

TYPE OF FEE ^{1, 2}	AMOUNT	DUE DATE	REMARKS
Costs and Attorneys' Fees	Will vary under circumstances	As incurred	Payable only if you do not comply with the Franchise Agreement or Multi-Unit Development Agreement, and we are the prevailing party in any relevant litigation or arbitration.
Music Fee	\$49.08 to \$51.24 per month plus applicable taxes (does not include set up fees) (subject to change)	Monthly	For music services provided by the required vendor to your Restaurant. Smashburger Purchasing pays the vendor directly and initiates an ACH from your bank account for amounts you owe. This amount is subject to change based-on <u>up to</u> our direct costs paid to the vendor.
Pest Control Services	\$73.69 per month plus applicable taxes (subject to change)	Monthly	For pest control services provided by the required vendor to your Restaurant. Smashburger Purchasing pays the vendor directly and initiates an ACH from your bank account for amounts you owe. This amount is subject to change based-on <u>up to</u> our direct costs paid to the vendor.
Customer Survey and Mystery Shop Services	\$40 to \$70 per month (subject to change)	Monthly	For customer survey and mystery shop services provided by the required vendor to your Restaurant. Smashburger Purchasing pays the vendor directly and initiates an ACH from your bank account for amounts you owe. This amount is subject to change based-on <u>up to</u> our direct costs paid to the vendor.
Gift Card Service (including Aloha Command & Configuration Center)	\$4.75 per day (subject to change)	Monthly	The cost of managing the gift card program, replenishing your supply of gift cards and managing the online ordering system. Smashburger Purchasing pays the vendor directly and initiates an ACH from your bank account for amounts you owe. This amount is subject to change based-on <u>up to</u> our direct costs paid to the vendor.
3 rd Party Gift Card Fee	14.8% to 30.64% of 3 rd party gift cards that are redeemed at the Restaurant (subject to change)	Monthly	The fee payable to third-parties for selling Smashburger gift cards at their locations. Smashburger Purchasing pays the vendor directly and initiates an ACH from your bank account for amounts you owe. This amount is subject to change based-on <u>up to</u> our direct costs paid to the vendor.
Loyalty Program	Currently Not Charged	Monthly	We may require you to pay this a fee for participation in the loyalty program. The amount will be determined when imposed (currently estimated, \$75 per month). If we do so, Smashburger Purchasing may pay the vendor directly, and initiate an ACH from your bank account for amounts you owe. This amount is subject to change based-on <u>up to</u> our direct costs paid to the vendor.

TYPE OF FEE ^{1, 2}	AMOUNT	DUE DATE	REMARKS
Non-Compliance Charge	Up to \$1,000 per failure to comply with the Franchise Agreement	On demand, the day after non-compliance occurs	You must pay our then-current non-compliance charge if you fail to comply with your obligations under the Franchise Agreement (for example, a failure to pay fees or submit reports when due). In addition to any other remedies we have under the Franchise Agreement as a result of the non-compliance.
Development Late Fee – Multi Unit Development Agreement	\$800 per month behind schedule	As incurred	You must pay this fee for each Smashburger Restaurant that you fail to develop by the deadline described in your Multi-Unit Development Agreement.
Digital Menu Board Service Fee	\$39 per month (subject to change)	Monthly	Our then-current cost of creating content for, and downloading it to, the Smashburger Restaurant's digital menu board. This amount is subject to change based on <u>up to</u> our direct costs <u>paid to the vendor</u> .
Printed Manual	Our direct out of pocket costs	As incurred	We do not currently provide printed copies of our Standards of Operations Manual. If you request one (and we agree to provide it) we may require you to pay us a fee to provide such copy.
Online Presence Maintenance Fee	Not currently charged (subject to change)	As incurred	If we provide you with a webpage or other presence on any Franchise System website, you must pay our then current initial fee and monthly maintenance fee for the Online Presences on any Franchise System website that are dedicated to your Restaurant. This amount is subject to change based on <u>up to our</u> direct costs <u>paid to the vendor</u> .
Tax Reimbursement	You must reimburse our expenses	As incurred	You are responsible for paying all taxes for your Restaurant and must reimburse us for any taxes that we must pay to any state taxing authority on account of your operation or payments that you make to us for these amounts, plus our expenses
Deficiency Correction	Our direct out of pocket costs	As incurred	If you fail to take any of the actions or refrain from taking any of the actions required upon termination or expiration, we may take those action on your behalf and you must reimburse us for all costs and expenses we incur in correcting any such deficiencies.
Appraisal Fees	Direct out of pocket costs (shared equally)	As incurred	If we exercise our right to purchase your Restaurant's assets upon termination or expiration of the Franchise Agreement, and you and we cannot agree on the purchase price, we will retain an independent appraiser and we and you will share the cost of the appraiser.

