

# EILEEN'S COLOSSAL COOKIES®

## FRANCHISE DISCLOSURE DOCUMENT



Information for Prospective Franchisees  
Required by Federal Trade Commission

### **EILEEN'S COLOSSAL COOKIES FRANCHISING, INC.**

(A Nebraska Corporation)

~~315 N. Baltimore~~ 2727 W. 2<sup>nd</sup> Street, Ste. 322

Hastings, Nebraska 68901

Telephone (402) 462 5983

Fax (402) 462 6990

To protect you, we've required your franchisor to give you this information. We haven't checked it, and don't know if it's correct. It should help you make up your mind. Study it carefully. While it includes some information about your contract, don't rely on it alone to understand your contract. Read all of your contract carefully. Buying a franchise is a complicated investment. Take your time to decide. If possible, show your contract and this information to an advisor, like a lawyer or accountant. If you find anything you think may be wrong or anything important that's been left out, you should let us know about it. It may be against the law.

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

FEDERAL TRADE COMMISSION  
Washington, D.C.

Date of issuance of this Disclosure Document is:

January 1, 2016 2017

# EILEEN'S COLOSSAL COOKIES®

## STATE COVER PAGE

### **EILEEN'S COLOSSAL COOKIES FRANCHISING, INC.**

(A Nebraska Corporation)

315 N. Baltimore 2727 W. 2<sup>nd</sup> Street, Ste. 322

Hastings, Nebraska 68901

Telephone (402) 462 5983

Fax (402) 462 6990

Eileen's Colossal Cookies Franchising, Inc., offers franchises for stores featuring cookies, confections and related food specialties. The stores operate according to a System that includes the service mark Eileen's Colossal Cookies®. The System features a distinctive selection of competitively priced cookies and related food specialties.

#### **Risk Factors:**

**1. THE FRANCHISE AGREEMENT PROVIDES THAT DISAGREEMENTS MAY BE SETTLED BY INFORMAL DISPUTE RESOLUTION, MEDIATION, OR LITIGATION IN NEBRASKA. OUT OF STATE INFORMAL DISPUTE RESOLUTION, MEDIATION, OR LITIGATION MAY FORCE YOU TO ACCEPT A LESS FAVORABLE SETTLEMENT FOR DISPUTES. IT MAY ALSO COST MORE TO MEDIATE OR LITIGATE WITH US IN NEBRASKA THAN IN YOUR HOME STATE.**

**2. THE FRANCHISE AGREEMENT PROVIDES THAT NEBRASKA LAW GOVERNS THE AGREEMENT, EXCEPT TO THE EXTENT THAT THE LANHAM ACT OR FEDERAL ARBITRATION ACT GOVERNS. NEBRASKA LAW MAY NOT PROVIDE THE SAME PROTECTIONS AND BENEFITS AS LOCAL LAW. YOU MAY WANT TO COMPARE THESE LAWS.**

**3. THE PARTIES WAIVE THEIR RIGHT TO A JURY TRIAL WITH RESPECT TO DISPUTES RELATING TO THE FRANCHISE AGREEMENT.**

**4. THERE MAY BE OTHER RISKS CONCERNING THIS FRANCHISE**

Information about comparisons of franchisors is available. Contact your state administrator or your public library for sources of information. Registration of this franchise with the state does not mean the state recommends it or has verified the information in this Disclosure Document. If you learn that anything in this Disclosure Document is untrue, contact the Federal Trade Commission or, the State Administrator listed in FDD Exhibit "A".

## TABLE OF CONTENTS

ITEM 1. THE FRANCHISOR, ANY PARENTS, PREDECESSORS, AND AFFILIATES	6
Franchisor's Corporate Information.....	6
Predecessors and Affiliates.....	6
Franchisor's Business.....	6
General Market and Competition .....	7
Industry Regulations .....	7
Prior Business Experience.....	7
ITEM 2. BUSINESS EXPERIENCE .....	7
ITEM 3. LITIGATION .....	8
ITEM 4. BANKRUPTCY .....	
ITEM 5. INITIAL FEES.....	8
ITEM 6. OTHER FEES .....	8
TABLE OF OTHER FEES.....	9
ITEM 7. ESTIMATED INITIAL INVESTMENT .....	12
ITEM 8. RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES.....	16
General Requirements.....	16
Authorized Suppliers and Specifications.....	16
Specific Requirements .....	17
Site and Lease Approval.....	17
Architect, Contractors, and Construction .....	17
Signage .....	17
Operating Standards .....	17
P.O.S. System .....	18
Secret Recipes.....	18
Insurance .....	19
Revenues Derived from Required Purchases and Leases .....	19
Supplier Rebates .....	19
Purchasing or Distribution Cooperatives.....	19
Material Benefits for Use of Approved Sources .....	19
ITEM 9. FRANCHISEE'S OBLIGATIONS.....	20
TABLE OF FRANCHISEE OBLIGATIONS .....	20
ITEM 10. FINANCING .....	21

ITEM 11. FRANCHISOR'S ASSISTANCE, ADVERTISING, COMPUTER SYSTEMS AND TRAINING .....	22
Implementation of Franchised Business .....	22
Home Office Training .....	22
Time of Training/Pre-opening Advertising/Training Materials .....	23
TABLE SUMMARIZING TRAINING .....	23
Pre-Opening Obligations.....	24
Post-Opening Obligations .....	25
Local Advertising.....	25
Grand Opening Advertising Program .....	26
Regional Advertising Cooperative .....	26
Other Advertising Programs.....	27
Internet Advertising Restrictions .....	27
Advertising Council .....	27
Selecting the Location of Your Franchised Business .....	28
Time between Signing Agreement and Opening the Franchised Business .....	28
Failure to Complete Initial Training .....	28
National Sales Conferences.....	28
 ITEM 12. TERRITORY .....	 29
Grant for a Specific Area .....	29
Protected Territory .....	29
Reserved Rights .....	29
National Accounts .....	29
Sales of Products or Services under a Different Trademark .....	29
Continuation of Territorial Exclusivity .....	29
 ITEM 13. TRADEMARKS .....	 30
Principal Trademarks .....	30
Currently Effective Trademark Determinations .....	31
Agreements Significantly Limiting Your Rights to Use the Marks .....	31
Protection of Your Right to Use the Trademarks.....	31
Knowledge of Superior Rights or Infringing Uses.....	31
 ITEM 14. PATENTS, COPYRIGHTS, AND PROPRIETARY INFORMATION.....	 32
 ITEM 15. OBLIGATION TO PARTICIPATE IN THE ACTUAL OPERATION OF THE FRANCHISE BUSINESS .....	 32
 ITEM 16. RESTRICTIONS ON WHAT THE FRANCHISEE MAY SELL.....	 33
Approved Goods and Services .....	33
Customer Restrictions.....	33

ITEM 17. RENEWAL, TERMINATION, TRANSFER, AND DISPUTE RESOLUTION ...	34
ITEM 18. PUBLIC FIGURES .....	36
ITEM 19. FINANCIAL PERFORMANCE REPRESENTATIONS .....	36
ITEM 20. OUTLETS AND FRANCHISEE INFORMATION .....	37
ITEM 21. FINANCIAL STATEMENTS .....	43
ITEM 22. CONTRACTS .....	50
ITEM 23. RECEIPTS	

EXHIBIT A - STATE ADMINISTRATORS/AGENTS FOR SERVICE OF PROCESS  
EXHIBIT B - TABLE OF CONTENTS- OPERATING MANUAL

## **ITEM 1. THE FRANCHISOR, ANY PARENTS, PREDECESSORS, AND AFFILIATES**

### **Franchisor's Corporate Information**

We are a Nebraska corporation and were organized on 4/23/1998. We do business under the name Eileen's Colossal Cookies Franchising, Inc. To simplify the language in this Disclosure Document, Eileen's Colossal Cookies Franchising, Inc. will be referred to as "We" or "ECC". "You" means the person, partnership or corporation who buys the Franchise.

Our agent for service of process is listed on the Acknowledgment of Receipt on the last page of this Disclosure Document.

### **Predecessors and Affiliates**

We do not have a predecessor. Nor do we have any affiliates that offer franchises in any line of business. We do have an affiliate which operates three Eileen's Colossal Cookies® stores in Hastings, Grand Island and Kearney, Nebraska.

### **Franchisor's Business**

Our only business is selling franchises to operate Eileen's Colossal Cookies specialty stores and servicing those franchises. We are not involved in any other business activities. We do currently operate a business similar to the franchise being offered to you.

We franchise the operation of a retail store which specializes in the production and sale of a variety of cookies sold primarily by the dozen and in special assortments. All cookies are made fresh from scratch and produced throughout the business day. The primary marketing thrust is the sale of twelve varieties of cookies sold by the dozen. Customer service is also a major component in the operation. All staff is trained on customer relations and expected to provide prompt and friendly service to all patrons.

ECC's business activities include the grant to qualified persons to own and operate one or more Eileen's Colossal Cookies franchise(s). The grant includes the right to use all trademarks and service marks of ECC in accordance with the terms of the Franchise Agreement.

Your customers want high quality cookies and related items. You would open a store and train personnel to service local customers. You must utilize our trade name, service mark, trademarks and related logos ("Names and Marks") as we prescribe. The Franchised Business is referred to as "Franchised Location", or "Franchised Business". High quality and reasonable pricing create the market differentiation.

### **General Market and Competition**

The market for your store is the general public. This market is developed and competitive. Your competitors include other retailers who offer such products.

### **Industry Regulations**

Stores, Restaurants, Delicatessens are subject to various special-industry regulations, such as food-service, health, and sanitation codes. Employees may need food-handler licenses. Many municipalities regulate the use of restaurant grease traps for cooking and require special sewer hook-ups. Regulations vary widely from place to place. Federal laws such as the Americans with Disabilities Act may apply to the design and construction of your restaurant premises. Your Manager must acquire any food-safety-program certification that the state or municipality where the Franchised Business is located may require. You should consult an advisor in your area to determine all applicable laws and regulations.

### **Prior Business Experience**

We have never operated an Eileen's Colossal Cookies® store, although companies sharing common ownership with us have operated Eileen's Colossal Cookies® stores for several years. We have never sold franchises in any other line of business.

## **ITEM 2. BUSINESS EXPERIENCE**

### **EILEEN M. HARMAN, PRESIDENT, CEO**

Eileen Harman is President and Chief Executive Officer. Ms. Harman founded the first "Eileen's Colossal Cookies" operation in Hastings, Nebraska in 1983 and operated it as a proprietorship until 1989 when the proprietorship incorporated as Eileen's Colossal Cookies, Inc. She remains as the Chief Executive Officer of that company. She assumed her current position with ECC upon its incorporation.

### **TONY HARMAN, FRANCHISE DIRECTOR**

After obtaining his bachelor's degree in Business Administration from the University of Nebraska at Lincoln in 2003, Tony Harman joined Cash-Wa Distributing, Inc. in Lincoln, Nebraska in 2004 and held several positions within that company until he joined Eileen's Colossal Cookies, Inc. in 2007 as Franchise Director, his current position with ECC.

### **GABE HARMAN, DISTRICT MANAGER**

Gabe joined the company in 2009, working in the Hastings location. He is now responsible for tax, accounting, and financial operations as well as assisting with franchise development.

### **ITEM 3. LITIGATION**

No litigation is required to be disclosed in this Disclosure Document.

### **ITEM 4. BANKRUPTCY**

No person previously identified in Items 1 or 2 of this Disclosure Document has been involved as a debtor in proceedings under the U.S. Bankruptcy Code required to be disclosed in this Item.

### **ITEM 5. INITIAL FEES**

The fees discussed in this Item are uniform to all franchisees and non-refundable.

The Initial Franchise Fee is \$20,000.

(A Franchise Territory consists of a boundary with a radius of six miles (6 miles) from the center point of the approved location of the franchised business.

You must pay the entire fee for the territory at the time you sign a Franchise Agreement. The Initial Franchise Fee is fully earned by ECC at the time ECC executes a Franchise Agreement and is not refundable.

### **ITEM 6. OTHER FEES**

**See Table on the following page.**

## TABLE OF OTHER FEES

<b>NAME OF FEE</b>	<b>AMOUNT</b>	<b>WHEN DUE</b>	<b>REMARKS</b>
ONGOING ROYALTY	6% of gross sales	Payable weekly on or before Wednesday of each week for previous week. See Note 7	See Note 1
ADVERTISING	No Advertising Fees	N/A	Advertising is done on a local basis only at the discretion of the Franchisee.
RENEWAL FEE	None		
TRAINING	NONE See Note 2. Special Training is available. See Note 3	N/A	Travel, room & board expenses must be paid by you.
TERMINATION FEE	N/A		
INTEREST or PENALTIES FOR LATE PAYMENTS	Imposed only when payments are late. \$50 or 1.5%, whichever is greater if 10 days late.	When required	
TESTING FEE	Cost of inspection and evaluation of new supplier product(s)	When required	On demand
LOST MANUALS	\$200 for each lost manual	If any operating manual is stolen, lost, or a replacement destroyed, you must pay us this amount	Before we loan you another manual
TRANSFER FEE	\$7500	UPON TRANSFER	ADJUSTMENT FOR COST OF LIVING
SEE NOTE 4			
AUDIT	Our costs and expenses connected with the inspection (including reasonable accounting and attorneys' fees)	On demand	If any inspection discloses an understatement of two percent or more of Gross Revenues, you must reimburse us for the costs and expenses connected with the inspection
<b>NAME OF FEE</b>	<b>AMOUNT</b>	<b>WHEN DUE</b>	<b>REMARKS</b>

ENFORCEMENT COSTS	Reasonable attorneys' fees, arbitration costs, court costs and all expenses	On demand	Due if any legal action or other proceeding is instituted to enforce the Franchise Agreement or any other Dispute
-------------------	---	-----------	---

**SEE NOTES THAT FOLLOW:**

**Note 1.**

**Royalty Fee**

“Gross Sales” means: All revenues from all sales, whether for cash or credit and regardless of collection in the case of credit. You must agree to pay the fees described in the following paragraphs.

**Note 2.**

**Training**

You must attend and successfully complete the ECC training satisfactorily prior to opening for business. This may include a training and familiarization course of up to 10 business days in duration to be conducted at ECC’s headquarters or at another place as ECC may designate, and will include working in a ECC retail location for approximately 10 days. The training sessions will take place prior to the Franchised Business’ opening. The training program will cover all material aspects of the operation of the Franchised Business, including introduction and orientation to the System, financial controls, promotion and sales methods, other marketing techniques, service and operational techniques, systems and methods, deployment of sales people and other personnel, and maintenance of quality standards. All expenses incurred by you and your employees in attending the program, including, travel, room and board expense, are your sole responsibility.

If your requests for additional training are reasonable, ECC shall provide the training at your expense, including training fees, travel, lodging, meals and other related costs.

**Note 3**  
**Special and Additional Training**

Training for new managers or partners is mandatory. The company's current charge for training for a new manager or partner for the initial training is \$3000 plus the travel, food and lodging expense of the trainer. This training is conducted in your store.

**Note 4**  
**Transfer Fee**

If the transferee is your spouse, son, or daughter and the transfer is for estate planning purposes, no transfer fee is charged, but you must reimburse us for the out-of-pocket expenses (including attorneys' fees) we incur in connection with reviewing and approving the transfer.

**Note 5**  
**Enforcement Costs**

The successful or prevailing party or parties is entitled to recover these amounts

**Note 6**

You may be required to sign a "Draft Agreement", which allows ECC to arrange with your financial institution or credit card company to honor drafts submitted for payment by ECC of royalty fees. On Wednesday of each week, a draft will be submitted for an amount equal to your Royalty Fee amount which is due for the previous week.

**ALL FEES ARE UNIFORM, AND ARE NON-REFUNDABLE**

THE BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK

## ITEM 7. ESTIMATED INITIAL INVESTMENT

<u>CATEGORY</u>	<u>AMOUNT</u>		<u>METHOD OF PAYMENT</u>	<u>WHEN DUE</u>	<u>TO WHOM PAYMENT IS TO BE MADE</u>
	<u>From</u>	<u>To</u>			
INITIAL FEE (Note 1)	\$20,000.00	\$20,000.00	LUMP SUM CASH OR CASH/NOTE	UPON SIGNING OF AGREEMENT	ECC
INITIAL RENT & DEPOSIT (Note 2)	\$6,000.00	\$7,000.00	AS INCURRED	AS INCURRED	LESSOR
OPENING CASH (Note 3)	\$7,000.00	\$8,000.00	AS INCURRED	AS INCURRED	VENDORS
STORE IMPROVEMENTS (Note 4)	<del>\$62,900.00</del> \$68,900.00	<del>\$77,150.00</del> \$92,150.00	AS INCURRED	AS INCURRED	CONTRACTOR LANDLORD
BUSINESS LICENSES (Note 5)	\$800.00	\$800.00	AS INCURRED	WHEN REQUIRED	STATE, MUNIC. AGENCIES
INSURANCE (Note 6)	\$3,000.00	\$3,300.00	VARIES	AS ARRANGED AND REQUIRED	BROKER OR INSURANCE CO.
INITIAL START UP PKG. (Note 7)	\$10,080.00	\$12,350.00	AS INCURRED	AS ARRANGED	APPROVED SUPPLIERS and LOCAL VENDORS
LEGAL & ACCT'G FEES (Note 8)	\$1,500.00	\$2,000.00	AS INCURRED	AS ARRANGED	ATTORNEYS ACCOUNTANTS
INITIAL INVENTORY EQUIP. PKG (Note 9)	<del>\$56,696.00</del> \$61,296.00	<del>\$59,106.00</del> \$64,806.00	AS INCURRED	AS ARRANGED	VENDOR OR LENDER OR LEASING FIRM
START UP ADVERTISING (Note 10)	\$3,500.00	\$4,000.00	4 WEEKS PRIOR TO STORE OPENING	AS ARRANGED	LOCAL PRINTER AND/OR AD COMPANY
<b><u>TOTALS</u></b>	<del>\$171,476.00</del> \$182,076.00	<del>\$193,706.00</del> \$214,406.00			

See Notes that follow

**Note 1****Initial Fee**

The Franchise Fee is Twenty Thousand Dollars (\$20,000.00). The geographic size of the Exclusive Territory granted to the Franchise Owner will consist of a boundary of a six (6) mile radius from the Franchised Business location. It may be part of a city or consist of several towns.

**Note 2****Initial Rent and Deposit**

Your estimated space should be approximately 1800 square feet. ECC will assist you in planning the conversion of a potential location for the Franchised Business.

**Note 3****Opening Cash**

Your Opening Cash Needs are for initial promotion and pre-operation expenses but you must determine the amount necessary to cover cash short fall in the initial six months of operation. These amounts are estimated between Seven Thousand Dollars (\$7,000.00) and Eight Thousand Dollars (\$8,000.00).

**Note 4****Leasehold Improvements**

Eileen's Colossal Cookies Franchising, Inc. estimates that the leasehold improvements will cost from ~~\$62,900~~ \$68,900.00 to as much as ~~\$77,150.00~~ \$92,150.00 in order to convert a space in a strip center into this Franchised Business. You may require improvements including floor coverings, interior cosmetics, plumbing, electrical work, etc. The cost of the improvements will vary from location to location. If the landlord makes all necessary leasehold improvements, it is possible that the costs will be included in or added to the monthly lease payment, and no front-end out-of-pocket expenses need be paid by you; however there is no guarantee the a landlord would enter into such an arrangement.

**Note 5****Business Licenses**

Several local business licenses may be needed in order to open the Franchised Business or you may already be covered under business licenses you hold now. The costs of the business licenses will vary from location to location and are estimated to be Eight Hundred Dollars (\$800.00).

**Note 6****Insurance**

Insurance costs are estimated between \$3,000 and \$3,300 and may include premiums for Workmen's Compensation, general liability, product liability, fire, vandalism, theft, business interruption and automobile coverage. Insurance Expenditures are described more full in Section 15 of the Franchise Agreement, but you must obtain an insurance policy or policies protection you and ECC, and the officers, directors, partners, agents, and employees of both you and ECC against any loss, liability, personal injury, death, property damage, or expense whatsoever arising or occurring upon or in connection with operating the Franchised Business. All insurance policies required by the Agreement must be written by an insurance company

satisfactory to Eileen's Colossal Cookies Franchising, Inc. The coverage will be provided in accordance with standards and specifications set forth in the Manuals or otherwise specified in writing.

You must also purchase Workmen's Compensation and employer's liability insurance as prescribed by state law and any such other insurance that may be required by ECC or by the statutes or other laws of the state in which the Office is located and operated. You also must purchase an umbrella insurance policy to provide excess limits over the above liability policies.

