

FRANCHISE DISCLOSURE DOCUMENT



Milkshake Factory Franchise, LLC
106 E. Liberty Street, Suite 310
Ann Arbor, Michigan 48104
(412) 488-1808

hello@themilkshakefactory.com
www.themilkshakefactory.com
hello@themilkshakefactory.com
www.milkshakefactory.com

Our franchisees own and operate facilities offering handspun milkshakes, gourmet chocolates, craft sundaes and related products (each, a “Shop”). As the franchisor, we provide services to our franchisees, including assistance with training, operations, advertising, purchasing and promotional techniques. We currently offer and sell franchises for the right to independently own and operate a Shop, which is operated from a traditional location.

The total investment necessary to begin operation of a Shop ranges from ~~\$462,545 to \$697,024, which includes \$68,500~~ \$476,705 to \$739,508, which includes \$68,500 that must be paid to us or our affiliates prior to opening.

We also grant qualified parties that right to open and operate multiple Shops within a defined geographical area under our form of area development agreement. The total investment necessary to begin operating as a multi-unit owner will vary depending on how many Shops we grant you the right to open. the total investment to enter into an area development agreement with us to open three (3) Shops ranges from ~~\$537,545~~ \$551,705 to ~~\$772,024~~ \$814,508, which includes: (i) a \$135,000 development fee that is paid to us; and (ii) the initial investment to open and commence operations of an initial Shop within your development area. The Development Fee is calculated as follows: (i) \$45,000 per Franchised Business if we award you the right to develop between three (3) and five (5) Franchised Businesses; (ii) \$40,000 per Franchised Business if we award you the right to develop between six (6) and nine (9) Franchised Businesses; and (iii) \$35,000 per Franchised Business if we award you the right to develop 10 or more Franchised Businesses.

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, us 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 availability of disclosures in different formats, contact Dan Reese, c/o Milkshake Factory Franchise, LLC, 106 E. Liberty Street, Suite 310, Ann Arbor, Michigan 48104.

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

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

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

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

Issue Date: ~~May 12, 2023~~ April 30, 2024.

How to Use This Franchise Disclosure Document

Here are some questions you may be asking about buying a franchise and tips on how to find more information:

QUESTION	WHERE TO FIND INFORMATION
How much can I earn?	Item 19 may give you information about outlet sales, costs, profits or losses. You should also try to obtain this information from others, like current and former franchisees. You can find their names and contact information in Item 20 or Exhibits H and I.
How much will I need to invest?	Items 5 and 6 list fees you will be paying to the franchisor or at the franchisor’s discretion. Item 7 lists the initial investment to open. Item 8 describes the suppliers you must use.
Does the franchisor have the financial ability to provide support to my business?	Item 21 or Exhibit D include financial statements. Review these statements carefully.
Is the franchise system stable, growing, or shrinking?	Item 20 summarizes the recent history of the number of company-owned and franchised outlets.
Will my business be the only System business in my area?	Item 12 and the “territory” provisions in the franchise agreement describe whether the franchisor and other franchisees can compete with you.
Does the franchise have a troubled legal history?	Items 3 and 4 tell you whether the franchisor or its management have been involved in material litigation or bankruptcy proceedings.
What’s it like to be a System franchisee?	Item 20 or Exhibits H and I list current and former franchisees. You can contact them to ask about their experiences.
What else should I know?	These questions are only a few things you should look for. Review all 23 Items and all Exhibits in this disclosure document to better understand this franchise opportunity. See the table of contents.

What You Need To Know About Franchising *Generally*

Continuing responsibility to pay fees. You may have to pay royalties and other fees even if you are losing money.

Business model can change. The franchise agreement may allow the franchisor to change its manuals and business model without your consent. These changes may require you to make additional investments in your franchise business or may harm your franchise business.

Supplier restrictions. You may have to buy or lease items from the franchisor or to a limited group of suppliers the franchisor designates. These items may be more expensive than similar items you could buy on your own.

Operating restrictions. The franchise agreement may prohibit you from operating a similar business during the term of the franchise. There are usually other restrictions. Some examples may include controlling your location, your access to customers, what you sell, how you market, and your hours of operation.

Competition from franchisor. Even if the franchise agreement grants you a territory, the franchisor may have the right to compete with you in your territory.

Renewal. Your franchise agreement may not permit you to renew. Even if it does, you may have to sign a new agreement with different terms and conditions in order to continue to operate your franchise business.

When your franchise ends. The franchise agreement may prohibit you from operating a similar business after your franchise ends even if you still have obligations to your landlord or other creditors.

Some States Require Registration

Your state may have a franchise law, or other state law, that requires franchisors to register before offering or selling franchises in the state. Registration does not mean that the state recommends the franchise or has verified the information in this document. To find out if your state has a registration requirement, or to contact your state, use the agency information in Exhibit A.

Your state may also have laws that require special disclosures or amendments be made to your franchise agreement. If so, you should check the State Specific Addenda. See the Table of Contents for the location of the State Specific Addenda.

Special Risks to Consider About *This* Franchise

Certain states require that the following risk(s) be highlighted:

1. **Out-of-State Dispute Resolution.** The franchise agreement and area development agreement require that all disagreements be settled by mediation or litigation in Michigan. Out of state mediation or litigation may force you to accept a less favorable settlement for disputes. It may also cost you more to mediate or litigate with us in Michigan than in your home state.
2. **Spousal Liability.** Your spouse must sign a document that makes your spouse liable for all financial obligations under the franchise agreement, even if your spouse has no ownership interest in the franchise. This guarantee will place both you and your spouse's marital and personal assets (perhaps including your house) at risk if your franchise fails.
3. **Mandatory Minimum Payments.** You must make minimum royalty or advertising fund payments, regardless of your sales levels. Your inability to make the payments may result in termination of your franchise and loss of your investment.
4. **Supplier Control.** You must purchase all or nearly all of the inventory or supplies that are necessary to operate your business from the franchisor, its affiliates, or suppliers that the franchisor designates, at prices the franchisor or they set. These prices may be higher than prices you could obtain elsewhere for the same or similar goods. This may reduce the anticipated profit of your franchise business.
5. **Financial Condition.** The franchisor's financial condition, as reflected in its financial statements (see Item 21), calls into question the franchisor's financial ability to provide services and support to you.

Certain states may require other risks to be highlighted. Check the "State Specific Addenda" (if any) to see whether your state requires other risks to be highlighted.

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Exhibits:

- Exhibit A – List of State Administrators and List of Agents for Service of Process
- Exhibit B – Franchise Agreement
- Exhibit C – Development Agreement
- Exhibit D – Financial Statements
- Exhibit E – State Specific Addenda
- Exhibit F – Operations Manual Table of Contents
- Exhibit G – Sample Release Agreement
- Exhibit H – List of Franchisees
- Exhibit I – List of Franchisees that Left the System in the Past Year or That Have Failed to Communicate with Us in the 10 Weeks Preceding the Issue Date
- Exhibit J – State Effective Dates
- Exhibit K – Receipts

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

THE FRANCHISOR

To simplify the language in this Disclosure Document, “we,” “MILKSHAKE FACTORY,” or “us” means Milkshake Factory Franchise, LLC. “You” means the person or company that buys the franchise, including, if any, such company’s owners, partners, members, controlling shareholders, and guarantors.

We are a Delaware limited liability company formed on December 29, 2022. Our principal business address is 106 E. Liberty Street, Suite 310, Ann Arbor, Michigan 48104. Exhibit A lists our agent for service of process in your state.

We do business and intend to do business under our corporate name and our then-current proprietary marks that we designate for use in connection with this franchise offering, which we may further develop and modify as we determine appropriate (collectively, the “Proprietary Marks”).

We do not directly operate any business that is substantially similar to the Shop being offered in this Disclosure Document. We commenced offering franchises of the type described in this Disclosure Document in May 2023, and we have not offered/granted licenses or franchises in any other line of business. We are not currently engaged in any other business activities.

PARENTS, PREDECESSORS, AND AFFILIATES

Our parent(s) as of the Issue Date include: (i) Edwards MSF Holdings, LLC, and (ii) FW-MSF Holdings, LLC.

We do not have any predecessors.

As of the Issue Date, we have the following affiliates that require disclosure in this Item:

- A. The Milk Shake Factory, LLC, which is a Delaware limited liability company organized in December 2010 with a principal place of business at 1705 E. Carson Street, Suite 4, Pittsburgh, Pennsylvania 15203; and
- B. Milkshake Factory IP, LLC, a Delaware limited liability company formed in December 2022 with a principal place of business at 106 E. Liberty Street, Suite 310, Ann Arbor, Michigan 48104, and which owns the trademarks and certain other intellectual property that we will license to you for use in your operation of the Franchised Business, as further detailed in Item 13 of this Disclosure Document.

As of the Issue Date, the above affiliates (a) have not offered franchises or licenses in any line of business, and (b) do not serve as a designated or approved supplier (an “Approved Supplier”) for any item or service that a new System franchisee is required to acquire and use in connection with a Franchised Business (each, a “Required Item”). We reserve the right to appoint one (1) or more affiliate(s) as such an Approved Supplier in the future.

THE FRANCHISED BUSINESS

The franchise offered in this Disclosure Document is for the right to independently own and operate a quick-serve shop (each, a “Shop”) that features hand-spun milkshakes, gourmet chocolates, craft sundaes and related products (collectively, the “Approved Products”). Our Shops are characterized by a unique system

that is comprised of the following: special recipes and menu items; distinctive design, décor, color scheme, and furnishings; hardware and software programs; standards, specifications, and procedures for operations; training and assistance; and advertising and promotion programs; all of which we may improve, amend, and further develop from time to time.

You will be required to establish and operate your Franchised Business from a premises that you propose and we must approve in writing prior to any development (your “Premises”). Typically, a franchised Shop will be operated from a third-party space that you lease (freestanding or otherwise) from a third-party landlord. Our standard franchise offering expects and assumes that a typical franchised Premises will be between 1,000 to 1,600 square feet in size. We reserve the right to approve operation of a System Shop from a Premises that is a “non-traditional site” such as malls, hospitals, schools, airports, parks (including theme parks), sports arenas, military bases, academic campuses and other comparable venues (each a “Non-Traditional Site”).

We expect and assume that the Franchised Business will operate as a quick-serve eating establishment that utilizes a counter-serve model, as well as providing any delivery services we approve in writing.

MULTI-UNIT OFFERING

We may offer qualified individuals and entities the right to open and operate multiple Franchised Businesses within a mutually-agreed upon geographical area (the “Development Area”) under our current form of area development agreement that is attached to this Disclosure Document as Exhibit C (the “Development Agreement”), which will also outline a schedule or defined period of time in which you must open and commence operating each Franchised Business (a “Development Schedule”).

You will sign a Franchise Agreement for the initial Franchised Business you commit to develop within your Development Area at the same time you sign your Development Agreement, and you will eventually need to sign our then-current form of franchise agreement for each of the Franchised Businesses you open under the Development Schedule that may contain materially different terms than your initial form of agreement. If we award you multi-unit development rights under a Development Agreement, your Development Area, Development Schedule and Development Fee will vary based on the number of franchises you commit and are awarded the right to develop.

MARKET AND COMPETITION

You will compete with ice cream and/or soda shops, confectioneries and other businesses that feature frozen confectionery items, desserts and/or sweets. These include national and regional chains, as well as local operations. This market is mature and competitive. Your ability to succeed with this franchise may, in part, be determined by your ability to compete with these other restaurant establishments. The Approved Products offered by a System Shop are not viewed as seasonal in nature, but your specific experience may depend on where you decide to locate your Franchised Business and the surrounding demographics.

INDUSTRY-SPECIFIC REGULATIONS

We are not aware of any regulations that are specific to the operation of an ice cream shop. However, state and local jurisdictions have enacted laws, rules, regulations, and ordinances that may apply to the operation of your Shop. You should investigate whether there are regulations and requirements that may apply to the geographic area in which you are interested in locating your franchise and should consider both the effect and cost of compliance. You may employ salaried help and/or independent contractors and will be required to observe general employment laws and regulations. If necessary in your geographic area and you

determine to provide any catering services we authorize, then you will be required to ensure you get any and all applicable licensing necessary to provide such services off-Premises or otherwise.

ITEM 2. BUSINESS EXPERIENCE

Dana Edwards Manatos: Founder and CEO

Ms. Manatos has served as our Founder and CEO since our inception. She has also served as Founder and CEO of our affiliate, The Milk Shake Factory, LLC, located in Pittsburgh, Pennsylvania since September 2008.

Dan Reese: President

Mr. Reese has served as our President since our inception. He has also served as President and CFO of our affiliate, The Milk Shake Factory, LLC, located in Pittsburgh, Pennsylvania since January 2021. Prior to that time, Mr. Reese served as Senior Vice President of Strategy and Finance for Edward Marc Brands, located in Pittsburgh, Pennsylvania, from November 2015 to December 2020.

Shawn Smith: Vice President of Operations

Mr. Smith has served as our Vice President of Operations since our inception. He has also served as Director of Operations for our affiliate, The Milk Shake Factory, LLC, located in Pittsburgh, Pennsylvania since December 2016.

ITEM 3. LITIGATION

No litigation is required to be disclosed in this item.

ITEM 4. BANKRUPTCY

No bankruptcy is required to be disclosed in this item.

ITEM 5. INITIAL FEES

Franchise Agreement

Initial Franchise Fee

You must pay us an initial franchise fee of \$60,000 (the “Initial Franchise Fee”) in connection with your purchase of a single Franchised Business, which must be paid in full upon the execution of your Franchise Agreement. The Initial Franchise Fee is deemed fully earned upon execution of your Franchise Agreement and is not refundable under any circumstances. Except as provided in this Item, the Initial Franchise Fee is uniform for those purchasing a single franchise.

Veterans Discount

We are proud to offer a \$5,000 on the Initial Franchise Fee to honorably discharged veterans of U.S. Armed Forces who otherwise meet our requirements. This discount will be only applicable for the first Franchised Business you are awarded. You qualify for a veteran discount if you or your majority owners (those individuals who own and control more than 50% of the equitable interest and voting rights in you if you

are any type of legal entity) are a member of any branch of the United States or Canadian military or are a veteran of any such military branch who has received an honorable discharge.

Initial Training Fee

You must also pay us an initial training fee amounting to \$8,500 (the “Initial Training Fee”), which will cover the tuition associated with you (the Franchisee) and one (1) other individuals attending our proprietary initial training program (the “Initial Training Program”) including the on-site assistance we provide at your Franchised Business on or around the time it opens for business, which is described more fully in Item 11 of this Disclosure Document. The Initial Training Fee does not cover costs and expenses incurred in attending training, such as travel, lodging, meals or salaries. This fee is due prior to you or any of your designated personnel attending our Initial Training Program and is deemed fully earned and non-refundable upon payment.

Development Agreement

Development Fee

If we grant you the right to open multiple Franchised Businesses under a Development Agreement, you must pay us a one-time Development Fee immediately upon execution of your Development Agreement. Your Development Fee will depend on the number of Franchised Businesses we grant you the right to open within the Site Selection Area and is calculated as follows:

Initial Franchise Fees	Number of Franchised Units
\$110,000	Two (2) Franchised Businesses
\$45,000 per Shop	Three (3) to Five (5) Franchised Businesses
\$40,000 per Shop	Six (6) to Nine (9) Franchised Businesses
\$35,000 per Shop	Ten (10) or more Franchised Businesses

You will be required to enter into our then-current form of Franchise Agreement for each Franchised Business you wish to open under your Development Agreement, but you will not be required to pay any additional Initial Franchise Fee at the time you execute each of these Franchise Agreements. You will typically execute our current form of Franchise Agreement for the first Shop we grant you the right to open within your Development Area concurrently with the Development Agreement (unless we agree otherwise in writing).

Your Development Fee will be deemed fully earned upon payment and is not refundable under any circumstances. The Development Fee described above is calculated and applied uniformly to all of our franchisees.

Uniformity and Other Relevant Disclosures

All of the initial fees and expenditures described in this Item are: (i) uniformly calculated and imposed on our franchisees; and (ii) payable in lump sum. All of the fees are deemed fully earned upon receipt and non-refundable.

ITEM 6. OTHER FEES

Name of Fee ¹	Amount	Due Date	Remarks
Royalty Fee	<p>During your first year of operations, 6% of Adjusted Gross Sales generated by your Franchised Business over the preceding reporting period.</p> <p>During your second year of operations, the greater of: (i) 6% of Adjusted Gross Sales generated by your Franchised Business over the preceding reporting period; or (ii) \$1,200 per month.</p> <p>During your third and each subsequent year of operations, the greater of: (i) 6% of Adjusted Gross Sales generated by your Franchised Business over the preceding reporting period; and (ii) \$1,500/month (your “Royalty” or “Royalty Fee”)</p>	<p>Currently, payable monthly<u>weekly</u> based on the Adjusted Gross Sales generated during the preceding calendar<u>month</u>week of operations</p>	<p>This fee becomes payable once your Shop begins operations. We reserve the right to collect your Royalty on a different interval (for example, weekly<u>monthly</u>).</p> <p>Please see Note Nos. 1 and 2 following this Chart.</p>
Brand Development Fund (the “Fund”)	<p>Currently, 2% of Adjusted Gross Sales generated by your Franchised Business over the preceding reporting period (your “Fund Contribution”)</p>	<p>Payable monthly, via ACH electronic funds transfer (“EFT”) or other method as we may require, based on the Adjusted Gross Sales of your Franchised Business during the preceding calendar month</p>	<p>We reserve the right to increase the Fund Contribution to our brand development Fund to an amount equal to up to 3% of the Adjusted Gross Sales generated by your Franchised Business.</p> <p>Your Fund Contribution obligations will commence upon the opening of your Franchised Business.</p>

Name of Fee ¹	Amount	Due Date	Remarks
Local Advertising Requirement	Currently, your minimum Local Advertising Requirement amounts to the following: (i) 2 % of Adjusted Gross Sales generated by your Franchised Business during the preceding calendar month in connection with Adjusted Gross Sales generated by the Franchised Business up to \$500,000 in a given calendar year of operations; and (ii) 1% of the Adjusted Gross Sales generated by your Franchised Business in excess of \$500,000 in any calendar year of operations	Payable as invoiced or incurred by the Approved Supplier or other provider at issue	<p>This is the minimum amount you must expend on local advertising, marketing and promotion of your Franchised Business within your Designated Territory. You may, and we encourage, you expend additional amounts.</p> <p>We may require that you expend any portion of your Local Advertising Requirement on services and/or materials that must be purchased from one (1) or more of our then-current Approved Suppliers.</p> <p>If we assign your Shop to a regional cooperative we establish, you must work with the other Shop owners in your cooperative and us to develop and implement regional advertising campaigns. We have not established any cooperatives as of the Issue Date of this Disclosure Document. We will have the right to establish, modify, merge and dissolve cooperative as we deem appropriate. Any amounts you expend on cooperatives will be credited towards your Local Advertising Requirement, and such required expenditures will not exceed your Local Advertising Requirement.</p>

Name of Fee ¹	Amount	Due Date	Remarks
Additional Training Fee	<p>Our then-current training fee</p> <p>Currently, the Training Fee(s) are as follows: \$2,500 per trainee for any Designated Manager and/or replacement operating principal (or General Manager) to attend 6-Day Technical Training and 3-Day Business Training.</p> <p>\$300/day per trainer for all other on-site training</p>	Within 7 days of invoicing	<p>We reserve the right to charge this fee in connection with (a) re-training or replacement training with regards to the portions of the initial training that are designed for the franchisee owner and/or General Manager, (b) any training we require you to complete to cure a default under your Franchise Agreement with us (“Remedial Training”), (c) training you request we provide (other than the kind of day-to-day assistance described below), or (d) training we provide on-site at your Franchised Business.</p> <p>If you request that we provide additional on-site training or if we determine additional training is necessary, you must pay our daily rate for each trainer we send, and you must reimburse each trainer's expenses, including travel, lodging and meals. In addition to any Training Fee we reserve the right to charge, you will be responsible for the costs and expenses that (a) our trainer personnel incur in connection with providing any such training anywhere other than corporate HQ, or (b) you and/or your personnel incurs in connection with attending any such training.</p>
POS System Fees	<p>Then-current fee charged by our then-current Approved Supplier(s) for any third-party Required Software</p> <p>Currently, these fees are as follows:</p> <p>(i) —\$635695.59 per month for software that provides POS functions, plus an initial one-time payment of \$3,750; and</p> <p>(ii)(i) \$28/month for cloud-based accounting software.</p>	As Invoiced by Approved Supplier	<p>These amounts are due in connection with the POS System and related software that you will use in connection with the operation of your franchised Shop.</p> <p>Currently, these are payable directly to our Approved Suppliers; however, we may reserve the right (upon written notice) to collect these payments to us directly to remit on your behalf in our discretion.</p>
Gift Card Service Fees	Currently, \$55 per month and an initial \$25 set-up fee	As Incurred	This fee is imposed by us but payable to a third party and subject to change.

Name of Fee ¹	Amount	Due Date	Remarks
VOIP Phone system, Email, Microsoft Office 365, and Antivirus Software	Currently, \$17 per month per telephone and \$4 per month per telephone line, \$12.50 per month for Email and Office 365, and \$4 per month for antivirus software	As Incurred	You must use our designated supplier for your voice over internet protocol phone system. This fee is imposed by us but payable to a third party and is subject to change.
Technology Fee	Then-current fee we or our Approved Supplier charges in connection with any technology services we determine to associate and provide as part of the System (the “Technology Fee”) Currently, \$150 550 per month	Payable on a monthly basis via ACH electronic funds transfer.	We may increase or otherwise modify the Technology Fee upon 60 days’ prior written notice to you based on vendor pricing and/or the technology services and/or access we determine to cover as part of the fee.
Music Licensing Fee	Then-current fee Currently, \$25 per month	As invoiced	These amounts are due in connection with the music licensing fees that you will incur in connection with the operation of your Shop. Currently, these are payable directly to our Approved Suppliers; however, we may require you to make these payments to us to remit on your behalf in our discretion.
Transfer Fee (both Franchise Agreement and Development Agreement)	\$10,000 per Franchised Business or undeveloped franchise being assignment	When we approve franchise transfer.	Payment of the applicable Transfer Fee is only one (1) of the conditions that must be satisfied for us to approve of your transfer. Please see Item 17 for additional transfer conditions. The Transfer Fee may not apply to the transfer in the event of your death or disability.
Renewal Fee	\$10,000	Upon execution of new franchise agreement.	This is only one (1) of the conditions that you must meet in order to for us to approve any renewal request.

Name of Fee¹	Amount	Due Date	Remarks
Relocation Fee	Reimbursement of our actual costs and expenses in evaluating the relocation proposal, plus the right to charge an administrative fee amounting to up to \$1,000	Upon your relocation request	We will review your relocation request in accordance with our then-current System standards and criteria for a Franchised Business, as disclosed more fully in Item 12 of this Disclosure Document.
Collection and Interest Administrative Charges in Connection with Certain Violations	18% or highest lawful rate if lower.	Immediately if payments not made when due.	This charge is in addition to other remedies such as late payment fees.
Alternate Supplier and/or Non-Approved Product Evaluation Fee	The greater of (a) reimbursement of our actual costs and expenses incurred in connection with our evaluation of your proposal, or (b) \$250 per request.	On Demand	If requested by you, you will pay all fees and costs incurred by us to obtain the necessary information and evaluate suppliers prior to giving approval for new suppliers and products.
Audit Fee	The cost of audit, as well as any underpayment, if applicable	At once if audit shows 2% or greater underpayment.	If we determine that you have been underreporting the Adjusted Gross Sales of your Franchised Business by 2% or more (over the audit period or any calendar year), then we have the right to reimbursement of the audit costs and expenses, along with the amounts necessary to address any documented underpayment. Otherwise, we will have the right to payment of any underreported Royalty Fees, Fund Contributions or other amounts to us and/or our affiliates.
Late Report Fee	\$250	As incurred	In the event you fail to provide to any financial report, Adjusted Gross Sales Report or other report which you are obligated to provide, you will pay a late fee of \$250. The imposition of late reporting fees shall be in addition to, and not in lieu of, any other remedy available to Franchisor for failure to report.
Legal Expenses	The cost of legal expenses we incur.	As incurred.	You must reimburse us for legal expenses incurred by us on your behalf to assist with leasing and other legal compliance issues.

Name of Fee¹	Amount	Due Date	Remarks
Indemnification	If any, will depend on unknown factors.	Defense cost when suit occurs. Indemnification when payment required.	You agree to defend, indemnify, and hold us harmless should we be sued as a result of something you do or fail to do.
Attorneys' Fees and Costs, and Arbitration	The fees incurred by us if we prevail in any litigation or other proceeding.	When court or arbitrator orders, if we win.	Loser pays winner's fees and costs to discourage meritless litigation and/or proceedings. We could have to pay your fees if you prevail.
Enforcement Costs	Will vary.	As incurred.	You must pay our costs of enforcement (including attorneys' fees and costs) if you do not comply with the Franchise Agreement. If we see no action on issues that tarnish our brand image or otherwise breach the Franchise Agreement, we reserve the right to engage our own lawyers at your expense to work on compliance. We will collect reimbursement from you by EFT for their fees.
Insufficient Funds	\$250 per occurrence, plus any fee charged us for uncollected funds.	Upon notice.	Failure to have sufficient funds available for payments to us.
Failure to attend required training/convention	Then-current fee Currently, \$1,000	Upon notice of infraction. Will be collected by EFT.	Additional royalty to compensate us for your failure to attend training/convention.
Quality Assurance Fee	Then-current fee charged by our then-current Approved Supplier. Currently, we expect these costs to be around \$250 per inspection	As Incurred	Such activities may include mystery shoppers or other third-party providers of quality assurance evaluation services.
Management Fees Payable if Step-In Rights Exercised	8% of the Adjusted Gross Sales of your Franchised Business during the period of time we or our representative manages your Franchised Business on your behalf (the "Management Fee"), plus the costs and expenses we incur.	As Invoiced and/or Incurred	The Management Fee will only be due to us if (a) you are in material default under your Franchise Agreement or become disabled (and unable to perform as the "Franchisee" under your Franchise Agreement), and (b) we exercise our right to temporarily operate your Franchised Business in an effort to assist in getting the operations of the Franchised Business back into compliance with the Franchise Agreement and System standards.

Name of Fee ¹	Amount	Due Date	Remarks
Liquidated Damages	We reserve the right to collect an amount equal to up to 12 times the average monthly Royalty Fee paid in connection with your Franchised Business over the preceding (a) 12 months of operation, and/or (b) shorter period of operations since its opening.	As and when incurred	This will only be incurred if the Franchise Agreement is terminated by us due to your default and, if applicable, failure to cure said default; and/or (ii) you cease operating the Franchised Business for any reason prior to the expiration of your Franchise Agreement.
Related Party Assignment Fee	First assignment is free and each subsequent assignment is \$500.	10 days after billing.	Paid only if you assign your Development Agreement or Franchise Agreement to an entity controlled by you or to your immediate family member. This fee would cover our administrative costs.
Insurance	You must reimburse our costs, plus a reasonable fee for our time incurred	When billed	If you fail to obtain insurance, we may obtain insurance for you and you must reimburse us.
Admin Default Fee	\$100 per occurrence, \$100 per week until cured	Upon demand	We may charge this fee if you breach any of the terms, conditions, or policies outlined in the Franchise Agreement or the operations manual, otherwise fail to comply with our standards and specifications, or use unauthorized products, equipment, or vendors. We will address such matters through compliance reports prepared for non-compliant franchisees with a reasonable cure period.

Explanatory Notes to Item 6 Chart Above:

1. All fees and expenses described in this Item 6 are non-refundable and, unless otherwise indicated, are imposed uniformly by, and are payable to, us. All flat fees described in this Item 6 are subject to adjustment due to inflation. Unless we have noted differently, we may increase these amounts based upon changes in market conditions, our cost of providing services and future policy changes, but we have no present plans to increase any fees. During our last fiscal year, all fees were uniformly applied to all franchisees.
2. “Adjusted Gross Sales” means the total gross revenue that you derive from operation of your Shop, including, but not limited to, all revenue generated from the sale and provision of any and all Approved Products offered at your Shop (including all menu items, retail items as well as all proceeds from any business interruption insurance related to the non-operation of your Franchised Business. The term “Adjusted Gross Sales” does not include (i) *bona fide* refunds to customers that are specifically authorized by us, (ii) sales taxes collected, (iii) discounts, coupons, and promotions, or (iv) sales of prepaid cards or similar products (but the redemption of any such card or product will be included in Adjusted Gross Sales). If you sell products or services at a discounted amount

(by coupons or otherwise) from your standard prices without our prior approval, we may calculate Adjusted Gross Sales as if you had sold such products or services at standard prices.

3. Please note that the highest lawful interest rate in the State of California is 10%.

ITEM 7. ESTIMATED INITIAL INVESTMENT

YOUR ESTIMATED INITIAL INVESTMENT

A. SINGLE-UNIT RESTAURANT¹

TYPE OF EXPENDITURE	AMOUNT LOW	AMOUNT HIGH	METHOD OF PAYMENT	WHEN PAY	TO WHOM PAYMENT IS TO BE MADE
Initial Franchise Fee ¹	\$60,000 \$60,000	\$60,000 \$60,000	One lump sum payable upon execution of the franchise agreement.	Franchise fee is due on signing franchise agreement.	Us
Initial Training Fee ¹	\$8,500 \$8,500	\$8,500 \$8,500	As agreed	As agreed	Us
Training – Costs and Expenses ²	\$5,800 \$6,345	\$8,800 \$9,220	As agreed	Before opening	Third-party providers, including airline, lodging and meals.
Lease – Security Deposit ³	-\$2,500 \$3,500	-\$5,897 \$7,500	As agreed	When securing Premises	Third-Party Landlord
Architectural and Design Services ⁴	-\$18,650 \$18,250	-\$19,150 \$19,750	As arranged	As invoiced	Approved Supplier
Real Estate and Construction Management Services ⁵	\$20,000 \$20,000	\$20,000 \$20,000	As agreed	As agreed	Approved Supplier
Leasehold Improvements ⁶	-\$134,430 \$134,430	-\$315,411 \$324,819	As arranged	As agreed	Third-Party Contractors and Other Provider
Furniture, Fixtures and Equipment (“FFE”) ⁷	-\$143,325 \$157,325	-\$150,325 \$168,152	As agreed	As invoiced	Approved Supplier(s) and Third-Party Suppliers
Signage (exterior/interior) ⁸	-\$15,900 \$8,475	-\$17,500 \$17,500	As agreed	Before opening	Approved Supplier(s)
Initial Inventory (pre-opening) ⁹	-\$8,000 \$12,480	-\$14,000 \$17,467	As agreed	As invoiced	Approved Supplier(s) and/or Third-Party Suppliers
Computer System and IT Equipment (and any initial Required Software fees) ¹⁰	-\$16,950 \$18,600	-\$17,750 \$20,600	As agreed	Before opening	Third-Party Suppliers

TYPE OF EXPENDITURE	AMOUNT LOW	AMOUNT HIGH	METHOD OF PAYMENT	WHEN PAY	TO WHOM PAYMENT IS TO BE MADE
Grand Opening Marketing Spend ¹¹	-\$10,050 \$10,050	-\$12,000 \$12,000	As agreed	As invoiced	Approved Supplier(s) and/or Third-Party Providers
Uniforms ¹²	-\$1,690 \$1,500	-\$2,500 \$2,000	As agreed	As invoiced	Approved Supplier
Professional Fees ¹³	-\$500 \$500	-\$6,000 \$6,000	As agreed	As invoiced or otherwise arranged	Third-Party Attorney and/or Accounting Firm(s)
Business Permits and Licensing	\$1000 \$1,000	\$2,500 \$3,500	As agreed	Before opening	State, local and municipal government agencies; service providers
Insurance – Deposit and 3 Months of Premiums	\$650 \$750	\$1,000 \$2,500	As agreed	As invoiced	Insurance carrier or agent
Additional Funds – 3 Months ¹⁴	-\$14,600 \$15,000	\$35,691 \$40,000	As agreed, invoiced or arranged	Varies, but expected within first 3 months of operations	Business personnel; Landlord; Approved Suppliers; Third-Party Supplier(s) and/or Providers; Utility Providers; Us; Etc.
TOTAL¹²	\$462,545 \$476,705	\$697,024 \$739,508			

Explanatory Notes to Chart 7(A) Above:

General. Unless negotiated with a third-party, non-affiliated vendor, all payments disclosed in this Item are non-refundable. We will not finance any part of your initial investment.

1. *Initial Franchise Fee; Initial Training Fee.* The Initial Franchise Fee and Initial Training Fee that are payable in a lump sum upon execution of your Franchise Agreement is disclosed more fully in Item 5, and is deemed fully earned and non-refundable upon payment.
2. *Training – Costs and Expenses.* These are the costs that we estimate for you and up to one (1) additional person to attend the portion of our Initial Training Program that takes place at our corporate training location (currently in Pennsylvania or Michigan). In addition to the Initial Training Fee, you are responsible for the costs associated with attending training at the location we specify in Item 11 below. These costs include transportation, meals, and lodging. Your total cost will vary based on who you choose to attend, how far they have to travel, and the type of accommodations you choose. These costs are typically non-refundable, but you should ask about refund policies before you patronize any vendor.

3. *Lease - Security Deposit.* This range is designed to cover the potential amounts that will be incurred in connection with leasing your approved Premises, with our standard franchise offering expecting that your Premises will: (i) be between 1,000 and 1,600 square feet in size; and (ii) involve a security deposit amounting to one (1) month of rent (based on our affiliates' experience opening each of the affiliate-owned Shops as of the Issue Date). Your cost to lease is difficult to quantify because there are factors that will impact what you pay. These factors include the facility's location, its square footage, cost-per-square foot, renovation costs and any required maintenance fees. Your landlord may refund your security deposit, but most will not refund rental payments. You should ask your leasing agent or landlord about their refund policy before you sign a lease agreement.
4. *Architect/Design Fees.* This range includes the costs associated with our Approved Supplier providing the architect/design fees in connection with the buildout of your Franchised Business at the Premises.
5. *Real Estate and Construction Management Services.* Our standard franchise offering expects and assumes that you will use our third-party Approved Supplier, for real estate and construction project management services for the construction and buildout of your Franchised Business. This is the current fee ("Project Management Fee") charged by that provider of project management services. To use our Approved Supplier, you must sign the approved vendor's current form of project management agreement within 14 days of your signing of the Franchise Agreement.
6. *Leasehold Improvements.* These are expenses to improve the Premises of your Shop in accordance with brand-specific standards. These projections assume the space is being leased. If you elect to own your own location, additional costs will be incurred. Impact fees vary in each jurisdiction (if and as applicable), which will vary state-by-state. We encourage you to research the fee structure in your jurisdiction. This range is based on our standard franchise offering's expectation that your Premises will be between 1,000 and 1,600 square feet and will otherwise meet our System standards and specifications. The actual costs you incur will depend on various factors, including prevailing labor rate and other demographics of the area surrounding your Premises, along with the actual Premises itself.

You may get certain tenant improvement allowances or credits from your landlord that will be used towards your buildout of the Franchised Business and/or other leasehold improvements. Our estimated range above accounts for certain tenant improvement allowances, in both the low and high end of the estimate based on the experience of our affiliates in opening their respective System Shop(s).

7. *FFE.* This estimated range is designed to cover the furniture, certain fixtures and operational equipment you will be required to purchase before (a) we provide any on-site training in connection with your franchise, and/or (b) you can otherwise open and operate the Franchised Business, including the following: kitchen equipment, small wares, cleaning supplies, furniture, shelving, organization and certain other equipment and supplies as may be necessary to effectively manage and operate your Shop.
8. *Signage.* Signage includes one (1) exterior storefront sign, as well as certain interior signage package and branding elements. The specific location where your Franchised Business will be located may have different requirements and regulations dictating the size, layout and illumination of the exterior signage. You will be required to abide by these regulations and, as a result, may experience higher or lower costs for your exterior signage.

9. *Initial Inventory (pre-opening)*. The inventory estimate is for an initial supply of ingredients and other operational inventory to commence operation. As inventory is used, more inventory will need to be acquired. This estimate includes and accounts for a reasonable amount of inventory that will be utilized in connection with the on-site training we provide to you and your initial Shop personnel prior to the opening of the Franchised Business.
10. *Computer System and IT-Related Equipment*. You are required to use point of sale hardware and accounting software approved by us, including, without limitation, touchscreens, multi-function printer, cash drawers, kitchen display screens, a server and modem, and assorted cables and mounting hardware. As of the Issue Date, we require that you purchase and/or lease all Computer System hardware and software from one (1) or more of our third-party Approved Suppliers, including those that provide gift card, customer loyalty program and/or online ordering services (as we specifically permit or designate in writing) in connection with your customer base and/or Approved Products.
11. *Grand Opening Marketing Spend*. You are required to spend a minimum amount between \$10,050 and \$12,000 on grand opening marketing within your Designated Territory, as detailed more fully in Item 11 of this Disclosure Document.
12. *Uniforms*. This is the estimated range to acquire the necessary uniforms for your initial Shop personnel, which must be worn when such individuals are working at the Franchised Business.
13. *Professional Fees*. This estimated range is designed to cover the fees you will pay to an attorney and/or accountant in connection with (a) the formation of any Franchisee (or Developer) entity, and (b) otherwise in connection with pre-opening activities and obligations of the Franchisee under the Franchise Agreement.
14. *Additional Funds – 3 Months*. This estimate represents a 3-month cash reserve to cover the operations of the franchised Shop, which reserves should be based on the total monthly cost of operating the franchised Shop. You should consider rent, salaries, utilities, maintenance, supplies, payroll, taxes, loan payments and other related operating costs to arrive at your 3-month reserves. Your costs will be affected by factors in the local market, which may include local economic conditions and local competition where your franchised Shop is located, which we cannot predict. For example, the wages and rental rates in the area where your franchised Shop is located will affect the size of your cash reserve. You may need to have more or less money in your cash reserve. You may need to have additional working capital to cover for low sales or high operating costs. You should speak with a financial advisor to get a more accurate estimate of the amount you should have in reserve. The operating costs on which you may use the cash reserve are typically non-refundable, but you should ask about refund policies before you patronize any vendor. The payments made to third parties may be refundable depending on the terms offered by each third party. These estimates do not include any finance charges, interest or debt service obligations. The amounts shown are estimates only and may vary for many reasons including the capabilities of your management team, where you locate your Franchise and your business experience and acumen. You should review these estimates carefully with a business advisor or accountant before making any decision to buy a franchise.

