

F-6637

STATE OF MINNESOTA  
DEPARTMENT OF COMMERCE  
REGISTRATION DIVISION  
(651) 539-1627

IN THE MATTER OF THE REGISTRATION OF:  
BLACK BEAR DINERS INC F/A  
By BLACK BEAR DINERS INC

ORDER AMENDING  
REGISTRATION

WHEREAS, an application to amend the registration and amendment fee have been filed,

IT IS HEREBY ORDERED that the registration dated May 31, 2011, is amended as of the date set forth below.



---

MIKE ROTHMAN  
Commissioner  
Department of Commerce  
85 7th Place East, Suite 500  
St Paul, MN 55101

Date: October 15, 2013

State of Minnesota  
Dept. of Commerce

UNIFORM FRANCHISE REGISTRATION APPLICATION

OCT 14 2013

Rec'd \$ 100

File No. F-6637  
(Insert file number of immediately preceding filing of Applicant)

4011

State: Minnesota

Fee: \$100.

APPLICATION FOR (Check only one):

- INITIAL REGISTRATION OF AN OFFER AND SALE OF FRANCHISES
- RENEWAL APPLICATION OR ANNUAL REPORT
- PRE-EFFECTIVE AMENDMENT
- POST-EFFECTIVE MATERIAL AMENDMENT

1. Full legal name of Franchisor: **BLACK BEAR DINERS, INC.**
2. Name of the franchise offering: **BLACK BEAR DINER**
3. Franchisor's principal business address:  
**1880 Shasta Street  
Redding, California 96001**
4. Name and address of Franchisor's agent in this State authorized to receive service of process:  
**Minnesota Commissioner of Commerce  
85 7<sup>th</sup> Place East, Suite 500  
St. Paul, Minnesota 55101-2198**
5. The states in which this application is or will be shortly on file: **California, Minnesota, North Dakota, South Dakota, Wisconsin, Washington**
6. Name, address, telephone and facsimile numbers, and e-mail address of person to whom communications regarding this application should be directed:

**Terry Shaver  
Law Office of O. Terry Shaver, LLC  
19 South LaSalle Street  
Suite 901  
Chicago, Illinois 60603**

**direct: 312-920-0160  
e-mail: tshaver@otslaw.com**

*10-15-13*  
*ASMA*  
*5-31-11*

LAW OFFICE OF  
**O. TERRY SHAVER, LLC**  
19 SOUTH LASALLE STREET  
SUITE 901  
CHICAGO, ILLINOIS 60603

O. TERRY SHAVER  
DIRECT: (312) 920-0160  
FAX: (312) 920-0161  
TSHAVER@OTSLAW.COM

October 09, 2013

Mr. Daniel Sexton  
Minnesota Department of Commerce  
85 7<sup>th</sup> Place East, Suite 500  
St. Paul, Minnesota 55101-2198

**Re: BLACK BEAR DINERS, INC.**  
**File No. F-6637 AMENDMENT OF REGISTRATION**

Dear Mr. Sexton,

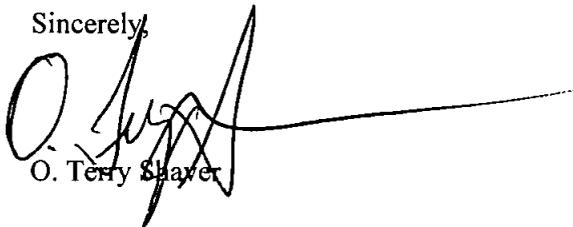
On behalf of Black Bear Diners, Inc. enclosed are the following documents in connection with the amendment of registration in the state of Minnesota:

- Uniform Franchise Registration Application;
- Certification Page;
- Black Bear Diner's Franchise Disclosure Document and lined copy; and
- A check in the amount of \$100 for your fee.

Please acknowledge receipt of these enclosures by date-stamping the enclosed copy of this letter and returning it to me in the envelope provided. Any questions in connection with this renewal should be directed to me at the address or telephone number above.

Thank you for your courtesy in processing this amendment of registration.

Sincerely,



O. Terry Shaver

OTS  
Enclosure

cc: Mr. Robert Manley

Certification

I certify and swear under penalty of law that I have read and know the contents of this application, including the Franchise Disclosure Document with an issuance date of March 01, 2013 attached as an exhibit, and that all material facts stated in all those documents are accurate and those documents do not contain any material omissions. I further certify that I am duly authorized to make this certification on behalf of the Franchisor and that I do so upon my personal knowledge.

Executed at: Redding, California,

October 2, 2013

BLACK BEAR DINERS, INC.

By: 

Name: Bruce Dean

Title: Co-President

STATE OF CALIFORNIA )  
  )  
  )  
COUNTY OF SHASTA )

Personally appeared before me this 2 day of October, 2013 the above-named, Bruce Dean to me known to be the person who executed the foregoing application and being first duly sworn, stated upon oath that said application, and all exhibits submitted herewith, are true and correct.

\_\_\_\_\_  
(Notary Public)

(Notarial Seal)

*see Attached*

My Commission Expires: \_\_\_\_\_

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Shasta

On Oct. 2, 2013 before me, \_\_\_\_\_  
Date

**John Burns, Notary Public**  
**My Commission Expires 1-26-14**  
Here Insert Name and Title of the Officer

personally appeared Bruce Dean

Name(s) of Signer(s)

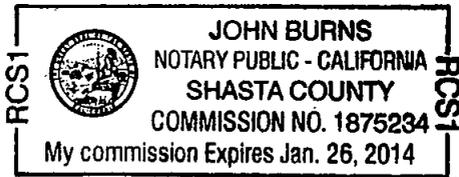
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is are subscribed to the within instrument and acknowledged to me that he she/they executed the same in his her/their authorized capacity(ies), and that by his her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

John Burns  
Signature of Notary Public



Place Notary Seal Above

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### Description of Attached Document

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

**RIGHT THUMBPRINT OF SIGNER**

Top of thumb here

Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

**RIGHT THUMBPRINT OF SIGNER**

Top of thumb here

Signer Is Representing: \_\_\_\_\_

## FRANCHISE DISCLOSURE DOCUMENT



### **BLACK BEAR DINERS, INC.**

1880 Shasta Street  
Redding, California 96001  
(530) 243-2327  
[www.blackbeardiner.com](http://www.blackbeardiner.com)  
[bob.manley@blackbeardiner.com](mailto:bob.manley@blackbeardiner.com)

Black Bear Diners, Inc. grants franchises for the operation of family-style restaurants which offer signature entrees featuring huge portions under the name Black Bear Diner.<sup>®</sup>

The total investment necessary to begin operation of a single Black Bear Diner restaurant is \$544,300 to \$1,353,700. This includes \$40,000 which must be paid to us for the Franchise Fee. We also offer an opportunity to operate multiple Black Bear Diner restaurants under an Area Development Agreement. The estimated initial investment to operate as an area developer ranges from ~~\$662,648,300~~ to ~~\$1,473,457,700~~. This includes a Franchise Fee of \$40,000 and a Development Fee of \$64,000 which must be paid to us. If you are an existing franchisee, you may enter into an Option Agreement for the right to develop a single Black Bear Diner restaurant at a predetermined site. The amount of the Option Fee is \$10,000 and is paid to us. The total investment is the same as for a single Black Bear Diner restaurant.

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 Black Bear Diners, Inc, attn: Bob Manley, 1880 Shasta Street, Redding, California 96001, (530) 243-2327.

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 TC at 1-877-FTC-HELP or by writing to the FTC at 600 Pennsylvania Avenue, NW, Washington, D.C. 20580. You can also visit the FTC's home page at [www.ftc.gov](http://www.ftc.gov) for additional information. Call your state agency or visit your public library for other sources of information on franchising.

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

**The Issuance Date of this Franchise Disclosure Document is March 01, 2013**

## 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 FRANCHISE AGREEMENT REQUIRES YOU TO RESOLVE DISPUTES WITH US BY ARBITRATION ONLY IN CALIFORNIA. 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 CALIFORNIA THAN IN YOUR HOME STATE.
2. THE FRANCHISE AGREEMENT STATES THAT CALIFORNIA LAW GOVERNS THE AGREEMENT, AND THIS LAW MAY NOT PROVIDE THE SAME PROTECTIONS AND BENEFITS AS LOCAL LAW. YOU MAY WANT TO COMPARE THESE LAWS.
3. 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.**

The effective dates of this disclosure document in the states with franchise registration laws in which we have sought registration appear on the following page.

**Black Bear Diners, Inc.**  
**State Registrations**

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

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

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

<u>State</u>	<u>Effective Date</u>
California	PENDING April 16, 2013
Hawaii	PENDING
Illinois	PENDING April 16, 2013
Indiana	PENDING April 16, 2013
Maryland	PENDING
Michigan	PENDING May 13, 2013
Minnesota	PENDING May 23, 2013
New York	PENDING
North Dakota	PENDING May 02, 2013
Rhode Island	PENDING
South Dakota	March 27, 2013
Virginia	PENDING
Washington	PENDING April 24, 2013
Wisconsin	March 27, 2013

In all the other states, the effective date of this Franchise Disclosure Document is the Issuance Date of March 01, 2013.

**THE FOLLOWING APPLIES ONLY TO TRANSACTIONS GOVERNED BY  
THE MICHIGAN FRANCHISE INVESTMENT LAW**

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

A prohibition of the right of Franchisee to join an association of franchisees.

A requirement that a Franchisee assent to a release, assignment, novation, waiver or estoppel which deprives a Franchisee of rights and protections provided under Michigan law. This shall not preclude a Franchisee, after entering into a Franchise Agreement, from settling any and all claims.

A provision that permits a Franchisor to terminate a franchise prior to the expiration of this term except for good cause. Good cause shall include the failure of the Franchisee to comply with any lawful provision of the Franchise Agreement and to cure such failure after being given written notice thereof and a reasonable opportunity, which in no event need be more than 30 days, to cure such failure.

A provision that permits a Franchisor to refuse to renew a franchise without fairly compensating the Franchisee by repurchase or other means for the fair market value at the time of expiration of the Franchisee's inventory, supplies, equipment, fixtures and furnishings. Personalized materials which have no value to the Franchisor and inventory, supplies, equipment, fixtures and furnishings not reasonably required in the conduct of the franchise business are not subject to compensation. This subsection applies only if: (i) the term of the franchise is less than 5 years, and (ii) the Franchisee is prohibited by the franchise or other agreement from continuing to conduct substantially the same business under another trademark, service mark, trade name, logotype, advertising or other commercial symbol in the same area subsequent to the expiration of the franchise or the Franchisee does not receive at least 6 months advance notice of Franchisor's intent not to renew the franchise.

A provision that permits the Franchisor to refuse to renew a franchise on terms generally available to other Franchisees of the same class or type under similar circumstances. This section does not require a renewal provision.

A provision requiring that arbitration or litigation be conducted outside this state. This shall not preclude the Franchisee from entering into an agreement, at the time of arbitration or litigation, to conduct arbitration or litigation at a location outside this state.

A provision which permits a Franchisor to refuse to permit a transfer of ownership of a franchise, except for good cause. The subdivision does not prevent a Franchisor from exercising a right of first refusal to purchase the franchise. Good cause shall include, but is not limited to:

- The failure of the proposed transferee to meet the Franchisor's then-current reasonable qualifications or standards.
- The fact that the proposed transferee is a competitor of the Franchisor or Subfranchisor.

- The unwillingness of the proposed transferee to agree in writing to comply with all lawful obligations.
- The failure of the Franchisee or proposed transferee to pay any sums owing to the Franchisor or to cure any default in the Franchise Agreement existing at the time of the proposed transfer.

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

A provision which permits the Franchisor to directly or indirectly convey, assign or otherwise transfer its obligations to fulfill contractual obligations to the Franchisee unless a provision has been made for providing the required contractual services.

If the Franchisor's most recent financial statements are unaudited and show a net worth of less than \$100,000 the Franchisee may request the Franchisor to arrange for the escrow of initial investment and other funds paid by the Franchisee until the obligations, if any, of the Franchisor to provide real estate, improvements, equipment, inventory, training or other items included in the franchise offering are fulfilled. At the option of the Franchisor, a surety bond may be provided in place of escrow.

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

Any questions regarding this notice should be directed to:

State of Michigan  
Consumer Protection Division  
Attention: Franchise Bureau  
670 Law Building  
Lansing, MI 48913  
(517) 373-3800

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### EXHIBITS

- A. List of Agents for Service of Process and State Administrators
- B. Franchise Agreement
- C. Option Agreement
- D. Area Development Agreement
- E. Contents of Manual
- F. Financial Statements
- G. List of Black Bear Diner Franchisees
- H. List of Franchisees Who Have Left the System
- I. Franchisee Disclosure Questionnaire
- J. Form of General Release
- K. Multi-State Addenda

## ITEM 1

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

#### The Franchisor

To simplify the language in this disclosure document “we,” “us,” or “our” means Black Bear Diners, Inc., the franchisor. The word “you” means the person to whom we grant the franchise. We are a California corporation incorporated on December 24, 2001. Our principal business address is 1880 Shasta Street, Redding, California 96001. We do business under our corporate name and trademarks described in Item 13 (the “Marks”) and no other name. We have offered franchises for Black Bear Diner restaurants since May 2002. As of December 31, 2014~~2~~, we had ~~3739~~ franchised restaurants. We do not offer and have not previously offered franchises in any other line of business and have no other business activities. Except through our affiliates (described below), we do not operate a Black Bear Diner restaurant. Our agents for service of process are included in Exhibit A to this disclosure document.

#### Our Predecessor and Affiliates

We have no parent companies. Our predecessor and affiliate is URSA Minor, Inc (“URSA”), a California corporation that was organized in March 1999. URSA’s principal business address is 1880 Shasta Street, Redding, California 96001. From April 2000 to January 2002, URSA offered franchises for a restaurant concept under the trademark Black Bear Diner which was similar to the franchises we offer. URSA granted one franchise in the state of Oregon. We have since assumed this agreement. URSA is not engaged in any other business activities and has not offered franchises in any other lines of business.

Another affiliate of ours is Strawberry Valley Food Service, Inc. (“Strawberry Valley”). Strawberry Valley was organized under California law in June 1995. Strawberry Valley’s principal business address is 1880 Shasta Street, Redding, California 96001. Strawberry Valley operates one Black Bear Diner restaurant in California that is similar to the franchise we offer. Strawberry Valley has not offered franchises in this or any other line of business. In the past, Strawberry Valley has supplied certain items to our franchisees but does not currently do so.

Our final affiliate is SunWest Restaurant Concepts, Inc. (“SunWest”). SunWest is a Nevada corporation that was organized in January 1986. SunWest maintains its principal business address at 6360 East Thomas Road, Suite 100, Scottsdale, Arizona 85251. SunWest operates approximately twenty-two restaurants in the western United States of which nine are Black Bear Diner restaurants and are similar to the franchises we offer. SunWest has not offered franchises in this or any other line of business.

#### The Franchise Programs

Single Unit. We grant franchises to individuals or entities for the operation of a single Black Bear Diner restaurant in accordance with our “System” under the terms of our Franchise Agreement attached to this disclosure document as Exhibit B. We refer to the restaurant that you and other franchisees will operate as a “Franchised Restaurant.” A Black Bear Diner restaurant is a casual, family-style restaurant which offers huge portions at an affordable price along with a high perceived value. A Black Bear Diner restaurant is typically located in a free-standing, one-story building with surrounding parking. In most instances a prospective franchisee will be able

to remodel and convert an existing building or former restaurant for the operation of a Black Bear Diner restaurant. Though not typical, a franchisee may elect to construct a new facility for the operation of the Franchised Restaurant.

Within the Franchised Restaurant, you will operate a gift shop known as a “Bear Country Store” of approximately 35 to 100 square feet depending upon the overall size of the Franchised Restaurant. Generally, we follow a common theme such that all products offered for sale in the Bear Country Store either feature or are in some way connected to the black bear concept. Many of the items offered in the Bear Country Store feature our Marks (“Trademarked Products”) while others follow and capitalize on the bear theme.

All Black Bear Diner restaurants are identified by way of a distinctive trade dress which includes a rustic exterior and interior appearance, interior decorations featuring the black bear theme along with certain designs, carvings and color schemes and exclusive exterior signage. Black Bear Diner restaurants also follow certain operating procedures, techniques, and standards which are referred to as the “Bear Necessities Quality Control Program.”

Option Agreement. We may offer certain qualified franchisees who already operate one or more Black Bear Diner restaurants the option to develop and operate one additional Black Bear Diner restaurant under the terms of an Option Agreement. We do not offer this opportunity to new franchisees. If we offer you the option to develop and operate an additional Black Bear Diner restaurant, and you accept, you will sign the Option Agreement attached as Exhibit C. The Option Agreement will expire on our signing of a Franchise Agreement for the Black Bear Diner restaurant that you have an option for under the Option Agreement. If you fail to (i) exercise the option for the Black Bear Diner restaurant or (ii) open the Black Bear Diner restaurant within the time stated in the Option Agreement, all of your option rights will terminate and you will have no further right to develop an additional Franchised Restaurant under the Option Agreement.

Area Development Agreement. In addition to awarding franchises for a single Black Bear Diner restaurant, we also grant qualified franchisees the option and right to develop multiple Franchised Restaurant(s) within a specific geographic area (“Development Area”) over a specific time period according to a pre-determined development schedule. These franchisees will sign our Area Development Agreement in the form attached as Exhibit D to this disclosure document. Under the Area Development Agreement, you will sign a separate Franchise Agreement for each Franchised Restaurant you establish. The Franchise Agreement you sign will be the then-current form of Franchise Agreement we are offering to new franchisees. The size of the Development Area will vary depending upon local market conditions and the number of Franchised Restaurants to be developed.

#### General Description of the Market and Competition

We are one of many franchisors in this highly competitive industry. Fluctuations in taste and habits of the public, local and national economic conditions, population density, and general traffic patterns affect the restaurant industry and are generally difficult to predict. You will face competition from other restaurants offering similar and dissimilar menu items. In some instances, you may also encounter competition from other Black Bear Diner restaurants operated by us or other franchisees. Competition for management and other operating personnel is intense within the industry. Sales generally are seasonally affected and may be lower during winter months or in certain areas (for example, vacation resort areas) may be affected by seasonal population. Given

the nature of the restaurant industry, we prefer that a prospective franchisee have prior restaurant management experience.

#### Regulations Specific to the Food Service Industry

Most all states and local jurisdictions have enacted laws, rules, regulations and ordinances which apply to the restaurant industry, including those which: (a) establish general standards, specifications and requirements for the construction, design and maintenance of the premises; (b) regulate matters affecting the health, safety and welfare of your customers, such as general health and sanitation requirements for the storage, handling, cooking and preparation of food, restrictions on smoking, availability of and requirements for public accommodations, including restrooms; (c) set standards pertaining to employee health and safety; (d) set standards and requirements for fire safety and general emergency preparedness; and (e) regulate the proper use, storage and disposal of waste. You should investigate whether there are regulations and requirements that may apply in the geographic area in which you are interested in locating your franchise and should consider both their effect and cost of compliance.

### **ITEM 2**

#### **BUSINESS EXPERIENCE**

##### Co-President and Director: Robert Paul Manley

Mr. Manley is one of our founders and has been Co-President since March 2007 and a Director since our inception. From December 2001 until February 2007, Mr. Manley served as our President. In addition since September 1995, Mr. Manley has served as Vice President of Strawberry Valley and since February 1999 as President of URSA.

##### Co-President and Director: Bruce Dean

Mr. Dean is one of our founders and has been Co-President since March 2007 and a Director since December 2001. From December 2001 until February 2007, Mr. Dean was our Vice President. In addition since September 1995, Mr. Dean has been President of Strawberry Valley and since February 1999 he has been Vice President of URSA.

##### Secretary and Director: Laurie Ann Manley

Ms. Manley is also one of our founders and has been Secretary and a Director since December 2001. Since September 1995, Ms. Manley has been Secretary/Treasurer of Strawberry Valley and since February 1999 she has been Secretary/Treasurer of URSA.

##### Vice President-Chief Financial Officer: Robin C.T. Yoshimura

Mr. Yoshimura has been our Chief Financial Officer since December 2001. In addition since October 1998, Mr. Yoshimura has been President of SunWest and since August 1996 he has been COO of Doty Equities, Inc., a corporation engaged in business development and investment located in Honolulu, Hawaii.

Vice President-Director of Marketing: David L. Doty

Mr. Doty has been Director of Marketing since our incorporation. Since November 1993, Mr. Doty has served as CEO of SunWest and since November 1996 he has served as CEO of Doty Equities, Inc. Also, since October 1992, Mr. Doty has been President of Sunflower Hi Partners, a company specializing in the development, ownership and operation of commercial warehouses, restaurants, apartment complexes and other real property in Hawaii, California, Colorado and Arizona.

Director of Franchise Operations: Robert Simpson

Mr. Simpson has been Director of Franchise Operations since May 2006. From March 2005 to May 2006, Mr. Simpson was employed by Boudin Bakeries Operating Company and served as General Manager with overall management responsibility for Boudin at the Wharf Restaurant located in San Francisco, California.

Vice President-Franchise Development: Douglas R. Branigan

Mr. Branigan has been our Vice President-Franchise Development since August 2013. Before joining Black Bear Diners, he was Chief Operating Officer with Sprinkles Cupcakes LLC in Beverly Hills, California from December 2012 to May 2013. From September 2009 to October 2012, Mr. Branigan was Vice President-Franchising with Smashburger Master LLC in Denver, Colorado. From January 2009 to September 2009, Mr. Branigan was self employed as a restaurant consultant based in Roseville, California. Before that time, Mr. Branigan was Market Partner with SWH Corporation ("Mimi's Café") in Tustin, California from 2003 to January 2009.

**ITEM 3**

**LITIGATION**

No litigation is required to be disclosed in this Item. See Exhibit K for additional California-specific disclosures.

**ITEM 4**

**BANKRUPTCY**

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

**ITEM 5**

**INITIAL FEES**

Franchise Agreement. You must pay an initial Franchise Fee of \$40,000 when you sign the Franchise Agreement. The Franchise Fee is paid to us in a lump sum and is non-refundable except as described below. The Franchise Fee is uniform for all franchisees except if you develop

multiple Franchised Restaurants under an Area Development Agreement described below. For our most recent fiscal year, the initial Franchise Fee ranged from \$20,000 to \$40,000.

We will refund \$30,000 of the initial Franchise Fee under any one of the following conditions: (i) you do not locate a suitable site within 60 days after signing the Franchise Agreement and we elect to terminate the Franchise Agreement; or (ii) you do not sign a lease for a suitable site within 180 days after signing the Franchise Agreement and we elect to terminate the Franchise Agreement; or (iii) we determine that you are unable to complete the training program described in Item 11 to our satisfaction and we elect to terminate the Franchise Agreement.

Option Agreement. We only offer existing, qualified franchisees the opportunity to enter into an Option Agreement for the development and operation of one additional Black Bear Diner restaurant. If you and we enter into an Option Agreement, you will pay a \$10,000 fee (“Option Fee”) when you sign the Option Agreement. We will apply the Option Fee toward the initial Franchise Fee if you and we move forward. You may terminate the Option Agreement at any time before you sign the Franchise Agreement. We may terminate the Option Agreement if you do not sign a Franchise Agreement within one year from signing the Option Agreement. The Option Fee is fully earned when paid and is not refundable under any circumstances.

Area Development Agreement. Under the Area Development Agreement, you are required to execute one Franchise Agreement and pay the Franchise Fee as stated above simultaneously with the execution of the Area Development Agreement. Under the terms of the Area Development Agreement, the Franchise Fee is the same as under the Franchise Agreement for the first Franchised Restaurant. For the second and each subsequent Franchised Restaurant, we will reduce the Franchise Fee to \$32,000.

You must pay a Development Fee equal to \$16,000 at the time of the execution of the Development Agreement for each of the Franchised Restaurants you agree to develop after the first one. We and you will agree on the number of Franchised Restaurants to be developed before you sign the Development Agreement. In addition, the Development Agreement will contain a minimum “Development Schedule” which will specify when each of the Franchised Restaurants must be operational. For example, if you agree to develop 5 Franchised Restaurants within a specified Development Territory, you will sign a single Franchise Agreement and pay an initial Franchise Fee of \$40,000 for the first Franchised Restaurant and sign a Development Agreement for the remaining 4 Franchised Restaurants. The Development Fee will be equal to \$64,000 (\$16,000 x 4). Each time you execute a Franchise Agreement for the second and each subsequent Franchised Restaurant, you will pay an additional Franchise Fee of \$32,000; however, you will receive a credit of \$16,000 which is the amount you paid per Franchised Restaurant under the Development Agreement. As a result, your balance due at the time you execute each Franchise Agreement will be \$16,000. The Development Fee is fully earned by us when paid, even if you do not fulfill your obligations under that agreement, and is not refundable under any circumstances.

**ITEM 6**

**OTHER FEES**

<b>Type of Fee<sup>(1)</sup></b>	<b>Amount</b>	<b>Due Date</b>	<b>Remarks</b>
Royalty	4.5% of Gross Sales <sup>(2)</sup>	Weekly	Amounts due will be withdrawn by electronic funds transfer ("EFT") or other methods we periodically specify
Marketing Fund Contribution	1% of Gross Sales	Weekly	We have the right to increase this amount to 2% upon 30 days notice to you (See Item 11)
Local Advertising	1% of Gross Sales	Monthly	You pay directly subject to our approval. Payable to suppliers of advertising services
Audit Expenses	Cost of audit plus interest	As invoiced	Payable only if the audit shows an understatement in amounts due of at least 3%
Late Payment Interest	18% of the overdue amount, calculated daily, or the maximum rate permitted by law, whichever is less	After due date	Applies to all Royalty Fees, Advertising Fund Contributions and amounts due for purchases from us or an affiliate of ours.
Bear Country Store Product Purchases	Will vary under circumstances	As required	You must purchase these products from our approved or designated suppliers in order to meet anticipated customer demand.
Credit, Debit and Black Bear Diner Gift Card Processing	Approximately \$50 per month plus transaction fee of approximately .085/item.	As required	This fee is imposed by us but payable to third party vendor. See Item 8 for additional information on the Gift Card Program

Type of Fee <sup>(1)</sup>	Amount	Due Date	Remarks
Suppliers' Approval	Reasonable cost of evaluation and actual cost of test not to exceed \$1,000	Time of inspection	Applies to costs in connection with evaluating a supplier or testing a product at your request.
Reimbursement of Amounts Paid on Your Behalf	Our costs	Within 15 days after billing	Payable only if you are required to reimburse us for amounts paid on your behalf
Transfer Fee	\$20,000	Before transfer	This transfer fee does not apply to a transfer to an entity you own or control
Ongoing Training	You are required to pay your expenses as well as your employees' expenses in attending training	Prior to training	Attendance will not be required more than 2 times per year and will not last more than 2 days per session
Cost and Attorneys' Fees	Will vary under circumstances	As incurred	You will reimburse us for all costs if you fail to comply with the Franchise Agreement or any other agreement
Indemnification	Will vary under circumstances	As incurred	You defend suits at your cost and hold us harmless against suits involving damages resulting from your operation of the Franchised Restaurant.

Explanatory Notes:

1. Unless stated otherwise, all fees are imposed and collected by and payable to us. No fees are refundable. Existing franchisees may have fees that differ from those stated in the table above.
2. "Gross Sales" means the total amount of all revenues that you receive from the sale of all menu items, Gift Shop Products, banquet and catering services and from goods and services from all sources in any way connected with the Franchised Restaurant whether for check, cash, credit or otherwise including, without limitation, all proceeds from any business interruption insurance less sales tax collected from customers and paid to the appropriate taxing authorities.

**ITEM 7**

**ESTIMATED INITIAL INVESTMENT**

**YOUR ESTIMATED INITIAL INVESTMENT  
(FRANCHISE AGREEMENT AND OPTION AGREEMENT)**

<b>Type of Expenditure<sup>(1)</sup></b>	<b>Amount</b>	<b>Method of Payment</b>	<b>When Due</b>	<b>To Whom Payed</b>
Franchise Fee <sup>(2)</sup>	\$40,000	Lump Sum	At Signing of Franchise Agreement	Us
First Month's Rent <sup>(3)</sup>	\$7,000 to \$14,000	As Arranged	As Arranged	Landlord
Security Deposits <sup>(4)</sup>	\$0 to \$500	As Arranged	As Arranged	Landlord, Utilities
Leasehold Improvements <sup>(5)</sup>	\$200,000 to \$400,000	As Arranged	As Arranged	Third Parties
Furniture, Fixtures & Equipment <sup>(6)</sup>	\$50,000 to \$350,000	As Arranged	As Arranged	Third Parties
Kitchen Equipment <sup>(7)</sup>	\$100,000 to \$250,000	As Arranged	As Arranged	Third Parties
Décor Package <sup>(8)</sup>	\$10,000 to \$12,000	As Arranged	As Arranged	Third Parties
Carved Bear Package <sup>(9)</sup>	\$10,000 to \$15,000	As Arranged	As Arranged	Third Parties
Initial Inventory – Food & Paper <sup>(10)</sup>	\$14,000 to \$18,000	As Arranged	As Arranged	Third Parties
Initial Inventory – Gift Shop Products <sup>(11)</sup>	\$10,000 to \$30,000	As Arranged	As Arranged	Third Parties
Insurance <sup>(12)</sup>	\$5,000 to \$15,000	As Arranged	As Arranged	Third Parties
Signage <sup>(13)</sup>	\$5,000 to \$20,000	As Arranged	As Arranged	Third Parties
Office Equipment and Supplies <sup>(14)</sup>	\$1,800 to \$2,200	As Arranged	As Arranged	Third Parties
Computer System <sup>(15)</sup>	\$20,000 to \$25,000	As Arranged	As Arranged	Third Parties
Grand Opening Advertising <sup>(16)</sup>	\$5,500 to \$12,000	As Arranged	First Three Months of Operation	Third Parties
Training Expenses <sup>(17)</sup>	\$20,000 to \$35,000	As Arranged	As Arranged	Third Parties
Licenses & Permits <sup>(18)</sup>	\$1,000 to \$5,000	As Arranged	As Arranged	Third Parties

Type of Expenditure <sup>(1)</sup>	Amount	Method of Payment	When Due	To Whom Payed
Professional Fees <sup>(19)</sup>	\$5,000 to \$10,000	As Arranged	As Arranged	Third Parties
Additional Funds-3 months <sup>(20)</sup>	\$40,000 to \$100,000	As Arranged	As Arranged	You Determine
TOTAL <sup>(21)</sup>	\$544,300 to \$1,353,700			

**EXPLANATORY NOTES:**

1. **Type of Expenditure.** In general, except for security deposits, all payments are non-refundable. The Franchise Fee is partially refundable under certain circumstances as described in Item 5. We do not finance any portion of your initial investment. See Item 10 for additional information on Financing.

2. **Franchise Fee.** The Franchise Fee is described in greater detail in Item 5. If you and we entered into an Option Agreement, we will credit the Option Fee you paid towards the Franchise Fee and we expect that your initial investment will be the same as stated above.

3. **First Month's Rent.** You must provide a suitable site from which to operate your Franchised Restaurant. Normally, a site is obtained on a leasehold basis. This estimate is based on one month's rent for a space of approximately 3,500 to 6,000 square feet. There may be other lease acquisition costs such as prepaid rent and security deposits. It is extremely difficult to estimate lease costs because of the wide variation in costs between locations.

4. **Security Deposits.** Security deposits generally are required by the utility companies, the landlord and any equipment lessors you may elect to use. Amounts will vary depending on the requirements under the various leases, utilities' policies and your credit rating.

5. **Leasehold Improvements.** We recommend that you convert an existing structure or former restaurant premises into use as a Black Bear Diner restaurant. The structure must be renovated according to our standards and specifications for furnishings and décor. The cost of the improvements will vary based upon size, condition and location of the premises, local wage rates and material costs. Your costs will most likely be significantly higher if you elect new construction.

6. **Furniture, Fixtures & Equipment.** You must buy or lease certain equipment and related services including serving equipment, a cash register/point-of-sale system, point-of-sale materials, a digital jukebox for use as a sound system, miscellaneous small wares, and signage. The Franchised Restaurant's equipment package will depend on the presence of existing food service facilities, square footage and anticipated volumes.

7. Kitchen Equipment. In addition to the equipment mentioned above, you must buy or lease certain kitchen equipment including an oven, fryer, refrigerator and freezer. We will provide you with a detailed list of kitchen equipment for operating your Franchised Restaurant. The cost of the kitchen equipment will vary depending upon the square footage, configuration, availability of used equipment and anticipated volumes.
8. Décor Package. In remodeling the site for your Franchised Restaurant you will utilize a Décor Package which is also described in Items 5, 8 and Exhibit B to the Franchise Agreement. The cost of the Décor Package will vary based on the square footage of the Franchised Restaurant and shipping costs.
9. Carved Bear Package. In addition to the Décor Package as part of your remodeling of the site, you will purchase and utilize a Carved Bear Package as described in Items 5, 8 and Exhibit C to the Franchise Agreement. The cost of the Carved Bear Package will vary based on the square footage of the Franchised Restaurant and shipping distance.
10. Initial Inventory-Food and Paper. You will need an initial inventory of food products, ingredients and paper goods for the operation of the Franchised Restaurant. These costs will vary based upon the size and location of the Franchised Restaurant, suppliers and anticipated volume.
11. Initial Inventory-Gift Shop Products. You will be required to purchase the Gift Shop Products from an approved supplier as described in Item 8. The cost will vary depending upon the size of your Franchised Restaurant, number of square feet devoted to the Bear Country Store and anticipated sales volume.
12. Insurance. The figures in the chart estimate your insurance costs during the first 3 months of operation. You might need to pay the entire annual premium in advance. Also, costs may vary among underwriters depending on how long you have been in business, your financial condition, your risk history, and the Franchised Restaurant location.
13. Signage. This range includes the cost of all signage used in identifying your Franchised Restaurant. The costs will vary based upon the overall size of the premises, the location of the Franchised Restaurant and prevailing wage rates.
14. Office Equipment and Supplies. You must purchase general office supplies including stationery and business cards along with typical office equipment. Factors that may affect this cost include local supplier charges and the specific items you select.
15. Computer System. We require you to utilize the Computer System which is described in greater detail in Item 11.
16. Grand Opening Advertising. We recommend, but do not require, that you spend approximately \$5,500 on grand opening advertising during the first 3 months of operation. You may choose to spend more or less. Factors that may affect your decision on the actual amount to spend include local media cost, location of the Franchised Restaurant and general customer demographics within the surrounding area.
17. Training Expenses. We do not charge an additional fee for the initial training program. However, you are responsible for transportation and expenses for meals and lodging while

attending training. The total cost will vary depending on the number of people attending, how far you travel and the type of accommodations you choose.

18. Licenses and Permits. These amounts will be incurred for costs such as pre-construction and operating licenses and permits. Your actual costs may vary from the estimates based on the requirements of local government agencies.

19. Professional Fees. You may need to employ an architect, attorney, accountant or other professionals to assist you in establishing your Franchised Restaurant. These fees may vary from location to location depending upon the prevailing rate of service fees.

20. Additional Funds-3 Months. The additional funds is an estimate to cover operating expenses, including employees' salaries, for three months of operation. However, we cannot guarantee that this amount will be sufficient. Our estimate of the amount of additional funds required to operate the Franchised Restaurant is based on the experience of our affiliate in operating other Black Bear Diner restaurants. Additional funds may be required if sales are low or fixed costs are high.

21. TOTAL. In compiling this chart, we relied on our and our affiliates' experience in operating other Black Bear Diner restaurants. The amounts shown are estimates only and may vary for many reasons including the size of your Franchised Restaurant, the capabilities of your management team, where you locate your Franchised Restaurant and your business experience and acumen. For planning purposes, please note that most costs and expenses listed in this Item 7 are not within our control. You should review these estimates carefully with a business advisor or accountant before making any decision to buy a franchise. We do not typically offer financing for any of the above expenditures.

**YOUR ESTIMATED INITIAL INVESTMENT  
(AREA DEVELOPMENT AGREEMENT)**

The following chart provides an estimate of your initial investment to open your first Franchised Restaurant if, for example, you sign a Development Agreement for the development of 5 Franchised Restaurants.

Type of Expenditure <sup>(1)</sup>	Amount	Method of Payment	When Due	To Whom Paid
Development Fee <sup>(2)</sup>	\$8064,000	Lump Sum	At Signing of Area Development Agreement	Us
Franchise Fee For First Franchised Restaurant	\$40,000	Lump Sum	At Signing of Franchise Agreement	Us
Other Expenditures For 1 <sup>st</sup> Franchised Restaurant <sup>(3)</sup>	\$544,300 to \$1,353,700	As Disclosed in Preceding Table	As Disclosed in Preceding Table	As Disclosed in Preceding Table
TOTAL <sup>(4)</sup>	\$662648,300 – \$1,473457,700			

**EXPLANATORY NOTES**

1. Type of expenditure. In general, all payments are non-refundable. The Franchise Fee is partially refundable under certain circumstances as described in Item 5. We do not finance any portion of your initial investment. See Item 10 for additional information on Financing.

2. Development Fee. If you enter into a Development Agreement requiring you to open 5 Franchised Restaurants, you will pay a Development Fee of \$8064,000 (4 x \$2016,000). The initial Franchise Fee for your first Franchised Restaurant is \$40,000 and is due upon signing the Franchise Agreement. The Franchise Fee for each additional Franchised Restaurant is \$4032,000. In the case of each Franchised Restaurant after the first one, we will credit against the Franchise Fee the amount of the Development Fee paid with respect to each Franchised Restaurant (\$2016,000). The Franchise and Development Fees are described in Item 5.

3. Other Expenditures. The balance of your initial investment for the first Franchised Restaurant is as stated in the preceding table. Your costs to develop the second and each additional Franchised Restaurant may be affected by inflation, local labor costs, materials cost and other factors not within our control.

4. TOTAL. In compiling this chart, we relied on our and our affiliates' experience in operating other Black Bear Diner restaurants. The amounts shown are estimates only and may vary for many reasons including the size of your Franchised Restaurant, the capabilities of your

management team, where you locate your Franchised Restaurant and your business experience and acumen. For planning purposes, please note that most costs and expenses listed in this Item 7 are not within our control. You should review these estimates carefully with a business advisor or accountant before making any decision to buy a franchise. We do not typically offer financing for any of the above expenditures.

## **ITEM 8**

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

#### **Franchised Restaurant Build-Out**

You are responsible for developing the Franchised Restaurant in compliance with our system and ensuring that all plans and specifications comply with our requirements, applicable laws, and lease requirements. We will give you required and recommended specifications and layouts for a Black Bear Diner restaurant. You must give us, and we have the right to review and approve all plans and specifications before you begin constructing the Restaurant. In addition, we will perform a final inspection and provide you with a written sign-off if the build-out meets our approval. We must sign off on the final build out prior to your beginning operation of the Franchised Restaurant.

To ensure a uniform image throughout the Black Bear Diner system, you must utilize a proprietary Décor Package and Carved Bear Package in the build out of your Franchised Restaurant. The Décor Package includes items used for the decoration of your Franchised Restaurant and includes bear-themed posters, photographs, signs, silhouettes and wallpaper. A list of items included in the standard Décor Package is included as Exhibit B to the Franchise Agreement. The Carved Bear Package includes a grouping of colorful, wood-carved bears depicted in playful, inviting poses which are designed to welcome customers to your Franchised Restaurant. A list of items included in the Carved Bear Package is included as Exhibit C to the Franchise Agreement. Both the Décor Package and the Carved Bear Package must be purchased from designated suppliers. We will assist you in placing your order with the designated suppliers of these packages.

#### **Franchised Restaurant Operation**

**Purchases and Suppliers.** You must buy all menu items, ingredients, equipment, furnishings, supplies, materials, paper products and other items used or offered for sale at the Franchised Restaurant only from suppliers (including manufacturers, distributors, and other sources) that satisfy our then-current standards and specifications; possess adequate quality controls and capacity to supply your needs promptly and reliably; and have received our approval. With respect to our proprietary food products or the Trademarked Products, we may limit suppliers to us, our affiliates, and/or other specified exclusive sources, in which case you must acquire those trade secret food products or the Trademarked Products only from us, our affiliates, and/or the other specified exclusive sources at the prices we and they decide to charge. We may restrict your sources of proprietary food products and Trademarked Products in order to protect trade secrets, assure quality, assure a reliable supply of products that meet our standards, achieve better terms of purchase and delivery service, control use of the Marks by third parties, and monitor the manufacture, packaging, processing, and sale of these items.

If you desire to use any item, service or supplier in operating the Franchised Restaurant that we have not approved (for items or services that must meet our specifications or require supplier approval), you will first send us sufficient information, specifications and/or samples for us to determine whether the item or service complies with our standards and specifications or the supplier meets our criteria. We may charge a reasonable fee for inspection and/or testing, not to exceed \$1,000, and will decide within a reasonable time, typically 30 days, after receiving all requested information whether any proposed item or service meets our specifications or if you may purchase or lease items or services from a proposed supplier. We apply the following general criteria in approving a proposed supplier: ability to provide sufficient quantity of product; quality of products and/or services at competitive prices; production and delivery capability; and dependability and general reputation of the supplier. We will notify you in writing of our decision regarding the approval or disapproval of any supplier or item or service. In addition, we will notify you in writing of our revocation of approval of any supplier, or of any item or service no longer meeting our specifications.

Credit Card Processing/ Gift Card Program. We require all franchisees to accept major credit cards for customer purchases. You may be required to invest in additional equipment and incur fees from the credit card vendors that we designate. We also have an electronic gift card program and you must participate in this program. As part of the gift card program you and other franchisees will issue stored value cards to customers for use as gift certificates, promotional cards and restaurant credit. The gift card program is administered through the Aloha Software as described in Item 11. When a gift card is redeemed we will pay the redeeming franchisee the amount of the purchase from a central gift card fund that we maintain.

Digital Jukebox Lease & Music Royalty Licenses. We have a sole supplier for the installation and maintenance of the digital jukebox you will use in your Franchised Restaurant. You will lease your digital jukebox and procure the appropriate music rights licenses from our supplier. In order to install the jukebox, you must provide a suitable prewired location within your Franchised Restaurant. In addition, you will need to maintain DSL and phone lines in order to download music and for its ongoing operation.

Computer System. You are required to purchase and utilize the point-of-sale system, including hardware and software, as more fully described in Item 11. We do not derive revenue as a result of your purchase of the point-of-sale system.

Insurance. You must purchase insurance and provide us copies of all insurance policies required by the Franchise Agreement or as otherwise stated in the Manual. If you fail to purchase this insurance, we or our affiliates may obtain insurance for you, and you must reimburse us for its cost. All liability insurance policies must name us and any affiliates that we designate as additional insureds and give all of us at least 30 days' prior written notice of termination, material amendment, or cancellation. You also must provide certificates of insurance evidencing your insurance coverage in compliance with these minimums no later than 10 days before your Franchised Restaurant opens and each year when your policies renew.

Marketing Materials. As described in Item 11, we or our designated agent must approve all marketing materials before you use them. We may require you to use certain agencies for the creation of marketing materials.

### Miscellaneous

As of the date of this disclosure document, you are not required to purchase any products or services from us or our affiliates. Presently, neither us nor our affiliates supply any products or services to franchisees. We negotiate purchase arrangements with suppliers for the benefit of franchisees including terms for price, specifications, payment, rebates, incentives and credits. There are several purchase arrangements currently in effect permitting franchisees to purchase for a discount price ranging from approximately 5-25% off standard pricing. As a result of franchisee purchases from certain suppliers we receive material consideration including rebates and revenue. We intend to utilize such the rebates and revenue for the reimbursement of our costs of sponsoring the annual Black Bear Diner Franchise Convention and other franchisee events and activities. For our most recent fiscal year ended December 31, 2012, we and our affiliates received \$0 in revenue from the sale of products and services directly to franchisees. Our affiliates received \$0 in revenue as a result of required purchases from approved and designated suppliers by franchisees. For the year ended December 31, 2012, we received \$149,909 in revenue as a result of required purchases by franchisees from approved or designated suppliers and from suppliers who comply with our specifications. This represents 1.6% of our total revenue of \$9,243,043 as taken from our December 31, 2012 audited financial statements. We estimate that approximately 80% to 90% of your expenditures for leases and purchases in establishing your Franchised Restaurant and approximately 30% to 40% of your expenditures on an ongoing basis will be for goods and services which must be purchased from approved or designated sources or in accordance with our specifications.

We do not provide or withhold material benefits to you (such as renewal rights or the right to open additional Franchised Restaurants) based upon whether you purchase through the sources we designate or approve; however, purchases of unapproved products or from unapproved suppliers in violation of the Franchise Agreement will entitle us, among other things, to terminate the Franchise Agreement. We currently have no purchasing or distribution cooperatives. There is currently no supplier in which any of our officers owns an interest.

### Option Agreement/ Area Development Agreement

We have no required specifications, designated or approved suppliers for goods, services or real estate relating to either the Option Agreement or the Area Development Agreement. We do not derive revenue as a result of your purchases or leases pursuant to either the Option Agreement or the Area Development Agreement.

**ITEM 9**

**FRANCHISEE'S OBLIGATIONS**

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

	<b>Obligation</b>	<b>Section in Agreement: Franchise Agreement (FA) Option Agreement (OA) Area Development Agreement (ADA)</b>	<b>Disclosure Document Item</b>
a.	Site selection and acquisition/lease	FA: Section 5 OA: Section 2	Item 12
b.	Pre-opening purchases/leases	FA: Section 5 OA: None	Items 7 and 8
c.	Site development and other pre-opening requirements	FA: Section 2 OA: None	Items 6, 7 and 11
d.	Initial and ongoing training	FA: Section 8 OA: None	Items 6, 7, 11
e.	Opening	FA: Section 5 OA: Section 4	Item 11
f.	Fees	FA: Section 3 OA: Section 3	Items 5 and 6
g.	Compliance with Standards and Policies/Operating Manual	FA: Sections 5, 6, 7, 9, and 10 OA: None	Item 8
h.	Trademarks and Proprietary information	FA: Sections 6 and 7 OA: Section 7	Items 13 and 14
i.	Restrictions on Products/Services Offered	FA: Sections 13 OA: None	Items 8 and 16
j.	Warranty and Customer Service Requirements	FA: Section 13 OA: None	Item 16
k.	Territorial Development and Sales Quotas	FA: None OA: Section 4	Item 12
l.	Ongoing Product/Service Purchases	FA: Section 13 OA: None	Items 8 and 11
m.	Maintenance, Appearance and Remodeling Requirements	FA: Sections 5 OA: None	Items 6 and 17

Obligation		Section in Agreement: Franchise Agreement (FA) Option Agreement (OA) Area Development Agreement (ADA)	Disclosure Document Item
n.	Insurance	FA: Section 14 OA: None	Items 6, 7 and 8
o.	Advertising	FA: Section 11 OA: None	Items 6 and 11
p.	Indemnification	FA: Section 20 OA: Section 11	Item 6
q.	Owner's Participation/Management/ Staffing	FA: Section 13 OA: None	Item 15
r.	Records and Reports	FA: Section 12 OA: None	Items 9 and 11
s.	Inspections and Audits	FA: Sections 6 and 13 OA: None	Items 6, 11 and 13
t.	Transfer	FA: Section 18 OA: Section 8	Items 9 and 17
u.	Renewal	FA: Section 4 OA: Section 6	Item 17
v.	Post-Termination Obligations	FA: Sections 16 and 17 OA: None	Item 17
w.	Non-Competition Covenants	FA: Section 17 OA: None	Item 17
x.	Dispute Resolution	FA: Section 22 OA: Section 13	Item 17

**ITEM 10**

**FINANCING**

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

## **ITEM 11**

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

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

#### **Pre-Opening Obligations**

Option Agreement. Under the Option Agreement, we will provide you with the following assistance:

1. Grant you the right and option to establish and operate one additional Back Bear Diner restaurant under the then-current Franchise Agreements at location we approve within the Option Area (Option Agreement, Section 2.1).
2. Review your submitted site reports for sites you select for conformity with our site criteria and, if the site meets our criteria, approve the site for the Franchised Restaurant (Option Agreement, Section 5.1).