You also may maintain such additional insurance as you may consider advisable.

Upon obtaining the insurance required by the Agreement and on each policy renewal date thereafter, you must promptly submit evidence of satisfactory insurance and proof of payment to ECC, along with copies of all policies and policy amendments and endorsements. The evidence of insurance must include a statement by the insurer that the policy or policies will not be canceled or materially altered without giving at least thirty (30) days prior written notice to Eileen's Colossal Cookies Franchising, Inc.

If you should fail to obtain the insurance required by the Agreement or the Manual, ECC may procure the insurance and to bill it to you along with reasonable fee for ECC's expenses in so acting.

#### **Note 7**

##### **Initial Start Up Package**

Printing, Signs and Graphics costs will vary depending upon location and the amount of initial stock of material that you have printed with your local Eileen's Colossal Cookies® number. The printing and supply package must conform to the artwork and layout approved by ECC and includes business cards, flyers, contract forms, brochures, sales forms, and invoices. For the sake of consistency of names and marks and quality control, the printing and supply package must conform to the artwork and layout approved by ECC.

#### **Note 8**

##### **Legal and Accounting Fees**

Legal and accounting fees may include incorporating your company and setting up its books and records. These fees are estimated to be \$1,500 - \$2,000, and include monies needed to create the new Franchise Owner's business entity (e.g., L.L.C.) and to set up its books and records. Section 12 of the Franchise Agreement has considerable detail relating to the record keeping requirements. You will be required to keep accurate records of customer inquiries, sales, marketing activities, closeout sheets, payroll, and accounts payable in accordance with the standard accounting system described by ECC in the Manual.

**Note 9****Initial Inventory, Equipment Package**

Your initial inventory, supplies and related items must be purchased and on hand prior to the store opening. We estimate this investment to be between ~~\$56,696 and \$59,106~~ \$61,296 and \$64,806. ECC has an approved supplier list and specs for all required equipment, inventory, and supplies.

**Note 10****Start-up Advertising**

ECC requires that you hold an official grand opening when you open your store. The amount spent on a Grand Opening will vary from one market to another. ECC estimates that the Grand Opening expenditure will be from \$3,500.00 to \$4,000.00.

**Note 11**

ECC does not offer any direct or indirect financing for any item listed in the above table.

**THERE ARE NO OTHER DIRECT OR INDIRECT PAYMENTS IN CONJUNCTION WITH THE PURCHASE OF THE FRANCHISE AND SUCH PAYMENTS ARE, FOR THE MOST PART, NON-REFUNDABLE.**

These figures are estimates and we cannot guaranty that you will not have additional expenses starting the business.

We relied on the historical experience of existing Eileen's Colossal Cookies restaurants to compile these estimates. You should review these figures carefully with a business advisor before making any decision to purchase the franchise. We do not offer direct or indirect financing for any items.

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

To insure high quality and a uniformity of product by all franchisees, you must purchase all products that are used in producing Eileen's Colossal Cookies sold through your store and all equipment, printing, supplies and fixtures in accordance with the standards and specifications described in our Operations Manual.

We, nor anyone affiliated with us, do not act as approved suppliers.

If you desire to purchase any items from an unapproved supplier, you or the supplier must submit a written request for our approval which will be acted upon within 30 days. ECC will not unreasonably withhold its approval. ECC may require an inspection of the supplier's facility and/or that samples from the supplier be delivered to ECC or to our independent consultant for testing. You or the supplier must pay the reasonable cost of the inspection and the actual cost of the testing. ECC may re-inspect the facilities and products of the approved suppliers and to revoke its approval upon supplier's failure to continue to meet any of ECC's criteria for standards and specifications. ECC currently does not receive any consideration from suppliers but, in the future may charge a fee of 5% to 10% of the dollar volume of orders by Franchisees to approved suppliers for the cost of maintaining its approved supplier program. ECC in no way guarantees the performance of any approved supplier through its approved supplier program. Currently, there are no purchasing or distribution cooperatives.

### **General Requirements**

To insure high quality and a uniformity of product by all franchisees, you must purchase all products that are used in producing Eileen's Colossal Cookies sold through your store and all equipment, printing, supplies and fixtures in accordance with the standards and specifications described in our Operations Manual.

### **Authorized Suppliers and Specifications**

You must purchase all required products, other products and materials for the operation of the Franchised Business solely from suppliers (including manufacturers and distributors) who demonstrate, to our continuing reasonable satisfaction, the ability to meet ECC's standards and specifications for those items; who possess adequate quality control and capacity to meet your needs, properly and reliably; and who are currently approved in writing by us. Upon written request, we will provide the specifications and standards we use in selecting approved suppliers. Currently, we do not negotiate prices and terms with any suppliers.

We, nor anyone affiliated with us, do not act as approved suppliers. ECC will not unreasonably withhold its approval of any supplier, manufacturer or distributor. ECC may require an inspection of the supplier's facility and/or that samples from the supplier be delivered to ECC or to our independent consultant for testing. You or the supplier must pay the reasonable cost of the inspection and the actual cost of the testing. ECC may re-inspect the facilities and products of the approved suppliers and to revoke its approval upon supplier's failure to continue to meet any of ECC's criteria for standards and specifications. ECC currently does not receive any

consideration from suppliers but, in the future may charge a fee of 5% to 10% of the dollar volume of orders by Franchisees to approved suppliers for the cost of maintaining its approved supplier program. ECC in no way guarantees the performance of any approved supplier through its approved supplier program.

### **Specific Requirements**

You must set up your own accounts and payment arrangements with approved suppliers. If you desire to purchase any items from an unapproved supplier, you or the supplier must submit a written request for our approval which will be acted upon within 30 days.

### **Site and Lease Approval**

You must select the site for the Premises. The site must meet our standards for environmental impact, demographic characteristics, traffic patterns, parking, predominant character of the neighborhood, competition from other businesses providing similar services within the area, proximity to other businesses and the nature of such businesses, size, appearance, and other physical characteristics of the site, and any other factors we may consider relevant to approving or disapproving a site. Your lease or sublease of the Premises must have certain provisions described in the Franchise Agreement and be approved by us. If you want to purchase the site, you must submit the purchase agreement to us for our approval.

### **Architect, Contractors, and Construction**

You or your Landlord must prepare a site plan and plans and specifications adapting our standard plans and specifications to your approved location and to applicable laws and lease requirements and restrictions and market conditions.

You or your Landlord must comply with all, zoning, signage, seating capacity, parking requirements and storage requirements. Any material modification to the standard plans and specifications must be approved by us. You must obtain professional supervision, satisfactory to us, where applicable, for preparing the site layout and plan and over construction of the Premises.

You must construct the Premises in accordance with the plans we approved and the Design Specifications. We may recommend using a construction project manager for constructing the Premises. If you choose not to use our recommended construction manager, your general contractor must have the insurance coverage described in the Franchise Agreement.

### **Signage**

You must purchase and install at the Premises all interior and exterior signage, from suppliers using designs that we designate (the "Signage").

### **Operating Standards**

To ensure that the highest degree of quality and service is uniformly maintained, you must operate the Franchised Business in conformity with any uniform methods, standards, and specifications that we may prescribe in the Eileen's Colossal Cookies® Manual or otherwise. These include, among other things: the recording all Gross Revenues, complying with the

procedures and systems instituted by us both now and in the future, including those relating to sales, good business practices, advertising and other obligations and restrictions; maintaining in sufficient supply (as we may prescribe in the Eileen's Colossal Cookies® Manual or otherwise in writing), and using at all times, only inventory, equipment, materials, advertising methods and formats, and supplies that conform with our standards and specifications, if any, at all times sufficient to meet the anticipated volume of business;

1. Using menu boards and menus and product brochures that comply with our prescribed specifications for content, materials, finish, style, pattern and design;
2. Selling and offering for sale only goods and services that meet our uniform standards of quality and quantity, and that have been expressly approved for sale in the Eileen's Colossal Cookies Manuals or otherwise in writing by us at retail to consumers from and through the Franchised Business and not selling those items for redistribution or resale;
3. Selling and offering for sale all goods and services that we may approve from time to time (including alcoholic beverages); and without our consent, not deviating from our standards and specifications for providing or selling such goods and services;
4. Purchasing and installing all fixtures, furnishings, signs and equipment that we specify and maintaining that equipment in a condition that meets the operational standards specified in the Eileen's Colossal Cookies Manuals.

### **P.O.S. System**

An ECC approved P.O.S. system will be required to operate the Franchised Business. You will be given the necessary specifications, including the required ability to keep sales records. The system shall include a cash drawer, receipt printer, as well as any other required hardware, software, and peripherals and related services. You shall also be required to offer a credit-card swipe reader.

### **Secret Recipes**

The recipes that are used to make Eileen's Colossal Cookies® are proprietary to us and we insist that you keep such recipes, and any that we should develop in the future, secret and confidential.

Secret Recipe Products include dough, icing, and other recipes and products we create and consider secret. Because of the importance of quality control and uniformity and the significance of these proprietary products to the System, we closely control the production and distribution of the Secret Recipe Products.

## **Insurance**

You must purchase and maintain the types of insurance, in amounts, that we may require. This insurance is in addition to any other insurance that may be required by applicable law, the Franchisee's landlord, or otherwise. Your insurance policies must be written by an insurance company reasonably satisfactory to us with a Best rating of "A" or better.

## **Revenues Derived from Required Purchases and Leases**

ECC may derive revenues from required purchases or leases.

## **Supplier Rebates**

ECC may receive supplier rebates, including securing said rebates for franchised locations.

## **Purchasing or Distribution Cooperatives**

Purchasing or distribution cooperatives may exist between ECC and suppliers. This may include negotiating purchase arrangements (including price terms) with suppliers.

## **Material Benefits for Use of Approved Sources**

We may provide material benefits to you based upon your use of designated or approved sources.

THE BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK

## ITEM 9. FRANCHISEE'S OBLIGATIONS

### TABLE OF FRANCHISEE OBLIGATIONS

THIS TABLE LISTS YOUR PRINCIPAL OBLIGATIONS UNDER THE FRANCHISE AGREEMENT AND OTHER AGREEMENTS. IT WILL HELP YOU FIND MORE DETAILED INFORMATION ABOUT YOUR OBLIGATIONS IN THESE AGREEMENTS AND IN OTHER ITEMS IN THIS DISCLOSURE DOCUMENT.

<b><u>OBLIGATION</u></b>	<b><u>SECTION IN AGREEMENT</u></b>	<b><u>ITEM IN DISCLOSURE DOCUMENT</u></b>
a. Site Selection and acquisition/lease	Section 3 also see R. E. Lease	Item 11
b. Pre-opening Purchase Leases	Not applicable	Not applicable
c. Site Development and other pre-opening requirements	Section 3 also see R.E. Lease	Item 6,7,11
d. Initial and On-going Training	Section 5	Item 11
e. Opening	Section 3C	Items 11D, 11G
f. Fees	Section 1B Section 11	item 5, 6
g. Compliance with standards and policies/ Operating Manual	Section 7,12,13	Item 11 see also FDD "Exhibit B"
h. Trademarks and Proprietary Information	Section 6	Items 13 and 14
i. Restrictions on Products and services offered	Section 14	Item 16
j. Warranty and Customer Service	Operations Manuals (Proprietary)	Item 11
k. Territorial Development and sales quotas	Section 13	Item 12

<u>OBLIGATION</u>	<u>SECTIONIN AGREEMENT</u>	<u>ITEM INDISCLOSURE DOCUMENT</u>
l. Ongoing product service purchases	Section 14	Item 8
m. Maintenance, appearance and remodeling requirements	Section 13B	Item 11A, 11C
n. Insurance	Section 15	Item 7
o. Advertising	Sections 10, 14	Item 6
p. Indemnification	Section 21	Item 7
q. Owners participation management, staffing	Section 13H	Item 15
r. Records, Reports	Section 12	Item 6
s. Inspections, Audits	Sections 12	item 11
t. Transfer	Section 19	Item 17
u. Renewal	Section 2	Item 17
v. Post Termination obligations	Section 17, 18	Item 17
w. Non-competition	Section 18	Item 17
x. Dispute Resolution	Section 23	Item 17

## **ITEM 10. FINANCING**

ECC does not offer any direct or indirect financing.

Other financing/leasing on signs, kiosks, computers, office and store equipment and other equipment may be available to you in your local market.

**Except as disclosed above, we do not arrange financing from other sources.**

**We do not receive direct or indirect payments for placing financing.**

**We do not guarantee your obligations to third parties.**

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

**EXCEPT AS LISTED BELOW, EILEEN'S COLOSSAL COOKIES FRANCHISING, INC. NEED NOT PROVIDE ANY ASSISTANCE TO YOU.**

Before you open your business, we will provide you with the following assistance and services:

### **A. Implementation of Franchised Business (Section 14, Franchise Agreement)**

We will:

1. designate your protected territory;
2. advise you concerning the opening inventory;
3. assist you with suggestions for the layout and design of your store (the costs of renovations, signs, printing, furniture and fixtures are your responsibility);
4. provide information and suggestions to establish your franchised area;
5. provide you with samples of approved apparel for your Franchised Business.

### **B. Home Office Training (Section 14, Franchise Agreement)**

You must attend and successfully complete to ECC's satisfaction, before opening for business, a training and familiarization course of up to ten business days to be conducted at ECC's headquarters or at another ECC designated place. The training sessions must take place before you open. The training program will include approximately 10 days of working in an Eileen's Colossal Cookies® store and will also cover all material aspects of the operation of the Franchised Business, including introduction and orientation to the System, financial controls, promotion and sales methods, other marketing techniques, service and operational techniques, systems and methods, and maintenance of quality standards. All expenses incurred by you and your employees in attending the training programs, including travel and room and board is your sole responsibility.

**C. Time of Training/Pre-opening Advertising/Training Materials** (Section 14, Franchise Agreement)

We arrange and put on training classes throughout the year and the training must be completed between the date of your Franchise Agreement, and opening date.

You must begin the Grand Opening and a recommended advertising program to start during the month that you open your store which will require arrangements and commitments to be made at least 30 days prior to the start of your local recommended advertising program. You should have completed your training so you will know what local advertising plans to implement.

The instructional materials that are used in your training are primarily the manuals that are listed in "Exhibit B" which is attached to this Disclosure Document.

**TABLE SUMMARIZING TRAINING**

<b>SUBJECT</b>	<b>MANUAL</b>	<b>TRAINING HOURS</b>	<b>INSTRUCTOR</b>
Baking	Operations Manual	16	ECC Training Specialist
Customer Service	Operations Manual	32	ECC Training Specialist
Making dough and frosting	Operations Manual	8	ECC Training Specialist
Hiring and Scheduling	Hiring and Scheduling Manual	1	ECC Training Specialist
Decorating	Operations Manual	24	ECC Training Specialist
Keeping records	Reports & Records	2	ECC Training Specialist
Review		1	ECC Training Specialist

The instructional materials that are used in your training are primarily the manuals that are listed in "Exhibit B" which is attached to this Disclosure Document.

**D. Pre-Opening Obligations**

Before you open your business:

1. If, when you sign your Franchise Agreement, we have not approved the site for the Franchised Business's Premises, we will supply you with our site-selection criteria. We may also provide any on-site evaluation that we consider advisable.
2. We will loan you information regarding building plans and specifications or standard recommended floor plans and specifications of our requirements for design, decoration, layout, equipment, furniture, fixtures and signs for the Franchised Business.
3. We will provide specifications for Eileen's Colossal Cookies uniforms for your employees to be purchased by you directly from our approved suppliers.
4. We will provide you with standardized accounting, cost-control, portion-control, and inventory-control systems.
5. We will provide you with a list of required equipment, supplies, materials, inventory and other items necessary to operate the Franchised Business and a list of approved suppliers of all such items.
6. We will provide you with an initial set of forms, including the standard brochures and various operational forms, such as standardized periodic reporting forms for reporting accounting information, and purchase-order forms.
7. We will provide you with a schedule of items that you may purchase from us. Such items may include customer bags, brochures and other items.
8. We will provide you with a schedule of recommended items such as equipment and supplies that you may purchase from third-party suppliers.
9. We will loan you one registered copy of the Eileen's Colossal Cookies® Manual (with periodic revisions as required). Our customary practice is to deliver the Eileen's Colossal Cookies® Manual to you at or shortly before the training program begins. The table of contents for the manual is attached to this Disclosure Document as Exhibit B.

**E. Post-Opening Obligations**

During the operation of your business:

1. We will always be available for informational telephone assistance during normal business hours.
2. We will provide advice on Local Advertising.
3. We will provide you with any promotional methods and materials we may periodically develop for the System.

4. We may provide continuing advisory assistance in the operation and promotion of the Franchised Business. This assistance may include communicating new developments, improvements in equipment and supplies, and new techniques in advertising, service, and management that are relevant to operating the Franchised Business.
5. If you request, and we can reasonably accommodate that request, we will furnish non-routine guidance and assistance to deal with your unusual or unique operating problems for the fees and charges described in Item 6.
6. We may continue to research and develop new products, services, and techniques.

### **Local Advertising**

You must engage in Local Advertising. The amounts you must spend on Local Advertising are described in Item 6. You must submit, for our prior approval, all materials used for Local Advertising. If, within 10 days from the date we receive submitted materials, you do not receive our written approval, they are considered disapproved. If we believe that advertising materials may injure or harm the System, we may require you to withdraw or discontinue the using previously approved advertising materials.

### **Grand Opening Advertising Program**

During the first four weeks after opening your Franchised Business, you must conduct a grand-opening advertising and promotional program (the "Grand Opening Advertising Program"), on which you may spend up to \$2500 to \$3,000 (the "Grand Opening Advertising Expenditure"). All activities in which you will engage, and all materials you will use for that program (as well as the amounts of money you will spend on it) must be pre-approved by us. The Grand Opening Advertising Expenditure is in addition to the on-going local advertising expenditures you make.

### **Regional Advertising Cooperative**

We or a group of our Franchisees may create a regional advertising cooperative in any ADI, and establish rules and regulations for it. An ADI is Area of Dominant Influence; this is a geographic survey-area created and defined by Arbitron, based on measurable patterns of television viewing. An ADI also takes into account the other available media within the geographic area designated by the ADI.

Should that occur, you must become a member of such a cooperative and make the contributions to the cooperative according to the vote of the required majority. The following provisions apply to the cooperative in which you participate:

1. The cooperative will be organized and governed by its members but, we must be notified and approve the form and organization in advance in writing;
2. The cooperative will be organized for the exclusive purpose of administering advertising programs and developing, subject to our approval, standardized

promotional materials for the members' use in Local Advertising within the cooperative's ADI ;

3. The cooperative may adopt its own rules and procedures, but those rules or procedures must be approved by us and may not restrict nor expand your rights or obligations under your franchise Agreement.
4. Except as otherwise provided in the Franchise Agreement, and subject to our approval, any lawful action of the cooperative (including imposing assessments for Local Advertising) shall be binding on all members of the Cooperative. Such actions must be voted upon at a meeting attended by members possessing more than 50% of the total voting power in the cooperative and approved by a majority of 50% of the total voting power possessed by members in attendance, with each Franchised Business and Company-Owned Unit having one vote, but no franchisee (or commonly controlled group of franchisees) may have more than 25% of the vote in the Cooperative regardless of the number of Franchised Businesses owned.
5. Without our prior written approval, the Cooperative may not use, nor furnish to its members, any advertising or promotional plans or materials; all such plans and materials must be submitted to us for review.
6. The Cooperative may require its members to periodically contribute to it in such amounts as it determines.
7. The cooperative must provide quarterly advertising expenditure reports to us.
8. Advertising Contributions to the cooperative belong to the cooperative. The cooperative may request our assistance in collection of the funds and we will send a "cure letter" to the delinquent franchisee/s advising them that they are committing a default under the Franchise Agreement and must cure such default within 30 days or their franchise may be subject to termination. Upon collection, we will forward amounts due to the cooperative to its treasurer.
9. Company-Owned Units shall contribute to any Cooperative on the same basis as franchisees.

### **Other Advertising Programs**

In addition to the foregoing advertising requirements and programs described in this ITEM 11 you must, at your expense, participate in any other advertising, marketing, and promotional activities and programs (including coupon programs and free-menu-item programs) we may require.

