

## FRANCHISE DISCLOSURE DOCUMENT

Freshii Development, LLC  
a Delaware limited liability company  
27 North Wacker Drive, Suite 426  
Chicago, Illinois 60606  
(312) 863-2151  
[development@freshiifood.com](mailto:development@freshiifood.com)  
[www.freshii.com](http://www.freshii.com)



The franchise is to develop and operate restaurants offering healthy meals such as salads, rice bowls, wraps, oatmeal, fresh and frozen yogurt, healthy portable snacks and beverages.

The total investment necessary to begin operation under a Freshii Restaurant Area Development Agreement is \$175,000 to \$300,000. This includes \$155,000 to \$260,000 that must be paid to the franchisor or affiliate. The total investment necessary to begin operation of a Freshii Restaurant franchise is \$165,000 to \$533,000. This includes \$35,000 to \$40,000 that must be paid to the franchisor or affiliate.

We may sell rights to individuals or entities to develop a number of restaurants within a specified area. If you are an area developer, you will pay a development fee equal to 100% of the initial franchise fee for the first Restaurant to be developed, plus a deposit of 50% of the initial franchise fee for each additional Restaurant to be developed under the Area Development Agreement. The total investment necessary will vary based on the number of Restaurants to be developed.

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

You may wish to receive your disclosure document in another format that is more convenient for you. To discuss the availability of disclosures in different formats, contact Matthew Corrin, our chief executive officer, at 27 North Wacker Drive, Suite 426, Chicago, Illinois 60606 and (312) 636-8049.

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

Buying a franchise is a complex investment. The information in this disclosure document can help you make up your mind. More information on franchising, such as "[A Consumer's Guide to Buying a Franchise](#)," which can help you understand how to use this disclosure document, is available from the Federal Trade Commission. You can contact the FTC at 1-877-FTC-HELP or by writing to the FTC at 600 Pennsylvania Avenue, NW, Washington, D.C. 20580. You can also visit the FTC's home page at

www.ftc.gov for additional information. Call your state agency or visit your public library for other sources of information on franchising.

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

**Issuance date: March ~~24, 2014~~31, 2015**

## STATE COVER PAGE

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

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

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

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

1. THE AREA DEVELOPMENT AGREEMENT AND FRANCHISE AGREEMENT REQUIRE YOU TO RESOLVE DISPUTES WITH US BY ARBITRATION ONLY IN OUR HOME STATE (CURRENTLY ILLINOIS). OUT-OF-STATE ARBITRATION MAY FORCE YOU TO ACCEPT A LESS FAVORABLE SETTLEMENT FOR DISPUTES. IT MAY ALSO COST YOU MORE TO ARBITRATE WITH US IN OUR HOME STATE THAN IN YOUR OWN STATE.
2. THE AREA DEVELOPMENT AGREEMENT AND FRANCHISE AGREEMENT STATE THAT ILLINOIS LAW GOVERNS THE AGREEMENTS, AND THIS LAW MAY NOT PROVIDE THE SAME PROTECTIONS AND BENEFITS AS LOCAL LAW. YOU MAY WANT TO COMPARE THESE LAWS.
3. THERE MAY BE OTHER RISKS CONCERNING THIS FRANCHISE.

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

## STATE COVER PAGE

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

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Effective Date:

FOR USE ONLY IN THE STATE OF MINNESOTA

## ~~STATE COVER PAGE~~EFFECTIVE DATES

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Effective Date:

~~FOR USE ONLY IN THE STATE OF WASHINGTON~~

## STATE COVER PAGE

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

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Effective Date:

FOR USE ONLY IN THE STATE OF WISCONSIN

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

This Disclosure Document is either registered, on file or exempt from registration in the following states having franchise registration and disclosure laws, with the following effective dates:

<u>California</u>	<u>April 23, 2014</u>
<u>Connecticut</u>	<u>Exempt</u>
<u>Florida</u>	<u>March 10, 2014</u>
<u>Hawaii</u>	<u>August 25, 2014</u>
<u>Illinois</u>	<u>April 9, 2014</u>
<u>Indiana</u>	<u>April 25, 2014</u>
<u>Kentucky</u>	<u>March 3, 2014</u>
<u>Maine</u>	<u>Exempt</u>
<u>Maryland</u>	<u>July 11, 2014</u>
<u>Michigan</u>	<u>April 29, 2014</u>
<u>Minnesota</u>	<u>April 4, 2014</u>
<u>Nebraska</u>	<u>March 10, 2008</u>
<u>New York</u>	<u>May 1, 2014</u>
<u>North Carolina</u>	<u>Exempt</u>
<u>North Dakota</u>	<u>July 28, 2014</u>
<u>Rhode Island</u>	<u>April 2, 2014</u>
<u>South Carolina</u>	<u>Exempt</u>
<u>South Dakota</u>	<u>March 9, 2015</u>
<u>Texas</u>	<u>March 10, 2008</u>
<u>Utah</u>	<u>March 10, 2014</u>
<u>Virginia</u>	<u>April 30, 2014</u>
<u>Washington</u>	<u>April 25, 2014</u>
<u>Wisconsin</u>	<u>April 2, 2015</u>

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## **EXHIBITS**

Exhibit A	List of State Administrators/Agents for Service of Process
Exhibit B	Area Development Agreement
Exhibit C	Franchise Agreement
Exhibit D	Operations Manual Table of Contents
Exhibit E	Financial Statements
Exhibit F	State-Specific Addenda
Exhibit G	List of Franchisees and Development Agents
Exhibit H	List of Franchisees and Development Agent Who Have Left The System
Exhibit I	Renewal/Assignment of Franchise Documents Release
<u>Exhibit J</u>	<u>Sample Letter of Intent</u>

**Item 1**  
**THE FRANCHISOR, AND ANY PARENTS, PREDECESSORS, AND AFFILIATES**

The franchisor is Freshii Development, LLC (“we,” “us,” or “our”). “You” means the company to whom we grant a franchise or development rights. We do not expect that people will sign our Area Development Agreement (Exhibit B) or Franchise Agreement (Exhibit C) in their individual capacities.

We are a limited liability company organized in Delaware in February 2008. Our principal business address is 27 North Wacker Drive, Suite 426, Chicago, Illinois 60606. We conduct business under our corporate name and the trademarks described in Item 13 and no other name. If we have an agent in your state for service of process, we disclose that agent in Exhibit A. We have operated two Freshii Restaurants since 2008. We have offered franchises for Freshii Restaurants since March 2008. We have no other business activities and have not offered franchises in other lines of business.

**Our Parents, Predecessors and Affiliates**

We have no predecessor. Our parent company is Freshii Inc., an Ontario corporation headquartered at 2 Toronto Street, #235, Toronto, Ontario Canada M5C 2B6 (“Parent”). Our Parent does not own or operate a business of the type being franchised. Our Parent is not an approved supplier of any product or service that you must purchase or lease. Our Parent will not guaranty our obligations.

Our first affiliate is Freshii USA, Inc. (“Freshii USA”). Freshii USA operated a Freshii Restaurant in Denver, Colorado from June 2008 to August 2013. Freshii USA owns Freshii S Wacker, LLC which operated a location in Chicago Illinois from June 2008 to August 2013. Freshii USA also owns Freshii Development LLC which is headquartered at 27 North Wacker Drive, Suite 426, Chicago, Illinois 60606. Freshii USA has never offered franchises in this or any other line of business.

Our second affiliate is Lettuce Eatery Development Inc. (“Lettuce Eatery Canada”) which is headquartered at 2 Toronto Street, #235, Toronto, Ontario Canada M5C 2B6. Lettuce Eatery Canada has offered Freshii franchises and previously Lettuce Eatery Restaurant franchises in Canada since March 2008. Freshii Restaurants in Canada are similar to Freshii Restaurants in the United States in that they also offer a variety of healthy meals like salads, soups, salad-wraps, frozen yogurt and healthy packaged snacks and beverages. Lettuce Eatery Canada has not operated a Freshii Restaurant or a Lettuce Eatery Restaurant and has not offered franchises in any other line of business in the United States.

**Franchise Agreement**

We grant franchises for restaurants identified by the Marks (defined below) offering for general consumption a wide variety of healthy meals such as salads, rice bowls, wraps, oatmeal, fresh and frozen yogurt, and healthy portable snacks and beverages. In this disclosure document we call these restaurants “Freshii Restaurants” and we call the Freshii Restaurant that you will operate under the Franchise Agreement the “Restaurant.” Freshii Restaurants operate under the trademarks, service marks and other commercial symbols that we periodically designate, including “Freshii™” (the “Marks”). Freshii Restaurants operate under our mandatory and suggested specifications, standards, operating procedures and rules that we periodically specify for operating a Freshii Restaurant (“System Standards”).

**Area Development Agreement**

We intend to focus our development efforts on prospects who will develop a number of Freshii Restaurants. These prospects will sign the Area Development Agreement under which they will develop a specified number of Freshii Restaurants within a defined geographic area (the “Development Area”).

according to a mandatory development schedule (the “Schedule”). We will determine the Development Area before you sign the Area Development Agreement and it will be included in the Area Development Agreement. Under the Area Development Agreement, you must establish a certain number of Freshii Restaurants within the Development Area according to a minimum performance schedule, and sign a separate Franchise Agreement for each Restaurant established under the Area Development Agreement. We expect to sign Franchise Agreements that are not covered by an Area Development Agreement only in rare situations.

The Franchise Agreement for the first Restaurant developed under the Area Development Agreement will be in the form attached as Exhibit B to this Disclosure Document, and we expect that this Franchise Agreement for your first Restaurant will be signed at the same time as the Area Development Agreement. For each additional Restaurant developed under the Area Development Agreement, you must sign the form of Franchise Agreement that we are then offering to new franchisees, but the Royalty Fee, Marketing Fee and other continuing fees will be the same as for your first Restaurant. The size of the Development Area will vary depending upon local market conditions and the number of Restaurants to be developed. You may not open a Restaurant for business until a fully executed Franchise Agreement is in place for that Restaurant and the initial franchise fee has been fully paid.

The person or entity signing the Area Development Agreement is referred to as the “Area Developer” The Area Development Agreement contains concepts similar to the Franchise Agreement involving the “Area Developer’s Principals.”

### **Market and Competition**

Your Restaurant will provide products and services to the general public throughout the year and compete with restaurants, grocery stores and convenience stores offering healthy foods and snacks. The market for a Freshii Restaurant’s products and services generally is well developed and growing to reach the increasing number of health-conscious consumers.

You will serve the general public and will compete with a variety of businesses, including locally owned to regional, national and chain restaurants, some of which may be franchise systems. We may establish other Restaurants in your area (if permitted under the Franchise Agreement) and/or sell or license others to sell products in your area. Also we may sell products through the Internet, toll-free telephone numbers, catalogs, or other similar means of distribution to customers at any location, which may be located in your area. See Items 12 and 16 for a description of your permitted activities and your rights, and our permitted and restricted activities and rights.

### **Industry Regulations**

The restaurant industry is heavily regulated. A wide variety of Federal, state and local laws, rules and regulations have been enacted that may impact the operation of your Restaurant, and may include those which: (a) establish general standards, zoning, permitting restrictions and requirements and other specifications and requirements for the location, construction, design, maintenance and operation of the Restaurant’s premises; (b) set standards pertaining to employee health and safety; (c) regulate matters affecting the health, safety and welfare of your customers, such as general health and sanitation requirements for restaurants and laws and regulations relating to access by persons with disabilities; employee practices concerning the storage, handling, cooking and preparation of food; restrictions on smoking; available of and requirements for public accommodations and requirements for fire safety and general emergency preparedness; (d) establish requirements for food identification and labeling; and (e) regulate advertisements. State and local agencies inspect restaurants to ensure that they comply with these laws and regulations. You should investigate whether there are regulations and requirements that

may apply in the geographic area in which you are interested in locating your Restaurant and you should consider both their effect and costs of compliance.

Many of the laws, rules and regulations that apply to business generally, such as the Americans With Disabilities Act, Federal Wage and Hour Laws and the Occupational Safety and Health Act, also apply to restaurants. The U.S. Food and Drug Administration, the U.S. Department of Agriculture and state and local health departments administer and enforce laws and regulations that govern food preparation and service and restaurant sanitary conditions. The federal Clean Air Act and various implementing state laws require certain state and local areas to meet national air quality standards limiting emissions of ozone, carbon monoxide and particulate matters, including caps on emissions from commercial food preparation. Some areas have also adopted or are considering proposals that would regulate indoor air quality.

The Nutrition Labeling and Education Act (NLEA) sets regulations for food labeling, including nutritional label standards, nutrient content claims, and health claims. NLEA applies to virtually all foods in the food supply, including food served and sold in restaurants. While NLEA specifies a number of exemptions for restaurants, there are many instances where a nutritional label is required. The Food and Drug Administration's *Nutritional Labeling Guide for Restaurants and Other Retail Establishments* provides answers to commonly asked questions regarding the application of NLEA.

You must identify, investigate, satisfy and comply with all laws, ordinances and/or regulations applicable to your Restaurant, including employment, workers' compensation, insurance, corporate, tax, public health and similar laws and regulations, because they vary from place to place, can change over time and may affect the operation of your Restaurant. You should independently research and review the legal requirements of the food services industry with your own attorney before you sign any binding documents or make any investments.

Each of your managers and other employees we designate must be ServSafe (or similar) certified.

## **Item 2** **BUSINESS EXPERIENCE**

### **Chief Executive Officer: Matthew Corrin**

Mr. Corrin has been our Chief Executive Officer since our formation in February 2008 and the President of Freshii ONE, LLC, our affiliate, in Chicago, Illinois since June 2007. He also is the founder and has been the CEO of Freshii Inc. in Toronto, Ontario, Canada since June 2004.

### **Vice President of Finance: Craig De Pratto**

Mr. De Pratto has been our Vice President of Finance since April 2014. From May 2011 through April 2014, he held the title of VP, Finance with Freeze Dry Foods Limited in Oakville, Ontario, Canada. Mr. De Pratto held the title of Manager of Audit and Assurance with BDO Canada LLP in Mississauga, Ontario, Canada from January 2004 through April 2011.

## **Item 3** **LITIGATION**

No litigation is required to be disclosed in this Item.

**Item 4**  
**BANKRUPTCY**

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

**Item 5**  
**INITIAL FEES**

**Letter of Intent**

After you submit an application to us for a single unit or multi-unit franchise opportunity, and following the required 14 day waiting period after receipt of the Franchise Disclosure Document, you will be required to sign a letter of intent (the “LOI”). You must pay us a non-refundable \$5,000 fee when you sign the LOI to cover the costs we incur in connection with reviewing your application and due diligence we perform (the “LOI Fee”). This fee is fully earned when paid and is not refundable. The sample form of the LOI is attached to this Disclosure Document as Exhibit I.

**Area Development Agreement**

If you sign the Area Development Agreement, you must pay us a “Development Fee” when you sign that Agreement. You must sign the Franchise Agreement for the first Restaurant at the same time you sign the Area Development Agreement. The Development Fee is \$15,000 multiplied by calculated based on the total number of Freshii Restaurants that you agree to develop under the Schedule Area Development Agreement. The Development Fee will be equal to 100% of the initial franchise fee for the first Restaurant to be developed, plus a deposit of 50% of the initial franchise fee for each additional Restaurant to be developed. We will charge an initial franchise fee of \$30,000 for each Restaurant. We expect Development Fees to range from \$150,000 to \$250,000. The Development Fee is non-refundable, but we will apply \$15,000 of the Development Fee towards the initial franchise fee owed under for the second and each additional franchise agreement that the Area Development Agreement covers. We will charge a \$30,000 initial franchise fee under each of those franchise agreements.

**Franchise Agreement**

You must pay us a \$30,000 initial franchise fee in a lump sum when you sign the Franchise Agreement. The initial franchise fee is not refundable. If you or your affiliate signed an Area Development Agreement covering this franchise, we will apply \$15,000 of the Development Fee towards the initial franchise fee.

~~———— In the State of Illinois, we will defer the payment of the initial franchise fee, marketing deposit, development fee, and any other initial payment until you open your business and it is operating. However, you must execute the Franchise Agreement prior to looking for a site or beginning training. This deferral has been imposed by the Illinois Attorney General’s Office based on the Franchisor’s financial condition.~~

~~———— In the State of Maryland, we will defer the payment of the initial franchise fee, marketing deposit and any other initial payment until you open your business and it is operating. However, you must execute the Franchise Agreement prior to looking for a site or beginning training.~~

**Marketing Deposit**

When you execute the ~~Letter of Intent (the “LOI”) to develop a lease for the~~ Freshii Restaurant, you must pay to us a marketing deposit in the amount of ~~\$5~~\$10,000 (the “Marketing Deposit”) and execute our Marketing Deposit Agreement, which is attached to the Franchise Agreement as Exhibit ~~H-F~~. We will apply the Marketing Deposit to the providers of products and services for the approved grand opening marketing program for your Freshii Restaurant. ~~The balance of the Marketing Deposit, or \$5,000, is payable by you upon execution of the lease for your Restaurant. If the Franchise Agreement is not executed by the date indicated on the LOI the marketing deposit will not be refunded. If you pay our approved vendors for the grand opening advertising that we require for your franchise restaurant and provide us with copies of the paid invoices, we will refund to you the amount you paid to those approved vendors, up to \$10,000.~~

There are no other purchases from or payments to us or any affiliate of ours that you must make before your Restaurant opens.

**Item 6**  
**OTHER FEES**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Type of fee<sup>(1)</sup></b>	<b>Amount</b>	<b>Due Date</b>	<b>Remarks</b>
Royalty	6% of Gross Sales <sup>(2)</sup>	Due weekly on day we specify (the “Payment Day”) <sup>(3)</sup>	Based on Gross Sales during previous week. This Royalty applies for all franchises under the Area Development Agreement. See Note 2
Marketing Fund contributions	Amount we specify, up to 3% of Gross Sales <sup>(2)</sup> , subject to Marketing Spending Requirement <sup>(4)</sup>	Due monthly on Payment Day <sup>(3)</sup>	See Item 11 for a detailed discussion about the Marketing Fund. Currently we have specified 1.5% of Gross Sales as the Marketing Fund contribution.
Successor franchise fee	Our then current standard initial franchise fee	When you acquire successor franchise	
Transfer <sup>(5)</sup>	\$10,000	Upon transfer	Due only upon transfer of agreement or controlling ownership interest in you
Ongoing training and special assistance <sup>(5)</sup>	Currently \$500 per day plus out-of-pocket costs and expenses, but could increase if our costs increase	As incurred	We may charge you for supplemental training courses, programs and conventions we provide and for additional or special assistance or training you need or request
<del>Product and service purchases</del>	<del>See Item 8</del>	<del>As incurred</del>	<del>Payable if you buy items or services from us or our affiliates during the Franchise Agreement’s term</del>
Replacement copy of Operations Manual	Currently \$2,000, but could increase if our costs increase	As incurred	Due only if you need a replacement copy

<b>Column 1</b> <b>Type of fee<sup>(1)</sup></b>	<b>Column 2</b> <b>Amount</b>	<b>Column 3</b> <b>Due Date</b>	<b>Column 4</b> <b>Remarks</b>
New product/supplier testing	Our good faith estimate of evaluation costs	When billed	Covers costs of testing new products or inspecting new suppliers you propose
Music Provider – Playlist Generation	Set-up fee of \$99 and \$42 monthly fee per location	Monthly	Payable to approved supplier.
Insurance	Premiums and our costs and expenses	When billed	Due only if you fail to maintain insurance and we (at our option) obtain insurance on your behalf
Relocation	Reasonable costs we incur	As incurred	Due only if you ask to relocate the Restaurant
Audit	Cost of inspection or audit	As incurred	Due only if you fail to report or understate by 2% or more
Interest	Lesser of 1.5% per month or highest commercial contract interest rate law allows	15 days after billing	Due on all overdue amounts more than 7 days late
Management fee	10% of Gross Sales <sup>(2)</sup> while we manage Restaurant plus direct out-of-pocket costs and expenses	As incurred	Due only if we or our designee manages Restaurant after your (or your managing owner’s) death or disability, after your default or abandonment, or after termination
Costs and attorneys’ fees <sup>(5)</sup>	Will vary under circumstances	As incurred	Due only if we prevail in legal proceeding
Indemnification <sup>(5)</sup>	Will vary under circumstances	As incurred	You must reimburse us if we are held liable for claims from your Restaurant’s operation or your business or breach of agreement
ServSafe / TIPS (or similar) Certification	\$150 per person or the then-current market rate	As needed	Each of your managers and other employees we designate must be ServSafe / TIPS or similarly certified. Payable to an approved supplier
Liquidated damages	Will vary under the circumstances	15 days after termination	See note 5

<sup>(1)</sup> Except as otherwise noted in this Item 6, all fees are imposed and collected by and payable to us. Except as noted above, all fees are non-refundable and currently are uniformly imposed.

<sup>(2)</sup> “Gross Sales” means all revenue from sales conducted upon or from the Restaurant, whether from check, cash, credit, charge account, debit account, exchange, trade credit, other credit transactions, barter or otherwise, including any implied or imputed Gross Sales from any business

interruption insurance and all revenue from providing Catering Service and Delivery Service. However, Gross Sales exclude: (a) sales for which you refund cash, if you previously included those sales in Gross Sales; (b) federal, state, or municipal sales, use or service taxes you collect from customers and pay to the appropriate taxing authority; and (c) the face value of coupons or discounts that customers redeem. We treat each charge or sale upon credit as a sale for the full price on the day during which that charge or sale is made, irrespective of when you receive payment (whether full or partial, or at all) on that sale. We include amounts customers pay by gift certificate, gift card or similar program in Gross Sales when the gift certificate, other instrument or applicable credit is redeemed.

- (3) You must sign and deliver to us the documents that we periodically require to authorize us to debit your business checking account automatically for the Royalty and other amounts due under the Franchise Agreement or any related agreement between us (or our affiliates) and you. If we institute an automatic debit program for the Restaurant, we will debit your account for the Royalty and other amounts on or after the Payment Day, based on the Gross Sales for the previous week. You must make the funds available for withdrawal by electronic transfer before each due date. In our automatic debit program, we may require you to procure, at your expense, overdraft protection for your business checking account in an amount that we specify. You must reimburse us for any “insufficient funds” charges and related expenses that we incur for (a) any checks that we receive from you or (b) your failure to maintain sufficient funds in your automatic debit account.

If you fail to report the Restaurant’s Gross Sales for any week, we may debit your account for 120% of the Royalty that we debited for the previous week. If the amount we debit from your account is less than the amount you actually owe us for the week (once we have determined the true and correct Gross Sales of the Restaurant for the week), we will debit your account for the balance due on the day that we specify. If the amount we debit from your account is greater than the amount you actually owe us for the week (once we have determined the true and correct Gross Sales of the Restaurant for the week), we will credit the excess, without interest, against the amount that we otherwise would debit from your account during the following week.

We have the right, at our sole option upon notice to you, to change periodically the timing and terms for payment of Royalties and other amounts payable to us under the Franchise Agreement. For example, we may change the frequency at which we calculate payments to bi-weekly or monthly.

- (4) You must spend a total of at least 3% of the Restaurant’s Gross Sales each calendar quarter on advertising, marketing and promotional programs for the Restaurant (the “Marketing Spending Requirement”). We will credit your Marketing Fund contributions and any other amounts that you spend to advertise, market or promote the Restaurant in compliance with the Franchise Agreement toward the Marketing Spending Requirement, including amounts you spend to provide food to consumers free or at a reduced price (we and you will calculate those amounts at the cost of food less revenue received) and other amounts you spend to participate in the advertising, marketing and promotional programs that we periodically recommend or require. However, we will not count the amount spent on grand opening marketing toward this minimum obligation. We have the right to periodically determine the rate of Marketing Fund contributions, and you must vary the amounts you spend on other advertising, marketing and promotional programs in order to spend at least the Marketing Spending Requirement. The amount of your Marketing Fund contributions in any calendar year, plus the amounts that you spend to participate in the mandatory advertising, marketing and promotional programs that we require for that calendar year (excluding amounts spent on grand opening marketing), will not be more than 3%

of the Restaurant's Gross Sales during that calendar year without your approval. We may review your books and records and require you to submit reports periodically to determine your advertising, marketing and promotion expenses.

- (5) If we terminate your Franchise Agreement for cause, you must pay us within 15 days after the effective date of termination liquidated damages equal to the average monthly Royalty Fees you paid or owed to us during the 12 months of operation preceding the effective date of termination multiplied by (a) 24 (being the number of months in two full years), or (b) the number of months remaining in the Agreement had it not been terminated, whichever is higher.

**Item 7**  
**ESTIMATED INITIAL INVESTMENT**

<b>YOUR ESTIMATED INITIAL INVESTMENT</b>				
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>	<b>Column 5</b>
<b>Type of expenditure</b>	<b>Amount</b>	<b>Method of payment</b>	<b>When due</b>	<b>To whom payment is to be made</b>
<u>Letter of intent fee</u>	<u>\$5,000</u>	<u>When you sign the a letter of intent</u>	<u>See Item 5</u>	<u>Us</u>
Initial franchise fee (1)	\$30,000	Installments if you sign Area Development Agreement, otherwise lump sum	See Item 5	Us
<u>Travel &amp; Living Expenses While Training expenses</u> (2)	\$10,000 to \$25,000	As agreed	As incurred	Third parties
Marketing deposit for grand opening	\$10,000	Lump sum	When the lease for the Restaurant is signed	<del>Us or approved vendors</del> <u>Us</u>
Real estate/3 months' rent (3)	\$10,000 to \$30,000	Installments	Typically monthly	Landlord
Security deposit (3)	\$5,000 to \$15,000	Lump sum	Typically when lease signed	Landlord
Construction, remodeling, leasehold improvements and decorating costs(4)	\$50,000 to \$150,000	As agreed	As incurred	Contractors/Interior Designer and other suppliers

<b>YOUR ESTIMATED INITIAL INVESTMENT</b>				
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>	<b>Column 5</b>
<b>Type of expenditure</b>	<b>Amount</b>	<b>Method of payment</b>	<b>When due</b>	<b>To whom payment is to be made</b>
Furniture, fixtures, other fixed assets and equipment (5)	\$25,000 to \$100,000	As agreed	As incurred	Approved vendors
Signage (interior and exterior)	\$3,000 to \$10,000	As agreed	As incurred	Approved vendors
Opening inventory and supplies	\$5,000 to \$10,000	As agreed	As incurred	Third parties
Insurance	\$1,000 to \$7,500	As agreed	As incurred	Insurance company
Licenses and permits	\$1,000 to \$3,000	As incurred	Typically lump sum	Government agencies and contractors
Miscellaneous Opening Costs (6)	\$5,000 to \$15,000	As incurred	As incurred	Third parties
Additional funds – 3 months (7)	\$10,000 to \$60,000	As incurred	As incurred	Third parties and us
<b>TOTAL ESTIMATED INITIAL INVESTMENT (8)</b>	\$165,000 to \$533,000			

Except for the security deposit, which typically is refundable if you comply with the lease during its term, and advertising for the grand opening which is described in item 5, none of these expenditures is refundable. We do not finance any portion of your initial investment.

**Explanatory Notes:**

1. We describe the initial franchise fee in Item 5.
2. We describe training in Item 11. This figure estimates your and your personnel’s costs and expenses for training if neither you nor your affiliates operate a Certified Training Restaurant and we provide the entire initial training program. It includes costs for the Operating Partner (under the Area Development Agreement to attend training.
3. A standard Freshii Restaurant occupies approximately 500 to 1,500 square feet of space. The typical location for a Freshii Restaurant is in an inline footprint in an urban setting with high vertical density that is focused on attracting office workers and professionals. Rent depends on geographic location, size, local rental rates, other businesses in the area, site profile, and other factors and could be higher in large metropolitan areas. This estimate contemplates a security deposit equal to one month’s rent. A landlord might require you to pay a security deposit that is more than one month’s rent. We anticipate that you will rent the Restaurant’s location. It is possible, however, that you might

choose to buy, rather than rent, real estate on which a building suitable for the Restaurant already is constructed or could be constructed. Real estate costs depend on location, size, visibility, economic conditions, accessibility, competitive market conditions, and the type of ownership interest you are buying. Because of the numerous variables affecting the value of a particular piece of real estate, this initial investment table does not reflect the potential purchase cost of real estate or the costs of constructing a building suitable for the Restaurant.

4. The estimate is to improve a 1,000 square foot property and includes the costs of general contractors and licensed tradesmen to install electrical and plumbing fixtures. Your costs might be more or less than this estimate depending on where you plan to operate your Restaurant. Leasehold improvement costs – including floor covering, wall treatment, counters, ceilings, painting, window coverings, electrical, carpentry and similar work, and contractor’s fees – depend on the site’s condition, location, and size; the demand for the site among prospective lessees; the site’s previous use; the build-out required to conform the site for your Restaurant; and any construction or other allowances the landlord grants. We have designated ~~Hapstak-Demetriou~~ CWD Design for assistance with the interior design of the Restaurant.

5. This includes items like the serving line, refrigerators, tables, chairs, the components for the Computer System, digital menu boards, ~~smallwares~~ small wares and office supplies.

6. This includes costs for professional fees, utility deposits, and other organizational and pre-paid expenses.

7. This estimates the funds needed to cover your initial expenses for the first 3 months of operation (other than the items identified separately in the table). It includes payroll costs but not any draw or salary for your owners. This is only an estimate, and you might need additional working capital during the first 3 months you operate your Restaurant and for a longer time period after that. This 3-month period is not intended, and should not be interpreted, to identify a point at which your Restaurant will break even. Your costs will depend on how closely you follow our methods and procedures; your management skill, experience, and business acumen; local economic conditions; the prevailing wage rate; competition; and your Restaurant’s sales during the initial period.

8. We relied on our affiliate’s experience developing and operating Lettuce Eatery Restaurants in Canada since 2004, and in developing Freshii Restaurants in Chicago, Illinois during 2007 and 2008, to compile these estimates (including the estimate of additional funds). You should review these figures carefully with a business advisor before deciding to acquire the franchise. We do not offer financing directly or indirectly for any part of the initial investment. The availability and terms of financing depend on many factors, including the availability of financing generally, your creditworthiness and collateral, and lending policies of financial institutions from which you request a loan. We strongly recommend that you use these categories and estimates as a guide to develop your own business plan and budget and investigate specific costs in your area.

### **Area Development Agreement**

Except for the LOI fee of \$5,000, development fee, which we expect will range from \$150,000 to \$250,000, and about \$25,000 to \$50,000 in working capital to cover initial training expenses for your personnel and costs to begin looking for sites in the Development Area, there is no additional initial investment required under the Area Development Agreement.

**Item 8**  
**RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES**

Neither we nor any of our affiliates currently is an approved supplier, ~~or the only approved supplier,~~ of any products or services that you will ~~acquire~~ purchase or lease to establish or operate your Restaurant. You currently must buy all of the furniture, fixtures, foodservice equipment, food items, beverages, printed marketing materials and uniforms, digital menu boards ~~and some of the,~~ construction materials and software, for the Restaurant only from suppliers that we designate or approve. None of our officers owns any interest in any ~~current~~ approved supplier to the franchise system.

Before using ~~them~~ a vendor that is not approved, you must send us, for our approval, samples of all advertising, promotional and marketing materials for the Restaurant that we have not prepared or previously approved within the last 6 months. If you do not receive written notice of disapproval from us within 15 days after we receive the materials, they are deemed approved. You may not use any advertising, promotional or marketing materials that we have disapproved. You also must implement a grand opening marketing program according to our requirements.

You must send us for our approval any lease or sublease for the Restaurant's site before you sign it. The lease must contain the terms and provisions that are reasonably acceptable to us. You may not relocate the Restaurant without our approval.

You are responsible for developing the Restaurant at your expense. It is your responsibility to prepare all required construction and remodeling plans and specifications to suit the Restaurant and to make sure that they comply with the Americans with Disabilities Act (the "ADA") and similar rules governing public accommodations for persons with disabilities, other applicable ordinances, building codes, permit requirements, and lease requirements and restrictions. You must submit all construction and remodeling plans and specifications to us for our approval before beginning build-out for the Restaurant and all revised or "as built" plans and specifications during construction and development. Our review is limited to ensuring your compliance with design requirements. Our review is not designed to assess compliance with federal, state, or local laws and regulations, including the ADA, as compliance with those laws ~~is~~ are your responsibility.

At our option, we may periodically (up to twice during the Franchise Agreement's term) require you to substantially alter the Restaurant's appearance, branding, layout and/or design, and/or replace a material portion of the Operating Assets (defined below), to meet our then current requirements for new Freshii Restaurants. You must incur any necessary costs. Within 60 days after receiving written notice from us, you must have plans prepared according to our standards and specifications and, if we require, using architects and contractors that we designate or approve. You must submit those plans to us for our approval. You must complete all work according to the plans we approve within the time period that we reasonably specify. We have designated ~~Hapstak-Demetriou~~ CWD Design for assistance with the interior design of your Restaurant.

~~Except as described above, there~~ There are no goods, services, supplies, fixtures, equipment, inventory, computer hardware and software, real estate, or comparable items related to establishing or operating the Restaurant that you ~~currently~~ must buy or lease from us (or our affiliate) ~~or from designated or approved suppliers.~~ In the future, we may designate products and services that you must buy only from us, or our affiliates, ~~or designated or approved suppliers~~ at the prices that we or they decide to charge.

To maintain the quality of the products and services that Freshii Restaurants offer and sell and our franchise network's reputation, all furniture, fixtures, equipment (including components for the Computer

System), vehicles, ~~smallwares~~small wares, digital menu boards and signs that we periodically require for the Restaurant and the business you operate under the Franchise Agreement (collectively, “Operating Assets”) and other products and services that your Restaurant uses or sells (besides those described above that you currently may obtain only from approved suppliers) must meet our minimum standards and specifications. We issue and modify standards and specifications based on our and our affiliates’ experience in developing and operating Freshii Restaurants and Lettuce Eatery Restaurants. Standards and specifications may impose minimum requirements for production, performance, reputation, prices, quality, design, and appearance. Our Operations Manual or other communications will identify our standards and specifications for you and, where appropriate, you may provide those standards and specifications to suppliers.

If you want to use any products or services for or at the Restaurant that we have not yet evaluated or purchase any product or service from a supplier that we have not yet approved (for products and services that we require you to purchase only from designated or approved suppliers), you first must submit sufficient information, specifications and samples for us to determine whether the product or service complies with our standards and specifications or the supplier meets our criteria. We may charge you our evaluation costs and will decide within a reasonable time (no more than 30 days). We may condition our approval of a supplier on requirements relating to product quality, prices, consistency, warranty, reliability, financial capability, labor relations, customer relations, frequency of delivery, concentration of purchases, standards of service (including prompt attention to complaints), and/or other criteria. We may inspect the proposed supplier’s facilities and require the proposed supplier to deliver product samples or items, at our option, either directly to us or to any third party we designate for testing. We may periodically re-inspect any approved supplier’s facilities and products and revoke our approval of any supplier, product or service that does not continue to meet our criteria by notifying you and/or the supplier. Despite these procedures, we may limit the number of approved suppliers with whom you may deal, designate sources that you must use, and/or refuse any of your requests for any reason, including that we have already designated an exclusive source (which in the future might be us or our affiliate) for a particular item or service or if we believe that doing so is in the best interests of the Freshii Restaurant network. We are not required to make available to you or to any supplier our criteria for product or supplier approval that we deem confidential.

We and/or our affiliates may derive revenue or other material consideration based on your purchases and leases, including from charging you for products and services that we or our affiliates provide to you in the future and from promotional allowances, volume discounts and other payments that designated, approved or recommended suppliers make to us and our affiliates. We and our affiliates may use all amounts received from suppliers, whether or not based on your and other franchisees’ prospective or actual dealings with them, without restriction for any purposes that we and our affiliates deem appropriate. Collectively, the purchases and leases that you must make from us or our affiliates, from designated or approved suppliers, or according to our standards and specifications represent about ~~90~~100% of your overall purchases and leases in establishing and operating the Restaurant. Neither we nor our affiliates have sold or leased products or services directly to franchisees (and therefore, have derived no revenue from these activities) nor received any payments from designated or approved suppliers on account of franchisee purchases or leases of required and approved items from those suppliers.

There are no purchasing or distribution cooperatives related to Freshii franchises. We have negotiated purchase arrangements with suppliers (including price terms) for some items and services. In doing so, we seek to promote the overall interests of the franchise system and affiliate-owned operations and our interests as the franchisor. We do not provide material benefits to you (for example, renewal or granting additional franchises) based on your purchase of particular products or services or use of particular suppliers.

The Area Development Agreement does not require you to buy or lease from us (or our affiliates), our designees, or approved suppliers, or according to our specifications, any goods, services, supplies, fixtures, equipment, inventory, computer hardware and software, or comparable items related to establishing or operating your business under the Area Development Agreement. However, you must give us information and materials we request concerning each site and Controlled Affiliate for a Freshii Restaurant so that we can assess that site and Controlled Affiliate, which are subject to our approval. We also have the right to approve your Management Personnel.

**Item 9**  
**FRANCHISEE'S OBLIGATIONS**

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

Obligation	Section in agreement	Item in Disclosure Document
a. Site selection and acquisition/lease	Sections 2A, 2B and 2G and Exhibit C of Franchise Agreement; Section 5B of Area Development Agreement	Items 7, 8, 11, and 12
b. Pre-opening purchases/leases	Sections 2C to 2E, 5A, 5E and 5G of Franchise Agreement	Items 7, 8, and 11
c. Site development and other pre-opening requirements	Sections 2C to 2F, 4A to 4C, 5A, 5D, 5E, 5G, 5H and 7A of Franchise Agreement	Items 7, 8, and 11
d. Initial and ongoing training	Sections 4A to 4E of Franchise Agreement; Section 6 of Area Development Agreement	Items 6, 7, and 11
e. Opening	Section 2F of Franchise Agreement	Item 11
f. Fees	Sections 2D, 2E, 2G, 4D, 4G, 5E, 5G, 6, 7A, 7B, 9B, 13D, 14, 15C, 16A, 17D and 18C of Franchise Agreement; Sections 4, 6D, 7B, 7C, 11D, 14D and 15C and Exhibit A of Area Development Agreement	Items 5, 6, 7, 8, and 11
g. Compliance with standards and policies/operating manual	Sections 2C, 4G and 5 of Franchise Agreement	Items 8 and 11
h. Trademarks and proprietary information	Sections 10 and 11 and Exhibit D of Franchise Agreement; Sections 8 and 9 and Exhibit D of Area Development Agreement	Items 13 and 14
i. Restrictions on products/services offered	Sections 5B, 5C and 5H of Franchise Agreement	Items 11, 12, and 16
j. Warranty and customer service requirements	Section 5H of Franchise Agreement	Not applicable
k. Territorial development and sales quotas	Section 5 and Exhibit A of Area Development Agreement;	Item 12

Obligation	Section in agreement	Item in Disclosure Document
l. On-going product/service purchases	Sections 2D, 2E, 5E and 5H of Franchise Agreement	Items 6 and 8
m. Maintenance, appearance, and remodeling requirements	Sections 2C, 5A and 5H of Franchise Agreement	Items 8, 11, 16, and 17
n. Insurance	Section 5G of Franchise Agreement	Items 6 and 7
o. Advertising	Section 7 of Franchise Agreement	Items 5, 6, 7, 8, and 11
p. Indemnification	Section 17D of Franchise Agreement; Section 14D of Area Development Agreement	Item 6
q. Owner's participation/management/staffing	Sections 1C, 1D, 4A to 4D, 5D and 5H of Franchise Agreement; Sections 1E, 7B and 7C of Area Development Agreement	Items 11 and 15
r. Records and reports	Section 8 of Franchise Agreement; Section 7D of Area Development Agreement	Not applicable
s. Inspections and audits	Section 9 of Franchise Agreement	Item 6
t. Transfer	Section 13 of Franchise Agreement; Section 11 of Area Development Agreement	Items 6 and 17
u. Renewal	Section 14 of Franchise Agreement; Section 2 of Area Development Agreement	Items 6 and 17
v. Post-termination obligations	Section 16 of Franchise Agreement; Section 13 of Area Development Agreement	Item 17
w. Non-competition covenants	Sections 12 and 16D of Franchise Agreement; Sections 10 and 13D of Area Development Agreement	Items 15 and 17
x. Dispute resolution	Sections 18C to 18F and 18L of Franchise Agreement; Sections 15C to 15F and 15L of Area Development Agreement	Item 17
y. Business plan	Section 7A of Area Development Agreement	Item 11
z. Catering service and delivery service	Section 5C of Franchise Agreement	Item 16

**Item 10**  
**FINANCING**

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

We have been accepted by SBA Franchise Registry. It is our understanding that this acceptance may expedite the loan process if you wish to obtain financing from the SBA.

## Item 11

### FRANCHISOR'S ASSISTANCE, ADVERTISING, COMPUTER SYSTEMS, AND TRAINING

Except as listed below, Freshii Development, LLC is not required to provide you with any assistance.

#### Obligations Under Area Development Agreement

##### Pre-Opening Assistance Under Area Development Agreement

If you sign the Area Development Agreement, then before you begin operating under that Agreement, we will:

1. Determine the Development Area within which you will look for Freshii Restaurant sites. (Area Development Agreement – Section 1B)
2. Determine the mandatory development Schedule for your (or your Controlled Affiliates') Freshii Restaurants. (Area Development Agreement – Section 1B)
3. Approve your Operating Partner (defined in Item 15) if he or she meets our requirements. (Area Development Agreement – Section 1E)

##### Ongoing Assistance Under Area Development Agreement

If you sign the Area Development Agreement, then during your operation under that Agreement, we will:

1. Approve of your (or your Controlled Affiliate's) financial and operational ability and proposed site for a Freshii Restaurant if they meet our requirements. You must give us the franchise application package that we periodically specify (including a signed letter of intent with the site's landlord) and all other information and materials that we periodically request to assess (i) each proposed Freshii Restaurant site and market area, and (ii) your (or the applicable Controlled Affiliate's) financial and operational ability to develop and operate the proposed Freshii Restaurant. We will not unreasonably withhold approval of any site in the Development Area you propose that meets our then current criteria for population density and other demographic characteristics, visibility, traffic flow, competition, accessibility, parking, size, and other physical and commercial characteristics. We will not unreasonably withhold approval of you or a Controlled Affiliate as the franchisee of a Freshii Restaurant if you or the Controlled Affiliate meets our then current criteria for the financial and operational qualifications of Freshii Restaurant franchisees, including the operational criteria under the Franchise Agreement relating to the Freshii Restaurant's management. However, we have the absolute right to disapprove any site or franchisee that does not meet these criteria. Our site criteria might vary depending on the number of Freshii Restaurants that you and your Controlled Affiliates then operate in the Development Area in order to achieve a patterned and targeted development in the market.

We will use reasonable efforts to review and either approve or disapprove the sites and franchisees that you propose within 30 days after we receive all requested information and materials. If we approve a proposed site and your (or your Controlled Affiliate's) financial and operational ability to develop and operate the proposed Freshii Restaurant, then we will offer, and you or your approved Controlled Affiliate (and your owners and, if applicable, the Controlled Affiliate's owners) must sign, a separate franchise agreement for that Freshii Restaurant. If you

or the Controlled Affiliate (and the applicable owners) do not do so within a reasonable time after we deliver the franchise agreement, or are unable to obtain lawful possession of the proposed site within a reasonable time after we approve of the proposed site, we may withdraw our approval.

Our acceptance indicates only that we believe the site meets our then acceptable criteria. Applying criteria that have appeared effective with other sites might not accurately reflect the potential for all sites, and demographic and/or other factors included in or excluded from our criteria could change, altering the site's potential. The uncertainty and instability of these criteria are beyond our control, and we are not responsible if a site we approve fails to meet your expectations. In granting you the development rights under the Area Development Agreement, we are relying on your knowledge of the real estate market in the Development Area and your ability to locate and access sites. (Area Development Agreement – Sections 5B and 5E)

2. Grant you (or your approved Controlled Affiliate) franchises to operate Freshii Restaurants at approved sites in the Development Area. You or the approved Controlled Affiliate must sign our then current form of franchise agreement and related documents for each Freshii Restaurant (the “Updated Franchise Documents”), the terms of which may differ substantially from those in the Franchise Agreement attached to this disclosure document. However, the Updated Franchise Documents will reflect a \$30,000 initial franchise fee (to which we apply \$15,000 of the Development Fee) and a royalty of 6% of gross sales. (Area Development Agreement – Section 5C)
3. Provide a 1-day executive workshop for the Operating Partner and your other owners, pre-opening training under the Franchise Agreement for your Operating Partner, and ongoing training courses, programs and conventions that we choose to provide. We describe the executive workshop and other training later in this Item. (Area Development Agreement – Sections 6A, 6B and 6D)
4. Approve one of your (or your Controlled Affiliate's) Freshii Restaurants as a Certified Training Restaurant, and that restaurant's general manager as a Certified Training Manager, if the restaurant and manager meet our requirements. We describe these aspects of our training program later in this Item. (Area Development Agreement – Section 6C)
5. Approve your business plan if it meets our requirements. Within 60 days after signing the Area Development Agreement, you must submit your proposed business plan covering your development plans and projected operations under that Agreement. The business plan must include detailed plans for locating sites in specific markets within the Development Area. You must incorporate our comments (if any) into a revised business plan. You also must update the business plan each year and submit the updated business plan to us for our review and comment within 30 days after the start of each Development Period (defined in Item 12). You must implement your business plan, as it is updated and revised. (Area Development Agreement – Section 7A)
6. Approve Management Personnel who meet our requirements. (Area Development Agreement – Sections 7B and 7C)

## **Obligations Under Franchise Agreement**

### **Pre-Opening Assistance Under Franchise Agreement**

Before you begin operating the Restaurant, we will:

1. Provide your personnel with initial training, which we describe in detail later in this Item. (Franchise Agreement – Sections 4A to 4C)
2. Approve sites for Freshii Restaurants that meet our criteria. We describe our site approval criteria and process under the Area Development Agreement above, and we use essentially the same criteria and process for evaluating sites if you sign a Franchise Agreement that is not covered by an Area Development Agreement. If you did not sign an Area Development Agreement with us, then you will have 60 days after you sign the Franchise Agreement to locate a site that you believe is acceptable for a Freshii Restaurant and provide us with all information we require relating to the proposed site. We will have 30 days after we receive all of the information we require to notify you whether the site is approved. Unless we provide our specific approval, a proposed site is deemed not approved. If we cannot agree on a proposed site, we may elect to terminate the Franchise Agreement and keep the entire initial franchise fee. (Franchise Agreement – Section 2A)
3. Approve or disapprove the lease for the Restaurant. You must not sign any lease or sublease unless we and you have signed the Franchise Agreement and we have approved the lease or sublease. The lease must contain the terms and provisions that are reasonably acceptable to us. We may (but have no obligation to) provide you guidance or assistance relating to the lease and its negotiation. At our request, you must sign, and obtain the lessor’s consent to, the Collateral Assignment of Lease attached to the Franchise Agreement under which you will collaterally assign the lease to us as security for your timely performance of all Franchise Agreement obligations. Our approval indicates only that we believe the lease’s terms meet our then acceptable criteria. Neither we nor our affiliates generally own the premises for Freshii Restaurants and lease them to franchisees. (Franchise Agreement – Section 2B)
4. Provide you mandatory and suggested specifications and layouts for a Freshii Restaurant, including requirements or recommendations (as applicable) for a Freshii Restaurant’s design, decor and Operating Assets. These specifications and layouts might not reflect the requirements of any federal, state or local law, code or regulation, including those arising under zoning regulations, environmental laws and regulations, other applicable ordinances, building codes or permit requirements, or any lease requirements or restrictions. It is your responsibility to prepare all required construction and remodeling plans and specifications to suit the Restaurant and to construct, remodel and decorate the Restaurant’s premises. We may, but have no obligation to, periodically inspect the Restaurant’s site during its development. (Franchise Agreement – Section 2C)
5. As discussed in Item 8, identify the Operating Assets, inventory, supplies and other products and services that you must use to develop and operate the Restaurant, the minimum standards and specifications that you must satisfy, and the designated and approved suppliers from whom you must or may buy or lease items and services. Neither we nor our affiliates currently provide items directly. We will provide names of approved suppliers for some items. Our Operations Manual provides specifications for some items. We do not deliver or install any items. (Franchise Agreement – Sections 2D, 2E, 5A, 5E and 5H)
6. Provide you access to our operating manual and other technical manuals (“Operations Manual”). The Operations Manual may include audiotapes, videotapes, computer disks, compact disks, DVDs and/or other written or intangible materials that we may make available to you by various means, including access through the Internet. The Operations Manual contains System Standards and information on your other obligations under the Franchise Agreement. We may modify the Operations Manual periodically to reflect changes in System Standards, but these modifications

will not alter your fundamental rights or status under the Franchise Agreement. You must keep your copy of the Operations Manual current and communicate all updates to your personnel in a timely manner. You must keep all parts of the Operations Manual in a secure location. If there is a dispute over its contents, our master copy of the Operations Manual controls. The Operations Manual's contents are confidential and you may not disclose any part of the Operations Manual to any person other than Restaurant personnel who need to know that part and who agree to maintain its confidentiality. You may not at any time copy, duplicate, record or otherwise reproduce any part of the Operations Manual. You must pay our then applicable charge for any replacement copy of the Operations Manual in tangible form.

The System Standards do not include any personnel policies or procedures or security-related policies or procedures that we (at our option) may make available to you in the Operations Manual or otherwise for your optional use. You will determine to what extent, if any, these policies and procedures might apply to your operations at the Restaurant. We neither dictate nor control labor or employment matters for franchisees and their employees and we are not responsible for the safety and security of Restaurant employees or patrons.

At our option, we may post the Operations Manual on a restricted website to which you will have password access. If we do so, you must periodically monitor the website for any updates to the Operations Manual or System Standards. Any passwords or other digital identifications necessary to access the Operations Manual on such a website are part of confidential information. The Operations Manual's current table of contents is Exhibit D. (Franchise Agreement – Section 4G)

7. Consult with you and prepare a written grand opening marketing program, if the Restaurant is the first Freshii Restaurant covered by the Area Development Agreement to open in the Development Area or if the Restaurant is not covered by an Area Development Agreement. You must implement the approved program with our assistance and according to our requirements. We will use the Grand Opening Marketing Deposit to pay, on your behalf, providers of products and services according to the approved grand opening marketing program. But even if we do not prepare a grand opening marketing program (because the Restaurant is not the first Freshii Restaurant covered by the Area Development Agreement to open in the Development Area), you still must implement a grand opening marketing program for the Restaurant according to the requirements in the Operations Manual and other System Standards. (Franchise Agreement – Section 7A)

#### Ongoing Assistance Under Franchise Agreement

During your operation of your Restaurant, we will:

1. Advise you regarding the Restaurant's operation based on your reports or our inspections. ~~We may~~ We will give you advice and written materials, including our Operations Manual, to guide you on standards, specifications, operating procedures and methods that Freshii Restaurants use; purchasing required or recommended Operating Assets and other products, supplies and materials; employee training methods and procedures (although you are responsible for hiring your employees and for the terms and conditions of their employment); and accounting, advertising, and marketing. ~~We may guide you in our Operations Manual, in bulletins or other written materials, by electronic media, by telephone consultation, and/or at our office or the Restaurant.~~ (Franchise Agreement – Section 4F)

2. Give you, at your request and expense (and our option), additional or special guidance, assistance, and training. Any specific ongoing training, conventions, advice or assistance we provide does not create an obligation to continue providing that specific training, convention, advice or assistance, all of which we may discontinue and modify at any time. (Franchise Agreement – Section 4F)
3. Continue to provide you access to our Operations Manual. (Franchise Agreement – Section 4G)
4. Issue and modify System Standards. Because of our periodic modification of the System Standards (including to accommodate changes to the required Computer System for Freshii Restaurants and the Marks), you might need to invest additional capital in and otherwise improve and develop the Restaurant and incur higher operating costs. You must comply with those obligations within the time period we specify. Although we may establish and periodically modify System Standards that you must follow, you retain the responsibility for the Restaurant’s day-to-day management and operation and implementing and maintaining System Standards at the Restaurant. Because complete and detailed uniformity under many varying conditions might not be possible or practical, we may vary System Standards for any Freshii Restaurant or group of Freshii Restaurants based upon the peculiarities of any conditions or factors that we consider important to its operations. You have no right to require us to grant you a similar variation or accommodation. (Franchise Agreement – Sections 5H and 5I)
5. Let you use our Marks. (Franchise Agreement – Section 10)
6. Let you use our confidential information. (Franchise Agreement – Section 11)
- ~~7. At our option, maintain and administer a marketing fund for the advertising, marketing and public relations programs and materials that we deem appropriate (the “Marketing Fund”). We describe the Marketing Fund and other aspects of our advertising, marketing and promotional programs later in this Item. (Franchise Agreement – Section 7B)~~
- ~~8. At our option, establish a website or series of websites for the Freshii Restaurant network to advertise, market and promote Freshii Restaurants and the products and services they offer, the Freshii Restaurant franchise and/or for any other purposes that we determine are appropriate for Freshii Restaurants (collectively, the “System Website”). We describe the System Website later in this Item. (Franchise Agreement – Section 7E)~~

## **Advertising and Marketing Programs**

### **Marketing Fund**

Recognizing the value of advertising and marketing to the goodwill and public image of Freshii Restaurants, we have established a Marketing Fund. You must contribute the amount that we periodically specify to the Marketing Fund. Currently the specified Marketing Fund Contribution is 1.5% of Gross Sales. Freshii Restaurants that we and our affiliates own will contribute to the Marketing Fund on the same basis as franchisees. We expect that all of our initial franchisees will contribute at the same rate.

We will direct all programs that the Marketing Fund finances, with sole control over the creative concepts, materials and endorsements used and their geographic, market and media placement and allocation. The Marketing Fund may pay for preparing and producing video, audio and written materials and electronic media; maintaining and administering one or more System Websites and otherwise establishing an online presence; administering regional and multi-regional marketing and advertising

programs, including creating and/or purchasing trade journal, direct mail, radio and other media advertising and using advertising, promotion and marketing agencies and other advisors to provide assistance; and supporting public relations, market research and other advertising, promotion and marketing activities. The Marketing Fund may advertise locally, regionally, and/or nationally in printed materials, on radio or television, and/or on the Internet, whatever we think best. We and/or an outside national or regional advertising agency will produce all advertising and marketing. The Marketing Fund periodically will make available samples of advertising, marketing and promotional formats and materials at no cost and will offer for sale multiple copies of these materials at its direct cost of producing them, plus any related shipping, handling and storage charges. The Marketing Fund also may reimburse Freshii Restaurant operators (including us and/or our affiliates) for certain approved marketing expenditures that we periodically specify. We also may use Marketing Fund assets for advertising, marketing and promotional programs and materials that principally solicit the sale of Freshii Restaurant franchises, although we have no historical information on the percentage of assets used for those purposes.

We will account for the Marketing Fund separately from our other funds and not use the Marketing Fund for any of our general operating expenses. However, the Marketing Fund may reimburse us and our affiliates for the reasonable salaries and benefits of personnel who manage and administer the Marketing Fund or otherwise provide assistance or services to the Marketing Fund, the Marketing Fund's administrative costs, travel expenses of personnel while they are on Marketing Fund business, meeting costs, overhead relating to the Marketing Fund's business, and other expenses that we and they incur in administering or directing the Marketing Fund and its programs, including conducting market research, preparing advertising, promotional and marketing materials, and collecting and accounting for Marketing Fund contributions.

The Marketing Fund is not a trust, and we do not owe you fiduciary obligations because of our maintaining, directing or administering the Marketing Fund or any other reason. The Marketing Fund may spend in any fiscal year more or less than the total Marketing Fund contributions in that year, borrow from us or others (paying reasonable interest) to cover deficits, or invest any surplus for future use. We will use all interest earned on Marketing Fund contributions to pay costs before using the Marketing Fund's other assets. We will prepare an annual, unaudited statement of Marketing Fund collections and expenses and give you the statement upon written request. We may (but need not) have the Marketing Fund audited annually, at the Marketing Fund's expense, by a certified public accountant. We may incorporate the Marketing Fund or operate it through a separate entity whenever we deem appropriate. The successor entity will have all of the rights and duties specified here.

We intend the Marketing Fund to maximize recognition of the Marks and patronage of Freshii Restaurants. Although we will try to use the Marketing Fund in the aggregate to develop advertising and marketing materials and programs, and implement programs, that will benefit all Freshii Restaurants, we need not ensure that Marketing Fund expenditures in or affecting any geographic area are proportionate or equivalent to the Marketing Fund contributions by Freshii Restaurants operating in that geographic area or that any Freshii Restaurant benefits directly or in proportion to its Marketing Fund contribution from the development of advertising and marketing materials or implementation of programs. We may, but have no obligation to, use collection agents and institute legal proceedings to collect Marketing Fund contributions at the Marketing Fund's expense. We also may forgive, waive, settle and compromise all claims by or against the Marketing Fund. We assume no other direct or indirect liability or obligation to you for collecting amounts due to, maintaining, directing or administering the Marketing Fund.

We may at any time defer or reduce the Marketing Fund contributions of a Freshii Restaurant franchisee and, upon 30 days' prior written notice, reduce or suspend Marketing Fund contributions and operations for one or more periods of any length and terminate (and, if terminated, reinstate) the Marketing Fund. If we terminate the Marketing Fund, we will distribute all unspent funds to our then

existing franchisees, and to us and our affiliates, in proportion to our and their respective Marketing Fund contributions during the previous 12-month period. (Franchise Agreement – Section 7B)

During the fiscal year ended December 31, ~~2013~~2014, the Marketing Fund had expenditures as follows: 50% was for production, 35% was for media placement, 5% was for administration, and 10% was for Mobile Application development.

#### Advisory Council

We have formed an advisory council to work with us to improve the System, the products offered by Freshii Restaurants, advertising conducted by the Marketing Fund, and any other matters that we deem appropriate. The members of the council will consist of all Freshii Restaurant, whether operated by Us, Our affiliates or franchised. The advisory council acts solely in an advisory capacity, and will not have decision making authority. We will have the right to form, change, merge or dissolve this advisory council. If you participate in an advisory council, you must pay any costs you incur related to your participation, such as travel and living expenses related to attending advisory council meetings.

There currently are currently no local or regional advertising cooperatives in the Freshii Restaurant network.

#### System Website and Electronic Advertising

We or one or more of our designees may establish the System Website. If we include information about the Restaurant on the System Website, you must give us the information and materials that we periodically request concerning the Restaurant and otherwise participate in the System Website in the manner that we periodically specify. By posting or submitting to us information or materials for the System Website, you are representing to us that the information and materials are accurate and not misleading and do not infringe any third party's rights.

We maintain an account with a “virtual storage” website, [www.box.com](http://www.box.com). This account is to provide private and secure communications between us, our franchisees, and other persons and entities that we decide are appropriate. Also, we publish and maintain various forms and manuals there that you may use in the operation of your Restaurant. You must establish and maintain access to this website in the manner we designate.

We own all intellectual property and other rights in the System Website and all information it contains, including the domain name or URL for the System Website, the log of “hits” by visitors, and any personal or business data that visitors (including you and your personnel) supply. We may use the Marketing Fund's assets to develop, maintain and update the System Website. We may implement and periodically modify System Standards relating to the System Website and, at our option, may discontinue the System Website, or any services offered through the System Website, at any time.

