his or her respective party without further consent or approval of any kind, have duly executed and delivered this Addendum as of the Addendum Effective Date.

**FRANCHISOR:**

KAHALA FRANCHISING, L.L.C., an Arizona  
limited liability company

By: \_\_\_\_\_  
[Name, Title]

**FRANCHISEE:**

\_\_\_\_\_,  
\_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

By: \_\_\_\_\_  
[Name, Title]

**[SUBLESSOR:**

\_\_\_\_\_, a[n]  
\_\_\_\_\_

By: \_\_\_\_\_]  
[Name, Title]]

**EXHIBIT T**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

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**EXHIBIT U**  
**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**List of Franchise Owners**

## FRULLATI

## FRANCHISE LIST AS OF NOVEMBER 30, 2016

The name of the franchisee, store address and store telephone number of the stores are listed below

Company Name	Franchisee Name	Location Name	Store Address	City	State	Zip Code	Telephone Number
Michael & Stephanie Jones	Michael & Stephanie Jones	Maricopa County Superior Court	175 W Madison St	Phoenix	AZ	85003	
Peng Fei Wu	Castleton Square	Castleton Square	6020 E. 82nd, Room 1008	Indianapolis	IN	46250	(317) 842-8276
KHL Frullati Café of Port Huron, L.L.C.	Kwang Soo Kim	Birchwood Mall	4350 24th Avenue, Suite 708	Fort Gratiot	MI	48059	(810) 385-9530
Yazin Services, Inc.	Maysoun Musa	Tri-County Mall	11700 Princeton Pike, Space FC-208	Cincinnati	OH	45246	(513) 518-8744
Maher Shalash, L.L.C.	Maher Shalash	Southern Park Mall	7401 Market Street, Room No. 351	Youngstown	OH	44512	(330) 729-9060
Intrepid Venture #1	Chris Wright	Westgate Mall	7701 I-40 West, Suite 236	Amarillo	TX	79121	(806) 353-5554
David Clark	David Clark	Barton Creek Mall	2901 Capital of TX, Hwy, No. FC-02	Austin	TX	78746	(512) 576-2408
Café & More, Inc.	Jose Moreno	Sunrise Mall	2370 N.	Brownsville	TX	78526	(956) 541-8002
Dae Won Suh	Dae Won Suh	Medical City-Dallas	7777 Forest Lane, Building A-068	Dallas	TX	75230	(972) 566-7905
Jae Lee	Jae Lee	North East Mall	1101 Melbourne, Suite 2309	Hurst	TX	76053	(817) 284-5959
Mohammad Qureshi & Gursharon Mahal	Mohammad Qureshi & Gursharon Mahal	Town East Mall-Lower Level	1204 Town East Mall	Mesquite	TX	75150	(972) 279-7780
Three Circles, Inc.	Don Huey	Medical Center of Plano	3901 W. 15th Street, First Floor	Plano	TX	75075	(972) 769-9169
Fidel Martinez	Fidel Martinez	Collin Creek Mall	811 N. Central	Plano	TX	75075	(972) 422-0694
Intrepid Venture #1	Chris Wright	Westgate Mall	640 Old San antonio Road	Buda	TX	78610	(512) 361-0555

Frullati Franchisees who have signed Franchise Agreements but whose stores were in the site selection process or construction had not yet begun and the stores were not open as of November 30, 2018

[illegible]

**EXHIBIT V**  
**TO THE FRANCHISE DISCLOSURE DOCUMENT**  
**Financial Statements**



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# Consolidated financial statements of MTY Franchising USA, Inc.

For the year ended November 30, 2018

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February 8, 2019

## **Independent Auditor's Report**

**To the Management of  
MTY Franchising USA, Inc.**

We have audited the accompanying consolidated financial statements of MTY Franchising USA, Inc. and its subsidiaries, which comprise the consolidated balance sheets as of November 30, 2018, and the related consolidated statements of operations and comprehensive income, change in stockholder's equity and cash flows for the year then ended.

### **Management's Responsibility for the Consolidated Financial Statements**

Management is responsible for the preparation and fair presentation of the consolidated financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

### **Auditors' Responsibility**

Our responsibility is to express an opinion on the consolidated financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on our judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, we consider internal control relevant to the Company's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

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*PricewaterhouseCoopers LLP/s.r.l./s.e.n.c.r.l.  
1250 René-Lévesque Boulevard West, Suite 2500, Montréal, Quebec, Canada H3B 4Y1  
T: +1 514 205 5000, F: +1 514 876 1502*

\*PwC\* refers to PricewaterhouseCoopers LLP/s.r.l./s.e.n.c.r.l., an Ontario limited liability partnership.

**Opinion**

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of MTY Franchising USA, Inc. and its subsidiaries as of November 30, 2018, and the results of their operations and their cash flows for the year then ended in accordance with accounting principles generally accepted in the United States of America.

**Other Matter**

The consolidated financial statements of MTY Franchising USA, Inc. and its subsidiaries as of November 30, 2017 and for the year then ended were audited by other auditors whose report, dated February 21, 2018, expressed an unmodified opinion on those statements.

*PricewaterhouseCoopers LLP<sup>1</sup>*

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<sup>1</sup> CPA auditor, CA, public accountancy permit No. A123475

**MTY Franchising USA, Inc.****Consolidated Statement of Operations and Comprehensive Income**

For the year ended November 30, 2018

	Notes	November 30, 2018	November 30, 2017
		\$	\$
<b>Revenue</b>	18	<b>107,121,584</b>	<b>103,351,774</b>
<b>Cost and expenses</b>			
Operating expenses	19	<b>68,976,164</b>	72,530,001
Amortization – property, plant and equipment	7	<b>311,615</b>	820,774
Amortization – intangible assets	8	<b>11,351,370</b>	10,853,392
Impairment charge of property, plant and equipment	7	<b>413,175</b>	—
Impairment charge of intangible assets	8	<b>4,414,048</b>	783,371
Interest charged by parent company	23	—	3,255
Interest charged by ultimate parent company	23	<b>21,450</b>	—
Interest charged by companies under common control	23	<b>11,191,600</b>	11,191,600
Accreted interest expense on interest-bearing holdbacks		<b>1,215,220</b>	1,434,003
Management fees charged by parent company	23	<b>1,245,148</b>	1,235,393
		<b>99,139,790</b>	<b>98,851,789</b>
<b>Other income</b>			
Gain on disposal of property, plant and equipment		<b>147,679</b>	404,116
Interest revenue from parent company	23	—	117,699
		<b>147,679</b>	<b>521,815</b>
<b>Income before income taxes</b>		<b>8,129,473</b>	<b>5,021,800</b>
<b>Income tax expense (recovery)</b>	21		
Current		<b>3,277,615</b>	193,441
Deferred		<b>(28,546,037)</b>	790,882
		<b>(25,268,422)</b>	<b>984,323</b>
<b>Net income and comprehensive income</b>		<b>33,397,895</b>	<b>4,037,477</b>

The accompanying notes are an integral part of these consolidated financial statements.

**MTY Franchising USA, Inc.****Consolidated Statement of Changes in Stockholder's Equity**

For the year ended November 30, 2018

	<b>Common stock issued</b>	<b>Common stock value</b>	<b>Retained earnings</b>	<b>Total stockholder's equity</b>
		\$	\$	\$
Balance as at November 30, 2016	5,001	89,153,737	681,271	89,835,008
Net income and comprehensive income	—	—	4,037,477	4,037,477
Balance as at November 30, 2017	5,001	89,153,737	4,718,748	93,872,485
Net income and comprehensive income	—	—	33,397,895	33,397,895
Balance as at November 30, 2018	5,001	89,153,737	38,116,643	127,270,380

The accompanying notes are an integral part of these consolidated financial statements.

**MTY Franchising USA, Inc.**  
**Consolidated Balance Sheet**  
As of November 30, 2018

	Notes	November 30, 2018 \$	November 30, 2017 \$
<b>Assets</b>			
<b>Current assets</b>			
Cash		9,968,800	37,835,612
Restricted cash		361,015	221,015
Accounts receivable	4	10,592,511	10,317,297
Inventories		408,693	258,913
Loans receivable	5	1,272,650	2,001,472
Prepaid expenses and deposits		4,284,626	3,212,700
		<b>26,888,295</b>	<b>53,847,009</b>
Loans receivable	5	969,984	2,284,355
Property, plant and equipment	7	1,192,978	863,209
Intangible assets	8	316,607,501	309,514,014
Goodwill	9	157,726,565	119,497,863
		<b>476,497,028</b>	<b>432,159,441</b>
		<b>503,385,323</b>	<b>486,006,450</b>
<b>Liabilities</b>			
<b>Current liabilities</b>			
Accounts payable		4,442,226	4,807,133
Accrued liabilities	15	6,821,380	8,212,917
Gift card liability	10	62,960,871	57,391,369
Promotional funds payable		4,454,647	4,041,713
Deferred revenue and deposits	11	9,286,092	10,730,565
Income taxes payable	21	14,670,268	12,708,759
Advances from ultimate parent	6 and 23	8,158,901	—
Advance from parent company	12 and 23	1,303,699	1,068,933
Advances from companies under common control	12 and 23	243,791	283,801
Current portion of long-term debt	14	1,719,377	2,701,380
		<b>114,061,252</b>	<b>101,946,570</b>
Long-term loans from company under common control	13	199,850,000	199,850,000
Long-term debt	14	6,339,816	4,989,124
Deferred revenue and deposits	11	530,121	1,509,579
Deferred income taxes	21	55,333,754	83,838,692
		<b>262,053,691</b>	<b>290,187,395</b>
		<b>376,114,943</b>	<b>392,133,965</b>
<b>Stockholder's equity</b>			
Common stock	16	89,153,737	89,153,737
Retained earnings		38,116,643	4,718,748
		<b>127,270,380</b>	<b>93,872,485</b>
		<b>503,385,323</b>	<b>486,006,450</b>

The accompanying notes are an integral part of these consolidated financial statements.

Approved by the Board

\_\_\_\_\_  
Director

**MTY Franchising USA, Inc.**  
**Consolidated Statement of Cash Flows**  
For the year ended November 30, 2018

	November 30, 2018	November 30, 2017
	\$	\$
<b>Operating activities</b>		
Net income	33,397,895	4,037,477
Items not affecting cash		
Amortization – property, plant and equipment	311,615	820,774
Amortization – intangible assets	11,351,370	10,853,392
Interest on advance from (to) parent company	21,450	(114,444)
Interest on advance from companies under common control	11,191,600	11,191,600
Accreted interest expense on interest-bearing holdbacks	1,215,220	1,434,003
Gain on disposal of property, plant and equipment	(147,679)	(404,116)
Impairment charge of property, plant and equipment	413,175	—
Impairment charge of intangible assets	4,414,048	783,371
Deferred income tax (recovery) expense	(28,546,037)	790,882
	33,622,657	29,392,939
Interest paid	(11,191,600)	(11,191,600)
Changes in non-cash working capital items		
Accounts receivable	59,786	2,346,590
Inventories	102,053	179,475
Prepaid expenses and deposits	(968,042)	1,763,250
Loans receivable	2,043,193	1,263,506
Income taxes	1,961,757	(778,952)
Accounts payable	(810,041)	(2,118,365)
Accrued liabilities	(1,900,577)	3,072,871
Promotional funds payable	412,934	(1,340,083)
Gift card liability	3,175,780	1,079,120
Deferred revenue and deposits	(2,528,429)	1,173,267
Net cash from operating activities	23,979,472	24,842,018
<b>Investing activities</b>		
Net cash outflow on acquisitions	(53,496,112)	(224,808)
Additions to property, plant and equipment	(832,444)	(187,500)
Additions to intangible assets	(668,344)	(75,000)
Proceeds on disposal of property, plant and equipment	515,958	1,801,384
Net cash from investing activities	(54,480,942)	1,314,076



**MTY Franchising USA, Inc.**  
**Consolidated Cash Flows**  
For the year ended November 30, 2018

	Notes	November 30, 2018	November 30, 2017
		\$	\$
<b>Financing activities</b>			
Proceeds of advances from ultimate parent		8,372,217	481,733
(Repayment) issuance of advances to companies under common control		(40,010)	207,949
Repayment of advance from parent company		—	(1,800,000)
Repayment of long-term debt		(5,557,549)	(6,255,592)
Net cash from financing activities		2,774,658	(7,365,910)
Net (decrease) increase in cash and restricted cash		(27,726,812)	18,790,184
Cash and restricted cash, beginning of year		38,056,627	19,266,443
<b>Cash and restricted cash, end of year</b>		<b>10,329,815</b>	<b>38,056,627</b>

**Supplemental cash flow information**

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The accompanying notes are an integral part of these consolidated financial statements.

**MTY Franchising USA, Inc.**  
**Notes to the consolidated financial statements**  
For the year ended November 30, 2018

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**1. Nature of operations**

MTY Franchising USA, Inc. (the "Company" or "MTY USA") was incorporated on March 14, 2001. The Company develops and franchises restaurants under a multitude of different banners in the United States of America.

**2. Significant accounting policies**

*Basis of presentation*

The accounting policies of the Company are in accordance with accounting principles generally accepted in the United States of America. The Company uses the United States dollar as its functional and reporting currency. MTY USA is a wholly owned subsidiary of MTY Food Group Inc.

Presented below are those policies considered particularly significant:

*Basis of consolidation*

Our consolidated financial statements reflect the financial position and operating results of the Company, including wholly-owned subsidiaries and investees that we control.

The principal subsidiaries of the Company are as follows:

Principal subsidiaries	Percentage of equity interest
	%
BF Acquisition Holdings, LLC	100
Kahala Brands Ltd.	100

Revenues and expenses of subsidiaries are included in the consolidated statement of operations and comprehensive income from the effective date of acquisition. The subsidiaries are consolidated from the acquisition date until the date on which the Company ceases to control them.

All intercompany transactions, balances, revenues and expenses are eliminated in full upon consolidation.

## **MTY Franchising USA, Inc.**

### **Notes to the consolidated financial statements**

For the years ended November 30, 2018 and November 30, 2017

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## **2. Significant accounting policies (continued)**

### *Business combinations*

The Company accounts for acquired businesses using the acquisition method of accounting in accordance with FASB ASC 805, Business Combinations. The consideration transferred for the acquisition is the fair values of the assets transferred, the liabilities incurred and the equity interest issued. The consideration transferred includes the fair value of any asset or liability resulting from a contingent consideration arrangement. Acquisition-related costs are expensed as incurred. Identifiable assets acquired and liabilities and contingent liabilities assumed in a business combination are measured initially at their fair value at the acquisition date.

Goodwill is measured as the excess of the purchase price over the estimated fair values of the net assets acquired. If, after reassessment, the net of the acquisition date amounts of the identifiable assets acquired and liabilities assumed exceeds the sum of the consideration transferred, the amount of any non-controlling interests in the acquiree and the fair value of the acquirer's previously held interest in the acquiree (if any), the excess is recognized immediately in profit or loss as a bargain purchase gain.

Goodwill reflects how the acquisition will impact the Company's ability to generate future profits in excess of existing profits. The consideration paid mostly relates to combined synergies, related mainly to revenue growth. These benefits are not recognized separately from goodwill as they do not meet the recognition criteria for identifiable intangible assets.

When the consideration transferred by the Company in a business combination includes assets or liabilities resulting from a contingent consideration arrangement, the contingent consideration is measured at its acquisition date fair value and included as part of the consideration transferred in a business combination.

When a business combination is achieved in stages, the Company's previously held equity interest in the acquiree is remeasured to fair value at the acquisition date (i.e. the date when the Company obtains control) and the resulting gain or loss, if any, is recognized in profit or loss. Amounts arising from interests in the acquiree prior to the acquisition date that have previously been recognized in other comprehensive income are reclassified to profit or loss where such treatment would be appropriate if that interest were disposed of.

If the initial accounting for a business combination is incomplete by the end of the reporting period in which the combination occurs, the Company reports provisional amounts for the items for which the accounting is incomplete. Those provisional amounts are adjusted retrospectively during the measurement period (see above), or additional assets or liabilities are recognized, to reflect new information obtained about facts and circumstances that existed at the acquisition date that, if known, would have affected the amounts recognized at that date.

### *Goodwill*

Goodwill represents the excess of cost over the net tangible assets and identifiable intangible assets of acquired businesses. Goodwill is carried at cost reduced by previous impairment losses, if any.

## **MTY Franchising USA, Inc.**

### **Notes to the consolidated financial statements**

For the years ended November 30, 2018 and November 30, 2017

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## **2. Significant accounting policies (continued)**

### *Functional currency*

The functional currency of the Company and its subsidiaries is the US dollar. The Company translates monetary assets and liabilities that are denominated in currencies other than the US dollar at the exchange rates prevailing at the end of the reporting period; non-monetary assets denominated in foreign currencies are translated using the exchange rate prevailing at the transaction date; all revenue and expense items denominated in foreign currencies are translated at the exchange rate prevailing at the transaction date. All foreign exchange gains and losses are reported in profit or loss.

### *Revenue recognition*

Revenue is recognized when persuasive evidence of an arrangement exists, delivery has occurred or services have been rendered, price is fixed or determinable and collectability is reasonably assured.

#### **i) Revenue from franchise locations**

The Company recognizes revenue in accordance with the accounting guidance of the Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") 952-605, Franchisors, Revenue Recognition.

Royalties are based either on a percentage of gross sales as reported by the franchisees or on a fixed monthly fee. They are recognized on an accrual basis in accordance with the substance of the relevant agreement, provided collectability is reasonably assured and price is fixed or determinable.