### **Internet Advertising Restrictions**

~~Without our prior written consent, you must not operate, advertise, market, or otherwise promote the Franchised Business on the Internet. Nor may you register any domain name containing the words Eileen's Colossal Cookies®, or establish, operate, or participate in a Web site on which such words appear (other than one operated by us). With respect to any aspect of the System, Chain, or Franchised Business (including the use of the Proprietary Marks), we alone may advertise on the Internet, create or operate a Web site or sites, and use Eileen's Colossal Cookies as part of any domain name.~~

Without our prior written consent, you must not register, create, or operate a website or domain name containing the words Eileen's Colossal Cookies®.

### **Advertising Council**

We do not have any advertising council.

### **Selecting the Location of Your Franchised Business**

You are solely responsible for selecting the site for the Premises. We merely approve your site if it is acceptable. When reviewing proposed sites, we consider factors such as environmental impact, demographic characteristics, traffic patterns, parking, the predominant character of the neighborhood, competition from other businesses providing similar services within the area, the proximity to other businesses and the nature of such businesses, and the size, appearance, and other physical characteristics of the site, as well as any other factors that we consider relevant to approving or disapproving a site.

Our approval of a site is not a representation or warranty that the Franchised Business will be profitable or that your sales will attain any predetermined levels. Approval is intended only to indicate that the proposed site meets our minimum criteria for identifying sites.

We will review site approval submissions on a first-in basis. If we do not approve the proposed site, you have 30 days after we disapprove the proposed site to submit a new site within the Protected Territory for our approval. In any event, however, if a site has not been approved within 90 days of the Agreement Date, we may terminate your Franchise Agreement. In such event, we need not refund to you the Initial Franchise Fee or any other money paid to us.

### **Time between Signing the Franchise Agreement and Opening the Franchised Business**

The typical length of time between your signing of the Franchise Agreement and the opening of your business is expected to be 180 days. Factors that may affect this typical time period include your ability to negotiate and obtain a lease at a satisfactory location, negotiate and obtain financing, procure the requisite building permits, comply with zoning and local ordinances, install equipment, fixtures, and signage, recruit competent staff, and schedule and complete training.

### **Failure to Complete Initial Training**

If we determine, in our sole discretion, that you are unable to satisfactorily complete the training program described above, we have the right to terminate the Franchise Agreement. If the Franchise Agreement is terminated because we make such a determination, we will return the initial Franchise Fee to you, minus the expenses we incur as of the date of termination. When we return said amount, we shall be fully and forever released from any claims or causes of action that you may have under or pursuant to the Franchise Agreement and you shall have no further right, title or interest in the Names and Marks and you agree to return all Manuals, and any other items that we have provided to you.

### **National Sales Conferences**

We may conduct annual National Sales Conferences and Continuing Education Seminars. If we do, we may require the Franchise Owner and employees that we designate to attend.

## **ITEM 12. TERRITORY**

### **Grant for a Specific Area**

Your franchise is granted for a specific location that you select and we approve if acceptable. Our approval of a location is not a representation or warranty that the Franchised Business will be profitable or that your sales will attain any predetermined levels. Approval is intended only to indicate that the proposed location meets our minimum criteria for identifying sites. This location may not be changed. You may operate the Franchised Business only at the approved location.

### **Protected Territory**

We grant you a Protected Territory. The Protected Territory is generally defined in terms of a geographic radius of six miles, containing at least 25,000 people. You may neither solicit nor service customers outside the Protected Territory. For so long as you are not in default, we will not operate, or grant a third party the right to operate, another Eileen's Colossal Cookies® business using the System within the Protected Territory. We do, however, retain the reserved rights and national accounts rights described below.

### **Reserved Rights**

In addition to our right to use and grant others the right to use the Proprietary Marks outside the Protected Territory (regardless how closely located to your Premises), we reserve all rights not expressly granted to you in the Franchise Agreement.

### **National Accounts**

We may provide you with referral customers through a national-accounts system or with special-order customers. You must service these customers according to the provisions in the Eileen's Colossal Cookies Manuals concerning national-accounts and special order customers. If you fail to service any of these customers as required, we may refer that customer and any other national-account and special-order customers in your area to another Franchisee.

### **Sales of Products or Services under a Different Trademark**

Neither Eileen's Colossal Cookies® nor any affiliate has established or has any present plan to establish other franchises or company-owned outlets or other channels of distribution selling or leasing similar products or services under a different trademark.

### **Continuation of Territorial Exclusivity**

Except as described above in this Item 11:

1. The continuation of your territorial rights does not depend on achieving a certain sales volume, market penetration, or other contingency; and;
2. Your Protected Territory may not be altered during the term of your Franchise Agreement.

## ITEM 13. TRADEMARKS

### Principal Trademarks

You will have the right to operate the Franchised Business in accordance with the System under certain trademarks, service marks, trade names, logo types and emblems, including the Name and Mark "Eileen's Colossal Cookies®", and any that we might develop in the future. The Operations Manual contains specifics on how our name and Logos must be used. ECC claims the right to the Trademark and has registered the Trademark with the United States Patent and Trademark Office Principal Register as follows:



Issued September 23, 1997  
Registration # 2099142

Additionally, the Trademark and all associated service marks have been registered with the Secretary of State in the state of Nebraska.

You must follow our rules when you use our marks. You cannot use a name or mark as part of a corporate name or with modifying words, designs or symbols except for those which ECC Franchises to you. You may not use our name or registered marks in connection with the sale of an unauthorized product or service or in a manner not authorized by Eileen's Colossal Cookies Franchising, Inc.

You must notify us immediately when you learn about an infringement of or challenge to your use of our trademark. ECC will take the action we think appropriate. While ECC is not required to defend you against your use of our trademark, ECC will reimburse you for your liability and reasonable cost in connection with defending ECC's trademark. To receive reimbursement, you must have notified ECC immediately when you learned of an infringement or challenge. You must not directly or indirectly contest our right to our trademarks, trade secrets or business techniques that are part of our business.

There are no currently effective material determinations of the Patent and Trademark Office, the Trademark Trial and Appeal Board, the trademark administrator of any state or any court of any jurisdiction in the United States; pending infringement, opposition or cancellation; and pending material litigation involving the principal trademarks ECC does not know of any infringing uses that could materially affect your use of our trademarks.

### **Currently Effective Trademark Determinations**

There are no currently effective material determinations of the U.S. Patent and Trademark Office, Trademark Trial and Appeal Board, the trademark administrator of this state or any court; pending infringement, opposition or cancellation proceedings; or pending material litigation involving the principal trademark.

### **Agreements Significantly Limiting Your Rights to Use the Marks**

There are no agreements that significantly limit our right to use or license the use of our principal trademark in a manner material to you.

### **Protection of Your Right to Use the Trademarks**

If any claim of infringement, unfair competition, or other challenge to your rights to use any Proprietary Property is made, or if you become aware of any use of, or claims to, any Proprietary Property by persons other than us or our franchisees, you must notify us in writing no later than seven days afterwards. We alone determine whether to take any action in connection with any infringement, challenge or claim, and exclusively control any litigation or other proceeding arising out of any infringement, challenge or claim relating to any Proprietary Property. This includes determining whether or not to settle any infringement, challenge, or claim, and on what terms. If we decide to modify or discontinue using any Proprietary Mark and use any additional names or marks, for any reason, you must do so, at your expense. In that event, we have no liability of any nature to you.

### **Knowledge of Superior Rights or Infringing Uses**

We have no actual knowledge of superior prior rights or infringing uses that could materially affect your use of the principal trademarks in any state in which the Franchised Business is to be located.

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

You do not receive the right to use an item covered by a patent or copyright, but you may use our Proprietary Property to operate the Franchised Business. The Proprietary Property includes Confidential Information. "Confidential Information" includes any recipes, knowledge, know-how, technologies, processes, techniques, and any other information that we designate as confidential, proprietary, or trade secrets or that is not readily available in the public domain through any breach of duty to us. Confidential Information includes your Customer List, the Eileen's Colossal Cookies® Manual, and Secret Recipe Products, as well as information relating to recipes and suppliers. The Eileen's Colossal Cookies Manuals are described in Item 11. Although we have not filed an application for a copyright registration for the Eileen's Colossal Cookies® Manual, we claim copyright in it and the information in it is proprietary. You must promptly tell us when you learn about unauthorized use of our proprietary information. We are not obligated to take any action but will respond to this information as we think appropriate. We need not indemnify you for losses arising from your use of our proprietary information.

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

The Franchised Business requires the Manager's day-to-day supervision. The Manager must devote, on a full-time basis, his or her best efforts to managing and operating the Franchised Business. The Manager must be the Franchise Owner unless we permit otherwise. The Franchise Owner is:

1. If the franchisee is an individual, that individual;
2. If the franchisee is a corporation, the individual who owns a majority of the voting and ownership interests in such corporation;
3. If the franchisee is a partnership, any individual who is, or owns a majority of the voting and ownership interests in an entity that is a general partner of such partnership; or
4. If the franchisee is a limited liability company, the individual who owns a majority of the voting and ownership interests in such limited liability company.

Before the Manager, or any successor Manager, may manage the Franchised Business, he or she must complete our Training Program to our satisfaction and acquire any food-safety-program certification that the state or municipality where the Franchised Business is located may require, as well as any other licenses, permits, and certifications that we may require from time to time. Your Manager must sign our standard confidentiality and non-competition agreement. If we permit the Manager to be an individual other than the Franchise Owner, and that Manager fails to satisfy his or her management obligations due to death, disability, termination of employment, or for any other reason, the Franchise Owner must satisfy those obligations until you designate a new Manager acceptable to us, who has successfully completed Basic Management Training.

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

### **Approved Goods and Services**

You may sell only goods and services we have approved. You must sell all goods and services we have approved. We may change the types of authorized goods and services that you must sell and the Franchise Agreement does not restrict our right to do so.

### **Customer Restrictions**

You may neither solicit nor service customers outside of your Protected Territory. We may provide you with referral customers through our national-accounts system or with special-order customers. You must service these customers according to the provisions in the Eileen's Colossal Cookies® Manual concerning national accounts and special-order customers. If you fail to service any of these customers as required, we may refer that customer and any other national-account and special-order customers in the Protected Territory to other Eileen's Colossal Cookies restaurants and may forbid you from soliciting or servicing those customers.

THE BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK

## ITEM 17. RENEWAL, TERMINATION, TRANSFER, AND DISPUTE RESOLUTION

**THIS TABLE LISTS IMPORTANT PROVISIONS OF THE FRANCHISE AND RELATED AGREEMENTS. YOU SHOULD READ THESE PROVISIONS IN THE AGREEMENTS ATTACHED TO THIS DISCLOSURE DOCUMENT.**

<u>PROVISION</u>	<u>SECTION IN FRANCHISE AGREEMENT</u>	<u>SUMMARY</u>
a. Term of Franchise	Section 2	Term is equal to 10 years
b. Renewal or Extension of Term	Section 2	If you are in good standing you can renew for 10 years
c. Requirements for Renewal or Extension	Section 2	Notify 6 months prior, Sign then current agreement
d. Termination by you	Section 16	None
e. Termination by ECC without cause	None	None
f. Termination by ECC with cause	Section 16	ECC can terminate only if you default
g. "Cause" defined Defaults which can Be cured	Section 16	You have 10 days to cure: Non-payment of fees, Non-submission of reports
h. "Cause" defined Defaults which cannot be cured.	Section 16	Non-curable Defaults: abandonment, bankruptcy unauthorized transfer
i. Your obligations on Termination/ Non-renewal	Section 17	Obligations include: de-identification and payments of amounts due. (Also see "r" below).
j. Assignment by ECC	Section 19	No restrictions
k. "Transfer" by you Definition:	Section 19	Includes transfer of contracts or assets or ownership of 51% or more.
l. ECC 's approval of Transfer by Franchisee	Section 19	ECC has the right to approve all transfers but will not unreasonably withhold approval
<u>PROVISION</u>	<u>SECTION IN FRANCHISE AGREEMENT</u>	<u>SUMMARY</u>

m. Conditions for ECC 's Transfer approval	Section 19	New Franchisee/owner must qualify, transfer fee paid, agreements approved, training arranged, release from your current agreement signed by new owner Franchisee (Also see 'r' below)
n. ECC 's right of first refusal	Section 19	ECC has the right to match any offer for your business
o. ECC 's option to purchase	Section 19	ECC has the right to purchase your inventory and equipment at fair market value
p. Your death or disability	Section 19	Franchise may be sold or terminated. Acceleration provision is canceled if terminated
q. Non-competition Covenants during Franchise term	Section 18	No involvement in a competing business anywhere
r. Non-competition Covenants after termination/expires	Section 18	No competing within 2 years or within 50 miles
s. Modification of Agreement	Section 23	None, except Manuals may be subject to change
t. Integration/Merger	None	No Provision
u. Dispute resolution by Arbitration or Mediation	Section 23	No provision for Arbitration. Private Mediation must be pursued before judicial action for any dispute except monies owed.
v. Choice of Forum	Section 23	Litigation must be in Adams County, Nebraska
w. Choice of Law	Section 23	Nebraska Law applies

The following states have statutes which may supersede the Franchise Agreement in your relationship with us, including the areas of termination and renewal of your Franchise: ARKANSAS [Stat. Section 70-807], CALIFORNIA [Bus. & Prof. Code Sections 20000-20043], CONNECTICUT [Gen. Stat. Section 42-133e et seq.], DELAWARE [Code, tit.], HAWAII [Rev. Stat. Section 482E-1], ILLINOIS [815 ILCS 705/1 - 44], INDIANA [Stat. Section 23-2-2.7], IOWA [Code Section 523H.1-523H.17], MICHIGAN [Stat. Section 19.854(27)], MINNESOTA [Stat. Section 80C.14], MISSISSIPPI [Code Section 75-24-51], MISSOURI [Stat. Section 407.400], NEBRASKA [Rev. Stat. Section 87-401], NEW JERSEY [Stat. Section 56:10-1], VIRGINIA [Code 13.1-557-574-13.1-564], WASHINGTON [Code Section 19.100.180], and WISCONSIN [Stat. Section 135.03].

These and other states may have court decisions that may supersede the Franchise Agreement in your relationship with us, including the areas of termination and renewal of your franchise.

The following states have statutes which limit our ability to restrict your activity after the Franchise Agreement has ended: California Business and Professional Code Section 16,600, Florida Statutes Section 542.33, Michigan Compiled Laws Section 445.771 et seq., Montana Codes Section 30-14-201, North Dakota Century Code Section 9-08-06, Oklahoma Statutes Section 15-217-19, Washington Code Section 19.86.030. Other states have court decisions limiting our ability to restrict your activity after the Franchise Agreement has ended.

The following states have statutes which restrict or prohibit the imposition of liquidated damage provisions: California [Civil Code Section 1671], Indiana [1C 23-2-2.71-1(10)], Minnesota [Rule 2860.4400J], South Dakota [Civil Law 53-9-5]. Some state courts also restrict the imposition of liquidated damages. The imposition of liquidated damages may also be restricted by fair practice laws, contract law, and state and federal court decisions.

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

## **ITEM 18. PUBLIC FIGURES**

We do not currently use any public figure to promote our franchise.

## **ITEM 19. FINANCIAL PERFORMANCE REPRESENTATIONS**

ECC does not furnish or authorize its salespersons to furnish any oral or written information concerning the actual or potential sales, costs, income or profits of a ECC business. Actual results vary from unit to unit and ECC cannot estimate the results of any particular franchise.

**ITEM 20. OUTLETS AND FRANCHISEE INFORMATION**

<b><u>System Wide Outlet Summary</u></b>				
<b>For years <del>2013 to 2015</del> 2014 to 2016</b>				
<b>Outlet Type</b>	<b>Year</b>	<b>Outlets at the Start of the Year</b>	<b>Outlets at the End of the Year</b>	<b>Net Change</b>
<b>Franchised</b>	2013	13	16	+3
	2014	16	18	+2
	2015	18	19	+1
	2016	19	22	+3
<b>Company Owned</b>	2013	3	3	
	2014	3	3	
	2015	3	3	
	2016	3	3	
<b>Total Outlets</b>	2013	16	19	+3
	2014	19	21	+2
	2015	21	22	+1
	2016	22	25	+3

<b><u>Transfers of Franchised Outlets to New Owners (other than the Franchisor)</u></b>		
<b>For years <del>2013 to 2015</del> 2014 to 2016</b>		
<b>State</b>	<b>Year</b>	<b>Number of Transfers</b>
Wyoming	2013	0
	2014	0
	2015	1
	2016	0
Nebraska	2013	1
	2014	1
	2015	0
	2016	0
<b>Total</b>	2013	1
	2014	1
	2015	1
	2016	0

<p><b><u>Status of Franchised Outlets</u></b>  <b>For Years <del>2013 to 2015</del> 2014 to 2016</b></p>
--

State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations (Other Reasons)	Outlets at End of the Year
NE	2013	6						6
	2014	6						6
	2015	6						6
	2016	6						6
SD	2013	4						4
	2014	1	1					2
	2015	2						2
	2016	2						2
CO	2013	3						3
	2014	3						3
	2015	3						3
	2016	3						3
OK	2013	4						4
	2014	1	1					2
	2015	2	1					3
	2016	3	1					4
KS	2013	4						4
	2014	1						1
	2015	1						1
	2016	1						1
MN	2013	0	4					4
	2014	1						1
	2015	1						1
	2016	1						1
TX	2013	0	4					4
	2014	1						1

	2015	1						1
	2016	1						1
WY	2013	4	4					2
	2014	2						2
	2015	2						2
	2016	2						2
IA	2014	0						0
	2015	0						0
	2016	0	1					1
MO	2014	0						0
	2015	0						0
	2016	0	1					1
State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations (Other Reasons)	Outlets at End of the Year
<b>Totals</b>	<b>2013</b>	<b>13</b>	<b>3</b>					<b>16</b>
	<b>2014</b>	<b>16</b>	<b>2</b>					<b>18</b>
	<b>2015</b>	<b>18</b>	<b>1</b>					<b>19</b>
	<b>2016</b>	<b>19</b>	<b>3</b>					<b>22</b>

<b>Status of Company-Owned Outlets</b>							
<b>For years <del>2013 to 2015</del> 2014 to 2016</b>							
State	Year	Outlets at Start of the Year	Outlets Opened	Outlets Reacquired from Franchisees	Outlets Closed	Outlets Sold to Franchisees	Outlets at End of the Year
NE	<del>2013</del>	<del>3</del>					<del>3</del>
	2014	3					3
	2015	3					3
	2016	3					3
<b>Totals</b>	<del>2013</del>	<del>3</del>					<del>3</del>
	2014	3					3
	2015	3					3
	2016	3					3

<b>Projected New Franchised Outlets</b>			
<b>As of December 31, <del>2015</del> 2016</b>			
State	Franchise Agreements signed But Outlet Not Opened	Projected New Franchised Outlets in the Next Fiscal Year	Projected New Company-Owned Outlets in the Current Fiscal Year

**Eileen's Colossal Cookies® Franchisees as of December 31, ~~2015~~ 2016**

ADDRESS,CITY STATE	CONTACT NAME COMPANY NAME	DATE SOLD	PHONE	STATUS
3757 E. Lincolnway SteB05 Cheyenne, WY 82001-6343	Keith Bellis Bell-Hall Enterprises	12/13/93	(307) 638-2121	Operational
5500 Old Cheney Rd. Lincoln, NE 68516	Molly and Brandon Kircher MGGB Enterprises	12/24/94	(402) 421-6609	Operational
2146 35 <sup>th</sup> Ave Greeley, CO 80631	Virginia Koenig Virginia L. Koenig, L.L.C	2/22/96	(970) 330-8363	Operational
14532 West Center Omaha, NE 68144	Pat and Don Holt Cookies, Inc.	6/12/96	(402) 266-9151	Operational
L&M Enterprises 2614 S. Timberline Ft. Collins, CO 80525	LaVaughn & Marty Gilbert	5/26/98	(970) 266-9151	Operational
Littleton, CO 80123	Denise Rose	7/11/98	not known	Closed: April 28, 2000
Cheyenne Montana Shopping Center 115 & Academy Colorado Springs, CO 80906	William & Norma Parsons Birch Hollow Drive Lincoln, NE 68516	5/6/99	not known	Closed August 5, 2000
2829 King Avenue West, Suite D Billings, MT 59102	Cal & Mary Bretz Cookie Dream	4/9/02	(406) 652-0434	Closed Jan 27, 2007
1333 North Santa Fe, Suite 103 Edmond, Oklahoma 73003	Linda and Rick Engel	6/23/03	405-216-0244	Operational
8244 Northern Lights Dr. Suite 100 Lincoln, NE 68504	Molly and Brandon Kircher MGGB Enterprises	3/23/04	402- 477-6609	Operational
1110 S. 71 <sup>st</sup> , #M Omaha, NE 68124	Carol Godbout Kyle Godbout	6/3/05	402-932-3262	Operational

ADDRESS,CITY STATE	CONTACT NAME COMPANY NAME	DATE SOLD	PHONE	STATUS
1109 W. Omaha Rapid City, SD 57701	Jill and Mark Eisenbraun	4/12/06	605-718-2842	Operational
213 N. Stephanie St. Henderson, NV 89074	Norah & Todd George	1/09/07	702-333-0591	Closed April 5, 2008
4931 W. 6 <sup>th</sup> Street, #124 Lawrence, KS 66049	Becky and Rodney Johansen	9/05/08	785-856-2253	Operational
8410 S. 73 <sup>rd</sup> Plaza Papillion, NE 68046	Brian Speer	8/28/09	402-933-1555	Operational
2201 Wildcat Reserve Pkwy Highlands Ranch, CO 80129	Joyce and Tim Carnes	6/1/11	303-683-0002	Operational
210 S. 16 <sup>th</sup> St. #109 Omaha, NE 68102	Carol Godbout Kyle Godbout	6/6/12	402-932-2282	Operational
401 W. Whitestone Blvd Cedar Park, TX 78613	Sunnie and Jason Fox	6/21/12	512-456-7110	Operational
4801 E. 2 <sup>nd</sup> Street Casper, WY 82609	Joe & Susan Schilling	2/19/13	307-333-4525	Operational
6880 Boudin St. Prior Lake, MN 55372	Colleen and Sean O'Malley	7/30/13	952-226-2253	Operational
9044 S. Sooner Rd. Oklahoma City, OK 73165	Lauri Hess	1/21/14	405-255-1970	Operational
2101 W. 41 <sup>st</sup> Street Sioux Falls, SD 57105	Kristi & Jim Westra	8/19/14	605-275-2014	Operational
1231 Garth Brooks Blvd. Yukon, OK 73099	Steven Shell	3/18/15	405-350-2076	Operational
1851 Madison Ave, Ste. 702 Council Bluffs, IA 51503	Jim & Karen Sulentic	1/7/16	712-256-1910	Operational
925 W. Liberty Dr. Liberty, MO 64068	John & Kristen Uhlman	10/30/15	816-429-5150	Operational

ADDRESS,CITY STATE	CONTACT NAME COMPANY NAME	DATE SOLD	PHONE	STATUS
222 W. Main Street Ardmore, OK 73401	Ted & Ronda Shell	4/26/16	580-798-5292	Operational

**Eileen's Colossal Cookies® Company Owned Stores as of  
December 31, 2015 2016**

ADDRESS,CITY STATE	CONTACT NAME	DATE OPENED	PHONE	STATUS
730 West 2 <sup>nd</sup> Street Hastings, NE 68901	Eileen Harman	10/01/1983	402-462-2572	Operational
2418 N. Webb Rd Grand Island, NE 68803	Eileen Harman	04/13/1987	308-382-0462	Operational
224 W. 42 <sup>nd</sup> Street Kearney, NE 68845	Eileen Harman	05/31/1991	308-237-4000	Operational

ITEM 21. FINANCIAL STATEMENTS



CONTRYMAN ASSOCIATES, P.C.