All advertising, marketing and promotional materials that you develop for the Restaurant must contain notices of the System Website's URL in the manner we periodically designate. You may not develop, maintain or authorize any other website, other online presence or other electronic medium that mentions or describes the Restaurant or displays any of the Marks without our prior approval. You may not conduct commerce or directly or indirectly offer or sell any products or services using any website, another electronic means or medium, or otherwise over the Internet. Nothing limits our s right to maintain websites other than the System Website or to offer and sell products and services under the Marks from the System Website, another website or otherwise over the Internet without payment or other obligation. (Franchise Agreement – Section 7E)

You are not permitted to promote your Restaurant or use any of the Proprietary Marks in any manner on any social or networking websites, such as Facebook, LinkedIn or Twitter, without our prior written consent. We will control all social media initiatives. You must comply with our System standards regarding the use of social media in your Restaurant's operation, including prohibitions on your and the Restaurant's employees posting or blogging comments about the Restaurant or the System, other than on a website established or authorized by us ("social media" includes personal blogs, common social networks like Facebook and MySpace, professional networks like LinkedIn, live-blogging tools like Twitter, virtual worlds, file, audio and video-sharing sites, and other similar social networking or media sites or tools). We will provide access to branded social media pages/handles/assets, and you must update these regularly. We reserve the right to conduct collective/national campaigns via local social media on your behalf.

### Approval of Advertising

All of your advertising, promotion and marketing must be completely clear, factual and not misleading and conform to the highest ethical standards and the advertising and marketing policies that we periodically specify. Before using them, you must send to us, for our approval, samples of all advertising, promotional and marketing materials that we have not prepared or previously approved during the past 6 months. If you do not receive written notice of disapproval from us within 15 days after we receive the materials, they are deemed approved. You may not use any advertising, promotional or marketing materials that we have disapproved. We assume no liability to you or any other party due to our approval or disapproval of any advertising, marketing or promotional materials or programs. You are responsible for ensuring that those materials and programs comply with all applicable laws, ordinances and regulations. (Franchise Agreement – Section 7D)

### Computer System

Under the Franchise Agreement, you must obtain and use the computer hardware and software that we periodically specify, including hardware components, dedicated telephone and power lines, modems, printers, and other computer-related accessories and peripheral equipment (the "Computer System").

As part of the Computer System, you currently must license our point-of-sale program from its manufacturer, Micros Systems Inc. ("Micros Systems"). This program has functions for multi-unit polling, daily sales reporting, labor reporting, void/comp/discount management, emails, comparative reports, management alerts and tracking sales trends and will collect, track and analyze sales, payment, labor, gift card, frequency program and other operations-related data. The Computer System also functions as the Restaurant's point-of-sale cash register system. It will cost about \$15,000 to \$30,000 to buy the Computer System's components, including the entire point-of-sale computer system, when you develop the Restaurant.

As part of the license for the point-of-sale program, Micros will provide ongoing maintenance, support, upgrades and updates for that program. You need not obtain, and no party has any obligation to provide, any specific maintenance, repairs, updating, upgrading or support contracts for other parts the Computer System, although typically manufacturers offer these services. Because of varying market conditions and manufacturers who could provide the Computer System's point-of-sale program and other components, the estimated cost of maintenance, updating, upgrading or support contracts for the computer system can range from \$250 to \$600 per year.

We may periodically modify specifications for and components of the Computer System. These modification and/or other technological developments or events may require you to purchase, lease and/or

license new or modified computer hardware, software and other components and to obtain service and support for the Computer System. Although we cannot estimate the future costs of the Computer System or required service or support, you must incur the costs of obtaining the computer hardware, software and other components comprising the Computer System (and additions and modifications) and required service or support. Within 60 days after we deliver notice to you, you must obtain the Computer System components that we designate and ensure that your Computer System, as modified, is functioning properly. No contract limits the frequency or cost of these obligations.

We and our affiliates may condition any license of required or recommended proprietary software to you, and/or your use of technology developed or maintained by or for us (including the System Website), on your signing a software license agreement or similar document, or otherwise agreeing to the terms (for example, by acknowledging your consent to and accepting the terms of a click-through license agreement), that we and our affiliates periodically specify to regulate your use of, and our (or our affiliate's) and your respective rights and responsibilities concerning, the software or technology. We and our affiliates may charge you up-front and ongoing fees for any required or recommended proprietary software or technology that we or our ~~affiliates~~affiliate's license to you and for other Computer System maintenance and support services provided during the Franchise Agreement's term.

Despite your obligation to buy, use, and maintain the Computer System according to our standards and specifications, you have responsibility for: (1) the acquisition, operation, maintenance, and upgrading of the Computer System; (2) the manner in which your Computer System interfaces with our and any third party's computer system; and (3) any and all consequences if the Computer System is not properly operated, maintained, and upgraded. The Computer System must permit 24 hours per day, 7 days per week electronic communications between us and you, including access to the Internet. We will have unlimited, independent access to all of the information and data in the Computer System. (Franchise Agreement - Section 2E)

You need not buy or use any computer system to operate under the Area Development Agreement.

### **Opening**

You will begin looking for sites and otherwise operating under the Area Development Agreement as soon as you sign it. We estimate that it will be about twelve months after you sign the Franchise Agreement (which is when you first pay consideration for that franchise) before you begin operating your Restaurant. The specific timetable for opening depends on how quickly you finalize the Restaurant's lease; the Restaurant's condition and the extent to which you must upgrade or remodel it; the construction schedule; the delivery schedule for Operating Assets and supplies; schedule for completing training; and complying with local laws and regulations. You must have the Restaurant's lease signed within 6 months from when you sign the Franchise Agreement. The typical length of time between the signing of the Franchise Agreement and the opening of your Restaurant is the same as for an individual Franchisee.

You may not open and begin operating the Restaurant until: (1) you have properly developed and equipped the Restaurant according to our standards and specifications and in compliance with all applicable laws, rules and regulations; (2) all Restaurant personnel have completed all pre-opening training to our satisfaction; (3) you have paid all amounts that you then owe to us or our affiliate; (4) you have obtained all required licenses and permits to operate the Restaurant; (5) you have provided us copies of all required insurance policies or other evidence of insurance coverage and payment of premiums as we request; and (6) we have (at our option) conducted a pre-opening inspection and approved the Restaurant for opening. Our determination that you have met all of our pre-opening requirements will not constitute a representation or warranty, express or implied, that the Restaurant complies with any laws or constitute

a waiver of your non-compliance, or of our right to demand full compliance, with any provision of the Franchise Agreement. You must obtain our approval to open and open the Restaurant for business within twelve months after signing the Franchise Agreement. (Franchise Agreement – Section 2F)

**Training**

Daniel Cooper supervises all aspects of our training programs. He has worked with us and the Freshii concept for the last 8 years and has worked in the restaurant industry for the last 20 years. Our and our affiliates’ other employees (such as the general managers of their Freshii Restaurants) also will assist with training, and we expect that they generally will have at least 5 years’ experience in their appropriate subject areas. We plan to hold most of our training programs about every 8 weeks. We use manuals (including the Operations Manual), videos, web-based training and handouts in our training programs. We do not charge any fees for the initial (pre-opening) training programs, but you must pay our then current fees for any additional or supplemental training we provide. You also must pay your personnel’s travel, living and other expenses and compensation incurred while attending any training programs. (Area Development Agreement – Section 6 and Franchise Agreement – Sections 4A to 4E)

**Executive Workshop**

Within 60 days after signing the Area Development Agreement, the Operating Partner and your other owners must attend and complete to our satisfaction the 1-day executive workshop for Freshii Restaurant developers. If you sign a Franchise Agreement that is not covered by an Area Development Agreement, then your owners must attend and complete the executive workshop to our satisfaction before you open the Restaurant. This workshop is about 8 hours of classroom training at our corporate headquarters covering the Freshii™ brand concept, site selection criteria, operations standards and methodology, and culture. The executive workshop and the initial training program for the Operating Partner (described below) are the only training programs that we currently require under the Area Development Agreement. It is anticipated that the executive workshop will be offered five or six times a year.

The following chart describes our current executive workshop:

**TRAINING PROGRAM**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Subject</b>	<b>Hours of Classroom Training</b>	<b>Hours of On-The-Job Training</b>	<b>Location</b>
Freshii brand concept and culture	12	0	Our affiliate’s Corporate Headquarters or Corporate Store in Toronto, Ontario
Site selection criteria	10	<u>0</u>	Our affiliate’s Corporate Headquarters or Corporate Store in Toronto, Ontario

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Subject</b>	<b>Hours of Classroom Training</b>	<b>Hours of On-The-Job Training</b>	<b>Location</b>
Operations standards and methodology	10	0	Our affiliate's Corporate Headquarters or Corporate Store in Toronto, Ontario
<b>Total Hours</b>	<b>32</b>	<b>0</b>	

### Initial Training for Salaried Managers

Before you open the Restaurant, the General Manager and other salaried managers at the Restaurant must attend and complete our initial training program on the operation of a Freshii Restaurant. This initial training may include classroom training, instruction at designated facilities, hands-on training at an operating Freshii Restaurant, remote training (including via videotape, DVD or Internet access) and/or self-study programs. The General Manager must complete the initial training program to our satisfaction at least 6 weeks before opening the Restaurant, and other salaried Restaurant managers must complete the initial training program to our satisfaction at least 3 weeks before opening the Restaurant. If you sign the Area Development Agreement, then your Operating Partner also must complete the initial training program to our satisfaction before the first Freshii Restaurant in the Development Area opens. If you fail to complete the training program to our satisfaction, we may elect to terminate the Agreement and keep the entire initial fee.

The following chart describes our current initial training program:

### TRAINING PROGRAM

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Subject</b>	<b>Hours of Classroom Training</b>	<b>Hours of On-The-Job Training</b>	<b>Location</b>
Freshii Basics: company philosophy, product descriptions, review, questions and answers	5	0	Our affiliate's Corporate Headquarters or Corporate Store in Toronto, Ontario
Unit orientation	2	0	Our affiliate's Corporate Headquarters or Corporate Store in Toronto, Ontario
Menu discussion, food safety, ordering, receiving and handling, and food preparation and design	7	64	Our affiliate's Corporate Headquarters or Corporate Store in Toronto, Ontario
Cashier and expeditor training	0	24	Our affiliate's Corporate Headquarters or Corporate Store in Toronto, Ontario

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Subject</b>	<b>Hours of Classroom Training</b>	<b>Hours of On-The-Job Training</b>	<b>Location</b>
Manager training	9	60	Our affiliate's Corporate Headquarters or Corporate Store in Toronto, Ontario
Business and Management: introduction to vendors, inventory, payroll, P&L statements and operations tools	30	10	Our affiliate's Corporate Headquarters or Corporate Store in Toronto, Ontario
Real estate criteria, restaurant review form, opening checklist and inventory	10	5	Our affiliate's Corporate Headquarters or Corporate Store in Toronto, Ontario
Marketing and promotion, menu pricing, catering and delivery	10	5	Our affiliate's Corporate Headquarters or Corporate Store in Toronto, Ontario
Final review	5	0	Our affiliate's Corporate Headquarters or Corporate Store in Toronto, Ontario
Certification week	0	50	Our affiliate's Corporate Headquarters or Corporate Store in Toronto, Ontario
<b>Total Hours</b>	<b>78</b>	<b>218</b>	

When you sign the Franchise Agreement, if we have then designated a Freshii Restaurant that you or your affiliate operates in the Development Area as a Certified Training Restaurant, and designated the general manager of that Freshii Restaurant as a Certified Training Manager, under the Area Development Agreement, then some parts of this initial training (as described in the chart above) will occur at that Certified Training Restaurant under the Certified Training Manager's supervision (and according to our standards and guidelines). However, you still must send the Restaurant's General Manager and all other salaried managers at the Restaurant to our affiliate's Freshii Restaurant in Toronto, Ontario, for a "certification week" following their training at the Certified Training Restaurant. These managers must obtain our written acknowledgement that the Certified Training Manager has properly trained them and pass any certification tests that we reasonably require before opening the Restaurant. If, when you sign the Franchise Agreement, we have not designated a Freshii Restaurant that you or your affiliate operates in the Development Area as a Certified Training Restaurant, or have not designated the general manager of that Freshii Restaurant as a Certified Training Manager, under the Area Development Agreement, then all initial training will occur at our affiliate's Freshii Restaurant in Toronto, Ontario.

#### Certified Training Restaurant and Certified Training Manager

If you sign the Area Development Agreement, then before the 5th Freshii Restaurant covered by the Area Development Agreement first opens for business, but not before the 3rd Freshii Restaurant covered by the Area Development Agreement first opens for business, you must ensure that:

- (1) you or your Controlled Affiliate completes to our satisfaction the necessary training, and attains the minimum benchmarks (including passing unit inspections with the

minimum scores we specify), that we then specify for us to designate one of the operating Freshii Restaurants in the Development Area as a “Certified Training Restaurant” for the Development Area; and

(2) the general manager of the Certified Training Restaurant completes the training, performs the other tasks, and satisfies the other conditions that we then specify to designate that general manager as the “Certified Training Manager” for the Development Area.

The following chart describes our current training program for a Certified Training Manager and Certified Training Restaurant:

**TRAINING PROGRAM**

Column 1	Column 2	Column 3	Column 4
Subject	Hours of Classroom Training	Hours of On-The-Job Training	Location
Advanced “train the trainer” workshop	0	5	Proposed Certified Training Restaurant
Certified Training Manager workshop	0	30	Proposed Certified Training Restaurant
<b>Total Hours</b>	<b>0</b>	<b>35</b>	

The Certified Training Manager and other personnel at the Certified Training Restaurant must provide training and other assistance to your (and your Controlled Affiliate’s) other Freshii Restaurants and their personnel using standards and procedures that we periodically specify.

Once we designate a Certified Training Restaurant and Certified Training Manager for the Development Area, you must maintain at all times during the Area Development Agreement’s remaining term at least 1 Certified Training Restaurant in the Development Area and have a Certified Training Manager working full-time at that Certified Training Restaurant. If the Certified Training Restaurant for the Development Area fails to maintain that status, or if the Certified Training Manager’s full-time employment at the Certified Training Restaurant terminates for any reason or the Certified Training Manager for the Development Area fails to maintain that status, then you have 30 days to comply with our requirements to once again obtain a Certified Training Restaurant in the Development Area and a Certified Training Manager working full-time at that Certified Training Restaurant.

**Supplemental and Refresher Training**

Periodically during the term of the Area Development Agreement and Franchise Agreement, we may require you and your personnel (whether they are existing or newly-hired employees) to attend and satisfactorily complete various training courses, programs and conventions that we choose to provide, and/or that we require you (or your Controlled Affiliate’s) Certified Training Restaurant and Certified Training Manager to provide (if applicable), at the times and locations that we designate. We may charge reasonable fees for those training courses, programs and conventions that we administer or provide. We currently have no plans to conduct any specific additional or refresher training programs.

**Item 12**  
**TERRITORY**

**Area Development Agreement**

If you sign the Area Development Agreement, you (and your Controlled Affiliates) will develop a specified number of Freshii Restaurants within the Development Area. We and you will identify the Development Area in the Area Development Agreement before signing it. Sizes and boundaries for Development Areas will vary widely depending on factors like economic conditions in the market you are developing, the number of Freshii Restaurants that you agree to develop, demographics, and site availability. There is no minimum size for Development Areas. We will describe the Development Area using streets or other natural boundaries or, in some markets, city or county boundaries. We and you will negotiate the Schedule describing the number of Freshii Restaurants that you must develop to keep your development rights and the dates by which you must develop them. We and you then will complete the Schedule in the Area Development Agreement before signing it. You may not develop or operate Freshii Restaurants outside the Development Area.

If you and your Controlled Affiliates are in full compliance with the Area Development Agreement and other agreements (including franchise agreements), then, during the Area Development Agreement's term, neither we nor our affiliates will operate, or authorize any other party to operate, a Freshii Restaurant the physical premises of which are located within the Development Area, except for Freshii Restaurants located at Non-Traditional Locations within the Development Area. "Non-Traditional Locations" means: (1) airports, amusement parks, sports stadiums, college and university buildings, hospitals and other medical centers, and other venues to which the general public customarily does not have unlimited access; and (2) department stores, grocery stores, and other retail locations that operate under a separate brand identity and within which a Freshii Restaurant or kiosk might operate as a department located within the premises of the host retailer. After the Area Development Agreement expires or is terminated, regardless of the reason, we and our affiliates may engage, and allow others to engage, in any activities we desire within and outside the Development Area without any restrictions, subject only to your (or any Controlled Affiliate's) rights under franchise agreements with us then in effect.

Except as described above, your rights under the Area Development Agreement are non-exclusive and we (and our affiliates) retain the right during the Area Development Agreement's term to engage in all activities that we (and they) desire, at any time or place. This includes the right to:

(1) establish and operate, and authorize other parties to establish and operate, Freshii Restaurants the physical premises of which are located at Non-Traditional Locations, whether within or outside the Development Area, on any terms and conditions we deem appropriate;

(2) establish and operate, and authorize other parties to establish and operate, Freshii Restaurants the physical premises of which are located outside the Development Area on any terms and conditions we deem appropriate;

(3) offer and provide, and grant rights to others to offer and provide, products and services, whether identified by the Marks or any other trademarks or service marks, to any customers we desire (wherever located or operating, including within the Development Area) and through any distribution channels we desire (wherever located or operating, including within the Development Area), including by selling products identified by the Marks through grocery stores, mail order and the Internet; We do not have to pay you if we solicit or accept orders from inside the Development Area. Any orders placed through our Website will be fulfilled by us and you

will not receive any portion of our revenue from these sales, even if the order is delivered to a customer within your Development Area;; and

(4) engage in all other activities that the Area Development Agreement does not expressly prohibit.

Because we and others may establish and operate Freshii Restaurants at Non-Traditional Locations in the Development Area, you will not receive an exclusive territory. You may face competition from other franchisees, from outlets we own, or from other channels of distribution or competitive brands that we control.

Your failure to comply with the Schedule as of the end of any Development Period is a “Development Default.” A “Development Period” is the 12-month period beginning on the date, or the anniversary of the date, upon which you sign the Area Development Agreement. Following a Development Default, and whether or not we provide you written notice of that Development Default, you must cure that Development Default by complying with the Schedule within 60 days after the end of the Development Period in which the Development Default occurred. This cure period does not reduce the Schedule for the next Development Period or extend the time for you to comply with the Schedule for the next Development Period. If you commit 2 Development Defaults in successive Development Periods, or 3 Development Defaults at any time during the term of the Area Development Agreement, then we may (but need not):

(a) terminate the Area Development Agreement (but not franchise agreements with you or your Controlled Affiliates);

(b) extend the time of any Development Period (and extend the time for all future Development Periods) for any period of time that we determine; and/or

(c) reduce the size of the Development Area to a lesser area that we determine.

Except as described above, continuation of your territorial rights in the Development Area does not depend on your achieving a certain sales volume, market penetration, or other contingency, and we may not alter your Development Area or your territorial rights. You have no options, rights of first refusal or similar rights for other areas.

### **Franchise Agreement**

You will operate the Restaurant only at an approved site. If the Restaurant’s lease expires or is terminated without your fault, or if the Restaurant is destroyed, condemned, or otherwise rendered unusable, we will allow you to relocate the Restaurant to a new site acceptable to us at your sole expense.

We and you will identify the “Designated Territory” for the Restaurant in the Franchise Agreement before signing it. Sizes and boundaries for Designated Territories will vary widely depending on the demographics and other market factors concerning the Restaurant’s site, but we expect that Designated Territories minimum area to be granted will be the area within a radius of 5 city blocks around the location approved for the Restaurant and for locations in suburban areas the Territory may be up to a 2 mile radius of the Restaurant. We will describe the Designated Territory using streets or other natural boundaries.

If you are complying with the Franchise Agreement and all other agreements, during the Franchise Agreement’s term, neither we nor our affiliates will operate, or authorize any other party to

operate, a Freshii Restaurant, the physical premises of which are located within the Designated Territory, except for Freshii Restaurants located at Non-Traditional Locations within the Designated Territory. Otherwise your rights under the Franchise Agreement are non-exclusive and we (and our affiliates) retain the right during the Franchise Agreement's term to engage in all activities that we (and they) desire, at any time or place. This includes our right to:

(1) establish and operate, and authorize other parties to establish and operate, Freshii Restaurants the physical premises of which are located at Non-Traditional Locations, whether within or outside the Territory, on any terms and conditions we deem appropriate;

(2) establish and operate, and authorize other parties to establish and operate, Freshii Restaurants the physical premises of which are located outside the Territory on any terms and conditions we deem appropriate;

(3) offer and provide, and grant rights to others to offer and provide, products and services, whether identified by the Marks or any other trademarks or service marks, to any customers we desire (wherever located or operating, including within the Territory) and through any distribution channels we desire (wherever located or operating, including within the Territory), including by selling products identified by the Marks through grocery stores, mail order and the Internet; and

(4) engage in all other activities that the Franchise Agreement does not expressly prohibit.

Because we and others may establish and operate Freshii Restaurants at Non-Traditional Locations in the Designated Territory, you will not receive an exclusive territory. You may face competition from other franchisees, from outlets we own, or from other channels of distribution or competitive brands that we control.

We do not have to pay you if we solicit or accept orders from inside your territory. We and our affiliates may use other channels of distribution, such as the Internet, catalog sales, telemarketing or other direct marketing, to make sales in your Designated Territory under the Marks and other trademarks. Any orders placed through our Website will be fulfilled by us and you will not receive any portion of our revenue from these sales, even if the order is delivered to a customer within your Designated Territory. You are not restricted from soliciting or accepting orders from consumers outside of the Designated Territory (if we approve the solicitation materials and programs). You may not use other channels of distribution, such as the Internet, catalog sales, telemarketing, or other direct marketing, to make sales (as opposed to advertising and marketing) outside of the Designated Territory, because you may only make sales at the Restaurant and provide Catering Service and Delivery Service within the Designated Territory.

As described in Item 1, Lettuce Eatery Canada and its affiliates operate and have been franchising since 2008. Lettuce Eatery Restaurants offer a variety of healthy meals (like salads) under the "Lettuce Eatery" name throughout Canada. Lettuce Eatery Canada's principal business address is 2 Toronto Street, #235, Toronto, Ontario Canada, M5C 2B6. Lettuce Eatery Restaurants may solicit and accept orders within your Designated Territory. But because we do not expect Lettuce Eatery Canada or its affiliates to operate or grant franchises for Lettuce Eatery Restaurants in the United States, we expect no conflicts between us and our franchisees, or between franchisees of Freshii Restaurants and Lettuce Eatery Restaurants, regarding territory, customers or franchisor support. If conflicts do arise, we will resolve them as we deem appropriate. Except for the Lettuce Eatery Restaurants, neither we nor our affiliate operates, franchises, or has present plans to operate or franchise a business under a different

trademark that sells or will sell goods or services similar to those you will sell, but we may do so in the future.

You have no options, rights of first refusal, or similar rights to acquire additional franchises under the Franchise Agreement. Continuation of your territorial rights does not depend on your achieving a certain sales volume, market penetration or other contingency. We may not alter your Designated Territory or your territorial rights. There are no minimum sales conditions.

**Item 13**  
**TRADEMARKS**

You may use the Marks to operate under the Area Development Agreement and operate the Restaurant. Freshii ONE, LLC (“Freshii One”), our affiliate, has registered the following principal Marks on the Principal Register of the United States Patent and Trademark Office (the “PTO”):

Mark	Registration No.	Registration Date	Basis of Application
Freshii (and design)	3,509,669	September 30, 2008	Actual Use
Nutrition to Go	3,538,312	November 25, 2008	<del>Intent to</del> <u>Actual</u> Use
Freshii (block letters)	3,601,823	April 7, 2009	Actual Use

Freshii One licenses us to use the Marks and related intellectual property, and to sublicense them to developers and franchisees to use in developing and operating Freshii Restaurants, under a Trademark License Agreement dated February 28, 2008 (the “Trademark License Agreement”). The Trademark License Agreement’s term is 10 years and automatically renews on a year-to-year basis. Freshii One and we can terminate the Trademark License Agreement on 30 days’ notice. Freshii One has the right to approve all proposed uses of the Marks. No other agreement limits our right to use or sublicense the Marks. Freshii One ~~has filed~~ intends to file all ~~required~~ affidavits and ~~intends to renew~~ other documents required to maintain its ~~registrations for~~ interest in and to the Marks ~~when they become due~~.

There are no currently effective material determinations of the PTO, the Trademark Trial and Appeal Board, or any state trademark administrator or court, and no pending infringement, opposition, or cancellation proceedings or material federal or state court litigation, involving the principal Marks. We do not know of either superior prior rights or infringing uses that could materially affect your use of the Marks in any state.

You must follow our rules and other System Standards when using the Marks. If we believe at any time that it is advisable for us and/or you to modify, discontinue using and/or replace any Mark, and/or use one or more additional or substitute trademarks or service marks, you must comply with our directions within a reasonable time after receiving notice. We need not reimburse you for your expenses in complying with these directions (such as costs that you incur in changing the signs or replacing supplies for the Restaurant), for any loss of revenue due to any modified or discontinued Mark, or for your expenses of promoting a modified or substitute trademark or service mark.

You must notify us immediately of any actual or apparent infringement of or challenge to your use of any Mark or of any person’s claim of any rights in any Mark (or any identical or confusingly similar trademark) or claim of unfair competition relating to any Mark. You may not communicate with

any person other than us and Freshii One, our and its attorneys, and your attorneys, regarding any infringement, challenge or claim. We and Freshii One may take the action that we or Freshii One deems appropriate (including no action) and control exclusively any litigation, PTO proceeding or other administrative proceeding arising from any infringement, challenge or claim or otherwise concerning any Mark. You must sign any documents and take any other reasonable actions that, in our or Freshii One's attorneys' opinion, are necessary or advisable to protect and maintain our and Freshii One's interests in any litigation or PTO or other proceeding or otherwise to protect and maintain our and Freshii One's interests in the Marks.

We need not protect your right to use the Marks nor protect you against claims of infringement or unfair competition arising from your use of the Marks. We need not participate in your defense nor indemnify you for expenses or damages if you are a party to an administrative or judicial proceeding involving a Mark or if the proceeding is resolved unfavorably to you.

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

No patents are material to the franchise. We and Freshii One (and, if applicable, our other affiliates) claim copyrights in various copyrighted or copyrightable materials that we approve and license for use in the operation of Freshii Restaurants, including the Operations Manual, training materials, and advertising and promotional materials. We have not registered these copyrighted works with the United States Copyright Office. You may use these copyrighted works to operate the Restaurant.

There currently are no effective adverse determinations of, or pending material proceedings before, the PTO, the United States Copyright Office, or any court regarding the copyrighted works. No agreement limits our right to use or allow others to use the copyrighted materials. We do not know of any copyright infringement that could materially affect you.

You must follow our rules and other System Standards when using the copyrighted works. If we believe at any time that it is advisable for us and/or you to modify, discontinue using and/or replace any of the copyrighted works, and/or use one or more additional or substitute copyrighted or copyrightable items, you must comply with our directions within a reasonable time after receiving notice. We need not reimburse you for your expenses in complying with these directions.

We need not protect your right to use the copyrighted works or protect you against claims arising from your use of the copyrighted works. Neither the Area Development Agreement nor the Franchise Agreement requires you to notify us of any infringement claims. We need not take any affirmative action to protect the copyrighted works, although we have the right to control any litigation relating to the copyrighted works. We need not participate in your defense nor indemnify you for expenses or damages if you are a party to an administrative or judicial proceeding involving a copyrighted work or if the proceeding is resolved unfavorably to you.

Our Operations Manual and other materials contain our confidential information, some of which constitutes trade secrets under applicable law. Our confidential information includes things like site selection and market development plans, standards and criteria; layouts, designs, and other plans and specifications for Freshii Restaurants; methods, formats, specifications, standards, systems, procedures, sales and marketing techniques, and knowledge and experience used in developing and operating Freshii Restaurants; marketing research and promotional, marketing and advertising programs for Freshii Restaurants; knowledge of specifications for and suppliers of, and methods of ordering, certain Operating Assets, products, materials and supplies that Freshii Restaurants use and sell; knowledge of the operating results and financial performance of Freshii Restaurants other than the Restaurant; customer solicitation,

communication and retention programs, along with data and information used or generated in those programs; all data and all other information generated by, or used or developed in, the operation of Freshii Restaurants, including customer names, contact information and related information (“Customer Data”); and any other information that we reasonably designate as confidential or proprietary.

You may use our confidential information under the Area Development Agreement and Franchise Agreement. You must:

- (1) not use any confidential information (including the Customer Data) in any other business or capacity and keep the Confidential Information absolutely confidential, both during and after the term of the Area Development Agreement and Franchise Agreement (afterward for as long as the information is not generally known in the restaurant industry);
- (2) not make unauthorized copies of any confidential information disclosed via electronic medium or in written or other tangible form;
- (3) adopt and implement all reasonable procedures that we periodically specify to prevent unauthorized use or disclosure of confidential information, including disclosing it only to Restaurant personnel and others needing to know that confidential information to operate your business, and requiring the managers and other employees we periodically designate who will have access to that information to sign the non-competition and confidentiality agreement in the form attached to the Area Development Agreement and Franchise Agreement (the “Confidentiality and Non-Competition Agreement”). You must give us, at our request, signed originals of each Confidentiality and Non-Competition Agreement; and
- (4) not sell, trade or otherwise profit in any way from the confidential information, except during the term of the Area Development Agreement or Franchise Agreement using methods that we have approved.

You must promptly disclose to us all ideas, concepts, techniques or materials relating to a Freshii Restaurant (“Innovations”), whether or not protectable intellectual property and whether created by or for you or your owners, employees or contractors. Innovations are our property and works made-for-hire for us. If any Innovation does not qualify as a “work made-for-hire” for us, then you assign ownership of that item, and all related rights to that item, to us and must sign (and cause your owners, employees and contractors to sign) whatever assignment or other documents that we periodically request to evidence our ownership and to help us obtain intellectual property rights in the item. You may not use any Innovation in operating your business or otherwise without our prior approval.

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

**Area Development Agreement**

We expect only companies to sign the Area Development Agreement. You must propose and obtain our approval of the “Operating Partner” for the business you will operate under the Area Development Agreement. We and you will insert the name of your approved Operating Partner in the Area Development Agreement before signing it. Your Operating Partner must at all times directly or indirectly own at least 5% of the ownership interests in you and must devote all of his or her business time and efforts (i.e. at least 40 hours per week) to the operation of, and to promote and enhance, your

business as a Freshii Restaurant developer. The Operating Partner also must attend and satisfactorily complete our training programs.

On or before the 4th Freshii Restaurant covered by the Area Development Agreement first opens for business, you must hire an approved multi-unit manager who will oversee and control the day-to-day operations at a number of your (and your Controlled Affiliates') Freshii Restaurants (a "Multi-Unit Manager"). You must hire an additional approved Multi-Unit Manager on or before the 10th Freshii Restaurant covered by the Area Development Agreement opens for business, and another additional Multi-Unit Manager on or before each successive 10th Freshii Restaurant covered by the Area Development Agreement opens for business (subject to your rights under the Schedule). Before engaging any Multi-Unit Manager, you must submit to us the identity and qualifications of the proposed Multi-Unit Manager, including resume, work history, experience, references, background verifications and other information that we reasonably request. We may interview your proposed Multi-Unit Managers, and you must not engage any Multi-Unit Manager unless we have approved him or her. The Multi-Unit Managers need not have an equity interest in your business nor attend our training program. Your Operating Partner and Multi-Unit Managers are collectively called the "Management Personnel." The Management Personnel must sign our Confidentiality and Non-Competition Agreement.

If any of the Management Personnel dies, becomes disabled, or otherwise ceases devoting all of his or her business time and efforts to the operation of your business in the capacity of his or her position, you must immediately notify us. You then have 30 days to submit to us the identity and qualifications of the proposed replacement Management Personnel member, including resume, work history, experience, references, background verifications and other information that we reasonably request. We may conduct an in-person interview of the proposed Management Personnel member. You must not engage any replacement Management Personnel member unless we have approved him or her. You must have an approved Management Personnel member who meets these qualifications within 60 days after the previous Management Personnel member ceased holding that position. However, you are solely responsible for the hiring, firing and personnel decisions, and the terms and conditions of employment, relating to the Management Personnel and your other personnel.

We will grant Freshii Restaurant franchises under the Area Development Agreement only to you or your approved Controlled Affiliates. "Controlled Affiliate" means a corporation, limited liability company or partnership that you form for the sole purpose of developing and operating a Freshii Restaurant under the Updated Franchise Documents, but only if:

(1) you, together with your direct and indirect owners, collectively own and control at least 90% of that entity's ownership interests;

(2) you have the authority under the governing documents, and at least the percentage of voting power required under applicable law, to authorize a merger, liquidation, dissolution or transfer of substantially all of the assets of that entity and, if the Controlled Affiliate is a partnership, you are the managing partner, or if the Controlled Affiliate is a limited liability company, you are the manager or managing member;

(3) you, your direct and indirect owners, and all direct and indirect owners of the Controlled Affiliate sign an agreement, in a form acceptable to us, under which they guarantee the Controlled Affiliate's performance of, and assume full and unconditional liability for and agree to perform, all of the Controlled Affiliate's obligations contained in the Updated Franchise Documents; and

(4) all owners of the Controlled Affiliate are of good character and otherwise meet our then current standards for owners of Freshii Restaurant franchisees.

Franchises that we grant to your Controlled Affiliates will count toward your Schedule.

Each owner of any direct or indirect ownership interest in you must personally guarantee all of your obligations under the Area Development Agreement and agree to be bound personally by every contractual provision, whether containing monetary or non-monetary obligations, including the covenant not to compete. This “Guaranty and Assumption of Obligations” is at the end of the Area Development Agreement.

### **Franchise Agreement**

We expect only companies to sign our Franchise Agreement. Only you are authorized to operate the Restaurant. Except for approved transfers, you may not delegate or assign any of your rights or obligations under the Franchise Agreement or any aspect of the Restaurant’s management or operation. You must at all times faithfully, honestly and diligently perform your obligations and fully exploit the rights granted under the Franchise Agreement.

The Restaurant must, at all times, have a fully-qualified general manager who meets our then current standards for Freshii Restaurant general managers and who has satisfactorily completed our then current training curriculum (the “General Manager”). The General Manager must devote all of his or her business time and efforts (at least 40 hours per week and at least 5 days per week) to the on-premises supervision of the Restaurant. If the General Manager ceases holding his or her position at the Restaurant for any reason, you must appoint a fully-qualified permanent replacement who meets our then current standards for Freshii Restaurant general managers, and who satisfactorily completes our then current training curriculum, within 30 days. All salaried managers at the Restaurant who are hired after we provide initial training must satisfactorily complete our then current training curriculum within 30 days after their hiring. Neither the General Manager nor any salaried managers at the Restaurant need to have an equity interest in the Restaurant, but they must sign our Confidentiality and Non-Competition Agreement.

Each owner of any direct or indirect ownership interest in you, and, if the Franchise Agreement is covered by an Area Development Agreement, the developer under that Area Development Agreement and each owner of any direct or indirect ownership interest in that developer, must personally guarantee all of your obligations under the Franchise Agreement and agree to be bound personally by every contractual provision, whether containing monetary or non-monetary obligations, including the covenant not to compete. This “Guaranty and Assumption of Obligations” is at the end of the Franchise Agreement.

### **Item 16**

#### **RESTRICTIONS ON WHAT THE FRANCHISEE MAY SELL**

The Restaurant must offer for sale all products and services that we periodically specify, including all products intended for off-premises consumption. You may not offer, sell or otherwise distribute at the Restaurant or any other location any products or services that we have not authorized. You may not offer or sell any products at wholesale without our prior written consent. There are no limits on any of our rights to modify the products and services that your Restaurant may or must provide. System Standards may regulate, among other things, sales, marketing, advertising and promotional programs and materials for the Restaurant (which might include providing food to consumers free or at a reduced price) and media used in these programs; maximum, minimum or other pricing requirements for products and services that the Restaurant offers; all aspects of the offer, sale, display and marketing of

products intended for off-premises consumption or use; and participation in market research and test programs that we require or approve concerning various aspects of the Freshii Restaurant franchise system.

Unless we specify otherwise, you must provide Catering Service and/or Delivery Service from the Restaurant according to the Franchise Agreement and all System Standards. “Catering Service” means the delivery of food and beverage products that you prepare or partially prepare at the Restaurant and deliver to customers at locations other than the Restaurant’s site, where, in addition to delivering the products, you provide ancillary services (such as setting up for, serving or otherwise distributing the food and beverage products) at those locations. “Delivery Service” means the delivery of food and beverage products that you fully prepare at the Restaurant and provide ready-for-consumption to customers at locations other than the Restaurant’s site, where you deliver the food and beverage products but provide no ancillary services (such as setting up for, serving or otherwise distributing the food and beverage products) at those locations. You may not establish another outlet or property (other than the Restaurant’s site) for use with Catering Service or Delivery Service.

You may determine the geographic area within which you will offer Catering Service or Delivery Service, but (1) you must ensure that your customers receive at all times high quality food and beverage products that you prepare and maintain according to our specifications, and (2) you may not provide Catering Service or Delivery Service to any location outside the Territory. You must maintain the condition and appearance of, and perform maintenance on, vehicles, servewear and equipment used in providing Catering Services and/or Delivery Services according to our standards, specifications and procedures, and consistent with the image of Freshii Restaurants as first class, clean, sanitary, attractive and efficiently-operated foodservice businesses. You must ensure that all catering and delivery drivers strictly comply with all applicable laws and maintain adequate motor vehicle liability insurance in the amounts that we periodically specify.

If you do not comply with any provision of the Franchise Agreement, including any System Standard, pertaining to Catering Service or Delivery Service, then in addition to our other rights, we may temporarily suspend or permanently terminate your right to provide Catering Service and/or Delivery Service or restrict the geographic area within which you may provide Catering Service and/or Delivery Service.

**Item 17**

**RENEWAL, TERMINATION, TRANSFER, AND DISPUTE RESOLUTION**

**THE FRANCHISE RELATIONSHIP**

**These tables list certain important provisions of the franchise and related agreements. You should read these provisions in the agreements attached to this disclosure document.**

**Area Development Agreement**

PROVISION	SECTION IN AREA DEVELOPMENT AGREEMENT	SUMMARY
a. Length of the franchise term	Section 2 of Area Development Agreement	Expires on date when last Freshii Restaurant under Schedule opens.
b. Renewal or extension of the term	Section 2 of Area Development Agreement	You have no right to renew or extend.

PROVISION	SECTION IN AREA DEVELOPMENT AGREEMENT	SUMMARY
c. Requirements for franchisee to renew or extend	Not applicable	Not applicable.
d. Termination by franchisee	Section 12A of Area Development Agreement	You may terminate on 30 days' notice if you are fully complying with, and we materially fail to comply with, the Area Development Agreement, and we do not correct the failure within 30 days after notice (or, if we cannot reasonably correct the failure in 30 days, we do not give you reasonable evidence of our effort to correct the failure within a reasonable time).
e. Termination by franchisor without cause	Not applicable	We may not terminate without cause.
f. Termination by franchisor with cause	Section 12B of Area Development Agreement	We may terminate if you commit one of several violations.
g. "Cause" defined — curable defaults	Section 12B of Area Development Agreement	60 days to cure single Development Default and 30 days to cure defaults not listed in (h) below.
h. "Cause" defined — non-curable defaults	Section 12B of Area Development Agreement	Material misrepresentations or omissions, failing to complete mandatory training satisfactorily, 2 Development Defaults in successive periods or 3 Development Defaults during term, conviction of or pleading no contest to a felony, dishonest, unethical or illegal conduct, unauthorized transfer, termination of another agreement with us or our affiliate, breach of non-compete, unauthorized use or disclosure of confidential information, repeated defaults (even if cured), and bankruptcy-related events.
i. Franchisee's obligations on termination/nonrenewal	Section 13 of Area Development Agreement	Pay outstanding amounts, stop further development, stop using Marks and our other intellectual property, deliver advertising material and other proprietary items to us, stop using and maintain confidentiality of all confidential information, and return confidential materials (also see (r) below).

PROVISION	SECTION IN AREA DEVELOPMENT AGREEMENT	SUMMARY
j. Assignment of contract by franchisor	Section 11A of Area Development Agreement	No restriction on our right to assign or transfer ownership interests without your approval.
k. “Transfer” by franchisee — defined	Section 11B of Area Development Agreement	Includes transfer of interest in Area Development Agreement, ownership interest in Controlled Affiliate, all or substantially all of your assets, any rights to receive any related profits or losses or capital appreciation, or any ownership interest in you or any holder of direct or indirect controlling interest in you.
l. Franchisor approval of transfer by franchisee	Section 11C of Area Development Agreement	No transfers without our prior written consent.
m. Conditions for franchisor approval of transfer	Sections 11C and 11D of Area Development Agreement	We will not unreasonably withhold approval of transfer of non-controlling interest in you. We will approve control transfer if transferee (and each owner) qualifies; transferee, its owners and affiliates are not in a competitive business; transferee signs (at our option) either assignment of existing area development agreement or our then current area development agreement and other documents; transfer fee paid; new Operating Partner is acceptable and completes training; you (and transferring owners) sign general release (if state law allows); we determine that sale terms will not adversely affect business’ operation; and you subordinate amounts due to you (also see (r) below). All direct and indirect owners must sign guarantees. Transfer of Franchise Agreements and ownership in Controlled Affiliates must accompany transfer of Area Development Agreement.
n. Franchisor’s right of first refusal to acquire franchisee’s business	Section 11G of Area Development Agreement	We may match any offer for your business or controlling ownership interest in you.
o. Franchisor’s option to purchase franchisee’s business	Not applicable	We do not have this right.

PROVISION	SECTION IN AREA DEVELOPMENT AGREEMENT	SUMMARY
p. Death or disability of franchisee	Section 11E of Area Development Agreement	Must transfer to approved party within 9 months.
q. Non-competition covenants during the term of the franchise	Section 10 of Area Development Agreement	No owning interest in, performing services for, or loaning money or guaranteeing loan to competitive business anywhere and no interference with our, our affiliates' or franchisees' general managers.
r. Non-competition covenants after the franchise is terminated or expires	Section 13D of Area Development Agreement	For 2 years no owning interest in or performing services for competitive business within Development Area or 3 miles of any other Freshii Restaurant (same restrictions apply after transfer).
s. Modification of the agreement	Section 15K of Area Development Agreement	No modifications without signed writing.
t. Integration/merger clause	Section 15M of Area Development Agreement	Only the terms of <u>the Area Development Agreement and other related written agreements</u> are binding (subject to <u>applicable state law</u> ). <del>Any other representations or promises might not be enforceable. Nothing in the agreement or any related agreement is intended to disclaim any representation made outside of the disclosure document, and Area Development Agreement may not be enforceable.</del>
u. Dispute resolution by arbitration or mediation	Section 15F of Area Development Agreement	We and you must arbitrate all disputes within 10 miles of our then current address (currently Chicago, Illinois).
v. Choice of forum	Section 15H of Area Development Agreement	Subject to arbitration requirements, litigation generally must be where our then current address is located (currently Chicago, Illinois), subject to state law.
w. Choice of law	Section 15G of Area Development Agreement	Except for Federal Arbitration Act and other federal law, Illinois law governs.

**Franchise Agreement**

PROVISION	SECTION IN FRANCHISE AGREEMENT	SUMMARY
a. Length of the franchise term	Section 1B of Franchise Agreement	10 years.
b. Renewal or extension of the term	Section 14 of Franchise Agreement	If you give timely notice, have complied with obligations during the Franchise Agreement’s term, and (at your option) either remodel/upgrade or relocate Restaurant, you may acquire a successor franchise for 10-year term.
c. Requirements for franchisee to renew or extend	Section 14 of Franchise Agreement	<p>Sign then current franchise agreement and releases (if state law allows) and pay successor franchise fee.</p> <p>“Renewal” means signing our then current franchise agreement for the 10-year successor franchise term, which could contain materially different terms (including fees and territory), and paying our then standard initial franchise fee.</p> <p>The term “renewal” means to continue your rights granted under the Franchise Agreement to operate the franchised business for an additional consecutive term.</p> <p><b>You may be asked to sign a contract with materially different terms and conditions than your original contract, but the boundaries of your territory will remain the same, and the fees on renewal will not be greater than the fees that we then impose on similarly situated renewing franchisees.</b></p>

PROVISION	SECTION IN FRANCHISE AGREEMENT	SUMMARY
d. Termination by franchisee	Section 15A of Franchise Agreement	You may terminate on 30 days' notice if you are fully complying with, and we materially fail to comply with, the Franchise Agreement, and we do not correct the failure within 30 days after notice (or, if we cannot reasonably correct the failure in 30 days, we do not give you reasonable evidence of our effort to correct the failure within a reasonable time).
e. Termination by franchisor without cause	Not applicable	We may not terminate without cause.
f. Termination by franchisor with cause	Section 15B of Franchise Agreement	We may terminate if you commit one of several violations.
g. "Cause" defined — curable defaults	Sections 15B and 15C of Franchise Agreement	48 hours to cure health, safety or sanitation law violations or operating unsafely; 10 days to cure monetary defaults and failure to maintain insurance; and 30 days to cure other defaults not listed in (h) below. We also may assume Restaurant's management if you default.
h. "Cause" defined — non-curable defaults	Section 15B of Franchise Agreement	Material misrepresentations or omissions, failing to complete mandatory training satisfactorily, failing to open on time, abandonment or failing to operate for 3 or more consecutive days, losing rights to Restaurant, conviction of or pleading no contest to a felony, interference with inspections, dishonest, unethical or illegal conduct, unauthorized transfer, termination of another agreement with us or our affiliate (other than Area Development Agreement), breach of non-compete, unauthorized use or disclosure of the Operations Manual or confidential information, failure to pay taxes, suppliers or lenders, understating Gross Sales, repeated defaults (even if cured), and bankruptcy-related events.

PROVISION	SECTION IN FRANCHISE AGREEMENT	SUMMARY
i. Franchisee's obligations on termination/nonrenewal	Sections 15C and 16 of Franchise Agreement	Pay outstanding amounts, stop using Marks and our other intellectual property, deliver advertising material, signs and other proprietary items to us, de-identify, stop using and maintain confidentiality of all confidential information and data, and return Operations Manual and other confidential materials (also see (o) and (r) below). We also may assume Restaurant's management.
j. Assignment of contract by franchisor	Section 13A of Franchise Agreement	No restriction on our right to assign or transfer ownership interests without your approval.
k. "Transfer" by franchisee — defined	Section 13B of Franchise Agreement	Includes transfer of interest in Franchise Agreement, the Restaurant or its profits or losses or capital appreciation, all or substantially all of the Operating Assets, or any ownership interest in you or any holder of direct or indirect controlling interest in you.
l. Franchisor approval of transfer by franchisee	Section 13C of Franchise Agreement	No transfers without our prior written consent.

PROVISION	SECTION IN FRANCHISE AGREEMENT	SUMMARY
m. Conditions for franchisor approval of transfer	Sections 13C and 13D of Franchise Agreement	We will not unreasonably withhold approval of transfer of non-controlling interest in you. We will approve control transfer if transferee (and each owner) qualifies; you have paid us and our affiliates all amounts due and submitted all reports and are otherwise not in violation of any provision; transferee, its owners and affiliates are not in a competitive business; training completed; transferee signs (at our option) either assignment of existing franchise agreement or our then current franchise agreement and other documents; transfer fee paid; transferee agrees to upgrade and remodel; you (and transferring owners) sign general release (if state law allows); we determine that sale terms will not adversely affect Restaurant's operation; you subordinate amounts due to you; and you stop using Marks and our other intellectual property (also see (r) below). All direct and indirect owners must sign guarantees.
n. Franchisor's right of first refusal to acquire franchisee's business	Section 13G of Franchise Agreement	We may match any offer for your Restaurant or Operating Assets or controlling ownership interest in you.
o. Franchisor's option to purchase franchisee's business	Section 16E of Franchise Agreement	We may buy Restaurant's assets at fair market value after Franchise Agreement is terminated or expires.
p. Death or disability of franchisee	Section 13E of Franchise Agreement	Must transfer to approved party within 9 months.
q. Non-competition covenants during the term of the franchise	Section 12 of Franchise Agreement	No owning interest in, performing services for, loaning money or guaranteeing loan to, or diverting business or customers to competitive business anywhere and no interference with our, our affiliates' or franchisees' general managers.
r. Non-competition covenants after the franchise is terminated or expires	Section 16D of Franchise Agreement	For 2 years no owning interest in or performing services for competitive business within Territory or 3 miles of any other Freshii Restaurant (same restrictions apply after transfer).

PROVISION	SECTION IN FRANCHISE AGREEMENT	SUMMARY
s. Modification of the agreement	Section 18K of Franchise Agreement	No modifications without signed writing, but we may change Operations Manual and System Standards.
t. Integration/merger clause	Section 18M of Franchise Agreement	Only the terms of <u>the Franchise Agreement and other related written agreements</u> are binding (subject to <u>applicable state law</u> ). <del>Any other representations or promises might not be enforceable. Nothing in the agreement or any related agreement is intended to disclaim any representation made in outside of the disclosure document, and Franchise Agreement may not be enforceable.</del>
u. Dispute resolution by arbitration or mediation	Section 18F of Franchise Agreement	We and you must arbitrate all disputes within 10 miles of our then current address (currently Chicago, Illinois).
v. Choice of forum	Section 18H of Franchise Agreement	Subject to arbitration requirements, litigation generally must be where our then current address is located (currently Chicago, Illinois), subject to state law.
w. Choice of law	Section 18G of Franchise Agreement	Except for Federal Arbitration Act and other federal law, Illinois law governs.

**Item 18**  
**PUBLIC FIGURES**

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

**Item 19**  
**FINANCIAL PERFORMANCE REPRESENTATIONS**

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

We do not make any representations about a franchisee's future financial performance or the past financial performance of company-owned or franchised outlets. We also do not authorize our employees or representatives to make any such representations either orally or in writing. If you are purchasing an existing outlet, however, we may provide you with the actual records of that outlet. If you receive any other financial performance information or projections of your future income, you should report it to the franchisor's management by contacting Matthew Corrin, our chief executive officer, at 27 North Wacker Drive, Suite 426, Chicago, Illinois 60606 and (312) 636-8049, the Federal Trade Commission, and the appropriate state regulatory agencies.

**Item 20**  
**OUTLETS AND FRANCHISEE INFORMATION**

**Table No. 1**  
**Systemwide Outlet Summary**  
**For years ~~2011~~, 2012, 2013, 2014**

Column 1 Outlet Type	Column 2 Year	Column 3 Outlets at the Start of the Year	Column 4 Outlets at the End of the Year	Column 5 Net Change
Franchised	<del>2011</del> <u>2012</u>	<u>922</u>	<u>2231</u>	<u>+139</u>
	<del>2012</del> <u>2013</u>	<u>2231</u>	<u>3145</u>	<u>+914</u>
	<del>2013</del> <u>2014</u>	<u>3145</u>	<u>4563</u>	<u>+1418</u>
Company-Owned	<del>2011</del> <u>2012</u>	<u>4</u>	<u>42</u>	<u>0-2</u>
	<del>2012</del> <u>2013</u>	<u>42</u>	<u>20</u>	<u>-2</u>
	<del>2013</del> <u>2014</u>	<u>20</u>	<u>0</u>	<u>-20</u>
Total Outlets	<del>2011</del> <u>2012</u>	<u>1326</u>	<u>2633</u>	<u>+137</u>
	<del>2012</del> <u>2013</u>	<u>2633</u>	<u>3345</u>	<u>+712</u>
	<del>2013</del> <u>2014</u>	<u>3345</u>	<u>4563</u>	<u>+1218</u>

**Table No. 2**  
**Transfers of Outlets from Franchisees to New Owners (other than the Franchisor)**  
**For years ~~2011~~, 2012, 2013, 2014**

Column 1 State	Column 2 Year	Column 3 Number of Transfers
All	<del>2011</del> <u>2012</u>	<u>0</u>
	<del>2012</del> <u>2013</u>	<u>0</u>
	<del>2013</del> <u>2014</u>	<u>20</u>
<b>Total</b>	<del>2011</del> <u>2012</u>	<u>0</u>
	<del>2012</del> <u>2013</u>	<u>0</u>
	<del>2013</del> <u>2014</u>	<u>20</u>

**Table No. 3A3**  
**Status of Franchised Outlets**  
**For years 2011, 2012, 2013, 2014**

Col 1 State	Col 2 Year	Col 3 Outlets at Start of Year	Col 4 Outlets Opened	Col 5 Termina- tions	Col 6 Non- Renewals	Col 7 Reacquired by Franchisor	Col 8 Ceased Operations – Other Reasons	Col 9 Outlets at End of the Year
AZ	<del>2011</del> 2012	0	0	0	0	0	0	0
	2012 <del>2013</del>	0	<u>0</u> <del>1</del>	0	0	0	0	<u>0</u> <del>1</del>
	2013 <del>2014</del>	<u>0</u> <del>1</del>	<u>1</u> <del>0</del>	0	0	0	0	1
CA	<del>2011</del> 2012	<u>3</u> <del>4</del>	<u>1</u> <del>0</del>	0	0	0	0	4
	2012 <del>2013</del>	4	0	0	0	0	<u>0</u> <del>2</del>	<u>4</u> <del>2</del>
	2013 <del>2014</del>	<u>4</u> <del>2</del>	<u>0</u> <del>1</del>	0	0	0	2	<u>0</u> <del>2</del>
CO	<del>2011</del> 2012	1	0	0	0	0	0	1
	2012 <del>2013</del>	1	0	0	0	0	<u>0</u> <del>1</del>	<u>1</u> <del>0</del>
	2013 <del>2014</del>	<u>1</u> <del>0</del>	0	0	0	0	<u>1</u> <del>0</del>	0
CT	<del>2011</del> 2012	0	0	0	0	0	0	0
	2012 <del>2013</del>	0	<u>0</u> <del>1</del>	0	0	0	0	<u>0</u> <del>1</del>
	2013 <del>2014</del>	<u>0</u> <del>1</del>	<u>1</u> <del>0</del>	0	0	0	0	1
DC	<del>2011</del> 2012	0	<u>0</u> <del>2</del>	0	0	0	0	<u>0</u> <del>2</del>
	2012 <del>2013</del>	<u>0</u> <del>2</del>	<u>2</u> <del>1</del>	0	0	0	0	<u>2</u> <del>3</del>
	2013 <del>2014</del>	<u>2</u> <del>3</del>	<u>1</u> <del>0</del>	0	0	0	<u>0</u> <del>1</del>	<u>3</u> <del>2</del>
IL	<del>2011</del> 2012	<u>2</u> <del>5</del>	<u>3</u> <del>2</del>	0	0	0	0	<u>5</u> <del>7</del>
	2012 <del>2013</del>	<u>5</u> <del>7</del>	<u>2</u> <del>6</del>	0	0	0	0	<u>7</u> <del>1</del> <u>3</u>
	2013 <del>2014</del>	<u>7</u> <del>1</del> <u>3</u>	<u>6</u> <del>5</del>	0	0	0	0	<u>1</u> <del>3</del> <u>1</u> <u>8</u>
INFL	<del>2011</del> 2012	0	0	0	0	0	0	0
	2012 <del>2013</del>	0	<u>1</u> <del>0</del>	0	0	0	0	<u>1</u> <del>0</del>
	2013 <del>2014</del>	<u>1</u> <del>0</del>	<u>2</u> <del>1</del>	0	0	0	0	2
MAGA	<del>2011</del> 2012	0	<u>1</u> <del>0</del>	0	0	0	0	<u>1</u> <del>0</del>
	2012 <del>2013</del>	<u>1</u> <del>0</del>	0	0	0	0	0	<u>1</u> <del>0</del>
	2013 <del>2014</del>	<u>1</u> <del>0</del>	<u>1</u> <del>0</del>	0	0	0	0	1
MDIN	<del>2011</del> 2012	<u>1</u> <del>0</del>	<u>2</u> <del>1</del>	0	0	0	0	<u>3</u> <del>1</del>
	2012 <del>2013</del>	<u>3</u> <del>1</del>	1	0	0	0	0	<u>4</u> <del>2</del>

Col 1 State	Col 2 Year	Col 3 Outlets at Start of Year	Col 4 Outlets Opened	Col 5 Termina- tions	Col 6 Non- Renewals	Col 7 Reacquired by Franchisor	Col 8 Ceased Operations - Other Reasons	Col 9 Outlets at End of the Year
	<u>2013</u> <u>2014</u>	<u>42</u>	<u>10</u>	0	0	0	<u>20</u>	<u>32</u>
<u>MIMA</u>	<u>2011</u> <u>2012</u>	<u>01</u>	0	0	0	0	0	<u>01</u>
	<u>2012</u> <u>2013</u>	<u>01</u>	0	0	0	0	0	<u>01</u>
	<u>2013</u> <u>2014</u>	<u>01</u>	<u>21</u>	0	0	0	0	2
<u>MNMD</u>	<u>2011</u> <u>2012</u>	<u>03</u>	<u>01</u>	0	0	0	0	<u>04</u>
	<u>2012</u> <u>2013</u>	<u>04</u>	<u>01</u>	0	0	0	<u>02</u>	<u>03</u>
	<u>2013</u> <u>2014</u>	<u>03</u>	<u>10</u>	0	0	0	<u>02</u>	1
<u>NCMI</u>	<u>2011</u> <u>2012</u>	0	0	0	0	0	0	0
	<u>2012</u> <u>2013</u>	0	<u>02</u>	0	0	0	0	<u>02</u>
	<u>2013</u> <u>2014</u>	<u>02</u>	<u>20</u>	0	0	0	0	2
<u>NYMN</u>	<u>2011</u> <u>2012</u>	<u>10</u>	0	0	0	0	<u>10</u>	0
	<u>2012</u> <u>2013</u>	0	<u>01</u>	0	0	0	0	<u>01</u>
	<u>2013</u> <u>2014</u>	<u>01</u>	<u>01</u>	0	0	0	0	<u>02</u>
<u>OHMS</u>	<u>2011</u> <u>2012</u>	0	0	0	0	0	0	0
	<u>2012</u> <u>2013</u>	0	<u>10</u>	0	0	0	0	<u>10</u>
	<u>2013</u> <u>2014</u>	<u>10</u>	<u>01</u>	0	0	0	0	1
<u>ORNC</u>	<u>2011</u> <u>2012</u>	0	<u>20</u>	0	0	0	0	<u>20</u>
	<u>2012</u> <u>2013</u>	<u>20</u>	<u>02</u>	0	0	0	0	2
	<u>2013</u> <u>2014</u>	2	0	0	0	0	0	2
<u>PAOH</u>	<u>2011</u> <u>2012</u>	0	1	0	0	0	0	1
	<u>2012</u> <u>2013</u>	1	0	0	0	0	0	1
	<u>2013</u> <u>2014</u>	1	0	0	0	0	<u>10</u>	<u>01</u>
<u>TXOR</u>	<u>2011</u> <u>2012</u>	<u>02</u>	<u>20</u>	0	0	0	0	2
	<u>2012</u> <u>2013</u>	2	<u>20</u>	0	0	0	0	<u>42</u>
	<u>2013</u> <u>2014</u>	<u>42</u>	<u>10</u>	0	0	0	<u>20</u>	<u>32</u>
<u>AUSTRIAPA</u>	<u>2011</u> <u>2012</u>	<u>01</u>	<u>10</u>	0	0	0	0	1
	<u>2012</u> <u>2013</u>	1	0	0	0	0	<u>01</u>	<u>10</u>
	<u>2013</u> <u>2014</u>	<u>10</u>	0	0	0	0	0	<u>10</u>