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

MINNESOTA

1. The following language is added at the end of Items 5 and 7.

As a condition to becoming registered to offer and sell franchises in the State of Minnesota, all initial fees and payments owed by franchisees shall be deferred until the franchisor completes its pre-opening obligations under the franchise agreement. In addition, all development fees and initial payments by area developers shall be deferred until the first franchise under the development agreement opens.

2. ~~1.~~ “Renewal, Termination, Transfer and Dispute Resolution”. The following is added at the end of the chart in Item 17:

Minnesota Statute 80C.21 and Minnesota Rule 2860.4400(J) prohibit the franchiser from requiring litigation to be conducted outside Minnesota, requiring waiver of a jury trial, or requiring the franchisee to consent to liquidated damages, termination penalties or judgment notes. In addition, nothing in the Franchise Disclosure Document or agreement(s) can abrogate or reduce (1) any of the franchisee’s rights as provided for in Minnesota Statute 80C or (2) franchisee’s rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction.

With respect to franchises governed by Minnesota law, the franchiser will comply with Minnesota Statute 80C.14 Subd. 3-5, which require (except in certain specified cases)

- that a franchisee be given 90 days notice of termination (with 60 days to cure) and 180 days notice for non-renewal of the franchise agreement and
- that consent to the transfer of the franchise will not be unreasonably withheld.

Minnesota considers it unfair to not protect the franchisee’s right to use the trademarks. Refer to Minnesota Statute 80C.12 Subd. 1(G). The franchiser will protect the franchisee’s rights to use the trademarks, service marks, trade names, logotypes, or other commercial symbols or indemnify the franchisee from any loss, costs, or expenses arising out of any claim, suit, or demand regarding the use of the name.

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

**RIDER TO THE SMASHBURGER FRANCHISING LLC
MULTI-UNIT DEVELOPMENT AGREEMENT
FOR USE IN MINNESOTA**

THIS RIDER is made and entered into by and between **SMASHBURGER FRANCHISING LLC**, a Delaware limited liability company with its principal business address at 3900 East Mexico Avenue, Suite 1300, Colorado, 80210 (“we,” “us,” or “our”), and _____, whose principal business address is _____ (“you” or “your”).

1. **BACKGROUND.** We and you are parties to that certain Multi-Unit Development Agreement dated _____, 20____ (the “Multi-Unit Development Agreement”) that has been signed concurrently with the signing of this Rider. This Rider is annexed to and forms part of the Multi-Unit Development Agreement. This Rider is being signed because (a) the Smashburger Restaurants that you will develop under the Multi-Unit Development Agreement will be operated wholly or partly in the State of Minnesota; and/or (b) you either a resident of, domiciled in, or actually present in the State of Minnesota.

2. **DEVELOPMENT FEE.** The following language is added to the end of Section 3A of the Area Development Agreement:

As a condition to becoming registered to offer and sell franchises in the State of Minnesota, all development fees and initial payments by you shall be deferred until the first franchise under this Agreement opens.