Franchise Agreement. Under the Franchise Agreement, before you open your Franchised Restaurant, we will provide you with the following assistance:

1. Provide you with general guidelines and assistance in selecting the site from which you will operate the Franchised Restaurant. (Franchise Agreement, Section 5.1)
2. Provide you with a layout for the interior of your Black Bear Diner restaurant along with specifications for the interior design, layout, décor, equipment, fixtures, furnishings and signs. (Franchise Agreement, Section 5.3).
3. Make available through third-party designated suppliers, the Décor Package and the Carved Bear Package for the build-out of your Franchised Restaurant along with an initial opening inventory of Trademarked Products for resale at your Franchised Restaurant. (Franchise Agreement, Sections 5.4 and 13.2)
4. Provide an initial training program for you, your General Manager and an assistant manager, along with training modules for your line cooks, prep cooks and head server. This training is described in detail later in this Item 11. (Franchise Agreement, Section 8)
5. Provide to you, on loan, one copy of the Black Bear Diner Operations Manual, which includes the Bear Necessities Quality Control Program (Franchise Agreement, Section 9). The Table of Contents of the Operations Manual, along with number of pages devoted to each section, is included as Exhibit E.

Area Development Agreement. Under the Area Development Agreement, we will provide you with the following assistance:

1. Grant you rights to a Development Area within which you will establish and operate an agreed-upon number of Franchised Restaurants under separate Franchise Agreements (Area Development Agreement, Section 2.1).

2. Review your submitted site reports for site(s) you select for conformity with our site criteria and, if the site meets our criteria, approve the sites for each Franchised Restaurant (Area Development Agreement, Section 4.3).

3. Conduct one on-site evaluation and such additional on-site evaluations as we deem advisable, as part of our evaluation of the site for a Franchised Restaurant (Area Development Agreement, Section 4.3).

### **Continuing Obligations**

During the operation of the Franchised Restaurant, we will provide you with the following assistance:

1. For approximately 14 days around the opening of your Franchised Restaurant, provide you with on-site assistance and guidance, at our expense, in order to facilitate the operations of your Franchised Restaurant. The types of guidance and assistance we provide included setup assistance, placement and arrangement of furniture and displays, computer system setup and training of your staff. (Franchise Agreement, Section 8.2).

2. Make a representative available to advise and offer general guidance to you by telephone, electronic mail, facsimile, newsletters and other methods based on our and our franchisees' experience in operating other Black Bear Diner restaurants. (Franchise Agreement, Section 8.6).

3. Send a field representative to your Franchised Restaurant from time to time as we deem necessary for the purpose of providing consultation, assistance and guidance in various aspects of the operation and management of the Franchised Restaurant. We may prepare written reports in accordance with the Bear Necessities Quality Control Program outlining any suggested changes or modifications in the operation of the your Franchised. (Franchise Agreement, Section 8.6)

4. Provide additional training programs and courses to you, your general manager and other employees, which may be optional or mandatory. We reserve the right to charge a tuition fee for optional training programs. Mandatory training programs will be provided to you without tuition charge. You will be required to pay all travel and living expenses incurred by you and your employees while attending training. (Franchise Agreement, Section 8.5)

5. At our discretion, conduct and administer a Black Bear Diner convention for system franchisees. (Franchise Agreement, Section 8.5)

### **Site Selection**

You are responsible for selecting the site for your Franchised Restaurant. In many instances franchisees have a proposed site prior to signing the Franchise Agreement. If you do not have a site which meets our criteria then you must select a site within the geographic area designated in the Franchise Agreement. Though you are solely responsible for selecting the site, we will provide site evaluation assistance at your request. The assistance consists of overall evaluation of alternative sites and at you request one site visit. Our prior approval of the site is required. The factors we consider in approving a site include general suitability, traffic pattern, ease of ingress and egress, visibility, availability of parking, proximity of similar business and the general lease terms. We will approve or disapprove a proposed site within 15 days of receiving all

requested information. Our approval of one or more sites is not a representation or a promise by us that a Franchised Restaurant at the approved site will achieve a certain sales volume or a certain level of profitability.

If no acceptable site is found by you and approved by us within 60 days after you sign the Franchise Agreement, we have the right to terminate the Franchise Agreement. If we elect to terminate the Franchise Agreement we will return \$30,000 of the Franchise Fee to you.

The typical length of time between the signing of the Franchise Agreement and the opening of a Franchised Restaurant is approximately 90 to 180 days. The factors that may affect this time include your ability to obtain zoning approval, build-out of the site, weather conditions and other special circumstances.

If you enter into an Option Agreement, you will typically have selected a site that meets with our approval at the time of signing the Option Agreement. If you have not proposed a predetermined site, then you will select a site within the Option Area that meets with our approval. You are required to sign a Franchise Agreement and begin operations of the Black Bear Diner restaurant to be developed under the Option Agreement within one year after signing the Option Agreement.

### **Marketing & Advertising**

**Marketing Fund.** We have implemented and administer the Black Bear Diner Marketing and Advertising Fund (the "Fund"). You are required to contribute, each week, an amount equal to 1% of your Gross Sales. We may increase the amount of your contribution upon 30 days notice to you. We will not increase your required contribution to more than 2% per week. Your contribution will be made at the same time and in the same manner as the Royalty Fee. We will maintain and administer the Fund in our sole discretion as follows:

We will use the Fund for national and/or regional marketing activities to promote the Black Bear Diner System (including, without limitation, the cost of preparing and conducting television, radio, magazine, newspaper and Internet advertising campaigns) and related business purposes including employing advertising agencies to assist in these activities. We may charge the Fund fees at reasonable market rates for administrative or marketing services provided by us, if any. We will not directly use the Fund to offer to sell franchises to prospective franchisees.

If less than the total of all contributions to the Fund are expended during any fiscal year, such excess may be accumulated for use during subsequent years. In addition, the Fund may borrow from us or other lenders to cover deficits in any fiscal year.

We will endeavor to manage the Fund in a way that benefits the System and increases public recognition of the services offered as part of the System. However, we cannot, and do not, ensure that any particular franchisee will benefit directly or pro rata from the placement of advertising or from any expenditure by the Fund. All contributions by franchisees to the Fund may be maintained in a separate account from our general operating account. Although we intend the Fund to be of perpetual duration, We maintain the right to terminate the Fund and return all unexpended funds to you and other franchisees on a pro rata basis based on contributions for the last 12 months prior to the Fund being terminated. An accounting of the operation of the Fund shall be prepared annually and shall be made available to you and other franchisees upon request. We may elect but are not required to have an audit performed of the Fund statements. All Black Bear Diner restaurants which we or our affiliates own or operate will be required to contribute to

the Fund on the same basis as the Franchised Restaurants. You authorize us to collect for remittance to the Fund any advertising or promotional monies offered by any supplier based upon purchases by you or otherwise. For the year ended December 31, 2012, we had the following Fund expenditures: 17.9% Production; 74.5% Placement; 7.6% Other-Promotional Materials.

**Local Advertising.** You must advertise your Black Bear Diner restaurant at your own expense in your local trade area. You are required to spend 1% of your Gross Sales per month on local advertising. In addition, you must maintain an alphabetic and classified listing in the local telephone directories. We have the right to review and approve (or disapprove) any or all advertising and promotional materials you propose to use. You may not use any advertising or promotional materials that we have not approved or have disapproved. You may not develop, maintain, or authorize any website that contains or mentions the Marks. (Franchise Agreement, Section 11.1)

**Advisory Council.** Currently, there is no advertising council composed of franchisees that advises us on advertising policies. If we choose to form an advisory council, the council will act in an advisory capacity only and will not have decision making authority. The franchisee representatives of the council may be chosen by us or by a vote of franchisees. We may form, merge, change or dissolve any advisory council at any time.

#### **Computer Hardware and Software:**

We require you to use certain computer hardware and software that meets our specifications. The use of the prescribed hardware and software will permit us to receive information on a timely basis concerning your Franchised Restaurant, and will provide you with detailed management information. We have the right to independently access information through the computer system and there is no contractual limitation on our right to do so.

**Software.** We require you to utilize Aloha Enterprise.com and Aloha Table Service (“Aloha Software”). The Aloha Software is designed to track sales and generate various management reports including those pertaining to labor, payroll, sales and inventory. Aloha Enterprise.com is an “application service provider” that resides on a third party host instead of your local computer hard drive. Aloha Table Service is a point-of-sale system designed to assist in the day-to-day operations of your Franchised Restaurant. Aloha Table Service provides point-of-sale processing, order entry, guest check management and payment processing. The Aloha Software is not proprietary to us. You may purchase the Aloha Software from any authorized dealer.

In addition to Aloha Software, we require you to utilize Ctuit RADAR software. This will permit us to inspect and monitor electronically information concerning your Franchised Restaurant’s financial and operational data. You may purchase the system from the authorized seller of your choice

**Hardware.** We recommend that you obtain a computer with a processor speed of at least 2.0 GHz and 500MB of RAM. You will also need a monitor, a Windows-based operating system and an Internet service provider. You may obtain the computer hardware from any authorized dealer.

In order to utilize the software and computer system you will need a high-speed Internet connection and web browser.

We estimate the initial cost of the computer system to be approximately \$20,000 to \$25,000. We do not require you to purchase a maintenance contract for your computer system although you may find it advantageous to do so. Neither we nor our affiliates are obligated to provide you with any ongoing maintenance, repair, upgrades or updates to your computer system.

You are not required to enter into any ongoing maintenance and support agreement but may find it advantageous to do so. We have the right to independently access all information collected or compiled by you as a result of using the Computer System at any time without first notifying you. You must update or upgrade computer hardware components and/or software as we deem necessary. There are no contractual limitations on the cost of any upgrades and/or updates we may require. However, we not require you to upgrade more than one time per year.

We do not have separate computer system requirements under the terms of the Option Agreement or the Area Development Agreement.

### **Training**

We conduct an Initial Training Program which you and your general manager, if applicable, and assistant manager(s) must attend and complete to our satisfaction prior to beginning operation of the Franchised Restaurant. Under certain circumstances, for example, you are currently a multi-unit operator or your personnel have been previously trained by us, and you receive our preapproval then we may waive the Initial Training Program or certain aspects of it and provide you with a credit based on our cost savings. The initial Training Program is on-the-job and conducted over approximately 25 days as described in the chart below. We conduct training on an as needed basis in Redding, California, unless we designate a different location.

Our Director of Training is Robert Simpson who is responsible for all aspects of training. Mr. Simpson will personally provide training and/or utilize appropriate individuals who have experience and knowledge in the subject matters being taught. We do not maintain a formal training staff. We will utilize persons described in Item 2 and other employees to provide training to our franchisees.

We may provide and, if so, require that you or your general manager attend and successfully complete ongoing training programs including refresher training, seminars, informational classes and/or meetings. Attendance at such training programs will be at your sole expense, as to travel and living expenses. We will not charge a tuition fee for any mandatory courses but may, in our discretion, charge a reasonable fee for any optional training.

If you hire a new general manager after completing initial Training Program, we will provide training to your general manager for an additional fee of \$3,000. Any general manager hired by you must attend and successfully complete the initial Training Program within 60 days of hire. We may, based on your, or your general manager's personal qualifications and experience, revise, modify or alter the initial training program.

All our training is on-the-job training. The following is a schedule of the initial training we currently provide:

### TRAINING PROGRAM

Subject	Hours of Classroom Training	Hours of On-The-Job Training	Location
<b>Franchisee/ General Manager/ Assistant Manager Module (app. 200 hours)</b>			
Front of House procedures and Management	0	App. 200	Redding, California
Kitchen Management	"	"	"
Food Preparation	"	"	"
Cooks Training	"	"	"
Purchasing & Cost Control	"	"	"
Accounting & Cash Systems	"	"	"
Marketing & Advertising	"	"	"
Operations & POS System	"	"	"
<b>Kitchen Manager Module (app. 120 hours)</b>			
Food Preparation	0	App. 120	Redding, California
Cooks Training	"	"	"
Purchasing	"	"	"
Cost Control and Operations Management	"	"	"
<b>Line Cook Module (app. 96 hours)</b>			
Food Preparation	0	App. 96	Redding, California
Cooks Training	"	"	"
<b>Prep Cook Module (app. 40 hours)</b>			
Food Preparation	0	App. 40	Redding, California

If you have previously operated a Black Bear Diner restaurant, our training program will be reduced as you and we deem appropriate. We have no training program under the terms of the Option Agreement or Area Development Agreement.

**ITEM 12**  
**TERRITORY**

**Franchise Agreement**

Under the Franchise Agreement, you will be granted the right to develop and operate a Franchised Restaurant at a specific location that first must be approved by us. You may not relocate the Franchised Restaurant without our prior written consent. If, prior to the termination or expiration of the Franchise Agreement, the lease or sublease for your Black Bear Diner restaurant location expires or terminates without your fault, or if the premises are destroyed, condemned or otherwise rendered unusable, we will permit you to relocate your Black Bear Diner restaurant to a new site acceptable to us. Any relocation will be at your sole expense, including reimbursing us for all reasonable costs and expenses that we may incur in connection with evaluating, approving and/or implementing the relocation. You also must indemnify us against all loss, liability, costs and expenses that we may incur in connection with any aspect of the relocation process.

If you comply with the Franchise Agreement, we will not operate or license others to operate a Black Bear Diner restaurant from a location within an agreed-upon geographic area (“Protected Territory”) during the term of the Franchise Agreement. A description of the Protected Territory is included as an exhibit to the Franchise Agreement. The perimeter of the Protected Territory may be described by street boundaries, county lines, state lines, municipal boundaries or other similar boundary descriptions. For the typical Franchised Restaurant, the Protected Territory will encompass an approximate 3-mile radius around the Franchised Restaurant.

As part of the rights reserved by us in the Franchise Agreement, we may (1) establish and operate, and license others to establish and operate, Black Bear Diner restaurants at any location outside of the Protected Area; (2) establish and operate, and license others to establish and operate, other businesses including similar restaurant concepts, using other trademarks, service marks and commercial symbols at any location either within and outside of the Protected Area; (3) sell and distribute products authorized for use and resale at the Franchised Restaurant, including the Gift Shop Products, at wholesale and at retail through alternative channels of distribution including, but not limited to, grocery stores, convenience stores, mail order and Internet sales to customers wherever located, including customers that may be located within the Protected Area; and (4) engage in any other activities not expressly forbidden by the Franchise Agreement.

Except as described above, we have no contractual right to modify any territorial right that we grant. As indicated above, we are not restricted from soliciting or accepting orders, from, or selling products or services using any trademarks to, consumers located within your Protected Area, including orders, products or services offered from other distribution channels, such as the Internet, catalogues, or other direct marketing sales. If we do so, we will not pay any compensation to you.

Neither we nor any affiliate currently engage in any of the activities described in the previous paragraph, but we reserve the right to do so in the future.

Under the terms of the Franchise Agreement, you are not required to achieve a sales or market penetration quota. The Franchise Agreement does not provide you any options, rights of first refusal or similar rights to acquire additional franchises.

There are no restrictions on the areas in which you may advertise or solicit customers though you must operate your Black Bear Diner restaurant solely at the restaurant premises. You may not sell products to any other customer or business for resale and you may not sell products at, from or through any other location or distribution channel such as the Internet, catalog sales, telemarketing, or other direct marketing.

### **Option Agreement**

When you sign the Option Agreement, we and you will designate a specific site or an "Option Area" within which you will locate a specific site for the operation of the Franchised Restaurant. The Option Area will vary widely depending on the market where you are looking for a site. We will identify the Option Area by street boundaries, county lines, state lines, municipal boundaries or other similar boundary descriptions. So long as you comply with all provisions in the Option Agreement and otherwise comply with the provisions of each related Franchise Agreement, we will not establish or license others to establish a Black Bear Diner restaurant within the Option Area. In addition, you maintain your rights to your Option Area even if the population increases.

Except as specifically limited by the Option Agreement, we retain all rights with respect to Franchised Restaurants, the Marks, and any products and services. As part of the rights reserved by us in the Option Agreement, we may (1) establish and operate, and license others to establish and operate, Black Bear Diner restaurants at any location outside of the Option Area; (2) establish and operate, and license others to establish and operate, other businesses including similar restaurant concepts, using other trademarks, service marks and commercial symbols at any location either within and outside of the Option Area; (3) sell and distribute products authorized for use and resale at the Franchised Restaurant, including the Gift Shop Products, at wholesale and at retail through alternative channels of distribution including, but not limited to, grocery stores, convenience stores, mail order and Internet sales to customers wherever located, including customers that may be located within the Option Area; and (4) engage in any other activities not expressly forbidden by the Option Agreement. Under the terms of the Option Agreement, you have no right to operate a Black Bear Diner restaurant or to solicit or accept orders for any products or services. These and other related rights are only granted to you upon signing a Franchise Agreement.

Your rights under the Option Agreement are not dependent upon achievement of a certain sales volume or market penetration. However, if you fail to meet the date contained in the Option Agreement for signing of a Franchise Agreement then the Option Agreement will automatically expire. In addition, upon the earlier of the expiration of the term of the Option Agreement or when you sign a Franchise Agreement for the Franchised Restaurant to be developed within the Option Area, your exclusive rights under the Option Agreement with respect to the Option Area will terminate and we and our affiliates will have the right to operate and to grant to others development rights and franchises to develop and operate Franchised Restaurants within the Option Area. This right will be subject only to the territorial rights under the Franchise Agreements entered into by you for the Franchised Restaurants in the Option Area. You are not granted any other option, right of first refusal or similar right to acquire additional Restaurants in your Option Area under the Option Agreement.

## **Area Development Agreement**

If you enter into an Area Development Agreement, you will receive a Development Area within which you will have the rights and obligation to develop one or more Black Bear Diner restaurants. The Development Area will vary in size, depending upon the number of Franchised Restaurants you intend to open, the population density, and the demographics in the area in which you intend to operate. The responsibility to locate and prepare a sufficient number of suitable sites is solely yours and we have no obligation to approve sites which do not meet our criteria. So long as you comply with all provisions in the Area Development Agreement and otherwise comply with the provisions of each related Franchise Agreement, we will not establish or license others to establish a Black Bear Diner restaurant within the Development Area. In addition, you maintain your rights to your Development Area even if the population increases.

Except as specifically limited by the Development Agreement, we retain all rights with respect to Franchised Restaurants, the Marks, and any products and service. As part of the rights reserved by us in the Development Agreement, we may (1) establish and operate, and license others to establish and operate, Black Bear Diner restaurants at any location outside of the Development Area; (2) establish and operate, and license others to establish and operate, other businesses including similar restaurant concepts, using other trademarks, service marks and commercial symbols at any location either within and outside of the Development Area; (3) sell and distribute products authorized for use and resale at the Franchised Restaurant, including the Gift Shop Products, at wholesale and at retail through alternative channels of distribution including, but not limited to, grocery stores, convenience stores, mail order and Internet sales to customers wherever located, including customers that may be located within the Development Area; and (4) engage in any other activities not expressly forbidden by the Area Development Agreement. Under the terms of the Area Development Agreement, you have no right to operate a Black Bear Diner restaurant or to solicit or accept orders for any products or services. These and other related rights are only granted to you upon signing a Franchise Agreement.

Your rights under the Area Development Agreement are not dependent upon achievement of a certain sales volume or market penetration. However, if you fail to meet the dates contained in the Development Schedule then we may terminate your territorial exclusivity and the Area Development Agreement. In addition, upon the earlier of the expiration of the term of the Area Development Agreement or when you sign a Franchise Agreement for the last Franchised Restaurant to be developed within the Development Area, your exclusive rights under the Development Agreement with respect to the Development Area will terminate and we and our affiliates will have the right to operate and to grant to others development rights and franchises to develop and operate Franchised Restaurants within the Development Area. This right will be subject only to the territorial rights under the Franchise Agreements entered into by you for Franchised Restaurants in the Protected Area. You are not granted any other option, right of first refusal or similar right to acquire additional Restaurants in your Development Area under the Area Development Agreement.

**ITEM 13**

**TRADEMARKS**

Under the Franchise Agreement we grant you the non-exclusive right to operate your Franchised Restaurant under certain Marks that we authorize you to use. Our principal trademarks are:

<b>Mark</b>	<b>Registration Number</b>	<b>Registration Date</b>	<b>Register</b>
Black Bear Diner & Design	2,429,445	February 20, 2001	Principal
Bear Design	2,939,746	April 12, 2005	Principal
Black Bear Diner	3,156,011	October 17, 2006	Principal
Black Bear Diner GOOD OLD FASHIONED FAMILY FOOD	3,156,012	October 17, 2006	Principal

There are currently no effective material determinations of the United States Patent and Trademark Office (“PTO”), the Trademark Trial and Appeal Board, the trademark administrator of any state, or any court, and no pending infringement, opposition or cancellation proceedings, or pending material litigation, involving the principal Marks. There are no infringing uses known to us that could materially affect your use of the Marks.

There are currently no effective material determinations of the PTO, trademark trial and appeal board, the trademark administrator of this state or any court; pending infringement, opposition or cancellation; or pending material litigation involving the Marks.

There are no infringing or prior superior uses actually known to us that could materially affect the use of the Marks in this state or any other state in which the Franchised Restaurant is to be located.

You must immediately notify us of any apparent infringement of or challenge to your use of any Mark, or claim by any person of any rights in any Marks, and you may not communicate with any person other than us and our counsel regarding any infringements, challenges or claims, unless you are legally required to do so. We may take whatever action we deem appropriate in these situations, and have the right to control exclusively any settlement, litigation or PTO or other proceeding arising out of any alleged infringement, challenge or claim or otherwise concerning any Mark. You must execute any instruments and documents, render assistance, take actions which in the opinion of our counsel, may be necessary or advisable to protect and maintain our interests in any litigation or other proceeding or to otherwise protect and maintain our interests in the Marks.

We can require you to modify or discontinue use of any Mark and/or to use one or more additional or substitute trademarks or service marks. We will not be required to reimburse you for your expenses to modify or discontinue the use of a Mark or to substitute a trademark or service mark for a discontinued Mark. The modification or substitution by us of a discontinued mark will

be your sole and exclusive remedy against us if a Mark must be modified in our sole judgment or as a result of an involuntary loss of any one or more of the Marks by us.

You must use the Marks as the sole trade identification of your Franchised Restaurant. You may not use any Mark or part of any Mark as part of any corporate or trade name, in any modified form, nor may you use any Mark in connection with the sale of any unauthorized product or service, or in any other manner which we do not authorize in writing. You must give notices of trademark and service mark registrations as we specify and obtain such fictitious or assumed name registrations as may be required under applicable law.

You may not establish a website on the Internet using any domain name containing the words "Black Bear Diner" or any variation thereof without our written consent. We retain the sole right to advertise on the Internet and create websites using the "Black Bear Diner" domain name. You must not use any Mark or part of any Mark as part of any corporate or entity name, in any modified form with the sale of any unauthorized product or service, or in any other manner not authorized in writing by us. You must give notices of trademark and service mark registration as we specify and obtain fictitious or assumed name registrations as may be required.

You do not receive any right to use any Mark under the terms of the Option Agreement or the Area Development Agreement.

## **ITEM 14**

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

No patents are material to the franchise. We own certain copyrights in the Manual, marketing materials and other copyrightable items which are part of the System. While we claim copyrights in these and similar items, we have not registered these copyrights with the United States Registrar of Copyrights but need not do so to protect them. You may use these items only as we specify while operating your Franchised Restaurant and must stop using them if we direct you to do so. Our right to use or license copyrighted items is not materially limited by any agreement or known infringing use.

The Franchise Agreement provides that our trade secrets and any information or matter that is competitively sensitive and not generally known by the public, whether or not in written or tangible form and regardless of the media (if any) on which stored, relating to the Black Bear Diner system, including recipes, food specifications, methods and techniques of food preparation, business operating systems and techniques, record-keeping and reporting methods, accounting systems, management systems and techniques, management training techniques, specifications for signs, displays, placemats, menus, bags, containers, business forms, and business stationery to be used by franchisees, designs, drawings, and specifications for business premises, operating manuals for franchisees, ideas, research and development, know-how, lists of franchisees and suppliers, suggested pricing and cost information, and business and marketing plans and proposals which we provide to you in confidence shall be deemed Confidential Information.

You must not divulge Confidential Information to anyone except employees who must have access to it in order to operate your Franchised Restaurant.

Certain individuals having access to Confidential Information, including your shareholders, officers, directors, partners, employees, members, managers and your spouse, may be required to sign nondisclosure and non-competition agreements in a form we approve.

## **ITEM 15**

### **OBLIGATION TO PARTICIPATE IN THE ACTUAL OPERATION OF THE FRANCHISED RESTAURANT**

The Franchised Restaurant shall at all times be under the direct full-time supervision of either you, if you are an individual, or your general manager if you are a business entity. If you operate two or more Franchised Restaurants, you may delegate your management duties for each additional Franchised Restaurant to a general manager who has successfully completed our training program. The general manager need not have an ownership interest in the Franchised Restaurant.

All managerial level employees, including your general manager, and other key individuals having access to the Confidential Information, described in Item 14, may be required to sign confidentiality and nondisclosure agreements.

If you are a business entity, we require each individual who owns a 10% or greater interest in the entity to sign the Guarantee and Assumption of Obligations, attached as Exhibit D to the Franchise Agreement. The Guarantee requires those who sign it to pay all monetary obligations under the Franchise Agreement and perform and fulfill all other promises and duties you must perform under the Franchise Agreement.

If you are an Option Holder, your personal participation or supervision is highly recommended but not required. No one is required to have an equity interest.

## **ITEM 16**

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

We require you to offer and sell only menu items and other categories of products and services that we have authorized. In addition, you must offer all menu items and other categories of products and services that we designate as required for all franchisees. You must follow all directions, specifications, recipes, formulae and techniques as to the contents, including using the ingredients and preparation methods we specify, as well as conform to our packaging specifications. In addition, you are not permitted to sell any other food or beverage item or other merchandise of any kind without our prior written consent, which consent may be granted or withheld in our sole discretion. We may change the products, services, or merchandise that you may sell as well as the ingredients, manner of preparation, packaging, and other features at any time. There is no limit to the type or extent of our changes.

The Black Bear Diner restaurant premises may not be used for any activity other than as a restaurant, and must remain open and in normal operation for the minimum hours and days we specify in the Manual or otherwise in writing. You must operate your Franchised Restaurant in strict conformity with the specifications contained in the Manual or otherwise in writing.

Except as described above, you are not restricted by the Franchise Agreement or any other custom or practice of ours or of our affiliates with respect to products or services which you may offer or sell or with respect to customers to whom you may sell. We may add, delete, and/or

change the menu items, products and services that we have approved as well as change or modify other aspects of the System. You will be obligated to accept, use and display any of these changes in the System. You will be obligated to make all necessary expenditures for such changes or modifications as we may reasonably require.

You must operate your Franchised Restaurant in strict conformity with all applicable federal, state, and local laws, ordinances and regulations. These laws, ordinances and regulations vary from jurisdiction to jurisdiction and are amendable and may be implemented or interpreted in different manners over time. It is solely your responsibility to apprise yourself of the existence and requirements of all laws, ordinances and regulations applicable to your Franchised Restaurant and to adhere to them and to the then-current implementation or interpretation of them.

**ITEM 17**

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

**THE FRANCHISE RELATIONSHIP**

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

**FRANCHISE AGREEMENT**

Provision		Section in the Franchise Agreement	Summary
a.	Term of the franchise	Section 4.1	The initial term is 10 years.
b.	Renewal or extension of the term	Section 4.2	You may renew for an additional term of 10 years subject to (c) below.
c.	Requirements for you to renew or extend	Section 4.2	To renew, you must have substantially complied with the provisions of the Franchise Agreement and not be in default at the time of renewal; maintain possession of the premises used in the operation of your Franchised Restaurant; make expenditures to remodel, modernize and redecorate to reflect the then-current appearance of new Black Bear Diner restaurants; provide notice of your intent to renew; sign a new franchise agreement; meet current training requirements; and sign a general release. The terms of the new franchise agreement may contain materially different terms and conditions
d.	Termination by you	Section 15.1	If you are in compliance with the Franchise Agreement and we materially breach the Franchise Agreement and fail to cure or begin to cure within 30 days of receiving your written notice.
e.	Termination by us without cause	None	
f.	Termination by us with cause	Section 15.2	We may terminate the franchise only if you breach the Franchise Agreement.
g.	“Cause” defined- defaults which can be cured	Section 15.2	You generally have 30 days to cure except for defaults included in (h) below.

	Provision	Section in the Franchise Agreement	Summary
h.	“Cause” defined- defaults which cannot be cured	Section 15.2	Noncurable defaults include: failure to obtain a suitable site; failure to begin operation of the Franchised Restaurant; failure to satisfactorily complete initial training or any mandatory training, seminar or annual convention; making a material misrepresentation or omission in the application for the franchise; conviction or plea of no contest to a felony or other crime or offense that can adversely affect the reputation of either party or the Franchised Restaurant; any unauthorized use of the Marks Confidential Information; abandonment of or failure to operate the Franchised Restaurant; an attempt to surrender or transfer control of the franchise in an unauthorized manner; adjudication of bankruptcy, insolvency or making a general assignment for the benefit of creditors; misuse or unauthorized use of the Marks; failure to comply with the Franchise Agreement on 3 or more occasions within any 12 month period; operation of the Franchised Restaurant in a manner that presents a health or safety hazard.
i.	Your obligations on termination/nonrenewal	Section 16	Stop operation of the Franchised Restaurant; if requested, assign your interest in the lease for the premises to us; stop using the Marks, System and our Confidential Information; assign any assumed names to us; pay all sums owed to us including damages and costs incurred in enforcing the termination provisions of the Franchise Agreement; return the Manual, Confidential Information and all other proprietary materials to us; assign your telephone and listings to us as requested; and comply with the covenants not to compete and any other surviving provision of the Franchise Agreement.
j.	Assignment of contract by us	Section 18.1	There are no restrictions on our right to assign or transfer.
k.	“Transfer” by you- definition	Section 18.2	Includes sale of assets used in operating the Franchised Restaurant, assignment of franchise agreement or sale of interest in a franchisee legal entity.

Provision		Section in the Franchise Agreement	Summary
l.	Our approval of transfer by you	Section 18.2	Approval is required for all transfers.
m.	Conditions for our approval of transfer	Section 18.2	Several conditions apply, including: all obligations owed to us must be paid; execution of a general release; the transferee must meet our qualifications; you must provide a copy of all agreements in connection with the proposed transfer and a transfer fee of \$ <del>15</del> <u>20</u> ,000 must be paid.
n.	Our right of first refusal to acquire your Franchised Restaurant	Section 19	We may match an offer for your Franchised Restaurant or an ownership interest in the franchise you propose to sell.
o.	Our option to purchase your Franchised Restaurant	Section 17.6	We are not obligated to do so, but, if the franchise is terminated or expires, we have the option to purchase the assets of the Franchised Restaurant.
p.	Your death or disability	Section 18.4	Your heirs, beneficiaries, devisees or legal representative can apply to us to continue operation of the Franchised Restaurant, or sell or otherwise transfer your interest in the Franchised Restaurant within 6 months of your death or disability.
q.	Non-competition covenants during the term of the franchise	Section 17.1	During the term of the Franchise Agreement you cannot own or otherwise have any interest in a competitive business unless we approve otherwise.
r.	Non-competition covenants after the franchise is terminated or expires	Section 17.2	No involvement in a competing business for 2 years within 10 miles of your Franchised Restaurant or within 10 miles of any other Black Bear Diner restaurant
s.	Modification of the agreement	Section 21.5	The Franchise Agreement can be modified only by written agreement between you and us.
t.	Integration/merger clause	Section 21.5	Only the terms of the Franchise Agreement are binding (subject to state law) any other promises may not be enforceable. Nothing in the Franchise Agreement or any other agreement is intended to disclaim representations made in this disclosure document.

Provision		Section in the Franchise Agreement	Summary
u.	Dispute resolution by arbitration or mediation	Section 22.7	Except for certain claims, all disputes must be arbitrated in Redding, California.
v.	Choice of forum	Section 22.2	Litigation in state court or judicial district in which we have our principal place of business (subject to state law)
w.	Choice of law	Section 22.1	California law applies (subject to state law)

See Exhibit K for additional California-specific disclosures.

#### AREA DEVELOPMENT AGREEMENT

Provision		Section in the Area Development Agreement	Summary
a.	Length of the term of the Development Option Agreement	Section 4	The rights granted under the Area Development Agreement expire on the date of the beginning of operation of the last Franchised Restaurant to be developed.
b.	Renewal or extension of term	N/A	You do not have the right to renew your Development Agreement.
c.	Requirements for you to renew or extend	N/A	
d.	Termination by you	N/A	
e.	Termination by us without cause	N/A	
f.	Termination by us with cause	Section 9	If you breach the Area Development Agreement, we will have cause to terminate.
g.	“Cause” defined (defaults which can be cured)	Section 9.2	Except for defaults in (h) below, you generally have 30 days to cure any defaults contained in the Area Development Agreement.

	Provision	Section in the Area Development Agreement	Summary
h.	"Cause" defined (defaults which cannot be cured)	Section 9.1	<del>Noneurable</del> Non-curable defaults include: any unapproved transfers, any material misrepresentations in the application for the Development Agreement; conviction of a felony; any unauthorized use of our Marks or Confidential Information; termination of a Franchise Agreement; your failure to meet the development obligations including obtaining approval of a site; or you become insolvent.
i.	Your obligation on termination/ non-renewal	Section 10	You have no further right to develop or operate any additional Franchised Restaurants; you may continue to own and operate all Franchised Restaurants pursuant to any existing Franchise Agreements; you must pay all amounts owed to us.
j.	Assignment of contract by us	Section 8.1	There are no restrictions on our right to assign.
k.	"Transfer" by you definition	Section 8.2	Includes transfer of the Area Development Agreement or changes in ownership of the business entity which owns the option rights.
l.	Our approval of transfer	Section 8.2	Our prior written consent is required.
m.	Conditions for our approval of transfer	Section 7.2	The proposed assignee must meet our criteria for experience, aptitude and financial resources and otherwise meets our standards for franchisees.
n.	Our right to acquire your business	N/A	
o.	Our option to purchase your business	N/A	
p.	Your death or disability	N/A	
q.	Non-competition covenants during the term of the Area Development Agreement	N/A	None unless you sign a Franchise Agreement

Provision		Section in the Area Development Agreement	Summary
r.	Non-competition covenants after the Area Development Agreement is terminated or expires	N/A	None unless you sign a Franchise Agreement
s.	Modification of the Development Agreement	Section 12.3	The Area Development Agreement can only be modified or amended by written agreement signed by both parties.
t.	Integration/merger clause	Section 12.3	Only the terms of the Area Development Agreement are binding (subject to state law) and any other promises may not be enforceable. Nothing in the Area Development Agreement or any other agreement is intended to disclaim representations made in this disclosure document.
u.	Dispute resolution by arbitration or mediation	Section 13.6	Except for certain claims, all disputes must be mediated and then arbitrated in Redding, California.
v.	Choice of forum	Section 13.2	Litigation in state court or judicial district in which we have our principal place of business (subject to state law).
w.	Choice of law	Section 13.1	California law applies (subject to state law).

See Exhibit K for additional California-specific disclosures.

**ITEM 18**

**PUBLIC FIGURES**

We do not presently use any public figures to promote the sale of Black Bear Diner franchises.

**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 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 Bob Manley at Black Bear Diner, Inc., The Federal Trade Commission, and the appropriate state regulatory agencies.

**ITEM 20**  
**OUTLETS AND FRANCHISEE INFORMATION**

**Systemwide Outlet Summary**  
**For years 2010 to 2012**

Outlet Type	Year	Outlets at the Start of the Year	Outlets at the End of the Year	Net Change
Franchised	2010	27	31	+4
	2011	31	37	+6
	2012	37	39	+2
Company-Owned	2010	14	14	-0
	2011	14	14	-0
	2012	14	15	+1
Total Outlets	2010	41	45	+4
	2011	45	51	+6
	2012	51	54	+3

**Transfer of Outlets from Franchisees to New Owners (other than the Franchisor)**  
**For years 2010 to 2012**

State	Year	Number of Transfers
California	2010	0
	2011	2
	2012	0
Colorado	2010	0
	2011	1
	2012	0
Oregon	2010	0
	2011	1
	2012	1
Washington	2010	0
	2011	2
	2012	0
Total Outlets	2010	0
	2011	6
	2012	1

**Status of Franchised Outlets  
For years 2010 to 2012**

State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations-Other Reasons	Outlets at End of Year
California	2010	14	3	0	0	0	0	17
	2011	17	3	0	0	0	0	20
	2012	20	2	1	0	0	0	21
Colorado	2010	2	0	0	0	0	0	2
	2011	2	0	1	0	0	0	1
	2012	1	0	0	0	0	0	1
Iowa	2010	0	1	0	0	0	0	1
	2011	1	1	0	0	0	0	2
	2012	2	1	0	0	0	1	1
Nevada	2010	3	0	0	0	0	0	3
	2011	3	0	0	0	0	0	3
	2012	3	0	0	0	0	0	3
Oregon	2010	6	0	0	0	0	0	6
	2011	6	1	0	0	0	0	7
	2012	7	0	0	0	0	0	7
Utah	2010	0	0	0	0	0	0	0
	2011	0	2	0	0	0	0	2
	2012	2	0	0	0	0	0	2
Washington	2010	2	0	0	0	0	0	2
	2011	2	0	0	0	0	0	2
	2012	2	1	0	0	0	0	3
Totals	2010	27	4	0	0	0	0	31
	2011	31	7	1	0	0	0	37
	2012	37	4	1	0	0	1	39

**Status of Company Owned Outlets  
For Years 2010 to 2012**

State	Year	Outlets at Start of the Year	Outlets Opened	Outlets Reacquired From Franchisee	Outlets Closed	Outlets Sold to Franchisee	Outlets at End of the Year
Arizona	2010	6	0	0	1	0	5
	2011	5	0	0	0	0	5
	2012	5	0	0	0	0	5
California	2010	7	1	0	0	0	8
	2011	8	0	0	0	0	8
	2012	8	1	0	0	0	9
Nevada	2010	1	0	0	0	0	1
	2011	1	0	0	0	0	1
	2012	1	0	0	0	0	1
Totals	2010	14	1	0	1	3	14
	2011	14	0	0	0	0	14
	2012	14	1	0	0	0	15

**Projected Openings As Of December 31, 2012**

State	Franchise Agreements Signed But Outlet Not Opened	Projected New Franchised Outlets In The Next Fiscal Year	Projected New Company-Owned Outlets In The Next Fiscal Year
California	2	4	1
Utah	0	1	0
Washington	0	1	0
Totals	2	6	1

The names, addresses and telephone numbers of all current Black Bear Diner franchisees are attached to this disclosure document as Exhibit G. The name, city and state, and current business telephone number, or if unknown, the last known home telephone number of every franchisee who had an outlet 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 the franchisor within 10 weeks of the disclosure document issuance date appear at Exhibit H. If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system.

In some instances, current and former franchisees sign provisions restricting their ability to speak openly about their experience with the Black Bear Diner franchise system. You may wish to speak with current and former franchisees, but be aware that not all such franchisees will be able to communicate with you.

**ITEM 21**

**FINANCIAL STATEMENTS**

Attached as Exhibit F are our audited financial statements for years ending December 31, 2012; December 31, 2011; and December 31, 2010. Also attached are our unaudited income statement and balance sheet as of ~~February 28~~ July 31, 2013.

**ITEM 22**

**CONTRACTS**

Attached as Exhibits to this disclosure document are the following contracts and their attachments:

- |    |                            |           |
|----|----------------------------|-----------|
| 1. | Franchise Agreement        | Exhibit B |
| 2. | Option Agreement           | Exhibit C |
| 3. | Area Development Agreement | Exhibit D |
| 4. | Form of General Release    | Exhibit J |

**ITEM 23**

**RECEIPT**

The Receipt pages are located on the last two pages of this disclosure document.

**EXHIBIT A TO THE DISCLOSURE DOCUMENT**  
**AGENTS FOR SERVICE OF PROCESS AND STATE ADMINISTRATORS**

California

Agent for Service of Process

Commissioner of Corporations Department of  
Business Oversight  
320 W. 4<sup>th</sup> Street, Suite 750  
Los Angeles, California 90013

State Administrator's Office

Securities Regulation Division  
California Department of  
Corporations Business Oversight  
1390 Market Street  
San Francisco, California 94102-5303  
(415) 557-3787

Hawaii

Director of Commerce & Consumer Affairs  
1010 Richards Street  
Honolulu, Hawaii 96813  
(808) 922-2270

Illinois

Agent for Service of Process

Illinois Attorney General  
500 South Second Street  
Springfield, Illinois 62706

State Administrator's Office

Franchise Bureau  
Office of the Attorney General  
500 South Second Street  
Springfield, Illinois 62706  
(217) 782-4465

Indiana

Agent for Service of Process:

Indiana Secretary of State  
201 State House  
Indianapolis, Indiana 46204

State Administrator's Office:

Indiana Securities Division  
302 West Washington Street  
Room E-111  
Indianapolis, Indiana 46204  
(317) 232-6681

Maryland

Agent for Service of Process

Maryland Securities Commissioner  
200 St. Paul Place, 20<sup>th</sup> Floor  
Baltimore, Maryland 21202-2020

State Administrator's Office

Office of the Attorney General  
Division of Securities  
200 St. Paul Place, 20<sup>th</sup> Floor  
Baltimore, Maryland 21202-2020  
(410) 576-6360

Michigan

Department of Attorney General  
Consumer Protection Division  
Antitrust and Franchise Unit  
670 Law Building  
Lansing, Michigan 48913  
(517) 373-7117

Minnesota

Agent for Service of Process  
Commissioner of Commerce  
Minnesota Department of Commerce  
133 East 7th Street  
St. Paul, Minnesota 55101

State Administrator's Office

Registration Division  
Minnesota Department of Commerce  
133 East 7th Street  
St. Paul, Minnesota 55101  
(651)296-6328

New York

Agent for Service of Process  
Secretary of State of the State of New York  
162 Washington Avenue  
Albany, New York 12231

State Administrator's Office  
Investor Protection & Securities Bureau  
New York Department of Law  
120 Broadway, 23rd Floor  
New York, New York 10271  
(212) 416-8211

North Dakota

Agent for Service of Process  
Securities Commissioner  
5th Floor, 600 East Boulevard  
Bismarck, North Dakota 58505

State Administrator's Office  
North Dakota Securities Commission  
State Capitol, 5th Floor  
600 East Boulevard  
Bismarck, North Dakota 58505  
(701)328-4712

Rhode Island

Agent for Service of Process  
Director of Business Regulation  
233 Richmond Street, Suite 232  
Providence, Rhode Island 02903

State Administrator's Office  
Department of Business Regulation  
233 Richmond Street, Suite 232  
Providence, Rhode Island 02903  
(401)222-3048

South Dakota

Agent for Service of Process  
Director of South Dakota Division of  
Securities  
445 E. Capitol Avenue  
Pierre, South Dakota 57501

State Administrator's Office  
Department of Labor and Regulation  
Division of Securities  
445 E. Capitol Avenue  
Pierre, South Dakota 57501

Virginia

Agent for Service of Process:  
Clerk of the State Corporation Commission  
1300 East Main Street, 1<sup>st</sup> Floor  
Richmond, Virginia 23219

State Administrators Office  
Division of Securities and Retail Franchising  
1300 East Main Street, Ninth Floor  
Richmond, Virginia 23219  
(804)371-9051

Washington

Agent for Service of Process

Director of the Department of Licenses  
1300 Quince Street  
Olympia, Washington 98504

State Administrators Office:

Department of Financial Institutions  
Securities Division  
210 11<sup>th</sup> Ave. S.W., Room 300  
Olympia, Washington 98504  
(360)902-8760

Wisconsin

Agent for Service of Process

Commissioner of Securities  
101 East Wilson Street, 4th Floor  
Madison, Wisconsin 53702

State Administrators Office:

Office of the Commissioner of Securities  
101 East Wilson Street, 4th Floor  
Madison, Wisconsin 53702  
(608)266-3431

**EXHIBIT B TO THE DISCLOSURE DOCUMENT**

**BLACK BEAR DINERS, INC.**

**FRANCHISE AGREEMENT**

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**EXHIBITS**

- A. MAP OF DESIGNATED AREA**
- B. DÉCOR PACKAGE**
- C. CARVED BEAR PACKAGE**
- D. GUARANTEE AND ASSUMPTION OF OBLIGATIONS**
- E. AUTHORIZATION AGREEMENT FOR AUTOMATIC DEBIT**

# BLACK BEAR DINERS, INC.

## FRANCHISE AGREEMENT

This Franchise Agreement (the "Agreement") is made this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between Black Bear Diners, Inc ("Franchisor"), a California corporation, having its principal place of business at 1880 Shasta Street, Redding, California 96001, and \_\_\_\_\_ ("Franchisee"), whose principal address is \_\_\_\_\_.

### RECITALS

Franchisor and its affiliates have developed a system ("System") relating to the establishment and operation of casual, family-style restaurants serving breakfast, lunch and dinner anytime during business hours, featuring menu items of large portions with excellent perceived customer value, all in a fun and friendly atmosphere with a distinctive black bear theme; and

Franchisor identifies the System by means of certain names and marks, including "Black Bear Diner," as well as other tradenames, service marks, trademarks, logos, insignias, symbols and designs (the "Marks") as designated by Franchisor or as Franchisor may designate in the future for use with the System; and

The distinguishing characteristics of the System include, among other things, a distinctive exterior and interior trade dress utilizing specially designed décor, furniture, fixtures and accessories; an on-premises gift shop known as a "Black Bear Country Store"; recipes and menu items; food preparation methods and food products; operating standards and food, beverage and equipment specifications; operational, management and record-keeping procedures also referred to as the "Bear Necessities Quality Control Program"; advertising and marketing techniques and trade secrets and confidential information; all of which may be changed, improved, and further developed by Franchisor from time to time;

Franchisor grants to qualified persons the right to operate a Black Bear Diner restaurant and Franchisee desires to obtain a license to operate a Black Bear Diner restaurant ("Franchised Restaurant") at the location specified in this Agreement, subject to the terms and conditions of this Agreement and in strict compliance with the standards and specifications established by Franchisor; and

NOW, THEREFORE, the parties agree as follows:

### **1. DEFINITIONS**

Whenever used in this Agreement, unless there is something in the subject matter or context inconsistent therewith, the following words and terms shall have the respective meanings ascribed to them as follows:

"**Agreement**" means this agreement entitled "Franchise Agreement" and all instruments supplemental hereto or in amendment or confirmation hereof;

**“Approved Suppliers”** has the meaning given to such term in Section 13.3 hereof;

**“Competitive Business”** means any restaurant business which provides similar food products as those provided by a Black Bear Diner restaurant or whose method of operation or trade dress is similar to that employed in the System; provided, however, that the term “Competitive Business” shall not apply to: (i) any business operated by Franchisee under a Franchise Agreement with Franchisor; or (ii) the ownership for investment purposes of less than five percent (5%) of the stock of any publicly-traded corporation;

**“Confidential Information”** means the recipes, ingredients, trade secrets, methods of food preparation, techniques, formats, specifications, procedures, information, systems, methods of business management, sales and promotion techniques, and knowledge of and experience in operating a Black Bear Diner restaurant;

**“Designated Area”** means an area within which Franchisee is required to select a site for the operation of its Franchised Restaurant as defined on the map set out in Exhibit A hereof and does not confer any territorial protection or exclusivity;

**“Electronic Depository Transfer Account”** means an account providing Franchisor with access to electronically withdraw any funds due Franchisor;

**“Franchise”** and variations thereof as used in this Agreement means the right granted to Franchisee by Franchisor to use the System and Marks in the operation of a Franchised Restaurant;

**“Franchise Fee”** has the meaning given to such term in Section 3.1 hereof;

**“Franchisee”** means the individual, corporation, limited liability company, partnership or other business entity who or which enters into this Agreement with Franchisor.

**“Franchised Location”** means the premises for the operation of the Franchised Restaurant selected by Franchisee and approved by Franchisor pursuant to Section 5 and as more particularly described in Section 2.2 hereof;

**“Franchisor”** means Black Bear Diners, Inc.;

**“General Manager”** means the individual who devotes his or her full-time and best efforts to the operations and is responsible for the day-to-day management of the Franchised Restaurant. If Franchisee is a business entity, Franchisor may require that the General Manager be an owner, officer or other individual selected by Franchisee and approved by Franchisor;

**“Gift Shop Products”** means certain products including specified Trademarked Products and other products which Franchisor has authorized for resale from the Black Bear Country Store located within the Franchised Restaurant.