Col 1 State	Col 2 Year	Col 3 Outlets at Start of Year	Col 4 Outlets Opened	Col 5 Termina- tions	Col 6 Non- Renewals	Col 7 Reacquired by Franchisor	Col 8 Ceased Operations - Other Reasons	Col 9 Outlets at End of the Year
COLUMBIASC	20112012	0	0	0	0	0	0	0
	20122013	0	0	0	0	0	0	0
	20132014	0	1	0	0	0	0	1
DUBAIX	20112012	12	12	0	0	0	0	24
	20122013	24	01	0	0	0	02	23
	20132014	23	02	0	0	0	0	25
SWEDENWA	20112012	0	0	0	0	0	0	0
	20122013	0	0	0	0	0	0	0
	20132014	0	32	0	0	0	0	32
SWITZER- LANDWI	20112012	0	0	0	0	0	0	0
	20122013	0	0	0	0	0	0	0
	20132014	0	1	0	0	0	0	1
<b>TotalDOMESTIC TOTAL</b>	20112012	<b>919</b>	<b>149</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>40</b>	<b>2228</b>
	20122013	<b>2228</b>	<b>917</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>08</b>	<b>3137</b>
	20132014	<b>3137</b>	<b>2217</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>85</b>	<b>4550</b>
AUSTRIA	2012	1	0	0	0	0	0	1
	2013	1	0	0	0	0	0	1
	2014	1	0	0	0	0	0	1
COLUMBIA	2012	0	0	0	0	0	0	0
	2013	0	1	0	0	0	0	1
	2014	1	5	0	0	0	0	6
SWEDEN	2012	0	0	0	0	0	0	0
	2013	0	3	0	0	0	0	3
	2014	3	2	0	0	0	1	4
SWITZER-LAND	2012	0	0	0	0	0	0	0
	2013	0	1	0	0	0	0	1
	2014	1	0	0	0	0	0	1
UNITED ARAB EMIRATES	2012	2	0	0	0	0	0	2
	2013	2	0	0	0	0	0	2
	2014	2	0	0	0	0	0	2

Col 1 State	Col 2 Year	Col 3 Outlets at Start of Year	Col 4 Outlets Opened	Col 5 Termina- tions	Col 6 Non- Renewals	Col 7 Reacquired by Franchisor	Col 8 Ceased Operations - Other Reasons	Col 9 Outlets at End of the Year
<b>INTER- NATIONAL TOTAL</b>	<b>2012</b>	<b>3</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>3</b>
	<b>2013</b>	<b>3</b>	<b>5</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>8</b>
	<b>2014</b>	<b>8</b>	<b>7</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>14</b>
<b>TOTAL</b>	<b>2012</b>	<b>22</b>	<b>9</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>31</b>
	<b>2013</b>	<b>31</b>	<b>22</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>8</b>	<b>45</b>
	<b>2014</b>	<b>45</b>	<b>24</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>6</b>	<b>63</b>

**Table No. 3B**  
**Status of Development Agents**  
**For years 2011, 2012, 2013**

Col 1 State	Col 2 Year	Col 3 Outlets at Start of Year	Col 4 Outlets Opened	Col 5 Termina- tions	Col 6 Non- Renewals	Col 7 Reacquired by Franchisor	Col 8 Ceased Operations - Other Reasons	Col 9 Outlets at End of the Year
CA	2011	1	0	0	0	0	0	1
	2012	1	0	0	0	0	0	1
	2013	1	0	0	0	0	1	0
IL	2011	1	0	0	0	0	0	1
	2012	1	0	0	0	0	0	1
	2013	1	0	0	0	0	0	1
MD	2011	1	0	0	0	0	0	1
	2012	1	0	0	0	0	0	1
	2013	1	0	0	0	0	0	1
NJ	2011	1	0	0	0	0	0	1
	2012	1	0	0	0	0	0	1
	2013	1	0	0	0	0	1	0
TX	2011	1	0	0	0	0	0	1
	2012	1	0	0	0	0	0	1
	2013	1	0	0	0	0	0	1
<b>Total</b>	2010	1	4	0	0	0	0	5

Col 1 State	Col 2 Year	Col 3 Outlets at Start of Year	Col 4 Outlets Opened	Col 5 Termina- tions	Col 6 Non- Renewals	Col 7 Reacquired by Franchisor	Col 8 Ceased Operations —Other Reasons	Col 9 Outlets at End of the Year
	2011	5	0	0	0	0	0	5
	2013	5	0	0	0	0	2	3

Table No. 4  
Status of Company-Owned Outlets  
For years 2011, 2012, 2013, 2014

Col 1 State	Col 2 Year	Col 3 Outlets at Start of Year	Col 4 Outlets Opened	Col 5 Outlets Reacquired from Franchisee	Col 6 Outlets Closed	Col 7 Outlets Sold to Franchisee	Col 8 Outlets at End of the Year
CA	<u>2011</u> <u>2012</u>	2	0	0	0	0 <sub>2</sub>	2 <sub>0</sub>
	<u>2012</u> <u>2013</u>	2 <sub>0</sub>	0	0	0	2 <sub>0</sub>	0
	<u>2013</u> <u>2014</u>	0	0	0	0	0	0
IL	2011	1	0	0	0	0	1
	2012	1	0	0	0	0	1
	2013	1	0	0	0	1	0
CO	<u>2011</u> <u>2012</u>	1	0	0	0	0	1
	<u>2012</u> <u>2013</u>	1	0	0	0 <sub>1</sub>	0	1 <sub>0</sub>
	<u>2013</u> <u>2014</u>	1 <sub>0</sub>	0	0	1 <sub>0</sub>	0	0
<b>Total</b>	<u>2011</u> <u>2012</u>	4	0	0	0	0 <sub>2</sub>	4 <sub>2</sub>
	<u>2012</u> <u>2013</u>	4 <sub>2</sub>	0	0	0 <sub>1</sub>	2 <sub>1</sub>	2 <sub>0</sub>
	<u>2013</u> <u>2014</u>	2 <sub>0</sub>	0	0	1 <sub>0</sub>	1 <sub>0</sub>	0

**Table No. 5**  
**Projected Openings as of December 31, 2014**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>State</b>	<b>Franchise Agreements Signed <del>But</del> <u>but</u> <del>Outlet Not Open</del> <u>Outlet Not Opened</u></b>	<b>Projected New Franchised Outlets <del>In The</del> <u>in the</u> Next Fiscal Year</b>	<b>Projected New Company-Owned Outlets <del>In The</del> <u>in the</u> Next Fiscal Year</b>
<del>Arizona</del> <u>California</u>	<u>0</u> <u>2</u>	0	0
<del>California</del> <u>Colorado</u>	1	<u>1</u> <u>0</u>	0
<del>Colorado</del> <u>Connecticut</u>	<u>0</u> <u>2</u>	0	0
<del>Connecticut</del> <u>Florida</u>	<u>0</u> <u>7</u>	<u>2</u> <u>0</u>	0
<del>District of Columbia</del> <u>Georgia</u>	<u>0</u> <u>1</u>	<u>3</u> <u>0</u>	0
<del>Florida</del> <u>Illinois</u>	<u>2</u> <u>6</u>	<u>2</u> <u>0</u>	0
<del>Georgia</del> <u>Massachusetts</u>	<u>1</u> <u>2</u>	<u>3</u> <u>0</u>	0
<del>Illinois</del> <u>Michigan</u>	<u>5</u> <u>3</u>	<u>9</u> <u>0</u>	0
<del>Massachusetts</del> <u>Minnesota</u>	<u>0</u> <u>1</u>	<u>4</u> <u>0</u>	0
<del>Maryland</del> <u>Minnesota</u>	1	<u>4</u> <u>0</u>	0
<del>Michigan</del> <u>North Carolina</u>	<u>0</u> <u>4</u>	0	0
<del>Minnesota</del> <u>Pennsylvania</u>	1	<u>2</u> <u>0</u>	0
<del>New Jersey</del> <u>South Carolina</u>	<u>0</u> <u>1</u>	0	0
<del>North Carolina</del> <u>Texas</u>	<u>0</u> <u>5</u>	<u>2</u> <u>0</u>	0
<del>Oregon</del> <u>Utah</u>	<u>0</u> <u>1</u>	<u>3</u> <u>0</u>	0
<del>Pennsylvania</del> <u>Virginia</u>	<u>1</u> <u>2</u>	<u>2</u> <u>0</u>	0
<del>South Carolina</del> <u>Washington</u>	<u>1</u> <u>2</u>	<u>2</u> <u>0</u>	0
<del>Tennessee</del> <u>Wisconsin</u>	<u>0</u> <u>2</u>	0	0
<del>Texas</del> <u>Austria</u>	1	<u>6</u> <u>0</u>	0
<del>Colombia</del>	<u>2</u>	<u>0</u>	<u>0</u>

Column 1	Column 2	Column 3	Column 4
State	Franchise Agreements Signed <del>But</del> <u>but</u> Outlet Not <del>Open</del> <u>Opened</u>	Projected New Franchised Outlets <del>In The</del> <u>in the</u> Next Fiscal Year	Projected New Company-Owned Outlets <del>In The</del> <u>in the</u> Next Fiscal Year
<del>Washington</del> <u>Germany</u>	1	<del>10</del> <u>0</u>	0
<u>Guatemala</u>	<u>2</u>	<u>0</u>	<u>0</u>
<u>Kuwait</u>	<u>1</u>	<u>0</u>	<u>0</u>
<u>Panama</u>	<u>1</u>	<u>0</u>	<u>0</u>
<u>Saudi Arabia</u>	<u>3</u>	<u>0</u>	<u>0</u>
<u>Switzerland</u>	<u>1</u>	<u>0</u>	<u>0</u>
<u>United Arab Emirates</u>	<u>2</u>	<u>0</u>	<u>0</u>
<b>Totals</b>	<b>1558</b>	<b>450</b>	<b>0</b>

A list of the names of all franchisees and the addresses and telephone numbers of their businesses are provided in Exhibit G to this Disclosure Document.

The name, city, state and current business telephone number (or if unknown, the last known home telephone number) of every franchisee who had a business terminated, cancelled, not renewed or otherwise voluntarily or involuntarily ceased to do business under the Franchise Agreement during the most recently completed fiscal year or who has not communicated with us within 10 weeks of the issuance date of this disclosure document are listed on Exhibit H to this Disclosure Document. **If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system.**

During the last three fiscal years, we have not had any franchisees sign confidentiality provisions that would restrict their ability to speak openly about their experience with the Freshii Restaurant System.

There are no trademark-specific organizations formed by our franchisees that are associated with the Freshii Restaurant System.

## **Item 21** **FINANCIAL STATEMENTS**

Exhibit E contains our audited financial statements as of December 31, ~~2013~~ 2012, December 31, ~~2012~~ 2013 and December 31, ~~2011~~ 28, 2014.

~~Our fiscal year end is December 31.~~ In 2014, we changed our financial year-end from December 31 to a floating year end. Our fiscal year is a 52 or 53 week period ending on the last Sunday of December. For 2014, our fiscal year ended December 28, 2014.

## **Item 22** **CONTRACTS**

The following agreements are exhibits:

Area Development Agreement — Exhibit B  
Franchise Agreement — Exhibit C  
Renewal/Assignment of Franchise Documents – Exhibit I  
Sample Letter of Intent – Exhibit J

**Item 23**  
**RECEIPTS**

Two copies of an acknowledgement of your receipt of this Disclosure Document appear at the end of the Disclosure Document. Please return one copy to us and retain the other for your records.

**EXHIBIT A**

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

Listed here are the names, addresses and telephone numbers of the state agencies having responsibility for franchising disclosure/registration laws and for service of process. We may not yet be registered to sell franchises in any or all of these states.

If a state is not listed, Freshii Development LLC has not appointed an agent for service of process in that state in connection with the requirements of franchise laws. There may be states in addition to those listed below in which Freshii Development LLC has appointed an agent for service of process.

There may also be additional agents appointed in some of the states listed.

<p><b><u>CALIFORNIA</u></b> Department of Business Oversight Commissioner of Business Oversight 320 West 4th Street, Suite 750 Los Angeles, CA 90013 (213) 576-7500 Toll Free (866) 275-2677</p> <p>1515 K Street, Suite 200 Sacramento, CA 95814 (916) 445-7205</p> <p>1350 Front Street San Diego, CA 92101 (619) 525-4233</p> <p>One Sansome Street, Suite 600 San Francisco, CA 94104 (415) 972-8559</p>	<p><b><u>CONNECTICUT</u></b> State of Connecticut Department of Banking Securities &amp; Business Investments Division 260 Constitution Plaza Hartford, CT 06103-1800 (860) 240-8230</p> <p>Agent: Banking Commissioner</p>
<p><b><u>HAWAII</u></b> (state administrator) Business Registration Division Department of Commerce and Consumer Affairs 335 Merchant Street, Room 203 Honolulu, Hawaii 96813 (808) 586-2722</p> <p>(agent for service of process)</p> <p>Commissioner of Securities State of Hawaii 335 Merchant Street Honolulu, Hawaii 96813 (808) 586-2722</p>	<p><b><u>ILLINOIS</u></b> Franchise Bureau Office of the Attorney General 500 South Second Street Springfield, Illinois 62706 (217) 782-4465</p>

<p><b><u>INDIANA</u></b>  (state administrator)  Indiana Secretary of State  Securities Division, E-111  302 Washington Street  Indianapolis, Indiana 46204  (317) 232-6681</p> <p>(agent for service of process)  Indiana Secretary of State  201 State House  200 West Washington Street  Indianapolis, Indiana 46204  (317) 232-6531</p>	<p><b><u>MARYLAND</u></b>  (state administrator)  Office of the Attorney General  Securities Division  200 St. Paul Place  Baltimore, Maryland 21202-2021  (410) 576-6360</p> <p>(for service of process)  Maryland Securities Commissioner  200 St. Paul Place  Baltimore, Maryland 21202-2021  (410) 576-6360</p>
<p><b><u>MICHIGAN</u></b>  (state administrator)  Consumer Protection Division  Antitrust and Franchise Unit  Michigan Department of Attorney General  525 W. Ottawa Street, 6<sup>th</sup> Floor  Lansing, Michigan 48933  (517) 373-7117</p> <p>(for service of process)  Corporations Division  Bureau of Commercial Services  Department of Labor and Economic Growth  P.O. Box 30054  Lansing, Michigan 48909</p>	<p><b><u>MINNESOTA</u></b>  (state administrator)  Minnesota Department of Commerce  85 7<sup>th</sup> Place East, Suite 500  St. Paul, Minnesota 55101-2198  (651) 296-6328</p> <p>(for service of process)  Minnesota Commissioner of Commerce</p>
<p><b><u>NEW YORK</u></b>  (state administrator)  New York State Department of Law  Bureau of Investor Protection and Securities  120 Broadway, 23<sup>rd</sup> Floor  New York, New York 10271  (212) 416-8211</p> <p>(for service of process)  Secretary of State of New York  41 State Street  Albany, New York 12231  (518) 474-4750</p>	<p><b><u>NORTH DAKOTA</u></b>  North Dakota Securities Department  State Capitol, Fifth Floor, Dept. 414  600 East Boulevard Avenue  Bismarck, North Dakota 58505  (701) 328-4712</p>
<p><b><u>OREGON</u></b>  Department of Insurance and Finance  Corporate Securities Section  Labor and Industries Building  Salem, Oregon 97310  (503) 378-4387</p>	<p><b><u>RHODE ISLAND</u></b>  Division of Securities  Rhode Island Dept. of Business Regulation  John O. Pastore Complex – Bldg. 69-1  1511 Pontiac Avenue  Cranston, RI 02920  (401) 462-9500</p>

<p><b><u>SOUTH DAKOTA</u></b>  <del>Division of Securities</del>  Department of Labor &amp; Regulation  <del>445 East Capitol</del><u>Division of Securities</u>  <u>124 S. Euclid Avenue, Suite 104</u>  Pierre, South Dakota 57501  (605) 773-4823</p>	<p><b><u>VIRGINIA</u></b>  State Corporation Commission  Division of Securities and Retail Franchising  1300 East Main Street, 9th Floor  Richmond, Virginia 23219  (804) 371-9051</p> <p>(for service of process)  Clerk of the State Corporation Commission  1300 East Main Street, 1<sup>st</sup> Floor  Richmond, Virginia 23219  (804) 371-9733</p>
<p><b><u>WASHINGTON</u></b>  (state administrator)  Department of Financial Institutions  Securities Division  150 Israel Road S.W.  Tumwater, Washington 98501  (360) 902-8760</p> <p>(for service of process)  Director, Department of Financial Institutions  Securities Division  150 Israel Road S.W.  Tumwater, Washington 98501</p>	<p><b><u>WISCONSIN</u></b>  (state administrator)  Division of Securities  Department of Financial Institutions  <del>345</del><u>201</u> W. Washington Ave., 4<sup>th</sup><del>3</del><u>rd</u> Floor  Madison, Wisconsin 53703  (608) 266-1064</p> <p>(for service of process)  Administrator, Division of Securities  Department of Financial Institutions  <del>345</del><u>201</u> W. Washington Ave., 4<sup>th</sup><del>3</del><u>rd</u> Floor  Madison, Wisconsin 53703</p>

**EXHIBIT B**

**AREA DEVELOPMENT AGREEMENT**

**FRESHII™ RESTAURANT**  
**AREA DEVELOPMENT AGREEMENT**

---

**DEVELOPER**

---

**DATE OF AGREEMENT**

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**DEVELOPMENT AREA**

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**FRESHII™ RESTAURANT  
AREA DEVELOPMENT AGREEMENT**

**THIS AREA DEVELOPMENT AGREEMENT** (the “**Agreement**”) is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ on \_\_\_\_\_ (the “**Agreement Date**”), between **FRESHII DEVELOPMENT, LLC**, a Delaware limited liability company, with its principal business address at 27 North Wacker Drive, Suite 426, Chicago, Illinois 60606 (“**Franchisor**”), and \_\_\_\_\_, a \_\_\_\_\_ limited liability/company whose principal business address is \_\_\_\_\_ (“**Developer**”).

**1. PREAMBLES AND GRANT OF DEVELOPMENT RIGHTS**

**1.A. PREAMBLES**

(1) Franchisor and its affiliates have designed and developed a method of developing and operating restaurants identified by the Marks (defined below) offering for general consumption a wide variety of healthy meals such as salads, rice bowls, wraps, oatmeal, fresh and frozen yogurt, healthy portable snacks and beverages (“**Freshii Restaurants**”).

(2) Franchisor and its affiliates have developed, and Franchisor uses, promotes and licenses, certain trademarks, service marks and other commercial symbols in operating Freshii Restaurants, including “Freshii (and design)™”, and Franchisor may create, use and license other trademarks, service marks and commercial symbols for use in operating Freshii Restaurants from time to time (collectively, the “**Marks**”).

(3) Franchisor offers development rights to develop a specified number of Freshii Restaurants within a defined geographic area. Developer has applied for such development rights, and Franchisor has approved Developer’s application relying on all of Developer’s representations, warranties and acknowledgments contained in its franchise application and this Agreement.

**1.B. GRANT OF DEVELOPMENT RIGHTS**

Subject to Developer’s compliance with this Agreement, Franchisor grants Developer (and/or Developer’s approved Controlled Affiliates, as defined below) the right to develop the number of Freshii Restaurants specified on Exhibit A to this Agreement, according to the mandatory development schedule identified on Exhibit A to this Agreement (the “**Schedule**”), within the geographic area described on Exhibit B to this Agreement (the “**Development Area**”). This Agreement does not grant Developer or its Controlled Affiliates the right to develop more than the number of Freshii Restaurants listed on the Schedule or the right to develop Freshii Restaurants outside of the Development Area.

**1.C. DEFINITION OF CONTROLLED AFFILIATE**

In this Agreement, “**Controlled Affiliate**” means a corporation, limited liability company or partnership that Developer is authorized under this Agreement to form for the sole purpose of developing and operating a Freshii Restaurant pursuant to a Franchise Agreement (defined in Section 5.C), provided that:

(1) Developer, together with its Owners (defined below), collectively owns and controls at least ninety percent (90%) of that entity’s ownership interests;

(2) Developer has the authority under the governing documents, and at least the percentage of voting power required under applicable law, to authorize a merger, liquidation, dissolution or transfer of substantially all of the assets of that entity and, if the Controlled Affiliate is a partnership, Developer is the managing partner, or if the Controlled Affiliate is a limited liability company, Developer is the manager or managing member;

(3) Developer, its Owners, and all owners of the Controlled Affiliate sign an agreement, in a form acceptable to Franchisor, under which they guarantee the Controlled Affiliate's performance of, and assume full and unconditional liability for and agree to perform, all of the Controlled Affiliate's obligations contained in the Franchise Agreement; and

(4) all owners of the Controlled Affiliate are of good character and otherwise meet Franchisor's then current standards for owners of Freshii Restaurant franchisees.

#### **1.D. BEST EFFORTS**

Except as specifically set forth in Section 11, Developer may not delegate or assign any of its rights or obligations under this Agreement or any aspect of the management or operation of the business it conducts under this Agreement (the "**Business**"). Developer agrees to at all times faithfully, honestly and diligently perform its obligations and fully exploit the rights granted under this Agreement.

#### **1.E. ORGANIZATION OF DEVELOPER AND OPERATING PARTNER**

Developer agrees and represents that:

(1) Its organizational documents will recite that this Agreement restricts the issuance and transfer of any ownership interests in Developer, and all certificates and other documents representing ownership interests in Developer will bear a legend referring to this Agreement's restrictions;

(2) Exhibit C to this Agreement completely and accurately describes all persons and entities holding a direct or indirect ownership interest (whether of record, beneficially or otherwise) or voting rights in Developer, including any person or entity who has a direct or indirect interest in Developer, this Agreement, or the Business and any person or entity who has any other legal or equitable interest, or the power to vest in himself or herself any legal or equitable interest, in their revenue, profits, rights or assets ("**Owners**"), and the interests of each Owner). Subject to Franchisor's rights and Developer's obligations under Section 11, Franchisee and its Owners agree to sign and deliver to Franchisor revised Exhibits C to reflect any changes in the information that Exhibit C now contains within ten (10) days after the change;

(3) Each of Developer's Owners at any time during the term of this Agreement will sign an agreement in the form that Franchisor periodically specifies undertaking personally to be bound, jointly and severally, by all provisions of this Agreement and any ancillary agreements between Developer and Franchisor (or its affiliate);

(4) The Business and the operation of Freshii Restaurants under Franchise Agreements, if applicable, will be the only businesses Developer operates (although Developer's Owners and affiliates may have other, non-competitive business interests, subject to Section 10); and

(5) An individual whom Franchisor approves must at all times directly or indirectly own at least five percent (5%) of the ownership interests in Developer and must devote all of his or her business time and efforts (i.e. at least forty (40) hours per week) to the operation of, and to promote and enhance, the Business (the “**Operating Partner**”). The Operating Partner’s name is listed on Exhibit C.

## **2. TERM OF AGREEMENT**

The term of this Agreement begins on the Agreement Date and ends on the date when (a) the final Freshii Restaurant under the Schedule has been opened, or (b) this Agreement otherwise is terminated. Developer has no right to renew its rights under this Agreement or develop additional Freshii Restaurants after this Agreement terminates or expires. Developer acknowledges and agrees that the execution and delivery of this Agreement shall constitute notice to Developer of non-renewal for purposes of fulfilling the requirements of any applicable law governing the non-renewal of franchise or development rights.

## **3. RIGHTS IN DEVELOPMENT AREA**

### **3.A. DEVELOPER’S RIGHTS IN DEVELOPMENT AREA**

Provided Developer and its Controlled Affiliates are in full compliance with this Agreement and all other agreements between Developer (or any of the Controlled Affiliates) and Franchisor (or any of its affiliates), including all Franchise Agreements, then during the term of this Agreement, neither Franchisor nor its affiliates will operate, or authorize any other party to operate, a Freshii Restaurant the physical premises of which are located within the Development Area, except for Freshii Restaurants located at Non-Traditional Locations within the Development Area. “**Non-Traditional Locations**” means: (1) airports, amusement parks, sports stadiums, college and university buildings, hospitals and other medical centers, and other venues to which the general public customarily does not have unlimited access; and (2) department stores, grocery stores, and other retail locations that operate under a separate brand identity and within which a Freshii Restaurant or kiosk might operate as a department located within the premises of the host retailer.

After this Agreement expires or is terminated, regardless of the reason, Franchisor and its affiliates may engage, and allow others to engage, in any activities Franchisor desires within and outside the Development Area without any restrictions whatsoever, subject only to Developer’s (or any Controlled Affiliate’s) rights under Franchise Agreements then in effect.

### **3.B. FRANCHISOR’S RESERVATION OF RIGHTS**

Except as provided in Section 3.A, Developer’s rights under this Agreement are non-exclusive and Franchisor (and its affiliates) retain the right during the term of this Agreement to engage in any and all activities that Franchisor (and they) desire, at any time or place, including the right to:

(1) establish and operate, and authorize other parties to establish and operate, Freshii Restaurants the physical premises of which are located at Non-Traditional Locations, whether within or outside the Development Area, on any terms and conditions Franchisor deems appropriate;

(2) establish and operate, and authorize other parties to establish and operate, Freshii Restaurants the physical premises of which are located outside the Development Area on any terms and conditions Franchisor deems appropriate;

(3) offer and provide, and grant rights to others to offer and provide, products and services, whether identified by the Marks or any other trademarks or service marks, to any customers Franchisor desires (wherever located or operating, including within the Development Area) and through any distribution channels Franchisor desires (wherever located or operating, including within the Development Area), including by selling products identified by the Marks through grocery stores, mail order and the Internet; and

(4) engage in all other activities that this Agreement does not expressly prohibit.

#### 4. DEVELOPMENT FEE

Simultaneously with signing this Agreement, Developer shall pay Franchisor the “**Development Fee**” set forth on Exhibit A, ~~which shall be an amount equal to Fifteen Thousand Dollars (\$15,000.00) multiplied by the number of Freshii Restaurants that Developer agrees to develop under the Schedule.~~ The Development Fee is calculated as one hundred percent (100%) of the initial franchise fee for the first Restaurant to be developed hereunder, plus a deposit equal to fifty percent (50%) of the initial franchise fee for each additional Restaurant to be developed hereunder. The Development Fee is fully earned by Franchisor when this Agreement is signed and is non-refundable, except as provided in Section 5.C below.

~~———— In the State of Illinois, we will defer the payment of the initial franchise fee, marketing deposit, development fee and any other initial payment until your first franchise business is open and operating. However, you must execute the Franchise Agreement prior to looking for a site or beginning training. This deferral has been imposed by the Illinois Attorney General’s Office based on the Franchisor’s financial condition.~~

~~———— In the State of Maryland, we will defer the payment of the initial franchise fee, marketing deposit, development fee and any other initial payment until all of our material pre-opening obligations have been satisfied and until you open your business and it is operating. However, you must execute the Franchise Agreement prior to looking for a site or beginning training.~~

#### 5. DEVELOPMENT SCHEDULE AND FRANCHISE AGREEMENTS

##### 5.A. DEVELOPMENT SCHEDULE

To maintain Developer’s rights under this Agreement, Developer and/or approved Controlled Affiliates must sign Franchise Agreements for, develop, and open for business the agreed-upon number of Freshii Restaurants within the Development Area by the dates set forth on the Schedule. The Schedule is not Franchisor’s representation, express or implied, that the Development Area can support, or that there are sufficient sites for, the number of Freshii Restaurants specified in the Schedule.

##### 5.B. SITE SELECTION AND FRANCHISOR APPROVAL

Developer agrees to give Franchisor the franchise application package that Franchisor periodically specifies (including a signed letter of intent with the site’s landlord) and all other information and materials that Franchisor periodically requests to assess (i) each proposed Freshii Restaurant site and market area, and (ii) Developer’s (or the applicable Controlled Affiliate’s) financial and operational ability to develop and operate the proposed Freshii Restaurant. Franchisor will not unreasonably withhold approval of any site Developer proposes that meets Franchisor’s then current criteria for population density and other demographic characteristics, visibility, traffic flow, competition, accessibility, parking, size, and other physical and commercial characteristics. Franchisor will not unreasonably withhold approval of Developer or a Controlled Affiliate as the franchisee of a Freshii

Restaurant if Developer or the Controlled Affiliate meets Franchisor's then current criteria for the financial and operational qualifications of Freshii Restaurant franchisees, including the operational criteria under the Franchise Agreement relating to the management of the Freshii Restaurant. However, Franchisor has the absolute right to disapprove any site or franchisee that does not meet these criteria. Developer acknowledges that Franchisor's site criteria might vary depending on the number of Freshii Restaurants that Developer and its Controlled Affiliates then operate in the Development Area in order to achieve a patterned and targeted development in the market.

Franchisor agrees to use reasonable efforts to review and either approve or disapprove the sites and franchisees that Developer proposes within thirty (30) days after Franchisor receives all requested information and materials. If Franchisor approves a proposed site and Developer's (or its Controlled Affiliate's) financial and operational ability to develop and operate the proposed Freshii Restaurant, then Franchisor will offer, and Developer or its approved Controlled Affiliate (and Developer's Owners and, if applicable, the Controlled Affiliate's owners) must sign, a separate Franchise Agreement for that Freshii Restaurant. If Developer or the Controlled Affiliate (and such owners) do not do so within a reasonable time after delivery of the Franchise Agreement, or are unable to obtain lawful possession of the proposed site within a reasonable time after Franchisor approves of the proposed site, Franchisor may withdraw its approval. Neither Developer nor any Controlled Affiliate may sign any lease or sublease for a site without Franchisor's approval and first signing, and complying with, the Franchise Agreement. After Developer (or its Controlled Affiliate) signs the Franchise Agreement, its terms and conditions will control the development and operation of the Freshii Restaurant.

If Franchisor approves a proposed site, that is not a representation or warranty of any kind, express or implied, of the site's suitability for a Freshii Restaurant or any other purpose. Franchisor's acceptance indicates only that it believes the site meets its then acceptable criteria. Applying criteria that have appeared effective with other sites might not accurately reflect the potential for all sites, and demographic and/or other factors included in or excluded from Franchisor's criteria could change, altering the potential of a site. The uncertainty and instability of these criteria are beyond Franchisor's control, and Franchisor is not responsible if a site it approves fails to meet Developer's expectations. In granting Developer the development rights under this Agreement, Franchisor is relying on Developer's knowledge of the real estate market in the Development Area and Developer's ability to locate and access sites.

### **5.C. FRANCHISE AGREEMENTS**

The franchise agreement (and related documents) that Developer or its Controlled Affiliate will sign for each Freshii Restaurant covered by this Agreement will be Franchisor's then current form of franchise agreement and related documents, including, without limitation, personal guarantees (collectively, the "**Franchise Agreement**"), any or all of the terms of which may differ substantially from the terms contained in Franchisor's current form of franchise agreement and related documents. However:

(1) the initial franchise fee under each Franchise Agreement will be Thirty Thousand Dollars (\$30,000);

(2) Franchisor will apply Fifteen Thousand Dollars (\$15,000) of the Development Fee towards the initial franchise fee (as described in Subsection (1) above) payable under each Franchise Agreement; and

(3) the royalty payable under each Franchise Agreement shall be six percent (6%) of Gross Sales (as defined in such Franchise Agreement).

#### **5.D. CONTINUOUS OPERATION OF FRESHII RESTAURANTS**

Franchisor will include a Freshii Restaurant in the cumulative number of Freshii Restaurants that must be open and operating in the Development Area according to the Schedule only if it actually is operating and substantially complying with the terms of its Franchise Agreement as of the end of a Development Period (as defined on Exhibit A). However, a Freshii Restaurant which is, with Franchisor's approval or because of fire or other casualty, permanently closed during a Development Period after being open and operating will be included in the cumulative number of Freshii Restaurants that must be open and operating according to the Schedule during that particular Development Period (but not after).

#### **5.E. FAILURE TO COMPLY WITH SCHEDULE**

Developer's failure to comply with the Schedule as of the end of any Development Period is a "**Development Default.**" Following a Development Default, and whether or not Franchisor provides Developer written notice of that Development Default, Developer must cure that Development Default by complying with the Schedule on or before the date which is sixty (60) days after the end of the Development Period with respect to which the Development Default occurred. This cure period does not reduce the Schedule for the next Development Period or extend the time for Developer to comply with the Schedule for the next Development Period. In addition, if Developer commits two (2) Development Defaults in successive Development Periods, or three (3) Development Defaults at any time during the term of this Agreement, then Franchisor may (but need not):

- (1) terminate this Agreement pursuant to Section 12.B;
- (2) extend the time of any Development Period (and thereby extend the time for all future Development Periods and the term of this Agreement) for any period of time that Franchisor determines; and/or
- (3) reduce the size of the Development Area to a lesser area that Franchisor determines.

#### **5.F. NO SUBLICENSING**

This Agreement does not grant Developer any right to license others to operate Freshii Restaurants. Only Developer (and its approved Controlled Affiliates) may open and operate Freshii Restaurants pursuant to this Agreement and only under Franchise Agreements.

### **6. TRAINING**

#### **6.A. EXECUTIVE WORKSHOP**

Within sixty (60) days after the Agreement Date, the Operating Partner and all other Owners of Developer must attend and complete to Franchisor's satisfaction the one (1)-day executive workshop that Franchisor specifies for Freshii Restaurant developers. Franchisor shall provide such executive workshop to Developer's Owners for no additional fee.

#### **6.B. RESTAURANT TRAINING FOR OPERATING PARTNER**

Without limiting the training and other obligations under the first Franchise Agreement that Developer (or its Controlled Affiliate) signs pursuant to this Agreement, the Operating Partner shall

attend and complete to Franchisor's satisfaction all pre-opening training required of the Freshii Restaurant's general manager under that Franchise Agreement before that Freshii Restaurant opens for business.

#### **6.C. CERTIFIED TRAINING RESTAURANTS AND MANAGERS**

On or before the date upon which the fifth (5th) Freshii Restaurant covered by this Agreement first opens for business, but no sooner than the date upon which the third (3rd) Freshii Restaurant covered by this Agreement first opens for business, Developer must ensure that:

(1) Developer or its Controlled Affiliate completes to Franchisor's satisfaction the necessary training, and attains the minimum benchmarks, that Franchisor then specifies for Franchisor to designate one of the operating Freshii Restaurants in the Development Area as a **"Certified Training Restaurant"** for the Development Area; and

(2) the general manager of the Certified Training Restaurant completes such training, performs such other tasks, and satisfies such other conditions that Franchisor then specifies to designate that general manager as the **"Certified Training Manager"** for the Development Area.

Developer shall ensure that the Certified Training Manager and other personnel at the Certified Training Restaurant provide training and other assistance to Developer's (and its Controlled Affiliate's) other Freshii Restaurants and their personnel using standards and procedures that Franchisor periodically specifies.

Once Franchisor has designated a Certified Training Restaurant and Certified Training Manager for the Development Area pursuant to this Agreement, Developer must ensure that it maintains at all times during the remaining term of this Agreement at least one (1) Certified Training Restaurant in the Development Area and has a Certified Training Manager working full-time at that Certified Training Restaurant. If the Certified Training Restaurant for the Development Area fails to maintain that status, or if the Certified Training Manager's full-time employment at the Certified Training Restaurant terminates for any reason or the Certified Training Manager for the Development Area fails to maintain that status, then Developer must within thirty (30) days thereafter comply with Franchisor's requirements to once again obtain a Certified Training Restaurant in the Development Area and a Certified Training Manager working full-time at that Certified Training Restaurant.

#### **6.D. ONGOING AND REFRESHER TRAINING**

All of Developer's Management Personnel (defined in Section 7.B) must attend and satisfactorily complete Franchisor's then current training program applicable to his or her position within thirty (30) days after assuming his or her duties for Developer. In addition, during the term of this Agreement, Franchisor may require Developer's Management Personnel and/or other executives of Developer to attend and satisfactorily complete various training courses, programs and conventions that Franchisor chooses to provide periodically at the times and locations that Franchisor designates. Franchisor may charge reasonable fees for these training courses, programs and conventions.

#### **6.E. TRAINING EXPENSES**

Developer agrees to pay (or cause its Controlled Affiliates to pay) all travel, living and other expenses (including local transportation expenses) and compensation that the Operating Partner and any of Developer's and its Controlled Affiliates' other personnel incur in connection with attendance at any training courses, programs or conventions pursuant to this Agreement.

## **7. DEVELOPER'S OTHER OBLIGATIONS**

### **7.A. BUSINESS PLAN**

Within sixty (60) days after the Agreement Date, Developer agrees to prepare and submit to Franchisor, in the form and format that Franchisor reasonably specifies, a business plan covering Developer's development plans and projected operations under this Agreement. This business plan will include detailed plans for locating sites in specific markets within the Development Area. Developer shall incorporate Franchisor's comments (if any) into a revised business plan. Developer agrees to update the business plan each year and submit the updated business plan to Franchisor for its review and comment within thirty (30) days after the start of each Development Period. Developer shall implement its business plan (as it is updated and revised) in accordance with this Agreement.

### **7.B. MULTI-UNIT MANAGERS**

On or before the date upon which the fourth (4th) Freshii Restaurant covered by this Agreement first opens for business, Developer must hire an approved multi-unit manager who will oversee and control the day-to-day operations at a number of Developer's (and its Controlled Affiliates') Freshii Restaurants (a "**Multi-Unit Manager**"). Developer must hire an additional approved Multi-Unit Manager on or before the date upon which the tenth (10th) Freshii Restaurant covered by this Agreement opens for business, and another additional Multi-Unit Manager on or before the date upon which each successive tenth (10th) Freshii Restaurant covered by this Agreement (*i.e.*, the twentieth (20th), thirtieth (30th), etc.) opens for business, subject to the number of Freshii Restaurants that Developer is permitted to develop under the Schedule. Before engaging any Multi-Unit Manager, Developer shall submit to Franchisor the identity and qualifications of the proposed Multi-Unit Manager, including resume, work history, experience, references, background verifications and other information that Franchisor reasonably requests. Franchisor shall have the right to conduct an in-person interview of the proposed Multi-Unit Manager, and Developer shall reimburse Franchisor for all travel and other expenses relating thereto. Developer shall not engage any Multi-Unit Manager unless he or she has been approved by Franchisor. Developer's Operating Partner and Multi-Unit Managers are collectively called the "**Management Personnel**."

### **7.C. REPLACEMENT OF MANAGEMENT PERSONNEL**

If any of the Management Personnel die, become disabled, or otherwise cease devoting all of his or her business time and efforts to the operation of the Business in the capacity of his or her position, Developer shall immediately notify Franchisor. Within thirty (30) days thereafter, Developer shall submit to Franchisor the identity and qualifications of the proposed replacement Management Personnel member, including resume, work history, experience, references, background verifications and other information that Franchisor reasonably requests. Franchisor shall have the right to conduct an in-person interview of the proposed Management Personnel member, and Developer shall reimburse Franchisor for all travel and other expenses relating thereto. Developer shall not engage any replacement Management Personnel member unless he or she has been approved by Franchisor. Developer agrees to have an approved Management Personnel member who meets the qualifications set forth in this Agreement within sixty (60) days after the previous Management Personnel member ceased holding that position. Notwithstanding the foregoing or anything to the contrary in this Agreement, Developer shall be solely responsible for the hiring, firing and personnel decisions, and the terms and conditions of employment, relating to the Management Personnel and its other personnel.

## **7.D. RECORDS AND REPORTS**

Developer agrees to establish and maintain at its own expense a bookkeeping, accounting and recordkeeping system conforming to the requirements and formats that Franchisor periodically specifies. In addition to the records and reports required under the Franchise Agreements, Developer also agrees to give Franchisor in the manner and format that Franchisor periodically specifies:

(1) within twenty (20) days after the end of each month, the consolidated operating statements, financial statements (including a balance sheet and profit and loss statements), statistical reports and other information Franchisor requests regarding Developer, its Controlled Affiliates and all Freshii Restaurants in the Development Area covering that month;

(2) within twenty (20) days following the end of each of Developer's fiscal quarters, reports in the format that Franchisor periodically specifies on Developer's progress on its business plan and Schedule and Developer's activities during the immediately preceding quarter, including Developer's activities in locating and developing sites and monitoring the development and operation of Freshii Restaurants, training activities and employee statistics;

(3) within sixty (60) days after the end of each of Developer's fiscal years, consolidated annual profit and loss and source and use of funds statements and a balance sheet regarding Developer, its Controlled Affiliates and all Freshii Restaurants in the Development Area as of the end of the previous fiscal year; and

(4) upon Franchisor's reasonable request, such other data, reports, information and supporting records for such periods as Franchisor periodically requires.

Developer agrees to verify and sign each report and financial statement in the manner that Franchisor periodically specifies. Franchisor may disclose data derived from these reports, including by creating reports on the financial results of Developer's (and its Controlled Affiliates') Freshii Restaurants and providing them to other existing or prospective Freshii Restaurant developers and franchisees, but Franchisor will not (without Developer's consent) disclose Developer's identity in connection with that data.

## **8. MARKS**

### **8.A. OWNERSHIP AND GOODWILL OF MARKS**

Developer's right to use the Marks is derived only from this Agreement and is limited to Developer's operating the Business according to this Agreement and the standards that Franchisor periodically specifies during the term of this Agreement. Developer's unauthorized use of the Marks is a breach of this Agreement and infringes Franchisor's (and its licensor's) rights in the Marks. Any use of the Marks relating to the Business, and any goodwill established by that use, are for Franchisor's (and its licensor's) exclusive benefit. This Agreement does not confer any goodwill or other interests in the Marks upon Developer, other than the right to use the Marks in operating the Business according to this Agreement. All provisions of this Agreement relating to the Marks apply to any additional and substitute trademarks and service marks that Franchisor periodically authorizes Developer to use. Developer may not at any time during or after the term of this Agreement contest or assist any other person in contesting the validity, or Franchisor's (or its licensor's) ownership, of the Marks.

## **8.B. LIMITATIONS ON USE OF MARKS**

Developer agrees to use the Marks as the sole identification of the Business, subject to the notices of independent ownership that Franchisor periodically designates. Developer may not use any Mark (1) as part of any corporate or legal business name, (2) with any prefix, suffix or other modifying words, terms, designs or symbols (other than logos that Franchisor has licensed to Developer), (3) in selling any services or products, (4) as part of any domain name, homepage, electronic address, metatag or otherwise in connection with any website or other online presence, or (5) in any other manner that Franchisor has not expressly authorized in writing. Developer may not use any Mark in advertising the transfer, sale or other disposition of the Business or any direct or indirect ownership interest in Developer without Franchisor's prior written consent, which Franchisor will not unreasonably withhold. Developer agrees to give the notices of trademark and service mark registrations that Franchisor periodically specifies and obtain any fictitious or assumed name registrations that applicable law requires.

Before using them, Developer must send Franchisor samples of all documents and other materials bearing any Mark that Developer intends to use in operating the Business. Developer may not use any documents or other materials bearing any Mark that Franchisor has not approved or has disapproved.

## **8.C. NOTIFICATION OF INFRINGEMENTS AND CLAIMS**

Developer agrees to notify Franchisor immediately of any actual or apparent infringement of or challenge to Developer's use of any Mark, or of any person's claim of any rights in any Mark (or any identical or confusingly similar trademark) or claim of unfair competition relating to any Mark. Developer agrees not to communicate with any person other than Franchisor and its licensor, their respective attorneys, and Developer's attorneys regarding any infringement, challenge or claim. Franchisor and its licensor may take the action that they deem appropriate (including no action) and control exclusively any litigation, U.S. Patent and Trademark Office proceeding or other administrative proceeding arising from any infringement, challenge or claim or otherwise concerning any Mark. Developer agrees to sign any documents and take any other reasonable actions that, in the opinion of Franchisor's or its licensor's attorneys, are necessary or advisable to protect and maintain Franchisor's (and its licensor's) interests in any litigation or Patent and Trademark Office or other proceeding or otherwise to protect and maintain Franchisor's (and its licensor's) interests in the Marks.

## **8.D. DISCONTINUANCE OF USE OF MARKS**

If Franchisor believes at any time that it is advisable for Franchisor and/or Developer to modify, discontinue using and/or replace any Mark, and/or use one or more additional or substitute trademarks or service marks, Developer agrees to comply with Franchisor's directions within a reasonable time after receiving notice. Franchisor need not reimburse Developer for Developer's expenses in complying with these directions, for any loss of revenue due to any modified or discontinued Mark, or for Developer's expenses of promoting a modified or substitute trademark or service mark.

## **9. CONFIDENTIAL INFORMATION AND INNOVATIONS**

### **9.A. CONFIDENTIAL INFORMATION**

Franchisor and its affiliates possess (and will continue to develop and acquire) certain confidential information, some of which constitutes trade secrets under applicable law, relating to the development and operation of Freshii Restaurants (the "**Confidential Information**"), which includes:

- (1) site selection and market development plans, standards and criteria;

- (2) layouts, designs, and other plans and specifications for Freshii Restaurants;
- (3) methods, formats, specifications, standards, systems, procedures, sales and marketing techniques, and knowledge and experience used in developing and operating Freshii Restaurants;
- (4) marketing research and promotional, marketing and advertising programs for Freshii Restaurants;
- (5) knowledge of specifications for and suppliers of, and methods of ordering, certain operating assets, products, materials and supplies that Freshii Restaurants use and sell;
- (6) knowledge of the operating results and financial performance of Freshii Restaurants;
- (7) customer solicitation, communication and retention programs, along with data and information used or generated in connection with those programs;
- (8) all data and all other information generated by, or used or developed in, the operation of Freshii Restaurants; and
- (9) any other information that Franchisor reasonably designates as confidential or proprietary.

Developer will not acquire any interest in any Confidential Information, other than the right to use certain Confidential Information as Franchisor specifies in operating the Business during the term of this Agreement and according to the terms and conditions of this Agreement. Developer acknowledges that its use of any Confidential Information in any other business would constitute an unfair method of competition with Franchisor and its franchisees and developers. Developer acknowledges and agrees that the Confidential Information is proprietary, includes Franchisor's and its affiliates' trade secrets, and is disclosed to Developer only on the condition that Developer and its Owners agree, and it and they do agree, that Developer and its Owners:

- (a) will not use any Confidential Information in any other business or capacity and will keep the Confidential Information absolutely confidential, both during and after the term of this Agreement (afterward for as long as the information is not generally known in the restaurant industry);
- (b) will not make unauthorized copies of any Confidential Information disclosed via electronic medium or in written or other tangible form;
- (c) will adopt and implement all reasonable procedures that Franchisor periodically specifies to prevent unauthorized use or disclosure of Confidential Information, including disclosing it only to its personnel needing to know such Confidential Information to operate the Business, and requiring the Multi-Unit Managers and other employees of Developer that Franchisor periodically designates who will have access to such information to execute the non-competition and confidentiality agreement in the form attached as Exhibit D (the "**Confidentiality and Non-Competition Agreement**"). Developer shall provide Franchisor, at its request, executed originals of each such Confidentiality and Non-Competition Agreement; and

(d) will not sell, trade or otherwise profit in any way from the Confidential Information, except during the term of this Agreement using methods that Franchisor has approved.

“**Confidential Information**” does not include information, knowledge or know-how which is or becomes generally known in the restaurant industry or which Developer knew from previous business experience before Franchisor provided it to Developer (directly or indirectly) or before Developer began training or operating the Business. If Franchisor includes any matter in Confidential Information, anyone who claims that it is not Confidential Information must prove that the exclusion in this paragraph is applicable.

## **9.B. INNOVATIONS**

All ideas, concepts, techniques or materials relating to a Freshii Restaurant (“**Innovations**”), whether or not protectable intellectual property and whether created by or for Developer or its Owners, employees or contractors, must be promptly disclosed to Franchisor and will be deemed to be Franchisor’s sole and exclusive property and works made-for-hire for Franchisor. To the extent any Innovation does not qualify as a “work made-for-hire” for Franchisor, by this paragraph Developer assigns ownership of that item, and all related rights to that item, to Franchisor and agrees to sign (and to cause its Owners, employees and contractors to sign) whatever assignment or other documents that Franchisor periodically requests to evidence Franchisor’s ownership and to help Franchisor obtain intellectual property rights in the item. Developer may not use any Innovation in operating the Business or otherwise without Franchisor’s prior approval.

## **10. EXCLUSIVE RELATIONSHIP**

Developer acknowledges that Franchisor has granted Developer the rights under this Agreement in consideration of and reliance upon Developer’s (and its Owners’) agreement to deal exclusively with Franchisor with respect to the development and operation of restaurants providing the types of products and services that Freshii Restaurants offer. Developer therefore agrees that, during the term of this Agreement, neither Developer nor any of its Owners, nor any members of their Immediate Families (defined below), will:

(a) have any direct or indirect, controlling or non-controlling interest as an owner - whether of record, beneficial or otherwise - in a Competitive Business (defined below), wherever located or operating, provided that this restriction will not prohibit the ownership of shares of a class of securities which are publicly traded on a United States stock exchange representing less than three percent (3%) of the number of shares of that class of securities issued and outstanding;

(b) perform services as a director, officer, manager, employee, consultant, representative or agent for a Competitive Business, wherever located or operating;

(c) directly or indirectly loan any money or other thing of value to, or guarantee any other person’s loan to, any Competitive Business or any owner, director, officer, manager, employee or agent of any Competitive Business, wherever located or operating; or

(d) employ or seek to employ any individual who is, or within six (6) months of such employment or solicitation was, employed by Franchisor, its affiliate or its franchisee as a restaurant general manager, or otherwise directly or indirectly induce or attempt to induce any such individual to leave that employment, without Franchisor’s or the employer’s prior written consent.

The term “**Competitive Business**” means any business that (i) offers fresh, made-to-order meals (including salads, soups, and/or rice bowls, but excluding sandwiches) in a format that allows the customer to choose among various ingredients to create individual meal options; (ii) is marketed to the public primarily as a health-food or healthy-alternative foodservice establishment; and/or (iii) grants franchises or licenses to, or enters into joint ventures with, others to operate a business described in subsection (i) or (ii). A Freshii Restaurant operated under a franchise agreement with Franchisor is not a Competitive Business. The term “**Immediate Family**” includes the named individual, his or her spouse, and all children of the named individual or his or her spouse.

## **11. TRANSFER**

### **11.A. TRANSFER BY FRANCHISOR**

Developer represents that it has not signed this Agreement in reliance on any owner’s, officer’s or employee’s remaining with Franchisor in that capacity. Franchisor may change its ownership or form and/or assign this Agreement without restriction. This Agreement will inure to the benefit of any transferee or other legal successor to Franchisor’s interest in it. After Franchisor’s assignment of this Agreement to a third party who expressly assumes Franchisor’s obligations under this Agreement, Franchisor no longer will have any performance or other obligations under this Agreement. Such an assignment shall constitute a release of Franchisor and novation with respect to this Agreement, and the assignee shall be liable to Developer as if it had been an original party to this Agreement.

### **11.B. TRANSFER BY DEVELOPER**

Developer acknowledges that the rights and duties this Agreement creates are personal to Developer and its Owners and that Franchisor has granted Developer the rights under this Agreement in reliance upon the character, skill, aptitude, business ability and financial capacity of Developer, the Operating Partner and Developer’s other Owners. Therefore, Developer agrees that:

- (1) no ownership interest in Developer or in any entity that directly or indirectly holds a Controlling Interest (defined below) in Developer;
- (2) no obligations, rights or interest of Developer in (a) this Agreement, (b) any ownership interest in any Controlled Affiliate, or (c) all or substantially all of the assets of Developer; and
- (3) no right to receive all or a portion of the profits or losses of Developer, the Business, a Controlled Affiliate, or any Freshii Restaurant covered by this Agreement, nor any capital appreciation relating to Developer, the Business or any Freshii Restaurant covered by this Agreement

may be transferred without the prior written consent of Franchisor. A transfer of this Agreement may be made (subject to Franchisor’s rights below) only with a transfer of all of Developer’s rights and obligations under all Franchise Agreements signed by Developer and all ownership interests in all Controlled Affiliates held by Developer or any Owner of Developer. Any purported transfer in violation of this Section shall constitute a breach of this Agreement and shall convey to the transferee no rights or interests in the foregoing.

In this Agreement, the term “**transfer**” shall include the following, whether voluntary or involuntary, conditional, direct or indirect: (i) assignment, sale, gift or other disposition; (ii) the grant of a mortgage, charge, pledge, lien or security interest, including the grant of a collateral assignment; (iii) a

merger, consolidation, exchange of shares or other ownership interests, issuance of additional ownership interests or securities representing or potentially representing ownership interests, or redemption of ownership interests; (iv) a sale or exchange of voting interests or securities convertible to voting interests, or an agreement granting the right to exercise or control the exercise of the voting rights of any holder of ownership interests or to control (directly or indirectly) the operations or affairs of Developer; and (v) a management agreement whereby Developer delegates any of its obligations under this Agreement or any or all of the management functions with respect to the Business. In addition, a transfer (as defined above) will include any transfer by virtue of divorce; insolvency; dissolution of a business entity; will; intestate succession; declaration of or transfer in trust; or foreclosure, attachment, seizure or otherwise by operation of law.

Although an ownership interest in any entity that directly or indirectly hold an ownership interest, but not a Controlling Interest, in Developer may be transferred without Franchisor's prior written consent under this Section 11.B, Developer must (a) provide notice of any such transfer to Franchisor within ten (10) days after its completion, and (b) ensure that each new Owner as a result of any such transfer signs and delivers to Franchisor, within thirty (30) days after its completion, agreements in the forms that Franchisor periodically specifies undertaking personally to be bound, jointly and severally, by all provisions of this Agreement and any ancillary agreements between Developer and Franchisor (or its affiliate) and all Franchise Agreements covered by this Agreement and any ancillary agreements between Developer (or the applicable Controlled Affiliate) and Franchisor (or its affiliate).

In this Agreement, the term “**Controlling Interest**” in a business entity means the greater of: (a) the percent of the voting shares or other voting rights in the entity that results from dividing one hundred percent (100%) of the ownership interests by the number of owners, with the determination of whether a “Controlling Interest” is involved being made as of both immediately before and immediately after the proposed transfer; or (b) twenty percent (20%) of the voting shares or other voting rights in the legal entity. In addition, regardless of whether the thresholds in (a) or (b) are satisfied, the effective control of the power to direct or cause the direction of an entity's management and policies constitutes a Controlling Interest.

#### **11.C. FRANCHISOR'S RIGHT TO APPROVE TRANSFERS**

If Developer or any Owner intends to transfer any interest which, under Section 11.B, requires Franchisor's prior written consent, Developer shall deliver to Franchisor written notice of such proposed transfer, with such detail as Franchisor reasonably specifies, at least thirty (30) days before its intended effective date. Franchisor shall have fifteen (15) days following delivery of such notice within which to evaluate the proposed transaction and to notify Developer of its approval or disapproval (with reasons) of the proposed transfer. Franchisor will not unreasonably withhold its approval. If approved, the transfer must take place in full compliance with all applicable laws, as described in the notice (as modified by any conditions imposed by Franchisor in granting its approval), and within thirty (30) days of the delivery of notice of Franchisor's approval. Any new Owner must, as a condition of Franchisor's approval of any transfer, sign Franchisor's then current form of guarantee and assumption of Developer's obligations under this Agreement and each Controlled Affiliate's obligations under each Franchise Agreement.

#### **11.D. CONDITIONS FOR APPROVAL OF CONTROL TRANSFERS**

If any proposed transfer involves a transfer of this Agreement or a direct or indirect Controlling Interest in Developer, or is one of a series of transfers (regardless of the period of time over which these transfers take place) which in the aggregate transfer this Agreement or a direct or indirect Controlling Interest in Developer, then, without limiting Franchisor's other rights (including under Sections 11.C and

11.G), Franchisor may also impose other reasonable conditions on its approval of the proposed transfer, including that:

(1) the proposed transferee and its owners demonstrate that they have sufficient business experience, aptitude and financial resources to develop and operate Freshii Restaurants in accordance with the requirements of this Agreement and all Franchise Agreements covered by this Agreement;

(2) neither the transferee nor any of its direct or indirect owners or affiliates operates, has an ownership interest in or performs services for a Competitive Business;

(3) Developer, the transferring Owner or the proposed purchaser pay a transfer fee of Ten Thousand Dollars (\$10,000.00) to Franchisor;

(4) if any part of the sale price is financed by the transferor, the transferor agrees, in a manner satisfactory to Franchisor, that all obligations of the purchaser under any promissory notes, agreements or security interests reserved by the transferor be subordinate to any obligations of the purchaser to pay amounts then or thereafter due Franchisor and its affiliates and all interests of Franchisor or its designee in connection with any right of first refusal or purchase option;

(5) Franchisor determines that the purchase price and payment terms will not adversely affect the operation of the Business;

(6) Developer and the transferring Owners sign a general release, in a form satisfactory to Franchisor, of any and all claims against Franchisor and its affiliates and their respective owners, officers, directors, employees and agents, for matters arising on or before the effective date of the transfer;

(7) Developer or, if applicable, the transferring Owners (and members of their Immediate Families) sign a noncompetition undertaking in favor of Franchisor and the transferee, which undertaking shall contain the restrictions in Section 13.D below;

(8) any new Operating Partner is reasonably acceptable to Franchisor and completes to Franchisor's satisfaction Franchisor's then current training program; and

(9) the transferee and each of its owners (if the transfer is of this Agreement) or Developer and its Owners (if the transfer is of a direct or indirect Controlling Interest in Developer) agrees, at Franchisor's option, to (a) be bound by all terms and conditions of this Agreement for the remainder of the term, or (b) sign Franchisor's then current form of standard development agreement and related documents for Freshii Restaurant development, which may contain provisions materially different from those contained in this Agreement, except that the term of such development agreement shall be the remaining term of this Agreement.

#### **11.E. DEATH OR INCAPACITY**

Upon the death or permanent incapacity of an Owner of Developer, all of such person's direct or indirect interest in Developer must be transferred to a transferee approved by Franchisor within a reasonable time, not to exceed nine (9) months from the date of death or permanent disability, and shall be subject to all the terms and conditions applicable to transfers contained in this Section 11. Failure to so transfer such ownership interest within such period of time shall constitute a breach of this Agreement.

#### **11.F. EFFECT OF CONSENT TO TRANSFER**

Franchisor's consent to a transfer under this Section 11 is not a waiver of any claims it might have against Developer (or its Owners), nor a waiver of Franchisor's right to demand Developer's (or the transferee's) full compliance with this Agreement. Franchisor's approval of any proposed transfer indicates only that the transferee meets, or that Franchisor has waived, Franchisor's then current criteria for developers and is not a warranty or guaranty by Franchisor, express or implied, of the suitability of the terms of sale or of the successful operation or profitability of the transferee.