Certified Public Accountants

615 West 1 <sup>st</sup> Street P.O. Box 700 Grand Island NE 68802 308-382-5720 Fax: 308-382-5945	5807 Osborne Drive West P.O. Box 2026 Hastings NE 68902 402-463-6711 Fax: 402-463-6713	315 West 60 <sup>th</sup> , Suite 500 P.O. Box 1746 Kearney NE 68848 308-237-5930 Fax: 308-234-4410	707 East Pacific P.O. Drawer H Lexington NE 68850 308-324-2368 Fax: 308-324-2360	1001 West 27 <sup>th</sup> Street P.O. Box 2246 Scottsbluff NE 69363 308-635-7705 Fax: 308-635-0599	1611 16 <sup>th</sup> Street P.O. Box 191 Central City NE 68825 308-946-3870 Fax: 308-946-3870	826 G Street Geneva, NE 68361 402-759-3002 Fax: 402-759-4342
---	--	---	--	---	--	---

INDEPENDENT AUDITORS' CONSENT

To: ~~The Board of Directors of~~  
Eileen's Colossal Cookies Franchising, Inc.

Franchise Disclosure Document (FDD)

~~We consent to the use in your Uniform Franchise Offering Circular (UFOC) for Prospective Franchisees of our annual audit reports on the financial statements of Eileen's Colossal Cookies Franchising, Inc.~~

~~April 21, 2016~~

Signed: Contryman Associates, P.C.  
Certified Public Accountants



# CONTRYMAN ASSOCIATES, P.C.

Certified Public Accountants

---

505 North Diers Ave P.O. Box 700 Grand Island NE 68802 308-382-5720 Fax: 308-382-5945	5807 Osborne Drive West P.O. Box 2026 Hastings NE 68902 402-463-6711 Fax: 402-463-6713	315 West 60 <sup>th</sup> , Suite 500 P.O. Box 1746 Kearney NE 68848 308-237-5930 Fax: 308-234-4410	707 East Pacific P.O. Drawer H Lexington NE 68850 308-324-2368 Fax: 308-324-2360	1001 West 27 <sup>th</sup> Street P.O. Box 2246 Scottsbluff NE 69363 308-635-7705 Fax: 308-635-0599	1611 16 <sup>th</sup> Street P.O. Box 191 Central City NE 68826 308-946-3870 Fax: 308-946-3831	826 G Street Geneva, NE 68361 402-759-3002 Fax: 402-759-4342
---	--	---	--	---	--	---

---

## Independent Auditors' Consent

Contryman Associates, P.C. consents to the use in the Franchise Disclosure Document issued by Eileen's Colossal Cookies Franchising, Inc. ("Franchisor") on January 1, 2017, as it may be amended, of our report dated March 1, 2017, relating to the financial statements of Franchisor for the periods ending December 31, 2016, 2015, and 2014.

*Contryman Associates PC*  
Certified Public Accountants  
Grand Island, Nebraska  
March 1, 2017

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

Members: American Institute of Certified Public Accountants - CPAmerica International

**EILEEN'S COLOSSAL COOKIES FRANCHISING, INC.**

FINANCIAL STATEMENTS

December 31, ~~2015, 2014, and 2013~~

2016, 2015, and 2014

**EILEEN'S COLOSSAL COOKIES FRANCHISING, INC.**TABLE OF CONTENTSDecember 31, ~~2015, 2014, and 2013~~

2016, 2015, and 2014

	<u>Page #</u>
INDEPENDENT AUDITORS' REPORT.....	1-2
FINANCIAL STATEMENTS:	
Balance Sheets .....	3
Statements of Income and Retained Earnings .....	4
Statements of Cash Flows.....	5
Notes to Financial Statements.....	6-8

## Independent Auditors' Report

~~April 21, 2016~~

To the Stockholders  
Eileen's Colossal Cookies Franchising, Inc.  
Hastings, Nebraska

### Report on the Financial Statements

We have audited the accompanying financial statements of Eileen's Colossal Cookies Franchising, Inc. (an S Corporation), which comprise the balance sheets as of December 31, ~~2015, 2014, and 2013~~ 2016, 2015, and 2014, and the related statements of income and retained earnings, and cash flows for the years then ended, and the related notes to the financial statements.

### Management's Responsibility for the Financial Statements

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

### Auditors' Responsibility

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits 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 financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the 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 entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating

the appropriateness accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the 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 financial statements referred to above present fairly, in all material respects, the financial position of Eileen's Colossal Cookies Franchising, Inc., as of December 31, 2016, 2015, and 2014, and the results of its operations and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

*Contryman Associated P.C.*  
Certified Public Accountants  
~~Hastings, Nebraska~~  
Grand Island, Nebraska

March 1, 2017

## EILEEN'S COLOSSAL COOKIES FRANCHISING, INC.

## BALANCE SHEETS

December 31, 2015, 2014, and ~~2013~~ASSETS

	<u>2015</u>	<u>2014</u>	<u><del>2013</del></u>
CURRENT ASSETS:			
Cash	305,145	229,040	<del>464,488</del>
Royalties receivable	50,288	52,771	<del>35,044</del>
Franchisees receivable	1,551	392	<del>3,063</del>
Prepaid supplies	11,374	9,726	<del>20,515</del>
TOTAL CURRENT ASSETS	<u>368,358</u>	<u>291,929</u>	<u><del>523,110</del></u>
PROPERTY AND EQUIPMENT:			
Equipment	28,803	28,803	<del>28,179</del>
Vehicle	56,265	23,956	<del>23,956</del>
Accumulated depreciation	(30,272)	(43,576)	<del>(38,691)</del>
NET PROPERTY AND EQUIPMENT	<u>54,796</u>	<u>9,183</u>	<u><del>13,444</del></u>
OTHER ASSETS:			
Stock subscription	0	0	<del>1,000</del>
Intangible assets	11,897	847	<del>847</del>
Accumulated amortization	(1,400)	(847)	<del>(847)</del>
TOTAL OTHER ASSETS	<u>10,497</u>	<u>0</u>	<u><del>1,000</del></u>
TOTAL ASSETS	<u><u>433,651</u></u>	<u><u>301,112</u></u>	<u><u><del>537,554</del></u></u>

LIABILITIES AND STOCKHOLDER'S EQUITY

CURRENT LIABILITIES:			
Accounts payable	2,101	7,543	<del>7,014</del>
TOTAL LIABILITIES	<u>2,101</u>	<u>7,543</u>	<u><del>7,014</del></u>
STOCKHOLDER'S EQUITY:			
Common stock (5,000 shares authorized @ \$1 par; 1,000 shares issued and outstanding)	1,000	1,000	<del>1,000</del>
Retained earnings	430,550	292,569	<del>529,540</del>
TOTAL STOCKHOLDER'S EQUITY	<u>431,550</u>	<u>293,569</u>	<u><del>530,540</del></u>
TOTAL LIABILITIES AND STOCKHOLDER'S EQUITY	<u><u>433,651</u></u>	<u><u>301,112</u></u>	<u><u><del>537,554</del></u></u>

*See accompanying notes*

**EILEEN'S COLOSSAL COOKIES FRANCHISING, INC.****BALANCE SHEETS**

December 31, 2016, 2015, and 2014

ASSETS

	<u>2016</u>	<u>2015</u>	<u>2014</u>
<b>CURRENT ASSETS:</b>			
Cash	225,964	305,145	229,040
Royalties receivable	53,845	36,067	41,348
Royalties receivable, related party	6,361	14,221	11,423
Franchisees receivable	879	1,551	392
Prepaid paper supplies	14,462	11,374	9,726
Prepaid insurance	2,749	0	0
<b>TOTAL CURRENT ASSETS</b>	<u>304,260</u>	<u>368,358</u>	<u>291,929</u>
<b>PROPERTY AND EQUIPMENT:</b>			
Equipment	28,803	28,803	28,803
Vehicle	0	56,265	23,956
Leasehold improvements	12,240	0	0
Accumulated depreciation and amortization	<u>(28,813)</u>	<u>(30,272)</u>	<u>(43,576)</u>
<b>NET PROPERTY AND EQUIPMENT</b>	<u>12,230</u>	<u>54,796</u>	<u>9,183</u>
<b>OTHER ASSETS:</b>			
Intangible assets	11,897	11,897	847
Accumulated amortization	<u>(3,610)</u>	<u>(1,400)</u>	<u>(847)</u>
<b>TOTAL OTHER ASSETS</b>	<u>8,287</u>	<u>10,497</u>	<u>0</u>
<b>TOTAL ASSETS</b>	<u>324,777</u>	<u>433,651</u>	<u>301,112</u>

LIABILITIES AND STOCKHOLDERS' EQUITY

<b>CURRENT LIABILITIES:</b>			
Accounts payable	7,788	2,101	7,543
Accrued payroll tax	3,641	0	0
<b>TOTAL LIABILITIES</b>	<u>11,429</u>	<u>2,101</u>	<u>7,543</u>

## STOCKHOLDERS' EQUITY:

Common stock (5,000 shares authorized @ \$1 par; 1,000 shares issued and outstanding)	1,000	1,000	1,000
Retained earnings	<u>312,348</u>	<u>430,550</u>	<u>292,569</u>
TOTAL STOCKHOLDERS' EQUITY	<u>313,348</u>	<u>431,550</u>	<u>293,569</u>
 TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	 <u><u>324,777</u></u>	 <u><u>433,651</u></u>	 <u><u>301,112</u></u>

**EILEEN'S COLOSSAL COOKIES FRANCHISING, INC.**

## STATEMENTS OF INCOME AND RETAINED EARNINGS

Years Ended December 31, 2015, 2014, and ~~2013~~

	<u>2015</u>	<u>2014</u>	<u><del>2013</del></u>
INCOME:			
Royalties	531,035	444,544	<del>385,217</del>
Franchising fees	47,500	42,500	<del>45,000</del>
Other franchising income	56,849	48,347	<del>35,468</del>
Other income	341	155	<del>0</del>
Gain on sale of asset	5,594	0	<del>0</del>
TOTAL INCOME	<u>641,319</u>	<u>535,546</u>	<u><del>465,685</del></u>
OPERATING EXPENSES:			
Advertising	239	432	<del>544</del>
Auto expense	6,293	6,872	<del>8,023</del>
Depreciation expense	6,546	4,885	<del>5,093</del>
Dues and subscriptions	3,132	2,352	<del>4,173</del>
Insurance	1,326	1,768	<del>1,441</del>
Meals and entertainment	5,587	6,856	<del>5,436</del>
Miscellaneous	5,604	5,043	<del>2,093</del>
Office expense	10,777	14,108	<del>9,744</del>
Postage	3,140	3,529	<del>3,381</del>
Professional fees	8,415	11,892	<del>4,895</del>
Reimbursed wages	150,060	114,432	<del>105,470</del>
Rent	12,600	12,600	<del>12,600</del>
Repairs and maintenance	299	140	<del>135</del>
Supplies	869	0	<del>1,850</del>
Telephone	2,015	2,417	<del>1,961</del>
Travel expenses	7,870	11,837	<del>29,080</del>
Utilities	2,230	2,354	<del>2,171</del>
TOTAL OPERATING EXPENSES	<u>227,002</u>	<u>201,517</u>	<u><del>198,090</del></u>
NET INCOME	414,317	334,029	<del>267,595</del>
Retained earnings-beginning of year	292,569	529,540	<del>406,945</del>
Distributions to stockholder	<u>(276,336)</u>	<u>(571,000)</u>	<u><del>(145,000)</del></u>
RETAINED EARNINGS - END OF YEAR	<u><u>430,550</u></u>	<u><u>292,569</u></u>	<u><u><del>529,540</del></u></u>

*See accompanying notes*

**EILEEN'S COLOSSAL COOKIES FRANCHISING, INC.**

## STATEMENTS OF INCOME AND RETAINED EARNINGS

Years Ended December 31, 2016, 2015, and 2014

	<u>2016</u>	<u>2015</u>	<u>2014</u>
<b>OPERATING INCOME:</b>			
Royalties	636,749	531,035	444,544
Franchising fees	40,000	47,500	42,500
Other franchising income	61,471	57,494	48,347
<b>TOTAL OPERATING INCOME</b>	<u>738,220</u>	<u>636,029</u>	<u>535,391</u>
<b>OPERATING EXPENSES:</b>			
Officer salaries	43,846	0	0
Other salaries	49,514	0	0
Payroll taxes	7,837	0	0
Employee benefits	1,462	0	0
Advertising	1,611	239	432
Auto expense	5,151	6,293	6,872
Amortization expense	2,501	553	0
Depreciation expense	7,627	5,993	4,885
Dues and subscriptions	3,742	3,132	2,352
Insurance	576	1,326	1,768
Meals and entertainment	10,232	5,587	6,856
Miscellaneous	1,774	6,198	5,043
Office supplies	24,293	10,742	14,108
Postage	2,805	3,013	3,529
Professional fees	12,706	8,415	11,892
Reimbursed wages	38,473	150,060	114,432
Rent	14,985	12,600	12,600
Repairs and maintenance	417	299	140
Supplies	(1,582)	869	0
Telephone	7,611	2,015	2,417
Travel expenses	19,366	7,870	11,837
Utilities	2,465	2,230	2,354
<b>TOTAL OPERATING EXPENSES</b>	<u>257,412</u>	<u>227,434</u>	<u>201,517</u>
<b>OTHER INCOME (EXPENSE):</b>			
Other income	42	128	155
Gain (loss) on sale of asset	(16,678)	5,594	0

TOTAL OTHER INCOME (EXPENSE)	<u>(16,636)</u>	<u>5,722</u>	<u>155</u>
NET INCOME	464,172	414,317	334,029
Retained earnings-beginning of year	430,550	292,569	529,540
Distributions to stockholders	<u>(582,374)</u>	<u>(276,336)</u>	<u>(571,000)</u>
RETAINED EARNINGS - END OF YEAR	<u><u>312,348</u></u>	<u><u>430,550</u></u>	<u><u>292,569</u></u>

## EILEEN'S COLOSSAL COOKIES FRANCHISING, INC.

## STATEMENTS OF CASH FLOWS

Years Ended December 31, 2015, 2014, and ~~2013~~

	<u>2015</u>	<u>2014</u>	<u><del>2013</del></u>
OPERATING ACTIVITIES:			
Net income	414,317	334,029	<del>267,595</del>
Items not requiring cash:			
Depreciation	6,546	4,885	<del>5,093</del>
Gain on sale of asset	(5,594)	0	<del>0</del>
(Increase) decrease in assets:			
Royalties receivable	2,483	(17,727)	<del>(2,863)</del>
Franchisees receivable	(1,159)	2,671	<del>8,822</del>
Prepaid paper supplies	(1,648)	10,789	<del>28,205</del>
Stock subscription	0	1,000	<del>0</del>
Increase (decrease) in liabilities:			
Accounts payable	(5,442)	529	<del>6,514</del>
NET OPERATING ACTIVITIES	<u>409,503</u>	<u>336,176</u>	<u><del>313,366</del></u>
INVESTING ACTIVITIES:			
Purchase of property and equipment	<u>(57,062)</u>	<u>(624)</u>	<u><del>0</del></u>
FINANCING ACTIVITIES:			
Distribution to stockholder	<u>(276,336)</u>	<u>(571,000)</u>	<u><del>(145,000)</del></u>
NET INCREASE (DECREASE) IN CASH	76,105	(235,448)	<del>168,366</del>
Cash - beginning of year	<u>229,040</u>	<u>464,488</u>	<u><del>296,122</del></u>
CASH - END OF YEAR	<u><u>305,145</u></u>	<u><u>229,040</u></u>	<u><u><del>464,488</del></u></u>

*See accompanying notes*

## STATEMENTS OF CASH FLOWS

Years Ended December 31, 2016, 2015, and 2014

	<u>2016</u>	<u>2015</u>	<u>2014</u>
<b>OPERATING ACTIVITIES:</b>			
Net income	464,172	414,317	334,029
Items not requiring cash:			
Depreciation and amortization	10,128	6,546	4,885
(Gain) loss on sale of asset	16,678	(5,594)	0
(Increase) decrease in assets:			
Royalties receivable	(9,918)	2,483	(17,727)
Franchisees receivable	672	(1,159)	2,671
Prepaid paper supplies	(3,088)	(1,648)	10,789
Prepaid insurance	(2,749)	0	0
Stock subscription	0	0	1,000
Increase in liabilities:			
Accounts payable	5,687	(5,442)	529
Accrued payroll tax	3,641	0	0
<b>NET OPERATING ACTIVITIES</b>	<u>485,223</u>	<u>409,503</u>	<u>336,176</u>
<b>INVESTING ACTIVITIES:</b>			
Proceeds from sale of equipment	30,210	0	0
Purchase of equipment and leasehold improvements	(12,240)	(57,062)	(624)
<b>NET INVESTING ACTIVITIES</b>	<u>17,970</u>	<u>(57,062)</u>	<u>(624)</u>
<b>FINANCING ACTIVITIES:</b>			
Distribution to stockholder	(582,374)	(276,336)	(571,000)
<b>NET INCREASE (DECREASE) IN CASH</b>	(79,181)	76,105	(235,448)
Cash - beginning of year	<u>305,145</u>	<u>229,040</u>	<u>464,488</u>
<b>CASH - END OF YEAR</b>	<u><u>225,964</u></u>	<u><u>305,145</u></u>	<u><u>229,040</u></u>

**EILEEN'S COLOSSAL COOKIES FRANCHISING, INC.**

## NOTES TO FINANCIAL STATEMENTS

December 31, ~~2015, 2014, and 2013~~

2016, 2015, and 2014

NOTE 1: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES:Nature of Business

Eileen's Colossal Cookies Franchising, Inc., (the Company) is the franchisor of Eileen's Colossal Cookies which grants to franchisees the use of the name, logo, and recipes and receives franchise fees and royalties.