**“Gross Sales”** means the total amount of all revenues Franchisee receives from the sale of all menu items, Gift Shop Products, banquet and catering services and from goods and services from all sources in any way connected with the Franchised Restaurant whether for check, cash, credit or otherwise including, without limitation, all proceeds from any business interruption insurance. Gross Sales does not include sales tax collected from customers and paid to the appropriate taxing authorities;

**“Local Advertising”** has the meaning given to such term in Section 11.1 hereof;

**“Manual”** means all operations, administration and managers manuals and all books, computer programs, pamphlets, memoranda and other publications prepared by or on behalf of Franchisor and as may be added to, changed, modified, withdrawn or otherwise revised by Franchisor from time to time setting out the standards, methods, procedures and specifications of the System;

**“Marketing Fund”** means the marketing, advertising and promotion fund established by Franchisor pursuant to Section 11.2 hereof;

**“Marketing Fund Contribution”** has the meaning given to such term in Section 11.2 hereof;

**“Protected Area”** has the meaning given to such term in Section 2.4 hereof;

**“Personal Guarantors”** means those persons who are required to sign the Guarantee and Assumption of Obligations which shall include: all partners of the entity that execute this Agreement, (if the entity is a limited or general partnership); all shareholders of the entity that executes this Agreement (if the entity is a corporation); and all members of the entity that executes this Agreement (if the entity is a limited liability company);

**“Royalty Fee”** has the meaning given to such term in Section 3.2 hereof;

**“Trademarked Products”** mean the products developed by Franchisor generally bearing the Marks including items such as stuffed bears, t-shirts, coffee mugs and tumblers, various gift items, bags, key chains, hats and other items.

## **2. GRANT OF FRANCHISE; FRANCHISED LOCATION**

### **2.1 Grant of Franchise**

Franchisor hereby grants to Franchisee, upon the terms and conditions herein contained, the right, license and privilege to operate one (1) Franchised Restaurant under the Marks and to use in connection therewith the System at the Franchised Location as provided in Section 2.2 hereof. Franchisee shall not relocate the Franchised Restaurant without the prior written consent of Franchisor.

### **2.2 Franchised Location**

Franchisor grants Franchisee the right to operate one Franchised Restaurant at the following single location \_\_\_\_\_ (“Franchised Location”).

### **2.3 Franchised Location Not Determined**

In the event the Franchised Location of the Franchised Restaurant has not yet been determined as of the date of this Agreement, then the geographical area in which the Franchised Restaurant is to be located will be within a Designated Area which is described or otherwise

defined in Exhibit A to this Agreement. At such time as the address for the Franchised Location has been determined, such address will be inserted into Section 2.2 above.

#### **2.4 Protected Area**

Subject to the provisions of this Agreement, including Section 2.5 below, Franchisor will not operate or license others to operate a Black Bear Diner restaurant within a three (3) mile radius from the Franchised Location, otherwise known as the "Protected Area."

#### **2.5 Franchisor's Reservation of Rights**

Notwithstanding Section 2.4 above, Franchisee acknowledges that the Franchise granted under this Agreement is non-exclusive and Franchisor expressly retains all rights and discretion with respect to the Marks and System, including the right to: (1) own, acquire, establish and operate, and to license others to establish and operate, Black Bear Diner restaurants at any location outside of the Protected Area; (2) own, acquire, establish and operate, and license others to establish and operate, other businesses including similar restaurant concepts, using other trademarks, service marks and commercial symbols at any location either within or outside of the Protected Area; (3) sell or distribute, at retail or wholesale, directly or indirectly, or license others to sell or distribute, any products authorized for use and resale at the Franchised Restaurant, including the Gift Shop Products or any other products which bear any trademarks including the Marks, through alternative channels of distribution including, but not limited to, grocery stores, convenience stores, mail order and Internet sales to customers wherever located, including customers that may be located within or outside the Protected Area; and (4) engage in any activities not expressly forbidden by this Agreement.

### **3. FEES**

In addition to other fees as may be required under the terms of this Agreement, Franchisee agrees to pay Franchisor the following fees and amounts at the times specified herein:

#### **3.1 Initial Franchise Fee**

Upon execution of this Agreement, Franchisee shall pay a Franchise Fee to Franchisor of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_). The Franchise Fee shall be deemed fully earned at the time paid and is non-refundable, except as otherwise provided in Sections 5.1, 5.2 and 8.3 of this Agreement. The Franchise Fee is payment, in part, for expenses incurred by Franchisor in furnishing assistance and services to Franchisee as set forth in this Agreement and for costs incurred by Franchisor including, but not limited to, general sales and marketing expenses, training, legal, accounting and other professional fees.

#### **3.2 Weekly Royalty Fee**

Franchisee shall pay without offset, credit or deduction of any nature to Franchisor, so long as this Agreement shall be in effect, a weekly Royalty Fee equal to four and one-half percent (4.5%) of Gross Sales. If any taxes, fees or assessments are imposed on Franchisor by reason of its acting as franchisor or licensing the Marks under this Agreement, then Franchisee shall reimburse Franchisor for the amount of those taxes, fees or assessments within 30 days after receipt of an invoice from Franchisor.

### **3.3 Marketing Fund Contribution**

Franchisor has established and administers a Black Bear Diner Marketing Fund as provided in Section 11.2. Franchisor reserves the right to require Franchisee to contribute an amount not to exceed two percent (2%) of the Gross Sales of the Franchised Restaurant for each week to the Marketing Fund ("Marketing Fund Contribution"). Currently, Franchisor requires Franchisee to contribute ~~three-quarters-of-one percent (75(1%)~~ (1%) of its Gross Sales to the Marketing Fund. Franchisor agrees to provide Franchisee with thirty (30) days written notice prior to increasing the amount of the Marketing Fund Contribution. The Marketing Fund Contribution shall be made at the same time and in the same manner as the Royalty Fee payment.

### **3.4 Taxes**

In addition to the Royalty Fee payment, Franchise Fee and other amounts due under the terms of this Agreement, Franchisee shall pay to Franchisor an amount equal to any sales, gross receipts, excise tax or similar tax imposed on Franchisor as a result of the operation of the Franchised Restaurant, unless the tax is an income tax (or its equivalent) otherwise payable by Franchisor. In no circumstances shall Franchisee have any obligation hereunder for any tax assessed which is based upon the net income of Franchisor.

### **3.5 Electronic Transfer**

Franchisor requires all Royalty Fee payments, Marketing Fund Contributions, product purchases and other amounts due to Franchisor to be paid through an Electronic Depository Transfer Account. Franchisee agrees to establish an account providing for electronic funds transfer, and Franchisor shall have access to such account for the purpose of receiving amounts due to Franchisor from Franchisee. Franchisee agrees to execute any documents as Franchisor's or Franchisee's bank requires in order to implement the Electronic Deposit Transfer Account. Franchisee agrees not to close the Electronic Deposit Transfer Account without Franchisor's approval. A copy of Franchisor's current form of authorization known as the "Authorization Agreement For Automatic Debit" is included as Exhibit E.

### **3.6 Interest**

All Royalty Fee payments, Marketing Fund Contributions, product purchases and other amounts due Franchisor that are not received within five (5) days after the due date, shall bear interest at the rate of eighteen percent (18%) per annum or the highest rate allowed by applicable law, whichever is lower, from the date payment is due until the date payment is received.

### **3.7 Application of Payments**

Notwithstanding any designation by Franchisee, Franchisor shall have the sole discretion to apply any payments by Franchisee to any past due indebtedness of Franchisee for Royalty Fee payments, Marketing Fund Contributions, purchases from Franchisor, interest or any other indebtedness.

### **3.8 Payment of Additional Fees**

Franchisee shall pay such other fees or amounts described in this Agreement.

**4. TERM AND RENEWAL**

**4.1 Initial Term**

This Agreement shall be effective and binding for an initial term of ten (10) years from the date of this Agreement (“Initial Term”).

**4.2 Renewal Term**

Franchisee shall have the right to acquire a successor franchise at the expiration of the initial term for an additional term of ten (10) years (“Renewal Term”), provided the following conditions must have been fulfilled and remain true as of the last day of the Initial Term of this Agreement:

(a) Franchisee has, during the entire term of this Agreement, substantially complied with all its provisions and is not in default at time of renewal;

(b) Franchisee shall have the right to remain in possession of the Franchised Location for the duration of the Renewal Term;

(c) Franchisee shall make capital expenditures necessary to remodel, modernize and redecorate the Franchised Restaurant so that the Franchised Restaurant reflects the then-current physical appearance and image for a new Black Bear Diner restaurant;

(d) Franchisee has given notice to Franchisor of its intent to renew not less than nine (9) months nor more than twelve (12) months prior to the end of the Initial Term;

(e) Franchisee shall execute and deliver Franchisor’s then-current form of franchise agreement to Franchisor. The new franchise agreement shall supersede this Agreement in all respects, and the terms of which may differ from the terms of this Agreement including, without limitation, a different percentage Royalty Fee and Marketing Fund Contribution; provided, however, Franchisee shall not be required to pay the then-current Franchise Fee;

(f) Franchisee has complied with Franchisor’s then-current training requirements for franchisees and their employees; and

(g) Franchisee has executed a general release of any and all claims against Franchisor and any affiliate, and their respective officers, directors, agents, and employees, arising out of or related to this Agreement, or any related agreement.

**5. SELECTION AND DEVELOPMENT OF FRANCHISED LOCATION**

**5.1 Site Selection**

If the site for the Franchised Location has been located by Franchisee and approved by Franchisor upon execution of this Agreement, then such Franchised Location will be identified in Section 2.2 of this Agreement. Otherwise, Franchisee agrees to locate a suitable site for the Franchised Location within (60) days after execution of this Agreement. In the event a site for the Franchised Location has not been approved by Franchisor before the expiration of the 60 day period, then Franchisor may terminate this Agreement. In the event Franchisor elects to terminate this Agreement, then within ten (10) business days after termination, Franchisor will refund

\$30,000 of the Franchise Fee paid by Franchisee. Franchisee must select a site for the Franchised Location within the Designated Area identified in Exhibit A to this Agreement. Franchisor shall provide Franchisee with general guidelines and assistance in selecting a site for the Franchised Restaurant. If requested by Franchisee, then a representative of Franchisor will make a visit for the purpose of assisting Franchisee in evaluating a single or alternative prospective site(s). Prior to entering into a commitment to purchase or lease a prospective site, Franchisee shall obtain Franchisor's written approval, which approval shall not be unreasonably withheld.

*Franchisor does not represent that it or any of its employees have special expertise in selecting sites or that the Franchised Restaurant will be profitable or successful as a result of Franchisor's approval. Franchisee acknowledges that it is ultimately responsible for finding and selecting a site for the Franchised Location.*

## **5.2 Lease of Franchised Location**

Franchisee agrees it will not enter into any agreement to purchase or lease a site for the Franchised Location without first obtaining Franchisor's written approval thereof. Such approval shall not be unreasonably withheld, but Franchisor shall be entitled to be sure that nothing therein contained is contradictory to, or likely to interfere with, Franchisor's rights or Franchisee's duties under this Agreement. If the Franchisee leases the Franchised Location, then the Franchisee will use its best efforts to negotiate a lease term that coincides with the Term of this Agreement.

Franchisee shall take all actions necessary to maintain the lease of the Franchised Location in effect while this Agreement is in effect. Any default for which said lease may be terminated shall also be deemed a default hereunder, and the time to cure the same shall expire when said lease is terminated.

Franchisor may require that the lease for the Franchised Location be collaterally assigned to Franchisor pursuant to the terms of its standard collateral assignment of lease form, to secure the performance by Franchisee of the obligations under this Agreement.

*Franchisor's review of the lease or any advice or recommendation offered by Franchisor shall not constitute a representation or guarantee that Franchisee will succeed at the Franchised Location or an expression of Franchisor's opinion regarding the terms of the lease.*

If Franchisee does not consummate a lease for the Franchised Location within one hundred eighty days from the date of this Agreement, Franchisor shall have the right terminate this Agreement. Within ten (10) business days after termination, Franchisor will refund to Franchisee \$30,000 of the Franchise Fee. At such time as the lease for the Franchised Location is signed by Franchisee, the Franchise Fee shall be deemed to be earned.

## **5.3 Development of Franchised Location**

After Franchisee has selected and obtained Franchisor's approval of the site for the Franchised Restaurant, Franchisee agrees to develop the site in accordance with the following procedures:

Franchisor will provide to Franchisee copies of Franchisor's standard plans and specifications for the design and layout of the exterior and interior of a typical Black Bear Diner restaurant including fixtures, equipment, furnishings, décor and signs. Franchisee assumes all

cost, liability and expense for the construction, renovation or remodeling at the Franchised Location. If any alterations are required to be made to the standard plans and specifications, such alterations must be approved by Franchisor in writing before any work is begun on the Franchised Restaurant. It shall be Franchisee's responsibility to submit the final plans and layout to the Franchisor for written approval. Nothing in this section shall be construed as an endorsement or guarantee of the conformity of such plans to applicable local, state or federal building or safety codes. Franchisee agrees that it is responsible for the accuracy of all drawings, plans and specifications used for the construction, renovation or remodeling of the Franchised Restaurant.

Franchisee may not begin site preparation or construction prior to receiving written notification from Franchisor that it has approved the plans. All construction, renovation or remodeling must be in accordance with the plans approved by Franchisor and must comply in all respects with applicable laws. The Franchised Restaurant may not open if construction, renovation or remodeling has not been performed in substantial compliance with plans approved by Franchisor. If at any time Franchisor determines (prior to opening date) that Franchisee has not constructed, renovated or remodeled the Franchised Restaurant in accordance with the plans and specifications approved by Franchisor, Franchisor shall, in addition to any other remedies, have the right to obtain an injunction from a court of competent authority prohibiting Franchisee from opening the Franchised Restaurant.

#### **5.4 Décor Package; Carved Bear Package**

Franchisee agrees that Franchisor, Franchisee and other Black Bear Diner franchisees will benefit from the maintenance of reasonable standards for appearance and trade dress including prominent display of the Marks and the distinctive black bear trade dress. The Franchised Location and the Franchised Restaurant will conform to all specifications for decor, furniture, fixtures, equipment, exterior and interior decorating designs and color schemes established by the Franchisor. The Franchisee will obtain and pay for the decor, furniture, fixtures, equipment, exterior and interior decorating designs and color schemes, inventory and supplies specified by the Operations Manual or otherwise in writing by the Franchisor used by the Franchisee for the operation of its Black Bear Diner restaurant. All decor, furniture, fixtures, equipment, exterior and interior decorating designs and color schemes used in the Franchisee's Black Bear Diner restaurant must be installed and located in accordance with the floor plans approved by the Franchisor, and must conform to the quality standards and uniformity requirements established by the Franchisor. Franchisee agrees to purchase from Franchisor's designated supplier, which may include Franchisor or its affiliates, certain items necessary for the interior decoration of the Franchised Restaurant ("Décor Package") consisting of decorations including framed bear posters, photographs of local historical sites, photographs of local school activities, wallpaper featuring the black bear theme and other related items. A complete list of items included in the Décor Package is included in Exhibit B to this Agreement. In addition, Franchisee agrees to purchase from Franchisor's designated supplier, which may include Franchisor or its affiliates certain wood bear images featuring a rustic hand-carved of bears in various settings ("Carved Bear Package"). A complete list of the items included in the Carved Bear Package is included in Exhibit C to this Agreement.

#### **5.5 Pre-conditions to Opening**

Franchisee expressly acknowledges and agrees that a pre-condition to opening the Black Bear Diner restaurant shall be the Franchisor's written authorization to open, which authorization shall be given only upon Franchisee's completing, to Franchisor's satisfaction, (i) construction, renovation and remodeling of the Franchised Location and Franchised Restaurant and (ii) training

as required by Section 8 of this Agreement. In an effort to obtain Franchisor's authorization to open and begin operation of the Franchised Restaurant, Franchisee agrees to notify Franchisor on such form as Franchisor may prescribe verifying that all pre-opening obligations have been completed in compliance with this Agreement.

#### **5.6 Relocation**

Franchisee may, with the prior written approval of the Franchisor, relocate the Franchised Location if the proposed new location does not compete with any Black Bear Diner restaurant operated by Franchisor or any other Black Bear Diner franchisee and the proposed new location is within the Franchisee's Protected Area. The new location of the Franchised Restaurant, including the real estate and the building, must comply with all applicable provisions of this Agreement and with the Franchisor's then-current image, decor and specifications. Within 10 days after receipt by the Franchisee of the Franchisor's written approval to relocate the Franchised Location, the Franchisee will pay to the Franchisor a Relocation Fee of \$5,000.

#### **5.7 Remodeling, Repairs and Maintenance**

At Franchisor's request, but not more often than once every five years, unless sooner required by the lease for the Franchised Location, Franchisee shall refurbish the Franchised Restaurant to conform to the then-current building design, trade dress, and color schemes for a new Black Bear Diner restaurant. Such refurbishment may require expenditures by Franchisee on, among other things, structural changes, installing new equipment, remodeling, redecoration and modifications to existing improvements. Franchisee agrees to maintain its Franchised Restaurant consistent with its own high standards as well as with Franchisor's standards as set forth in the Manual. Franchisee will, at its expense, repair, maintain, paint and keep the Franchised Restaurant and Franchised Location in an attractive, clean and sanitary condition and make repairs or replacements required because of wear and tear.

### **6. MARKS**

#### **6.1 Ownership**

Franchisor is the owner or licensee of the Marks licensed to Franchisee by this Agreement. Franchisee acknowledges that its right to use the Marks is derived solely from this Agreement and is limited to the conduct of business by Franchisee pursuant to and in compliance with this Agreement and all applicable standards, specifications and operating procedures prescribed by Franchisor during the term of the Franchise. Any unauthorized use of the Marks by Franchisee is a breach of this Agreement and an infringement of the rights of Franchisor in and to the Marks. All usage of the Marks by Franchisee and any goodwill established by Franchisee's use of the Marks shall inure to the exclusive benefit of Franchisor and its affiliates. This Agreement does not confer any goodwill or other interests in the Marks upon Franchisee. Franchisee shall not, at any time during the term of this Agreement or after its termination or expiration, contest the validity or ownership of any of the Marks or assist any other person in contesting the validity or ownership of any of the Marks. All provisions of this Agreement applicable to the Marks apply to any additional trademarks, service marks and commercial symbols authorized for use by and licensed to Franchisee by Franchisor after the date of this Agreement.

## **6.2 Limitations on Use**

Franchisee agrees that it will use the Marks as the Franchised Restaurant's sole identification, and that it will 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 we have licensed to you), (3) in selling any unauthorized services or products, (4) as part of any domain name, homepage, electronic address, or otherwise in connection with a Website, or (5) in any other manner that Franchisor has not expressly authorized in writing.

Franchisee agrees to display the Marks prominently as prescribed by Franchisor at the Franchised Restaurant and on menus, forms, advertising, supplies, and other designated materials. Franchisee agrees to give the notices of trade and service mark registrations that Franchisor specifies and to obtain any fictitious or assumed name registrations required under applicable law.

## **6.3 Notification of Infringements and Claims**

If there are any claims by any third party that its rights to any or all of the Marks are superior to those of the Franchisor and if the attorneys for the Franchisor are of the opinion that such claim by a third party is legally meritorious, or if there is an adjudication by a court of competent jurisdiction that any party's rights to the Marks are superior to those of the Franchisor, then upon receiving written notice from Franchisor, Franchisee will immediately adopt, implement and use the changes and amendments to the Marks that are specified by Franchisor. If required, Franchisee will immediately cease using the Marks specified by the Franchisor, and will, as soon as reasonably possible, commence using the new trademarks, trade names, service marks, logos, designs and commercial symbols designated by the Franchisor in writing at the Franchised Location in connection with the operations, advertising, marketing and promotion of the Franchised Restaurant. Franchisee will not make any changes or amendments whatsoever to the Marks or the System unless specified or approved in advance by the Franchisor in writing.

## **6.4 Discontinuance of Use**

If it becomes advisable at any time, in Franchisor's sole discretion, for Franchisee to modify or discontinue use of the Marks, then Franchisor will reimburse Franchisee for its reasonable direct expenses in substituting new trademarks, trade names, service marks, logos, designs and commercial symbols designated by the Franchisor; provided, however, that Franchisor shall not be obligated to reimburse Franchisee for any loss of goodwill associated with any modified or discontinued Mark or for any expenditures made by Franchisee to promote a modified or substitute trademark or service mark.

## **6.5 Right of Inspection**

In order to preserve the validity and integrity of the Marks, Franchisor and its agents shall have the right of entry and inspection of the Franchised Restaurant at all reasonable times and, additionally, shall have the right to observe the manner in which Franchisee is rendering its services and conducting its activities and operations and to inspect ingredients, menu items, equipment, accessories, products, supplies, reports, forms and documents and related data to make certain that the Franchised Restaurant is being operated in accordance with the quality control provisions and performance standards established by Franchisor.

## **7. CONFIDENTIAL INFORMATION**

### **7.1 Non-Disclosure of Confidential Information**

Franchisee acknowledges and expressly agrees that (i) as between Franchisor and Franchisee, Franchisor is the sole owner of all Confidential Information, (ii) the Confidential Information now and hereafter provided or revealed to Franchisee pursuant to this Agreement (including in particular, but without limitation, the recipes and the contents of the Confidential Operations Manual) are confidential trade secrets of Franchisor, (iii) such Confidential Information is being imparted to Franchisee only by reason of its special status as a Franchisee, (iv) the Confidential Information is not generally known to the food industry or public at large, (v) Franchisee shall acquire no interest in the Confidential Information, other than the right to utilize it during the term of this Agreement in the development and operation of the Franchised Restaurant, (vi) such Confidential Information shall be disclosed only to personnel of Franchisee on a "need to know basis", (vii) the use or duplication of the Confidential Information except as expressly permitted by this Agreement shall constitute an unfair method of competition and that Franchisor shall suffer irreparable injury thereby, and (iv) Franchisee shall adopt and implement all procedures as prescribed from time to time by Franchisor to prevent unauthorized use or disclosure of the Confidential Information.

### **7.2 Additional Developments**

All ideas, concepts, techniques, or materials relating to a Black Bear Diner restaurant, whether or not protectable intellectual property and whether created by or for Franchisee, must be promptly disclosed to Franchisor and will be deemed to be the exclusive property of Franchisor, part of the franchise system, and works made-for-hire for Franchisor. To the extent that any item does not qualify as a "work made-for-hire", by this paragraph Franchisee assigns ownership of that item, and all related rights to that item, to Franchisor and agrees to take whatever action (including signing assignment or other documents) as requested to evidence Franchisor's ownership or to help Franchisor obtain intellectual property rights in the item.

### **7.3 Confidentiality Agreements with Certain Individuals**

Franchisor reserves the right to require that Franchisee enter into confidentiality agreements with certain individuals including Franchisee's shareholders, officers, directors, partners, employees, members, managers, and spouses of each pursuant to a form of agreement as approved by Franchisor.

## **8. TRAINING AND ASSISTANCE**

### **8.1 Initial Training**

Franchisor will provide an initial training program for Franchisee, Franchisee's General Manager and one assistant manager ("Franchisee Managers"). The initial training program consists of on-the-job training of approximately two hundred (200) hours over four (4) weeks. The initial training program is structured to provide practical on-the-job training in the operation of a Black Bear Diner restaurant and will include training on subjects such as food preparation, marketing, customer service techniques, equipment maintenance and the point-of-sale system. All Franchisee Managers are required to attend and complete the initial training program to

Franchisor's satisfaction. In addition, Franchisor provides the following initial training modules as part of the initial training program for certain of Franchisee's line and staff employees ("Franchisee Employees"), who must attend and complete the applicable on-the-job training modules to Franchisor's satisfaction: kitchen manager (one hundred twenty [120] hours); line cook (ninety-six [96] hours); and prep cook (forty [40] hours). Franchisor conducts the initial training program in Redding, California or another mutually agreeable location. Subject to mutual agreement of Franchisor and Franchisee, all or part of the initial training may be conducted at an alternate franchisee or Franchisor-owned Black Bear Diner restaurant. All expenses incurred by Franchisee in attending such program including, but not limited to, travel costs, room and board expenses and salaries, shall be the sole responsibility of Franchisee. Franchisor reserves the right to revise, modify or alter the initial training program on a case-by-case basis based on the requirements or qualifications of any particular franchisee.

## **8.2 Opening Assistance**

In conjunction with, and prior to, the beginning of operation of the Franchised Restaurant, Franchisor shall make available to Franchisee, at Franchisor's expense, for approximately fourteen (14) days, one (1) of Franchisor's representatives, experienced in the System, for the purpose of providing general assistance and guidance in operating the Franchised Restaurant. Opening assistance shall only apply if the Franchised Restaurant is one (1) of the first three (3) Franchised Restaurants operated by Franchisee.

## **8.3 Failure to Complete Initial Training Program**

If Franchisor determines, in its sole discretion, that Franchisee has not satisfactorily completed the initial training program or applicable module, then Franchisor shall have the right to terminate this Agreement. If this Agreement is terminated pursuant to this Section 8, Franchisor shall return to Franchisee THIRTY THOUSAND DOLLARS (\$30,000.00) of the Initial Franchise Fee paid by Franchisee. Upon return of said amounts, Franchisor shall be fully and forever released from any claims or causes of action Franchisee may have under or pursuant to this Agreement.

In the event the Franchisee Managers or Franchisee Employees fails to complete the initial training program ~~or~~ training modules to Franchisor's reasonable satisfaction, then Franchisee shall have the right to substitute a Franchisee Manager or Franchisee Employee person who must complete the initial training to Franchisor's reasonable satisfaction. Franchisee shall pay Franchisor's then current cost of training, if any, in respect of such substitute Franchisee Manager or Franchisee Employee person.

## **8.4 Substitute General Manager**

If, after beginning operations, Franchisee hires a substitute General Manager, the substitute General Manager must complete the initial training program to Franchisor's satisfaction within sixty (60) days of hire. The substitute General Manager may attend the initial training program without charge, provided that Franchisor may require Franchisee to pay the costs of training if Franchisor determines that manager changes are excessive or caused by poor hiring practices. Franchisee will be responsible for all travel and living expenses.

### **8.5 Additional Training and Franchisee Convention**

Franchisee, Franchisee's General Manager and such other restaurant personnel as Franchisor shall designate shall attend such additional training programs and seminars as Franchisor may offer from time to time, if Franchisor requires such attendance. Such training and seminars may relate to new techniques, marketing, accounting and general operating procedures. Attendance at ongoing training courses shall be at Franchisee's sole expense including, without limitation, travel costs, room and board expenses and employee salaries.

In addition if required by Franchisor, Franchisee agrees to attend an annual convention of all Black Bear Diner restaurant franchise owners at a location designated by Franchisor. Attendance will not be required for more than two (2) days during any calendar year. Franchisee agrees to pay all costs to attend the convention; however, Franchisor may elect to offset certain costs otherwise required of Franchisee based upon the level of payments received (if any) from third party suppliers pursuant to Section 13.3.

### **8.6 Ongoing Assistance**

Franchisor shall provide Franchisee with periodic supervision and assistance as Franchisor deems appropriate, utilizing Franchisor's field representatives who may visit the Franchised Restaurant from time to time. The frequency and duration of such visits to the Franchised Restaurant by representatives of Franchisor shall be in the sole discretion of Franchisor. In addition, Franchisor will be available on an ongoing basis at its national headquarters for consultation and guidance with respect to the operation and management of the Franchised Restaurant.

## **9. MANUAL**

### **9.1 Loan by Franchisor**

While this Agreement is in effect, Franchisor will loan to Franchisee one (1) copy of the Manual which includes, in part, standards and business operating procedures, specifications, technical advice, and rules and regulations for operating the Franchised Restaurant. The Manual shall, at all times, remain the sole property of Franchisor and shall promptly be returned upon expiration or termination of this Agreement.

### **9.2 Revision**

Franchisor shall have the right to add to and otherwise modify the Manual from time to time to reflect changes in the specifications, standards and operating procedures, provided that no such addition or modification shall alter Franchisee's fundamental status and rights under this Agreement. Franchisor may make such additions or modifications without prior notice to Franchisee. Franchisee shall immediately, upon notice, adopt any such changes.

### **9.3 Confidential Use**

The Manual contains Confidential Information of Franchisor and shall be kept confidential by Franchisee both during the term of this franchise and after its expiration or termination. Franchisee shall at all times ensure that its copy of the Manual is available at the Franchised Restaurant and is current and up-to-date. Franchisee shall not make any disclosure, duplication or other unauthorized use of any portion of the Manual. In the event of any dispute as to the contents

of the Manual, the terms of the master copy of the Manual maintained by Franchisor shall be controlling.

## **10. SYSTEM STANDARDS**

### **10.1 Uniformity**

Franchisee acknowledges and agrees that operating and maintaining the Franchised Restaurant according to the System and prescribed standards is essential to preserve the goodwill of the Marks and all Black Bear Diner restaurants. Therefore, Franchisee agrees at all times to operate and maintain the Franchised Restaurant according to all of the System standards, as Franchisor may periodically modify and supplement them, even if Franchisee believe that a System Standard, as originally issued or subsequently modified, is not in the System's or the Franchised Restaurant's best interests. Although Franchisor retains the right to establish and periodically modify the System that Franchisee has agreed to maintain, Franchisee retains the right to and responsibility for the day-to-day management and operation of the Franchised Restaurant and implementing and maintaining the System standards at the Franchised Restaurant. The System standards may regulate any one or more of the following:

(a) design, layout, l, appearance, and lighting of the Franchised Restaurant; periodic maintenance, cleaning, and sanitation; periodic remodeling and painting; replacing obsolete or worn-out leasehold improvements and equipment; and using interior and exterior signs, emblems, lettering, and logos;

(b) types, models, and brands of required equipment, menu items, ingredients for menu items other food products, Trademarked Products, and supplies and minimum standards and specifications that you must satisfy;

(c) designated and approved suppliers for equipment including jukebox, the Décor Package, the Carved Bear Package, food products, beverages, Trademarked Products, and other items. In the case of Trademarked Products, the Décor Package and the Carved Bear Package, suppliers will be limited to Franchisor, its affiliates, and/or other specified exclusive sources, and Franchisee agrees to acquire such Trademarked Products, the Décor Package and the Carved Bear Package only from Franchisor, its affiliates, and/or the other specified exclusive sources at the prices Franchisor or they decide to charge. (Franchisor restricts the sources for the Trademarked Products, Décor Package and Carved Bear Package in order to protect our trade secrets, assure quality and uniformity, assure a reliable supply of products that meet our standards, achieve better terms of purchase and delivery service and control usage of the Marks by third parties.).

(d) sales, marketing, advertising, and promotional programs and materials and media used in these programs;

(e) use and display of the Marks at the Franchised Restaurant and on delivery menus, napkins, boxes, bags, wrapping paper, labels, forms, paper and plastic products, and other supplies;

(f) issuing and honoring gift cards and certificates;

- (g) acceptance of credit, debit, charge or courtesy cards; and
- (h) music and music selections played in the Franchised Restaurant.

### **10.2 Modification**

Franchisee acknowledges that from time to time, Franchisor may introduce as part of the System, new menu items and other products, methods or technology which require certain system modifications including, without limitation, the adoption and use of new computer hardware and software, fixtures, furnishings, equipment or signs. Franchisee agrees to make all required upgrades and modifications at its expense as may reasonably be required by Franchisor. No additional investment will be required during the first year of the Initial term; if such additional investment is required to be made in the last year of the Initial term, Franchisee may avoid making the investment by providing notice of intent not to renew its franchise.

### **10.3 Variance**

Franchisee acknowledges that because complete and detailed uniformity under many varying conditions may not be possible or practical, Franchisor specifically reserves the right and privilege, at its sole discretion and as it may deem in the best interests of all concerned in any specific instance, to vary standards for any franchisee based upon the peculiarities of any particular site or other circumstances, density of population, business potential, existing business practices or any other condition which Franchisor deems to be of importance to the operation of any particular Black Bear Diner restaurant. Franchisee agrees that it shall have no claim against Franchisor on account of any variation from System standards granted to any franchisee and shall not be entitled to require Franchisor to disclose or grant to Franchisee a like or similar variation hereunder.

## **11. MARKETING AND PROMOTIONAL ACTIVITIES**

Recognizing the value of advertising and the importance of the standardization of advertising and promotion to the furtherance of the goodwill and the public image of the Black Bear Diner franchise system and Marks, Franchisee agrees as follows:

### **11.1 Local Advertising**

Each month, Franchisee agrees to spend not less than one percent (1%) of its previous month's Gross Sales on Local Advertising including local marketing, advertising, promotions and public relations activities. Such expenditures shall be made directly by Franchisee. Within thirty (30) days of the end of each month, Franchisee shall furnish to Franchisor an accounting of the expenditures for the preceding month.

Franchisee shall submit to Franchisor, for its prior approval, all advertising and promotional materials to be used by Franchisee including, but not limited to coupons, flyers, local newspapers and direct mail advertising. Franchisor shall use reasonable efforts to provide notice of approval or disapproval within twenty (20) days from the date all requested material is received by Franchisor. In the event written approval is not received by Franchisee within twenty (20) days of receipt, Franchisor shall be deemed to have not given the required approval. Franchisor reserves the right to disapprove any advertising and promotional materials even if prior approval has been granted.

## **11.2 Systemwide Marketing Fund**

Franchisor has established and administers the Black Bear Diner Systemwide Marketing Fund (the "Marketing Fund"). Currently, Franchisee is required to make a weekly contribution of one percent (1%) of its Gross Sales to the Marketing Fund ("Marketing Fund Contribution"). Franchisor reserves the right increase the amount of the Marketing Fund Contribution but will not increase the amount of the Marketing Fund Contribution to more than 2% of Gross Sales per week and will provide Franchisee with at least thirty (30) days written notice prior to increasing the amount of the Marketing Fund Contribution. Franchisee's Marketing Fund Contribution shall be made at the same time and in the same manner as its Royalty Fee payment. The Marketing Fund shall be maintained and administered by Franchisor or its designee as follows:

Franchisor shall generally oversee all advertising programs with sole discretion over the creative concepts, materials and media used in such programs and the placement and allocation thereof. Although Franchisor will endeavor to manage the Marketing Fund in a manner that benefits franchisees uniformly, Franchisor cannot and does not ensure that any particular franchisee will benefit directly or pro rata from the placement of advertising by the Marketing Fund.

Franchisee's contribution may be used to meet any and all costs of producing, maintaining, administering and directing consumer advertising (including, without limitation, the cost of preparing and conducting television, radio, Internet, magazine and newspaper advertising campaigns and other public relations activities developing and/or hosting an Internet Web page of similar activities; employing advertising agencies to assist therein; and providing promotional brochures and other marketing materials to franchisees) and/or offsetting certain costs of a convention consisting of Franchisor employees and representatives and franchisees of the Black Bear Diner franchise system. The contributions by Franchisee and other franchisees to the Marketing Fund shall be maintained in a separate account from the funds of Franchisor and shall not be used to defray any of Franchisor's general operating expenses, except for such reasonable administrative costs and overhead, if any, as Franchisor may incur in activities reasonably related to the administration or direction of the Marketing Fund.

Each Black Bear Diner restaurant operated by Franchisor, or any affiliate of Franchisor, shall make contributions to the Marketing Fund equivalent to the contributions required of franchisees.

Although Franchisor intends the Marketing Fund to be of perpetual duration, Franchisor maintains the right to terminate the Marketing Fund. The Marketing Fund shall not be terminated, however, until all monies in the Marketing Fund have been expended for advertising and promotional purposes or returned to Franchisee on a pro rata basis.

An accounting of the operation of the Marketing Fund shall be prepared annually and shall be made available to Franchisee upon request. Franchisor reserves the right, at its option, to require that such annual accounting include an audit of the operation of the Marketing Fund prepared by an independent certified public accountant selected by Franchisor and prepared at the expense of the Marketing Fund.

Franchisee acknowledges that the Marketing Fund is not a trust and Franchisor assumes no fiduciary duty in administering the Marketing Fund.

### **11.3 Grand Opening Advertising**

Franchisor recommends that Franchisee spend no less than FIVE THOUSAND FIVE HUNDRED DOLLARS (\$5,500.00) during the first three (3) months of operation of the Franchised Restaurant on local advertising and promotion to coincide with the Franchised Restaurant's initial grand opening ("Grand Opening Advertising"). All materials used on Grand Opening Advertising shall be subject to Franchisor's approval prior to its use. The Grand Opening Advertising shall be in addition to the Marketing Fund Contribution as required in Section 11.2; however, Franchisee shall receive a credit towards its Local Advertising requirement under Section 11.1.

### **11.4 Telephone Directory Advertising**

Franchisee must list and advertise the telephone number for the Franchised Restaurant in the "white pages" telephone directory and the classified or "yellow pages" telephone directory distributed in its local area under the heading "Restaurant" or such directory heading as specified by Franchisor. Franchisee must place the classified directory advertisement and listings together with other Black Bear Diner restaurants operating within the distribution area of any directory. If a joint listing is obtained, the cost of the advertisements and listings will be apportioned among Black Bear Diner restaurants which are placed together.

### **11.5 Internet Advertising**

Franchisor has established and maintains a website on the Internet at the uniform resource locator "<http://www.blackbeardiner.com>" ("Website") that provides information about the Black Bear Diner restaurant system and the menu items and services that Franchisor and its franchisees provide. Franchisor may (but is not required to) include at the Website an interior page containing information about Franchisee's Franchised Restaurant and other Franchised Restaurants. If Franchisor includes such information on the Website, then Franchisor may require Franchisee to prepare all or a portion of the page, at Franchisee's expense, using a template that Franchisor provides for inclusion on the Website. All such information shall be subject to Franchisor's approval prior to posting. Franchisee may not separately register any domain name containing any of the Marks, and may not have a website for the Franchised Restaurant other than a website or web page that may be developed as part of Franchisor's Website. In addition, without Franchisor's prior written approval, Franchisee may not link or frame the Website, conduct any business or offer to sell or advertise any services or products on the internet (or any other existing or future form of electronic communication) or use any email address which Franchisor has not authorized for use in operating the Franchised Restaurant. Franchisor retains all rights relating to the Website, Franchisee's website or web page, and any intranet/extranet system, including without limitation all rights to the data stored therein, and may alter or terminate the Website, Franchisee's website or web page, or Franchisor's intranet/extranet system. Franchisor also has the right to access, at all times, all information and data contained on its Website, including without limitation Franchisee's separate website or web page that is part of Franchisor's Website, and any intranet/extranet system. Franchisee's general conduct on the Website and any intranet/extranet system or other online communications and specifically Franchisee's use of the Marks or any advertising is subject to the provisions of this Agreement. Franchisee acknowledges that certain information related to its participation in the Website or any intranet/extranet system may be considered Confidential Information, including without limitation access codes and identification codes.

## **12. ACCOUNTING, RECORDS AND REPORTING OBLIGATIONS**

### **12.1 Records and Inspection**

Franchisee covenants and agrees that it shall keep and maintain during the term hereof, and for a period of 60 months following expiration or termination for any reason, full, true and complete records of all revenues and expenditures respecting the Franchised Restaurant, in the form and manner specified by Franchisor in its Manual and shall permit Franchisor or its representatives or agents selected in the sole discretion of Franchisor, during normal business hours, to examine or audit the books of accounts, bank statements, documents, records, papers, and federal, state and local tax return records relating to the Franchised Restaurant or individual officers, directors, owners, partners, or affiliated or related entities or shareholders. If Franchisor should cause an audit to be made and the Gross Sales as shown by Franchisee's records should be found to be understated by any amount, Franchisee shall immediately pay to Franchisor the additional amount payable as shown by such audit, plus interest thereon at the rate of 18% *per annum* or the highest rate of interest allowed by law, whichever is lower, computed from the date (or dates) said understated amount (or amounts) were due. If the Gross Sales are found to be understated by 3% or more, Franchisee will be required to immediately pay to Franchisor the entire cost of such audit; otherwise, the cost of the audit shall be borne by Franchisor. Franchisee shall furnish Franchisor with a copy of any and all certified financial statements respecting Franchisee's business, in the format and chart of accounts specified by Franchisor, without any cost or expense to Franchisor.

### **12.2 Weekly Sales Reports**

By the close of business on Monday of each week, Franchisee shall provide to Franchisor an itemized report of the Gross Sales for the preceding week. Franchisee shall submit the itemized report in the format and form as required by Franchisor whether in written or electronic form and via the computer system described in Section 12.4 below. In addition, Franchisee shall provide a copy of all state sales returns for the Franchised Restaurant.

### **12.3 Financial Statements**

Franchisee shall, at its expense, provide to Franchisor, in a format specified by Franchisor, a complete annual financial statement (prepared in accordance with generally accepted accounting principles), on a review basis, prepared by an independent certified public accountant, within ninety (90) days after the end of each fiscal year of the Franchised Restaurant. In addition, no later than the twentieth (20<sup>th</sup>) day of each month during the term of this Agreement, Franchisee shall submit to Franchisor, a monthly and fiscal year-to-date income statement and a monthly balance sheet for the Franchised Restaurant.

### **12.4 Computer System**

Franchisee shall install, maintain, and at all times operate such computer hardware and software, including point-of-sale system, as Franchisor may specify in the Manual or otherwise in writing as Franchisor may deem reasonably necessary for the efficient management and operation of the Franchised Restaurant and the transmission of data to and from Franchisor. Franchisee agrees to permit Franchisor to access, by modem, Internet, or otherwise the computer system for the purpose of downloading information from Franchisee's computer system. Franchisee must configure and constitute its computer system so that Franchisor has complete, continuous, and unfettered access to all information the computer system generates and collects.

### **13. OPERATION OF THE FRANCHISED RESTAURANT**

#### **13.1 Authorized Products**

Franchisee shall offer for sale at the Franchised Restaurant only the menu items, Gift Shop Products and other products that Franchisor has expressly approved and shall not offer for sale or sell or provide through the Franchised Restaurant, any products or services which Franchisor has not approved or use the Franchised Location for any purpose other than the operation of a Black Bear Diner restaurant in full compliance with this Agreement and the Manual.

#### **13.2 Gift Shop Products**

Franchisee agrees to purchase from Franchisor, its affiliate(s), or certain designated or approved suppliers all Gift Shop Products, including Trademarked Products, and other products to the extent specified by Franchisor. Franchisee acknowledges that the Gift Shop Products are provided on a for-profit basis. If Franchisor or its affiliate supplies Gift Shop Products, then: (i) all orders for Gift Shop Products shall be in writing and are subject to Franchisor's acceptance; (ii) the purchase price shall be the prices in effect at the time of the order and Franchisor may implement price changes upon thirty (30) days prior written notice; (iii) Franchisee shall pay to Franchisor the amount of all taxes, excises and governmental charges that Franchisor may be required to pay on the sale or delivery of any Gift Shop Products; (iv) Franchisor shall invoice Franchisee for the Gift Shop Products at the time of shipment and Franchisee shall pay such invoice by ACH within thirty (30) days and if invoices are not paid within that period, Franchisee agrees to pay a service charge of one and one-half percent (1 ½%) or as otherwise permitted by law; and (v) all Gift Shop Product purchases shall be shipped FOB shipping point with title and risk of loss passing at such point.

#### **13.3 Other Products**

All food items, ingredients, paper goods, glassware, supplies, materials, and other products used in the operation of the Franchised Restaurant shall comply with Franchisor's specifications and quality standards and, if required by Franchisor, shall be purchased only from "Approved Suppliers" that Franchisor designates or approves (which might include Franchisor or its affiliates). Franchisor shall provide Franchisee, in the Manual or other written or electronic form, with a list of items and, if required, a list of Approved Suppliers for some or all of these items, and shall from time to time issue revisions thereto. Upon Franchisor's request, or if Franchisee desires to use any item or service in operating the Franchised Restaurant that Franchisor has not approved (for items or services that required supplier approval), Franchisee shall first send Franchisor sufficient information, specifications and/or samples for Franchisor to determine whether the item or service complies with its standards and specifications or the supplier meets its approved supplier criteria. Franchisor may charge a reasonable fee for inspection and/or testing, not to exceed ONE THOUSAND DOLLARS (\$1,000.00), and will decide within a reasonable time after receiving the required information whether Franchisee may purchase or lease such items or services or from such supplier.

Notwithstanding anything contrary in this Agreement, Franchisor reserves the right to review from time to time its approval of any items or suppliers. Franchisee acknowledges and agrees that Franchisor may revoke its approval of any supplier at any time and in its sole discretion by notifying Franchisee and/or the supplier. Franchisee agrees, at its own expense, to promptly cease using, selling or providing any products disapproved by Franchisor and to

promptly cease purchasing from suppliers which Franchisor disapproves. Nothing in the foregoing shall be construed to require Franchisor to approve any particular supplier, nor to require Franchisor to make available to prospective suppliers, standards and specifications that Franchisor, in its discretion, deems confidential. Franchisor and its affiliates have the right to receive payments from suppliers on account of their actual or prospective dealings with Franchisee and other franchisees and to use all amounts received without restriction for any purposes Franchisor deems appropriate (unless Franchisor and its affiliates agree otherwise with the suppliers).

#### **13.4 Supervision of the Franchised Restaurant**

The Franchised Restaurant shall, at all times, be under the direct full-time supervision of Franchisee (or, if Franchisee is a corporation, partnership, limited liability company or other business entity, its General Manager). Full-time means the expenditure of at least thirty-five (35) hours per week, excluding vacation, sick leave, etc. In the event Franchisee operates more than one (1) Franchised Restaurant, at least one (1) trained and competent employee referred to above shall act as the General Manager for each Franchised Restaurant. The General Manager and any replacement General Manager is required to complete the Initial Training Program as specified in Section 8 within 60 days of hire. Franchisee will be totally and solely responsible for the operation of its Black Bear Diner restaurant, and will control, supervise and manage all the employees, agents and independent contractors who work for or with the Franchisee. The Franchisee will be responsible for the acts of its employees, agents and independent contractors, and will take all reasonable business actions necessary to ensure that its employees, agents and independent contractors comply with all applicable federal, state, city, local and municipal laws, statutes, ordinances, rules and regulations.

#### **13.5 Right to Inspect**

Franchisor, or its agents, shall have the right, at any time during business hours, to inspect the Franchised Restaurant and/or Franchised Location including the right to remove samples of food or non-food items from the Franchised Restaurant, without payment therefor, in amounts reasonably necessary for testing by Franchisor to determine whether such samples meet Franchisor's then-current standards and specifications.

#### **13.6 Licenses and Permits**

Franchisee shall secure and maintain in force all required licenses, permits and certificates relating to the operation of the Franchised Restaurant and shall operate its Franchised Restaurant in full compliance with all applicable federal, state, city, local and municipal laws, statutes, ordinances, rules and regulations.

#### **13.7 Notification of Proceedings**

Franchisee shall notify Franchisor in writing within five (5) days of the commencement of any legal action or any order, writ, injunction, award or decree of any court, agency or other governmental authority, including a failed health inspection report, which may adversely affect the operation or financial condition of the Franchised Restaurant.

### **13.8 Compliance with Good Business Practices**

Franchisee acknowledges that each and every detail of the quality of customer service, appearance and demeanor of Franchisee's employees, and the quality of the menu items at the Franchised Restaurant is important to Franchisor and to other franchisees in the Black Bear Diner franchise system. The Franchised Restaurant shall in all dealings with its customers, suppliers and the general public adhere to the highest standards of honesty, fair dealing, moral and ethical conduct. The Franchised Restaurant shall at all times give prompt, courteous and efficient service to its customers.

### **13.9 Days of Operation**

Franchisee shall keep the Franchised Restaurant open for business during normal business hours on the days specified in the Manual.

### **13.10 Vending Machines**

Franchisee agrees not to install or use at the Franchised Restaurant any vending machines, amusement devices, video machines or other similar devices unless approved in writing by Franchisor.

## **14. INSURANCE**

### **14.1 Types and Amounts of Coverage**

Franchisee shall procure, at its sole expense, and maintain in full force and effect during the term of this Agreement the following insurance policies naming Franchisor and its officers, directors, agents and employees as additional named insured, in addition to any other insurance that may be required by applicable law, any lender or lessor. All insurance policies purchased and maintained by Franchisee pursuant to this Provision will contain endorsements by the insurance companies waiving all rights of subrogation against the Franchisor, and will stipulate that the Franchisor will receive copies of all notices of cancellation, nonrenewal, or coverage reduction or elimination at least 30 days prior to the effective date

Comprehensive General Liability insurance against claims for bodily and personal injury, death and property damage caused by or occurring in conjunction with the operation of the Franchised Restaurant with a policy limit of at least TWO MILLION DOLLARS (\$2,000,000.00) per occurrence.

"All Risk" property insurance coverage on all contents including inventory, furniture, fixtures, equipment, supplies and other property used in the operation of the Franchised Restaurant. Franchisee's property insurance policy including time and extended coverages must have coverage limits of full replacement cost.