Initial franchise fees are recognized when substantially all of the initial services as required by the franchise agreement have been performed. This usually occurs when the location commences operations.

Master licence fees are recognized when the Company has performed substantially all material initial obligations under the agreement, which usually occurs when the agreement is signed, which is recorded in franchise fees, transfer fees and master licence fees.

Renewal and transfer fees are recognized when substantially all applicable services required by the Company under the franchise agreement have been performed. This generally occurs when the agreement is signed. This revenue is recorded in franchise fees, transfer fees and master licence fees.

Revenue from equipment sale and retail sales are recognized when the risk and rewards of ownership and title pass to buyer, generally upon the shipment of the equipment or goods. This revenue is recorded in other revenue.

Depending on the gift card program, the Company recognizes breakage based on the historical load and redemption patterns of the gift cards. The Company also charges various program fees to its franchisees as gift cards are redeemed. Notably, this does not apply to gift card liabilities assumed upon a business acquisition, which are accounted for at fair value.

The Company earns rent revenue on certain leases it holds; the Company's policy is described below.

The Company receives considerations from certain suppliers called program allowances. Program allowances are recognized as revenues as they are earned.

## **MTY Franchising USA, Inc.**

### **Notes to the consolidated financial statements**

For the years ended November 30, 2018 and November 30, 2017

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## **2. Significant accounting policies (continued)**

### *Revenue recognition (continued)*

#### ii) Revenue from corporate-owned locations

Revenue from corporate-owned locations is recorded when goods are delivered to customers.

### *Leasing*

Leases are classified as capital leases whenever the terms of the lease transfer substantially all the risks and rewards of ownership to the lessee. All other leases are classified as operating leases.

#### The Company as lessor

Rental income from operating leases is recognized on a straight-line basis over the term of the relevant lease.

#### The Company as lessee

Operating lease payments are recognized as an expense on a straight-line basis over the lease term, except where another systematic basis is more representative of the time pattern in which economic benefits from the leased asset are consumed. Contingent rentals arising under operating leases are recognized as an expense in the period in which they are incurred.

In the event that lease incentives are received to enter into operating leases, such incentives are recognized as a liability. The aggregate benefit of incentives is recognized as a reduction of rental expense on a straight-line basis, except where another systematic basis is more representative of the time pattern in which economic benefits from the leased asset are consumed.

### *Income taxes*

The Company accounts for income taxes pursuant to ASC 740, Income Taxes ("ASC 740"). Deferred tax assets and liabilities are recorded for differences between the financial statement and tax basis of the assets and liabilities that will result in taxable or deductible amounts in the future based on enacted tax laws and rates. Valuation allowances are established when necessary to reduce deferred tax assets to the amount expected to be realized. Income tax expense is recorded for the amount of income tax payable or refundable for the period increased or decreased by the change in deferred tax assets and liabilities during the period.

The Company recognizes the financial statement benefit of a tax position only after determining that the relevant tax authority would more likely than not sustain the position following an audit. For tax positions meeting the more-likely-than-not threshold, the amount recognized in the financial statements is the largest benefit that has a greater than 50 percent likelihood of being realized upon ultimate settlement with the relevant tax authority.

### *Allowance for doubtful accounts*

Allowance for doubtful accounts is calculated based on historical experience, customer credit risk and application of the specific identification method.

## **MTY Franchising USA, Inc.**

### **Notes to the consolidated financial statements**

For the years ended November 30, 2018 and November 30, 2017

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## **2. Significant accounting policies (continued)**

### *Property, plant and equipment*

Cost includes expenditures that are directly attributable to the acquisition of the asset, including any costs directly attributable to bringing the asset to a working condition for its intended use.

Equipment, leasehold improvements, rolling stock and computer hardware are stated at cost less accumulated amortization and accumulated impairment losses.

Amortization is recognized so as to write off the cost or valuation of assets less their residual values over their useful lives, using the straight-line method. The estimated useful lives, residual values and amortization methods are reviewed at the end of each year, with the effect of any changes in estimate accounted for on a prospective basis.

An item of property, plant and equipment is derecognized upon disposal or when no future economic benefits are expected to arise from the continued use of the asset. Any gain or loss arising on the disposal or retirement of an item of property, plant and equipment is determined as the difference between the sales proceeds and the carrying amount of the asset and is recognized in profit or loss.

Amortization is based on the following terms:

Equipment	Straight-line	3 to 10 years
Leasehold improvements	Straight-line	Term of the lease
Rolling stock	Straight-line	5 to 7 years
Computer hardware	Straight-line	3 to 7 years

### *Intangible assets*

#### *Intangible assets acquired separately*

Intangible assets with finite useful lives that are acquired separately are carried at cost less accumulated amortization and accumulated impairment losses, if applicable. Amortization is recognized on a straight-line basis over their estimated useful lives. The estimated useful lives and amortization methods are reviewed at the end of each year, with the effect of any changes in estimate being accounted for on a prospective basis. Intangible assets with indefinite useful lives that are acquired separately are carried at cost less accumulated impairment losses, if applicable.

Intangible assets acquired in a business combination and recognized separately from goodwill are initially recognized at their fair value at the acquisition date.

Subsequent to initial recognition, intangible assets having a finite life acquired in a business combination are reported at cost less accumulated amortization and accumulated impairment losses, if applicable, on the same basis as intangible assets that are acquired separately. Intangible assets having an indefinite life are not amortized and are therefore carried at cost reduced by previous impairment losses, if applicable.

## **MTY Franchising USA, Inc.**

### **Notes to the consolidated financial statements**

For the years ended November 30, 2018 and November 30, 2017

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## **2. Significant accounting policies (continued)**

### *Intangible assets (continued)*

#### **Derecognition of intangible assets**

An intangible asset is derecognized on disposal, or when no future economic benefits are expected from use or disposal. Gains or losses arising from derecognition of an intangible asset, measured as the difference between the net disposal proceeds and the carrying amount of the asset, are recognized in profit or loss when the asset is derecognized.

The Company currently carries the following intangible assets in its books:

#### *Franchise rights*

The franchise rights acquired through business combinations are recognized at the fair value of the estimated future cash inflows related to the acquisition of franchises. The franchise rights are generally amortized on a straight-line basis over the term of the agreements, which typically range between 10 to 20 years.

#### *Trademarks*

Trademarks acquired through business combinations are recognized at their fair value at the time of the acquisition and are not amortized. Trademarks are determined to have an indefinite useful life based on their brand recognition and their ability to generate revenue through changing economic conditions with no foreseeable time limit.

#### *Impairment of long-lived assets other than goodwill*

The Company continually reviews whether events or circumstances subsequent to the acquisition of any long-lived assets, including intangible assets with finite useful lives, have occurred that indicate the remaining estimated useful lives of those assets may warrant revision or that the remaining balance of those assets may not be recoverable. If events and circumstances indicate that the long-lived assets should be reviewed for possible impairment, the Company uses projections to assess whether future cash flows on an undiscounted basis related to the assets exceeds the recorded carrying amount of those assets to determine if an asset is impaired. Should an impairment be identified, a loss would be recorded to the extent that the carrying value of the impaired assets exceeds their fair values as determined by valuation techniques appropriate in the circumstances that could include the use of similar cash flow projections on a discounted basis. The reporting units of indefinite intangible assets are individual brands.

#### *Impairment of goodwill*

Goodwill is tested for impairment at the reporting unit level (operating segment or one level below an operating segment) on an annual basis (August 31 for the Company) and between annual tests if an event occurs or circumstances change that would more likely than not reduce the fair value of a reporting unit below its carrying value. Fair value is determined using a discounted cash flow methodology with a risk adjusted weighted average cost of capital. Goodwill is allocated to the franchising business unit segment for impairment testing.

#### *Cash and restricted cash*

Cash and restricted cash includes cash on hand and short-term investments, if any, with maturities upon acquisition of generally three months or less or that are redeemable at any time at full value and for which the risk of a change in value is not significant. As at November 30, 2018, cash and restricted cash included \$361,015 in restricted cash (2017 – \$221,015), required as part of guarantees on certain lease commitments.

## **MTY Franchising USA, Inc.**

### **Notes to the consolidated financial statements**

For the years ended November 30, 2018 and November 30, 2017

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## **2. Significant accounting policies (continued)**

### *Inventories*

Inventories are measured at the lower of cost and market value. Costs of inventories are determined on a first-in-first-out basis and include acquisition costs and other costs incurred to bring inventories to their present location and condition.

Market value represents the current replacement cost, provided that the cost does not exceed the net realizable value or is not less than the net realizable value reduced by a normal profit margin.

### *Contingencies*

#### *Litigation, disputes and closed stores*

Contingencies for the expected cost of litigation, disputes and the cost of settling leases for closed stores are recognized when it becomes probable the Company will be required to settle the obligation, at management's best estimate of the expenditure required to settle the Company's obligation.

#### *Contingent liabilities acquired in a business combination*

Contingent liabilities acquired in a business combination are initially measured at fair value at the acquisition date. At the end of subsequent reporting periods, such contingent liabilities are measured at the higher of the amount that would be recognized and the amount initially recognized less cumulative amortization recognized, if any.

### *Financial instruments*

The Company's financial instruments consist of cash, restricted cash, accounts receivable, loans receivable, advances to ultimate parent, accounts payable, accrued liabilities, promotional funds payable, advances from parent company, advances from companies under common control, long-term loans from company under common control and long-term debt. Unless otherwise noted, it is management's opinion that the Company is not exposed to significant interest, currency or credit risks arising from these financial instruments. The fair value for cash, accounts receivable, loans receivable, deposits, advances to ultimate parent, accounts payable, accrued liabilities, promotional funds payable, advance from parent company and advances from companies under common control approximates their carrying values due to their immediate or short-term maturities, unless otherwise noted. Long-term loans from company under common control and long-term debt are measured at amortized cost using the effective interest method.



## **MTY Franchising USA, Inc.**

### **Notes to the consolidated financial statements**

For the years ended November 30, 2018 and November 30, 2017

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## **2. Significant accounting policies (continued)**

### *Gift card and loyalty program liabilities*

Gift card liability represents liabilities related to unused balances on reloadable payment cards. Loyalty program liabilities represent the dollar value of the loyalty points earned and unused by customers.

The Company's various franchised and corporate owned locations, in addition to third party companies, sell gift cards to be redeemed at the Company's corporate and franchised locations for food and beverages only. Proceeds from the sale of gift cards are included in gift card liability until redeemed by the gift cardholder as a method of payment for good and beverage purchases.

The Company recognizes breakage on gift card programs in its consolidated statement of income based on historical load and redemption patterns. The redemption rate was established following an analysis performed over 7 to 10 years of the redemption patterns as well as expected future trends. The expected breakage is then recognized in income on a pro rata basis as gift cards are redeemed.

Due to the inherent nature of gift cards, it is not possible for the Company to determine what portion of the gift card liability related to gift cards will be redeemed in the next 12 months and, therefore, the entire unredeemed gift card liability is considered to be a current liability.

### *Promotional funds*

Pursuant to the franchise agreements, franchisees must pay a fee to the promotional fund. These amounts are collected by the Company in its capacity as agent and must be used for promotional and advertising purposes, since the amounts are set aside to promote the respective banners for the franchisees' benefit. The fees collected by the Company for the promotional fund are not recorded in the Company's statement of operations and comprehensive income, but as operations in the accounts payable to the promotional fund. The payable is presented net of any amounts spent from the promotional fund.

Cash held pursuant to the promotional funds received are classified as unrestricted cash as there are no legal restrictions on the use of these funds; however, the Company intends to use these funds solely to support the promotional funds rather than to fund its ongoing operations. Promotion funds are currently in a net liability position amounting to \$4,454,647 (2017 net liability of \$4,041,713).

### *Subsequent events*

Subsequent events were evaluated through the date that the consolidated financial statements were issued, which was February 8, 2019.

### *Incoming new standards affecting the Company but not yet adopted*

## **ASU 2017-01—Clarifying the Definition of a Business ("ASU 2017-01")**

The FASB issued ASU 2017-01 – Clarifying the Definition of a Business. The amendment clarifies the definition of a business with objective guidance to assist entities with evaluating whether transactions should be accounted for as acquisitions (or disposals) of businesses. The ASU will be effective for the Company for the fiscal years beginning after December 1, 2019. The Company is in the process of evaluating the impact of the standard on its consolidated financial statements.

## **MTY Franchising USA, Inc.**

### **Notes to the consolidated financial statements**

For the years ended November 30, 2018 and November 30, 2017

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## **2. Significant accounting policies (continued)**

*Incoming new standards affecting the Company but not yet adopted (continued)*

### **ASU 2017-04—Intangibles—Goodwill and (Other Topic 350) Simplifying the Test for Goodwill Impairment (“ASU 2017-04”)**

In January 2017, the FASB issued guidance that simplifies the measurement of goodwill impairment. Under this new guidance, an impairment charge, if triggered, is calculated as the difference between a reporting unit's carrying value and fair value, but it is limited to the carrying value of goodwill. The ASU will be effective for the Company for the fiscal years beginning after December 1, 2021. Early adoption is permitted. The Company is in the process of evaluating the impact of the standard on its consolidated financial statements.

### **ASU 2016-16—Income taxes (topic 740) Intra-Entity Transfer as of Assets other than Inventory (“ASU 2016-06”)**

In October 2016, the FASB issued guidance on the accounting for income tax effects of intercompany sales or transfers of assets other than inventory. The guidance requires entities to recognize the income tax impact of an intra-entity sale or transfer of an asset other than inventory when the sale or transfer occurs, rather than when the asset has been sold to an outside party. The ASU will be effective for the Company for the fiscal years beginning after December 1, 2019. Early adoption is permitted. The Company is in the process of evaluating the impact of the standard on its consolidated financial statements.

### **ASU 2016-15—Statement of Cash Flows—Classification of Certain Cash Receipts and Cash Payments (“ASU 2016-15”)**

In August 2016, the FASB issued ASU 2016-15 to address diversity in practice on certain specific cash flow issues. The ASU will be effective for the Company for the fiscal years beginning after December 1, 2018. Early adoption is permitted. The Company does not believe that this standard will have a significant impact on its consolidated financial statements.

### **ASU 2016-04—Liabilities—Extinguishment of Liabilities (Subtopic 405-20): Recognition of Breakage for Certain Prepaid Stored-Value Products (“ASU 2016-04”)**

In March 2016, the FASB issued ASU 2016-04, Liabilities – Extinguishment of Liabilities (Subtopic 405-20): Recognition of Breakage for Certain Prepaid Stored-Value Products. ASU 2016-04 aligns recognition of the financial liabilities related to prepaid stored-value products (for example, gift cards) with Topic 606, Revenues from Contracts with Customers, for non-financial liabilities. In general, these liabilities may be extinguished proportionately in earnings as redemptions occur, or when redemption is remote if issuers are not entitled to the unredeemed stored value. ASU 2016-04 is effective for fiscal years, and interim periods within those years, beginning after December 1, 2019, and early adoption is permitted. The Company is in the process of evaluating the impact of the standard on its consolidated financial statements and does not anticipate a material impact.

## **MTY Franchising USA, Inc.**

### **Notes to the consolidated financial statements**

For the years ended November 30, 2018 and November 30, 2017

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## **2. Significant accounting policies (continued)**

*Incoming new standards affecting the Company but not yet adopted (continued)*

### **ASU 2016-02—Leases (“ASU 2016-02”)**

In February 2016, the FASB issued ASU 2016-02. The new standard establishes a right-of-use (“ROU”) model that requires a lessee to record a ROU asset and a lease liability on the balance sheet for all leases with terms longer than 12 months. Leases will be classified as either finance or operating, with classification affecting the pattern of expense recognition in the consolidated statement of income.

The new standard is effective for fiscal years beginning after December 1, 2020. A modified retrospective transition approach is required for lessees for capital and operating leases existing at, or entered into after, the beginning of the earliest comparative period presented in the consolidated financial statements, with certain practical expedients available. The Company is in the process of evaluating the impact of the standard on its consolidated financial statements.

### **ASU 2016-01—Recognition and Measurement of Financial Assets and Financial Liabilities (“ASU 2016-01”)**

In January 2016, the FASB issued ASU No. 2016-01, which among other changes in accounting and disclosure requirements, replaces the cost method of accounting for non-marketable equity securities with a model for recognizing impairments and observable price changes, and also eliminates the available-for-sale classification for marketable equity securities. Under the new guidance, other than when the consolidation or equity method of accounting is utilized, changes in the fair value of equity securities are to be recognized in income.

The amendments in this ASU are effective for fiscal years beginning after December 15, 2017. For all other entities including not-for-profit entities and employee benefit plans within the scope of Topics 960 through 965 on plan accounting, the amendments in this ASU are effective for fiscal years beginning after December 1, 2019. The Company is in the process of evaluating the impact of the standard on its consolidated financial statements.

### **ASU 2015-14—Revenue from Contracts with Customers (Topic 606), Deferral of the Effective Date (“ASU 2015-14”)**

In May 2014, the FASB issued ASU No. 2015-14, which supersedes nearly all existing revenue recognition guidance under U.S. GAAP. The core principle of ASU 2015-14 is to recognize revenue when promised goods or services are transferred to customers in an amount that reflects the consideration to which an entity expects to be entitled for those goods or services. The ASU defines a five-step process to achieve this core principle, and in applying such process, more judgment and estimates may be required within the revenue recognition process than are required under existing U.S. GAAP.