#### **11.G. FRANCHISOR'S RIGHT OF FIRST REFUSAL**

If Developer or any of its Owners at any time determines to sell or transfer for consideration an interest in this Agreement and the Business (or all or substantially all of its assets) or a direct or indirect Controlling Interest in Developer, whether in one transfer or a series of related transfers (except to or among Developer's Owners as of the Agreement Date or in a transfer pursuant to Section 11.E, which are not subject to this Section 11.G), Developer agrees to obtain from a responsible and fully disclosed buyer, and send Franchisor, a true and complete copy of a bona fide, executed written offer (which may be a letter of intent) relating exclusively to this Agreement and the Business or direct or indirect Controlling Interest in Developer. The offer must include details of the payment terms of the proposed sale and the sources and terms of any financing for the proposed purchase price and must provide for an earnest money deposit of at least ten percent (10%) of the proposed purchase price. To be a valid, bona fide offer, the proposed purchase price must be in a fixed dollar amount and without any contingent payments of purchase price (such as earn-out payments) and the proposed transaction must relate exclusively to an interest in this Agreement and the Business (or all or substantially all of its assets) or a direct or indirect Controlling Interest in Developer and not to any other interests or assets. Franchisor may require Developer (or its Owners) to send Franchisor copies of any materials or information sent to the proposed buyer or transferee regarding the possible transaction.

Franchisor may, by delivering written notice to Developer within thirty (30) days after Franchisor receives both an exact copy of the offer and all other information that Franchisor requests, elect to purchase the interest for the price and on the terms and conditions contained in the offer, provided that: (1) Franchisor may substitute cash for any form of payment proposed in the offer; (2) Franchisor's credit will be deemed equal to the credit of any proposed buyer; (3) the closing will be not less than thirty (30) days after notifying Developer of Franchisor's election to purchase or, if later, the closing date proposed in the offer; and (4) Franchisor must receive, and Developer and its Owners agree to make, all customary representations, warranties and indemnities given by the seller of the assets of a business or ownership interests in a legal entity, as applicable, including representations and warranties regarding ownership and condition of, and title to, assets and (if applicable) ownership interests, liens and encumbrances on assets, validity of contracts and agreements, and the liabilities, contingent or otherwise, relating to the assets or ownership interests being purchased, and indemnities for all actions, events and conditions that existed or occurred in connection with the Business prior to the closing of Franchisor's purchase. If Franchisor exercises its right of first refusal, Developer and its transferring Owners agree that, for two (2) years beginning on the closing date, Developer or the transferring Owners (and members of their Immediate Families) will be bound by the non-competition covenants contained in Section 13.D.

If Franchisor does not exercise its right of first refusal, Developer or its Owner(s) may complete the sale to the proposed buyer on the original offer's terms, but only if Franchisor approves the transfer as provided in this Section 11. If Developer or its Owners do not complete the sale to the proposed buyer within sixty (60) days after Franchisor notifies Developer that Franchisor does not intend to exercise its right of first refusal, or if there is a material change in the terms of the sale (which Developer agrees to tell Franchisor promptly), Franchisor will have an additional right of first refusal during the thirty

(30)-day period following either the expiration of the sixty (60)-day period or Franchisor's receipt of notice of the material change(s) in the sale's terms, either on the terms originally offered or the modified terms, at Franchisor's option. Franchisor has the unrestricted right to assign this right of first refusal to a third party (including an affiliate), who then will have the rights described in this Section 11.G.

## **12. TERMINATION OF AGREEMENT**

### **12.A. TERMINATION BY DEVELOPER**

If Developer is fully complying with this Agreement, and Franchisor materially fails to comply with this Agreement and does not, within thirty (30) days after Developer delivers written notice of the failure to Franchisor, either correct the failure or, if Franchisor cannot reasonably correct the failure within thirty (30) days, give Developer reasonable evidence of Franchisor's effort to correct the failure within a reasonable time, then Developer may terminate this Agreement effective an additional thirty (30) days after Developer delivers to Franchisor written notice of termination. Developer's termination of this Agreement other than according to this Section 12.A will be deemed a termination without cause and a breach of this Agreement.

### **12.B. TERMINATION BY FRANCHISOR**

Without limiting Franchisor's termination and other rights and remedies under any other agreement with Developer or its affiliates, including Franchise Agreements, Franchisor may terminate this Agreement, effective upon delivery of written notice of termination to Developer, if:

- (1) Developer or any of its Owners has made or makes a material misrepresentation or omission in acquiring the rights under this Agreement or operating the Business;
- (2) the Operating Partner does not satisfactorily complete the initial executive training program;
- (3) Developer commits two (2) Development Defaults in successive Development Periods, or three (3) Development Defaults at any time during the term of this Agreement, or fails to cure any Development Default in accordance with Section 5.E within sixty (60) days after the end of the Development Period with respect to which the Development Default occurred;
- (4) Developer or any of its Owners is convicted by a trial court of, or pleads no contest to, a felony;
- (5) Developer or any of its Owners engages in any dishonest, unethical or illegal conduct which, in Franchisor's reasonable opinion, adversely affects or might adversely affect the reputation of the Business, the reputation of other Freshii Restaurants or the goodwill associated with the Marks;
- (6) Developer or any of its Owners makes or attempts to make a transfer in violation of this Agreement;
- (7) any Franchise Agreement or other agreement between Franchisor (or any of its affiliates) and Developer (or any of its Owners, Controlled Affiliates or other affiliates) is terminated before its term expires, regardless of the reason;

(8) Developer or any of its Owners breaches Section 10 of this Agreement or knowingly makes any unauthorized use or disclosure of any Confidential Information;

(9) Developer fails on three (3) or more separate occasions within any twelve (12) consecutive month period to comply with any one or more obligations under this Agreement, whether or not any of these failures are corrected after Franchisor delivers written notice to Developer and whether these failures involve the same or different obligations under this Agreement;

(10) Developer or any of its owners fails on two (2) or more separate occasions within any six (6) consecutive month period, or on three (3) or more separate occasions within any thirty-six (36) consecutive month period, to comply with the same obligation under this Agreement, whether or not any of these failures are corrected after Franchisor delivers written notice to Developer;

(11) Developer makes an assignment for the benefit of creditors or admits in writing its insolvency or inability to pay its debts generally as they become due; Developer consents to the appointment of a receiver, trustee or liquidator of all or the substantial part of its property; the Business or any of the assets of the Business is attached, seized, subjected to a writ or distress warrant, or levied upon, unless the attachment, seizure, writ, warrant or levy is vacated within thirty (30) days; or any order appointing a receiver, trustee or liquidator of Developer or the Business is not vacated within thirty (30) days following the order's entry; or

(12) Developer fails to comply with any other provision of this Agreement and does not correct the failure within thirty (30) days after Franchisor delivers written notice of the failure to Developer.

## **12.C. EFFECT OF TERMINATION**

The termination of this Agreement shall not, without more, be grounds for the termination of any Franchise Agreement signed before the effective date of the termination of this Agreement. However, nothing in this Agreement shall limit any party's right to terminate any such Franchise Agreement, including the right to terminate any such Franchise Agreement due to any event, cause or default which also forms the basis or grounds of the termination of this Agreement.

## **13. RIGHTS AND OBLIGATIONS UPON TERMINATION OR EXPIRATION OF THIS AGREEMENT**

### **13.A. PAYMENT OF AMOUNTS OWED**

Developer agrees to pay within fifteen (15) days after this Agreement expires or is terminated, or on any later date that the amounts due are determined, all amounts owed to Franchisor or its affiliates which then are unpaid, including Franchisor's damages arising from the termination of this Agreement.

### **13.B. DE-IDENTIFICATION**

When this Agreement expires or is terminated for any reason, and except with respect to Franchise Agreements between Franchisor and Developer or its Controlled Affiliate then in effect, Developer shall:

- (1) have no further rights to develop Freshii Restaurants;

(2) not directly or indirectly at any time thereafter or in any manner: (a) identify itself or any business as a current or former Freshii Restaurant developer or as otherwise currently or formerly associated with Franchisor; (b) use any Mark, any colorable imitation of a Mark, any trademark, service mark or commercial symbol that is confusingly similar to any Mark, or any other indicia of a Freshii Restaurant in any manner or for any purpose; or (c) use for any purpose any trade dress, trade name, trademark, service mark or other commercial symbol that indicates or suggests a connection or association with Franchisor;

(3) promptly take the action required to cancel all fictitious or assumed name or equivalent registrations relating to its use of any Mark; and

(4) promptly deliver to Franchisor all advertising, marketing and promotional materials, forms, and other materials containing any Mark or otherwise identifying or relating to a Freshii Restaurant or the development of Freshii Restaurants.

### **13.C. CONFIDENTIAL INFORMATION**

When this Agreement expires or is terminated, except with respect to Franchise Agreements between Franchisor and Developer or its Controlled Affiliate then in effect, Developer agrees to immediately cease using any Confidential Information in any business or otherwise and return to Franchisor all confidential materials that Franchisor has loaned Developer. Developer may not sell, trade or otherwise profit in any way from any Confidential Information at any time following the expiration or termination of this Agreement, except under Franchise Agreements between Franchisor and Developer or its Controlled Affiliate then in effect.

### **13.D. COVENANT NOT TO COMPETE**

Upon expiration or termination of this Agreement for any reason (other than pursuant to Section 12.A), and except with respect to Franchise Agreements between Franchisor and Developer or its Controlled Affiliate then in effect, Developer agrees that, for two (2) years beginning on the effective date of termination or expiration or the date on which all persons restricted by this Section 13.D begin to comply fully with this Section 13.D, whichever is later, neither Developer nor any of its Owners, nor any member of their Immediate Families, will:

(1) have any direct or indirect, controlling or non-controlling interest as an owner – whether of record, beneficial or otherwise – in any Competitive Business which is located or operating:

(a) within the Development Area; or

(b) within three (3) miles of any other Freshii Restaurant in operation or under construction on the effective date of the termination or expiration,

provided that this restriction will not prohibit the ownership of shares of a class of securities which are publicly traded on a United States stock exchange representing less than three percent (3%) of the number of shares of that class of securities issued and outstanding; or

(2) perform services as a director, officer, manager, employee, consultant, representative or agent for a Competitive Business which is located or operating:

(a) within the Development Area, or

(b) within three (3) miles of any other Freshii Restaurant in operation or under construction on the later of the effective date of the termination or expiration.

These restrictions also apply after transfers and other events, as provided in Section 11 above. Developer (and each of its Owners) expressly acknowledges that it (and they) possess skills and abilities of a general nature and have other opportunities for exploiting these skills. Consequently, Franchisor's enforcing the covenants made in this Section 13.D will not deprive them of personal goodwill or the ability to earn a living.

### **13.E. CONTINUING OBLIGATIONS**

All of Franchisor's and Developer's (and its Owners') obligations hereunder which expressly or by their nature survive the expiration or termination of this Agreement will continue in full force and effect subsequent to and notwithstanding its expiration or termination and until these obligations are satisfied in full or by their nature expire.

## **14. RELATIONSHIP OF THE PARTIES/INDEMNIFICATION**

### **14.A. INDEPENDENT CONTRACTORS**

This Agreement does not create a fiduciary relationship between Developer and Franchisor. Developer has no authority, express or implied, to act as an agent of Franchisor or any of its affiliates for any purpose. Developer is, and shall remain, an independent contractor responsible for all obligations and liabilities of, and for all loss or damage to, the Business and its assets, including any personal property, equipment, fixtures or real property and for all claims or demands based on damage to or destruction of property or based on injury, illness or death of any person or persons, directly or indirectly, resulting from the operation of the Business. Further, Franchisor and Developer are not and do not intend to be partners, joint venturers, associates, or joint employers in any way, and Franchisor shall not be construed to be jointly liable for any of Developer's acts or omissions under any circumstances. Franchisor has no relationship with Developer's employees and Developer has no relationship with Franchisor's employees. Developer agrees to identify itself conspicuously in all dealings with suppliers, public officials, Business personnel and others as the owner of the Business under a license that Franchisor has granted and to place notices of independent ownership on the forms, business cards, stationery, advertising and other materials that Franchisor requires from time to time.

### **14.B. NO LIABILITY FOR ACTS OF OTHER PARTY**

Franchisor and Developer agree not to make any express or implied agreements, warranties, guarantees or representations, or incur any debt, in the name or on behalf of the other or represent that their relationship is other than licensor and licensee. Franchisor will not be obligated for any damages to any person or property directly or indirectly arising out of the operation of the Business.

### **14.C. TAXES**

Franchisor will have no liability for any sales, use, service, occupation, excise, gross receipts, income, property or other taxes, whether levied upon Developer or the Business, due to the business Developer conducts (except any taxes Franchisor is required by law to collect from Developer for purchases from Franchisor and Franchisor's income taxes). Developer is responsible for paying such taxes.

#### **14.D. INDEMNIFICATION**

To the fullest extent permitted by law, Developer agrees to indemnify, defend and hold harmless Franchisor, its affiliates and their respective owners, directors, officers, employees, agents, representatives, successors and assigns (the “**Indemnified Parties**”) from and against, and to reimburse any one or more of the Indemnified Parties for, any and all claims, losses, obligations and damages directly or indirectly arising out of or relating to: (1) the operation of the Business, (2) Developer’s breach of this Agreement or any other agreement with Franchisor or its affiliate, or (3) noncompliance or alleged noncompliance with any law, ordinance, rule or regulation concerning the Business, including those claims, obligations and damages alleged to be caused by an Indemnified Party’s negligence or willful misconduct, except as specifically set forth below in this Section 14.D.

For purposes of this indemnification, “**claims**” include all losses, expenses, obligations, and damages (actual, consequential, punitive or otherwise) and costs that an Indemnified Party reasonably incurs in defending any claim against it, including reasonable accountants’, arbitrators’, attorneys’ and expert witness fees, costs of investigation and proof of facts, court costs, travel and living expenses, and other expenses of litigation, arbitration or alternative dispute resolution, regardless of whether litigation, arbitration or alternative dispute resolution is commenced. Each Indemnified Party may defend and control the defense of any claim against it which is subject to this indemnification at Developer’s expense, and Developer may not settle any claim or take any other remedial, corrective or similar actions relating to any claim without the consent of the Indemnified Party. The provisions of this Section 14.D will continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement. An Indemnified Party need not seek recovery from an insurer or other third party, or otherwise mitigate its losses and expenses, in order to maintain and recover fully a claim against Developer. Developer agrees that a failure to pursue a recovery or mitigate a loss will not reduce or alter the amounts that an Indemnified Party may recover from Developer.

Notwithstanding the foregoing, Developer has no obligation to indemnify under this Section 14.D if a court of competent jurisdiction makes a final decision not subject to further appeal that Franchisor, its affiliate, or any of their respective employees directly engaged in willful misconduct or intentionally caused the property damage or bodily injury that is the subject of the claim, so long as the claim is not asserted on the basis of theories of vicarious liability (including agency, apparent agency, or employment) or Franchisor’s failure to compel Developer to comply with this Agreement, which are claims for which Franchisor is entitled to indemnification under this Section 14.D.

#### **15. ENFORCEMENT**

##### **15.A. SEVERABILITY AND SUBSTITUTION OF VALID PROVISIONS**

Except as expressly provided to the contrary in Section 15.F or otherwise in this Agreement, each Section, Subsection, paragraph, term and provision of this Agreement is severable, and if, for any reason, any part is held to be invalid or contrary to or in conflict with any applicable present or future law or regulation in a final, unappealable ruling issued by any court, arbitrator, agency or tribunal with competent jurisdiction, that ruling will not impair the operation of, or otherwise affect, any other portions of this Agreement, which will continue to have full force and effect and bind the parties. If any covenant which restricts competitive activity is deemed unenforceable by virtue of its scope in terms of area, business activity prohibited, and/or length of time, but would be enforceable if modified, Developer and Franchisor agree that the covenant will be enforced to the fullest extent permissible under the laws and public policies applied in the jurisdiction whose law determines the covenant’s validity. If any applicable and binding law or rule of any jurisdiction requires more notice than this Agreement requires of the termination of this Agreement or of Franchisor’s refusal to enter into a successor or renewal agreement,

or if, under any applicable and binding law or rule of any jurisdiction, any provision of this Agreement is invalid, unenforceable or unlawful, the notice and/or other action required by the law or rule will be substituted for the comparable provisions of this Agreement, and Franchisor may modify the invalid or unenforceable provision to the extent required to be valid and enforceable or delete the unlawful provision in its entirety. Developer agrees to be bound by any promise or covenant imposing the maximum duty the law permits which is subsumed within any provision of this Agreement, as though it were separately articulated in and made a part of this Agreement.

#### **15.B. WAIVER OF OBLIGATIONS AND FORCE MAJEURE**

Franchisor and Developer may by written instrument unilaterally waive or reduce any obligation of or restriction upon the other under this Agreement, effective upon delivery of written notice to the other or another effective date stated in the notice of waiver. However, no interpretation, change, termination or waiver of any provision of this Agreement shall be binding upon Franchisor unless it is in writing and signed by one of its officers and is specifically identified as an amendment to this Agreement. No modification, waiver, termination, discharge or cancellation of this Agreement shall affect the right of any party hereto to enforce any claim or right hereunder, whether or not liquidated, which occurred prior to the date of such modification, waiver, termination, discharge or cancellation. Any waiver Franchisor grants will be without prejudice to any other rights it has, will be subject to its continuing review, and may be revoked at any time and for any reason, effective upon delivery to Developer of ten (10) days' prior written notice.

Franchisor and Developer will not be deemed to waive or impair any right, power or option this Agreement reserves (including Franchisor's right to demand exact compliance with every term, condition and covenant or to declare any breach to be a default and to terminate this Agreement before its term expires) because of any custom or practice at variance with the terms of this Agreement; Franchisor's or Developer's failure, refusal or neglect to exercise any right under this Agreement or to insist upon the other's compliance with this Agreement; Franchisor's waiver of or failure to exercise any right, power or option, whether of the same, similar or different nature, with other Freshii Restaurant developers; the existence of other development agreements for Freshii Restaurants which contain provisions different from those contained in this Agreement; or Franchisor's acceptance of any payments due from Developer or its Controlled Affiliates after any breach of this Agreement. No special or restrictive legend or endorsement on any check or similar item given to Franchisor will be a waiver, compromise, settlement or accord and satisfaction. Franchisor is authorized to remove any legend or endorsement, and it shall have no effect.

Neither Franchisor nor Developer will be liable for loss or damage or be in breach of this Agreement (including Developer's obligation to comply with the Schedule) if its failure to perform its obligations results from: (1) acts of God; (2) fires, strikes, embargoes, war, acts of terrorism or similar events, or riot; or (3) any other similar event or cause. Any delay resulting from any of these causes will extend performance accordingly or excuse performance, in whole or in part, as may be reasonable, except that these causes will not excuse payments of amounts owed at the time of the occurrence or amounts due afterward.

#### **15.C. COSTS AND ATTORNEYS' FEES**

If either Franchisor or Developer seeks to enforce this Agreement in an arbitration, judicial or other proceeding, the prevailing party shall be entitled to recover its reasonable costs and expenses (including attorneys' fees, arbitrators' fees and expert witness fees, costs of investigation and proof of facts, court costs, other arbitration or litigation expenses and travel and living expenses) incurred in connection with such arbitration, judicial or other proceeding.

#### **15.D. DEVELOPER MAY NOT WITHHOLD PAYMENTS**

Developer agrees that Developer will not withhold payment of any amounts owed to Franchisor or its affiliates on the grounds of Franchisor's or their alleged nonperformance of any of its or their obligations under this Agreement or any other agreement.

#### **15.E. RIGHTS OF PARTIES ARE CUMULATIVE**

Franchisor's and Developer's rights under this Agreement are cumulative, and their exercise or enforcement of any right or remedy under this Agreement will not preclude their exercise or enforcement of any other right or remedy under this Agreement which they are entitled by law to enforce.

#### **15.F. ARBITRATION**

All controversies, disputes or claims between Franchisor (and its affiliates and their respective owners, officers, directors, agents and employees, as applicable) and Developer (and its affiliates and their respective owners, officers, and directors, as applicable) arising out of or related to:

- (1) this Agreement or any other agreement between Developer (or its Owners or affiliates) and Franchisor (or its affiliates) or any provision of any of such agreements;
- (2) Franchisor's relationship with Developer; or
- (3) the scope or validity of this Agreement or any other agreement between Developer (or its Owners or affiliates) and Franchisor (or its affiliates) or any provision of any of such agreements (including the validity and scope of the arbitration obligation under this Section, which Franchisor and Developer acknowledge is to be determined by an arbitrator, not a court)

will be submitted for arbitration to the American Arbitration Association. Except as otherwise provided in this Agreement, such arbitration proceedings shall be heard by one (1) arbitrator in accordance with the then existing Commercial Arbitration Rules of the American Arbitration Association. Arbitration proceedings shall be held at a suitable location to be chosen by the arbitrator within ten (10) miles of Franchisor's then existing principal business address. All matters within the scope of the Federal Arbitration Act (9 U.S.C. Sections 1 et seq.) will be governed by it and not by any state arbitration law.

The arbitrator shall have the right to award any relief which he or she deems proper in the circumstances, including money damages (with interest on unpaid amounts from the date due), specific performance, injunctive relief and attorneys' fees and costs in accordance with Section 15.C above, provided that: (a) the arbitrator shall not have authority to declare any Mark generic or otherwise invalid; and (b) subject to the exceptions in Section 15.I, Franchisor and Developer waive to the fullest extent permitted by law any right to or claim for any punitive, exemplary, and treble and other forms of multiple damages against the other. The award and decision of the arbitrator shall be conclusive and binding upon all parties hereto and judgment upon the award may be entered in any court of competent jurisdiction.

Franchisor and Developer agree to be bound by the provisions of any limitation on the period of time by which claims must be brought under this Agreement or applicable law, whichever expires first. Franchisor and Developer further agree that, in connection with any such arbitration proceeding, each shall submit or file any claim which would constitute a compulsory counterclaim (as defined by the then current Rule 13 of the Federal Rules of Civil Procedure) within the same proceeding as the claim to which it relates. Any such claim which is not submitted or filed in such proceeding shall be barred. The

arbitrator may not consider any settlement discussions or offers that might have been made by either Developer or Franchisor.

Franchisor and Developer agree that arbitration shall be conducted on an individual, not a class-wide, basis, that only Franchisor (and its affiliates and their respective owners, officers, directors, agents and employees, as applicable) and Developer (and its affiliates and their respective owners, officers and directors, as applicable) may be the parties to any arbitration proceeding described in this Section, and that no such arbitration proceeding shall be consolidated with any other arbitration proceeding involving Franchisor and/or any other person. Notwithstanding the foregoing or anything to the contrary in this Section or Section 15.A, if any court or arbitrator determines that all or any part of the preceding sentence is unenforceable with respect to a dispute that otherwise would be subject to arbitration under this Section 15.F, then Franchisor and Developer agree that this arbitration clause shall not apply to that dispute and that such dispute shall be resolved in a judicial proceeding in accordance with this Section 15 (excluding this Section 15.F).

The provisions of this Section are intended to benefit and bind certain third party non-signatories and will continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement.

Notwithstanding anything to the contrary contained in this Section 15.F, Franchisor and Developer have the right in a proper case to obtain temporary restraining orders and temporary or preliminary injunctive relief from a court of competent jurisdiction. In that case, Franchisor and Developer agrees to contemporaneously submit Franchisor's dispute for arbitration on the merits according to this Section 15.F. Furthermore, nothing in this Section 15.F shall limit either party's right to deliver a notice of default under, and terminate, this Agreement in accordance with Section 12.

#### **15.G. GOVERNING LAW**

Except to the extent governed by the Federal Arbitration Act, the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. Sections 1051 et seq.) or other federal law, all controversies, disputes or claims arising from or relating to:

- (1) this Agreement or any other agreement between Developer (or its Owners or affiliates) and Franchisor (or its affiliates);
- (2) Franchisor's relationship with Developer; or
- (3) the validity of this Agreement or any other agreement between Developer (or its Owners or affiliates) and Franchisor (or its affiliates)

will be governed by the laws of the State of Illinois, without regard to its conflict of laws rules, except that any law regulating the offer or sale of franchises, business opportunities or similar interests, or governing the relationship between a franchisor and a franchisee or any similar relationship, will not apply unless its jurisdictional requirements are met independently without reference to this Section 15.G.

#### **15.H. CONSENT TO JURISDICTION**

Subject to the arbitration obligations in Section 15.F, Developer and its Owners agree that all judicial actions brought by Franchisor against Developer or its Owners, or by Developer or its Owners against Franchisor, its affiliates or their respective owners, officers, directors, agents, or employees, must be brought exclusively in the state or federal court of general jurisdiction in the state, and in (or closest to)

the city, where Franchisor then maintains its principal business address. Developer and each of its owners irrevocably submit to the jurisdiction of such courts and waive any objection that any of them may have to either jurisdiction or venue. Notwithstanding the foregoing, Franchisor may bring an action for a temporary restraining order or for temporary or preliminary injunctive relief, or to enforce an arbitration award, in any federal or state court in the state in which Developer resides or the Business premises is located.

#### **15.I. WAIVER OF PUNITIVE DAMAGES**

EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS UNDER SECTION 14.D AND CLAIMS BASED ON UNAUTHORIZED USE OF THE MARKS OR UNAUTHORIZED USE OR DISCLOSURE OF ANY CONFIDENTIAL INFORMATION, FRANCHISOR AND DEVELOPER (AND ITS OWNERS) WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT TO OR CLAIM FOR ANY PUNITIVE, EXEMPLARY, AND TREBLE AND OTHER FORMS OF MULTIPLE DAMAGES AGAINST THE OTHER AND AGREE THAT, IN THE EVENT OF A DISPUTE BETWEEN FRANCHISOR AND DEVELOPER (AND/OR ITS OWNERS), THE PARTY MAKING A CLAIM WILL BE LIMITED TO EQUITABLE RELIEF AND TO RECOVERY OF ANY ACTUAL DAMAGES IT SUSTAINS.

#### **15.J. WAIVER OF JURY TRIAL**

FRANCHISOR AND DEVELOPER (AND ITS OWNERS) IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM, WHETHER AT LAW OR IN EQUITY, BROUGHT BY EITHER OF THEM.

#### **15.K. BINDING EFFECT**

This Agreement is binding upon Franchisor and Developer and their respective executors, administrators, heirs, beneficiaries, permitted assigns and successors in interest. This Agreement may not be modified except by a written agreement signed by both Developer and Franchisor.

#### **15.L. LIMITATIONS OF CLAIMS**

EXCEPT FOR CLAIMS ARISING FROM DEVELOPER'S NON-PAYMENT OR UNDERPAYMENT OF AMOUNTS THAT DEVELOPER OWES FRANCHISOR, ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE RELATIONSHIP BETWEEN FRANCHISOR AND DEVELOPER WILL BE BARRED UNLESS AN ARBITRATION OR JUDICIAL PROCEEDING IS COMMENCED IN THE APPROPRIATE FORUM WITHIN EIGHTEEN (18) MONTHS FROM THE DATE ON WHICH THE PARTY ASSERTING THE CLAIM KNEW OR SHOULD HAVE KNOWN OF THE FACTS GIVING RISE TO THE CLAIM.

#### **15.M. CONSTRUCTION**

The preambles and exhibits are a part of this Agreement, which, together with any riders or addenda signed at the same time as this Agreement, constitutes Franchisor's and Developer's entire agreement and supersedes all prior and contemporaneous oral or written agreements and understandings between Franchisor and Developer relating to the subject matter of this Agreement. There are no other oral or written representations, warranties, understandings or agreements between Franchisor and Developer relating to the subject matter of this Agreement. Notwithstanding the foregoing, nothing in this Agreement shall disclaim or require Developer to waive reliance on any representation that Franchisor made in the most recent disclosure document (including its exhibits and amendments) that

Franchisor delivered to Developer or its representative. Any policies that Franchisor adopts and implements from time to time to guide it in its decision-making are subject to change, are not a part of this Agreement and are not binding on Franchisor. Except as provided in Sections 14.D and 15.F, nothing in this Agreement is intended nor deemed to confer any rights or remedies upon any person or legal entity not a party to this Agreement.

The headings of the sections and paragraphs are for convenience only and do not define, limit or construe the contents of these sections or paragraphs.

References in this Agreement to “**Franchisor**” with respect to all of its rights and all of Developer’s obligations to Franchisor under this Agreement include any of Franchisor’s affiliates with whom Developer deals in connection with the Business. The term “**affiliate**” means any person or entity directly or indirectly owned or controlled by, under common control with, or owning or controlling the party indicated. “**Control**” means the power to direct or cause the direction of management and policies.

The term “**person**” means any natural person, corporation, limited liability company, general or limited partnership, unincorporated association, cooperative or other legal or functional entity. Unless otherwise specified, all references to a number of days shall mean calendar days and not business days. The words “**include**,” “**including**,” and words of similar import shall be interpreted to mean “including, but not limited to” and the terms following such words shall be interpreted as examples of, and not an exhaustive list of, the appropriate subject matter. This Agreement may be executed in multiple copies, each of which will be deemed an original.

#### **15.N. THE EXERCISE OF FRANCHISOR’S JUDGMENT**

Whenever Franchisor has reserved in this Agreement a right to take or to withhold an action, or to grant or decline to grant Developer a right to take or omit an action, Franchisor may, except as otherwise specifically provided in this Agreement, make its decision or exercise its rights based on information readily available to Franchisor and its judgment of what is in the best interests of Franchisor, the Freshii Restaurant network generally, or the Freshii Restaurant franchise operating system at the time Franchisor’s decision is made, without regard to whether it could have made other reasonable or even arguably preferable alternative decisions or whether Franchisor’s decision promotes its or its affiliates’ financial or other individual interest. Except where this Agreement expressly obligates Franchisor reasonably to approve or not unreasonably to withhold its approval of any of Developer’s actions or requests, Franchisor has the absolute right to refuse any request Developer makes or to withhold Franchisor’s approval of any of Developer’s proposed, initiated or completed actions that require Franchisor’s approval.

#### **16. NOTICES AND PAYMENTS**

All written notices, reports and payments permitted or required to be delivered by the provisions of this Agreement will be deemed so delivered:

- (1) one (1) business day after transmission by telecopy, facsimile or other electronic system if the sender has confirmation of successful transmission;
- (2) one (1) business day after being placed in the hands of a commercial courier service for next business day delivery; or
- (3) three (3) business days after placement in the United States Mail by Registered or Certified Mail, Return Receipt Requested, postage prepaid;

and must be addressed to the party to be notified at its most current principal business address of which the notifying party has notice.

**17. ELECTRONIC MAIL**

Developer acknowledges and agrees that exchanging information with Franchisor by e-mail is efficient and desirable for day-to-day communications and that Franchisor and Developer may utilize e-mail for such communications. Developer authorizes the transmission of e-mail by Franchisor and its employees, vendors, and affiliates (“**Official Senders**”) to Developer during the term of this Agreement.

Developer further agrees that: (a) Official Senders are authorized to send e-mails to Instructors and those of Developer’s other employees as Developer may occasionally authorize for the purpose of communicating with Franchisor; (b) Developer will cause its officers, directors and other employees to give their consent to Official Senders’ transmission of e-mails to them; (c) Developer will require such persons not to opt out or otherwise ask to no longer receive e-mails from Official Senders during the time that such person works for or is associated with Developer; and (d) Developer will not opt out or otherwise ask to no longer receive e-mails from Official Senders during the term of this Agreement.

The consent given in this Section 17 shall not apply to the provision of notices by either party under this Agreement pursuant to Section 16 using e-mail unless the parties otherwise agree in a written document manually signed by both parties.

**IN WITNESS WHEREOF**, the parties have executed and delivered this Agreement effective on the date stated on the first page above.

~~FRESHII DEVELOPMENT, LLC~~, a  
Delaware limited liability company

\_\_\_\_\_  
[Name]

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

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

Franchisor

Developer

**FRESHII DEVELOPMENT, LLC**

a Delaware limited liability company

a \_\_\_\_\_ limited liability  
company/corporation

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

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

Name: Matthew Corrin

Name: \_\_\_\_\_

Title: CEO

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

Or if individually

\_\_\_\_\_  
Name: \_\_\_\_\_

**EXHIBIT A**  
**to the**  
**FRESHII™ RESTAURANT AREA DEVELOPMENT AGREEMENT**

**SCHEDULE AND DEVELOPMENT FEE**

Developer agrees to open \_\_\_\_\_ (\_\_) Freshii Restaurants within the Development Area (besides the Freshii Restaurants already located in the Development Area, if any) in each twelve (12) month period (each a “**Development Period**”) described below according to the following Schedule:

<b>End of Development Period</b>	<b>Cumulative Number of New Freshii Restaurants To Be Opened and Operating By End of Development Period</b>
First anniversary of Agreement Date	
Second anniversary of Agreement Date	
Third anniversary of Agreement Date	
Fourth anniversary of Agreement Date	

Total: \_\_\_\_\_

The Development Fee is \$ \_\_\_\_\_.

**FRESHII DEVELOPMENT, LLC**, a  
 Delaware limited liability company

\_\_\_\_\_  
 [Name]

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

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

**FRESHII DEVELOPMENT, LLC**

Franchisor Developer

By: By:

Name: Matthew Corrin Name:

Title: CEO Title:

Or if individually

Name:

**EXHIBIT B**  
**to the**  
**FRESHII™ RESTAURANT AREA DEVELOPMENT AGREEMENT**

**DEVELOPMENT AREA**

The Development Area is defined as the entire territory encompassed by \_\_\_\_\_ in the State of \_\_\_\_\_. If the Development Area is identified by city or other political subdivisions, political boundaries will be considered fixed as of the Agreement Date, notwithstanding any political reorganization or change to the boundaries. The Development Area is depicted on the map attached to this Exhibit B. However, if there is an inconsistency between the language in this Exhibit B and the attached map, the language in this Exhibit B shall control. All street boundaries will be deemed to end at the street center line unless otherwise specified.

**FRESHII DEVELOPMENT, LLC**, a  
Delaware limited liability company

\_\_\_\_\_  
[Name]

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

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

**FRESHII DEVELOPMENT, LLC**

By: \_\_\_\_\_  
Name: Matt Corrin  
Title: CEO

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

\_\_\_\_\_  
Or if individually  
\_\_\_\_\_  
Name: \_\_\_\_\_  
\_\_\_\_\_

## MAP OF DEVELOPMENT AREA

**EXHIBIT C**  
**to the**  
**FRESHII™ RESTAURANT AREA DEVELOPMENT AGREEMENT**

**DEVELOPER AND ITS OWNERS**

**Effective Date: This Exhibit C is current and complete**  
**as of \_\_\_\_\_, 20\_\_\_\_**

1. **Form of Developer.** Developer was incorporated or formed on \_\_\_\_\_, 20\_\_, under the laws of the State of \_\_\_\_\_. Developer has not conducted business under any name other than Developer's corporate, limited liability company, or partnership name and \_\_\_\_\_. The following is a list of Developer's directors or managers (if applicable) and officers as of the effective date shown above:

<u>Name</u>	<u>Position(s) Held</u>
_____	_____
_____	_____
_____	_____

2. **Owners.** The following list includes the full name of each person who is one of Developer's direct or indirect Owners and fully describes the nature of each owner's interest (attach additional pages if necessary).

<u>Owner's Name</u>	<u>Description of Interest</u>
(a) _____	_____
(b) _____	_____

3. **Operating Partner.** Developer's Operating Partner is \_\_\_\_\_.

**FRESHII DEVELOPMENT, LLC**, a  
Delaware limited liability company

\_\_\_\_\_  
[Name]

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

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

**FRESHII DEVELOPMENT, LLC**

a Delaware limited liability company

a limited liability  
company/corporation

By:

Name: Matt Corrin

Title: CEO

By:

Name:

Title:

Or if individually

Name:

**EXHIBIT D**  
**to the**  
**FRESHII™ RESTAURANT AREA DEVELOPMENT AGREEMENT**  
**CONFIDENTIALITY AND NON-COMPETITION AGREEMENT**

**WHEREAS**, the undersigned (the “**Undersigned**”) is a current or prospective Operating Partner and/or employee of one or more developers or franchisees (each a “**Related Party**”) of **FRESHII DEVELOPMENT, LLC**, a Delaware limited liability company (the “**Company**”);

**WHEREAS**, the Undersigned has been or may be given access to certain confidential and proprietary information of the Company and/or its Related Parties previously not available to the Undersigned;

**WHEREAS**, the Related Party signatory hereto is only willing to commence or continue its relationship with Undersigned in the event Undersigned enters into this Agreement; and

**WHEREAS**, the Related Party signatory hereto has entered into this Agreement with the Undersigned in order to ensure the confidentiality of Proprietary Information (defined below) in accordance with the terms of this Agreement, to ensure that the Undersigned does not utilize such information to compete with the Company or unfairly disadvantage the Company, and/or to protect the investment made by the Related Party signatory hereto in the training and instruction of its employees.

**NOW, THEREFORE**, the Undersigned hereby agrees as follows:

1. **Recitals.** The recitals set forth above are incorporated herein by this reference and shall be part of this Agreement.

2. **Proprietary Information.** As used in this Agreement, the term “**Proprietary Information**” shall mean the business concepts, information about types and suppliers of equipment, operating techniques, menu and ingredient information, marketing methods, financial information, demographic and trade area information, prospective site locations, market penetration techniques, plans, schedules, customer profiles, preferences, statistics, franchisee composition, territories, and development plans, and all related trade secrets or confidential or proprietary information treated as such by the Company and/or the Related Party signatory hereto, as the case may be, whether by course of conduct, by letter or report, by the inclusion of such information in the Company’s operations manuals or similar documents, or by the use of any appropriate proprietary stamp or legend designating such information or item to be confidential or proprietary, by any communication to such effect made prior to or at the time any such Proprietary Information is disclosed to the Undersigned, or otherwise.

3. **Use and Disclosure of Proprietary Information.** The Undersigned shall hold all Proprietary Information in strict confidence and shall use such Proprietary Information only for the benefit of the Company and/or the Related Party. The Undersigned shall not disclose Proprietary Information to any other person or entity. The obligations hereunder to maintain the confidentiality of Proprietary Information shall not expire. However, these obligations shall not apply to any Proprietary Information received from the Company and/or the Related Party signatory hereto, as the case may be, which (a) is disclosed in a printed publication available to the public, or is otherwise in the public domain through no act of the Undersigned or any other person or entity which has received such Proprietary Information from or through the Undersigned, (b) is approved for release by written authorization of an officer of the Company, or (c) is required to be disclosed by proper order of a court of applicable jurisdiction after adequate notice to the Company and/or the Related Party signatory hereto, as the case

may be, sufficient to permit them to seek a protective order therefor, the imposition of which protective order the Undersigned agrees to approve and support.

4. **Return of Documents.** The Undersigned shall, upon the request of the Company and/or the Related Party signatory hereto, as the case may be, return all documents and other tangible manifestations of Proprietary Information received from the Company and/or the Related Party signatory hereto, as the case may be, including all copies and reproductions thereof.

5. **Noncompete.** During the term of employment of the Undersigned (it being understood and acknowledged that the Undersigned is employed at will and may be terminated at any time by the Related Party signatory hereto) and for six (6) months thereafter, the Undersigned agrees (a) not to have any direct or indirect, controlling or non-controlling interest as an owner (whether of record, beneficial or otherwise) in, or perform services as a director, officer, manager, employee, consultant, representative or agent for, a Competitive Business (defined below) located or operating within any standard metropolitan statistical area or other trade area in which the Related Party signatory hereto is engaged, or has developed specific plans to engage, in business, and (b) agrees not to solicit employees from the Company or the Related Party signatory hereto. The term “**Competitive Business**” means any business that (i) offers fresh, made-to-order meals (including salads, soups, and/or rice bowls, but excluding sandwiches) in a format that allows the customer to choose among various ingredients to create individual meal options; (ii) is marketed to the public primarily as a health-food or healthy-alternative foodservice establishment; and/or (iii) grants franchises or licenses to, or enters into joint ventures with, others to operate a business described in subsection (i) or (ii). This Section 5 shall not prevent the Undersigned from investing so as to hold less than three percent (3%) of the outstanding shares of any company which is a “reporting company” under the Securities Exchange Act of 1934, as amended. It is the intention of the parties that this Section 5 be interpreted so as to be valid under applicable law and, if required for validity, any court or applicable tribunal may reduce or alter the geographic scope and duration of this Section 5, by substitution of words or otherwise, so as to create the broadest permissible protection to the Company and the Related Party signatory hereto.

6. **No Waiver.** No delays or omissions by the Company or the Related Party signatory hereto in exercising any right under this Agreement will operate as a waiver of that or any other right. A waiver or consent given by the Company and/or the Related Party signatory hereto, as the case may be, on any one occasion is effective only in that instance and will not be construed as a bar to or waiver of any right on any other occasion.

7. **Equitable Relief.** The undersigned acknowledges that the Company and/or the Related Party signatory hereto, as the case may be, will be irreparably harmed by any breach hereof, that monetary damages would be inadequate and that the Company and/or the Related Party signatory hereto shall have the right to have an injunction or other equitable remedies imposed in relief of, or to prevent or restrain, such breach. The Undersigned agrees that the Company and/or the Related Party signatory hereto shall also be entitled to any and all other relief available under law or equity for such breach.

8. **Miscellaneous.**

a. This Agreement shall not be construed to grant to the Undersigned any patents, licenses, or similar rights to Proprietary Information disclosed to the Undersigned hereunder, all of which rights and interests shall be deemed to reside or be vested in the Company.

b. This Agreement does not supersede, but rather is in addition to and cumulative with, all prior agreements, written or oral, between the parties relating to the subject matter of this

Agreement. This Agreement may not be modified, changed or discharged, in whole or in part, except by an Agreement in writing signed by the parties.

c. This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

d. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

e. This Agreement shall be construed and interpreted in accordance with the laws of the State of Illinois, without regard to its conflicts of laws rules.

**EXECUTED** as of the \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

~~FRESHII DEVELOPMENT, LLC, a~~  
Delaware limited liability company

**[DEVELOPER]**

\_\_\_\_\_

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

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

**UNDERSIGNED:**

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Print Name]

**FRESHII DEVELOPMENT, LLC**

Franchisor Developer

By: By:

Name: Name:

Title: Title:

Or if individually

Name:

**UNDERSIGNED:**

Signature

Print Name

**EXHIBIT E**  
**GUARANTY AND ASSUMPTION OF OBLIGATIONS**

**THIS GUARANTY AND ASSUMPTION OF OBLIGATIONS** is given this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, on \_\_\_\_\_, by \_\_\_\_\_.

In consideration of, and as an inducement to, the execution of that certain Area Development Agreement (the “**Agreement**”) on this date by **FRESHII DEVELOPMENT, LLC**, a Delaware limited liability company (“**Franchisor**”), each of the undersigned personally and unconditionally (a) guarantees to Franchisor and its successors and assigns, for the term of the Agreement (including, without limitation, any extensions of its term) and afterward as provided in the Agreement, that \_\_\_\_\_ (“**Developer**”) will punctually pay and perform each and every undertaking, agreement, and covenant set forth in the Agreement (including, without limitation, any amendments or modifications of the Agreement) and (b) agrees to be personally bound by, and personally liable for the breach of, each and every provision in the Agreement (including, without limitation, any amendments or modifications of the Agreement), both monetary obligations and obligations to take or refrain from taking specific actions or to engage or refrain from engaging in specific activities, including, but not limited to, the arbitration, non-competition, confidentiality, and transfer requirements.

Each of the undersigned consents and agrees that: (1) his or her direct and immediate liability under this Guaranty will be joint and several, both with Developer and among other guarantors; (2) he or she will render any payment or performance required under the Agreement upon demand if Developer fails or refuses punctually to do so; (3) this liability will not be contingent or conditioned upon Franchisor’s pursuit of any remedies against Developer or any other person; (4) this liability will not be diminished, relieved, or otherwise affected by any extension of time, credit, or other indulgence which Franchisor may from time to time grant to Developer or to any other person, including, without limitation, the acceptance of any partial payment or performance or the compromise or release of any claims (including, without limitation, any extensions of its term or the release of other guarantors), none of which will in any way modify or amend this Guaranty, which will be continuing and irrevocable during the term of the Agreement (including, without limitation, any extensions of its term), for so long as any performance is or might be owed under the Agreement by Developer or any of its owners, and for so long as Franchisor has any cause of action against Developer or any of its owners; (5) this Guaranty will continue in full force and effect for (and as to) any extension or modification of the Agreement and despite the transfer of any interest in the Agreement or Developer, and each of the undersigned waives notice of any and all renewals, extensions, modifications, amendments, or transfers; and (6) any indebtedness by Developer to the undersigned, for whatever reason, whether currently existing or hereafter arising, shall at all times be inferior and subordinate to any indebtedness owed by Developer to Franchisor or its affiliates.

Each of the undersigned waives: (i) all rights to payments and claims for reimbursement or subrogation which any of the undersigned may have against Developer arising as a result of the undersigned’s execution of and performance under this Guaranty; (ii) acceptance and notice of acceptance by Franchisor of his or her undertakings under this Guaranty, notice of demand for payment of any indebtedness or non-performance of any obligations hereby guaranteed, protest and notice of default to any party with respect to the indebtedness or nonperformance of any obligations hereby guaranteed, and any other notices to which he or she may be entitled; and (iii) all rights to assert or plead any statute of limitations as to or relating to this Guaranty.

If Franchisor seeks to enforce this Guaranty in an arbitration, judicial or other proceeding, and prevails in such proceeding, Franchisor shall be entitled to recover its reasonable costs and expenses

(including, but not limited to, attorneys' fees, arbitrators' fees, and expert witness fees, costs of investigation and proof of facts, court costs, other arbitration or litigation expenses and travel and living expenses) incurred in connection with such proceeding. If Franchisor is required to engage legal counsel in connection with any failure by the undersigned to comply with this Guaranty, the undersigned shall reimburse Franchisor for any of the above-listed costs and expenses Franchisor incurs.

Subject to the arbitration obligations (as set forth in the Agreement) and the provisions below, each of the undersigned agrees that all actions arising under this Guaranty or the Agreement, or otherwise as a result of the relationship between Franchisor and the undersigned, must be brought exclusively in the state or federal court of general jurisdiction in the state, and in (or closest to) the city, where Franchisor then maintains its principal business address, and each of the undersigned irrevocably submits to the jurisdiction of those courts and waives any objection he or she might have to either the jurisdiction of or venue in those courts. Nonetheless, each of the undersigned agrees that Franchisor may enforce this Guaranty and any arbitration orders and awards in the courts of the state or states in which he or she is domiciled. **FRANCHISOR AND THE UNDERSIGNED IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM, WHETHER AT LAW OR IN EQUITY, BROUGHT BY ANY OF THEM.**

**IN WITNESS WHEREOF**, each of the undersigned has affixed his or her signature on the same day and year as the Agreement was executed.

**GUARANTOR(S)**

**PERCENTAGE OF OWNERSHIP IN DEVELOPER**

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
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**GUARANTOR(S)**

**PERCENTAGE OF OWNERSHIP IN DEVELOPER**

\_\_\_\_\_  
 Name: \_\_\_\_\_ %

\_\_\_\_\_  
 Name: \_\_\_\_\_ %

|

**EXHIBIT EF TO THE AREA DEVELOPMENT AGREEMENT**  
**STATE SPECIFIC ADDENDUM**

**EXHIBIT EF TO THE AREA DEVELOPMENT AGREEMENT  
DISCLOSURE REQUIRED BY THE STATE OF MINNESOTA**

This Rider (the “**Rider**”) is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ on \_\_\_\_\_ (the “**Agreement Date**”), between **FRESHII DEVELOPMENT, LLC**, a Delaware limited liability company, with its principal business address at 27 North Wacker Drive, Suite 426, Chicago, Illinois 60606 (“**Franchisor**”), and \_\_\_\_\_, whose principal business address is \_\_\_\_\_ (“**Developer**”).

1. **Background.** Franchisor and Developer are parties to that certain Area Development Agreement that has been signed concurrently with the signing of this Rider (the “**Area Development Agreement**”). This Rider is annexed to and forms part of the Area Development Agreement. This Rider is being signed because (a) the Development Area will be located in Minnesota; and/or (b) any of the offering or sales activity with respect to the Area Development Agreement occurred in Minnesota.

2. **Trademark Indemnity.** The following language is added to the end of Section 8.C of the Area Development Agreement:

If Developer has complied with all of Franchisor’s requirements that apply to the Marks, Franchisor will protect Franchisee’s right to use the principal Mark and indemnify Developer from any loss, costs, or expenses arising out of any claims, suits, or demands regarding Developer’s use of the principal Mark, in accordance with and to the extent required by Minn. Stat. Sec. 80C.12. Subd. 1(g).

3. **Release.** The following language is added to the end of Section 11.D.(6) of the Area Development Agreement:

; provided, however, that any release required as a condition of assignment/transfer will not apply to the extent prohibited by the Minnesota Franchises Law.

4. **Termination by Franchisor.** The following language is added to the end of Section 12.B of the Area Development Agreement:

With respect to franchises governed by Minnesota law, Franchisor will comply with Minn. Stat. Sec. 80C.14, Subds. 3, 4 and 5 which require, except in certain specified cases, that a franchisee be given 90 days’ notice of termination (with 60 days to cure) and one hundred eighty (180) days’ notice of non-renewal of a franchise agreement.

5. **Governing Law/Consent to Jurisdiction.** The following language is added to the end of Sections 15.G. and 15.H of the Area Development Agreement:

Pursuant to Minn. Stat. Section 80C.21 and Minn. Rule Part 2860.4400J, this Section shall not in any way abrogate or reduce Developer’s right as provided in Minnesota Statutes 1984, Chapter 80C, including (if applicable, and subject to the parties’ arbitration obligations) the right to submit matters to the jurisdiction of the courts of Minnesota.

6. Waiver of Punitive Damages. The following language is added to the beginning of Section 15.I of the Area Development Agreement:

EXCEPT AS OTHERWISE REQUIRED BY THE MINNESOTA FRANCHISES LAW, AND

7. Waiver of Jury Trial. The following language is added to the beginning of Section 15.J of the Area Development Agreement:

EXCEPT AS OTHERWISE REQUIRED BY THE MINNESOTA FRANCHISES LAW,

8. Limitation of Claims. The following language is added to the end of Section 15.L of the Area Development Agreement:

; provided, however, that Minnesota law provides that no action may be commenced under Minn. Stat. Sec. 80C.17 more than three (3) years after the cause of action accrues.

IN WITNESS WHEREOF, the parties hereto have duly executed, sealed and delivered this Addendum dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.on\_\_\_\_\_.

ATTEST

FRESHII DEVELOPMENT, LLC

Witness \_\_\_\_\_

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

Name: Matthew Corrin

Title: CEO

FRANCHISEE:

\_\_\_\_\_  
DEVELOPER

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

Witness \_\_\_\_\_ Name: \_\_\_\_\_

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

Or if individually

Witness \_\_\_\_\_ Name: \_\_\_\_\_

**EXHIBIT C**  
**FRANCHISE AGREEMENT**

**FRESHII™ RESTAURANT**  
**FRANCHISE AGREEMENT**

---

**FRANCHISEE**

---

**DATE OF AGREEMENT**

---

**RESTAURANT ADDRESS**

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## **EXHIBITS**

EXHIBIT A	--	BASIC TERMS
EXHIBIT B	--	FRANCHISEE AND ITS OWNERS
EXHIBIT C	--	COLLATERAL ASSIGNMENT OF LEASE
EXHIBIT D	--	CONFIDENTIALITY AND NON-COMPETITION AGREEMENT
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EXHIBIT G	--	<u>STATE SPECIFIC ADDENDUM</u>
EXHIBIT H	--	FRANCHISEE COMPLIANCE CERTIFICATION

EXHIBIT H ——— DEPOSIT AGREEMENT

**FRESHII™ RESTAURANT  
FRANCHISE AGREEMENT**

**THIS FRANCHISE AGREEMENT** (the “**Agreement**”) is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ on \_\_\_\_\_ (the “**Agreement Date**”), between **FRESHII DEVELOPMENT, LLC**, a Delaware limited liability company, with its principal business address at 27 North Wacker Drive, Suite 426, Chicago, Illinois 60606 (“**Franchisor**”), and \_\_\_\_\_, a \_\_\_\_\_ limited liability/corporation, whose principal business address is \_\_\_\_\_ (“**Franchisee**”).

**1. PREAMBLES AND GRANT OF FRANCHISE**

**PREAMBLES**

(1) Franchisor and its affiliates have designed and developed a method of developing and operating restaurants identified by the Marks (defined below) offering for general consumption a wide variety of healthy meals such as salads, rice bowls, wraps, oatmeal, fresh and frozen yogurt, and healthy portable snacks and beverages (“**Freshii Restaurants**”).

(2) Franchisor and its affiliates have developed, and Franchisor uses, promotes and licenses, certain trademarks, service marks and other commercial symbols in operating Freshii Restaurants, including “Freshii (and design) <sup>TM</sup>”, and Franchisor may create, use and license other trademarks, service marks and commercial symbols for use in operating Freshii Restaurants from time to time (collectively, the “**Marks**”).

(3) Franchisor offers franchises to own and operate a Freshii Restaurant using Franchisor’s business system, business formats, methods, procedures, designs, layouts, trade dress, standards, specifications and Marks, all of which Franchisor may improve, further develop and otherwise modify periodically (collectively, the “**Franchise System**”).

(4) Franchisee has applied for a franchise to own and operate a Freshii Restaurant within the Designated Territory identified on Exhibit A (the “**Designated Territory**”), and Franchisor has approved Franchisee’s application relying on all of Franchisee’s representations, warranties and acknowledgments contained in its franchise application and this Agreement.

**GRANT OF FRANCHISE RIGHTS AND TERM**

Subject to the terms of this Agreement, Franchisor grants Franchisee the right, and Franchisee undertakes the obligation, to operate a Freshii Restaurant at the address identified on Exhibit A (the “**Restaurant**”), and to use the Franchise System in its operation, for a term of ten (10) years beginning on the Agreement Date, unless sooner terminated.

**1.C. BEST EFFORTS**

Only Franchisee is authorized to operate the Restaurant. Except as specifically set forth in Section 13, Franchisee may not delegate or assign any of its rights or obligations under this Agreement or any aspect of the management or operation of the Restaurant. Franchisee agrees to at all times faithfully, honestly and diligently perform its obligations and fully exploit the rights granted under this Agreement.

**1.D. ORGANIZATION OF FRANCHISEE**

Franchisee agrees and represents that:

(1) Its organizational documents will recite that this Agreement restricts the issuance and transfer of any ownership interests in Franchisee, and all certificates and other documents representing ownership interests in Franchisee will bear a legend referring to this Agreement’s restrictions;

(2) Exhibit B to this Agreement completely and accurately describes all persons and entities holding a direct or indirect ownership interest (whether of record, beneficially or otherwise) or voting rights in Franchisee, including any person or entity who has a direct or indirect interest in Franchisee, this Agreement, or the Restaurant and any person or entity who has any other legal or equitable interest, or the power to vest in himself or herself any legal or equitable interest, in their revenue, profits, rights or assets (“**Owners**”), and the interests of each Owner. Subject to Franchisor’s rights and Franchisee’s obligations under Section 13, Franchisee and its Owners agree to sign and deliver to Franchisor revised Exhibits B to reflect any changes in the information that Exhibit B now contains within ten (10) days after the change;

(3) Each of the Franchisee’s Owners at any time during the term of this Agreement will sign an agreement in the form that Franchisor periodically specifies undertaking personally to be bound, jointly and severally, by all provisions of this Agreement and any ancillary agreements between Franchisee and Franchisor (or its affiliate); and

(4) The Restaurant and other Freshii Restaurants, if applicable, will be the only businesses Franchisee operates (although Franchisee’s Owners and affiliates may have other, non-competitive business interests, subject to Section 12).

**2. SITE SELECTION, LEASE, AND DEVELOPING THE RESTAURANT**

**2.A. SITE SELECTION**

Franchisee shall, within sixty (60) days after this Agreement has been executed, locate a site that Franchisee believes is suitable for a Freshii Restaurant and submit to Franchisor all information it requires in order to evaluate such proposed site. Franchisor shall, within thirty (30) days after receipt of all information it requires, notify Franchisee whether the proposed site is accepted by Franchisor. Unless Franchisor provides its specific approval of a proposed site, such site is deemed not approved.

Franchisor’s approval of a site for the Freshii Restaurant, pursuant to this Agreement, indicates only that it believes that the site meets its then acceptable criteria. Franchisor’s application of criteria that have appeared effective with other sites might not accurately reflect the potential for all sites, and demographic and/or other factors included in or excluded from Franchisor’s criteria could change, altering the potential of a site. The uncertainty and instability of these criteria are beyond Franchisor’s control, and Franchisor is not responsible if the site fails to meet Franchisee’s expectations.

**2.B. LEASE OF RESTAURANT’S SITE**

You must have the Restaurant’s lease signed within six (6) months from when you sign the Franchise Agreement. Franchisee agrees to present to Franchisor for its approval any lease or sublease for the Restaurant’s site (the “**Lease**”) before Franchisee signs it. The Lease must contain the terms and provisions that are reasonably acceptable to Franchisor. Franchisor may (but has no obligation to)

provide Franchisee guidance or assistance relating to the Lease and its negotiation. At Franchisor's request, Franchisee agrees to sign, and obtain the lessor's consent to, the Collateral Assignment of Lease attached as Exhibit C under which Franchisee will collaterally assign the Lease to Franchisor as security for Franchisee's timely performance of all obligations under this Agreement. Franchisee acknowledges that Franchisor's guidance and assistance (if Franchisor chooses to provide it) and/or approval of the Lease is not a guarantee or warranty, express or implied, of the success or profitability of a Freshii Restaurant operated at the site or the suitability of the Lease for Franchisee's business purposes. Franchisor's approval indicates only that it believes that the Lease's terms meet its then acceptable criteria.

## **2.C. DEVELOPING AND EQUIPPING THE RESTAURANT**

Franchisee is responsible for developing the Restaurant at its expense. Franchisor will provide Franchisee mandatory and suggested specifications and layouts for a Freshii Restaurant, including requirements or recommendations (as applicable) for a Freshii Restaurant's design, decor and Operating Assets (defined in Section 2.D). These specifications and layouts might not reflect the requirements of any federal, state or local law, code or regulation, including those arising under zoning regulations, environmental laws and regulations, other applicable ordinances, building codes or permit requirements, or any Lease requirements or restrictions.

It is Franchisee's responsibility to prepare all required construction and remodeling plans and specifications to suit the Restaurant and to make sure that they comply with the Americans with Disabilities Act (the "ADA") and similar rules governing public accommodations for persons with disabilities, other applicable ordinances, building codes, permit requirements, and Lease requirements and restrictions. Franchisee must submit all construction and remodeling plans and specifications to Franchisor for its approval before beginning build-out for the Restaurant and all revised or "as built" plans and specifications during construction and development. Franchisor's review is limited to ensuring Franchisee's compliance with design requirements. Franchisor's review is not designed to assess compliance with federal, state, or local laws and regulations, including the ADA, as compliance with such laws is Franchisee's responsibility. Franchisee agrees to remedy, at its expense, any noncompliance or alleged noncompliance with such laws. Franchisor may, but has no obligation to, periodically inspect the Restaurant's site during its development.