Our estimated range for Additional Funds is based on (a) the experience of our affiliates in opening the affiliate-owned Shops, (b) estimates we have received from any Approved Suppliers for the required purchases and/or services detailed in the Chart above (as applicable), and (c) other data and information gleaned from industry-based reports with regards to real estate and leasehold improvement costs in the areas where we contemplate offering franchises as of the Issue Date.

15. *Total Estimated Initial Investment.* The estimate of costs assumes you will lease the location for your franchised Shop. The cost for purchasing the real estate is not included in these cost estimates. This range and Chart above does not include any estimates for (a) any owner or officer compensation, or (b) debt service. Variances may result from local economic conditions, availability of materials and labor, and other conditions beyond our control. You must also pay the royalty and other related fees described in this Disclosure Document. Your actual costs will depend on factors like your management skills, experience and business acumen. You should base your estimated start-up expenses on the anticipated costs in your market and consider whether you will need additional cash reserves. You should review these figures carefully with your business advisor.

B. Multi-Unit Development Agreement (Using 3-Pack as an Example)¹

YOUR ESTIMATED INITIAL INVESTMENT¹

TYPE OF EXPENDITURE	AMOUNT LOW	AMOUNT HIGH	METHOD OF PAYMENT	WHEN PAY	TO WHOM PAYMENT IS TO BE MADE
Initial Development Fee ²	\$135,000 ¹ \$35,000	\$135,000 ¹ \$35,000	Lump Sum	Upon execution of Development Agreement	Us
Initial Investment to Open Initial Shop ³	\$402,545 \$416,705	\$637,024 \$679,508	See Chart A of this Item 7 for estimated initial investment to open a Shop. <u>##,000</u>		
TOTAL⁴	\$537,545 \$551,705	\$772,024 \$814,508	This is the total estimated initial investment to enter into a Development Agreement for the right to own a total of three (3) franchised Shops, as well as the costs to open and commence operating your Initial Shop for the first three (3) months (as described more fully in Chart A of this Item 7). See Note 3.		

Explanatory Notes

1. *General.* All fees and payments are non-refundable, unless otherwise stated or permitted by the payee. This Chart details the estimated initial investment associated with executing a Development Agreement for the right to own and operate three (3) Shops, as well as the initial investment to open your Initial Shop under your Development Schedule.
2. *Development Fee.* The Development Fee is described in greater detail in Item 5 of this Disclosure Document, and this is the Development Fee for the right to open and operate a total of three (3) franchised Shops (provided you comply with your development obligations under the Development Agreement). If you choose to open more than three (3) Shops, your Development Fee will be calculated as follows:

Initial Franchise Fees	Number of Franchised Units
\$45,000 per Shop	Three (3) to Five (5) Franchised Businesses
\$40,000 per Shop	Six (6) to Nine (9) Franchised Businesses
\$35,000 per Shop	Ten (10) or more Franchised Businesses

3. *Estimated Initial Investment for First Franchised Shop.* This figure represents the total estimated initial investment required to open the initial Shop you agree to open and operate under the Development Agreement. You will be required to enter into our current form of franchise agreement to govern this Initial Shop at the same time you sign your Development Agreement. The range includes all the items outlined in Chart 7.A. of this Item, except for the \$60,000 Initial Franchise Fee because, upon full payment of the Development Fee, you will not be required to pay any Initial Franchise Fee in connection with your Initial Shop. Please see Chart 7.A. for more details on this initial investment range.
4. *Total.* Please note that this row does not include the initial investment you will need to undertake in connection with opening your second and any other Additional Shops you are granted the right to open under your Development Agreement. These amounts were not included because you are not likely to incur such amounts until more than three (3) months after you have opened your initial franchised Shop.

ITEM 8

RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES

You must operate all aspects of your Franchised Business in strict conformance with the methods, standards and specifications of our System. Our methods, standards, and specifications will be communicated to you in writing through our confidential Manuals and other proprietary guidelines and writings that we prepare for your use in connection with the Franchised Business and System. We may periodically change our System standards and specifications, as we deem appropriate or necessary in our sole discretion, and you will be solely responsible for costs associated with complying with any modifications to the System.

Approved Products and Services

You may only market, offer, sell and provide the Approved Products at your Franchised Business in a manner that meets our System standards and specifications. We will provide you with a list of our then-current Approved Products, along with their standards and specifications, as part of the Manuals or otherwise in writing prior to the opening of your Franchised Business. We may update or modify this list in writing at any time.

If you wish to offer any product or service in your Franchised Business other than our Approved Products or use any item in connection with your Franchised Business that does not meet our System standards and specifications, then you must obtain our prior written approval as described more fully in this Item.

We reserve the right to modify the Approved Products at any time in our sole discretion, including the right for us or our affiliate(s) to develop proprietary products, recipes and equipment.

Required Purchases of Goods and Services

You are required to purchase equipment, fixtures, food and beverage products, ingredients, furnishings, décor items, supplies and signage for your Shop that meet our specifications for quality and design from suppliers that we approve which may include us or our affiliate(s).

We must approve in writing in advance products and other items offered for sale at the Shop. All requests for approval must include fresh samples, a copy of applicable vendor licenses, appropriate health certificates and proof of liability insurance by the vendor. There is no time limitation imposed upon us within which approval must be granted, but a decision can usually be made within 30 days after our receipt

of all information and samples.

Required and Approved Suppliers

We have the right to require you to purchase any items or services necessary to operate your Franchised Business from a supplier that we approve or designate (each, an “Approved Supplier”), which may include us or our affiliate(s). We will provide you with a list of our Approved Suppliers in writing as part of the Manuals or otherwise in writing, and we may update or modify this list as we deem appropriate. No franchisor officer owns an interest in any supplier.

You may generally buy or lease original and replacement equipment, fixtures, and supplies meeting our specifications from any source, including us and our affiliates, although some items may be obtained only from our Approved Suppliers, which may, in some cases, be us and our affiliates.

Currently, we have Approved Suppliers for the following items that must be used to establish and/or operate your Franchised Business: (i) the architectural/design services; (ii) construction management services; (iii) site (real estate) selection services, in connection with the establishment of your Franchised Business at your approved Premises; (iv) certain initial and ongoing advertising, marketing and public relations materials/services that we designate; (v) the point-of-sale system you must use in connection with your Franchised Business; (vi) branded products and supplies; (vii) certain other food and beverage products proposed to be sold at the Franchised Business; (viii) exterior signage; and (ix) certain furniture, fixtures, equipment and interior signage that must be purchased to outfit and equip your Franchised Business.

We restrict your sources of certain products to protect our trade secrets, assure quality, assure a reliable supply of products that meet our standards, achieve better terms of purchase and delivery service, control usage of the trademarks by third parties, and monitor the manufacture, packaging, processing, and sale of these items.

Any product or supply item we have not previously approved must be approved in writing by us before you may sell or use it at the Shop. We will issue and modify standards and specifications based on our, our affiliates’, and franchisees’ experience in operating Shops in our Manuals or otherwise in writing. Standards and specifications may impose minimum requirements for production, performance, reputation, prices, quality, design, and appearance.

We will provide certain standards and specifications for approved products and services and will identify our current Approved Suppliers in an update to our confidential Manual(s) or other written communications. Otherwise, we are not required to provide our specifications to you.

Approval of Alternative Suppliers and/or Non-Approved Products

If you wish to purchase a product or service that we require you to purchase from an Approved Supplier from an alternate source, then you must obtain our prior written approval as outlined more fully in this Item.

We may provide our standards and specifications for our Approved Products directly to our Approved Suppliers and may provide these standards and specifications to an alternative supplier you propose if: (i) we approve the supplier in writing as outlined more fully in this Item; and (ii) the alternative supplier agrees to sign our prescribed form of non-disclosure agreement with respect to any confidential information we disclose.

We may, but are not obligated to, grant your request to: (i) offer any products or services in connection with your Franchised Business that are not Approved Products and Services; or (ii) purchase any item or service

we require you to purchase from an Approved Supplier from an alternative supplier.

If you wish to undertake either of these actions, you must request and obtain our approval in writing before: (i) using or offering the non-approved product or service in connection with your Franchised Business; or (ii) purchasing from a non-approved supplier. You must pay our then-current supplier or non-approved product evaluation fee when submitting your request. We do not currently charge any evaluation fee, but we reserve the right to do so in the future in an amount equal to the greater of our actual costs in evaluating a non-approved supplier or vendor, or \$250. We may ask you to submit samples or information so that we can make an informed decision whether the goods, equipment, supplies or supplier meet our specifications and quality standards. In evaluating a supplier that you propose to us, we consider not only the quality of the particular product at issue, but also the supplier's production and delivery capability, overall business reputation and financial condition. We may provide any alternate supplier you propose with a copy of our then-current specifications for any product(s) you wish the supplier to supply, provided the supplier enters into a confidentiality and non-disclosure agreement in the form we specify. We may also inspect a proposed supplier's facilities and test its products, and request that you reimburse our actual costs associated with the testing/inspection.

We will notify you in writing within 30 days after we receive all necessary information and/or complete our inspection or testing to advise you if we approve or disapprove the proposed item and/or supplier. The criteria we use in approving or rejecting new suppliers is proprietary, but we may (but are not required to) make it available to you upon request. Each supplier that we approve of must comply with our usual and customary requirements regarding insurance, indemnification and non-disclosure. If we approve any supplier, we will not guarantee your performance of any supply contract with that supplier under any circumstances. We may re-inspect and/or revoke our approval of a supplier or item at any time and for any reason to protect the best interests and goodwill of our System and Proprietary Marks. The revocation of a previously-approved product or alternative supplier is effective immediately when you receive written notice from us of revocation and, following receipt of our notice, you may not place any new orders for the revoked product, or with the revoked supplier.

Revenue from Franchisee Purchases

The products or services we require you to purchase or lease from an Approved Supplier, or purchase or lease in accordance with our standards and specifications, are referred to collectively as your "Required Purchases." We estimate that your Required Purchases will account for approximately 65% to 90% of all purchases and leases incurred in establishing your Franchised Business, and approximately 45% to 75% of all purchases and leases to operate the Franchised Business after the initial start-up phase. Please be advised that these percentages do not include your lease payments you make in connection with your Premises.

We reserve the right to derive revenue from any of the purchases (items or services) that our System franchisees are required to make in connection with the Franchised Business. In our past fiscal year ending December 31, ~~2023~~2022, neither we nor our affiliates derived any revenue in connection with franchisees' required purchases.

Cooperatives

Currently, there are no purchasing cooperatives, but we may, when appropriate, negotiate purchase arrangements, including price terms, with designated and Approved Suppliers on behalf of the System. We may establish strategic alliances or preferred vendor programs with suppliers that are willing to supply some products, equipment, or services to some or all of the Shops in our System. If we do establish those types of alliances or programs, we may: (i) limit the number of Approved Suppliers with whom you may deal; (ii) designate sources that you must use for some or all products, equipment and services; and (iii)

refuse to approve proposals from franchisees to add new suppliers if we believe that approval would not be in the best interests of the System.

We and/or our affiliate(s) may receive payments or other compensation from Approved Suppliers or any other suppliers on account of these suppliers' dealings with us, you, or other Franchised Businesses in the System, such as rebates, commissions or other forms of compensation. We may use any amounts that we receive from suppliers for any purpose that we deem appropriate. We and/or our affiliates may negotiate supply contracts with our suppliers under which we are able to purchase products, equipment, supplies, services and other items at a price that will benefit us and our franchisees. We reserve the right to established more purchasing cooperatives in the future.

Material Benefits

We do not provide material benefits to you based on your buying particular products or services or using particular suppliers.

Franchisee Compliance

When determining whether to grant new or additional franchises, we consider many factors, including your compliance with the requirements described in this Item 8. You do not receive any further benefit as a result of your compliance with these requirements.

Advertising and Marketing

All advertising and promotional materials and other items we designate must bear the Proprietary Marks in the form, color, location and manner we prescribe. In addition, all your advertising and promotion in any medium must be conducted in a dignified manner and must conform to the standards and requirements we prescribe in the Manuals or otherwise. You must obtain our approval before you use any advertising and promotional materials or plans in connection with your Franchised Business if we have not prepared or approved them during the 12 months prior to the date of your proposed use.

Approved Premises

You must obtain our approval of the Premises for your Franchised Business before you acquire the site. You must also provide us with a copy of any contract of sale or lease for the Premises before you execute the contract or lease, and we may condition our approval of any such lease on you and your landlord's execution of our prescribed form of Collateral Assignment of Lease (attached as an Exhibit to our current form of Franchise Agreement). You must also ensure that you comply with all of our System standards and specifications related to the build-out, remodeling and/or construction of your Franchised Business at the Premises. We currently require the use of our Approved Suppliers for site selection assistance.

If we grant you the right to open and operate multiple Franchised Businesses under a Development Agreement, you may not enter into your Franchise Agreement for each Franchised Business opened under your Development Schedule until you have our approval that we may condition on, among other things, you proposing a site as the approved Premises for that Franchised Business.

Insurance

You must purchase and maintain the types and amounts of insurance that we designate in our Manuals or otherwise in writing, including a general liability policy with \$2,000,000 in total coverage and \$1,000,000 per incident, all of which we may modify from time to time as we deem appropriate in our reasonable

discretion. We do not have an Approved Supplier for insurance, but you must furnish us with certificates of insurance (or, at our request, copies of all insurance policies), evidencing the existence and continuation of the insurance coverage required by the Franchise Agreement. All policies must contain a waiver of subrogation in our favor, and must name us and any additional parties we designate as additional insureds (except with regards to workers' compensation insurance).

Computer System

You must purchase any and all computer hardware, software and peripherals in accordance with our System standards and specifications. We may require you to purchase any of these items from one of our Approved Suppliers. Your Premises must have Internet Wi-Fi access that the guests of the Franchised Business can access. We may require you to purchase any of these items from one of our Approved Suppliers.

ITEM 9
FRANCHISEE'S OBLIGATIONS

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

OBLIGATION	SECTION IN FRANCHISE AGREEMENT	SECTION IN DEVELOPMENT AGREEMENT	DISCLOSURE DOCUMENT ITEM
a. Site selection and acquisition/lease	Sections 2, 5 and 6	Section 1 and Exhibit A of the Development Agreement	Items 7, 8, and 11
b. Pre-opening purchases/leases	Sections 5 and 6	Nothing Additional (see Franchise Agreements signed)	Item 8
c. Site development and other pre-opening requirements	Sections 2, 5 and 6	Sections 1, 5 and Exhibit A of the Development Agreement	Items 7, 11
d. Initial and ongoing training	Sections 5 and 6	Nothing Additional (see Franchise Agreements signed)	Item 11
e. Opening	Sections 5 and 6	Nothing Additional (see Franchise Agreements signed)	Items 5, 7, 11
f. Fees	Sections 3, 4, 9 and 13(E)	Section 2	Items 5, 6, 7, and 17
g. Compliance with standards and policies/Operations Manual	Sections 5 and 6	Nothing Additional (see Franchise Agreements signed)	Items 13 and 15
h. Trademarks and proprietary information	Section 7	Nothing Additional (see Franchise Agreements signed)	Items 13 and 14
i. Restrictions on products/services offered	Sections 5 and 6	Nothing Additional (see Franchise Agreements signed)	Item 16
j. Warranty and customer service requirements	Section 6	Nothing Additional (see Franchise Agreements signed)	Item 15

OBLIGATION	SECTION IN FRANCHISE AGREEMENT	SECTION IN DEVELOPMENT AGREEMENT	DISCLOSURE DOCUMENT ITEM
k. Territorial development and sales quotas	Not Applicable	Section 1 and Exhibit A of the Development Agreement	Not Applicable
l. Ongoing product/service purchases	Sections 5 and 6	Nothing Additional (see Franchise Agreements signed)	Not Applicable
m. Maintenance, appearance and remodeling requirements	Section 6	Nothing Additional (see Franchise Agreements signed)	Item 9
n. Insurance	Sections 6 and 11	Nothing Additional (see Franchise Agreements signed)	Items 6 and 9
o. Advertising	Sections 4, 5, 6 and 9	Nothing Additional (see Franchise Agreements signed)	Items 6 and 9
p. Indemnification	Section 11	Nothing Additional (see Franchise Agreements signed)	Item 6
q. Owner's participation/management/staffing	Section 6	Nothing Additional (see Franchise Agreements signed)	Item 15
r. Records and reports	Sections 4, 6 and 10	Nothing Additional (see Franchise Agreements signed)	Items 6, 16 and 17
s. Inspections and audits	Section 5 and 10	Nothing Additional (see Franchise Agreements signed)	Item 6
t. Transfer	Section 13	Section 8	Item 17
u. Renewal	Section 3	Nothing Additional (see Franchise Agreements signed)	Item 17
v. Post-termination obligations	Sections 14(B) and 16	Sections 12 and 13	Item 17
w. Non-competition covenants	Section 14	Section 13.1 and 13.2	Item 17
x. Dispute resolution	Sections 19 and 21	Sections 11 through 19	Items 6 and 17

ITEM 10. FINANCING

Neither we, nor our affiliates or agents, offer direct or indirect financing to franchisees, nor do we guarantee your obligations.

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

A. Pre-Opening Assistance

Except as disclosed below, we are not required to provide any assistance to you:

1. If you have entered into a Development Agreement, we will discuss and agree upon your Development Area under your Development Agreement.
2. We will provide site selection guidelines and assistance (as described more fully below in this Item 11), as we deem appropriate in our discretion, in connection with selecting the Premises for each of your Shop(s). We will also review, and subsequently approve/reject, any proposed lease or purchase agreement for each location that you propose as a Premises for any Franchised Business. (Franchise Agreement, Sections 2(B) and 5(F)) We do not typically own the Premises and lease it to you, but reserve the right to do so;
3. Once you secure a Premises that we approve for a Shop, we will define your Designated Territory for that Shop and include its boundaries in a Data Sheet attached as Exhibit A to your Franchise Agreement. (Franchise Agreement, Section 2(D));
4. Aside from the on-site training that we provide during the Initial Training Program, you may request additional on-site training or assistance at any time in accordance with guidelines we may specify in the Manual or otherwise (the “On-Site Assistance”). We will not be obligated to provide such additional on-site training or assistance, but if we elect to do so, or if we determine that additional on-site training is necessary for you, you will be required to pay the then-current on-site training fee then being charged to franchisees, due seven (7) days after billing, plus reimburse us for the costs of travel, lodging and meals incurred by our trainers in connection with same. The timing of all advice, consultation and training provided for in this Agreement will be subject to the availability of our personnel. (Franchise Agreement, Section 5(B)).
5. We will provide you with a list of our Approved Products, including any branded merchandise, Approved Suppliers (to the extent we have designated them) and Required Items, either as part of the Manuals or otherwise in writing. (Franchise Agreement, Section 5(E));
6. We will review and approve your signage, the proposed layout and design of your Premises (which must be prepared by our Approved Supplier unless we agree otherwise in writing), as well the equipment, furniture and fixtures used in connection with your Franchised Business, as we deem appropriate and advisable in our discretion. (Franchise Agreement, Section 6(F));
7. Once you (and/or any of your initial personnel) have: (i) submitted, and obtained our approval of, your Grand Opening Marketing Spend; (ii) undertaken all steps to establish the EFT Account to use in connection with your Shop, including ensuring that both we and our designee has all authorizations and approvals necessary to access this EFT Account; (iii) demonstrated that you have all required insurance policies in place and that such policies name us and our designees as additional insureds; (iv) provided us with completed and signed copies of all exhibits to your Franchise Agreement, to the extent such exhibits have not been signed or need to be updated/completed; and (v) demonstrated that you have completed all other pre-training requirements set forth in our then-current Manuals, we will provide the Initial Training Program as detailed more fully under the “Initial Training Program” heading directly below in this Item. (Franchise Agreement, Section 5(B)).

B. Initial Training Program

1. We will provide you and other management personnel you designate with our proprietary initial training program (the “Initial Training Program”) regarding our System methods and techniques

related to the establishment and operation of a franchise. Our Initial Training Program is mandatory and will typically consist of the following three (3) components, and the required attendees and additional details are provided below the chart:

|

TRAINING PROGRAM

Subject	Hours of Classroom Training	Hours of On-The-Job Training	Location
Technical Training		48.0	Pittsburgh, PA, another location we designate, or virtually
Business Training	24.0		Ann Arbor, MI, another location we designate, or virtually
Pre-Opening Support		Up to 40.0	Your Shop
TOTAL HOURS	24.0	Up to 88.0	

- a. “Technical Training” will typically be provided over a six (6) day period and, as of the Issue Date, we expect to hold this portion of training in Pittsburgh, PA. Required attendees will include the Franchisee Owner Operator and his/her Assistant General Manager (“AGM”). If you (or your operating principal) are not planning on functioning as an Owner Operator of a given Franchised Business, then you will be required to hire a General Manager and have that individual attend Technical Training as well;
 - b. “Business Training” (or “BT”) will typically consist of three (3) days of courses hosted either through on-line webinars or in-person training (currently, in Ann Arbor, MI). Required attendees will include the Franchisee Owner Operator. If you (or your operating principal) are not going to serve as the owner/operator of the Franchised Business, then your requisite General Manager must also attend the BT portion of our training program; and
 - c. On-Site Pre-Opening Support will consist of one (1) of Franchisor’s training team providing up to five (5) days of on-site oversight and guidance at the Premises of your Franchised Business, including staff orientation and assisting in training initial Shop personnel at or around the time of your opening.
2. The initial training program will be overseen by Shawn Smith, who has twenty (20) years of relevant industry experience, and six (6) years of experience working with us or our affiliate. Currently, we expect to offer the Initial Training Program on a monthly basis as-needed, and we will use printed and electronics job aids, training guides and manuals in connection with conducting the training. We expect that you will complete the Initial Training Program between four and six weeks prior to opening. You will be responsible for all costs and expenses you and your other attendees incur in connection with attending or otherwise participating in the Initial Training Program, including travel, lodging, meals, and other related expenses. You also must pay our then-current additional training fee for each individual that attends in addition to the first two (2) individuals. We may require additional training or refresher courses.

C. Operations Manual and/or Other Manuals

We will provide you with licensed, electronic access to a copy of our confidential and proprietary Manuals. You must operate your Shop in accordance with the then-current Manuals and all applicable laws and regulations. You must keep the Manuals confidential and current, and you may not copy any part of the

Manuals. The Operations Manuals currently contain a total of around 150 to 200 pages, and the table of contents is set forth in Exhibit F. We may periodically amend, update or replace the contents of the Manuals.

D. Site Selection Assistance

You must assume all costs, liabilities, expenses and responsibility for: (i) locating, obtaining and developing a Premises for your Shop; and (ii) constructing, equipping, remodeling and/or building out the Premises for use as a Shop, all in accordance with our System standards and specifications.

You must secure a Premises and execute a lease in connection with the same within six (6) months of signing the Franchise Agreement. We may provide you with our current written site selection guidelines, to the extent such guidelines are in place, and any other site selection counseling and assistance we believe is advisable. Our guidelines for site selection may require that you conduct, at your expense, an evaluation of the demographics of the market area for the location. We may then use these factors in determining the suitability of your proposed site for the approved Premises of your Franchised Business.

In deciding whether to approve a site, we may also consider, among other things: (i) demographic characteristics, traffic patterns, allowed design and building, parking, visibility, allowed signage, and the predominant character of the neighborhood surrounding the proposed site; (ii) competition from other businesses selling similar products and services within the area and the proximity of the site to these businesses, as well as the nature of all other businesses in proximity to the site; (iii) zoning restrictions, soil and environmental issues, and other commercial characteristics; and (iv) the size, appearance, and other physical characteristics of the proposed site.

We must also have the opportunity to review any lease or purchase agreement for a proposed Premises before you enter into such an agreement. We may condition our approval of your proposed site on a number of conditions, including requiring that any lease or agreement governing your right to occupy the Premise include our current form of lease addendum and collateral assignment of lease that is currently attached to the Franchise Agreement as Exhibit C. (Franchise Agreement, Sections 5(F), 6(A) and Exhibit C).

If you do not secure a site that we approve within six (6) months of signing the Franchise Agreement, you will be in default and the Franchise Agreement will be subject to termination. (Franchise Agreement, Sections 5 and 6).

E. Typical Length of Time to Open Your Business

The typical length of time we estimate between your signing of the Franchise Agreement or Development Agreement (or first paying us money) and opening your Shop is typically between nine (9) and 12 months.

Single Franchised Business Opened Pursuant to Franchise Agreement

You must receive written approval from us in order to open, and you must open your Shop no later than twelve (12) months after you sign the Franchise Agreement. If you fail to open within this required time period, your Franchise Agreement will be subject to termination. (Franchise Agreement, Section 6.)

The factors that may increase or decrease the time periods discussed above are the amount of time and effort you commit to the site selection process and the construction of your Shop; the availability of acceptable sites within the geographical area you choose; your ability to obtain a lease, financing and building permits; your credit and personal financials, zoning, and licensing requirements. Delays or a lack of effort by you, your contractors, or your prospective landlord will increase these time periods, and will

result in the delayed training of your staff. We will only send trainers after you pass your last inspection and you are permitted to open by state and local regulations.

Multi-Unit Development Under a Development Agreement (if applicable)

If you have entered into a Development Agreement to open and operate multiple Franchised Businesses, your Development Agreement will include a Development Schedule containing a deadline by which you must have each of your Franchised Businesses open and operating. Your Development Schedule may depend on the number of Franchised Businesses you are granted the right to open and operate. (Development Agreement, Section 6). If you fail to open any Shop within the appropriate time period outlined in the Development Agreement, we will have the right to terminate your Development Agreement if you do not cure that default within 30 days of receiving notice of the same from us.

You will not have any further development rights within the Development Area upon termination of your Development Agreement, except to continue operating the Shop(s) that were already open and operating as of the termination date. We must approve of the Premises you choose for each Shop you are required to open under the Development Agreement.

F. Post-Opening Obligations.

During the operation of the Franchised Business, we will have the following obligations:

1. We may require you and, if applicable, your General Manager to attend annual additional/refresher courses, as we deem necessary in our sole discretion (“Additional Training”). You will be required to pay our then-current Training Fee, which is currently \$300/day per trainer, for any Additional Training you and your employees attend. You will also be solely responsible for all expenses incurred in attending Additional Training. (Franchise Agreement, Section 5(D)).

2. We may provide you with continuing consultation and advice, as we deem necessary in our sole discretion, regarding the management and operation of the Franchised Business. We may provide this assistance by telephone, facsimile, or intranet communication, as we deem advisable and subject to the availability of our personnel. (Franchise Agreement, Section 5(H)).

3. We will approve or deny any advertising/marketing materials you wish to use in connection with your Franchised Business as described more fully below in this Item 11 under the heading “Advertising and Marketing.” (Franchise Agreement, Section 5(I)).

4. We will approve or disapprove your requests to: (i) purchase and/or offer non-approved products or services in connection with the Franchised Business; and (ii) make Required Purchases from suppliers other than our then-current Approved Suppliers. (Franchise Agreement, Section 5).

5. We may schedule and hold an annual conference, as we deem advisable in our sole discretion, to discuss the current state of the System, improvements to the System, hold discussion forums for System franchisees and recognize certain franchisees. In the event we schedule a conference, we may require you to attend for up to five (5) calendar days. You will be responsible for the costs and expenses you incur in connection with any annual conference/convention (lodging, travel, meals, etc.), and we may charge you our then-current attendance/registration fee. If you do not attend a scheduled required event, we may charge you a non-attendance fee amounting to \$1,000. (Franchise Agreement, Section 5(Q)).

6. We will display the contact information of your Franchised Business on the website that we or our designee maintains to advertise and promote our brand, our Proprietary Marks and other Shop

locations, provided you are in compliance with the terms of your Franchise Agreement. We will also have the right to discontinue operation of the Website at any time without notice to you. We may require that you maintain and utilize a specific e-mail account in connection with the Shop. We are the lawful and sole owner of the domain name www.themilkshakefactory.com and www.milkshakefactory.com. You may not establish or operate a website, web page, domain name, Internet address, blog, forum or email address that in any way concerns, discusses or alludes to us, the System or your Shop without our written consent. The Proprietary Marks may not be used as part of, in conjunction with, to establish, or to operate any domain names, Internet addresses, blogs, forums or Networking/Social Media Sites, unless specifically approved by us. You may not post, and must take such steps as necessary to ensure that your employees do not post, any information to a Networking/Social Media Site relating to us, the System, the Proprietary Marks, or the Shop that (a) does not comply with our social networking guidelines described in the Operating Manuals, (b) is derogatory, disparaging, or critical of us, the System, or the Proprietary Marks, (c) is offensive, inflammatory or indecent, or (d) harms the goodwill and/or public image of the System and/or the Proprietary Marks. You may not establish or permit or aid anyone else to establish any links to any website or any other electronic or computer generated advertising or communication arrangement which we may create. Subject to the terms of the Franchise Agreement and Operations Manual, we may make available to you a sub-page on the Website that will be located at a sub-directory of the Website to be specified by us (the "Subpage"). You will be permitted to provide content onto the Subpage solely to promote, and provide customers information related to your Shop. You may only upload content onto the Subpage in accordance with terms of the Franchise Agreement and any guidelines, directives or specifications (collectively, "Subpage Standards") issued by us. The Subpage may not contain content which references any other Shops other than your Shop. You may not upload, publish, display, or otherwise include or use any content on the Subpage without receiving our approval. Once we approve the initial content of the Subpage, you must submit any changes to us before you make any changes. We may, at any time, cease to make the Subpage available to you or the public. We may also design the Website for taking delivery orders from customers and routing that to you. We will be solely responsible for the development of all online ordering. Upon the termination or expiration of the Franchise Agreement for any reason or a default under the Franchise Agreement for any reason, you may not upload, content, onto, or otherwise use, the Subpage shall immediately cease and we may cease to make the Subpage available to you. Please see below in this Item 11 under the heading "Advertising and Marketing" for further information. (Franchise Agreement, Section 5(J)).

7. We also may maintain one or more social media sites (e.g., www.twitter.com; www.facebook.com; or such other social media sites). You may not establish or maintain any social media sites utilizing any usernames, or otherwise associating with the Proprietary Marks, without our advance written consent. We may designate from time to time regional or territory-specific usernames/handles to be maintained by you. You must adhere to the social media policies established from time to time by us and you will require all of your employees to adhere to the social media policy as well.

8. We expect and intend to administer and maintain our brand development Fund for the benefit of the System, Proprietary Marks, Approved Products, System locations and/or our brand generally as we deem appropriate – including collecting and/or expending Fund Contributions. (Franchise Agreement, Section 5(M)).

9. We may conduct, as we deem advisable in our sole discretion, inspections of the premises and audits of the Franchised Business and your operations generally to ensure compliance with our System standards and specifications as well as to consult in the development and growth of your Franchised Business. We may also prepare written reports outlining any recommended or required changes or improvements in the operations of the Shop, as we deem appropriate in our sole discretion, and detail any deficiencies that become evident as a result of any inspection or audit. If any inspection reveals any

deficiencies, you will be responsible for our costs in conducting such inspection. (Franchise Agreement, Section 5(L)).

10. We may supplement, revise or otherwise modify the Manuals, as we deem necessary or prudent in our sole discretion, which may, among other things, provide new operations concepts and ideas. We may provide you with these updates through various mediums, including mail, e-mail and our System-wide intranet. (Franchise Agreement, Section 2(G)).

11. We may: (i) research new recipes, ingredients, equipment, products, services and methods of doing business and provide you with information we have developed as a result of this research, as we deem appropriate in our sole discretion; and (ii) create and develop additional products and services to be offered or provided as Approved Products and Services (including catering services) at or from a Shop, including proprietary products and services sold under the marks we designate. (Franchise Agreement, Section 2(G) and 5(K)).

G. Advertising and Marketing

Brand Development Fund

We currently administer a brand development fund (the “Fund”) for the benefit of the entire System of Shops. We use the Fund to meet certain costs related to maintaining, administering, directing, conducting and preparing advertising, marketing, public relations, and/or promotional programs and materials, and any other activities which we believe will enhance the image of the System. Your current Fund Contribution amounts to two percent (2%) of the Adjusted Gross Sales generated by your Franchised Business. Your required Fund Contribution may be increased to an amount equal to up to three percent (3%) of the Adjusted Gross Sales generated by your Franchised Business upon 60 days’ prior written notice of such an increase via the Manuals or otherwise in writing. ~~Currently, other~~Other franchised and affiliate-owned Shops will contribute to the Fund in the same amount and manner as franchised Restaurants. Other than the Fund, there are currently no other advertising funds that you are required to participate in.

With any advertising funds paid, we have sole discretion as to how and where the money is spent to promote, enhance, or further the development and/or growth of the System, Proprietary Marks, Approved Products, System locations and our brand generally. Such activities may include, but are not limited in any manner to the following: promotional marketing, public relationships, and advertising expenses, hiring marketing, public relations and advertising agencies and internal personnel to assist in developing the brand name and average unit volumes, expenses associated with listings, subsidies of premiere/marquee restaurants designed to garner media attention and promote the brand name, travel expenses in connection with promotions and marketing meetings, training, development of Proprietary Marks and trademarked materials, production of circulars, media, advertisements, coupons, and promotional materials (including point of purchase materials), market research, developing training tools designed to assist System franchisees, the cost of developing and maintaining an Internet website and other digital marketing tools, developing and deploying mystery shopper programs and for any other use we determine. Additionally, we can use the Fund to pay for expenses incurred in developing and maintaining non-franchise sales portion of our brand website. We are not required to spend any advertising funds in your specific area or territory. Materials provided by the Fund to System Restaurants may include video, social media assets, posters marketing collateral, banners and miscellaneous point-of-sale items.

We may provide for placement of advertising on behalf of the entire franchise system, including Franchisees. While we have not yet done so, we have the right in the future to use Fund Contributions to place advertising in national media (including broadcast, print or other media). Advertising funds are used to promote the products sold by Franchisees. A brief statement regarding the availability of information

regarding the purchase of a franchise may be included in advertising and other items produced using the Fund; provided that we will not use Fund funds principally to sell franchises.

Currently, Fund Contributions will be payable to us. We have the right to establish in the future a nonprofit corporation or other business entity to collect Fund advertising contributions from our Franchisees. The Fund is administered by our accounting and marketing personnel under our direction. We may have the Fund borrow from us or other lenders to cover any Fund deficits. We may have the fund invest any surplus for the Fund's future use. (Franchise Agreement - Section 9)

We will not be required to spend any of your Fund Contributions in the Designated Territory you are granted under your Franchise Agreement, and we will provide you with an accounting of the Fund within 120 days after our fiscal year end (upon your written request). We are not required to have the Fund audited, but we may do so and use the Fund Contributions to pay for such an audit. We also may, in our sole discretion, use the Fund to pay certain marketing expenses including, but not limited to, outside agency fees or the salaries of any internal marketing staff. If we do not spend all Fund Contributions in a given year, any excess funds will rollover into the Fund for use during the following year. We will have the right to modify or discontinue the Fund (if established), as we deem appropriate in our sole discretion.

We did not collect any Fund Contributions during the fiscal year ended on December 31, ~~2023~~2022, and consequently, no expenditures were made during this time period that would require disclosure in this Item.

Regional Cooperatives

We reserve the right to establish regional cooperatives that are comprised of a geographical market area that contain two (2) or more Shops (whether a Franchised Business or Affiliate-owned) (each a "Cooperative"). If we assign your Shop to a Cooperative we establish, you must work with the other Shop owners in your Cooperative and us to develop and implement regional advertising campaigns designed to benefit all the Shops within the geographical boundaries of the Cooperative. We have not established any Cooperatives as of the Issue Date of this Disclosure Document, and have not contemplated how much a Franchised Business might be required to contribute to such a Cooperative, but such required amounts will not exceed your Local Advertising Requirement. We will have the right to establish, modify, merge and dissolve Cooperative as we deem appropriate. Any amounts you expend on Cooperatives will be credited towards your Local Advertising Requirement. (Franchise Agreement, Section 9(H))

Franchise Advisory Council

We do not currently have any franchise advisory councils. We reserve the right to form such advisory councils in the future, to serve in an advisory capacity only. (Franchise Agreement, Section 9(F)).

Grand Opening Marketing Spend

You are required to spend a minimum amount on the local advertising and marketing of your Franchised Business that ranges from \$10,050 to \$12,000, and we will designate the exact amount you must expend as your Grand Opening_Marketing Spend once you secure a Premises we have approved. We may require that you pay this amount to one (1) or more of our Approved Suppliers. We expect that these expenditures will occur during the period commencing 30 to 60 days prior to your contemplated opening and around your contemplated opening of your franchised Shop. (Franchise Agreement, Section 9(X))

Local Advertising Requirement

In addition to the Grand Opening Marketing Spend, you must expend a minimum Local Advertising on the local marketing and advertising of your Franchised Business, which is based on the Adjusted Gross Sales generated by your Franchised Business during the preceding calendar month. Specifically, your Local Advertising Requirement amounts to: (i) 2% of the Adjusted Gross Sales generated in a calendar year of operations up to \$500,000; and (ii) 1% of the any Adjusted Gross Sales generated by your Franchised Business in that calendar year in excess of \$500,000. We may request in writing that you provide a written accounting, invoices or other reasonable/objective evidence to demonstrate your compliance with this obligations. We may require that you expend any portion of your Local Advertising on services and/or materials that are acquired from one (1) or more of your Approved Supplier(s). (Franchise Agreement, Section 9(X)). Your obligations will commence upon the opening of your Franchised Business, unless we agree otherwise in a separate writing.

H. Computer System and Point of Sale System

You are required to use point of sale system (or “POS System”) and other Computer System hardware we designate in the Manual(s) or otherwise in writing. Our current Computer System components include: (i) one (1) network rack, router, access point and cloud key; (ii) one POE+ switch; (iii) one (1) 24” monitor with USB-C docking station, along with one (1) PC that meets our System specifications; (iv) one (1) tablet that has at least 64GB of RAM and otherwise meets our current brand and other System specifications. We also have System specifications for the security system (*i.e.*, cameras) and certain audio components. We currently require that you purchase these components from our Approved Supplier, as well as certain ongoing Required Software that you must license and use in connection with your Franchised Business (as detailed more fully in Item 8).

Presently, we estimate the initial costs associated with acquiring the required hardware, as well as Required Software pre-opening costs, associated with the Computer System to be between \$16,950 and \$17,750, including security system and certain audio equipment and associated installation/service costs. We estimate the cost of annual upgrades, maintenance and repairs to be approximately \$500 to \$1,500, but we do not require or mandate any kind of annual support or maintenance contract in connection with the Computer System.