Workers' Compensation that complies with the statutory requirements of the state in which the Franchised Restaurant is located and employer liability coverage with a ONE HUNDRED THOUSAND DOLLAR (\$100,000.00) minimum limit or the statutory minimum limit if required by state law.

Automobile Liability Insurance for owned, hired and non-owned vehicles, with a combined single limit of at least ONE MILLION DOLLARS (\$1,000,000.00).

Such other and further insurance that a prudent business owner in Franchisee's position would maintain or that Franchisor may reasonably require pursuant to Franchisor's then existing policies.

#### **14.2 Carrier Standards**

Such policy or policies shall be written by an insurance company licensed in the state in which Franchisee operates and having at least an "A" Rating Classification as indicated in A.M. Best's Key Rating Guide in accordance with standards and specifications set forth in the Manual.

#### **14.3 Evidence of Coverage**

Franchisee's obligation to obtain and maintain the foregoing policy or policies shall not be limited in any way by reason of any insurance which may be maintained by Franchisor, nor shall Franchisee's performance of that obligation relieve it of liability under the indemnity provisions set forth in Section 20 of this Agreement. Franchisee agrees to provide annually a Certificate of Insurance showing compliance with the foregoing requirements. Such certificate shall state that said policy or policies shall not be canceled or altered without at least thirty (30) days prior written notice to Franchisor and shall reflect proof of payment of premiums.

#### **14.4 Failure to Maintain Coverage**

Should Franchisee, for any reason, not procure and maintain such insurance coverage as required by this Agreement, Franchisor shall have the right and authority (without, however, any obligation to do so) to immediately procure such insurance coverage and to charge same to Franchisee, which charges, together with a reasonable fee for expenses incurred by Franchisor in connection with such procurement, shall be payable by Franchisee immediately upon notice.

### **15. DEFAULT AND TERMINATION**

#### **15.1 Termination by Franchisee**

If Franchisee is in substantial compliance with this Agreement and Franchisor materially breaches this Agreement and fails to cure such breach within a reasonable time after written notice thereof is delivered to Franchisor, Franchisee may terminate this Agreement unless the breach cannot reasonably be cured within thirty (30) days, in which case Franchisee will have the right to terminate this Agreement if, after receipt of a written notice of default, Franchisor does not promptly undertake and continue efforts to cure such material breach within a reasonable period of time, and furnish Franchisee reasonable proof of such efforts. To terminate this Agreement under this Section, Franchisee must provide a separate written notice of termination, which will be effective no less than thirty (30) days after delivery of such notice to Franchisor. Franchisee's termination of this Agreement other than according to this Section will be deemed a termination without cause and a breach of this Agreement

#### **15.2 Termination by Franchisor**

This Agreement shall, at the option of Franchisor, terminate upon written notice to Franchisee and without opportunity to cure, if Franchisee:

- (a) fails to construct, renovate and remodel the Franchised Location as required in this Agreement;
- (b) fails begin operation of the Franchised Restaurant as required in this Agreement;
- (c) fails to satisfactorily complete the Initial training program as required in Section 8.1 of this Agreement or any required training, seminars or the annual convention as required in Section 8.5 of this Agreement;
- (d) has made any material misrepresentation or omission in the application for the franchise;
- (e) is convicted of or pleads no contest to a felony or other crime or offense that is likely to adversely affect the reputation of Franchisor, Franchisee or the Franchised Restaurant;
- (f) makes any unauthorized use, disclosure or duplication of any portion of the Manual or duplicates or discloses or makes any unauthorized use of any Confidential Information;
- (g) abandon or fails or refuses to actively operate the Franchised Restaurant for five (5) or more consecutive days, unless otherwise approved by Franchisor;
- (h) makes or attempts to make an unauthorized direct or indirect assignment of the Franchise, the Franchised Restaurant or an ownership interest in a Franchisee that is a legal entity, or fails or refuses to assign the franchise or the interest in Franchisee of a deceased or incapacitated controlling owner thereof as required in Section 18.4 of this Agreement;
- (i) is adjudicated as bankrupt, becomes insolvent, commits any affirmative act of insolvency, files any action or petition of insolvency or makes a general assignment for the benefit of its creditors;
- (j) materially misuses or makes an unauthorized use of any of the Marks or commits any other act which can reasonably be expected to materially impair the goodwill associated with any of the Marks;
- (k) fails on three (3) or more separate occasions within any period of twelve (12) consecutive months to submit reports or other information or supporting records when due, to pay Royalty Fee payments, Marketing Fund Contributions, amounts due for purchases from Franchisor or other payments when due to Franchisor, or otherwise fails to comply with this Agreement, whether or not such failures to comply are corrected after notice is delivered to Franchisee; or
- (l) operates the Franchised Restaurant in a manner that presents a health or safety hazard to its customers, employees or the public.

Except as otherwise provided in Section 15.2. of this Agreement, upon any other default by Franchisee, Franchisor may terminate this Agreement only by giving written notice of termination stating the nature of such default to Franchisee at least thirty (30) days prior to the effective date of termination; provided, however, that Franchisee may avoid termination by immediately initiating a remedy to cure such default, curing it to Franchisor's satisfaction, and by

promptly providing proof thereof to Franchisor within the thirty (30) day period. If any such default is not cured within the specified time, or such longer period as applicable law may require, this Agreement shall terminate without further notice to Franchisee effective immediately upon the expiration of the thirty (30) day period or such longer period as applicable law may require.

### **15.3 Reinstatement and Extension**

To the extent that the provisions of this Agreement provide for periods of notice less than those required by applicable law, or provide for termination, cancellation, nonrenewal or the like, other than in accordance with applicable law, to the extent such are not in accordance with applicable law, Franchisor may reinstate or extend the term for the purpose of complying with applicable law by submitting a written notice to Franchisee without waiving any of Franchisor's rights under this Agreement.

## **16. RIGHTS AND DUTIES UPON EXPIRATION OR TERMINATION**

Upon termination or expiration, this Agreement and all rights granted hereunder to Franchisee shall terminate and Franchisee will:

(a) cease to operate the Franchised Restaurant under this Agreement and shall not thereafter, directly or indirectly, represent to the public or hold itself out as a present or former Franchisee of Franchisor;

(b) if requested, assign (or, if an assignment is prohibited, a sublease for the full remaining term and on the same terms and conditions as Franchisee's lease) its interest in the lease then in effect for the Franchised Location to Franchisor;

(c) cease to use the Confidential Information, the System, the Marks and any distinctive forms, slogans, signs, symbols, logos or devices associated with the Marks or System. In particular, Franchisee shall cease to use, without limitation, all signs, advertising materials, stationery, forms and any other items which display the Marks;

(d) assign to Franchisor any assumed name or equivalent registration filed with state, city or county authorities which contain the name "Black Bear Diner" or any of the Marks;

(e) pay all sums owing to Franchisor which may include, but not be limited to, all damages, costs and expenses, including reasonable attorneys' fees and lost Royalty Fee payments;

(f) pay to Franchisor all damages, costs and expenses, including reasonable attorneys' fees, incurred by Franchisor subsequent to the termination or expiration of the franchise in obtaining injunctive or other relief for the enforcement of any provisions contained in Sections 17;

(g) immediately return the Manual, all Confidential Information and all other records, files, instructions, brochures, agreements, disclosure statements and any and all other materials provided by Franchisor to Franchisee relating to the operation of the Franchised Restaurant (all of which are acknowledged to be Franchisor's property);

(h) assign to Franchisor, at Franchisor's option, all telephone numbers (and associated listings) for the Franchised Restaurant.; and

(i) comply with all other applicable provisions of this Agreement including the non-compete provisions.

## **17. FRANCHISEE'S COVENANTS NOT TO COMPETE**

### **17.1 During Term**

Franchisee specifically acknowledges that pursuant to this Agreement, Franchisee will receive valuable training and Confidential Information of Franchisor and the System. Accordingly, Franchisee and the Personal Guarantors will not, during the term of this Agreement, on their own account or as an employee, agent, consultant, affiliate, licensee, partner, officer, director, or shareholder of any other person, firm, entity, partnership or corporation, own, operate, lease, franchise, conduct, engage in, be connected with, have any interest in, or assist any person or entity engaged in any Competitive Business, except with the prior written consent of the Franchisor.

### **17.2 After Termination**

Franchisee and the Personal Guarantors covenant that, except as otherwise approved in writing by Franchisor, neither Franchisee nor the Personal Guarantors will not, for a period of two (2) years after the expiration or termination of this Agreement, regardless of the cause of for termination, either directly or indirectly, for themselves or through, on behalf of or in conjunction with, any person, persons, partnership, corporation, limited liability company or other business entity own an interest in, manage, operate, act as a consultant with respect to the management or operation of any Competitive Business within a radius of ten (10) miles of the Franchised Location or within ten (10) miles of any other Black Bear Diner restaurant. The Franchisee and the Personal Guarantors expressly agree that the time and geographical limitations set forth in this provision are reasonable and necessary to protect the Franchisor and its franchisees if this Agreement expires or is terminated by either party for any reason, and that this covenant not to compete is necessary to permit the Franchisor the opportunity to resell or develop a new Black Bear Diner restaurant at or in the area near the Franchised Location.

### **17.3 Modification of Covenants**

Each of the foregoing covenants shall be construed as independent of any other covenant or provision of this Agreement. If all or any portion of a covenant in this Section 17 is held unreasonable, then it shall be amended to provide for limitations upon post-term competition to the maximum extent provided and permitted by law.

### **17.4 Injunctive Relief**

As any breach by Franchisee of any of the covenants contained in this section would result in irreparable injury to Franchisor, and as the damages arising out of any such breach would be difficult to ascertain, Franchisee agrees that, in addition to all other remedies provided by law or in equity, Franchisor may be entitled to seek an injunction against any such breach, whether actual or contemplated.

### **17.5 If Franchisee Starts Another Business**

In the event Franchisee continues to operate or subsequently begins to operate any other business, Franchisee shall not use any reproduction, counterfeit, copy or colorable imitation of the Marks, the System or the trade dress, either in connection with such other business or the promotion thereof, which is likely to cause confusion, mistake or deception, or which is likely to dilute Franchisor's rights in the Marks. This Section 17.5 is not intended as an approval of Franchisee's right to operate other businesses and in no way is it intended to contradict Section 17.2 of this Agreement. Franchisee shall not utilize any designation of origin, or description or representation which falsely suggests or represents an association or connection with Franchisor so as to constitute unfair competition. Franchisee shall make such modifications or alterations to the Franchised Location (including, without limitation, the changing of the telephone and facsimile numbers) immediately upon termination or expiration of this Agreement as may be necessary to prevent any association between Franchisor or the System and any business thereon subsequently operated by Franchisee or others, and shall make such specific additional changes thereto as Franchisor may reasonably request for that purpose including, without limitation, removal of all distinctive physical and structural features identifying the System. In the event Franchisee fails or refuses to comply with the requirements of this Section 17.5, Franchisor shall have the right to enter upon the Franchised Location, without being guilty of trespass or any other tort, for the purpose of making or causing to be made such changes as may be required at Franchisee's expense.

### **17.6 Franchisor's Option to Purchase Certain Assets**

Franchisor shall have the option, to be exercised within thirty (30) days after termination or expiration of this Agreement, to purchase from Franchisee any or all of the furnishings (including the Décor Package or the Carved Bear Package), equipment (including any electronic cash register or computer hardware and software systems), signs, fixtures, supplies, and inventory of Franchisee related to the operation of the Franchised Restaurant, at fair market value. Franchisor shall be purchasing Franchisee's assets only and shall be assuming no liabilities whatsoever, unless otherwise agreed to in writing by the parties. If the parties cannot agree on the fair market value within thirty (30) days of Franchisor's exercise of its option, fair market value shall be determined by two (2) appraisers, with each party selecting one (1) appraiser, and the average of their determinations shall be binding. In the event of such appraisal, each party shall bear its own legal and other costs and each shall pay one-half (1/2) of the appraisal fees. If Franchisor elects to exercise any option to purchase herein provided, it shall have the right to set off (i) all fees for any such independent appraiser due from Franchisee and (ii) all amounts due from Franchisee to Franchisor against any payment therefor and shall pay the remaining amount in cash. The time for closing of the purchase shall be a date not later than thirty (30) days after the purchase price is determined by the parties or the determination of the appraisers, or such date Franchisor receives and obtains all necessary permits and approvals, whichever is later, unless the parties mutually agree to designate another date. Closing shall take place at Franchisor's corporate offices or at such other location as the parties may agree.

### **17.7 Survival of Certain Provisions**

All obligations of Franchisor and Franchisee which expressly or by their nature survive the expiration or termination of this Agreement shall continue in full force and effect subsequent to and notwithstanding their expiration or termination and until satisfied or by their nature expire.

## **18. TRANSFERS**

### **18.1 By Franchisor**

This Agreement and all rights hereunder can be assigned and transferred by Franchisor and, if so, shall be binding upon and inure to the benefit of Franchisor's successors and assigns; provided, however, that with respect to any assignment resulting in the subsequent performance by the assignee of the functions of Franchisor, the assignee shall provide assurances of its assumption of all obligations and provide evidence of its ability to do so, all in a manner satisfactory to Franchisor.

### **18.2 By Franchisee to a Third Party**

The rights and duties of Franchisee as set forth in this Agreement, and the franchise herein granted, are personal to Franchisee, and Franchisor has agreed to enter into this contract with Franchisee in reliance upon Franchisee's personal skill and financial ability. Accordingly, neither Franchisee nor any successor of Franchisee, either immediate or remote, to any part of Franchisee's interest in this Agreement may sell, assign, transfer, convey, give away, pledge, mortgage or otherwise encumber any interest in this Agreement or in the franchise granted hereby. Any purported assignment or transfer, whether by operation of law or otherwise, or encumbrance of all or any part of Franchisee's rights, or of all or any part of Franchisee's company under this Agreement, or of all or any part of the operating control of the business of Franchisee, shall be null and void and shall constitute a material breach of this Agreement, for which breach Franchisor may then terminate this Agreement without notice or opportunity to cure, unless such assignment, transfer or encumbrance has the prior written consent of Franchisor. A transfer includes the sale, transfer, assignment or conveyance of (1) fifteen percent (15%) or more of the assets used in the operation of the Franchised Restaurant; (2) any interest in this Agreement; or (3) any interest in a legal entity as Franchisee pursuant to this Agreement. Franchisee agrees to first obtain the written consent of Franchisor to such transaction, which consent will not be unreasonably withheld or delayed but will be conditioned upon the satisfaction of the following conditions:

(a) all obligations owed to Franchisor and all other outstanding obligations relating to the Franchised Restaurant shall be fully paid and satisfied;

(b) Franchisee shall execute a general release, in a form satisfactory to Franchisor, of any and all claims against Franchisor including its officers, directors, shareholders and employees, in their corporate and individual capacities, including, without limitation, claims arising under federal, state and local laws, rules and ordinances, and any other matters incident to the termination of this Agreement or to the transfer of Franchisee's interest herein or to the transfer of Franchisee's ownership of all or any part of the business which operates this franchise. If a general release is prohibited, Franchisee shall give the maximum release allowed by law;

(c) the transferee shall have satisfied Franchisor that it meets Franchisor's management, business and financial standards and otherwise possesses the character and capabilities, including business reputation and credit rating, as Franchisor may require to demonstrate ability to conduct the Franchised Restaurant;

(d) Franchisee shall have provided Franchisor with a complete copy of all contracts and agreements and related documentation between Franchisee and the transferee relating to the sale or transfer of the franchise; and

(e) Franchisee shall have paid to Franchisor a transfer fee in the amount of TWENTY THOUSAND DOLLARS (\$20,000). A transfer fee shall not be required pursuant to a transfer by Franchisee to an entity controlled by Franchisee under the terms of Section 18.3 of this Agreement.

### **18.3 Transfer by Franchisee to an Entity Controlled by Franchisee**

If Franchisee is an individual and wishes to transfer his rights, duties and obligations under this Agreement therein to a corporation, limited liability company or other legal entity ("Controlled Entity") which shall be entirely owned by Franchisee, which Controlled Entity is being formed for the financial planning, tax or other convenience of Franchisee, then Franchisor's consent to such transfer shall be conditioned upon the following requirements:

(a) the Controlled Entity shall be newly organized and its organizational documents shall provide that its activities are confined exclusively to the operation of the Franchised Restaurant;

(b) Franchisee shall retain total ownership of the outstanding stock or other capital interest in the transferee Controlled Entity, and Franchisee shall act as the principal officer or officers and directors thereof;

(c) all obligations of Franchisee to Franchisor or any affiliate shall be fully paid and satisfied prior to Franchisor's consent; provided that Franchisee shall not be required to pay a transfer fee, as required, pursuant to Section 18.2.5 of this Agreement for any transfer under this Section 18.3;

(d) the Controlled Entity assignee shall enter into a written agreement with Franchisor expressly assuming the obligations of this Agreement and all other agreements relating to the operation of this Franchised Restaurant. If the consent of any other contracting party to any such agreement is required, Franchisee shall have obtained such written consent and provided the same to Franchisor prior to consent by Franchisor;

(e) all owners of the stock or other ownership interest of the Controlled Entity shall enter into Franchisor's form of Guaranty and Assumption of Obligations, jointly and severally, guaranteeing the full payment of the Controlled Entity's obligations to Franchisor and the performance by the Controlled Entity of all the obligations contained in this Agreement;

(f) each stock certificate or other ownership interest certificate of the Controlled Entity shall have conspicuously endorsed upon the face thereof of a statement in a form satisfactory to Franchisor that it is held subject to, and that further assignment or transfer thereof is subject to, all restrictions imposed upon transfers and assignments by this Agreement;

(g) copies of the Controlled Entity's organizational documents and other related documents, including resolutions authorizing the assumption of this Agreement, shall be promptly furnished to Franchisor; and

(h) Franchisor's consent to a transfer of any interest in this Agreement or of any ownership interest in the Franchised Restaurant shall not constitute a waiver of any claims Franchisor may have against the transferor or the transferee, nor shall it be deemed a waiver of Franchisor's right to demand compliance with the terms of this Agreement.

#### **18.4 Death or Incapacity of Franchisee**

Upon the death or permanent disability of any person with an interest in this Agreement, the executor, administrator, conservator or personal representative of such person must transfer his/her interest to a third party approved by Franchisor within a reasonable period not to exceed six (6) months after death or permanent disability. Such transfers, including, without limitation, transfers by will or inheritance, shall be subject to the same conditions for assignments and transfers contained in this Agreement. During that six (6) month period, the Franchised Restaurant must be under the primary supervision of a manager who otherwise meets Franchisor's management qualifications. Failure to appoint such manager or dispose of such interest within that six (6) month period, will constitute grounds for termination under this Agreement.

#### **19. RIGHT OF FIRST REFUSAL**

##### **19.1 Submission of Offer**

If Franchisee proposes to sell: (i) fifteen percent (15%) or more of the assets of the Franchised Restaurant; (ii) any beneficial interest in the Franchise; or (iii) any ownership interest in this Agreement or a Franchisee entity, Franchisee shall obtain and deliver a bona fide, executed written offer or proposal to purchase, along with all pertinent documents including any contract or due diligence materials to Franchisor. The offer must apply only to the sale of the above and may not include any other property or rights of Franchisee or its owners.

##### **19.2 Franchisor's Right to Purchase**

Franchisor shall, for thirty (30) days from the date of delivery of all such documents, have the right, exercisable by written notice to Franchisee, to purchase the same for the price and on the same terms and conditions contained in such offer or proposal to Franchisor. Franchisor may substitute cash for the fair market value of any form of payment proposed in such offer or proposal. Franchisor's credit shall be deemed equal to the credit of any proposed buyer. After providing notice to Franchisee, Franchisor shall have up to sixty (60) days to close the purchase. Franchisor shall be entitled to receive from Franchisee all customary representation and warranties given by Franchisee as the seller of the assets or such ownership interest.

##### **19.3 Non-Exercise of Right of First Refusal**

If Franchisor does not exercise this right of first refusal within thirty (30) days, the offer or proposal may be accepted by Franchisee or its owners, subject to the prior written approval by Franchisor, as provided in Section 19, of the proposed transfer. Should the sale fails to close within one hundred twenty (120) days after the offer is delivered to Franchisor, Franchisor shall again have the right of first refusal herein described. Should a transferee assume the rights and obligations under this Agreement, such transferee shall likewise be subject to Franchisor's right of first refusal under terms and conditions as set forth herein.

## **20. RELATIONSHIP AND INDEMNIFICATION**

### **20.1 Independent Contractor**

Franchisor and Franchisee are independent contractors. This Agreement does not constitute Franchisee as an agent, legal representative, joint ~~30~~venture, partner or employee of Franchisor. Neither Franchisee nor Franchisor may represent to third parties that either is an agent of the other. Neither party is in any way authorized to make any contract, agreement, warranty or representation on behalf of the other. Franchisee specifically acknowledges that Franchisor shall in no way be responsible for any injuries to persons or property resulting from the operation of the Franchised Restaurant. During the term of this Agreement and any extension hereof, Franchisee shall hold itself out to the public as an independent contractor operating the business pursuant to a franchise from Franchisor. Franchisee shall take such affirmative action as may be necessary to do so including, without limitation, exhibiting a notice of that fact in a conspicuous place on the Franchised Location and on all forms, stationery or other written materials, the content of which Franchisor reserves the right to specify.

### **20.2 Indemnification by Franchisee**

Franchisee and Personal Guarantors agree to indemnify, defend, and hold harmless Franchisor, its affiliates, and their respective shareholders, directors, officers, employees, agents, successors, and assignees (the "Indemnified Parties") against, and to reimburse any one or more of the Indemnified Parties for, all claims, obligations, and damages directly or indirectly arising out of the Franchised Restaurant's operation, the business Franchisee conducts under this Agreement, or Franchisee's breach of this Agreement, including, without limitation, those alleged to be or found to have been caused by the Indemnified Party's negligence, unless (and then only to the extent that) the claims, obligations, or damages are determined to be caused solely by our gross negligence or willful misconduct in a final, unappealable ruling issued by a court or arbitrator with competent jurisdiction.

For purposes of this indemnification, "claims" include all obligations, damages (actual, consequential, or otherwise), and costs that any Indemnified Party reasonably incurs in defending any claim against it, including, without limitation, 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 any claim against it at Franchisee's expense and agree to settlements or take any other remedial, corrective, or other actions.

This indemnity will continue in full force and effect subsequent to and notwithstanding this Agreement's expiration or termination. An Indemnified Party need not seek recovery from any insurer or other third party, or otherwise mitigate its losses and expenses, in order to maintain and recover fully a claim against you under this subparagraph. 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 under this subparagraph.

**21. GENERAL CONDITIONS AND PROVISIONS**

**21.1 Waiver and Delay**

No failure of Franchisor to exercise any power reserved to it hereunder, or to insist upon strict compliance by Franchisee with any obligation or condition hereunder, and no custom or practice of the parties in variance with the terms hereof, shall constitute a waiver of Franchisor's right to demand exact compliance with the terms hereof. Any waiver by Franchisor of any particular default by Franchisee shall not be binding unless in writing and executed by the party sought to be charged and shall not affect or impair Franchisor's right with respect to any subsequent default of the same or of a different nature; nor shall any delay, waiver, forbearance or omission of Franchisor to exercise any power or rights arising out of any breach or default by Franchisee of any of the terms, provisions or covenants hereof, affect or impair Franchisor's rights nor shall such constitute a waiver by Franchisor of any right hereunder or of the right to declare any subsequent breach or default. Subsequent acceptance by Franchisor of any payment(s) due to it hereunder shall not be deemed to be a waiver by Franchisor of any preceding breach by Franchisee of any terms, covenants or conditions of this Agreement.

**21.2 Notices**

Any and all notices required or permitted under this Agreement shall be in writing and shall be deemed received: (a) at the time delivered by hand to the recipient party (or to an officer, director or partner of the recipient party); (b) on the next business day of the transmission by facsimile, telegraph or other reasonably reliable electronic communication system; (c) two (2) business days after being placed in the hands of a commercial courier service for guaranteed overnight delivery; or (d) five (5) business days after placement in the United States Mail by Registered or Certified Mail, Return Receipt Requested, postage prepaid and addressed to the party to be notified at its most current principal business address of which the notifying party has been notified in writing. All notices, payments and reports required by this Agreement shall be sent to Franchisor at the address below:

Notices to Franchisor:

Black Bear Diners, Inc  
Attention: President  
1880 Shasta Street  
Redding, California 96001

Notices to Franchisee:

\_\_\_\_\_  
Attention: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### **21.3 Cost of Enforcement or Defense**

If Franchisor or Franchisee are required to enforce this Agreement in a judicial or arbitration proceeding, the prevailing party shall be entitled to reimbursement of its costs, including reasonable accounting and legal fees, in connection with such proceeding.

### **21.4 Approvals**

Whenever this Agreement requires the prior approval or consent of Franchisor, Franchisee shall make a timely written request to Franchisor therefor and, except as otherwise provided herein, any approval or consent granted shall be effective only if in writing. Franchisor makes no warranties or guarantees upon which Franchisee may rely and assumes no liability or obligation to Franchisee or any third party to which it would not otherwise be subject, by providing any waiver, approval, advice, consent or services to Franchisee in connection with this Agreement, or by reason of any neglect, delay or denial of any request therefor.

### **21.5 Entire Agreement**

This Agreement, any exhibit attached hereto and the documents referred to herein, shall be construed together and constitute the entire, full and complete agreement between Franchisor and Franchisee concerning the subject matter hereof, and shall supersede all prior agreements. No other representation, has induced Franchisee to execute this Agreement and there are no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein, which are of any force or effect with reference to this Agreement or otherwise; provided however, that nothing in the Franchise Agreement or any related agreement is intended to disclaim any representation made in Franchisor's Franchise Disclosure Document. No amendment, change or variance from this Agreement shall be binding on either party unless executed in writing by both parties.

### **21.6 Severability**

Each paragraph, part, term and/or provision of this Agreement shall be considered severable, and if, for any reason, any paragraph, part, term and/or provision herein is determined to be invalid and contrary to, or in conflict with, any existing or future law or regulation, such shall not impair the operation of or affect the remaining portions, paragraphs, parts, terms and/or provisions of this Agreement, and the latter shall continue to be given full force and effect and bind the parties hereto; and said invalid paragraphs, parts, terms and/or provisions shall be deemed not part of this Agreement; provided, however, that if Franchisor determines that said finding of illegality adversely affects the basic consideration of this Agreement, Franchisor may, at its option, terminate this Agreement. Anything to the contrary herein notwithstanding, nothing in this Agreement is intended, nor shall be deemed, to confer upon any person or legal entity other than Franchisor or Franchisee and such of their respective successors and assigns as may be contemplated by this Agreement, any rights or remedies under or by reason of this Agreement. Franchisee expressly shall be bound by any promise or covenant imposing the maximum duty permitted by law which is contained within the terms of any provision hereof, as though it were separately stated in and made a part of this Agreement, that may result from striking from any of the provisions hereof any portion or portions which a court may hold to be unreasonable and unenforceable in a final decision to which Franchisor is a party, or from reducing the scope of any promise or covenant to the extent required to comply with such a court order.

### **21.7 Construction**

All captions herein are intended solely for the convenience of the parties, and none shall be deemed to affect the meaning or construction of any provision hereof.

### **21.8 Force Majeure**

Whenever a period of time is provided in this Agreement for either party to do or perform any act or thing, except the payment of monies, neither party shall be liable or responsible for any delays due to strikes, lockouts, casualties, acts of God, war, governmental regulation or control or other causes beyond the reasonable control of the parties, and in any event said time period for the performance of an obligation hereunder shall be extended for the amount of time of the delay. This clause shall not apply or not result in an extension of the term of this Agreement.

### **21.9 Timing**

Time is of the essence of this Agreement. It will be a material breach of this Agreement to fail to perform any obligation within the time required or permitted by this Agreement. All references to time mean the time at Franchisor's office in Redding, California.

### **21.10 Survival**

The rights of the Franchisor and the obligations of the Franchisee and the Personal Guarantors set forth in Section 20.2, and in Articles 16, 17, 22 and 23 shall survive the termination or expiry of this agreement.

### **21.11 No Withholding**

The Franchisee agrees that it will not, on grounds of the alleged non-performance by the Franchisor of any of its obligations hereunder or for any other reason whatsoever, withhold payment of any service fee or other amounts due hereunder or otherwise to the Franchisor or any of its Affiliates.

## **22. DISPUTE RESOLUTION**

### **22.1 Choice Of Law**

This Agreement and the rights of the parties will not take effect unless and until this Agreement is accepted and signed by Franchisor. All matters relating to arbitration shall be governed by the Federal Arbitration Act (9 U.S.C. §§ 1 et seq.). Except to the extent this Agreement or any particular dispute is governed by the Federal Arbitration Act, the United States Trademark Act of 1946 or other federal law, this Agreement shall be governed by and construed in accordance with the laws of the State of California (without reference to its conflict of laws principles), excluding any law regulating the sale of franchises or governing the relationship between a franchisor and franchisee, unless the jurisdictional requirements of such laws are met independently without reference to this Section. References to any law or regulation, refer also to any successor laws or regulations or any published regulations for any statute, as in effect at the relevant time.

## **22.2 Consent to Jurisdiction**

The parties agree that any action brought by Franchisee against Franchisor in any court, whether federal or state, shall be brought within such state and in the judicial district in which Franchisor has its principal place of business. Any action brought by Franchisor against Franchisee in any court, whether federal or state, may be brought within the state and judicial district in which Franchisor has its principal place of business. The parties do hereby waive all questions of personal jurisdiction or venue for the purposes of carrying out this provision.

## **22.3 Cumulative Rights And Remedies**

No right or remedy conferred upon or reserved to Franchisor or Franchisee by this Agreement is intended to be, nor shall be deemed, exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be in addition to every other right or remedy. Nothing herein contained shall bar Franchisor's right to obtain injunctive relief against threatened conduct that shall cause it loss or damages including obtaining restraining orders, preliminary and permanent injunctions.

## **22.4 Limitations of Claims**

Any claim concerning the Franchised Restaurant or this Agreement or any related agreement will be barred unless an arbitration or an action for a claim that cannot be the subject of arbitration is commenced within one (1) year from the date on which Franchisee or Franchisor knew or should have known, in the exercise of reasonable diligence, of the facts giving rise to the claim. Notwithstanding anything to the contrary in this Section 22.4, if in the event any valid, applicable law or regulation of a competent governmental authority having jurisdiction over this Agreement or the parties hereto shall limit Franchisor's rights of termination hereunder or shall require longer notice periods than those set forth above, this Agreement shall be deemed amended to conform to the requirements of such laws and regulations, but in such event the provisions of the Agreement thus affected shall be amended only to the extent necessary to bring it within the requirements of the law or regulation.

## **22.5 No Punitive or Exemplary Damages**

Franchisee and Franchisor each waive, to the fullest extent permitted by law, any right or claim for any punitive or exemplary damages against the other, and agrees that if there is a dispute with the other, each will be limited to the recovery of actual damages sustained by it including reasonable accounting and/or legal fees as provided in Section 21.3.

## **22.6 Waiver of Jury Trial**

Franchisee and Franchisor each irrevocably waive trial by jury in any action, whether at law or equity, brought by either of them.

## **22.7 Arbitration**

Except as provided in Sections 22.8 and 22.9 below, any dispute between (i) Franchisor and its affiliates and (ii) Franchisee and its affiliates, arising out of or relating to this Agreement or its breach, including without limitation, any claim that this Agreement or any of its parts, is invalid, illegal or otherwise voidable or void, will be resolved by submission to binding arbitration by and before one arbitrator from the American Arbitration Association ("AAA"), in

accordance with its Commercial Arbitration Rules. All arbitration proceedings will be conducted individually by a single plaintiff, and not as a class or by multiple plaintiffs in one action. All hearings and other proceedings shall take place in Redding, California. The arbitrators shall apply California law (unless pre-empted by federal law) in conducting the arbitration, including determination of all issues relating to the arbitrability or the enforcement of the agreement to arbitrate. NO PUNITIVE OR EXEMPLARY DAMAGES SHALL BE AWARDED AGAINST FRANCHISOR OR FRANCHISEE, THEIR RESPECTIVE EQUITY HOLDERS, OR ENTITIES AFFILIATED WITH ANY OF THEM, IN ARBITRATION PROCEEDINGS (OR OTHER PROCEEDINGS), AND ARE HEREBY WAIVED. This arbitration provision shall be deemed to be self-executing and shall remain in full force and effect after expiration or termination of this Agreement. If either party fails to appear at any properly noticed arbitration proceeding, an award may be entered against such party by default or otherwise notwithstanding said failure to appear. This section 22.7 shall be construed as independent of any other covenant or provision of this Agreement; provided, however, that if a court of competent jurisdiction determines that any of such provisions are unlawful in any way, the court shall modify or interpret such provisions to the minimum extent necessary to comply with the law. All issues relating to arbitrability or the enforcement of the agreement to arbitrate contained herein shall be governed by the Federal Arbitration Act (9 U.S.C. §1 *et seq.*).

#### **22.8 Exceptions to Arbitration**

Notwithstanding Section 22.7 above, Franchisor may bring an action in any court of competent jurisdiction in Orange County, California or other venue selected by Franchisor for injunctive or other extraordinary relief, without the necessity of posting any bond, as Franchisor deems necessary or appropriate in connection with (i) violations of Franchisee's obligations under Section 17 hereof, or (ii) the use or display of the Marks. Franchisee acknowledges that it is one of a number of franchisees using the Marks and that failure on its part to comply fully with any of the terms of this Agreement respecting the foregoing obligations regarding examinations, audits and the Marks could cause irreparable damage to Franchisor or other franchisees of Franchisor. Therefore, Franchisor shall have the immediate right to seek a preliminary order or injunction enforcing the foregoing obligations during the pendency of all arbitration or other proceedings, without the necessity of posting a bond. This covenant shall be independent, severable and enforceable notwithstanding any other rights or remedies that Franchisor may have.

#### **22.9 Face-to-Face Meeting and Mediation**

Notwithstanding anything to the contrary in Section 22.8, before either party may initiate any arbitration proceeding pursuant to Section 22.8, the parties pledge to attempt to resolve the dispute arising out of or relating to this Agreement pursuant to the following process:

**Face-to-Face Meeting.** The parties pledge to attempt first to resolve the dispute arising out of or relating to this Agreement at a face-to-face meeting. The face-to-face meeting shall be held at a neutral location at or near Franchisor's headquarters within 30 days after either Franchisee or Franchisor gives written notice to the other party proposing such a meeting. If such face-to-face meeting fails to result in a satisfactory resolution of the dispute then the parties agree to proceed to mediation.

**Mediation.** If the dispute remains unresolved after the face-to-face meeting, the parties agree to submit the dispute to non-binding mediation conducted in accordance with the Commercial Mediation Rules of the AAA, unless the parties agree on alternative rules. The mediator must be a neutral person agreed upon by the parties and experienced in franchising. Any

party may be represented by counsel and persons authorized to settle the dispute must attend any mediation session. The fees and expenses of the mediator shall be shared equally by the parties. The entire mediation process shall be confidential and the conduct, statements, promises, offers, views and opinions of the mediator and the parties shall not be discoverable or admissible in any legal proceeding for any purpose; provided, however, that evidence which is otherwise discoverable or admissible shall not be excluded from discovery or admission as a result of its use in the mediation. The parties agree to participate in the mediation proceedings in good faith with the intention of resolving the dispute if at all possible within 30 days of the notice from the party seeking to initiate the mediation procedures.

## **23. ACKNOWLEDGMENTS**

### **23.1 Receipt of Agreement**

Franchisee represents and acknowledges that it has received, read and understood this Agreement and Franchisor's Franchise Disclosure Document; and that Franchisor has accorded Franchisee ample time and opportunity to consult with advisors of its own choosing about the potential benefits and risks of entering into this Agreement.

### **23.2 Receipt of Franchise Disclosure Document**

Franchisee acknowledges that it has received a copy of this Agreement and the attachments thereto, at least five (5) business days prior to the date on which this Agreement was executed. Franchisee further acknowledges that Franchisee has received the disclosure document required by the Trade Regulation Rule of the Federal Trade Commission at least ten (10) business days prior to the date on which this Agreement was executed.

### **23.3 Consultation by Franchisee**

Franchisee acknowledges having been advised to consult with its own advisors with respect to the legal, financial and other aspects of this Agreement, the business franchised hereby and the prospects for that business. Franchisee has either consulted with such advisors or has deliberately declined to do so.

### **23.4 True and Accurate Information**

Franchisee affirms that all information set forth in any and all applications, financial statements and submissions to Franchisor is true, complete and accurate in all respects, with Franchisee expressly acknowledging that Franchisor is relying upon the truthfulness, completeness and accuracy of such information.

### **23.5 Risk**

Franchisee and the Personal Guarantors acknowledge they have conducted an independent investigation of the business contemplated by this Agreement and recognizes that, like any other business, an investment in a Black Bear Diner franchise involves business risks and that the success of the venture is dependent, among other factors, upon the business abilities and efforts of Franchisee. Franchisor does not, in this Agreement or otherwise, make any representation or warranty, express or implied, as to the potential success of the business venture contemplated hereby.

### **23.6 No Representations**

Franchisor expressly disclaims the making of, and Franchisee acknowledges that it has not received, nor has Franchisee relied upon, any warranty or guarantee, express or implied, as to the potential volume, profits, or success of the business venture contemplated by this Agreement.

### **23.7 No Violation of any Agreement**

Neither the execution, delivery or performance by Franchisee or the Personal Guarantors of this Agreement or the other documents executed by any of them in connection with this Agreement nor the consummation by Franchisor and the Personal Guarantors of the transactions contemplated hereby, will (with or without notice or lapse of time): (i) violate Franchisee's Articles of Incorporation or Bylaws or other governing organizational documents; (ii) violate, breach, conflict with or constitute a default under, or permit the termination of, any agreement or instrument, by which any such Franchisee or any Personal Guarantor is bound.

### **23.8 Anti-Terrorism**

Franchisee further acknowledges that the President of the United States of America has issued Executive Order 13224 (the "Executive Order") prohibiting transactions with terrorists and terrorist organizations and that the United States government has adopted, and in the future may adopt, other antiterrorism measures (the "Anti-Terrorism Measures"). The Franchisor therefore requires certain certifications that the parties with whom it deals are not directly involved in terrorism. For that reason, you hereby certify that neither you nor any of your employees, agents or representatives, nor any other person or entity associated with you, is:

- (i) a person or entity listed in the Annex to the Executive Order;
- (ii) a person or entity otherwise determined by the Executive Order to have committed acts of terrorism or to pose a significant risk of committing acts of terrorism;
- (iii) a person or entity who assists, sponsors, or supports terrorists or acts of terrorism; or
- (iv) owned or controlled by terrorists or sponsors of terrorism.

Franchisee further covenant that neither it nor any of its employees, agents or representatives, nor any other person or entity associated with Franchisee, will during the term of the Franchise Agreement become a person or entity described above or otherwise become a target of any Anti-Terrorism Measure.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby have duly executed this Agreement.

**FRANCHISOR:**

**BLACK BEAR DINERS, INC.**

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

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

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

**FRANCHISEE:**

If Franchisee is an individual:

Individually:

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

Individually:

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

If Franchisee is a corporation, limited liability company or other entity:

\_\_\_\_\_  
(Name of Franchisee)

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

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

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

**EXHIBIT A TO THE FRANCHISE AGREEMENT**

**MAP OF DESIGNATED AREA**

Franchisee acknowledges that the Designated Area is delineated solely for the purpose of establishing a geographic area within which Franchisee will secure a site for the Franchised Location and for no other purpose. The Designated Area does not grant to Franchisee any promise of exclusivity or territorial protection.

[signature page follows]

**FRANCHISOR:**

**BLACK BEAR DINERS, INC.**

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

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

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

**FRANCHISEE:**

If Franchisee is an individual:

Individually:

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

If Franchisee is a corporation, limited liability company or other entity:

\_\_\_\_\_  
(Name of Franchisee)

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

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

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

## **EXHIBIT B TO THE FRANCHISE AGREEMENT**

### **DÉCOR PACKAGE**

The Décor Package is tailored to each specific Black Bear Diner. The following list represents a typical number and type of décor items to be placed in Franchisee's Black Bear Diner. Your Décor Package may slightly differ and will be designed to reflect the locale where the Franchised Restaurant is located.

A typical Décor Package includes the following:

<b>Quantity</b>	<b>Description</b>
15	Framed & matted bear posters (approx. 24" x 36")
30	Framed & matted photographs, articles & bios
20	Framed & matted historical prints of local area
6 to 8	Hand painted signs
1	Welcome to Black Bear Diner cutout sign
8	Cut-out black bear silhouettes
15	Antiques & three dimensional pieces
	Valances with stenciled bear border – as per window coverage
	Specified wallpaper and border – as needed
	TV/VCR (optional)
50 (app.)	Table Caddies

## **EXHIBIT C TO THE FRANCHISE AGREEMENT**

### **CARVED BEAR PACKAGE**

A typical Carved Bear Package includes the following:

<b>Quantity</b>	<b>Description</b>
1	9 to 12 foot hand-carved standing bear
6 to 8	4 to 6 foot hand-carved bears depicting either the culture or specific elements of the local and geographical area
2	6 to 8 foot carved bear entry benches

The package may include such optional items as:

- Carved bear fountain
- Bear tree
- Small bears to hang on posts and pillars

**EXHIBIT D TO THE FRANCHISE AGREEMENT**

**GUARANTEE AND ASSUMPTION OF OBLIGATIONS**

THIS GUARANTEE AND ASSUMPTION OF OBLIGATIONS is made this \_\_\_ day of \_\_\_\_\_,  
20\_\_\_, by \_\_\_\_\_  
\_\_\_\_\_.

In consideration of, and as an inducement to, the execution of that certain Franchise Agreement of even date herewith ("Agreement") by Black Bear Diners, Inc ("Franchisor"), each of the undersigned hereby personally and unconditionally (1) guarantees to Franchisor and its successors and assigns, for the term of the Agreement and thereafter as provided in the Agreement, that \_\_\_\_\_ ("Franchisee") shall (1) punctually pay and perform each and every undertaking, agreement and covenant set forth in the Agreement; and (2) shall personally be bound by, and personally liable for the breach of each and every provision in 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, without limitation, the provisions of Section 17. Each of the undersigned waives: (1) acceptance and notice of acceptance by Franchisor of the foregoing undertakings; (2) notice of demand for payment of any indebtedness or nonperformance of any obligations hereby guaranteed; (3) protest and notice of default to any party with respect to the indebtedness or nonperformance of any obligations hereby guaranteed; (4) any right it may have to require that an action be brought against Franchisee or any other person as a condition of liability; and (5) any and all other notices and legal or equitable defenses to which it may be entitled.

Each of the undersigned consents and agrees that: (1) its direct and immediate liability under this guarantee shall be joint and several; (2) it shall render any payment or performance required under the Agreement upon demand if Franchisee fails or refuses punctually to do so; (3) such liability shall not be contingent or conditioned upon pursuit by Franchisor of any remedies against Franchisee or any other person; and (4) such liability shall 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, none of which shall in any way modify or amend this guarantee, which shall be continuing and irrevocable during the term of the Agreement.

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

GUARANTOR(S)

PERCENTAGE OWNERSHIP IN  
FRANCHISEE

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

\_\_\_\_\_

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

\_\_\_\_\_

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

\_\_\_\_\_

**EXHIBIT E TO THE FRANCHISE AGREEMENT**

**AUTHORIZATION AGREEMENT  
FOR AUTOMATIC DEBIT (ACH DEBIT)**

COMPANY NAME **Black Bear Diners, Inc.** COMPANY ID NUMBER 75-2978486

I (we) hereby authorize **Black Bear Diners, Inc.**, hereinafter called COMPANY, to initiate debit entries and to initiate, if necessary, credit entries and adjustments for any debit entries in error to my (our) Checking Account indicated below, hereinafter called DEPOSITORY, to credit and/or debit the same such account.

**DEPOSITORY**

NAME \_\_\_\_\_ BRANCH \_\_\_\_\_  
CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_  
ROUTING NO. \_\_\_\_\_ ACCT. NO. \_\_\_\_\_

This authorization is to remain in full force and effect until COMPANY has received written notice from me (or either of us) of its termination in such time and in such manner as to afford COMPANY and DEPOSITORY a reasonable time to act on it.

By \_\_\_\_\_ By \_\_\_\_\_  
(Please print) (Please print)  
X \_\_\_\_\_ X \_\_\_\_\_  
(Authorized signature) (Authorized signature)

DATE \_\_\_\_\_

---

**EXHIBIT C TO THE DISCLOSURE DOCUMENT**

**BLACK BEAR DINERS, INC**

**OPTION AGREEMENT**

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**EXHIBITS**

**A. DESCRIPTION OF OPTION AREA**

**BLACK BEAR DINERS, INC.**

**OPTION AGREEMENT**

This Option Agreement is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, (“Effective Date”) between Black Bear Diners, Inc (“Franchisor”), a California corporation, having its principal place of business at 1880 Shasta Street, Redding, California 96001, and \_\_\_\_\_ (“Option Holder”), whose principal address is \_\_\_\_\_.

**RECITALS**

Franchisor and Option Holder have entered into a Black Bear Diners, Inc. Franchise Agreement, whereby Option Holder, as Franchisee, was granted the right to develop and operate a Black Bear Diner Restaurant as identified in and under the terms of the Franchise Agreement;

Option Holder desires to obtain the right to develop one (1) additional Black Bear Diner restaurant within the geographic area known as the “Option Area” as stated in Exhibit A; and

Franchisor is willing to grant this right pursuant to the provisions stated below.

NOW, THEREFORE, the parties, in consideration of the undertakings and commitments of each party to the other set forth in this Agreement, agree as follows:

**1. DEFINITIONS**

For purposes of this Agreement, the terms below have the following definitions:

“**Agreement**” means this agreement entitled “Option Agreement” and all instruments supplemental hereto or in amendment or confirmation hereof;

“**Franchise Agreement**” means the Black Bear Diner Franchise Agreement to be executed by Option Holder in connection with the development and operation of a Black Bear Diner restaurant by Option Holder under the terms of this Agreement;

“**Franchise Fee**” means the then-current franchise fee charged by Franchisor under the terms of the Franchise Agreement.

“**Franchised Location**” means the premises for the operation of the Franchised Restaurant pursuant to a Franchise Agreement between Option Holder, as Franchisee, and Franchisor;

“**Franchised Restaurant**” means the Black Bear Diner restaurant that Option Holder develops and operates pursuant to this Agreement.

“**Marks**” means certain names and marks, including “Black Bear Diner,” as well as other tradenames, service marks, trademarks, logos, insignias, symbols and designs as designated by

Franchisor or as Franchisor may designate in the future for use with the System;

“System” means the Black Bear Diner System which consists of, among other things, a distinctive exterior and interior trade dress utilizing specially designed décor, furniture, fixtures and accessories; an on-premises gift shop known as a “Black Bear Country Store”; recipes and menu items; food preparation methods and food products; operating standards and food, beverage and equipment specifications; operational, management and record-keeping procedures also referred to as the “Bear Necessities Quality Control Program”; advertising and marketing techniques and trade secrets and confidential information; all of which may be changed, improved, and further developed by Franchisor from time to time.

## **2. GRANT OF OPTION RIGHT**

### **2.1 Grant of Option**

Subject to the terms and conditions of this Agreement, Franchisor grants to Option Holder the right to establish and operate one (1) additional Black Bear Diner restaurant solely at a site located within the Option Territory described in Exhibit A attached to this Agreement. The Franchised Restaurant developed under this Option Agreement will operate under the then-currently used form of Franchise Agreement that Franchisor is offering to new franchisees.

### **2.2 Exclusivity and Retained Rights**

Until this Option Agreement expires or terminates, Franchisor will not establish or license anyone, other than Option Holder pursuant to this Option Agreement, to establish a Black Bear Diner restaurant within the Option Area; provided however, Franchisor retains the right: (i) to operate and license others to operate Black Bear Diner and other restaurants using the System and Marks at locations outside the Option Area and on such terms and conditions as Franchisor deems appropriate; (ii) to operate and license others to operate restaurants operating under marks other than “Black Bear Diner” at any location whether within or outside the Option Area, regardless of the proximity to any Black Bear Diner restaurant developed or under development by Option Holder, and on such terms and conditions as Franchisor deems appropriate; (iii) to license others to use the Marks in connection with the selling of certain food and other products and ingredients, including the Gift Shop Products through alternative channels of distribution including, but not limited to, grocery stores, convenience stores, mail order and Internet sales, which may be either within or outside the Option Area; and (iv) to engage in any activities not expressly forbidden by this Option Agreement.