## **MTY Franchising USA, Inc.**

### **Notes to the consolidated financial statements**

For the years ended November 30, 2018 and November 30, 2017

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#### **2. Significant accounting policies (continued)**

##### *Incoming new standards affecting the Company but not yet adopted (continued)*

As a result of the issuance of the ASU is effective for annual periods beginning after December 1, 2019, using either of the following transition methods: (i) a full retrospective approach reflecting the application of the standard in each prior reporting period with the option to elect certain practical expedients, or (ii) a retrospective approach with the cumulative effect of initially adopting the ASU recognized at the date of adoption (which includes additional footnote disclosures). Earlier application is permitted only as of annual reporting periods beginning after December 15, 2016. The Company is currently evaluating the impact of its pending adoption of the ASU on its consolidated financial statements.

**MTY Franchising USA, Inc.****Notes to the consolidated financial statements**

For the years ended November 30, 2018 and November 30, 2017

**3. Business acquisitions****l) Acquisition of Counter Custom Burgers and Built Custom Burgers**

On December 1, 2017, the Company completed the acquisition of all the limited liability company interests in CB Franchise Systems, LLC and Built Franchise Systems, LLC. The total consideration for the transaction was \$23,545,068. The purpose of the transaction was to diversify the Company's range of offering as well as to complement existing MTY USA brands.

	2018
	\$
Consideration paid:	
Purchase price	22,698,710
Repayment of external debt	990,420
Working capital	118,436
Discount on non-interest-bearing holdback	(262,498)
Net purchase price	23,545,068
Holdback	(1,284,669)
Less cash acquired	(27,000)
Net consideration paid/cash outflow	22,233,399

The purchase price allocation is as follows:

	2018
	\$
Net assets acquired:	
Current assets	
Cash	27,000
Accounts receivable	335,000
Inventory	56,000
Prepaid expenses and deposits	68,000
	486,000
Property, plant and equipment	497,000
Franchise rights	7,200,000
Trademarks	13,200,000
Goodwill <sup>(1)</sup>	3,265,167
	24,648,167
Current liabilities	
Accounts payable	355,000
Accrued liabilities	396,000
Unredeemed gift card liability	229,000
Deferred revenues	82,000
Deferred income tax	41,099
	1,103,099
Net purchase price	23,545,068

<sup>(1)</sup> Goodwill is deductible for tax purposes

Total expenses incurred related to acquisition costs amounted to \$60,492.

**MTY Franchising USA, Inc.****Notes to the consolidated financial statements**For the years ended November 30, 2018 and November 30, 2017

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**3. Business acquisitions (continued)****II) Acquisition of Grabbagreen**

On March 15, 2018, the Company completed its acquisition of the assets of Grabbagreen franchise system. The total consideration for the transaction was \$2,633,316. The purpose of the transaction was to diversify the Company's range of offering as well as to complement existing MTY USA brands.

	2018
	\$
Consideration paid:	
Purchase price	2,675,000
Net obligations assumed	(22,979)
Discount on non-interest-bearing holdback	(18,705)
Net purchase price	2,633,316
Holdback	(248,795)
Net consideration paid/cash outflow	2,384,521

The preliminary purchase price allocation is as follows:

	2018
	\$
Net assets acquired:	
Current assets	
Prepaid expenses and deposits	12,883
Property, plant and equipment	11,595
Franchise rights	291,508
Trademarks	1,499,053
Goodwill <sup>(1)</sup>	854,139
	2,669,178
Current liabilities	
Accrued liabilities	540
Unredeemed gift card liability	35,322
Net purchase price	2,633,316

<sup>(1)</sup> Goodwill is deductible for tax purposes

Total expenses incurred related to acquisition costs amounted to nil.

The purchase price allocation is still preliminary as post-closing adjustments have not been finalized.

**MTY Franchising USA, Inc.****Notes to the consolidated financial statements**

For the years ended November 30, 2018 and November 30, 2017

**3. Business acquisitions (continued)****III) Acquisition of SweetFrog**

On September 26, 2018, the Company completed its acquisition of the assets of SweetFrog Premium Frozen Yogurt ("SweetFrog"). The total consideration for the transaction was \$32,063,828. The purpose of the transaction was to diversify the Company's range of offering as well as to complement existing MTY USA brands.

Given the size of the transaction, the Company has not yet completed its fair value assessment of the intangible assets and goodwill acquired. Consequently, part of the fair value adjustments, mainly relating to franchise rights and trademark, related to this acquisition are included in goodwill in the preliminary fair value assessment of the assets acquired.

	2018
	\$
Consideration paid:	
Purchase price	35,000,000
Net obligations assumed	(2,613,725)
Discount on non-interest-bearing holdback	(322,447)
Net purchase price	32,063,828
Holdback	(3,177,553)
Net consideration paid/cash outflow	28,886,275

The preliminary purchase price allocation is as follows:

	2018
	\$
Net assets acquired:	
Current assets	
Inventory	195,833
Prepaid expenses	23,000
	218,833
Goodwill <sup>(1)</sup>	34,109,396
	34,328,229
Current liabilities	
Accounts payable and accrued liabilities	112,501
Unredeemed gift card liability	2,129,400
Deferred revenue	22,500
	2,264,401
Net purchase price	32,063,828

<sup>(1)</sup> Goodwill is deductible for tax purposes

Total expenses incurred related to acquisition costs amounted to nil.

The purchase price allocation is still preliminary as post-closing adjustments have not been finalized.

**MTY Franchising USA, Inc.****Notes to the consolidated financial statements**For the years ended November 30, 2018 and November 30, 2017

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**4. Accounts receivable**

The following table provides details on trade accounts receivable not past due, past due and the related allowance for doubtful accounts:

	<b>2018</b>	<b>2017</b>
	<b>\$</b>	<b>\$</b>
Total accounts receivable	<b>12,601,550</b>	12,646,414
Less: Allowance for doubtful accounts	<b>(2,009,039)</b>	(2,329,117)
Total accounts receivable, net	<b>10,592,511</b>	10,317,297

	<b>2018</b>	<b>2017</b>
	<b>\$</b>	<b>\$</b>
Of which:		
Not past due	<b>8,804,355</b>	6,889,406
Past due for more than one day but for no more than 30 days	<b>221,360</b>	871,393
Past due for more than 31 days but for no more than 60 days	<b>295,979</b>	696,995
Past due for more than 61 days	<b>1,270,817</b>	1,859,503
Total accounts receivable, net	<b>10,592,511</b>	10,317,297



**MTY Franchising USA, Inc.****Notes to the consolidated financial statements**

For the years ended November 30, 2018 and November 30, 2017

**4. Accounts receivable (continued)**

	2018	2017
	\$	\$
Allowance for doubtful accounts, beginning of year	2,329,117	1,265,035
Additions	130,993	954,596
Reversals	143,985	228,593
Write-off	(595,056)	(119,107)
Allowance for doubtful accounts, end of year	2,009,039	2,329,117

The Company has recognized an allowance for doubtful accounts based on past experience, outlet-specific situation, counterparty's current financial situation and age of the receivables.

Trade receivables disclosed above include amounts that are past due at the end of the reporting period and for which the Company has not recognized an allowance for doubtful accounts because there was no significant change in the credit quality of the counterparty and the amounts are therefore considered recoverable. The Company does not hold any collateral or other credit enhancements over these balances nor does it have the legal right of offset against any amounts owed by the Company to the counterparty.

The concentration of credit risk is limited due to the fact that the customer base is large and unrelated.

**5. Loans receivable**

Loans receivable generally result from the sales of franchises and of various advances to certain franchisees and consist of the following:

	2018	2017
	\$	\$
Loans receivable bearing interest between 0% and 9% per annum, receivable in monthly instalments of \$190,526 in aggregate, including principal and interest, ending in 2026	2,242,634	4,285,827
Current portion	(1,272,650)	(2,001,472)
	969,984	2,284,355

There is currently an allowance for doubtful accounts offset against the loans receivable balance of \$2,094,923 (2017 – \$904,999).

**MTY Franchising USA, Inc.****Notes to the consolidated financial statements**For the years ended November 30, 2018 and November 30, 2017

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**5. Loans receivable (continued)**

The capital repayments in subsequent years will be:

	\$
2019	1,272,650
2020	295,356
2021	84,733
2022	146,440
2023	57,416
Thereafter	386,039
	<u>2,242,634</u>

**6. Advances from ultimate parent**

The advances from ultimate parent are interest-bearing and due on demand with no specified repayment terms.

**MTY Franchising USA, Inc.****Notes to the consolidated financial statements**

For the years ended November 30, 2018 and November 30, 2017

**7. Property, plant and equipment**

Cost	Equipment	Leasehold improvements	Rolling stock	Computer hardware	Total
	\$	\$	\$	\$	\$
Balance at November 30, 2016	2,351,025	897,990	66,681	117,730	3,433,426
Additions	159,662	—	5,000	22,838	187,500
Dispositions	(1,142,822)	(860,383)	—	(19,853)	(2,023,058)
Balance at November 30, 2017	1,367,865	37,607	71,681	120,715	1,597,868
Additions	769,093	40,574	—	14,445	824,112
Additions through business acquisitions (note 3)	498,595	—	—	10,000	508,595
Dispositions	(450,548)	—	—	—	(450,548)
Impairments	(413,175)	—	—	—	(413,175)
Balance at November 30, 2018	1,771,830	78,181	71,681	145,160	2,066,852
Accumulated amortization	Equipment	Leasehold improvements	Rolling Stock	Computer Hardware	Total
	\$	\$	\$	\$	\$
Balance at November 30, 2016	378,895	142,557	4,149	14,075	539,676
Amortization expense	643,620	125,344	16,098	35,712	820,774
Dispositions	(358,325)	(260,105)	—	(7,361)	(625,791)
Balance at November 30, 2017	664,190	7,796	20,247	42,426	734,659
Amortization expense	257,771	5,721	10,356	37,767	311,615
Dispositions	(172,400)	—	—	—	(172,400)
Balance at November 30, 2018	749,561	13,518	30,603	80,192	873,874
Carrying amounts	Equipment	Leasehold improvements	Rolling stock	Computer hardware	Total
	\$	\$	\$	\$	\$
November 30, 2017	703,675	29,811	51,434	78,289	863,209
November 30, 2018	1,022,270	64,663	41,078	64,968	1,192,978

**MTY Franchising USA, Inc.****Notes to the consolidated financial statements**

For the years ended November 30, 2018 and November 30, 2017

**7. Property, plant and equipment (continued)**

For the year ended November 30, 2018, as the result of a decline in its financial performance, the Company carried out a review of the recoverable amounts of property, plant and equipment related to certain corporate stores. The review led to the recognition of a non-cash impairment loss of \$413,175 composed of leasehold improvements and equipment. The Company proceeded to an undiscounted cash flow calculation that resulted in fair values being lower than carrying values. Therefore, the impairment charges were based on the amount by which the carrying values of the assets exceeded their fair values, and were determined using expected discounted future cash flows for trademarks and multi-period excess income for franchise rights.

**8. Intangible assets**

Cost	Franchise rights	Trademarks	Total
	\$	\$	\$
Balance at November 30, 2016	132,706,527	192,025,722	324,732,249
Additions	75,000	—	75,000
Impairment	(210,204)	(573,167)	(783,371)
Balance at November 30, 2017	132,571,323	191,452,555	324,023,878
Additions	668,344	—	668,344
Acquisitions through business combinations	7,491,508	14,699,053	22,190,561
Impairment	(945,489)	(3,468,559)	(4,414,048)
Balance at November 30, 2018	139,785,686	202,683,049	342,468,735

Accumulated amortization	Franchise rights	Trademarks	Total
	\$	\$	\$
Balance at November 30, 2016	3,656,472	—	3,656,472
Amortization expense	10,853,392	—	10,853,392
Balance at November 30, 2017	14,509,864	—	14,509,864
Amortization expense	11,351,370	—	11,351,370
Balance at November 30, 2018	25,861,234	—	25,861,234

Carrying amounts	Franchise rights	Trademarks	Total
	\$	\$	\$
November 30, 2017	118,061,459	191,452,555	309,514,014
November 30, 2018	113,924,452	202,683,049	316,607,501

For the year ended November 30, 2018, the Company recorded impairment charges of \$4,414,048 related to four of its reporting units following a decline in the performance of the related brands. The total impairment amounted to \$945,489 and \$3,468,559 for the franchise rights and trademarks, respectively. Impairment charges were based on the amount by which the carrying values of the assets exceeded their fair values, and were determined using expected discounted future cash flows for trademarks and multi-period excess income for franchise rights.

**MTY Franchising USA, Inc.****Notes to the consolidated financial statements**

For the years ended November 30, 2018 and November 30, 2017

**9. Goodwill**

The changes in the carrying amount of goodwill are as follows:

	<b>2018</b>	<b>2017</b>
	<b>\$</b>	<b>\$</b>
Balance, beginning of year	<b>119,497,863</b>	117,952,987
Additional amounts recognized from business acquisitions (note 3)	<b>38,228,702</b>	1,544,876
Balance, end of year	<b>157,726,565</b>	119,497,863

**10. Gift card liability**

	<b>2018</b>	<b>2017</b>
	<b>\$</b>	<b>\$</b>
Gift card liability, beginning of year	<b>57,391,369</b>	56,312,249
Activations during the year	<b>32,572,440</b>	30,225,167
Redemptions during the year	<b>(23,162,597)</b>	(23,921,232)
Gift card liability acquired (note 3)	<b>2,394,868</b>	—
Deferred program fees and other	<b>(1,386,001)</b>	(461,278)
Gift card breakage recorded	<b>(4,849,208)</b>	(4,763,537)
Gift card liability, end of year	<b>62,960,871</b>	57,391,369

**11. Deferred revenue and deposits**

	<b>2018</b>	<b>2017</b>
	<b>\$</b>	<b>\$</b>
Franchise fee deposits	<b>4,211,121</b>	5,075,252
Unearned rent	<b>2,547,440</b>	2,620,653
Supplier contributions and other allowances	<b>3,057,652</b>	4,544,239
	<b>9,816,213</b>	12,240,144
Less: Current portion	<b>(9,286,092)</b>	(10,730,565)
	<b>530,121</b>	1,509,579

**MTY Franchising USA, Inc.****Notes to the consolidated financial statements**For the years ended November 30, 2018 and November 30, 2017

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**12. Advances from parent company and companies under common control**

The advances from parent company and companies under common control are non-interest bearing and due on demand with no specified repayment terms.

**13. Long-term loans from company under common control**

	2018	2017
	\$	\$
Interest-bearing loan on acquisition of Kahala Brands Ltd. bearing interest at 5.6%, repayable by July 2023 <sup>(1)</sup>	181,850,000	181,850,000
Interest-bearing loan on acquisition of BF Acquisition Holdings LLC, bearing interest at 5.6%, repayable by October 2023 <sup>(1)</sup>	18,000,000	18,000,000
Balance, end of year	199,850,000	199,850,000

<sup>(1)</sup> The loans are subject to a maximum debt to EBITDA ratio of 5.50 to 1 starting on December 1, 2016 and a minimum EBITDA interest coverage ratio of 2.00 to 1 to be calculated in conjunction with interest payments based on the last 12 months.

The Company is currently in breach of its debt covenants on its long-term loans. The Company has obtained a waiver from a company under common control that is valid until February 29, 2020.

**MTY Franchising USA, Inc.****Notes to the consolidated financial statements**

For the years ended November 30, 2018 and November 30, 2017

**14. Long-term debt**

	2018	2017
	\$	\$
Non-interest-bearing holdbacks acquired on acquisition of Kahala Brands Ltd. repayable between July 2018 and August 2020	3,234,211	7,690,504
Non-interest-bearing holdbacks acquired on acquisition of The Counter repayable on December 2020	1,361,567	—
Non-interest-bearing holdbacks acquired on acquisition of Grabbagreen repayable on March 2020	254,880	—
Non-interest-bearing holdbacks acquired on acquisition of SweetFrog repayable between March 2020 and September 2021	3,208,535	—
	<b>8,059,193</b>	<b>7,690,504</b>
Less: Current portion	<b>(1,719,377)</b>	<b>(2,701,380)</b>
	<b>6,339,816</b>	<b>4,989,124</b>

**15. Contingencies**

The contingencies for litigation and disputes represent management's best estimate of the outcome of litigations and disputes that are on-going at the date of the consolidated balance sheet. This contingency is made of multiple items; the timing of the settlement of this contingency is unknown given its nature, as the Company does not control the litigation timelines.

The provision related to closed stores mainly represent amounts that are expected to be disbursed to exit leases of underperforming or closed stores. The negotiations with the various stakeholders are typically short in duration and are expected to be settled within a few months following the recognition of the contingencies. The provisions for litigations, disputes and closed stores are recorded in accrued liabilities.

	November 30, 2018	November 30, 2017
	\$	\$
Provision for litigation and disputes and closed stores, beginning balance	1,819,346	1,024,500
Reversals	(1,234,381)	(303,103)
Acquired through our business acquisitions	—	91,871
Amounts used	(1,006,410)	(421,691)
Additions	1,632,515	1,427,769
Provision for litigation and disputes and closed stores, ending balance	<b>1,211,070</b>	<b>1,819,346</b>

**MTY Franchising USA, Inc.****Notes to the consolidated financial statements**

For the years ended November 30, 2018 and November 30, 2017

**16. Common stock**

	2018		2017	
	Shares issued	\$	Shares issued	\$
Balance, beginning of year	5,001	89,153,737	5,001	89,153,737
Balance, end of year	5,001	89,153,737	5,001	89,153,737

**17. Financial instruments**

In the normal course of business, the Company uses various financial instruments which by their nature involve risk, including market risk and the credit risk of non-performance by counterparties. These financial instruments are subject to normal credit standards, financial controls, risk management as well as monitoring procedures.