We will have independent access to the information stored in your Computer System or Required Software, and there is no contractual limit on our right to access such information. While the hardware and software are not currently proprietary, you are required to purchase the approved hardware and software we require from our Approved Supplier. In order to promote system-wide compatibility, we may, at our option, in the future require you to purchase the software and/or computer hardware from us or a different designated supplier. You must purchase or lease the required hardware, modem, and communications software as designated by us. As the current computer system requirements change, you may be required to upgrade or update your hardware and software. There are no restrictions on the frequency or the cost of upgrading. If the software you are required to use is proprietary to us, we will grant you a license to use the software upon signing the software licensing agreement and payment of the license fee.

ITEM 12. TERRITORY

Premises and Relocation

You may only operate your Franchised Business from the Premises we approve. Once we agree on the Premises, we will designate it on the Data Sheet attached to your Franchise Agreement.

You may not relocate your Franchised Business without our written consent, which we will not unreasonably withhold provided: (i) the new location is located within your Designated Territory and meets our then-current criteria for a Premises; and (ii) upon our request, pay us the appropriate Relocation Fee (up to \$1,000). When considering a request for relocation, we may take into account the desirability of the proposed new location, its distance from other and future-planned franchised locations, the traffic patterns, security, cost, and the demographics of the area, as well as any other related factors we deem appropriate. We will not unreasonably withhold or approval of your relocation request, provided the location meets our site selection criteria.

Franchise Agreement: Designated Territory

Once you have secured the Premises of your Franchised Business, we will define the Designated Territory on the Data Sheet attached to your Franchise Agreement. Your Designated Territory will typically (i) be a two (2) mile radius around your Premises, or (ii) if your Franchised Business is located in a major metropolitan downtown area or similarly situated or densely populated area, have a population size of 75,000 people. The size of your Designated Territory may vary from other System franchisees based on the location and demographics surrounding your Premises.

The boundaries of your Designated Territory will typically be defined by zip code(s) as of the Issue Date, but we may also describe such territorial rights in terms of radii, streets, landmarks (both natural and man-made) or county lines, or otherwise delineated on a map attached to the Data Sheet. If applicable, the sources we expect to use to determine the population within your Designated Territory will be publicly available population information (and, if based on population, the data published by the U.S. Census Bureau or other governmental agencies and commercial sources).

During the term of your Franchise Agreement, we will not open or locate, or license a third party the right to open or locate, any other Shop utilizing the Proprietary Marks and System from a physical location within your Designated Territory. Your Designated Territory cannot be modified except by mutual written agreement signed by both parties.

You will not receive an exclusive territory. You may face competition from other franchisees, from outlets that we own, or from other channels of distribution or competitive brands that we control.

Limitations on Soliciting and Other Activities Outside of Your Designated Territory; Revenue Sharing

There are no territorial restrictions from accepting business from customers that reside/work or are otherwise based outside of your Designated Territory if these customers contact you and/or visit your Franchised Business. You may solicit prospective customers outside of your Designated Territory, provided (a) these prospective customers do not reside within the territory granted to another franchisee or Shop and (b) you obtain our prior written consent. You may not use alternative channels of distribution, such as the Internet, catalog sales, telemarketing or other direct marketing, to make any sales inside or outside of your Designated Territory.

Development Agreement: Development Area

If you are granted the right to open multiple Franchised Businesses under our form of Development Agreement, then we will provide you with a development area (“Development Area”) upon execution of this agreement. The size of your Development Area will substantially vary from other System developers based on: (i) the number of Franchised Businesses we grant you the right to open and operate; and (ii) the

location and demographics of the general area where we mutually agree you will be opening these locations. The boundaries of your Development Area may be described in terms of zip codes, county lines, population and/or other specific demarcated boundaries we delineate on a map on a map attached to the Data Sheet.

Each Franchised Business you timely open and commence operating under our then-current form of franchise agreement will be operated: (i) from a distinct Premises located within the Development Area; and (ii) within its own Designated Territory that we will define once the Premises for that Franchised Business has been approved. We will approve sites for future/additional units using our then-current criteria.

You will not receive an exclusive territory. You may face competition from other franchisees, from outlets that we own, or from other channels of distribution or competitive brands that we control.

You do not receive territorial rights within your Development Area, which is not exclusive. Upon expiration or termination of the Development Agreement, each Franchised Business that you have opened and are continuously operating as of the date of such occurrence will have the territorial rights within their respective Designated Territories that were granted under the franchise agreement(s) you entered into for those Franchised Business(es).

You must comply with your development obligations under the Development Agreement, including your Development Schedule, in order to maintain your rights within the Development Area. If you do not comply with your Development Schedule, we may terminate your Development Agreement and any further development rights you have under that agreement if that default is not timely cured within 30 days of the date we provide you with written notice of the same.

Otherwise, we will not modify the size of your Development Area except by mutual written agreement signed by both parties. You will not receive an exclusive territory in connection with your Development Agreement. You may face competition from other franchisees, from outlets that we own, or from other channels of distribution or competitive brands that we control.

Reserved Rights

We, our parent and/or affiliates reserve the exclusive right to conduct the following activities under the Franchise Agreement and/or Development Agreement (as applicable): (i) establish and operate, and license any third party the right to establish and operate, other Shops and Franchised Businesses using the Proprietary Marks and System at any location outside of your Designated Territory(ies) and, if applicable, Development Area; (ii) market, offer and sell products and services that are similar to the products and services offered by the Franchised Business under a different trademark or trademarks at any location, within or outside the Designated Territory(ies) and Development Area; (iii) use the Proprietary Marks and System, other such marks we designate, to distribute our Approved Products and/or Services in any alternative channel of distribution, within or outside the Designated Territory(ies) and Development Area (including the Internet, mail order, catalog sales, toll-free numbers, wholesale stores, etc.); (iv) to acquire, merge with, or otherwise affiliate with, and after that own and operate, and franchise or license others to own and operate, any business of any kind, including, without limitation, any business that offers products or services the same as or similar to the Approved Products and Services (but under different marks), within or outside your Designated Territory(ies) and, if applicable, Development Area; (v) use the Proprietary Marks and System, and license others to use the Proprietary Marks and System, to engage in any other activities not expressly prohibited in your Franchise Agreement and, if applicable, your Development Agreement; and (vi) own and operate Shops in “Non-Traditional Locations” including, but not limited to, malls, amusement parks, military bases, college campuses, hospitals, airports, sports arenas and stadia, train stations, travel plazas, toll roads and casinos, both within or outside your Designated Territory(ies) and, if

applicable, Development Area.

Neither the Franchise Agreement nor Development Agreement grants you any right to engage in any of the activities outlined in the preceding paragraph, or to share in any of the proceeds received by us, our affiliates, our parent, or any third party from these activities, unless we otherwise agree in writing. Further, we have no obligation to provide you any compensation for soliciting or accepting orders (via alternate channels of distribution) within your Designated Territory. We have the exclusive right to negotiate and enter into agreements or approve forms of agreements to operate Shops at Non-Traditional Sites, either directly or through our parent, our affiliates, licensees, or designees, and you will not be entitled to any compensation as a result of our operation of Shops at Non-Traditional Sites.

Additional Disclosures

Neither the Franchise Agreement nor the Development Agreement provides you with any right or option to open and operate additional Franchised Businesses (other than as specifically provided for in your Development Agreement if you are granted multi-unit development rights). Regardless, each Franchised Business you are granted the right to open and operate must be governed by its own specific form of Franchise Agreement.

We have not established other franchises or company-owned outlets or another distribution channel offering or selling similar products or services under a different trademark. Neither we nor our affiliates have established, or presently intend to establish, other franchised or company-owned businesses that sell our Approved Products under a different trade name or trademark, but we reserve the right to do so in the future without your consent.

ITEM 13. TRADEMARKS

You will have the limited right to use the Proprietary Marks we designate for use in connection with the System. Our affiliate is the owner of the following Proprietary Mark that is registered on the Principal Register of the United States Patent and Trademark Office (“USPTO”):

<u>MARK</u> <u>REGISTRATION</u> <u>N-NO.</u>	<u>REGISTRATION</u> <u>DATE</u> <u>NO.</u>	<u>REGISTRATION</u> <u>DATE</u> <u>MARK</u>
<i>The</i> MilkShake EST FACTORY 1914 5,218,413	5,218,413 June 6, 2017	June 6, 2017 <i>The</i> MilkShake EST FACTORY 1914
<u>THE MILKSHAKE</u> <u>FACTORY</u> 3,934,138	3,934,138 March 22, 2011	March 22, 2011 <u>THE</u> <u>MILKSHAKE FACTORY</u>

We do not have a federal registration for all of our principal trademarks. Therefore, our trademark does not have many legal benefits and rights as a federally registered trademark. If our right to use the trademark is challenged, you may have to change to an alternative trademark, which may increase your expenses. The following registrations are currently pending.

<u>MARK</u>	<u>STATUS</u>	<u>REGISTER</u>	<u>SERIAL NUMBER</u>	<u>FILING DATE</u>
<u>MILKSHAKE FACTORY</u>	<u>Application Filed</u>	<u>Prinipal</u>	<u>98258068</u>	<u>Nov. 07, 2023</u>
	<u>Application Filed</u>	<u>Prinipal</u>	<u>98258186</u>	<u>Nov. 07, 2023</u>

Our affiliate, Milkshake Factory IP, LLC (“Milkshake IP”), owns the Proprietary Mark(s) and has licensed us the right to (a) use and (b) sublicense our System franchisees to use, such Proprietary Marks in connection with the franchise offering and system described in this Disclosure Document. The license agreement has an initial term of our license agreement with Milkshake IP, effective as of December 29, 2022, is 20 years with successive renewal terms of twenty (20) years each. If Milkshake IP’s license to us expires or is terminated, your rights under the Franchise Agreement will not be affected. You will have the right to operate your Shop during the remaining franchise term, and during the term of any permitted renewal franchise agreement, as long as you comply with all of your obligations. We or our affiliate have filed all required affidavits. As of the Issuance Date of this Disclosure Document, no renewals have been required to be filed.

We may also license our franchisees any additional marks that we develop or designate for use in connection with the operation of a Shop. In addition to the principal marks, we have other secondary trademarks used to promote the business, including certain menu items or design marks using our logo, which marks we also license to you. Some of these marks are registered trademarks and others we claim common law trademark protection.

Except for the license agreement with our affiliate, there are no agreements in effect that significantly limit our rights to use or license the use of the Proprietary Marks listed in this Item in a manner material to the franchise that we have been made aware of. There are no current determinations, proceedings or litigation involving any of our Proprietary Marks. We are also not aware of any infringing use of our primary Proprietary Marks that could materially affect your use of them.

You must promptly notify us of any suspected unauthorized use of the Proprietary Marks, any challenge to the validity of the Proprietary Marks, or any challenge to our ownership of, our right to use and to license others to use, or your right to use, the Proprietary Marks. We have the sole right to direct and control any administrative proceeding or litigation involving the Proprietary Marks, including the right to settle the proceedings or litigation. We have the exclusive right, but not the obligation, to affirmatively prosecute actions against third parties for infringement or threatened infringement of the Proprietary Marks.

We will defend you against any third-party claim, suit, or demand arising out of your use of the Proprietary Marks. If we, in our sole discretion, determine that you have used the Proprietary Marks in accordance with the Franchise Agreement, we will pay the cost of defending the action, including the cost of any judgment or settlement. If we, in our sole discretion, determine that you have not used the Proprietary Marks in accordance with the Franchise Agreement, you will be required to pay for the defense or to reimburse us for costs we incurred in providing the defense, including the cost of any judgment or settlement. In the event of any litigation relating to your use of the Proprietary Marks, you are required to sign all documents and assist us, as we deem necessary, to carry out the defense or prosecution including, without limitation, becoming a nominal party to any legal action. Except to the extent that such litigation is the result of your use of the Proprietary Marks in a manner inconsistent with the terms of the Franchise Agreement, we will reimburse you for your out-of-pocket costs in performing such acts.

You may use only the Proprietary Marks which we designate, and may use them only in the manner we authorize and permit. Any goodwill associated with Proprietary Marks, including any goodwill which might be deemed to have arisen through your activities, inures directly and exclusively to our benefit. You may use the Proprietary Marks only for the operation of the Shop and only at the Franchisee Location or in advertising for the Shop. You must use all Proprietary Marks without prefix or suffix and in conjunction with the symbols “SM,” “TM,” “S” or “R,” as applicable. You may not use the Proprietary Marks in connection with the offer or sale of any services or products which we have not authorized for use in connection with the System. You may not use the Proprietary Marks as part of your corporate or other legal name. All of your advertising must prominently display the Proprietary Marks and must comply with our standards for using the Proprietary Marks.

We reserve the right to substitute different proprietary marks for use in identifying the System and the businesses operating thereunder. You must discontinue using all Proprietary Marks which we have notified you, in writing, have been modified or discontinued within 10 days of receiving written notice and must promptly begin using such additional, modified or substituted Proprietary Marks at your expense.

ITEM 14. PATENTS, COPYRIGHTS, AND PROPRIETARY INFORMATION

We do not own any registered patents or copyrights which are material to the franchise; however, we claim common law copyright and trade secret protection for several aspects of the franchise System including our Operations Manual, advertising, and business materials.

There are no current determinations, proceedings or litigation involving any of our copyrighted materials. Should you become aware that any unauthorized third party is using any of our copyrighted materials, we request that you notify us of such unauthorized use. We may revise our Franchise System and any of our copyrighted materials in our discretion, and may require that you cease using any outdated copyrighted material. You will be responsible for printing any revised or new advertising, marketing or other business materials.

During the term of the Franchise Agreement, you will receive information which we consider trade secrets and confidential information. You may not, during the term of the Franchise Agreement or thereafter, communicate, divulge, or use for the benefit of any other person, partnership, association, corporation, or limited liability company any trade secrets including our proprietary recipes, sauces and ingredients, operating systems, other standards and specification for the preparation and presentation of food and beverages, price marketing mixes related to products and services offered under the System, supplier networks, copyrighted materials including the Operations Manual, and other methods, techniques, and know-how concerning the operation of the Shop (“Confidential Information”) you will acquire in your capacity as our franchisee. You may divulge such Confidential Information only to your employees who must have access to it in order to perform their employment obligations. You must require your manager and any personnel having access to any of our Confidential Information to sign an agreement stating that they will maintain the confidentiality of information they receive in connection with their employment and restricting their right to work for a competitor while they are employed by you. Such agreement, which will be in a form that we prescribe, will identify us as a third-party beneficiary to the agreement and give us independent enforcement rights.

The Franchise Agreement provides that if you, your employees, or principals develop any new concept, process or improvement in the operation or promotion of the Shop, including variations on proprietary recipes or other food and beverage items, you must promptly notify us and provide us with all necessary related information, without compensation. Any new concept, process or improvement will become our sole property and we will be the sole owner of all patents, patent applications, trademarks, copyrights and

other intellectual property rights related to such new concepts. You and your principals will assign to us any rights you may have or acquire in new concepts you or your employees develop, including the right to modify such concept, process or improvement, and otherwise will waive and/or release all rights of restraint and moral rights to any new concepts you or your employees develop. You and your principals agree to assist us in obtaining and enforcing the intellectual property rights to any such concept, process or improvement in any and all countries and further agree to execute and provide us with all necessary documentation for obtaining and enforcing such rights. You and your principals will irrevocably designate and appoint us as your agent and attorney-in-fact to execute and file any such documentation and to do all other lawful acts to further the prosecution and issuance of patents or other intellectual property rights related to any such concept, process or improvement. In the event that such provisions of the Franchise Agreement and/or Development Agreement are found to be invalid or otherwise unenforceable, you and your principals will grant to us a worldwide, perpetual, non-exclusive, fully-paid license to use and sublicense the use of the concept, process or improvement to the extent such use or sublicense would, absent the Franchise Agreement, directly or indirectly infringe on your rights to the new concepts.

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

We encourage but do not require you to personally supervise the Shop. We strongly recommend that you devote a substantial amount of time to your Shop, whether or not you engage a manager. The Shop must be directly supervised and managed by a person, identified to us and approved by us, who has undergone our training program or for whom, based on his or her experience, we have waived this requirement. If you are an entity, you may elect to appoint an Operating Partner to oversee the day-to-day operations and be the primary point of contact. If you are not willing to be the full-time operator of your business, then you will be required to engage a manager approved by us (the “General Manager”). We do not currently require that your General Manager hold ownership interest in franchisee, but we reserve the right to require this in the future.

Your franchised Shop must, at all times, be managed and staffed with at least one (1) individual who has successfully completed our Initial Training Program. In the event that you operate more than one Shop, you must have a properly trained General Manager at each Shop you own and operate. We are not your employer and you will control all decisions related to recruiting, hiring or firing any personnel, including any managers. In addition to the Franchise Agreement, both you and your spouse will be required to sign guarantees of performance in which you will guarantee the performance of your Shop’s obligations to us. The only restriction we place on the manager of your business is that the manager must execute a confidentiality and non-competition agreement similar to the one you will execute if you purchase a franchise from us. All personnel employed by you in connection with the operation of your Shop must maintain standards of sanitation, cleanliness and demeanor as may be established by us. All personnel must wear uniforms or other clothing approved by us.

We expect that you will keep your Shop open and operating during those hours where the majority of our franchised Shops are open or as otherwise recommended in our Operations Manual, but as an independent contractor you may deviate from our recommended hours if (a) there are local regulations or landlord restrictions that affect your ability to actively operate your Shop, or (b) you otherwise provide us with notice in writing of your hours of operation and an explanation regarding any material deviation from our recommended hours of operation.

Each of your principal owners and their spouse must sign the franchise agreement, in the form of Exhibit B, as either the franchisee or the guarantor. In either event, by signing the franchise agreement each Principal and their spouse agrees to perform, and guarantees, all of the franchisee’s obligation to us and our

affiliates (including the obligations under this Agreement) and agrees to be bound by the restrict covenants, the confidentiality provisions and certain other provisions contained in the Franchise Agreement.

ITEM 16. RESTRICTIONS ON WHAT THE FRANCHISEE MAY SELL

You must offer and sell only our then-current list of Approved Products, as we designate in the Manuals or otherwise in writing, and in the manner we prescribe. You will not offer to sell or provide at or through the Shop any merchandise, products or services that have not been approved in advance in writing, or use the premises for any other purpose other than the operation of the Shop. You may not use nor sell any products, materials, ingredients, supplies, paper goods, uniforms, fixtures, furnishings, signs, or equipment which do not meet our standards and specifications, unless approved in writing.

You will prepare and present all menu items in accordance with our standards and specifications, using the ingredients and preparation techniques we prescribe. We have the right to require you to offer and sell additional goods or services as we may designate. There are no limits on our right to do so. You are not allowed to solicit customers outside of your Designated Territory without our prior written approval. You will at all times maintain sufficient levels of inventory to adequately satisfy consumer demand. You must stop using offering disapproved products or services immediately upon notice that such services or products have been discontinued. You must offer and sell any branded merchandise and/or private label food and beverage items which we may now or in the future designate for sale by System franchisees, including prepackaged or frozen food and beverage items, and related merchandise.

Your grant of a Franchised Business does not include: (i) any right to offer any services via e-commerce except through a website designated by us; (ii) any right to establish an independent website or to establish a URL incorporating the Proprietary Marks or any variation thereof; or (iii) any right to distribute, market, or implement our services in any channel of distribution not specifically identified in the Franchise Agreement.

Any off-site catering must be done in accordance with procedures we establish and must not be provided in a shopping center or mall where we or another franchise operate a Shop. Although there are no restrictions on the retail customers or trade area you may serve from your Shop, as a practical matter, you will be limited to serving customers who choose to visit the Shop.

You will be obligated to offer and sell those new products and to participate in all local, regional and promotional program initiatives and campaigns adopted by us in which we require you to participate. We have the right to designate which of our franchisees may, or will be required to, participate in new product or service tests, new or modified product or service offerings and other programs and initiatives that we may, from time to time, develop. If we designate you for participation in any such program, initiative or campaign, you must participate when and as required by us. There are no limits on rights to require you to offer and sell those new products or to participate in those programs, initiatives and campaigns.

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.

A. Franchise Agreement

	Provision	Section in Franchise Agreement	Summary
a.	Term of the Franchise	Section 3	The initial term is for ten (10) years commencing on the date we execute your Franchise Agreement.
b.	Renewal or extension of the term	Section 3	You have the right to be considered for two (2) additional (and successive) ten (10) year renewal terms.
c.	Requirements for franchisee to renew or extend	Section 3	In order to renew (which means renewing your franchise relationship with us), you must: not have any uncured material defaults under your Franchise Agreement (including any monetary defaults) or any other agreement between you and us or the landlord of the Premises; not have received three (3) or more separate, written notices of material default from Franchisor with respect to this Agreement in the 24-month period preceding the renewal request date or renewal date, or two (2) or more such notices within the 12-month period preceding the renewal request date or renewal date; be in good financial standing; have continued right of possession to the Premises; complete required renovation and modernization of your Franchised Business; pay us our then-current Renewal Fee; execute our then-current form of franchise agreement (which may contain materially different terms and conditions than your original franchise agreement); complete our then-current refresher training course and pay the appropriate training fee (currently, \$400/day per trainee); pay a renewal fee amounting to \$10,000, and execute a general release in our favor (as well as related parties).
d.	Termination by franchisee	Not Applicable	Not Applicable
e.	Termination by franchisor without cause	Not Applicable	Not Applicable
f.	Termination by franchisor with “cause”	Section 15	We may terminate your Franchise Agreement with cause as described in (g)-(h) of this Item 17 Chart.
g.	“Cause” defined – curable defaults	Section 15(B) Section 15©	<p>You must cure all monetary defaults under your Franchise Agreement within 10 days of being provided with notice by us, as well as the following defaults: failure to purchase any Required Item; failure to purchase from our Approved Suppliers; any purchase of a non-approved item or offering of a product/service at the Franchised Business that we have not authorized; failure to pay us, our Affiliates, or our Approved Suppliers any amount due, and failure to obtain any necessary permit/certificate/approval to operate the Franchised Business.</p> <p>If you receive notice that you have failed to provide us with access to your POS system, you must cure such a default within 3 days.</p> <p>Except as provided above and those defaults listed in (h) of this Item 17 Chart, you must cure all other defaults and violations of any provision of your Franchise Agreement or any other agreement with us or our affiliates within 30 days of being provided with notice of your default(s).</p>
h.	“Cause” defined – defaults which cannot be cured	Section 15(A)	Your Franchise Agreement may be terminated automatically and without notice from us if: you become insolvent or make a general assignment for the benefit of creditors; a bankruptcy petition is filed by or against you and not dismissed within 30 days; a bill in equity or appointment of receivership is filed in connection with you or the Franchised Business; a receiver or custodian of your assets of property is appointed; a final judgment in the amount of \$10,000 or more is entered against you and not satisfied within 60 days (or longer period if we consent); you attempt to make an invalid transfer in violation of Section 13

	Provision	Section in Franchise Agreement	Summary
		Section 15(B)	<p>of your Franchise Agreement.</p> <p>Your Franchise Agreement may be terminated by us upon written notice and no opportunity to cure if: you commit and fraud or misrepresentation in connection with your Franchised Business; you or other required attendees fail to timely complete our Initial Training Program; you receive three (3) or more notices to cure defaults under Section 15© of your Franchise Agreement in any 24-month period, or you receive two (2) or more such notices in any 12-month period (whether or not subsequently cured); you violate any in-term restrictive covenants; you misuse the Proprietary Marks, Proprietary Information or other confidential information provided to you; misuse an proprietary software that might be developed; you fail to cure any default under any other agreement you have with our affiliates or any Approved Supplier within the appropriate cure period; you default under your lease for the Premises and fail to timely cure; you fail to open and commence operations within the required time period; you abandon your Franchised Business; you are convicted of a felony or any other crime of moral turpitude or offense that will adversely affect the System; you take any property of the Franchised Business for personal use; there are insufficient funds in your EFT Account on three (3) or more occasions in any 12-month period; or if you commit repeated violations of any applicable law.</p>
i.	Franchisee’s obligations on termination/non-renewal	Section 16	Upon termination or early expiration of the Franchise Agreement, your obligations include: immediately discontinuing the use of the Proprietary Marks and trade dress; cease doing business in a form or manner that may give the general public the impression that you are operating a Franchised Business; return of the Manuals of any other Proprietary Information to us; provide us with all customer information, lists and applicable contracts; cancel or, at our option, assign us all telephone/facsimile numbers and domain names (if permitted) used in connection with the Franchised Business (as well as all related listings) to us or our designee; comply with all post-term restrictive covenants; at our written option, assign the lease for the Premises to us; pay us all outstanding amounts; comply with our option to purchase the business, if we so choose; and provide us with written confirmation of compliance with these obligations within 30 days.
j.	Assignment of contract by franchisor	Section 13	No restrictions on our right to assign.
k.	“Transfer” by franchisee – defined	Sections 13(A) and 13(C)	Includes any transfer of Franchise Agreement, assets of the Franchised Business, or ownership change in you.
l.	Franchisor approval of transfer by franchisee	Section 13(A)	We must approve all transfers, but we will not unreasonably withhold our approval if you meet our conditions.
m.	Conditions for franchisor approval of transfer	Section 13©	<p>We have the right to impose the following conditions on any transfer by you: all of your obligations under the Franchise Agreement have been satisfied; you cure all existing defaults; the new franchisee must meet our then-current qualifications and criteria for a new franchisee; transferee must assume all of your obligations under the Franchise Agreement; transferee must complete our training program; transferee must execute our then-current form of franchise agreement; transferee must pay our Transfer Fee and successfully complete our Initial Training Program (and pay the applicable training fee); and you must execute a general release in our favor (as well as related parties).</p> <p>You will not be required to pay any transfer fee in the event: (i) you wish to transfer your rights under the Franchise Agreement to a newly-established legal</p>

	Provision	Section in Franchise Agreement	Summary
		Section 13(F)	business entity that is wholly owned by you and established solely for purposes of operating the Franchised Business under that Franchise Agreement; or (ii) you are required to encumber certain assets of the Franchised Business (or subordinate Franchisor's security interest with respect to the Franchised Business) in order to receive SBA or other traditional bank financing, provided we otherwise approve of the transfer.
n.	Franchisor's right of first refusal to acquire franchisee's business	Section 13(D)	Except in certain circumstances (death/disability or transfer from individual franchisee to business entity), you must provide us with a period of 30 days to match any third-party bona fide offer to purchase any interest in the Franchise Agreement or Franchised Business. If we do not exercise this right, then you will have 60 days to effectuate the transfer to the third party that made the offer on those exact terms – if the transfer does not occur or the proposed terms of the offer change in any way, then we will have another 30 days to exercise our right of first refusal.
o.	Franchisor's option to purchase franchisee's business	16(G)	We have the right, but not the obligations, to purchase all or any portion of the assets of your Franchised Business upon expiration/termination of your Franchise Agreement at book value.
p.	Death or disability of franchisee	Section 13(B)	<p>You will have a period of 90 days to find a suitable legal representative that we approve to continue the operation of your Franchised Business, provided that person completes our Initial Training Program and pays the appropriate tuition fee.</p> <p>During this 90-day period, we may step in and operate the Franchised Business on your behalf and pay ourselves a reasonable amount to reimburse our costs associated with this operation on your behalf. We are not under any obligation to step in and operate your business during this period.</p>
q.	Non-competition covenants during the term of the franchise	Section 14(A)	Neither you, your principals, guarantors, owners or General Managers, nor any immediate family member of you, your principals, guarantors, owners or General Managers, may: (i) own, operate, or otherwise be involved with, Competing Business (as defined in the Franchise Agreement); (ii) employ or seek to employ any of employees or us, our affiliates or any other System franchisee or induce such persons to leave their employment; or (iii) divert, or attempt to divert, any prospective customer to a Competing Business.
r.	Non- competition covenants after the franchise is terminated or expires	<p>Section 14(B)(1)</p> <p>Section 14(B)(2)</p>	<p>For a period of two (2) years after the termination/expiration/transfer of your Franchise Agreement, neither you, your principals, guarantors, owners, General Managers, nor any immediate family member of you, your principals, guarantors, owners, General Manager(s), may own, operate or otherwise be involved with any business that is involved in the licensing or franchising of Competing Businesses at any location within the United States where we can demonstrate we have offered this franchise offering.</p> <p>For a period of two (2) years after the termination/expiration/transfer of your Franchise Agreement, neither you, your principals, guarantors, owners, General Managers, nor any immediate family member of you, your principals, guarantors, owners, General Managers, may own, operate or otherwise be involved with and Competing Business within a 10-mile radius of: (i) the perimeter of your Designated Territory; (ii) any other Shop location that exists or is under development as of the date your Franchise Agreement is terminated, expires or is transferred; or (iii) any other Development Area granted by Franchisor to open Shops under the Proprietary Marks as of the date this Agreement expires or is terminated.</p>

	Provision	Section in Franchise Agreement	Summary
			During this two (2) year period, these parties are also prohibited from: (i) soliciting business from customers of your former Franchised Business; (ii) contacting any of our suppliers/vendors for a competitive business purpose; or (iii) soliciting any employees of us, our affiliates or any other System franchisee to discontinue their employment.
s.	Modification of the agreement	Section 18(D)	Your Franchise Agreement may not be modified, except by a writing signed by both parties. With that said, we may modify the System and Manuals as we deem appropriate in our discretion from time to time.
t.	Integration/merger clause	Sections 27(A) and 27(C)	<p>Only the terms of the Franchise Agreement and this Disclosure Document are binding (subject to state law). Nothing in the Franchise Agreement or any related agreement is intended to disclaim the representations made in this Disclosure Document.</p> <p>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.</p>
u.	Dispute resolution by arbitration or mediation	Section 21(B) Section 21(c)	<p>You must first submit all dispute and controversies arising under the Franchise Agreement to our management and make every effort to resolve the dispute internally.</p> <p>At our option, all claims or disputes arising out of the Franchise Agreement must be submitted to non-binding mediation, which will take place in Ann Arbor, Michigan. You must notify us of any potential disputes and we will provide you with notice as to whether we wish to mediate the matter or not. If the matter is mediated, the parties will split the mediator's fees and bear all of their other respective costs of the mediation.</p>
v.	Choice of forum	Sections 21(D)-(E)	Subject to the other dispute resolution provisions of the Franchise Agreement, all claims and causes of action arising out of the Franchise Agreement must be initiated and litigated to conclusion (unless settled) in the state court of general jurisdiction that is within Washtenaw County, Michigan or, if appropriate, the United States District Court for the Eastern District of Michigan (subject to state law).
w.	Choice of law	Section 21(A)	The Franchise Agreement is governed by the laws of the State of Michigan, without reference to this state's conflict of laws principles (subject to state law).

B. Development Agreement

	Provision	Section in Development Agreement	Summary
a.	Term of franchise	6.1	The Development Agreement will commence on the date it is fully executed and end on the earlier of (a) the last day of the calendar month that the final Franchised Business is required to be opened and

	Provision	Section in Development Agreement	Summary
			operating under the Development Schedule or (b) the day that the final Franchised Business is opened.
b.	Renewal or extension of the term	Not Applicable	Not Applicable.
c.	Requirements for you to renew or extend	Not Applicable	Not Applicable.
d.	Termination by you	Not Applicable	Not Applicable.
e.	Termination by us without cause	Not Applicable	Not Applicable.
f.	Termination by us with cause	6.2	We may terminate your Development Agreement with cause.
g.	Cause defined – default which can be cured	Not Applicable	Not Applicable.
h.	Cause defined – default which cannot be cured	6.2	Your Development Agreement can be terminated by us if: (i) you cease to actively engage in development activities in the Development Area or otherwise abandon your development business for three (3) consecutive months, or any shorter period that indicates an intent by you to discontinue development of the Franchised Businesses within the Development Area; (ii) you become insolvent or are adjudicated bankrupt, or if any action is taken by Franchisee, or by others against you, under any insolvency, bankruptcy or reorganization act, or if you make an assignment for the benefit of creditors or a receiver is appointed by you; (iii) you fail to meet your development obligations under the Development Schedule for any single Development Period, and fail to cure such default within 30 days of receiving notice thereof; and (iv) any Franchise Agreement that is entered into in order to fulfill your development obligations under the Development Agreement is terminated or subject to termination by us, pursuant to the terms of that Franchise Agreement.
i.	Your obligations on termination/non-renewal	Not Applicable	Not Applicable.
j.	Assignment of contract by us	8	We have the right to assign our rights under the Development Agreement.
k.	“Transfer” by you – definition	8	Any transfer in you (if you are an entity) or your rights/obligations under the Development Agreement.
l.	Our approval of transfer by franchisee	8	You may not transfer any rights or obligations under the Development Agreement without our prior written consent.
m.	Conditions for our approval of transfer	Not Applicable	Not Applicable.

	Provision	Section in Development Agreement	Summary
n.	Our right of first refusal to acquire your business	Not Applicable	Not Applicable.
o.	Our option to purchase your business	Not Applicable	Not Applicable.
p.	Your death or disability	Not Applicable	Not Applicable.
q.	Non-competition covenants during the term of the franchise	Not Applicable	Nothing additional. Please see non-competition covenants set forth in your Franchise Agreement(s) entered into under the Development Agreement.
r.	Non-competition covenants after the franchise is terminated or expires	Section 6.3	The geographical scope of the post-term covenant against competition will include the Development Area and a 10-mile radius around the perimeter of that area.
s.	Modification of the Franchise Agreement	27	Any modification of the Development Agreement must be in writing and signed by both parties.
t.	Integration/ merger clauses	27	<p>Only the terms of the Development Agreement are binding (subject to state law). Any representations or promises made outside of the disclosure document and the Development Agreement may not be enforceable. Notwithstanding the foregoing, nothing in this or any related agreement is intended to disclaim the express representations made in the Franchise Disclosure Document, its exhibits and amendments.</p> <p>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.</p>
u.	Dispute resolution by mediation or arbitration	12 13	<p>You must first notify us of any disputes arising under or related to your Development Agreement and attempt to resolve the dispute through internal dispute resolution with our management.</p> <p>At our option, any disputes or claims that are not resolved by internal dispute resolution must, at our option, be subject to non-binding mediation that will take place in Ann Arbor, Michigan. We will notify you if we decide to mediate any claim or dispute under the Franchise Agreement and/or Development Agreement, but we are not required to mediate any claim or dispute we have with you if we do not wish to do so.</p>

	Provision	Section in Development Agreement	Summary
v.	Choice of forum	15	Subject to Sections 13 and 14 of the Development Agreement, all claims must be brought before a court of general jurisdiction located in Washtenaw County, Michigan, or the United States District Court for the Eastern District of Michigan. You consent to the personal jurisdiction and venue of these courts (subject to state law).
w.	Choice of law	11	The Development Agreement is governed by the laws of the State of Michigan (subject to state law).

ITEM 18. PUBLIC FIGURES

We do not currently use any public figures to promote the franchise.

ITEM 19 FINANCIAL PERFORMANCE REPRESENTATION

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

BACKGROUND

Part I in this Item below discloses the historical Adjusted Gross Sales generated by the ~~eight (8)~~ nine (9) Affiliate-Owned Shops that were open and operating over the entirety of the ~~2023~~ 2022 calendar year (each, a “Part I Shop”) over that ~~2023~~ 2022 calendar year (the “Part I Measurement Period”).

Of the nine (9) total Affiliate-Owned Shops that were open and operating as of December 31, ~~2023~~ 2022, Chart I excludes ~~and does not account for the performance of: (i) one (1) Shop because it did not open until April 2022 and, as such, was not open for the entire Measurement Period (the “Recent Shop”); and (ii) one (1) other Shop~~ – which is located in Southside area of Pittsburgh, PA in a non traditional venue – because this affiliate’s operations, menu and Premises are not substantially similar to the other Affiliate-Owned Shops or the Franchised Business being offered in this Disclosure Document (the “Excluded Shop”) – which is also not accounted for in Item 20 of this Disclosure Document below.

Part II of this Item discloses the Adjusted Gross Sales generated by the Part I Shops, along with the Recent Shop from that opened in April 2022, over the first calendar quarter of 2023 (“Q1 2023”).

Part III of this Item discloses the percentage of Gross Sales that is attributable to a certain kind of menu items (or type of Approved Product) over the 2022 calendar year, namely (1) milkshakes, (2) chocolates, and (3) other Approved Products, amongst all Part I Shops and the Recent Shop (for the months it was open in 2022).

Part IV of this Item discloses the total number of transactions generated by each of the Part I Shops, as well as the Recent Shop (for the months it was open), over the 2022 calendar year, along with the average number of transactions generated by each such Shop per business day that Shop was open and actively operating.

Part V of this Item discloses the percentage of Gross Sales generated amongst all Part I Shops and the Recent Shop (when open) during the 2022 calendar year broken down by: (i) month of operation in 2022; and (ii) each business day and each hour of operation amongst these Shops over the typical and recommended operational hours we recommend in our current Manuals (12 pm EST to 10 pm EST) over that period.

The information and data provided in this Item is historical in nature and was provided/reported to us by the affiliate owners of the Part I Shops and Recent Shop for the measurement period(s) discussed above.

Some affiliate outlets sold these amounts. Your individual results may vary. There is no assurance that you will sell as much.