Receivables

The Company extends unsecured credit to its franchisees and periodically reviews the accounts receivable to determine those accounts deemed uncollectible. Receivables are carried at their estimated collectible amounts. The Company does not assess finance charges on unpaid balances. Management has determined that an allowance for doubtful accounts is not necessary.

Property and Equipment

Property and equipment are stated at historical cost and depreciated over the estimated useful life of each asset. Annual depreciation is primarily computed using the straight-line methods with lives from 5-7 years. Amortization of leasehold improvements is computed using the straight-line methods over the shorter of the remaining lease term or the estimated useful lives of the improvements.

Advertising Costs

The Company expenses advertising costs as incurred.

Income Taxes

The Company has elected to be an S Corporation for federal and state income tax purposes, under the Internal Revenue Code and the State of Nebraska. In lieu of corporation income taxes, the stockholders of an S corporation are taxed on their proportionate share of the Company's taxable income, therefore no liability for income taxes has been included in these financial statements.

Reclassification of Prior Year Amounts

Certain items previously presented for 2014 and 2015 have been reclassified in the accompanying financial statements to conform to the 2016 presentation.

-6-

**EILEEN'S COLOSSAL COOKIES FRANCHISING, INC.**

## NOTES TO FINANCIAL STATEMENTS (CONTINUED)

December 31, 2015, 2014, and 2013

2016, 2015, and 2014

NOTE 1: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED):Use of Estimates

The preparation of financial statements in accordance with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Subsequent Events

The Company has evaluated subsequent events through March 1, 2017, the date which the financial statements were available to be issued.

NOTE 2: FRANCHISES

The Company executes franchise agreements that set the terms of its arrangement with each store opened. Initial franchise fees of \$20,000 are recognized when conditions relating to the franchise have been performed. Continuing fees for royalties are charged based upon 5% or 6% of sales depending on the date the franchise agreement was signed. Transfer fees of up to \$7,500 may be charged when stores are sold or transferred to a new location.

The Company sold two franchises in each of the years ending December 31, 2015, 2014, and 2013 2016, 2015, and 2014. ~~The Company had eighteen franchises in 2015, sixteen franchises in 2014, and thirteen franchises in 2013. The Company also has three outlet stores that are owned by Eileen's Colossal Cookies, Inc., a corporation who has the same stockholder.~~

The Company had a total of 24 franchises in 2016, 22 franchises in 2015 and 20 franchises in 2014. Of these franchises, three are owned by Eileen's Colossal Cookies, Inc., a corporation who has the same stockholders as the Company.

NOTE 3: LEASE EXPENSE

~~The Company leases office space on a month to month basis. Lease payments were \$12,600 for 2015, 2014 and 2013.~~

OPERATING LEASE

In August, 2016, the Company entered into a new operating lease agreement for office space for a term of seven years beginning in November, 2016 at a monthly rate of \$2,290. The lease contains a single option to extend the initial term of the lease for an additional seven years at a monthly rate of \$2,475 by providing notice to the lessor at least six months prior to the end of the initial term.

Prior to November, 2016, the Company leased office space on a month to month basis at a monthly rate of \$1,050. Total rent payments were \$14,985, \$12,600, and \$12,600 for the years ending December 31, 2016, 2015 and 2014, respectively.

Future minimum rental payments under the lease agreement are as follows:

Year ending December 31:	
2017	27,480
2018	27,480
2019	27,480
2020	27,480
2021	27,480
Thereafter	50,380
Total minimum payments required	<u>187,780</u>

NOTE 4: RELATED PARTY TRANSACTIONS

The Company engages in business with Eileen's Colossal Cookies, Inc., a corporation who has the same stockholders and has transactions as follows:

	<u>2015</u>	<u>2014</u>	<u>2013</u>
Royalties	<del>115,381</del>	<del>108,547</del>	<del>90,921</del>
Royalties receivable	14,221	11,423	4,190
Franchisees receivable	0	563	1,245

  

	<u>2016</u>	<u>2015</u>	<u>2014</u>
Royalties	121,244	115,392	107,098
Royalties receivable	6,361	14,221	11,423
Franchisees receivable	0	100	563
Reimbursed wages	38,473	150,060	114,432

**ITEM 22. CONTRACTS**

**FRANCHISE AGREEMENT**

**FRANCHISE AGREEMENT**

BETWEEN

Eileen's Colossal Cookies Franchising, Inc.

(A Nebraska Corporation)

and

\_\_\_\_\_  
\_\_\_\_\_

Phone Number (\_\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

Fax Number (\_\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

Date \_\_\_\_\_

**TABLE OF CONTENTS**

<b>SECTION</b>	<b>16</b> <b>PAGE</b>
1. <u>GRANT AND FRANCHISE FEE</u> .....	1
A. <u>Grant of Franchise and Territory</u> .....	1
B. <u>Franchisee's Initial Franchise Fee</u> .....	1
2. <u>TERM AND RENEWAL</u> .....	2
A. <u>Term</u> .....	2
B. <u>Renewal</u> .....	2
3. <u>FRANCHISED BUSINESS LOCATION</u> .....	3
A. <u>Operation of Franchised Business</u> .....	3
B. <u>Selection of location by Franchisee</u> .....	3
C. <u>Opening of Franchised Business</u> .....	3
4. <u>EQUIPMENT AND MATERIALS</u> .....	3
A. <u>Use of Proper Equipment and Materials</u> .....	3
B. <u>Specification Standards For Equipment</u> .....	3
5. <u>TRAINING AND ASSISTANCE BY ECC</u> .....	3
A. <u>Technical Support</u> .....	3
B. <u>Non-Completion of Training by Franchisee</u> .....	4
C. <u>Additional Training Requirements</u> .....	4
6. <u>PROPRIETARY NAMES AND MARKS</u> .....	4
A. <u>ECC's Ownership of Names and Marks</u> .....	4
B. <u>Franchisee's Use of Names and Marks</u> .....	5
C. <u>Unauthorized Use of Names and Marks</u> .....	5
D. <u>ECC's Right to Modify</u> .....	5
E. <u>ECC's Right to Inspect Franchised Business</u> .....	5
7. <u>CONFIDENTIAL OPERATIONS MANUALS</u> .....	6
8. <u>CONFIDENTIALITY OF PROPRIETARY INFORMATION</u> .....	6
A. <u>Franchisee Will Learn Proprietary Matters</u> .....	6
B. <u>Injunctive Relief Available to ECC</u> .....	6
C. <u>Franchisee's Employees Will Not Disclose Proprietary Information</u> .....	6
D. <u>ECC's Patent Rights and Copyrights</u> .....	6
9. <u>MODIFICATION OF THE SYSTEM</u> .....	7
10. <u>ADVERTISING AND PROMOTION</u> .....	7
11. <u>ON-GOING FEES</u> .....	7
A. <u>Royalty Fees</u> .....	8
B. <u>Interest for Late Payments</u> .....	8

**TABLE OF CONTENTS (continued)**

<b>SECTION</b>		<b>PAGE</b>
12.	<u>ACCOUNTING AND BOOKKEEPING RECORDS</u> .....	8
	A. <u>Bookkeeping, Accounting and Records</u> .....	8
	B. <u>Submission of Financial Statements</u> .....	8
	C. <u>Audits</u> .....	8
	D. <u>Corporate Franchisee</u> .....	9
13.	<u>STANDARDS OF QUALITY AND PERFORMANCE</u> .....	9
	A. <u>Open Business in One Hundred Eighty Days</u> .....	9
	B. <u>Image of Franchised Business</u> .....	9
	C. <u>Approved Manufacturers, Suppliers and Distributors</u> .....	10
	D. <u>Authorized Materials and Supplies</u> .....	10
	E. <u>Specifications, Standards and Operating Procedures</u> .....	10
	F. <u>Licenses, Permits and Certificates</u> .....	11
	G. <u>Names and Marks</u> .....	11
	H. <u>Supervision of Franchised Business</u> .....	11
	I. <u>Maintenance of Highest Moral Standards</u> .....	12
	J. <u>Use of Advertising and Promotional Claims</u> .....	12
	K. <u>Notice of Legal Proceedings</u> .....	12
14.	<u>OBLIGATIONS OF THE FRANCHISOR: SUPERVISION, ASSISTANCE</u> .....	12
	A. <u>EILEEN'S COLOSSAL COOKIES System Training</u> .....	12
	B. <u>Operations Manuals</u> .....	13
	C. <u>Continuing Assistance</u> .....	13
	D. <u>Advertising and Promotion</u> .....	13
	E. <u>Suppliers</u> .....	13
	F. <u>Pricing</u> .....	13
15.	<u>INSURANCE</u> .....	14
	A. <u>Overall Coverage Required</u> .....	14
	B. <u>Qualified Insurance Carrier</u> .....	14
	C. <u>No Limitations on Coverage</u> .....	15
	D. <u>Evidence of Coverage</u> .....	15
	E. <u>ECC May Procure Insurance Coverage</u> .....	15
16.	<u>TERMINATION OF FRANCHISE</u> .....	15
	A. <u>By Franchisee</u> .....	15
	B. <u>By ECC</u> .....	15
	C. <u>Termination of Franchisee Without Cure</u> .....	16
	D. <u>Termination of Franchisee Immediately and Without Notice</u> .....	16

## TABLE OF CONTENTS (continued)

SECTION	PAGE
17. <u>FRANCHISEE'S OBLIGATIONS UPON TERMINATION OR EXPIRATION</u> .....	17
A. <u>Payment of Monies Owed to ECC</u> .....	17
B. <u>Return of Manuals and Other Materials</u> .....	17
C. <u>Cease Using Names and Marks</u> .....	17
D. <u>Cease Operating Franchised Business</u> .....	17
E. <u>No Confusion with Names and Marks</u> .....	18
F. <u>ECC Purchase of Inventory and Equipment</u> .....	18
18. <u>COVENANTS</u> .....	18
A. <u>Franchisee Receives Confidential Information</u> .....	18
B. <u>No Diversion of Business</u> .....	18
C. <u>Covenant Not to Compete</u> .....	19
D. <u>Exception to Covenant Not to Compete</u> .....	19
E. <u>Covenants are Independent</u> .....	19
F. <u>Claims Are Not Defense to Covenants</u> .....	19
G. <u>Injunctive Relief Available to ECC</u> .....	19
H. <u>Operation of Franchised Business</u> .....	20
19. <u>ASSIGNMENT</u> .....	20
A. <u>Assignment by ECC</u> .....	20
B. <u>Assignment by Franchisee</u> .....	20
C. <u>ECC's Right of First Refusal</u> .....	21
D. <u>Transfer Upon Death or Mental Incapacity</u> .....	21
20. <u>OPERATION IN THE EVENT OF ABSENCE, INCAPACITY OR DEATH</u> .....	21
21. <u>INDEPENDENT CONTRACTOR AND INDEMNIFICATION</u> .....	22
A. <u>No Fiduciary Relationship</u> .....	22
B. <u>Franchisee is an Independent Contractor</u> .....	22
C. <u>ECC Not Liable for Acts of Franchisee</u> .....	22
22. <u>WAIVER</u> .....	22

## TABLE OF CONTENTS (continued)

SECTION	PAGE
23. <u>ENFORCEMENT</u> .....	23
A. <u>Judicial Enforcement, Injunction and Specific Performance</u> .....	23
B. <u>Severability and Substitution of Valid Provisions</u> .....	23
C. <u>Franchisee May Not Withhold Payments Due ECC</u> .....	24
D. <u>Rights of Parties Are Cumulative</u> .....	24
E. <u>Governing Law and Venue</u> .....	24
F. <u>Binding Effect</u> .....	24
G. <u>Construction</u> .....	24
H. <u>Attorney Fees</u> .....	24
I. <u>Modification</u> .....	24
24. <u>INDEMNIFICATION</u> .....	25
25. <u>TAXES, PERMITS AND INDEBTEDNESS</u> .....	25
A. <u>Franchisee Must Pay Taxes Promptly</u> .....	25
B. <u>Franchisee Can Contest Tax Assessments</u> .....	25
C. <u>Franchisee Must Comply With Laws</u> .....	25
D. <u>Franchisee Must Notify ECC of Lawsuits</u> .....	25
26. <u>NOTICES</u> .....	26
27. <u>VARYING STANDARDS</u> .....	26
28. <u>AUTHORITY</u> .....	26
29. <u>SPECIAL REPRESENTATIONS</u> .....	26

## Eileen's Colossal Cookies®

### FRANCHISE AGREEMENT

Franchisee(s) Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

**THIS AGREEMENT** is made by and between Eileen's Colossal Cookies Franchising, Inc., a Nebraska Corporation located at ~~315 N. Baltimore~~ 2727 W. 2<sup>nd</sup> Street, Ste. 322, Hastings, Nebraska, 68901; hereinafter known as "Franchisor" or "ECC", and the persons listed above and referenced herein individually or collectively as "Franchisee", to evidence the agreement and understandings between the parties as follows:

**WHEREAS**, ECC, under its trade names, trademarks, logos and service marks (the "Names and Marks") has developed expertise (including confidential information) and a unique and comprehensive system (the "System") for the promotion and identification of the mark "Eileen's Colossal Cookies®" for the sale of cookies and related products, and;

**WHEREAS**, ECC has developed and licenses or franchises a system or business program (the "Eileen's Colossal Cookies® System"), including expertise and technical know-how and other skills for operating such a system under the mark "Eileen's Colossal Cookies®"; and

**WHEREAS**, ECC provides a uniform system for the establishment and operation of Eileen's Colossal Cookies® Systems including sales development programs, unique sales techniques, special training techniques, and other related benefits for use of Franchisee under the Names and Marks; and

**WHEREAS**, ECC has established substantial goodwill and business value in its Names and Marks, expertise and Program; and

**WHEREAS**, Franchisee recognizes the benefits to be derived from being identified with and receiving a franchise from ECC; and

**WHEREAS**, Franchisee desires to obtain a Franchise from ECC for the right to use the Names and Marks and the expertise for operating a Eileen's Colossal Cookies® business and to obtain the benefits and knowledge of ECC's System including, without limitation, operating methods, advertising, signs, control

systems, and in general a style, method and procedure of business operation utilizing the Names and Marks as a Franchisee of ECC.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants set forth subject to the terms and conditions hereof, the parties agree as follows:

1. **GRANT AND FRANCHISE FEE**

A. **Grant of Franchise and Territory**

(1) **Grant of Franchise**

ECC hereby grants to Franchisee and Franchisee hereby accepts a Franchise under the terms and conditions as set forth herein for the right to operate a Eileen's Colossal Cookies® retail store in an area to be agreed upon between ECC and Franchisee within a territory described in Franchise Agreement Exhibit "A" (the "Territory"). ECC also hereby grants, and the Franchisee hereby accepts, a limited license to use the Eileen's Colossal Cookies® Names and Marks, and the Eileen's Colossal Cookies® System and related advertising and sales methods, provided the Franchisee shall adhere to the terms and conditions hereof.

(2) **Territory**

Territories granted hereunder shall relate to the population within it. A Franchise Territory consists of a population within a city or contiguous cities of approximately at least 25,000 persons and has a boundary of a radius of six miles (6 miles) from the center point of the approved location of the franchised business and may be designated by geographical, city, town, county and/or zip code boundaries.

B. **Franchisee's Initial Franchise Fee**

(1) **Payment of Fee**

By executing this Agreement, Franchisee agrees to become a Franchisee and pay an Initial Franchise Fee to ECC as follows:

Twenty Thousand Dollars (\$20,000.00).

(2) **Method of Payment**

Payment is made by tendering a cashier's check in the amount of the fee at the time this Agreement is executed by Franchisee. The Initial Franchise Fee is fully earned by ECC at the time ECC executes this Agreement.

(3) **Location and Opening of Eileen's Colossal Cookies® Business by Franchisee**

Within ninety (90) days after execution hereof, Franchisee must select a location and submit such location to ECC for its approval and comments. ECC shall not unreasonably withhold its approval and will provide its approval or rejection of the site in addition to its comments in writing within 10 business days of submission by Franchisee.

Upon approval, Franchisee must secure all necessary occupational licenses and/or zoning approvals for the location; and shall have commenced to install leasehold improvements and signage according to a plan furnished by ECC. Franchisee hereby agrees that leasehold improvements, ordering and installation of necessary equipment, training, the purchase and stocking of opening inventory and opening the Franchised Business shall be completed within 90 days of receiving approval on a site submission unless otherwise approved in writing by ECC. In the event Franchisee does not meet each of the obligations described above within the time period allowed, then this Agreement may be deemed terminated by ECC.

**(4) Franchise Fee Is Non-Refundable**

The Franchise Fee described in this section of the Agreement is fully earned by ECC upon its execution of this Agreement and is non-refundable.

**2. TERM AND RENEWAL**

**A. Term**

This Agreement shall be effective and binding from the date of its execution for an initial term equal to ten (10) years from the date of this Agreement.

**B Renewal**

Franchisee shall have the right to renew this franchise at the expiration of each term for 2 additional successive terms of Ten (10) years each, and provided that all of the following conditions have been fulfilled:

- (1) Franchisee has, during the entire term of this Agreement, substantially complied with all its provisions;
- (2) Franchisee has satisfied all monetary obligations owed by Franchisee to ECC and any of its subsidiaries, affiliates, and approved suppliers and has in a timely manner met these obligations throughout the term of this Agreement;
- (3) Franchisee has satisfied all monetary obligations owed by Franchisee to ECC and any of its subsidiaries, affiliates, and approved suppliers and has in a timely manner met these obligations throughout the term of this Agreement;
- (4) Franchisee has executed ECC's then-current form of Franchise Agreement (with appropriate modifications to reflect the fact that the said agreement relates to the grant of a renewal franchise), which agreement shall supersede in all respects this

Agreement the terms of which may differ from the terms of this Agreement, including, without limitation, higher continuing Fees; provided, however, Franchisee has notified ECC in writing of Franchisee's intent to renew the franchise six (6) months prior to the expiration of the initial term of this Agreement.

- (5) Franchisee has complied with ECC's then-current qualification and training requirements;
- (6) Franchisee has executed a general release, in a form prescribed by ECC, of any and all claims against ECC and its subsidiaries and affiliates, if any, and their respective officers, directors, agents and employees.

### **3. FRANCHISED BUSINESS LOCATION**

#### **A. Operation of Franchised Business**

Franchisee may operate the Franchised Business servicing customers only within the area specified in Section 1 and "Exhibit A" hereof.

#### **B. Selection of Location by Franchisee**

ECC will assist Franchisee in selecting a location to operate. Franchisee will have sole responsibility for lease agreement.

#### **C. Opening of Franchised Business**

Within one hundred eighty (180) days after execution of this Agreement Franchisee must have opened the Franchised Business and commenced operations. Time is of the essence. Prior to opening, Franchisee shall complete to ECC's satisfaction all preparations of the Eileen's Colossal Cookies® System in accordance with specifications set forth in the Manuals, including the acquisition of supplies and inventory as required by ECC and the completion of the required training program.

### **4. EQUIPMENT AND MATERIALS**

#### **A. Use of Proper Equipment and Materials**

ECC will provide Franchisee with specifications for brands and types of any equipment, printed forms, and promotional materials, required for the Franchised Business, all of which may be amended from time to time.

#### **B. Specification Standards For Equipment**

Franchisee shall comply with all specifications for types of equipment used in the Franchised Business as provided in Section 13 herein and shall purchase all equipment, printed forms, promotional materials and other items and supplies only from vendors who have been designated "Approved Suppliers" by ECC.

## 5. TRAINING REQUIREMENTS AND ASSISTANCE BY ECC

### A. Technical Support

ECC shall make training available to Franchisees, prior to opening for business, a training and familiarization course of up to two (2) weeks in duration to be conducted at ECC's headquarters or at such other place as ECC shall designate. The training sessions will take place prior to the Franchised Business' opening. Said training program shall cover all material aspects of the operation of the Franchised Business, including introduction and orientation to the System, financial controls, promotion and sales methods, other marketing techniques, service and operational techniques, systems and methods. All expenses are to be paid by Franchisee including additional transportation and lodging. Should Franchisee desire to have a non-owner attend the initial training program, Franchisee agrees to pay a charge of Three Thousand Dollars (\$3000.00) for each additional attendee.