*Fair value of recognized financial instruments*

The Company has determined that the fair value of its financial assets and financial liabilities with short-term maturities approximates their carrying value. These financial instruments consist of cash, restricted cash, accounts receivable, accrued liabilities, promotional funds payable, and advances from parent company, advances from ultimate parent and advances from companies under common control.

The table below shows the fair value and the carrying value of other financial instruments as at November 30, 2018 and November 30, 2017. Since estimates are used to determine fair value, they must not be interpreted as being realizable in the event of a settlement of the instruments.

	2018		2017	
	Carrying amount	Fair value	Carrying amount	Fair value
	\$	\$	\$	\$
Financial assets				
Loans receivable	2,242,634	2,242,634	4,285,827	4,285,827
Financial liabilities				
Long-term loans from company under common control	199,850,000	219,886,037	199,850,000	228,861,445
Long-term debt	8,059,193	9,545,950	7,690,504	9,856,310



## **MTY Franchising USA, Inc.**

### **Notes to the consolidated financial statements**

For the years ended November 30, 2018 and November 30, 2017

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#### **17. Financial instruments (continued)**

##### *Determination of fair value*

The following methods and assumptions were used to estimate the fair values of each class of financial instruments:

*Cash, accounts receivable, loans receivable, deposits, accounts payable, accrued liabilities, advances to parent company, advances from companies under common control, advances from ultimate parent, advances from parent company* – The carrying amounts approximate fair values due to the short maturity of these financial instruments.

*Long-term loans from company under common control* – The fair value of long-term loans from company under common control is determined using the present value of future cash flows under current financing agreements based on the Company's current estimated borrowing rate for a similar debt.

*Long-term debt* – The fair value of long-term debt is determined using the present value of future cash flows under current financing agreements based on the Company's current estimated borrowing rate for a similar debt.

##### *Risk management policies*

The Company, through its financial assets and financial liabilities, is exposed to various risks. The following analysis provides a measurement of risks as at November 30, 2018.

##### *Credit risk*

The Company's credit risk is primarily attributable to its trade receivables, loans receivable and deposits. For accounts receivable and loans receivable, the amounts disclosed on the consolidated balance sheet are net of allowances for bad debts, estimated by the Company's management based on past experience and counterparty specific circumstances. The Company believes that the credit risk of accounts receivable is limited for the following reasons:

- The Company's broad client base is spread mostly across the United States, which limits the concentration of credit risk.
- The Company accounts for a specific bad debt provision when management considers that the expected recovery is less than the actual account receivable.

The credit risk on cash is limited because the Company invests its excess liquidity in high-quality financial instruments and with credit-worthy counterparties.

The credit risk on deposits is also limited as these are mostly with well-established and credit-worthy companies.

##### *Foreign exchange risk*

Foreign exchange risk is the Company's exposure to decreases or increases in financial instrument values caused by fluctuations in exchange rates. The Company's exposure to foreign exchange risk mainly comes from sales denominated in foreign currencies. The Company uses the U.S. dollar as functional currency. Since almost all transactions are conducted in U.S. currency, the Company's risk to fluctuations in foreign exchange rates are deemed to have minimal risk.

**MTY Franchising USA, Inc.****Notes to the consolidated financial statements**

For the years ended November 30, 2018 and November 30, 2017

**17. Financial instruments (continued)***Interest rate risk*

Interest rate risk is the Company's exposure to increases and decreases in financial instrument values caused by the fluctuation in interest rates. The Company has limited exposure to interest rate risk as its long-term loans from company under common control and advance from parent company as well as its long-term debt have fixed interest rates.

*Liquidity risk*

Liquidity risk refers to the possibility of the Company not being able to meet its financial obligations when they become due. The Company has contractual and fiscal obligations as well as financial liabilities and is therefore exposed to liquidity risk. Such risk can result, for example, from a market disruption or a lack of liquidity. Given that the majority of financial obligations are with related parties, liquidity risk is deemed to have a minimal risk

**The following are the contractual maturities of financial liabilities as at November 30, 2018:**

	Carrying amount	Contractual cash flows	0 to 6 months	6 to 12 months	12 to 24 months	Thereafter
	\$	\$	\$	\$	\$	\$
Accounts payable	4,442,226	4,442,226	4,442,226	—	—	—
Accrued liabilities	6,821,380	6,821,380	6,821,380	—	—	—
Promotional funds payable	4,454,647	4,454,647	4,454,647	—	—	—
Advance from parent company	1,303,699	1,303,699	1,303,699	—	—	—
Advances from company under common control	243,791	243,791	243,791	—	—	—
Long-term loans from company under common control	199,850,000	219,886,037	—	—	—	219,886,037
Long-term debt	8,059,193	9,545,950	191,598	2,005,072	3,536,259	3,813,021
Interest on long-term loans from company under common control <sup>(1)</sup>	—	52,247,908	5,580,469	5,611,131	11,222,262	29,834,046
	<b>225,174,936</b>	<b>298,945,638</b>	<b>23,037,810</b>	<b>7,616,203</b>	<b>14,758,521</b>	<b>253,533,104</b>

<sup>(1)</sup> When future interest cash flows are variable, they are calculated using the interest rates prevailing at the end of the reporting period.

**MTY Franchising USA, Inc.****Notes to the consolidated financial statements**

For the years ended November 30, 2018 and November 30, 2017

**18. Revenues**

Revenues are broken down as follows:

	<b>2018 Total</b>	<b>2017 Total</b>
	<b>\$</b>	<b>\$</b>
Corporate store revenues	<b>20,064,600</b>	21,129,138
Royalties	<b>51,747,557</b>	48,850,240
Franchise fees, transfer fees and master licence fees	<b>5,833,465</b>	4,408,458
Program allowances	<b>16,714,928</b>	15,034,286
Breakage income	<b>4,849,208</b>	4,763,537
Resale material and retail sales	<b>5,840,830</b>	6,557,706
Other revenue	<b>2,070,996</b>	2,608,409
	<b>107,121,584</b>	103,351,774

**19. Operating expenses**

Operating expenses are broken down as follows:

	<b>Franchising</b>	<b>Corporate</b>	<b>2018 Total</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>
Cost of goods sold	2,717,461	6,223,577	<b>8,941,038</b>
Wages and benefits	20,413,548	7,557,547	<b>27,971,095</b>
Advertising, marketing and promotion	1,146,022	556,916	<b>1,702,938</b>
Rent	2,067,605	4,723,191	<b>6,790,796</b>
Professional and consulting fees and commission	5,689,809	9,362	<b>5,699,171</b>
Office, travel, meals and entertainment, and utilities	5,323,954	2,203,319	<b>7,527,273</b>
Gift card program, costs <sup>1</sup>	5,913,068	—	<b>5,913,068</b>
Other	3,201,964	1,228,821	<b>4,430,785</b>
	<b>46,473,431</b>	<b>22,502,733</b>	<b>68,976,164</b>

1. Comparative period amounts were reclassified to correspond with 2018 figures.

**MTY Franchising USA, Inc.****Notes to the consolidated financial statements**

For the years ended November 30, 2018 and November 30, 2017

**19. Operating expenses (continued)**

	Franchising	Corporate	2017 Total
	\$	\$	\$
Cost of goods sold <sup>1</sup>	3,571,094	6,487,653	10,058,747
Wages and benefits	19,622,626	7,651,697	27,274,323
Advertising, marketing and promotion <sup>1</sup>	1,199,168	530,477	1,729,645
Rent	2,869,291	5,592,365	8,461,656
Professional and consulting fees and commission <sup>1</sup>	7,450,355	10,051	7,460,406
Office, travel, meals and entertainment, and utilities <sup>1</sup>	5,165,769	1,837,234	7,003,003
Gift card program costs <sup>1</sup>	6,312,111	—	6,312,111
Other	2,501,061	1,729,049	4,230,110
	48,691,475	23,828,526	72,530,001

2. Comparative period amounts were reclassified to correspond with 2018 figures.

Operating expenses are split into two types of operations: franchise operations and corporate store operations. Operating segments were established based on the differences in the types of products or services offered by each division.

The products and services offered by each segment are as follows:

***Franchising operations***

The franchising business mainly generates revenues from royalties, supplier contributions, franchise fees and rent.

***Corporate store operations***

Corporate stores generate revenues from the direct sale of prepared food to customers.

**MTY Franchising USA, Inc.****Notes to the consolidated financial statements**For the years ended November 30, 2018 and November 30, 2017

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**20. Operating lease arrangements**

Operating leases as lessee relate to leases of premises in relation to the Company's operations. Leases typically have terms ranging between 5 and 10 years at inception. The Company does not have options to purchase the premises on any of its operating leases.

The Company has entered into various long-term leases and has sub-leased substantially all of the premises based on the same terms and conditions as the original lease to unrelated franchisees. The minimum rentals, exclusive of occupancy and escalation charges, and additional rent paid on a percentage of sales basis, payable under the leases are as follows:

	Lease commitments	Sub-leases	Net commitments
	\$	\$	\$
2019	35,955,104	33,425,615	2,529,489
2020	32,736,438	30,441,202	2,295,236
2021	30,037,071	27,818,950	2,218,121
2022	25,689,873	23,669,797	2,020,076
2023	21,459,525	20,119,459	1,340,066
Thereafter	67,690,609	64,380,597	3,310,012
	<b>213,568,620</b>	<b>199,855,620</b>	<b>13,713,000</b>

Payments recognized as a net expense during the year ended November 30, 2018 amount to \$6,790,796 (2017 – \$8,461,656).

Operating leases as lessor relate to the properties leased or owned by the Company, with lease terms ranging between 5 to 10 years. Some have options to extend the duration of the agreements, for periods ranging between 1 and 15 years. None of the agreements contain clauses that would enable the lessee or sub-lessee to acquire the property.

The Company has recognized a liability of \$444,200 (2017 – \$647,000) for the leases of premises in which it no longer has operations but retains the obligations contained in the lease agreement (note 15).

**MTY Franchising USA, Inc.****Notes to the consolidated financial statements**

For the years ended November 30, 2018 and November 30, 2017

**21. Income taxes**

The Company accounts for income taxes in accordance with ASC 740, Income Taxes ("ASC 740"). ASC 740 prescribes the use of the liability method whereby deferred tax asset and liability account balances are determined based on differences between the financial reporting and tax bases of assets and liabilities and are measured using the enacted tax rates. The effects of future changes in tax laws or rates are not anticipated.

Under ASC 740, income taxes are recognized for the following: a) amount of tax payable for the current year and b) deferred tax liabilities and assets for future tax consequences of events that have been recognized differently in the consolidated financial statements than for tax purposes.

On December 22, 2017, the United States enacted the "U.S. Tax Cuts and Job Act" of 2017, commonly referred to as the U.S. tax reform, which resulted in the U.S. statutory federal income tax rate being reduced to 21.00% from the previous rate of 35.00%, effective January 1, 2018.

Consequently, for its fiscal year ending on November 30, 2018, the Company's statutory federal income tax rate is 22.19%. The Company recorded a net tax benefit of \$28.3M during the year, which is primarily derived from the re-measurement of the Company's deferred income tax balances.

	2018	2017
Income tax expense (benefit)	\$	\$
Current tax (benefit) expense	3,277,615	193,441
Deferred tax (benefit) expense	(28,546,037)	790,882
Total tax (benefit) expense	(25,268,422)	984,323

The provision for income taxes recorded in the consolidated financial statements differs from the amount, which would be obtained by applying the statutory federal income tax rate of 22.19% (2017 – 34.00%), to the income for the year as follows:

	2018	2017
	\$	\$
Income before income taxes	8,129,473	5,021,800
Income tax expense at federal statutory rate	1,803,928	1,707,412
State and local income taxes, net of federal tax benefit	395,574	204,385
Non-deductible/non-taxable items	315,597	456,855
True-up of prior year tax provision	516,539	(136,598)
Change related to the U.S. tax reform	(28,300,060)	(1,247,731)
Income tax (recovery) expense	(25,268,422)	984,323

**MTY Franchising USA, Inc.****Notes to the consolidated financial statements**For the years ended November 30, 2018 and November 30, 2017

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**21. Income taxes (continued)**

Components of the net deferred tax asset or liability:

	2018	2017
	\$	\$
Allowance for doubtful accounts	830,148	1,567,480
Deferred revenue	969,907	1,504,191
Gift cards	10,774,937	14,536,942
Property, plant and equipment	552,353	622,162
Accrued liabilities	2,056,225	3,626,772
Long-term debt	—	21,459
Total deferred tax assets	15,183,570	21,879,066
Intangible assets	(70,438,001)	(105,717,698)
Long-term debt	(79,323)	—
Total deferred tax liabilities	(70,517,324)	(105,717,698)
Net deferred tax liabilities	(55,333,754)	(83,838,692)

**22. Supplemental cash flow information**

During the year, the Company paid \$579,580 (2017 – \$126,975) in income taxes.

**23. Related party transactions**

The Company has transactions in the normal course of business with its parent company and companies under common control. These transactions were in the normal course of business and measured at the exchange amount, which is the amount of consideration established and agreed to by the related parties.

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**Consolidated financial statements of  
MTY Franchising USA, Inc.**

November 30, 2017

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## Independent Auditor's Report

To the Board of Directors and Stockholder of MTY Franchising USA, Inc.

We have audited the accompanying consolidated financial statements of MTY Franchising USA, Inc. (the "Company"), which comprise the consolidated balance sheet as at November 30, 2017, and the consolidated statements of operations and comprehensive income (loss), changes in stockholder's equity and cash flows for the year then ended, and the related notes to the consolidated financial statements.

### Management's Responsibility for the Consolidated Financial Statements

Management is responsible for the preparation and fair presentation of these consolidated financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

### Auditor's Responsibility

Our responsibility is to express an opinion on these consolidated financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the Company's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal controls. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### Opinion

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of MTY Franchising USA, Inc. as at November 30, 2017, and the results of its operations and its cash flows for the year then ended in accordance with accounting principles generally accepted in the United States of America.

*Deloitte LLP*<sup>1</sup>

February 21, 2018

<sup>1</sup> CPA auditor, CA, public accountancy permit No. A116933

**MTY Franchising USA, Inc.****Consolidated statement of operations and comprehensive income (loss)**

Year ended November 30, 2017

	Notes	<b>2017</b>	<b>2016</b>
		<b>\$</b>	<b>\$</b>
<b>Revenue</b>	19	<b>103,351,774</b>	<b>38,191,929</b>
<b>Cost and expenses</b>			
Operating expenses	20	<b>72,530,001</b>	28,620,362
Amortization – property, plant and equipment	8	<b>820,774</b>	502,591
Amortization – intangible assets	9	<b>10,853,392</b>	3,524,603
Interest charged by parent company	3	<b>3,255</b>	43,721
Interest charged by companies under common control	3	<b>11,191,600</b>	3,697,987
Accreted interest expense on-interest-bearing holdbacks		<b>1,434,003</b>	528,769
Management fees charged by parent company	3	<b>1,235,393</b>	756,648
		<b>98,068,418</b>	<b>37,674,681</b>
<b>Other income (charges)</b>			
Gain (Loss) on disposal of property, plant and equipment		<b>404,116</b>	(15,242)
Interest revenue from parent company	3	<b>117,699</b>	—
Impairment charge of Intangible assets	9	<b>(783,371)</b>	—
		<b>(261,556)</b>	<b>(15,242)</b>
<b>Income before income taxes</b>		<b>5,021,800</b>	<b>502,006</b>
<b>Income tax expense (recovery)</b>	21		
Current		<b>193,441</b>	2,083,431
Deferred		<b>790,882</b>	(1,454,759)
		<b>984,323</b>	<b>628,672</b>
<b>Net income (loss) and comprehensive income (loss)</b>		<b>4,037,477</b>	<b>(126,666)</b>

The accompanying notes are an integral part of the consolidated financial statements.

**MTY Franchising USA, Inc.****Consolidated statement of changes in stockholder's equity**

Year ended November 30, 2017

	<b>Common stock issued</b>	<b>Common stock value</b>	<b>Additional paid-in capital</b>	<b>Retained earnings</b>	<b>Total stockholder's equity</b>
		\$	\$	\$	\$
Balance as at November 30, 2015	1,000	1	99	897,838	897,938
Share Issuance (note 18)	4,001	89,153,736	—	—	89,153,736
Acquisition of net assets of Mucho Burrito Franchising USA, Inc. (note 4)	—	—	(99)	(89,901)	(90,000)
Net loss	—	—	—	(126,666)	(126,666)
Balance as at November 30, 2016	<b>5,001</b>	<b>89,153,737</b>	<b>—</b>	<b>681,271</b>	<b>89,835,008</b>
Net Income	—	—	—	4,037,477	4,037,477
Balance as at November 30, 2017	<b>5,001</b>	<b>89,153,737</b>	<b>—</b>	<b>4,718,748</b>	<b>93,872,485</b>

The accompanying notes are an integral part of the consolidated financial statements.