PART I: GROSS SALES AND ADJUSTED GROSS SALES GENERATED, AS WELL AS CERTAIN OPERATING COSTS AND EXPENSES INCURRED, BY EACH OF THE PART I SHOPS OVER THE 2022 CALENDAR YEAR

	<u>Affiliate Shop 1</u>		<u>Affiliate Shop 2</u>		<u>Affiliate Shop 3</u>		<u>Affiliate Shop 4</u>		<u>Affiliate Shop 5</u>		<u>Affiliate Shop 6</u>
<i>Year Opened</i>	<i>Aug 2016</i>		<i>Nov 2018</i>		<i>Mar 2019</i>		<i>Aug 2019</i>		<i>Sep 2019</i>		
Gross Sales ¹	\$ 980,403 <u>\$1,026,748</u>		\$ 573,501 <u>\$509,940</u>		\$ 851,025 <u>\$853,539</u>		\$ 780,716 <u>\$804,217</u>		\$ 1,019,228 <u>063,219</u>		\$
Discounts ²	\$(21,289) <u>\$(20,060)</u>		\$(19,224) <u>\$(14,259)</u>		\$(30,223) <u>\$(32,759)</u>		\$(35,466) <u>\$(37,448)</u>		\$(53,008)		
Adjusted Gross Sales ³	\$ 959,114 <u>\$1,006,688</u>		\$ 554,278 <u>\$495,681</u>		\$ 820,802 <u>780</u>		\$ 745,250 <u>\$766,769</u>		\$ 978,425 <u>\$1,010,211</u>		\$
Primary Operating Costs											
COGS ⁴	\$ 297,903 <u>\$325,648</u>		\$ 190,332 <u>\$168,023</u>		\$ 249,494 <u>\$248,385</u>		\$ 238,979 <u>\$219,656</u>		\$ 300,596 <u>613</u>		\$
Labor ⁵	\$ 177,229 <u>\$204,296</u>		\$ 120,735 <u>133,240</u>		\$ 160,826 <u>\$165,841</u>		\$ 118,522 <u>\$151,705</u>		\$ 160,712 <u>\$167,519</u>		\$
Adjusted Gross Sales less COGs and Labor ⁶	\$ 483,982 <u>\$476,744</u>		\$ 230,706 <u>\$206,923</u>		\$ 410,481 <u>\$406,555</u>		\$ 387,750 <u>\$395,408</u>		\$ 517,117 <u>\$542,079</u>		\$ 31
Certain Other Operating Costs and Expenses											
Occupancy-Related Costs ⁷	\$ 53,375		\$ 78,073 <u>072</u>		\$ 76,310 <u>\$78,471</u>		\$ 67,540 <u>\$70,035</u>		\$ 105,907 <u>\$103,782</u>		\$ 48
Bank Fees ⁸	\$ 32,026 <u>\$31,035</u>	\$ 18,511 <u>\$16,715</u>	\$ 27,987 <u>\$26,273</u>	\$ 23,217 <u>150</u>	\$ 29,949 <u>\$65,717</u>	\$19,198	\$20,479	\$42,000	\$		
Cleaning Supplies ⁹	\$ 13,676 <u>\$17,842</u>		\$ 7,184 <u>\$9,437</u>		\$ 11,680 <u>\$10,943</u>		\$ 8,891 <u>\$15,910</u>		\$ 10,368 <u>\$242</u>		\$1
Maint./Repairs/Equip. ¹⁰	\$ 6,466 <u>\$9,144</u>		\$7,417		\$10,018		\$ 6,574 <u>165</u>		\$13,883		\$
IT-Related Fees and Costs ¹¹	\$ 5,769 <u>\$4,662</u>		\$ 5,307 <u>017</u>		\$ 12,308 <u>\$13,069</u>		\$ 4,703 <u>752</u>		\$ 4,888 <u>991</u>		\$ 5,3
Utilities ¹²	\$ 32,614 <u>\$30,950</u>		\$ 20,026 <u>\$21,440</u>		\$ 13,232 <u>\$692</u>		\$ 16,076 <u>\$17,938</u>		\$ 16,395 <u>\$17,687</u>		\$ 16
Total of Certain Other Operating Costs and Expenses Incurred in Operations ¹³ Other	\$ 10,717 <u>\$8,359</u>		\$ 7,952 <u>\$4,491</u>		\$ 12,270 <u>\$4,106</u>		\$ 13,499 <u>\$5,038</u>		\$ 15,807 <u>\$7,986</u>		\$ 11
Estimated Local Advertising ¹⁴	\$15,401		\$7,649		\$12,803		\$12,063		\$15,948		\$1
Total of Certain Other Operating Costs and Expenses Incurred in Operations ¹³	\$ 164,234 <u>\$170,768</u>		\$ 149,169 <u>\$150,238</u>		\$ 169,986 <u>375</u>		\$ 150,158 <u>\$155,051</u>		\$ 205,429 <u>\$240,236</u>		\$ 11

Other Estimated Fee(s)										
Royalties (Calc – 6%)										
Brand Fund (Calc – 2%)										
Adjusted Gross Sales Less COGs, Labor, Other Disclosed Operating Costs/Expenses and Estimated Fees	\$223,836	\$15,890	\$168,896	\$ 243,176,019	\$ 37,195	\$ 174,831	\$ 177,972	\$ 233,414	\$ 109,429	\$ 109,429

PART II: GROSS REVENUE GENERATED, AS WELL AS CERTAIN OPERATING COSTS AND EXPENSES INCURRED, BY THE PART I LOCATIONS AND THE RECENT LOCATION OVER THE FIRST CALENDAR QUARTER OF 2023 (THROUGH MARCH 2023)

	<u>Affiliate Shop 1</u>	<u>Affiliate Shop 2</u>	<u>Affiliate Shop 3</u>	<u>Affiliate Shop 4</u>	<u>Affiliate Shop 5</u>	<u>Affiliate Shop 6</u>	<u>Affiliate Shop 7</u>	<u>Affiliate Shop 8</u>	<u>Affiliate Shop 9</u>
<i>Year Opened</i>	<i>Aug 2016</i>	<i>Nov 2018</i>	<i>Mar 2019</i>	<i>Aug 2019</i>	<i>Sep 2019</i>	<i>Jan 2020</i>	<i>Feb 2020</i>	<i>May 2022</i>	<i>March 2023</i>
Adjusted Gross Sales	\$ 234,618	\$ 136,159	\$ 236,086	\$ 239,894	\$ 296,366	\$ 196,792	\$ 214,642	\$ 204,611	\$ 85,077
Percent Change from Q1 2022	27.8%	6.5%	25.2%	22.0%	16.8%	25.5%	15.6%	N/A	N/A
Discounts***	\$ (8,979)	\$ (5,694)	\$ (11,552)	\$ (14,635)	\$ (16,704)	\$ (12,144)	\$ (12,753)	\$ (9,495)	\$ (6,207)
Adjusted Gross Sales	\$ 225,639	\$ 130,465	\$ 224,534	\$ 225,258	\$ 279,663	\$ 184,648	\$ 201,889	\$ 195,117	\$ 78,870
Primary Operating Costs									
COGS	\$ 69,898	\$ 40,724	\$ 67,143	\$ 65,329	\$ 79,971	\$ 59,217	\$ 60,865	\$ 59,154	\$ 24,596
Labor*	\$ 52,027	\$ 31,509	\$ 38,505	\$ 34,570	\$ 41,264	\$ 33,335	\$ 34,051	\$ 32,575	\$ 23,078
Adjusted Gross Sales less COGs and Labor	\$ 103,714	\$ 58,232	\$ 118,886	\$ 125,360	\$ 158,428	\$ 92,096	\$ 106,974	\$ 103,388	\$ 31,196
Certain Other Operating Costs and Expenses									
Occupancy Related Costs	\$ 13,344	\$ 19,518	\$ 19,078	\$ 16,490	\$ 23,308	\$ 12,312	\$ 18,507	\$ 10,866	\$ 5,228
Bank Fees	\$ 6,395	\$ 3,715	\$ 5,922	\$ 5,696	\$ 7,066	\$ 4,259	\$ 4,872	\$ 4,660	\$ 1,602
Cleaning Supplies	\$ 4,432	\$ 2,141	\$ 3,678	\$ 3,397	\$ 2,336	\$ 3,235	\$ 2,807	\$ 2,532	\$ 1,437
Maint./Repairs/Equip.	\$ 1,971	\$ 1,535	\$ 1,209	\$ 982	\$ 2,751	\$ 1,246	\$ 1,789	\$ 1,604	\$ 1,711
IT Related Fees and Costs	\$ 1,216	\$ 1,218	\$ 4,240	\$ 1,518	\$ 1,518	\$ 1,518	\$ 1,516	\$ 1,557	\$ 300
Utilities	\$ 5,854	\$ 5,906	\$ 3,356	\$ 3,942	\$ 3,576	\$ 4,912	\$ 4,218	\$ 2,297	\$ 857
Certain Other Operating Costs and Expenses Incurred in Operations	\$ 2,389	\$ 1,965	\$ 3,177	\$ 3,841	\$ 4,891	\$ 3,368	\$ 3,248	\$ 3,254	\$ 4,079

Estimated Local Advertising**	-\$ 2,256	-\$ 1,305	-\$ 2,245	-\$ 2,253	-\$ 2,797	-\$ 1,846	-\$ 2,019	-\$ 1,951	-\$ 789
Total of Other Operating Costs and Expenses	-\$ 37,858	-\$ 37,302	-\$ 42,904	-\$ 38,119	-\$ 48,241	-\$ 32,695	-\$ 38,976	-\$ 28,721	-\$ 16,003
Estimated Fee(s)									
Royalties (Calc 6%) ⁺⁶	-\$ 13,538	-\$ 7,828	-\$ 13,472	-\$ 13,516	-\$ 16,780	-\$ 11,079	-\$ 12,113	-\$ 11,707	-\$ 4,732
Brand Fund (Calc 2%) ⁺⁷	-\$ 4,513	-\$ 2,609	-\$ 4,491	-\$ 4,505	-\$ 5,593	-\$ 3,693	-\$ 4,038	-\$ 3,902	-\$ 1,577
Adjusted Gross Sales Less COGs, Labor, Other Disclosed Operating Costs/Expenses and Estimated Fees	-\$ 47,805	-\$ 10,493	-\$ 58,019	-\$ 69,221	-\$ 87,813	-\$ 44,629	-\$ 51,846	-\$ 59,057	-\$ 8,884

Explanatory Notes to ~~Parts~~Part I and H Above

1. *Gross Sales* means all gross receipts, less tips and sales tax.
2. *Discounts* means any approved coupon, discounts, and promotion. You will be able to deduct only approved coupons discounts and promotions from Adjusted Gross Sales. This figure excludes any free milkshakes to employees pursuant to optional employee meal policies.
3. *Adjusted Gross Sales* means Gross Sales less Discounts, and represents the amount upon which will base your Royalty Fee, Local Advertising Requirement and Fund Contribution under your Franchise Agreement with us.
4. *COGS* means all variable cost inputs to facilitate customer sales, including all food items, cups, lids, and other paper goods.
5. *Labor* means all hourly and salaried labor, such as shift leads and assistant general managers, including based wages, payroll taxes, and benefits. This definition excludes the cost of multi-unit managers and general managers.
6. *Adjusted Gross Sales less COGS and Labor* means Adjusted Gross Sales less COGS and Labor.
7. *Occupancy-Related Costs* means base rent and all related NNN (triple net) costs, including common area maintenance, insurance, and tax-related obligations under the Lease.
8. *Bank Fees* means all credit card processing fees and other special processing fees.
9. *Cleaning Supplies* means all cleaning and janitorial supplies to operate the store.
10. *Maint./Repairs/Equip.* means all standard maintenance items, such as floor mat replacement services and HVAC maintenance, necessary repair items, and any equipment replacement.
11. *IT-Related Fees and Costs* means all store level expenses for Point of Sale, Restaurant Management Software, Gift Cards, Panther Funds, and Security Camera services.
12. *Utilities* means the following utility expenses electric, water, power, internet and phone.
13. *Other* means general and administrative expenses that could not be categorized into another itemized category.
- ~~13-14.~~ *Certain Other Operating Costs and Expenses Incurred in Operations* means a certain license fee, uniforms, employee morale events, charitable contributions, licenses, permits, fees, parking leases, and travel. This range does not include or account for any other operating costs or expenses that are not specifically identified in this Explanatory Note.
- ~~14-15.~~ *Estimated Local Advertising* means the calculated estimated local marketing expenditures a location would have been required to pay had it been a franchise operating pursuant to this Franchise Disclosure Document.
- ~~15-16.~~ *Total of Other Operating Costs and Expenses* means the sum of Occupancy-Related Costs, Bank Fees, Cleaning Supplies, Maint./Repairs/Equip., IT-Related Fees and Costs, Utilities and Certain Other Operating Costs and Expenses Incurred in Operations, and Estimated Local Advertising.
- ~~16-17.~~ *Estimated Royalties (Calculate at 6% of Adjusted Gross Sales)* means the calculated estimated Royalty Fees a location would have been required to pay had it been a franchise operating pursuant to this Franchise Disclosure Document.
- ~~17-18.~~ *Estimated Brand Fund Contribution (Calculated at 2% of Adjusted Gross Sales)* means the calculated estimated Brand Fund expenditures a location would have been required to pay had it been a franchise operating pursuant to this Franchise Disclosure Document.

PART III: GROSS REVENUE GENERATED BY PRODUCT CATEGORY AMONGST TOTAL REVENUES GENERATED BY PART I LOCATIONS AND RECENT LOCATION OVER THE 2022~~2023~~ CALENDAR YEAR

Product Category	Percentage of Adjusted Gross Sales Generated in <u>2022</u> 2023
Shakes & Sundaes	85 <u>84</u> %
Chocolate (Retail)	14%
Other Products	1 <u>2</u> %
Total	100 <u>84</u> %

PART IV: TOTAL CHECK/TRANSACTION INFORMATION GENERATED BY EACH DISCLOSED AFFILIATE-OWNED LOCATION BY YEAR AND PARTIAL YEAR

<u>Location</u>		CHECKS BY LOCATION
		<u>First Quarter 2023</u>
	TOTAL TRANSAC TIONS	AVERAGE DAILY TRANSACTIONS ¹
Affiliate Shop 1	71,118 <u>74,412</u>	198,207
Affiliate Shop 2	43,345 <u>38,500</u>	120,107
Affiliate Shop 3	76,511 <u>74,746</u>	213,208
Affiliate Shop 4	52,113 <u>261</u>	145
Affiliate Shop 5	60,986 <u>61,941</u>	169,172
Affiliate Shop 6	39,379 <u>41,493</u>	109,115
Affiliate Shop 7	49,348 <u>47,909</u>	133,137
Affiliate Shop 8	28,408 <u>39,466</u>	135,110
Affiliate Shop 9*	N/A <u>36,327</u>	N/A <u>125</u>
Total	421,208 <u>467,055</u>	154,147

AVERAGE CHECK BY LOCATION	<u>2022</u> 2023
Affiliate Shop 1	\$13.33 <u>26</u>

Affiliate Shop 2	\$ 12.55 61
Affiliate Shop 3	\$ 10.54 75
Affiliate Shop 4	\$ 13.95 \$14.36
Affiliate Shop 5	\$ 15.65 97
Affiliate Shop 6	\$ 15.32 36
Affiliate Shop 7	\$ 14.73 94
<u>Affiliate Shop 8</u>	<u>\$14.79</u>
Affiliate Shop <u>89*</u>	\$ 15.21 63

Explanatory Notes to Parts III and IV Above

Please note that the Chart above excludes the location the operates under the Proprietary Marks from a non-traditional location (sports stadium), which is not operated in a substantially similar manner to other System locations or the Franchised Business offered under this Disclosure Document.

1. *Percentage of Adjusted Gross Sales Attributable to Product Group.* This percentage was calculated by taking (a) the total revenue generated by all the Disclosed Affiliate Locations from the sale of the type of product described in Part III above over the ~~2022~~2023 calendar year, and dividing that by (b) the total cumulative sales generated by all Disclosed Affiliate Locations (from the sale of all products) over that same time period.
2. *Total and Average Daily Transaction Information.*
 - a. *Total Transactions.* For each Affiliate Shop in Part IV above, the term “Total Transactions” means the total number of transactions generated by a given Affiliate Shop over the ~~2022 calendar year and Q1 of the 2023~~ 2023 calendar year (each, ~~at the~~ the “Part IV Measurement Period”).
 - b. *Average Daily Transactions.* For each Affiliate Shop in Part IV above, the term “Average Daily Transactions” is calculated by taking the Total Transactions generated by that Shop over the Part IV Measurement Period at issue, and dividing that by (b) the number of days that Shop was open and operating during that Part IV Measurement Period.

PART IV: PERCENTAGE OF TOTAL TRANSACTIONS GENERATED IN TERMS OF MONTH/SEASONALITY AND BUSINESS DAY/HOUR

Month	% of Total Transactions by Month ¹
January	6.48 <u>5.5</u> %
February	7.89 <u>0.0</u> %
March	9.21 <u>0.1</u> %

April	10.29.7%
May	10.38.5%
June	8.51%
July	8.45%
August	8.47.9%
September	7.96%
October	8.47.3%
November	7.20%
December	7.27%

**% of Total Revenue Generated Amongst Disclosed Affiliate Locations
by Day / Hour for Calendar Year 2022²**

Time	Sun	Mon	Tue	Wed	Thu	Fri	Sat	TOTAL
Noon to 1pm	0.89%	0.5%	0.5%	0.65%	0.6%	0.7%	0.8%	4.56%
1 - 2pm	1.1%	0.6%	0.6%	0.76%	0.67%	0.8%	1.1%	5.45%
2 - 3pm	1.45%	0.78%	0.7%	0.7%	0.78%	1.0%	1.4%	6.78%
3 - 4pm	1.67%	0.9%	0.8%	0.98%	0.98%	1.32%	1.7%	8.17.9%
4 - 5pm	1.78%	0.9%	0.87%	0.98%	0.98%	1.21%	1.76%	8.17.7%
5 - 6pm	1.89%	0.9%	0.8%	1.09%	0.9%	1.32%	1.8%	8.53%
6 - 7pm	2.02%	1.32%	1.2%	1.43%	1.3%	2.01.8%	2.4%	11.64%
7 - 8pm	2.46%	1.7%	1.76%	2.01.9%	2.01.9%	2.87%	3.1%	15.75%
8 - 9pm	2.44%	1.87%	1.8%	2.19%	2.40%	3.21%	3.23%	16.3%
9 - 10pm	1.45%	1.12%	1.2%	1.43%	1.45%	2.78%	2.79%	11.912.4%
	16.217.6%	10.54%	10.19.9%	11.710.8%	11.3%	17.016.4%	19.920.0%	96.84%*

*The remaining 3.26% of revenue generated by all Disclosed Affiliate Locations was generated after our System-recommended (and expected) hours of operation noted in the Chart above, and was generated by a few of the Affiliate Locations that have typical operating hours outside the 10-hour period of operations disclosed above.

Explanatory Notes to Parts V Above

1. *Percentage of Cumulative Total Transactions by Month.* This percentage was calculated by taking (a) the total revenue generated by the Disclosed Affiliate Locations during the applicable 20222023 calendar month (as recorded by the POS system), and dividing that by (b) the total cumulative sales generated by all Disclosed Affiliate Locations over the 20222023 calendar year.
2. *Percentage of Total Cumulative Revenue Generated by Business Day/Hour of Operation Amongst All Disclosed Affiliate Locations.* This percentage was calculated by taking (a) the total revenue generated by the Disclosed Affiliate Locations during the specific day/hour (as recorded by the

POS system) during the ~~2022~~2023 calendar year of operations, and dividing that by (b) the total cumulative sales generated by all Disclosed Affiliate Locations over the ~~2022~~2023 calendar year.

GENERAL NOTES TO ITEM 19

1. *Characteristics of Affiliate Locations (disclosed consistent with 16 C.F.R. 436.5(s)(3)(ii)(F)).*
 - a. Each of the Disclosed Affiliate Locations is located in Pittsburgh, Pennsylvania or surrounding area, where our brand and concept have garnered goodwill and reputation over the years that these Affiliate Locations have been open and operating.
 - b. Most of the Disclosed Affiliate Locations, other than the Recent Location, were open for some time as of the commencement of the ~~2022~~2023 calendar year. As such, the non-Recent Locations. As such, the profit and loss information disclosed for certain of the Disclosed Affiliate Locations in Parts I ~~and II~~ of this Item did not incur certain of the startup/initial costs that might be incurred when first opening a Franchised Business given their more mature operations.

Except as specifically disclosed above in this Item, 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 Dan Reese c/o Milkshake Factory Franchise, LLC, in writing, at 106 E. Liberty Street, Suite 310, Ann Arbor, Michigan 48104, or by phone at (734)619-0919, the Federal Trade Commission, and the appropriate state regulatory agencies.

ITEM 20. OUTLETS AND FRANCHISEE INFORMATION

Table ~~4~~No. 1
Systemwide Outlet Summary
 For years 2021 - 2023
Systemwide Outlet Summary for years 2020, 2021, and 2022

<u>OUTLET TYPE</u> <u>Outlet Type</u>	<u>YEAR</u> <u>Year</u>	<u>OUTLETS AT THE START OF THE YEAR</u> <u>Outlets at the Start of the Year</u>	<u>OUTLETS AT THE END OF THE YEAR</u> <u>Outlets at the End of the Year</u>	<u>NET CHANGE</u> <u>Net Change</u>
Franchised*	2021 2020	0	0	0
	2022 2021	0	0	0
	2022 2023	0	0	0
Company—Owned [†] <u>Owned</u>	2021 2020	68	8	+20
	2022 2021	8	89	0+1
	2022 2023	89	90	+19
Total Outlets	2021 2020	68	8	+20
	2022 2021	8	89	0+1
	2022 2023	89	910	+1

[†]Please note that this Chart does not disclose or account for one (1) location that is operated from a non-traditional venue (hockey arena) in Pittsburgh, PA because it is not operated in a substantially similar manner to the other affiliate-owned Shops or a Franchised Business.

Table

* The outlets represented in this Table reflect both franchisee and licensees who currently operate The Milk Shake Factory under the Proprietary Marks.

Table No. 2

**Transfers of Franchised Outlets
from Franchisees to New Owners (~~Other~~other than the Franchisor)
for
For years ~~2020~~, 2021, and ~~2022~~ - 2023**

<u>STATE</u> State	<u>YEAR</u> Year	<u>NUMBER OF TRANSFERS</u> Number of Transfers
<u>Totals</u> Total	2021 2020	0
	2022 2021	0
	2022 2023	0

Table No. 3

Status of Franchised Outlets

For years ~~2020, 2021, and 2022~~ - 2023

STATE/State	YEAR/Year	OUTLETS AT START OF YEAR/Outlets at Start of Year	OUTLETS OPENED/Outlets Opened	TERMINATIONS/Terminations	NON-RENEWALS/Non-Renewals	REACQUIRED BY FRANCHISOR/Reacquired by Franchisor	CEASED OPERATIONS-OTHER REASONS/Ceased Operations-Other Reasons	OUTLETS AT END OF THE YEAR/Outlets at End of the Year
Totals/Total	2021 20	0	0	0	0	0	0	0
	2022 21	0	0	0	0	0	0	0
	2022 23	0	0	0	0	0	0	0

Table No. 4

Status of Company-Owned Outlets

For years ~~2020, 2021, and 2022~~ - 2023

STATE/State	YEAR/Year	OUTLETS AT START OF YEAR/Outlets at Start of Year	OUTLETS OPENED/Outlets Opened	OUTLETS REACQUIRED FROM FRANCHISEE/Outlets Reacquired from Franchisees	OUTLETS CLOSED/Outlets Closed	OUTLETS SOLD TO FRANCHISEE/Outlets Sold to Franchisees	OUTLETS AT END OF THE YEAR/Outlets at End of the Year
Pennsylvania	2021 20	<u>68</u>	<u>20</u>	0	0	0	8
	2022 21	8	<u>01</u>	0	0	0	<u>89</u>
	2022 23	<u>89</u>	1	0	0	0	<u>910</u>
Totals/Total	2021 20	<u>68</u>	<u>20</u>	0	0	0	8
	2022 21	8	<u>01</u>	0	0	0	<u>89</u>
	2022 23	<u>89</u>	1	0	0	0	<u>910</u>

Table No. 5

**Projected Openings-as
As of December 31, ~~2022~~2023**

<u>STATE</u> State	<u>FRANCHISE AGREEMENTS SIGNED BUT OUTLET NOT OPENED</u> Franchise Agreements Signed but Outlet Not Opened	<u>PROJECTED NEW FRANCHISED-OUTLETS IN THE NEXT FISCAL YEAR</u> Projected New Franchised Outlet in the Next Fiscal Year	<u>PROJECTED NEW COMPANY-OWNED OUTLETS IN THE NEXT FISCAL YEAR</u> Projected New Company Owned outlet in the Next Fiscal Year
<u>Pennsylvania</u> Arizona	<u>0</u> <u>1</u>	<u>0</u> <u>1</u>	<u>1</u> <u>0</u>
<u>Colorado</u>	<u>2</u>	<u>1</u>	<u>0</u>
<u>TOTALS</u> Connecticut	<u>0</u><u>1</u>	<u>0</u><u>1</u>	<u>1</u><u>0</u>
<u>Florida</u>	<u>1</u>	<u>1</u>	<u>0</u>
<u>Georgia</u>	<u>2</u>	<u>2</u>	<u>0</u>
<u>New Jersey</u>	<u>2</u>	<u>2</u>	<u>0</u>
<u>North Carolina</u>	<u>3</u>	<u>2</u>	<u>0</u>
<u>Ohio</u>	<u>1</u>	<u>1</u>	<u>0</u>
<u>South Carolina</u>	<u>1</u>	<u>1</u>	<u>0</u>
<u>Tennessee</u>	<u>1</u>	<u>1</u>	<u>0</u>
<u>Texas</u>	<u>1</u>	<u>1</u>	<u>0</u>
<u>Utah</u>	<u>2</u>	<u>1</u>	<u>0</u>
<u>Total</u>	<u>18</u>	<u>15</u>	<u>0</u>

Among the attached Exhibits you will find:

- Exhibit H lists the names of all current franchisees and the addresses and telephone numbers of their outlets (if open) as of December 31, ~~2022~~2023 (once applicable).
- Exhibit I lists the name, city, state, and the current business telephone number (or, if unknown, the last known home telephone number) of every franchisee who had an outlet terminated, canceled, not renewed, or otherwise voluntarily or involuntarily ceased to do business under the franchise agreement during our most recently completed fiscal year or who has not communicated with us within 10 weeks of the issuance date of this FDD, if and once applicable.

If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system.

During the last three (3) fiscal years, we have not signed confidentiality clauses with current or former franchisees that may restrict their ability to share their experience with the System.

As of the Issue Date, there are no independent franchisee organizations that have been asked to be included in this Disclosure Document.

ITEM 21. FINANCIAL STATEMENTS

Exhibit D contains our audited opening day balance sheet as of December 31, ~~2022~~2023, as well as our (i) unaudited balance sheet as of March 31, 2023, and (ii) unaudited profit and loss statement for the interim

period beginning January 1, 2023, and ending March 31, 2023. Our fiscal year end is December 31. We have not been franchising for three (3) years as of the Issue Date and, as such, we are not able to disclose the audited financials that would otherwise be required in this Item.

ITEM 22. CONTRACTS

Copies of the following contracts or documents are also attached as Exhibits to the disclosure agreement:

Franchise Agreement (and Exhibits)	Exhibit B
Development Agreement (and Exhibits)	Exhibit C
State-Specific Addenda (if and as applicable)	Exhibit E
Sample Release Agreement	Exhibit G

ITEM 23. RECEIPTS

Exhibit K of this Franchise Disclosure Document contains a detachable document, in duplicate, acknowledging receipt of this Franchise Disclosure Document by a prospective franchisee. You should sign both copies of the Receipt. You should retain one signed copy for your records and return the other signed copy to: Dan Reese, c/o Milkshake Factory Franchise, LLC, 106 E. Liberty Street, Suite 310, Ann Arbor, Michigan 48104, or at telephone number (734) 619-0919.

EXHIBIT A
TO THE MILKSHAKE FACTORY FRANCHISE, LLC
FRANCHISE DISCLOSURE DOCUMENT

LIST OF STATE ADMINISTRATORS AND AGENTS FOR SERVICE OF PROCESS

LIST OF STATE ADMINISTRATORS

California Department of Business Oversight
TOLL FREE 1-(866) 275-2677

LA Office

300 S. Spring Street, Suite 15513
Los Angeles, CA 90013-1259
(213) 897-2085

Sacramento Office

2101 Arena Blvd.
Sacramento, CA 95834
(866) 275-2677

San Diego Office

1455 Frazee Road, Suite 315
San Diego, CA 92108
(619) 610-2093

San Francisco Office

One Sansome St., #600
San Francisco, CA 94104
(415) 972-8565

Florida Department of Agricultural
and Consumer Services
Division of Consumer Services
Mayo Building, Second Floor
Tallahassee, Florida 32399-0800
(904) 922-2770

Commissioner of Securities of the State of Hawaii
Department of Commerce and Consumer Affairs
Business Registration Division
335 Merchant Street, Room 203
Honolulu, HI 96813
(808) 586-2722

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

Indiana Secretary of State
Securities Division
302 West Washington Street, Room E-11
Indianapolis, IN 46204
(317) 232-6681

Kentucky Office of the Attorney General Consumer
Protection Division
P.O. Box 2000
Frankford, KY 40602
(502) 573-2200

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

Michigan Department of the Attorney General
Consumer Protection Division
Attn: Franchise Section
525 W. Ottawa Street
G. Mennen Williams Building, 1st Floor
Lansing, MI 48933
(517) 373-7117

Minnesota Department of Commerce
85 7th Place East, Suite 280
St. Paul, MN 55101-2198
(651) 539-1600

Nebraska Department of Banking and Finance
1200 North Street, Suite 311
P.O. Box 95006
Lincoln, NE 68509-5006
(402) 471-3445

NYS Department of Law
Investor Protection Bureau
28 Liberty Street, 21st Floor
New York, NY 10005
(212) 416-8236

North Dakota Securities Department
State Capital, 5th Floor
600 East Boulevard Avenue
Bismarck, ND 58505-0510
(701) 328-2910

Oregon Department of Consumer
and Business Services
Division of Finance and Corporate
Securities labor and Industries
350 Winter Street, NE, Room 410
Salem, OR 97310-3881
(503) 378-4140

Director, Department of Business Regulations
Rhode Island Division of Securities
233 Richmond Street, Suite 232
Providence, RI 02903-4232

South Dakota Division of Insurance
Securities Regulation
124 S. Euclid Suite 104
Pierre, SD 57501
(605) 773-3563

Statutory Document Section
Texas Secretary of State
P.O. Box 12887
Austin, TX 78711
(512) 475-1769

State of Utah
Division of Consumer Protection
P.O. Box 45804
Salt Lake City, Utah 84145-0804
(801) 530-6601

State Corporation Commission
Division of Securities and Retail Franchising
1300 East Main Street, 9th Floor
Richmond, VA 23219
(804) 371-9051

State of Washington
Director, Department of Financial Institutions
Securities Division
150 Israel Road, SW
Olympia, WA 98501
(360) 902-8760

Wisconsin Commissioner of Securities
345 W Washington Ave., 4th Floor
Madison, WI 53703
(608) 266-8550

AGENTS FOR SERVICE OF PROCESS

Attn: Mr. Dan Reese
Milkshake Factory Franchise, LLC
106 E. Liberty Street, Suite 310
Ann Arbor, Michigan 48104

California Commissioner of the Department of
Financial Protection and Innovation
320 West 4th Street, Suite 750
Los Angeles, CA 90013-2344

Commissioner of the Department of Financial
Protection and Innovation
One Sansome St., #600
San Francisco, California 94104

Commissioner of the Department of Business
Oversight
2101 Arena Blvd.
Sacramento, CA 95834

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

Illinois Attorney General
500 South Second Street
Springfield, IL 62706

Indiana Secretary of State
Securities Division
302 West Washington Street, Room E-111
Indianapolis, IN 46204

Maryland Securities Commissioner
Office of Attorney General
Securities Division
200 St. Paul Place
Baltimore, MD 21202-2020

Michigan Department of Attorney General
Consumer Protection Division
Antitrust and Franchise Unit
P.O. Box 30054, 6546 Mercantile Way
Lansing, MI 48909

Minnesota Department of Commerce
85 7th Place East, Suite 280
St. Paul, MN 55101-2198

New York Department of State
One Commerce Plaza
99 Washington Avenue, 6th Floor
Albany, NY 12231
(518) 473-2492

North Dakota Securities Commissioner
State Capitol – 5th Floor
600 E. Boulevard Avenue
Bismarck, ND 58505

Director, Department of Business Regulation
Division of Securities
Suite 232
233 Richmond Street
Providence, RI 02903-4232

South Dakota Division of Insurance
Securities Regulation
124 S. Euclid Suite 104
Pierre, SD 57501
(605) 773-3563

Clerk of the State Corporation Commission
Tyler Building, 1st Floor
1300 East Main Street
Richmond, VA 23219

Director, Department of Financial Institutions
Securities Division
150 Israel Road, Southwest
Olympia, WA 98501

Wisconsin Commissioner of Securities
345 West Washington Avenue, 4th Floor
Madison, WI 53703
(608) 261-9555

EXHIBIT B
TO THE MILKSHAKE FACTORY FRANCHISE, LLC
FRANCHISE DISCLOSURE DOCUMENT
FRANCHISE AGREEMENT

MILKSHAKE FACTORY FRANCHISE, LLC

FRANCHISE AGREEMENT

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MILKSHAKE FACTORY FRANCHISE, LLC

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT (the “Agreement”) is made and entered into on this date _____ by and between: (i) Milkshake Factory Franchise, LLC, a Michigan limited liability company with its principal place of business at 106 E. Liberty Street, Suite 310, Ann Arbor, Michigan 48104 (the “Franchisor”); and (ii) _____, a (resident of) (corporation organized in) (limited liability company organized in) _____ with a business address at _____ (the “Franchisee”).

RECITATIONS

A. Franchisor and its affiliate/principals, as a result of the expenditure of time, skill, effort, and money, have developed and own a unique system (the “System”) related to the development and operation of a specialty restaurant business that features and offer (i) handspun milkshakes, gourmet chocolates, craft sundaes and ancillary topping and/or other add-ons, and (ii) any other menu items or retail merchandise that Franchisor designated or otherwise authorizes (collectively, the “Approved Products”), all while utilizing Franchisor’s then-current proprietary marks utilizing the System and proprietary marks (each, a “Shop”).

B. Franchisor’s System is comprised of various proprietary and, in some cases, distinguishing elements, including without limitation: proprietary methodology and procedures for the establishment and operation of a Shop; site selection guidance and criteria; specifications for the design, layout and construction of the interior of the Shop; standards and specifications for the furniture, fixtures and equipment located within a Shop; established relationships with approved or designated suppliers for certain products and services; and standards and specifications for advertising, bookkeeping, sales and other aspects of operating a Shop. The parties agree and acknowledge that Franchisor may change, improve, further develop, or otherwise modify the System from time to time as it deems appropriate in its discretion. Franchisee hereby acknowledges and agrees that: (i) while the System and Franchisor’s related materials contain information that, in isolated form, could be construed as being in the public domain, they also contain significant proprietary and confidential information which makes the System unique as a whole; and (ii) the combined methods, information, procedures, and theories that make up the total System or are contained in the relevant manuals that are proprietary and confidential.

C. The System and Shops are identified by its then-current proprietary marks, which may include the primary marks THE MILKSHAKE FACTORY® and MILKSHAKE FACTORY™ and certain other trade names, trademarks, service marks and trade dress that Franchisor designates for use in connection with each Shop (collectively, the “Proprietary Marks”), all of which Franchisor may modify, update, supplement or substitute in the future as Franchisor deems appropriate. The parties agree and acknowledge that Franchisor has established substantial goodwill and business value in its Proprietary Marks, expertise, and System.

D. Franchisor is in the business of granting qualified parties a franchise for the right to independently own and operate a single Shop utilizing the Proprietary Marks and System at a location that Franchisor approves in writing.

E. Franchisee recognizes the benefits derived from being identified with Franchisor, appreciates and acknowledges the distinctive and valuable significance to the public of the System and the Proprietary Marks, and understands and acknowledges the importance of Franchisor’s high and uniform standards of quality, appearance, and service to the value of the System.

F. Franchisee desires to acquire a non-exclusive franchise for the right to operate a single Shop from an approved location and has submitted an application to obtain such a franchise from Franchisor.

G. Franchisor is willing to grant Franchisee the right to operate a Shop based on the representations contained in the franchise application and subject to the terms and conditions set forth in this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

1. **PREAMBLES, ACKNOWLEDGEMENTS AND REPRESENTATIONS OF FRANCHISEE.** Franchisee, on behalf of itself and its principals, hereby agrees and acknowledges the following:

- A. The business venture contemplated by this Agreement involves business risks. Franchisee's success will be largely dependent upon Franchisee's ability as an independent businessperson.
- B. Franchisee has received, read, and does understand this Agreement and any attachments.
- C. Franchisee understands and agrees that the restaurant industry is highly competitive with constantly changing market conditions.
- D. Franchisee has raised any questions or concerns it had with respect to this Agreement and the franchise offering to Franchisor prior to entering into this Agreement. Any written inquiries made to Franchisor by Franchisee pertaining to the nature of this franchise were answered in writing to Franchisee's satisfaction.
- E. Franchisee has consulted with Franchisee's own advisors with respect to the legal, financial, and other aspects of this Agreement, the business franchised hereby, and the prospects for such business. Franchisee either has consulted with such advisors or has deliberately declined to do so.
- F. Any and all applications, financial statements, and representations submitted to Franchisor by Franchisee, whether oral or in writing, were complete and accurate when submitted and are complete and accurate as of the date of execution of this Agreement unless the same has been otherwise amended in writing. Franchisee states that he/she is not (a) presently involved in any business activity that could be considered competitive in nature, unless heretofore disclosed to Franchisor in writing, or (b) violating any existing contractual obligations by entering into this agreement.
- G. Franchisee will not and shall not contest, directly or indirectly, Franchisor's ownership, title, right, or interest in its names or Proprietary Marks, trade secrets, methods, procedures, know-how, or advertising techniques which are part of Franchisor's business, or contest Franchisor's sole right to register, use, or license others to use such names or Proprietary Marks, trade secrets, methods, procedures, or techniques.

- H. Franchisee represents and warrants that Franchisee is not a party to or subject to any order or decree of any court or government agency which would limit or interfere in any way with the performance by Franchisee of the obligations under this Agreement and that Franchisee is not a party, and has not within the last ten (10) years been a party, to any litigation, bankruptcy, or legal proceedings other than those heretofore disclosed to Franchisor in writing.
- I. Franchisee agrees and acknowledges that it is solely responsible for ensuring that it: (i) timely secures a premises that Franchisor approves for the Franchised Business (the “Premises”), as well as conducting all due diligence associated with building out the Franchised Business from that Premises (prior to securing the same); (ii) acquires and maintains all business licenses, permits and approvals, including those that are specifically required to offer and provide restaurant services and Ancillary Products (that Franchisee becomes eligible to provide once Franchisee has demonstrated to Franchisor that Franchisee is capable of providing the services under this Agreement without complaint or other issues), that are necessary to operate the Franchised Business at the Premises (defined below) and within the Designated Territory (defined below); and (iii) otherwise opens and operates the Franchised Business in full compliance with all federal, state and local laws and regulations where the Franchisee is located.
- J. Franchisee agrees and acknowledges that: (i) Franchisor may enter into franchise agreements with other franchisees that may contain provisions, conditions, and obligations that differ from those contained in this Agreement, including without limitation, franchise agreements for the operation of a Shop; and (ii) the existence of different forms of agreement and the fact that Franchisor and other franchisees may have different rights and obligations does not affect the parties’ duty to comply with the terms of this Agreement.