## **3. OPTION FEE**

Concurrently with signing this Option Agreement, Option Holder has deposited with Franchisor the sum of TEN THOUSAND DOLLARS (\$10,000) for one (1) Franchised Restaurant to be developed in the Option Area (“Option Fee”). The Option Fee is due in full upon signing the Option Agreement and is nonrefundable in whole or part, but shall be credited against the Franchise Fee for the Franchised Restaurant to be opened pursuant to this Agreement. The balance of the Franchise Fee shall be due and payable at the time of signing the Franchise Agreement for the Franchised Restaurant.

#### **4. TERM OF OPTION**

The failure by Option Holder to sign a Franchise Agreement and begin operation of the Franchised Restaurant within one year from the Effective Date of this Option Agreement will automatically terminate this Option Agreement in accordance with Section 8 below.

#### **5. DEVELOPMENT OF THE FRANCHISED RESTAURANT**

##### **5.1 Exercise of Option**

At least 45 days, but no more than 60 days, prior to signing of the Franchise Agreement, Franchisee must send Franchisor a notice (i) requesting that Franchisor send Franchisee its then-current franchise disclosure documents and (ii) providing Franchisor with all information necessary to complete the Franchise Agreement for the Franchised Restaurant. In addition, all of the following conditions must have been met:

(1) Franchisee's Submission of Proposed Site. Franchisee must find a proposed site for the Franchised Restaurant which Franchisee reasonably believes to conform to Franchisor's site selection criteria, as modified by Franchisor from time to time, and submit to Franchisor a complete site report (containing such information and photographs as Franchisor may reasonably require) for such site.

(2) Franchisor's Acceptance of the Proposed Site. Franchisee must receive Franchisor's written acceptance of the proposed site. Franchisor agrees not to unreasonably withhold acceptance of a proposed site. Franchisor's acceptance of a proposed site does not in any way constitute a guaranty as to the success of the Franchised Restaurant.

(3) Franchisee's Compliance with Franchisor's Then-Current Standards for Franchisees. Franchisee must receive written confirmation from Franchisor that Franchisee meets Franchisor's then-current standards for franchisees, including financial capability criteria for the development of a new Franchised Restaurant. Franchisor's confirmation that Franchisee meets its then-current standards for the development of a new Franchised Restaurant, however, does not in any way constitute a guaranty by Franchisor as to Franchisee's success.

(4) Good Standing. Franchisee must not be in default of this Option Agreement, any Franchise Agreement or any other agreement between Franchisee or any of Franchisee's affiliates and Franchisor or any of Franchisor's affiliates.

If Franchisee fails to perform any of the acts or fails to deliver any required notice required under Section 5.1 of this Option Agreement in a timely fashion, this failure will be deemed an election by Franchisee not to exercise its option rights hereunder, and this failure will cause this Option Agreement to terminate and all of Franchisee's option rights as provided under this Option Agreement to lapse and expire, in which event Franchisor will retain the Option Fee paid hereunder as consideration for this Option Agreement.

##### **5.2 Return of Signed Franchise Agreement**

Option Holder shall return to Franchisor a signed copy of the Franchise Agreement at least 15 business days nor more than 30 business days after Franchisor's delivery of the Franchise Agreement and franchise disclosure document (if required). Option Holder shall execute and deliver as instructed by Franchisor two copies of said Franchise Agreement and the balance of the

Franchise Fee therefore as required in Section 3 above. Franchisor reserves the right to revoke its acceptance of any site for the Franchised Location if Franchisee does not deliver a signed Franchise Agreement as provided in this Option Agreement.

### **5.3 Acknowledgement of Risk**

Franchisee acknowledges having conducted an independent investigation of the prospects for the establishment of the Franchised Restaurant within the Option Area, and recognizes that the business venture contemplated by this Agreement involves business and economic risks and that Franchisee's financial and business success will be primarily dependent upon the personal efforts of Franchisee and its management and employees. Franchisor expressly disclaims the making of, and Franchisee acknowledges that it has not received, any estimates, projections, warranties or guaranties, express or implied, regarding potential gross sales, profits, earnings or the financial success of the Franchised Restaurant to be developed within the Option Area.

### **5.4 No Subfranchising by Option Holder**

Option Holder shall have no right under this Agreement to sublicense, subfranchise, resell, or otherwise transfer any interest in this Option Agreement, any Franchise Agreement or any Franchised Restaurant.

## **6. MARKS AND CONFIDENTIAL INFORMATION**

### **6.1 No License Under Option Agreement**

Notwithstanding any provision to the contrary under this Agreement, it is understood and agreed that this Option Agreement does not grant the Option Holder any right to use the Marks. Such right to use the Marks is granted only under the Franchise Agreement entered into between Franchisor and Option Holder for the purpose of operating the Franchised Restaurant. Option Holder shall not use any Mark as part of any corporate or trade name or with any prefix, suffix, or other modifying words, terms designs, or symbols, or in any modifying words, terms designs or symbols, or in any modified form, nor may Option Holder use any Mark, in connection with any business or activity, other than the business conducted by Option Holder pursuant to Franchise Agreement entered into between Option Holder, as Franchisee, and Franchisor, or in any other manner not explicitly authorized in writing by Franchisor.

### **6.2 Confidential Information**

Except as hereinafter provided, Option Holder shall not, during the term of this Agreement or at any time thereafter, communicate, divulge, or use for the benefit of any other person or entity any Confidential Information which may be communicated to Option Holder or of which Option Holder may be privy by virtue of Option Holder's activities under this Option Agreement or any Franchise Agreement. Option Holder may divulge such Confidential Information only to such of its employees as deemed necessary by Option Holder, and to other third parties with the prior written approval of Franchisor. All information which Franchisor designates as confidential shall be deemed confidential for purposes of this Agreement, except information which Option Holder can demonstrate came to its attention by lawful means prior to disclosure thereof by Franchisor, or which, at or after the time of disclosure by Franchisor to Option Holder, had become or later becomes a part of the public domain, through publication or communication by third parties other than Option Holder. At Franchisor's request, Option Holder shall require its employees and any other person to whom Option Holder wishes to disclose any

Confidential Information of Franchisor to execute covenants agreeing to maintain the confidentiality of such information.

## **7. TRANSFER**

### **7.1 By Franchisor**

This Option Agreement and all rights hereunder can be assigned and transferred by Franchisor and, if so, shall be binding upon and inure to the benefit of Franchisor's successors and assigns; provided, however, that with respect to any assignment resulting in the subsequent performance by the assignee of the functions of Franchisor, Franchisor shall have no liability for the performance of any obligations contained in this Agreement after the effective date of such transfer or assignment.

### **7.2 By Option Holder**

Option Holder understands and acknowledges that the rights set forth in this Agreement are personal to Option Holder and are granted in reliance upon the personal qualifications of Option Holder. Option Holder has represented and hereby represents to Franchisor that Option Holder is entering into this Agreement with the intention of complying with its terms and conditions and not for the purpose of resale of the rights hereunder.

Neither Option Holder, nor any holder of a legal or beneficial interest in Option Holder, without Franchisor's prior written consent, by operation of law or otherwise, shall sell, assign, transfer, convey, give away or encumber to any person, firm, corporation or limited liability company, all or any part of its interest in this Agreement or its interest in the option rights granted hereby or its interest in any proprietorship, partnership, corporation, limited liability company or other entity which owns any interest in such rights, nor offer, permit or suffer the same to be sold, assigned, transferred, conveyed, given away or encumbered in any way to any person, partnership, corporation, limited liability company or other entity. Option Holder may not without the prior written consent of Franchisor fractionalize any of the rights granted pursuant to this Agreement. Any purported assignment of any of Option Holder's or any of its owner's, partner's, shareholder's or member's rights herein not having the aforesaid consent shall be null and void and shall constitute a material default of this Option Agreement.

## **8. DEFAULT AND TERMINATION**

### **8.1 Termination Without Opportunity to Cure**

Option Holder will be deemed in default under this Agreement if Option Holder breaches any of the terms of this Agreement, or the terms of any Franchise Agreement or any other agreements between Option Holder or its affiliates and Franchisor or its affiliates. All rights granted in this Agreement immediately terminate upon written notice without opportunity to cure if:

- (a) Option Holder makes or attempts to make an unauthorized assignment or transfer of this Agreement or an ownership interest in Option Holder;
- (b) Option Holder has made any material misrepresentation or omission in its application for the rights conferred by this Agreement or is convicted of or pleads no contest to a

felony or other crime or offense that may adversely affect the goodwill associated with the Marks;

(c) Option Holder makes any unauthorized use of the Marks or unauthorized use or disclosure of the Confidential Information;

(d) Franchisor has delivered a notice of termination of a Franchise Agreement in accordance with its terms and conditions or Option Holder has terminated a Franchise Agreement without cause;

(e) Option Holder fails to Execute a Franchise Agreement for the Black Bear Diner restaurant to be established and operated in connection with this Agreement within one year from the Effective Date of this Option Agreement as provided under Section 4 above; or

(f) Option Holder become insolvent, commits any affirmative action of insolvency or file any action or petition of insolvency.

## **8.2 Termination With Opportunity to Cure**

If Option Holder fails to comply with any other provision of this Agreement, Franchisor may terminate this Option Agreement by delivering notice of termination to Option Holder stating the reason for termination, provided that Option Holder shall have the right to cure a breach within thirty (30) days after delivery of Franchisor's notice of termination.

## **9. RIGHTS AND DUTIES ON TERMINATION OR EXPIRATION**

### **9.1 Loss of Development Rights**

Upon termination of this Option Agreement, the rights granted to Option Holder under this Agreement shall automatically terminate. Option Holder will have no additional rights to establish or operate any Franchised Restaurant for which a Franchise Agreement has not been executed by Franchisor and Option Holder. No default under this Agreement shall constitute a default under any Franchise Agreement between the parties hereto, except to the extent that any default under this Development Agreement constitutes a default under any Franchise Agreement in accordance with the terms of the Franchise Agreement. Notwithstanding the above, the terms and conditions of each Franchise Agreement must be complied with by the Option Holder and shall control in determining whether any default exists under such Franchise Agreement.

### **9.2 Amounts Owed to Franchisor**

Option Holder shall immediately pay to Franchisor upon termination or expiration of this Agreement any amounts owed by Option Holder to Franchisor which are then unpaid.

## **10. INDEPENDENT CONTRACTOR AND INDEMNIFICATION**

### **10.1 Independent Contractor**

It is understood and agreed by the parties hereto that nothing in this Agreement is intended to constitute either party an agent, legal representative, joint venturer, partner or employee of the other for any purpose whatsoever. Each party to this Agreement is an

independent contractor, and neither shall be responsible for the debts or other liabilities incurred by the other. Option Holder will not be deemed to be a franchisee of Franchisor with respect to any Franchised Restaurant optioned hereunder except to the extent that the option granted must have been exercised in the manner provided in this Agreement and a valid Franchise Agreement with respect to the Franchised Location optioned has been signed by Franchisor and Option Holder as Franchisee.

## **10.2 Indemnification**

Option Holder agrees to indemnify Franchisor and its subsidiaries, affiliates, stockholders, directors, officers, employees, agents and assignees against any and all claims, losses, damages and liabilities, however caused, arising directly or indirectly from, as a result of, or in connection with, the development, use and operation of Option Holder's Franchised Restaurant(s), as well as all costs, including reasonable attorneys' fees.

## **11. GENERAL CONDITIONS AND PROVISIONS**

### **11.1 Non-Waiver**

No failure of Franchisor to exercise any power reserved to it hereunder, or to insist upon strict compliance by Option Holder with any obligation or condition hereunder, and no custom or practice of the parties in variance with the terms hereof, shall constitute a waiver of Franchisor's right to demand exact compliance with the terms hereof. Waiver by Franchisor of any particular default by Option Holder shall not be binding unless in writing and executed by the party sought to be charged and shall not affect or impair Franchisor's right with respect to any subsequent default of the same or of a different nature; nor shall any delay, waiver, forbearance or omission of Franchisor to exercise any power or rights arising out of any breach or default by Option Holder of any of the terms, provisions or covenants hereof, affect or impair Franchisor's rights nor shall such constitute a waiver by Franchisor of any right hereunder or of the right to declare any subsequent breach or default. Subsequent acceptance by Franchisor of any payment(s) due to it hereunder shall not be deemed to be a waiver by Franchisor of any preceding breach by Option Holder of any terms, covenants or conditions of this Agreement.

### **11.2 Notices**

Any and all notices required or permitted under this Agreement shall be in writing and shall be deemed received: (a) at the time delivered by hand to the recipient party (or to an officer, director or partner of the recipient party); (b) on the next business day of the transmission by facsimile, telegraph or other reasonably reliable electronic communication system; (c) two (2) business days after being placed in the hands of a commercial courier service for guaranteed overnight delivery; or (d) five (5) business days after placement in the United States Mail by Registered or Certified Mail, Return Receipt Requested, postage prepaid and addressed to the party to be notified at its most current principal business address of which the notifying party has been notified in writing. All notices, payments and reports required by this Agreement shall be sent to Franchisor and Developer at the address specified below:

Notices to Franchisor:           Black Bear Diners, Inc.  
  Attention: President  
  1880 Shasta Street  
  Redding, California 96001

Notices to Developer:           \_\_\_\_\_

  Attention: \_\_\_\_\_

  \_\_\_\_\_

  \_\_\_\_\_

**11.3 Entire Agreement**

This Agreement, any exhibit attached hereto and the documents referred to herein, shall be construed together and constitute the entire, full and complete agreement between Franchisor and Option Holder concerning the subject matter hereof, and shall supersede all prior agreements. No other representation has induced Option Holder to execute this Agreement and there are no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein, which are of any force or effect with reference to this Agreement or otherwise; provided however, that nothing in the Option Agreement or any related agreement is intended to disclaim any representation made in Franchisor's Franchise Disclosure Document. No amendment, change or variance from this Agreement shall be binding on either party unless executed in writing by both parties.

**11.4 Superiority of Franchise Agreement**

For the Franchised Restaurant to be developed in the Option Area under the terms of this Agreement, a separate Franchise Agreement shall be executed and the required Franchise Fee shall be paid to Franchisor. It is understood and agreed by Option Holder that the Franchise Agreement executed in connection with the individual Franchised Restaurant within the Option Territory is independent of this Agreement. The continued existence of any such Franchise Agreement shall not depend on the continuing existence of this Agreement. If any conflict shall arise in connection with this Agreement and any such Franchise Agreement, the latter shall have precedence and superiority over the former.

**11.5 Severability**

Each paragraph, part, term and/or provision of this Agreement shall be considered severable, and if, for any reason, any paragraph, part, term and/or provision herein is determined to be invalid and contrary to, or in conflict with, any existing or future law or regulation, such shall not impair the operation of or affect the remaining portions, paragraphs, parts, terms and/or provisions of this Agreement, and the latter shall continue to be given full force and effect and bind the parties hereto; and said invalid paragraphs, parts, terms and/or provisions shall be deemed not part of this Agreement.

**11.6 Construction**

All captions herein are intended solely for the convenience of the parties, and none shall be deemed to affect the meaning or construction of any provision hereof.

### **11.7 Timing**

Time is of the essence of this Agreement. It will be a material breach of this Agreement to fail to perform any obligation within the time required or permitted by this Agreement.

## **12. DISPUTE RESOLUTION**

### **12.1 Choice Of Law**

This Agreement and the rights of the parties will not take effect unless and until this Agreement is accepted and signed by Franchisor. All matters relating to arbitration shall be governed by the Federal Arbitration Act (9 U.S.C. §§ 1 et seq.). Except to the extent this Agreement or any particular dispute is governed by the Federal Arbitration Act, the United States Trademark Act of 1946 or other federal law, this Agreement shall be governed by and construed in accordance with the laws of the State of California (without reference to its conflict of laws principles), excluding any law regulating the sale of franchises or governing the relationship between a franchisor and franchisee, unless the jurisdictional requirements of such laws are met independently without reference to this Section. References to any law or regulation, refer also to any successor laws or regulations or any published regulations for any statute, as in effect at the relevant time.

### **12.2 Venue**

Except for claims subject to arbitration under Section 13.6, the parties agree that any all claims between Option Holder and Franchisor shall be brought within such state and in the judicial district in which Franchisor has its principal place of business. The parties do hereby waive all questions of personal jurisdiction or venue for the purposes of carrying out this provision.

### **12.3 Cumulative Rights And Remedies**

No right or remedy conferred upon or reserved to Franchisor or Option Holder by this Agreement is intended to be, nor shall be deemed, exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be in addition to every other right or remedy. Nothing herein contained shall bar Franchisor's right to obtain injunctive relief against threatened conduct that shall cause it loss or damages including obtaining restraining orders, preliminary and permanent injunctions.

### **12.4 No Punitive or Exemplary Damages**

Option Holder and Franchisor each waive, to the fullest extent permitted by law, any right or claim for any punitive or exemplary damages against the other, and agrees that if there is a dispute with the other, each will be limited to the recovery of actual damages sustained by it including reasonable accounting and/or legal fees.

### **12.5 Waiver of Jury Trial**

Option Holder and Franchisor each irrevocably waive trial by jury in any action, whether at law or equity, brought by either of them.

## **12.6 Settlement Procedure**

This Agreement is a written agreement evidencing a transaction involving commerce and is, therefore, subject to the terms and provisions of the Federal Arbitration Act, Title 9 of the United States Code. Except for a controversy or claim relating to the ownership of any of the Marks or unauthorized use or disclosure of Confidential Information, all disputes arising out of or relating to this Agreement, or to any other agreements between the parties or with regard to interpretation, formation or breach of this or any other agreement between the parties, shall be settled by binding arbitration conducted in Redding, California, in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. Judgment upon the award rendered by the arbitrator may be entered in any court having proper jurisdiction.

Before the filing of any arbitration, the parties agree to attempt first to resolve the dispute arising out of or relating to this Agreement at a face-to-face meeting. The face-to-face meeting shall be held at a neutral location at or near Franchisor's headquarters within 30 days after either Franchisee or Franchisor gives written notice to the other party proposing such a meeting. If such face-to-face meeting fails to result in a satisfactory resolution of the dispute then the parties agree to proceed to mediation.

If the dispute remains unresolved after the face-to-face meeting, the parties agree to submit the dispute to non-binding mediation conducted in accordance with the Commercial Mediation Rules of the AAA, unless the parties agree on alternative rules. The mediator must be a neutral person agreed upon by the parties and experienced in franchising. Any party may be represented by counsel and persons authorized to settle the dispute must attend any mediation session. The fees and expenses of the mediator shall be shared equally by the parties. The entire mediation process shall be confidential and the conduct, statements, promises, offers, views and opinions of the mediator and the parties shall not be discoverable or admissible in any legal proceeding for any purpose; provided, however, that evidence which is otherwise discoverable or admissible shall not be excluded from discovery or admission as a result of its use in the mediation. The parties agree to participate in the mediation proceedings in good faith with the intention of resolving the dispute if at all possible within 30 days of the notice from the party seeking to initiate the mediation procedures.

## **13. ACKNOWLEDGMENTS**

### **13.1 Receipt of Agreement**

Option Holder represents and acknowledges that it has received, read and understood this Agreement and that Franchisor has accorded Option Holder ample time and opportunity to consult with advisors of its own choosing about the potential benefits and risks of entering into this Agreement.

### **13.2 Receipt of Franchise Disclosure Document**

Option Holder acknowledges that it has received a copy of this Agreement and the attachments thereto, at least seven (7) days prior to the date on which this Agreement was executed. Option Holder further acknowledges that Option Holder has received the disclosure document required by the Trade Regulation Rule of the Federal Trade Commission, at least fourteen (14) days prior to the date on which this Agreement was executed.

### **13.3 Consultation by Option Holder**

Option Holder has been advised to consult with its own advisors with respect to the legal, financial and other aspects of this Agreement, the business franchised hereby and the prospects for that business. Option Holder has either consulted with such advisors or has deliberately declined to do so.

### **13.4 True and Accurate Information**

Option Holder affirms that all information set forth in any and all applications, financial statements and submissions to Franchisor is true, complete and accurate in all respects, with Option Holder expressly acknowledging that Franchisor is relying upon the truthfulness, completeness and accuracy of such information.

### **13.5 Risk**

Option Holder has conducted an independent investigation of the business contemplated by this Agreement and recognizes that, like any other business, an investment in a Black Bear Diner restaurant involves business risks and that the success of the venture is dependent, among other factors, upon the business abilities and efforts of Option Holder. Franchisor does not, in this Agreement or otherwise, make any representation or warranty, express or implied, as to the potential success of the business venture contemplated hereby.

### **13.6 No Representations**

Franchisor expressly disclaims the making of, and Franchisee acknowledges that it has not received, nor has Franchisee relied upon, any warranty or guarantee, express or implied, as to the potential volume, profits, or success of the business venture contemplated by this Agreement.

### **13.7 No Violation of any Agreement**

Neither the execution, delivery or performance by Option Holder of this Agreement or the other documents executed by Option Holder in connection with this Agreement nor the consummation by Franchisor of the transactions contemplated hereby, will (with or without notice or lapse of time): (i) violate Option Holder's Articles of Incorporation or Bylaws or other governing organizational documents; (ii) violate, breach, conflict with or constitute a default under, or permit the termination of, any agreement or instrument, by which any such Option Holder is bound.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have duly executed, sealed, and delivered this Agreement in multiple copies on the day and year first above written.

**FRANCHISOR:**

**BLACK BEAR DINERS, INC.**

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

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

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

**OPTION HOLDER:**

If Option Holder is an individual:

Individually:

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

If Option Holder is a corporation, limited liability company or other entity:

\_\_\_\_\_  
(Name of Option Holder)

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

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

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

**EXHIBIT A TO THE OPTION AGREEMENT**

**DESCRIPTION OF OPTION AREA**

[signature page follows]

**FRANCHISOR:**

**BLACK BEAR DINERS, INC.**

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

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

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

**OPTION HOLDER:**

If Option Holder is an individual:

Individually:

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

If Option Holder is a corporation, limited liability company or other entity:

\_\_\_\_\_  
(Name of Option Holder)

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

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

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

**EXHIBIT D TO THE DISCLOSURE DOCUMENT**

**BLACK BEAR DINERS, INC.**

**AREA DEVELOPMENT AGREEMENT**

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**EXHIBITS**

- A. DESCRIPTION OF DEVELOPMENT AREA**
- B. DEVELOPMENT SCHEDULE**
- C. GUARANTY AND ASSUMPTION OF OBLIGATIONS**
- D. LIST OF PRINCIPALS**

**BLACK BEAR DINERS, INC.**

**AREA DEVELOPMENT AGREEMENT**

This Development Agreement (the "Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, ("Effective Date") by and between Black Bear Diners, Inc. ("Franchisor"), a California corporation, having its principal place of business at 1880 Shasta Street, Redding, California 96001, and \_\_\_\_\_ ("Developer"), whose principal address is \_\_\_\_\_.

**RECITALS**

Franchisor and Developer are, on this day, entering into a Black Bear Diners, Inc. Franchise Agreement, whereby Developer will be granted the right to operate one (1) Franchised Restaurant;

Developer wishes to obtain certain rights to develop additional Black Bear Diner restaurants under Franchisor's System, within the Development Area specified in this Agreement and according to the Development Schedule specified in this Agreement; and

WHEREAS, Franchisor is willing to grant such rights pursuant to the provisions stated below;

NOW, THEREFORE, the parties, in consideration of the undertakings and commitments of each party to the other set forth in this Agreement, hereby agree as follows:

**1. DEFINITIONS**

Whenever used in this Agreement, unless there is something in the subject matter or context inconsistent therewith, the following words and terms shall have the respective meanings ascribed to them as follows:

**"Confidential Information"**—means means the recipes, ingredients, trade secrets, methods of food preparation, techniques, formats, specifications, procedures, information, systems, methods of business management, sales and promotion techniques, and knowledge of and experience in operating a Black Bear Diner restaurant;

**"Development Agreement"** means this agreement entitled "Black Bear Diners, Inc. Area Development Agreement" and all instruments supplemental hereto or in amendment or confirmation hereof;

**"Development Area"** has the meaning given to such term in Section 2.1 as shown on the map set out in Exhibit A hereof;

**"Development Fee"** has the meaning given to such term in Section 3.1 hereof;

**“Development Rights”** means the rights granted to Developer to establish and operate Franchised Restaurants in the Development Area under the terms of this Development Agreement and the Franchise Agreement;

**“Development Schedule”** means the dates to begin operation of each Franchised Restaurant as specified in Exhibit B to this Development Agreement;

**“Franchise Agreement”** means the then-currently used form of the Black Bear Diners, Inc. franchise agreement that Franchisor is offering to new franchisees.

**“Gift Shop Products”** means all products featuring the Marks and other products which Franchisor has authorized for resale from the Black Bear Country Store located within the Franchised Restaurant.

**“Marks”** means certain names and marks, including “Black Bear Diner,” as well as other tradenames, service marks, trademarks, logos, insignias, symbols and designs as designated by Franchisor or as Franchisor may designate in the future for use with the System;

**“System”** means the Black Bear Diner System which consists of, among other things, a distinctive exterior and interior trade dress utilizing specially designed décor, furniture, fixtures and accessories; an on-premises gift shop known as a “Black Bear Country Store”; recipes and menu items; food preparation methods and food products; operating standards and food, beverage and equipment specifications; operational, management and record-keeping procedures also referred to as the “Bear Necessities Quality Control Program”; advertising and marketing techniques and trade secrets and confidential information; all of which may be changed, improved, and further developed by Franchisor from time to time.

**“Personal Guarantors”** means those persons as specified in Section 3.3 who are required to sign the Guarantee and Assumption of Obligations in Exhibit C;

## **2. GRANT OF DEVELOPMENT RIGHTS**

### **2.1 Grant**

Subject to the provisions stated below, Franchisor hereby grants to Developer, pursuant to the terms and conditions of this Agreement, the right and obligation to establish and operate \_\_\_\_ ( ) Black Bear Diner restaurants in the Development Area described in Exhibit A attached to this Development Agreement.

### **2.2 Exclusivity and Retained Rights**

So long as Developer is in compliance with the terms of this Development Agreement, Franchisor will not, for the term of this Development Agreement, establish or operate, or license others to establish or operate a restaurant utilizing the System and the Marks within the Development Area other than to Developer pursuant to this Development Agreement; provided, however, Franchisor retains the right to:

- (i) operate and license others to operate restaurant(s) using the System and Marks at locations outside the Development Area and on such terms and conditions as Franchisor deems appropriate;
- (ii) operate and license others to operate restaurant(s) operating under names other than "BLACK BEAR DINER" at any location whether within or outside the Development Area, regardless of the proximity to any Black Bear Diner restaurant developed or under development by Developer, and on such terms and conditions as Franchisor deems appropriate;
- (iii) license others to use the Marks in connection with the selling of certain food items and ingredients, including the Gift Shop Products through alternative channels of distribution including, but not limited to, grocery stores, convenience stores, mail order and Internet sales, which may be either within or outside the Development Area; and
- (iv) engage in any activities not expressly forbidden by this Development Agreement.

### **3. FEES**

#### **3.1 Development Fee and Initial Franchise Fee**

Simultaneously with the execution of this Agreement, Developer shall execute a Franchise Agreement for the first Franchised Restaurant to be developed, and shall pay the initial Franchise Fee for said Franchised Restaurant in the amount of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_). In addition, Developer shall pay an amount equal to TWENTY THOUSAND DOLLARS (\$20,000.00) for each Black Bear Diner restaurant to be developed in the Development Area ("Development Fee"). The amount of the Development Fee is \_\_\_\_\_ THOUSAND DOLLARS (\$\_\_\_\_\_). The total to be paid at the time of execution of this Agreement is \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_). The Development Fee is fully earned by Franchisor and is non-refundable upon execution of this Agreement, but shall be credited against the initial Franchise Fee at the rate of TWENTY THOUSAND DOLLARS (\$20,000.00) for each Franchised Restaurant opened pursuant to this Agreement. The balance of each initial Franchise Fee shall be due and payable at the time of signing the Franchise Agreement for each Franchised Restaurant.

#### **3.2 Other Fees**

For each Franchise Agreement to be executed under the terms of the Development Agreement, Developer, as Franchisee, will be obligated to pay Royalty fees and Marketing Fund Contributions at the percentage rate as provided in the then-current Franchise Agreement for each Franchised Restaurant.

#### **3.3 Guarantee of Performance**

Each present and future: (i) shareholder of a Developer that is a corporation with at least a twenty-five percent (25%) equity interest in Developer; (ii) member of a Developer that is a limited liability company with at least a twenty-five percent (25%) equity interest in Developer;

(iii) partner of a Developer that is a partnership with at least a twenty-five percent (25%) equity interest in Developer; (iv) partner of a Developer that is a limited liability partnership with at least a twenty-five percent (25%) equity interest in Developer; (v) general partner of Developer that is a limited partnership; (vi) or managing member of a Developer that is a limited liability company; shall jointly and severally guarantee Developer's performance of each and every provision of this Agreement by executing the Guarantee in the form attached to this Agreement as Exhibit C.

#### **4. DEVELOPMENT OBLIGATIONS**

##### **4.1 Minimum Development Obligation**

Developer shall be bound by and strictly follow the Development Schedule set forth in Exhibit B of this Development Agreement. By the dates set forth under the Development Schedule, Developer shall establish and operate Black Bear Diner restaurants in the number indicated in the Development Schedule. Developer acknowledges and agrees that the time limits and time frames set forth in and inherent in the Development Schedule, and not those in the Franchise Agreement, shall govern Developer's obligations hereunder. Developer will enter into a separate Franchise Agreement with Franchisor pursuant to this Agreement for each Franchised Restaurant to be developed under this Agreement. Developer shall at all times continuously maintain in operation pursuant to each Franchise Agreement at least the number of Franchised Restaurants set forth in the Development Schedule.

##### **4.2 Exercise of Development Rights**

For each Black Bear Diner restaurant to be developed hereunder, Developer shall submit to Franchisor, in a form specified by Franchisor, a completed site approval package which shall include a site approval form prescribed by Franchisor, an option contract, letter of intent, term sheet, or other evidence satisfactory to Franchisor which describes Developer's favorable prospects for obtaining such site, and such other information or materials as Franchisor may reasonably require. No site shall be deemed approved unless it has been expressly approved in writing by Franchisor. Developer hereby acknowledges and agrees that approval by Franchisor of a site does not constitute an assurance, representation, or warranty of any kind, express or implied, as to the suitability of the site for the Black Bear Diner restaurant or for any other purpose. Approval by Franchisor of the site indicates only that Franchisor believes the site complies with acceptable minimum criteria established by Franchisor solely for its purposes as of the time of the evaluation. Both Franchisee and Franchisor acknowledge that application of criteria that may have been effective with respect to other sites and premises may not be predictive of potential for all sites and that, subsequent to approval by Franchisor of a site, demographic and/or economic factors, such as competition from other similar businesses, included in or excluded from criteria used by Franchisor could change, thereby altering the potential of a site. Such factors are unpredictable and are beyond the control of Franchisor. Franchisor shall not be responsible for the failure of a site approved by Franchisor to meet Developer's expectations as to revenue or operational criteria. Developer further acknowledges and agrees that its acceptance of a franchise for the operation of a Black Bear Diner restaurant at a site is based on its own independent investigation of the suitability of the site. For each Black Bear Diner restaurant to be developed hereunder, Developer shall execute a lease/sublease that complies with the applicable provisions of the Franchise Agreement, or a binding agreement to purchase the site. Franchisee acknowledges and agrees that, notwithstanding the execution of the Franchise Agreement and any applicable exhibits and attachments thereto, the selection and approval of a site that may become a Franchised Location under a Franchise Agreement shall be governed by this Agreement and Franchisor's site review and approval procedures as set forth in

Franchisor's Manual. Within 30 days after receipt of the site approval package by Franchisor, Franchisor shall deliver two (2) copies of the Franchise Agreement along with a copy of its then current franchise disclosure document, if required by law. Immediately upon receipt of the franchise disclosure document, Developer shall return to Franchisor a signed copy of the Receipt Page of the disclosure document. Developer shall execute and deliver as instructed by Franchisor two copies of said Franchise Agreement and the balance of the Franchise Fee therefore as provided in Section 3.1 above.

#### **4.3 Franchisor's Duties**

Franchisor shall furnish to Developer site selection guidelines, including Franchisor's minimum standards for a location for the Black Bear Diner restaurant, and such site selection assistance as Franchisor may deem advisable. In response to Developer's request for site approval, Franchisor shall perform one (1) on-site evaluation of a proposed site for each Black Bear Diner restaurant to be developed hereunder. Franchisor shall perform additional on site evaluations as Franchisor may deem advisable in response to Developer's requests for site approval; provided, however, that Franchisor shall not be required to provide on-site evaluation for any proposed site(s) in addition to Franchisee's first proposed site for each Black Bear Diner restaurant. If additional on-site evaluation is deemed necessary and appropriate by Franchisor (on its own initiative or at Franchisee's request) for any Black Bear Diner restaurant to be established, Developer shall reimburse Franchisor for all reasonable expenses incurred by Franchisor in connection with such on-site evaluation visit(s), including, without limitation, the cost of travel, lodging and meals.

#### **4.4 Conditions Precedent to Franchisor's Obligations**

Franchisor shall execute the Franchise Agreement for each Black Bear Diner restaurant to be developed under this Agreement only if: (i) Developer is in compliance with and is not in default of any requirements and obligations of this Development Agreement or any other agreements between Franchisor and Developer; and (ii) in the case of each then existing Franchise Agreement, Developer, as Franchisee, is in compliance with all and is not in default of any of its obligations under the Franchise Agreement. In order to meet the Development Schedule, the Franchise Agreement must be executed by Developer and Franchisor in accordance with the Development Schedule.

#### **4.5 No Subfranchising by Developer**

Developer shall have no right under this Agreement to sublicense, subfranchise, resell, or otherwise transfer any interest in this Agreement or any Franchise Agreement.

### **5. TERM**

Unless sooner terminated in accordance with the terms of this Agreement, the term of this Agreement and all Development Rights granted hereunder to Developer shall expire on the last day of the last Development Period. At the end of the term of this Development Agreement, the exclusive Development Rights with respect to the Development Area will automatically terminate, and Developer will not have the right to renew or extend the term of this Development Agreement.

## **6. MARKS AND CONFIDENTIAL INFORMATION**

### **6.1 No License Under Development Agreement**

Notwithstanding any provision to the contrary under this Agreement, it is understood and agreed that this Agreement does not grant the Developer any right to use the Marks. The rights to use the Marks are granted only under the Franchise Agreement(s) entered into between Franchisor and Developer for the purpose of operating Black Bear Diner restaurants(s). Developer shall not use any Mark as part of any corporate or trade name or with any prefix, suffix, or other modifying words, terms designs, or symbols, or in any modifying words, terms designs or symbols, or in any modified form, nor may Developer use any Mark, in connection with any business or activity, other than the business conducted by Developer pursuant to Franchise Agreement(s) entered into between Developer and Franchisor, or in any other manner not explicitly authorized in writing by Franchisor.

### **6.2 Confidential Information**

Except as hereinafter provided, Developer shall not, during the term of this Agreement or at any time thereafter, communicate, divulge, or use for the benefit of any other person or entity any Confidential Information which may be communicated to Developer or of which Developer may be apprised by virtue of Developer's activities under this Agreement or any Franchise Agreement with Franchisor. Developer may divulge such Confidential Information only to such of its employees as deemed necessary by Developer, and to other third parties with the prior written approval of Franchisor. All information which Franchisor designates as confidential shall be deemed confidential for purposes of this Agreement, except information which Developer can demonstrate came to its attention by lawful means prior to disclosure thereof by Franchisor, or which, at or after the time of disclosure by Franchisor to Developer, had become or later becomes a part of the public domain, through publication or communication by others. At Franchisor's request, Developer shall require its employees and any other person to whom Developer wishes to disclose any Confidential Information of Franchisor to execute covenants that they will maintain the confidentiality of such information.

## **7. TRANSFERS**

### **7.1 By Franchisor**

This Development Agreement and all rights hereunder can be assigned and transferred by Franchisor and, if so, shall be binding upon and inure to the benefit of Franchisor's successors and assigns; provided, however, that with respect to any assignment resulting in the subsequent performance by the assignee of the functions of Franchisor, the assignee shall assume the obligations of Franchisor hereunder and Franchisor shall have no liability for the performance of any obligations contained in this Agreement after the effective date of such transfer or assignment.

### **7.2 By Developer**

**7.2.1** If Developer is a corporation, limited liability company, partnership, or limited liability partnership, each principal of Developer with at least a ten percent (10%) equity ownership interest in Developer ("Principal"), and the interest of each Principal in Developer, is identified in Exhibit C hereto. Developer represents and warrants that its owners are as set forth on Exhibit C attached to this Agreement, and covenants that it will not permit the identity of such

owners, or their respective interests in Developer, to change without complying with this Agreement. Franchisor shall have the right to designate any person or entity which owns a direct or indirect interest in Developer as a Principal, and Exhibit C shall be so amended automatically upon notice thereof to Developer. Throughout the term of this Agreement, Franchisor shall have a continuing right to designate as a Principal any person or entity that owns a direct or indirect interest in Developer.

**7.2.2** This Agreement has been entered into by Franchisor in reliance upon and in consideration of the individual or collective character, reputation, skill, attitude, business ability, and financial capacity of Developer or, if applicable, its Principals who will actively and substantially participate in the development, ownership and operation of the Black Bear Diner restaurants. Accordingly, except as otherwise may be permitted herein, neither Developer nor any of Developer's Principals shall directly or indirectly sell, assign, transfer, convey, give away, pledge, mortgage, or otherwise encumber any direct or indirect interest in this Agreement or in all or substantially all of Developer's assets, voluntarily or involuntarily, in whole or in part, by operation of law or otherwise (a "Transfer"), without Franchisor's prior written consent, which consent may be withheld for any reason whatsoever in Franchisor's sole subjective judgment.

**7.2.3** If Developer is a business entity, each of the following shall be deemed to be a Transfer of this Agreement: (i) the sale, assignment, transfer, conveyance, gift, pledge, mortgage, or other encumbrance of 10% or more in the aggregate, whether in one or more transactions, of the assets, capital stock, membership interests or voting power of Developer, by operation of law or otherwise; (ii) the issuance of any securities by Developer which itself or in combination with any other transaction(s) results in the Principals existing as of the Effective Date, owning 75% or less of the outstanding shares, membership interests or voting power of Developer as constituted as of the date hereof; (iii) if Developer is a partnership, the withdrawal, death or legal incapacity of a general partner or limited partner owning 10% or more of the voting power, property, profits or losses, or partnership interests of the partnership, or the admission of any additional general partner or the transfer by any general partner of any of its partnership rights in the partnership; (iv) the death or legal incapacity of any Principal owning 10% or more of the capital stock, voting power, or partnership rights of Developer; and (v) any merger, stock redemption, consolidation, reorganization, recapitalization or other transfer control of the Developer, however effected.

**7.2.4** Developer shall not in any event have the right to pledge, encumber, hypothecate or otherwise give any third party a security interest in this Agreement in any manner whatsoever without the express prior written permission of Franchisor, which permission may be withheld for any reason whatsoever in Franchisor's sole subjective judgment.

### **7.3 Public or Private Securities Offering**

Should Developer at some time in the future desire to make either a public or a private offering of its securities, prior to such offering and sale, and prior to the public release of any statements, data or other information of any kind relating to the proposed offering of Developer's securities, Developer shall secure the written approval of Franchisor, which approval shall not be unreasonably withheld. Developer shall secure Franchisor's prior written approval of any and all press releases, news releases and any and all other publicity, the primary purpose of which is in the public interest in its offering. Only to the extent that written approval has been given by Franchisor may Developer proceed to file, publish, issue and release and make public any data, material or information regarding its securities offering or the Franchised Restaurant. It is specifically understood that any review by Franchisor is solely for its own information, and its

approval shall not constitute any kind of authorization, acceptance, agreement, endorsement, approval or ratification of the same, either express or implied; and Developer shall make no oral or written notice of any kind whatsoever indicating or implying that Franchisor and/or related corporations or persons have any interest in or relationship whatsoever to the proposed offering other than acting as Franchisor. Developer agrees to indemnify and hold harmless Franchisor and its subsidiaries, and their owners, directors, officers, members, employees, successors and assigns, from all claims, demands, costs, fees, charges, liabilities or expenses (including attorneys' fees) of any kind whatsoever arising from Developer's offering or information published or communicated and any actions taken with regard thereto.

#### **7.4 Franchisor's Right of First Refusal**

If Developer or its owners shall at any time determine to sell the Development Rights under this Development Agreement or any of their respective ownership interests in Developer, or any of Developer's assets (except in the ordinary course of business), Developer or its owners shall obtain a bona fide, executed written offer from a responsible and fully disclosed purchaser and shall submit an exact copy of such offer to Franchisor, which shall, for a period of thirty (30) days from the date of delivery of such offer, have the right, exercisable by written notice to Developer to purchase such interests for the price and on the terms and conditions contained in such offer, provided that Franchisor may substitute cash for any form of payment proposed in such offer and that Franchisor shall have not less than sixty (60) days to prepare for closing. If Franchisor does not exercise this right of first refusal, Developer may complete the sale of such interest, subject to Franchisor's approval as provided in this Section, provided that, if such sale is not completed within ninety (90) days after delivery of such offer to Franchisor, Franchisor shall again have the right of first refusal provided herein.

### **8. DEFAULT AND TERMINATION**

#### **8.1 Termination Without Opportunity to Cure**

Franchisor shall have the right to terminate this Development Agreement by delivering a notice to Developer stating that Franchisor elects to terminate this Development Agreement as a result of any of the breaches set forth below. Such termination shall be effective upon delivery of such notice of termination if:

**8.1.1** Developer becomes insolvent or makes a general assignment for the benefit of creditors; or if a petition in bankruptcy is filed by Developer or such a petition is filed against and not opposed by Developer; or if Developer is adjudicated a bankrupt or insolvent; or if a bill in equity or other proceeding for the appointment of a receiver of Developer or other custodian for Developer's business or assets is filed and consented to by Developer; or if a receiver or other custodian (permanent or temporary) of Developer's assets or property, or any part thereof, is appointed by any court of competent jurisdiction; or if proceedings for a composition with creditors under any state or federal law should be instituted by or against Developer; or if a final judgment remains unsatisfied or of record for thirty (30) days or longer (unless unappealed or a supersedeas bond is filed); or if Developer is dissolved; or if execution is levied against Developer's business or property; or if suit to foreclose any lien or mortgage against the premises or equipment of any Black Bear Diner restaurant developed hereunder is instituted against Developer and not dismissed within thirty (30) days; or if the real or personal property of Developer shall be sold after levy thereupon by any sheriff, marshal, or constable.

**8.1.2** Developer makes or attempts to make an unauthorized assignment or transfer of this Development Agreement or an ownership interest in Developer;

**8.1.3** Developer has made any material misrepresentation or omission in its application for the Development Rights conferred by this Development Agreement or is convicted of or pleads no contest to a felony or other crime or offense that may adversely affect the goodwill associated with the Marks;

**8.1.4** Developer makes any unauthorized use of the Marks or unauthorized use or disclosure of the Confidential Information;

**8.1.5** Franchisor has delivered a notice of termination of a Franchise Agreement in accordance with its terms and conditions or Developer has terminated a Franchise Agreement without cause; or

**8.1.6** Developer fails to meet the Development Schedule set forth in Exhibit B.

## **8.2 Termination With Opportunity to Cure**

Except as otherwise provided in Section 8.1, if Developer fails to comply with any material term and condition of this Agreement, or fails to comply with the terms and conditions of any Franchise Agreement or other development agreement between the Developer (or a person or entity affiliated with or controlled by the Developer) and Franchisor, such action shall constitute a default under this Agreement. Upon the occurrence of any such default, Franchisor may terminate this Agreement by giving written notice of termination stating the nature of such default to Developer at least thirty (30) days prior to the effective date of termination; provided, however, that Developer may avoid termination by immediately initiating a remedy to cure such default, curing it to Franchisor's satisfaction, and by promptly providing proof thereof to Franchisor within the thirty (30) day period (or such longer period as applicable law may require). If any such default is not cured within the specified time (or such longer period as applicable law may require), this Agreement and all rights granted hereunder (including but not limited to, the right to develop any new Black Bear Diner restaurants) will terminate without further notice to Developer, effective immediately upon the expiration of the thirty (30) day period (or such longer period as applicable law may require).

## **9. RIGHTS AND DUTIES ON TERMINATION OR EXPIRATION**

### **9.1 Loss of Development Rights**

Upon termination of this Development Agreement, the Development Rights granted to Developer under this Agreement shall automatically terminate. Developer shall have no additional rights to establish or operate any Black Bear Diner restaurant for which a Franchise Agreement has not been executed by Franchisor and Developer. Thereafter, Franchisor shall be entitled to establish, and to license others to establish, Black Bear Diner restaurants in the Development Area (except as may be otherwise provided under any Franchise Agreement that has been executed between Franchisor and Developer). No default under this Agreement shall constitute a default under any Franchise Agreement between the parties hereto, except to the extent that any default under this Development Agreement constitutes a default under any Franchise Agreement in accordance with the terms of the Franchise Agreement. Notwithstanding the above, the terms and conditions of each Franchise Agreement must be complied with by the

Developer and shall control in determining whether any default exists under such Franchise Agreement.

### **9.2 Amounts Owed to Franchisor**

Developer shall immediately pay to Franchisor upon termination or expiration of the Development Agreement any amounts owed by Developer to Franchisor which are then unpaid plus interest due.

### **9.3 Confidential Information**

Developer agrees that upon termination or expiration of this Agreement, it and all of its employees, agents or other representatives will immediately cease to use and will maintain the absolute confidentiality of any Confidential Information disclosed or otherwise learned or acquired by Developer and will not use such Confidential Information in any business or otherwise. In addition, Developer shall comply with the covenants not to compete contained in Section 10.

## **10. NON-COMPETITION**

### **10.1 In Term**

Developer specifically acknowledges that, pursuant to this Agreement, Developer will receive valuable specialized training and confidential information, including, without limitation, information regarding the operational, sales, promotional, and marketing methods and techniques of Franchisor and the System. Developer covenants that during the term of this Agreement, except as otherwise approved in writing by Franchisor, Developer shall not, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, partnership corporation or entity:

**10.1.1** Divert or attempt to divert any business or customer of the Black Bear Diner restaurant or of any other Black Bear Diner restaurant to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with Franchisor's Marks and the System.

**10.1.2** Own, maintain, operate, engage in, or have any interest in any restaurant providing products and services similar to those provided by a Black Bear Diner restaurant.

### **10.2 Post-Term**

Developer covenants that, except as otherwise approved in writing by Franchisor, Developer shall not, for a period of two (2) years after the expiration or termination of this Agreement, regardless of the cause of termination, either directly or indirectly, for itself, or through, on behalf of or in conjunction with any person, persons, partnership, corporation or limited liability company or other entity: own an interest in, manage, operate, act as a consultant with respect to the management or operation of, or (in the same or a similar capacity as the capacity in which Developer has been engaged in such a business pursuant to this Agreement) engage in any restaurant providing products and services similar to those provided by a Black Bear Diner restaurant within the Development Area or within ten (10) miles from the location of

any Black Bear Diner restaurant as of the date of expiration or termination of this Agreement, without Franchisor's written consent. This Section 10.2 shall not apply to ownership by Developer of less than five percent (5%) beneficial interest in the outstanding equity securities of any publicly-held corporation. As used in this Agreement, the term "publicly-held corporation" shall be deemed to refer to a corporation which has securities that have been registered under the federal Securities Exchange Act of 1934.

### **10.3 Modification of Covenants**

Each of the foregoing covenants shall be construed as independent of any other covenant or provision of this Agreement. If all or any portion of a covenant in this Section 10 is held unreasonable, then it shall be amended to provide for limitations upon post-term competition to the maximum extent provided and permitted by law.

### **10.4 Injunctive Relief**

As any breach by Developer of any of the covenants contained in this section would result in irreparable injury to Franchisor, and as the damages arising out of any such breach would be difficult to ascertain, Developer agrees that, in addition to all other remedies provided by law or in equity, Franchisor shall be entitled to an injunction prohibiting any conduct by Developer in violation of this Section 10.