**MTY Franchising USA, Inc.**  
**Consolidated balance sheet**  
As at November 30, 2017

	Notes	<b>2017</b>	<b>2016</b>
		<b>\$</b>	<b>\$</b>
<b>Assets</b>			
<b>Current assets</b>			
Cash		<b>38,056,627</b>	19,266,443
Accounts receivable	5	<b>10,317,297</b>	12,901,366
Inventories		<b>258,913</b>	438,388
Loans receivable	6	<b>2,001,472</b>	2,353,231
Prepaid expenses and deposits		<b>3,212,701</b>	4,975,951
Advances to parent company	3 and 7	<b>227,316</b>	86,209
		<b>54,074,326</b>	40,021,588
Loans receivable	6	<b>2,284,355</b>	3,334,102
Property, plant and equipment	8	<b>863,208</b>	2,893,750
Intangible assets	9	<b>309,514,014</b>	321,075,777
Goodwill	10	<b>119,497,863</b>	117,952,987
		<b>432,159,440</b>	445,256,616
		<b>486,233,766</b>	485,278,204
<b>Liabilities</b>			
<b>Current liabilities</b>			
Accounts payable		<b>4,807,133</b>	5,787,960
Accrued liabilities		<b>8,212,917</b>	5,140,046
Gift card liability	11	<b>57,391,369</b>	56,312,249
Promotional funds payable		<b>4,041,713</b>	3,300,647
Deferred revenue and deposits	12	<b>10,730,565</b>	8,586,237
Income taxes payable	21	<b>12,708,759</b>	13,487,370
Advance from parent company	3 and 13	<b>1,296,249</b>	2,587,853
Advances from companies under common control	3 and 13	<b>283,801</b>	75,852
Current portion of long-term debt	15	<b>2,701,380</b>	4,832,883
		<b>102,173,886</b>	100,111,097
Long-term loans from company under common control	14	<b>199,850,000</b>	199,850,000
Long-term debt	15	<b>4,989,124</b>	8,500,511
Deferred revenue and deposits	12	<b>1,509,579</b>	2,480,640
Deferred income taxes	21	<b>83,838,692</b>	84,500,948
		<b>392,361,281</b>	395,443,196
<b>Stockholder's equity</b>			
Common stock	17	<b>89,153,737</b>	89,153,737
Retained earnings		<b>4,718,748</b>	681,271
		<b>93,872,485</b>	89,835,008
		<b>486,233,766</b>	485,278,204

The accompanying notes are an integral part of the consolidated financial statements.

Approved by the Board

\_\_\_\_\_, Director

**MTY Franchising USA, Inc.**  
**Consolidated statement of cash flows**  
Year ended November 30, 2017

	Notes	2017	2016
		\$	\$
<b>Operating activities</b>			
Net Income (loss)		<b>4,037,477</b>	(126,666)
Items not affecting cash			
Amortization – property, plant and equipment		<b>820,774</b>	502,591
Amortization – intangible assets		<b>10,853,392</b>	3,524,603
Interest on advance from (to) parent company		<b>(114,444)</b>	43,721
Interest on advance from companies under common control		<b>11,191,600</b>	3,697,987
Accreted interest expense on-interest-bearing holdbacks		<b>1,434,003</b>	528,769
(Gain) loss on disposal of property, plant and equipment		<b>(404,116)</b>	15,242
Impairment charge of intangible assets		<b>783,371</b>	—
Income tax expense		<b>790,882</b>	(1,454,759)
		<b>29,392,939</b>	6,731,488
Interest paid		<b>(11,191,600)</b>	(3,697,987)
Changes in non-cash working capital items			
Accounts receivable		<b>2,346,590</b>	(2,654,016)
Inventories		<b>179,475</b>	(6,060)
Prepaid expenses and deposits		<b>1,763,250</b>	(1,780,458)
Loans receivable		<b>1,263,506</b>	(675,258)
Income taxes		<b>(778,952)</b>	1,380,279
Accounts payable		<b>(2,118,365)</b>	(3,751,221)
Accrued liabilities		<b>3,072,871</b>	4,066,015
Promotional funds payable		<b>(1,340,083)</b>	2,075,064
Gift card liability		<b>1,079,120</b>	2,558,749
Deferred revenue and deposits		<b>1,173,267</b>	(506,614)
Net cash from operating activities		<b>24,842,018</b>	3,739,981
<b>Investing activities</b>			
Net cash outflow on acquisitions		<b>(224,808)</b>	(28,818,500)
Additions to property, plant and equipment		<b>(187,500)</b>	(54,500)
Additions to intangible assets		<b>(75,000)</b>	—
Issuance of advances to parent company		<b>481,733</b>	3,271
Issuance of advances to companies under common control		<b>207,949</b>	8,489
Proceeds on disposal of property, plant and equipment		<b>1,801,384</b>	294,100
Net cash from investing activities		<b>2,003,758</b>	(28,567,140)

**MTY Franchising USA, Inc.**  
**Consolidated statement of cash flows (continued)**  
Year ended November 30, 2017

	Notes	2017	2016
		\$	\$
<b>Financing activities</b>			
Issuance of long-term debt		—	30,000,000
(Repayment) Issuance of advance from parent company		(1,800,000)	819,375
Issuance of advances from company under common control		—	19,818,500
Issuance of shares to parent company		—	8,500,000
(Repayment) of long-term debt		(6,255,592)	(31,263,500)
Net cash from financing activities		(8,055,592)	27,874,375
Net increase in cash		18,790,184	3,047,216
Cash, beginning of year		19,266,443	899,018
Cash acquired		—	15,320,209
Cash, end of year		38,056,627	19,266,443

**Non-cash transactions**

4 and 22

The accompanying notes are an integral part of the consolidated financial statements.

**1. Nature of operations**

MTY Franchising USA, Inc. (the "Company" or "MTY USA") was incorporated on March 14, 2001. The Company develops and franchises restaurants under a multitude of different banners in the United States of America.

**2. Significant accounting policies**

*Basis of presentation*

The accounting policies of the Company are in accordance with accounting principles generally accepted in the United States of America. The Company uses the United States dollar as its functional and reporting currency.

On July 26, 2016, the Company acquired all of the equity ownership of Kahala Brands Ltd. having 2,879 locations under a multitude of banners operating in the United States of America, whose financial results are reported with those of the company from the date of acquisition onward.

On October 5, 2016, the Company acquired all of the equity ownership of BF Acquisition Holdings, LLC, having 185 locations under two banners operating in the United States of America, whose financial results are reported with those of the company from the date of acquisition onward.

On November 30, 2016, the Company acquired the net assets of BSB Franchising USA Inc, having 4 locations in the United States of America, whose financial results are reported with those of the Company from the date of acquisition onward.

On November 30, 2016, the Company acquired the net assets of Mucho Burrito Franchising USA Inc, having 1 location in the United States of America, whose financial results are reported with those of the Company from the date of acquisition onward.

Presented below are those policies considered particularly significant:

*Basis of consolidation*

Our consolidated financial statements reflect the financial position and operating results of the Company, including wholly-owned subsidiaries and investees that we control. Investments in entities that we do not control, but have the ability to exercise significant influence over operating and financial policies, are accounted for under the equity method. Investments in entities in which we do not have the ability to exercise significant influence are accounted for under the cost method. Intercompany transactions and balances have been eliminated.

The principal subsidiaries of the Company are as follows:

BF Acquisition Holdings, LLC	100%
Kahala Brands Ltd.	100%

Revenues and expenses of subsidiaries are included in the consolidated statement of operations and comprehensive income from the effective date of acquisition. The subsidiaries are consolidated from the acquisition date until the date on which the Company ceases to control them.

All intercompany transactions, balances, revenues and expenses are eliminated in full upon consolidation.



**2. Significant accounting policies (continued)**

*Business combinations between entities under common control*

The Company accounts for acquired businesses using the acquisition method of accounting in accordance with FASB ASC 805, Business Combinations. Identifiable assets acquired and liabilities and contingent liabilities assumed in a business combination between entities under common control are to be initially recognized by the receiving entity at the transfer date. The acquired net assets shall initially be transferred at their carrying amounts in the accounts of the transferring entity. Any excess of the purchase price over the carrying amounts in the accounts of the transferring entity is recognized as an equity transaction within the statement of changes in stockholder's equity.

The financial statements of the receiving entity shall report results of operations for the period in which the transfer occurs as though the transfer of net assets or exchange of equity interests had occurred at the beginning of the period. Results of operations for that period will thus comprise those of the previously separate entities combined from the beginning of the period to the date the transfer is completed and those of the combined operations from that date to the end of the period.

*Business combinations*

The Company accounts for acquired businesses using the acquisition method of accounting in accordance with FASB ASC 805, Business Combinations. The consideration transferred for the acquisition is the fair values of the assets transferred, the liabilities incurred and the equity interest issued. The consideration transferred includes the fair value of any asset or liability resulting from a contingent consideration arrangement. Acquisition-related costs are expensed as incurred. Identifiable assets acquired and liabilities and contingent liabilities assumed in a business combination are measured initially at their fair value at the acquisition date. Any excess of the purchase price over the estimated fair values of the net assets acquired is recorded as goodwill.

*Goodwill*

Goodwill represents the excess of cost over the net tangible assets and identifiable intangible assets of acquired businesses. Goodwill is carried at cost less accumulated impairment losses, if any.

*Functional currency*

The functional currency of the Company and its subsidiaries is the US dollars. The Company translates monetary assets and liabilities that are denominated in currencies other than the US dollar at the exchange rates prevailing at the end of the reporting period; non-monetary assets denominated in foreign currencies are translated using the exchange rate prevailing at the transaction date; all revenue and expense items denominated in foreign currencies are translated at the exchange rate prevailing at the transaction date. All foreign exchange gains and losses are reported in profit or loss.

**2. Significant accounting policies (continued)**

*Revenue recognition*

Revenue is recognized when persuasive evidence of an arrangement exists, delivery has occurred or services have been rendered, price is fixed or determinable and collectability is reasonably assured.

**(a) Revenue from franchise locations**

The Company recognizes revenue in accordance with the accounting guidance of the Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") 952-605, Franchisors, Revenue Recognition.

Royalties are based either on a percentage of gross sales as reported by the franchisees or on a fixed monthly fee. They are recognized on an accrual basis in accordance with the substance of the relevant agreement, provided collectability is reasonably assured and price is fixed or determinable.

Initial franchise fees are recognized when substantially all of the initial services as required by the franchise agreement have been performed. This usually occurs when the location commences operations.

Revenue from the sale of franchise locations is recognized at the time the franchisee assumes control of the franchise location.

Master license fees are recognized when the Company has performed substantially all material initial obligations under the agreement, which usually occurs when the agreement is signed, which is recorded in franchise fees, transfer fees and master license fees.

Renewal and transfer fees are recognized when substantially all applicable services required by the Company under the franchise agreement have been performed. This generally occurs when the agreement is signed. This revenue is recorded in franchise fees, transfer fees and master license fees.

Revenue from equipment sale is recognized when the risk and rewards of ownership and title pass to buyer, generally upon the shipment of the equipment. This revenue is recorded in other revenue.

The Company earns rent revenue on certain leases it holds; the Company's policy is described below.

The Company receives considerations from certain suppliers called program allowances. Program allowances are recognized as revenues as they are earned.

**(b) Revenue from corporate-owned locations**

Revenue from corporate-owned locations is recorded when goods are delivered to customers.

*Leasing*

Leases are classified as capital leases whenever the terms of the lease transfer substantially all the risks and rewards of ownership to the lessee. All other leases are classified as operating leases.

## **2. Significant accounting policies (continued)**

### *Leasing (continued)*

#### *The Company as lessor*

Rental income from operating leases is recognized on a straight-line basis over the term of the relevant lease.

#### *The Company as lessee*

Operating lease payments are recognized as an expense on a straight-line basis over the lease term, except where another systematic basis is more representative of the time pattern in which economic benefits from the leased asset are consumed. Contingent rentals arising under operating leases are recognized as an expense in the period in which they are incurred.

In the event that lease incentives are received to enter into operating leases, such incentives are recognized as a liability. The aggregate benefit of incentives is recognized as a reduction of rental expense on a straight-line basis, except where another systematic basis is more representative of the time pattern in which economic benefits from the leased asset are consumed.

### *Income taxes*

The Company accounts for income taxes pursuant to ASC 740, Income Taxes ("ASC 740"). Deferred tax assets and liabilities are recorded for differences between the financial statement and tax basis of the assets and liabilities that will result in taxable or deductible amounts in the future based on enacted tax laws and rates. Valuation allowances are established when necessary to reduce deferred tax assets to the amount expected to be realized. Income tax expense is recorded for the amount of income tax payable or refundable for the period increased or decreased by the change in deferred tax assets and liabilities during the period.

The Company recognizes the financial statement benefit of a tax position only after determining that the relevant tax authority would more likely than not sustain the position following an audit. For tax positions meeting the more-likely-than-not threshold, the amount recognized in the financial statements is the largest benefit that has a greater than 50 percent likelihood of being realized upon ultimate settlement with the relevant tax authority.

### *Allowance for Doubtful Accounts*

Allowance for doubtful accounts is calculated based on historical experience, customer credit risk and application of the specific identification method

### *Property, plant and equipment*

Land and buildings held for use in the production or supply of goods or services, or for administrative purposes, are stated in the consolidated balance sheet at their historical costs less accumulated depreciation (buildings) and accumulated impairment losses. Cost includes expenditures that are directly attributable to the acquisition of the asset, including any costs directly attributable to bringing the asset to a working condition for its intended use.

Equipment, leasehold improvements, rolling stock and computer hardware are stated at cost less accumulated depreciation and accumulated impairment losses.

Depreciation is recognized so as to write off the cost or valuation of assets (other than land) less their residual values over their useful lives, using the straight-line method. The estimated useful lives, residual values and depreciation methods are reviewed at the end of each year, with the effect of any changes in estimate accounted for on a prospective basis.

## **2. Significant accounting policies (continued)**

### *Property, plant and equipment*

An item of property, plant and equipment is derecognized upon disposal or when no future economic benefits are expected to arise from the continued use of the asset. Any gain or loss arising on the disposal or retirement of an item of property, plant and equipment is determined as the difference between the sales proceeds and the carrying amount of the asset and is recognized in profit or loss.

Depreciation is based on the following terms:

Equipment	Straight-line	3 to 10 years
Leasehold improvements	Straight-line	Term of the lease
Rolling stock	Straight-line	5 to 7 years
Computer hardware	Straight-line	3 to 7 years

### *Intangible assets*

#### *Intangible assets acquired separately*

Intangible assets with finite useful lives that are acquired separately are carried at cost less accumulated amortization and accumulated impairment losses, if applicable. Amortization is recognized on a straight-line basis over their estimated useful lives. The estimated useful lives and amortization methods are reviewed at the end of each year, with the effect of any changes in estimate being accounted for on a prospective basis. Intangible assets with indefinite useful lives that are acquired separately are carried at cost less accumulated impairment losses, if applicable.

Intangible assets acquired in a business combination and recognized separately from goodwill are initially recognized at their fair value at the acquisition date.

Subsequent to initial recognition, intangible assets having a finite life acquired in a business combination are reported at cost less accumulated amortization and accumulated impairment losses, if applicable, on the same basis as intangible assets that are acquired separately. Intangible assets having an indefinite life are not amortized and are therefore carried at cost less accumulated impairment losses, if applicable.

#### *Derecognition of intangible assets*

An intangible asset is derecognized on disposal, or when no future economic benefits are expected from use or disposal. Gains or losses arising from derecognition of an intangible asset, measured as the difference between the net disposal proceeds and the carrying amount of the asset, are recognized in profit or loss when the asset is derecognized.

The Company currently carries the following intangible assets in its books:

#### *Franchise rights*

The franchise rights acquired through business combinations are recognized at the fair value of the estimated future cash inflows related to the acquisition of franchises. The franchise rights are generally amortized on a straight-line basis over the term of the agreements which typically range between 10 to 20 years.

**2. Significant accounting policies (continued)**

*Trademarks*

Trademarks acquired through business combinations are recognized at their fair value at the time of the acquisition and are not amortized. Trademarks are determined to have an indefinite useful life based on their strong brand recognition and their ability to generate revenue through changing economic conditions with no foreseeable time limit.

*Impairment of long lived assets other than goodwill*

The Company continually reviews whether events or circumstances subsequent to the acquisition of any long-lived assets, including intangible assets with finite useful lives, have occurred that indicate the remaining estimated useful lives of those assets may warrant revision or that the remaining balance of those assets may not be recoverable. If events and circumstances indicate that the long-lived assets should be reviewed for possible impairment, the Company uses projections to assess whether future cash flows on an undiscounted basis related to the assets exceeds the recorded carrying amount of those assets to determine if an asset is impaired. Should an impairment be identified, a loss would be recorded to the extent that the carrying value of the impaired assets exceeds their fair values as determined by valuation techniques appropriate in the circumstances that could include the use of similar cash flow projections on a discounted basis.

*Impairment of goodwill*

Goodwill is tested for impairment at the reporting unit level (operating segment or one level below an operating segment) on an annual basis (August 31 for the Company) and between annual tests if an event occurs or circumstances change that would more likely than not reduce the fair value of a reporting unit below its carrying value. Fair value is determined using a discounted cash flow methodology with a risk adjusted weighted average cost of capital.

*Cash and cash equivalents*

Cash and cash equivalents includes cash on hand and short-term investments, if any, with maturities upon acquisition of generally three months or less or that are redeemable at any time at full value and for which the risk of a change in value is not significant. As at November 30, 2017 cash and cash equivalents included \$221,015 in restricted cash (2016 - \$221,015), required as part of guarantees on certain lease commitments.