2. **GRANT OF FRANCHISE**

- A. **Grant of Franchise.** Franchisor hereby grants Franchisee, subject to the terms, conditions, and obligations of this Agreement, a non-exclusive right and license to use the Proprietary Marks and receive the other benefits of the System in connection with the establishment and operation of a single franchised Shop (the “Franchised Business”).
- B. **Approved Premises; Site Selection Area.**
 - 1. *Approved Premises.* Franchisee must and may only operate the Franchised Business from a premises that (a) Franchisee proposes to Franchisor as described more fully in this Agreement, and (b) Franchisor approves in writing (the “Premises”).
 - 2. *Site Selection Area.* If the parties have not agreed on a Premises as of the date this Agreement is executed, Franchisor will designate a general marketing area (the “Site Selection Area”) on the data sheet attached to this Agreement as Exhibit A (the “Data Sheet”) wherein Franchisee must locate and secure the Premises as detailed more fully in Section 6(A) of this Agreement. Franchisee acknowledges and agrees that: (i) it does not have any territorial rights within the Site Selection Area; (ii) Franchisor may permit other new franchisees to search for the location of their franchised Shop within the same Site Selection Area that is assigned to Franchisee under this Agreement if Franchisor determines in its discretion that the Site Selection Area is large enough to contain additional franchises; and (iii) potential locations for each franchised Shop, and resulting territory designation (as discussed more fully under Section 2(D) below),

within the Site Selection Area will be reviewed and rejected/granted on a first-to-propose basis.

- C. **Relocation of Premises.** Once the Franchisor approves the Premises of the Franchised Business, the location will be set forth in the Data Sheet. Franchisee may only use the Premises to operate the Franchised Business. Franchisee may not relocate the Franchised Business to any location other than the Premises without Franchisor's prior written consent, which Franchisor will not unreasonably withhold, provided: (i) Franchisee secures an alternate location for the Franchised Business within the Designated Territory (as defined below) that meets Franchisor's then-current site selection criteria for the premises of a Shop; and (ii) Franchisee pays Franchisor its then-current relocation fee (if any) or, in the alternative, reimburses Franchisor for the costs and expenses incurred with evaluating the relocation request (regardless of whether or not Franchisor approves of such request).
- D. **Designated Territory.** Once Franchisee has secured an approved Premises, Franchisor will designate a geographical area surrounding the Premises wherein Franchisee will be afforded certain territorial rights (the "Designated Territory"). The exact boundaries of the Designated Territory awarded, on determined by Franchisor, will be set forth by Franchisor in the Data Sheet to this Agreement or otherwise in a separately signed addendum to this Agreement. Once Franchisee is assigned a Designated Territory, Franchisor agrees that it will not open or operate, or license any third party the right to open or operate, another Shop utilizing the System and Proprietary Marks, from a physical location within that Designated Territory for so long as Franchisee is in compliance with this Agreement. Franchisee acknowledges that it does not have any other territorial rights within or outside the Designated Territory, except as specifically provided in this Section.
- E. **Rights Not Granted.** Franchisee acknowledges and agrees that this Agreement does not afford Franchisee any rights or options to open any additional Shops and that Franchisee does not have any right to sub-license or sub-franchise any of the rights granted hereunder. Franchisee may not use the Proprietary Marks or System for any purpose other than promoting and operating the Franchised Business at the Premises. Franchisor will have sole discretion as to whether it decides to grant Franchisee the right to open any additional Shops, each of which will be governed by a separate form of Franchisor's then-current franchise agreement.
- F. **Reservation of Rights.** Notwithstanding anything contained in this Agreement, Franchisor and its affiliates hereby reserve the exclusive right to: (i) open and operate, and license third parties the right to open or operate, other Shops utilizing the Proprietary Marks and System outside the Designated Territory; (ii) market, offer and sell the Approved Products offered by the Franchised Business and other Shops through alternate channels of distribution, including without limitation, via the Internet and other e-commerce channels, grocery stores, direct mail or wholesale, at any location, both inside or outside of Franchisee's Designated Territory; (iii) acquire, or be acquired by, any company, including a company operating one or more businesses offering products or services offered by a Shop, located within or outside Franchisee's Designated Territory, and subsequently operate (or license a third party the right to operate) these locations; (iv) open and operate, or license third parties the right to open or operate, businesses that offer products and services similar to the Franchised Business under marks other than the Proprietary Marks at any location; (v) open and operate, or license third parties the right to open or operate Shops in non-traditional sites, including, but not limited to, sports and entertainment stadiums, arenas, entertainment complexes, malls, other shopping outlets, food courts, and

train stations and airports, both within and outside of Franchisee's Designated Territory, with determination of what constitutes a non-traditional site subject to Franchisor's sole discretion; and (v) use, and license others the right to use, the Proprietary Marks and System to engage in any other activity not expressly prohibited by this Agreement.

- G. **Modification of System.** Franchisor reserves the right to supplement, revise or otherwise modify the System or any aspect/component thereof, and Franchisee agrees to promptly accept and comply with any such addition, subtraction, revision, modification or change and make such reasonable expenditures as may be necessary to comply with any change that Franchisor makes to the System. Any change or modification that Franchisor makes to the System will not materially alter Franchisee's fundamental rights under this Agreement. Moreover, Franchisor will provide Franchisee with a reasonable amount of time to comply with any change or modification to the System once Franchisee has been notified of such change/modification in writing (via the Operations Manual or otherwise).
- H. **Catering or other Off-Premises Services.** In the event Franchisor establishes a System-wide program for the provision of catering or other services by System franchisees that can be provided off-Premises, then Franchisor may grant Franchisee the right to provide such catering services within the Designated Territory, provided: (i) Franchisee completes any additional training that Franchisor establishes in connection with the provision of such catering services; (ii) Franchisee demonstrates that it has a vehicle that (a) bears Franchisor's Proprietary Marks in the manner Franchisor prescribes, and (b) is otherwise adequately insured as part of the Franchised Business operations and meets any other reasonably-imposed standards for vehicles used in connection with such catering services; and (iii) Franchisee is otherwise in material compliance with the terms of this Agreement at the time Franchisee requests the right to provide such catering services.

3. **TERM AND RENEWAL**

- A. **Term.** The initial term of this Agreement shall be for a period of 10 years commencing as of the execution of this Agreement ("Initial Term"), unless this Agreement is terminated earlier than said natural expiration consistent with the provisions herein.
- B. **Renewal.** Franchisee may submit a request to renew this Agreement for up to two (2) additional, consecutive terms of 10 years each, and must provide each request to renew no less than six (6) months and no more than twelve (12) months prior to the end of the then-current term. Failure to provide such notice to Franchisor will be deemed an indication that Franchisee does not wish to renew the franchise relationship. Franchisor shall not unreasonably withhold its approval of such requests for renewal, provided Franchisee complies with the following conditions:
1. Franchisee must not have: (i) any uncured material defaults under this Agreement (including any monetary defaults) or any other agreement between Franchisee and Franchisor or the landlord of the Premises, either at time of Franchisee's renewal request or at the time of renewal; and (ii) received more than three (3) separate, written notices of material default from Franchisor with respect to this Agreement in the 12-month period preceding the renewal request date or renewal date.
 2. Franchisee must execute Franchisor's then-current form of franchise agreement, which may contain materially different terms and conditions from those contained

in this Agreement, within thirty (30) days of the date Franchisee is provided with Franchisor's then-current form of franchise agreement.

3. Franchisee pays Franchisor a renewal fee amounting to \$10,000 (the "Renewal Fee") a least 90 days prior the applicable renewal date, with the understanding that Franchisee will not be required to pay an additional Initial Franchise Fee (as defined in Section 4) upon renewal.
4. Franchisee and/or the Designated Manager (as defined in this Agreement and as applicable) attends any training refresher course prescribed by Franchisor at least thirty (30) days before the expiration of the then-current term of this Agreement, and pays Franchisor's then-current refresher training tuition fee for each attending trainee. Franchisee will also be responsible for all expenses incurred in connection with attending this refresher training.
5. Franchisee executes a general release under seal, in a form satisfactory to Franchisor, of any and all claims it may have against Franchisor and its officers, directors, shareholders, and employees in their corporate and individual capacities, including without limitation, all claims arising out of or related to (a) this Agreement, or (b) any federal, state, or local law, rule, or ordinance.
6. Franchisee must have participated in and supported the training procedures, purchasing, marketing, advertising, promotional, and other operational and training programs recommended or provided by Franchisor to the satisfaction of Franchisor.
7. Franchisee or transferee agrees, at its sole cost and expense, to re-image, renovate, refurbish, and modernize the Premises and Franchised Business within the time frame required by Franchisor, including the design, equipment, signs, interior and exterior décor items, displays, inventory assortment and depth, fixtures, furnishings, trade dress, color scheme, presentation of trademarks and service marks, supplies, and other products and materials, as necessary to meet Franchisor's then-current System standards, specifications, and design criteria for a newly-open franchised System Shop.

4. **FEES AND PAYMENTS**

- A. **Fees.** In consideration of the rights and license granted herein, Franchisee shall pay the following amounts:
 1. *Initial Franchise Fee.* Upon execution of this Agreement, Franchisee must pay Franchisor an initial franchise fee of \$60,000 (the "Initial Franchise Fee"). The parties acknowledge and agree that the Initial Franchise Fee will be deemed fully earned and non-refundable under any circumstances upon payment.
 2. *Initial Training Fee.* Upon execution of this Agreement, Franchisee must also pay Franchisor an initial training fee of \$8,500 (the "Initial Training Fee") to cover the tuition associated with Franchisee and one (1) other individual attending the proprietary initial training program. The parties acknowledge and agree that the Initial Training Fee will be deemed fully earned and non-refundable under any circumstances upon payment.

3. *Royalty Fee.* On or before the fifth (5th) day of each month the Franchised Business is open and operating (and/or required to be open and operating under this Agreement), Franchisee must pay Franchisor an ongoing royalty fee calculated as follows: (i) during Franchisee's first year of operations, six percent (6%) of the Adjusted Gross Sales (as defined in Section 4(D)) generated by the Franchised Business in the preceding calendar month; (ii) during Franchisee's second year of operations, the greater of (a) six percent (6%) of the Adjusted Gross Sales generated by the Franchised Business in the preceding calendar month, or (b) \$1,200 per month; and (iii) during Franchisee's third and each subsequent year of operations, the greater of (a) six percent (6%) of the Adjusted Gross Sales generated by the Franchised Business in the preceding calendar month, or (b) \$1,500 per month (the "Royalty Fee").
4. *Contribution to Brand Development Fund.* Franchisor has established a System-wide marketing fund (the "Fund"), and Franchisee is required to make a monthly contribution to the Fund in an amount equal to up to three percent (3%) of the Adjusted Gross Sales (as defined in this Section 4(D)) generated by the Franchised Business in the preceding Business Week.
5. *Technology Fee.* Franchisor may charge Franchisee an on-going technology fee to pay for certain aspects of Franchisee's computer system and/or software ("Technology Fee"). Franchisor may designate and/or change the amount, scope, or manner of payment of the Technology Fee, including the party to whom payment is made, at any time providing reasonable notice to Franchisee. The Technology Fee will be in addition to any ongoing license/subscription fees that Franchisee must pay in connection with any third-party software to be used in connection with the point-of-sale system at the Shop (collectively, the "Required Software").
6. [Related Party Assignment Fee. Except as otherwise provided for in Section 13\(F\), you will pay a fee in the amount of \\$500 to assign your franchise agreement to an entity you control.](#)
- ~~6.7.~~ *Other Amounts Due in Connection with the Franchised Business.* All other training/tuition fees, evaluation fees, licensing fees, administration/late fees, as well as all amounts necessary to purchase marketing materials, inventory or other supplies from Franchisor, its affiliates or any third-party Approved Supplier must be paid on an ongoing basis as and when such amounts are due, as described more fully in this Agreement. [Franchisee must also](#)

- A. **Method of Payment.** With the exception of the Initial Franchise Fee, Franchisee shall pay all fees and other amounts due to Franchisor and/or its affiliates under this Agreement through an electronic funds transfer program (the "EFT Program"), under which Franchisor automatically deducts all payments owed to Franchisor under this Agreement, or any other agreement between Franchisee and Franchisor or its affiliates, from the bank account Franchisee provides to Franchisor for use in connection with EFT Program (the "EFT Account"). Franchisee shall immediately deposit all revenues from operation of the Franchised Business into this bank account immediately upon receipt, including cash, checks, and credit card receipts. At least ten (10) days prior to opening the Franchised Business, Franchisee shall provide Franchisor with: (i) Franchisee's bank name, address and account number; and (ii) a voided check from such bank account. Contemporaneous with the execution of this Agreement, Franchisee shall sign

and provide to Franchisor and Franchisee's bank, all documents, including Franchisor's form of EFT Authorization Form attached as Exhibit D to this Agreement, necessary to effectuate the EFT Program and Franchisor's ability to withdraw funds from such bank account via electronic funds transfer. Franchisee shall immediately notify Franchisor of any change in Franchisee's banking relationship, including any change to the EFT Account.

B. **Access to Computer System.** Franchisor may, without notice to Franchisee, have the right to independently and remotely access and view Franchisee's computer system used in connection with the Franchised Business (the "Computer System") via the Internet, other electronic means or by visiting the Shop, in order to obtain Adjusted Gross Sales, tenant occupancy rates and other available information that Franchisor reasonably requests about the Franchised Business. Franchisee hereby consents to Franchisor using and disclosing to third parties (including, without limitation, prospective franchisees, financial institutions, legal and financial advisors), for any purpose or as may be required by law, any financial or other information contained in or resulting from information, data, materials, statements and reports received by Franchisor or disclosed to Franchisor in accordance with this Agreement. Franchisee must obtain and use the Computer System hardware, software and other components that Franchisor prescribed for use in connection with the Franchised Business, and utilize and participate in any intranet/extranet that Franchisor establishes in connection with the System.

C. **Adjusted Gross Sales.** "Adjusted Gross Sales" means the total revenue generated by Franchisee's Shop, including all revenue generated from the sale and provision of any and all Approved Products and Services (including Ancillary Products) offered at Franchisee's Shop, as well as all proceeds from any business interruption insurance related to the non-operation of the Franchised Business. "The term "Adjusted Gross Sales" does not include (i) *bona fide* refunds to customers that are specifically authorized by Franchisor, (ii) sales taxes collected and paid directly by Franchisee to the appropriate tax authority, (iii) discounts, coupons, and promotions, or (iv) sales of prepaid cards or similar products (but the redemption of any such card or product will be included in Adjusted Gross Sales). If Franchisee sells any products or services at a discounted amount (by coupons or otherwise) from your standard prices without Franchisor's approval, Franchisor may calculate Adjusted Gross Sales as if Franchisee sold such products or services at standard menu prices.

~~E.D.~~ **Adjusted Gross Sales Reports.** On or before Monday of each week, Franchisee must send Franchisor a signed Adjusted Gross Sales report (a "Adjusted Gross Sales Report") detailing the following information: (i) Adjusted Gross Sales of the Franchised Business from the preceding Business Week; (ii) Franchisee's calculated Royalty Fee and Fund Contribution (if appropriate) based on the Adjusted Gross Sales from the preceding Business Week; and (iii) any other information Franchisor may require for that reporting period. Franchisor may, as it deems necessary in its sole discretion, change the form and content of the Adjusted Gross Sales Reports from time to time. The parties agree and acknowledge that Franchisor may modify the interval at which it collects Franchisee's Royalty Fee, Fund Contribution and other recurring fees under this Agreement upon written notice (i.e., Franchisor may provide Franchisee with notice that it will be collecting these fees on a monthly rather than weekly basis). In such event, Franchisee's reporting obligations may also be modified by Franchisor accordingly.

~~F.E.~~ **Late Payments; Insufficient Funds Fees.** If any payment due under this Agreement is not received by Franchisor by the scheduled date due, Franchisee shall be in default under this Agreement. If any payment is overdue, Franchisee shall pay interest to the Franchisor, in addition to the overdue amount, at a rate of the greater of eighteen percent (18%) per month or the highest commercial contract rate allowed by law, beginning from the date of non-payment

or underpayment, until paid. Entitlement to collect such interest shall be in addition to any and all other remedies Franchisor may have. Franchisee agrees to pay Two Hundred Fifty Dollars (\$250.00) for each check given or electronic transfer made to Franchisor that is dishonored, fails to process, or is returned.

G.F. Taxes Owed by Franchisee. No payments to be made to Franchisor by Franchisee, whether for royalties, advertising, merchandise, special programs, or otherwise, may be reduced on account of the imposition by any federal, state, or local authority of any tax, charge, or assessment, or by any claim Franchisee may have against Franchisor. All taxes, charges, or assessments shall be paid by Franchisee to the taxing authorities when due, in addition to the amounts due to Franchisor.

H.G. Late Reporting Fee(s). In the event Franchisee fails to provide to Franchisor any financial report, Adjusted Gross Sales Report or other report which Franchisee is obligated by this Agreement to provide to Franchisor when such report is due, Franchisee will be charged a late fee for each such report equal to Two Hundred Fifty Dollars (\$250.00). The imposition of late reporting fees shall be in addition to, and not in lieu of, any other remedy available to Franchisor for failure to report.

H.H. Security Interest. Franchisee hereby grants to Franchisor a security interest in all of Franchisee's interests in the real estate where the franchise is located (if Franchisee purchases its Premises), as well as all improvements to that real estate. Franchisee further grants to Franchisor a security interest in all furniture, furnishings, equipment, fixtures, inventory, and supplies located at or used in connection with the Franchised Business, whether now or hereafter leased or acquired, together with all attachments, accessions, accessories, additions, substitutions, and replacements therefore, as well as all cash and non-cash proceeds derived from insurance, the disposition of any such collateral to secure payment and performance of all debts, liabilities, and obligations of any kind of Franchisee to Franchisor under this Agreement, whenever and however incurred, any promissory note given by Franchisee to Franchisor, or any other agreement between them. Franchisee hereby authorizes Franchisor to file and record all financing statements, financing statement amendments, continuation financing statements, fixture filings, and other documents necessary or desirable to evidence, perfect, and continue the priority of the security interests granted herein. Franchisee agrees and understands that it must promptly execute and deliver any such documents to Franchisor upon request.

1. Notwithstanding anything contained in Section 4(I) of the Franchise Agreement to the contrary, Franchisee does not grant Franchisor any security interest in any real property associated with the Franchised Business if such real property is being leased by the Franchisee.
2. The parties agree that Franchisor will not execute on any security interest granted to Franchisor under Section 4(I) of the Franchise Agreement unless Franchisee fails to cure a material default under the Franchise Agreement within the applicable time period for cure after Franchisor has provided Franchisee with proper notice of such default(s).

H.I. Compliance with Gift Card Redemption Policies. Franchisee agrees and acknowledges that Franchisor has set forth policies and guidelines regarding Franchisee's redemption of gift cards at the Franchised Business that were purchased at a System Shop other than the Franchised Business (and vice versa), along with directives and guidelines for how any compensation will be allocated amongst the Franchised Business and the other System Shop(s) at issue. Franchisee

agrees and acknowledges that such policies and guidelines may affect Franchisee's payment obligations under this Agreement, whether to Franchisor and/or to a different Shop location, but agrees to strictly comply with such directives, policies and guidelines as set forth and updated by Franchisor in the Manuals or otherwise in writing.

K.J. Administrative Default Fee. In the event of default under this Section 4, or in the event of any instance of Franchisee's non-compliance with this Agreement, the Manual, or other policies and System standards, for which Franchisor notifies Franchisee of such default or non-compliance, at Franchisor's discretion it may require Franchisee to pay an administrative fee to Franchisor in the amount of One Hundred Dollars (\$100) per occurrence, and One Hundred Dollars (\$100) for each week such default or non-compliance remains uncured, plus any and all of Franchisor's costs and expenses to enforce compliance by Franchisee or to cure such default, including our attorneys' fees. Such administrative fee and other charges are intended to reimburse Franchisor for its time, expense, and other expenditure of resources incurred due to Franchisee's default or non-compliance. Franchisor's decision to require Franchisee to pay such administrative fee shall be without prejudice to Franchisor's right to terminate this Agreement and/or to terminate any other rights, options or arrangements under this Agreement at any time thereafter for the same default or as a result of any additional defaults of the terms of this Agreement. Franchisor may obtain payment of such administrative fee by way of electronic fund transfer.

5. **DUTIES OF FRANCHISOR**

- A. **Initial Training Program.** Franchisor shall offer and make available an initial training program (the "Initial Training Program") for Franchisee and other management personnel Franchisee designates, provided the parties attend at the same time. One of the trainees must be Franchisee (or one of Franchisee's principals responsible for the Franchised Business if Franchisee is an entity) and his/her Assistant General Manager ("AGM"). The Initial Training Program will be conducted at Franchisor's corporate headquarters or other facility that Franchisor designates, subject to the schedules and availability of Franchisor's training personnel. Franchisor will provide the Initial Training Program to additional owners of Franchisee or managers of the Franchised Business (subject to the availability of Franchisor's staff), provided Franchisee pays Franchisor its then-current additional training fee for each individual that attends in addition to the first two (2) individuals (as well as any expenses incurred). Franchisor reserves the right to charge Franchisee its then-current Training Fee for any such training provided.
- B. **On-Site Assistance and/or Training.** As Franchisor ~~deems appropriate in its discretion,~~ Franchisor may will provide on-site assistance and training at the Premises prior to the opening of the Franchised Business (the "On-Site Assistance Training") for a period of up to five (5) days.
- C. **Replacement Personnel Training.** Franchisor will also provide the Initial Training Program to any replacement personnel or those who attend but fail to complete the program as well, provided Franchisee pays Franchisor's then-current Training Fee (as well as any expenses incurred).
- D. **Additional and Refresher Training.** Franchisor may, as it deems appropriate in its discretion, develop additional and refresher training courses, and require Franchisee and its management to attend such courses. Franchisor will require Franchisee and its designated attendees to pay an additional then-current Training Fee for this kind of training,

as well as being solely responsible for all expenses incurred in connection any required management and/or personnel attending such training.

- E. **Manuals; Lists of Current Required Items and Approved Suppliers.** Franchisor will loan Franchisee one (1) copy of its proprietary and confidential operations manual prior to the opening of the Franchised Business, as well as any other instructional manuals as Franchisor deems appropriate (collectively, the “Manuals”). Franchisor will also loan Franchisee a list of: (i) all furniture, fixtures, equipment, inventory, supplies and other items that Franchisee is required to purchase or lease in connection with the establishment and ongoing operation of the Franchised Business (collectively, the “Required Items”); (ii) a list of all suppliers from which Franchisee must purchase or lease any Required Items, which may be Franchisor or its affiliates (collectively, the “Approved Suppliers”); and (iii) a list of the Approved Products and Services that Franchisee is authorized to offer, sell or provide at and from the Franchised Business, including membership programs and services. The foregoing lists may be provided as part of the Manuals or otherwise in writing prior to opening, and Franchisor has the right to revise, supplement or otherwise modify these lists and the Manuals at any time upon written notice to Franchisee. Franchisor may also establish and maintain a System website portal that affords access to System owners and Franchisor only (each, a “System Site”) wherein Franchisor may post content that will automatically become part of, and constitute a supplement to, the Manuals, all of which Franchisee must strictly comply with promptly after such content is posted or otherwise listed as part of the manuals on such website portal.
- F. **Site Selection Assistance.** Franchisor will provide Franchisee with site selection assistance and guidance with regards to Franchisee’s selection of a Premises for the Franchised Business, including Franchisor’s then-current site selection criteria, as it deems appropriate in its sole discretion. Franchisor may require that Franchisee use an Approved Supplier for site selection assistance. Franchisor will also review and approve of any location the Franchisee proposes for the Franchised Business. Franchisor must approve of Franchisee’s proposed location, as well as the lease for the Premises (the “Lease”) or purchase agreement for the location, prior to Franchisee entering into any such agreement for that location to serve as the Premises of the Franchised Business. Franchisor may condition its approval of any Lease for the proposed Premises on the landlord’s execution of Franchisor’s form of Consent and Agreement of Landlord attached to this Agreement at Exhibit C. Franchisor will use reasonable efforts to review and approve of any proposed Premises location and corresponding Lease within thirty (30) days of receiving all reasonably requested information from Franchisee.
- G. **Initial Marketing Spend Assistance.** Franchisor may assist Franchisee, as it deems appropriate in its discretion, in developing and conducting the Initial Marketing Spend Program (as defined and described more fully in Section 9 of this Agreement), which program shall be conducted at Franchisee’s expense.
- H. **Opening Assistance/Continuing Assistance.** Franchisor may, as it deems appropriate and advisable in its sole discretion, provide opening assistance and continuing advisory assistance in the operation of the Franchised Business. Franchisor’s determination not to provide any particular service, whether initial or continuing, shall not excuse Franchisee from any of its obligations under this Agreement.

- I. **Review of Advertising Materials.** Franchisor will review and approve/reject any advertising or marketing materials proposed by Franchisee in connection with the Franchised Business as described more fully in Section 9 of this Agreement.
- J. **Website.** For so long as Franchisor has an active website containing content designed to promote the System brand, System and Proprietary Marks (collectively, the “Website”), Franchisor will list the contact information of the Franchised Business on this Website, provided Franchisee is not in material default under this Agreement. Franchisor may also provide Franchisee with one or more email address(es), as it deems appropriate in its discretion, which Franchisee must use only in connection with the Franchised Business.
- K. **Private Label Products.** Franchisor may directly, or indirectly through Franchisor’s affiliates or designated vendors, develop and provide Franchisee with private label products or other merchandise bearing the Proprietary Marks to be sold at the Franchised Business. Franchisee may be required to purchase these items from Franchisor or any other Approved Supplier Franchisor designates.
- L. **Inspections of the Franchised Business and Premises.** Franchisor will, as it deems appropriate in its sole discretion, conduct inspections and/or audits of the Franchised Business and Premises to ensure that Franchisee is operating its Franchised Business in compliance with the terms of this Agreement, the Manuals and the System standards and specifications. Such inspections may include inspections of the Premises, taking photographs and/or videotape of the Shop’s common area, taking samples of any Approved Products for sale at the Shop, interviewing and surveying Franchisee’s personnel and customers, inspecting any and all books and records, and conducting mystery shop services. Franchisor is not responsible for ensuring that the Franchised Business is being operated in compliance with all applicable laws and regulations.
- a. Franchisor may establish a mystery shops program (“Mystery Shops Program”) whereby a third-party vendor will patronize the Franchised Business and grade its experience based on criteria established by Franchisor or the third-party vendor. If established, Franchisee shall pay for the costs of the surveys conducted under the Mystery Shops Program to either Franchisor or a third-party vendor.
- b. Franchisor may also conduct quarterly service evaluations of the Franchised Business. Franchisee shall comply with any changes requested by Franchisor based on the quarterly evaluations.
- M. **Administration of Fund.** Franchisor will administer the brand development Fund as it deems advisable to the System in its sole discretion as described more fully in Section 9 of this Agreement.
- N. **No Assumption of Liability.** Franchisor shall not, by virtue of any approvals or advice provided to the Franchisee under this Agreement, including site selection or other approval provided under this Section 5, assume any responsibility or liability to Franchisee or to any third party to which it would not otherwise be responsible or liable. Franchisee acknowledges that any assistance (including site selection and project oversight) provided by Franchisor or its nominee in relation to the selection or development of the Premises is only for the purpose of determining compliance with System standards and does not constitute a representation, warranty, or guarantee, express, implied or collateral, regarding the choice and location of the Premises, that the development of the Premises is free of

error, nor that the Franchised Business is likely to achieve any level of volume, profit or success.

- O. **Delegation of Duties.** Franchisee acknowledges and agrees that any designee, employee, or agent of Franchisor may perform any duty or obligation imposed on Franchisor by the Agreement, as Franchisor may direct.
- P. **Annual Conference.** Franchisor may establish and conduct an annual conference for all System Shop owners and operators, and may require Franchisee to attend this conference for no more than five (5) days each year. Franchisee will be solely responsible for all expenses incurred in attending the annual conference (including any employee wages).
- Q. **Pre-Opening Obligations Acknowledgement.** If Franchisee believes Franchisor has failed to provide any of the pre-opening services detailed in this Agreement, Franchisee shall notify Franchisor in writing within ninety (90) days following the opening of the Franchised Business. Absent such notice to Franchisor, Franchisee acknowledges, agrees and grants that Franchisor complied with all of its pre-opening and opening obligations set forth in this Agreement.

6. **DUTIES OF FRANCHISEE**

- A. **Secure a Premises.** Franchisee must secure a Premises within the Designated Territory within six (6) months of executing this Agreement, unless Franchisor agrees to an extension of time in writing. If Franchisor has designated an Approved Supplier for site selection assistance, then Franchisor may require that Franchisee use this Approved Supplier. If Franchisee is entering into a Lease for the proposed Premises, the form of Lease must be approved by Franchisor and Franchisee must ensure that the Lease contains the following terms as a condition to Franchisor's approval thereof:
 - 1. The leased Premises will only be used as a System Shop offering only the Approved Products and Services that Franchisor designates;
 - 2. Franchisor has the right to enter the Premises to make any modifications necessary to protect Franchisor's Proprietary Marks;
 - 3. Upon Franchisor's request, the landlord shall supply Franchisor with a current copy of the Lease;
 - 4. The landlord will notify Franchisor in writing of and upon the failure of Franchisee to cure any default by Franchisee under the Lease, and provide Franchisor with an opportunity to cure the default on behalf of Franchisee within a reasonable period of time;
 - 5. Franchisor will have the option, but not the obligation, to assume or renew the Lease and the occupancy of the business premises, including the right to sublease to another party operating a System Shop, for all or any part of the remaining term of the Lease only if: (i) the Franchise Agreement or Lease is terminated for cause; (ii) Franchisee is in default under the Lease and, if applicable, fails to cure within the time period provided for in the Lease; (iii) Franchisee is in material default of the Franchise Agreement and fails to cure said default(s) within the applicable time period (if any) thereunder; or (iv) either the Franchise Agreement or Lease expires

(and Franchisee does not renew in accordance with the respective terms of those agreements). Franchisor will not have the right to assume any Lease in the event Franchisee is relocating the Franchised Business from the Premises governed by the Lease in accordance with the terms of this Agreement. In the event Franchisor assumes the Lease under this Section, Franchisor will not be obligated to pay to the landlord past due rent, common area maintenance, and/or other charges attributable to more than one (1) month. The landlord shall give Franchisor thirty (30) days upon termination of Franchisee's rights under the Lease to exercise this option, which Franchisor must do in writing; and

6. The Lease may not be materially amended, assigned, or terminated without Franchisor's prior written approval.

B. **Access to Franchisor for Inspection of Premises.** Upon the surrender of the Premises, Franchisee must conduct a physical inventory so that there is an accurate accounting of inventory, fixtures, furniture, supplies and equipment on hand, and shall provide a signed copy of this physical inventory to Franchisor as of the date of surrender of the Premises. Franchisor shall have the right to enter the Premises at its convenience and conduct said physical inventory on its own.

C. **Compliance with Lease.** Franchisee must comply with both the Lease and any additional leasehold covenants and regulations of the building in which the Premises is located. In the event the landlord of the Premises terminates the Lease due to Franchisee's default thereunder, this termination will also constitute a material breach of this Agreement by Franchisee. In the event Franchisor provides appropriate notice as described in Section 6(A) above and assumes control of the Premises and the operation of the former Franchised Business upon the termination or expiration of the Lease, the future operation of that Shop by Franchisor shall not be as an agent of Franchisee and Franchisor shall not be required to account to Franchisee as a result thereof.

D. **Construction and Build-Out.**

1. *Single Franchise.* Franchisee must complete all construction and build-out of the Premises in a manner consistent with Franchisor's System standards, specifications and any agreed-upon plans and open the Franchised Business to the public no later than 12 months after the date this Agreement is executed. Franchisor may require that Franchisee use an Approved Supplier for construction management services. Franchisor must provide its prior written consent before Franchisee may open the Franchised Business, and Franchisor reserves the right to inspect the construction and/or build-out of the Franchised Business at any reasonable time prior to the opening date. Should Franchisee fail to open the Franchised Business for operation within the prescribed period (or, if applicable, within any extended period of time Franchisor approves in writing), this Agreement will be deemed terminated upon written notice from Franchisor to Franchisee without the necessity of further action or documentation by either party.

2. *Franchise Developed to Fulfill Development Obligations.* The parties further agree and acknowledge that if Franchisee is opening and operating the Franchised Business pursuant to its development obligations under an Area Development Agreement ("ADA") with Franchisor, then that ADA will control the timeline for opening and operating the Franchised Business in the event there is an inconsistency between the

ADA and this Agreement. Franchisee must open and commence operations of the Franchised Business within the time period prescribed in the development schedule set forth in the ADA (even if Franchisor does not require Franchisee to execute this Agreement until Franchisee has secured an approved Premises for the Franchised Business).

- E. **Required Licenses and Permits.** Prior to opening, Franchisee must obtain and maintain (throughout the term of this Agreement) all required licenses, permits and approvals to establish, open and operate the Franchised Business at the Premises in the Designated Territory, including all required licenses and permits related to operation of a restaurant or establishment offering food and the other Approved Products and Services provided at the Franchised Business.
- F. **Approved Products and Services.** Franchisee must only offer and sell only the Approved Products and Services at the Franchised Business. Franchisee may not offer or provide any other products/services and must not deviate from Franchisor's System standards and specification related to the manner in which the Approved Products and Services are offered and sold, unless Franchisor provides its prior written consent. Franchisor has the right to add additional, delete or otherwise modify certain of the Approved Products and Services from time to time in the Manuals and otherwise in writing, as it deems appropriate in its sole discretion. In the event of a dispute between Franchisee and Franchisor concerning Franchisee's right to carry any particular product or to offer any specific service, Franchisee will immediately remove the disputed products from inventory, remove the disputed service from those services offered at the Premises, or, if the same are not already in inventory or such services not yet being offered, will defer offering for sale such products and services pending resolution of the dispute.
- G. **Other Devices Prohibited at Premises.** Franchisee is specifically prohibited from installing, displaying, or maintaining any vending machines, gaming machines, automatic teller machines, internet kiosks, public telephones (or payphones), or any other electrical or mechanical device in the Shop other than those Franchisor prescribes or approves.
- H. **Fixtures, Furniture, Signs and Inventory.** Franchisee must maintain at all times during the term of this Agreement and any renewals hereof, at Franchisee's expense, the Premises and all fixtures, furnishings, signs, and inventory therein as necessary to comply with Franchisor's standards and specifications as prescribed in the Manuals or otherwise in writing. Franchisee must also make such additions, alterations, repairs, and replacements to the foregoing as Franchisor requires. Franchisor will not require Franchisee to make material renovations or refurbishments to the Premises of the Franchised Business (involving costs exceeding \$50,000) more than once every five (5) years, unless such renovation/refurbishment is in connection with a renewal or transfer of this Agreement. The parties agree and acknowledge, however, that the limitation set forth in the preceding sentence will not apply to any request to modify the Proprietary Marks as provided for in this Agreement.
- I. **Compliance with Applicable Laws.** Franchisee will adapt, at the Franchisee's expense, the specifications to the Franchised Business Premises in accordance with local, state, and federal laws, rules, and ordinances, including zoning laws. Franchisee is solely responsible for ensuring compliance with the Americans with Disabilities Act, the Patriot Act, OSHA, environmental laws, worker's compensation laws, the Affordable Care Act and all other applicable laws, ordinances and regulations or ruling of every nature whatsoever which in

any way regulate or affect the operation of the Franchised Business. Franchisee agrees to obtain all required permits and licenses for the operation of the Franchised Business. Franchisee agrees to indemnify and hold us harmless from any such violation or non-compliance. Franchisor have not made, and Franchisee has not relied on any representation that no licenses, or only certain license, etc., are necessary in connection with the operation of the Franchised Business. Franchisee agrees to not engage in any activity or practice which results, or may reasonably be anticipated to result, in any public criticism of the System or any part thereof. Franchisee must also comply with federal, state, and local health and consumer protection laws and regulations governing the food service industry and concerning food preparation, handling, storage, truth in menu laws concerning menu item names and product labeling, nutritional claims, and local labor regulation, including minimum age and minimum wage laws. Franchisee further agrees that it will be solely responsible for all employment decisions and to comply with all state, federal, and local hiring laws and functions of the Franchised Business, including without limitation, those related to hiring, firing, training, wage and hour requirements, compensation, promotion, record-keeping, supervision, and discipline of employees, paid or unpaid, full or part-time. At no time will Franchisee or Franchisee's employees be deemed to be employees of Franchisor or Franchisor's affiliates.

J. **Required Items.** Franchisee must: (i) purchase any and all Required Items that Franchisor designates for use in connection with the Franchised Business, including without limitation, all products, supplies, inventory, fixtures, Computer System, parts, and materials required for the operation of the Franchised Business; (ii) ensure that all Required Items meet Franchisor's standards and specifications; and (iii) purchase all items Franchisor specifies from the Approved Supplier(s) that Franchisee designates, which may include Franchisor or its affiliate(s). Franchisee agrees and acknowledges that Franchisor and/or its affiliates may derive revenue from the offer and sale of Required Items.

K. **Alternative Supplier Approval.** If Franchisee wishes to purchase any unapproved item, including inventory, and/or acquire approved items from an unapproved supplier, Franchisee must provide Franchisor the name, address and telephone number of the proposed supplier, a description of the item Franchisee wishes to purchase, and the purchase price of the item, to the extent known. Franchisee must then follow Franchisor's then-current procedure for evaluating and approving such request and pay Franchisor's then-current product/supplier evaluation fee (the "Evaluation Fee"). At Franchisor's request, Franchisee must also provide Franchisor, for testing purposes, a sample of the item Franchisee wishes to purchase. If Franchisor incurs any costs in connection with testing a particular product or evaluating an unapproved supplier at Franchisee's request, Franchisee must reimburse Franchisor for Franchisor's reasonable testing costs, regardless of whether Franchisor subsequently approves the item or supplier. Franchisor will use commercially reasonable efforts to notify Franchisee in writing whether or not Franchisee's request is approved or denied within thirty (30) days of: (i) Franchisor's receipt of all supporting information from Franchisee regarding Franchisee's request under this Section; and (ii) if applicable, Franchisor's completion of any inspection or testing associated with Franchisee's request. If Franchisor does not provide written approval within this time period, then Franchisee's request will be deemed denied. Franchisor may, but is not obligated to, provide Franchisee's proposed supplier with its specifications for the item that Franchisee wishes the third-party to supply, provided that third-party executes Franchisor's prescribed form of non-disclosure agreement. Each supplier that Franchisor approves must comply with Franchisor's usual and customary requirements regarding insurance, indemnification and non-disclosure. If Franchisor approves any supplier,

Franchisee may enter into supply contracts with such third party, but under no circumstances will Franchisor guarantee Franchisee's performance of any supply contract. Franchisor may re-inspect and revoke Franchisor's approval of particular products or suppliers when Franchisor determines, in Franchisor's sole discretion, that such products or suppliers no longer meet Franchisor's standards. Upon receipt of written notice of such revocation, Franchisee must cease purchasing products from such supplier. Nothing in this Section shall be construed to require Franchisor to approve any particular supplier. Franchisor may base Franchisor's approval of any such proposed item or supplier on considerations relating not only directly to the item or supplier itself, but also indirectly to the uniformity, efficiency, and quality of operation Franchisor deems necessary or desirable in Franchisor's System as a whole. Franchisor has the right to receive payments from suppliers on account of their dealings with Franchisee and other franchisees and to use all amounts Franchisor receives without restriction (unless instructed otherwise by the supplier) for any purposes Franchisor deems appropriate.