### B. Non-Completion of Training by Franchisee

If ECC determines in its sole discretion that Franchisee is unable to satisfactorily complete the training program described above, ECC shall have the right to terminate this Agreement in the manner herein provided. If this Agreement is terminated pursuant to this paragraph, ECC shall return to Franchisee the initial Franchise Fee paid by Franchisee to ECC minus the expenses incurred by ECC as of such date for providing training to Franchisee and other expenses incurred by ECC. Upon return of said amount, ECC shall be fully and forever released from any claims or causes of action the Franchisee may have under or pursuant to the Franchise Agreement and Franchisee shall have no further right, title or interest in the Names and Marks and Franchisee further agrees to return all Manuals, computer software, and any other items provided by ECC.

### C. Additional Training Requirements

ECC requires and Franchisee acknowledges and agrees that Franchisee or an employee must attend any convention or continuing education seminar which ECC may, at its option, hold during the entire term of this Agreement. Additionally, from time to time, ECC may require that previously trained and experienced Franchisees, their managers, contractors or employees attend and successfully complete refresher training programs or seminars to be conducted at ECC's headquarters or at such other location as may be designated by ECC, at Franchisee's expense.

## 6. PROPRIETARY NAMES AND MARKS

### A. ECC's Ownership of Names and Marks

Franchisee acknowledges and agrees that ECC is the owner of the Names and Marks and Franchisee's right to use the Names and Marks is derived solely from this Agreement and is limited to the conduct of business by Franchisee pursuant to and in compliance with this Agreement and all applicable standards, specifications, and operating procedures prescribed by ECC from time to time during the term of this Agreement. Any unauthorized use of the Names and Marks by Franchisee is a breach of this Agreement and an infringement of the rights of ECC in and to the Names and Marks. Franchisee acknowledges and agrees that all usage of the Names and Marks by Franchisee and

any goodwill established by Franchisee's use of the Names and Marks shall inure to the exclusive benefit of ECC and that this Agreement does not confer any goodwill or other interests in the Names and Marks upon Franchisee. Franchisee shall not, at any time during the term of this Agreement, or after its termination or expiration, contest the validity or ownership of any of the Names and Marks or assist another person in contesting the validity or ownership of any of the Names and Marks. All provisions of this Agreement applicable to the Names and Marks apply to any additional trademarks, service marks, and commercial symbols authorized for use by and licensed to Franchisee by ECC after the date of this Agreement.

**B. Franchisee's Use of Names and Marks**

Franchisee shall not use any Name or Mark as part of any corporate or trade name, or with any prefix, suffix, or other modifying words, terms, designs, symbols, or in any modified form, nor may Franchisee use any Name or Mark in connection with the sale of any unauthorized product or service or in any other manner not expressly authorized in the Manuals or otherwise in writing by ECC. Franchisee agrees to give such notices of trademark and service mark registrations as ECC specifies and to obtain such fictitious or assumed name registrations as may be required under applicable law. Franchisee shall not use any of the Names and Marks in any manner which has not been specified or approved by ECC. Franchisee agrees that this Agreement does not convey any right or property interest in the Name or Mark licensed hereunder.

**C. Unauthorized Use of Names and Marks**

Franchisee shall immediately notify ECC in writing of any apparent infringement of or challenge to Franchisee's use of the Names and Marks and of any claim by any person of any right in the Names and Marks or any similar trade name, trademark, or service mark of which Franchisee becomes aware. Franchisee shall not directly or indirectly communicate with any person other than ECC and its counsel in connection with any such infringement, challenge, or claim. ECC shall have sole discretion to take such action as it deems appropriate and the right to exclusively control any litigation, U.S. Patent and Trademark proceeding or other administrative proceeding arising out of such infringement, challenge or claim or otherwise relating to the Names and Marks. Franchisee agrees to execute any and all instruments and documents, render such assistance, and do such acts and things as may, in the opinion of ECC's counsel, be necessary or advisable to protect and maintain the interests of ECC in any such litigation, U.S. Patent and Trademark proceeding, or other administrative proceeding or to otherwise protect and maintain the interests of ECC in the Names and Marks.

**D. ECC's Right to Modify**

If it becomes advisable at any time in ECC's sole discretion, for ECC and/or Franchisee to modify or discontinue use of the Names and Marks, and/or use one or more additional or substitute trade name, trademark, service mark, or other commercial symbol, Franchisee agrees to comply with ECC's directions within a reasonable time after notice to Franchisee by ECC. ECC shall have no liability or obligation whatsoever with respect to Franchisee's modification or discontinuance of the Names and Marks.

**E. ECC's Right to Inspect Franchised Business**

In order to preserve the validity and integrity of the Names and Marks and copyrighted materials licensed herein, and to assure that Franchisee is properly employing the same in the operation of its Franchised Business, ECC or its agents shall have the right of entry and inspection of Franchisee's premises at all reasonable times. Additionally, ECC shall have the right to observe the manner in which Franchisee is rendering its services and conducting its operations, to confer with Franchisee's employees and customers, and to inspect equipment, trademarked items, other materials or printed matter inventory for test of content and evaluation purposes to make certain that all trademarks and names are satisfactory and meet the quality control provisions and standards established by ECC.

**7. CONFIDENTIAL OPERATIONS MANUALS**

ECC shall loan to Franchisee one copy of Manual and other materials which may cover such topics as Pre-Opening Procedures, Daily Operations, Recipes, Marketing, and additional topics as may be incorporated in such Manual from time to time, as ECC deems necessary. The Manual will remain confidential and the property of ECC and may not be duplicated, loaned out, or copied in whole or in part in any manner. ECC will have the right to add to and otherwise modify the Manual from time to time, as it deems necessary, provided that no such addition or modification will alter the Franchisee's fundamental status and rights under this Agreement. Franchisee agrees to follow the directives of the Manual, as may be amended by ECC from time to time.

**8. CONFIDENTIALITY OF PROPRIETARY INFORMATION****A. Franchisee Will Learn Proprietary Matters**

Franchisee acknowledges that he or she will obtain knowledge of proprietary matters, techniques and business procedures of ECC that are necessary and essential to the operation of the Franchised Business without which information Franchisee could not effectively and efficiently operate such business, including, without limitation, knowledge regarding the System, Recipes, marketing techniques, financial controls, training, and usage of the Manual. Franchisee further acknowledges that such proprietary information was not known to Franchisee prior to execution of this Agreement and that the methods of ECC are unique and novel to the System.

During the term of this Agreement and for a period of five (5) years following the expiration or termination of this Agreement, Franchisee agrees not to divulge, directly or indirectly, any Proprietary Information, without the prior written consent of ECC.

**B. Injunctive Relief Available to ECC**

Franchisee acknowledges that any failure to comply with the requirements of this Section of the Agreement will cause ECC irreparable injury and ECC shall be entitled to obtain specific performance of, or an injunction against any violation of, such requirements. Franchisee agrees to pay all court costs and reasonable attorneys' fees incurred by ECC in obtaining specific performance of, or an injunction against, violation of requirements of this Section. The foregoing remedies shall be in addition to any other legal or equitable remedies which ECC may possess.

**C. Disclosure of Proprietary Information**

The Franchisee may disclose the Proprietary Information only to such of its employees, agents and representatives as must have access to it in order to operate the Franchised Business.

**D. ECC's Patent Rights and Copyrights**

ECC owns rights in or to copyrights that are material to the Franchise and ECC intends to continue to obtain copyright protection for any additions to the Manuals and certain marketing, sales, and operations literature. Furthermore, ECC claims rights to certain trade secrets and confidential information as discussed above.

**9. MODIFICATION OF THE SYSTEM**

Franchisee recognizes and agrees that from time to time hereafter ECC may change or modify the System as presently described in the Manuals, and the Names and Marks, including the adoption and use of new or modified trade names, trademarks, service marks or copyrighted materials, new computer programs, computer hardware and systems, new equipment or new techniques. Franchisee will accept and use for the purpose of this Agreement any such changes in the System, as if they were part of this Agreement at the time of execution hereof. Franchisee will make such expenditures as such changes or modifications in the System may reasonably require. Franchisee shall not change, modify or alter in any way the System, without the prior written consent of ECC.

**10. ADVERTISING AND PROMOTION**

Recognizing the value of advertising and the importance of the standardization of advertising and promotion to the furtherance of the goodwill and the public image of the Franchised Business, Franchisee agrees as follows:

Franchisee shall place local advertising in any media it desires, provided that such advertising conforms to the standards and requirements of ECC as set forth in ECC's Manuals or otherwise designated by ECC. Franchisee shall obtain ECC's prior approval of all unapproved advertising and promotional plans and materials that Franchisee desires to use thirty (30) days before the start of any such plans. Franchisee shall submit such unapproved plans and materials to ECC (by personal delivery or through the mail, return receipt requested). Franchisee shall promptly discontinue use of any advertising or promotional plans or materials upon the request of ECC. Any plans or materials submitted by Franchisee to ECC which have not been approved or disapproved in writing within thirty (30) days of receipt thereof by ECC, shall be deemed approved.

Further, Franchisee agrees to participate in any national, regional or local advertising or promotional program that has been approved by a majority of ECC's Franchisees and to promptly remit the required funds to an advertising account which shall be maintained by ECC for such purpose.

## 11. ONGOING FEES

The parties also agree that the term "Gross Sales" shall mean: All revenues from any type of sales which are generated by the Eileen's Colossal Cookies™ System, whether for cash or credit and regardless of collection in the case of credit; provided however that "Gross Sales" shall not include any sales tax collected by the Franchised Business and paid to the appropriate sales taxing authority.

The Franchisee agrees to pay the fees described in the following paragraphs.

### A. Royalty Fees

In consideration of the franchise granted, Franchisee agrees to pay ECC a Royalty Fee as follows:

Six Percent (6%) of the Gross Sales (as defined herein) of the Franchised Business each and every week payable by each and every Wednesday for the previous weeks Gross Sales amount for the entire term of this Agreement.

### B. Interest for Late Payments

If any payment pursuant to this section of the Agreement is overdue or if a draft is dishonored by the Franchisee's financial institution, Franchisee shall pay to ECC immediately upon demand, the overdue amount plus a Fifty Dollars (\$50.00) late fee for any payments over ten days past due or the maximum rate permitted by law, whichever is greater. The foregoing shall be in addition to any other remedies ECC may possess. Franchisee acknowledges that this paragraph shall not constitute agreement by ECC to accept such payments after same are due or a commitment by ECC to extend credit to or otherwise finance Franchisee's operation of the Franchised Business. Further, Franchisee acknowledges that his or her failure to pay all amounts when due shall constitute grounds for termination of this Agreement, as provided in this Agreement.

## 12. ACCOUNTING AND BOOKKEEPING RECORDS

### A. Bookkeeping, Accounting and Records

Franchisee shall maintain, during the term of this Agreement, and shall preserve for a minimum of five (5) years, full, complete, and accurate records of sales, marketing activities, and accounts payable in accordance with the standard accounting system described by ECC in the Manuals or otherwise specified in writing.

### B. Submission of Financial Statements

Franchisee shall submit to ECC each month during the term of this Agreement all report forms required by ECC as outlined in the Manual. Each report shall be signed by Franchisee attesting that the report is true and correct. Franchisee shall also submit to ECC other forms, records, reports, information and data as ECC may reasonably require, in the form, and at the times and the places reasonably required by ECC, upon request, and as specified from time to time in the Manuals or

otherwise specified in writing. Franchisee shall send a copy of its state sales tax reporting form within ten (10) days of due date of such report to their state.

### **C. Audits**

ECC or its representatives have the right at all reasonable times to examine and copy your books, records and tax returns. ECC may also, at its expense, have an independent audit made of your books. If inspection reveals a discrepancy in the amount of payments made by Franchisee to ECC, Franchisee must immediately pay ECC any amounts owed, as well as interest on the unreported receipts at the maximum rate permitted by law. Should an inspection reveal a discrepancy of two percent or more, Franchisee must also pay and reimburse ECC for all costs and expenses connected with such inspection or audit, including reasonable accounting and legal fees and travel and transportation expenses for the inspectors or auditing team.

### **D. Corporate Franchisee**

If Franchisee is a corporation, the following requirements shall apply:

- (1) Copies of Franchisee's Corporate resolution directing its officers and/or directors to enter into this Agreement.
- (2) Franchisee shall maintain a current list of all owners of record and all beneficial owners of any class of voting stock of Franchisee and shall furnish such list to ECC upon its request; and
- (3) All shareholders of Franchisee shall jointly and severally guarantee Franchisee's performance hereunder and shall bind themselves to the terms of this Agreement; provided, however, that the requirements of this subsection shall not apply to any corporation registered under the Securities Exchange Act of 1934 (hereinafter known as a "Publicly Held Corporation").

## **13. STANDARDS OF QUALITY AND PERFORMANCE**

Franchisee shall comply with the entire Eileen's Colossal Cookies® System developed by ECC including, without limitation, the following:

### **A. Open Business in One Hundred Eighty Days**

Franchisee shall commence operation of the Franchised Business no later than One Hundred Eighty (180) days after the execution of this Agreement or as otherwise approved in writing by ECC. Prior to such opening, Franchisee shall have installed or cause to be installed all necessary equipment and telephone service, as required by ECC. If Franchisee for any reason fails to commence operations as herein provided, unless Franchisee is precluded from doing so by war or civil disturbance, natural disaster or labor dispute, such failure shall be considered a default and ECC may terminate this Agreement as herein provided.

**B. Image of Franchised Business**

Franchisee agrees to maintain the condition and appearance of the premises of the Franchised Business consistent with ECC's standards for the image of a business as an attractive, pleasant and comfortable business. Franchisee agrees to affect such reasonable maintenance of the Franchised Business, as is from time to time required to maintain the equipment or improve the appearance and efficient operation of the Franchised Business, including replacement of equipment, fixtures, furniture as may be necessary. If at any time in ECC's judgment the general state of repair or the appearance of the premises of the Franchised Business or its equipment, fixtures, furniture, signs, uniforms of service personnel or decor does not meet ECC's standards for such, ECC shall so notify Franchisee specifying the action to be taken by Franchisee to correct such deficiency. If Franchisee fails or refuses to initiate within thirty (30) days after receipt of such notice, and thereafter continue, a bona fide program to complete any required maintenance, ECC shall have the right, in addition to all other remedies, to enter upon the premises of the Franchised Business and effect such repairs, equipment, fixtures, furniture or signs on behalf of Franchisee, and Franchisee shall pay the entire costs thereof on demand. Franchisee's obligation to initiate and continue any required maintenance shall be suspended during any period in which such maintenance is impractical due to war, civil disturbance, natural disaster, labor dispute or other event beyond Franchisee's reasonable control.

**C. Approved Manufacturers, Suppliers and Distributors**

From time to time, ECC shall provide to Franchisee, a list of approved manufacturers, printers, suppliers, and distributors for all products and services necessary to operate the Franchised Business. ECC may revise the approved list of manufacturers, printers, suppliers and distributors from time to time in its sole discretion.

**D. Authorized Materials and Supplies**

All purchases of products and other materials used in the operation of the Franchised Business shall conform to the specifications and quality standards established by ECC from time to time. Franchisee may only use such products and related items which meet ECC's specifications and quality standards and which are stated in ECC's approved list of equipment, printing and products suppliers approved by ECC, as meeting its criteria. If Franchisee proposes to use in the operation of the Franchised Business any products equipment or materials which are not then approved by ECC as meeting its minimum specifications and quality standards, or to purchase any product from a supplier that is not then designated by ECC as an approved supplier, Franchisee shall first notify ECC and shall upon request by ECC submit samples and such other information as ECC requires for examination and/or testing or to otherwise determine whether such equipment, product, material or supply, or such proposed supplier, meets its specifications and quality standards. A charge not to exceed the actual cost of testing may be made by ECC and shall be paid by Franchisee. ECC shall notify Franchisee within a reasonable time whether it approved such equipment, product, material or supply, and/or such supplier by being listed on ECC's approved list. Franchisee understands that part of Franchisor's income may come from commissions from approved vendors. Franchisee also understands that if Franchisor or related parties stock and/or sell products to franchisees, these parties expect to make a reasonable profit on these services or goods.

**E. Specifications, Standards and Operating Procedures**

Franchisee agrees to fully comply with all mandatory specifications, standards, operating procedures and rules as in effect from time to time relating to:

- (1) Procedures regarding use of any Trademarked items or Copyrighted Materials;
- (2) Procedures and techniques regarding recipes and sales activities;
- (3) Training, dress, general appearance and demeanor of Franchised Business employees;
- (4) Advertising and promotional programs;
- (5) Type, quantity and variety of products and materials, printing, Trademarked items and Copyrighted materials;
- (6) Use of signs, posters, advertising pieces, displays and similar items;
- (7) Identification of Franchisee as the owner of the Franchised Business; and
- (8) The handling of customer complaints.

Mandatory specifications, standards, operating procedures and techniques and other rules, prescribed from time to time by ECC in the Manuals or otherwise communicated to Franchisee in writing, shall constitute provisions of this Agreement, as if fully set forth herein, and shall be reasonable and uniformly applied to all Franchisees. All references herein to this Agreement shall include all such mandatory specifications, standards, operating procedures and rules.

**F. Licenses, Permits and Certificates**

Franchisee shall secure and maintain in force all required licenses, permits and certificates relating to the operation of the Franchised Business and shall operate the Franchised Business in full compliance with all applicable laws, ordinance and regulations, workmen's compensation, unemployment insurance, withholding and payment of federal and state income taxes, social security taxes, sales, use and property taxes.

**G. Names and Marks**

Franchisee shall use only displays, labels, forms and other paper products imprinted with the Names and Marks and colors as prescribed from time to time by ECC in the operation of the Franchised Business.

## **H. Supervision of Franchised Business**

The Franchised Business shall at all times be under the direct, on-premises supervision of Franchisee (or a trained and competent employee acting as full-time manager). In the event Franchisee operates more than one franchise, or in the event Franchisee does not devote his or her full time to conducting the Franchised Business, at least one trained and competent employee referred to above shall act as a full-time manager. Franchisee shall keep ECC informed at all times of the identity of any employee(s) acting as manager(s) of the Franchised Business. ECC shall make training available, as is reasonable and necessary, for all managers designated by Franchisee. ECC may provide such training at the then-current rates charged by ECC. Franchisee agrees that he or she will at all times faithfully, honestly and diligently perform his or her obligations hereunder and that he or she will not engage in any business or other activities that will conflict with his or her obligations hereunder.

## **I. Maintenance of Highest Moral Standards**

Franchisee agrees that the Franchised Business shall at all times maintain a requirement of its employees, agents and affiliates to maintain the highest moral standards of the community or the standards of Eileen's Colossal Cookies® as set forth by ECC.

## **J. Use of Advertising and Promotional Claims**

All sales activities conducted by the Franchised Business in any medium shall be conducted in a dignified manner and shall accurately promote, describe and otherwise represent the services of the Franchised Business. Franchisee agrees to refrain from any sales practice which is unethical or may be injurious to the business of ECC and/or other franchised businesses or the goodwill associated with the Names and Marks.

## **K. Notice of Legal Proceedings**

Franchisee shall notify ECC in writing within five (5) days of the commencement of any action, suit or proceeding, and of the issuance of any order, writ, injunction, award, or decree of any court, agency, or other governmental agency, which may adversely affect the operation or financial condition of the Franchised Business.

## **14. OBLIGATIONS OF THE FRANCHISOR: SUPERVISION, ASSISTANCE OR SERVICES**

ECC shall provide the Franchisee with the following assistance and services:

### **A. Eileen's Colossal Cookies® System Training**

(1) ECC will provide a training program concerning the operation of the Franchised Business as described in Section 5A of this Agreement.

(2) ECC may conduct additional seminars or other training programs for the benefit of the Franchisee, and Franchisee (and/or Franchisee's employees) may attend any such seminar or program. ECC may charge a reasonable fee for such seminar or program if it is deemed

appropriate. Any and all traveling, living and other expenses incurred by anyone attending training shall be paid by Franchisee.

(3) Franchisee may make reasonable requests for training in addition to that specified above and ECC shall provide such training, at Franchisee's expense, including, without limitation, any travel, lodging, meals, employee time, and other related costs.

(4) Franchisee shall complete and/or shall cause its employees to complete, to ECC's satisfaction, such other additional training as ECC may reasonably require from time to time.

**B. Operations Manual**

ECC shall loan to Franchisee one copy of the Operations Manual, any associated video tapes, and electronic media as more fully described in Section 7 herein.