3. ~~2.~~ **RELEASES.** The following is added to the end of Section 6.C of the Multi-Unit Development Agreement:

Any release required as a condition of assignment/transfer will not apply to the extent prohibited by the Minnesota Franchises Law.

4. ~~3.~~ **INJUNCTIVE RELIEF.** The following language is added to the end of Section 9.D of the Multi-Unit Development Agreement:

Notwithstanding the foregoing, a court will determine if a bond is required.

5. ~~4.~~ **LIMITATIONS OF CLAIMS.** The following is added to the end of the first paragraph of Section 9.E of the Multi-Unit Development Agreement:

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

6. ~~5.~~ **MINNESOTA LAW.** Notwithstanding anything to the contrary contained in the Multi-Unit Development Agreement, Minn. Stat. Sec. 80C.21 and Minn. Rule 2860.4400J prohibit us from requiring you to waive your rights to a jury trial or to waive your rights to any procedure, forum or remedies provided for by the laws of the jurisdiction, or to consent to liquidated damages, termination penalties or judgment notes.

[SIGNATURE PAGE TO FOLLOW]

**RIDER TO THE SMASHBURGER FRANCHISING LLC
FRANCHISE AGREEMENT
FOR USE IN MINNESOTA**

THIS RIDER is made and entered into by and between **SMASHBURGER FRANCHISING LLC**, a Delaware limited liability company with its principal business address at 3900 East Mexico Avenue, Suite 1300, Colorado, 80210 (“we,” “us,” or “our”), and _____, whose principal business address is _____ (“you” or “your”).

1. **BACKGROUND.** We and you are parties to that certain Franchise Agreement dated _____, 20____ (the “Franchise Agreement”) that has been signed concurrently with the signing of this Rider. This Rider is annexed to and forms part of the Franchise Agreement. This Rider is being signed because (a) the Smashburger Restaurant that you will develop under the Franchise Agreement will be operated wholly or partly in the State of Minnesota; and/or (b) you either a resident of, domiciled it, or actually present in the State of Minnesota.

2. **INITIAL FRANCHISE FEE.** The following language is added to the end of Section 3A of the Franchise Agreement:

As a condition to becoming registered to offer and sell franchises in the State of Minnesota, we will defer your obligation to pay the initial franchise fee, until we have met our pre-opening obligations and you have commenced operation of the Smashburger Restaurant.

23. **RELEASES.** The following is added to the end of Sections 12.C(3), 13.A(7) and 15.D(5) of the Franchise Agreement:

Any release required as a condition of renewal and/or assignment/transfer will not apply to the extent prohibited by the Minnesota Franchises Law.

34. **RENEWAL AND TERMINATION.** The following is added to the end of Sections 13.B and 14.B of the Franchise Agreement:

However, 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) and 180 days’ notice of non-renewal of this Agreement.

45. **LOST REVENUE DAMAGES.** The following language is added to the end of Section 15.E of the Franchise Agreement

We and you acknowledge that certain parts of this provision might not be enforceable under Minn. Rule Part 2860.4400J. However, we and you agree to enforce the provision to the extent the law allows.

56. INJUNCTIVE RELIEF. Section 17.K of the Franchise Agreement is deleted and replaced with the following:

Notwithstanding the foregoing, a court will determine if a bond is required.

67. LIMITATIONS OF CLAIMS. The following is added to the end of Section 17.M of the Franchise Agreement:

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

78. MINNESOTA LAW. Notwithstanding anything to the contrary contained in the Franchise Agreement, Minn. Stat. Sec. 80C.21 and Minn. Rule 2860.4400J prohibit us from requiring you to waive your rights to a jury trial or to waive your rights to any procedure, forum or remedies provided for by the laws of the jurisdiction, or to consent to liquidated damages, termination penalties or judgment notes.

[SIGNATURE PAGE TO FOLLOW]