- L. **Computer Issues.** Franchisee acknowledges and agrees that Franchisee is solely responsible for protecting itself from computer viruses, bugs, power disruptions, communication line disruptions, internet access failures, internet content failures, date-related problems, and attacks by hackers and other unauthorized intruders.
- M. **Promotional Materials Display.** Franchisee must openly and prominently display franchise promotional materials provided or designated by Franchisor and participate in any ongoing System-wide sales, specials or other promotions that Franchisor designates.
- N. **Initial Training Program.** Franchisee and each of its management personnel must attend and successfully complete the Initial Training Program prior to opening the Franchised Business and otherwise in accordance with Franchisor's then-current Manuals. Franchisee must also cover all costs associated with personnel of Franchisee attending the Initial Training Program. Franchisee must also complete any additional or refresher training the Franchisor is permitted to require Franchisee to attend each year, and Franchisee must attend Franchisor's annual conference if conducted.
- O. **Training of Employees.** Franchisee or at least one (1) of Franchisee's personnel that has successfully completed the Initial Training Program must conduct training classes for, and properly train, all of Franchisee's employees on sales, advertising, maintenance of the Premises, the POS and computer system, as well as any other information that is relevant to each employee's role with the Franchised Business, including Franchisor's standards and specifications for operating the Franchised Business, as Franchisor may set forth in the Manuals or otherwise in writing. Further, at least one person that has completed the Initial Training Program must manage the Franchised Business at all times.
- P. **Hours of Operation.** Franchisee shall keep the Franchised Business open and in normal operation for such minimum hours and days as Franchisor may prescribe in the Manuals or otherwise in writing, and must ensure that the Franchised Business is sufficiently staffed.
- Q. **Image.** Franchisee shall maintain the image of the Franchised Business at all times in accordance with Franchisor's standards and specifications, including: (i) ensuring that the Premises is maintained in a clean and orderly manner; (ii) ensuring that all equipment, furniture and fixtures remain in good, clean condition and is properly displayed; and (iii) ensuring that all Shop personnel wear the branded uniforms prescribed in the Manual(s) or otherwise in writing from time to time..

- R. **Customer Information – Loyalty and/or Other POS Data.** Franchisee must maintain all customer information associated with any customer loyalty or other promotional programs or otherwise in connection with the data input into any Required Software (the “Customer Information”), all of which will be solely owned by Franchisor and deemed “Confidential Information” hereunder.
- S. **Promotional/Maximum Prices; Pricing Guidelines.** To the extent permitted under applicable law, Franchisee must follow Franchisor’s general pricing guidelines, including any promotional or maximum prices set by Franchisor for a particular Approved Product or Service. As an independent contractor, however, Franchisee may exercise flexibility in meeting competition, ~~offering specials,~~ and adapting to local market conditions. Franchisor may request information from Franchisee that has been used to substantiate any reduction in pricing to meet market conditions.
- T. **Operation of Franchised Business and Customer Service.** Franchisee will be responsible for the day-to-day operation of the business. Franchisee shall manage and operate the Franchised Business in an ethical and honorable manner, and must ensure that all those working at the Franchised Business provide courteous and professional services to customers and always keep its customers’ interests in mind while protecting the goodwill of the Proprietary Marks, System and the Franchised Business. Franchisee must handle all customer complaints and requests for returns and adjustments in a manner consistent with Franchisor’s standards and specifications, and in a manner that will not detract from the name and goodwill enjoyed by Franchisor. Franchisee must consider and act promptly with respect to handling of customer complaints, and implement complaint response procedures that Franchisor outlines in the Manuals or otherwise in writing.
- U. **Access to Shop.** To determine whether Franchisee is complying with this Agreement, Manuals and the System, Franchisor and its designated agents or representatives may at all times and without prior written notice to Franchisee: (i) inspect the Premises; (ii) observe and monitor the operation of the Franchised Business for consecutive or intermittent periods as Franchisor deems necessary; (iii) interview personnel and customers of the Franchised Business; and (iv) inspect, audit and/or copy any books, records, and agreements relating to the operation of the Franchised Business, including all financial information. Franchisee agrees to cooperate with Franchisor fully in connection with these undertakings by Franchisor (if taken). If Franchisor exercises any of these rights, Franchisor will not interfere unreasonably with the operation of the Franchised Business.
- V. **Personal Participation by Franchisee.** Franchisee must personally participate in the direct management operation of the Franchised Business on a full-time basis, unless Franchisee engages a Designated Manager that Franchisor approves in writing to manage the day-to-day operations of the Franchised Business when Franchisee is not present. If Franchisee designates a manager at any time, that manager must successfully complete the Initial Training Program prior to assuming any management responsibilities in connection with the Franchised Business. Regardless, Franchisee is solely responsible for all aspects of the operation of the Franchised Business and ensuring that all the terms, conditions, and requirements contained in this Agreement and in the Manuals are met and kept.
- W. **Credit Cards.** Franchisee must accept credit cards at the Premises to facilitate sales, including Visa, MasterCard, American Express, Discover, and any other major credit cards designated by Franchisor.

- X. **Payments to Franchisor.** Franchisee agrees to promptly pay Franchisor all payment and contributions that are due to Franchisor, its affiliates or any Approved Supplier.
- Y. **Employment Decisions.** Franchisee agrees to be solely responsible for all employment decisions and to comply with all state, federal, and local hiring laws and functions of the Franchised Business, including without limitation, those related to hiring, firing, training, wage and hour requirements, compensation, promotion, record-keeping, supervision, and discipline of employees, paid or unpaid, full or part-time. Franchisee's employees must be competent, conscientious, and properly trained.

7. **PROPRIETARY MARKS AND OTHER INTELLECTUAL PROPERTY RIGHTS**

- A. **Ownership of Proprietary Marks.** Franchisee acknowledges the exclusive ownership and/or right to use the Proprietary Marks by Franchisor, and Franchisee agrees that during the term of this Agreement and after its expiration or termination Franchisee will not directly or indirectly contest or aid in contesting the validity of the Proprietary Marks or the ownership or rights of the Proprietary Marks by Franchisor. Furthermore, Franchisee intends and hereby concedes that any commercial use Franchisee may make of the Proprietary Marks shall contribute and inure to the commercial use and benefit of Franchisor, which Franchisor may claim to strengthen and further secure ownership of the Proprietary Marks.
- B. **Permitted Use.** It is understood and agreed that the use by Franchisee of Franchisor's Proprietary Marks applies only in connection with the operation of the Franchised Business at the Premises, and includes only such Proprietary Marks as are now designated, or which may hereafter be designated in the Manuals or otherwise in writing as part of the System (which might or might not be all of the Proprietary Marks pertaining to the System owned by the Franchisor), and does not include any other mark, name, or indicia of origin of Franchisor now existing or which may hereafter be adopted or acquired by Franchisor.
- C. **Use of Proprietary Marks in Advertising and Signage.** To develop and maintain high, uniform standards of quality and service and thereby protect Franchisor's reputation and goodwill, as well as that of the System, Franchisee agrees to:
 - 1. Operate and advertise the Franchised Business only under the Proprietary Marks authorized by Franchisor as specified in this Agreement or the Manuals;
 - 2. Maintain and display signage and advertising bearing the Proprietary Marks that reflects the current commercial image of the System and, upon notice from Franchisor, to immediately discard and cease use of Proprietary Marks or other imagery that has become obsolete and no longer authorized by Franchisor.
 - 3. Upon Franchisor's request, Franchisee hereby covenants and agrees that it will affix in a conspicuous location in or upon the Premises, a sign containing the following notice: "This business is owned and operated independently by (*name of franchisee*) who is an authorized licensed user of the trademark under a license agreement with Milkshake Factory Franchise, LLC."
- D. **Proprietary Marks are Sole Property of Franchisor.** Franchisee acknowledges that the Proprietary Marks, System, Manual, and all other information and items delivered to Franchisee by Franchisor pursuant to this Agreement or in furtherance of the System,

including without limitation, video and audio tapes or disks, information communicated by electronic means, and intellectual property, are the sole and exclusive property of Franchisor, and Franchisee's right to use the same are contingent upon Franchisee's continued full and timely performance under this Agreement. Franchisee acknowledges it acquires no rights, interests, or claims to any of said property, except for Franchisee's rights to use the same under this Agreement for the term hereof and strictly in the manner prescribed. Franchisee agrees that it will not, during the term of this Agreement or any time thereafter, contest or challenge the sole and exclusive proprietary rights of Franchisor (and, if appropriate, Franchisor's affiliates) to the Proprietary Marks, System, Manuals, special recipes, ingredients, menu items, and other information, intellectual property, and items delivered or provided or to which Franchisee obtains access under this Agreement, nor shall Franchisee claim any proprietary interest in such property. Franchisee agrees that it will not adopt, display, attempt to register or otherwise use any names, marks, insignias, or symbols in any business that are or may be confusingly similar to the Proprietary Marks licensed under this Agreement.

- E. **Legal Action Involving Proprietary Marks**. Furthermore, Franchisee agrees to cooperate with and assist Franchisor in connection with any legal action brought by or against either of them regarding the protection and preservation of the Proprietary Marks, System, or the Manuals, special recipes, ingredients, menu items, and other information and intellectual property delivered to Franchisee or used by Franchisee under this Agreement.
- H. **No Representations/Warranties**. The parties agree and acknowledge that, except as provided in this Agreement, Franchisor does not make any representations or warranties regarding the Proprietary Marks or System.
- I. **Modification or Substitution of Marks by Franchisor**. If in Franchisor's reasonable determination, the use of Proprietary Marks in connection with the System will infringe or potentially infringe upon the rights of any third party, weakens or impairs Franchisor's rights in the Proprietary Marks, or it otherwise becomes advisable at any time in Franchisor's sole discretion for Franchisor to modify, discontinue, or to use one (1) or more additional or substitute trade or service Proprietary Marks then upon notice from Franchisor, Franchisee will terminate or modify, within a reasonable time, such use in the manner prescribed by Franchisor. If Franchisor changes the Proprietary Marks in any manner, Franchisor will not reimburse Franchisee for any out-of-pocket expenses that Franchisee incurs to implement such modifications or substitutions. Franchisor is not obligated to reimburse Franchisee for any loss of goodwill or revenue associated with any modified or discontinued Proprietary Mark or good offered, nor is Franchisor responsible for reimbursing Franchisee for any other costs or damages.
- J. **Modification or Substitution of Proprietary Marks by Franchisee**. Franchisee agrees not to make any changes or amendments whatsoever in or to the use of the Proprietary Marks unless directed by Franchisor in writing.
- K. **Cease Use of Marks on Termination/Non-Renewal**. Upon termination or expiration and non-renewal of this Agreement, Franchisee agrees to immediately cease use, in any manner whatsoever, of any of the Proprietary Marks or any other Proprietary Marks or trade names that may be confusingly similar to the Proprietary Marks.
- L. **Disconnection of Telephone Number upon Termination/Renewal**. Franchisee acknowledges that there will be substantial confusion among the public if, after the

termination or expiration and non-renewal of this Agreement, Franchisee continues to use advertisements and/or the telephone number listed in the telephone directory or URL containing any Proprietary Mark, or any name/mark similar to it. Thus, effective upon the termination or expiration and non-renewal of this Agreement, Franchisee agrees to direct the telephone company servicing Franchisee, per Franchisor's request, to disconnect the telephone number used in connection with the Franchised Business or transfer such number to Franchisor or to any person or location of Franchisor's choosing. If Franchisee fails to take these steps, Franchisee shall be deemed to have hereby irrevocably appointed Franchisor as Franchisee's attorney-in-fact for purposes of directing and accomplishing such transfer. Franchisee understands and agrees that, notwithstanding any billing arrangements with any telephone company or yellow pages directory company, Franchisor will be deemed for purposes hereof to be the subscriber of such telephone numbers, with full authority to instruct the applicable telephone or yellow pages directory company as to the use and disposition of telephone listings and numbers. Franchisee hereby agrees to release, indemnify, and hold such companies harmless from any damages or loss as a result of following Franchisor's instructions.

- M. **Non-Exclusive Use of Proprietary Marks.** Franchisee understands and agrees that its right to use the Proprietary Marks is non-exclusive, that Franchisor in its sole discretion has the right to grant licenses to others to use the Proprietary Marks and obtain the benefits of the System in addition to the licenses and rights granted to Franchisee under this Agreement, and that Franchisor may develop and license other trademarks or service marks in conjunction with systems other than the System on any terms and conditions as Franchisor may deem advisable where Franchisee will have no right or interest in any such other trademarks, licenses, or systems.
- N. **Acknowledgements.** With respect to Franchisee's use of the Proprietary Marks pursuant to this Agreement, Franchisee acknowledges and agrees that:
1. Franchisee shall not use the Proprietary Marks as part of Franchisee's corporate or any other business name, domain name, e-mail address or any social media or social networking profile/page;
 2. Franchisee shall not hold out or otherwise use the Proprietary Marks to perform any activity or incur any obligation or indebtedness in such a manner as might in any way make Franchisor liable thereof without Franchisor's prior written consent; and
 3. Franchisee shall execute any documents and provide such other assistance deemed necessary by Franchisor or its counsel to obtain protection for Proprietary Marks or to maintain the continued validity of such Proprietary Marks.
- O. **No Unauthorized Use.** Franchisee acknowledges that the use of the Proprietary Marks outside the scope of this license without Franchisor's prior written consent is an infringement of Franchisor's exclusive right to use the Proprietary Marks and, during the term of this Agreement and after the expiration or termination hereof, Franchisee covenants not to directly or indirectly commit an act of infringement, contest or aid in contesting the validity or ownership of Franchisor's Proprietary Marks, or take any other action in derogation thereof.

- P. **Notification of Infringement.** Franchisee shall notify Franchisor within three (3) calendar days of any suspected infringement of, or challenge to, the validity of the ownership of, or Franchisor's right to use, the Proprietary Marks licensed hereunder. Franchisee will not communicate with any persons other than Franchisor or Franchisor's legal counsel in connection with any such infringement, challenge, or claim. Franchisee acknowledges that Franchisor has the right to control any administrative proceeding or litigation involving the Proprietary Marks. In the event Franchisor undertakes the defense or prosecution of any litigation relating to the Proprietary Marks, Franchisee agrees to execute any and all documents and to do such acts and things as may be necessary in the opinion of counsel for Franchisor to carry out such defense or prosecution.
- Q. **Indemnification Regarding Marks.** Franchisor will indemnify and defend Franchisee against any third-party claim brought against Franchisee that arises solely out of Franchisee's authorized use of the Proprietary Marks licensed under this Agreement in connection with the Franchised Business, provided: (i) such use is in full compliance with Franchisor's standards and specifications; and (ii) Franchisee notifies Franchisor in writing of this third-party claim within three (3) calendar days of receiving notice or otherwise learning of the claim. Franchisor will have complete control over the defense and, if appropriate, settlement negotiations and resolution regarding the claims described in this Section, including the right to select legal counsel Franchisor deems appropriate. Franchisee must fully cooperate with Franchisor in connection with Franchisor's defense or settlement of any third-party claim that Franchisor determines to take control of under this Section 7. Notwithstanding anything in this Section to the contrary, Franchisor's liability under this Section shall be limited to no more than the Initial Franchise Fee paid under this Agreement.
- R. **Other Obligations of Franchisee.** In addition to all other obligations of Franchisee with respect to the Proprietary Marks licensed herein, Franchisee agrees:
4. To feature and use the Proprietary Marks solely in the manner prescribed by Franchisor and not use the Proprietary Marks on the internet except as approved in writing by Franchisor; and
 5. To observe all such requirements with respect to service mark, trademark and copyright notices, fictitious name registrations, and the display of the legal name or other identification of Franchisee as Franchisor may direct in writing from time to time.

8. **OPERATIONS MANUALS AND CONFIDENTIAL/CONFIDENTIAL INFORMATION**

- A. **Compliance with Manuals.** In order to protect the reputation and goodwill of Franchisor and the System, and to maintain uniform standards of operation under Franchisor's Proprietary Marks, Franchisee shall conduct the Franchised Business in strict accordance with Franchisor's Manuals.
- B. **Control of the Franchised Business.** Franchisee acknowledges the Manuals provided by Franchisor to Franchisee are intended to protect Franchisor's standards, systems, names, and marks and is not intended to control day-to-day operation of Franchisee's business. Franchisee further acknowledges and agrees that the Franchised Business will be under the control of the Franchisee at all times.

- C. **Confidential Information Generally.** In connection with the operation of the Franchised Business, Franchisee will from time to time become acquainted with, work with, and even generate certain information, procedures, techniques, data, special recipes, ingredients, menu items, and materials that are and, by this Agreement, will become proprietary to Franchisor. Franchisee and all persons signing this Agreement agree to keep confidential any of Franchisor's trade secrets or proprietary information as defined below and will not use such for its or their own purpose or supply or divulge same to any person, firm, association, or corporation except as reasonably necessary to operate the Franchised Business.
- D. **Scope of Confidential Information.** The confidentiality requirements set forth in the preceding paragraph will remain in full force and effect during the term of this Agreement and in perpetuity after its termination or expiration and non-renewal. Franchisor's trade secrets and proprietary/confidential information include the following:
1. The Manuals, as well as information related to the following: (i) site-selection criteria for Shops; (ii) methods, techniques and trade secrets for use in connection with the System for the establishment and operation of a Shop; (iii) marketing research and promotional, marketing and advertising programs for the Franchised Business and Shops generally; (iv) knowledge of specification for and suppliers of, and methods of ordering, certain products, fixtures, furnishings, equipment and inventory used at the Franchised Business and Shops generally; (v) knowledge of the operating results and financial performance of any Shop utilizing the System; (vi) customer communication and loyalty programs, along with data used or generated in connection with those programs; (vii) Franchisor's other instructional manuals, as well as any training materials and information Franchisor has developed for use in connection with the System; (viii) information regarding the development of the Proprietary Marks; (ix) information generated by, or used or developed in, the operation of the Franchised Business, including customer names, addresses, telephone numbers and any other information contained in the Franchised Business's computer system; and (x) the design, build-out and any construction/remodeling plans for the interior and exterior of the Franchised Business and Shops generally;
 2. The special recipes, ingredients, menu items, storage systems, preparation, cooking, presentation, techniques and methodology associated with the Approved Products; and
 3. Any other information that may be imparted to Franchisee from time to time and designated by Franchisor as confidential (collectively, the "Confidential Information").
- E. **Confidential Information as Property of Franchisor.** Franchisee acknowledges and agrees that the Confidential Information and any business goodwill of the Franchise are Franchisor's sole and exclusive property and that Franchisee will preserve the confidentiality thereof. Upon the termination or expiration and non-renewal of this Agreement, all items, records, documentation, and recordings incorporating any Confidential Information will be immediately turned over by Franchisee, at Franchisee's sole expense, to Franchisor or to Franchisor's authorized representative.

- F. **Information Not Proprietary.** Excepted from Confidential Information for purposes of non-disclosure to any third parties by Franchisee and/or its Restricted Persons (as hereinafter defined) is information that:
1. Becomes publicly known through no wrongful act of Franchisee or Restricted Persons; or
 2. Is known by Franchisee or Restricted Persons without any confidential restriction at the time of the receipt of such information from Franchisor or becomes rightfully known to them without confidential restriction from a source other than Franchisor.
- G. **Non-Disclosure Obligations.** Franchisee shall at all times, before and after the term of this Agreement, treat the Confidential Information as confidential and shall use all reasonable efforts to keep such information secret and confidential. The Manuals must remain at the Premises and be kept in a secure location, under lock and key, except when it is being studied by Franchisee or Franchisee's employees. Franchisee shall not, at any time without Franchisor's prior written consent, copy, scan, duplicate, record, distribute, disseminate, or otherwise make the Manuals available to any unauthorized person or entity, in whole or in part.
- H. **Prevention of Unauthorized Use or Disclosure.** Franchisee shall adopt and implement all reasonable procedures as Franchisor may prescribe from time to time to prevent the unauthorized use or disclosure of any of the Confidential Information. Franchisee must ensure and require that all of its officers, agents, directors, shareholders, trustees, beneficiaries, partners, employees, spouses of employees, and independent contractors who may obtain or who are likely to obtain knowledge concerning the Confidential Information (collectively, "Restricted Persons") execute Franchisor's prescribed form of confidentiality agreement that will be in substantially the same form attached to this Agreement as Exhibit E (the "Confidentiality and Non-Competition Agreement"). Franchisee must obtain a signed copy of the Confidentiality and Non-Competition Agreement from any such person prior to, or at the same time of, that person undertaking its role and/or employment or association with Franchisee or the Franchised Business. Franchisee's spouse or significant other shall also be bound by the same requirement and shall sign the same Confidentiality and Non-Competition Agreement. Franchisee must provide Franchisor with a copy of each signed Confidentiality and Non-Competition Agreement within ten (10) days of Franchisor's request.
- I. **Proprietary Manuals.** Franchisor will loan one, or otherwise provide access to, one (1) copy of the Manuals to Franchisee. The Manuals shall at all times remain the sole property of Franchisor and must be returned to Franchisor upon termination or expiration and non-renewal of this Agreement.
- J. **Modification of Manuals.** In order for Franchisee to benefit from new knowledge, information, methods, and technology adopted and used by Franchisor in the operation of the System, Franchisor may from time to time revise the Manuals, and Franchisee agrees to adhere to and abide by all such revisions (at its expense). Franchisee agrees at all times to keep its copy of the Manuals current and up-to-date. In the event of any dispute as to the contents of Franchisee's Manual, the terms of the master copy of the Manuals maintained by Franchisor at its home office shall be controlling. Out-of-date pages must be returned to Franchisor immediately upon replacement. Franchisor may provide any supplements,

updates or revisions to the Manuals via the Internet, email, the System-wide intranet/extranet or any other electronic or traditional mediums it deems appropriate.

9. **ADVERTISING**

- A. **Advertising and Sales Promotion Programs.** Franchisor may from time to time develop and create advertising and sales promotion programs designed to promote and enhance the collective success of all or some of the Shops operating under the System. Franchisee must participate in all such advertising and sales promotion programs in accordance with the terms and conditions established by Franchisor for each program. In all aspects of these programs, including without limitation, the type/quantity/timing/placement and choice of media, and market areas and advertising agencies, the System standards and specifications established by Franchisor shall be final and binding upon Franchisee. Franchisor may also request that Franchisee purchase and/or make copies (at Franchisee's expense) and subsequently use certain other advertising or promotional materials that Franchisor designates for use in connection with the Franchised Business.
- B. **Approval for all Advertising/Promotional Materials.** All advertising and promotion by Franchisee in any medium must be conducted in a professional manner and shall conform to Franchisor's standards and requirements as set forth in the Manuals or otherwise. Franchisee shall obtain Franchisor's approval of all advertising and promotional plans and materials prior to use if such plans and materials have not been prepared by Franchisor or previously approved by Franchisor during the twelve (12) months prior to their proposed use. Franchisee must submit unapproved plans and materials to Franchisor, and Franchisor will have thirty (30) days to notify Franchisee of its approval or disapproval of such materials. If Franchisor does not provide its specific approval of the proposed materials within this thirty (30) day period, the proposed materials will be deemed rejected. Any plans and materials that Franchisee submits to Franchisor for its review will become Franchisor's property and there will be no restriction on Franchisor's use or dissemination of such materials. Franchisor may revoke its approval of any previously-approved advertising materials upon notice to Franchisee. Franchisor reserves the right to require Franchisee to include certain language on all advertising to be used locally by Franchisee or to be used by a Cooperative, including, but not limited to, the phrase "Franchises Available" and references to Franchisor's telephone number and/or website.
- C. **Grand Opening Marketing Spend.** Franchisee must spend a minimum of between \$10,050 and \$12,000 to promote and advertise the grand opening of the Franchised Business within the Designated Territory, which must be expended during the time period beginning approximately 30 – 60 days prior to the opening of the Franchised Business through the opening of the Franchised Business (the "Initial Marketing Spend"). The exact amount of Franchisee's Grand Opening Marketing Spend will be determined after Franchisee secures its approved Premises.
- D. **Local Advertising Requirement.** In addition to the Initial Marketing Spend, Franchisee must expend a minimum amount on the local marketing, advertising and promotion of the Franchised Business within the Designated Territory that amounts to: (i) 2 % of Adjusted Gross Sales generated by the Franchised Business during the preceding calendar month in connection with Adjusted Gross Sales generated by the Franchised Business up to \$500,000 in a given calendar year of operations; and (ii) 1% of the Adjusted Gross Sales generated by the Franchised Business in excess of \$500,000 in any calendar year of operations (the "Local Advertising Requirement").

1. Upon Franchisor's request, Franchisee must provide Franchisor with itemized reports documenting proof of its monthly expenditures for local advertising and marketing in a form Franchisor may require. Franchisor reserves the right to increase the minimum local marketing requirement if determined by Franchisor, in our sole discretion, that to do so will be in the best interest of the System.
 2. Franchisee must ensure that the Franchised Business has a dedicated phone line for use in connection with the Franchised Business only (and no other business, including any other System franchise);
 3. Franchisee may not advertise and promote the Franchised Business outside of the Designated Territory, unless (a) the geographic area wherein Franchisee wishes to advertise is contiguous to the Designated Territory and that area has not been granted to any other System location or System franchisee/developer, or (b) Franchisor otherwise provides its prior written consent in writing.
 4. Franchisee agrees and acknowledges that it may be required to expend any portion of its monthly Local Advertising Requirement on materials or services that are acquired from and/or provided by one (1) or more Approved Suppliers.
- E. **Brand Development Fund.** Franchisor has established a brand development Fund designed to promote, market, advertise and/or otherwise develop the System, Proprietary Marks and brand generally. Franchisee is required to contribute to this Fund on a weekly basis in an amount equal to up to three percent (3%) of the Adjusted Gross Sales of the Franchised Business as described in Section 4. All payments by Franchisee to the Fund are non-refundable upon payment, and Franchisor will account separately for all sums paid to the Fund. The Fund will be maintained and administered by Franchisor or Franchisor's designee as follows:
1. Franchisor will use Fund and all contributions to it and any earnings on it, exclusively for preparing, directing, conducting, placing, and administering advertising, marketing, public relations, and/or promotional programs and materials, and any other activities, that Franchisor believes would enhance the image of the System, Proprietary Marks, and Approved Products or Services.
 2. Franchisor is not obligated to spend monies from the Fund in any particular Franchisee's market in proportion to the payments to the Fund made by the Franchisee in that market. Franchisor does not represent that it will spend any particular amount of advertising funds locally, regionally, or nationally.
 3. The Fund may be used to meet any and all costs of maintaining, administering, directing, and preparing advertising. This includes, among other things, direct mail advertising, marketing surveys and other public relations activities, developing and maintaining the Franchisor's Website, employing advertising and public relations agencies, purchasing promotional items, and providing other marketing materials and services to the Shops operating under the System. These costs may include the proportionate salary share of Franchisor's employees that devote time and render services for advertising and promotion or the administration of the Fund, including administrative costs, salaries, and overhead expenses related to administering the Fund and its programs. No part of the Fund shall be used by Franchisor to defray any of its general operating expenses, other than those reasonably allocable to the advertising

described in this Section or other activities reasonably related to the administration or direction of the Fund.

4. Franchisor shall administratively segregate all contributions to the Fund on its books and records. All such payments to the Fund may be deposited in Franchisor's general operating account, may be commingled with Franchisor's general operating funds, and may be deemed an asset of Franchisor, subject to Franchisor's obligation to expend the monies in the Fund in accordance with the terms hereof. Franchisor may, in its sole discretion, elect to accumulate monies in the Fund for such periods of time, as it deems necessary or appropriate, with no obligation to expend all monies received in any fiscal year during that fiscal year. In the event Franchisor's expenditures for the Fund in a given fiscal year (of Franchisor) exceeds the total amount contributed to the Fund during such fiscal year, Franchisor shall have the right to be reimbursed to the extent of such excess contributions from any amounts subsequently contributed to the Fund or to use such excess as a credit against its future contributions. The parties do not intend that the Fund be deemed a trust.
 5. Franchisor shall, on an annual basis, account for the operation of the Fund and prepare an unaudited financial statement evidencing such accounting, which will be available to Franchisee upon its written request at least one hundred twenty (120) days after the Franchisor's fiscal year end for the past fiscal year. Franchisor will not be required to provide an audit with respect to the Fund, and Franchisor may dissolve the Fund at any time after it is established.
- F. **Advertising Council.** Franchisor may establish, if and when it deems appropriate in its sole discretion, a council to provide advice and guidance regarding the administration of the Fund and various other advertising/marketing matters (an "Advertising Council"). If Franchisor establishes an Advertising Council, it may serve in only an advisory capacity and may consist of franchisees, personnel from Franchisor's affiliate-owned Shops, or other management/employees that Franchisor designates. If an Advertising Council is established, the membership of such Advertising Council, along with the policies and procedures by which it operates, will be determined by Franchisor. The recommendations of the Advertising Council shall not be binding on Franchisor.
- G. **Website.** Franchisor agrees that it will establish an interior page on its corporate website to display the Premises and contact information associated with the Franchised Business for so long as (i) the Franchised Business is open and actively operating, and (ii) this Agreement is not subject to termination. Franchisee may not establish any separate website or other Internet presence in connection with the Franchised Business, System or Proprietary Marks without Franchisor's prior written consent. If approved to establish a separate website, Franchisee shall comply with Franchisor's policies, standards and specifications with respect to the creation, maintenance and content of any such website. Franchisee specifically acknowledges and agrees that any website owned or maintained by or for the benefit of Franchisee shall be deemed "advertising" under this Agreement, and will be subject to (among other things) Franchisor's approval as described in this Section 9. Franchisee may not promote or otherwise list its Franchised Business, or the Proprietary Marks or System, on any social media or networking site, including without limitation, Facebook, LinkedIn, Instagram, Pinterest, Twitter or YouTube, without Franchisor's prior written consent. Franchisor shall have the right to modify the provisions of this Section relating to Franchisee's use of separate websites and social media, as Franchisor determines necessary or appropriate.

- H. **Cooperatives.** Franchisor may establish regional advertising cooperatives that are comprised of multiple Shop owners located within a geographical region that Franchisor designates (each, a “Cooperative”). If Franchisor establishes a Cooperative and designates Franchisee as a member thereof, Franchisee may be required to contribute to the Cooperative in an amount not to exceed Franchisee’s Local Advertising Requirement each month. All amounts paid to a Cooperative will be credited towards Franchisee’s Local Advertising Requirement. Franchisor shall have the right to specify the governing rules, terms and operating procedures of any Cooperative.

10. **ACCOUNTING AND RECORDS**

- A. **Maintenance of Records.** Franchisee must, in a manner satisfactory to Franchisor and in accordance with generally accepted accounting principles, maintain original, full, and complete register tapes, computer files, back-up files, other records, accounts, books, data, licenses, contracts, and product vendor invoices which shall accurately reflect all particulars relating to the Franchised Business, as well as other statistical and financial information and records Franchisor may require. All of this information must be kept for at least three (3) years, even if this Agreement is no longer in effect. Upon Franchisor’s request, Franchisee must furnish Franchisor with copies of any or all product or equipment supply invoices reflecting purchases by or on behalf of the Franchised Business. In addition, Franchisee shall compile and provide to Franchisor any statistical or financial information regarding the operation of the Franchised Business, the products and services sold by it, or data of a similar nature, including without limitation, any financial data that Franchisor believes that it needs to compile or disclose in connection with the sale of franchises or that Franchisor may elect to disclose in connection with the sale of franchises. All data provided to the Franchisor under this Section 10 shall belong to Franchisor and may be used and published by Franchisor in connection with the System (including in Franchisor’s disclosure documents).
- B. **Examination and Audit of Records.** Franchisor and its designated agents shall have the right to examine and audit Franchisee’s records, accounts, books, computer files, and data at all reasonable times to ensure that Franchisee is complying with the terms of this Agreement. If such audit discloses that Franchisee has underreported the Adjusted Gross Sales of the Franchised Business or any amount due to Franchisor by two percent (2%) or more in any given reporting period (weekly, monthly or otherwise), then Franchisee must: (i) reimburse Franchisor any costs/expenses incurred in connection with conducting the inspection and audit; and (ii) pay any amount due and owing Franchisor as a result of Franchisee’s underreporting, along with any accrued interest on said amounts.
- C. **Computer System for Records.** Franchisee shall record all transactions and Adjusted Gross Sales of the Franchised Business on a Computer System that is approved by Franchisor, which must contain software that allows Franchisee to record accumulated sales without turning back, resetting or erasing such sales. Franchisor will, at all times and without notice to Franchisee, have the right to independently and remotely access and view Franchisee’s Computer System as described in Section 4 of this Agreement.
- D. **Computer System Files and Passwords.** Franchisee will not install or load any computer software on the hard disks of the Computer System used in connection with the Franchised Business without Franchisor’s prior written consent. All computer and file passwords associated with the Computer System must be supplied as a list to Franchisor by Franchisee, along with any modifications or changes to that list. The passwords to access

the Computer System located at the Premises or used by the Franchised Business, as well as all computer files and records related to the Franchised Business, are the exclusive property of Franchisor and Franchisee must provide Franchisor with these files and information upon the termination or expiration of this Agreement.

E. **Computer System Security and Compliance.**

3. **Data Security Standards.** Franchisee must ensure compliance with all payment card industry (“PCI”) and data security standard (“DSS”) standards, regulations, and requirements. Franchisee must meet the requirements of, and comply with enhanced and changes to, the PCI and DSS and maintain PIC compliance with the current version of the PCI and DSS. Franchisee is responsible to use all required tools, systems, and vendors to complete ongoing PCI requirements, including all required Computer System components and Required Software. Franchisee, along with any third-party software providers, will be responsible for all costs relating to PCI compliance and data security issues, including security threats, breaches, and malware. It is the responsibility of the Franchisee to alert Franchisor, not later than 24-hours following a suspected or confirmed data security breach in connection with any customer information or otherwise related to Franchised Business operations, so that appropriate action can be taken to protect customer data and notify relevant parties. Franchisee is not permitted to collect, store, transfer, etc. any unnecessary customer information.
4. **Security System.** Franchisee must install a security system in the Premises as specified in the Manuals. Franchisee is solely responsible for monitoring, maintenance, and upgrades to this systems. Franchisor must be afforded electronic and independent access to such security system upon written notice in the Manuals or otherwise, but Franchisor has no obligation or responsibly to monitor the system for security reasons. By installing the security and monitoring system, Franchisee and its personnel may be waiving certain privacy rights, and Franchisee agrees to have such personnel sign a waiver with regards to such privacy rights. Franchisee agrees to indemnify and hold Franchisor harmless from and against any claim arising out of or related to this Section as part of Franchisee’s overall indemnification obligations under Section 11.
5. **Compliance Monitoring.** Franchisee may be required to install a compliance monitoring system as specified in the Manuals at the Premises at reference points designated by Franchisor. This compliance monitoring system is not a security system but is a management tool and Franchisor is not required to monitor the Franchised Business. Both Franchisee and Franchisor will have the right to online access to any such compliance monitoring system.

F. **Current Contracts, Listings and Projects.** At any time and upon request of Franchisor, Franchisee shall provide Franchisor with a copy or summary listing, at Franchisor’s discretion, of all current contracts, listings, agreements, and projects that Franchisee is involved in or working with.

G. **Tax Returns.** Upon Franchisor’s request, Franchisee shall furnish the Franchisor with a copy of each of its reports, returns of sales, use and gross receipt taxes, and complete copies of any state or federal income tax returns covering the operation of the Franchised Business, all of which Franchisee shall certify as true and correct.

- H. **Required Reports.** Franchisee must provide Franchisor with the following reports and information, all of which must be certified as true and correct by Franchisee and in the form and manner prescribed by Franchisor: (i) a signed Adjusted Gross Sales Report as described more fully in Section 4 of this Agreement on or before Monday of each week; (ii) on or before the twentieth (20th) of each month, an unaudited profit and loss statement for the Franchised Business for the preceding calendar month; (iii) within sixty (60) days of each calendar quarter, an unaudited balance sheet reflecting the financial position of the Franchised Business as of the end of that calendar quarter; (iv) within sixty (60) days of Franchisor's request, a financial statement that details the total assets and liabilities of the Franchised Business (and, if appropriate Franchisee and personal guarantors under this Agreement); (v) within ninety (90) days after the close of each fiscal year of Franchisee, financial statements which shall include a statement of income and retained earnings, a statement of changes in financial position, and a balance sheet of the Franchised Business, all as of the end of such fiscal year; and (vi) any other financial information or performance metrics of the Franchised Business that Franchisor may reasonably request.
- I. **Change to Ownership of Franchisee.** In addition to the foregoing statements, Franchisee must provide Franchisor with written reports regarding any authorized change to: (i) the listing of all owners and other holders of any type of interest (legal or beneficial) in Franchisee or the Franchised Business; and (ii) Franchisee's partners, officers, directors, as well as any of the Designated Managers that manage the day-to-day operations of the Franchised Business. Franchisee will notify Franchisor in writing within ten (10) days after any such change, unless Franchisor is required to first notify Franchisor and obtain its approval prior to making any such change.