## **11. INDEPENDENT CONTRACTOR AND INDEMNIFICATION**

### **11.1 Independent Contractor**

It is understood and agreed by the parties hereto that this Agreement does not create a fiduciary relationship, that nothing in this Agreement is intended to constitute either party an agent, legal representative, joint venturer, partner or employee of the other for any purpose whatsoever. Each party to this Development Agreement is an independent contractor, and neither shall be responsible for the debts or other liabilities incurred by the other. Developer shall hold itself out to the public to be an independent contractor operating pursuant to this Agreement. Developer agrees to take such actions as shall be necessary to that end.

### **11.2 Indemnification**

Developer agrees to indemnify Franchisor and its subsidiaries, affiliates, stockholders, directors, officers, employees, agents and assignees against and to reimburse them for all such obligations, damages, and taxes for which they are held liable and for all costs reasonably incurred by them in the defense of any such claim brought against them or in any action in which they are named as a party, including without limitation reasonable attorneys' and expert witness fees, cost of investigation and proof of facts, court costs, other litigation expenses, and travel and living expenses. Franchisor shall have the right to defend any such claim against it. The indemnities and assumptions of liabilities and obligations herein shall continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement.



#### **12.4 Approvals**

Whenever this Agreement requires the prior approval or consent of Franchisor, Developer shall make a timely written request to Franchisor therefor and, except as otherwise provided herein, any approval or consent granted shall be effective only if in writing. Franchisor makes no warranties or guarantees upon which Developer may rely and assumes no liability or obligation to Developer or any third party to which it would not otherwise be subject, by providing any waiver, approval, advice, consent or services to Developer in connection with this Agreement, or by reason of any neglect, delay or denial of any request therefor.

#### **12.5 Entire Agreement**

This Agreement, any exhibit attached hereto and the documents referred to herein, shall be construed together and constitute the entire, full and complete agreement between Franchisor and Developer concerning the subject matter hereof, and shall supersede all prior agreements. No other representation has induced Developer to execute this Agreement and there are no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein, which are of any force or effect with reference to this Agreement or otherwise. No amendment, change or variance from this Agreement shall be binding on either party unless executed in writing by both parties.

#### **12.6 Superiority of Franchise Agreement**

For each Franchised Restaurant developed in the Development Area, a separate Franchise Agreement shall be executed and any individual franchise fee as prescribed by Franchisor shall be paid to Franchisor. It is understood and agreed by Developer that any and all Franchise Agreements executed in connection with an individual Franchised Restaurant within the Development Area are independent of this Agreement. The continued existence of any such Franchise Agreement shall not depend on the continuing existence of this Agreement. If any conflict shall arise in connection with this Development Agreement and any such Franchise Agreement, the latter shall have precedence and superiority over the former.

#### **12.7 Severability**

Each paragraph, part, term and/or provision of this Agreement shall be considered severable, and if, for any reason, any paragraph, part, term and/or provision herein is determined to be invalid and contrary to, or in conflict with, any existing or future law or regulation, such shall not impair the operation of or affect the remaining portions, paragraphs, parts, terms and/or provisions of this Agreement, and the latter shall continue to be given full force and effect and bind the parties hereto; and said invalid paragraphs, parts, terms and/or provisions shall be deemed not part of this Agreement; provided, however, that if Franchisor determines that said finding of illegality adversely affects the basic consideration of this Agreement, Franchisor may, at its option, terminate this Agreement. Anything to the contrary herein notwithstanding, nothing in this Agreement is intended, nor shall be deemed, to confer upon any person or legal entity other than Franchisor or Developer and such of their respective successors and assigns as may be contemplated by this Agreement, any rights or remedies under or by reason of this Agreement. Developer expressly shall be bound by any promise or covenant imposing the maximum duty permitted by law which is contained within the terms of any provision hereof, as though it were separately stated in and made a part of this Agreement, that may result from striking from any of the provisions hereof any portion or portions which a court may hold to be unreasonable and

unenforceable in a final decision to which Franchisor is a party, or from reducing the scope of any promise or covenant to the extent required to comply with such a court order.

### **12.8 Construction**

All captions herein are intended solely for the convenience of the parties, and none shall be deemed to affect the meaning or construction of any provision hereof.

### **12.9 Continuing Obligations**

All obligations of Franchisor and Developer under this Development Agreement which expressly or by their nature survive the expiration or termination of this Development Agreement shall continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Development Agreement and until they are satisfied in full or by their nature expire.

### **12.10 Timing**

Time is of the essence of this Agreement. It will be a material breach of this Agreement to fail to perform any obligation within the time required or permitted by this Agreement. All references to time mean the time at Franchisor's office in Redding, California.

## **13. DISPUTE RESOLUTION**

### **13.1 Choice Of Law**

This Agreement and the rights of the parties will not take effect unless and until this Agreement is accepted and signed by Franchisor. Except to the extent this Agreement or any particular dispute is governed by the U.S. Trademark Act of 1946 or other federal law, this Agreement shall be governed by and construed in accordance with the laws of the State of California (without reference to its conflict of laws principles), excluding any law regulating the sale of franchises or governing the relationship between a franchisor and franchisee (developer), unless the jurisdictional requirements of such laws are met independently without reference to this Section; provided, however, that if the covenants in Section 10 of this Agreement would not be enforceable under the laws of California, and the Development Area is located outside of California, then such covenants shall be interpreted and construed under the laws of the state in which the Development Area is located.

### **13.2 Dispute Resolution**

The parties pledge to attempt to resolve any dispute between Franchisor and Franchisee or either party's affiliates arising under, out of, in connection with or in relation to this Agreement, the parties' relationship, or any Black Bear Diner restaurant in connection with this Agreement in accordance with the following process:

**Face-to-Face Meeting.** The parties pledge to attempt first to resolve any dispute at a face-to-face meeting. The face-to-face meeting shall be held at a neutral location at or near Franchisor's headquarters within 30 days after either Franchisee or Franchisor gives written notice to the other party proposing such a meeting. If such face-to-face meeting fails to result in a satisfactory resolution of the dispute then the parties agree to proceed to mediation.

**Mediation.** If the dispute remains unresolved after the face-to-face meeting, the parties agree to submit the dispute to non-binding mediation conducted in accordance with the Commercial Mediation Rules of the American Arbitration Association (“AAA”), unless the parties agree on alternative rules. The mediator must be a neutral person agreed upon by the parties and experienced in franchising. Any party may be represented by counsel and persons authorized to settle the dispute must attend any mediation session. The fees and expenses of the mediator shall be shared equally by the parties. The entire mediation process shall be confidential and the conduct, statements, promises, offers, views and opinions of the mediator and the parties shall not be discoverable or admissible in any legal proceeding for any purpose; provided, however, that evidence which is otherwise discoverable or admissible shall not be excluded from discovery or admission as a result of its use in the mediation. The parties agree to participate in the mediation proceedings in good faith with the intention of resolving the dispute if at all possible within 30 days of the notice from the party seeking to initiate the mediation procedures.

**Arbitration.** This Agreement is a written agreement evidencing a transaction involving commerce and is, therefore, subject to the terms and provisions of the Federal Arbitration Act, Title 9 of the United States Code. All disputes arising out of or relating to this Agreement, or to any other agreements between the parties or with regard to interpretation, formation or breach of this or any other agreement between the parties, shall be settled by binding arbitration conducted in Redding, California, or such place as may be mutually agreeable to the parties, in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. or at such other place as may be mutually agreeable to the parties. The decision of the arbitrators will be final and binding on all parties to the dispute; however, the arbitrators may not under any circumstances: (i) stay the effectiveness of any pending termination of this Agreement; (ii) assess punitive or exemplary damages; or (iii) make any award which extends, modifies or suspends any lawful term of this Agreement or any reasonable standard of business performance. A judgment may be entered upon the arbitration award by any state or federal court in California or the state within which the Development Area is located. The prevailing party in any action or proceeding arising under, out of, in connection with, or in relation to this Agreement or the Black Bear Diner restaurant conducted pursuant to this Agreement shall be entitled to recover its reasonable attorneys’ fees and costs.

**DEVELOPER EXPRESSLY ACKNOWLEDGES THAT DEVELOPER HAS READ THE TERMS OF THIS BINDING ARBITRATION PROVISION AND SPECIFICALLY AFFIRMS THAT THIS PROVISION IS ENTERED INTO WILLINGLY AND VOLUNTARILY AND WITHOUT ANY FRAUD, DURESS OR UNDUE INFLUENCE ON THE PART OF FRANCHISOR OR ANY OF FRANCHISOR’S AGENTS OR EMPLOYEES.**

### **13.3 Consent to Jurisdiction**

The parties agree that any action brought by ~~Franchisee~~Developer against Franchisor in any court, whether federal or state, shall be brought within such state and in the judicial district in which Franchisor has its principal place of business. Any action brought by Franchisor against ~~Franchisee~~Developer in any court, whether federal or state, may be brought within the state and judicial district in which Franchisor has its principal place of business. The parties do hereby waive all questions of personal jurisdiction or venue for the purposes of carrying out this provision.

### **13.4 Cumulative Rights And Remedies**

No right or remedy conferred upon or reserved to Franchisor or Developer by this Agreement is intended to be, nor shall be deemed, exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be in addition to every other right or remedy. Nothing herein contained shall bar Franchisor's right to obtain injunctive relief against threatened conduct that shall cause it loss or damages including obtaining restraining orders, preliminary and permanent injunctions.

### **13.5 Limitations of Claims**

Any claim in connection with this Agreement or any related agreement will be barred unless an arbitration or an action for a claim that cannot be the subject of arbitration is commenced within one (1) year from the date on which Developer or Franchisor knew or should have known, in the exercise of reasonable diligence, of the facts giving rise to or the claim.

### **13.6 Waiver of Jury Trial**

**FRANCHISOR AND DEVELOPER IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM, WHETHER AT LAW OR IN EQUITY, BROUGHT BY EITHER OF THEM AGAINST THE OTHER, WHETHER OR NOT THERE ARE OTHER PARTIES IN SUCH ACTION OR PROCEEDING.**

## **14. ACKNOWLEDGMENTS**

### **14.1 Receipt of Agreement**

Developer represents and acknowledges that it has received, read and understood this Agreement and Franchisor's franchise disclosure document; and that Franchisor has accorded Developer ample time and opportunity to consult with advisors of its own choosing about the potential benefits and risks of entering into this Agreement.

### **14.2 Receipt of Franchise Disclosure Document**

Developer acknowledges that it received a complete copy of this Agreement and the Exhibits hereto, with all of the blank lines herein filled in, prior to the date on which this Agreement was executed, and with sufficient time within which to review the Agreement with advisors of its choosing. Developer further acknowledges that it received the franchise disclosure document required by the Federal Trade Commission Franchise Rule, 16 C.F.R. Part 436, at least 14 days prior to the date on which this Agreement was executed.

### **14.3 Business Risk**

Developer acknowledges that it has conducted an independent investigation of the business contemplated hereunder, recognizes that the business venture contemplated by this Agreement involves business risks, and that its success will be largely dependent upon the ability of Developer and if a corporation, partnership, or limited liability company, its owners as independent businesspersons. Franchisor expressly disclaims the making of, and Developer

acknowledges that it has not received, any warranty or guarantee, express or implied, as to the potential volume, profits, or success of the business venture contemplated by this Agreement.

#### **14.4 True and Accurate Information**

Developer affirms that all information set forth in any and all applications, financial statements and submissions to Franchisor is true, complete and accurate in all respects, with Developer expressly acknowledging that Franchisor is relying upon the truthfulness, completeness and accuracy of such information. Each party represents and warrants to the others that there are no other agreements, court orders, or any other legal obligations that would preclude or in any manner restrict such party from: (a) negotiating and entering into this Agreement; (b) exercising its rights under this Agreement; and/or (c) fulfilling its responsibilities under this Agreement.

#### **14.5 No Representations**

Developer acknowledges that the success of the business venture contemplated under this Agreement is speculative and depends, to a large extent, upon Developer's ability as an independent businessperson, his/her active participation in the daily affairs of the business, market conditions, area competition, availability of product, quality of services provided as well as other factors. Franchisor does not make any representation or warranty express or implied as to the potential success of the business venture contemplated hereby, and Developer acknowledges that it has not received nor relied upon, any such representation or warranty.

IN WITNESS WHEREOF, the parties hereto have duly executed, sealed, and delivered this Agreement in multiple copies on the day and year first above written.

**FRANCHISOR:**

**BLACK BEAR DINERS, INC.**

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

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

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

**DEVELOPER:**

If Developer is an individual:

Individually:

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

Individually:

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

If Developer is a corporation, limited liability company or other entity:

\_\_\_\_\_  
(Name of Developer)

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

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

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

**EXHIBIT A TO THE AREA DEVELOPMENT AGREEMENT**

**DESCRIPTION OF DEVELOPMENT AREA**

**FRANCHISOR:**

**BLACK BEAR DINERS, INC.**

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

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

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

**DEVELOPER:**

If Developer is an individual:

Individually:

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

Individually:

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

If Developer is a corporation, limited liability  
company or other entity:

\_\_\_\_\_  
(Name of Developer)

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

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

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



**EXHIBIT C TO THE AREA DEVELOPMENT AGREEMENT**

**GUARANTY AND ASSUMPTION OF OBLIGATIONS**

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

In consideration of, and as an inducement to, the execution of that certain Area Development Agreement of even date herewith ("Agreement") by Black Bear Diners, Inc. ("Franchisor"), each of the undersigned hereby personally and unconditionally (1) guarantees to Franchisor, and its successors and assigns, for the term of the Agreement and thereafter as provided in the Agreement, that \_\_\_\_\_ ("Developer") shall punctually pay and perform each and every undertaking, agreement and covenant set forth in the Agreement; and (2) shall personally be bound by, and personally liable for the breach of each and every provision in 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. Each of the undersigned waives: (1) acceptance and notice of acceptance by Franchisor of the foregoing undertakings; (2) notice of demand for payment of any indebtedness or non-performance of any obligations hereby guaranteed; (3) protest and notice of default to any party with respect to the indebtedness or non-performance of any obligations hereby guaranteed; (4) any right he may have to require that an action be brought against Developer or any other person as a condition of liability; and (5) any and all other notices and legal or equitable defenses to which he may be entitled.

Each of the undersigned consents and agrees that: (1) his direct and immediate liability under this guaranty shall be joint and several; (2) he shall render any payment or performance required under the Agreement upon demand if Developer fails or refuses punctually to do so; (3) such liability shall not be contingent or conditioned upon pursuit by Franchisor of any remedies against Developer or any other person; and (4) such liability shall 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, none of which shall in any way modify or amend this guaranty, which shall be continuing and irrevocable during the term of the Agreement.

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

GUARANTOR(S)

PERCENTAGE OF OWNERSHIP  
IN DEVELOPER

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**EXHIBIT D TO THE AREA  
DEVELOPMENT AGREEMENT**

**LIST OF PRINCIPALS**

<b>Name of Principal</b>	<b>Address and Telephone Number</b>	<b>Percent Interest</b>

**EXHIBIT E TO THE DISCLOSURE DOCUMENT**

**CONTENTS OF MANUAL**

<b>SECTION</b>	<b>SUBJECT</b>	<b>NO. OF PAGES</b>
Preface	Manual Overview	10
A.	Introduction	22
B.	Establishing a Black Bear Diner	75
C.	Managing a Black Bear Diner	38
D.	Personnel	50
E.	Operational Procedures	46
F.	Marketing	37
<b>TOTAL NO. OF PAGES</b>		<b>278</b>

**EXHIBIT F TO THE DISCLOSURE DOCUMENT**

**BLACK BEAR DINERS, INC.**

**FINANCIAL STATEMENTS**

**BLACK BEAR DINERS, INC. AND SUBSIDIARY**

Consolidated Financial Statements  
And Supplemental Schedules

December 31, 2012 and 2011

(With Independent Auditors' Report Thereon)

**BLACK BEAR DINERS, INC AND SUBSIDIARY**

Consolidated Financial Statements  
And Supplemental Schedules

December 31, 2012 and 2011

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## KOBAYASHI, KANETOKU, DOI, LUM & YASUDA CPAs LLC

745 Fort Street, Suite 1915 • Honolulu, Hawaii 96813 • Tel (808) 521-3962 • Fax (808) 531-3217  
410 Kilani Avenue, Suite 202 • Wahiawa, Hawaii 96786 • Tel (808) 622-4188 • Fax (808) 621-2438

### **Independent Auditors' Report**

To the Board of Directors and  
Stockholders of Black Bear Diners, Inc.  
Honolulu, Hawaii

We have audited the accompanying consolidated financial statements of Black Bear Diners, Inc. (a California S-corporation) and subsidiary, which comprise the consolidated statements of financial position as of December 31, 2012 and 2011, and the related consolidated statements of income and retained earnings, and cash flows for the years then ended, and the related notes to the consolidated financial statements.

#### ***Management's Responsibility for the Financial Statements***

Management is responsible for the preparation and fair presentation of these consolidated financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

#### ***Auditors' Responsibility***

Our responsibility is to express an opinion on these consolidated financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the 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 significant accounting estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

***Opinion***

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Black Bear Diners, Inc. and subsidiary as of December 31, 2012 and 2011, and the results of their operations and their cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

***Report on Consolidating Information***

Our audit was conducted for the purpose of forming an opinion on the consolidated financial statements as a whole. The consolidating information in Schedules I and II is presented for purposes of additional analysis of the consolidated financial statements rather than to present the financial position, and results of operations of the individual companies, and it is not a required part of the consolidated financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the consolidated financial statements. The consolidating information has been subjected to the auditing procedures applied in the audit of the consolidated financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the consolidated financial statements or to the consolidated financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the consolidating information is fairly stated in all material respects in relation to the consolidated financial statements as a whole.

*Kohayashi, Kanetsugu, J-i, CPA # Yasuda CPAs LLC*

Wahiawa, Hawaii  
March 18, 2013

**BLACK BEAR DINERS, INC. AND SUBSIDIARY**  
Consolidated Statements of Financial Position  
December 31, 2012 and 2011

	2012	2011
<b>Assets</b>		
Current assets:		
Cash (\$148,962 restricted for marketing fund)	\$ 937,882	\$ 1,221,224
Accounts receivable	98,601	10,912
Inventory	45,634	30,180
Prepaid expenses	17,812	18,006
Total current assets	1,099,929	1,280,322
Property, plant and equipment, net of accumulated depreciation of \$307,251 and \$196,063 in 2012 and 2011, respectively	1,667,922	821,808
Other assets	60,890	17,241
Total assets	\$ 2,828,741	\$ 2,119,371
<b>Liabilities and Stockholders' Equity</b>		
Current liabilities:		
Accounts payable	\$ 543,492	\$ 251,211
Gift cards payable	257,248	325,305
Payable to URSA Minor, Inc.	54,891	52,045
Accrued expenses	180,939	152,144
Franchise deposits	130,000	70,000
Note payable - current portion	197,469	102,654
Liability - Marketing fund	88,518	-
Other liabilities	10,468	32,799
Total current liabilities	1,463,025	986,158
Long-term liabilities:		
Notes payable, net of current portion	646,601	351,143
Total liabilities	2,109,626	1,337,301
Stockholders' equity:		
Common stock - stated value \$1,000 per share; 1,000 shares authorized, 108 shares issued and outstanding	108,000	108,000
Additional paid-in capital	32,000	32,000
Retained earnings	579,115	642,070
Total stockholders' equity	719,115	782,070
Total liabilities and stockholders' equity	\$ 2,828,741	\$ 2,119,371

See accompanying notes to consolidated financial statements

**BLACK BEAR DINERS, INC. AND SUBSIDIARY**  
Consolidated Statements of Income and Retained Earnings  
Years ended December 31, 2012 and 2011

	2012	2011
Food sales	\$ 5,413,231	\$ 3,924,020
Royalty income	3,445,672	2,845,161
Franchise fees	115,000	340,000
Merchandise sales	30,832	15,430
Other income	238,308	380,828
Cost of goods sold	9,243,043	7,505,439
	2,074,741	1,557,845
Gross profit	7,168,302	5,947,594
Operating expenses:		
Salaries and wages including payroll taxes	3,600,930	2,575,621
General and administration	1,268,385	784,700
Sales and marketing expenses	738,327	595,048
Rent	316,913	234,065
Advertising and production costs	203,990	229,664
Consulting	203,344	141,743
Professional fees	198,323	194,944
Depreciation	111,188	84,999
Taxes and licenses	68,964	72,606
Total operating expenses	6,710,364	4,913,390
Income from operations	457,938	1,034,204
Interest expense	(29,225)	(22,348)
Net income	428,713	1,011,856
Retained earnings, beginning of year	642,070	278,214
Distributions	(491,668)	(648,000)
Retained earnings, end of year	\$ 579,115	\$ 642,070

See accompanying notes to consolidated financial statements

**BLACK BEAR DINERS, INC. AND SUBSIDIARY**  
Consolidated Statements of Cash Flows  
Years ended December 31, 2012 and 2011

	2012	2011
Cash flows provided by operating activities:		
Net income	\$ 428,713	\$ 1,011,856
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation	111,188	84,999
Changes in assets and liabilities:		
(Increase) decrease in:		
Accounts receivable	(87,689)	127,603
Inventory	(15,454)	2,834
Prepaid expenses	194	6,813
Other assets	(43,649)	-
Increase (decrease) in:		
Accounts payable and others	227,070	134,423
Accrued expenses	28,795	(1,708)
Franchisee deposits	60,000	16,000
Liability - Marketing fund	88,518	-
Other liabilities	(22,331)	24,209
Net cash provided by operating activities	775,355	1,407,029
Cash flows from investing activities:		
Purchases of property and equipment	(957,302)	(44,476)
Cash flows from financing activities:		
Payments on debt	(109,727)	(96,203)
Distributions to stockholders	(491,668)	(648,000)
Proceeds from debt	500,000	-
Net cash used in financing activities	(101,395)	(744,203)
Net increase (decrease) in cash	(283,342)	618,350
Cash, beginning of year	1,221,224	602,874
Cash, end of year	\$ 937,882	\$ 1,221,224
Supplemental disclosures of cash flow information:		
Interest paid	\$ 29,225	\$ 22,348

See accompanying notes to consolidated financial statements

**BLACK BEAR DINER, INC. AND SUBSIDIARY**

Notes to Consolidated Financial Statements

December 31, 2012 and 2011

**Note A – Description of the Business and Summary of Significant Accounting Policies**

*Nature of Activities*

Black Bear Diners, Inc. (the Company) was incorporated on January 2002 in the State of California. The Company franchises family dining restaurants under the name Black Bear Diner. As of December 31, 2012 there were 55 Black Bear Diner restaurants (40 operated by franchisees and 15 operated by affiliates of the Company).

Bear Tracks, Inc. (the Subsidiary) was established in March 2009 as a wholly owned subsidiary of Black Bear Diners, Inc. to own and operate restaurants under the Black Bear Diner brand. At December 31, 2012, the Subsidiary had three operating restaurants, one located in Davis, California, one in Modesto, California, and one in Signal Hill, California. There is also a Torrance, California location scheduled to open in early 2013.

*Basis of Accounting*

The financial statements of Black Bear Diners, Inc. have been prepared on the accrual basis of accounting.

*Principles of Consolidation*

The accompanying consolidated financial statements include the accounts of Black Bear Diners, Inc. and its wholly owned subsidiary, Bear Tracks, Inc., with all significant balances and transactions between the two entities eliminated.

*Accounts Receivable*

Accounts receivable is stated at the amount management expects to collect from outstanding balances. Management provides for probable uncollectible amounts through a provision for bad debt expense and an adjustment to a valuation allowance based on its assessment of the current status of individual accounts. Balances still outstanding after management has used reasonable collection efforts are written off through a charge to the valuation allowance and a credit to trade accounts receivable.

*Inventories*

Inventories are stated at the lower of cost or market. Cost is determined by the first-in, first-out method, and market represents the lower of replacement cost or estimated net realizable value. Inventory primarily consists of food of the Subsidiary.

**BLACK BEAR DINER, INC. AND SUBSIDIARY**

Notes to Consolidated Financial Statements

December 31, 2012 and 2011

***Property and Equipment***

Property and equipment are carried at cost. The Company and the Subsidiary follow the practice of capitalizing all expenditures for property and equipment in excess of \$1,500. Depreciation of property and equipment is provided using the straight-line method over the estimated useful lives of the respective assets, as follows:

	Range of estimated useful lives
Equipment	5-10 years
Signs	13-25 years
Leasehold improvements	12-25 years

Repairs and maintenance costs are charged directly to income, and expenditures for major improvements, revisions and alterations to existing facilities are capitalized. Cost and accumulated depreciation of property and equipment retired or otherwise disposed of are eliminated from the accounts at the time of retirement or sale, and profit or loss, if any, is credited or charged to income.

***Gift Cards***

The Company has gift card service agreements to receive and hold the proceeds of gift card sales until a customer uses the card to purchase merchandise or services from a participating franchisee. When a customer uses a gift card to purchase merchandise or services from a participating franchisee, the participating franchisee is obligated to accept the gift card as payment for its goods or services and the Company is obligated to reimburse the participating franchisee for the sales price of the goods or services purchased with the gift card. The Company is primarily liable to the customer for the value of the gift card until the card is redeemed. When the gift cards are issued, a liability is recorded by the Company. When the gift cards are redeemed and the participating franchisee is reimbursed there is an offset of the liability account and payment to the participating franchisee. Revenues (and related expenses) are recognized by the participating franchisee in exchange for goods and services.

***Revenue Recognition***

Included in Company's revenues are sales by Company-operated restaurants and fees from restaurants operated by franchisees and affiliates. The Company grants franchises to operators who in turn pay initial fees and royalties for each restaurant. The initial franchise fee is recorded as income when each restaurant commences operations. Franchise royalties, which are based on a percentage of monthly sales, are recognized as income on the accrual basis. In the event that a franchise experiences payment difficulties or, in management's opinion, may be susceptible to such difficulties, franchise royalties may be recognized as income on the cash basis.

## **BLACK BEAR DINER, INC. AND SUBSIDIARY**

Notes to Consolidated Financial Statements

December 31, 2012 and 2011

### ***Advertising***

Advertising expense is comprised of media, agency, and production costs. Advertising expenses are expensed when incurred. Advertising expense for the years ended December 31, 2012 and 2011 amounted to \$203,990 and \$229,664, respectively.

### ***Income Taxes***

The Company and the Subsidiary elected to be taxed under the provision of Subchapter S of the Internal Revenue Code. Under this provision, the Company does not pay income taxes on its taxable income. The Company's taxable income is passed through to its stockholders and is taxed at the stockholders' level for income tax purposes. The Company is responsible for paying an annual minimum franchise tax in the State of California.

Management has determined that the Company does not have an uncertain tax position and associated unrecognized benefits that materially impact the financial statements or related disclosures.

Since tax matters are subject to some degree of uncertainty, there can be no assurance that the Company's tax returns will not be challenged by the taxing authorities and that the Company or its shareholders will not be subject to additional tax, penalties, and interest as a result of such challenge. With few exceptions, the Company is no longer subject to U.S. federal examinations by tax authorities for years ended December 31, 2009 and prior.

### ***Long-Lived Assets***

Long-lived assets, such as property, plant and equipment, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. If circumstances require a long-lived asset or asset group be tested for possible impairment, the Company first compares undiscounted cash flows expected to be generated by that asset or asset group to its carrying value. If the carrying value of the long-lived asset or asset group is not recoverable on an undiscounted cash flow basis, an impairment is recognized to the extent that the carrying value exceeds its fair value. Fair value is determined using various valuation techniques including discounted cash flow models, quoted market values and third-party independent appraisals, as considered necessary. No impairment losses were recognized in the years ended December 31, 2012 and 2011.

### ***Sales Tax***

The State of California, in the city of Davis imposes a sales tax of 7.75% on the Subsidiary's sales. The State of California, in the city of Modesto, imposes a sales tax of 7.375% on the Subsidiary's sales. The State of California, in the city of Signal Hill, imposes a sales tax of 8.75% on the Subsidiary's sales. The Subsidiary collects the sales tax from customers and remits the entire amount to the State. The Subsidiary's accounting policy is to exclude the tax collected and remitted to the State from revenues and cost of sales.

**BLACK BEAR DINER, INC. AND SUBSIDIARY**

Notes to Consolidated Financial Statements

December 31, 2012 and 2011

***Use of Estimates***

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

***Subsequent Events***

Management has evaluated subsequent events through March 18, 2013, the date the financial statements were available to be issued.

**Note B – Concentration of Credit Risk**

The Company maintains cash balances at Bank of the West and Redding Bank of Commerce. There were no cash balances in excess of federally insured limits during the year.

**Note C – Property and Equipment**

Property and equipment at December 31, 2012 consisted of the following:

	<u>Company</u>	<u>Subsidiary</u>	<u>Total</u>
Equipment	\$ 154,307	\$ 751,360	\$ 905,667
Signs	-	37,341	37,341
Leasehold improvements	-	734,100	734,100
Construction in progress	-	298,065	298,065
Less: accumulated depreciation	(42,969)	(264,282)	(307,251)
	<u>\$ 111,338</u>	<u>\$ 1,556,584</u>	<u>\$ 1,667,922</u>

Property and equipment at December 31, 2011 consisted of the following:

	<u>Company</u>	<u>Subsidiary</u>	<u>Total</u>
Equipment	\$ 42,265	\$ 494,864	\$ 537,129
Signs	-	28,773	28,773
Leasehold improvements	-	451,969	451,969
Less: accumulated depreciation	(28,667)	(167,396)	(196,063)
	<u>\$ 13,598</u>	<u>\$ 808,210</u>	<u>\$ 821,808</u>

Depreciation expense for the years ended December 31, 2012 and 2011 totaled \$111,188 and \$84,999, respectively.

**BLACK BEAR DINER, INC. AND SUBSIDIARY**

Notes to Consolidated Financial Statements

December 31, 2012 and 2011

**Note D – Note Payable**

Notes payable consisted of the following:

	<u>2012</u>	<u>2011</u>
6.5083% note due in monthly installments of \$10,764, maturing December 2015, secured by the assets of the Company.	\$ 351,143	\$ 453,797
6.5083% note due in monthly installments of \$9,785, maturing November 2017, secured by the assets of the Company.	<u>492,927</u>	<u>-</u>
Total notes payable	844,070	453,797
Less: current portion	<u>(197,469)</u>	<u>(102,654)</u>
Note payable, net of current portion	<u>\$ 646,601</u>	<u>\$ 351,143</u>

Annual maturities of debt are as follows:

Year ending December 31:

2013	\$ 197,469
2014	210,712
2015	224,842
2016	106,834
2017	<u>104,213</u>
	<u>\$ 844,070</u>

**Note E - Franchising**

The Company has franchised restaurants in markets in which it considers expansion to be of benefit. Franchisees bear all direct costs involved in the development, construction, and operation of their restaurants. The Company provides franchisees support for site selection, architectural plans, interior and exterior design and layout, training, marketing and sales techniques, and opening assistance. The current standard franchise agreement provides for payment to the Company of a nonrefundable franchise fee of \$40,000 and royalties of 3.5% to 4.5% of sales.

Franchise revenues are deferred until substantial performance of franchisor obligations is complete. Initial franchise fees, included in franchise income in the consolidated statements of income and retained earnings, totaled \$115,000 and \$340,000 for 2012 and 2011, respectively.

Under the franchise agreements, the Company has the right to collect a percentage of restaurant sales from its franchise owners which is required to be utilized for marketing activities.

The Company shall generally oversee all advertising programs with sole discretion over the creative concepts, materials and media used in such programs and the placement and allocation thereof.

## **BLACK BEAR DINER, INC. AND SUBSIDIARY**

Notes to Consolidated Financial Statements

December 31, 2012 and 2011

Although the Company will endeavor to manage Black Bear Diners, Inc. Marketing Fund (the Marketing Fund) in a manner that benefit franchisees uniformly, the Company cannot and does not ensure that any particular franchisee will benefit directly or pro rata from the placement of advertising by the Marketing Fund.

The Franchisee's contribution may be used to meet any and all costs of producing, maintaining, administering and directing consumer advertising (including, without limitation, the cost of preparing and conducting television, radio, internet, magazine, newspaper and outdoor advertising campaigns and other public relations activities developing and/or hosting an internet web page of similar activities; employing advertising agencies to assist therein; and providing promotional brochures and other marketing materials to franchisees). The contributions by franchisee and other franchisees to the Marketing Fund shall be maintained in a separate account from the funds of the Company and shall not be used to defray any of the Company's general operating expenses, except for such reasonable administrative costs and overhead, if any, as the Company may incur in activities reasonably related to the administration or direction of the Marketing Fund.

Although the Company intends the Marketing Fund to be of perpetual duration, the Company maintains the right to terminate the Marketing Fund. The Marketing Fund shall not be terminated, however, until all monies in the Marketing Fund have been expended for advertising and promotional purposes or returned to the Franchisee on a pro rata basis.

Franchisees acknowledge that the Marketing Fund is not a trust and the Company assumes no fiduciary duty in administering the Marketing Fund.

In 2012, all Marketing Fund expenses totaling \$727,227 have been netted against marketing fund contributions totaling \$815,745 with excess contributions reported as a liability on the consolidated statement of financial position. At December 31, 2012, \$148,962 has been included as cash, \$14,469 has been included in accounts receivable, \$74,913 has been included in accounts payable and \$88,518 has been included as a liability on the consolidated statement of financial position.

### **Note F – Related Party Transactions**

The Company pays franchise license fees to URSA Minor, Inc., an affiliated company owned by certain stockholders of the Company. Total franchise license fees paid to URSA Minor, Inc. in 2012 and 2011 amounted to \$314,046 and \$312,319, respectively. Franchise license fees are also paid to Grin and Bear It, LLC, an affiliated company owned by certain stockholders of the Company. Total franchise license fees paid to Grin and Bear It, LLC in 2012 and 2011 amounted to \$65,625 and \$64,381, respectively.

The Company reimburses various costs to Sunwest Restaurant Concepts, Inc. and Strawberry Valley Food Service, Inc., which are owned by certain stockholders of the Company. Total cost reimbursements to Sunwest Restaurant Concepts Inc. in 2012 and 2011 amounted to \$35,637 and \$80,134, respectively. Total cost reimbursements to Strawberry Valley Food Service, Inc. in 2012 and 2011 amounted to \$10,498 and \$3,085, respectively.

The Company pays accounting fees to Doty Equities, Inc. Doty Equities, Inc. is owned by certain stockholders of the Company. The annual accounting and management fees paid to Doty Equities, Inc. in 2012 and 2011 amounted to \$9,424 and \$10,680, respectively.

**BLACK BEAR DINER, INC. AND SUBSIDIARY**

Notes to Consolidated Financial Statements

December 31, 2012 and 2011

**Note G – Cost of Goods Sold**

Included in the Company's cost of goods sold are franchise license fees, food and beverage costs and merchandise costs. Net franchise license fees for the years ended December 31, 2012 and 2011 totaled \$379,671 and \$376,700, respectively. Food, beverage and merchandise costs for the years ended December 31, 2012 and 2011 totaled \$1,695,070 and \$1,181,145, respectively.

**Note H – Operating Lease Agreements**

The Subsidiary leases space for the Modesto location under a ten year lease agreement with Central Valley Associates. Under the terms of the lease the Subsidiary has an option to extend the lease for two additional five year periods beginning January 1, 2014. The Subsidiary also leases the space for the Davis location under a five year lease agreement with the Jane Chapman Trust. Under the terms of the lease, the Subsidiary exercised its option to extend the lease for the first of two additional five year periods beginning November 1, 2012.

On March 15, 2012, the Subsidiary entered into a ten year lease agreement with Towne Center West I, II, III and IV, LLC for the Signal Hill location, commencing on August 1, 2012. On September 25, 2012, the Subsidiary entered into a fifteen year lease agreement with TradeCor Hawthorne, LLC for the Torrance location, commencing on February 25, 2013. Under the terms of the lease, the Company has the option to extend the lease for four additional five year periods beginning on February 25, 2028.

The Company leased space from the McConnell Foundation for the corporate office in Mt. Shasta until October 2012. Beginning on October 1, 2012, the Company entered into a five year lease for its office space in Redding, California. Under the terms of the lease, the Company has the option to extend the lease for two additional sixty month periods beginning on October 1, 2017.

Future minimum lease payments are as follows:

Year ending December 31:	
2013	\$ 560,593
2014	494,598
2015	498,594
2016	512,590
2017	513,882
Thereafter	<u>3,478,100</u>
	<u>\$ 6,058,357</u>

**SUPPLEMENTAL SCHEDULES**

**BLACK BEAR DINERS, INC. AND SUBSIDIARY**  
Schedule I - Consolidating Statement of Financial Position  
December 31, 2012

	Black Bear Diners, Inc.	Bear Tracks, Inc.	Eliminations	Consolidated
<b>Assets</b>				
<b>Current assets:</b>				
Cash	\$ 484,740	\$ 453,142	\$ -	\$ 937,882
Accounts receivable	85,697	12,904	-	98,601
Inventory	-	45,634	-	45,634
Investment in Bear Tracks, Inc.	100,000	-	(100,000)	-
Prepaid expenses	11,132	6,680	-	17,812
<b>Total current assets</b>	<b>681,569</b>	<b>518,360</b>	<b>(100,000)</b>	<b>1,099,929</b>
Property, plant and equipment, net	111,338	1,556,584	-	1,667,922
Advance to Bear Tracks, Inc.	495,051	-	(495,051)	-
Other assets	5,000	55,890	-	60,890
<b>Total assets</b>	<b>\$ 1,292,958</b>	<b>\$ 2,130,834</b>	<b>\$ (595,051)</b>	<b>\$ 2,828,741</b>
<b>Liabilities and Stockholders' Equity</b>				
<b>Current liabilities:</b>				
Accounts payable	\$ 160,578	\$ 382,914	\$ -	\$ 543,492
Gift cards payable	257,248	-	-	257,248
Payable to URSA Minor, Inc.	54,891	-	-	54,891
Accrued expenses	98,671	82,268	-	180,939
Franchise deposits	130,000	-	-	130,000
Notes payable - current portion	-	197,469	-	197,469
Liability - Marketing fund	88,518	-	-	88,518
Other liabilities	10,468	-	-	10,468
<b>Total current liabilities</b>	<b>800,374</b>	<b>662,651</b>	<b>-</b>	<b>1,463,025</b>
<b>Long-term liabilities:</b>				
Advance from Bear Tracks, Inc.	-	495,051	(495,051)	-
Notes payable, net of current portion	-	646,601	-	646,601
<b>Total liabilities</b>	<b>800,374</b>	<b>1,804,303</b>	<b>(495,051)</b>	<b>2,109,626</b>
<b>Stockholders' equity</b>				
Common stock	108,000	100,000	(100,000)	108,000
Additional paid-in capital	32,000	-	-	32,000
Retained earnings	352,584	226,531	-	579,115
<b>Total stockholders' equity</b>	<b>492,584</b>	<b>326,531</b>	<b>(100,000)</b>	<b>719,115</b>
<b>Total liabilities and stockholders' equity</b>	<b>\$ 1,292,958</b>	<b>\$ 2,130,834</b>	<b>\$ (595,051)</b>	<b>\$ 2,828,741</b>

See accompanying independent auditors' report.

**BLACK BEAR DINERS, INC. AND SUBSIDIARY**  
Schedule II - Consolidating Statement of Income and Retained Earnings  
Year Ended December 31, 2012

	<u>Black Bear Diners, Inc.</u>	<u>Bear Tracks, Inc.</u>	<u>Eliminations</u>	<u>Consolidated</u>
Food sales	\$ -	\$ 5,413,231	\$ -	\$ 5,413,231
Royalty income	3,445,672	-	-	3,445,672
Franchise fees	115,000	-	-	115,000
Merchandise sales	-	30,832	-	30,832
Other income	235,443	2,865	-	238,308
	<u>3,796,115</u>	<u>5,446,928</u>	<u>-</u>	<u>9,243,043</u>
Cost of goods sold	379,671	1,695,070	-	2,074,741
	<u>3,416,444</u>	<u>3,751,858</u>	<u>-</u>	<u>7,168,302</u>
	<b>Gross profit</b>			<b>7,168,302</b>
Operating expenses:				
Salaries and wages including payroll taxes	1,579,608	2,021,322	-	3,600,930
General and administration	506,017	762,368	-	1,268,385
Sales and marketing expenses	440,028	298,299	-	738,327
Rent	41,089	275,824	-	316,913
Advertising and production costs	91,763	112,227	-	203,990
Consulting	200,933	2,411	-	203,344
Professional fees	191,218	7,105	-	198,323
Depreciation	14,301	96,887	-	111,188
Taxes and licenses	(3,601)	72,565	-	68,964
	<u>3,061,356</u>	<u>3,649,008</u>	<u>-</u>	<u>6,710,364</u>
	<b>Total operating expenses</b>			<b>6,710,364</b>
	355,088	102,850	-	457,938
	<b>Income from operations</b>			<b>457,938</b>
Interest expense	-	(29,225)	-	(29,225)
	<u>355,088</u>	<u>73,625</u>	<u>-</u>	<u>428,713</u>
	<b>Net income</b>			<b>428,713</b>
Retained earnings, beginning of year	489,164	152,906	-	642,070
Distributions	(491,668)	-	-	(491,668)
Retained earnings, end of year	<u>\$ 352,584</u>	<u>\$ 226,531</u>	<u>\$ -</u>	<u>\$ 579,115</u>

See accompanying independent auditors' report.

BLACK BEAR DINERS, INC. AND SUBSIDIARY

CONSOLIDATED FINANCIAL STATEMENTS  
AND SUPPLEMENTAL SCHEDULES

DECEMBER 31, 2011 AND 2010

(WITH INDEPENDENT AUDITORS' REPORT THEREON)

BLACK BEAR DINERS, INC AND SUBSIDIARY  
CONSOLIDATED FINANCIAL STATEMENTS  
AND SUPPLEMENTAL SCHEDULES  
DECEMBER 31, 2011 AND 2010

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### INDEPENDENT AUDITORS' REPORT

To the Board of Directors and  
Stockholders of Black Bear Diners, Inc.  
Honolulu, Hawaii

We have audited the accompanying consolidated statements of financial position of Black Bear Diners, Inc. (a California S-corporation) and subsidiary as of December 31, 2011 and 2010, and the related consolidated statements of income and retained earnings, and cash flows for the years then ended. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits .

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement. An audit includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the consolidated financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Black Bear Diners, Inc. and subsidiary as of December 31, 2011 and 2010, and the results of their operations and their cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

Our audits were conducted for the purpose of forming an opinion on the consolidated financial statements taken as a whole. The Schedule I – Consolidating Statement of Financial Position and Schedule II – Consolidating Statement of Income is presented for the purpose of additional analysis of the consolidating financial statements rather than to present the financial position and results of operations of the individual companies, and it is not a required part of the consolidated financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the consolidated financial statements. The consolidating information has been subjected to the auditing procedures applied in the audit of the consolidated financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the consolidated financial statements or to the consolidated financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the consolidating information is fairly stated in all material respects in relation to the consolidated financial statements as a whole.

*Kohayashi, Kanehiko, J.D., CPA & Yasuda CPAs LLC*

Wahiawa, Hawaii  
March 14, 2012

BLACK BEAR DINERS, INC. AND SUBSIDIARY  
CONSOLIDATED STATEMENTS OF FINANCIAL POSITION  
DECEMBER 31, 2011 AND 2010

ASSETS	2011	2010
Current assets:		
Cash	\$ 1,221,224	\$ 602,874
Accounts receivable	10,912	138,515
Inventory	30,180	33,014
Prepaid expenses	18,006	24,819
Total current assets	1,280,322	799,222
Property, plant and equipment, net of accumulated depreciation of \$196,063 and \$111,064 in 2011 and 2010, respectively	821,808	862,331
Other assets	17,241	17,241
Total assets	\$ 2,119,371	\$ 1,678,794
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 251,211	\$ 197,582
Gift cards payable	325,305	244,438
Payable to URSA Minor, Inc.	52,045	52,118
Accrued expenses	152,144	153,852
Franchise deposits	70,000	54,000
Note payable - current portion	102,654	96,200
Other liabilities	32,799	8,590
Total current liabilities	986,158	806,780
Long-term liabilities:		
Note payable, net of current portion	351,143	453,800
Total liabilities	1,337,301	1,260,580
Stockholders' equity:		
Common stock - stated value \$1,000 per share; shares authorized and 108 shares issued and outstanding	108,000	108,000
Additional paid-in capital	32,000	32,000
Retained earnings	642,070	278,214
Total stockholders' equity	782,070	418,214
Total liabilities and stockholders' equity	\$ 2,119,371	\$ 1,678,794

See accompanying notes to consolidated financial statements

BLACK BEAR DINERS, INC. AND SUBSIDIARY  
CONSOLIDATED STATEMENTS OF INCOME AND RETAINED EARNINGS  
DECEMBER 31, 2011 AND 2010

	<u>2011</u>	<u>2010</u>
Food sales	\$ 3,924,020	\$ 3,625,619
Royalty income	2,845,161	1,998,560
Other income	380,828	315,487
Franchise fees	340,000	152,000
Merchandise sales	15,430	17,343
	<u>7,505,439</u>	<u>6,109,009</u>
Cost of goods sold	<u>1,557,845</u>	<u>1,523,242</u>
Gross profit	5,947,594	4,585,767
Operating expenses:		
Salaries and wages including payroll taxes	2,575,621	2,096,646
General and administration	784,700	805,935
Sales and marketing expenses	595,048	395,382
Rent	234,065	239,140
Professional fees	194,944	143,918
Advertising and production costs	229,664	108,419
Consulting	141,743	43,339
Depreciation	84,999	73,791
Taxes and licenses	72,606	46,944
	<u>4,913,390</u>	<u>3,953,514</u>
Total operating expenses	<u>4,913,390</u>	<u>3,953,514</u>
Income from operations	1,034,204	632,253
Interest expense	<u>(22,348)</u>	<u>(35,453)</u>
Net income	1,011,856	596,800
Retained earnings, beginning of year	278,214	5,414
Less distributions	<u>(648,000)</u>	<u>(324,000)</u>
Retained earnings, end of year	<u>\$ 642,070</u>	<u>\$ 278,214</u>

See accompanying notes to consolidated financial statements

BLACK BEAR DINERS, INC. AND SUBSIDIARY  
CONSOLIDATED STATEMENTS OF CASH FLOWS  
DECEMBER 31, 2011 AND 2010

	<u>2011</u>	<u>2010</u>
Cash flows provided by operating activities:		
Net income	\$ 1,011,856	\$ 596,800
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation	84,999	73,791
Changes in assets and liabilities:		
(Increase) decrease in:		
Accounts receivable	127,603	56,960
Inventory	2,834	(15,934)
Prepaid expenses	6,813	(6,386)
Other assets	-	(1,741)
Increase (decrease) in:		
Accounts payable and others	134,423	10,026
Accrued expenses	(1,708)	54,947
Franchisee deposits	16,000	(40,000)
Other liabilities	24,209	(58,974)
Net cash provided by operating activities	<u>1,407,029</u>	<u>669,489</u>
 Cash flows from investing activities:		
Purchase of property and equipment	<u>(44,476)</u>	<u>(290,604)</u>
 Cash flows from financing activities:		
Payments on debt	(96,203)	(448,037)
Distributions to stockholders	(648,000)	(324,000)
Proceeds from debt	-	550,000
Net cash used in financing activities	<u>(744,203)</u>	<u>(222,037)</u>
 Net increase in cash	618,350	156,848
Cash, beginning of year	602,874	446,026
Cash, end of year	<u>\$ 1,221,224</u>	<u>\$ 602,874</u>
 Supplemental disclosures of cash flow information:		
Interest paid	<u>\$ 22,348</u>	<u>\$ 35,453</u>
Income taxes paid (refunded)	<u>\$ (585)</u>	<u>\$ 2,350</u>

See accompanying notes to consolidated financial statements

BLACK BEAR DINER, INC. AND SUBSIDIARY  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
DECEMBER 31, 2011 AND 2010

NOTE A – DESCRIPTION OF THE BUSINESS AND SUMMARY OF SIGNIFICANT  
ACCOUNTING POLICIES

Nature of Activities

Black Bear Diners, Inc. (the Company) was incorporated on January 2002 in the State of California. The Company franchises family dining restaurants under the name Black Bear Diner. As of December 31, 2011 there were 51 Black Bear Diner restaurants (40 operated by franchisees and 11 operated by affiliates of the Company).

Bear Tracks, Inc. (the Subsidiary) was established in March 2009 as a wholly owned subsidiary of Black Bear Diners, Inc. to own and operate restaurants under the Black Bear Diner brand. At December 31, 2011, the Subsidiary had two operating restaurants, one located in Davis, California and one in Modesto, California.

Basis of Accounting

The financial statements of Black Bear Diners, Inc. have been prepared on the accrual basis of accounting.