*Inventories*

Inventories are measured at the lower of cost and market value. Costs of inventories are determined on a first-in-first-out basis and include acquisition costs, conversion costs and other costs incurred to bring inventories to their present location and condition. The cost of finished goods includes a pro rata share of production overhead based on normal production capacity.

Market value represents the current replacement cost, provided that the cost does not exceed the net realizable value or is not less than the net realizable value reduced by a normal profit margin.

*Contingencies*

*Litigation, disputes and closed stores*

Contingencies for the expected cost of litigation, disputes and the cost of settling leases for closed stores are recognized when it becomes probable the Company will be required to settle the obligation, at management's best estimate of the expenditure required to settle the Company's obligation.

## **2. Significant accounting policies (continued)**

### *Contingencies (continued)*

#### *Contingent liabilities acquired in a business combination*

Contingent liabilities acquired in a business combination are initially measured at fair value at the acquisition date. At the end of subsequent reporting periods, such contingent liabilities are measured at the higher of the amount that would be recognized and the amount initially recognized less cumulative amortization recognized, if any.

### *Financial instruments*

The Company's financial instruments consist of cash, accounts receivable, loans receivable, deposits, advances to ultimate parent, accounts payable, accrued liabilities, promotional funds payable, advances from parent company, advances from companies under common control, long-term loans from company under common control and long-term debt. Unless otherwise noted, it is management's opinion that the Company is not exposed to significant interest, currency or credit risks arising from these financial instruments. The fair value for cash, accounts receivable, loans receivable, deposits, advances to ultimate parent, accounts payable, accrued liabilities, promotional funds payable, advance from parent company and advances from companies under common control approximates their carrying values due to their immediate or short-term maturities, unless otherwise noted. Long-term loans from company under common control and long-term debt are measured at amortized cost using the effective interest method.

### *Gift card and loyalty program liabilities*

Gift card liability represents liabilities related to unused balances on reloadable payment cards. Loyalty program liabilities represent the dollar value of the loyalty points earned and unused by customers.

The Company's various franchised and corporate owned locations, in addition to third party companies, sell gift cards to be redeemed at the Company's corporate and franchised locations for food and beverages only. Proceeds from the sale of gift cards are included in gift card liability until redeemed by the gift cardholder as a method of payment for good and beverage purchases.

Effective September 1, 2017, the Company refined its method to determine breakage income recognized for Cold Stone Creamery gift cards that were not acquired as part of the business acquisition. Previously, the Company would recognize breakage revenue in its consolidated statements of income based on historical redemption patterns, when it was established that these gift cards had a remote likelihood of being redeemed.

Under the refined method, the Company recognizes breakage on the Cold Stone Creamery gift cards in its consolidated statements of income based on historical load and redemption patterns. The redemption rate was established following an analysis performed over 10 years of the redemption patterns as well as expected future trends. The expected breakage is then recognized into income on a pro rata basis as gift cards are redeemed.

The Company has determined that this accounting change represents a change in accounting estimate effected by a change in accounting principle. The refinement resulted in a cumulative adjustment to increase previously recorded breakage income in 2016 by \$236,184. This adjustment has been recorded in the consolidated statements of income for the year ended November 30, 2017. This change was accounted for prospectively as a change in accounting estimate.

For all other gift card programs, the Company estimates based on historical redemption patterns, the portion of gift cards that have a remote likelihood of being redeemed and recognizes the amount in its consolidated statements of income, except for those gift cards liabilities assumed upon a business acquisition.

**2. Significant accounting policies (continued)**

*Gift card and loyalty program liabilities (continued)*

Due to the inherent nature of gift cards, it is not possible for the Company to determine what portion of the gift card liability related to gift cards will be redeemed in the next 12 months and, therefore, the entire unredeemed gift card liability is considered to be a current liability.

*Promotional funds*

Pursuant to the franchise agreements, franchisees must pay a fee to the promotional fund. These amounts are collected by the Company in its capacity as agent and must be used for promotional and advertising purposes, since the amounts are set aside to promote the respective banners for the franchisees' benefit. The fees collected by the Company for the promotional fund are not recorded in the Company's statement of operations and comprehensive income, but as operations in the accounts payable to the promotional fund. The payable is presented net of any amounts spent from the promotional fund.

Cash held pursuant to the promotional funds received are classified as unrestricted cash as there are no legal restrictions on the use of these funds; however, the Company intends to use these funds solely to support the promotional funds rather than to fund its ongoing operations. Promotion funds are currently in a net liability position amounting to \$4,041,713 (2016 net liability of \$3,300,647).

*Subsequent events*

Subsequent events were evaluated through the date that the consolidated financial statements were issued, which was February 21, 2018.

*Adoption of New Standards*

**ASU 2015-17 – Income Taxes (Topic 740): Balance Sheet Classification of Deferred Taxes ("ASU 2015-17")**

During 2015, the Company adopted ASU 2015-17, Income Taxes (Topic 740): Balance Sheet Classification of Deferred Taxes ("ASU 2015-17") on a prospective basis; therefore, all deferred tax assets and liabilities have been classified as noncurrent in the accompanying Consolidated Balance Sheet.

**ASU 2015-16 Simplifying the Accounting for Measurement-Period Adjustments in Business Combinations ("ASU 2015-16")**

Effective December 1, 2016, the Company adopted ASU 2015-16 on a prospective basis. The new standard requires that an acquirer must recognize adjustments to provisional amounts that are identified during the measurement period in the reporting period in which the adjustment amounts are determined. The adoption of the pronouncement did not have a material impact on the Company's consolidated financial statements.

**ASU 2015-03 Simplifying the Presentation of Debt Issuance Costs ("ASU 2015-03")**

Effective December 1, 2016, the Company adopted ASU 2015-03. The adoption of this standard did not have a material impact on the Company's consolidated financial statements. The new standard requires debt issuance costs related to a recognized debt liability to be presented in the Consolidated Statements of Financial Position as a direct deduction from the carrying amount of that debt liability, as consistent with the presentation of debt discounts or premiums. ASU 2015-15 was adopted in conjunction with the above standard and did not have a material impact on the Company's consolidated financial statements. ASU 2015-15 clarifies the presentation and subsequent measurement of debt issuance costs associated with line-of-credit arrangements, whereby an entity may defer debt issuance costs as an asset and subsequently amortize them over the term of the line-of-credit.

**2. Significant accounting policies (continued)**

*Recently Issued Accounting Pronouncements*

**ASU 2017-01– Clarifying the definition of a business ("ASU 2017-01")**

The FASB issued ASU 2017-01– *Clarifying the definition of a business*; the amendment clarifies the definition of a business with objective guidance to assist entities with evaluating whether transactions should be accounted for as acquisitions (or disposals) of businesses. The ASU will be effective for the Company for the fiscal years beginning after December 1, 2019. The Company is in the process of evaluating the impact of the standard on its financial statements.

**ASU 2017-04– Intangibles- Goodwill and other topic 350 simplifying the test for goodwill impairment ("ASU 2017-04")**

In January 2017, the FASB issued guidance that simplifies the measurement of goodwill impairment. Under this new guidance, an impairment charge, if triggered, is calculated as the difference between a reporting unit's carrying value and fair value, but it is limited to the carrying value of goodwill. The ASU will be effective for the Company for the fiscal years beginning after December 1, 2021. Early adoption is permitted. The Company is in the process of evaluating the impact of the standard on its financial statements.

**ASU 2016-16– Income taxes (topic 740) Intra entity transfer as of assets other than inventory ("ASU 2016-06")**

In October 2016, the FASB issued guidance on the accounting for income tax effects of intercompany sales or transfers of assets other than inventory. The guidance requires entities to recognize the income tax impact of an intra-entity sale or transfer of an asset other than inventory when the sale or transfer occurs, rather than when the asset has been sold to an outside party. ASU will be effective for the Company for the fiscal years beginning after December 1, 2020. Early adoption is permitted. The Company is in the process of evaluating the impact of the standard on its financial statements.

**ASU 2016-15 – Statement of Cash Flows – Classification of Certain Cash Receipts and Cash Payments ("ASU 2016-15")**

In August 2016, the FASB issued ASU 2016-15 "Statement of Cash Flows – Classification of Certain Cash Receipts and Cash Payments" to address diversity in practice on certain specific cash flow issues. The ASU will be effective for the Company for the fiscal years beginning after December 1, 2018. Early adoption is permitted. The Company is in the process of evaluating the impact of the standard on its financial statements.

**ASU 2016-04 – Liabilities – Extinguishment of Liabilities (Subtopic 405-20): Recognition of Breakage for Certain Prepaid Stored-Value Products. ("ASU 2016-04")**

In March 2016, the FASB issued ASU 2016-04, Liabilities – Extinguishment of Liabilities (Subtopic 405-20): Recognition of Breakage for Certain Prepaid Stored-Value Products. ASU 2016-04 aligns recognition of the financial liabilities related to prepaid stored-value products (for example, gift cards) with Topic 606, Revenues from Contracts with Customers, for non-financial liabilities. In general, these liabilities may be extinguished proportionately in earnings as redemptions occur, or when redemption is remote if issuers are not entitled to the unredeemed stored value. ASU 2016-04 is effective for fiscal years, and interim periods within those years, beginning after December 1, 2018, and early adoption is permitted. The Company is in the process of evaluating the impact of the standard on its financial statements.



**2. Significant accounting policies (continued)**

*Recently Issued Accounting Pronouncements (continued)*

**ASU 2016-02 – Leases (“ASU 2016-02”)**

In February 2016, the FASB issued ASU 2016-02, Leases. The new standard establishes a right-of-use (“ROU”) model that requires a lessee to record a ROU asset and a lease liability on the balance sheet for all leases with terms longer than 12 months. Leases will be classified as either finance or operating, with classification affecting the pattern of expense recognition in the income statement.

The new standard is effective for fiscal years beginning after December 1, 2019. A modified retrospective transition approach is required for lessees for capital and operating leases existing at, or entered into after, the beginning of the earliest comparative period presented in the financial statements, with certain practical expedients available. The Company is in the process of evaluating the impact of the standard on its financial statements.

**ASU 2016-01 – Recognition and Measurement of Financial Assets and Financial Liabilities (“ASU 2016-01”)**

In January 2016, the FASB issued ASU No. 2016-01, *Recognition and Measurement of Financial Assets and Financial Liabilities*, which among other changes in accounting and disclosure requirements, replaces the cost method of accounting for non-marketable equity securities with a model for recognizing impairments and observable price changes, and also eliminates the available-for-sale classification for marketable equity securities. Under the new guidance, other than when the consolidation or equity method of accounting is utilized, changes in the fair value of equity securities are to be recognized in earnings.

The amendments in this Update are effective for fiscal years beginning after December 15, 2017. For all other entities including not-for-profit entities and employee benefit plans within the scope of Topics 960 through 965 on plan accounting, the amendments in this Update are effective for fiscal years beginning after December 1, 2019, and interim periods within fiscal years beginning after December 1, 2020. The Company is in the process of evaluating the impact of the standard on its consolidated financial statements.

**ASU 2015-14, Revenue From Contracts With Customers (Topic 606), Deferral of the Effective Date (“ASU 2015-14”)**

In May 2014, the FASB issued Accounting Standards Update No. 2014-09, *Revenue from Contracts with Customers* (“ASU 2014-09”), which supersedes nearly all existing revenue recognition guidance under U.S. GAAP. The core principle of ASU 2014-09 is to recognize revenue when promised goods or services are transferred to customers in an amount that reflects the consideration to which an entity expects to be entitled for those goods or services. ASU 2014-09 defines a five-step process to achieve this core principle and, in applying such process, more judgment and estimates may be required within the revenue recognition process than are required under existing U.S. GAAP.

As a result of the issuance of ASU 2015-14, ASU 2014-09 is effective for annual periods beginning after December 11, 2019, and interim periods within annual reporting periods beginning after December 1, 2020, using either of the following transition methods: (i) a full retrospective approach reflecting the application of the standard in each prior reporting period with the option to elect certain practical expedients, or (ii) a retrospective approach with the cumulative effect of initially adopting ASU 2014-09 recognized at the date of adoption (which includes additional footnote disclosures). Earlier application is permitted only as of annual reporting periods beginning after December 15, 2016. The Company is currently evaluating the impact of its pending adoption of ASU 2014-09 on its consolidated financial statements and has not yet determined the method by which they will adopt the standard.

**3. Related party transactions**

The Company has transactions in the normal course of business with its parent company and companies under common control. These transactions were in the normal course of business and measured at the exchange amount, which is the amount of consideration established and agreed to by the related parties.

**4. Business acquisitions**

**(a) 2016 acquisition**

On November 30, 2016, the Company acquired the net assets of BSB Franchising USA, Inc, a company under common control, for a total consideration of \$112,044 included in accrued liabilities as at November 30, 2017.

	\$
Consideration paid:	
Purchase price	199,292
Net obligations assumed	(87,248)
Net payable on acquisition	<u>112,044</u>

The purchase price allocation is as follows:

Net assets acquired:	\$
Franchise rights	17,300
Goodwill	<u>181,992</u>
	199,292
Current liabilities	
Promotional funds payable	11,029
Deferred revenue	<u>76,219</u>
	87,248
Net purchase price	<u>112,044</u>

Total expenses incurred related to acquisition costs amounted to \$nil.

**(b) 2016 acquisition**

On November 30, 2016, the Company acquired the franchise rights of Mucho Burrito Franchising USA, Inc, a company under common control, for a total consideration of \$90,000, included in accrued liabilities as at November 30, 2017. The transaction was accounted for as an equity transaction.

**4. Business acquisitions (continued)**

**(c) 2016 acquisition**

On October 5, 2016, the Company acquired the units of BF Acquisition Holdings, LLC, for a total consideration of \$27,000,000. The purpose of the transaction was to further solidify the Company's presence in the United States.

\$

Consideration paid:

Purchase price	26,952,852
Working capital adjustment	47,148
Net cash outflow <sup>(1)</sup>	<u>27,000,000</u>

<sup>(1)</sup> Includes \$2,700,000 in holdbacks paid to escrow.

The purchase price allocation is as follows:

\$

Net assets acquired:

Current assets

Cash	1,089,313
Accounts receivable	964,271
Promotional funds receivable	291,162
Inventories	131,481
Loans receivable	1,289,595
Prepaid expenses and deposits	360,791
	<u>4,126,613</u>

Property, plant and equipment	1,762,000
Franchise rights	2,400,630
Trademarks	16,462,529
Goodwill <sup>(1)</sup>	<u>6,327,693</u>
	31,079,465

Current liabilities

Accounts payable	1,092,668
Accrued liabilities	405,921
Unredeemed gift card liability	1,871,431
Deferred revenue	683,326
	<u>4,053,346</u>

Long-term debt	26,119
Net purchase price	<u>27,000,000</u>

<sup>(1)</sup> Goodwill is deductible for tax purposes

Total expenses incurred related to acquisition costs amounted to \$nil.

**4. Business acquisitions (continued)**

**(d) 2016 acquisition (continued)**

On July 26, 2016, the Company acquired the shares of Kahala Brands Ltd. for a total consideration of \$259,174,785, including \$1,818,500 cash paid by MTY Franchising USA, Inc.

The purpose of the transaction was to solidify its presence in the United States as this is expected to become one of the growth platforms.

In May 2017, the total purchase consideration was adjusted to \$258,599,985; in order to reflect measurement period adjustments. A net decrease in consideration of \$574,800 due to the receipt of final working capital adjustments and an amendment to the repayment terms of the holdback payable.

The holdback payable amendment was signed in April 2017 and affected only a portion of the holdback; originally \$25,000,000 of the holdback was to be repaid in equal installments over a three-year period commencing July 2017. This holdback will now be repaid over four installments amounting to \$6,150,000 repayable in both July 2017 and 2018 and \$6,200,000 in July 2019 and \$6,500,000 in August of 2020. The first installment has been paid in July 2017. The adjustment below reflects the change in the discounted amount for the changed repayment terms. The discount rate remains unchanged.