11. **INSURANCE AND INDEMNIFICATION**

- A. **Required Insurance.** Franchisee shall, at its own expense and no later than the earlier of (a) the date on which Franchisee uses any of the Proprietary Marks, or (b) the date Franchisee begins building out the Premises, procure and maintain in full force and effect throughout the term of this Agreement the types of insurance enumerated in the Manuals or otherwise in writing (whether the Franchised Business is open or not). This insurance shall be in such amounts Franchisor or the lessor of the Premises designates from time to time. In addition to any other insurance that may be required by applicable law, or by lender or lessor, Franchisee shall procure all insurance coverages in the minimum coverage amounts as set forth in the Manual(s) or otherwise in writing by Franchisor. Franchisee must buy insurance only from a company rated "A" or better by A.M. Best & Company, Inc. (or similar criteria as Franchisor periodically specifies), unless Franchisor designates specific carriers from which Franchisee must purchase coverage (in which case Franchisee may only purchase from the designated carrier(s)). Franchisor may periodically increase the amounts of coverage required under these insurance policies and/or require different or additional insurance coverage to reflect inflation, identification of new risks, changes in law or standards of liability, higher damage awards, changing economic conditions, or other relevant changes in circumstances. All insurance policies Franchisee purchases must name Franchisor and any affiliate Franchisor designate as additional insureds, and provide for thirty (30) days' prior written notice to Franchisor of a policy's material modification or cancellation. The cost of Franchisee's premiums will depend on the insurance carrier's charges, terms of payment, and Franchisee's insurance and payment histories. Franchisee shall make timely delivery of certificates of all required insurance to Franchisor, each of which shall contain a statement by the insurer that the policy will not be cancelled or materially altered without at least thirty (30) days' prior written notice to Franchisor. The

procurement and maintenance of such insurance shall not relieve Franchisee of any liability to Franchisor under any indemnity requirement of this Agreement. Franchisee must at all times during the entire Term of this Agreement and at their own expense keep in full force, by advance payment(s), the minimum insurance policies set forth in the initial Manual(s) that Franchisor provides to Franchisee and/or as set forth in any subsequent writing within 30 days of the date Franchisee received such writing.

- B. **Failure to Procure and Maintain Insurance.** If Franchisee fails for any reason to procure and maintain the required insurance coverage, Franchisor has the right and authority (without having any obligation to do so) to immediately procure such insurance coverage, in which case Franchisee must: (i) reimburse Franchisor for the costs incurred to obtain the required insurance (including any premium amounts paid); and (ii) pay Franchisor its then-current administrative fee, as may be reasonably charged by Franchisor as consideration for securing the required insurance on Franchisee's behalf.
- B. **Indemnification.** Franchisee, as a material part of the consideration to be rendered to Franchisor, agrees to indemnify, defend and hold Franchisor, as well as Franchisor's directors, officers, principals/owners, managers, shareholders, affiliates, subsidiaries, employees, servants, agents, successors and assignees (collectively, the "Indemnitees"), harmless from and against any and all losses, damage, claims, demands, liabilities and causes of actions of every kind or character and nature, as well as costs and expenses incident thereto (including reasonable attorneys' fees and court costs), that are brought against any of the Indemnitees (collectively, the "Claims") that arise out of or are otherwise related to Franchisee's ownership, construction, management, or operation of the Franchised Business in any manner. Notwithstanding the foregoing, at Franchisor's option, Franchisor may choose to engage counsel and defend against any such Claim and may require immediate reimbursement from the Franchisee of all expenses and fees incurred in connection with such defense.

12. **INDEPENDENT CONTRACTOR**

- A. **No Fiduciary Relationship.** In all dealings with third parties, including without limitation, employees, suppliers, and customers, Franchisee shall disclose in an appropriate manner acceptable to Franchisor that it is an independent entity licensed by Franchisor. Nothing in this Agreement is intended by the parties hereto either to create a fiduciary relationship between them or to constitute the Franchisee an agent, legal representative, subsidiary, joint venture, partner, employee, or servant of Franchisor for any purpose whatsoever.
- B. **Independent Contractor Relationship.** It is understood and agreed that Franchisee is an independent contractor and is in no way authorized to make any contract, agreement, warranty, or representation or to create any obligation on behalf of Franchisor. Upon Franchisor's request, Franchisee must display a sign in its Franchised Business displaying the following phrase (or something similar): "This Shop is independently owned and operated pursuant to a license agreement." Neither this Agreement nor Franchisor's course of conduct is intended, nor may anything in this Agreement (nor Franchisor's course of conduct) be construed to state or imply that Franchisor is the employer of Franchisee's employees and/or independent contractor.

13. **TRANSFER AND ASSIGNMENT**

- A. **Franchisee Right to Transfer.** Franchisee's rights under this Agreement are personal, and Franchisee shall not sell, transfer, assign or encumber Franchisee's interest in this

Agreement or the Franchised Business (or undertake any of the actions identified in Section 13(C) of this Agreement) without Franchisor's prior written consent. Any sale, transfer, assignment or encumbrance made without Franchisor's prior written consent shall be voidable at Franchisor's option and shall subject this Agreement to termination as specified herein.

B. Death or Disability.

1. In the event of Franchisee's death, disability or incapacitation (or the death, disability or incapacitation of Franchisee's principals/owners/guarantors), Franchisee's legal representative, or Franchisee's partner's or guarantor's respective legal representative, as applicable, will have the right to continue the operation of the Franchised Business as "Franchisee" under this Agreement if: (i) within ninety (90) days from the date of death, disability or incapacity (the "90 Day Period"), such person has obtained Franchisor's prior written approval and has executed Franchisor's then-current franchise agreement for the unexpired term of the franchise, or has furnished a personal guaranty of any partnership, corporate or limited liability company Franchisee's obligations to Franchisor and Franchisor's affiliates; and (ii) such person successfully completes Franchisor's training program (which Franchisor will provide at Franchisor's then-current tuition rate). Such assignment by operation of law will not be deemed in violation of this Agreement, provided such heirs or legatees accept the conditions imposed by the Franchise Agreement and are acceptable to Franchisor.
2. Franchisor is under no obligation to operate the Franchised Business, or incur any obligation on behalf of any incapacitated franchisee, during or after the 90 Day Period. If necessary, Franchisee (or Franchisee's legal representative, as applicable) shall appoint a previously approved acting interim manager to operate the Franchised Business during the 90 Day Period. In the event of Franchisee's death, disability, absence or otherwise, Franchisor may (but is not required to) operate the Franchised Business on Franchisee's behalf and at Franchisee's expense for such period of time (and under such terms and conditions) as Franchisor determines, including paying out the assets and/or revenues of the Franchised Business to cover any or all past, current and/or future obligations of the Franchised Business (including any amounts owed to Franchisor and/or any affiliate) in such priorities as Franchisor determines in Franchisor's sole discretion. Franchisor may pay itself a reasonable amount to reimburse Franchisor for Franchisor's management services and other costs. Franchisor may obtain approval of a court or arbitrator for any such arrangements, the attorney's fees and other costs incurred in connection with obtaining such approval to be charged against the assets and/or revenues of the Franchised Business. Franchisee (and/or Franchisee's estate) will indemnify Franchisor against any costs and/or liabilities incurred by it in connection with, or related in any way to, the operation (or otherwise) of the Franchised Business.
3. Franchisor will not collect any transfer fee if there is a transfer under this Section 13(B) to an immediate family member of the Franchisee that Franchisor approves pursuant to Section 13(E).

C. Ownership. In addition to those acts described in Section 13(A), a transfer or assignment requiring Franchisor's prior written consent shall be deemed to occur: (i) if Franchisee is a

corporation, upon any assignment, sale, pledge or transfer of any fractional portion of Franchisee's voting stock or any increase in the number of outstanding shares of Franchisee's voting stock which results in a change of ownership, (ii) if Franchisee is a partnership, upon the assignment, sale, pledge or transfer of any fractional partnership ownership interest; or (iii) if Franchisee is a limited liability company, upon the assignment, sale, pledge or transfer or any interest in the limited liability company. Any new partner, shareholder, or member or manager owning having an ownership interest in the surviving entity after the proposed transfer will be required to personally guarantee Franchisee's obligations under this Agreement. A transfer pursuant to (i) and (iii) above shall not be subject to Franchisor's right of first refusal as set forth in Section 13(D).

D. **Right of First Refusal.** If Franchisee proposes to transfer either this Agreement or all, or substantially all, of the assets used in connection with the Franchised Business or any interest in Franchisee's lease to any third party (other than a corporation or limited liability company as set forth in Section 13(C) hereof or in the event of Franchisee's death/disability as set forth in Section 13(B)), Franchisee shall first offer to sell such interest to Franchisor on the same terms and conditions as offered by such third party. Franchisee shall obtain from the third party and provide Franchisor a statement in writing, signed by the third party and Franchisee, of the terms of the offer ("Letter of Intent"). If Franchisor elects not to accept the offer within a thirty (30) day period, Franchisee shall have a period not to exceed sixty (60) days to complete the transfer described in the Letter of Intent subject to the conditions for approval set forth in Section 13(E) of this Agreement. Franchisee shall effect no other sale or transfer as contemplated under the Letter of Intent without first complying with this Section. Any material change in the terms of the offer will be deemed a new proposal subject to Franchisor's right of first refusal. So long as Franchisee has obtained Franchisor's prior written consent, which shall not be unreasonably withheld, a transfer to an existing partner or shareholder, or a transfer as a result of the death, disability or incapacitation of a shareholder or partner, in accordance with the provisions set forth below, is not subject to Franchisor's first right of refusal.

E. **Conditions for Approval.** Franchisor may condition Franchisor's approval of any proposed sale or transfer of the Franchised Business or of Franchisee's interest in this Agreement or any other acts of transfer described in Section 13(C) upon satisfaction of the following occurrences:

1. All of Franchisee's accrued monetary obligations to Franchisor, Franchisor's affiliates, and Franchisor's designated/approved suppliers and vendors, are satisfied;
2. Franchisee must cure all existing defaults under this Agreement, or any other agreement between Franchisee and Franchisor, Franchisor's affiliates, Franchisor's designated/approved suppliers and vendors, within the period permitted for cure and have substantially complied with such agreements during their respective terms;
3. Franchisee and Franchisee's principals (if Franchisee is a partnership, corporation or limited liability company), and the transferee (if it has had any previous relationship with Franchisor or Franchisor's affiliates), must execute a general release under seal, in a form satisfactory to Franchisor, of any and all claims against Franchisor and Franchisor's affiliates and officers, directors, shareholders and employees, in their corporate and individual capacities;

4. Franchisee or transferee shall provide Franchisor a copy of the executed purchase agreement relating to the proposed transfer with all supporting documents and schedules, including transferee's assumption and agreement to faithfully perform all of Franchisee's obligations under this Agreement;
5. The transferee shall demonstrate to Franchisor's satisfaction that he or she meets Franchisor's educational, managerial and business standards; possesses a good moral character, business reputation and credit rating; has the aptitude and ability to conduct the business to be transferred; and has adequate financial resources and capital to meet the performance obligations under this Agreement; however, transferee shall not be in the same business as Franchisor either as licensor, franchisor, independent operator or licensee of any other business or chain which is similar in nature or in competition with Franchisor, except that the transferee may be an existing franchisee of ours;
6. The transferee shall execute Franchisor's then-current franchise agreement (which may contain materially different terms than this Agreement) for the remaining balance of Franchisee's term under this Agreement, assuming all of Franchisee's obligations under this Agreement, with transferee's term commencing on the date the transferee executes the then-current franchise agreement;
7. Franchisee or transferee shall pay Franchisor a transfer fee amounting to \$10,000 (the "Transfer Fee"). The transfer fee is non-refundable and is only payable at the time of the approved Transfer;
8. The transferee shall satisfactorily complete Franchisor's Initial Training Program at the transferee's expense within the time frame Franchisor sets forth, with transferee also responsible for all costs and expenses associated with attending the initial training program;
9. Franchisee (and Franchisee's principals/guarantors if Franchisee is a partnership, corporation or limited liability company) must comply with the post-termination provisions of this Agreement;
10. The transferee must demonstrate that is has obtained or maintained, within the time limits set by Franchisor, all permits and licenses required for the continued operation of the Franchised Business;
11. To the extent required by the terms of any leases or other agreements, the lessors or other parties must have consented to the proposed transfer;
12. The transfer must be made in compliance with any laws that apply to the transfer, including state and federal laws governing the offer and sale of franchises;
13. The purchase price and terms of the proposed transfer must not be so burdensome to the prospective transferee as to impair or materially threaten its future operation of the Franchised Business and performance under its franchise agreement;
14. Franchisor shall have the right to disclose to any prospective transferee such revenue reports and other financial information concerning Franchisee and Franchised Business as Franchisee has supplied Franchisor hereunder.

Franchisor will not unreasonably withhold its consent to a proposed transfer or assignment requested by Franchisee, provided the foregoing conditions are met. Franchisor's approval of a transfer shall not operate as a release of any liability of the transferring party nor shall such approval constitute a waiver of any claims Franchisor may have against the transferring party. Furthermore, Franchisor agrees that Franchisee will not be required to pay any transfer fee in the event: (i) Franchisee wishes to transfer its rights under the Franchise Agreement to a newly-established legal business entity that is wholly owned by Franchisee and established solely for purposes of operating the Franchised Business under the Franchise Agreement; or (ii) Franchisee is required to encumber certain assets of the Franchised Business (or subordinate Franchisor's security interest thereto) in order to receive SBA or other traditional bank financing, provided Franchisor otherwise approves of the transfer.

- F. **Transfer from an Individual Franchisee to Business Entity.** If Franchisee is an individual and desires to assign its rights under this Agreement to a corporation or limited liability company, and if all of the following conditions are met, Franchisor will consent to the transfer without assessing the transfer fee or training tuition fees set forth in Section 13(E)(7)-(8), and such assignment will not be subject to Franchisor's right of first refusal in Section 13(D): (i) the corporation or limited liability company is newly organized and its activities are confined to operating the Franchised Business; (ii) Franchisee is, and at all times remains, the owner of 51% or more of the outstanding shares of the corporation or a controlling interest in the limited liability company; (iii) the corporation or limited liability company agrees in writing to assume all of Franchisee's obligations hereunder; ~~and (iv) it is your first transfer of this Agreement;~~ and (v) all stockholders of the corporation, or members and managers of the limited liability company, as applicable, personally guarantee prompt payment and performance by the corporation or limited liability company of all its obligations to Franchisor and Franchisor's affiliates, under this Agreement and any other agreement between Franchisee and Franchisor and/or Franchisor's affiliates, and execute the Personal Guaranty attached to this Agreement as Exhibit B.
- G. **Franchisor's Right to Transfer.** Franchisor has the right to sell, transfer, assign and/or encumber all or any part of Franchisor's assets and Franchisor's interest in, and rights and obligations under, this Agreement in Franchisor's sole discretion.

14. **COVENANTS**

Franchisee acknowledges that, as a participant in Franchisor's System, Franchisee will receive proprietary and confidential information and materials, trade secrets, and the unique methods, procedures and techniques that Franchisor has developed. As such, Franchisee agrees to the covenants in this Section to protect Franchisor, the System, Proprietary Marks and Franchisor's other franchisees.

- A. **During the Term of this Agreement.** During the term of this Agreement, neither Franchisee, its principals, owners, guarantors or Designated Manager(s), nor any immediate family of Franchisee, its principals, owners, guarantors or Designated Manager(s), may, directly or indirectly, for themselves or through, on behalf of, or in conjunction with any other person, partnership or corporation:
1. Own, maintain, engage in, be employed or serve as an officer, director, or principal of, lease space to, lend money or extend credit to, or have any other interest in or involvement with: (i) any other restaurant or business that is a restaurant or other eating establishment offering to the public milkshakes, ice cream, chocolates or other specialty drinks or desserts, as well as any other Approved Products primarily offered by System Shops (each, a "Competing Business"); or (ii) offers or grants

licenses or franchises, or establishes joint ventures, for the ownership or operation of a Competing Business. For purposes of this Agreement, a Competing Business does not include the following: any business operated by Franchisee under a Franchise Agreement with Franchisor; or any business operated by a publicly-traded entity in which Franchisee owns less than two percent (2%) legal or beneficial interest;

2. Employ or seek to employ any person who is at that time employed by Franchisor, Franchisor's affiliates or any other System franchisee, or otherwise directly or indirectly induce or seek to induce such person to leave his or her employment thereat; or
3. Divert, or attempt to divert, any prospective customer to a Competing Business in any manner.

B. After the Term of this Agreement.

1. For a period of two (2) years after the expiration and nonrenewal, transfer or termination of this Agreement, regardless of the cause, neither Franchisee, its principals, owners and guarantors, nor any member of the immediate family of Franchisee, its principals, owners or guarantors, may, directly or indirectly, for themselves or through, on behalf of, or in conjunction with any other person, partnership or corporation, be involved with any business that competes in whole or in part with Franchisor by offering or granting licenses or franchises, or establishing joint ventures, for the ownership or operation of a Competing Business. The geographic scope of the covenant contained in this Section is any location where Franchisor can demonstrate it has offered or sold franchises as of the date this Agreement is terminated or expires.
2. For a period of two (2) years after the expiration and nonrenewal, transfer or termination of this Agreement or assignment of this Agreement by Franchisee, regardless of the cause, neither Franchisee, its principals, owners and guarantors, nor any immediate family member of Franchisee, its principals, owners or guarantors, may, directly or indirectly, for themselves or through, on behalf of, or in conjunction with any other person, partnership or corporation:
 - a. Own, maintain, engage in, be employed as an officer, director, or principal of, lend money to, extend credit to, or otherwise have any interest in or involvement with any other Competing Business: (i) within the Designated Territory; or (ii) within a 10-mile radius of (a) the perimeter of the Designated Territory, or (b) any other System Shop (whether franchised or company-owned) that is open or under development as of the date this Agreement is terminated or expires (or as of the date Franchisee assigns this Agreement); or
 - b. Solicit business from customers of Franchisee's former Franchised Business or contact any of Franchisor's suppliers or vendors for any competitive business purpose.

C. Intent and Enforcement. It is the parties' intent that the provisions of this Section 14 be judicially enforced to the fullest extent permissible under applicable law. Accordingly, the

parties agree that any reduction in scope or modification of any part of the noncompetition provisions contained herein shall not render any other part unenforceable. In the event of the actual or threatened breach of this Section 14 by Franchisee, any of Franchisee's principals, or any member of the immediate family of Franchisee or Franchisee's principals, Franchisor shall be entitled to an injunction restraining such person from any such actual or threatened breach. Franchisee acknowledges that the covenants contained herein are necessary to protect the goodwill of the Franchised Business, other System franchisees, and the System. Franchisee further acknowledges that covenants contained in this Section 14 are necessary to protect Franchisor's procedures and know-how transmitted during the term of this Agreement. Franchisee agrees that in the event of the actual or threatened breach of this Section 14, Franchisor's harm will be irreparable and that Franchisor has no adequate remedy at law to prevent such harm. Franchisee acknowledges and agrees on Franchisee's own behalf and on behalf of the persons who are liable under this Section 14 that each has previously worked or been gainfully employed in other careers and that the provisions of this Section 14 in no way prevent any such person from earning a living. Franchisee further acknowledges and agrees that the time limitation set forth above with regards to any post-term covenant in this Section 14 shall be tolled during any time period where Franchisee and/or its principals are in violation of Section 14(B) in any manner.

- D. **Confidentiality and Non-Competition Agreement.** Franchisee must ensure that all management personnel of the Franchised Business, as well as any officers and directors of Franchisee, execute Franchisor's then-current form of Confidentiality and Non-Competition Agreement (which will be in substantially the same form as the document attached to this Agreement as Exhibit E). Franchisee must furnish Franchisor a copy of each executed agreement.
- E. **No Defense.** Franchisee hereby agrees that the existence of any claim Franchisee may have against Franchisor, whether or not arising from this Agreement, shall not constitute a defense to Franchisor's enforcement of the covenants contained in this Section 14. Franchisee agrees to pay all costs and expenses (including reasonable attorneys' fees) that Franchisor incurs in connection with the enforcement of this Section 14.

15. **DEFAULT AND TERMINATION**

Franchisor may terminate this Agreement as described in this Section, and Franchisee agrees and acknowledges that the defaults, or failure to cure such defaults within the appropriate time period prescribed below (if any), shall constitute "good cause" and "reasonable cause" for termination under any state franchise laws or regulations that might apply to the operation of the Franchised Business.

- A. **Automatic Termination.** This Agreement will automatically terminate without notice or an opportunity to cure upon the occurrence of any of the following:
 - 1. The Franchisee becomes insolvent or makes a general assignment for the benefit of creditors, unless otherwise prohibited by law;
 - 2. A petition in bankruptcy is filed by Franchisee or such a petition is filed against and consented to by Franchisee and not dismissed within thirty (30) days;

3. A bill in equity or other proceeding for the appointment of a receiver of Franchisee or other custodian in connection with the Franchisee or Franchised Business (or assets of the Franchised Business) is filed and consented to by Franchisee;
4. A receiver or other custodian (permanent or temporary) of Franchisee's assets or property, or any part thereof, is appointed;
5. A final judgment in excess of \$10,000 against Franchisee remains unsatisfied or of record for sixty (60) days or longer (unless a bond is filed or other steps are taken to effectively stay enforcement of such judgment in the relevant jurisdiction), except that Franchisor may provide Franchisee with additional time to satisfy the judgment if Franchisee demonstrates that it is using commercially reasonable efforts to resolve the issues related to the judgment; or
6. Franchisee attempts to sell, transfer, encumber or otherwise dispose of any interest in Franchisee, this Agreement or the Franchised Business in violation of Section 13 hereof.

B. **Termination upon Notice.** Franchisor has the right to terminate this Agreement upon notice to Franchisee without providing Franchisee any opportunity to cure with respect to any of the following breaches or defaults:

1. If Franchisee or Franchisee's owners/principals commit any fraud or misrepresentation in the establishment or operation of the Franchised Business, including without limitation, any misrepresentation made in Franchisee's franchise application;
2. If Franchisee and any other required attendees fail to attend and complete the Initial Training Program within the time period prescribed in this Agreement;
3. If Franchisee receives from Franchisor three (3) or more notices to cure the same or similar defaults or violations set forth in Section 15(C) of this Agreement during any twelve (12) month period, whether or not these breaches were timely cured;
4. If Franchisee or Franchisee's owners/principals violate any of the in-term covenant not to compete or any of the other restrictive covenants set forth in Section 14 of this Agreement;
5. If Franchisee misuses the Proprietary Marks or Confidential Information in any manner, or otherwise violates any provision of this Agreement related to the use of the Proprietary Marks, Confidential Information and any other confidential materials provided by Franchisor (including those provisions related to non-disclosure of the Manuals and other confidential materials that Franchisor loans to Franchisee);
6. If Franchisee misuses any proprietary software that Franchisor designates for use in connection with the Franchised Business;
7. If Franchisee or any of Franchisee's principals default on any other agreement with Franchisor or any affiliate or Approved Supplier of Franchisor, and such default is not cured within the prescribed time period set forth in that other agreement;

8. If Franchisee defaults under the lease for the Premises and does not cure within the prescribed period of time thereunder, or if Franchisee otherwise loses its right to possess and control the Premises to operate the Franchised Business at any time during the term of this Agreement (except in cases of *force majeure* and cases where Franchisor has previously approved Franchisee's relocation request and Franchisee timely relocates);
9. If Franchisee fails to open and commence operations of the Franchised Business within the time period prescribed in Section 6 of this Agreement;
10. If Franchisee fails to cure any of the following violations under this Agreement within ten (10) days of being notified by Franchisor: (i) failure to offer only those Approved Products and Services that Franchisor authorizes at the Franchised Business; (ii) any purchase of any non-approved item or service for use in connection with the Franchised Business; or (iii) failure to purchase any Required Item that Franchisor designates as necessary for the establishment or operation of the Franchised Business from the appropriate Approved Supplier(s) that Franchisor designates;
11. If Franchisee voluntarily or otherwise abandons the Franchised Business. For purposes of this Agreement, the term "abandon" means: (i) failure to actively operate the Franchised Business for more than two (2) business days without Franchisor's prior written consent; or (ii) any other conduct on the part of Franchisee or its principals that Franchisor determines indicates a desire or intent to discontinue operating the Franchised Business in accordance with this Agreement or the Manuals;
12. If Franchisee fails to provide Franchisor with access to Franchisee's POS system, Computer System or registers located at the Franchised Business as required under this Agreement, and fails to remedy this default within three (3) business days of being notified by Franchisor;
13. If Franchisee fails to pay Franchisor, its affiliates or any of its Approved Suppliers any amount that is due and owing Franchisor within ten (10) days of the date that Franchisor (or other party owed the money) notifies Franchisee of the outstanding amount that is due and owed;
14. If Franchisee fails, for a period of fifteen (15) days after notification of non-compliance by appropriate authority, to comply with any law or regulation applicable to the operation of the Franchised Business;
15. If Franchisee fails, for a period of ten (10) days after notification of non-compliance, to obtain any other licenses, certificates, permits or approvals necessary to operate the Franchised Business at the Premises;
16. If Franchisee, any person controlling, controlled by, or under common control with the Franchisee, any principal officer or employee of Franchisee, or any person owning an interest in Franchise is convicted of a felony or any other crime or offense (even if not a crime) that is reasonably likely in the sole opinion of Franchisor to adversely affect the System, any System unit, the Proprietary Marks, or the goodwill associated therewith;

17. If Franchisee takes for Franchisee's own personal use any assets or property of the Franchised Business, including inventory, employee taxes, FICA, insurance or benefits;
 18. If there are insufficient funds in Franchisee's EFT Account to cover a check or EFT payment due to Franchisor or its affiliates under this Agreement three (3) or more times within any twelve (12) month period; and/or
 19. If Franchisee commits repeated violations of any health, zoning, sanitation, or other regulatory law, standard, or practice; operates the business in a manner that presents a health or safety hazard to its employees or customers; or if Franchisee loses its approval from any city, state, or other regulatory agency to operate a business that provides restaurant services or offers food.
- C. **Termination upon Notice and 30 Days' Cure.** Except for those defaults set forth in Sections 15(A)-(B) of this Agreement, Franchisor may terminate this Agreement upon notice to Franchisee in the event Franchisee: (i) breaches or violates any other covenant, obligation, term, condition, warranty, or certification under this Agreement, including Franchisee's failure to comply with any of Franchisor's other System standards and specifications in the operation of the Franchised Business as set forth in the Manuals; and (ii) fails to cure such breach or violation within thirty (30) days of the date Franchisee is provided with notice thereof by Franchisor.
- D. **Step-In Rights.** In addition to Franchisor's right to terminate this Agreement, and not in lieu of such right or any other rights hereunder, if this Agreement is subject to termination due to Franchisee's failure to cure any default within the applicable time period (if any), then Franchisor has the right, but not the obligations, to enter the Premises and exercise complete authority with respect to the operation of the Franchised Business until such time that Franchisor determines, in its reasonable discretion, that the default(s) at issue have been cured and that Franchisee is otherwise in compliance with the terms of this Agreement. In the event Franchisor exercises these "step-in rights," Franchisee must reimburse Franchisor for all reasonable costs and overhead that Franchisor incurs in connection with its operation of the Franchised Business, including without limitation, costs of personnel supervising and staffing the Franchised Business and any travel, lodging and meal expenses. Additionally, Franchisor will be entitled to a management fee amounting to eight percent (8%) of the Adjusted Gross Sales of the Franchised Business during the period in which Franchisor has exercised its step-in rights. If Franchisor undertakes to operate the Franchised Business pursuant to this Section, Franchisee must indemnify, defend and hold Franchisor (and its representatives and employees) harmless from and against any Claims that may arise out of Franchisor's operation of the Franchised Business.

16. **POST-TERM OBLIGATIONS**

Upon the expiration or termination of this Agreement, Franchisee shall immediately:

- A. **Cease Operation of Franchised Business and Affiliation with Franchisor.** Cease to be a franchise owner of Franchised Business under this Agreement and cease to operate the former Franchised Business under the System. Franchisee shall not thereafter directly or indirectly represent to the public that the former Franchised Business is or was operated or

in any way connected with the System or hold itself out as a present or former franchise owner of Franchise at or with respect to the Premises;

- B. **Return Manuals and Confidential Information.** Return to Franchisor the Manuals and all trade secrets, Confidential Information (including customer lists and information) and other confidential materials, equipment, software and property owned by Franchisor and all copies thereof. Franchisee shall retain no copy or record of any of the foregoing; provided, however, that Franchisee may retain its copy of this Agreement, any correspondence between the parties, and any other document which Franchisee reasonably needs for compliance with any applicable provision of law;
- C. **Assignment of Customer Contracts, Telephone/Facsimile Numbers and Domain Names.** Take such action as may that Franchisor designates to: (i) provide and assign to Franchisor the then-current and up-to-date customer list and any membership contracts to Franchisor; and (ii) transfer, disconnect, forward, or assign all telephone/facsimile numbers and domain names used in connection with the Franchised Business, as well as any white and yellow page telephone references, advertisements, and all trade and similar name registrations and business licenses to Franchisor or its designee and cancel any interest which Franchisee may have in the same (as Franchisor directs in its sole discretion). Franchisee agrees to execute all documents necessary to comply with the obligations of this Section, including the form Conditional Assignment of Telephone/Facsimile Numbers and Domain Names attached to this Agreement as Exhibit F;
- D. **Cease using Proprietary Marks.** Cease to use in advertising or in any manner whatsoever any methods, procedures, or techniques associated with the System in which Franchisor has a proprietary right, title, or interest; cease to use the Proprietary Marks and any other marks and indicia of operation associated with the System; and remove all trade dress, physical characteristics, color combinations, and other indications of operation under the System from the Premises. Without limiting the generality of the foregoing, Franchisee agrees that, in the event of any termination or expiration and non-renewal of this Agreement, it will remove all signage bearing the Proprietary Marks, deliver the fascia for such signs to Franchisor upon Franchisor's request, and remove any items that are characteristic of the System "trade dress" from the Premises. Franchisee agrees that Franchisor or a designated agent may enter upon the Premises at any time to make such changes at Franchisee's sole risk and expense and without liability for trespass. Upon Franchisor's request, Franchisee must provide all materials bearing the Proprietary Marks to Franchisor upon expiration or termination of this Agreement for any reason, without cost to Franchisor;
- E. **Compliance with Post-Term Covenants.** Comply with the post-term covenants not to compete and other restrictive covenants set forth in Section 14 of this Agreement;
- F. **Written Evidence of Compliance.** Provide Franchisor with written evidence that they have complied with the post-term obligations, within thirty (30) days' notice of termination or scheduled expiration of the franchise; and
- G. **Payment of Outstanding Amounts.** Pay Franchisor all amounts owed to Franchisor and/or its affiliates under the terms of this Agreement or otherwise in connection with the Franchised Business.

- H. **Option to Purchase Operating Assets.** Franchisor shall have the option, but not the obligation, within thirty (30) days after the date of termination, expiration, and non-renewal of this Agreement to purchase any and all of Franchisee's assets from the Franchised Business at a purchase price equal to net depreciated book value. If Franchisor elects this option, Franchisor will deliver written notice to Franchisee. Franchisor will have the right to inspect equipment at any time during this thirty (30) day period. If Franchisor elects to purchase equipment as part of the asset purchase, Franchisor will be entitled to, and Franchisee must provide, all customary warranties and representations as to compliance with law, the maintenance, function, and condition of the equipment and Franchisee's good title to the equipment (including, but not limited to, that Franchisee owns the equipment free and clear of any liens and encumbrances).

17. **TAXES AND INDEBTEDNESS**

- A. **Taxes.** Franchisee must promptly pay when due any and all federal, state, and local taxes, including without limitation, unemployment, workers' compensation, and sales taxes which are levied or assessed with respect to any services or products furnished, used, or licensed pursuant to this Agreement and all accounts or other indebtedness of every kind incurred by Franchisee in the operation of the Franchised Business.
- B. **Debts and Obligations.** Franchisee hereby expressly covenants and agrees to accept full and sole responsibility for any and all debts and obligations incurred in the operation of the Franchised Business.

18. **WRITTEN APPROVALS; WAIVERS; FORMS OF AGREEMENT; AMENDMENT**

- A. **Franchisor's Approval.** Whenever this Agreement requires or Franchisee desires to obtain Franchisor's approval, Franchisee shall make a timely written request. Unless a different period is specified in this Agreement, Franchisor shall respond with its approval or disapproval within fifteen (15) days of receipt of such request. If Franchisor has not specifically approved a request within such fifteen (15) day period, such failure to respond shall be deemed as a disapproval of any such request.
- B. **No Waiver.** No failure of Franchisor to exercise any power reserved to it by this Agreement and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of Franchisor's right to demand exact compliance with any of the terms herein. No waiver or approval by Franchisor of any particular breach or default by Franchisee; no delay, forbearance, or omission by Franchisor to act or give notice of default or to exercise any power or right arising by reason of such default hereunder; and no acceptance by Franchisor of any payments due hereunder shall be considered a waiver or approval by Franchisor of any preceding or subsequent breach or default by Franchisee of any term, covenant, or condition of this Agreement.
- C. **Terms of Other Franchise Agreements.** No warranty or representation is made by the Franchisor that all System franchise agreements heretofore or hereafter issued by Franchisor do or will contain terms substantially similar to those contained in this Agreement. Further, Franchisee recognizes and agrees that Franchisor may, in its reasonable business judgment due to local business conditions or otherwise, waive or modify comparable provisions of other franchise agreements heretofore or hereafter granted to other System franchise owners in a non-uniform manner.

- D. **Modification of System and Manuals.** Except as provided in Section 22 and Franchisor's right to unilaterally modify the System and Manuals, no amendment, change, or variance from this Agreement shall be binding upon either Franchisor or Franchisee unless set forth in writing and signed by both parties.
- E. **No Disclaimers of Franchise Disclosure Document.** Nothing in this Agreement or in any related agreement is intended to disclaim the representations we made in the franchise disclosure document.

19. **ENFORCEMENT**

- A. **Full Access to Premises for Inspection.** In order to ensure compliance with this Agreement and enable Franchisor to carry out its obligation under this Agreement, Franchisee agrees that Franchisor and its designated agents shall be permitted, with or without notice, full and complete access during business hours to inspect the Premises and all records thereof, including but not limited to, records relating to Franchisee's customers, suppliers, employees, and agents. Franchisee shall cooperate fully with the Franchisor and its designated agents requesting such access.
- B. **Injunctive Relief.** The Franchisor or its designee shall be entitled to obtain without bond, declarations, temporary and permanent injunctions, and orders of specific performance in order to enforce the provisions of this Agreement relating to Franchisee's use of the Proprietary Marks, the obligations of Franchisee upon termination or expiration of this Agreement, and assignment of the franchise and ownership interests in Franchisee or in order to prohibit any act or omission by Franchisee or its employees which constitutes a violation of any applicable law or regulation, which is dishonest or misleading to prospective or current customers of businesses operated under the System, which constitutes a danger to other franchise owners, employees, customers, or the public or which may impair the goodwill associated with the Proprietary Marks.
- C. **No Withholding of Payments.** Franchisee agrees and acknowledges that it may not withhold payments or amounts of any kind due to Franchisor on the premise of alleged nonperformance by Franchisor of any of its obligations hereunder.
- D. **Costs and Attorneys' Fees.** If Franchisee is in breach or default of any monetary or non-monetary obligation under this Agreement or any related agreement between Franchisee and Franchisor and/or Franchisor's affiliates, and Franchisor engages an attorney to enforce Franchisor's rights (whether or not formal judicial proceedings are initiated), Franchisee must reimburse Franchisor for all costs/expenses incurred in connection with enforcing its rights under this Agreement including all reasonable attorneys' fees, court costs and litigation expenses. If Franchisee institutes any legal action to interpret or enforce the terms of this Agreement, and Franchisee's claim in such action is denied or the action is dismissed, Franchisor is entitled to recover Franchisor's reasonable attorneys' fees, and all other reasonable costs and expenses incurred in defending against same, and to have such an amount awarded as part of the judgment in the proceeding.

20. **NOTICES**

Any notice required to be given hereunder shall be in writing and shall be either mailed by certified mail, return receipt requested, or delivered by a recognized courier service, receipt acknowledged. Notices must be provided to each party at the respective addresses set forth below:

To Franchisor: Milkshake Factory Franchise, LLC
Attn: Dan Reese, President
106 E. Liberty Street, Suite 310
Ann Arbor, Michigan 48104

With a copy to: Fisher Zucker, LLC
Attn: William R. Graefe, Esq.
21 South 21st Street
Philadelphia, PA 19103

To Franchisee:

Any notice complying with the provisions hereof will be deemed delivered at the earlier of: (i) three (3) days after mailing; or (ii) the actual date of delivery or receipt (as evidenced by the courier). Each party shall have the right to designate any other address for such notices by providing the other party(ies) with written notice thereof at the addresses above, and in such event, all notices to be mailed after receipt of such notice shall be sent to such other address.

21. **GOVERNING LAW AND DISPUTE RESOLUTION**

- A. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan, without reference to this state's conflict of laws principles.
- B. **Internal Dispute Resolution.** Franchisee must first bring any claim or dispute between Franchisee and Franchisor to Franchisor's management, after providing notice as set forth in Section 21(G) of this Agreement, and make every effort to resolve the dispute internally. Franchisee must exhaust this internal dispute resolution procedure before Franchisee may bring Franchisee's dispute before a third party. This agreement to first attempt resolution of disputes internally shall survive termination or expiration of this Agreement.
- C. **Mediation.** At Franchisor's option, all claims or disputes between Franchisee and Franchisor (or its affiliates) arising out of, or in any way relating to, this Agreement or any other agreement by and between Franchisee and Franchisor (or its affiliates), or any of the parties' respective rights and obligations arising from such agreement, which are not first resolved through the internal dispute resolution procedure set forth in Section 21(B) above, will be submitted first to mediation to take place at Franchisor's then-current headquarters under the auspices of the American Arbitration Association ("AAA"), in accordance with AAA's Commercial Mediation Rules then in effect. Before commencing any legal action against Franchisor or its affiliates with respect to any such claim or dispute, Franchisee must submit a notice to Franchisor, which specifies, in detail, the precise nature and grounds of such claim or dispute. Franchisor will have a period of thirty (30) days following receipt of such notice within which to notify Franchisee as to whether Franchisor or its affiliates elects to exercise its option to submit such claim or dispute to mediation. Franchisee may not commence any action against Franchisor or its affiliates with respect to any such claim or dispute in any court unless Franchisor fails to exercise its option to submit such claim or dispute to mediation, or such mediation proceedings have been terminated either: (i) as the result of a written declaration of the mediator(s) that further mediation efforts are not worthwhile; or (ii) as a result of a written declaration by Franchisor. Franchisor's rights to mediation, as set forth herein, may be specifically enforced by Franchisor. Each party will bear its own cost of mediation and Franchisor and

Franchisee will share mediator fees equally. This agreement to mediate will survive any termination or expiration of this Agreement. The parties will not be required to first attempt to mediate a controversy, dispute, or claim through mediation as set forth in this Section 21(C) if such controversy, dispute, or claim concerns an allegation that a party has violated (or threatens to violate, or poses an imminent risk of violating): (i) any federally protected intellectual property rights in the Proprietary Marks, the System, or in any Confidential Information or other confidential information; (ii) any of the restrictive covenants contained in this Agreement; and (iii) any of Franchisee's payment obligations under this Agreement.