Principles of Consolidation

The accompanying consolidated financial statements include the accounts of Black Bear Diners, Inc. and its wholly owned subsidiary, Bear Tracks, Inc., with all significant balances and transactions between the two entities eliminated.

BLACK BEAR DINER, INC. AND SUBSIDIARY  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
DECEMBER 31, 2011 AND 2010

NOTE A – DESCRIPTION OF THE BUSINESS AND SUMMARY OF SIGNIFICANT  
ACCOUNTING POLICIES (CONTINUED)

Accounts Receivable

Accounts receivable is stated at the amount management expects to collect from outstanding balances. Management provides for probable uncollectible amounts through a provision for bad debt expense and an adjustment to a valuation allowance based on its assessment of the current status of individual accounts. Balances still outstanding after management has used reasonable collection efforts are written off through a charge to the valuation allowance and a credit to trade accounts receivable.

Inventories

Inventories are stated at the lower of cost or market. Cost is determined by the first-in, first-out method, and market represents the lower of replacement cost or estimated net realizable value. Inventory primarily consists of food of the Subsidiary.

Property and Equipment

Property and equipment are carried at cost. The Company and the Subsidiary follow the practice of capitalizing all expenditures for property and equipment in excess of \$1,500. Depreciation of property and equipment is provided using the straight-line method over the estimated useful lives of the respective assets, as follows:

	Range of estimated useful lives
Equipment	5-10 years
Signs	13-19 years
Leasehold improvements	12-19 years

Repairs and maintenance costs are charged directly to income, and expenditures for major improvements, revisions and alterations to existing facilities are capitalized. Cost and accumulated depreciation of property and equipment retired or otherwise disposed of are eliminated from the accounts at the time of retirement or sale, and profit or loss, if any, is credited or charged to income.

BLACK BEAR DINER, INC. AND SUBSIDIARY  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
DECEMBER 31, 2011 AND 2010

NOTE A – DESCRIPTION OF THE BUSINESS AND SUMMARY OF SIGNIFICANT  
ACCOUNTING POLICIES (CONTINUED)

Gift Cards

The Company has gift card service agreements to receive and hold the proceeds of gift card sales until a customer uses the card to purchase merchandise or services from a participating franchisee. When a customer uses a gift card to purchase merchandise or services from a participating franchisee, the participating franchisee is obligated to accept the gift card as payment for its goods or services and the Company is obligated to reimburse the participating franchisee for the sales price of the goods or services purchased with the gift card. The Company is primarily liable to the customer for the value of the gift card until the card is redeemed. When the gift cards are issued, a liability is recorded by the Company. When the gift cards are redeemed and the participating franchisee is reimbursed there is an offset of the liability account and payment to the participating franchisee. Revenues (and related expenses) are recognized by the participating franchisee in exchange for goods and services.

Revenue Recognition

Included in Company's revenues are sales by Company-operated restaurants and fees from restaurants operated by franchisees and affiliates. The Company grants franchises to operators who in turn pay initial fees and royalties for each restaurant. The initial franchise fee is recorded as income when each restaurant commences operations. Franchise royalties, which are based on a percentage of monthly sales, are recognized as income on the accrual basis. In the event that a franchise experiences payment difficulties or, in management's opinion, may be susceptible to such difficulties, franchise royalties may be recognized as income on the cash basis.

Advertising

Advertising expense is comprised of media, agency, and production costs. Advertising expenses are expensed when incurred. Advertising expense for the years ended December 31, 2011 and 2010 amounted to \$229,664 and \$108,419, respectively.

BLACK BEAR DINER, INC. AND SUBSIDIARY  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
DECEMBER 31, 2011 AND 2010

NOTE A – DESCRIPTION OF THE BUSINESS AND SUMMARY OF SIGNIFICANT  
ACCOUNTING POLICIES (CONTINUED)

Income Taxes

The Company and the Subsidiary elected to be taxed under the provision of Subchapter S of the Internal Revenue Code. Under this provision, the Company does not pay income taxes on its taxable income. The Company's taxable income is passed through to its stockholders and is taxed at the stockholders' level for income tax purposes. The Company is responsible for paying an annual minimum franchise tax in the State of California. The Company was refunded \$585 on franchise taxes for the year ended December 31, 2011. Franchise taxes paid for the year ended December 31, 2010 totaled \$2,350.

Management has determined that the Company does not have an uncertain tax position and associated unrecognized benefits that materially impact the financial statements or related disclosures.

Since tax matters are subject to some degree of uncertainty, there can be no assurance that the Company's tax returns will not be challenged by the taxing authorities and that the Company or its shareholders will not be subject to additional tax, penalties, and interest as a result of such challenge. With few exceptions, the Company is no longer subject to U.S. federal examinations by tax authorities for years ended December 31, 2008 and prior.

Long-Lived Assets

Long-lived assets, such as property, plant and equipment, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. If circumstances require a long-lived asset or asset group be tested for possible impairment, the Company first compares undiscounted cash flows expected to be generated by that asset or asset group to its carrying value. If the carrying value of the long-lived asset or asset group is not recoverable on an undiscounted cash flow basis, an impairment is recognized to the extent that the carrying value exceeds its fair value. Fair value is determined using various valuation techniques including discounted cash flow models, quoted market values and third-party independent appraisals, as considered necessary. No impairment losses were recognized in the years ended December 31, 2011 and 2010.

BLACK BEAR DINER, INC. AND SUBSIDIARY  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
DECEMBER 31, 2011 AND 2010

NOTE A – DESCRIPTION OF THE BUSINESS AND SUMMARY OF SIGNIFICANT  
ACCOUNTING POLICIES (CONTINUED)

Sales Tax

The State of California in the city of Davis imposes a sales tax of 7.75% on the Subsidiary's sales. The State of California, in the city of Modesto, imposes a sales tax of 7.375% on the Subsidiary's sales. The Subsidiary collects the sales tax from customers and remits the entire amount to the State. The Subsidiary's accounting policy is to exclude the tax collected and remitted to the State from revenues and cost of sales.

Use of Estimates

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

Subsequent Events

Management has evaluated subsequent events through March 14, 2012, the date the financial statements were available to be issued.

NOTE B – CONCENTRATION OF CREDIT RISK

The Company maintains cash balances at Bank of the West. There were no cash balances in excess of federally insured limits during the year.

BLACK BEAR DINER, INC. AND SUBSIDIARY  
 NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
 DECEMBER 31, 2011 AND 2010

NOTE C – PROPERTY AND EQUIPMENT

Property and equipment at December 31, 2011 consisted of the following:

	<u>Company</u>	<u>Subsidiary</u>	<u>Total</u>
Equipment	\$ 42,265	\$ 494,864	\$ 537,129
Signs	-	28,773	28,773
Leasehold improvements	-	451,969	451,969
Less: accumulated depreciation	<u>(28,667)</u>	<u>(167,396)</u>	<u>(196,063)</u>
	<u>\$ 13,598</u>	<u>\$ 808,210</u>	<u>\$ 821,808</u>

Property and equipment at December 31, 2010 consisted of the following:

	<u>Company</u>	<u>Subsidiary</u>	<u>Total</u>
Equipment	\$ 31,002	\$ 490,771	\$ 521,773
Signs	-	28,772	28,772
Leasehold improvements	-	422,850	422,850
Less: accumulated depreciation	<u>(22,631)</u>	<u>(88,433)</u>	<u>(111,064)</u>
	<u>\$ 8,371</u>	<u>\$ 853,960</u>	<u>\$ 862,331</u>

Depreciation expense for the years ended December 31, 2011 and 2010 totaled \$84,999 and \$73,791, respectively.

BLACK BEAR DINER, INC. AND SUBSIDIARY  
 NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
 DECEMBER 31, 2011 AND 2010

NOTE D – NOTE PAYABLE

Note payable at December 31, 2011 consisted of the following:

In 2010, the Company secured a note in the amount of \$550,000 with First Hawaiian Leasing, for the purpose of paying off the expired revolving line of credit. The note is payable in monthly installments of \$10,764, including interest at a rate of 6.5083% per annum. Monthly payments are to begin on January 29, 2011 and continue over a period of 60 months. The note will mature on December 15, 2015 and is secured by the assets of the Company.

	\$ 453,797
Less: current portion	<u>(102,654)</u>
Note payable, net of current portion	<u><u>\$ 351,143</u></u>

Estimated maturities of debt are as follows:

Year ending December 31:	
2012	\$ 102,654
2013	109,538
2014	116,884
2015	124,721
	<u><u>\$ 453,797</u></u>

NOTE E – RELATED PARTY TRANSACTIONS

The Company pays franchise license fees to URSA Minor, Inc., an affiliated company owned by certain stockholders of the Company. Total franchise license fees paid to URSA Minor, Inc. in 2011 and 2010 amounted to \$478,985 and \$401,549, respectively.

BLACK BEAR DINER, INC. AND SUBSIDIARY  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
DECEMBER 31, 2011 AND 2010

NOTE E – RELATED PARTY TRANSACTIONS (CONTINUED)

The Company reimburses various costs to Sunwest Restaurant Concepts, Inc. and Strawberry Valley Food Service, Inc., which are owned by certain stockholders of the Company. Total cost reimbursements to Sunwest Restaurant Concepts Inc. in 2011 and 2010 amounted to \$80,134 and \$57,756, respectively. Total cost reimbursements to Strawberry Valley Food Service, Inc. in 2011 and 2010 amounted to \$3,085 and \$12,272, respectively.

The Company pays accounting and management fees to Doty Equities, Inc. Doty Equities, Inc. is owned by certain stockholders of the Company. The annual accounting and management fees paid to Doty Equities, Inc. in 2011 and 2010 amounted to \$10,680 and \$24,345, respectively.

Until September 30, 2010, the Company also leased office space from Black Bear Diner Partnership on a month-to-month basis. Black Bear Diner Partnership is owned by certain stockholders of the Company. Rent expense of \$11,130 was paid for the year ended December 31, 2010.

NOTE F – COST OF GOODS SOLD

Included in the Company's cost of goods sold are franchise license fees, food and beverage costs and merchandise costs. Franchise license fees for the years ended December 31, 2011 and 2010 totaled \$478,985 and \$401,549, respectively. Food, beverage and merchandise costs for the years ended December 31, 2011 and 2010 totaled \$1,181,145 and \$1,121,693, respectively.

NOTE G – OPERATING LEASE AGREEMENTS

The Company leases space for the Modesto location under a ten year commercial lease agreement with Central Valley Associates. Under the terms of the lease the Company has an option to extend the lease for two additional five year periods beginning January 1, 2014. The Company also leases the space for the Davis location under a five year lease agreement with the Jane Chapman Trust. Under the terms of the lease, the Company has an option to extend the lease for two additional five year periods beginning November 1, 2012.

BLACK BEAR DINER, INC. AND SUBSIDIARY  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
DECEMBER 31, 2011 AND 2010

NOTE G – OPERATING LEASE AGREEMENTS (CONTINUED)

Future minimum lease payments are as follows:

Year ending December 31:	
2012	\$ 218,162
2013	221,635
2014	121,635
2015	121,635
2016	121,635
Thereafter	778,018
	<u>\$ 1,582,720</u>

NOTE H – RETIREMENT PLAN

The Company has a 401(k) Plan ("Plan") to provide retirement and incidental benefits for its employees. Employees may contribute from 1% to 15% of their annual compensation to the Plan, limited to a maximum annual amount as set periodically by the Internal Revenue Service. The Company does not provide for any matching contributions.

## SUPPLEMENTAL SCHEDULES

BLACK BEAR DINERS, INC. AND SUBSIDIARY  
SCHEDULE I - CONSOLIDATING STATEMENT OF FINANCIAL POSITION  
DECEMBER 31, 2011

	BLACK BEAR DINERS, INC.	BEAR TRACKS, INC.	ELIMINATIONS	CONSOLIDATED
<b>ASSETS</b>				
<b>CURRENT ASSETS:</b>				
Cash	\$ 873,242	\$ 347,982	\$ -	\$ 1,221,224
Accounts receivable	400	10,512	-	10,912
Inventory	-	30,180	-	30,180
Investment in Bear Tracks, Inc.	100,000	-	(100,000)	-
Prepaid expenses	14,013	3,993	-	18,006
<b>TOTAL CURRENT ASSETS</b>	<b>987,655</b>	<b>392,667</b>	<b>(100,000)</b>	<b>1,280,322</b>
Property, plant and equipment, net	13,598	808,210	-	821,808
Advance to Bear Tracks, Inc.	250,080	-	(250,080)	-
Other assets	1,741	15,500	-	17,241
<b>TOTAL ASSETS</b>	<b>\$ 1,253,074</b>	<b>\$ 1,216,377</b>	<b>\$ (350,080)</b>	<b>\$ 2,119,371</b>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>				
<b>CURRENT LIABILITIES:</b>				
Accounts payable	\$ 81,121	\$ 170,090	\$ -	\$ 251,211
Gift cards payable	325,305	-	-	325,305
Payable to URSA Minor, Inc.	52,045	-	-	52,045
Accrued expenses	62,640	89,504	-	152,144
Franchise deposits	70,000	-	-	70,000
Note payable - current portion	-	102,654	-	102,654
Other liabilities	32,799	-	-	32,799
<b>TOTAL CURRENT LIABILITIES</b>	<b>623,910</b>	<b>362,248</b>	<b>-</b>	<b>986,158</b>
<b>LONG-TERM LIABILITIES</b>				
Advance from Bear Tracks, Inc.	-	250,080	(250,080)	-
Note payable, net of current portion	-	351,143	-	351,143
<b>TOTAL LIABILITIES</b>	<b>623,910</b>	<b>963,471</b>	<b>(250,080)</b>	<b>1,337,301</b>
<b>STOCKHOLDER'S EQUITY</b>				
Common stock	108,000	100,000	(100,000)	108,000
Additional paid-in capital	32,000	-	-	32,000
Retained earnings	489,164	152,906	-	642,070
<b>TOTAL STOCKHOLDERS' EQUITY</b>	<b>629,164</b>	<b>252,906</b>	<b>(100,000)</b>	<b>782,070</b>
<b>TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY</b>	<b>\$ 1,253,074</b>	<b>\$ 1,216,377</b>	<b>\$ (350,080)</b>	<b>\$ 2,119,371</b>

See independent auditors' report.

BLACK BEAR DINERS, INC. AND SUBSIDIARY  
SCHEDULE II - CONSOLIDATING STATEMENT OF INCOME AND RETAINED EARNINGS (ACCUMULATED DEFICIT)  
Year Ended December 31, 2011

	BLACK BEAR DINERS, INC.	BEAR TRACKS, INC.	ELIMINATIONS	CONSOLIDATED
Food sales	\$ -	\$ 3,924,020	\$ -	\$ 3,924,020
Royalty income	2,845,161	-	-	2,845,161
Other income	380,828	-	-	380,828
Franchise fees	340,000	-	-	340,000
Merchandise sales	-	15,430	-	15,430
	<u>3,565,989</u>	<u>3,939,450</u>	-	<u>7,505,439</u>
Cost of goods sold	<u>376,700</u>	<u>1,181,145</u>	-	<u>1,557,845</u>
GROSS PROFIT	3,189,289	2,758,305	-	5,947,594
OPERATING EXPENSES				
Salaries and wages including payroll taxes	1,273,987	1,301,634	-	2,575,621
General and administration	265,674	519,026	-	784,700
Sales and marketing expenses	394,717	200,331	-	595,048
Rent	30,216	203,849	-	234,065
Professional fees	186,555	8,389	-	194,944
Advertising	106,883	65,907	-	172,790
Consulting	135,810	5,933	-	141,743
Depreciation	6,036	78,963	-	84,999
Taxes and licenses	19,450	53,156	-	72,606
Production costs	56,874	-	-	56,874
TOTAL OPERATING EXPENSES	<u>2,476,202</u>	<u>2,437,188</u>	-	<u>4,913,390</u>
INCOME FROM OPERATIONS	713,087	321,117	-	1,034,204
OTHER INCOME				
Interest expense	-	(22,348)	-	(22,348)
NET INCOME	713,087	298,769	-	1,011,856
RETAINED EARNINGS (ACCUMULATED DEFICIT), BEGINNING OF YEAR	424,077	(145,863)		278,214
LESS DISTRIBUTIONS	(648,000)	-		(648,000)
RETAINED EARNINGS, END OF YEAR	<u>\$ 489,164</u>	<u>\$ 152,906</u>	<u>\$ -</u>	<u>\$ 642,070</u>

See independent auditors' report.

**THE FOLLOWING FINANCIAL STATEMENTS ARE PREPARED WITHOUT AN AUDIT. PROSPECTIVE FRANCHISEES SHOULD BE ADVISED THAT NO CERTIFIED PUBLIC ACCOUNTANT HAS AUDITED THESE FIGURES OR EXPRESSED HIS/HER OPINION WITH REGARD TO THE CONTENT OR FORM.**

BLACK BEAR DINERS, INC. AND SUBSIDIARY  
CONSOLIDATED STATEMENT OF INCOME AND RETAINED EARNINGS (Unaudited)  
FOR THE SEVEN MONTHS ENDED JULY 31, 2013

REVENUE		
Royalty income	\$	3,197,468
Food sales		5,786,892
Franchise fees		110,000
Merchandise sales		45,038
Other income		<u>209,922</u>
		9,349,320
COST OF REVENUE		
Cost of goods sold		<u>2,544,354</u>
	GROSS PROFIT	<u>6,804,966</u>
OPERATING EXPENSES		
Salaries and wages including payroll taxes		3,004,567
General and administration		1,042,139
Sales and marketing expenses		465,439
Rent		397,312
Professional fees		127,324
Depreciation		92,462
Advertising		124,820
Production costs		46,422
Taxes and licenses		273,344
Consulting		<u>97,037</u>
	TOTAL OPERATING EXPENSES	<u>5,670,866</u>
	INCOME FROM OPERATIONS	<u>1,134,100</u>
OTHER INCOME (EXPENSE)		
Interest expense		<u>(30,123)</u>
	NET INCOME	1,103,977
	RETAINED EARNINGS, BEGINNING OF YEAR	579,115
	LESS DISTRIBUTIONS	<u>(324,000)</u>
	RETAINED EARNINGS, END OF YEAR	<u>\$ 1,359,092</u>

BLACK BEAR DINERS, INC. AND ITS SUBSIDIARY  
CONSOLIDATED BALANCE SHEET (Unaudited)  
JULY 31, 2013

ASSETS

CURRENT AESTS

Cash and cash equivalents	\$	1,483,251
Accounts receivable		25,761
Inventory		61,078
Prepaid expenses		1,744
		1,744

TOTAL CURRENT ASSETS 1,571,834

Property, plant and equipment, net of accumulated depreciation		2,086,026
Other assets		60,890

TOTAL ASSETS \$ 3,718,750

LIABILITIES AND STOCKHOLDERS' EQUITY

CURRENT LIABILITIES

Accounts payable	\$	365,795
Gift cards payable		299,282
Payable to URSA Minor, Inc.		116,362
Accrued expenses		211,278
Franchise deposits		150,000
Note payable - current portion		197,469
Other liabilities		46,588
		46,588

TOTAL CURRENT LIABILITIES 1,386,774

LONG-TERM LIABILITIES

Note payable, net of current portion		832,884
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STOCKHOLDER'S EQUITY

Common stock		108,000
Additional paid-in capital		32,000
Retained earnings		1,359,092
		1,359,092

TOTAL STOCKHOLDERS' EQUITY 1,499,092

TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY \$ 3,718,750

## EXHIBIT G TO THE DISCLOSURE DOCUMENT

### LIST OF FRANCHISEES

#### California

(Opened: October 2011)

Gilroy Black Bear Diner  
3 Bears, Inc.  
395 Leavesley Road  
Gilroy, CA 95020  
408.842.9901  
(Opened: June 2009)

Milpitas Black Bear Diner  
Milpitas  
BBD HCUNO, Inc.  
174 W. Calaveras Blvd.  
Milpitas, CA 95035  
408.946.2327  
(Opened: August 2011)

Gridley Black Bear Diner  
Northern Bear, Inc.  
1586 Highway 99E99 East  
Gridley, California CA 95948  
530.846.3043  
(Opened: December 2004)

Monterey Black Bear Diner  
3 Bears, Inc.  
2450 N Fremont St.  
Monterey, CA 93942  
831.645.9700  
(Opened: June 2009)

Hanford Black Bear Diner  
Hanford  
BBD—San Joaquin Valley Corp.  
1790 W. Lacey Blvd.  
Hanford, California CA 93230  
559.584.8278  
(Opened: March 2005)

Oakley Black Bear Diner  
Delta Black Bear Diner, Inc.  
3201 Main Street  
Oakley, CA 94561  
925.625.3555  
(Opened: March 2008)

Los Banos Black Bear Diner  
Los Banos  
Black Bear Diner Los Banos, LLP  
955 W. Pacheno Blvd.  
Los Banos, California CA 93635  
209.826.2616  
(Date-Opened: 12/05/December 2012)

Paradise Black Bear Diner  
Larco, Inc.  
5971 Clark Road  
Paradise, CA 95969  
530.877.0877  
(Opened: June 2009)

Madera Black Bear Diner  
Madera  
Bob Rose  
San Joaquin Valley Corp.  
1209 E. Almond Ave.  
Madera, California CA 93627  
559.675.1332  
(Opened: March 2009)

Porterville Black Bear Diner  
Porterville  
BBD—San Joaquin Valley Corp.  
910 W. Olive Ave.  
Porterville, California CA 93257  
559.784.3648  
(Opened: September 2004)

Manteca Black Bear Diner  
Manteca  
CRC, Inc.  
1703 E. Yosemite Ave.  
Manteca, California CA 95336  
209.239.6400  
(Date-Opened: 07/16/July 2012)

Rohnert Park Black Bear Diner  
Rohnert Park  
Pacific Bear, LLC  
Prestige Foods, Inc.  
6255 Commerce Blvd.  
Rohnert Park, California 94926  
707.584.8552  
(Opened: June 2003)

Merced Black Bear Diner  
Merced  
CRC, Inc.  
1435 V Street  
Merced, California CA 95340  
209.383.9600

Sacramento-Natomas Black Bear Diner  
Sacramento  
Welcam 80 Ventures, LLC  
2700 El Centro Road  
Sacramento, California 95833

~~916-966-5122641-2327~~  
(Opened: September 2010)  
Salinas Black Bear Diner  
3 Bears, Inc.  
805 W. Laurel StreetSt.  
Salinas, CA 93901  
831.449.1545  
(Opened: June 2009)

Suisun City Black Bear Diner  
~~Pacific Bear, LLC~~  
~~Luxury Foods, Inc.~~  
111 Sunset PlacePl.  
Suisun City, CaliforniaCA 94585  
707.422.4386  
(Opened: December 2003)

Tracy Black Bear Diner  
CRC Inc.  
2351 Toste RoadRd.  
Tracy, CaliforniaCA 95377  
209.835.5600  
(Opened: November 2010)

~~Tulare Black Bear Diner-Tulare~~  
~~BBD-San Joaquin Valley Corp.~~  
1161 E. Tulare Ave.  
Tulare, CaliforniaCA 93274  
559.684.9152  
(Opened: March 2004)

Vacaville Black Bear Diner  
CRC, Inc.  
951 Merchant St.  
Vacaville, CaliforniaCA 95688  
707.448.1500  
(Opened: August 2010)

~~Vallejo Black Bear Diner-Vallejo~~  
Pawsibilities 1, Inc.  
980 Admiral Callaghan LaneLn.  
Vallejo, CA 94591  
707.552.1300  
(Opened: August 2011)

~~Willows Black Bear Diner-Willows~~  
Northern Bear, Inc.  
246 N. Humboldt Ave.  
Willows, CaliforniaCA 95988  
530.934.3797  
(Opened: December 2004)

## Colorado

~~Colorado Springs Black Bear Diner-Colorado Springs~~  
~~Bear Paw ManagementOn The Range, LLC~~  
975-A N. Academy Blvd.  
Colorado Springs, CO 80909  
719.314.3616  
(Opened: May 2006)

## Idaho

~~Boise Black Bear Diner-Boise~~  
Black Bear Diner Boise, ID, LLC  
1731 S. Entertainment Ave.  
Boise, IdahoID 83709  
208.322.1888  
(Opened: 07/18/July 2012)

## Iowa

~~Sioux City Black Bear Diner-Sioux City~~  
~~BBDBlack Bear Diner Sioux City, IA, LLC~~  
5030 Sergeant RoadRd.  
Sioux City, IowaIA 51106  
712.276.4031  
(Opened: June 2010)

## Nevada

~~Fernley, NV-BBD Black Bear Diner~~  
~~490BGalena Creek, LLC~~  
1190-B E. Main St.  
Fernley, NV 89408  
775-.835-.8512  
(Opened: November 2008)

~~Reno Black Bear Diner-Reno~~  
Galena Creek, LLC  
2323 S. Virginia StreetSt.  
Reno, NevadaNV 89509  
775.827.5570  
(Opened: July 2004)

~~Sparks Black Bear Diner-Sparks~~  
Galena Creek, LLC  
235 N. McCarran Blvd.  
Sparks, Nevada 89431  
775.356.1138  
(Opened: July 2005)

541-548-5969  
(Opened: June 2008)

## Oregon

~~Beaverton Black Bear Diner~~  
~~Deli Concepts, Inc.~~  
MMLG, LLC  
13435 SW Tualatin Valley Hwy.  
Beaverton, OR 97005  
503.646.4507  
(Opened: August 2005)

~~Bend Black Bear Diner~~  
~~Bucc'N Dulge, Inc.~~  
1465 NE 3<sup>rd</sup> Street St.  
Bend, Oregon 97701  
541.312.8327  
(Opened: February 2006)

~~Grants Pass Black Bear Diner-Grants Pass~~  
~~CEDA Hills, LLC~~  
1900 NW 6<sup>th</sup> Street St.  
Grants Pass, OR 97526  
541.955.6888  
(Opened: April 2011)

~~Black Bear Diner-Klamath Falls~~ Black Bear Diners  
~~Yankee Bear, LLC~~  
5140 S. Sixth Street St.  
Klamath Falls, Oregon OR 97603  
541.883.7766  
(Opened: June 2005)

~~Madras Black Bear Diner-Madras~~  
~~Black Bear Diner of Madras, LLC~~  
237 SW 4<sup>th</sup> Street St.  
Madras, Oregon OR 97741  
541.475.6632  
(Opened: March 2004)

~~Medford Black Bear Diner-Medford~~  
~~CEDA Hills, LLC~~  
1150 E. Barnett Rd.  
Medford, OR 97504  
541.773.4060  
(Opened: July 24, 2006)

~~Redmond Black Bear Diner-Redmond~~  
~~Bucc'N Dulge, Inc~~  
429 N. W Cedar St.  
Redmond, OR 97756

## Utah

~~Sandy Black Bear Diner-Sandy~~  
~~BBD Black Bear Diner Sandy, UT, LLC~~  
1966 E. East 9400 S. South  
Sandy, UT 84093  
801.571.7026  
(Opened: January 2011)

~~St. George Black Bear Diner-St. George~~  
~~Pathway Partners DBA~~  
1245 S. Main Street St.  
St. George, UT 84770  
435.656.2327  
(Opened: August 2011)

## Washington

~~Federal Way Black Bear Diner~~  
~~BBD Northwestern Bear Banwait, LLC~~  
32065 Pacific Coast Highway South  
Federal Way, Washington WA 98003  
253.945.8332  
(Opened: July 2007)

~~Olympia Black Bear Diner~~  
~~BBD Northwestern Bear Banwait, LLC~~  
955 Black Lake Blvd.-SW  
Olympia, Washington WA 98502  
360.352.1219  
(Opened: May 2007)

~~Sequim Black Bear Diner-Sequim~~  
~~Sound Equity Ventures, LLC~~  
1471 E. Washington St.  
Sequim, Washington WA 98382  
360.504.2950  
(Opened: 07/10/July 2012)

The following Black Bear Diner restaurants have began operation since our last fiscal year end:

Auburn Black Bear Diner

BBD West, Inc.

13365 Lincoln Way

Auburn, CA 95603

530.888.8432

(Opened: July 2013)

Bakersfield Black Bear Diner

CRC, Inc.

4102 California Avenue

Bakersfield, CA 93309

661.322.5000

(Opened: June 2013)

Emeryville Black Bear Diner

HMM Black Bear, Inc.

5750 Christie Avenue

Emeryville, CA 95616

510.654.2327

(Opened: February 2013)

**EXHIBIT H TO THE DISCLOSURE DOCUMENT**

**LIST OF FRANCHISEES WHO HAVE LEFT THE SYSTEM**

The name and last known city and state and telephone number for all franchisees that had a store 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 have not communicated with us within 10 weeks of the date of this disclosure document. If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system.

Patricia Spencer  
Litchfield, California 96130  
530.310.5657

Stanley Wong  
Draper, Utah 84020  
801.554.4347

**EXHIBIT I TO THE DISCLOSURE DOCUMENT**

**FRANCHISEE DISCLOSURE QUESTIONNAIRE**

As you know, Black Bear Diners, Inc. and you are preparing to enter into a Franchise Agreement for the operation of a Franchised Restaurant. In this Franchisee Disclosure Questionnaire, Black Bear Diners, Inc will be referred to as "we" or "us." The purpose of this Questionnaire is to determine whether any statements or promises were made to you that we did not authorize and that may be untrue, inaccurate or misleading. Please review each of the following questions carefully and provide honest and complete responses to each question.

1. Have you received and personally reviewed the Black Bear Diners, Inc. Franchise Agreement and each exhibit, addendum and schedule attached to it?  
Yes \_\_\_ No \_\_\_
  
2. Do you understand all of the information contained in the Franchise Agreement and each exhibit and schedules attached to it?  
Yes \_\_\_ No \_\_\_

If "No," what parts of the Franchise Agreement do you not understand? (Attach additional pages, if necessary.)

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3. Have you received and personally reviewed our Franchise Disclosure Document we provided to you?  
Yes \_\_\_ No \_\_\_
  
4. Do you understand all of the information contained in the Franchise Disclosure Document?  
Yes \_\_\_ No \_\_\_

If "No," what parts of the Franchise Disclosure Document do you not understand? (Attach additional pages, if necessary.)

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5. Have you discussed the benefits and risks of operating a Black Bear Diner restaurant with an attorney, accountant or other professional advisor and do you understand those risks?  
Yes \_\_\_ No \_\_\_
6. Do you understand that the success or failure of your business will depend in large part upon your skills and abilities, competition from other businesses, interest rates, inflation, labor and supply costs, lease terms and other economic and business factors?  
Yes \_\_\_ No \_\_\_
7. Has any employee or other person speaking on our behalf made any statement or promise concerning the revenues, profits or operating costs of a Black Bear Diner restaurant that we or our franchisees operate?  
Yes \_\_\_ No \_\_\_
8. Has any employee or other person speaking on our behalf made any statement or promise concerning a Black Bear Diner restaurant that is contrary to, or different from, the information contained in the Franchise Disclosure Document?  
Yes \_\_\_ No \_\_\_
9. Has any employee or other person speaking on our behalf made any statement or promise concerning the likelihood of success that you should or might expect to achieve from operating a Black Bear Diner?  
Yes \_\_\_ No \_\_\_
10. Has any employee or other person speaking on our behalf made any statement, promise or agreement concerning the advertising, marketing, training, support service or assistance that we will furnish to you that is contrary to, or different from, the information contained in the Franchise Disclosure Document?  
Yes \_\_\_ No \_\_\_



**EXHIBIT J TO THE DISCLOSURE DOCUMENT**

**MULTI STATE ADDENDA TO THE**  
**BLACK BEAR DINERS, INC FRANCHISE DISCLOSURE**  
**DOCUMENT, FRANCHISE AGREEMENT, AREA DEVELOPMENT**  
**AGREEMENT AND OPTION AGREEMENT**

The following are additional disclosures for the Franchise Disclosure Document of Black Bear Diners, Inc. required by various state franchise laws. Each provision of these additional disclosures will not apply unless, with respect to that provision, the jurisdictional requirements of the applicable state franchise registration and disclosure law are met independently without reference to these additional disclosures.

## FOR THE STATE OF CALIFORNIA

1. THE CALIFORNIA FRANCHISE INVESTMENT LAW REQUIRES THAT A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE FRANCHISE BE DELIVERED TOGETHER WITH THE FRANCHISE DISCLOSURE DOCUMENT.

2. SECTION 31125 OF THE FRANCHISE INVESTMENT LAW REQUIRES US TO GIVE YOU A DISCLOSURE DOCUMENT APPROVED BY THE COMMISSIONER OF CORPORATIONS BUSINESS OVERSIGHT BEFORE ~~WE ASK YOU TO CONSIDER A~~ SOLICITATION OF A PROPOSED MATERIAL MODIFICATION OF YOUR AN EXISTING FRANCHISE AGREEMENT.

3. Item ~~23~~ of the Franchise Disclosure Document is amended to add the following:

Neither the franchisor, nor any person ~~or franchise broker~~ in Item 2 of the ~~UFOC~~ Disclosure Document is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities Exchange Act of 1934, 15 U.S.C.A. ~~78a78~~ et seq., suspending or expelling ~~such person~~ this person from membership in ~~that~~ such association or exchange.

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

a. The California Business and Professions Code Sections 20000 through 20043 provide rights to franchisees concerning termination or non-renewal of a franchise. ~~No franchise may be terminated except for good cause, and the franchisee must be given a notice of default and a reasonable opportunity to cure the defects, except for certain defects as specified in the statute in which no opportunity to cure is required by law.~~ If a Franchise Agreement is inconsistent with the law, the law will control.

b. The Franchise Agreement provides for termination upon bankruptcy. This provision may not be enforceable under federal bankruptcy law (11 U.S.C.A. Sec. 101 et seq.).

c. The Franchise Agreement requires Franchisee to sign a general release as a condition of ~~transfer. This general release shall exclude claims arising under California Law.~~ renewal or transfer of the Franchise Agreement. California Corporations Code Section 31512 provides that any condition, stipulation or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of that law or any rule or order is void. Section 31512 voids a waiver of your rights under the Franchise Investment Law (California Corporations Code Section 31000-31516). Business and professions Code Section 20010 voids a waiver of a franchisee's rights under the Franchise Relations Act (Business and Professions Code Sections 20000-20043).

- d. The Franchise Agreement contains a covenant not to compete which extends beyond the term of the agreement. This provision might not be enforceable under California Law.

| ~~5. The Franchisor's~~

5. The terms of Item 17 of this disclosure document have been negotiated with another franchisee. A copy of all Negotiated Sales Notices filed in California in the last twelve months is attached to this Addendum for the state of California.

6. Our website, located at [www.blackbeardiner.com](http://www.blackbeardiner.com) has not been reviewed or approved by the California Department of Corporations. Any complaints concerning the content of this Website may be directed to the California Department of Corporations at [www.corp.ca.gov](http://www.corp.ca.gov).

Department of Corporations  
File No. 995-3217  
(Insert file number of  
currently effective  
franchise registration)

STATE OF CALIFORNIA  
DEPARTMENT OF CORPORATIONS

FRANCHISE INVESTMENT LAW  
NOTICE OF NEGOTIATED SALE OF FRANCHISE  
UNDER SECTION 310.100.2, TITLE 10, CALIFORNIA CODE OF REGULATIONS

1. (a) Name of FILER: Black Bear Diners, Inc.
- (b) The above-named filer is filing as a (check one):  
 FRANCHISOR       SUBFRANCHISOR
- (c) If FILER is a SUBFRANCHISOR, the name of FRANCHISOR:  
\_\_\_\_\_
2. (a) Name of FRANCHISEE: East Lake Travel Plaza LLC
- (b) Contact Person: John Ponczoch
- (c) Address: 24601 Center Ridge Rd. Westlake, Ohio 44145
- (d) Telephone: (915) 526-5780
- 3.A. (a) Offering Circular Item Number: 17.c.
- (b) Description of Provisions in Currently Registered  
Offering Circular: Renewal agreement may contain materially different terms
- (c) Description of Change: Certain monetary and other terms to remain same on renewal
- B. (a) Offering Circular Item Number: 17.d.
- (b) Description of Provisions in Currently Registered  
Offering Circular: Termination by franchisee if franchisor breaches agreement
- (c) Description of Change: Allows for termination by franchisee upon payment of fee.
- C. (a) Offering Circular Item Number: 17.m.
- (b) Description of Provisions in Currently Registered  
Offering Circular: Requires transfer fee be paid by franchisee
- (c) Description of Change: No transfer fee required for transfer to affiliated entity

(If additional space is needed, attach separate sheet(s) with  
respect to each additional item being changed using the  
above format)

3. D. (a) Disclosure Document Item Number: 17o
- (b) Description of Provisions in Currently Registered Disclosure Document:  
Franchisor has right to purchase all assets of Franchised Restaurant at termination or expiration
- (c) Description of Change:  
Franchisor's right to purchase limited to items containing the Marks or part of trade dress.
3. D. (a) Disclosure Document Item Number: 17q
- (b) Description of Provisions in Currently Registered Disclosure Document:  
Competitive business defined as providing similar food products or having similar trade dress for purpose of non-compete provision
- (c) Description of Change: .  
Competitive business defined as having bear theme for purpose of non-compete provision.

4. Date of Sale of Negotiated Franchise: June 25, 2013

5. Name, title, business address and telephone number of individual to be contacted by the Department regarding this notice:

Name: O. Terry Shaver

Title: Attorney

Business Address: Law Office of O. Terry Shaver, LLC

19 S. LaSalle St. Suite 901

Chicago, IL 60603

Telephone: (312) 920-0160

6. Date of this notice: September 23, 2013



Authorized Signature

Bruce Dean

Printed Name of Signatory

**FOR THE STATE OF HAWAII**

The Cover Page of the FDD is amended to add the following:

**THIS FRANCHISE WILL BE/HAS BEEN FILED UNDER THE FRANCHISE INVESTMENT LAW OF THE STATE OF HAWAII. FILING DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION OR ENDORSEMENT BY THE DIRECTOR OF COMMERCE AND CONSUMER AFFAIRS OR A FINDING THAT THE INFORMATION PROVIDED HEREIN IS TRUE, COMPLETE AND NOT MISLEADING. THE FRANCHISE INVESTMENT LAW MAKES IT UNLAWFUL TO OFFER OR SELL ANY FRANCHISE IN THIS STATE WITHOUT FIRST PROVIDING TO THE PROSPECTIVE FRANCHISEE, OR SUBFRANCHISOR, AT LEAST SEVEN DAYS PRIOR TO THE EXECUTION BY YOU OF ANY BINDING FRANCHISE OR OTHER AGREEMENT, OR AT LEAST SEVEN DAYS PRIOR TO THE PAYMENT OF ANY CONSIDERATION BY THE FRANCHISEE, OR SUBFRANCHISOR, WHICHEVER OCCURS FIRST, A COPY OF THE DISCLOSURE DOCUMENT, TOGETHER WITH A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE FRANCHISE.**

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

**FOR THE STATE OF ILLINOIS**

ITEM 17 of the disclosure document is amended to add the following:

1. ~~\_\_\_\_\_ Delete the “Summary” section of 17(v), entitled Choice of Forum.~~
2. ~~\_\_\_\_\_ Delete and replace the “Summary” section of 17(w), entitled Choice of Law with~~

~~the following:~~

~~Except for the Federal Arbitration Act and other federal law, the laws of the state of Illinois apply~~

1. ~~\_\_\_\_\_~~ 3The conditions under which you can be terminated and your rights on nonrenewal may be affected by Illinois law, 815 ILCS 705/19 and 705/20.
2. ~~\_\_\_\_\_~~ The Illinois Franchise Disclosure Act will govern any franchise agreement if it applies to a franchise located in Illinois.

3. The Franchise Agreement shall become effective on its acceptance and execution by us at our principal business address. The Franchise Agreement shall be interpreted and construed under the state law in which our principal place of business is located (currently California), except to the extent governed by the Federal Arbitration Act and the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C., Sections 1051 et seq.). However, any condition, stipulation, or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of the Act or other law of the state of Illinois is void.

4. Any action brought by either party in any court, except for claims required to be submitted to arbitration, whether federal or state, will be brought within a court of general jurisdiction where our principal place of business is located, which is currently Redding, California. The parties waive all questions of personal jurisdiction or venue. However, any provision that designates jurisdiction or venue outside of Illinois is void with respect to any cause of action that otherwise is enforceable in Illinois; provided, however that the Franchise Agreement may provide for arbitration in a forum outside Illinois.

5. No action for liability under the Illinois Franchise Disclosure Act shall be maintained unless brought before the expiration of 3 years after the act or transaction constituting the violation upon which it is based, the expiration of 1 year after the Franchisee becomes aware of facts or circumstances reasonably indicating that he may have a claim for relief in respect to conduct governed by the Act, or 90 days after delivery to the Franchisee of a written notice disclosing the violation, whichever shall first expire.

#### **FOR THE STATE OF MARYLAND**

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

- a. The Franchise Agreement requires Franchisee to sign a general release as a condition of renewal or transfer of the Franchise Agreement. This general release will not apply to any claims that arise under the Maryland Franchise Registration and Disclosure Law.
- b. The Franchise Agreement requires Franchisee to agree to a period of limitations of less than 3 years. The period of limitations less than 3 years will not apply to any claims arising under the Maryland Franchise Registration and Disclosure Law.
- c. The Franchise Agreement requires Franchisee to sue in a state other than Maryland. Franchisee still can file a lawsuit in Maryland alleging a violation of the Maryland Franchise Registration and Disclosure Law.
- d. The provision in the Franchise Agreement which provides for termination upon bankruptcy of the Franchisee may not be enforceable under federal bankruptcy law (11 U.S.C. Section 101 et seq.).

#### **FOR THE STATE OF MINNESOTA**

The following is added to the end of Item 5, entitled Initial Fees and at the end of Item 7, Note 2 entitled Franchise Fee:

You need not pay us any initial fees until after we have satisfied our initial obligations to you under the Franchise Agreement and you have commenced operations of your Franchised Restaurant.

Item 13 of the Franchise Disclosure Document is amended to add the following:

To the extent required by Minnesota Stat. Sec. 80C.12, Subd. 1 (g), we will protect your right to use the Marks and indemnify you from any loss, costs or expenses arising out of any claim, suit or demand regarding the use of the Marks.

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

- a. With respect to franchises governed by Minnesota law, we will comply with Minn. Stat. Sec. 80C.14, Subds. 3, 4 and 5 which require, except in certain specified cases, that you be given 90 days' notice of termination (with 60 days to cure) of the Franchise Agreement and 180 days' notice for non-renewal of the Franchise Agreement.
- b. Minn. Stat. Sec. 80C.21 and Minn. Rule 2860.4400J might prohibit us from requiring litigation to be conducted outside Minnesota. Those provisions also provide that nothing in the Disclosure Document or Franchise Agreement shall in any way abrogate or reduce any rights you have under the Minnesota Franchises Law, including (if applicable) 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.
- c. Any release required as a condition of renewal or transfer/assignment will not apply to the extent prohibited by applicable law with respect to claims arising under Minn. Rule 2860.4400D.
- d. Minnesota Statutes, Section 80C.21 and Minnesota Rule 2860.4400(J) prohibit the franchisor from requiring litigation to be conducted outside Minnesota, requiring waiver of jury trial, or requiring the franchisee to consent to liquidated damages, termination penalties or judgment notes. In addition, nothing in the Franchise Disclosure Document or agreements can abrogate or reduce any of franchisee's rights as provided for in Minnesota Statutes, Chapter 80C, or franchisee's rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction.

**FOR THE STATE OF NEW YORK**

1. The FDD cover page is amended as follows:

INFORMATION COMPARING FRANCHISORS IS AVAILABLE. CALL THE STATE ADMINISTRATORS LISTED IN EXHIBIT A OR YOUR

PUBLIC LIBRARY FOR SOURCES OF INFORMATION. REGISTRATION OF THIS FRANCHISE WITH THE STATE OF NEW YORK DOES NOT MEAN THAT NEW YORK STATE RECOMMENDS IT OR HAS VERIFIED THE INFORMATION IN THIS DISCLOSURE DOCUMENT. IF YOU LEARN THAT ANYTHING IN THIS DISCLOSURE DOCUMENT IS UNTRUE, CONTACT THE FEDERAL TRADE COMMISSION AND THE NEW YORK STATE DEPARTMENT OF LAW, BUREAU OF INVESTOR PROTECTION AND SECURITIES, 120 BROADWAY, NEW YORK, NEW YORK 10271-0332.

THE FRANCHISOR MAY, IF IT CHOOSES, NEGOTIATE WITH YOU ABOUT ITEMS COVERED IN THE FDD. HOWEVER, THE FRANCHISOR CANNOT USE THE NEGOTIATING PROCESS TO PREVAIL UPON A PROSPECTIVE FRANCHISEE TO ACCEPT TERMS WHICH ARE LESS FAVORABLE THAN THOSE SET FORTH IN THIS CIRCULAR.

2. Item 3 of the FDD is amended by the addition of the following language:

Neither we, nor any person identified in Item 2 has any administrative, criminal or material civil action (or a significant number of civil actions irrespective of materiality) pending against them alleging a violation of any franchise law, securities law, fraud, embezzlement, fraudulent conversion, restraint of trade, unfair or deceptive practices, misappropriation of property or comparable civil or misdemeanor allegations.

Neither we, nor any person identified in Item 2 has been convicted of a felony or pleaded nolo contendere to a felony charge or, within the 10 year period immediately preceding the application for registration, has been convicted of or pleaded nolo contendere to a misdemeanor charge or has been held liable in a civil action by final judgment or been the subject of a material complaint or other legal proceeding involving violation of any franchise law, securities law, fraud, embezzlement, fraudulent conversion or restraint of trade, misappropriation of property, or unfair or deceptive practices or comparable allegations.

Neither we, nor any person identified in Item 2 is subject to any injunctive or restrictive order or decree relating to the franchises, or any Federal, State or Canadian franchise, securities, antitrust, trade regulation or trade practice law, as a result of a concluded or pending action or proceeding brought by a public agency.

3. Item 4 of the FDD is amended by to state that:

Neither we, nor any predecessor, officer or general partner of the franchisor has, during the ten (10) year period immediately preceding the date of the disclosure document: (a) filed as debtor (or had filed against it) a petition to start an action under the U.S. Bankruptcy Code; (b) obtained a discharge of its debts under the U.S. Bankruptcy

Code; or (c) was a principal officer of any company or a general partner in any partnership that was adjudged bankrupt or reorganized due to insolvency during or within one (1) year after the period that such officer or general partner of the franchisor held such position in such company or partnership, and no such bankruptcy or reorganization proceeding has been commenced.

4. Item 17 of the FDD is amended to add the following:

Items 17(b) and (m) are modified to provide that no general release shall be required as a condition of renewal and/or transfer which is intended to exclude claims arising under the General Business Law of the State of New York, Article 3, Sections 687.4 and 687.5.

Item 17(d) is amended to provide that you may terminate the Franchise Agreement on any grounds available by law.

Item 17(j) is amended to state, that no assignment will be made except to an assignee who, in the good faith judgment of Franchisor, is able to assume Franchisor's obligations under the Franchise Agreement.

Item 17(w) is amended to state that New York law governs any cause of action which arises under the General Business Law of the State of New York, Article 33, Section 680-695.

#### **FOR THE STATE OF NORTH DAKOTA**

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

- a. Any release required as a condition of renewal and/or assignment/transfer will not apply to the extent prohibited by the North Dakota Franchise Investment Law.
- b. Covenants not to compete such as those mentioned above are generally considered unenforceable in the State of North Dakota; however, Franchisor will enforce the covenants to the maximum extent the law allows.
- c. To the extent required by the North Dakota Franchise Investment Law (unless such requirement is preempted by the Federal Arbitration Act), arbitration will be at a site to which Franchisor and Franchisee mutually agree and will not be remote from your place of business.
- d. Except as otherwise required by North Dakota law, California law shall apply.
- e. To the extent required by the North Dakota Franchise Investment Law, and subject to the arbitration obligations, you may bring an action in

North Dakota for claims arising under the North Dakota Franchise Investment Law.

**FOR THE STATE OF RHODE ISLAND**

ITEM 17 of the FDD is amended to add the following:

The Rhode Island Franchise Investment Act, R.I. Gen. Law Ch. 395 Sec. 19-28.1-1 through 34 provides that a provision in a Franchise Agreement restricting jurisdiction or venue to a forum outside this state or requiring the application of the laws of another state is void with respect to a claim otherwise enforceable under the Rhode Island Franchise Investment Act.