**C. Continuing Assistance**

In addition to the assistance rendered to the Franchisee prior to opening, ECC will provide continuing consultation and advice regarding business, financial, operational, technical, pricing, sales and advertising matters, type of products and services offered, operation of the Franchised Business and development of personnel policies. ECC will provide such assistance by telephone, e-mail or intranet system or, if the situation warrants, through on-site assistance of appropriate ECC personnel. All expenses incurred by ECC through on-site assistance shall be paid by Franchisee. ECC shall keep a current E-mail address to receive and transmit information to Franchises.

**D. Advertising and Promotion**

ECC may develop and provide creative materials and/or press releases for local and regional advertising and promotion and make such materials available to its Franchisees for publication or distribution in the Franchisee's market area at Franchisee's own expense. ECC may provide specific guidelines for advertising initiated by individual Franchisees and shall reserve the right to disapprove any advertising, which in ECC's opinion, is not in accordance with these guidelines.

Immediately upon notification to do so, Franchisee shall discontinue any practices that would, in ECC's opinion, be detrimental.

**E. Suppliers**

ECC agrees to provide Franchisee with a list of Approved Suppliers and Shippers for the products and services needed by Franchisee. By providing such assistance, ECC makes no warranty or guarantee of performance on the part of any supplier or shipper.

**F. Pricing**

ECC shall endeavor to ascertain those prices which will optimize profits for Franchisee and shall advise Franchisee from time to time, concerning such pricing. ECC and Franchisee agree that any pricing recommendation is a recommendation only and is not to be construed as mandatory upon Franchisee. Nothing contained herein shall be deemed a representation by ECC that the use of ECC's suggested prices will in fact optimize profits.

**G. National Sales Conference**

ECC, at its discretion, may hold a Conference, Seminar or Convention that will promote the training and education of the Franchisees from time to time during the term of this Agreement. Attendance of one person at such Conferences, Seminars or Conventions is mandatory for all Franchisees.

**15. INSURANCE****A. Overall Coverage Required**

Franchisee shall procure, prior to opening the Franchised Business, and shall maintain in full force and effect during the term of this Agreement, at Franchisee's expense, an insurance policy or policies protecting ECC, and the officers, directors, partners and employees of both ECC and Franchisee, against any loss, liability, personal injury, death, property damage or expense whatsoever arising or occurring upon or in connection with operating the Franchised Business. ECC shall be named as an additional insured on all such policies.

**B. Qualified Insurance Carrier**

All insurance policies required under this Agreement shall be written by an insurance company satisfactory to ECC. The coverage will be provided in accordance with standards and specifications set forth in the Manuals or otherwise specified in writing. The insurance coverage shall be provided on policy forms which include the provisions at least as broad as those included in the standard Insurance Service Offices Forms. The coverage shall include, at minimum (except as additional coverage and higher policy limits may reasonably be specified from time to time by ECC) limits at least equal to those shown for the categories of required insurance:

- (1) Comprehensive general liability insurance;  
One Million dollars (\$1,000,000.00) limit minimum
- (2) Liability for owned, hired, and non-owned automobiles or other vehicles; Five Hundred Thousand Dollars (\$500,000.00) limit minimum
- (3) Property damage liability insurance covering at a minimum the perils of fire and extended coverage and vandalism;
- (4) Worker's Compensation and employer's liability insurance as prescribed by state law;
- (5) Such other insurance that may be required by ECC or by the statutes or other laws of the state in which the Franchised Business is located and operated; and
- (6) An umbrella insurance policy to provide excess limits over the above liability policies.
- (7) Such other insurance, as may be required by the statutes or other laws of the state in which the Franchise Business is located and operated.

**C. No Limitations on Coverage**

Franchisee's obligations to obtain and maintain the foregoing insurance policies, in the amounts specified shall not be limited in any way by reason of any insurance which may be maintained by ECC, nor shall Franchisee's performance of that obligation relieve it of liability under the indemnity provisions set forth in this Agreement. Franchisee may maintain such additional insurance as it may consider advisable.

**D. Evidence of Coverage**

Upon obtaining the insurance required by this Agreement and on each policy renewal date thereafter, Franchisee shall promptly submit evidence of satisfactory insurance and proof of payment to ECC, together with, upon request, copies of all policies and policy amendments and endorsements. The evidence of insurance shall include a statement by the insurer that the policy or policies will not be canceled or materially altered without giving at least thirty (30) days' prior written notice to ECC.

**E. ECC May Procure Insurance Coverage**

Should Franchisee, for any reason, fail to procure or maintain the insurance required by this Agreement, as described from time to time by the Manuals or otherwise in writing, ECC shall have the right and authority (but no obligation) to procure such insurance and to charge same to Franchisee. Such charges, together with a reasonable fee for ECC's expenses in so acting, shall be payable by Franchisee immediately upon notice from ECC.

**16. TERMINATION OF FRANCHISE****A. By Franchisee**

If Franchisee is in compliance with this Agreement and ECC breaches this Agreement and fails to cure such breach within thirty (30) days after written notice thereof is delivered to ECC, then Franchisee may terminate this Agreement and the Franchise effective thirty (30) days after delivery to ECC of notice thereof. Any termination of this Agreement and the Franchise by Franchisee, without complying with the foregoing requirements, or for any reason other than breach of this Agreement by ECC and ECC's failure to cure such breach within thirty (30) days after receipt of written notice thereof, shall be deemed a termination by Franchisee without cause.

**B. By ECC**

Franchisee acknowledges that the strict performance of all the terms of this Agreement is necessary not only for protection of ECC, but also the protection of Franchisee and other Franchisees of ECC. As a result, Franchisee therefore acknowledges and agrees that strict and exact performance by Franchisee of each of the covenants and conditions contained in the Agreement is a condition precedent to the continuation of this Agreement. If Franchisee shall breach any provision of this Agreement, then ECC shall notify Franchisee in writing of such breach, specifying its nature and giving Franchisee thirty (30) days in which to remedy same. If Franchisee shall fail to remedy such

breach, then ECC can terminate this Agreement and the Franchise effective thirty (30) days after delivery of notice of termination to Franchisee.

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

### **C. Termination of Franchisee Without Cure**

Notwithstanding the foregoing, Franchisee shall be deemed to be in breach and ECC, at its option, may terminate this Agreement and all rights granted under it, without affording Franchisee any opportunity to cure the breach, effective immediately upon ECC notifying Franchisee in writing of such breach, if Franchisee does any of the following:

- (1) Abandons, surrenders, or transfers control of the operation of the Franchised Business or fails to continuously and actively operate the Franchised Business, unless precluded from doing so by damage to the premises of the Franchised Business due to war, act of God, civil disturbance, natural disaster, labor dispute or other events beyond Franchisee's reasonable control;
- (2) Consistently fails or refuses to submit when due the Royalty Fees, or any other payments due ECC, or any other party related to this Franchise;
- (3) Operates the Franchised Business in a manner that violates any federal, state, or local law, rule, regulation or ordinance;
- (4) Has made a material misrepresentation on his or her application for the Franchise;
- (5) Transfers, assigns, sub-licenses or sub-franchises this Agreement without having the prior written consent of ECC, as set forth herein;
- (6) Discloses or divulges the contents of the Manuals or any other Proprietary Information provided to Franchisee by ECC;
- (7) Repeatedly fails to substantially comply with any of the requirements imposed by this Agreement, whether or not cured after notice;
- (8) Commits a breach of this Agreement or engages in any other activity which has a material adverse effect on ECC and/or the Names and Marks;
- (9) Fails or refuses to comply with any provision of this Agreement or any other agreement between ECC and Franchisee relating to the Franchised Business or the Franchise and does not correct such failure or refusal within thirty (30) days after written notice of such failure to comply is delivered to Franchisee; or

- (10) Is convicted of a felony or has pleaded nolo contendere to a felony.

**D. Termination of Franchisee Immediately and Without Notice**

Notwithstanding the foregoing, Franchisee shall be in breach under this Agreement and all rights granted under this Agreement shall automatically terminate without notice to Franchisee, if Franchisee does any of the following:

- (1) Makes an assignment for the benefit of creditors or an admission of Franchisee's inability to pay its obligations as they become due; or
- (2) Files a voluntary petition in bankruptcy or any pleading, seeking any reorganization, arrangement, composition, adjustment, liquidation, dissolution or similar release under any law, or admitting or failing to contest the material allegations of any such pleading filed against him or her, or is adjudicated bankrupt or insolvent, or a receiver is appointed for a substantial part of the assets of the Franchisee or the Franchised Business, or the claims of creditors of Franchisee or the Franchised Business are abated or subject to moratorium under any laws.

**17. FRANCHISEE'S OBLIGATIONS UPON TERMINATION OR EXPIRATION**

**A. Payment of Monies Owed to ECC**

Franchisee shall pay to ECC, within fifteen (15) days after the effective date of termination or expiration of this Agreement, such monthly Royalty Fees, or any other sums owed to ECC or approved suppliers and vendors by Franchisee, which are then unpaid.

**B. Return of Manuals and Other Materials**

Franchisee further agrees that upon termination or expiration of this Agreement, he or she will immediately return to ECC all copies of the Manuals, training aids and any other materials which have been loaned to Franchisee by ECC. Franchisee further agrees to turn over to ECC any other manuals, computer programs, software, customer lists, records, files, instructions, correspondence and brochures, and any and all other confidential and proprietary materials relating to the operation of the Franchised Business in Franchisee's possession, custody, or control and all copies thereof (all of which are acknowledged to be ECC's property) Franchisee shall retain no copy or record of the foregoing, excepting only Franchisee's copy of this Agreement and any correspondence between the parties, and any other documents which Franchisee reasonably needs for compliance with any provision of law.

**C. Cease Using Names and Marks**

Franchisee further agrees that, upon termination or expiration of this Agreement, Franchisee shall immediately and permanently cease to use, by advertising, or any manner whatsoever, any confidential methods, procedures and techniques associated with ECC and the Names and Marks and any proprietary marks and distinctive forms, slogans, symbols, signs, logos or devices

associated with the System. In particular, Franchisee shall cease to use, without limitation, all signs, advertising materials, stationery, forms, and any other articles which display the Names and Marks.

**D. Cease Operating Franchised Business**

Franchisee shall immediately cease to operate the Franchised Business under this Agreement, and shall not thereafter, directly or indirectly, represent itself to the public or hold itself out as a present or former Franchisee of ECC.

**E. No Confusion with Names and Marks**

Franchisee agrees, in the event it continues to operate or subsequently begins to operate any other business, not to use any reproduction, counterfeit, copy or colorable imitation of the Names and Marks, either in connection with such other business or in the promotion thereof, which is likely to cause confusion, mistake or deception, or which is likely to dilute ECC's exclusive rights in and to the Names and Marks, and further agrees not to utilize any designation of origin or description or representation which falsely suggests or represents an association or connection with The Eileen's Colossal Cookies™ System.

**F. ECC Purchase of Inventory and Equipment**

ECC shall have the right (but not the duty), to be exercised by notice of intent to do so within thirty (30) days after termination or expiration, to purchase any or all equipment, supplies, signs, advertising materials and items bearing ECC's Names and Marks, at fair market value (less the amount of any outstanding liens or encumbrances). If the parties cannot agree on a fair market value within a reasonable time, an independent appraiser shall be designated by ECC and the appraiser's determination shall be binding. If ECC elects to exercise any option to purchase herein provided, it shall have the right to set off all amounts due from Franchisee, and the cost of the appraisal, if any, against any payment therefor.

**18. COVENANTS**

**A. Franchisee Receives Confidential Information**

Franchisee specifically acknowledges that pursuant to this Agreement, Franchisee will receive valuable training and confidential information, including, without limitation, information regarding promotional, operational, sales, and marketing methods and techniques of ECC and the System.

**B. No Diversion of Business**

During the term of this Agreement and for a period of two (2) years following the expiration or termination of the Agreement, Franchisee covenants that it will not, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, or legal entity:

- (1) Divert or attempt to divert any business or customers of the Franchised Business with which or with whom Franchisee has had contact during the term of this Agreement to any competitor by direct or indirect inducement or otherwise;

- (2) Do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Names and Marks or the System or both; or
- (3) Induce, directly or indirectly, any person who is at that time employed by ECC or by any other Franchisee of ECC, to leave his or her employment.

The provisions of this Section shall apply only in the geographic area lying within a fifty-mile radius of the area of the Franchised Business or any other Franchise of ECC.

**C. Covenant Not to Compete**

Franchisee covenants that, except as otherwise approved in writing by ECC, Franchisee shall not, for a continuous uninterrupted period commencing upon expiration or termination of this Agreement, regardless of the cause for termination, and continuing for two (2) years thereafter, either directly or indirectly, for himself, or on behalf of, or in conjunction with, any person, persons, partnership, or corporation, own, manage, operate, maintain, advise, substantially invest in, be employed by, or engage in, any retail business specializing, in whole or in part, in (a) a business offering to the public in a manner substantially similar to ECC's products and/or services substantially similar to the products and/or services then being offered by the majority of ECC's locations or located within a fifty (50) mile radius of the Franchised Business or any other Franchisee of ECC, or each Location, if more than one location exists within the Exclusive Territory; or (b) any entity which is granting franchises or licenses to others to operate a business principally offering products or services in a manner substantially similar to ECC and/or substantially similar to the products or services being offered by the majority of ECC Franchised Facilities. Franchisee additionally covenants that he or she will secure similar written covenants from all employees, agents and representatives. The above-noted covenant is not intended to prevent any individual Franchisee from employment which does not directly contribute to competition against ECC or its Franchised Facilities.

**D. Exception to Covenant Not to Compete**

Section 18 (C) hereof shall not apply to ownership by Franchisee of less than a five percent (5%) beneficial interest in the outstanding equity securities of any publicly held corporation.

**E. Covenants are Independent**

The parties agree that each of the foregoing covenants shall be construed to be independent of any other covenant or provision of this Agreement. If all or any portion of the covenants in this Section 18 is held to be unenforceable or unreasonable by a court or agency having competent jurisdiction in any final decision to which ECC is a party, Franchisee expressly agrees to be bound by any lesser covenant subsumed within the terms of such covenant that imposes the maximum duty permitted by law, as if the resultant covenant were separately stated in and made a part of this Section of the Agreement.

**F. Claims Are Not Defense to Covenants**

Franchisee expressly agrees that the existence of any claim it may have against ECC, whether or not arising from this Agreement, shall not constitute a defense to the enforcement by ECC of the covenants of this Section of the Agreement. Franchisee further agrees that ECC shall be entitled to set off any amount owed by ECC to Franchisee against any loss or damage to ECC resulting from Franchisee's breach of this Section of the Agreement.

**G. Injunctive Relief Available to ECC**

Franchisee acknowledges that any failure to comply with the requirements of this Section of the Agreement will cause ECC irreparable injury for which no adequate remedy at law may be available, and Franchisee hereby accordingly consents to the issuance by a court of competent jurisdiction of an injunction prohibiting any conduct by Franchisee in violation of the terms of this Section of the Agreement. ECC may further avail itself of any legal or equitable rights and remedies which it may have under this Agreement or otherwise.

**H. Operation of Franchised Business**

Franchisee covenants that during the term of this Agreement, Franchisee shall devote a majority of time, energy, and best efforts to the management and operation of the Franchised Business.

**19. ASSIGNMENT****A. Assignment by ECC**

This Agreement grants ECC the right to transfer or assign all or part of its rights or obligations under this Agreement to any assignee or other legal successor to the interests of ECC.

**B. Assignment by Franchisee**

This Agreement restricts the Franchisee's right to assign the Agreement to a third party. Neither this Agreement, nor any of the Franchisee's rights or privileges, shall be assigned, transferred, shared, redeemed or divided by operation of law or otherwise, in any manner, without the prior written consent of ECC, which consent will not be unreasonably withheld. In granting any such consent, ECC may impose reasonable conditions, including, without limitation, the following:

1. The proposed assignee (or its partners, managers, directors, officers, or controlling shareholders, if it is a corporation or partnership) must meet the then-applicable standards of ECC;
2. The proposed assignee does not operate a franchise, license or other business offering services similar to those offered by the Franchised Business; and
3. The execution by the assignee of the then-current form of this Agreement, which form may contain provisions which materially alter the rights or obligations of Franchisee under this Agreement.

ECC shall not charge such assignee an Initial Franchise Fee for the Franchise, but will charge a minimum transfer fee of Seven thousand five hundred dollars (\$7500.00). If ECC determines that training is required, assignee will attend training at ECC's Home Office (at the cost specified under the then-current Franchise Agreement). Any and all traveling, living, and other expenses incurred by anyone attending training shall be paid by Franchisee. ECC shall have the right to require Franchisee and its owners to execute a general release of ECC in a form satisfactory to ECC's counsel as a condition to its approval of assignment or other transfer of the Franchise.

This Agreement may be assigned to a partnership or corporation which conducts no business other than operating the Franchised Business, which is actively managed by the Franchisee and in which Franchisee owns and controls no less than fifty-one percent (51%) of the general partnership or not less than fifty-one percent (51%) of the voting stock, provided that all shareholders of voting stock shall execute a Guarantee Agreement undertaking to be bound, jointly and severally, by all provisions of the Agreement and all other agreements with ECC, and undertaking to guarantee, jointly and severally, the payment of all sums due or to become due to ECC hereunder. All issued and outstanding stock certificates of such corporation shall bear the following legend:

"TRANSFER OF THESE SHARES IS SUBJECT TO CERTAIN RESTRICTIONS CONTAINED IN A FRANCHISE AGREEMENT BETWEEN . . . . . AND EILEEN'S COLOSSAL COOKIES FRANCHISING, INC. DATED . . . . ."

**C. ECC's Right of First Refusal**

If Franchisee (or its owners) shall obtain a bona fide written offer to purchase the Franchised Business or such ownership, such offer shall be submitted to ECC. For a period of thirty (30) days from the date of ECC's receipt of such offer, ECC shall have the right, exercisable by written notice to Franchisee (or its owners), to purchase the Franchised Business or such ownership for the price and on the same terms and conditions contained in such offer, provided that ECC may substitute cash for any form of payment proposed in such offer. If ECC does not exercise its right of first refusal, the bona fide written offer may be accepted by Franchisee (or its owners), subject to the prior written approval of ECC, as provided in this Agreement.

**D. Transfer Upon Death or Mental Incapacity**

Upon the death or mental incapacity of any person with an interest in the Franchised Business, the executor, administrator, or personal representative of that person must transfer his or her interest to a third party approved by ECC within three (3) months after death or mental incapacity. These transfers, including, without limitation, transfers by devise or inheritance, will be subject to the same restrictions and conditions as any inter vivos transfer including the requirements to complete and pay for training by the future operator of the Franchised Business. However, in the case of a transfer by devise or inheritance, if the heirs or beneficiaries of any deceased person are unable to meet the conditions contained in the Agreement, the personal representative of the deceased Franchisee shall have a reasonable time to dispose of the deceased's interest in the Franchised Business which disposition will be subject to all the terms and conditions for transfer contained in the Agreement. If the interest is not disposed of within a reasonable time, ECC may terminate the Agreement.

## **20. OPERATION IN THE EVENT OF ABSENCE, INCAPACITY OR DEATH**

In order to prevent any interruption of the Franchised Business which would cause harm to said business and thereby depreciate the value thereof, Franchisee authorizes ECC, in the event that Franchisee is absent or incapacitated, as defined herein, or by death and is not, therefore, in the sole judgment of ECC, able to operate the Franchised Business hereunder, to operate said business for so long as ECC deems necessary and practical, and without waiver of any other rights or remedies ECC may have under this Agreement. Provided, however, that in the event that ECC should operate the Franchised Business, ECC shall not be obligated to so operate the Franchise for a period of more than ninety (90) days. All monies from the operation of the business during such period of operation by ECC shall be kept in a separate account and the expenses of the business, including reasonable compensation and expenses for ECC's representative, shall be charged to said account. If, as herein provided, ECC temporarily operates for Franchised Business, Franchisee agrees to indemnify and hold harmless ECC and any representative of ECC who may act hereunder, from any and all claims arising from the acts and omissions of ECC and its representative.

## **21 INDEPENDENT CONTRACTOR AND INDEMNIFICATION**

### **A. No Fiduciary Relationship**

It is understood and agreed by the parties hereto that this Agreement does not establish a fiduciary relationship between them, and that the Franchisee shall be an independent contractor, and that nothing in this Agreement is intended to constitute either party an agent, legal representative, subsidiary, joint venturer, partner, employee, or servant of the other for any purpose whatsoever.

### **B. Franchisee is an Independent Contractor**

During the term of this Agreement, and any renewals or extensions hereof, Franchisee shall hold itself out to the public as an independent contractor operating its business pursuant to a Franchise from ECC. Franchisee agrees to take such affirmative action as may be necessary to do so, including, without limitation, exhibiting a public notice of that fact, the content and display of which ECC shall have the right to specify.