The resulting measurement period adjustments in total purchase consideration are highlighted below:

	Consideration	Measurement period adjustments recorded in fiscal 2017	Final Consideration
	\$	\$	\$
<b>Consideration paid:</b>			
Total cash consideration	240,000,000	—	240,000,000
Less: Indebtedness	(26,365,758)	—	(26,365,758)
Less: Working capital adjustment	(22,864,130)	224,808	(22,639,322)
	190,770,112	224,808	190,994,920
Less: Holdbacks	(30,000,000)	—	(30,000,000)
Total cash disbursed	160,770,112	224,808	160,994,920
<b>Sources of financing</b>			
Paid by MTY Franchising USA	1,818,500	224,808	2,043,308
Funds provided by ultimate parent company	2,061,791	—	2,061,791
Funds provided through advances	156,889,821	—	156,889,821
	160,770,112	224,808	160,994,920
<b>Total merger consideration paid</b>			
Cash	1,818,500	224,808	2,043,308
Loan payable to company under common control	181,850,000	—	181,850,000
Shares issued to parent company	80,653,736	—	80,653,736
Less: discount on holdbacks	(3,328,951)	(799,608)	(4,128,559)
Total cash, liabilities and equity consideration	260,993,285	(574,800)	260,418,485
Less: Cash received from parent company	(1,818,500)	—	(1,818,500)
Total merger consideration	259,174,785	(574,800)	258,599,985

**4. Business acquisitions (continued)**

**(d) 2016 acquisition (continued)**

The final purchase price allocation is as follows:

	Purchase Price Allocation	Measurement period adjustments recorded in fiscal 2017	Final Purchase Price Allocation
	\$	\$	\$
Net assets acquired:			
Current assets			
Cash	14,230,896	—	14,230,896
Accounts receivable	8,987,334	(237,479)	8,749,855
Inventory	286,379	—	286,379
Loans receivable	1,419,096	(138,000)	1,281,096
Prepaid expenses and deposits	2,816,916	—	2,816,916
	<u>27,740,621</u>	<u>(375,479)</u>	<u>27,365,142</u>
Loans receivable	2,303,384	—	2,303,384
Property, plant and equipment	1,718,304	—	1,718,304
Franchise rights	129,758,834	—	129,758,834
Trademarks	174,103,832	—	174,103,832
Goodwill <sup>(1)</sup>	111,190,035	1,544,876	112,734,911
	<u>446,815,010</u>	<u>1,169,397</u>	<u>447,984,407</u>
Current liabilities			
Accounts payable	8,318,520	1,115,845	9,434,365
Accrued liabilities	241,000	—	241,000
Promotional funds payable	1,424,095	2,081,149	3,505,244
Notes payable	26,365,758	—	26,365,758
Income tax liability	2,848,010	—	2,848,010
Unredeemed gift card liability	51,882,069	—	51,882,069
Deferred revenue	8,520,657	—	8,520,657
	<u>99,600,109</u>	<u>3,196,994</u>	<u>135,786</u>
Deferred revenue	2,171,247	—	2,171,247
Deferred income taxes	85,868,869	(1,452,797)	84,416,072
	<u>187,640,225</u>	<u>1,744,197</u>	<u>189,384,422</u>
Net purchase price	<u>259,174,785</u>	<u>(574,800)</u>	<u>258,599,985</u>

<sup>(1)</sup> Goodwill is partially deductible for tax purposes

The cumulative impact of measurement period adjustments recorded in the consolidated Statement of Operations and Comprehensive Income:

\$

Accreted interest expense on-interest-bearing holdbacks 34,443

Total expenses incurred related to acquisition costs amounted to approximately \$775,858.

**5. Accounts receivable**

The following table provides details on trade accounts receivable not past due, past due and the related allowance for doubtful accounts:

	<b>2017</b>	<b>2016</b>
	<b>\$</b>	<b>\$</b>
Total accounts receivable	<b>12,646,414</b>	14,166,401
Less : Allowance for doubtful accounts	<b>2,329,117</b>	1,265,035
Total accounts receivable, net	<b>10,317,297</b>	12,901,366

	<b>2017</b>	<b>2016</b>
	<b>\$</b>	<b>\$</b>
Of which:		
Not past due	<b>6,889,406</b>	10,640,151
Past due for more than one day but for no more than 30 days	<b>871,393</b>	279,895
Past due for more than 31 days but for no more than 60 days	<b>696,995</b>	485,180
Past due for more than 61 days	<b>1,859,503</b>	1,496,140
Total accounts receivable, net	<b>10,317,297</b>	12,901,366

	<b>2017</b>	<b>2016</b>
	<b>\$</b>	<b>\$</b>
Allowance for doubtful accounts, beginning of year	<b>1,265,035</b>	16,936
Additions	<b>954,596</b>	179,641
Additions through acquisition	<b>—</b>	1,424,871
Reversals	<b>228,593</b>	(275,113)
Write-off	<b>(119,107)</b>	(81,300)
Allowance for doubtful accounts, end of year	<b>2,329,117</b>	1,265,035

The Company has recognized an allowance for doubtful accounts based on past experience, outlet-specific situation, counterparty's current financial situation and age of the receivables.

Trade receivables disclosed above include amounts that are past due at the end of the reporting period and for which the Company has not recognized an allowance for doubtful accounts because there was no significant change in the credit quality of the counterparty and the amounts are therefore considered recoverable. The Company does not hold any collateral or other credit enhancements over these balances nor does it have the legal right of offset against any amounts owed by the Company to the counterparty.

The concentration of credit risk is limited due to the fact that the customer base is large and unrelated.

**MTY Franchising USA, Inc.**  
**Notes to the consolidated financial statements**  
November 30, 2017

**6. Loans receivable**

Loans receivable generally result from the sales of franchises and of various advances to certain franchisees and consist of the following:

	<u>2017</u>	<u>2016</u>
	\$	\$
Loans receivable bearing interest between 0% and 9% per annum, receivable in monthly instalments of \$209,704 in aggregate, including principal and interest, ending in 2026	<b>4,285,827</b>	5,687,333
Current portion	<b>(2,001,472)</b>	(2,353,231)
	<u><b>2,284,355</b></u>	<u>3,334,102</u>

The total allowance for uncollectable amounts on loans receivable amount to \$904,999 as at November 30, 2017 (2016- \$666,212).

The capital repayments in subsequent years will be:

	\$
2018	2,001,472
2019	488,186
2020	483,960
2021	264,654
2022	233,711
Thereafter	813,844
	<u>4,285,827</u>

**7. Advances to ultimate parent company**

The advances to ultimate parent company is non-interest bearing and due on demand with no specified repayment terms.

**8. Property, plant and equipment**

Cost	Equipment	Leasehold	Rolling Stock	Computer Hardware	Total
	\$	\$	\$	\$	\$
Balance at November 30, 2015	119,836	101,407	—	—	221,243
Additions	29,610	—	23,541	1,349	54,500
Additions through business combinations	2,503,200	796,583	64,140	116,381	3,480,304
Dispositions	(301,621)	—	(21,000)	—	(322,621)
Balance at November 30, 2016	<b>2,351,025</b>	<b>897,990</b>	<b>66,681</b>	<b>117,730</b>	<b>3,433,426</b>
Additions	159,662	—	5,000	22,838	187,500
Dispositions	(1,142,822)	(860,383)	—	(19,853)	(2,023,058)
Balance at November 30, 2017	<b>1,367,865</b>	<b>37,607</b>	<b>71,681</b>	<b>120,715</b>	<b>1,597,868</b>

**MTY Franchising USA, Inc.**  
**Notes to the consolidated financial statements**  
November 30, 2017

**8. Property, plant and equipment (continued)**

Accumulated amortization	Equipment	Leasehold	Rolling Stock	Computer Hardware	Total
	\$	\$	\$	\$	\$
Balance at November 30, 2015	25,736	24,628	—	—	50,364
Amortization Expense	364,771	117,929	5,816	14,075	502,591
Dispositions	(11,612)	—	(1,667)	—	(13,279)
Balance at November 30, 2016	<b>378,895</b>	<b>142,557</b>	<b>4,149</b>	<b>14,075</b>	<b>539,676</b>
Amortization Expense	<b>643,620</b>	<b>125,344</b>	<b>16,098</b>	<b>35,712</b>	<b>820,774</b>
Dispositions	<b>(358,325)</b>	<b>(260,105)</b>	<b>—</b>	<b>(7,361)</b>	<b>(625,791)</b>
Balance at November 30, 2017	<b>664,190</b>	<b>7,796</b>	<b>20,247</b>	<b>42,426</b>	<b>734,659</b>

Carrying Amounts	Equipment	Leasehold	Rolling Stock	Computer Hardware	Total
	\$	\$	\$	\$	\$
November 30, 2016	1,972,130	755,433	62,532	103,655	2,893,750
<b>November 30, 2017</b>	<b>703,675</b>	<b>29,811</b>	<b>51,434</b>	<b>78,289</b>	<b>863,209</b>

**9. Intangible assets**

Cost	Franchise rights	Trademark	Total
	\$	\$	\$
Balance at November 30, 2015	529,763	1,459,361	1,989,124
Additions through business combinations	132,176,764	190,566,361	322,743,125
Balance at November 30, 2016	<b>132,706,527</b>	<b>192,025,722</b>	<b>324,732,249</b>
Additions	<b>75,000</b>	<b>—</b>	<b>75,000</b>
Impairment	<b>(210,204)</b>	<b>(573,167)</b>	<b>(783,371)</b>
Balance at November 30, 2017	<b>132,503,823</b>	<b>191,452,555</b>	<b>324,023,878</b>

Accumulated amortization	Franchise rights	Trademark	Total
	\$	\$	\$
Balance at November 30, 2015	131,869	—	131,869
Amortization for the period	3,524,603	—	3,524,603
Balance at November 30, 2016	<b>3,656,472</b>	<b>—</b>	<b>3,656,472</b>
Amortization expense	<b>10,853,392</b>	<b>—</b>	<b>10,853,392</b>
Balance at November 30, 2017	<b>14,509,864</b>	<b>—</b>	<b>14,509,864</b>



**9. Intangible assets (continued)**

Carrying amounts	Franchise rights	Trademark	Total
	\$	\$	\$
November 30, 2016	129,050,055	192,025,722	321,075,777
November 30, 2017	<b>118,061,459</b>	<b>191,452,555</b>	<b>309,514,014</b>

For the year ended November 30, 2017, the Company recorded impairment charges of \$783,371 related to three of its reporting units following a decline in the performance of the related brand. The total impairment amounted to \$210,204 and \$573,167 for the franchise rights and trademark respectively. Impairment charges were based on the amount by which the carrying values of the assets exceeded fair value, determined using expected discounted future cash flows for trademarks and multi-period excess earnings for franchise rights.

**10. Goodwill**

The changes in the carrying amount of goodwill are as follows:

	2017	2016
	\$	\$
Balance, beginning of year	<b>117,952,987</b>	253,267
Additional amounts recognized from business acquisitions (note 4)	<b>1,544,876</b>	117,699,720
Balance, end of year	<b>119,497,863</b>	117,952,987

**11. Gift card liability**

	2017	2016
	\$	\$
Gift card Liability, beginning of year	<b>56,312,249</b>	—
Activations during the period	<b>30,225,167</b>	11,027,955
Redemptions during the period	<b>(23,921,232)</b>	(6,504,267)
Gift card Liability acquired (note 4)	—	53,753,500
Deferred program fees and other	<b>(461,278)</b>	(725,050)
Gift card Breakage recorded	<b>(4,763,537)</b>	(1,239,889)
Gift card Liability, end of year	<b>57,391,369</b>	56,312,249

**12. Deferred revenue and deposits**

	<b>2017</b>	<b>2016</b>
	<b>\$</b>	<b>\$</b>
Franchise fee deposits	<b>5,075,252</b>	2,903,152
Unearned rent	<b>2,620,653</b>	2,554,588
Supplier contributions and other allowances	<b>4,544,239</b>	5,609,137
	<b>12,240,144</b>	11,066,877
Current portion	<b>(10,730,565)</b>	(8,586,237)
	<b>1,509,579</b>	2,480,640

**13. Advances from parent company and companies under common control**

The advances from parent company and companies under common control are non-interest bearing and due on demand with no specified repayment terms.

**14. Long-term loans from company under common control**

	<b>2017</b>	<b>2016</b>
	<b>\$</b>	<b>\$</b>
Interest bearing loan on acquisition of Kahala Brands Ltd. bearing interest at 5.6%, repayable by July 2023 <sup>(1)</sup>	<b>181,850,000</b>	181,850,000
Interest bearing loan on acquisition of BF Acquisition Holdings LLC, bearing interest at 5.6%, repayable by October 2023 <sup>(1)</sup>	<b>18,000,000</b>	18,000,000
Balance, end of year	<b>199,850,000</b>	199,850,000

<sup>(1)</sup> The loans are subject to a maximum debt to EBITDA ratio of 5.50 to 1 starting on December 1, 2016 and a minimum EBITDA interest coverage ratio of 2.00 to 1 to be calculated in conjunction with interest payments based on the last four rolling quarters.

The company is currently in breach of its debt covenants on its long terms loans. The company has obtained a waiver from its creditors that waiver valid until February 28, 2019.

**15. Long-term debt**

	<b>2017</b>	<b>2016</b>
	<b>\$</b>	<b>\$</b>
Non-interest-bearing debt payable during 2017	—	127,266
Non-interest-bearing holdbacks acquired on acquisition of Kahala Brands Ltd. repayable between July 2018 and August 2020	<b>7,690,504</b>	13,206,128
	<b>7,690,504</b>	13,333,394
	<b>(2,701,380)</b>	(4,832,883)
	<b>4,989,124</b>	8,500,511

## 16. Contingencies

The contingencies for litigation and disputes represent management's best estimate of the outcome of litigations and disputes that are on-going at the date of the statement of financial position. This contingency is made of multiple items; the timing of the settlement of this contingency is unknown given its nature, as the Company does not control the litigation timelines.

The payables related to closed stores mainly represent amounts that are expected to be disbursed to exit leases of underperforming or closed stores. The negotiations with the various stakeholders are typically short in duration and are expected to be settled within a few months following the recognition of the contingencies. The provisions for litigations, disputes and closed stores are recorded in accrued liabilities.

	2017	2016
	\$	\$
Provision for litigation and disputes and closed stores, beginning balance	1,024,500	—
Reversals	(303,103)	(283,000)
Acquired through our business acquisitions	91,871	1,016,000
Amounts used	(421,691)	(40,037)
Additions	1,427,769	331,537
Provision for litigation and disputes and closed stores, ending balance	1,819,346	1,024,500

## 17. Common Stock

	2017		2016	
	Shares issued	Total	Shares issued	Total
	\$	\$	\$	\$
Balance, beginning of year	5,001	89,153,737	1,000	1
Share issuance related to Kahala Brands Inc. acquisition	—	—	4,000	80,653,736
Share issuance related to BF Acquisition Holdings LLC acquisition	—	—	1	8,500,000
Balance, end of year	5,001	89,153,737	5,001	89,153,737

On July 25, 2016, the Company issued 1,700 common shares to its parent company in exchange for its parent company assuming debt of \$8,920,112 related to the acquisition of Kahala Brands Inc. Further to this, an additional 2,300 shares were issued as part of the same transaction in exchange for its parent company assuming an additional \$71,733,624 in debt.

On October 4, 2016, MTY Franchising USA, Inc. issued 1 common share to its parent company in exchange for \$8,500,000. This issuance was done as part of the financing plan for the acquisition of BF Acquisition Holdings LLC.

## 18. Financial instruments

In the normal course of business, the Company uses various financial instruments which by their nature involve risk, including market risk and the credit risk of non-performance by counterparties. These financial instruments are subject to normal credit standards, financial controls, risk management as well as monitoring procedures.

### *Fair value of recognized financial instruments*

Following is a table which sets out the fair values of recognized financial instruments using the valuation methods and assumptions described below:

	2017		2016	
	Carrying amount	Fair value	Carrying amount	Faire value
	\$	\$	\$	\$
<b>Financial assets</b>				
Cash	38,056,627	38,056,627	19,266,443	19,266,443
Loans receivable	4,285,827	4,285,827	5,687,333	5,687,333
Deposits			1,040,108	1,040,108
Advances to ultimate parent	227,316	227,316	86,209	86,209
<b>Financial liabilities</b>				
Accrued liabilities	8,212,917	8,212,917	5,140,046	5,140,046
Promotional funds payable	4,041,713	4,041,713	3,300,647	3,300,647
Advances from parent company	1,296,249	1,296,249	2,587,853	2,587,853
Advances from companies under common control	283,801	283,801	75,852	75,852
Long-term loans from company under common control	199,850,000	199,850,000	199,850,000	199,850,000
Long-term debt	7,690,504	7,690,504	13,333,394	13,333,394

### *Determination of fair value*

The following methods and assumptions were used to estimate the fair values of each class of financial instruments:

*Cash, loans receivable, deposit, accrued liabilities, promotional funds payable, advances from companies under common control, Advances to ultimate parent, advances from parent company* – The carrying amounts approximate fair values due to the short maturity of these financial instruments.

*Long-term loans from company under common control* – The fair value is approximately equal to the carrying amount as they were obtained at market rates during the current year.

*Long-term debt* – The fair value of long-term debt is determined using the present value of future cash flows under current financing agreements based on the Company's current estimated borrowing rate for a similar debt.

## **18. Financial instruments (continued)**

### *Risk management policies*

The Company, through its financial assets and liabilities, is exposed to various risks. The following analysis provides a measurement of risks as at November 30, 2017.

### *Credit risk*

The Company's credit risk is primarily attributable to its trade receivables, loans receivable and deposits. For accounts receivable and loans receivable, the amounts disclosed on the balance sheet are net of allowances for bad debts, estimated by the Company's management based on past experience and counterparty specific circumstances. The Company believes that the credit risk of accounts receivable is limited for the following reasons:

- The Company's broad client base is spread mostly across the USA, which limits the concentration of credit risk.
- The Company accounts for a specific bad debt provisions when management considers that the expected recovery is less than the actual account receivable.

The credit risk on cash is limited because the Company invests its excess liquidity in high quality financial instruments and with credit-worthy counterparties.

The credit risk on deposits is also limited as these are mostly with well established and credit-worthy companies.

### *Foreign exchange risk*

Foreign exchange risk is the Company's exposure to decreases or increases in financial instrument values caused by fluctuations in exchange rates. The Company's exposure to foreign exchange risk mainly comes from sales denominated in foreign currencies. The Company uses the U.S. dollar as functional currency. Since almost all transactions are conducted in U.S. currency, the Company's risk to fluctuations in foreign exchange rates are deemed to have minimal risk.

### *Interest rate risk*

Interest rate risk is the Company's exposure to increases and decreases in financial instrument values caused by the fluctuation in interest rates. The Company has limited exposure to interest rate risk as its long-term loans from company under common control and parent company as well as its long-term debt have fixed interest rates.