## **2.D. OPERATING ASSETS**

Franchisee agrees at its expense to construct, install trade dress and furnish all Operating Assets in, and otherwise develop, the Restaurant according to Franchisor's standards, specifications and directions. Franchisee may not install or use any unauthorized Operating Assets at the Restaurant. Franchisee agrees to place or display, according to Franchisor's guidelines, at the Restaurant (interior and exterior) only the signs, emblems, lettering, logos and display materials that Franchisor approves from time to time. Franchisee agrees to purchase or lease from time to time only the approved brands, types and models of Operating Assets according to Franchisor's standards and specifications and, if Franchisor specifies, only from suppliers that Franchisor designates or approves (which may include or be limited to Franchisor and/or its affiliates). "**Operating Assets**" means all required furniture, fixtures, equipment (including components for the Computer System (defined below)), vehicles, smallwares, and signs that Franchisor periodically requires for the Restaurant and the business Franchisee operates under this Agreement.

## **2.E. COMPUTER SYSTEM**

Franchisee agrees to obtain and use the computer hardware and software that Franchisor periodically specifies, including hardware components, dedicated telephone and power lines, modems, printers, and other computer-related accessories and peripheral equipment (the “**Computer System**”). Franchisor may periodically modify specifications for and components of the Computer System. Franchisor’s modification of specifications for the Computer System, and/or other technological developments or events, may require Franchisee to purchase, lease and/or license new or modified computer hardware, software and other components and to obtain service and support for the Computer System. Although Franchisor cannot estimate the future costs of the Computer System or required service or support, Franchisee agrees to incur the costs of obtaining the computer hardware, software and other components comprising the Computer System (and additions and modifications) and required service or support. Within sixty (60) days after Franchisor delivers notice to Franchisee, Franchisee agrees to obtain the Computer System components that Franchisor designates and ensure that Franchisee’s Computer System, as modified, is functioning properly.

Franchisor and its affiliates may condition any license of required or recommended proprietary software to Franchisee, and/or Franchisee’s use of technology developed or maintained by or for Franchisor (including the System Website, as defined in Section 7.E), on Franchisee’s signing a software license agreement or similar document, or otherwise agreeing to the terms (for example, by acknowledging Franchisee’s consent to and accepting the terms of a click-through license agreement), that Franchisor and its affiliates periodically prescribe to regulate Franchisee’s use of, and Franchisor’s (or its affiliate’s) and Franchisee’s respective rights and responsibilities with respect to, the software or technology. Franchisor and its affiliates may charge Franchisee up-front and ongoing fees for any required or recommended proprietary software or technology that Franchisor or its affiliates license to Franchisee and for other Computer System maintenance and support services provided during the term of this Agreement.

Notwithstanding Franchisee’s obligation to buy, use, and maintain the Computer System according to Franchisor’s standards and specifications, Franchisee has sole and complete responsibility for: (1) the acquisition, operation, maintenance, and upgrading of the Computer System; (2) the manner in which Franchisee’s Computer System interfaces with Franchisor’s and any third party’s computer system; and (3) any and all consequences if the Computer System is not properly operated, maintained, and upgraded. The Computer System shall permit twenty-four (24) hours per day, seven (7) days per week electronic communications between Franchisee and Franchisor, including access to the Internet.

## **2.F. RESTAURANT OPENING**

Franchisee agrees not to open the Restaurant for business until: (1) it has properly developed and equipped the Restaurant according to Franchisor’s standards and specifications and in compliance with all applicable laws, rules and regulations; (2) all pre-opening training for the Restaurant’s personnel has been completed to Franchisor’s satisfaction; (3) all amounts that Franchisee then owes to Franchisor or its affiliate have been paid; (4) Franchisee has obtained all required licenses and permits to operate the Restaurant; (5) Franchisee has provided Franchisor copies of all insurance policies required under this Agreement, or such other evidence of insurance coverage and payment of premiums as Franchisor requests; and (6) Franchisor has (at its option) conducted a pre-opening inspection and approved the Restaurant for opening. Franchisor’s determination that Franchisee has met all of Franchisor’s pre-opening requirements will not constitute a representation or warranty, express or implied, that the Restaurant complies with any laws or constitute a waiver of Franchisee’s non-compliance, or of Franchisor’s right to demand full compliance, with any provision of this Agreement. Franchisee agrees to

obtain Franchisor's approval to open and open the Restaurant for business within three hundred sixty-five (365) days after the Agreement Date.

## **2.G. RELOCATING THE RESTAURANT**

If the Lease expires or is terminated without Franchisee's fault, or if the Restaurant is destroyed, condemned, or otherwise rendered unusable, Franchisor will allow Franchisee to relocate the Restaurant to a new site within the Territory acceptable to Franchisor. Relocation will be at Franchisee's sole expense, and Franchisor may charge Franchisee for the reasonable costs that Franchisor incurs in connection with any Restaurant relocation.

## **3. TERRITORY**

### **3.A. RIGHTS IN DESIGNATED TERRITORY**

The Designated Territory is identified on Exhibit A. Provided Franchisee is in full compliance with this Agreement and all other agreements between Franchisee and Franchisor (or any of its affiliates), then during the term of this Agreement, neither Franchisor nor its affiliates will operate, or authorize any other party to operate, a Freshii Restaurant the physical premises of which are located within the Designated Territory, except for Freshii Restaurants located at Non-Traditional Locations within the Territory. "**Non-Traditional Locations**" means (1) airports, amusement parks, sports stadiums, college and university buildings, hospitals and other medical centers, and other venues to which the general public customarily does not have unlimited access; and (2) department stores, grocery stores, and other retail locations that operate under a separate brand identity and within which a Freshii Restaurant or kiosk might operate as a department located within the premises of the host retailer.

### **3.B. RESERVATION OF RIGHTS**

Except as provided in Section 3.A, Franchisee's rights under this Agreement are non-exclusive and Franchisor (and its affiliates) retain the right during the term of this Agreement to engage in any and all activities that Franchisor (and they) desire, at any time or place, and whether or not these activities compete with the Restaurant, including the right to:

- (1) establish and operate, and authorize other parties to establish and operate, Freshii Restaurants the physical premises of which are located at Non-Traditional Locations, whether within or outside the Designated Territory, on any terms and conditions Franchisor deems appropriate;
- (2) establish and operate, and authorize other parties to establish and operate, Freshii Restaurants the physical premises of which are located outside the Designated Territory on any terms and conditions Franchisor deems appropriate;
- (3) offer and provide, and grant rights to others to offer and provide, products and services, whether identified by the Marks or any other trademarks or service marks, to any customers Franchisor desires (wherever located or operating, including within the Designated Territory) and through any distribution channels Franchisor desires (wherever located or operating, including within the Designated Territory), including by selling products identified by the Marks through grocery stores, mail order and the Internet; and
- (4) engage in all other activities that this Agreement does not expressly prohibit.

#### **4. TRAINING, GUIDANCE AND ASSISTANCE**

##### **4.A. INITIAL TRAINING FOR SALARIED MANAGERS**

Before Franchisee opens the Restaurant for business, the General Manager (defined in Section 5.D) and each other salaried manager at the Restaurant must attend and complete Franchisor's initial training program on the operation of a Freshii Restaurant. Initial training may include classroom training, instruction at designated facilities, hands-on training at an operating Freshii Restaurant, remote training (including via videotape, DVD or Internet access) and/or self-study programs, subject to Section 4.B below. Franchisor will provide the pre-opening initial training program for all applicable Restaurant managers for no additional fee. The General Manager must complete the initial training program to Franchisor's satisfaction at least six (6) weeks before opening the Restaurant, and other salaried Restaurant managers must complete the initial training program to Franchisor's satisfaction at least three (3) weeks before opening the Restaurant.

##### **4.B. CERTIFIED TRAINING RESTAURANT**

If, as of the Agreement Date, Franchisor has designated a Freshii Restaurant that Franchisee or its affiliate operates as a Certified Training Restaurant, and designated the general manager of that Freshii Restaurant as a Certified Training Manager, then part of the initial training under Section 4.A will occur at that Certified Training Restaurant under the Certified Training Manager's supervision (and according to Franchisor's standards and guidelines). However, Franchisee still must send the General Manager and all other salaried managers at the Restaurant to Franchisor's designated training center for a "certification week" following their training at the Certified Training Restaurant, and Franchisee must obtain Franchisor's written acknowledgement that the Restaurant personnel have been properly trained and pass any certification tests that Franchisor reasonably requires before opening the Restaurant. If, as of the Agreement Date, Franchisor has not designated a Freshii Restaurant that Franchisee or its affiliate operates as a Certified Training Restaurant, or has not designated the general manager of that Freshii Restaurant as a Certified Training Manager, then all initial training under Section 4.A will occur at a location that Franchisor specifies under Franchisor's supervision.

##### **4.C. ADDITIONAL TRAINING**

Franchisor may require Franchisee's Owners to attend and complete to Franchisor's satisfaction the one (1)-day executive workshop that Franchisor specifies for Freshii Restaurant Franchisee's. Franchisor shall provide such executive workshop to Franchisee's Owners for no additional fee.

##### **4.D. ONGOING AND SUPPLEMENTAL TRAINING**

Periodically during the term of this Agreement, Franchisor may require the General Manager and other Restaurant personnel (whether they are existing or newly-hired employees) to attend and satisfactorily complete various training courses, programs and conventions that Franchisor chooses to provide, and/or that Franchisor requires Franchisee's (or its Affiliate's) Certified Training Restaurant and Certified Training Manager to provide (if applicable), at the times and locations that Franchisor designates. Franchisor may charge reasonable fees for those training courses, programs and conventions that it administers or provides.

##### **4.E. TRAINING EXPENSES**

Franchisee will be responsible for its and its personnel's travel, living and other expenses (including local transportation expenses) and compensation incurred in connection with attendance at any

training courses, programs and conventions and work at Freshii Restaurants that is part of their development.

#### 4.F. GENERAL GUIDANCE

Franchisor will periodically advise Franchisee regarding the operation of the Restaurant based on Franchisee's reports or Franchisor's inspections with respect to:

- (1) standards, specifications, operating procedures and methods that Freshii Restaurants use;
- (2) purchasing required or recommended Operating Assets and other products, supplies and materials;
- (3) employee training methods and procedures (although Franchisee is responsible for the terms and conditions of employment of all of its employees); and
- (4) accounting, advertising, and marketing.

Franchisor may guide Franchisee by means of Franchisor's operating manual and other technical manuals ("**Operations Manual**"), in bulletins or other written materials, by electronic media, by telephone consultation, and/or at Franchisor's office or the Restaurant. If Franchisee requests and Franchisor agrees to provide additional or special guidance, assistance or training, Franchisee agrees to pay Franchisor's then applicable charges, including reasonable training fees and Franchisor's personnel's per diem charges and any travel and living expenses. Any specific ongoing training, conventions, advice or assistance that Franchisor provides does not create an obligation to continue providing that specific training, convention, advice or assistance, all of which Franchisor may discontinue and modify at any time.

#### 4.G. OPERATIONS MANUAL

During the term of this Agreement, Franchisor will provide Franchisee access to one (1) copy of Franchisor's Operations Manual, which may include audiotapes, videotapes, computer disks, compact disks, DVDs and/or other written or intangible materials and which Franchisor may make available to Franchisee by various means, including access through the Internet. The Operations Manual contains mandatory and suggested specifications, standards, operating procedures and rules that Franchisor periodically prescribes for operating a Freshii Restaurant ("**System Standards**") and information on Franchisee's other obligations under this Agreement. Franchisor may modify the Operations Manual periodically to reflect changes in System Standards, but these modifications shall not alter Franchisee's fundamental rights or status under this Agreement. Franchisee agrees to keep Franchisee's copy of the Operations Manual current and communicate all updates to Franchisee's personnel in a timely manner. Franchisee agrees to keep all parts of the Operations Manual in a secure location. If there is a dispute over its contents, Franchisor's master copy of the Operations Manual controls. Franchisee agrees that the contents of the Operations Manual are confidential and that Franchisee will not disclose any part of the Operations Manual to any person other than Restaurant personnel who need to know such part and who agree to maintain its confidentiality. Franchisee may not at any time copy, duplicate, record or otherwise reproduce any part of the Operations Manual. Franchisee agrees to pay Franchisor's then applicable charge for any replacement copy of the Operations Manual in tangible form.

The System Standards do not include any personnel policies or procedures or security-related policies or procedures that Franchisor (at its option) may make available to Franchisee in the Operations Manual or otherwise for Franchisee's optional use. Franchisee will determine to what extent, if any, these

policies and procedures might apply to its operations at the Restaurant. Franchisee and Franchisor recognize that Franchisor neither dictates nor controls labor or employment matters for franchisees and their employees and Franchisor is not responsible for the safety and security of Restaurant employees or patrons.

At Franchisor's option, Franchisor may post the Operations Manual on a restricted website to which Franchisee will have password access. If Franchisor does so, Franchisee agrees to periodically monitor that website for any updates to the Operations Manual or System Standards. Any passwords or other digital identifications necessary to access the Operations Manual on such a website will be deemed to be part of Confidential Information (defined in Section 11.A below).

#### **4.H. DELEGATION OF PERFORMANCE**

Franchisor has the right to delegate the performance of any portion or all of Franchisor's obligations under this Agreement from time to time to third party designees, whether these designees are Franchisor's agents or independent contractors with whom Franchisor contracts to perform these obligations.

### **5. RESTAURANT OPERATION AND SYSTEM STANDARDS**

#### **5.A. CONDITION AND APPEARANCE OF RESTAURANT**

Franchisee may not use, or allow any other party to use, any part of the Restaurant for any purpose other than Franchisee's operation of a Freshii Restaurant in compliance with this Agreement. Franchisee agrees to place or display at the Restaurant (interior and exterior) and on all vehicles used in connection with the Restaurant's business only those signs, emblems, designs, artwork, lettering, logos and display and advertising materials that Franchisor periodically specifies. Franchisee agrees to maintain the condition and appearance of the Restaurant and the Operating Assets in accordance with the System Standards. Without limiting that obligation, Franchisee agrees to take, at its expense, the following actions during the term of this Agreement: (1) thorough cleaning, repainting and redecorating of the interior and exterior of the Restaurant at intervals that Franchisor may periodically prescribe and at Franchisor's direction; (2) interior and exterior repair of the Restaurant as needed; and (3) repair or replacement, at Franchisor's direction, of damaged, worn-out or obsolete Operating Assets at intervals that Franchisor periodically prescribes (or, if Franchisor does not prescribe an interval for replacing any Operating Asset, as that Operating Asset needs to be repaired or replaced).

In addition to Franchisee's obligations described above, Franchisor may from time to time, but not more than two (2) times during the term of this Agreement, require Franchisee to substantially alter the Restaurant's appearance, branding, layout and/or design, and/or replace a material portion of the Operating Assets, in order to meet Franchisor's then current requirements for new Freshii Restaurants. Franchisee acknowledges that this obligation could result in its making extensive structural changes to, and significantly remodeling and renovating, the Restaurant, and/or in Franchisee's spending substantial amounts for new Operating Assets, from time to time during the term of this Agreement, and Franchisee agrees to incur, without limitation, any capital expenditures required in order to comply with this obligation and Franchisor's requirements (even if such expenditures cannot be amortized over the remaining term of this Agreement). Within sixty (60) days after receiving written notice from Franchisor, Franchisee shall have plans prepared according to the standards and specifications that Franchisor prescribes and, if Franchisor requires, using architects and contractors that Franchisor designates or approves, and Franchisee must submit those plans to Franchisor for its approval. Franchisee agrees to complete all work according to the plans that Franchisor approves within the time period that Franchisor reasonably specifies.

## **5.B. PRODUCTS AND SERVICES THE RESTAURANT OFFERS**

The Restaurant must offer for sale all products and services that Franchisor periodically specifies, including the products intended for off-premises consumption. Franchisee may not offer, sell or otherwise distribute at the Restaurant or any other location any products or services that Franchisor has not authorized and may not offer or sell any products at wholesale without Franchisor's prior written consent.

## **5.C. CATERING SERVICE AND DELIVERY SERVICE**

Unless Franchisor specifies otherwise in writing, Franchisee shall provide Catering Service and/or Delivery Service from the Restaurant in accordance with all applicable terms and conditions of this Agreement (including all System Standards). "**Catering Service**" means the delivery of food and beverage products which are prepared or partially prepared at the Restaurant and delivered to customers at locations other than the Restaurant's site, where, in addition to delivering such products, Franchisee provides ancillary services (such as setting up for, serving or otherwise distributing such food and beverage products) at such locations. "**Delivery Service**" means the delivery of food and beverage products that are fully prepared at the Restaurant and ready for consumption to customers at locations other than the Restaurant's site, where Franchisee delivers such food and beverage products but provides no ancillary services (such as setting up for, serving or otherwise distributing such food and beverage products) at such locations. Franchisee shall not establish another outlet or property (other than the Restaurant's site) for use in connection with Catering Service or Delivery Service.

Franchisee may determine the geographic area within which it will offer Catering Service or Delivery Service, provided that (1) Franchisee must ensure that its customers receive at all times high quality food and beverage products prepared and maintained in accordance with Franchisor's specifications, and (2) Franchisee shall not provide Catering Service or Delivery Service to any location outside the Territory. Franchisee shall maintain the condition and appearance of, and perform maintenance with respect to, vehicles, servewear and equipment used in connection with the provision of Catering Services and/or Delivery Services in accordance with Franchisor's standards, specifications and procedures, and consistent with the image of Freshii Restaurants as first class, clean, sanitary, attractive and efficiently-operated foodservice businesses. Franchisee shall ensure that all catering and delivery drivers strictly comply with all applicable laws and maintain adequate motor vehicle liability insurance in the amounts that Franchisor periodically specifies.

If Franchisee fails to comply with any provision of this Agreement, including any System Standard, pertaining to Catering Service or Delivery Service, then in addition to any other rights and remedies that Franchisor might have (including the right to terminate this Agreement pursuant to Section 15.B, if applicable), Franchisor may temporarily suspend or permanently terminate Franchisee's right to provide Catering Service and/or Delivery Service or restrict the geographic area within which Franchisee may provide Catering Service and/or Delivery Service.

## **5.D. RESTAURANT GENERAL MANAGER AND SALARIED MANAGERS**

Franchisee agrees that the Restaurant will, at all times, have a fully-qualified general manager who meets Franchisor's then current standards for Freshii Restaurant general managers and who has satisfactorily completed Franchisor's then current training curriculum (the "**General Manager**"). The General Manager must devote all of his or her business time and efforts (i.e. at least forty (40) hours per week and at least five (5) days per week) to the on-premises supervision of the Restaurant. The Restaurant's initial General Manager (if known on the Agreement Date) is identified on Exhibit A. If the General Manager ceases holding his or her position at the Restaurant for any reason, Franchisee agrees to

appoint a fully-qualified permanent replacement who meets Franchisor's then current standards for Freshii Restaurant general managers, and who satisfactorily completes Franchisor's then current training curriculum, within thirty (30) days thereafter. Franchisee also agrees that all salaried managers at the Restaurant who are hired after the Agreement Date shall satisfactorily complete Franchisor's then current training curriculum within thirty (30) days after their hiring.

#### **5.E. APPROVED PRODUCTS AND SUPPLIERS**

Franchisor reserves the right periodically to designate and approve standards, specifications and/or suppliers of the Operating Assets and other products and services that Franchisor periodically authorizes for use at or sale by the Restaurant. Franchisee agrees to purchase or lease all Operating Assets and other products and services for the Restaurant only according to Franchisor's standards and specifications and, if Franchisor requires, only from suppliers that Franchisor designates or approves (which may include or be limited to Franchisor or its affiliates). Franchisor and/or its affiliates may derive revenue based on Franchisee's purchases and leases, including from charging Franchisee for products and services that Franchisor or its affiliates provide to Franchisee and from promotional allowances, volume discounts and other payments made to Franchisor and its affiliates by suppliers that Franchisor designates, approves or recommends for some or all Freshii Restaurant franchisees. Franchisor and its affiliates may use all amounts received from suppliers, whether or not based on Franchisee's and other franchisees' prospective or actual dealings with them, without restriction for any purposes that Franchisor and its affiliates deem appropriate.

If Franchisee wants to use any products or services for or at the Restaurant that Franchisor has not yet evaluated or purchase any product or service from a supplier that Franchisor has not yet approved (for products and services that Franchisor requires Franchisee to purchase only from designated or approved suppliers), Franchisee first agrees to submit sufficient information, specifications and samples for Franchisor to determine whether the product or service complies with Franchisor's standards and specifications or the supplier meets Franchisor's criteria. Franchisor may charge Franchisee a reasonable fee (not exceeding Franchisor's good faith estimate of its evaluation costs) for each product, service or supplier that Franchisee asks Franchisor to evaluate. Franchisor may condition its approval of a supplier on requirements relating to product quality, prices, consistency, warranty, reliability, financial capability, labor relations, customer relations, frequency of delivery, concentration of purchases, standards of service (including prompt attention to complaints), and/or other criteria. Franchisor has the right to inspect the proposed supplier's facilities and to require the proposed supplier to deliver product samples or items, at Franchisor's option, either directly to Franchisor or to any third party it designates for testing. Franchisor reserves the right periodically to re-inspect the facilities and products of any approved supplier and to revoke its approval of any supplier, product or service that does not continue to meet its criteria. Notwithstanding the foregoing, Franchisor may limit the number of approved suppliers with whom Franchisee may deal, designate sources that Franchisee must use, and/or refuse any of Franchisee's requests for any reason, including that Franchisor has already designated an exclusive source (which might be Franchisor or its affiliate) for a particular item or service or if Franchisor believes that doing so is in the best interests of the Freshii Restaurant network.

#### **5.F. COMPLIANCE WITH LAWS AND GOOD BUSINESS PRACTICES**

Franchisee agrees to secure and maintain in force throughout the term of this Agreement all required licenses, permits and certificates relating to the operation of the Restaurant and operate the Restaurant, and otherwise conduct its business under this Agreement, in full compliance with all applicable laws, ordinances and regulations, including the ADA, all environmental regulations, and all present and future laws, regulations, policies, lists and other requirements of any governmental authority addressing or relating to terrorism, terrorist acts or acts of war. Franchisee agrees that the Restaurant will

in all dealings with its customers, suppliers, Franchisor and the public adhere to the highest standards of honesty, integrity, fair dealing and ethical conduct. Franchisee agrees to refrain from any business or advertising practice that might injure Franchisor's business or the goodwill associated with the Marks or other Freshii Restaurants. Franchisee agrees to notify Franchisor in writing within three (3) business days of: (1) the commencement of any action, suit or proceeding relating to the Restaurant; (2) the issuance of any order, writ, injunction, award or decree of any court, agency or other governmental instrumentality which might adversely affect Franchisee's operation or financial condition or that of the Restaurant (including the revocation or threatened revocation of any license, permit or certification applicable to the Restaurant); or (3) any notice of violation of any law, ordinance or regulation relating to the Restaurant.

#### **5.G. INSURANCE**

During the term of this Agreement, Franchisee agrees to maintain in force at its sole expense insurance coverage for the Restaurant in the amounts, and covering the risks, that Franchisor periodically specifies. All of Franchisee's insurance carriers must be licensed to do business in the state in which the Restaurant is located and be rated A- or higher by A.M Best and Company, Inc. (or such similar criteria as Franchisor periodically specifies). These insurance policies must be in effect before Franchisee opens the Restaurant for business. Franchisor may periodically increase the amounts of coverage required under these insurance policies and/or require different or additional insurance coverage at any time to reflect inflation, identification of new risks, changes in law or standards of liability, higher damage awards or relevant changes in circumstances. Insurance policies must name Franchisor and any affiliates it periodically designates as additional insureds and provide for thirty (30) days' prior written notice to Franchisor of the material modification, cancellation or non-renewal of any policy. Franchisee agrees to periodically send Franchisor a valid certificate of insurance or duplicate insurance policy evidencing the coverage specified above and the payment of premiums. If Franchisee fails or refuses to obtain or maintain required insurance coverage, or to provide Franchisor evidence of the payment of premiums, then Franchisor may, at its option and in addition to its other rights and remedies, obtain such coverage on Franchisee's behalf. Franchisee agrees to cooperate fully with Franchisor and to reimburse Franchisor on demand for any premiums, costs and expenses it incurs.

#### **5.H. COMPLIANCE WITH SYSTEM STANDARDS**

Franchisee acknowledges and agrees that operating and maintaining the Restaurant according to mandatory System Standards, as Franchisor may periodically modify and supplement them, are essential to preserve the goodwill of the Marks and all Freshii Restaurants. Therefore, Franchisee agrees at all times to operate and maintain the Restaurant according to each and every mandatory System Standard, as Franchisor periodically modifies and supplements them. System Standards may regulate any aspect of the operation and maintenance of the Restaurant, including any one or more of the following:

- (1) sales, marketing, advertising and promotional programs and materials for the Restaurant (which might include providing food to consumers free or at a reduced price) and media used in these programs, including participation in and compliance with the requirements of any special advertising, marketing and promotional programs that Franchisor periodically specifies in which all or certain Freshii Restaurants participate;
- (2) staffing levels for the Restaurant, appearance and job functions for Restaurant personnel, and competent and courteous service to customers (although Franchisee has the sole responsibility and authority for Franchisee's employees' terms and conditions of employment);
- (3) maximum, minimum or other pricing requirements for products and services that the Restaurant offers, including requirements for promotions, special offers and discounts in

which some or all Freshii Restaurants participate, in each case to the maximum extent the law allows;

- (4) ingredients and methods of preparing food products;
- (5) standards, requirements and procedures for training managers and other personnel of Franchisee's Restaurant;
- (6) requirements for vehicles, training, qualifications, conduct and appearance of personnel, product packaging, format and use of materials and supplies (including display of the Marks thereon), and other aspects of providing Catering Services or Delivery Services;
- (7) all aspects of the offer, sale, display and marketing of products intended for off-premises consumption or use;
- (8) use and display of the Marks;
- (9) terms and conditions of the sale and delivery of, and terms and methods of payment for, products and services that Franchisee obtains from Franchisor and affiliated and unaffiliated suppliers, including ordering, return and warranty terms and conditions and Franchisor's and its affiliates' right to sell Franchisee any products only on a "cash-on-delivery" or other basis if Franchisee is in default or has failed to pay when due amounts owed under any agreement with Franchisor or its affiliates;
- (10) customer satisfaction surveys and programs and procedures for resolving customer complaints;
- (11) days and hours of operation (which may vary among Freshii Restaurants);
- (12) issuing and honoring gift certificates, gift cards, stored value cards and similar items and participating in other promotions;
- (13) participation in market research and test programs that Franchisor requires or approves concerning various aspects of the Franchise System, including new or updated procedures, systems, equipment, signs, trade dress, supplies, marketing materials and strategies, merchandising strategies, products and/or services;
- (14) accepting credit and debit cards, other payment systems and check verification services; and
- (15) any other aspects of operating and maintaining the Restaurant that Franchisor determines to be useful to preserve or enhance the efficient operation, image or goodwill of the Marks and Freshii Restaurants.

Franchisee acknowledges that Franchisor's periodic modification of the System Standards (including to accommodate changes to the required Computer System for Freshii Restaurants and the Marks) may obligate Franchisee to invest additional capital in the Restaurant and incur higher operating costs, and Franchisee agrees to comply with those obligations within the time period Franchisor specifies. Although Franchisor retains the right to establish and periodically modify System Standards that Franchisee has agreed to follow, Franchisee retains the responsibility for the day-to-day management and operation of the Restaurant and implementing and maintaining System Standards at the Restaurant.

## 5.I. MODIFICATION OF FRANCHISE SYSTEM

Because complete and detailed uniformity under many varying conditions might not be possible or practical, Franchisor reserves the right to vary System Standards for any Freshii Restaurant or group of Freshii Restaurants based upon the peculiarities of any conditions or factors that Franchisor considers important to its operations. Franchisee has no right to require Franchisor to grant Franchisee a similar variation or accommodation.

## 6. INITIAL FRANCHISE FEE AND ROYALTY

### 6.A. INITIAL FRANCHISE FEE

~~Franchisee agrees to pay Franchisor a nonrecurring and nonrefundable initial franchise fee equal to Thirty Thousand Dollars (\$30,000) upon signing this Agreement. If we have required you to execute our Deposit Agreement, we hereby acknowledge receipt of your deposit of Five Thousand Dollars (\$5,000), which sum was paid to us when you signed our deposit agreement, attached to this Agreement as Exhibit K. Said deposit will be applied by us toward your Marketing Deposit, and Five Thousand Dollars (\$5,000) is payable by you in a lump sum upon execution of the lease for the Restaurant. If the Franchise Agreement is not executed by the date indicated on the Letter of Intent (“the LOI”) the marketing deposit shall not be refunded.~~

~~————— In the State of Illinois, we will defer the payment of the initial franchise fee, marketing deposit and any other initial payment until you open your business and it is operating. However, you must execute the Franchise Agreement prior to looking for a site or beginning training. This deferral has been imposed by the Illinois Attorney General’s Office based on the Franchisor’s financial condition.~~

~~————— In the State of Maryland, we will defer the payment of the initial franchise fee, marketing deposit and any other initial payment until all of our material pre-opening obligations have been satisfied and until you open your business and it is operating. However, you must execute the Franchise Agreement prior to looking for a site or beginning training.~~

Upon signing this Franchise Agreement, the Franchisee will pay the Franchisor the initial franchise fee in the amount of Thirty Thousand Dollars (\$30,000.00). The initial franchise fee is non-refundable. If this Agreement is being executed pursuant to an Area Development Agreement, the Franchisor shall apply Fifteen Thousand Dollars (\$15,000), as applicable, of the Development Fee paid under the Area Development Agreement (if any) toward such initial franchise fee, and Franchisee agrees to pay the remainder of such initial franchise fee, as provided for in Exhibit A, upon executing this Agreement.

### 6.B. ROYALTY AND DEFINITIONS OF GROSS SALES

Franchisee agrees to pay Franchisor, on or before the day of each week that Franchisor periodically specifies (the “**Payment Day**”), a royalty (“**Royalty**”) in an amount equal to six percent (6%) of the Gross Sales (defined below) of the Restaurant during the previous week. In this Agreement, “**Gross Sales**” means all revenue from sales conducted upon or from the Restaurant, whether from check, cash, credit, charge account, debit account, exchange, trade credit, other credit transactions, barter or otherwise, including any implied or imputed Gross Sales from any business interruption insurance and all revenue from the provision of Catering Service and Delivery Service. However, Gross Sales exclude: (1) sales for which cash has been refunded, if those sales were previously included in Gross Sales; (2) federal, state, or municipal sales, use or service taxes collected from customers and paid to the appropriate taxing authority; and (3) the face value of coupons or discounts that customers redeem. Each charge or sale upon credit shall be treated as a sale for the full price on the day during which such charge or sale is made, irrespective of when Franchisee receives payment (whether full or partial, or at all) on that sale. Amounts paid by gift certificate, gift card or similar program are included in Gross Sales when the gift certificate, other instrument or applicable credit is redeemed.

### **6.C. PAYMENT METHOD AND TIMING**

Franchisee agrees to sign and deliver to Franchisor the documents that Franchisor periodically requires to authorize Franchisor to debit Franchisee's business checking account automatically for the Royalty and other amounts due under this Agreement or any related agreement between Franchisor (or its affiliates) and Franchisee. If Franchisor institutes an automatic debit program for the Restaurant, Franchisor will debit Franchisee's account for the Royalty and other amounts on or after the Payment Day, based on the Gross Sales for the previous week. Franchisee agrees to make the funds available for withdrawal by electronic transfer before each due date. In connection with the automatic debit program, Franchisor may require Franchisee to procure, at Franchisee's expense, overdraft protection for its business checking account in an amount that Franchisor specifies. Franchisee agrees to reimburse Franchisor for any "insufficient funds" charges and related expenses that Franchisor incurs in connection with (1) any checks that Franchisor receives from Franchisee or (2) Franchisee's failure to maintain sufficient funds in its automatic debit account.

If Franchisee fails to report the Restaurant's Gross Sales for any week, Franchisor may debit Franchisee's account for one hundred twenty percent (120%) of the Royalty and/or Marketing Fund (defined in Section 7.B) contribution that Franchisor debited for the previous week. If the amount Franchisor debits from Franchisee's account is less than the amount Franchisee actually owes Franchisor for the week (once Franchisor has determined the true and correct Gross Sales of the Restaurant for the week), Franchisor will debit Franchisee's account for the balance due on the day that Franchisor specifies. If the amount Franchisor debits from Franchisee's account is greater than the amount Franchisee actually owes Franchisor for the week (once Franchisor has determined the true and correct Gross Sales of the Restaurant for the week), Franchisor will credit the excess, without interest, against the amount that Franchisor otherwise would debit from Franchisee's account during the following week.

Franchisor has the right, at its sole option upon notice to Franchisee, to change from time to time the timing and terms for payment of Royalties and other amounts payable to Franchisor under this Agreement. For example, Franchisor may change the frequency at which payments are calculated to bi-weekly or monthly.

Franchisee may not subordinate to any other obligation its obligation to pay Royalties or any other fee or charge under this Agreement.

### **6.D. INTEREST ON LATE PAYMENTS**

All amounts that Franchisee owes Franchisor (including Royalty payments), if not debited from Franchisee's account or paid within seven (7) days after the due date, will bear interest beginning after their original due date at one and one-half percent (1.5%) per month or the highest commercial contract interest rate the law allows, whichever is less. Franchisor may debit Franchisee's account automatically for these amounts. Franchisee acknowledges that this Section 6.D is not Franchisor's agreement to accept any payments after they are due or Franchisor's commitment to extend credit to, or otherwise finance Franchisee's operation of, the Restaurant. Franchisee's failure to pay all amounts that Franchisee owes Franchisor when due constitutes grounds for Franchisor's terminating this Agreement under Section 15, notwithstanding this Section.

### **6.E. APPLICATION OF PAYMENTS AND RIGHT OF SET-OFF**

Notwithstanding any designation that Franchisee makes, Franchisor may apply any of Franchisor's debits or Franchisee's payments to any of Franchisee's past due indebtedness to Franchisor (or its affiliates). Franchisor may set-off any amounts Franchisee or its Owners owe Franchisor or its affiliates against any

amounts that Franchisor or its affiliates owe Franchisee or its Owners, whether in connection with this Agreement or otherwise.

## 7. ADVERTISING AND MARKETING

### 7.A. GRAND OPENING MARKETING PROGRAM

(1) Franchisee agrees, at its expense, to implement a grand opening marketing program for the Restaurant in accordance with the requirements in the Operations Manual and other System Standards. Franchisee agrees to spend Ten Thousand Dollars (\$10,000) on its grand opening marketing program.

(2) ~~At least thirty (30) days before the Restaurant's planned grand opening, Franchisee shall pay~~ When the Franchisee signs the lease for the Restaurant, the Franchisee will sign the Marketing Deposit Agreement, attached as Exhibit F (the "Marketing Deposit Agreement"), and shall pay to the Franchisor a grand opening marketing deposit in the amount of Ten Thousand Dollars (\$10,000) (the "**Grand Opening Marketing Deposit**"). Franchisor will consult with Franchisee and prepare a written grand opening marketing program for the Restaurant that contemplates spending the Grand Opening Marketing Deposit. Franchisee agrees to implement the approved program with Franchisor's assistance and according to Franchisor's requirements. Franchisor will use the Grand Opening Marketing Deposit to pay, on Franchisee's behalf, providers of products and services according to the approved grand opening marketing program. In the event the Franchisee pays the providers of products and services instead of the Franchisee for the Grand Opening Advertising and provide the paid invoices to the Franchisor, the Franchisor will reimburse Franchisee the amounts expended up to Ten Thousand Dollars (\$10,000).

### 7.B. MARKETING FUND

Recognizing the value of advertising and marketing to the goodwill and public image of Freshii Restaurants, Franchisor may, upon at least thirty (30) days' written notice to Franchisee, establish, and thereafter administer and control, a marketing fund (the "**Marketing Fund**") for the advertising, marketing and public relations programs and materials that Franchisor deems appropriate. Franchisee agrees to contribute the amount that Franchisor periodically specifies to the Marketing Fund, up to three percent (3%) of the Restaurant's Gross Sales, subject to the Marketing Spending Requirement (defined in Section 7.D). Franchisee's Marketing Fund contribution shall be payable in the same manner as the Royalty or in such other manner as Franchisor periodically specifies. Freshii Restaurants that Franchisor or its affiliates own will contribute to the Marketing Fund on the same basis as franchisees.

Franchisor will direct all programs that the Marketing Fund finances, with sole control over the creative concepts, materials and endorsements used and their geographic, market and media placement and allocation. The Marketing Fund may pay for preparing and producing video, audio and written materials and electronic media; maintaining and administering one or more System Websites and otherwise establishing an online presence; administering regional and multi-regional marketing and advertising programs, including creating and/or purchasing trade journal, direct mail, radio and other media advertising and using advertising, promotion and marketing agencies and other advisors to provide assistance; and supporting public relations, market research and other advertising, promotion and marketing activities. The Marketing Fund periodically will make available samples of advertising, marketing and promotional formats and materials at no cost and will offer for sale multiple copies of these materials at its direct cost of producing them, plus any related shipping, handling and storage charges. The Marketing Fund also may reimburse Freshii Restaurant operators (including Franchisor and/or its affiliates) for certain approved marketing expenditures that Franchisor periodically specifies.

Franchisor also may use Marketing Fund assets for advertising, marketing and promotional programs and materials that principally solicit the sale of Freshii Restaurant franchises and/or development rights.

Franchisor will account for the Marketing Fund separately from its other funds and not use the Marketing Fund for any of its general operating expenses. However, the Marketing Fund may reimburse Franchisor and its affiliates for the reasonable salaries and benefits of personnel who manage and administer the Marketing Fund or otherwise provide assistance or services to the Marketing Fund, the Marketing Fund's administrative costs, travel expenses of personnel while they are on Marketing Fund business, meeting costs, overhead relating to the Marketing Fund's business, and other expenses that Franchisor and they incur in administering or directing the Marketing Fund and its programs, including conducting market research, preparing advertising, promotional and marketing materials, and collecting and accounting for Marketing Fund contributions. The Marketing Fund is not a trust, and Franchisor does not owe Franchisee fiduciary obligations because of Franchisor's maintaining, directing or administering the Marketing Fund or any other reason. The Marketing Fund may spend in any fiscal year more or less than the total Marketing Fund contributions in that year, borrow from Franchisor or others (paying reasonable interest) to cover deficits, or invest any surplus for future use. Franchisor will use all interest earned on Marketing Fund contributions to pay costs before using the Marketing Fund's other assets. Franchisor will prepare an annual, unaudited statement of Marketing Fund collections and expenses and give Franchisee the statement upon written request. Franchisor may (but need not) have the Marketing Fund audited annually, at the Marketing Fund's expense, by a certified public accountant. Franchisor may incorporate the Marketing Fund or operate it through a separate entity whenever Franchisor deems appropriate. The successor entity will have all of the rights and duties specified in this Subsection.

Franchisor intends the Marketing Fund to maximize recognition of the Marks and patronage of Freshii Restaurants. Although Franchisor will try to use the Marketing Fund in the aggregate to develop advertising and marketing materials and programs, and implement programs, that will benefit all Freshii Restaurants, Franchisor need not ensure that Marketing Fund expenditures in or affecting any geographic area are proportionate or equivalent to the Marketing Fund contributions by Freshii Restaurants operating in that geographic area or that any Freshii Restaurant benefits directly or in proportion to its Marketing Fund contribution from the development of advertising and marketing materials or implementation of programs. Franchisor has the right, but no obligation, to use collection agents and institute legal proceedings to collect Marketing Fund contributions at the Marketing Fund's expense. Franchisor also may forgive, waive, settle and compromise all claims by or against the Marketing Fund. Except as expressly provided in this Subsection, Franchisor assumes no direct or indirect liability or obligation to Franchisee for collecting amounts due to, maintaining, directing or administering the Marketing Fund.

Franchisor may at any time defer or reduce the Marketing Fund contributions of a Freshii Restaurant franchisee and, upon thirty (30) days' prior written notice to Franchisee, reduce or suspend Marketing Fund contributions and operations for one or more periods of any length and terminate (and, if terminated, reinstate) the Marketing Fund. If Franchisor terminates the Marketing Fund, Franchisor will distribute all unspent funds to Franchisor's then existing franchisees, and to Franchisor and its affiliates, in proportion to their respective Marketing Fund contributions during the preceding twelve (12) month period.

### **7.C.    MARKETING SPENDING REQUIREMENT**

During the term of this Agreement, Franchisee agrees to spend a total of at least three percent (3%) of the Restaurant's Gross Sales each calendar quarter on advertising, marketing and promotional programs for the Restaurant (the "**Marketing Spending Requirement**"). Franchisor will credit Franchisee's Marketing Fund contributions and any other amounts that Franchisee spends to advertise, market or promote the Restaurant in compliance with this Agreement toward the Marketing Spending

Requirement, including amounts Franchisee spends to provide food to consumers free or at a reduced price (with such amounts calculated at the cost of food less revenue received) and other amounts expended to participate in the advertising, marketing and promotional programs that Franchisor periodically recommends or requires. However, Franchisor will not count the amount spent on grand opening marketing toward this minimum obligation. Franchisor has the authority under this Agreement to periodically determine the rate of Franchisee's Marketing Fund contributions, and Franchisee acknowledges that it must vary the amounts it spends on other advertising, marketing and promotional programs in order to spend at least the amounts required by the Marketing Spending Requirement. The amount of Franchisee's Marketing Fund contributions in any calendar year, plus the amounts that Franchisee spends to participate in the mandatory advertising, marketing and promotional programs that Franchisor requires for that calendar year (excluding amounts spent on grand opening marketing), shall not exceed three percent (3%) of the Restaurant's Gross Sales during that calendar year without Franchisee's approval. Franchisor may review Franchisee's books and records from time to time and require Franchisee to submit reports periodically to determine its advertising, marketing and promotion expenses.

#### **7.D. APPROVAL OF ADVERTISING**

All of Franchisee's advertising, promotion and marketing must be completely clear, factual and not misleading and conform to the highest ethical standards and the advertising and marketing policies that Franchisor periodically specifies. Before using them, Franchisee agrees to send to Franchisor, for its approval, samples of all advertising, promotional and marketing materials that Franchisor has not prepared or previously approved within the preceding six (6) months. If Franchisee does not receive written notice of disapproval from Franchisor within fifteen (15) days after Franchisor receives the materials, they are deemed approved. Franchisee may not use any advertising, promotional or marketing materials that Franchisor has disapproved. Franchisor assumes no liability to Franchisee or any other party due to Franchisor's approval or disapproval of any advertising, marketing or promotional materials or programs, and Franchisee is responsible for ensuring that all such materials and programs that Franchisee uses and implements comply with all applicable laws, ordinances and regulations.

#### **7.E. SYSTEM WEBSITES AND ELECTRONIC ADVERTISING**

Franchisor or one or more of its designees may establish a website or series of websites for the Freshii Restaurant network to advertise, market and promote Freshii Restaurants and the products and services they offer, the Freshii Restaurant franchise and/or for any other purposes that Franchisor determines are appropriate for Freshii Restaurants (collectively, the "**System Website**"). If Franchisor includes information about the Restaurant on the System Website, Franchisee agrees to give Franchisor the information and materials that Franchisor periodically requests concerning the Restaurant and otherwise participate in the System Website in the manner that Franchisor periodically specifies. By posting or submitting to Franchisor information or materials for the System Website, Franchisee is representing to Franchisor that the information and materials are accurate and not misleading and do not infringe any third party's rights.

Franchisor shall own all intellectual property and other rights in the System Website and all information it contains, including the domain name or URL for the System Website, the log of "hits" by visitors, and any personal or business data that visitors (including Franchisee and its personnel) supply. Franchisor may use the Marketing Fund's assets to develop, maintain and update the System Website. Franchisor may implement and periodically modify System Standards relating to the System Website and, at Franchisor's option, may discontinue the System Website, or any services offered through the System Website, at any time.

All advertising, marketing and promotional materials that Franchisee develops for the Restaurant must contain notices of the URL of the System Website in the manner that Franchisor periodically designates. Franchisee may not develop, maintain or authorize any other website, other online presence or other electronic medium that mentions or describes the Restaurant or displays any of the Marks without Franchisor's prior approval. Franchisee may not conduct commerce or directly or indirectly offer or sell any products or services using any website, another electronic means or medium, or otherwise over the Internet.

You are not permitted to promote your Restaurant or use any of the Proprietary Marks in any manner on any social or networking websites, such as Facebook, LinkedIn or Twitter, without our prior written consent. We will control all social media initiatives. You must comply with our System standards regarding the use of social media in your Restaurant's operation, including prohibitions on your and the Restaurant's employees posting or blogging comments about the Restaurant or the System, other than on a website established or authorized by us ("social media" includes personal blogs, common social networks like Facebook and MySpace, professional networks like LinkedIn, live-blogging tools like Twitter, virtual worlds, file, audio and video-sharing sites, and other similar social networking or media sites or tools). We will provide access to branded social media pages/handles/assets, and you must update these regularly. We reserve the right to conduct collective/national campaigns via local social media on your behalf.

Nothing in this Section 7.F shall limit Franchisor's right to maintain websites other than the System Website or to offer and sell products and services under the Marks from the System Website, another website or otherwise over the Internet without payment or obligation of any kind to Franchisee.

## **8. RECORDS, REPORTS AND FINANCIAL STATEMENTS**

Franchisee agrees to establish and maintain at its own expense a bookkeeping, accounting and recordkeeping system conforming to the requirements and formats that Franchisor periodically specifies. Franchisor may require Franchisee to use the Computer System to maintain certain financial data and other information, in such formats as Franchisor periodically prescribes, and to transmit certain data and information to Franchisor on a schedule that Franchisor periodically specifies. Franchisee also agrees, at its expense, to maintain the Computer System and purchase the hardware and software that Franchisor designates in order to allow Franchisor unlimited access to, and the ability to download, all information in the Computer System at any time. Franchisee also agrees to give Franchisor in the manner and format that Franchisor periodically specifies:

(a) on or before the Payment Day, a report on the Restaurant's operations during the previous week, including a calculation of Gross Sales;

(b) within twenty (20) days after the end of each month, the operating statements, financial statements (including a balance sheet and profit and loss statements), statistical reports and other information Franchisor requests regarding Franchisee and the Restaurant covering that month;

(c) within sixty (60) days after the end of each of Franchisee's fiscal years, annual profit and loss and source and use of funds statements and a balance sheet for the Restaurant as of the end of the previous fiscal year; and

(d) within thirty (30) days after Franchisor's request, exact copies of federal and state income and other tax returns and any other forms, records, books, reports and other information that Franchisor periodically requires relating to the Restaurant or Franchisee.

Franchisee agrees to verify and sign each report and financial statement in the manner that Franchisor periodically specifies. Franchisor may disclose data derived from these reports, including by creating and circulating reports on the financial results of Franchisee's Restaurant and/or some or all other Freshii Restaurants to other Freshii Restaurant owners and prospective franchisees, but Franchisor will not (without Franchisee's consent) disclose Franchisee's identity in connection with that data.

Franchisee agrees to preserve and maintain all records in a secure location at the Restaurant or other safe location during the term of this Agreement and for at least five (5) years afterward. If Franchisor determines that Franchisee has failed to comply with its reporting or payment obligations under this Agreement, Franchisor may require Franchisee to have audited financial statements prepared annually at Franchisee's expense during the remaining term of this Agreement, in addition to Franchisor's other remedies and rights under the Agreement and applicable law.

## **9. INSPECTIONS AND AUDITS**

### **9.A. FRANCHISOR'S INSPECTION RIGHTS**

To determine whether Franchisee and the Restaurant are complying with this Agreement and all System Standards, Franchisor and its designated agents and representatives may at all times and without prior notice to Franchisee:

- (1) inspect the Restaurant and/or videotape, photograph or otherwise remotely monitor the Restaurant's operations and monitor and test the Operating Assets, whether remotely via the Computer System or by other means;
- (2) observe, photograph, and videotape the operation of the Restaurant (including so-called "mystery shopping") for consecutive or intermittent periods that Franchisor deems necessary;
- (3) remove samples of any food or beverage items, ingredients or other products used or sold at the Restaurant;
- (4) interview the personnel and customers of the Restaurant; and
- (5) inspect and copy any books, records and documents relating to the operation of the Restaurant.

Franchisee agrees to cooperate with Franchisor fully. If Franchisor exercises any of these rights, it will use commercially reasonable efforts not to interfere unreasonably with the operation of the Restaurant.

Franchisee acknowledges that Franchisor may conduct quality, service, cleanliness, and other inspections of the Restaurant and Franchisee's operations from time to time without notice to Franchisee to determine compliance with this Agreement and the System Standards, and that Franchisee's performance in such inspections must meet Franchisor's standards. Franchisee agrees to present to customers the evaluation forms that Franchisor periodically specifies and to participate and/or request that Franchisee's customers participate in any surveys and other customer satisfaction programs performed by or for Franchisor.

## **9.B. FRANCHISOR'S RIGHT TO AUDIT**

Franchisor may at any time during Franchisee's business hours, and without prior notice to Franchisee, examine the business, bookkeeping and accounting records, sales and income tax records and returns, and other records of the Restaurant. Franchisee agrees to cooperate fully with Franchisor, its representatives and independent accountants in any inspection or audit. If any inspection or audit discloses an understatement of the Gross Sales of the Restaurant, Franchisee agrees to pay, within fifteen (15) days after receiving the inspection or audit report, the Royalty, Marketing Fund contributions, and any other amounts due on the amount of the understatement, plus interest (in the amount described in Section 6.D) from the date originally due until the date of payment. Further, if an inspection or audit is necessary due to Franchisee's failure to furnish reports, supporting records or other information as required, or to furnish these items on a timely basis, or if Franchisor's examination reveals a Royalty understatement exceeding two percent (2%) of the amount that Franchisee actually reported to Franchisor for the period examined, Franchisee agrees to reimburse Franchisor for the cost of its examination, including the charges of attorneys and independent accountants and the travel expenses, room and board, and compensation of Franchisor's employees. These remedies are in addition to Franchisor's other remedies and rights under this Agreement and applicable law.

## **10. MARKS**

### **10.A. OWNERSHIP AND GOODWILL OF MARKS**

Franchisee's right to use the Marks is derived only from this Agreement and is limited to Franchisee's operating the Restaurant according to this Agreement and all mandatory System Standards that Franchisor prescribes during its term. Franchisee's unauthorized use of the Marks is a breach of this Agreement and infringes Franchisor's (and its licensor's) rights in the Marks. Any use of the Marks relating to the Restaurant, and any goodwill established by that use, are for Franchisor's (and its licensor's) exclusive benefit. This Agreement does not confer any goodwill or other interests in the Marks upon Franchisee, other than the right to operate the Restaurant according to this Agreement. All provisions of this Agreement relating to the Marks apply to any additional and substitute trademarks and service marks that Franchisor periodically authorizes Franchisee to use. Franchisee may not at any time during or after the term of this Agreement contest or assist any other person in contesting the validity, or Franchisor's (or its licensor's) ownership, of the Marks.

### **10.B. LIMITATIONS ON USE OF MARKS**

Franchisee agrees to use the Marks as the sole identification of the Restaurant, subject to the notices of independent ownership that Franchisor periodically designates. Franchisee may not use any Mark (1) as part of any corporate or legal business name, (2) with any prefix, suffix or other modifying words, terms, designs or symbols (other than logos that Franchisor has licensed to Franchisee), (3) in selling any unauthorized services or products, (4) as part of any domain name, homepage, electronic address, metatag or otherwise in connection with any website or other online presence without Franchisor's consent, or (5) in any other manner that Franchisor has not expressly authorized in writing. Franchisee may not use any Mark in advertising the transfer, sale or other disposition of the Restaurant or an ownership interest in Franchisee any Owner without Franchisor's prior written consent, which Franchisor will not unreasonably withhold. Franchisee agrees to give the notices of trademark and service mark registrations that Franchisor periodically specifies and obtain any fictitious or assumed name registrations that applicable law requires.

## 10.C. NOTIFICATION OF INFRINGEMENTS AND CLAIMS

Franchisee agrees to notify Franchisor immediately of any actual or apparent infringement of or challenge to Franchisee's use of any Mark, or of any person's claim of any rights in any Mark (or any identical or confusingly similar trademark) or claim of unfair competition relating to any Mark. Franchisee agrees not to communicate with any person other than Franchisor and its licensor, their respective attorneys, and Franchisee's attorneys regarding any infringement, challenge or claim. Franchisor and its licensor may take the action that they deem appropriate (including no action) and control exclusively any litigation, U.S. Patent and Trademark Office proceeding or other administrative proceeding arising from any infringement, challenge or claim or otherwise concerning any Mark. Franchisee agrees to sign any documents and take any other reasonable actions that, in the opinion of Franchisor's or its licensor's attorneys, are necessary or advisable to protect and maintain Franchisor's (and its licensor's) interests in any litigation or Patent and Trademark Office or other proceeding or otherwise to protect and maintain Franchisor's (and its licensor's) interests in the Marks.

## 10.D. DISCONTINUANCE OF USE OF MARKS

If Franchisor believes at any time that it is advisable for Franchisor and/or Franchisee to modify, discontinue using and/or replace any Mark, and/or use one or more additional or substitute trademarks or service marks, Franchisee agrees to comply with Franchisor's directions within a reasonable time after receiving notice. Franchisor need not reimburse Franchisee for Franchisee's expenses in complying with these directions (such as costs that Franchisee incurs in changing the signs or replacing supplies for the Restaurant), for any loss of revenue due to any modified or discontinued Mark, or for Franchisee's expenses of promoting a modified or substitute trademark or service mark.

## 11. CONFIDENTIAL INFORMATION AND INNOVATIONS

### 11.A. CONFIDENTIAL INFORMATION

Franchisor and its affiliates possess (and will continue to develop and acquire) certain confidential information, some of which constitutes trade secrets under applicable law, relating to the development and operation of Freshii Restaurants (the "**Confidential Information**"), which includes:

- (1) site selection and market development plans, standards and criteria;
- (2) layouts, designs, and other plans and specifications for Freshii Restaurants;
- (3) methods, formats, specifications, standards, systems, procedures, sales and marketing techniques, and knowledge and experience used in developing and operating Freshii Restaurants;
- (4) marketing research and promotional, marketing and advertising programs for Freshii Restaurants;
- (5) knowledge of specifications for and suppliers of, and methods of ordering, certain Operating Assets, products, materials and supplies that Freshii Restaurants use and sell;
- (6) knowledge of the operating results and financial performance of Freshii Restaurants other than the Restaurant;

(7) customer solicitation, communication and retention programs, along with data and information used or generated in connection with those programs;

(8) all data and all other information generated by, or used or developed in, the operation of Freshii Restaurants, including customer names, contact information and related information (“**Customer Data**”); and

(9) any other information that Franchisor reasonably designates as confidential or proprietary.

Franchisee will not acquire any interest in any Confidential Information, other than the right to use certain Confidential Information as Franchisor specifies in operating the Restaurant during the term of this Agreement and according to the System Standards and the other terms and conditions of this Agreement. Franchisee acknowledges that its use of any Confidential Information in any other business would constitute an unfair method of competition with Franchisor and its franchisees. Franchisee acknowledges and agrees that the Confidential Information is proprietary, includes Franchisor’s and its affiliates’ trade secrets, and is disclosed to Franchisee only on the condition that Franchisee and its Owners agree, and it and they do agree, that Franchisee and its Owners:

(a) will not use any Confidential Information (including the Customer Data) in any other business or capacity and will keep the Confidential Information absolutely confidential, both during and after the term of this Agreement (afterward for as long as the information is not generally known in the restaurant industry);

(b) will not make unauthorized copies of any Confidential Information disclosed via electronic medium or in written or other tangible form;

(c) will adopt and implement all reasonable procedures that Franchisor periodically specifies to prevent unauthorized use or disclosure of Confidential Information, including disclosing it only to Restaurant personnel and others needing to know such Confidential Information to operate the Restaurant, and requiring the General Manager, other Restaurant managers and such other employees of Franchisee that Franchisor periodically designates who will have access to such information to execute the non-competition and confidentiality agreement in the form attached as Exhibit D (the “**Confidentiality and Non-Competition Agreement**”). Franchisee shall provide Franchisor, at its request, executed originals of each such Confidentiality and Non-Competition Agreement; and

(d) will not sell, trade or otherwise profit in any way from the Confidential Information, except during the term of this Agreement using methods that Franchisor has approved.

“**Confidential Information**” does not include information, knowledge or know-how which is or becomes generally known in the restaurant industry or which Franchisee knew from previous business experience before Franchisor provided it to Franchisee (directly or indirectly) or before Franchisee began training or operating the Restaurant. If Franchisor includes any matter in Confidential Information, anyone who claims that it is not Confidential Information must prove that the exclusion in this paragraph is applicable.

## 11.B. INNOVATIONS

All ideas, concepts, techniques or materials relating to a Freshii Restaurant (“**Innovations**”), whether or not protectable intellectual property and whether created by or for Franchisee or its Owners, employees or contractors, must be promptly disclosed to Franchisor and will be deemed to be Franchisor’s sole and exclusive property and works made-for-hire for Franchisor. To the extent any Innovation does not qualify as a “work made-for-hire” for Franchisor, by this paragraph Franchisee assigns ownership of that item, and all related rights to that item, to Franchisor and agrees to sign (and to cause its Owners, employees and contractors to sign) whatever assignment or other documents that Franchisor periodically requests to evidence Franchisor’s ownership and to help Franchisor obtain intellectual property rights in the item. Franchisee may not use any Innovation in operating the Restaurant or otherwise without Franchisor’s prior approval.

## 12. EXCLUSIVE RELATIONSHIP

Franchisee acknowledges that Franchisor has granted Franchisee the rights under this Agreement in consideration of and reliance upon Franchisee’s (and its Owners’) agreement to deal exclusively with Franchisor with respect to the products and services that Freshii Restaurants offer. Franchisee therefore agrees that, during the term of this Agreement, neither Franchisee nor any of its Owners, nor any members of their Immediate Families (defined below), will:

- (a) have any direct or indirect, controlling or non-controlling interest as an owner - whether of record, beneficial or otherwise - in a Competitive Business (defined below), wherever located or operating, provided that this restriction will not prohibit the ownership of shares of a class of securities which are publicly traded on a United States stock exchange representing less than three percent (3%) of the number of shares of that class of securities issued and outstanding;
- (b) perform services as a director, officer, manager, employee, consultant, representative or agent for a Competitive Business, wherever located or operating;
- (c) directly or indirectly loan any money or other thing of value to, or guarantee any other person’s loan to, any Competitive Business or any owner, director, officer, manager, employee or agent of any Competitive Business, wherever located or operating;
- (d) employ or seek to employ any individual who is, or within six (6) months of such employment or solicitation was, employed by Franchisor, its affiliate or its franchisee as a restaurant general manager, or otherwise directly or indirectly induce or attempt to induce any such individual to leave that employment, without Franchisor’s or the employer’s prior written consent; or
- (e) divert or attempt to divert any actual or potential business or customer of the Restaurant to a Competitive Business.

The term “**Competitive Business**” means any business that (i) offers fresh, made-to-order meals (including salads, soups, and/or rice bowls, but excluding sandwiches) in a format that allows the customer to choose among various ingredients to create individual meal options; (ii) is marketed to the public primarily as a health-food or healthy-alternative foodservice establishment; and/or (iii) grants franchises or licenses to, or enters into joint ventures with, others to operate a business described in subsection (i) or (ii). A Freshii Restaurant operated under a franchise agreement with Franchisor is not a Competitive Business. The term “**Immediate Family**” includes the named individual, his or her spouse, and all children of the named individual or his or her spouse.