### **C. ECC Not Liable for Acts of Franchisee**

Franchisee understands and agrees that nothing in this Agreement authorizes Franchisee to make any contract, agreement, warranty or representation on ECC's behalf, or to incur any debt or other obligation in ECC's name, and that ECC shall in no event assume liability for, or be deemed liable hereunder as a result of any such action, or by reason of any act or omission of Franchisee in its conduct of the Franchised Business's business, or any claim or judgment arising there from against ECC. Franchisee shall indemnify and hold ECC and ECC's officers, directors, shareholders and employees harmless against any and all claims arising directly or indirectly from, as a result of, or in

connection with, Franchisee's operation of the Franchised Business, as well as the cost, including attorneys' fees, of defending against same.

## **22. WAIVER**

No failure of ECC to exercise any power reserved to it by this Agreement or to insist upon strict compliance by Franchisee with any obligation or condition hereunder, and no custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of ECC's right to demand exact compliance with any of the terms herein. Waiver by ECC of any particular default or breach by Franchisee shall not affect or impair ECC's rights with respect to any subsequent default or breach of the same, similar or different nature; nor shall any delay, forbearance, or omission of ECC to exercise any power or right arising out of any breach or default by Franchisee of any of the terms, provisions, or covenants hereof, affect or impair ECC's right to exercise the same; nor shall such constitute a waiver by ECC of any preceding breach by Franchisee of any terms, covenants or conditions of this Agreement.

## **23. ENFORCEMENT**

Except as specifically otherwise provided in this Agreement, the parties agree that any and all disputes between them, and any claim by either party that cannot be amicably settled, except as to monies owed, shall be discussed on a face to face basis by the parties in a meeting of at least a one hour duration without the representation of attorneys or others at a mutually agreed upon meeting place or at ECC headquarters in Hastings, Nebraska if a mutual site cannot be agreed upon. If after that meeting, the claims of either party cannot be amicably settled then the parties to this Agreement shall submit their differences to a neutral professional Mediator who shall hear both sides of the dispute in informal mediation sessions and make suggestions and recommendations for the resolution of such dispute. If the parties agree to resolve the dispute after the mediation sessions, then an agreement of resolution shall be entered into by the parties and they shall split the cost of the professional mediator on an equal basis. If no resolution of the dispute can be accomplished, then the parties may proceed with judicial enforcement proceedings.

### **A. Judicial Enforcement, Injunction and Specific Performance**

ECC shall have the right to enforce by judicial process its right to terminate this Agreement for the causes enumerated in this Agreement, to collect any amounts owed to ECC for any unpaid Royalty Fees, or other unpaid charges due hereunder, arising out of the business conducted by Franchisee pursuant hereto, and to pursue any rights it may have under any leases, subleases, sales, purchases, or security agreements or other agreements with Franchisee. ECC shall be entitled without bond to the entry of temporary or permanent injunctions and orders of specific performance enforcing any of the provisions of this Agreement. If ECC secures any such injunction or orders of specific performance, Franchisee agrees to pay to ECC an amount equal to the aggregate costs of obtaining such relief, including, without limitation, reasonable attorneys' fees, costs of investigation and proof of facts, court costs, other litigation expenses, travel and living expenses, and any damages incurred by ECC as a result of the breach of any provision of this Agreement.

**B. Severability and Substitution of Valid Provisions**

All provisions of this Agreement are severable, and this Agreement shall be interpreted and enforced as if all completely invalid or unenforceable provisions were not contained herein, and any partially valid and enforceable provisions shall be enforced to the extent valid and enforceable. If any applicable law or rule requires a greater prior notice of the termination of this Agreement than is required hereunder, or require the taking of some other action not required hereunder, the prior notice or other action required by such law or rule shall be substituted for the notice or other requirements hereof.

**C. Franchisee May Not Withhold Payments Due ECC**

Franchisee agrees that he or she will not withhold payments of any Royalty Fees or any other amounts of money owed to ECC for any reason, on grounds of alleged nonperformance by ECC of any obligation hereunder.

**D. Rights of Parties Are Cumulative**

The rights of ECC and Franchisee hereunder are cumulative, and the exercise or enforcement by ECC or Franchisee of any right or remedy hereunder shall not preclude the exercise or enforcement by ECC or Franchisee of any other right or remedy hereunder which ECC or Franchisee is entitled by law to enforce.

**E. Governing Law and Venue**

Except to the extent governed by the U.S. Trademark Act of 1946 (Lanham Act, 15 U.S.C., Section 1051 et.seq.), this Agreement shall be governed by the laws of the State of Nebraska. Both parties agree that unless superseded by governing state statutes, all litigation shall take place in the Courts in Adams County, Nebraska.

**F. Binding Effect**

This Agreement is binding upon the parties hereto and their respective permitted assigns and successors in interest.

**G. Construction**

Any other agreements or instruments referred to herein or which relate to the purchase or lease by Franchisee from ECC of any fixtures, signs, equipment, printing, merchandise, or the like, constitutes the entire agreement of the parties, and there are no other oral or written understandings or agreements between ECC or Franchisee relating to the subject matter of this Agreement. The headings of the several sections and paragraphs hereof are for convenience only and do not define, limit, or construe the contents of those sections or paragraphs. The term "Franchisee" as used herein is applicable to one or more persons, a corporation or partnership, as the case may be; the singular usage includes the plural; and the masculine and neuter usages include the other and

feminine. References to "Franchisee" applicable to an individual or individuals shall mean the principal owner or owners of the equity or operating control of Franchisee, if Franchisee is a corporation or partnership.

#### **H. Attorney Fees**

In the event any legal proceedings between the parties hereto arise under this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and court costs from the other party.

#### **I. Modification**

This instrument contains the entire Agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this Agreement shall be of no force or effect unless a subsequent modification in writing is signed by the parties hereto.

### **24. INDEMNIFICATION**

Franchisee understands and agrees that nothing in this Agreement authorizes Franchisee to make any contract, agreement, warranty or representation on ECC's behalf, or to incur any debt or other obligation in ECC's name. Franchisee further understands and agrees that ECC shall in no event assume liability for, or be deemed liable hereunder as a result of, any such action or by reason of any act or omission of Franchisee in its conduct of the Franchised Business, or any claim or judgment arising therefrom against ECC. Franchisee shall indemnify and hold ECC and ECC's officers, directors, shareholders and employees, and agents harmless against any and all claims arising directly or indirectly from, as a result of, or in connection with, Franchisee's operation of the Franchised Business, as well as the cost, including attorney's fees, of defending against same.

### **25. TAXES, PERMITS AND INDEBTEDNESS**

#### **A. Franchisee Must Pay Taxes Promptly**

Franchisee shall promptly pay when due all taxes levied or assessed, including, without limitation, unemployment, sales taxes, and all accounts and other indebtedness of any kind incurred by Franchisee in the conduct of the Office's business.

Franchisee shall pay ECC an amount equal to any sales tax, gross receipts tax or similar tax imposed on ECC with respect to any payments to ECC required under this Agreement, unless the tax is credited against income tax otherwise payable by ECC.

#### **B. Franchisee Can Contest Tax Assessments**

In the event of any bona fide dispute as to any liability for taxes assessed or other indebtedness, Franchisee may contest the validity or the amount of the tax or indebtedness in accordance with

procedures of the taxing authority or applicable law; however, in no event shall Franchisee permit a tax sale or seizure by levy of execution or similar writ or warrant, or attachment by a creditor to occur against the premises of the Franchised Business or any improvements thereon.

**C. Franchisee Must Comply With Laws**

Franchisee shall, at Franchisee's expense, comply with all federal, state and local laws, rules, regulations and ordinances and shall timely obtain and shall keep in force as required throughout the term of this Agreement all permits, certificates and licenses necessary for the full and proper conduct of the Franchised Business, including, without limitation, any required permits, licenses to do business, fictitious names and registrations, sales tax permits, and fire clearances.

**D. Franchisee Must Notify ECC of Lawsuits**

Franchisee shall notify ECC in writing within five (5) days of notice of the commencement of any action, suit, or proceeding against Franchisee, and of the issuance of any inquiry, subpoena, order, writ, injunction, award or decree of any court, agency or other governmental instrumentality, which arises out of, concerns, or may affect the operation or financial condition of the Franchised Business, including, without limitation, any criminal action or proceedings brought by Franchisee against its employees, customers, or other persons.

**26. NOTICES**

All written notices permitted or required to be delivered by the provisions of this Agreement or of the Manuals shall be deemed so delivered three (3) days after placed in the mail, by Registered or Certified Mail, Return Receipt Requested, postage prepaid and addressed to the party to be notified at its most current principal address which the notifying party has on record.

**27. VARYING STANDARDS**

Because complete and detailed uniformity under many varying conditions may not be possible or practical, ECC specifically reserves the right and privilege, at its sole and absolute discretion and as it may deem in the best interests of all concerned in any specific instance, to vary standards for any Franchise based upon the peculiarities of a particular location or circumstance, density of population, business potential, population or trade area, existing business practices, or any other condition which ECC deems to be of importance to the successful operation of such Franchisee's business. Franchisee shall not have any right to complain about a variation from standard specifications and practices granted to any other Franchisee and shall not be entitled to require ECC to grant to Franchisee a like or similar variation.

**28. AUTHORITY**

Franchisee or, if Franchisee is a corporation or partnership, the individuals executing this Agreement on behalf of such corporation or partnership, warrant to ECC both individually and in their capacities as partners or officers that all the partners in the partnership or all of the shareholders of the corporation, as

the case may be, having read and approved this Agreement, including any restrictions which this Agreement places upon their right to transfer their respective interests in the partnership or corporation.

## **29. SPECIAL REPRESENTATIONS**

Franchisee (and each partner or shareholder if Franchisee is a partnership or corporation) hereby represents as follows:

**A.** That he or she has conducted an independent investigation of ECC's business and System and recognizes that the business venture contemplated by this Agreement involves business risks and that its success will be largely dependent upon the ability of Franchisee as an independent business person. ECC expressly disclaims the making of, and Franchisee acknowledges that it has not received any warranty or guarantee, express or implied, as to the potential volume, profits or success of the business contemplated by this Agreement.

**B.** Franchisee acknowledges having received, read, and understood this Agreement, including the Attachments hereto; and Franchisee further acknowledges that ECC has accorded Franchisee ample time and opportunity to consult with advisors of his or her own choosing about the potential benefits and risks of entering into this Agreement.

**C.** Franchisee acknowledges that it has received a complete copy of this Agreement, attachments referred to herein, and agreements relating hereto, if any, at least five (5) business days prior to the date on which this Agreement was executed. Franchisee further acknowledges that it has received the disclosure document required by the Trade Regulation Rule of the Federal Trade Commission, entitled "Information For Prospective Franchisees Required By The Federal Trade Commission," at least ten (10) business days prior to the date on which this Agreement was executed.

**IN WITNESS WHEREOF**, the parties hereto have duly executed, sealed and delivered this Agreement in triplicate this \_\_\_\_\_ of \_\_\_\_\_ 20\_\_.

**FRANCHISOR: Eileen's Colossal Cookies Franchising, Inc.**

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

Title: \_\_\_\_\_ Witness: \_\_\_\_\_

**FRANCHISEE: \_\_\_\_\_**

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

Title: \_\_\_\_\_ Witness: \_\_\_\_\_

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

Title: \_\_\_\_\_ Witness: \_\_\_\_\_

**Exhibit "A"**  
To Franchise Agreement

This Exhibit "A" to the Franchise Agreement executed by Eileen's Colossal Cookies Franchising, Inc. ("ECC") and \_\_\_\_\_ ("Franchisee"),

on \_\_\_\_\_, \_\_\_\_\_.  
(DATE)

hereby grants to Franchisee the following territory:

Written description of territory.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**FRANCHISOR: Eileen's Colossal Cookies Franchising, Inc.**

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

Title: \_\_\_\_\_ Witness: \_\_\_\_\_

**FRANCHISEE: \_\_\_\_\_**

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

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

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

Title: \_\_\_\_\_ Witness: \_\_\_\_\_

## **FDD Exhibit “A”**

Exhibit A to the Franchise Disclosure Document of Eileen’s Colossal Cookies  
Franchising, Inc.

### **STATE ADMINISTRATORS/AGENTS FOR SERVICE OF PROCESS LIST OF AGENTS FOR SERVICE OF PROCESS**

The following list includes the names, addresses and telephone numbers of state agencies serving as our agents for service of process (to the extent we are registered in their states). The list also includes the names, addresses and telephone numbers of other agencies, companies or entities serving as our agents for service of process.

#### **CALIFORNIA**

California Corporations Commissioner  
320 West 4th Street, Suite 750  
Los Angeles, California 90013  
(213) 576-7505  
(866) 275-2677

#### **HAWAII**

Commissioner of Securities  
Department of Commerce and Consumer Affairs  
335 Merchant Street, 2nd Floor  
Honolulu, Hawaii 96813  
(808) 586-2744  
Fax (808) 586-3977

#### **ILLINOIS**

Illinois Attorney General  
500 S. Second Street  
Springfield, IL 62706  
(217) 782-4465

#### **INDIANA**

Secretary of State  
201 State House  
200 West Washington St.  
Indianapolis, IN 46204  
(317) 232-6531-Phone (317) 233-3675-Fax

**MARYLAND**

Maryland Securities Commissioner  
Office of the Attorney General  
200 St. Paul Place  
Baltimore, MD 21202-2020  
(410) 576-6360

**MICHIGAN**

Michigan Department of Commerce, Corporations and Securities Bureau  
Consumer Protection Division, Franchise Section  
P.O. Box 30213  
Lansing, Michigan 48913  
(517) 373-7177

**MINNESOTA**

Minnesota Department of Commerce  
85 7th Place East, Suite 500  
St. Paul, Minnesota 55101-2198  
P - (651) 296-4026  
F - (651) 297-1959

**NEW YORK**

Secretary of State of the State of New York  
41 State Street  
Albany, New York 11231  
(518) 474-4650

**NORTH DAKOTA**

North Dakota Securities Department  
600 East Blvd. Avenue, 5th Floor  
Bismarck, ND 58505-0510  
(701) 328-2910 (Phone)  
(701) 328-2946 (Fax)  
(800) 297-5124

**OREGON**

Department of Insurance and Finance  
Corporate Securities Section  
(503) 378-4387 Office of the Attorney General  
200 St. Paul Place  
Baltimore, MD 21202-2020  
(410) 576-6360

**RHODE ISLAND**

Director, Rhode Island Department of Business Regulation  
Division of Securities  
233 Richmond St., Suite 232  
Providence, RI 02903-4232  
P-(401) 222-3048  
F-(401) 222-5629

**SOUTH DAKOTA**

Director, South Dakota Department of Labor and Regulation  
Division of Securities  
124 S. Euclid, Suite 104  
Pierre, SD 57501  
(605) 773-4823

**TEXAS**

Office of the Secretary of State  
Business Opportunity Section  
P.O. Box 13563  
Austin, TX 78711-3563

**VIRGINIA**

Clerk of the State Corporation Commission  
1300 East Main Street, 1st Floor  
Richmond, VA 23219  
(804) 371-9773

**WASHINGTON**

Director, Department of Financial Institutions  
Securities Division  
150 Israel Rd SW  
Tumwater, Washington 98501  
(360) 902-8760 Fax (360) 902-0524

**WISCONSIN**

Commissioner of Securities of Wisconsin  
345 W. Washington Avenue  
Madison, Wisconsin 53703  
(608) 261-9555

## FDD Exhibit "B"

Exhibit B to the Franchise Disclosure Document of Eileen's Colossal Cookies Franchising, Inc.

### OPERATING MANUAL

#### TABLE OF CONTENTS

##### OPERATIONS MANUAL - PART 1 (*Total Pages - 108*)

- Welcome - *6 pages*
- Customer Service - *10 pages*
- Front - *22 pages*
- Order Tickets - *17 pages*
- Baking - *15 pages*
- Decorating Cookies - *10 pages*
- Dough and Frosting - *12 pages*
- Opening Procedures - *2 pages*
- Closing Procedures - *10 pages*
- Policies and Procedures - *4 pages*

##### OPERATIONS MANUAL - PART 2 (*Total Pages - 38*)

- Memo. - *1 page*
- Dozens Kept - *3 pages*
- Dough List - *1 page*
- 1<sup>st</sup> of Month - *2 page*
- Petty Cash - *3 pages*
- Sending Bills - *1 page*
- Advertising - *1 page*
- Discounts and Donations - *2 pages*
- Miscellaneous - *3 pages*
- Recipes/Nutritional Info - *16 pages*
- Tours - *3 pages*
- Cost Analysis - *2 pages*

## ITEM 23. RECEIPTS

**THIS FRANCHISE DISCLOSURE DOCUMENT SUMMARIZES PROVISIONS OF THE FRANCHISE AGREEMENT AND OTHER INFORMATION IN PLAIN LANGUAGE. READ THIS DISCLOSURE DOCUMENT AND ALL OTHER AGREEMENTS CAREFULLY.**

**IF ECC OFFERS YOU A FRANCHISE, ECC MUST PROVIDE THIS DISCLOSURE DOCUMENT TO YOU BY THE EARLIEST OF:**

- (1) THE FIRST PERSONAL MEETING TO DISCUSS OUR FRANCHISE; OR**
- (2) TEN BUSINESS DAYS BEFORE SIGNING OF A BINDING AGREEMENT; OR**
- (3) TEN BUSINESS DAYS BEFORE ANY PAYMENT TO ECC.**

**YOU MUST ALSO RECEIVE A FRANCHISE AGREEMENT CONTAINING ALL MATERIAL TERMS AT LEAST FIVE BUSINESS DAYS BEFORE YOU SIGN ANY FRANCHISE AGREEMENT.**

**IF EILEEN'S COLOSSAL COOKIES FRANCHISING, INC. DOES NOT DELIVER THIS DISCLOSURE DOCUMENT ON TIME OR IF IT CONTAINS A FALSE OR MISLEADING STATEMENT, OR A MATERIAL OMISSION, A VIOLATION OF A FEDERAL AND STATE LAW MAY HAVE OCCURRED AND SHOULD BE REPORTED TO THE FEDERAL TRADE COMMISSION, WASHINGTON, D.C. 20580 AND THE APPROPRIATE STATE AGENCY.**

I have received a Franchise Disclosure Document dated \_\_\_\_\_

This Franchise Disclosure Document included 23 FDD Items, including the Franchise Agreement, Financial Statements, and Franchisee List.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Prospective Franchisee

\_\_\_\_\_  
Seller of Franchise

## ITEM 23. RECEIPTS

**THIS FRANCHISE DISCLOSURE DOCUMENT SUMMARIZES PROVISIONS OF THE FRANCHISE AGREEMENT AND OTHER INFORMATION IN PLAIN LANGUAGE. READ THIS DISCLOSURE DOCUMENT AND ALL OTHER AGREEMENTS CAREFULLY.**

**IF ECC OFFERS YOU A FRANCHISE, ECC MUST PROVIDE THIS DISCLOSURE DOCUMENT TO YOU BY THE EARLIEST OF:**

- (1) THE FIRST PERSONAL MEETING TO DISCUSS OUR FRANCHISE; OR**
- (2) TEN BUSINESS DAYS BEFORE SIGNING OF A BINDING AGREEMENT; OR**
- (3) TEN BUSINESS DAYS BEFORE ANY PAYMENT TO ECC.**

**YOU MUST ALSO RECEIVE A FRANCHISE AGREEMENT CONTAINING ALL MATERIAL TERMS AT LEAST FIVE BUSINESS DAYS BEFORE YOU SIGN ANY FRANCHISE AGREEMENT.**

**IF EILEEN'S COLOSSAL COOKIES FRANCHISING, INC. DOES NOT DELIVER THIS DISCLOSURE DOCUMENT ON TIME OR IF IT CONTAINS A FALSE OR MISLEADING STATEMENT, OR A MATERIAL OMISSION, A VIOLATION OF A FEDERAL AND STATE LAW MAY HAVE OCCURRED AND SHOULD BE REPORTED TO THE FEDERAL TRADE COMMISSION, WASHINGTON, D.C. 20580 AND THE APPROPRIATE STATE AGENCY.**

I have received a Franchise Disclosure Document dated \_\_\_\_\_

This Franchise Disclosure Document included 23 FDD Items, including the Franchise Agreement, Financial Statements, and Franchisee List.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Prospective Franchisee

\_\_\_\_\_  
Seller of Franchise