### *Liquidity risk*

Liquidity risk refers to the possibility of the Company not being able to meet its financial obligations when they become due. The Company has contractual and fiscal obligations as well as financial liabilities and is therefore exposed to liquidity risk. Such risk can result, for example, from a market disruption or a lack of liquidity. Given that the majority of financial obligations are with related parties, liquidity risk is deemed to have a minimal risk.

# **18. Financial instruments (continued)**

## *Liquidity risk (continued)*

The following are the contractual maturities of financial liabilities as at November 30, 2017:

	Carrying amount	Contractual cash flows	0 to 6 months	6 to 12 months	12 to 24 months	thereafter
	\$	\$	\$	\$	\$	\$
Accounts payable	4,807,133	4,807,133	4,807,133	—	—	—
Accrued liabilities	8,212,917	8,212,917	8,212,917	—	—	—
Promotional funds payable	4,041,713	4,041,713	4,041,713	—	—	—
Advance from parent company	1,296,249	1,296,249	1,296,249	—	—	—
Advances from company under common control	283,801	283,801	283,801	—	—	—
Long-term loans from company under common control	199,850,000	199,850,000	—	—	—	199,850,000
Long-term debt	7,690,504	9,856,310	—	3,215,719	3,241,863	3,398,728
Interest on long-term loans from company under common control <sup>(1)</sup>	n/a	63,439,508	5,580,469	5,611,131	11,191,600	41,056,308
	<b>226,182,317</b>	<b>291,787,631</b>	<b>24,222,282</b>	<b>8,826,850</b>	<b>14,433,460</b>	<b>244,305,036</b>

<sup>(1)</sup> When future interest cash flows are variable, they are calculated using the interest rates prevailing at the end of the reporting period.

# **19. Revenues**

Revenues are broken down as follows:

	2017	2016
	\$	\$
Corporate store revenues	21,129,138	11,246,007
Royalties	48,850,240	16,868,145
Franchise fees, transfer fees and master license fees	4,408,458	1,006,468
Program allowances	15,034,286	6,003,229
Breakage income	4,763,537	910,374
Resale material	6,557,706	1,369,120
Other revenue	2,608,409	788,586
	<b>103,351,774</b>	<b>38,191,929</b>

**20. Operating expenses**

Operating expenses are broken down as follows:

			2017
	Franchising	Corporate	Total
	\$	\$	\$
Cost of goods sold	6,319,736	3,253,047	9,572,783
Wages and benefits	19,622,626	7,651,697	27,274,323
Advertising, marketing and promotion	1,651,245	530,477	2,181,722
Rent	2,869,291	5,592,365	8,461,656
Professional & consulting fees and commission	11,451,024	—	11,451,024
Office Travel, meals & entertainment and utilities	6,060,360	—	6,060,360
Gift card program, costs <sup>1</sup>	5,226,107	—	5,226,107
Other	1,316,784	985,241	2,302,025
	<b>54,517,174</b>	<b>18,012,827</b>	<b>72,530,001</b>

			2016
	Franchising	Corporate	Total
	\$	\$	\$
Cost of goods sold <sup>1</sup>	5,340,236	941,371	6,281,607
Wages and benefits	7,640,626	4,118,605	11,759,231
Advertising, marketing and promotion	925,998	196,636	1,122,634
Rent	989,348	1,843,795	2,833,143
Professional & consulting fees and commission	4,196,351	—	4,196,351
Office Travel, meals & entertainment and utilities	1,011,227	—	1,011,227
Gift card program, costs <sup>(1)</sup>	1,386,059	—	1,386,059
Other	85,487	394,623	480,110
	<b>21,125,332</b>	<b>7,495,030</b>	<b>28,620,362</b>

<sup>(1)</sup> Comparative period amounts were restated to present gift card program costs separately.

Operating expenses are split into two types of operations; Franchise operations and Corporate store operations. Operating segments were established based on the differences in the types of products or services offered by each division.

## 20. Operating expenses (continued)

The products and services offered by each segment are as follows:

### *Franchising operations*

The franchising business mainly generates revenues from royalties, supplier contributions, franchise fees and rent.

### *Corporate store operations*

Corporate stores generate revenues from the direct sale of prepared food to customers.

## 21. Income taxes

The Company accounts for income taxes in accordance with ASC 740, Income Taxes ("ASC 740"). ASC 740 prescribes the use of the liability method whereby deferred tax asset and liability account balances are determined based on differences between the financial reporting and tax bases of assets and liabilities and are measured using the enacted tax rates. The effects of future changes in tax laws or rates are not anticipated.

Under ASC 740 income taxes are recognized for the following: a) amount of tax payable for the current year and b) deferred tax liabilities and assets for future tax consequences of events that have been recognized differently in the financial statements than for tax purposes.

Income tax expense (benefit)	2017	2016
	\$	\$
Current tax expense (benefit)	193,441	2,083,431
Deferred tax expense (benefit)	790,882	(1,454,759)
Total tax expense (benefit)	984,323	628,672

The provision for income taxes recorded in the consolidated financial statements differs from the amount, which would be obtained by applying the statutory federal income tax rate of 34% (34% in 2016), to the income for the period as follows:

	2017	2016
	\$	\$
Earnings for the period before Income taxes	5,021,800	502,006
Income tax expense at federal statutory rate	1,707,412	170,682
State and local income taxes net of federal tax benefit	204,385	68,758
Non-deductible/non-taxable items	456,855	406,239
True up of prior year tax provision	(136,598)	15,384
Change in state tax rate	(1,247,731)	1,859
Other	—	(34,250)
Income tax expense	984,323	628,672



**21. Income taxes (continued)**

Components of the net deferred tax asset or liability:

	<b>2017</b>	<b>2016</b>
	\$	\$
Allowance for doubtful accounts	<b>1,567,480</b>	1,064,132
Deferred revenue	<b>1,504,191</b>	1,912,653
Gift cards	<b>14,536,942</b>	17,223,485
Property, plants and equipment	<b>622,162</b>	448,611
Accrued expenses	<b>3,626,772</b>	2,809,537
Long-term debt	<b>21,459</b>	22,542
Total deferred tax assets	<b>21,879,066</b>	23,480,960
Intangible assets	<b>(105,717,698)</b>	(107,981,908)
Total deferred tax liabilities	<b>(105,717,698)</b>	(107,981,908)
Net deferred tax asset (liability)	<b>(83,838,692)</b>	(84,500,948)

**22. Supplemental cash flow information**

During the year, the Company paid \$126,975 (\$658,212 in 2016) in income taxes.

**23. Subsequent events**

*Acquisition the Counter and Built*

On December 1, 2017, the Company completed its acquisition of all of the limited liability company interests in CB Franchise Systems, LLC ("The Counter"), Built Franchise Systems, LLC ("Built") for a total consideration of \$24,600,000 of which \$22,300,000 was settled in cash and the remainder retained as a holdback on the transaction.

*US tax reform*

On December 22, 2017, the United States proceeded to a tax reform through the enactment of the "Tax Cuts and Jobs Act" (hereafter the "Act"). One of the significant changes included in the Act is the reduction of the federal corporate tax rate from 35% to 21% effective January 1, 2018. For the financial year ending November 30, 2018, the applicable federal corporate tax rate will correspond to a blended rate of 22.19% based on the number of days in the taxation year before and after the effective date.

Based on temporary differences as of November 30, 2017, the Company preliminarily estimates that it will record a deferred tax benefit estimated at USD 29.1 million in its financial year ended November 30, 2018, by reducing its deferred tax liability.

The Company made a preliminary analysis of the new Base Erosion Anti-avoidance Tax (hereafter the "BEAT") and changes to interest deduction limitation rules included in the Act and that will impact financial years November 30, 2019, and after. Based on available information as of financial statement date, the Company expects to meet the de minimis exception and not be subject to BEAT rules. Based on a preliminary analysis, the new interest deduction limitation rule might have an impact in future years. However, any amount disallowed based on the new interest deduction rule could be carried over indefinitely and used against future taxable profit. Therefore, the Company does not expect this measure to have any permanent impact.

**23. Subsequent events (continued)**

*US tax reform (continued)*

The new rules provided by the Act are complex and further guidance will be provided by the United States authorities in upcoming months. Accordingly, the information presented herein is subject to adjustments when new regulation will be available.

*Announced agreement to acquire Grabbagreen ®*

On February 19, 2018, the Company announced that they had signed an agreement to acquire the assets of the Grabbagreen ® franchise system for an estimated consideration of \$2,750,000.

**EXHIBIT W**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**Performance Guaranty**

## GUARANTEE OF PERFORMANCE

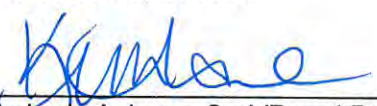
For value received, MTY Franchising USA, Inc., a Delaware corporation ("Guarantor"), located at 9311 E. Via De Ventura, Scottsdale, Arizona 85258, absolutely and unconditionally guarantees to assume the duties and obligations of Kahala Franchising, L.L.C., an Arizona limited liability company, located at 9311 E. Via De Ventura, Scottsdale, Arizona 85258 ("Franchisor"), under its franchise registration in each state where the franchise is registered, and under its Franchise Agreement identified in its 2019 Franchise Disclosure Document, as it may be amended, and as that Franchise Agreement may be entered into with franchisees and amended, modified or extended from time to time. This guarantee continues until all such obligations of the Franchisor under its franchise registrations and the Franchise Agreement are satisfied or until the liability of Franchisor to its franchisees under the Franchise Agreement has been completely discharged, whichever first occurs. The Guarantor is not discharged from liability if a claim by a franchisee against the Franchisor remains outstanding. Notice of acceptance is waived. The Guarantor does not waive receipt of notice of default on the part of the Franchisor. This guarantee is binding on the Guarantor and its successors and assigns.

The Guarantor signs this guarantee at Scottsdale, Arizona on March 28, 2019.

Guarantor:

MTY Franchising USA, Inc., a Delaware corporation

By: \_\_\_\_\_  
Eric Lefebvre, Director

By: \_\_\_\_\_  
Kimberly A. Lane, Sr. VP and Deputy  
General Counsel

**EXHIBIT X**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**Addendum for Sale of Company-Affiliated Owned Stores**

### Addendum for Sale of Company-Affiliated Owned Stores #1

**Below is information covering the last five fiscal years on a previously-owned franchised outlet now under the control of an affiliate of Franchisor.**

Address of Outlet for Sale: \_\_\_\_\_

Previous Franchise Owner 1:

Name: \_\_\_\_\_

City, State: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Time period outlet was controlled by previous franchise owner: \_\_\_\_\_

Reason for change in ownership: \_\_\_\_\_

Previous Franchise Owner 2 (if applicable):

Name: \_\_\_\_\_

City, State: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Time period outlet was controlled by previous franchise owner: \_\_\_\_\_

Reason for change in ownership: \_\_\_\_\_

Previous Franchise Owner 3 (if applicable):

Name: \_\_\_\_\_

City, State: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Time period outlet was controlled by previous franchise owner: \_\_\_\_\_

Reason for change in ownership: \_\_\_\_\_

Note: The telephone number of the previous franchise owner(s) listed above is the current business telephone number, or if unknown, the last home telephone number Franchisor had for the previous franchise owner.

The time period(s) when affiliate of Franchisor retained control of the outlet: \_\_\_\_\_

Date: \_\_\_\_\_  
(Do not leave blank)

\_\_\_\_\_  
Signature of Prospective Franchisee

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

Addendum for Sale of Company-Affiliated Owned Stores #1 must be signed and dated and remains in the Franchise Disclosure Document as the prospective franchisee's copy. Addendum for Sale of Company-Affiliated Owned Stores #2 must be signed and dated by the prospective franchisee and returned to Kahala Franchising, L.L.C. either by mailing it to Kahala Franchising, L.L.C. at 9311 E. Via De Ventura, Scottsdale, Arizona 85258 or faxing it to Kahala Franchising, L.L.C. at (480) 362-4792.

## Addendum for Sale of Company-Affiliated Owned Stores #2

**Below is information covering the last five fiscal years on a previously-owned franchised outlet now under the control of an affiliate of Franchisor.**

Address of Outlet for Sale: \_\_\_\_\_

Previous Franchise Owner 1:

Name: \_\_\_\_\_

City, State: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Time period outlet was controlled by previous franchise owner: \_\_\_\_\_

Reason for change in ownership: \_\_\_\_\_

Previous Franchise Owner 2 (if applicable):

Name: \_\_\_\_\_

City, State: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Time period outlet was controlled by previous franchise owner: \_\_\_\_\_

Reason for change in ownership: \_\_\_\_\_

Previous Franchise Owner 3 (if applicable):

Name: \_\_\_\_\_

City, State: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Time period outlet was controlled by previous franchise owner: \_\_\_\_\_

Reason for change in ownership: \_\_\_\_\_

Note: The telephone number of the previous franchise owner(s) listed above is the current business telephone number, or if unknown, the last home telephone number Franchisor had for the previous franchise owner.

The time period(s) when affiliate of Franchisor retained control of the outlet: \_\_\_\_\_

Date: \_\_\_\_\_  
(Do not leave blank)

\_\_\_\_\_  
Signature of Prospective Franchisee

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

Addendum for Sale of Company-Affiliated Owned Stores #1 must be signed and dated and remains in the Franchise Disclosure Document as the prospective franchisee's copy. Addendum for Sale of Company-Affiliated Owned Stores #2 must be signed and dated by the prospective franchisee and returned to Kahala Franchising, L.L.C. either by mailing it to Kahala Franchising, L.L.C. at 9311 E. Via De Ventura, Scottsdale, Arizona 85258 or faxing it to Kahala Franchising, L.L.C. at (480) 362-4792.

**EXHIBIT Y**  
**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**Receipts**



## RECEIPT #1

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 Kahala Franchising, L.L.C. 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.

**[New York requires that we give you this disclosure document at the earlier of the first personal meeting or 10 business days before the execution of the franchise or other agreement or the payment of any consideration that relates to the franchise relationship.]**

**[Michigan requires that we give you this disclosure document at least 10 business days before the execution of any binding franchise or other agreement or the payment of any consideration, whichever occurs first.]**

If Kahala Franchising, L.L.C. 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, DC 20580 and the state agency listed on Exhibit B.

The franchisor is Kahala Franchising, L.L.C., located at 9311 E. Via De Ventura, Scottsdale, Arizona 85258. Its telephone number is (480) 362-4800. The franchise seller for this offering is \_\_\_\_\_, (\_\_\_\_) \_\_\_\_\_.

Issuance date: April 1, 2019.

Kahala Franchising, L.L.C. authorizes the respective state agencies identified on Exhibit C to receive service of process for it in the particular state.

I received a Frullati Cafe & Bakery Disclosure Document dated April 1, 2019, that included the following Exhibits:

A.	State Addenda to Franchise Disclosure Document	M	Lease Guaranty Acknowledgement
B	Directory of State Agencies and Administrators	N	Lease Review and/or Negotiation Agreement and Release and State Addenda
C	Franchisor's Agent for Service of Process	O-1.	Sublease and Guaranty of Sublease (Franchisee pays rent directly to Landlord)
D	Asset Purchase Agreement (For Sale of a Corporate Store to a Franchisee) with Promissory Note Security Agreement and Guaranty (if applicable)	O-2	Sublease and Guaranty of Sublease (Kahala collects rent from Franchisee and pays to Landlord)
E-1	Franchise Agreement (New) and Franchisee Questionnaire	P	Pre-Authorized Electronic Funds Transfer Form
E-2	Franchise Agreement (Renewal) and Franchisee Questionnaire	Q	General Release for Renewal of Franchise Agreement
E-3	Franchise Agreement (Transfer) and Franchisee Questionnaire	R-1.	Consent to Transfer and Release Agreement (without Sublease)
F-1	Guaranty of Franchise Agreement	R-2	Consent to Transfer and Release Agreement (with Sublease)
F-2	Non-Disclosure and Non-Competition Agreement	S	State Specific Addenda to Franchise Documents
G	Collateral Assignment and Irrevocable Special Power of Attorney	T	Table of Contents – Confidential Operations Manual
H	Amendment to Franchise Agreement (for non-traditional locations excluding those co-branded with another affiliated brand)	U	List of Franchise Owners
I	Amendment to Franchise Agreement (for co-branded non-traditional locations)	V	Financial Statements
J	Intentionally Omitted	W	Performance Guaranty
K	Intentionally Omitted	X	Addendum for Sale of Company-Affiliated Owned Stores
L	Required Lease Terms (Lease Addendum to Lease Agreement)	Y	Receipts

Date: \_\_\_\_\_

(Do not leave blank)

\_\_\_\_\_  
Signature of Prospective Franchisee

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

Receipt #1 must be signed and dated and remains in the Franchise Disclosure Document as the prospective franchisee's copy. Receipt #2 must be signed and dated by the prospective franchisee and returned to Kahala Franchising, L.L.C. by mailing it to Kahala Franchising, L.L.C. at 9311 E. Via De Ventura, Scottsdale, Arizona 85258.

## RECEIPT #2

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L	Required Lease Terms (Lease Addendum to Lease Agreement)	Y	Receipts

Date: \_\_\_\_\_

(Do not leave blank)

\_\_\_\_\_  
Signature of Prospective Franchisee

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

Receipt #1 must be signed and dated and remains in the Franchise Disclosure Document as the prospective franchisee's copy. Receipt #2 must be signed and dated by the prospective franchisee and returned to Kahala Franchising, L.L.C. by mailing it to Kahala Franchising, L.L.C. at 9311 E. Via De Ventura, Scottsdale, Arizona 85258.