Franchisee agrees to obtain similar covenants from its personnel whom Franchisor specifies, including officers, directors, the General Manager, other Restaurant managers, and employees attending Franchisor's training program or having access to Confidential Information. Franchisor has the right to regulate the form of agreement that Franchisee uses and to be a third party beneficiary of that agreement with independent enforcement rights.

### **13. TRANSFER**

#### **13.A. TRANSFER BY FRANCHISOR**

Franchisee represents that it has not signed this Agreement in reliance on any owner's, officer's or employee's remaining with Franchisor in that capacity. Franchisor may change its ownership or form and/or assign this Agreement without restriction. This Agreement will inure to the benefit of any transferee or other legal successor to Franchisor's interest in it. After Franchisor's assignment of this Agreement to a third party who expressly assumes Franchisor's obligations under this Agreement, Franchisor no longer will have any performance or other obligations under this Agreement. Such an assignment shall constitute a release of Franchisor and novation with respect to this Agreement, and the assignee shall be liable to Franchisee as if it had been an original party to this Agreement.

#### **13.B. TRANSFER BY FRANCHISEE AND DEFINITION OF TRANSFER**

Franchisee acknowledges that the rights and duties this Agreement creates are personal to Franchisee and its Owners and that Franchisor has granted Franchisee the rights under this Agreement in reliance upon Franchisor's perceptions of Franchisee's and its Owners' individual or collective character, skill, aptitude, business ability and financial capacity. Therefore, Franchisee and its Owners agree that:

- (1) no ownership interest in Franchisee or in any entity that directly or indirectly holds a Controlling Interest (defined below) in Franchisee;
- (2) no obligations, rights or interest of Franchisee in this Agreement, the Restaurant or all or substantially all of the Operating Assets; and
- (3) no right to receive all or a portion of the profits or losses of Franchisee or Restaurant, nor any capital appreciation relating to Franchisee or the Restaurant

may be transferred without the prior written consent of Franchisor. A transfer of the ownership, possession or control of the Restaurant or all or substantially all of the Operating Assets may be made (subject to Franchisor's rights below) only with a transfer of this Agreement. Any purported transfer in violation of this Section shall constitute a breach of this Agreement and shall convey to the transferee no rights or interests in the foregoing.

In this Agreement, the term "**transfer**" shall include the following, whether voluntary or involuntary, conditional, direct or indirect: (i) assignment, sale, gift or other disposition; (ii) the grant of a mortgage, charge, pledge, lien or security interest, including the grant of a collateral assignment, excluding only an equipment lease arrangement or financing arrangement for equipment on arm's-length terms; (iii) a merger, consolidation, exchange of shares or other ownership interests, issuance of additional ownership interests or securities representing or potentially representing ownership interests, or redemption of ownership interests; (iv) a sale or exchange of voting interests or securities convertible to voting interests, or an agreement granting the right to exercise or control the exercise of the voting rights of any holder of ownership interests or to control (directly or indirectly) the operations or affairs of Franchisee; and (v) a management agreement whereby Franchisee delegates any of its obligations under

this Agreement or any or all of the management functions with respect to the Restaurant. In addition, a transfer (as defined above) will include any transfer by virtue of divorce; insolvency; dissolution of a business entity; will; intestate succession; declaration of or transfer in trust; or foreclosure, attachment, seizure or otherwise by operation of law.

Although an ownership interest in any entity that directly or indirectly hold an ownership interest, but not a Controlling Interest, in Franchisee may be transferred without Franchisor's prior written consent under this Section 13.B, Franchise must (a) provide notice of any such transfer to Franchisor within ten (10) days after its completion, and (b) ensure that each new Owner as a result of any such transfer signs and delivers to Franchisor, within thirty (30) days after its completion, an agreement in the form that Franchisor periodically specifies undertaking personally to be bound, jointly and severally, by all provisions of this Agreement and any ancillary agreements between Franchisee and Franchisor (or its affiliate).

In this Agreement, the term “**Controlling Interest**” in a business entity means the greater of: (a) the percent of the voting shares or other voting rights in the entity that results from dividing one hundred percent (100%) of the ownership interests by the number of owners, with the determination of whether a “Controlling Interest” is involved being made as of both immediately before and immediately after the proposed transfer; or (b) twenty percent (20%) of the voting shares or other voting rights in the legal entity. In addition, regardless of whether the thresholds in (a) or (b) are satisfied, the effective control of the power to direct or cause the direction of an entity's management and policies constitutes a Controlling Interest.

### **13.C. FRANCHISOR'S RIGHT TO APPROVE TRANSFERS**

If Franchisee or any Owner intends to transfer any interest which, under Section 13.B, requires Franchisor's prior written consent, Franchisee shall deliver to Franchisor written notice of such proposed transfer, with such detail as Franchisor reasonably specifies, at least thirty (30) days before its intended effective date. Franchisor shall have fifteen (15) days following delivery of such notice within which to evaluate the proposed transaction and to notify Franchisee of its approval or disapproval (with reasons) of the proposed transfer. Franchisor will not unreasonably withhold its approval. If approved, the transfer must take place in full compliance with all applicable laws, as described in the notice (as modified by any conditions imposed by Franchisor in granting its approval), and within thirty (30) days of the delivery of notice of Franchisor's approval. Any new Owner must, as a condition of Franchisor's approval of any transfer, sign Franchisor's then current term of guarantee and assumption of Franchisee's obligations.

### **13.D. CONDITIONS FOR APPROVAL OF CONTROL TRANSFERS**

If the proposed transfer is of this Agreement or a direct or indirect Controlling Interest in Franchisee, or is one of a series of transfers (regardless of the period of time over which these transfers take place) which in the aggregate transfer this Agreement or a direct or indirect Controlling Interest in Franchisee, then, without limiting Franchisor's other rights (including under Sections 13.C and 13.G), Franchisor may impose other reasonable conditions on its approval of the proposed transfer, including that:

- (1) the proposed transferee and owners demonstrate that they have sufficient business experience, aptitude and financial resources to operate the Restaurant;
- (2) Franchisee has paid all required Royalties, Marketing Fund contributions and other amounts owed to Franchisor and its affiliates, has submitted all required reports and

statements, and is not in violation of any provision of this Agreement, any other agreement with Franchisor or its affiliate, or the Lease;

(3) neither the transferee nor any of its direct or indirect owners or affiliates operates, has an ownership interest in or performs services for a Competitive Business;

(4) any new General Manager is reasonably acceptable to Franchisor and completes to Franchisor's satisfaction Franchisor's then current training program;

(5) the transferee and each of its owners (if the transfer is of this Agreement), or Franchisee and its Owners (if the transfer is of a direct or indirect Controlling Interest in Franchisee), agrees, at Franchisor's option, to (a) be bound by all terms and conditions of this Agreement for the remainder of the term, or (b) sign Franchisor's then current form of standard franchise agreement and related documents for a Freshii Restaurant, the provisions of which (including the fees and the rights in, and geographic area comprising, the Territory) may differ materially from those contained in this Agreement, except that the term of such franchise agreement shall be the remaining term of this Agreement;

(6) Franchisee, the transferring Owner of the proposed purchaser pays a transfer fee of Ten Thousand Dollars (\$10,000) to Franchisor;

(7) the transferee agrees to repair and/or replace the Operating Assets and upgrade the Restaurant in accordance with Franchisor's then current requirements and specifications for new Freshii Restaurants within the time period that Franchisor specifies following the effective date of the transfer;

(8) Franchisee and the transferring Owners sign a general release, in a form satisfactory to Franchisor, of any and all claims against Franchisor and its affiliates and their respective owners, officers, directors, employees, and agents, for matters arising on or before the effective date of the transfer;

(9) Franchisor determines that the purchase price and payment terms will not adversely affect the operation of the Restaurant;

(10) if any part of the sale price is financed by the transferor, the transferor agrees, in a manner satisfactory to Franchisor, that all obligations of the purchaser under any promissory notes, agreements or security interests reserved to the transferor be subordinate to any obligations of the purchaser to pay Royalties, Marketing Fund contributions and other amounts then or thereafter due to Franchisor and its affiliates and all interests of Franchisor or its designee in connection with any right of first refusal or purchase option;

(11) Franchisee or, if applicable, the transferring Owners (and members of their Immediate Families) sign a noncompetition undertaking in favor of Franchisor and the transferee, which undertaking shall contain the restrictions in Section 16.D below; and

(12) Franchisee and its transferring Owners agree not to directly or indirectly at any time thereafter or in any manner (except with respect to Freshii Restaurants that any of them owns or operates): (a) identify themselves or any business as a current or former Freshii Restaurant or as one of Franchisor's franchisees; (b) use any Mark, any colorable imitation of a Mark, any trademark, service mark or commercial symbol that is confusingly similar to any Mark, or other indicia of a Freshii Restaurant in any manner or for any purpose; or (c) utilize for

any purpose any trade dress, trade name, trademark, service mark or other commercial symbol that suggests or indicates a connection or association with Franchisor.

Franchisor has the right, but no obligation, to review all information regarding the Restaurant that Franchisee gives the transferee and to give the transferee copies of any reports that Franchisee has given Franchisor or that Franchisor has made regarding the Restaurant.

### **13.E. DEATH OR INCAPACITY**

Upon the death or permanent incapacity of an Owner of Franchisee, all of such person's direct or indirect interest in Franchisee must be transferred to a transferee approved by Franchisor within a reasonable time, not to exceed nine (9) months from the date of death or permanent disability, and shall be subject to all the terms and conditions applicable to transfers contained in this Section 13. Failure to so transfer such ownership interest within such period of time shall constitute a breach of this Agreement.

### **13.F. EFFECT OF CONSENT TO TRANSFER**

Franchisor's consent to a transfer under this Section 13 is not a waiver of any claims it might have against Franchisee (or its Owners), nor a waiver of Franchisor's right to demand Franchisee's (or the transferee's) full compliance with this Agreement. Franchisor's approval of any proposed transfer indicates only that the transferee meets, or that Franchisor has waived, Franchisor's then current criteria for Freshii Restaurant franchisees and is not a warranty or guaranty by Franchisor, express or implied, of the suitability of the terms of sale or of the successful operation or profitability of the transferee or the Restaurant.

### **13.G. FRANCHISOR'S RIGHT OF FIRST REFUSAL**

If Franchisee or any of its Owners at any time determines to sell or transfer for consideration an interest in this Agreement and the Restaurant (or all or substantially all of its Operating Assets) or a direct or indirect Controlling Interest in Franchisee, whether in one transfer or a series of related transfers (except to or among Franchisee's Owners as of the Agreement Date or in a transfer pursuant to Section 13.E, which are not subject to this Section 13.G), Franchisee agrees to obtain from a responsible and fully disclosed buyer, and send Franchisor, a true and complete copy of a bona fide, executed written offer (which may be a letter of intent) relating exclusively to this Agreement and the Restaurant or direct or indirect Controlling Interest in Franchisee. The offer must include details of the payment terms of the proposed sale and the sources and terms of any financing for the proposed purchase price and must provide for an earnest money deposit of at least ten percent (10%) of the proposed purchase price. To be a valid, bona fide offer, the proposed purchase price must be in a fixed dollar amount and without any contingent payments of purchase price (such as earn-out payments) and the proposed transaction must relate exclusively to an interest in this Agreement and the Restaurant (or all or substantially all of its Operating Assets) or a direct or indirect Controlling Interest in Franchisee and not to any other interests or assets. Franchisor may require Franchisee (or its Owners) to send Franchisor copies of any materials or information sent to the proposed buyer or transferee regarding the possible transaction.

Franchisor may, by delivering written notice to Franchisee within thirty (30) days after Franchisor receives both an exact copy of the offer and all other information that Franchisor requests, elect to purchase the interest for the price and on the terms and conditions contained in the offer, provided that: (1) Franchisor may substitute cash for any form of payment proposed in the offer; (2) Franchisor's credit will be deemed equal to the credit of any proposed buyer; (3) the closing will be not less than thirty (30) days after notifying Franchisee of Franchisor's election to purchase or, if later, the closing date proposed in the offer; and (4) Franchisor must receive, and Franchisee and its Owners agree to make, all customary

representations, warranties and indemnities given by the seller of the assets of a business or ownership interests in a legal entity, as applicable, including representations and warranties regarding ownership and condition of, and title to, assets and (if applicable) ownership interests, liens and encumbrances on assets, validity of contracts and agreements, and the liabilities, contingent or otherwise, relating to the assets or ownership interests being purchased, and indemnities for all actions, events and conditions that existed or occurred in connection with the Restaurant prior to the closing of Franchisor's purchase. If Franchisor exercises its right of first refusal, Franchisee and its transferring Owners agree that, for two (2) years beginning on the closing date, Franchisee or the transferring Owners (and members of their Immediate Families) will be bound by the non-competition covenants contained in Section 16.D.

If Franchisor does not exercise its right of first refusal, Franchisee or its Owner(s) may complete the sale to the proposed buyer on the original offer's terms, but only if Franchisor approves the transfer as provided in this Section 13. If Franchisee or its Owners do not complete the sale to the proposed buyer within sixty (60) days after Franchisor notifies Franchisee that Franchisor does not intend to exercise its right of first refusal, or if there is a material change in the terms of the sale (which Franchisee agrees to tell Franchisor promptly), Franchisor will have an additional right of first refusal during the thirty (30)-day period following either the expiration of the sixty (60)-day period or Franchisor's receipt of notice of the material change(s) in the sale's terms, either on the terms originally offered or the modified terms, at Franchisor's option. Franchisor has the unrestricted right to assign this right of first refusal to a third party (including an affiliate), who then will have the rights described in this Section 13.G.

#### **14. EXPIRATION OF THIS AGREEMENT**

When this Agreement expires (unless it is terminated sooner), Franchisee will have the right to acquire a successor franchise and continue operating the Restaurant as a Freshii Restaurant for a ten (10)-year term under Franchisor's then current form of agreement, but only if Franchisee has:

- (a) given Franchisor written notice of Franchisee's election to acquire a successor franchise at least ninety (90) days, but not more than one hundred eighty (180) days, before the end of the term of this Agreement,
- (b) complied with all of its obligations under this Agreement and all other agreements with Franchisor or its affiliate throughout their terms, and
- (c) at Franchisee's option, either (i) remodeled and upgraded the Restaurant and otherwise brought the Restaurant into full compliance with the specifications and standards then applicable for new Freshii Restaurants before this Agreement expires, or (ii) agreed to relocate the Restaurant to a substitute site that Franchisor has approved and construct and develop a new Freshii Restaurant at that site.

To acquire a successor franchise, Franchisee and its Owners agree to:

- (i) sign Franchisor's then current form of franchise agreement (and related documents), which may contain terms and conditions (including the fees and the rights in, and geographic area comprising, the Territory) that differ materially from any or all of those in this Agreement, modified to reflect the fact it is for a successor franchise, except that such franchise agreement will not grant any rights to a renewal or successor franchise;
- (ii) pay Franchisor the standard initial franchise fee that Franchisor then charges under such franchise agreement; and

(iii) sign a general release in the form that Franchisor specifies as to any and all claims against Franchisor, its affiliates and their respective owners, officers, directors, employees, agents, representatives, successors and assigns.

If Franchisee fails to sign and return to Franchisor the documents referenced in (i) and (iii) above, and pay the initial franchise fee referenced in (ii) above, within thirty (30) days after Franchisor delivers those documents to Franchisee, that will be deemed Franchisee's election not to acquire a successor franchise. If Franchisee (and each of its Owners) are not, both on the date Franchisee gives Franchisor written notice of Franchisee's election to acquire a successor franchise and on the date on which this Agreement expires, in full compliance with this Agreement and all other agreements with Franchisor or its affiliate, Franchisee acknowledges that Franchisor need not grant Franchisee a successor franchise, whether or not Franchisor had, or chose to exercise, the right to terminate this Agreement during its term under Section 15.

## **15. TERMINATION OF AGREEMENT**

### **15.A. TERMINATION BY FRANCHISEE**

If Franchisee and its Owners are fully complying with this Agreement, and Franchisor materially fails to comply with this Agreement and does not, within thirty (30) days after Franchisee delivers written notice of the failure to Franchisor, either correct the failure or, if Franchisor cannot reasonably correct the failure within thirty (30) days, give Franchisee reasonable evidence of Franchisor's effort to correct the failure within a reasonable time, then Franchisee may terminate this Agreement effective an additional thirty (30) days after Franchisee delivers to Franchisor written notice of termination. Franchisee's termination of this Agreement other than according to this Section 15.A will be deemed a termination without cause and a breach of this Agreement.

### **15.B. TERMINATION BY FRANCHISOR**

Without limiting Franchisor's termination and other rights and remedies under any other agreement with Franchisee or its affiliates, Franchisor may terminate this Agreement, effective upon delivery of written notice of termination to Franchisee, if:

- (1) Franchisee or any of its Owners has made or makes a material misrepresentation or omission in acquiring the rights under this Agreement or operating the Restaurant;
- (2) the General Manager or any other Restaurant personnel that Franchisor required to attend any portion of Franchisor's initial training programs does not satisfactorily complete that training;
- (3) Franchisee fails to open and begin continuously operating the Restaurant on or before the date specified in Section 2.F;
- (4) Franchisee abandons or fails actively to operate the Restaurant for three (3) or more consecutive calendar days, unless Franchisee closes the Restaurant for a purpose that Franchisor approves or because of casualty;
- (5) Franchisee surrenders or transfers control of the operation of the Restaurant or loses the right to occupy the Restaurant without Franchisor's prior written consent;

(6) Franchisee or any of its Owners is convicted by a trial court of, or pleads no contest to, a felony;

(7) Franchisee fails to maintain the insurance Franchisor requires from time to time, and/or Franchisee fails to provide Franchisor with proof of such insurance as this Agreement requires, and does not correct the failure within ten (10) days after Franchisor delivers written notice of that failure to Franchisee;

(8) Franchisee interferes with Franchisor's right to inspect the Restaurant or observe or videotape its operation, as provided in Section 9;

(9) Franchisee or any of its Owners engages in any dishonest, unethical or illegal conduct which, in Franchisor's reasonable opinion, adversely affects or might adversely affect the reputation of the Restaurant, the reputation of other Freshii Restaurants or the goodwill associated with the Marks;

(10) Franchisee or any of its Owners makes or attempts to make a transfer in violation of this Agreement;

(11) any other franchise agreement or other agreement between Franchisor (or any of its affiliates) and Franchisee (or any of its Owners or affiliates), is terminated before its term expires, regardless of the reason;

(12) Franchisee or any of its Owners breaches Section 12 of this Agreement or knowingly makes any unauthorized use or disclosure of any part of the Operations Manual or any other Confidential Information;

(13) Franchisee violates any health, safety or sanitation law, ordinance or regulation, or operates the Restaurant in an unsafe manner, and does not begin to cure the violation immediately, and correct the violation within forty-eight (48) hours, after Franchisee receives notice;

(14) Franchisee fails to pay when due any federal, state or local income, service, sales or other taxes due on the operation of the Restaurant, or repeatedly fails to make or delays making payments to its suppliers or lenders, unless Franchisee is in good faith contesting its liability for these taxes or payments;

(15) Franchisee understates Gross Sales two (2) or more times during the term of this Agreement or by more than two percent (2%) on any one occasion;

(16) Franchisee or any of its Owners fails on three (3) or more separate occasions within any twelve (12) consecutive month period to pay when due any amounts due to Franchisor (or its affiliate) or otherwise comply with any one or more obligations under this Agreement, whether or not any of these failures are corrected after Franchisor delivers written notice to Franchisee and whether these failures involve the same or different obligations under this Agreement;

(17) Franchisee or any of its Owners fails on two (2) or more separate occasions within any six (6) consecutive month period, or on three (3) or more separate occasions within any thirty-six (36) consecutive month period, to comply with the same obligation under this

Agreement, whether or not any of these failures are corrected after Franchisor delivers written notice to Franchisee;

(18) Franchisee makes an assignment for the benefit of creditors or admits in writing its insolvency or inability to pay its debts generally as they become due; Franchisee consents to the appointment of a receiver, trustee or liquidator of all or the substantial part of its property; the Restaurant or any of the Operating Assets is attached, seized, subjected to a writ or distress warrant, or levied upon, unless the attachment, seizure, writ, warrant or levy is vacated within thirty (30) days; or any order appointing a receiver, trustee or liquidator of Franchisee or the Restaurant is not vacated within thirty (30) days following the order's entry;

(19) Franchisee fails to pay Franchisor (or its affiliate) any amounts due, whether under this Agreement or any other agreement or arrangement, and does not correct the failure within ten (10) days after Franchisor delivers written notice of that failure to Franchisee; or

(20) Franchisee fails to comply with any other provision of this Agreement or the Operations Manual, or any mandatory System Standard, and does not correct the failure within thirty (30) days after Franchisor delivers written notice of the failure to Franchisee.

### **15.C. ASSUMPTION OF MANAGEMENT**

Franchisor has the right (but not the obligation), under the circumstances described below and upon delivery of written notice to Franchisee, to enter the Restaurant's premises and assume the management of the Restaurant itself or appoint a third party (who may be an affiliate of Franchisor) to manage the Restaurant. All funds from the operation of the Restaurant while Franchisor or its appointee assumes its management will be kept in a separate account, and all of the expenses of the Restaurant will be charged to that account. Franchisor or its appointee may charge Franchisee (in addition to the Royalty and other amounts due under this Agreement) a management fee equal to ten percent (10%) of the Restaurant's Gross Sales during the period of management, plus any direct out-of-pocket costs and expenses, if Franchisor or its appointee assumes the management of the Restaurant under this Section 15.C. Franchisor or its appointee has a duty to utilize only reasonable efforts and will not be liable to Franchisee for any debts, losses or obligations the Restaurant incurs, or to any of Franchisee's creditors for any products or services the Restaurant purchases, while managing it. Franchisee shall not take any action or fail to take any action that interferes with Franchisor's or its appointee's exclusive right to manage the Restaurant.

Franchisor or its appointee may assume the Restaurant's management pursuant to this Section 15.C if: (1) the Restaurant is not being managed by an approved and trained General Manager; (2) Franchisee abandons or fails actively to operate the Restaurant for any period; (3) Franchisee fails to comply with any provision of this Agreement or any System Standard and does not correct the failure within the time period, if any, that Franchisor specifies in its notice to Franchisee (which might be less than the cure period specified for such failure in Section 15.B); (4) this Agreement expires or is terminated and Franchisor is deciding whether to exercise the option under Section 16.E; or (5) Franchisor (or its designee) has exercised the option under Section 16.E and the parties are awaiting the closing of that purchase. Franchisor's (or its appointee's) management of the Restaurant shall continue until Franchisor's delivery of written notice to Franchisee. Franchisor's exercise of its rights under this Section 15.C will not affect its right to terminate this Agreement under Section 15.B.

## 16. RIGHTS AND OBLIGATIONS UPON TERMINATION OR EXPIRATION OF THIS AGREEMENT

### 16.A. PAYMENT OF AMOUNTS OWED

Franchisee agrees to pay within fifteen (15) days after this Agreement expires or is terminated, average monthly Royalties, Marketing Fund contributions and interest and all other amounts owed to Franchisor or its affiliates which then are unpaid, including Franchisor's damages arising from the termination of this Agreement. In addition, if we terminate your Franchise Agreement for cause, you must pay us within 15 days after the effective date of termination, liquidated damages, equal to the average monthly Royalty Fees you paid or owed to us during the ~~twelve (12)~~ months of operation preceding the effective date of termination multiplied by (a) twenty-four (24) (being the number of months in two (2) full years), or (b) the number of months remaining in the Agreement had it not been terminated, whichever is higher-

### 16.B. DE-IDENTIFICATION

When this Agreement expires or is terminated for any reason, and except with respect to franchise agreements with Franchisor then in effect:

(1) beginning on the De-identification Date (defined below), Franchisee and its Owners shall not directly or indirectly at any time thereafter or in any manner: (a) identify themselves or any business as a current or former Freshii Restaurant or as one of Franchisor's current or former franchisees; (b) use any Mark, any colorable imitation of a Mark, any trademark, service mark or commercial symbol that is confusingly similar to any Mark, or any other indicia of a Freshii Restaurant in any manner or for any purpose; or (c) use for any purpose any trade dress, trade name, trademark, service mark or other commercial symbol that indicates or suggests a connection or association with Franchisor;

(2) Franchisee agrees promptly to take the action required to cancel all fictitious or assumed name or equivalent registrations relating to its use of any Mark;

(3) if Franchisor does not exercise the option under Section 16.E below, within three (3) days after the De-identification Date, Franchisee agrees to deliver to Franchisor all signs, sign faces, sign cabinets, advertising, marketing and promotional materials, forms, menus, paper goods, and other materials containing any Mark or otherwise identifying or relating to a Freshii Restaurant that Franchisor requests and allow Franchisor, without liability to Franchisee or third parties, to remove these items from the Restaurant;

(4) if Franchisor does not exercise the option under Section 16.E below, within three (3) days after the De-identification Date, Franchisee agrees, at its own expense, to make the alterations that Franchisor specifies to distinguish the Restaurant clearly from its former appearance and from other Freshii Restaurants in order to prevent public confusion; and

(5) Franchisee agrees to give Franchisor from time to time upon request evidence satisfactory to Franchisor of Franchisee's compliance with these obligations.

The "**De-identification Date**" means: (i) if Franchisor exercises the option under Section 16.F, the closing date of Franchisor's (or its designee's) purchase of the Restaurant's assets; or (ii) if Franchisor does not exercise the option under Section 16.E, the date upon which that option expires or the date upon

which Franchisor provides Franchisee written notice of its decision not to exercise, or to withdraw its previous exercise, of that option, whichever occurs first.

#### **16.C. CONFIDENTIAL INFORMATION**

When this Agreement expires or is terminated, beginning on the De-identification Date, Franchisee (and its owners) agrees to immediately cease using any Confidential Information in any business or otherwise and return to Franchisor all copies of the Operations Manual and any other confidential materials that Franchisor has loaned Franchisee. Franchisee may not sell, trade or otherwise profit in any way from any Confidential Information (including Customer Data) at any time following the expiration or termination of this Agreement.

#### **16.D. COVENANT NOT TO COMPETE**

Upon Franchisor's termination of this Agreement for any reason, Franchisee's termination of this Agreement other than pursuant to Section 15.A, or expiration of this Agreement (without the grant of a successor franchise), Franchisee and its Owners agree that, for two (2) years beginning on the effective date of termination or expiration or the date on which all persons restricted by this Section 16.D begin to comply fully with this Section 16.D, whichever is later, and except in connection with other Freshii Restaurants operating under effective franchise agreements with Franchisor, neither Franchisee nor any of its Owners, nor any member of their Immediate Families, will:

(1) have any direct or indirect, controlling or non-controlling interest as an owner – whether of record, beneficial or otherwise – in any Competitive Business which is located or operating:

(a) within the Territory (including at the Restaurant's site), or

(b) within three (3) miles of any other Freshii Restaurant in operation or under construction on the effective date of the termination or expiration,

provided that this restriction will not prohibit the ownership of shares of a class of securities which are publicly traded on a United States stock exchange representing less than three percent (3%) of the number of shares of that class of securities issued and outstanding; or

(2) perform services as a director, officer, manager, employee, consultant, representative or agent for a Competitive Business which is located or operating:

(a) within the Territory (including at the Restaurant's site), or

(b) within three (3) miles of any other Freshii Restaurant in operation or under construction on the effective date of the termination or expiration.

These restrictions also apply after transfers and other events, as provided in Section 13 above. Franchisee (and each of its Owners) expressly acknowledges that it (and they) possess skills and abilities of a general nature and have other opportunities for exploiting these skills. Consequently, Franchisor's enforcing the covenants made in this Section 13.D will not deprive them of personal goodwill or the ability to earn a living.

## **16.E. OPTION TO PURCHASE OPERATING ASSETS**

### **(1) Exercise of Option**

Upon Franchisor's termination of this Agreement for any reason, Franchisee's termination of this Agreement other than pursuant to Section 15.A, or expiration of this Agreement (without the grant of a successor franchise), Franchisor has the option, exercisable by giving Franchisee written notice within fifteen (15) days after the date of termination or expiration, to purchase those Operating Assets and other assets associated with the operation of the Restaurant that Franchisor designates (the "**Purchased Assets**"). Franchisor has the unrestricted right to exclude any assets it specifies from the Purchased Assets and not acquire them. Franchisor also has the unrestricted right to assign this option to purchase to a third party (including an affiliate), who will then have the rights and obligations described in this Section 16.E.

Franchisor is entitled to all customary representations, warranties and indemnities in its asset purchase, including representations and warranties as to ownership and condition of, and title to, assets, liens and encumbrances on assets, validity of contracts and agreements, and the liabilities affecting the assets, contingent or otherwise, and indemnities for all actions, events and conditions that existed or occurred in connection with the Restaurant prior to the closing of its purchase. If Franchisee or one of its affiliates owns the site upon which the Restaurant is located, Franchisor may elect to include a fee simple interest in that site as part of the assets purchased or, at Franchisor's option, lease that site from Franchisee or such affiliate for an initial five (5)-year term with one (1) renewal term of five (5) years (at Franchisor's option) on commercially reasonable terms. If Franchisee leases the Restaurant's site from an unaffiliated lessor, Franchisee agrees (at Franchisor's option) to assign the Lease to Franchisor or to enter into a sublease for the remainder of the Lease term on the same terms (including renewal options) as the Lease.

### **(2) Purchase Price**

The purchase price for the Purchased Assets will be their fair market value. However, the purchase price will not include any value for any rights granted by this Agreement, goodwill attributable to the Marks or the Franchise System, Franchisor's brand image and other intellectual property or participation in the network of Freshii Restaurants. If Franchisor and Franchisee cannot agree on the purchase price within fifteen (15) days after Franchisor's delivery of notice exercising this option, then Franchisor will designate one (1) independent appraiser to determine the purchase price. Franchisor and Franchisee will share equally the appraiser's fees and expenses. Within ten (10) days after Franchisor designates the appraiser, Franchisor and Franchisee each must submit to the appraiser its respective calculations of the purchase price, prepared in accordance with the terms and conditions of this Subsection E and with such detail and supporting information as the appraiser requires. Within twenty (20) days after the deadline for submitting such purchase price calculations, the appraiser must decide whether Franchisor's proposed purchase price or Franchisee's proposed purchase price most accurately reflects the fair market value of the Purchased Assets, determined in accordance with this Subsection E. The appraiser has no authority to compromise between the two proposed purchase prices, but instead is authorized to choose only one or the other. The appraiser's choice shall be the purchase price and shall be final and binding on Franchisor and Franchisee.

### **(3) Closing**

Franchisor will pay the purchase price at the closing, which will take place not later than thirty (30) days after the purchase price is determined, although Franchisor may decide after the purchase price is determined not to complete the purchase without any liability to Franchisee. Franchisor may set off

against the purchase price, and reduce the purchase price by, any and all amounts that Franchisee owes Franchisor (or its affiliates). At the closing, Franchisee agrees to deliver instruments transferring to Franchisor: (a) good and merchantable title to the assets purchased, free and clear of all liens and encumbrances (other than liens and security interests acceptable to Franchisor), with all sales and transfer taxes paid by Franchisee; and (b) all of the Restaurant's licenses and permits which may be assigned or transferred.

If Franchisee cannot deliver clear title to all of the purchased assets, or if there are other unresolved issues, the sale will be closed through an escrow. Franchisee further agrees to sign general releases, in a form satisfactory to Franchisor, of any and all claims against Franchisor and its affiliates and their respective owners, officers, directors, employees, agents, representatives, successors and assigns. If Franchisor exercises its rights under this Subsection F, then for two (2) years beginning on the closing date, Franchisee and its Owners (and members of their Immediate Families) will be bound by the non-competition covenants contained in Section 16.D.

#### **16.F. CONTINUING OBLIGATIONS**

All of Franchisor's and Franchisee's (and its Owners') obligations hereunder which expressly or by their nature survive the expiration or termination of this Agreement will continue in full force and effect subsequent to and notwithstanding its expiration or termination and until these obligations are satisfied in full or by their nature expire.

### **17. RELATIONSHIP OF THE PARTIES/INDEMNIFICATION**

#### **17.A. INDEPENDENT CONTRACTORS**

This Agreement does not create a fiduciary relationship between Franchisee and Franchisor. Franchisee has no authority, express or implied, to act as an agent of Franchisor or any of its affiliates for any purpose. Franchisee is, and shall remain, an independent contractor responsible for all obligations and liabilities of, and for all loss or damage to, the Restaurant and its assets, including any personal property, Operating Assets or real property and for all claims or demands based on damage to or destruction of property or based on injury, illness or death of any person or persons, directly or indirectly, resulting from the operation of the Restaurant. Further, Franchisor and Franchisee are not and do not intend to be partners, joint venturers, associates, or joint employers in any way, and Franchisor shall not be construed to be jointly liable for any of Franchisee's acts or omissions under any circumstances. Franchisor has no relationship with Franchisee's employees and Franchisee has no relationship with Franchisor's employees. Franchisee agrees to identify itself conspicuously in all dealings with customers, suppliers, public officials, Restaurant personnel and others as the owner of the Restaurant under a franchise that Franchisor has granted and to place notices of independent ownership at the Restaurant and on the forms, business cards, stationery, advertising and other materials that Franchisor requires from time to time.

#### **17.B. NO LIABILITY FOR ACTS OF OTHER PARTY**

Franchisor and Franchisee agree not to make any express or implied agreements, warranties, guarantees or representations, or incur any debt, in the name or on behalf of the other or represent that their relationship is other than franchisor and franchisee. Franchisor will not be obligated for any damages to any person or property directly or indirectly arising out of the operation of the Restaurant or the business Franchisee conducts under this Agreement.

## **17.C. TAXES**

Franchisor will have no liability for any sales, use, service, occupation, excise, gross receipts, income, property or other taxes, whether levied upon Franchisee or the Restaurant, due to the business Franchisee conducts (except any taxes Franchisor is required by law to collect from Franchisee for purchases from Franchisor and Franchisor's income taxes). Franchisee is responsible for paying such taxes.

## **17.D. INDEMNIFICATION**

To the fullest extent permitted by law, Franchisee agrees to indemnify, defend and hold harmless Franchisor, its affiliates and their respective owners, directors, officers, employees, agents, representatives, successors and assigns (the "**Indemnified Parties**") from and against, and to reimburse any one or more of the Indemnified Parties for, any and all claims, losses, obligations and damages directly or indirectly arising out of or relating to: (1) the operation of the Restaurant, (2) the business Franchisee conducts under this Agreement, (3) Franchisee's breach of this Agreement or any other agreement with Franchisor or its affiliate, or (4) noncompliance or alleged noncompliance with any law, ordinance, rule or regulation concerning the construction, design or operation of the Restaurant (including the ADA and other laws regarding public accommodations for persons with disabilities), including those claims, obligations and damages alleged to be caused by an Indemnified Party's negligence or willful misconduct, except as specifically set forth below in this Section 17.D.

For purposes of this indemnification, "**claims**" include all losses, expenses, obligations, and damages (actual, consequential, punitive or otherwise) and costs that an Indemnified Party reasonably incurs in defending any claim against it, including reasonable accountants', arbitrators', attorneys' and expert witness fees, costs of investigation and proof of facts, court costs, travel and living expenses, and other expenses of litigation, arbitration or alternative dispute resolution, regardless of whether litigation, arbitration or alternative dispute resolution is commenced. Each Indemnified Party may defend and control the defense of any claim against it which is subject to this indemnification at Franchisee's expense, and Franchisee may not settle any claim or take any other remedial, corrective or similar actions relating to any claim without the consent of the Indemnified Party. The provisions of this Section 17.D will continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement. An Indemnified Party need not seek recovery from an insurer or other third party, or otherwise mitigate its losses and expenses, in order to maintain and recover fully a claim against Franchisee. Franchisee agrees that a failure to pursue a recovery or mitigate a loss will not reduce or alter the amounts that an Indemnified Party may recover from Franchisee.

Notwithstanding the foregoing, Franchisee has no obligation to indemnify under this Section 17.D if a court of competent jurisdiction makes a final decision not subject to further appeal that Franchisor, its affiliate, or any of their respective employees directly engaged in willful misconduct or intentionally caused the property damage or bodily injury that is the subject of the claim, so long as the claim is not asserted on the basis of theories of vicarious liability (including agency, apparent agency, or employment) or Franchisor's failure to compel Franchisee to comply with this Agreement, which are claims for which Franchisor is entitled to indemnification under this Section 17.D.

## **18. ENFORCEMENT**

### **18.A. SEVERABILITY AND SUBSTITUTION OF VALID PROVISIONS**

Except as expressly provided to the contrary in Section 18.F or otherwise in this Agreement, each Section, Subsection, paragraph, term and provision of this Agreement is severable, and if, for any reason,

any part is held to be invalid or contrary to or in conflict with any applicable present or future law or regulation in a final, unappealable ruling issued by any court, arbitrator, agency or tribunal with competent jurisdiction, that ruling will not impair the operation of, or otherwise affect, any other portions of this Agreement, which will continue to have full force and effect and bind the parties. If any covenant which restricts competitive activity is deemed unenforceable by virtue of its scope in terms of area, business activity prohibited, and/or length of time, but would be enforceable if modified, Franchisee and Franchisor agree that the covenant will be enforced to the fullest extent permissible under the laws and public policies applied in the jurisdiction whose law determines the covenant's validity. If any applicable and binding law or rule of any jurisdiction requires more notice than this Agreement requires of the termination of this Agreement or of Franchisor's refusal to enter into a successor franchise agreement, or if, under any applicable and binding law or rule of any jurisdiction, any provision of this Agreement or any System Standard is invalid, unenforceable or unlawful, the notice and/or other action required by the law or rule will be substituted for the comparable provisions of this Agreement, and Franchisor may modify the invalid or unenforceable provision or System Standard to the extent required to be valid and enforceable or delete the unlawful provision in its entirety. Franchisee agrees to be bound by any promise or covenant imposing the maximum duty the law permits which is subsumed within any provision of this Agreement, as though it were separately articulated in and made a part of this Agreement.

#### **18.B. WAIVER OF OBLIGATIONS AND FORCE MAJEURE**

Franchisor and Franchisee may by written instrument unilaterally waive or reduce any obligation of or restriction upon the other under this Agreement, effective upon delivery of written notice to the other or another effective date stated in the notice of waiver. However, no interpretation, change, termination or waiver of any provision of this Agreement shall be binding upon Franchisor unless in writing and signed by one of its officers, and which is specifically identified as an amendment to this Agreement. No modification, waiver, termination, discharge or cancellation of this Agreement shall affect the right of any party hereto to enforce any claim or right hereunder, whether or not liquidated, which occurred prior to the date of such modification, waiver, termination, discharge or cancellation. Any waiver Franchisor grants will be without prejudice to any other rights it has, will be subject to its continuing review, and may be revoked at any time and for any reason, effective upon delivery to Franchisee of ten (10) days' prior written notice.

Franchisor and Franchisee will not be deemed to waive or impair any right, power or option this Agreement reserves (including Franchisor's right to demand exact compliance with every term, condition and covenant or to declare any breach to be a default and to terminate this Agreement before its term expires) because of any custom or practice at variance with the terms of this Agreement; Franchisor's or Franchisee's failure, refusal or neglect to exercise any right under this Agreement or to insist upon the other's compliance with this Agreement, including Franchisee's compliance with any System Standard; Franchisor's waiver of or failure to exercise any right, power or option, whether of the same, similar or different nature, with other Freshii Restaurants; the existence of franchise agreements for other Freshii Restaurants which contain provisions different from those contained in this Agreement; or Franchisor's acceptance of any payments due from Franchisee after any breach of this Agreement. No special or restrictive legend or endorsement on any check or similar item given to Franchisor will be a waiver, compromise, settlement or accord and satisfaction. Franchisor is authorized to remove any legend or endorsement, and it shall have no effect.

Neither Franchisor nor Franchisee will be liable for loss or damage or be in breach of this Agreement if its failure to perform its obligations results from: (1) acts of God; (2) fires, strikes, embargoes, war, acts of terrorism or similar events, or riot; or (3) any other similar event or cause. Any delay resulting from any of these causes will extend performance accordingly or excuse performance, in whole or in part, as may be reasonable, except that these causes will not excuse payments of amounts

owed at the time of the occurrence or payment of Royalties, Marketing Fund contributions and other amounts due afterward.

#### **18.C. COSTS AND ATTORNEYS' FEES**

If either Franchisor or Franchisee seeks to enforce this Agreement in an arbitration, judicial or other proceeding, the prevailing party shall be entitled to recover its reasonable costs and expenses (including attorneys' fees, arbitrators' fees and expert witness fees, costs of investigation and proof of facts, court costs, other arbitration or litigation expenses and travel and living expenses) incurred in connection with such arbitration, judicial or other proceeding.

#### **18.D. FRANCHISEE MAY NOT WITHHOLD PAYMENTS**

Franchisee agrees that Franchisee will not withhold payment of any amounts owed to Franchisor or its affiliates on the grounds of Franchisor's or their alleged nonperformance of any of its or their obligations under this Agreement or any other agreement.

#### **18.E. RIGHTS OF PARTIES ARE CUMULATIVE**

Franchisor's and Franchisee's rights under this Agreement are cumulative, and their exercise or enforcement of any right or remedy under this Agreement will not preclude their exercise or enforcement of any other right or remedy under this Agreement which they are entitled by law to enforce.

#### **18.F. ARBITRATION**

All controversies, disputes or claims between Franchisor (and its affiliates and their respective owners, officers, directors, agents and employees, as applicable) and Franchisee (and its affiliates and their respective owners, officers, and directors, as applicable) arising out of or related to:

- (1) this Agreement or any other agreement between Franchisee (or its Owners) and Franchisor (or its affiliates) or any provision of any of such agreements;
- (2) Franchisor's relationship with Franchisee;
- (3) the scope or validity of this Agreement or any other agreement between Franchisee (or its Owners) and Franchisor (or its affiliates) or any provision of any of such agreements (including the validity and scope of the arbitration obligation under this Section, which Franchisor and Franchisee acknowledge is to be determined by an arbitrator, not a court); or
- (4) any System Standard

will be submitted for arbitration to the American Arbitration Association. Except as otherwise provided in this Agreement, such arbitration proceedings shall be heard by one (1) arbitrator in accordance with the then existing Commercial Arbitration Rules of the American Arbitration Association. Arbitration proceedings shall be held at a suitable location to be chosen by the arbitrator within ten (10) miles of Franchisor's then existing principal business address. All matters within the scope of the Federal Arbitration Act (9 U.S.C. Sections 1 et seq.) will be governed by it and not by any state arbitration law.

The arbitrator shall have the right to award any relief which he or she deems proper in the circumstances, including money damages (with interest on unpaid amounts from the date due), specific

performance, injunctive relief and attorneys' fees and costs in accordance with Section 18.C above, provided that: (a) the arbitrator shall not have authority to declare any Mark generic or otherwise invalid; and (b) subject to the exceptions in Section 18.I, Franchisor and Franchisee waive to the fullest extent permitted by law any right to or claim for any punitive, exemplary, and treble and other forms of multiple damages against the other. The award and decision of the arbitrator shall be conclusive and binding upon all parties hereto and judgment upon the award may be entered in any court of competent jurisdiction.

Franchisor and Franchisee agree to be bound by the provisions of any limitation on the period of time by which claims must be brought under this Agreement or applicable law, whichever expires first. Franchisor and Franchisee further agree that, in connection with any such arbitration proceeding, each shall submit or file any claim which would constitute a compulsory counterclaim (as defined by the then current Rule 13 of the Federal Rules of Civil Procedure) within the same proceeding as the claim to which it relates. Any such claim which is not submitted or filed in such proceeding shall be barred. The arbitrator may not consider any settlement discussions or offers that might have been made by either Franchisee or Franchisor.

Franchisor and Franchisee agree that arbitration shall be conducted on an individual, not a class-wide, basis, that only Franchisor (and its affiliates and their respective owners, officers, directors, agents and employees, as applicable) and Franchisee (and its affiliates and their respective owners, officers and directors, as applicable) may be the parties to any arbitration proceeding described in this Section, and that no such arbitration proceeding shall be consolidated with any other arbitration proceeding involving Franchisor and/or any other person. Notwithstanding the foregoing or anything to the contrary in this Section or Section 18.A, if any court or arbitrator determines that all or any part of the preceding sentence is unenforceable with respect to a dispute that otherwise would be subject to arbitration under this Section 18.F, then Franchisor and Franchisee agree that this arbitration clause shall not apply to that dispute and that such dispute shall be resolved in a judicial proceeding in accordance with this Section 18 (excluding this Section 18.F).

The provisions of this Section are intended to benefit and bind certain third party non-signatories and will continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement.

Notwithstanding anything to the contrary contained in this Section 18.F, Franchisor and Franchisee have the right in a proper case to obtain temporary restraining orders and temporary or preliminary injunctive relief from a court of competent jurisdiction. In that case, Franchisor and Franchisee agrees to contemporaneously submit Franchisor's dispute for arbitration on the merits according to this Section 18.F. Furthermore, nothing in this Section 18.F shall limit either party's right to deliver a notice of default under, and terminate, this Agreement in accordance with Section 15.

#### **18.G. GOVERNING LAW**

Except to the extent governed by the Federal Arbitration Act, the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. Sections 1051 et seq.) or other federal law, all controversies, disputes or claims arising from or relating to:

- (1) this Agreement or any other agreement between Franchisee (or its Owners) and Franchisor (or its affiliates);
- (2) Franchisor's relationship with Franchisee;

(3) the validity of this Agreement or any other agreement between Franchisee (or its Owners) and Franchisor (or its affiliates); or

(4) any System Standard

will be governed by the laws of the State of Illinois, without regard to its conflict of laws rules, except that any law regulating the offer or sale of franchises, business opportunities or similar interests, or governing the relationship between a franchisor and a franchisee or any similar relationship, will not apply unless its jurisdictional requirements are met independently without reference to this Section 18.G.

#### **18.H. CONSENT TO JURISDICTION**

Subject to the arbitration obligations in Section 18.F, Franchisee and its Owners agree that all judicial actions brought by Franchisor against Franchisee or its Owners, or by Franchisee or its Owners against Franchisor, its affiliates or their respective owners, officers, directors, agents, or employees, must be brought exclusively in the state or federal court of general jurisdiction in the state, and in (or closest to) the city, where Franchisor then maintains its principal business address. Franchisee and each of its Owners irrevocably submit to the jurisdiction of such courts and waive any objection that any of them may have to either jurisdiction or venue. Notwithstanding the foregoing, Franchisor may bring an action for a temporary restraining order or for temporary or preliminary injunctive relief, or to enforce an arbitration award, in any federal or state court in the state in which Franchisee resides or the Restaurant is located.

#### **18.I. WAIVER OF PUNITIVE DAMAGES**

EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS UNDER SECTION 17.D AND CLAIMS BASED ON UNAUTHORIZED USE OF THE MARKS OR UNAUTHORIZED USE OR DISCLOSURE OF ANY CONFIDENTIAL INFORMATION, FRANCHISOR AND FRANCHISEE (AND ITS OWNERS) WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT TO OR CLAIM FOR ANY PUNITIVE, EXEMPLARY, AND TREBLE AND OTHER FORMS OF MULTIPLE DAMAGES AGAINST THE OTHER AND AGREE THAT, IN THE EVENT OF A DISPUTE BETWEEN FRANCHISOR AND FRANCHISEE (AND/OR ITS OWNERS), THE PARTY MAKING A CLAIM WILL BE LIMITED TO EQUITABLE RELIEF AND TO RECOVERY OF ANY ACTUAL DAMAGES IT SUSTAINS.

#### **18.J. WAIVER OF JURY TRIAL**

FRANCHISOR AND FRANCHISEE (AND ITS OWNERS) IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM, WHETHER AT LAW OR IN EQUITY, BROUGHT BY EITHER OF THEM.

#### **18.K. BINDING EFFECT**

This Agreement is binding upon Franchisor and Franchisee and their respective executors, administrators, heirs, beneficiaries, permitted assigns and successors in interest. Subject to Franchisor's rights to modify the Operations Manual and the System Standards, this Agreement may not be modified except by a written agreement signed by both Franchisee and Franchisor.

## 18.L. LIMITATIONS OF CLAIMS

EXCEPT FOR CLAIMS ARISING FROM FRANCHISEE'S NON-PAYMENT OR UNDERPAYMENT OF AMOUNTS THAT FRANCHISEE OWES FRANCHISOR, ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE RELATIONSHIP BETWEEN FRANCHISOR AND FRANCHISEE WILL BE BARRED UNLESS AN ARBITRATION OR JUDICIAL PROCEEDING IS COMMENCED IN THE APPROPRIATE FORUM WITHIN EIGHTEEN (18) MONTHS FROM THE DATE ON WHICH THE PARTY ASSERTING THE CLAIM KNEW OR SHOULD HAVE KNOWN OF THE FACTS GIVING RISE TO THE CLAIM.

## 18.M. CONSTRUCTION

The preambles and exhibits are a part of this Agreement, which, together with any riders or addenda signed at the same time as this Agreement, constitutes Franchisor's and Franchisee's entire agreement and supersedes all prior and contemporaneous oral or written agreements and understandings between Franchisor and Franchisee relating to the subject matter of this Agreement. There are no other oral or written representations, warranties, understandings or agreements between Franchisor and Franchisee relating to the subject matter of this Agreement. Notwithstanding the foregoing, nothing in this Agreement shall disclaim or require Franchisee to waive reliance on any representation that Franchisor made in the most recent disclosure document (including its exhibits and amendments) that Franchisor delivered to Franchisee or its representative. Any policies that Franchisor adopts and implements from time to time to guide it in its decision-making are subject to change, are not a part of this Agreement and are not binding on Franchisor. Except as provided in Sections 17.D and 18.F, nothing in this Agreement is intended nor deemed to confer any rights or remedies upon any person or legal entity not a party to this Agreement.

The headings of the sections and paragraphs are for convenience only and do not define, limit or construe the contents of these sections or paragraphs.

References in this Agreement to "**Franchisor**" with respect to all of its rights and all of Franchisee's obligations to Franchisor under this Agreement include any of Franchisor's affiliates with whom Franchisee deals in connection with the Restaurant. The term "**affiliate**" means any person or entity directly or indirectly owned or controlled by, under common control with, or owning or controlling the party indicated. "**Control**" means the power to direct or cause the direction of management and policies.

The term "**person**" means any natural person, corporation, limited liability company, general or limited partnership, unincorporated association, cooperative or other legal or functional entity. Unless otherwise specified, all references to a number of days shall mean calendar days and not business days. The term "**Restaurant**" includes all of the assets of the Freshii Restaurant that Franchisee operates under this Agreement, including its revenue and income and the Lease. The words "**include**," "**including**," and words of similar import shall be interpreted to mean "including, but not limited to" and the terms following such words shall be interpreted as examples of, and not an exhaustive list of, the appropriate subject matter. This Agreement may be executed in multiple copies, each of which will be deemed an original.

## 18.N. THE EXERCISE OF FRANCHISOR'S JUDGMENT

Franchisor has the right to operate, develop and change the Franchise System in any manner that is not specifically prohibited by this Agreement. Whenever Franchisor has reserved in this Agreement a right to take or to withhold an action, or to grant or decline to grant Franchisee a right to take or omit an

action, Franchisor may, except as otherwise specifically provided in this Agreement, make its decision or exercise its rights based on information readily available to Franchisor and its judgment of what is in the best interests of Franchisor, the Freshii Restaurant network generally, or the Franchise System at the time Franchisor's decision is made, without regard to whether it could have made other reasonable or even arguably preferable alternative decisions or whether Franchisor's decision promotes its or its affiliates' financial or other individual interest. Except where this Agreement expressly obligates Franchisor reasonably to approve or not unreasonably to withhold its approval of any of Franchisee's actions or requests, Franchisor has the absolute right to refuse any request Franchisee makes or to withhold Franchisor's approval of any of Franchisee's proposed, initiated or completed actions that require Franchisor's approval.

## **19. NOTICES AND PAYMENTS**

All written notices, reports and payments permitted or required to be delivered by the provisions of this Agreement or the Operations Manual will be deemed so delivered:

- (1) one (1) business day after transmission by telecopy, facsimile or other electronic system if the sender has confirmation of successful transmission;
- (2) one (1) business day after being placed in the hands of a commercial courier service for next business day delivery; or
- (3) three (3) business days after placement in the United States Mail by Registered or Certified Mail, Return Receipt Requested, postage prepaid;

and must be addressed to the party to be notified at its most current principal business address of which the notifying party has notice. Any required payment or report which Franchisor does not actually receive during regular business hours on the date due (or postmarked by postal authorities at least two (2) business days before then) will be deemed delinquent.

## **20. ELECTRONIC MAIL**

Franchisee acknowledges and agrees that exchanging information with Franchisor by e-mail is efficient and desirable for day-to-day communications and that Franchisor and Franchisee may utilize e-mail for such communications. Franchisee authorizes the transmission of e-mail by Franchisor and its employees, vendors, and affiliates ("**Official Senders**") to Franchisee during the term of this Agreement.

Franchisee further agrees that: (a) Official Senders are authorized to send e-mails to the General Manager and those of Franchisee's other employees as Franchisee may occasionally authorize for the purpose of communicating with Franchisor; (b) Franchisee will cause its officers, directors, managers and other employees to give their consent to Official Senders' transmission of e-mails to them; (c) Franchisee will require such persons not to opt out or otherwise ask to no longer receive e-mails from Official Senders during the time that such person works for or is associated with Franchisee; and (d) Franchisee will not opt out or otherwise ask to no longer receive e-mails from Official Senders during the term of this Agreement.

The consent given in this Section 20 shall not apply to the provision of notices by either party under this Agreement pursuant to Section 19 using e-mail unless the parties otherwise agree in a written document manually signed by both parties.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement effective on the date stated on the first page above.

**FRESHII DEVELOPMENT, LLC**, a  
Delaware limited liability company

\_\_\_\_\_  
\_\_\_\_\_  
[Name]

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

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

ATTEST FRESHII DEVELOPMENT, LLC

By: \_\_\_\_\_  
Name: Matthew Corrin  
Title: CEO

Witness

FRANCHISEE:

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

Witness

Or if individually

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

Witness



Or if individually  
Franchisee

Name:

**MAP OF TERRITORY**

**EXHIBIT B**  
to the  
**FRESHII™ RESTAURANT FRANCHISE AGREEMENT**  
**FRANCHISEE AND ITS OWNERS**

**Effective Date: This Exhibit B is current and complete**  
as of \_\_\_\_\_, 20\_\_\_\_

1. **Form of Franchisee.**

(a) **Corporation, Limited Liability Company or Partnership.** Franchisee was incorporated or formed on \_\_\_\_\_, 20\_\_\_\_, under the laws of the State of \_\_\_\_\_. Franchisee has not conducted business under any name other than Franchisee's corporate, limited liability company, or partnership name and \_\_\_\_\_. The following is a list of Franchisee's directors or managers (if applicable) and officers as of the effective date shown above:

<u>Name</u>	<u>Position(s) Held</u>
_____	_____
_____	_____

2. **Owners.** The following list includes the full name of each person who is one of Franchisee's direct or indirect owners and fully describes the nature of each owner's interest (attach additional pages if necessary).

<u>Owner's Name</u>	<u>Description of Interest</u>
(a) _____	_____
(b) _____	_____
(c) _____	_____
(d) _____	_____

**FRESHII DEVELOPMENT, LLC**, a  
Delaware limited liability company

\_\_\_\_\_  
[Name]

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

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

**FRESHII DEVELOPMENT, LLC.**

Franchisor Franchisee

By: By:

Name: Matthew Corrin Name:

Title: CEO Title:

Or if individually

Franchisee

Name:

**EXHIBIT C**  
**to the**  
**FRESHII™ RESTAURANT FRANCHISE AGREEMENT**

**COLLATERAL ASSIGNMENT OF LEASE**

**FOR VALUE RECEIVED**, \_\_\_\_\_ (“**Assignor**”) hereby assigns, transfers and sets over unto **FRESHII DEVELOPMENT, LLC**, a Delaware limited liability company (“**Assignee**”), all of Assignor’s right, title and interest as tenant in, to and under that certain lease, a copy of which is attached hereto as Exhibit A (the “**Lease**”), respecting premises commonly known as \_\_\_\_\_ (the “**Premises**”). This Assignment is for collateral purposes only and except as specified herein, Assignee shall have no liability or obligation of any kind whatsoever arising from or in connection with this Assignment or the Lease unless and until Assignee takes possession of the Premises and assumes certain obligations of Assignor under the Lease pursuant to the terms hereof.

Assignor represents and warrants to Assignee that Assignor (a) has full power and authority to so assign the Lease and its interest therein, and (b) has not previously assigned or transferred, and is not obligated to assign or transfer, any of its interest in the Lease or the Premises.

Upon the occurrence of any of the following:

(a) a default by Assignor under the Lease, the Freshii™ Restaurant franchise agreement between Assignee and Assignor (the “**Franchise Agreement**”), or any document or instrument securing or relating to the Franchise Agreement, or

(b) the expiration (without renewal), cancellation or termination of the Franchise Agreement by Assignor or Assignee for any reason other than a default by Assignee,

Assignee shall have the right (but no obligation), exercisable upon delivery of written notice to Assignor, and is hereby empowered, to take possession of the Premises, expel Assignor from the Premises, and acquire all of Assignor’s right, title and interest as tenant in, to and under the Lease. In such event, Assignor shall have no further right, title or interest in the Lease or the Premises, but shall remain solely liable to the lessor under the Lease for all rents, charges and other obligations owed under the Lease prior to the date upon which Assignee assumes possession of the Premises.

Assignor agrees that it will not suffer or permit any surrender, termination, amendment or modification of the Lease without the prior written consent of Assignee. Throughout the term of the Franchise Agreement (and any extensions, amendments and renewals thereof), Assignor agrees that it shall exercise all rights and options to extend the term of or renew the Lease (each a “**Renewal Option**”) not less than thirty (30) days prior to the last day upon which such Renewal Option must be exercised, unless Assignee otherwise agrees in writing. Assignor shall send Assignee a copy of the notice of exercise concurrently with Assignor’s exercise of each Renewal Option. If Assignee does not otherwise agree in writing to Assignor’s refusal to exercise any Renewal Option, and if Assignor fails to exercise such Renewal Option, Assignor hereby appoints Assignee as its true and lawful attorney-in-fact to exercise such Renewal Option in the name, place and stead of Assignor for the sole purpose of effecting such extension or renewal, provided that Assignee shall have no obligation to exercise such Renewal Option.

This Assignment shall inure to the benefit of Assignee and its successors and assigns and shall be binding upon Assignor and its heirs, personal representatives, officers, partners, successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Assignment as of the date set forth below.

Dated: \_\_\_\_\_, 20\_\_\_\_

**ASSIGNEE:**

**FRESHII DEVELOPMENT, LLC**, a  
Delaware limited liability company

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

**FRESHII DEVELOPMENT, LLC,**

a Delaware limited liability company

\_\_\_\_\_ Assignor

By: \_\_\_\_\_  
Name: Matthew Corrin  
Title: CEO

**ASSIGNOR:**

\_\_\_\_\_  
[Name]

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

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

**Notary for Assignor:**

STATE OF \_\_\_\_\_ )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

I HEREBY CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the subscriber, a Notary Public of the State of \_\_\_\_\_, personally appeared \_\_\_\_\_, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same for the purposes therein contained.