**FOR THE STATE OF VIRGINIA**

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

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

**FOR THE STATE OF WASHINGTON**

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

- a. In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW shall prevail.
- b. A release or waiver of rights executed by a Franchisee will not include rights under the Washington Franchise Investment Protection Act.
- c. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act, rights or remedies under the Act such as a right to a jury trial may not be enforceable.
- d. Transfer fees are collectable to the extent that they reflect the Franchisor's reasonable estimated or actual costs in effecting a transfer.

**THE FOLLOWING PAGES IN THIS EXHIBIT ARE STATE-SPECIFIC AMENDMENTS  
TO THE BLACK BEAR DINERS, INC. FRANCHISE AGREEMENT**

**FOR THE STATE OF CALIFORNIA**

This Addendum to the Franchise Agreement is agreed to this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, between Black Bear Diners, Inc and \_\_\_\_\_ to amend and revise said Franchise Agreement as follows:

In recognition of the requirements of the California Franchise Investment Law, Cal. Corp. Code §§31000-3516 and the California Franchise Relations Act, Cal. Bus. And Prof. Code §§20000-20043, the Franchise Agreement for Black Bear Diners, Inc shall be amended as follows:

- a. The California Franchise Relations Act provides rights to the Franchisee concerning termination or nonrenewal of the Franchise Agreement, which may supersede provisions in the Franchise Agreement, specifically Sections 4.2 and 16.
- b. Sections 4.2- and 18.2 require Franchisee to sign a general release as a condition of renewal and transfer of the franchise, such release shall exclude claims arising under California Franchise Investment Law and California Franchise Relations Act.
- c. Section 15.2 which terminates the Franchise Agreement upon the bankruptcy of the Franchisee may not be enforceable under federal bankruptcy law (11 U.S.C. Section 101, *et seq.*).
- d. Sections 22.2 and 22.7 of the Franchise Agreement require litigation or arbitration to be conducted in the State of California; the requirement may not be enforceable for claims arising under the California Franchise Investment Law or the California Franchise Relations Act.
- e. Section 17.2 of the Franchise Agreement contains a covenant not to compete which extends beyond the expiration or termination of the Agreement; this covenant may not be enforceable under California Law.

Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the California Law applicable to the provisions are met independent of this Addendum. To the extent this Addendum shall be deemed to be inconsistent with any terms or conditions of said Franchise Agreement or exhibits or attachments thereto, the terms of this Addendum shall govern.

(signature page follows)

IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Addendum, understands and consents to be bound by all of its terms.

**FRANCHISOR:**

**BLACK BEAR DINERS, INC.**

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

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

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

**FRANCHISEE:**

If Franchisee is an individual:

Individually:

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

Individually:

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

If Franchisee is a corporation, limited liability company or other entity:

\_\_\_\_\_  
(Name of Franchisee)

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

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

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

**FOR THE STATE OF ILLINOIS**

This Addendum to the Franchise Agreement is agreed to this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, between Black Bear Diners, Inc and \_\_\_\_\_ to amend and revise said Franchise Agreement as follows:

In recognition of the requirements of the Illinois Franchise Disclosure Act of 1987, 815 ILCS 705/1 et seq., the Franchise Agreement for Black Bear Diners, Inc. shall be amended as follows:

**Choice of Law.** Section 22.1 of the Franchise Agreement is deleted and replaced with the following:

**22.1 Choice of Law**

This Agreement and the rights of the parties will not take effect unless and until this Agreement is accepted and signed by Franchisor. All matters relating to arbitration shall be governed by the Federal Arbitration Act (9 U.S.C. §§ 1 et seq.). Except to the extent this Agreement or any particular dispute is governed by the Federal Arbitration Act, the United States Trademark Act of 1946 or other federal law, this Agreement shall be governed by and construed in accordance with the laws of the State of Illinois (without reference to its conflict of laws principles), excluding any law regulating the sale of franchises or governing the relationship between a franchisor and franchisee, unless the jurisdictional requirements of such laws are met independently without reference to this Section. References to any law or regulation, refer also to any successor laws or regulations or any published regulations for any statute, as in effect at the relevant time.

**Consent to Jurisdiction.** Section 22.2 of the Franchise Agreement is deleted.

**Waiver of Jury Trial.** The following language is added to the end of Section 22.6 of the Franchise Agreement:

This Section shall not act to bind any person acquiring a franchise to waive compliance with any provision of the Illinois Franchise Disclosure Act of 1987.

Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the Illinois Franchise Disclosure Act applicable to the provisions are met independent of this Addendum. To the extent this Addendum shall be deemed to be inconsistent with any terms or conditions of said Option Agreement or exhibits or attachments thereto, the terms of this Addendum shall govern.

IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Addendum, understands and consents to be bound by all of its terms.

**FRANCHISOR:**

**BLACK BEAR DINERS, INC.**

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

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

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

**FRANCHISEE:**

If Franchisee is an individual:

Individually:

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

Individually:

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

If Franchisee is a corporation, limited liability  
company or other entity:

\_\_\_\_\_  
(Name of Franchisee)

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

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

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

**FOR THE STATE OF MINNESOTA MARYLAND**

This Addendum to the Franchise Agreement is agreed to this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, between Black Bear Diners, Inc and \_\_\_\_\_  
\_\_\_\_\_ to amend and revise said Franchise Agreement as follows:

In recognition of the requirements of the Maryland Franchise Registration and Disclosure Law, Md. Code Ann., Bus. Reg. §§14-201-14-233, the Franchise Agreement for Black Bear Diners, Inc. shall be amended as follows:

Sections 4.2 and 18.2 of the Franchise Agreement require Franchisee to sign a general release as a condition of renewal and transfer of the franchise; such release shall exclude claims arising under the Maryland Franchise Registration and Disclosure Law.

Section 15.2 of the Franchise Agreement which terminates the Franchise Agreement upon the bankruptcy of the Franchisee may not be enforceable under federal bankruptcy law (11 U.S.C. Section 101, *et seq.*).

Section 22.1 of the Franchise Agreement requires that the franchise be governed by California law; however, in the event of a conflict of laws to the extent required by the Maryland Franchise Registration and Disclosure Law, Maryland law shall prevail.

Sections 22.2 and 22.7 of the Franchise Agreement require litigation or arbitration to be conducted in the State of California; the requirement shall not limit any rights Franchisee may have under the Maryland Franchise Registration and Disclosure Law to bring suit in the State of Maryland.

Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the Maryland Franchise Registration and Disclosure Law applicable to the provisions are met independent of this Addendum. To the extent this Addendum shall be deemed to be inconsistent with any terms or conditions of said Franchise Agreement or exhibits or attachments thereto, the terms of this Addendum shall govern.

[signature page follows]

IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Addendum, understands and consents to be bound by all of its terms.

**FRANCHISOR:**

**BLACK BEAR DINERS, INC.**

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

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

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

**FRANCHISEE:**

If Franchisee is an individual:

Individually:

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

Individually:

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

If Franchisee is a corporation, limited liability company or other entity:

\_\_\_\_\_  
(Name of Franchisee)

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

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

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

**FOR THE STATE OF MINNESOTA**

This Addendum to the Franchise Agreement is agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between Black Bear Diners, Inc and \_\_\_\_\_ to amend and revise said Franchise Agreement as follows:

In recognition of the Minnesota Franchise Law, Minn. Stat., Chapter 80C, Sections 80C.01 through 80C.22, and the Rules and Regulations promulgated pursuant thereto by the Minnesota Commission of Securities, Minnesota Rule 2860.4400, et. seq., the parties agree as follows:

Section 3.1 of the Franchise Agreement shall be amended to add:

Despite the payment provisions above, Franchisee need not pay Franchisor any initial fees until after Franchisor has satisfied its initial obligations to Franchisee under this Agreement and Franchisee has commenced operations of its Franchised Restaurant.

Sections 4.2(g) and 18.2(b) of the Franchise Agreement shall be amended to add:

Any release required as a condition of renewal and/or assignment/transfer will not apply to the extent prohibited by the Minnesota Franchises Law.

Section 6.3 of the Franchise Agreement shall be amended to add:

To the extent required by Minnesota Stat. Sec. 80C.12, Subd. I (g), Franchisor agrees to protect Franchisee's right to use the Marks and indemnify Franchisee from any loss, costs or expenses arising out of any claim, suit or demand regarding the use of the Marks.

Section 15.2 and 15.3 of the Franchise Agreement shall be amended to add the following:

With respect to franchises governed by Minnesota Law, the Franchisor will comply with the Minnesota Franchise Law which requires, except in certain specified cases, that a Franchisee be given 90 days notice of termination (with 60 days to cure) and 180 days notice of non-renewal of the Agreement.

Section 22.2. of the Franchise Agreement shall be amended to add:

Minnesota Statutes, Section 80C.21 and Minnesota Rule 2860.4400(J) prohibit the franchisor from requiring litigation to be conducted outside Minnesota, requiring waiver of jury trial, or requiring the franchisee to consent to liquidated damages, termination penalties or judgment notes.

In addition, nothing in the Franchise Disclosure Document or agreements can abrogate or reduce any of franchisee's rights as provided for in Minnesota Statutes, Chapter 80C, or franchisee's rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction.

Section 22.4 of the Franchise Agreement shall be amended to add:

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

Section 22.6 of the Franchise Agreement is deleted to the extent required by Minnesota Franchises Law.

Pursuant to Minnesota Rule 2860.4400J, the Franchisee shall not be required to consent to the Franchisor obtaining injunctive relief. However, Franchisor may seek injunctive relief. In addition, the court shall determine if a bond is required and the amount of such bond.

Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the Minnesota Law applicable to the provisions are met independent of this Addendum. To the extent this Addendum shall be deemed to be inconsistent with any terms or conditions of said Franchise Agreement or exhibits or attachments thereto, the terms of this Addendum shall govern.

IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Amendment, and agrees to be bound by its terms.

**FRANCHISOR:**

**BLACK BEAR DINERS, INC.**

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

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

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

**FRANCHISEE:**

If Franchisee is an individual:

Individually:

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

Individually:

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

If Franchisee is a corporation, limited liability company or other entity:

\_\_\_\_\_  
(Name of Franchisee)

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

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

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

**FOR THE STATE OF NEW YORK**

This Addendum to the Franchise Agreement is agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between Black Bear Diners, Inc and \_\_\_\_\_ to amend and revise said Franchise Agreement as follows:

In recognition of the requirements of the General Business Laws of the State of New York, Article 33, §§ 680 through 695, the Franchise Agreement for Black Bear Diners, Inc. shall be amended as follows:

Sections 4.2 and 18.2 of the Franchise Agreement may require you to sign a general release as a condition of renewal and transfer of the franchise; such release shall exclude claims arising under the General Business Law Sections 687.4 and 687.5, as amended of the State of New York.

Under Section 18.1 of the Franchise Agreement, we will not transfer and assign our rights and obligations under the Franchise Agreement unless the transferee will be able to perform the obligations under the Franchise Agreement, in our good faith judgment.

Section 20.2 of the Franchise Agreement is amended to provide that you will not be required to indemnify us for any liability imposed upon us as a result of your reliance upon or use of procedures or products which were required by us, if such procedures or products were utilized by you in the manner required by us.

Section 22.1 of the Franchise Agreement requires that the franchise be governed by the laws of the State of California, such requirement will not be considered a waiver of any right conferred upon you by Article 33 of the General Business Law of the State of New York.

Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the General Business Laws of the State of New York applicable to the provisions are met independent of this Addendum. To the extent this Addendum shall be deemed to be inconsistent with any terms or conditions of said Franchise Agreement or exhibits or attachments thereto, the terms of this Addendum shall govern.

[signature page follows]

IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Addendum, understands and consents to be bound by all of its terms.

**FRANCHISOR:**

**BLACK BEAR DINERS, INC.**

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

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

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

**FRANCHISEE:**

If Franchisee is an individual:

Individually:

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

Individually:

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

If Franchisee is a corporation, limited liability company or other entity:

\_\_\_\_\_  
(Name of Franchisee)

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

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

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

**FOR THE STATE OF NORTH DAKOTA**

This Addendum to the Franchise Agreement is agreed to this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, between Black Bear Diners, Inc and \_\_\_\_\_  
\_\_\_\_\_ to amend and revise said Franchise Agreement as follows:

The North Dakota Securities Commission requires that certain provisions contained in the Agreement be amended to be consistent with North Dakota law, including the North Dakota Franchise Investment Law, Chapter 51-19, Sections 51-19-01 *et seq.* Such provisions in the Agreement are hereby amended as follows:

Sections 4.2(g) and 18.2(b) of the Franchise Agreement shall be amended to add:

Any release required as a condition of renewal and/or assignment/transfer will not apply to the extent prohibited by the North Dakota Franchise Investment Law.

Section 17.2 of the Franchise Agreement shall be amended to add:

Covenants not to compete such as those mentioned above are generally considered unenforceable in the State of North Dakota; however, we will enforce the covenants to the maximum extent the law allows

Section 22.1. of the Franchise Agreement shall be amended as follows:

The word "California" shall be replaced with the words "North Dakota".

Section 22.2. of the Franchise Agreement shall be amended to add:

Notwithstanding the foregoing, to the extent required by the North Dakota Franchise Investment Law, and subject to the arbitration obligations, Franchisee may bring an action in North Dakota for claims arising under the North Dakota Franchise Investment Law.

Section 22.4 of the Franchise Agreement shall be amended to add:

The statutes of limitations under North Dakota law applies with respect to claims arising under the North Dakota Franchise Investment Law.

Section 22.5 of the Franchise Agreement is deleted to the extent required by the North Dakota Franchise Investment Law.

Section 22.6 of the Franchise Agreement is deleted to the extent required by the North Dakota Franchise Investment Law.

Section 22.7 of the Franchise Agreement shall be amended to add:

provided, however, that to the extent otherwise required by the North Dakota Franchise Investment Law (unless such a requirement is preempted by the Federal Arbitration Act), arbitration shall be held at a site to which Franchisor

and Franchisee mutually agree and may not be remote from Franchisee's place of business.

Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the North Dakota Law applicable to the provisions are met independent of this Addendum. To the extent this Addendum shall be deemed to be inconsistent with any terms or conditions of said Franchise Agreement or exhibits or attachments thereto, the terms of this Addendum shall govern.

IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Amendment, and agrees to be bound by its terms.

**FRANCHISOR:**

**BLACK BEAR DINERS, INC.**

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

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

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

**FRANCHISEE:**

If Franchisee is an individual:

Individually:

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

Individually:

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

If Franchisee is a corporation, limited liability company or other entity:

\_\_\_\_\_  
(Name of Franchisee)

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

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

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

|

**FOR THE STATE OF RHODE ISLAND**

This Addendum to the Franchise Agreement is agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between Black Bear Diners, Inc and \_\_\_\_\_ to amend and revise said Franchise Agreement as follows:

In recognition of the requirements of The Rhode Island Franchise Investment Act §19-28.1-14, the Franchise Agreement for Black Bear Diners, Inc shall be amended as follows:

Sections 4.2 and 18.2 of the Franchise Agreement require Franchisee to sign a general release as a condition of renewal and transfer of the franchise; such release shall exclude claims arising under The Rhode Island Franchise Investment Act.

Sections 22.2 and 22.7 of the Franchise Agreement shall be amended to state that restricting jurisdiction or venue to a forum outside the state of Rhode Island or requiring the application of the laws of another state is void with respect to a claim otherwise enforceable under The Rhode Island Franchise Investment Act.

Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the Rhode Island Franchise Investment Act applicable to the provisions are met independent of this Addendum. To the extent this Addendum shall be deemed to be inconsistent with any terms or conditions of said Franchise Agreement or exhibits or attachments thereto, the terms of this Addendum shall govern.

[signature page follows]

IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Addendum, understands and consents to be bound by all of its terms.

**FRANCHISOR:**

**BLACK BEAR DINERS, INC.**

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

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

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

**FRANCHISEE:**

If Franchisee is an individual:

Individually:

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

Individually:

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

If Franchisee is a corporation, limited liability company or other entity:

\_\_\_\_\_  
(Name of Franchisee)

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

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

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

**FOR THE STATE OF WASHINGTON**

This Addendum to the Franchise Agreement is agreed to this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, between Black Bear Diners, Inc and \_\_\_\_\_ to amend and revise said Franchise Agreement as follows:

In recognition of the requirements of the Washington Franchise Investment Protection Act, Washington Rev. Code §§19.100.010 – 19.100.940, the Franchise Agreement for Black Bear Diners, Inc. shall be amended as follows:

- a. The Washington Franchise Investment Protection Act provides rights to Franchisee concerning non-renewal and termination of the Franchise Agreement. If the Agreement contains a provision that is inconsistent with the Act, the Act will control.
- b. Under Sections 4.2 and 18.2, Franchisee is required to sign a general release as a condition of renewal and transfer of the franchise; such release shall exclude claims arising under the Washington Franchise Investment Protection Act.
- c. Sections 22.2 and 22.7 of the Franchise Agreement require litigation or arbitration to be conducted in the State of California; the requirement shall not limit any rights Franchisee may have under the Washington Franchise Investment Protection Act to bring suit in the State of Washington.
- d. Section 22.1 of the Franchise Agreement requires that the franchise be governed by the laws of the State of California; such a requirement may be unenforceable in the event of a conflict with the Washington Franchise Investment Protection Act.

Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the Washington Law applicable to the provisions are met independent of this Addendum. To the extent this Addendum shall be deemed to be inconsistent with any terms or conditions of said Franchise Agreement or exhibits or attachments thereto, the terms of this Addendum shall govern.

(signature page follows)

IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Addendum, understands and consents to be bound by all of its terms.

**FRANCHISOR:**

**BLACK BEAR DINERS, INC.**

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

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

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

**FRANCHISEE:**

If Franchisee is an individual:

Individually:

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

Individually:

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

If Franchisee is a corporation, limited liability company or other entity:

\_\_\_\_\_  
(Name of Franchisee)

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

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

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

**FOR THE STATE OF WISCONSIN**

This Addendum to the Franchise Agreement is agreed to this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, between Black Bear Diners, Inc and \_\_\_\_\_ to amend and revise said Franchise Agreement as follows:

The Wisconsin Fair Dealership Law Title XIV-A Ch. 135, Sec. 135.01-135.07 will supersede any conflicting terms of the Franchise Agreement.

Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the Wisconsin Law applicable to the provisions are met independent of this Addendum. To the extent this Addendum shall be deemed to be inconsistent with any terms or conditions of said Franchise Agreement or exhibits or attachments thereto, the terms of this Addendum shall govern.

IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Amendment, and agrees to be bound by its terms.

**FRANCHISOR:**

**BLACK BEAR DINERS, INC.**

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

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

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

**FRANCHISEE:**

If Franchisee is an individual:

Individually:

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

Individually:

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

If Franchisee is a corporation, limited liability company or other entity:

\_\_\_\_\_  
(Name of Franchisee)

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

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

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

**THE FOLLOWING PAGES IN THIS EXHIBIT ARE STATE-SPECIFIC AMENDMENTS  
TO THE BLACK BEAR DINERS, INC. AREA DEVELOPMENT AGREEMENT**

**FOR THE STATE OF CALIFORNIA**

This Addendum to the Area Development Agreement is agreed to this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between Black Bear Diners, Inc. and \_\_\_\_\_  
\_\_\_\_\_ to amend and revise said Area Development Agreement as follows:

In recognition of the requirements of the California Franchise Investment Law, Cal. Corp. Code §§31000-3516 and the California Franchise Relations Act, Cal. Bus. And Prof. Code §§20000-20043, the Area Development Agreement for Black Bear Diners, Inc. shall be amended as follows:

Section 13.2 of the Area Development Agreement requires litigation or arbitration to be conducted in the State of California; the requirement may not be enforceable for claims arising under the California Franchise Investment Law or the California Franchise Relations Act.

Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the California Law applicable to the provisions are met independent of this Addendum. To the extent this Addendum shall be deemed to be inconsistent with any terms or conditions of said Area Development Agreement or exhibits or attachments thereto, the terms of this Addendum shall govern.

[signature page follows]

IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Addendum, understands and consents to be bound by all of its terms.

**FRANCHISOR:**

**BLACK BEAR DINERS, INC.**

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

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

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

**AREA DEVELOPER**

If Area Developer is an individual:

Individually:

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

Individually:

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

If Area Developer is a corporation, limited liability company or other entity:

\_\_\_\_\_  
(Name of Area Developer)

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

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

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

**FOR THE STATE OF ILLINOIS**

This Addendum to the Area Development Agreement is agreed to this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, between Black Bear Diners, Inc. and \_\_\_\_\_ to amend and revise said Area Development Agreement as follows:

In recognition of the requirements of the Illinois Franchise Disclosure Act of 1987, 815 ILCS 705/1 et seq., the Area Development Agreement for Black Bear Diners, Inc. shall be amended as follows:

Section 13.1 of the Area Development Agreement is deleted and replaced with the following:

**13.1 Choice of Law**

This Agreement and the rights of the parties will not take effect unless and until this Agreement is accepted and signed by Franchisor. All matters relating to arbitration shall be governed by the Federal Arbitration Act (9 U.S.C. §§ 1 et seq.). Except to the extent this Agreement or any particular dispute is governed by the Federal Arbitration Act, the United States Trademark Act of 1946 or other federal law, this Agreement shall be governed by and construed in accordance with the laws of the State of Illinois (without reference to its conflict of laws principles), excluding any law regulating the sale of franchises or governing the relationship between a franchisor and franchisee, unless the jurisdictional requirements of such laws are met independently without reference to this Section. References to any law or regulation, refer also to any successor laws or regulations or any published regulations for any statute, as in effect at the relevant time.

Section 13.2 of the Area Development Agreement currently requires litigation to be conducted in the state of California, the requirement shall not limit any rights either party may have under the Illinois Franchise Disclosure Act to bring suit in the State of Illinois.

**Waivers Void.** In accordance with Section 41 of the Illinois Franchise Disclosure Act of 1987, no provision contained in the Area Development Agreement shall act to bind any person acquiring a franchise to waive compliance with any provision of the Illinois Franchise Disclosure Act.

Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the Illinois Franchise Disclosure Act applicable to the provisions are met independent of this Addendum. To the extent this Addendum shall be deemed to be inconsistent with any terms or conditions of said Area Development Agreement or exhibits or attachments thereto, the terms of this Addendum shall govern.

IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Addendum, understands and consents to be bound by all of its terms.

**FRANCHISOR:**

**BLACK BEAR DINERS, INC.**

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

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

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

**AREA DEVELOPER:**

If Area Developer is an individual:

Individually:

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

Individually:

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

If Area Developer is a corporation, limited liability company or other entity:

\_\_\_\_\_  
(Name of Area Developer)

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

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

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

**FOR THE STATE OF MARYLAND**

This Addendum to the Area Development Agreement is agreed to this \_\_\_\_ day of  
\_\_\_\_, 20\_\_\_\_, between Black Bear Diners, Inc and  
to amend and revise said Area Development Agreement as follows:

In recognition of the requirements of the Maryland Franchise Registration and Disclosure Law, Md. Code Ann., Bus. Reg. §§14-201-14-233, the Area Development Agreement for Black Bear Diners, Inc. shall be amended as follows:

Section 13.1 of the Area Development Agreement requires that the franchise be governed by California law; however, in the event of a conflict of laws to the extent required by the Maryland Franchise Registration and Disclosure Law, Maryland law shall prevail.

Section 13.2 of the Area Development Agreement requires litigation or arbitration to be conducted in the judicial district in which Franchisor has its principal place of business, currently Redding, California; the requirement shall not limit any rights Franchisee may have under the Maryland Franchise Registration and Disclosure Law to bring suit in the State of Maryland.

Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the Maryland Franchise Registration and Disclosure Law applicable to the provisions are met independent of this Addendum. To the extent this Addendum shall be deemed to be inconsistent with any terms or conditions of said Franchise Agreement or exhibits or attachments thereto, the terms of this Addendum shall govern.

[signature page follows]

IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Addendum, understands and consents to be bound by all of its terms.

**FRANCHISOR:**

**BLACK BEAR DINERS, INC.**

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

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

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

**DEVELOPER:**

If Developer is an individual:

Individually:

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

Individually:

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

If Developer is a corporation, limited liability company or other entity:

\_\_\_\_\_  
(Name of Franchisee)

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

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

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

**FOR THE STATE OF MINNESOTA**

This Addendum to the Area Development Agreement is agreed to this \_\_\_ day of \_\_\_\_\_, 20 \_\_\_, between Black Bear Diners, Inc and \_\_\_\_\_ to amend and revise said Area Development Agreement as follows:

In recognition of the Minnesota Franchise Law, Minn. Stat., Chapter 80C, Sections 80C.01 through 80C.22, and the Rules and Regulations promulgated pursuant thereto by the Minnesota Commission of Securities, Minnesota Rule 2860.4400, et. seq., the parties agree as follows:

Section 9 of the Area Development Agreement shall be amended to add the following:

With respect to franchises governed by Minnesota Law, the Franchisor will comply with the Minnesota Franchise Law which requires, except in certain specified cases, that a Franchisee be given 90 days notice of termination (with 60 days to cure) and 180 days notice of non-renewal of the Agreement.

Section 13.2 of the Area Development Agreement shall be amended to add:

Minnesota Statutes, Section 80C.21 and Minnesota Rule 2860.4400(J) prohibit the franchisor from requiring litigation to be conducted outside Minnesota, requiring waiver of jury trial, or requiring the franchisee to consent to liquidated damages, termination penalties or judgment notes. In addition, nothing in the Franchise Disclosure Document or agreements can abrogate or reduce any of franchisee's rights as provided for in Minnesota Statutes, Chapter 80C, or franchisee's rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction.

Section 13.5 of the Area Development Agreement is deleted to the extent required by Minnesota Franchises Law.

Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the Minnesota Law applicable to the provisions are met independent of this Addendum. To the extent this Addendum shall be deemed to be inconsistent with any terms or conditions of said Area Development Agreement or exhibits or attachments thereto, the terms of this Addendum shall govern.

[signature page follows]

IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Amendment, and agrees to be bound by its terms.

**FRANCHISOR:**

**BLACK BEAR DINERS, INC.**

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

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

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

**AREA DEVELOPER:**

If Area Developer is an individual:

Individually:

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

Individually:

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

If Area Developer is a corporation, limited liability company or other entity:

\_\_\_\_\_  
(Name of Area Developer)

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

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

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

**FOR THE STATE OF NORTH DAKOTA**

This Addendum to the Area Development Agreement is agreed to this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, between Black Bear Diners, Inc and \_\_\_\_\_ to amend and revise said Area Development Agreement as follows:

The North Dakota Securities Commission requires that certain provisions contained in the Agreement be amended to be consistent with North Dakota law, including the North Dakota Franchise Investment Law, Chapter 51-19, Sections 51-19-01 *et seq.* Such provisions in the Agreement are hereby amended as follows:

Section 10.2 of the Development Agreement shall be amended to add:

Covenants not to compete such as those mentioned above are generally considered unenforceable in the State of North Dakota; however, we will enforce the covenants to the maximum extent the law allows

Section 13.1 of the Development Agreement shall be amended as follows:

The word "California" shall be replaced with the words "North Dakota".

Section 13.2 of the Development Agreement shall be amended as follows:

The following shall be added:

Notwithstanding anything to the contrary contained in Section 13.2, to the extent otherwise required by the North Dakota Franchise Investment Law (unless such a requirement is preempted by the Federal Arbitration Act), mediation or arbitration shall be held at a site to which Franchisor and Developer mutually agree and may not be remote from Developer's place of business.

Under the heading Arbitration, the following shall be deleted:

(ii) assess punitive or exemplary damages;

Section 13.3 of the Development Agreement shall be amended to add:

Notwithstanding the foregoing, to the extent required by the North Dakota Franchise Investment Law, and subject to the arbitration obligations, Developer may bring an action in North Dakota for claims arising under the North Dakota Franchise Investment Law.

Section 13.5 of the Development Agreement shall be amended to add:

The statutes of limitations under North Dakota law applies with respect to claims arising under the North Dakota Franchise Investment Law.

Section 13.6 of the Development Agreement is deleted to the extent required by the North Dakota Franchise Investment Law.

Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the North Dakota Law applicable to the provisions are met independent of this Addendum. To the extent this Addendum shall be deemed to be inconsistent with any terms or conditions of said Option Agreement or exhibits or attachments thereto, the terms of this Addendum shall govern.

IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Amendment, and agrees to be bound by its terms.

**FRANCHISOR:**

**BLACK BEAR DINERS, INC.**

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

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

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

**AREA DEVELOPER:**

If Area Developer is an individual:

Individually:

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

Individually:

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

If Area Developer is a corporation, limited liability company or other entity:

\_\_\_\_\_  
(Name of Area Developer)

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

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

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

**FOR THE STATE OF WASHINGTON**

This Addendum to the Area Development Agreement is agreed to this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, between Black Bear Diners, Inc and \_\_\_\_\_  
\_\_\_\_\_ to amend and revise said Area Development Agreement as follows:

In recognition of the requirements of the Washington Franchise Investment Protection Act, Washington Rev. Code §§19.100.010 – 19.100.940, the Area Development Agreement for Black Bear Diners, Inc. shall be amended as follows:

Section 13.1 of the Area Development Agreement requires that the franchise be governed by California Law; in the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act will prevail.

Section 13.2 of the Area Development Agreement requires litigation to be conducted in California, the requirement shall not limit any rights Area Developer may have under the Washington Franchise Investment Protection Act to bring suit in the State of Washington.

Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the Washington Law applicable to the provisions are met independent of this Addendum. To the extent this Addendum shall be deemed to be inconsistent with any terms or conditions of said Area Development Agreement or exhibits or attachments thereto, the terms of this Addendum shall govern.

[signature page follows]

IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Addendum, understands and consents to be bound by all of its terms.

**FRANCHISOR:**

**BLACK BEAR DINERS, INC.**

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

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

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

**AREA DEVELOPER:**

If Area Developer is an individual:

Individually:

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

Individually:

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

If Area Developer is a corporation, limited liability company or other entity:

\_\_\_\_\_  
(Name of Area Developer)

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

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

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

**FOR THE STATE OF WISCONSIN**

This Addendum to the Franchise Agreement is agreed to this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, between Black Bear Diners, Inc and \_\_\_\_\_ to amend and revise said Franchise Agreement as follows:

The Wisconsin Fair Dealership Law Title XIV-A Ch. 135, Sec. 135.01-135.07 will supersede any conflicting terms of the FranchiseArea Development Agreement.

Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the Wisconsin Law applicable to the provisions are met independent of this Addendum. To the extent this Addendum shall be deemed to be inconsistent with any terms or conditions of said FranchiseArea Development Agreement or exhibits or attachments thereto, the terms of this Addendum shall govern.

IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Amendment, and agrees to be bound by its terms.

**FRANCHISOR:**

**BLACK BEAR DINERS, INC.**

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

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

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

**AREA DEVELOPER:**

If Area Developer is an individual:

Individually:

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

Individually:

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

If Area Developer is a corporation, limited liability company or other entity:

\_\_\_\_\_  
(Name of Area Developer)

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

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

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

**THE FOLLOWING PAGES IN THIS EXHIBIT ARE STATE-SPECIFIC AMENDMENTS  
TO THE BLACK BEAR DINERS, INC. OPTION AGREEMENT**

**FOR THE STATE OF CALIFORNIA**

This Addendum to the Option Agreement is agreed to this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between Black Bear Diners, Inc and \_\_\_\_\_ to amend and revise said Option Agreement as follows:

In recognition of the requirements of the California Franchise Investment Law, Cal. Corp. Code §§31000-3516 and the California Franchise Relations Act, Cal. Bus. And Prof. Code §§20000-20043, the Option Agreement for Black Bear Diners, Inc shall be amended as follows:

Section 12.2 of the Option Agreement require litigation or arbitration to be conducted in the State of California; the requirement may not be enforceable for claims arising under the California Franchise Investment Law or the California Franchise Relations Act.

Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the California Law applicable to the provisions are met independent of this Addendum. To the extent this Addendum shall be deemed to be inconsistent with any terms or conditions of said Option Agreement or exhibits or attachments thereto, the terms of this Addendum shall govern.

[signature page follows]

IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Addendum, understands and consents to be bound by all of its terms.

**FRANCHISOR:**

**BLACK BEAR DINERS, INC.**

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

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

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

**OPTION HOLDER:**

If Option Holder is an individual:

Individually:

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

Individually:

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

If Option Holder is a corporation, limited liability company or other entity:

\_\_\_\_\_  
(Name of Option Holder)

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

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

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

**FOR THE STATE OF ILLINOIS**

This Addendum to the Option Agreement is agreed to this \_\_\_ day of \_\_\_\_\_, 20 \_\_\_, between Black Bear Diners, Inc and \_\_\_\_\_ to amend and revise said Option Agreement as follows:

In recognition of the requirements of the Illinois Franchise Disclosure Act of 1987, 815 ILCS 705/1 et seq., the Option Agreement for Black Bear Diners, Inc. shall be amended as follows:

Section 12.1 of the Option Agreement is deleted and replaced with the following:

**12.1 Choice of Law**

This Agreement and the rights of the parties will not take effect unless and until this Agreement is accepted and signed by Franchisor. All matters relating to arbitration shall be governed by the Federal Arbitration Act (9 U.S.C. §§ 1 et seq.). Except to the extent this Agreement or any particular dispute is governed by the Federal Arbitration Act, the United States Trademark Act of 1946 or other federal law, this Agreement shall be governed by and construed in accordance with the laws of the State of Illinois (without reference to its conflict of laws principles), excluding any law regulating the sale of franchises or governing the relationship between a franchisor and franchisee, unless the jurisdictional requirements of such laws are met independently without reference to this Section. References to any law or regulation, refer also to any successor laws or regulations or any published regulations for any statute, as in effect at the relevant time.

Section 12.2 of the Option Agreement currently requires litigation to be conducted in the state of California, the requirement shall not limit any rights either party may have under the Illinois Franchise Disclosure Act to bring suit in the State of Illinois.

**Waivers Void.** In accordance with Section 41 of the Illinois Franchise Disclosure Act of 1987, no provision contained in the Option Agreement shall act to bind any person acquiring a franchise to waive compliance with any provision of the Illinois Franchise Disclosure Act.

Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the Illinois Franchise Disclosure Act applicable to the provisions are met independent of this Addendum. To the extent this Addendum shall be deemed to be inconsistent with any terms or conditions of said Option Agreement or exhibits or attachments thereto, the terms of this Addendum shall govern.

IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Addendum, understands and consents to be bound by all of its terms.

**FRANCHISOR:**

**BLACK BEAR DINERS, INC.**

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

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

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

**OPTION HOLDER:**

If Option Holder is an individual:

Individually:

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

Individually:

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

If Option Holder is a corporation, limited liability company or other entity:

\_\_\_\_\_  
(Name of Option Holder)

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

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

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

|

**FOR THE STATE OF MARYLAND**

This Addendum to the Option Agreement is agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
between Black Bear Diners, Inc and \_\_\_\_\_  
to amend and revise said Option Agreement as follows:

In recognition of the requirements of the Maryland Franchise Registration and Disclosure Law, Md. Code Ann., Bus. Reg. §§14-201-14-233, the Option Agreement for Black Bear Diners, Inc. shall be amended as follows:

Section 12.1 of the Option Agreement requires that the franchise be governed by California law; however, in the event of a conflict of laws to the extent required by the Maryland Franchise Registration and Disclosure Law, Maryland law shall prevail.

Section 12.2 of the Option Agreement requires litigation or arbitration to be conducted in the judicial district in which Franchisor has its principal place of business, currently Redding, California; the requirement shall not limit any rights Franchisee may have under the Maryland Franchise Registration and Disclosure Law to bring suit in the State of Maryland.

Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the Maryland Franchise Registration and Disclosure Law applicable to the provisions are met independent of this Addendum. To the extent this Addendum shall be deemed to be inconsistent with any terms or conditions of said Option Agreement or exhibits or attachments thereto, the terms of this Addendum shall govern.

[signature page follows]

IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Addendum, understands and consents to be bound by all of its terms.

**FRANCHISOR:**

**BLACK BEAR DINERS, INC.**

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

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

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

**OPTION HOLDER:**

If Option Holder is an individual:

Individually:

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

Individually:

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

If Option Holder is a corporation, limited liability company or other entity:

\_\_\_\_\_  
(Name of Franchisee)

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

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

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

**FOR THE STATE OF MINNESOTA**

This Addendum to the Option Agreement is agreed to this \_\_\_ day of \_\_\_\_\_, 20 \_\_\_, between Black Bear Diners, Inc and \_\_\_\_\_  
\_\_\_\_\_ to amend and revise said Option Agreement as follows:

In recognition of the Minnesota Franchise Law, Minn. Stat., Chapter 80C, Sections 80C.01 through 80C.22, and the Rules and Regulations promulgated pursuant thereto by the Minnesota Commission of Securities, Minnesota Rule 2860.4400, et. seq., the parties agree as follows:

Section 12.2 of the Option Agreement shall be amended to add:

Minnesota Statutes, Section 80C.21 and Minnesota Rule 2860.4400(J) prohibit the franchisor from requiring litigation to be conducted outside Minnesota, requiring waiver of jury trial, or requiring the franchisee to consent to liquidated damages, termination penalties or judgment notes. In addition, nothing in the Franchise Disclosure Document or agreements can abrogate or reduce any of franchisee's rights as provided for in Minnesota Statutes, Chapter 80C, or franchisee's rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction.

Section 12.5 of the Option Agreement is deleted to the extent required by Minnesota Franchises Law.

Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the Minnesota Law applicable to the provisions are met independent of this Addendum. To the extent this Addendum shall be deemed to be inconsistent with any terms or conditions of said Option Agreement or exhibits or attachments thereto, the terms of this Addendum shall govern.

[signature page follows]

IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Amendment, and agrees to be bound by its terms.

**FRANCHISOR:**

**BLACK BEAR DINERS, INC.**

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

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

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

**OPTION HOLDER:**

If Option Holder is an individual:

Individually:

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

Individually:

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

If Option Holder is a corporation, limited liability company or other entity:

\_\_\_\_\_  
(Name of Option Holder)

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

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

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

**FOR THE STATE OF NORTH DAKOTA**

**FOR THE STATE OF NORTH DAKOTA**

This Addendum to the Option Agreement is agreed to this \_\_\_ day of \_\_\_\_\_, 20 \_\_\_, between Black Bear Diners, Inc and \_\_\_\_\_ to amend and revise said Option Agreement as follows:

The North Dakota Securities Commission requires that certain provisions contained in the Agreement be amended to be consistent with North Dakota law, including the North Dakota Franchise Investment Law, Chapter 51-19, Sections 51-19-01 *et seq.* Such provisions in the Agreement are hereby amended as follows:

Section 12.1 of the Option Agreement shall be amended as follows:

The word "California" shall be replaced with the words "North Dakota".

Section 12.2 of the Option Agreement shall be amended to add:

Notwithstanding the foregoing, to the extent required by the North Dakota Franchise Investment Law, and subject to the arbitration obligations, Franchisee may bring an action in North Dakota for claims arising under the North Dakota Franchise Investment Law.

Section 12.4 of the Option Agreement is deleted to the extent required by the North Dakota Franchise Investment Law.

Section 12.5 of the Option Agreement is deleted to the extent required by the North Dakota Franchise Investment Law.

Section 12.6 of the ~~Franchise~~Option Agreement shall be amended to add:

provided, however, that to the extent otherwise required by the North Dakota Franchise Investment Law (unless such a requirement is preempted by the Federal Arbitration Act), arbitration shall be held at a site to which Franchisor and Option Holder mutually agree and may not be remote from Option Holder's place of business.

Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the North Dakota Law applicable to the provisions are met independent of this Addendum. To the extent this Addendum shall be deemed to be inconsistent with any terms or conditions of said Option Agreement or exhibits or attachments thereto, the terms of this Addendum shall govern.

[signature page follows]

IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Amendment, and agrees to be bound by its terms.

**FRANCHISOR:**

**BLACK BEAR DINERS, INC.**

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

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

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

**OPTION HOLDER:**

If Option Holder is an individual:

Individually:

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

Individually:

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

If Option Holder is a corporation, limited liability company or other entity:

\_\_\_\_\_  
(Name of Option Holder)

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

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

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

**FOR THE STATE OF WASHINGTON**

This Addendum to the Option Agreement is agreed to this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between Black Bear Diners, Inc and \_\_\_\_\_ to amend and revise said Option Agreement as follows:

In recognition of the requirements of the Washington Franchise Investment Protection Act, Washington Rev. Code §§19.100.010 – 19.100.940, the Option Agreement for Black Bear Diners, Inc. shall be amended as follows:

Section 12.1 of the Option Agreement requires that the franchise be governed by California Law; in the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act will prevail.

Section 12.2 of the Option Agreement requires litigation to be conducted in California, the requirement shall not limit any rights Option Holder may have under the Washington Franchise Investment Protection Act to bring suit in the State of Washington.

Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the Washington Law applicable to the provisions are met independent of this Addendum. To the extent this Addendum shall be deemed to be inconsistent with any terms or conditions of said Option Agreement or exhibits or attachments thereto, the terms of this Addendum shall govern.

[signature page follows]

IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Addendum, understands and consents to be bound by all of its terms.

**FRANCHISOR:**

**BLACK BEAR DINERS, INC.**

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

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

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

**OPTION HOLDER:**

If Option Holder is an individual:

Individually:

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

Individually:

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

If Option Holder is a corporation, limited liability company or other entity:

\_\_\_\_\_  
(Name of Option Holder)

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

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

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

**FOR THE STATE OF WISCONSIN**

This Addendum to the Franchise Agreement is agreed to this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, between Black Bear Diners, Inc and \_\_\_\_\_ to amend and revise said Franchise Agreement as follows:

The Wisconsin Fair Dealership Law Title XIV-A Ch. 135, Sec. 135.01-135.07 will supersede any conflicting terms of the Franchise Agreement.

Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the Wisconsin Law applicable to the provisions are met independent of this Addendum. To the extent this Addendum shall be deemed to be inconsistent with any terms or conditions of said Franchise Agreement or exhibits or attachments thereto, the terms of this Addendum shall govern.

IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Amendment, and agrees to be bound by its terms.

**FRANCHISOR:**

**BLACK BEAR DINERS, INC.**

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

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

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

**OPTION HOLDER:**

If Option Holder is an individual:

Individually:

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

Individually:

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

If Option Holder is a corporation, limited liability company or other entity:

\_\_\_\_\_  
(Name of Option Holder)

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

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

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

**EXHIBIT K TO THE DISCLOSURE DOCUMENT**

**GENERAL RELEASE**

**BLACK BEAR DINERS, INC.**

**GENERAL RELEASE**

THIS GENERAL RELEASE ("Release"), is dated as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, (the "Effective Date") by and between Black Bear Diners, Inc, a California corporation, having its principal place of business at 1880 Shasta Street, Redding, California 96001 West Virginia 26105 ("Franchisor"), and

\_\_\_\_\_ (in the following space insert one of the following: individual(s), partnership, corporation, limited liability company or other entity) whose principal address is \_\_\_\_\_ ("Releasor").

RECITALS

WHEREAS, you and we have been parties to that certain Franchise Agreement, pursuant to which you acquired from us, and we granted to you, the right to operate a Black Bear Diner restaurant under a certain System and Marks in accordance with the terms and conditions of the Franchise Agreement (the "Franchise"); and

WHEREAS, as a condition to (strike inapplicable) (entering into a Renewal Franchise Agreement or consenting to a Transfer of the Franchise), we require that you as "Releasor" execute and deliver this General Release to confirm the absence of any claims by Releasor; and

NOW, THEREFORE, the undersigned hereby agrees as follows:

1. Release. Releasor does for itself, its successors and assigns, hereby release and forever discharge generally the Franchisor and any affiliate, wholly owned or controlled corporation, subsidiary, successor or assign thereof and any shareholder, officer, director, employee, or agent of any of them, from any and all claims, demands, damages, injuries, agreements and contracts, indebtedness, accounts of every kind or nature, whether presently known or unknown, suspected or unsuspected, disclosed or undisclosed, actual or potential, which Releasor may now have, or may hereafter claim to have or to have acquired against them of whatever source or origin, arising out of or related to any and all transactions of any kind or character at any time prior to and including the date hereof, including generally any and all claims at law or in equity, those arising under the common law or state or federal statutes, rules or regulations such as, by way of example only, franchising, securities and anti-trust statutes, rules or regulations, in any way arising out of or connected with the Agreement, and further promises never from this day forward, directly or indirectly, to institute, prosecute, commence, join in, or generally attempt to assert or maintain any action thereon against the Franchisor, any affiliate, successor, assign, parent corporation, subsidiary, director, officer, shareholder, employee, agent, executor, administrator, estate, trustee or heir, in any court or tribunal of the United States of America, any state thereof, or any other jurisdiction for any matter or claim arising before execution of this Agreement. In the event Releasor breaches any of the promises covenants, or undertakings made herein by any act or omission, Releasor shall pay, by way of indemnification, all costs and expenses of the Franchisor caused by the act or omission, including reasonable attorneys' fees.

2. Representation by Releasor. Releasor hereto represents and warrants that no

portion of any claim, right, demand, obligation, debt, guarantee, or cause of action released hereby has been assigned or transferred by Releasor party to any other party, firm or entity in any manner including, but not limited to, assignment or transfer by subrogation or by operation of law. In the event that any claim, demand or suit shall be made or institute against any released party because of any such purported assignment, transfer or subrogation, the assigning or transferring party agrees to indemnify and hold such released party free and harmless from and against any such claim, demand or suit, including reasonable costs and attorneys' fees incurred in connection therewith. It is further agreed that this indemnification and hold harmless agreement shall not require payment to such claimant as a condition precedent to recovery under this paragraph.

3. Further Assurances. Releasor hereby agrees: (a) to furnish upon request such further information, (b) to execute and deliver such other documents and (c) to do such other acts and things as may reasonably be request for the purpose of carrying out the intent of this Release.

4. Modification. This Release may be modified only by a written instrument executed by Franchisor and Releasor.

5. Waiver. If any provision of this Release is held to be illegal, invalid or unenforceable under present or future laws in any jurisdiction, that provision shall be ineffective to the extent of such illegality, invalidity or unenforceability in that jurisdiction and such holding shall not, consistent with applicable law, invalidate or render unenforceable such provision in any other jurisdiction, and the legality, validity and enforceability of the remaining provisions of this Release shall not in any way be affected or impaired thereby, and shall remain in full force and in effect in all jurisdictions.

[signature page follows]

IN WITNESS WHEREOF, the undersigned has executed this Release effective as of the date first written above.

**FRANCHISOR:**

**BLACK BEAR DINERS, INC.**

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

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

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

**RELEASOR:**

If Releasor is an individual:

Individually:

\_\_\_\_\_

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

Individually:

\_\_\_\_\_

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

If Releasor is a corporation, limited liability company or other entity:

\_\_\_\_\_  
(Name of Releasor)

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

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

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

**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 Black Bear Diners, Inc. offers you a franchise, it must provide this disclosure document to you:

(a) 14 calendar days before you sign a binding agreement with, or make a payment to, us or an affiliate in connection with the proposed franchise sale or grant, or

(b) Under New York, and Rhode Island law, if applicable, at the earlier of (i) your first personal meeting to discuss the franchise, or (ii) 10 business days before you sign a binding agreement with, or make payment to us or an affiliate in connection with the proposed franchise sale or grant, or

(c) Michigan, Oregon and Washington require that we give you this disclosure document at least 10 business days before the execution of any binding franchise or other agreement or the payment of any consideration, whichever occurs first.

If Black Bear Diners, Inc. does not deliver this disclosure document on time or if it contains a false or misleading statement, or a material omission, a violation of federal and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580 and the appropriate state administrator listed on Exhibit A.

The name, principal business address, and telephone number of each franchise seller offering the franchise are (check as follows: applicable):  Bob Manley,  Bruce Dean and/or  Doug Branigan, all of 1880 Shasta Street, Redding, California 96001, (530) 243-2327, \_\_\_\_\_ and \_\_\_\_\_.

The issuance date of this franchise disclosure document is March 01, 2013.

We authorize the persons and/or entities listed on Exhibit A to receive service of process for us.

I received a disclosure document dated March 01, 2013 that included the following Exhibits:

- A. List of Agents for Service of Process and State Administrators
- B. Franchise Agreement
- C. Contents of Manual
- D. Multi-unit Development Agreement
- E. Financial Statements
- F. List of Black Bear Diner Franchisees
- G. List of Franchisees Who Have Left the System
- H. Franchisee Disclosure Questionnaire
- I. Multi-State Addenda
- J. General Release

DATE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

PRINT NAME:  
(submit retain this copy)

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DATE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

(retain this copy)