AS WITNESS my hand and notarial seal.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_, 20\_\_\_\_

**Notary for Assignee:**

STATE OF \_\_\_\_\_ )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

I HEREBY CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the subscriber, a Notary Public of the State of \_\_\_\_\_, personally appeared \_\_\_\_\_, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same for the purposes therein contained.

AS WITNESS my hand and notarial seal.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_, 20\_\_\_\_

**CONSENT AND AGREEMENT OF LESSOR**

The undersigned Lessor under the “**Lease**” attached as Exhibit A hereby:

1. agrees to notify Assignee in writing of and upon the failure of Assignor to cure any default by Assignor under the Lease;

2. agrees that Assignee shall have the right, but shall not be obligated, to cure any default by Assignor under the Lease within 30 days after delivery by Lessor of notice thereof in accordance with paragraph (1) above;

3. consents to the foregoing collateral assignment and agrees that if Assignee takes possession of the premises demised by the Lease pursuant to the Collateral Assignment, Lessor shall recognize Assignee as tenant under the Lease from and after the date upon which Assignee assumes possession and provides notice thereof to Lessor, but that Assignee shall not be liable for any past due rents or other liabilities or obligations of Assignor under or in connection with the Lease prior to such date; and

4. agrees that, provided there are then no existing defaults under the Lease, Assignee may further assign the Lease to any person or business entity who shall agree to assume the tenant’s obligations under the Lease and, upon such assignment, Assignee shall have no further liability or obligation under the Lease as assignee, tenant or otherwise.

DATED: \_\_\_\_\_

| \_\_\_\_\_  
| \_\_\_\_\_, Lessor

|

**EXHIBIT A to the**  
**Collateral Assignment of Lease**  
**LEASE**

See attached

**EXHIBIT D**  
**to the**  
**FRESHII™ RESTAURANT FRANCHISE AGREEMENT**

**CONFIDENTIALITY AND NON-COMPETITION AGREEMENT**

**WHEREAS**, the undersigned (the “**Undersigned**”) is a current or prospective General Manager or other employee of one or more franchisees (each a “**Related Party**”) of **FRESHII DEVELOPMENT, LLC**, a Delaware limited liability company (the “**Company**”);

**WHEREAS**, the Undersigned has been or may be given access to certain confidential and proprietary information of the Company and/or its Related Parties previously not available to the Undersigned;

**WHEREAS**, the Related Party signatory hereto is only willing to commence or continue its relationship with Undersigned in the event Undersigned enters into this Agreement; and

**WHEREAS**, the Related Party signatory hereto has entered into this Agreement with the Undersigned in order to ensure the confidentiality of Proprietary Information (defined below) in accordance with the terms of this Agreement, to ensure that the Undersigned does not utilize such information to compete with the Company or unfairly disadvantage the Company, and/or to protect the investment made by the Related Party signatory hereto in the training and instruction of its employees.

**NOW, THEREFORE**, the Undersigned hereby agrees as follows:

1. **Recitals.** The recitals set forth above are incorporated herein by this reference and shall be part of this Agreement.

2. **Proprietary Information.** As used in this Agreement, the term “**Proprietary Information**” shall mean the business concepts, information about types and suppliers of equipment, operating techniques, menu and ingredient information, marketing methods, financial information, demographic and trade area information, prospective site locations, market penetration techniques, plans, schedules, customer profiles, preferences, statistics, franchisee composition, territories, and development plans, and all related trade secrets or confidential or proprietary information treated as such by the Company and/or the Related Party signatory hereto, as the case may be, whether by course of conduct, by letter or report, by the inclusion of such information in the Company’s operations manuals or similar documents, or by the use of any appropriate proprietary stamp or legend designating such information or item to be confidential or proprietary, by any communication to such effect made prior to or at the time any such Proprietary Information is disclosed to the Undersigned, or otherwise.

3. **Use and Disclosure of Proprietary Information.** The Undersigned shall hold all Proprietary Information in strict confidence and shall use such Proprietary Information only for the benefit of the Company and/or the Related Party. The Undersigned shall not disclose Proprietary Information to any other person or entity. The obligations hereunder to maintain the confidentiality of Proprietary Information shall not expire. However, these obligations shall not apply to any Proprietary Information received from the Company and/or the Related Party signatory hereto, as the case may be, which (a) is disclosed in a printed publication available to the public, or is otherwise in the public domain through no act of the Undersigned or any other person or entity which has received such Proprietary Information from or through the Undersigned, (b) is approved for release by written authorization of an officer of the Company, or (c) is required to be disclosed by proper order of a court of applicable jurisdiction after adequate notice to the Company and/or the Related Party signatory hereto, as the case

may be, sufficient to permit them to seek a protective order therefor, the imposition of which protective order the Undersigned agrees to approve and support.

4. **Return of Documents.** The Undersigned shall, upon the request of the Company and/or the Related Party signatory hereto, as the case may be, return all documents and other tangible manifestations of Proprietary Information received from the Company and/or the Related Party signatory hereto, as the case may be, including all copies and reproductions thereof.

5. **Noncompete.** During the term of employment of the Undersigned (it being understood and acknowledged that the Undersigned is employed at will and may be terminated at any time by the Related Party signatory hereto) and for six (6) months thereafter, the Undersigned agrees (a) not to have any direct or indirect, controlling or non-controlling interest as an owner (whether of record, beneficial or otherwise) in, or perform services as a director, officer, manager, employee, consultant, representative or agent for, a Competitive Business (defined below) located or operating within any standard metropolitan statistical area or other trade area in which the Related Party signatory hereto is engaged, or has developed specific plans to engage, in business, and (b) agrees not to solicit employees from the Company or the Related Party signatory hereto. The term “**Competitive Business**” means any business that (i) offers fresh, made-to-order meals (including salads, soups, and/or rice bowls, but excluding sandwiches) in a format that allows the customer to choose among various ingredients to create individual meal options; (ii) is marketed to the public primarily as a health-food or healthy-alternative foodservice establishment; and/or (iii) grants franchises or licenses to, or enters into joint ventures with, others to operate a business described in subsection (i) or (ii). This Section 5 shall not prevent the Undersigned from investing so as to hold less than three percent (3%) of the outstanding shares of any company which is a “reporting company” under the Securities Exchange Act of 1934, as amended. It is the intention of the parties that this Section 5 be interpreted so as to be valid under applicable law and, if required for validity, any court or applicable tribunal may reduce or alter the geographic scope and duration of this Section 5, by substitution of words or otherwise, so as to create the broadest permissible protection to the Company and the Related Party signatory hereto.

6. **No Waiver.** No delays or omissions by the Company or the Related Party signatory hereto in exercising any right under this Agreement will operate as a waiver of that or any other right. A waiver or consent given by the Company and/or the Related Party signatory hereto, as the case may be, on any one occasion is effective only in that instance and will not be construed as a bar to or waiver of any right on any other occasion.

7. **Equitable Relief.** The undersigned acknowledges that the Company and/or the Related Party signatory hereto, as the case may be, will be irreparably harmed by any breach hereof, that monetary damages would be inadequate and that the Company and/or the Related Party signatory hereto shall have the right to have an injunction or other equitable remedies imposed in relief of, or to prevent or restrain, such breach. The Undersigned agrees that the Company and/or the Related Party signatory hereto shall also be entitled to any and all other relief available under law or equity for such breach.

8. **Miscellaneous.**

a. This Agreement shall not be construed to grant to the Undersigned any patents, licenses, or similar rights to Proprietary Information disclosed to the Undersigned hereunder, all of which rights and interests shall be deemed to reside or be vested in the Company.

b. This Agreement does not supersede, but rather is in addition to and cumulative with, all prior agreements, written or oral, between the parties relating to the subject matter of this

Agreement. This Agreement may not be modified, changed or discharged, in whole or in part, except by an Agreement in writing signed by the parties.

c. This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

d. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

e. This Agreement shall be construed and interpreted in accordance with the laws of the State of Illinois, without regard to its conflicts of laws rules.

**EXECUTED** as of the \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

~~FRESHII DEVELOPMENT, LLC, a~~  
Delaware limited liability company

**[FRANCHISEE]**

\_\_\_\_\_

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

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

**UNDERSIGNED:**

\_\_\_\_\_  
{Signature}

\_\_\_\_\_  
{Print Name}

**FRESHII DEVELOPMENT, LLC**

Franchisor \_\_\_\_\_ Franchisee \_\_\_\_\_

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

Or if individually

\_\_\_\_\_  
Name: \_\_\_\_\_

**UNDERSIGNED:**

\_\_\_\_\_  
Signature

Print Name

~~EXHIBIT E TO THE~~ **to the**  
**FRESHII™ RESTAURANT FRANCHISE AGREEMENT**

**GUARANTY AND ASSUMPTION OF OBLIGATIONS**

**THIS GUARANTY AND ASSUMPTION OF OBLIGATIONS** is given this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, on \_\_\_\_\_, by \_\_\_\_\_.

In consideration of, and as an inducement to, the execution of that certain Franchise Agreement (the “**Agreement**”) on this date by **FRESHII DEVELOPMENT, LLC**, a Delaware limited liability company (“**Franchisor**”), each of the undersigned personally and unconditionally (a) guarantees to Franchisor and its successors and assigns, for the term of the Agreement (including, without limitation, any extensions of its term) and afterward as provided in the Agreement, that \_\_\_\_\_ (“**Franchisee**”) will punctually pay and perform each and every undertaking, agreement, and covenant set forth in the Agreement (including, without limitation, any amendments or modifications of the Agreement) and (b) agrees to be personally bound by, and personally liable for the breach of, each and every provision in the Agreement (including, without limitation, any amendments or modifications of the Agreement), both monetary obligations and obligations to take or refrain from taking specific actions or to engage or refrain from engaging in specific activities, including, but not limited to, the arbitration, non-competition, confidentiality, and transfer requirements.

Each of the undersigned consents and agrees that: (1) his or her direct and immediate liability under this Guaranty will be joint and several, both with Franchisee and among other guarantors; (2) he or she will render any payment or performance required under the Agreement upon demand if Franchisee fails or refuses punctually to do so; (3) this liability will not be contingent or conditioned upon Franchisor’s pursuit of any remedies against Franchisee or any other person; (4) this liability will not be diminished, relieved, or otherwise affected by any extension of time, credit, or other indulgence which Franchisor may from time to time grant to Franchisee or to any other person, including, without limitation, the acceptance of any partial payment or performance or the compromise or release of any claims (including, without limitation, any extensions of its term or the release of other guarantors), none of which will in any way modify or amend this Guaranty, which will be continuing and irrevocable during the term of the Agreement (including, without limitation, any extensions of its term), for so long as any performance is or might be owed under the Agreement by Franchisee or any of its owners, and for so long as Franchisor has any cause of action against Franchisee or any of its owners; (5) this Guaranty will continue in full force and effect for (and as to) any extension or modification of the Agreement and despite the transfer of any interest in the Agreement or Franchisee, and each of the undersigned waives notice of any and all renewals, extensions, modifications, amendments, or transfers; and (6) any indebtedness by Franchisee to the undersigned, for whatever reason, whether currently existing or hereafter arising, shall at all times be inferior and subordinate to any indebtedness owed by Franchisee to Franchisor or its affiliates.

Each of the undersigned waives: (i) all rights to payments and claims for reimbursement or subrogation which any of the undersigned may have against Franchisee arising as a result of the undersigned’s execution of and performance under this Guaranty; (ii) acceptance and notice of acceptance by Franchisor of his or her undertakings under this Guaranty, notice of demand for payment of any indebtedness or non-performance of any obligations hereby guaranteed, protest and notice of default to any party with respect to the indebtedness or nonperformance of any obligations hereby guaranteed, and any other notices to which he or she may be entitled; and (iii) all rights to assert or plead any statute of limitations as to or relating to this Guaranty.

If Franchisor seeks to enforce this Guaranty in an arbitration, judicial or other proceeding, and prevails in such proceeding, Franchisor shall be entitled to recover its reasonable costs and expenses (including, but not limited to, attorneys' fees, arbitrators' fees, and expert witness fees, costs of investigation and proof of facts, court costs, other arbitration or litigation expenses and travel and living expenses) incurred in connection with such proceeding. If Franchisor is required to engage legal counsel in connection with any failure by the undersigned to comply with this Guaranty, the undersigned shall reimburse Franchisor for any of the above-listed costs and expenses Franchisor incurs.

Subject to the arbitration obligations (as set forth in the Agreement) and the provisions below, each of the undersigned agrees that all actions arising under this Guaranty or the Agreement, or otherwise as a result of the relationship between Franchisor and the undersigned, must be brought exclusively in the state or federal court of general jurisdiction in the state, and in (or closest to) the city, where Franchisor then maintains its principal business address, and each of the undersigned irrevocably submits to the jurisdiction of those courts and waives any objection he or she might have to either the jurisdiction of or venue in those courts. Nonetheless, each of the undersigned agrees that Franchisor may enforce this Guaranty and any arbitration orders and awards in the courts of the state or states in which he or she is domiciled. **FRANCHISOR AND THE UNDERSIGNED IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM, WHETHER AT LAW OR IN EQUITY, BROUGHT BY ANY OF THEM.**

**IN WITNESS WHEREOF**, each of the undersigned has affixed his or her signature on the same day and year as the Agreement was executed.

<b>GUARANTOR(S)</b>	<b>PERCENTAGE OF OWNERSHIP IN FRANCHISEE</b>
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %

**GUARANTOR(S)** **PERCENTAGE OF OWNERSHIP**  
**IN FRANCHISEE**

\_\_\_\_\_  
Name: \_\_\_\_\_ %

\_\_\_\_\_  
Name: \_\_\_\_\_ %

**EXHIBIT F**  
**MARKETING DEPOSIT AGREEMENT**

**FRESHII DEVELOPMENT, LLC**

**EXHIBIT "H" TO THE FRANCHISE AGREEMENT**

**MARKETING DEPOSIT AGREEMENT**

This Marketing Deposit Agreement (the "Agreement") is made and entered into on \_\_\_\_\_, 20\_\_\_\_, (the "Effective Date") by and between Freshii Development, LLC., an Illinois corporation whose principal address is 27 North Wacker Drive, Suite 426, Chicago, Illinois 60606 a("Franchisor", "we", "us" or "our") and \_\_\_\_\_, a \_\_\_\_\_ [resident] [corporation] [partnership] [limited liability company] [residing at] [with a principal address at] \_\_\_\_\_ ("Depositor", "you" or "your").

**RECITALS**

WHEREAS, we are in the business of developing and operating a system consisting of franchised and company-operated "Freshii Restaurants" units under our trademarks, service marks, and system ("Franchised Businesses");

WHEREAS, you are a franchisee under our system pursuant to a Franchise Agreement, entered into between you and us, dated \_\_\_\_\_, 20\_\_\_\_ for a Freshii Restaurant located at \_\_\_\_\_ (the "Restaurant");

WHEREAS, the lease for the above referenced Restaurant is executed and you wish to place a deposit with us for the Grand Opening Marketing for said Restaurant.

NOW, THEREFORE, for good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows:

1. The Deposit. Upon execution of this Agreement, you shall pay us the sum of Ten Thousand Dollars (\$10,000) as a non-interest bearing deposit (the "Deposit").

2. Non-Refundability. The Deposit shall not be refundable under any circumstances.

3. Credit. In the event you pay the approved vendors for the required grand opening advertising, in accordance with the Franchise Agreement and Confidential Operations Manual, for the Restaurant and provide us copies of the paid invoices, we will refund to you the amount you paid to the approved vendors, up to Ten Thousand Dollars (\$10,000).

8. No Franchise Rights. This Agreement is not a franchise agreement and does not grant you any right whatsoever to use the "Freshii" marks and/or system, which rights can only be granted under a franchise agreement entered into by you and us. You shall not use the "Freshii" marks or system, nor shall you make any representation or commitment on our behalf.

9. Acknowledgment. You acknowledge receipt of our Disclosure Document at least fourteen (14) calendar days before the Effective Date.

10. Full Agreement. This Agreement incorporates the full and complete agreement between the parties concerning the subject of this Agreement, and supersedes any and all prior correspondence, conversations, representations, or statements of whatever nature concerning the subject of this Agreement. This Agreement shall be interpreted under the laws of the Illinois without regard to its conflict of laws principles.

FRANCHISOR: \_\_\_\_\_ DEPOSITOR: \_\_\_\_\_  
FRESHII DEVELOPMENT, LLC \_\_\_\_\_

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

**EXHIBIT G to the**  
**FRESHII™ RESTAURANT FRANCHISE AGREEMENT**  
**STATE SPECIFIC ADDENDUM**

**EXHIBIT G TO THE FRANCHISE AGREEMENT**  
**DISCLOSURE REQUIRED BY THE STATE OF MINNESOTA**

This Rider (the “**Rider**”) is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ on \_\_\_\_\_ (the “**Agreement Date**”), between **FRESHII DEVELOPMENT, LLC**, a Delaware limited liability company, with its principal business address at 27 North Wacker Drive, Suite 426, Chicago, Illinois 60606 (“**Franchisor**”), and \_\_\_\_\_, whose principal business address is \_\_\_\_\_ (“**Franchisee**”).

1. **Background.** Franchisor and Franchisee are parties to that certain Franchise Agreement that has been signed concurrently with the signing of this Rider (the “**Franchise Agreement**”). This Rider is annexed to and forms part of the Franchise Agreement. This Rider is being signed because (a) the Freshii Restaurant that Franchisee will operate under the Franchise Agreement will be located in Minnesota; and/or (b) any of the franchise offering or sales activity with respect to the Franchise Agreement occurred in Minnesota.

2. **Trademark Indemnity.** The following language is added to the end of Section 10.C of the Franchise Agreement.

If Franchisee has complied with all of Franchisor’s requirements that apply to the Marks, Franchisor will protect Franchisee’s right to use the principal Mark and indemnify Franchisee from any loss, costs, or expenses arising out of any claims, suits, or demands regarding Franchisee’s use of the principal Mark, in accordance with and to the extent required by Minn. Stat. Sec. 80C.12. Subd. 1(g).

3. **Releases.** The following language is added to the end of Sections 13.D.(8), 14(iii), and the last paragraph of Section 16.E.(3) of the Franchise Agreement:

; however, any release required as a condition of renewal and/or assignment/transfer will not apply to the extent prohibited by the Minnesota Franchises Law.

4. **Termination by Franchisor.** The following language is added to the end of Section 15.B of the Franchise Agreement:

With respect to franchises governed by Minnesota law, Franchisor will comply with Minn. Stat. Sec. 80C.14, Subds. 3, 4 and 5 which require, except in certain specified cases, that Franchisee be given 90 days’ notice of termination (with 60 days to cure) and one hundred eighty (180) days’ notice of non-renewal of the Franchise Agreement.

5. **Governing Law/Consent to Jurisdiction.** The following language is added to the end of Sections 18.G and 18.H of the Franchise Agreement:

Pursuant to Minn. Stat. Section 80C.21 and Minn. Rule Part 2860.4400J, this Section shall not in any way abrogate or reduce Franchisee’s right as provided in Minnesota Statutes 1984, Chapter 80C, including (if applicable, and subject to the parties’ arbitration obligations) the right to submit matters to the jurisdiction of the courts of Minnesota.

6. Waiver of Punitive Damages. The following language is added to the beginning of Section 18.I of the Franchise Agreement:

EXCEPT AS OTHERWISE REQUIRED BY THE  
MINNESOTA FRANCHISES LAW, AND

7. Waiver of Jury Trial. The following language is added to the beginning of Section 18.J of the Franchise Agreement:

EXCEPT AS OTHERWISE REQUIRED BY THE  
MINNESOTA FRANCHISES LAW,

8. Limitation of Claims. The following language is added to the end of Section 18.L of the Franchise Agreement:

; provided, however, that Minnesota law provides that no action may be commenced under Minn. Stat. Sec. 80C.17 more than three (3) years after the cause of action accrues.

IN WITNESS WHEREOF, the parties hereto have duly executed, sealed and delivered this Addendum dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.on \_\_\_\_\_.

ATTEST

FRESHII DEVELOPMENT, LLC

Witness \_\_\_\_\_

By: \_\_\_\_\_  
Name: Matthew Corrin  
Title: CEO

FRANCHISEE:

Witness \_\_\_\_\_

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

**EXHIBIT GH to the**  
**FRESHII™ RESTAURANT FRANCHISE AGREEMENT**

**FRANCHISEE COMPLIANCE CERTIFICATION**

As you know, Freshii Development, LLC (the “Franchisor”) and you are preparing to enter into a Franchise Agreement for the establishment and operation of a Freshii Restaurant. The purpose of this Questionnaire is to determine whether any statements or promises were made to you by employees or authorized representatives of Franchisor, or by employees or authorized representatives of Fransmart, Inc. (“Fransmart”) that have not been authorized, or that were not disclosed in the Disclosure Document or that may be untrue, inaccurate or misleading.

In the event that you are intending to purchase an existing Freshii Restaurant from an existing Franchisee, you may have received information from the transferring Franchisee, who are not employees or representatives of Franchisor. The questions below do not apply to any communications that you had with the transferring Franchisee. Please review each of the following questions and statements carefully and provide honest and complete responses to each.

1. Are you seeking to enter into the Franchise Agreement in connection with a purchase or transfer of an existing Freshii Restaurant from an existing Franchisee?

Yes \_\_\_\_\_ / No \_\_\_\_\_

2. I had my first face-to-face meeting with a Franchisor representative on \_\_\_\_\_, 20\_\_\_\_.

3. Have you received and personally reviewed the Franchise Agreement and each Addendum and related agreement attached to it?

Yes \_\_\_\_\_ / No \_\_\_\_\_

4. Do you understand all of the information contained in the Franchise Agreement, each Addendum and related agreement provided to you?

Yes \_\_\_\_\_ / No \_\_\_\_\_

If no, what parts of the Franchise Agreement, any Addendum, and/or related agreement do you not understand? (Attach additional pages, if necessary.)

\_\_\_\_\_

\_\_\_\_\_

5. Have you received and personally reviewed the Franchisor’s Disclosure Document that was provided to you?

Yes \_\_\_\_\_ / No \_\_\_\_\_

Witness Initial: \_\_\_\_\_ (Franchisee) Initial: \_\_\_\_\_

6. Did you sign a receipt for the Disclosure Document indicating the date you received it?

Yes \_\_\_\_\_ / No \_\_\_\_\_

Witness Initial: \_\_\_\_\_ (Franchisee) Initial: \_\_\_\_\_

7. Do you understand all of the information contained in the Disclosure Document and any state-specific Addendum to the Disclosure Document?

Yes \_\_\_\_\_ / No \_\_\_\_\_

If No, what parts of the Disclosure Document and/or Addendum do you not understand? (Attach additional pages, if necessary.)

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

8. Have you discussed the benefits and risks of establishing and operating a Freshii Restaurant with an attorney, accountant, or other professional advisor?

Yes \_\_\_\_\_ / No \_\_\_\_\_

If No, do you wish to have more time to do so?

Yes \_\_\_\_\_ / No \_\_\_\_\_

9. Do you understand that the success or failure of your Freshii Restaurant will depend in large part upon your skills and abilities, competition from other businesses, interest rates, inflation, labor and supply costs, location, lease terms, your management capabilities and other economic, and business factors?

Yes \_\_\_\_\_ / No \_\_\_\_\_

10. Has any employee of Fransmart or other person speaking on behalf of the Franchisor made any statement or promise concerning the revenues, project cost, (project cost), profits or operating costs of a Freshii Restaurant operated by the Franchisor or its Franchisees, that is contrary to the information contained in the Disclosure Document?

Yes \_\_\_\_\_ / No \_\_\_\_\_

11. Has any employee of Fransmart or other person speaking on behalf of the Franchisor made any statement or promise regarding the amount of money you may earn in operating the Franchised Business that is contrary to the information contained in the Disclosure Document?

Yes \_\_\_\_\_ / No \_\_\_\_\_

12. Has any employee of Fransmart or other person speaking on behalf of the Franchisor made any statement or promise concerning the total amount of revenue the Freshii Restaurant will generate, that is contrary to the information contained in the Disclosure Document?

Witness Initial: \_\_\_\_\_ (Franchisee) Initial: \_\_\_\_\_

Yes \_\_\_\_\_/No \_\_\_\_\_

13. Has any employee of Fransmart or other person speaking on behalf of the Franchisor made any statement or promise regarding the costs you may incur in operating the Freshii Restaurant that is contrary to or different from, the information contained in the Disclosure Document?

Witness Initial: \_\_\_\_\_ (Franchisee) Initial: \_\_\_\_\_

Yes \_\_\_\_\_/No \_\_\_\_\_

Witness Initial: \_\_\_\_\_ (Franchisee) Initial: \_\_\_\_\_

- 14. Has any employee of Fransmart or other person speaking on behalf of the Franchisor made any statement or promise concerning the likelihood of success that you should or might expect to achieve from operating a Freshii Restaurant?

Yes \_\_\_\_\_/No \_\_\_\_\_

- 15. Has any employee of Fransmart or other person speaking on behalf of the Franchisor made any statement, promise or agreement concerning the advertising, marketing, training, support service or assistance that the Franchisor will furnish to you that is contrary to, or different from, the information contained in the Disclosure Document?

Yes \_\_\_\_\_/No \_\_\_\_\_

- 16. Have you entered into any binding agreement with the Franchisor concerning the purchase of this franchise prior to today?

Yes \_\_\_\_\_/No \_\_\_\_\_

- 17. Have you paid any money to the Franchisor concerning the purchase of this franchise prior to today?

Yes \_\_\_\_\_/No \_\_\_\_\_

- 18. Have you spoken to any other franchisee(s) of this system before deciding to purchase this Franchise? If so, who? \_\_\_\_\_

If you have answered "Yes" to any one of questions 10-17, please provide a full explanation of each Yes answer in the following blank lines. (Attach additional pages, if necessary, and refer to them below.) If you have answered No to each of questions 10-17, please leave the following lines blank.

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

I signed the Franchise Agreement and Addendum (if any) on \_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_, and acknowledge that no Agreement or Addendum is effective until signed and dated by the Franchisor.

Please understand that your responses to these questions are important to us and that we will rely on them. By signing this Questionnaire, you are representing that you have responded truthfully to the above questions.

FRANCHISEE APPLICANT

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Witness

**EXHIBIT H**  
**DEPOSIT AGREEMENT**

Freshii/fa-11

Witness Initial: \_\_\_\_\_ (Franchisee) Initial: \_\_\_\_\_

**FRESHII DEVELOPMENT, LLC**

**EXHIBIT "H" TO THE FRANCHISE AGREEMENT**

**MARKETING DEPOSIT AGREEMENT**

~~\_\_\_\_\_ This Marketing Deposit Agreement (the "Agreement") is made and entered into on \_\_\_\_\_, 20\_\_\_\_, (the "Effective Date") by and between Freshii Development, LLC., an Illinois corporation whose principal address is 27 North Wacker Drive, Suite 426, Chicago, Illinois 60606 ("we", "us" or "our") and \_\_\_\_\_, a \_\_\_\_\_ [resident] [corporation] [partnership] [limited liability company] [residing at] [with offices located at] \_\_\_\_\_ ("you" or "your").~~

***RECITALS***

~~\_\_\_\_\_ WHEREAS, we are in the business of developing and operating a system consisting of franchised and company-operated "Freshii Restaurants" units under our trademarks, service marks, and system ("Franchised Businesses");~~

~~\_\_\_\_\_ WHEREAS, you wish to apply to become a franchisee under our system pursuant to a franchise agreement, which, if entered into between you and us, would confer upon you the right and obligation to open a Franchised Business within an agreed-upon area;~~

~~\_\_\_\_\_ WHEREAS, we must expend considerable time, effort, and cost during the period (the "Evaluation Period") needed to evaluate your qualifications and suitability to become a franchisee;~~

~~\_\_\_\_\_ WHEREAS, you wish to place a deposit with us as evidence of your good faith during the Evaluation Period.~~

~~\_\_\_\_\_ NOW, THEREFORE, for good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows:~~

~~\_\_\_\_\_ 1. The Deposit. Upon execution of this Agreement, you shall pay us the sum of Five Thousand Dollars (\$5,000) as a non interest bearing marketing deposit (the "Deposit").~~

~~\_\_\_\_\_ 2. Non-Refundability. The Deposit shall not be refundable if the Franchise Agreement is not executed by the date indicated on the Letter of Intent (the "LOI").~~

~~\_\_\_\_\_ 3. Credit. Unless you do not meet our qualifications to purchase a franchise, the full amount of the Deposit shall be credited by us toward payment of the marketing budget due under the franchise agreement entered into by the parties.~~

Witness Initial: \_\_\_\_\_ (Franchisee) Initial: \_\_\_\_\_

~~4. Application. You agree to make all applications and provide all information reasonably requested by us to evaluate your qualifications and suitability to enter into a franchise agreement with us. We shall assess your qualifications during the Evaluation Period.~~

~~5. Confidentiality. During the Evaluation Period, certain confidential information about us and our system may be disclosed or otherwise made known to you (“Confidential Information”). You agree to respect and maintain the confidential nature of such Confidential Information, and not in any way disclose the Confidential Information to anyone else, nor in any way use the Confidential Information in the operation of any business (excluding a Franchised Business operated pursuant to a franchise agreement). It is agreed that your obligations under this Section 5 shall not expire upon termination of this Agreement.~~

~~6. Evaluation Period. The parties agree that the Evaluation Period shall last until (a) we determine that you do not meet our qualifications to purchase a franchise and we so notify you in writing, or (b) you and we sign a Franchise Agreement for a Franchised Business, whichever occurs first.~~

~~7. Termination. This Agreement shall be terminated only as provided in Section 6 above.~~

~~8. No Franchise Rights. This Agreement is not a franchise and does not grant you any right whatsoever to use the “Freshii” marks and/or system, which rights can only be granted under a franchise agreement entered into by you and us. You shall not use the “Freshii” marks or system, nor shall you make any representation or commitment on our behalf.~~

~~9. Acknowledgment. You acknowledge receipt of our Disclosure Document at least fourteen (14) calendar days before the Effective Date.~~

~~10. Full Agreement. This Agreement incorporates the full and complete agreement between the parties concerning the subject of this Agreement, and supersedes any and all prior correspondence, conversations, representations, or statements of whatever nature concerning the subject of this Agreement. This Agreement shall be interpreted under the laws of the State of Illinois without regard to its conflict of laws principles.~~

FRANCHISOR: \_\_\_\_\_ DEPOSITOR: \_\_\_\_\_  
FRESHII DEVELOPMENT, LLC \_\_\_\_\_

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

Witness Initial: \_\_\_\_\_ (Franchisee) Initial: \_\_\_\_\_

**EXHIBIT D**

**OPERATIONS MANUAL TABLE OF CONTENTS**



**FRESHII DEVELOPMENT, LLC  
CONFIDENTIAL OPERATIONS MANUAL CONTENTS**

1.	Freshii Handbook.....	15 pages
2.	Position Manuals.....	50 pages
3.	Train the Trainer Workbook.....	15 pages
4.	Operations Tools & Resource Manual.....	25 pages
5.	Food Presentation Picture Book.....	25 pages
6.	Freshii Product Specifications .....	30 pages
7.	Marketing Resource Manual.....	50 pages
8.	POS & IT Resource Manual .....	25 pages

**Total pages in the Manual: 235 pages**

**EXHIBIT E**  
**FINANCIAL STATEMENTS**

|

# **Freshii Development, LLC**

## **Financial Statements**

(in US Dollars)

**For the Year Ended December 28, 2014**

(with comparatives for the year ended December  
31, 2013)

## INDEPENDENT AUDITORS' REPORT

### To the Member of Freshii Development, LLC

We have audited the accompanying financial statements of Freshii Development, LLC which comprise the balance sheet as at December 28, 2014 and the related statements of income, member's equity, and cash flows for the year then ended, and the 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.

#### *Auditor's Responsibility*

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we comply with ethical requirements and 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 auditor's 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 of accounting policies used and the reasonableness of 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 present fairly, in all material respects, the financial position of Freshii Development, LLC as at December 28, 2014, and the results of operations and its cash flows for the year then ended in accordance with accounting principles generally accepted in the United States of America.

*Collins Barrow Toronto LLP*

Licensed Public Accountants  
Chartered Accountants  
March 31, 2015  
Toronto, Ontario

# Freshii Development, LLC

## Balance Sheet

(in US Dollars)

As at December 28, 2014

	December 28, 2014	December 31, 2013
<b>Assets</b>		
<b>Current</b>		
Cash	\$ 1,847,738	\$ 1,460,285
Accounts receivable (Note 3)	288,712	290,696
Due from affiliated entities (Note 7)	41,614	-
Prepaid expenses	13,130	-
	<b>2,191,194</b>	1,750,981
Deferred commission costs (Note 2)	486,052	211,736
Reacquired franchise rights (Note 6)	152,941	176,471
Long-term receivables (Note 3)	60,000	-
	<b>\$ 2,890,187</b>	<b>\$ 2,139,188</b>

## Liabilities

<b>Current</b>		
Accounts payable and accrued liabilities	\$ 380,589	\$ 223,440
Deferred revenue	923,730	421,950
	<b>1,304,319</b>	645,390

## Member's Equity

Retained earnings	1,585,868	1,493,798
	<b>\$ 2,890,187</b>	<b>\$ 2,139,188</b>

Subsequent events (Note 8)  
Commitments (Note 2)

Approved by the Board

\_\_\_\_\_  
Member

**Freshii Development, LLC****Statement of Income**

(in US Dollars)

**Year Ended December 28, 2014**

(with comparatives for the year ended December 31, 2013)

	<b>December 28, 2014</b>	December 31 2013
<b>Revenue</b>		
Royalty income	\$ 1,536,588	\$ 1,037,753
Development and franchise fees	1,238,219	1,021,356
	<b>2,774,807</b>	2,059,109
<b>Expenses</b>		
Amortization expense (Note 6)	23,530	23,529
Bad debt (recovery) expense	(13,254)	135,000
Commissions (Note 2)	845,203	538,812
Foreign exchange	268,859	-
Interest	2,310	4,986
Management fees (Note 7)	965,685	134,679
Office and general	64,094	6,137
Professional fees	62,993	59,287
Revenue share (Note 2)	309,831	237,585
Travel	153,486	-
	<b>2,682,737</b>	<b>1,140,015</b>
<b>Net earnings</b>	<b>\$ 92,070</b>	<b>\$ 919,094</b>

**Freshii Development, LLC****Statement of Member's Equity**

(in US Dollars)

**Year Ended December 28, 2014**

(with comparatives for the year ended December 31, 2013)

	<b>December 28, 2014</b>	December 31, 2013
Balance, beginning of year	\$ 1,493,798	\$ 970,683
Member's distributions	-	(395,979)
Net earnings for the year	92,070	919,094
<b>Balance, end of year</b>	<b>\$ 1,585,868</b>	<b>\$ 1,493,798</b>

**Freshii Development, LLC****Statement of Cash Flows**

(in US Dollars)

**Year Ended December 28, 2014**

(with comparatives for the year ended December 31, 2013)

	<b>December 28, 2014</b>	December 31 2013
<hr/>		
Cash provided by (used in)		
Operations		
Net earnings	\$ 92,070	\$ 919,094
Items not affecting cash		
Bad debt expense	-	135,000
Amortization expense	23,530	23,529
Unrealized foreign exchange gain or loss	279,273	-
	<hr/>	<hr/>
	394,873	1,077,623
Net changes in non-cash working capital		
Accounts receivable	(58,016)	(268,610)
Deferred commission costs	(274,316)	(5,320)
Accounts payable and accrued liabilities	157,149	108,919
Deferred revenue	501,780	(36,382)
Note payable	-	(412,540)
Prepaid expenses	(13,130)	-
	<hr/>	<hr/>
	708,340	463,690
<b>Investing</b>		
Advances to affiliated entities	(41,614)	(18,162)
Member's distribution	-	(395,979)
Reacquisition of franchise rights	-	(200,000)
	<hr/>	<hr/>
	(41,614)	(614,141)
<b>Net change in cash</b>	666,726	(150,451)
Foreign exchange loss on cash held in foreign currency	(279,273)	-
<b>Cash, beginning of year</b>	1,460,285	1,610,736
<b>Cash, end of year</b>	<hr/> <b>\$ 1,847,738</b>	<hr/> <b>\$ 1,460,285</b>

**Freshii Development, LLC**  
**Notes to Financial Statements**  
(in US Dollars)  
**December 28, 2014**

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**1. INDUSTRY OPERATIONS**

Freshii Development, LLC (the "Company") was organized under the laws of the state of Delaware on February 26, 2008 and was established to franchise "Freshii" fast casual salad retail stores in metropolitan areas throughout the United States of America. As of December 28, 2014, the Company is the franchisor of restaurants located in the states of Illinois, Washington, District of Columbia, Texas, Pennsylvania, California, Massachusetts, Oregon, North Carolina, South Carolina, Ohio, Indiana, Florida, Mississippi, Arizona, Minnesota, Wisconsin, Georgia, Michigan, Connecticut, and internationally in Dubai, United Arab Emirates, Austria, Switzerland, Sweden and Colombia.

Changes in the number of franchise locations during the year are as follows:

	<b>December 28, 2014</b>	December 31, 2013
Balance, beginning of year	<b>45</b>	32
Additions	<b>24</b>	22
Closures	<b>(5)</b>	(9)
<b>Balance, end of year</b>	<b>64</b>	45

There were no corporate locations as of December 28, 2014 (2013 - nil).

**2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

As a limited liability company, each member's liability is limited to the capital invested. The Company's sole member is Freshii USA, Inc.

The Company is treated as a partnership for federal income tax purposes. Consequently, federal income taxes are not payable by, or provided for, the Company. All Company earnings flow through to its sole member. Accordingly, the financial statements do not reflect a provision for income taxes.

The Company's application of accounting principles generally accepted in the United States of America ("US GAAP") regarding uncertain tax positions had no effect on its financial position as management believes the Company has no material unrecognized income tax benefits. The Company would account for any potential interest or penalties related to possible future liabilities for unrecognized income tax benefits as other expense.

**Change in Reporting Period**

In 2014, the Company changed its financial year end from December 31 to a floating year end. The Company's fiscal year is the 52 or 53 week period ending on the last Sunday of December. The 2014 fiscal year ended on December 28, 2014 and includes 52 weeks.

**Basis of Presentation**

These financial statements have been prepared in accordance with US GAAP, on a basis consistent for all periods presented. The significant accounting policies used in these US GAAP financial statements are as follows:

**Freshii Development, LLC**  
**Notes to Financial Statements**  
(in US Dollars)  
**December 28, 2014**

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**2. SIGNIFICANT ACCOUNTING POLICIES (Cont'd)**

**Functional and Presentation Currency**

The Company's functional currency is United States dollar ("USD"), as this is the principal currency of the economic environment in which the entity operates. These financial statements are presented in USD.

**Commission Costs**

The Company has entered into a consulting agreement that gives the consultant the exclusive right to market and sell the Freshii franchise worldwide, except for Canada, for a period of ten years. Commissions are payable to the consultant upon the Company's receipt of any franchise, development or other fees covered under the agreement. Commission costs related to any fee revenue that is deferred shall also be deferred and expensed as the associated revenues are recognized into income as discussed below.

The Company has incurred and deferred \$486,052 of commission costs as of December 28, 2014 (2013 - \$211,736). The commissions recognized as expense are as follows:

	<b>December 28, 2014</b>	December 31, 2013
Commissions on royalties	\$ 226,080	\$ 131,632
Commissions on franchise fees	619,123	407,180
	<b>\$ 845,203</b>	<b>\$ 538,812</b>

**Revenue Share**

The Company has also agreed to pay Development Agents 50% of royalties collected.

**Revenue Recognition**

**Development and Franchise Fees**

The Company's restaurants are predominantly franchised. The Company grants franchise license or operator agreements to independent operators who in turn pay franchise fees and other payments, which may include payments for equipment and royalties. Development and franchise fees are received by the Company at the time the respective agreements for individual stores are executed. The Company recognizes development and franchise fees as revenue when substantially all material services or conditions as specified in the agreement have been performed. These non-refundable fees are recognized as follows:

(i) **Franchise Agreement**

Franchise fees are paid to the Company for providing operational materials, training personnel and assistance in store opening activities such as marketing, brand promotion and site selection. The Company recognizes revenue from initial franchise fees when all material services or conditions required by the franchise agreement have been substantially performed or satisfied, which is typically upon opening of the store, and when collectability of the initial franchise fee is reasonably assured.

**2. SIGNIFICANT ACCOUNTING POLICIES (Cont'd)**

**Revenue Recognition (Cont'd)**

Development and Franchise fees (Cont'd)

(ii) Master License Agreement

Master license fees are paid to the Company in order to secure the exclusive right to develop and open a specific number of stores in a specified territory as defined by the respective agreement. The majority of the services for Master Licensors are provided up front, and the Company provides training at the opening of the first location under the Master agreement. The revenue is recognized in two parts by the Company; the first when substantially all of the initial services or conditions required by the agreement have been met and collectability of the initial franchise fee is reasonably assured, at which time 75% of the fee is recognized, the balance is recognized as the remainder of the services are provided.

(iii) Area Development Agreement

Area development fees are paid to the Company in order to secure the exclusive right to develop and open a specific number of stores in a specified territory as defined by the respective agreement. The majority of the services for Area Developers are provided up front, and minimal services related to site selection is provided at the opening of each unit. The revenue is recognized in two parts by the Company; the first when substantially all of the initial services or conditions required by the agreement have been met and collectability of the initial franchise fee is reasonably assured, at which time 75% of the fee is recognized, the balance is recognized as the remainder of the services are provided.

(iv) Agent Development Agreement

Agent Development fees are paid to the Company in order to secure the exclusive right to develop a specific number of stores in a specified territory as defined by the respective agreement. The revenue is recognized by the Company when substantially all of the initial services or conditions required by the agreement have been met and collectability of the initial franchise fee is reasonably assured.

The total initial franchise fee recognized during the year ended December 28, 2014 was \$1,238,219 (2013 - \$1,021,356).

**Royalties**

Royalties are based on a percentage of monthly sales of each store and are recognized as income in the month earned, on the accrual basis. They are normally collected within the month or shortly thereafter. Royalties typically range from 3% to 6% of gross sales.

**2. SIGNIFICANT ACCOUNTING POLICIES (Cont'd)**

**Accounts Receivable**

Receivables are primarily comprised of amounts due from franchisees. The Company reports accounts receivable at net realizable value. The Company recognizes an allowance for losses on accounts receivable in an amount equal to the estimated probable losses net of recoveries. The allowance is based on an analysis of historical bad debt experience, current receivables aging, and expected future write-offs, as well as an assessment of specific identifiable customer accounts considered at risk or uncollectible. As at December 28, 2014 there was no allowance for doubtful accounts (2013 - nil).

**Management Estimates**

The preparation of financial statements in conformity with US GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities as of 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.

The revenue recognition policies selected require the use of estimates and assumptions that may affect the reported amounts of the recognized and deferred revenues, related commission expenses and collectability of accounts receivable.

**Reacquired Franchise Rights**

Reacquired franchise rights are amortized over the life of the related franchise agreement. The company identifies potential impairments for the reacquired franchise rights by comparing the fair value with its carrying amount. If the fair value exceeds the carrying amount the franchise rights are not impaired. If the fair value of the asset is less than the carrying amount, an impairment is recorded.

**Fair Value of Financial Instruments**

The Company measures certain financial assets and liabilities at fair value on a recurring basis. Fair value is the price that would be received to sell an asset or paid to transfer a liability in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants at the measurement date. The Company uses a three-tier fair value hierarchy based upon observable and non-observable inputs that prioritizes the information used to develop our assumptions regarding fair value. Fair value measurements are separately disclosed by level within the fair value hierarchy.

Level 1: This level includes assets and liabilities measured at fair value based on unadjusted quoted prices for identical assets and liabilities in active markets that are accessible at the measurement date.

**Freshii Development, LLC**  
**Notes to Financial Statements**  
(in US Dollars)  
**December 28, 2014**

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**2. SIGNIFICANT ACCOUNTING POLICIES (Cont'd)**

**Fair Value of Financial Instruments (Cont'd)**

Level 2: This level includes valuations determined using directly or indirectly observable inputs other than quoted prices included within Level 1.

Level 3: This level includes valuations based on inputs which are less observable, unavailable or where the observable data does not support a significant portion of the instruments' fair value.

**Franchise Operations**

The Company enters into franchise agreements with unrelated third parties to build and operate restaurants using the Freshii brand within a defined geographical area. The Company believes that franchising is an effective and efficient means to expand the Freshii brand. The franchisee is required to operate its restaurants in compliance with its franchise agreement that includes adherence to operating and quality control procedures established by the Company. The Company does not provide loans, leases, or guarantees to the franchisee or the franchisee's employees and vendors. If a franchisee becomes financially distressed, the Company does not provide financial assistance. The Company has financial exposure for the collection of the royalty payments. Franchisees generally remit royalty payments weekly for the prior week's sales, which substantially minimizes the financial exposure. Historically, the Company has experienced insignificant write-offs of franchisee royalties. Franchise and area development fees are paid upon the signing of the related agreements.

**3. LONG-TERM RECEIVABLES**

	<b>December 28, 2014</b>	December 31, 2013
Accounts receivable related to area development agreement	<b>\$ 348,712</b>	\$ -
Less long-term portion	<b>60,000</b>	-
	<b>\$ 288,712</b>	\$ -

In 2014, Freshii signed a multi-unit development deal with a franchisee located in Saudi Arabia. The total franchise fee was \$300,000, of which \$150,000 was paid in 2014. \$90,000 will be collected 12 months after execution, and \$60,000 will be collected 24 months after execution.

**4. LEGAL PROCEEDINGS**

The Company was a defendant in a lawsuit with its marketing consultant relating to an alleged breach of contract and one count of tortious interference with business expectancy in the state of Virginia. Both cases were filed in 2011 and settled in December 2011. During 2013, the settlement amount was paid.

Effective July 1, 2012, the provisions of the original agreement between the Company and the consultant were reinstated. The Company is currently working with the marketing consultant under the original agreement.

**5. FINANCIAL INSTRUMENTS**

**Liquidity Risk**

Liquidity risk is the risk that the Company will encounter difficulty in meeting its obligations as they fall due. The Company manages liquidity risk by continuously monitoring actual and forecast cash flows. The Company's financial liabilities include accounts payable and accrued liabilities.

**Credit Risk**

Credit risk is the risk of financial loss to the Company if a franchisee fails to meet its contractual obligations, and arises principally from deposits with banks and financial institutions, as well as credit exposure to franchisees, including outstanding receivables and committed transactions.

The Company manages and analyzes the credit risk for each new client before standard payment terms and conditions are offered. The Company has no significant concentrations of credit risk.

The Company maintains its cash in a bank deposit account, which at times may exceed federally insured limits. The Company believes it is not exposed to any significant credit risk with respect to its cash.

**6. REACQUIRED FRANCHISE RIGHTS**

In 2013, the Company acquired the Florida Territory from its Area Developer for \$200,000. The acquisition is amortized on a straight line basis over the remaining term for franchise commitments, which had an initial estimated useful life of 8.5 years. Reacquired franchise rights consisted of the following:

	<b>December 28, 2014</b>	December 31, 2013
Reacquired franchise rights	\$ 200,000	\$ 200,000
Accumulated amortization	(47,059)	(23,529)
<b>Reacquired franchise rights, net</b>	<b>\$ 152,941</b>	<b>\$ 176,471</b>

**7. RELATED PARTY TRANSACTIONS**

During 2014, the Company advanced a total of \$41,614 (2013 - \$395,979) to entities affiliated with the Company through common ownership. Such advances are due on demand and non-interest-bearing. The Company also incurred management fees from the ultimate parent in the amount of \$965,685 (2013 - \$134,679).

In 2013, the Company recognized deemed distributions for the forgiveness of the amounts due from the affiliate totaling \$395,979.

**8. SUBSEQUENT EVENTS**

On December 31, 2014, Freshii Development LLC, Freshii S. Wacker LLC, and Freshii Creative Fund LLC, will combine, such that Freshii S. Wacker LLC and Freshii Creative Fund LLC merged into the Company and Freshii Development LLC is the surviving entity.

# **Freshii Development, LLC**

## **Financial Statements**

(in US Dollars)

**For the Year Ended December 31, 2013**

(with comparatives for the year ended December  
31, 2012)

## INDEPENDENT AUDITORS' REPORT

### To the Member of Freshii Development, LLC

We have audited the accompanying financial statements of Freshii Development, LLC which comprise the balance sheet as at December 31, 2013 and the statements of income and member's equity (deficit) and cash flows for the year then ended and a summary of significant accounting policies and other explanatory information.

#### *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 controls relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

#### *Auditor's Responsibility*

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the 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 auditor's 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 controls 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 controls. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of 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 present fairly, in all material respects, the financial position of Freshii Development, LLC as at December 31, 2013, and the result of operations and its cash flows for the year then ended in accordance with accounting principles generally accepted in the United States of America.

*Collins Barrow Toronto LLP*

Licensed Public Accountants  
Chartered Accountants  
March 24, 2014  
Toronto, Ontario

# Freshii Development, LLC

## Balance Sheet

(in US Dollars)

As at December 31, 2013

	2013	2012
		(As Restated - Note 7)
<b>Assets</b>		
<b>Current</b>		
Cash	\$ 1,460,285	\$ 1,610,736
Accounts receivable	290,696	156,079
	1,750,981	1,766,815
Deferred commission costs (Note 2)	211,736	206,416
Reacquired franchise rights (Note 5)	176,471	-
	\$ 2,139,188	\$ 1,973,231

## Liabilities

<b>Current</b>		
Accounts payable and accrued liabilities	\$ 223,440	\$ 114,523
Due to affiliated entities	-	17,153
	223,440	131,676
Deferred revenue	421,950	458,332
Note payable (Note 3)	-	412,540
	645,390	1,002,548

## Member's Equity

Retained earnings	1,493,798	970,683
	\$ 2,139,188	\$ 1,973,231

Subsequent events (Note 8)

Approved by the Board                     "Matthew Corrin"                      
Member (Signed)

**Freshii Development, LLC****Statement of Income**

(in US Dollars)

**Year Ended December 31, 2013**

(with comparatives for the year ended December 31, 2012)

	<b>2013</b>	<b>2012</b>
		(As Restated - Note 7)
<b>Revenue</b>		
Development and franchise fees	\$ 1,021,356	\$ 563,120
Royalty income	1,037,753	573,698
	<b>2,059,109</b>	1,136,818
<b>Expenses</b>		
Amortization expense (Note 5)	23,529	-
Bad debt expense	135,000	-
Commissions (Note 2)	538,812	356,861
Interest	4,986	22,485
Management fees	134,679	114,905
Office and general	6,137	6,885
Professional fees	59,287	55,307
Revenue share (Note 2)	237,585	197,811
	<b>1,140,015</b>	754,254
<b>Net earnings</b>	<b>\$ 919,094</b>	<b>\$ 382,564</b>

**Freshii Development, LLC**  
**Statement of Member's Equity (Deficit)**  
(in US Dollars)  
**Year Ended December 31, 2013**  
(with comparatives for the year ended December 31, 2012)

	<b>2013</b>	2012
		(As Restated - Note 7)
Balance, beginning of year	\$ 970,683	\$(1,087,683)
Member's contributions	-	1,675,802
Member's distributions	(395,979)	-
Net earnings for the year	919,094	382,564
<b>Balance, end of year</b>	<b>\$ 1,493,798</b>	<b>\$ 970,683</b>

**Freshii Development, LLC****Statement of Cash Flows**

(in US Dollars)

**Year Ended December 31, 2013**

(with comparatives for the year ended December 31, 2012)

	<b>2013</b>	<b>2012</b>
		(As Restated - Note 7)
Cash provided by (used in)		
Operations		
Net earnings	\$ 919,094	\$ 382,564
Items not affecting cash		
Bad debt expense	135,000	-
Amortization expense	23,529	-
	<b>1,077,623</b>	382,564
Net changes in non-cash working capital		
Accounts receivable	(268,610)	(141,889)
Deferred commission costs	(5,320)	(122,606)
Accounts payable and accrued liabilities	108,919	114,060
Deferred revenue	(36,382)	222,800
Note payable	(412,540)	(587,460)
	<b>463,690</b>	(132,531)
<b>Investing</b>		
Due to (from) affiliated entities	(18,162)	47,275
Member's contribution (distribution)	(395,979)	1,675,802
Reacquisition of franchise rights	(200,000)	-
	<b>(614,141)</b>	1,723,077
<b>Net change in cash</b>	<b>(150,451)</b>	1,590,546
Cash, beginning of year	1,610,736	20,190
<b>Cash, end of year</b>	<b>\$ 1,460,285</b>	<b>\$ 1,610,736</b>

**Freshii Development, LLC**  
**Notes to Financial Statements**  
(in US Dollars)  
**December 31, 2013**

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**1. INDUSTRY OPERATIONS**

Freshii Development, LLC "the Company" was organized under the laws of the state of Delaware on February 26, 2008 and was established to franchise "Freshii" fast casual salad retail stores in metropolitan areas throughout the United States of America. As of December 31, 2013, the Company has agreements in place awarding exclusive development rights for the Chicago, IL, Washington, D.C., Houston, TX, Austin, TX, Philadelphia, PA, Baltimore, MD, Orange County, CA, Los Angeles, CA, Boston, MA, Portland, OR, New York, NY, Charlotte, NC, Cincinnati, OH, Indianapolis, IN, metropolitan areas as well as other areas in the states of California, Washington, Texas, Florida and internationally in Dubai, United Arab Emirates, Austria, Switzerland, Sweden and Colombia.

Changes in the number of franchise locations during the year is as follows:

	<b>2013</b>	<b>2012</b>
Balance, beginning of year	<b>32</b>	28
Additions	<b>29</b>	4
Closures	<b>(6)</b>	-
Balance, end of year	<b>55</b>	32

**2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

As a limited liability company, each member's liability is limited to the capital invested. The Company's sole member is Freshii USA, Inc.

The Company is treated as a partnership for federal income tax purposes. Consequently, federal income taxes are not payable by, or provided for, the Company. All Company earnings flow through to its sole member. Accordingly, the financial statements do not reflect a provision for income taxes.

The Company's application of accounting principles generally accepted in the United States of America ("US GAAP") regarding uncertain tax positions had no effect on its financial position as management believes the Company has no material unrecognized income tax benefits. The Company would account for any potential interest or penalties related to possible future liabilities for unrecognized income tax benefits as other expense.

**Basis of Presentation**

These financial statements have been prepared in accordance with US GAAP, on a basis consistent for all periods presented. The significant accounting policies used in these US GAAP financial statements are as follows:

**Functional and Presentation Currency**

The Company's functional currency is United States dollar ("USD"), as this is the principal currency of the economic environment in which the entity operates. These financial statements are presented in USD.

**Freshii Development, LLC**  
**Notes to Financial Statements**  
(in US Dollars)  
**December 31, 2013**

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**2. SIGNIFICANT ACCOUNTING POLICIES (Cont'd)**

**Cash**

The Company maintains its cash in a bank deposit account, which at times may exceed federally insured limits. The Company believes it is not exposed to any significant credit risk with respect to its cash.

**Commission Costs**

The Company has entered into a consulting agreement that gives the consultant the exclusive right to market and sell the Freshii franchise worldwide, except for Canada, for a period of ten years. Commissions are payable to the consultant upon the Company's receipt of any franchise, development or other fees covered under the agreement. Commission costs related to any fee revenue that is deferred shall also be deferred and expensed as the associated revenues are recognized into income as discussed below.

The Company has incurred and capitalized \$211,736 and \$206,416 of commission costs as of December 31, 2013 and December 31, 2012, respectively. The commissions recognized as expense are as follows:

	<b>2013</b>	<b>2012</b>
Commissions on royalties (20%)	\$ 131,632	\$ 75,301
Commissions on franchise fees	407,180	281,560
	<b>\$ 538,812</b>	<b>\$ 356,861</b>

**Revenue Share**

The Company has also agreed to pay master franchises 50% of royalties collected which were \$237,585 in 2013 (2012 - \$197,811).

**2. SIGNIFICANT ACCOUNTING POLICIES (Cont'd)**

**Revenue Recognition**

Development and Franchise fees

The Company's restaurants are predominantly franchised. The Company grants franchise license or operator agreements to independent operators who in turn pay franchise fees and other payments, which may include payments for equipment and royalties. Development and franchise fees are received by the Company at the time the respective agreements for individual stores are executed. The Company recognizes development and franchise fees as revenue when substantially all material services or conditions as specified in the agreement have been performed. These non-refundable fees are recognized as follows:

(i) Franchise Agreement

Franchise fees are paid to the Company for providing operational materials, training personnel and assistance in store opening activities such as marketing, brand promotion and site selection. The revenue is recognized by the Company upon the opening of a store.

(ii) Master License Agreement

Master license fees are paid to the Company in order to secure the exclusive right to develop and open a specific number of stores in a specified territory as defined by the respective agreement. The majority of the services for Master Licensors are provided up front, and the Company provides training at the opening of the first location under the Master agreement. The revenue is recognized in two parts by the Company; the first is upon signing the agreement at which time 75% of the fee is recognized and the balance is recognized as the remainder of the services are provided.

(iii) Area Development Agreement

Area development fees are paid to the Company in order to secure the exclusive right to develop and open a specific number of stores in a specified territory as defined by the respective agreement. The majority of the services for Area Developers are provided up front, and minimal services related to site selection is provided at the opening of each unit. The revenue is recognized in two parts by the Company; the first is upon signing the agreement at which time 75% of the fee is recognized and the balance is recognized as each store is opened.

(iv) Agent Development Agreement

Agent Development fees are paid to the Company in order to secure the exclusive right to develop a specific number of stores in a specified territory as defined by the respective agreement. The revenue is recognized by the Company upon signing the agreement.

The total initial franchise fee recognized during the year ended December 31, 2013 was \$1,021,356 (2012 - \$563,120).

**2. SIGNIFICANT ACCOUNTING POLICIES (Cont'd)**

**Royalties**

Royalties are based on a percentage of monthly sales of each store and are recognized as income in the month earned, on the accrual basis. They are normally collected within the month or shortly thereafter. Royalties typically range from 3% to 6% of gross sales.

**Accounts Receivable**

The Company records accounts receivable on the date the franchisee or the area developer sign the respective agreement and when there is reasonable assurance that the agreement will be fulfilled. As at December 31, 2013, there was no allowance for doubtful accounts.

**Management Estimates**

The preparation of financial statements in conformity with US GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities as of 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.

The revenue recognition policies selected require the use of estimates and assumptions that may affect the reported amounts of the recognized and deferred revenues, related commission expenses and collectibility of accounts receivable.

**Reacquired Franchise Rights, and Other Assets**

Reacquired franchise rights are amortized over the life of the related franchise agreement. The company identifies potential impairments for the reacquired franchise rights by comparing the fair value with its carrying amount. If the fair value exceeds the carrying amount the franchise rights are not impaired. If the fair value of the asset is less than the carrying amount, an impairment is recorded.

**Fair Value of Financial Instruments**

Fair value is the price that would be received to sell an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants at the measurement date. We use a three-tier fair value hierarchy based upon observable and non-observable inputs that prioritizes the information used to develop our assumptions regarding fair value. Fair value measurements are separately disclosed by level within the fair value hierarchy.

The carrying value of cash and cash equivalents, accounts receivable, accounts payable, and other current assets and liabilities approximate fair value because of their short-term maturity.

**2. SIGNIFICANT ACCOUNTING POLICIES (Cont'd)**

**Franchise Operations**

The Company enter into franchise agreements with unrelated third parties to build and operate restaurants using the Freshii brand within a defined geographical area. We believe that franchising is an effective and efficient means to expand the Freshii brand. The franchisee is required to operate its restaurants in compliance with its franchise agreement that includes adherence to operating and quality control procedures established by the Company. The Company does not provide loans, leases, or guarantees to the franchisee or the franchisee's employees and vendors. If a franchisee becomes financially distressed, the Company does not provide financial assistance. The Company has financial exposure for the collection of the royalty payments. Franchisees generally remit royalty payments weekly for the prior week's sales, which substantially minimizes the financial exposure. Historically, the Company has experienced insignificant write-offs of franchisee royalties. Franchise and area development fees are paid upon the signing of the related agreements.

**3. LEGAL PROCEEDINGS**

The Company was a defendant in a lawsuit with its marketing consultant relating to an alleged breach of contract. The case was filed on March 16, 2010 in the state of Virginia. The plaintiff was seeking amounts alleged to be currently due under its contract with the Company. On March 1, 2011, a summary judgment was granted in favor of the plaintiff. The Company filed an appeal.

The same consultant had also filed a lawsuit against the Company for one count of tortious interference with business expectancy in the state of Virginia. This case was filed on March 7, 2011.

Both lawsuits were settled on December 30, 2011. The terms of the settlement agreement require the Company to make payments to the consultant totaling \$1.2 million, of which \$200,000 has been paid as of December 31, 2011. The settlement amount consists of \$547,891 relating to the original claim for fees owed under the consulting agreement including interest, and \$652,109 relating to the remaining settlement amount agreed to by the Company and the consultant. The \$652,109 is payable under a promissory note, bearing interest at 6%, and having a maturity date of December 31, 2013. The remaining \$347,891 is non-interest bearing and is payable under the provisions of the settlement agreement. Payments are to be made as royalty, development and franchise fees are collected by the Company. The percentage of such collections to be remitted to the consultant are described in the settlement agreement. In addition, 50% of any capital raised by the Company in excess of \$1,000,000 must be used to pay any amounts outstanding under the settlement agreement. During 2013, the settlement amount was paid.

Effective July 1, 2012, the provisions of the original agreement between the Company and the consultant were reinstated. The Company is currently working with the marketing consultant under the original agreement.

#### **4. FINANCIAL INSTRUMENTS**

##### **Liquidity Risk**

Liquidity risk is the risk that the Company will encounter difficulty in meeting its obligations as they fall due. The Company manages liquidity risk by continuously monitoring actual and forecast cash flows. The Company's financial liabilities include accounts payable and accrued liabilities and note payable.

##### **Credit Risk**

Credit risk is the risk of financial loss to the Company if a franchisee fails to meet its contractual obligations, and arises principally from deposits with banks and financial institutions, as well as credit exposure to franchisees, including outstanding receivables and committed transactions.

The Company manages and analyzes the credit risk for each new client before standard payment terms and conditions are offered. The Company has no significant concentrations of credit risk.

Cash is maintained in reputed banks.

#### **5. REACQUIRED FRANCHISE RIGHTS**

Reacquired franchise rights consisted of the following:

	<b>2013</b>	<b>2012</b>
Reacquired franchise rights	\$ 200,000	\$ -
Accumulated amortization	(23,529)	-
<b>Reacquired franchise rights, net</b>	<b>\$ 176,471</b>	<b>\$ -</b>

#### **6. RELATED PARTY TRANSACTIONS**

During 2013, the Company advanced a total of \$395,979 to an entity affiliated with the Company through common ownership. Such advances were due on demand and non-interest-bearing.

As of December 31, 2013, the Company recognized deemed distributions for the forgiveness of the amounts due from the affiliate totaling \$395,979.

**7. CHANGE IN ACCOUNTING POLICY**

**Voluntary Change in Revenue Recognition Policy for Development Fees**

In 2012 the Company changed its revenue recognition policy for area development fees and have elected to record 75% of the area development fees upon signing of the area development agreement. The change in revenue recognition policy was made to better reflect the services provided upon the signing of the agreement and the exclusive right to develop and open a specific number of stores in a specific territory.

The change in accounting policy was accounted for retroactively and accordingly the comparative financial statements were restated to conform to the said change. The effect of the change was an increase in net income and member's equity of approximately \$177,000 for the year ended and as at December 31, 2012 and approximately \$762,000 to opening member's equity as at January 1, 2012.

**8. SUBSEQUENT EVENTS**

Management has evaluated subsequent events through March 24, 2014, the date on which the financial statements were available to be issued.

# **Freshii Development, LLC**

## **Financial Statements**

(in US Dollars)

**For the Year Ended December 31, 2012**

## INDEPENDENT AUDITORS' REPORT

### To the Member of Freshii Development, LLC

We have audited the accompanying financial statements of Freshii Development, LLC which comprise the balance sheet as at December 31, 2012 and the related statements of income, member's equity and cash flows for the year 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 of financial statements that are free from material misstatement, whether due to fraud or error.

#### *Auditor's Responsibility*

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with accounting principles 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 auditor's 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 of accounting policies used and the reasonableness of 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 Freshii Development, LLC as at December 31, 2012, the results of its operations and its cash flows for the year then ended in accordance with accounting principles generally accepted in the United States of America.

#### *Other matter*

The financial statements of Freshii Development LLC for the year ended December 31, 2011 were audited by another auditor, who issued an unmodified opinion dated March 28, 2012.

*Collins Barrow Toronto LLP*

Licensed Public Accountants  
Chartered Accountants  
March 28, 2013  
Toronto, Ontario

# Freshii Development, LLC

## Balance Sheet

(in US Dollars)

As at December 31, 2012

	2012	2011
<b>Assets</b>		
<b>Current</b>		
Cash	\$ 1,610,736	\$ 20,190
Accounts receivable	156,079	14,190
Due from affiliated entities	-	30,284
	1,766,815	64,664
<b>Deferred commission costs</b>	<b>942,166</b>	<b>661,000</b>
	<b>\$ 2,708,981</b>	<b>\$ 725,664</b>
<b>Liabilities</b>		
<b>Current</b>		
Accounts payable and accrued liabilities	\$ 114,687	\$ 627
Settlement payable (Note 4)	-	347,891
	114,687	348,518
<b>Deferred revenue</b>	<b>2,150,327</b>	<b>1,574,407</b>
<b>Note payable (Note 4)</b>	<b>412,540</b>	<b>652,109</b>
	<b>2,677,554</b>	<b>2,575,034</b>
<b>Member's Equity (Deficit)</b>		
	<b>31,427</b>	<b>(1,849,370)</b>
	<b>\$ 2,708,981</b>	<b>\$ 725,664</b>

*Commitments (Note 7)*

Approved by the Board \_\_\_\_\_  
Member

**Freshii Development, LLC****Statement of Income**

(in US Dollars)

**Year Ended December 31, 2012**

	<b>2012</b>	2011
<b>Revenue</b>		
Development and franchise fees	\$ 210,000	\$ 645,000
Royalty Income	<b>572,689</b>	511,474
	<b>782,689</b>	1,156,474
<b>Expenses</b>		
Commissions (Note 7)	<b>180,301</b>	258,186
Interest	<b>22,485</b>	32,222
Management fees	<b>114,905</b>	170,236
Office and general	<b>6,883</b>	642,726
Professional fees	<b>55,307</b>	185,046
Royalty fees (Note 7)	<b>197,811</b>	232,180
	<b>577,692</b>	1,520,596
<b>Net earnings (loss)</b>	<b>\$ 204,997</b>	\$ (364,122)

**Freshii Development, LLC**  
**Statement of Member's Equity (Deficit)**  
(in US Dollars)  
**Year Ended December 31, 2012**

	<b>Member Contributions</b>	<b>Accumulated Deficit</b>	<b>Total</b>
<b>Balance, beginning of year</b>	<b>\$ (929,676)</b>	<b>\$ (919,694)</b>	<b>\$ (1,849,370)</b>
<b>Partners' contributions</b>	<b>1,675,800</b>	<b>-</b>	<b>1,675,800</b>
<b>Net earnings for the year</b>	<b>-</b>	<b>204,997</b>	<b>204,997</b>
<b>Balance, end of year</b>	<b>\$ 746,124</b>	<b>\$ (714,697)</b>	<b>\$ 31,427</b>

**For the Year Ended December 31, 2011**

	<b>Member Contributions</b>	<b>Accumulated Deficit</b>	<b>Total</b>
<b>Balance, beginning of year</b>	<b>\$ (567,350)</b>	<b>\$ (555,572)</b>	<b>\$ (1,122,922)</b>
<b>Deemed Distribution (Note 3)</b>	<b>(362,326)</b>	<b>-</b>	<b>(362,326)</b>
<b>Net loss for the year</b>	<b>-</b>	<b>(364,122)</b>	<b>(364,122)</b>
<b>Balance, end of year</b>	<b>\$ (929,676)</b>	<b>\$ (919,694)</b>	<b>\$ (1,849,370)</b>

**Freshii Development, LLC**  
**Statement of Cash Flows**  
(in US Dollars)  
**Year Ended December 31, 2012**

	2012	2011
<b>Cash provided by (used in)</b>		
<b>Operations</b>		
Net earnings (loss)	\$ 204,997	\$ (364,122)
Net changes in non-cash working capital		
Accounts receivable	(141,889)	(10,473)
Deferred commission costs	(281,166)	386,500
Accounts payable and accrued liabilities	114,060	(50,065)
Deferred revenue	575,920	(521,393)
Settlement payable	(587,460)	501,184
	(115,538)	(58,369)
<b>Investing</b>		
Due to (from) affiliated entities	30,284	(354,863)
Member's contribution	1,675,800	-
	1,706,084	(354,863)
<b>Net change in cash</b>	<b>1,590,546</b>	<b>(413,232)</b>
<b>Cash, beginning of year</b>	<b>20,190</b>	<b>433,422</b>
<b>Cash, end of year</b>	<b>\$ 1,610,736</b>	<b>\$ 20,190</b>

**1. INDUSTRY OPERATIONS**

Freshii Development, LLC "the Company" was organized under the laws of the state of Delaware on February 26, 2008 and was established to franchise "Freshii" fast casual salad retail stores in metropolitan areas throughout the United States. As of December 31, 2012, the Company has agreements in place awarding exclusive development rights for the Chicago, IL, Washington, D.C., Houston, TX, Austin, TX, Philadelphia, PA, Baltimore, MD, Orange County, CA, Los Angeles, CA, Boston, MA, Portland, OR, New York, NY, Charlotte, NC, metropolitan areas as well as other areas in the states of California, Washington, Texas, Florida and internationally in Dubai, United Arab Emirates, Austria, Switzerland, Sweden and Colombia. As at December 31, 2012, 32 stores (28 in 2011) were opened for business under the previously mentioned agreements.

**2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

As a limited liability company, each member's liability is limited to the capital invested. The Company's sole member is Freshii USA, Inc.

The Company is treated as a partnership for federal income tax purposes. Consequently, federal income taxes are not payable by, or provided for, the Company. All Company earnings flow through to its sole member. Accordingly, the financial statements do not reflect a provision for income taxes.

The Company's application of accounting principles generally accepted in the United States of America ("GAAPUSA") regarding uncertain tax positions had no effect on its financial position as management believes the Company has no material unrecognized income tax benefits. The Company would account for any potential interest or penalties related to possible future liabilities for unrecognized income tax benefits as other expense.

**Cash**

The Company maintains its cash in a bank deposit account, which at times may exceed federally insured limits. The Company believes it is not exposed to any significant credit risk with respect to its cash.

**Commission Costs**

The Company has entered into a consulting agreement that gives the consultant the exclusive right to market and sell the Freshii franchise worldwide, except for Canada, for a period of ten years. Commissions are payable to the consultant upon the Company's receipt of any franchise, development or other fees covered under the agreement. Commission costs related to any fee revenue that is deferred shall also be deferred and expensed as the associated revenues are recognized into income as discussed below. The Company has incurred and capitalized \$942,166 and \$661,000 of commission costs as of December 31, 2012 and December 31, 2011, respectively. During 2012 and 2011, \$105,000 and \$255,000, respectively, was recognized as an expense, included in commissions.

**2. SIGNIFICANT ACCOUNTING POLICIES (Cont'd)**

**Revenue Recognition**

*Development and franchise fees*

Development fees are paid to the Company in order to secure the exclusive right to develop and open a specific number of stores in a specified territory as defined by the respective agreement. These non-refundable development fees are recognized as revenue as the stores open.

Franchise fees are paid to the Company for providing operational materials, training personnel and assistance in other store opening activities such as marketing and site selection. Franchise fees are received by the Company at the time the respective franchise agreements for individual stores are executed. If a store is opened under a development agreement as discussed above, the per store development fee already paid is credited towards the amount of the franchise fee owed. The Company recognizes franchise fees as revenue when all material services or conditions as specified in the agreement have been performed. Such obligations are typically satisfied by the Company upon the opening of a new store.

The Company collected and deferred \$2,150,327 and \$1,574,407 of development fees and franchise fees as of 2012 and 2011, respectively. During 2012 and 2011, \$210,000 and \$645,000, respectively, was recognized as revenue.

*Royalty Income*

The Company records royalty revenues as defined by the respective agreement. Royalties typically range from 3% to 6% of gross sales.

**Management Estimates**

The preparation of financial statements in conformity with GAAPUSA requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities as of 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. Estimates include collectibility of accounts receivable.

**3. RELATED PARTY TRANSACTIONS**

During 2011, the Company advanced a total of \$354,863 to an entity affiliated with the Company through common ownership. Such advances were due on demand and non-interest-bearing.

As of December 31, 2011, the Company recognized deemed distributions for the forgiveness of the amounts due from the affiliate totaling \$362,326. This was accounted for as a non-cash transaction on the statement of cash flows.

#### **4. LEGAL PROCEEDINGS**

The Company was a defendant in a lawsuit with its marketing consultant relating to an alleged breach of contract. The case was filed on March 16, 2010 in the state of Virginia. The plaintiff was seeking amounts alleged to be currently due under its contract with the Company. On March 1, 2011, a summary judgment was granted in favor of the plaintiff. The Company filed an appeal.

The same consultant had also filed a lawsuit against the Company for one count of tortious interference with business expectancy in the state of Virginia. This case was filed on March 7, 2011.

Both lawsuits were settled on December 30, 2011. The terms of the settlement agreement require the Company to make payments to the consultant totaling \$1.2 million, of which \$200,000 has been paid as of December 31, 2011. The amount consists of \$547,891 relating to the original claim for fees owed under the consulting agreement including interest, and \$652,109 relating to the remaining settlement amount agreed to by the Company and the consultant. The \$652,109 is payable under a promissory note, bearing interest at 6%, and having a maturity date of December 31, 2013. The remaining \$347,891 is non-interest bearing and is payable under the provisions of the settlement agreement. Payments are to be made as royalty, development and franchise fees are collected by the Company. The percentage of such collections to be remitted to the consultant are described in the settlement agreement. In addition, 50% of any capital raised by the Company in excess of \$1,000,000 must be used to pay any amounts outstanding under the settlement agreement. At December 31, 2012, \$412,540 was outstanding.

Effective July 1, 2012, the provisions of the original agreement between the Company and the consultant were reinstated. The Company is currently working with the marketing consultant under the original agreement. (Note 7)

#### **5. FINANCIAL INSTRUMENTS**

##### **Liquidity Risk**

Liquidity risk is the risk that the Company will encounter difficulty in meeting its obligations as they fall due. The Company manages liquidity risk by continuously monitoring actual and forecast cash flows. The Company's financial liabilities include accounts payable and accrued liabilities and note payable.

#### **6. COMMITMENTS**

- (a) The Company has agreed to pay commissions of 20% of royalties collected and 50% of franchise fees collected to a consultant which were \$180,301 in 2012 (2011- \$258,186).
- (b) The Company has agreed to pay certain master franchises 50% of royalties collected which were \$197,811 in 2012 (2011- \$232,180).

**7. COMPARATIVE FIGURES**

Certain comparative figures have been reclassified to conform with the current year's financial statement presentation.

**8. SUBSEQUENT EVENTS**

Management has evaluated subsequent events through March 28, 2013, the date on which the financial statements were available to be issued.

**EXHIBIT F**

**STATE-SPECIFIC ADDENDUM**

**EXHIBIT ~~GE~~ TO THE DISCLOSURE DOCUMENT**  
**DISCLOSURE REQUIRED BY THE STATE OF MINNESOTA**

1. The last paragraph of Item 13 of the Disclosure Document is deleted and replaced with the following:

If you have complied with all of our requirements that apply to the Marks, we will protect your right to use the principal Mark and indemnify you from any loss, costs, or expenses arising out of any claims, suits, or demands regarding your use of the principal Mark, in accordance with and to the extent required by Minn. Stat. Sec. 80C.12. Subd. 1(g).

2. The following paragraphs are added at the end of Item 17 of the Disclosure Document:

For franchises governed by the Minnesota Franchises Law, we will comply with Minn. Stat. Sec. 80C.14, Subds. 3, 4, and 5 which require, except in certain specified cases, that you be given 90 days' notice of termination (with 60 days to cure) and 180 days' notice for non-renewal of the franchise agreement.

Minn. Stat. Sec. 80C.21 and Minn. Rule 2860.4400J prohibit us in certain cases from requiring litigation to be conducted outside Minnesota. Those provisions also provide that no condition, stipulations or provision in the franchise agreement shall in any way abrogate or reduce any rights you have under the Minnesota Franchises Law, including (if applicable, and subject to your arbitration obligations) the right to submit matters to the jurisdiction of the courts of Minnesota and the right to any procedure, forum or remedies that the laws of the jurisdiction provide.

Any release as a condition of renewal and/or assignment/transfer will not apply to the extent prohibited by applicable law for claims arising under Minn. Rule 2860.4400D.

Minnesota Rule Part 2860.4400J prohibits a franchisee in certain cases from waiving rights to a jury trial; waiving your rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction; or consenting to liquidated damages, termination penalties or judgment notes. However, we and you will enforce these provisions in the agreements to the extent the law allows.

IN WITNESS WHEREOF, the parties hereto have duly executed, sealed and delivered this Addendum dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

ATTEST

FRESHII DEVELOPMENT, LLC

\_\_\_\_\_  
Witness

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

FRANCHISEE:

\_\_\_\_\_  
Witness

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

Title:

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**EXHIBIT G**

**LIST OF FRANCHISEES**  
(As of December 31, 20132014)

<b>ARIZONA</b>	
<b>Franchisee</b>	<b>Location</b>
Aramark Food and Support Services Group, Inc. Aramark Tower 1101 Market St, 24 Floor Philadelphia, Pennsylvania 19107	1290 S Normal Ave Tempe, Arizona 85281
<b>CALIFORNIA</b>	
<b>Franchisee</b>	<b>Location</b>
8-Cubed Attn: Jeffrey Schlosser	230 Bush Street San Francisco, CA 94104 415-362-6262
8-Cubed Attn: Jeffrey Schlosser	4 The Embarcadero San Francisco, CA 94105 415-772-9840
<b>CONNECTICUT</b>	
<b>Franchisee</b>	<b>Location</b>
Freshii Westport LLC Jonathan Blob 180 West 20 <sup>th</sup> St #14D New York, New York 10011	One Main Street Westport, Connecticut 06880 203-222-3599
<b>FLORIDA</b>	
<b>Franchisee</b>	<b>Location</b>
<u>CFR Healthy Foods LLC</u> <u>175 SW 7<sup>th</sup> Street, Suite 1906</u> <u>Miami, Florida 33130</u>	<u>2300 NW 2<sup>nd</sup> Ave</u> <u>Miami, Florida 33127</u> <u>786-534-9656</u>
<u>Maxi Food, LLC</u> <u>1921 Reed Hill Drive</u> <u>Windermere, Florida 34786</u>	<u>7600 Dr Philips Blvd #10</u> <u>Orlando, Florida 32819</u> <u>407-203-8862</u>
<b>GEORGIA</b>	
<b>Franchisee</b>	<b>Location</b>
<u>Todd and Tamara Lukens</u> <u>383 Cherokee Place SE</u> <u>Atlanta, Georgia 30312</u>	<u>3393 Peachtree Rd NE #1005</u> <u>Atlanta, Georgia 30326</u>
<b>ILLINOIS</b>	

Franchisee	Location
Fresh Food 200 West LLC 35 Shenandoah Deerfield, Illinois 60015 Attn: David Grossman	200 West Monroe Street Chicago, Illinois 312-269-0995
Prestige Worldwide Holdings LLC 1050 W Diversey Parkway Unit 3 Chicago, <del>H</del> <u>Illinois</u> 60614 Attn Joshua Newcomer	111 W Jackson Blvd Chicago, Illinois 60604 312-588-5998
STF Enterprises LLC Attn: Scott Frankel 365 N Jefferson St Chicago, Illinois 60661	161 North Clark Street Chicago, Illinois 60601 312-332-4151
STF Enterprises LLC Attn: Scott Frankel 365 N Jefferson St Chicago, Illinois 60661	311 S Wacker Dr Chicago, <del>H</del> <u>Illinois</u> 60606 312-435-0311
SJLG Fresh Series One Attn: Davenport 350 W. Wisconsin Street Chicago, Illinois 60614	17 E. Monroe Street Chicago, Illinois 60606 312-419-1777
United Fresh and Healthy, Inc. Attn: Jamie Maloney 49 S. Vine Street Hinsdale, Illinois 60521	3021 Butterfield Road Oak Brook, Illinois 60523 630-990-7446
Fresh Food Management, LLC Attn: David Grossman	835 N. Michigan Avenue Chicago, Illinois 60606 312-202-9016
Nutritionality Inc Attn: Peter Irie 561 Woodvale Avenue Deerfield, Illinois 60015	200 W. Randolph Street Chicago, Illinois 60606 <u>312-578-1470</u>
ABFF 208 W Washington #1501 Chicago, Illinois 60606	26 S Clinton Street Chicago, Illinois 60606 312-382-0900
Freshi Food 350 North Investors, LLC 35 Shenandoah Rd Deerfield, Illinois 60015 Attn: David Grossman	350 LaSalle Blvd Chicago, Illinois 60606 312-836-0160
Ritus LLC 1590 W Algonquin Road #225 Hoffman Estates, Illinois 60192 Attn: Rocco Armocida	5220 Fashion Outlets Way Rosemont, Illinois 60018 847-678-9373

MHD LLC David Grossman 35 Shenandoah Rd Deerfield, Illinois 60015	900 N Michigan Ave Chicago, Illinois 60611 <u>312-274-0464</u>
United Fresh and Healthy Inc Jamie Maloney 449 S Vine St Hinsdale Illinois 60501	203 Yorktown Shopping Center Lombard, Illinois 60148 630-495-1197
<u>Compass Group USA Inc</u> <u>2400 Yorkmont Road</u> <u>Charlotte, North Carolina 28217</u>	<u>University of Illinois in Chicago</u> <u>828 S Wolcott Ave</u> <u>Chicago, Illinois 60612</u> <u>312-996-4540</u>
<u>FF854 Armitage LLC</u> <u>208 W Washington St</u> <u>Chicago, Illinois 60606</u>	<u>854 W Armitage Ave</u> <u>Chicago, Illinois 60614</u> <u>773-348-0300</u>
<u>FF50 E Washington LLC</u> <u>208 W Washington St</u> <u>Chicago, Illinois 60606</u>	<u>50 E Washington St</u> <u>Chicago, Illinois 60602</u> <u>312-499-0600</u>
<u>Healthyeats LLC</u> <u>1050 W Diversey Pkwy Unit 3</u> <u>Chicago, Illinois 60614</u>	<u>28 N Clark St</u> <u>Chicago, Illinois 60602</u> <u>312-346-3663</u>
<u>Princes Jelu LLC</u> <u>200 E Randolph Dr Ste LL03</u> <u>Chicago, Illinois 60601</u>	<u>200 E Randolph Dr Ste LL03</u> <u>Chicago, Illinois 60601</u> <u>312-233-3399</u>
<b>INDIANA</b>	
<b>Franchisee</b>	<b>Location</b>
Keystone Fresh, LLC 225 W. Washington Street Indianapolis, Indiana 46204	8702 Keystone Crossing Boulevard Indianapolis, Indiana 46240 317-660-8110
Castleton Fresh, LLC 6020 East 82 <sup>nd</sup> Street Indianapolis, Indiana 46250	6020 East 82 <sup>nd</sup> Street Indianapolis, Indiana 46250 317-288-3091
<b>MARYLAND</b>	
<b>Franchisee</b>	<b>Location</b>
<u>BMFD LLC</u> <u>Attn: Sumeet K. Goel</u> <u>5116 Dorsey Hall Drive, 2<sup>nd</sup> Fl.</u> <u>Elicott City, Maryland 21042</u>	<u>186 Waterfront Street</u> <u>National Harbor, Maryland 20745</u> <u>301-839-1377</u>

Fielding Martinez, LLC Attn: Daniel Fielding	Charles Village Baltimore, Maryland 21218 410-244-1922
Bootmata LLC 100 Havencrest Street Rockville, Maryland 20850 Attn: Jay and Mala Amin	9613 East Medical Center Drive #4 Rockville, Maryland 20850 240-328-1037
<b>MASSACHUSETTS</b>	
<b>Franchisee</b>	<b>Location</b>
Red Cape Ventures <u>LLC</u> <u>Weston Gaddy</u> <u>383 Marlborough Street St Apt 1</u> Boston, Massachusetts 02115	100 High Street, Suite 100 Boston, Massachusetts 02110 <u>857-233-2674</u>
<u>Red Cape Ventures LLC</u> <u>Weston Gaddy</u> <u>383 Marlborough St Apt 1</u> <u>Boston, Massachusetts 02115</u>	<u>1 Iron Street</u> <u>Boston, Massachusetts 02210</u> <u>857-496-0656</u>
<b>MICHIGAN</b>	
<b>Franchisee</b>	<b>Location</b>
Aramark Food and Support Services Group, Inc. Aramark Tower 1101 Market St, 24 Floor Philadelphia, Pennsylvania 19107	679 Kirby St Detroit, Michigan 48202
Freshcraft LLC Nathan and Dan Ashcraft 576 Hillview Place Rockford, Michigan 49341	146 Monroe Center NW #160 Grand Rapids, Michigan 49503 616-551-1449
<b>MINNESOTA</b>	
<b>Franchisee</b>	<b>Location</b>
Southdale Fresh LLC Patrick Peterman 225 W Washington St Indianapolis, Indiana 46204	10 Southdale Circle #2305 Edina, Minnesota 55435 925-314-8253
<u>Aramark Food and Support Services Group, Inc.</u> <u>Aramark Tower</u> <u>1101 Market St, 24 Floor</u> <u>Philadelphia, Pennsylvania 19107</u>	<u>Phillips Wagensteen Building</u> <u>516 Delaware St SE</u> <u>Minneapolis, Minnesota 55455</u>
<b>MISSISSIPPI</b>	
<b>Franchisee</b>	<b>Location</b>

<u>Aramark Food and Support Services Group, Inc.</u> <u>Aramark Tower</u> <u>1101 Market St, 24 Floor</u> <u>Philadelphia, Pennsylvania 19107</u>	<u>University of Mississippi</u> <u>Johnon Commons Building</u> <u>University, Mississippi 38677</u>
<b>NORTH CAROLINA</b>	
<b>Franchisee</b>	<b>Location</b>
Aramark Food and Support Services Group, Inc. Aramark Tower 1101 Market Street, 24 <sup>th</sup> Floor Philadelphia, Pennsylvania 19107	100 Campus Drive Elon, North Carolina 27244
The Hutchens Group, Inc. 5010 Sentinel Post Road Charlotte, North Carolina 28226 Attn: James Hutchens	200 S College St #312 Charlotte, North Carolina 28202 980-298-6704
<b>OHIO</b>	
<b>Franchisee</b>	<b>Location</b>
SOSCO Foods	425 Walnut Street Cincinnati, Ohio 45202 513-421-3000
<b>OREGON</b>	
<b>Franchisee</b>	<b>Location</b>
RTJ Enterprises 3287 Summit Ridge Terrace Chico, California 95928	<del>647</del> <u>635</u> SW Morrison Street Portland, Oregon 97205 <u>844-899-8095</u>
RTJ Enterprises 3287 Summit Ridge Terrace Chico, California 95928	<del>4200</del> <u>100</u> SW Main Street, #130 Portland, Oregon 97205 <u>971-337-3489</u>
<b>SOUTH CAROLINA</b>	
<b>Franchisee</b>	<b>Location</b>
<u>David Herbert</u> <u>Christopher Jacobs</u>	<u>315 King St</u> <u>Charleston, South Carolina 29401</u> <u>843-793-3386</u>
<b>TEXAS</b>	
<b>Franchisee</b>	<b>Location</b>
Novus Concepts, LLC Attention: John Yapundich 3333 Wesleyan, Suite 1405 Houston, Texas 77027	1200 McKinney Houston, Texas 77010 713-659-2200

STE Food One LLC 5700 Thackery Drive Plano, Texas 75093	1412 Main Street #101 Dallas, Texas 75202 214-748-6000
A3 Ventures LLC Attention: Ade Amos 5506 Darling St Houston, TX Texas 77007	5085 Westheimer Road Kiosk KI-25 Houston, Texas 77056 719-965-9900
<u>Aramark Food and Support Services Group, Inc.</u> <u>Aramark Tower</u> <u>1101 Market St, 24 Floor</u> <u>Philadelphia, Pennsylvania 19107</u>	<u>1311 S 5<sup>th</sup> St</u> <u>Waco, TX 76706</u>
<u>STE Food Two LLC</u> <u>5700 Thackery Dr</u> <u>Plano, Texas 75093</u>	<u>700 N Pearl St Ste A100</u> <u>Dallas, Texas 75201</u> <u>214-748-6000</u>
<b>WASHINGTON DC</b>	
<b>Franchisee</b>	<b>Location</b>
<u>Freshii DC 3, Gillespie Ventures LLC</u> <u>Attn: Andrew Nelson</u> <u>2800 Wisconsin Avenue, #902</u> <u>3725 North West 15<sup>th</sup> Ave</u> <u>Camas, Washington, DC 20007 98607</u>	<u>555 11<sup>th</sup> Street NW</u> <u>2420 Columbia House Blvd</u> <u>Vancouver, Washington, DC 20004</u> <u>202-628-0980</u> <u>98685</u>
<u>Gillespie Ventures LLC</u> <u>3725 North West 15<sup>th</sup> Ave</u> <u>Camas, Washington 98607</u>	<u>910 NE Tenney Rd #103</u> <u>Vancouver, Washington 98685</u>
<b>WASHINGTON DC</b>	
<b>Franchisee</b>	<b>Location</b>
<u>Freshii DC 2, LLC</u> <u>Attn: Andrew Nelson</u> <u>2800 Wisconsin Avenue, #902</u> <u>Washington, DC 20007</u>	<u>1015 K Street NW</u> <u>Washington, DC 20005</u> <u>202-312-5531</u>
<u>Aramark Food and Support Services Group, Inc.</u> <u>Aramark Tower</u> <u>1101 Market St, 24 Floor</u> <u>Philadelphia, PA 19107 Pennsylvania 19107</u>	<u>4400 Massachusetts Ave NW</u> <u>Washington, DC 20016</u>
<b>WISCONSIN</b>	
<b>Franchisee</b>	<b>Location</b>
<u>Magee Holdings LLC</u> <u>2659 Saw Tooth Drive</u> <u>Madison, WI 53711</u>	<u>422 Gammon Pl</u> <u>Madison, WI 53719</u> <u>608-821-0209</u>

<b>AUSTRIA</b>	
<b>Franchisee</b>	<b>Location</b>
Andreas Kotal Schoeffelstrasse 20 3001 Mauerbach Austria	Herrengasse 5 Vienna, Austria <u>43-01-532-0995</u>
<b>COLOMBIA</b>	
<b>Franchisee</b>	<b>Location</b>
Freshii Columbia SAS Cra54 #75*45 Barranquilla, Atlantico Colombia	Carrera 12 no <del>90</del> <u>93</u> -08 Local 3 Bogota, Colombia <u>600-3262</u>
<del>DUBAI</del> Adriana Molina <u>Cra 54#75-45 Local 5</u> <u>Barranquilla, Colombia</u>	<u>Avenida Circunvalar #5-20 Local 232</u> <u>Pereira, Colombia</u> <u>036 331-0555</u>
<u>Armando Iguan/El Heraldo</u> <u>Cra 54#75-45 Local 5</u> <u>Barranquilla, Colombia</u>	<u>Carrera 53 #76-279</u> <u>Centro Comercial Shopping Norte</u> <u>035 385-5407</u>
<u>Gonzalo Duque Madrinan</u> <u>Cra 54#75-45 Local 5</u> <u>Barranquilla, Colombia</u>	<u>Oeste</u> <u>Calle 7 Oeste #1A-59 Local 2</u> <u>Cali, Colombia</u> <u>032 308-7545</u>
<u>Lisobeyth Acosta</u> <u>Cra 54#75-45 Local 5</u> <u>Barranquilla, Colombia</u>	<u>Edificio Bavaria</u> <u>Carrera 13 #27-98 Bogota</u> <u>Cundinamarca Colombia</u> <u>600-3262</u>
<u>Ricardo Sanchez</u> <u>Calle 101A No 11B-02 Apr 701</u> <u>Bogota, DC, Colombia</u>	<u>Calle 113 No 7-21, Local 1-11</u> <u>Edificio Teleport Business Park</u> <u>600-3262</u>
<b><u>UNITED ARAB EMIRATES</u></b>	
<b>Franchisee</b>	<b>Location</b>
Tierra Luna Investments, LLC Attention: Jennifer Ridgeway 22C Street, Al Barsha Dubai, Unit Arab Emirates	DIFC Dubai International Financial Center, Gate Building, Unit TB1-28, Level TB1, Marble Walk Dubai, UAE <u>971-4-327-8089</u>
Tierra Luna Investments, LLC Attention: Jennifer Ridgeway 22C Street, Al Barsha Dubai, Unit Arab Emirates	Healthcare City Building #64, Al Razi Building, C Block, Healthcare City Dubai, UAE <u>971-4-421-3370</u>

<b>SWEDEN</b>	
<b>Franchisee</b>	<b>Location</b>
Visionsbolaget 6202 AB Engelbrektsvagen 121 191 62 Sollentuna, Sweden Attn: Charlie Younan	<del>Arenaslingan 10</del> <del>12177 Johanneshov</del> <u>Grevturegatan 1</u> <u>11446 Stockholm</u> Sweden <u>46-0-8-611-8801</u>
Visionsbolaget 6202 AB Engelbrektsvagen 121 191 62 Sollentuna, Sweden Attn: Charlie Younan	<del>11446 Danmarks</del> <u>Grevturegatan 1</u> <u>11446 Danmarks</u> <u>16453 Danmarks</u> <u>16453 Stockholm</u> Sweden <u>46-0-8-750-6400</u>
<u>Abod Younan</u>	<u>Marknaden 5</u> <u>Taby Centrum</u> <u>18370 Taby, Sweden</u> <u>46-0-8-200-377</u>
Visionsbolaget 6202 AB Engelbrektsvagen 121 191 62 Sollentuna, Sweden <del>Attn: Charlie Younan</del>	<del>Danmarks</del> <u>Danmarks</u> <u>16453 Hotorget T-Bana</u> <u>Sveavagen 21</u> Stockholm Sweden <u>46-0-8-231-210</u>
<b>SWITZERLAND</b>	
<b>Franchisee</b>	<b>Location</b>
Kathrin and Dieter Winkelhausen Flurstrasse 4 CH-4512 Bellach, Switzerland	Militarestrasse 14 CH-8004 Zurich, Switzerland 41-43-538-5128

**LIST OF DEVELOPMENT AGENTS**

<b><u>ILLINOIS</u></b>	
<u>David Grossman</u> <u>MDH LLC</u> <u>35 Shenandoah</u> <u>Deerfield, Illinois 60015</u>	
<b><u>MARYLAND</u></b>	

Sumeet Goel BMFD LLC 5116 Dorsey Hall Drive, 2 <sup>nd</sup> Fl. Elicott City, Maryland 21042	David Grossman MDH LLC 35 Shenandoah Deerfield, Illinois 60015
<b><u>TEXAS</u></b>	
Javier Bueno Kore Meals, LLC 3811 Blossom Avenue Pearland, TX <u>Texas</u> 77584	

**AGREEMENTS SIGNED BUT NOT YET OPEN AS OF DECEMBER 31, 20132014:**

Asif Rajabali 9002 N. Maryland Street Niles, IL 60714 <u>CALIFORNIA</u>	Westburb Fresh Development LLC 563 North Lincoln Street Hinsdale, IL 60521 Attn: Peggy Knowles
Poon Concepts Attn: Jason Poon 5757 South Loop East Freeway Houston, TX 77033 <u>The Life Lab LLC,</u> 4013 Old Harbor Lane #116 Marina Del Rey, California 90292	James K Lee 1743 Fall Road Breingsville, PA 18031 <u>SSP</u> <u>America,</u> 19465 Deerfield Ave, Ste 105 Lansdowne, Virginia 20176
Paul Tran 704 S Kroeger Street Anaheim, CA 92805 <u>COLORADO</u>	Todd and Tamara Lukens 383 Cherokee Pl, SE Atlanta, GA 30312
Max Baumgartner 5891 Wadsworth Blvd Arvada, Colorado 80003	
<b><u>CONNECTICUT</u></b>	
Gillespie Ventures <u>Freshi Food Fairfield, LLC</u> Attn: Doug Gillespie 3725 NW 15th Ave Camas, WA 98607 <u>31 Fairfield Road</u> Greenwich, Connecticut 06830	Maxi Food LLC Nataly — Hermida, — Leonardo Sanchez 1921 Reed Hill Dr Windermere, FL 34786 <u>Soxedo,</u> <u>Inc</u> 9801 Washington Blvd Gaithersburg, Maryland 20878
<b><u>FLORIDA</u></b>	
Brian Johnson & Monique Pardo 111 Kent Ave Apt 28 Brooklyn, New York 11249	Venkat Jagarlamudi 10114 Boca Vista Dr Boca Raton, Florida 33498
PB Vikings, LLC 234 Murray Court Jupiter, Florida 33458	Manuel Losa Salas & Vanessa Riera 10724 MNW 76 Lane Miami, Florida 33178 (2 franchise agreements signed)

<p>CFR Healthy Foods  Jorge Ramirez  175 SW 7th St  SSP America,  19465 Deerfield Ave, Ste 4906  105  Miami, FL 33130</p>	<p>Fresh Food Twin Cities LLC  Scott McPhee  23321 Woodland Ridge Dr  Lakeville, MN 55044  Green  Candy, LLC  846 Addison Drive NE  St. Petersburg, Florida 33716</p>
<p>David Herbert  Christopher Jacobs  665 Palisades Dr  Mount Pleasant, SC 29464</p>	<p>Anjali LLC  Attn: Vedant Sharma  3704 Springdell Ave  Randallstown, MD 21133</p>
<p>Tod &amp; Tamara Lukens  383 Cherokee Place SE  Atlanta, Georgia 30312</p>	
<p><u>ILLINOIS</u></p>	
<p>Franke Development Inc  Attn: Edward Franke  1210 Energized Foods LLC  1910 South James Court North  Lake Forest Ave, Illinois 60045  Highland Park, IL 60035  (5 franchise agreements signed)</p>	<p>Prestige Worldwide Holdings LLC  Attn: Joshua Newcomer  1050 W Diversey Parkway Unit 3  Alex Blair  208 W Washington Ave # 1501  Chicago, IL 60614  Illinois 60606</p>
<p><u>MASSACHUSETTS</u></p>	
<p>Red Cape Ventures, LLC  383 Marlborough St Apt 1  Boston, Massachusetts 02115</p>	<p>Aramark Food and Support  Services Group, Inc.  1101 Market Street, 24th Floor  Philadelphia, Pennsylvania 19107</p>
<p><u>MICHIGAN</u></p>	
<p>Princess Jelu LLC  Carolun Michael  Chicago, IL  KACH LLC  5670 Beaver Street  Dearborn Heights, Michigan 48127</p>	<p>Randy &amp; Andy Dickow  1812 Agrosy Court  Bloomfield Hills, Michigan 48302</p>
<p>Fresh Food Twin  23321 Woodland Ridge Drive  Lakeville, Minnesota 55044</p>	
<p><u>MINNEAPOLIS</u></p>	
<p>Fresh Food Twin Cities  23321 Woodland Ridge Drive  Lakeville, Minnesota 55044</p>	
<p><u>NORTH CAROLINA</u></p>	
<p>The Hutchens Group, Inc  5010 Sentinel Post Road  Charlotte, North Carolina 28226  (3 franchise agreements signed)</p>	<p>Soxedo, Inc  9801 Washington Blvd  Gaithersburg, Maryland 20878</p>
<p><u>PENNSYLVANIA</u></p>	
<p>Soxedo, Inc  9801 Washington Blvd  Gaithersburg, Maryland 20878</p>	
<p><u>SOUTH CAROLINA</u></p>	

<u>Soxedo, Inc</u> <u>9801 Washington Blvd</u> <u>Gaithersburg, Maryland 20878</u>	
<u>TEXAS</u>	
<u>STE Food Three LLC</u> <u>Sonia Elhence</u> <u>5700 Thackery Dr</u> <u>Plano, Texas 75093</u>	<u>Aramark Food and Support</u> <u>Services Group, Inc.</u> <u>1101 Market Street, 24th Floor</u> <u>Philadelphia, Pennsylvania 19107</u> <u>(2 franchise agreements signed)</u>
<u>SSP America</u> <u>19465 Deerfield Ave Ste 105</u> <u>Lansdowne, Virginia 20176</u> <u>(2 franchise agreements signed)</u>	
<u>UTAH</u>	
<u>Ironwood Enterprises, LLC</u> <u>1562 E Kings Row Drive</u> <u>Salt Lake City, Utah 84117</u>	
<u>VIRGINIA</u>	
<u>SSP America,</u> <u>19465 Deerfield Ave, Ste 105</u> <u>Lansdowne, Virginia 20176</u> <u>(2 franchise agreements signed)</u>	
<u>WASHINGTON</u>	
<u>Melissa Barnes</u> <u>14113 123rd Avenue NE</u> <u>Kirkland, Washington 98034</u>	<u>Gillespie Ventures, LLC</u> <u>2014 SE 130th Ave</u> <u>Vancouver, Washington 98683</u>
<u>WISCONSIN</u>	
<u>Jake &amp; Scott Nerenhausen</u> <u>1715 Grabar Street</u> <u>Oshkosh, Wisconsin 54901</u> <u>(2 franchise agreements signed)</u>	
<u>AUSTRIA</u>	
<u>Andreas Kotal</u> <u>Fleischmarkt 20-22/4D</u> <u>1010 Vienna, Austria</u>	
<u>COLOMBIA</u>	
<u>Colombia SAS</u> <u>CRA #54-75-45</u> <u>Barranquilla, Atlantico, Colombia</u> <u>(2 franchise agreements signed)</u>	
<u>GERMANY</u>	
<u>EA WELT GMBH</u> <u>Dornreschenweg 5</u> <u>70567 Stuttgart, Germany</u>	
<u>GUATEMALA</u>	
<u>Juan and Alejandro</u> <u>Carranza KM 20 A Fraijanes Condominio la Foresta Casa 72,</u> <u>Guatemala 01054</u> <u>(2 franchise agreements signed)</u>	

<u>KUWAIT</u>	
<u>Naser Al Saleh</u> <u>2nd Floor, Sama Tower</u> <u>Al Soor Street, Qibla, Kuwait</u>	
<u>PANAMA</u>	
<u>Fresh Food Company C.A</u> <u>Zona Industrial Mantanzas UD 321,</u> <u>Calle 3 Manzanall, Galpon 4-1, Puerto Ordaz, Estado Boliviari,</u> <u>Venezuela 8050</u>	
<u>SAUDI ARABIA</u>	
<u>Musaid Al-Sayyar Trading Est</u> <u>PO Box 40364</u> <u>Riyadh, Saudi Arabia 11499</u> <u>(2 franchise agreements signed)</u>	<u>Raddah Invesments</u> <u>Al Maamun Plaza Center, District</u> <u>Nuzha; Al Madina Road, Jeddah</u> <u>21581 KSA</u>
<u>SWITZERLAND</u>	
<u>Kathryn &amp; Dieter Winkelhausen</u> <u>Flustrasse 4, CH-4512</u> <u>Bellach Switzerland</u>	
<u>UNITED ARAB EMIRATES</u>	
<u>Mohamed El Ebiary &amp; Ramy Reda Darweesh</u> <u>Southridge 6</u> <u>Burj Khalifa Downtown</u> <u>Dubai, UAE</u>	<u>Tierra Luna Investment LLC</u> <u>22 C Street, Al Barsha</u> <u>Dubai, UAE</u>

**EXHIBIT H**

**LIST OF FRANCHISEES WHO HAVE LEFT THE SYSTEM**

(As of December 31, 20132014)

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

**FRANCHISEES:**

<b>CALIFORNIA</b>	
<b>Franchisee</b>	<b>Location</b>
Sosco Foods, LLC Robert and Jeff Sosna 340 Hauser Blvd. Los Angeles, California 90036 <u>8 Cubed</u>	110 S Fairfax Ave Los Angeles <u>4 The Embarcadero</u> San Francisco, CA 90036 <u>94105</u> 323-933-1500 <u>415-772-9840</u>
Alma Foods <u>8 Cubed</u> Attn: <del>Tony Owen</del> <u>Jeffrey Schlosser</u>	600 W. 7 <sup>th</sup> <u>230 Bush Street</u> <del>Los Angeles</del> <u>San Francisco, CA</u> 90017 <u>94104</u> 213-327-0636 <u>415-362-6262</u>
<b><u>COLORADO</u></b>	
<b>Franchisee</b>	<b>Location</b>
Freshii USA Inc. 27 N Wacker <u>BMFD LLC</u> Attn: Sumeet K. Goel <u>5116 Dorsey Hall Drive, 2<sup>nd</sup> Fl.</u> #426 Chicago, Illinois <del>60606</del> <u>Elicott City, Maryland 21042</u>	303 <del>Sixteenth</del> <u>186 Waterfront</u> Street #130 Denver, Colorado <u>National Harbor, Maryland 20745</u> <u>301-839-1377</u>
<del>MARYLAND</del> <u>Fielding Martinez, LLC</u> Attn: Daniel Fielding	<u>3113 St. Paul Street</u> <u>Baltimore, Maryland 21218</u> <u>410-244-1922</u>
<b>Franchisee</b>	<b>Location</b>
<b><u>WASHINGTON DC</u></b>	
Aramark Food and Support Services Group, Inc. 1101 Market Street, 24 <sup>th</sup> Floor Philadelphia, Pennsylvania 19107 <u>Franchisee</u>	Hood College 401 Rosemont Avenue Frederick, Maryland 21701 <b><u>Location</u></b>
Fielding Martinez <u>Freshii DC 3, LLC</u> Attn: <del>Daniel Fielding</del> <u>Andrew Nelson</u> <u>2800 Wisconsin Avenue, #902</u> Washington, DC 20007	30 Light <u>555 11<sup>th</sup> Street NW</u> <u>Baltimore, Maryland 21204</u> <u>410-467-3737</u> <u>Washington, DC</u> <u>20004</u> <u>202-628-0980</u>
<b><u>PENNSYLVANIA</u></b>	
<b><u>SWEDEN</u></b>	

Franchisee	Location
BMFD1 LLC <u>Visionsbolaget 6202 AB</u> <u>Engelbrektsvagen 121</u> <u>191 62 Sollentuna, Sweden</u> Attn: <u>Sumeet K. Goel</u> 5116 Dorsey Hall Drive, 2 <sup>nd</sup> Fl. Elicott City, Maryland 21042 <u>Charlie Younan</u>	1414 South Penn Square Philadelphia, Pennsylvania 19102 <del>215-977-7123</del> <u>Arenaslingan 10</u> <u>12177 Johanneshov</u> <u>Sweden</u>
<b>TEXAS</b>	
Franchisee	Location
Kore Meals #2 LLC Attn: Javier Bueno 8255 Tewantin Houston, Texas 77061	3939 Washington Avenue Suite B Houston, Texas 77056 713-236-0100

**DEVELOPMENT AGENTS: NONE**

**EXHIBIT I**  
**FRESHII DEVELOPMENT, LLC**  
**RENEWAL/ASSIGNMENT OF FRANCHISE DOCUMENTS**  
**RELEASE**

**THIS CONSENT TO RENEWAL/ASSIGNMENT OF FRANCHISE DOCUMENTS** (the "Release") is effective this \_\_\_\_ day of \_\_\_\_\_ 20\_\_ (the "Effective Date"), by and among **FRESHII DEVELOPMENT, LLC** a Delaware limited liability company (the "Company"), and \_\_\_\_\_, a \_\_\_\_\_ ("Franchisee/Transferor").

**RECITALS:**

**WHEREAS**, Franchisee/Transferor and the Company entered into a certain Franchise Agreement dated as of \_\_\_\_\_, 20\_\_ (the "Franchise Agreement" and, together with all related documents and agreements, the "Franchise Documents") granting Franchisee/Transferor the right to operate a Freshii Restaurant at \_\_\_\_\_ (the "Restaurant") according to the terms of the Franchise Documents (all initial capitalized terms used but not defined in this Release shall have the meanings set forth in the Franchise Agreement); and

**WHEREAS**, Franchisee/Transferor wishes to renew or assign its interest in the Franchise Documents and the Restaurant, and all related rights; and

**WHEREAS**, the Franchise Agreement contains Franchisee's/Transferor's obligation to sign a release of claims in connection with any renewal of or transfer under the Franchise Documents; and

**WHEREAS**, the Company is willing to approve the renewal of or transfer under the Franchise Documents, as applicable (the "Transaction"), if, among other things, Franchisee/Transferor and its related parties agree to the terms of this Release; and

**WHEREAS**, Franchisee/Transferor and its related parties are willing to agree to the terms of this Release in order to obtain the Company's consent to the Transaction.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained in this Release and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Release of the Company Parties and Covenant Not to Sue.** Franchisee/Transferor, for itself and its affiliates, each of their respective owners (including, without limitation, each person listed under "Owners" on the signature page of this Release) (collectively, the "Owners"), officers, directors, partners, managers, employees, representatives and agents, and all of their respective successors, heirs, executors, administrators, personal representatives and assigns (collectively, the "Renewing/Transferring Parties"), hereby forever releases and discharges the Company, its predecessors, its and their affiliates, and all of their respective managers, officers, directors, owners, employees, agents, heirs, representatives, successors and assigns (collectively, the "Company Parties"), from any and all claims, damages, demands, causes of action, debts, costs, suits, duties, obligations, liabilities and agreements of any nature and kind whatsoever (collectively, "Claims") which any of the Renewing/Transferring Parties now has, ever had, or, but for this Release, hereafter would or could have against any of the Company Parties relating to or arising directly or indirectly in connection with any of the Renewing/Transferring Parties' rights or any of the Company Parties' obligations under the Franchise Documents, or otherwise relating to or arising directly or indirectly in connection with the relationship between any of the Renewing/Transferring

Parties and any of Company Parties, at any time prior to the Effective Date, excepting only Claims arising under the Maryland Franchise Registration and Disclosure Law.

Franchisee/Transferor and the Owners, for themselves and the other Renewing/Transferring Parties, further covenant not to sue any of the Company Parties on any of the Claims released by this Section 1. Franchisee/Transferor and each of the Owners, jointly and severally, hereby represent and warrant to the Company Parties that: (a) each has full power and authority to sign this Release and bind all of the Renewing/Transferring Parties to its provisions; (b) none of the Renewing/Transferring Parties has assigned any of the Claims released by this Section 1 to any individual or entity who is not bound by this Section 1; and (c) the Owners collectively own all of the issued and outstanding shares of capital stock or other ownership interests in Franchisee/Transferor.

Franchisee/Transferor and the Owners acknowledge a familiarity with Section 1542 of the Civil Code of the State of California, which provides as follows:

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

Each of the Renewing/Transferring Parties hereby waives and relinquishes every right or benefit which he, she, or it has under Section 1542 of the Civil Code of the State of California, and any similar statute under any other state or federal law, to the fullest extent that he, she, or it may lawfully waive such right or benefit. In connection with this waiver and relinquishment, with respect to the Claims released under this Release, each of the Renewing/Transferring Parties acknowledges that he, she, or it may hereafter discover facts in addition to or different from those which he, she, or it now knows or believes to be true with respect to the subject matter of this release, but that it is the parties' intention, subject to the terms and conditions of this Release, fully, finally and forever to settle and release all such Claims, known or unknown, suspected or unsuspected, which now exist, may exist or did exist, and, in furtherance of such intention, the releases given under this Release shall be and remain in effect as full and complete releases, notwithstanding the discovery or existence of any such additional or different facts

## 2. Miscellaneous.

(a) This Release, together with the other documents and agreements signed simultaneously with this Release in order to effect the Transaction, represents the entire agreement of the parties pertaining to the subject matter of this Release and supersedes all prior agreements, understandings and representations, whether oral or written.

(b) The Sections in the Franchise Agreement relating to enforcement of the Agreement, including, without limitation, the provisions relating to Arbitration, Governing Law and Consent to Jurisdiction, are incorporated in this Release by this reference as if fully stated here.

(c) The captions and headings are only for convenience of reference, are not a part of this Release, and will not limit or construe the provisions to which they apply. All references in this Release to the singular usage will be construed to include the plural and the masculine and neuter usages to include the other and the feminine. The obligations and liabilities of the Owners and Franchisee/Transferor to the Company shall be joint and several.

(d) This Release is binding upon and inures to the benefit of the Company, Franchisee/Transferor, the Owners and their respective successors, permitted assigns and legal

representatives. This Release may be executed in multiple copies, each of which will be deemed an original.

(e) Each of the Company Parties will be deemed to be a third party beneficiary of this Release with an independent right to enforce it.

**IN WITNESS WHEREOF**, the parties have duly executed this Release on the day stated on page one.

|  
**FRESHII DEVELOPMENT, LLC**

**FRANCHISEE/TRANSFEROR**

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

\_\_\_\_\_  
[Name]  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

**OWNERS**

\_\_\_\_\_  
[Name]  
\_\_\_\_\_  
[Signature]

| \_\_\_\_\_  
{Name}

| \_\_\_\_\_  
{Signature}

**EXHIBIT J**  
**FRESHII DEVELOPMENT, LLC**  
**SAMPLE LETTER OF INTENT**



DATE

NAME

ADDRESS 1

ADDRESS 2

CITY, PROVINCE, POSTAL CODE

TELEPHONE: (XXX.XXX.XXX)

Dear NAME(S)]:

Thank you very much for your interest in becoming a franchisee partner with Freshii. Below, please find the business points to your franchise agreement with us. Please read this document and acknowledge below that you are in agreement to these business terms and conditions.

Franchisee: \_\_\_\_\_ INDIVIDUAL NAME(S) (CORPORATION TO BE FORMED AT A LATER DATE)

Development Area: \_\_\_\_\_ [MARKET AREA].

The specific trade area will be determined within forty-five (45) days of completion of the Franchise Agreement.

Number of Units: \_\_\_\_\_ [NUMBER OF UNITS]

Fees Due Upon Signing: \_\_\_\_\_ \$[FEE AMOUNT], plus applicable taxes will be applied.

Development Schedule: \_\_\_\_\_ ( ) months from date of Franchise Agreement.

Closing/Expiration Date: \_\_\_\_\_ [EXPIRATION DATE] \_\_\_\_\_ (initial to accept date)

You recognize and acknowledge that you may have access to certain confidential information not generally known to the public relating to the products, sales or business of Freshii (“Confidential Information”). You recognize and acknowledge that this Confidential Information constitutes a valuable, special and unique asset of Freshii Development, LLC. You acknowledge and agree that all such Confidential Information is and shall remain the exclusive property the Freshii Development, LLC. Additionally you agree that, except as directed by Freshii Development, LLC, that you will not at any time use or disclose to any person for any purpose any Confidential Information, or permit any person to use, examine and/or make copies of any documents, files, data or other information sources which contain or are derived from Confidential Information, whether prepared by or otherwise coming into the Franchisee’s possession or control, without the prior written permission of Franchisor.

This document is created exclusively to demonstrate your intent to develop Freshii restaurants. Upon signing this document and paying a non-refundable \$5,000 fee (“LOI Fee”), we are setting forth the

framework of your deal and reserving your place in order to select your markets. However, after the agreed upon expiration date, all offers regarding this matter shall be rescinded and the territory shall be released.

AGREED AND ACCEPTED:

**FRESHII DEVELOPMENT, LLC** **FRANCHISEE**

\_\_\_\_\_

Name: Matthew Corrin                      Date                      Name: \_\_\_\_\_                      Date

\_\_\_\_\_ Name: \_\_\_\_\_                      Date

\_\_\_\_\_ Name: \_\_\_\_\_                      Date

\_\_\_\_\_

**ITEM 23**  
**RECEIPT**

This disclosure document summarizes certain provisions of the franchise agreement and other information in plain language. Read this disclosure document and all agreements carefully.

If Freshii Development, LLC offers you a franchise, Freshii Development, LLC must provide this disclosure document to you 14 calendar-days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale. New York and Rhode Island require that Freshii Development, LLC give you this disclosure document at the earlier of the first personal meeting or 10 business days before the execution of the franchise or other agreement or the payment of any consideration that relates to the franchise relationship. Michigan, Oregon and Wisconsin require that Freshii Development, LLC give you this disclosure document at least 10 business days before the execution of any binding franchise or other agreement or the payment of any consideration, whichever occurs first.

If Freshii Development, LLC does not deliver this disclosure document on time or if it contains a false or misleading statement, or a material omission, a violation of federal law and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580 and the appropriate state agency identified on Exhibit A.

The franchisor is Freshii Development, LLC, located at 27 North Wacker Drive, Suite 426, Chicago, Illinois 60606. Its telephone number is (312) 863-2151.

**Issuance Date:** ~~March 24, 2014~~ 31, 2015

The name, principal business address, and telephone number of each franchise seller offering the franchise are as follows: \_\_\_\_\_

Freshii Development, LLC authorizes the respective parties identified on Exhibit A to receive service of process for us in the particular state.

I received a disclosure document from Freshii Development, LLC dated as of ~~March 24, 2014~~, \_\_\_\_\_, that included the following Exhibits:

- A. List of State Agencies/Agents for Service of Process
- B. Area Development Agreement
- C. Franchise Agreement
- D. Operations Manual Table of Contents
- E. Financial Statements
- F. State-Specific Additional Disclosures and Riders
- G. List of Franchisees and Development Agents
- H. List of Franchisees and Development Agent Who Have Left the System
- I. Renewal/Assignment of Franchise Documents Release
- J. Sample Letter of Intent

\_\_\_\_\_  
Date

\_\_\_\_\_  
Prospective Franchisee [Print Name]

(Date, Sign, and Keep for Your Own  
Records)

\_\_\_\_\_  
Prospective Franchisee [Signature]

**ITEM 23**  
**RECEIPT**

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\_\_\_\_\_  
Date

\_\_\_\_\_  
Prospective Franchisee [Print Name]

(Date, Sign, and Return to Us)

\_\_\_\_\_  
Prospective Franchisee [Signature]

You may return the signed receipt by signing, dating and mailing it to Freshii Development, LLC at 27 North Wacker Drive, Suite 426, Chicago, Illinois 60606.