- D. **Injunctive Relief.** Franchisee acknowledges and agrees that irreparable harm could be caused to Franchisor by Franchisee's violation of certain provisions of this Agreement and, as such, in addition to any other relief available at law or equity, Franchisor shall be entitled to obtain in any court of competent jurisdiction, without bond, restraining orders or temporary or permanent injunctions in order to enforce, among other items, the provisions of this Agreement relating to: (i) Franchisee's use of the Proprietary Marks and Confidential Information (including any proprietary software used in connection with the Franchised Business); (ii) the in-term covenant not to compete, as well as any other violations of the restrictive covenants set forth in this Agreement; (iii) Franchisee's obligations on termination or expiration of this Agreement; (iv) disputes and controversies based on or arising under the Lanham Act, or otherwise involving the Proprietary Marks, as now or hereafter amended; (v) disputes and controversies involving enforcement of the Franchisor's rights with respect to confidentiality under this Agreement; and (vi) to prohibit any act or omission by Franchisee or its employees that constitutes a violation of applicable law, threatens Franchisor's franchise system or threatens other franchisees of Franchisor. Franchisee's only remedy if such an injunction is entered will be the dissolution of the injunction, if appropriate, and Franchisee waives all damage claims if the injunction is wrongfully issued.
- E. **Venue.** Subject to Sections 21(B) through 21(D) of this Agreement, the parties agree that any actions arising out of or related to this Agreement must be initiated and litigated to conclusion exclusively in the state court of general jurisdiction in the courts of record of the State of Michigan. Each party waives any objection they may have to the personal jurisdiction of or venue in the courts of Michigan or, if appropriate, the United States District Court for the Eastern District of Michigan (unless settled by the parties after such action is initiated). Franchisee acknowledges that this Agreement has been entered into in the State of Michigan, and that Franchisee is to receive valuable and continuing services emanating from Franchisor's headquarters in Michigan, including but not limited to training, assistance, support and the development of the System. In recognition of such services and their origin, Franchisee hereby irrevocably consents to the personal jurisdiction of the state and federal courts of Michigan set forth in this Section.
- F. **Third Party Beneficiaries.** Franchisor's officers, directors, shareholders, agents and/or employees are express third party beneficiaries of the provisions of this Agreement, including the dispute resolution provisions set forth in this Section 21, each having authority to specifically enforce the right to mediate/arbitrate claims asserted against such person(s) by Franchisee.
- G. **Notice Requirement.** As a condition precedent to commencing an action for damages or for violation or breach of this Agreement, Franchisee must notify Franchisor within thirty

(30) days after the occurrence of the violation or breach, and failure to timely give such notice shall preclude any claim for damages.

- H. **No Withholding of Payments.** Franchisee shall not withhold all or any part of any payment to Franchisor or any of its affiliates on the grounds of Franchisor's alleged nonperformance or as an offset against any amount Franchisor or any of Franchisor's affiliates allegedly may owe Franchisee under this Agreement or any related agreements.
- I. **Limitation of Actions.** Franchisee further agrees that no cause of action arising out of or under this Agreement may be maintained by Franchisee against Franchisor unless brought before the expiration of one (1) year after the act, transaction or occurrence upon which such action is based or the expiration of one year after the Franchisee becomes aware of facts or circumstances reasonably indicating that Franchisee may have a claim against Franchisor hereunder, whichever occurs sooner, and that any action not brought within this period shall be barred as a claim, counterclaim, defense, or set-off. Franchisee hereby waives the right to obtain any remedy based on alleged fraud, misrepresentation, or deceit by Franchisor, including, without limitation, rescission of this Agreement, in any mediation, judicial, or other adjudicatory proceeding arising hereunder, except upon a ground expressly provided in this Agreement, or pursuant to any right expressly granted by any applicable statute expressly regulating the sale of franchises, or any regulation or rules promulgated thereunder.
- J. **Waiver of Punitive Damages.** Franchisee hereby waives to the fullest extent permitted by law, any right to or claim for any punitive, exemplary, incidental, indirect, special or consequential damages (including, without limitation, lost profits) against Franchisor arising out of any cause whatsoever (whether such cause be based in contract, negligence, strict liability, other tort or otherwise) and agrees that in the event of a dispute, that Franchisee's recovery is limited to actual damages. If any other term of this Agreement is found or determined to be unconscionable or unenforceable for any reason, the foregoing provisions shall continue in full force and effect, including, without limitation, the waiver of any right to claim any consequential damages. Nothing in this Section or any other provision of this Agreement shall be construed to prevent Franchisor from claiming and obtaining expectation or consequential damages, including lost future royalties for the balance of the term of this Agreement if it is terminated due to Franchisee's default, which the parties agree and acknowledge Franchisor may claim under this Agreement.
- K. **WAIVER OF JURY TRIAL.** THE PARTIES HEREBY AGREE TO WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER AT LAW OR EQUITY, REGARDLESS OF WHICH PARTY BRINGS SUIT. THIS WAIVER SHALL APPLY TO ANY MATTER WHATSOEVER BETWEEN THE PARTIES HERETO WHICH ARISES OUT OF OR IS RELATED IN ANY WAY TO THIS AGREEMENT, THE PERFORMANCE OF EITHER PARTY, AND/OR FRANCHISEE'S PURCHASE FROM FRANCHISOR OF THE FRANCHISE AND/OR ANY GOODS OR SERVICES.
- L. **WAIVER OF CLASS ACTIONS.** THE PARTIES AGREE THAT ALL PROCEEDINGS ARISING OUT OF OR RELATED TO THIS AGREEMENT, OR THE SALE OF THE FRANCHISED BUSINESS, WILL BE CONDUCTED ON AN INDIVIDUAL, NOT A CLASS-WIDE BASIS, AND THAT ANY PROCEEDING BETWEEN FRANCHISEE, FRANCHISEE'S GUARANTORS AND FRANCHISOR OR ITS AFFILIATES/OFFICERS/EMPLOYEES MAY NOT BE CONSOLIDATED

WITH ANY OTHER PROCEEDING BETWEEN FRANCHISOR AND ANY OTHER THIRD PARTY.

22. SEVERABILITY AND CONSTRUCTION

- A. Should any provision of this Agreement for any reason be held invalid, illegal, or unenforceable by a court of competent jurisdiction, such provision shall be deemed restricted in application to the extent required to render it valid, and the remainder of this Agreement shall in no way be affected and shall remain valid and enforceable for all purposes, both parties hereto declaring that they would have executed this Agreement without inclusion of such provision. In the event such total or partial invalidity or unenforceability of any provision of this Agreement exists only with respect to the laws of a particular jurisdiction, this paragraph shall operate upon such provision only to the extent that the laws of such jurisdiction are applicable to such provision. Each party agrees to execute and deliver to the other any further documents which may be reasonably required to make fully the provisions hereof. Franchisee understands and acknowledges that Franchisor shall have the right in its sole discretion on a temporary or permanent basis, to reduce the scope of any covenant or provision of this Agreement binding upon Franchisee without Franchisee's consent, effective immediately upon receipt by Franchisee of written notice thereof, and Franchisee agrees that it will comply forthwith with any covenant as so modified, which shall be fully enforceable.
- B. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but such counterparts together shall constitute the same instrument.
- C. The table of contents, headings, and captions contained herein are for the purposes of convenience and reference only and are not to be construed as a part of this Agreement. All terms and words used herein shall be construed to include the number and gender as the context of this Agreement may require. The parties agree that each Section of this Agreement shall be construed independently of any other Section or provision of this Agreement.

23. ACKNOWLEDGMENTS

- A. Franchisee acknowledges that it received a complete copy of this Agreement for a period not less than fourteen (14) calendar days, during which time conducted an independent investigation of the business licensed hereunder to the extent of Franchisee's desire to do so. Franchisee recognizes and acknowledges that the business venture contemplated by this Agreement involves business risks, and that its success will be largely dependent upon the ability of the Franchisee as an independent businessperson. Franchisee acknowledges that this Agreement, the franchise disclosure document ("FDD"), and the exhibits hereto constitutes the entire Agreement of the parties. This Agreement terminates and supersedes any prior agreement between the parties concerning the same subject matter.
- B. Franchisee agrees and acknowledges that fulfillment of any and all of Franchisor's obligations written in this Agreement or based on any oral communications which may be ruled to be binding in a court of law shall be Franchisor's sole responsibility and none of Franchisor's agents, representatives, nor any individuals associated with Franchisor's franchise company shall be personally liable to Franchisee for any reason. This is an important part of this Agreement. Franchisee agrees that nothing that Franchisee believes

Franchisee has been told by Franchisor or Franchisor's representatives shall be binding unless it is written in this Agreement. This is an important part of this Agreement. Do not sign this Agreement if there is any question concerning its contents or any representations made.

[The remainder of this page is left intentionally blank.

Signatures to appear on the following page]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement under seal on the date first written above.

FRANCHISOR:

MILKSHAKE FACTORY FRANCHISE, LLC

By: _____
Dan Reese, President

Date: _____

FRANCHISEE:

ENTITY

By: _____
NAME, TITLE

Date: _____

Spouse Signature

Date: _____

EXHIBIT A TO THE FRANCHISE AGREEMENT
DATA SHEET AND STATEMENT OF OWNERSHIP

1. EFFECTIVE DATE: _____

2. SITE SELECTION AREA

Pursuant to Section 2(B) of the Franchise Agreement, Franchisee must locate and secure a Premises for the Franchised Business within the following Site Selection Area:

3. PREMISES

Pursuant to Section 2(C) of the Franchise Agreement, the Franchised Business shall be located at the following approved Premises:

4. DESIGNATED TERRITORY

Pursuant to Section 2(D) of the Franchise Agreement, Franchisee's Designated Territory will be defined as follows (if identified on a map, please attach map and reference attachment below):

5. Franchisee Contact Person. The following individual is a shareholder, member, or partner of Franchisee and is the principal person to be contacted on all matters relating to the Franchised Business:

Name: _____

Daytime Telephone No.: _____

Evening Telephone No.: _____

Cellular Telephone No.: _____

Facsimile No.: _____

E-mail Address: _____

6. Statement of Ownership. If Franchisee is a corporation, limited liability company, partnership or other business entity, the undersigned agree and acknowledge that the following is a complete list of all of the shareholders, members, or partners of Franchisee and the percentage interest of each individual:

<u>Name</u>	<u>Position/Title</u>	<u>Interest (%)</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

THE PARTIES SIGNING THIS DATA SHEET BELOW AGREE AND ACKNOWLEDGE THAT THIS DATA SHEET, BY ITSELF, DOES NOT CONSTITUTE A FRANCHISE AGREEMENT OR OTHERWISE CONFER ANY FRANCHISE RIGHTS UPON FRANCHISEE. THIS DATA SHEET PROVIDES CERTAIN DEAL-SPECIFIC INFORMATION IN CONNECTION WITH THE FRANCHISE THAT IS GOVERNED BY THE FRANCHISE AGREEMENT TO WHICH THIS DATA SHEET IS AN EXHIBIT.

THE PARTIES AGREE AND ACKNOWLEDGE THAT THE FOREGOING FRANCHISE AGREEMENT MUST BE EXECUTED PRIOR TO OR CONTEMPORANEOUS WITH THIS DATA SHEET FOR ANY RIGHTS TO BE CONFERRED.

IN WITNESS WHEREOF, the undersigned has duly executed this Exhibit to the Franchise Agreement on this day _____.

FRANCHISEE:

FRANCHISOR:

ENTITY

MILKSHAKE FACTORY FRANCHISE, LLC

By: _____
NAME, TITLE

By: _____
Dan Reese, President

EXHIBIT B TO THE FRANCHISE AGREEMENT

PERSONAL GUARANTY

NOTE: IF FRANCHISEE IS A CORPORATION, LIMITED LIABILITY COMPANY OR OTHER BUSINESS ENTITY, THEN EACH INDIVIDUAL/ENTITY WITH AN OWNERSHIP INTEREST IN FRANCHISEE (PRINCIPALS/MEMBERS/SHAREHOLDERS/MANAGERS/PARTNERS/ETC.) AND THEIR RESPECTIVE SPOUSES MUST EXECUTE THIS FORM OF PERSONAL GUARANTY. IF FRANCHISEE IS AN INDIVIDUAL AND FRANCHISEE'S SPOUSE HAS NOT SIGNED THE FRANCHISE AGREEMENT DIRECTLY, THEN FRANCHISEE'S SPOUSE MUST EXECUTE THIS FORM OF PERSONAL GUARANTY.

ARTICLE I PERSONAL GUARANTY

The undersigned persons (individually and collectively "you") hereby represent to Milkshake Factory Franchise, LLC, a Delaware limited liability company (the "Franchisor") that you are all the owners/principals/members/shareholders/managers/partners, as applicable, of the business entity named _____ (the "Franchisee"), as well as their respective spouses, as of the date this Personal Guaranty (the "Personal Guaranty" or "Guaranty") is executed.

In consideration of the grant by Franchisor to the Franchisee as herein provided, each you hereby agree, in consideration of benefits received and to be received by each of you, jointly and severally, and for yourselves, your heirs, legal representatives and assigns, to be firmly bound by all of the terms, provisions and conditions of the franchise agreement entered into between Franchisee and Franchisor (the "Franchise Agreement"), as well as any other agreement between Franchisee and Franchisor and/or its affiliates, and do hereby unconditionally guarantee the full and timely performance by Franchisee of each and every obligation of Franchisee under the aforesaid Franchise Agreement or other agreement between Franchisor and Franchisee, including, without limitation: (i) any indebtedness of Franchisee arising under or by virtue of the aforesaid Franchise Agreement; (ii) the prohibition of any change in the percentage of Franchisee owned, directly or indirectly, by any person, without first obtaining the written consent of Franchisor prior to said proposed transfer as set forth in the Franchise Agreement; (iii) those obligations related to confidentiality, non-disclosure and indemnification; and (iv) the in-term and post-term covenants against competition, as well as all other restrictive covenants set forth in the Franchise Agreement.

ARTICLE II CONFIDENTIALITY

During the initial and any renewal terms of the Franchise Agreement and this Guaranty, you will receive information, which Franchisor considers to be Confidential Information, trade secrets and/or confidential information, including without limitation: (i) site-selection criteria for a restaurant business operated utilizing Franchisor's proprietary marks (the "Proprietary Marks") and System (as defined below) (each, a "Shop"); (ii) methods, techniques and trade secrets for use in connection with the proprietary business operating system that Franchisor and its affiliates have developed (the "System") for the establishment and operation of a franchised Shop (hereafter, a "Franchised Business"); (iii) marketing research and promotional, marketing and advertising programs for the Franchised Business; (iv) knowledge of specification for and suppliers of, and methods of ordering, certain products, fixtures, furnishings, equipment and inventory used at the Franchised Business; (v) knowledge of the operating results and financial performance of other Shops; (vi) customer communication and retention programs, along with data used or generated in connection with those programs; (vii) Franchisor's proprietary Manuals and other instructional manuals, as well as any training materials and information Franchisor has developed for use

in connection with the System; (viii) information regarding the development of Franchisor's proprietary marks (the "Proprietary Marks"); (ix) information generated by, or used or developed in, the Shop's operation, including customer names, addresses, telephone numbers and related information and any other information contained in the Franchised Business's computer system; (x) the design, build-out and any construction/remodeling plans for the interior and exterior of the Franchised Business; (xi) Franchisor's proprietary Operations Manual and other instructional manuals, as well as any training materials and information Franchisor has developed for use in connection with the System; and (xii) any other proprietary information or confidential information that is provided to Franchisee by Franchisor during the term of the Franchise Agreement (collectively, "Confidential Information"). You shall not, during the term of this Agreement or anytime thereafter, communicate, divulge, or use for the benefit of any other person, partnership, association, corporation, or limited liability company any Confidential Information and trade secrets, including, without limitation: Franchisor's copyrighted materials; price marketing mixes related to the offer and sale of restaurant products and other Approved Services and Products (as defined in the Franchise Agreement); standards and specifications for providing the Approved Services and Products and other merchandise or services offered or authorized for sale by System franchisees; methods, special recipes, ingredients, menu item preparation, and other techniques and know-how concerning the of operation of the Franchised Business, which may be communicated to you or of which you may become apprised by virtue of your role as a guarantor of the Franchisee's obligations under the Franchise Agreement. You also acknowledge and agree that the following also constitutes "Confidential Information" under this Section: (i) former, current and prospective customer information, including customer names and addresses, contracts/agreements (collectively "Customer Lists"), and (ii) sources and pricing matrices of any approved or designated suppliers; and (iii) any and all information, knowledge, know-how, techniques, and other data, which Franchisor designates as confidential.

ARTICLE III **NON-COMPETITION**

You acknowledge that as a participant in the Franchisor's System, you will receive proprietary and confidential information and materials, trade secrets, and the unique methods, procedures and techniques which Franchisor has developed. Therefore, to protect Franchisor and all Franchisor's franchisees, you agree as follows:

1. **During the Term of the Franchise Agreement and this Guaranty.** During the term of the Franchise Agreement and this Personal Guaranty, each of the undersigned may not, directly or indirectly, for themselves or through, on behalf of, or in conjunction with any other person, partnership or corporation:

1.1. Own, maintain, engage in, be employed or serve as an officer, director, or principal of, lease space to, lend money or extend credit to, or have any other interest in or involvement with any restaurant or other eating establishment that primarily serves milkshakes, baked good, craft sundaes and/or other desserts and/or specialty drinks, as well as any other Approved Products offered by System Shops (each, a "Competing Business"); or (ii) offers or grants licenses or franchises, or establishes joint ventures, for the ownership or operation of a Competing Business; provided, however, that this Section does not apply to your operation of a System franchise pursuant to a valid franchise agreement with Franchisor, or your ownership of less than two percent (2%) of the interests in a publicly traded company.

1.2. Employ or seek to employ any person who is at that time employed by Franchisor, Franchisor's affiliates or any other System franchisee, or otherwise directly or indirectly induce or seek to induce such person to leave his or her employment thereat; or

1.3. Divert or attempt to divert business or customers of any Franchisee-owned Franchised Businesses 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 the Proprietary Marks or the System.

2. **After the Term of This Agreement.**

2.1. For a period of two (2) years after the expiration and nonrenewal, transfer or termination of the Franchise Agreement, regardless of the cause, the undersigned may not, directly or indirectly, for themselves or through, on behalf of, or in conjunction with any other person, partnership or corporation enter into any business competing in whole or in part with Franchisor in offering or granting franchises or licenses, or establishing joint ventures, for the ownership or operation of a Competing Business. The scope of the non-compete described in this Section shall be the geographical area where Franchisor can demonstrate that it has offered and sold franchises as of the date the Franchise Agreement is terminated or expires (or, if applicable, as of the date Franchisee assigns/transfers the Franchise Agreement).

2.2. For a period of two (2) years after the expiration, transfer or termination of the Franchise Agreement, regardless of the cause, the undersigned may not, directly or indirectly, for themselves or through, on behalf of, or in conjunction with any other person, partnership or corporation:

2.2.1. Own, maintain, engage in, be employed or serve as an officer, director, or principal of, lease space to, lend money or extend credit to, or have any other interest in or involvement with, any Competing Business that is located within a 10-mile radius of: (i) the perimeter of the Designated Territory granted under the Franchise Agreement; or (ii) any other Shop that exists as of the date the Franchise Agreement is terminated or expires (or, if applicable, as of the date Franchisee assigns/transfers the Franchise Agreement);

2.2.2. Contact any of Franchisor's suppliers or vendors for any competitive business purpose; or

2.2.3. Solicit any of Franchisor's employees, or the employees of Franchisor's affiliates, or any other System franchisee to discontinue employment.

3. **Intent and Enforcement.** It is the parties' intent that the provisions of this Article III be judicially enforced to the fullest extent permissible under applicable law. Accordingly, the parties agree that any reduction in scope or modification of any part of the noncompetition provisions contained herein shall not render any other part unenforceable. In the event of the actual or threatened breach of this Article III by you, any of your principals, or any members of their immediate family, Franchisor shall be entitled to an injunction restraining such person from any such actual or threatened breach. You agree that in the event of the actual or threatened breach of this Article III, Franchisor's harm will be irreparable and that Franchisor has no adequate remedy at law to prevent such harm. You acknowledge and agree that each of you has previously worked or been gainfully employed in other careers and that the provisions of this Article III in no way prevents you from earning a living. You further acknowledge and agree that the time limitation of this Article III shall be tolled during any default under this Guaranty.

ARTICLE IV DISPUTE RESOLUTION

1. **Acknowledgment.** You acknowledge that this Guaranty is not a franchise agreement and does not confer upon you any rights to use the Franchisor's proprietary marks or its system.

2. **Governing Law.** This Guaranty shall be deemed to have been made in and governed by the laws of the State of Michigan, without reference to that state's conflicts of law provisions.

3. **Internal Dispute Resolution.** You must first bring any claim or dispute arising out of or relating to the Franchise Agreement or this Personal Guaranty to Franchisor's Chief Executive Officer and/or President. You agree to exhaust this internal dispute resolution procedure before bringing any dispute before a third party. This agreement to engage in internal dispute resolution first shall survive the termination or expiration of this Agreement.

4. **Mediation.** At Franchisor's option, all claims or disputes between you and Franchisor or its affiliates arising out of, or in any way relating to, the Franchise Agreement, this Guaranty or any other agreement by and between the parties or their respective affiliates, or any of the parties' respective rights and obligations arising from such agreements, which are not first resolved through the internal dispute resolution procedure set forth above, must be submitted first to mediation, in Ann Arbor, Michigan under the auspices of the American Arbitration Association ("AAA"), in accordance with AAA's Commercial Mediation Rules then in effect. Before commencing any legal action against Franchisor or its affiliates with respect to any such claim or dispute, you must submit a notice to Franchisor that specifies, in detail, the precise nature and grounds of such claim or dispute. Franchisor will have a period of thirty (30) days following receipt of such notice within which to notify you as to whether Franchisor or its affiliates elect to exercise our option to submit such claim or dispute to mediation. You may not commence any arbitration proceeding or other action against Franchisor or its affiliates with respect to any such claim or dispute in any court unless Franchisor fails to exercise its option to submit such claim or dispute to mediation, or such mediation proceedings have been terminated either: (i) as the result of a written declaration of the mediator(s) that further mediation efforts are not worthwhile; or (ii) as a result of a written declaration by Franchisor. Franchisor may specifically enforce our mediation rights under this Section. Each party shall bear its own cost of mediation, except that you and Franchisor shall share the mediator's fees and costs equally. This agreement to mediate at Franchisor's option shall survive any termination or expiration of the Franchise Agreement and this Guaranty.

4.1. *Excepted Claims.* The parties agree that mediation shall not be required with respect to any claim or dispute involving: (i) any of your payment obligations that are past due; (ii) the actual or threatened disclosure or misuse of Franchisor's Confidential Information; (iii) the actual or threatened violation of Franchisor's rights in, or misuse of, the Proprietary Marks, System or other trade secrets; (iv) any of the restrictive covenants contained in the Franchise Agreement or this Guaranty; or (v) any claims arising out of or related to fraud or misrepresentation by you, or your insolvency (collectively, the "Excepted Claims").

5. **Jurisdiction and Venue.** Subject to the other dispute resolution provisions in this Personal Guaranty, the parties agree that any action at law or in equity instituted against either party to this Agreement must be commenced and litigated to conclusion (unless settled) exclusively in any court of competent jurisdiction located in Ann Arbor, Michigan or, if appropriate, the United States District Court for the Eastern District of Michigan. The undersigned hereby irrevocably consent to the jurisdiction of these courts.

6. **Third Party Beneficiaries.** Franchisor's officers, directors, shareholders, agents and/or employees are express third-party beneficiaries of this Agreement and the mediation and other dispute resolution provisions contained herein, each having authority to specifically enforce the right to mediate and litigate claims asserted against such person(s) by you.

7. **Right to Injunctive Relief.** Nothing contained in this Guaranty shall prevent Franchisor from applying to or obtaining from any court having jurisdiction a writ of attachment, temporary injunction, preliminary injunction and/or other emergency relief available to safeguard and protect Franchisor's interest prior to the filing of any mediation or arbitration proceeding, or pending the trial or handing down of a decision

or award pursuant to any mediation or arbitration proceeding conducted hereunder. If injunctive relief is granted, your only remedy will be the court's dissolution of the injunctive relief. If the injunctive relief was wrongfully issued, you expressly waive all claims for damages you incurred as a result of the wrongful issuance.

8. **JURY TRIAL AND CLASS ACTION WAIVER. THE PARTIES HEREBY AGREE TO WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER AT LAW OR EQUITY, REGARDLESS OF WHICH PARTY BRINGS SUIT. THIS WAIVER SHALL APPLY TO ANY MATTER WHATSOEVER BETWEEN THE PARTIES HERETO WHICH ARISES OUT OF OR IS RELATED IN ANY WAY TO THIS AGREEMENT, THE PERFORMANCE OF EITHER PARTY, AND/OR FRANCHISEE'S PURCHASE FROM FRANCHISOR OF THE FRANCHISE AND/OR ANY GOODS OR SERVICES. THE PARTIES AGREE THAT ALL PROCEEDINGS ARISING OUT OF OR RELATED TO THIS AGREEMENT, OR THE SALE OF THE FRANCHISED BUSINESS, WILL BE CONDUCTED ON AN INDIVIDUAL, NOT A CLASS-WIDE BASIS, AND THAT ANY PROCEEDING BETWEEN FRANCHISEE, FRANCHISEE'S GUARANTORS AND FRANCHISOR OR ITS AFFILIATES/OFFICERS/EMPLOYEES MAY NOT BE CONSOLIDATED WITH ANY OTHER PROCEEDING BETWEEN FRANCHISOR AND ANY OTHER THIRD PARTY.**

9. **Limitation of Action.** You further agree that no cause of action arising out of or under this Guaranty may be maintained by you unless brought before the expiration of one year after the act, transaction or occurrence upon which such action is based or the expiration of one year after you become aware of facts or circumstances reasonably indicating that you may have a claim against us, whichever occurs sooner, and that any action not brought within this period shall be barred as a claim, counterclaim, defense or set-off.

10. **Punitive Damages.** You hereby waive to the fullest extent permitted by law, any right to or claim for any punitive, exemplary, incidental, indirect, special or consequential damages (including, without limitation, lost profits) which you may have against us, arising out of any cause whatsoever (whether such cause be based in contract, negligence, strict liability, other tort or otherwise) and agrees that in the event of a dispute, that your recovery shall be limited to actual damages. If any other term of this Guaranty is found or determined to be unconscionable or unenforceable for any reason, the foregoing provisions shall continue in full force and effect, including, without limitation, the waiver of any right to claim any consequential damages.

11. **Costs and Attorneys' Fees.** Whether or not formal legal proceedings are initiated, in the event Franchisor incurs any legal fees or other costs associated with enforcing the terms of this Guaranty or the Franchise Agreement against you, then Franchisor will be entitled to recover from you all costs and expenses, including reasonable attorneys' fees, incurred in enforcing the terms of this Guaranty or the Franchise Agreement.

12. **Nonwaiver.** Franchisor's failure to insist upon strict compliance with any provision of this Guaranty shall not be a waiver of our right to do so, any law, custom, usage or rule to the contrary notwithstanding. Delay or omission by us respecting any breach or default shall not affect Franchisor's rights respecting any subsequent breaches or defaults. All rights and remedies granted in this Guaranty shall be cumulative. Your election to exercise any remedy available by law or contract shall not be deemed a waiver or preclude exercise of any other remedy.

13. **No Personal Liability.** You agree that fulfillment of any and all of Franchisor's obligations written in the Franchise Agreement or this Guaranty, or based on any oral communications which may be ruled to be binding in a court of law, shall be Franchisor's sole responsibility and none of our owners, officers, agents, representatives, nor any individuals associated with Franchisor shall be personally liable to you for any reason. This is an important part of this Guaranty. You agree that nothing that you believe you have been told

by us or our representatives shall be binding unless it is written in the Franchise Agreement or this Guaranty. Do not sign this Agreement if there is any question concerning its contents or any representations made.

14. **Severability.** The parties agree that if any provisions of this Guaranty may be construed in two ways, one of which would render the provision illegal or otherwise voidable or unenforceable and the other which would render it valid and enforceable, such provision shall have the meaning, which renders it valid and enforceable. The language of all provisions of this Guaranty shall be construed according to fair meaning and not strictly construed against either party. The provisions of this Guaranty are severable, and this Guaranty shall be interpreted and enforced as if all completely invalid or unenforceable provisions were not contained herein, and partially valid and enforceable provisions shall be enforced to the extent that they are valid and enforceable. If any material provision of this Guaranty shall be stricken or declared invalid, the parties agree to negotiate mutually acceptable substitute provisions. In the event that the parties are unable to agree upon such provisions, Franchisor reserves the right to terminate this Guaranty.

15. **Construction of Language.** Any term defined in the Franchise Agreement which is not defined in this Guaranty will be ascribed the meaning given to it in the Franchise Agreement. The language of this Guaranty will be construed according to its fair meaning, and not strictly for or against either party. All words in this Guaranty refer to whatever number or gender the context requires. If more than one party or person is referred to as you, their obligations and liabilities must be joint and several. Headings are for reference purposes and do not control interpretation.

16. **Successors.** References to “Franchisor” or “the undersigned,” or “you” include the respective parties' heirs, successors, assigns or transferees.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Guaranty on the date stated on the first page hereof.

PERSONAL GUARANTORS

[Insert Name of Guarantor]

[Insert Name of Spouse]

[Insert Name of Guarantor]

[Insert Name of Spouse]

[Insert Name of Guarantor]

[Insert Name of Spouse]

[Insert Name of Guarantor]

[Insert Name of Spouse]

EXHIBIT C TO THE FRANCHISE AGREEMENT
CONSENT AND AGREEMENT OF LANDLORD FORM AND
COLLATERAL ASSIGNMENT OF LEASE FORM

CONSENT AND AGREEMENT OF LANDLORD

The undersigned Landlord hereby:

- A. Agrees that the leased Premises will only be used in connection with the operation of Franchisee’s Milkshake Factory franchised business;
- B. Agrees that Franchisor has the right to enter the Premises to (a) make any modifications necessary to protect Franchisor’s Proprietary Marks, or (b) otherwise exercise or enforce Franchisor’s rights under the Franchise Agreement;
- C. Agrees to allow Franchisee, upon written request from Franchisor, to provide Franchisor with a current copy of the lease;
- D. Agrees to notify Franchisor in writing of and upon the failure of Franchisee to cure any default by Franchisee under the Lease, and also provide Franchisor with the right to cure said default under the Lease within thirty (30) days of being notified (but Franchisor is under no obligation to do so);
- E. Agrees that Franchisor will have the option, but not the obligation, to assume or renew the lease and the occupancy of the business Premises, including the right to sublease to another Franchisee, for all or any part of the remaining term of the lease, upon Franchisee’s default or termination hereunder or upon Franchisee’s default or termination or expiration of the Franchise Agreement, and in connection with said assumption Franchisor will not be obligated to pay to the landlord past due rent, common area maintenance, and other charges attributable to more than one (1) month. The landlord shall give Franchisor thirty (30) days, upon termination of Franchisee’s rights under the lease, to exercise this option; and
- F. Agrees that the lease may not be materially amended, assigned, or sublet without Franchisor’s prior written approval.

Dated: _____

LANDLORD
CORPORATE SIGNATURE:

a/an _____ corporation

By: _____

By: _____

Its: _____

Its: _____

SIGNED and SEALED this ____ day of _____, 20__

_____ Notary Public

COLLATERAL ASSIGNMENT OF LEASE

FOR VALUE RECEIVED, the undersigned (“Assignor”) hereby assigns and transfers to Milkshake Factory Franchise, LLC (“Assignee”), all of Assignor's right, title and interest as tenant in, to and under that certain lease, a copy of which is attached hereto as Schedule 1 (the “Lease”) respecting premises commonly known as _____ (the “Premises”).

This Assignment is for collateral purposes only and except as specified herein, Assignee has no liability or obligation of any kind whatsoever arising from or in connection with this Assignment or the Lease unless: (i) Assignee provides express, written notice to both Assignor and the landlord of the Premises under the Lease that Assignee is assuming all of Assignor’s rights, title and interest under the Lease pursuant to this assignment; and (ii) Assignee takes possession of the Premises demised by the Lease pursuant to the terms hereof, and assumes the obligations of Assignor thereunder.

Assignor represents and warrants to Assignee that it has full power and authority to so assign the Lease and its interest therein and that Assignor has not previously assigned or transferred, and is not obligated to assign or transfer, any of its interest in the Lease or the premises demised thereby.

Upon a default and failure to cure (within the appropriate time period) by Assignor under the Lease or under the franchise agreement for a Franchised Business between Assignee and Assignor (the “Franchise Agreement”), or in the event of a default by Assignor under any document or instrument securing the Franchise Agreement, or upon expiration or termination of the Franchise Agreement, Assignee has the right and is hereby empowered to take possession of the premises demised by the Lease, expel Assignor therefrom, and, in such event, Assignor will have no further right, title or interest in the Lease. Assignor hereby authorizes the Lessor to disclose to Assignee, upon its request, sales and other information furnished to the Lessor by Assignor.

Assignor agrees that it will not suffer or permit any surrender, termination, amendment or modification of the Lease without the prior written consent of Assignee. Throughout the term of the Franchise Agreement and any renewals thereto, Assignor agrees that it must elect and exercise all options to extend the term of or renew the Lease not less than 120 days prior to the last day that the option must be exercised, unless Assignee otherwise agrees in writing. If Assignee does not otherwise agree in writing, and upon failure of Assignor to so elect to extend or renew the Lease as aforesaid, Assignor hereby appoints Assignee as its true and lawful attorney-in-fact to exercise such extension or renewal options in the name, place and stead of Assignor for the purpose of effecting such extension or renewal.

ASSIGNOR:

Dated: _____

SIGNED AND SEALED this __
day of _____, 20__

EXHIBIT D TO THE FRANCHISE AGREEMENT

EFT AUTHORIZATION FORM

Bank Name: _____
ABA# : _____
Acct. No.: _____
Acct. Name: _____

Effective as of the date of the signature below, **[Franchisee Name]** (the “Franchisee”) hereby authorizes Milkshake Factory Franchise, LLC (the “Company”) or its designee to withdraw funds from the above-referenced bank account, electronically or otherwise, to cover the following payments that are due and owing Company or its affiliates under the franchise agreement dated _____ (the “Franchise Agreement”) for the franchised business located at: _____ (the “Franchised Business”): (i) all Royalty Fees; (ii) Fund Contributions (if a Fund is established); (iii) (iii) any amounts due and owing the Company or its affiliates in connection with marketing materials or other supplies or inventory that is provided by Company or its affiliates; and (iv) all other fees and amounts due and owing to Company or its affiliates under the Franchise Agreement. Franchisee acknowledges each of the fees described above may be collected by the Company (or its designee) as set forth in the Franchise Agreement.

The parties further agree that all capitalized terms not specifically defined herein will be afforded the definition they are given in the Franchise Agreement.

Such withdrawals shall occur on a weekly basis, or on such other schedule as Company shall specify in writing. This authorization shall remain in full force and effect until terminated in writing by Company. **[Franchisee Name]** shall provide Company, in conjunction with this authorization, a voided check from the above-referenced account.

AGREED:

FRANCHISEE

[INSERT FRANCHISEE NAME]

By: _____

Name (Print): _____

Its: _____

FRANCHISOR APPROVAL

MILKSHAKE FACTORY FRANCHISE, LLC

By: _____

Dan Reese, President

Please attach a voided blank check, for purposes of setting up Bank and Transit Numbers.

EXHIBIT E TO THE FRANCHISE AGREEMENT

CONFIDENTIALITY AND RESTRICTIVE COVENANT AGREEMENT

(for trained employees, officers, directors, general partners, members, Designated Managers and any other management personnel of Franchisee)

In consideration of my being a [INSERT TITLE/ROLE WITH FRANCHISEE] of _____ (the “Franchisee”), and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, I (the undersigned) hereby acknowledge and agree that Franchisee has acquired the right from Milkshake Factory Franchise, LLC (the “Company”) to: (i) establish and operate a Milkshake Factory franchised business (the “Franchised Business”); and (ii) use in the operation of the Franchised Business the Company’s trade names, trademarks and service marks (collectively, the “Proprietary Marks”) and the Company’s unique and distinctive format and system relating to the establishment and operation of Milkshake Factory businesses (the “System”), as they may be changed, improved and further developed from time to time in the Company’s sole discretion, only at the following authorized and approved location: _____ (the “Premises”).

1. The Company possesses certain proprietary and confidential information relating to the operation of the Franchised Business and System generally, including without limitation: Company’s proprietary and confidential Operations Manual and other manuals providing guidelines, standards and specifications related to the establishment and operation of the Franchised Business (collectively, the “Manual”); Franchisor’s proprietary training materials and programs, as well as proprietary marketing methods and other instructional materials, trade secrets; information related to any other proprietary methodology or aspects of the System or the establishment and continued operation of the Franchised Business; financial information; any and all customer lists, contracts and other customer information obtained through the operation of the Franchised Business and other Milkshake Factory businesses; any information related to any type of proprietary software that may be developed and/or used in the operation of with the Franchised Business; and any techniques, special recipes, ingredients, menu item preparation, methods, and know-how related to the operation of Milkshake Factory business or otherwise used in connection with the System, which includes certain trade secrets, copyrighted materials, methods and other techniques and know-how (collectively, the “Confidential Information”).

2. Any other information, knowledge, know-how, and techniques which the Company specifically designates as confidential will also be deemed to be Confidential Information for purposes of this Agreement.

3. As [INSERT TITLE WITH RESPECT TO FRANCHISEE] of the Franchisee, the Company and Franchisee will disclose the Confidential Information to me in furnishing to me the training program and subsequent ongoing training, the Manual, and other general assistance during the term of this Agreement.

4. I will not acquire any interest in the Confidential Information, other than the right to utilize it in the operation of the Franchised Business during the term hereof, and the use or duplication of the Confidential Information for any use outside the System would constitute an unfair method of competition.

5. The Confidential Information is proprietary, involves trade secrets of the Company, and is disclosed to me solely on the condition that I agree, and I do hereby agree, that I shall hold in strict confidence all Confidential Information and all other information designated by the Company as confidential. Unless the Company otherwise agrees in writing, I will disclose and/or use the Confidential Information only in connection with my duties as [INSERT TITLE] of the Franchisee, and will continue not to disclose any such information even after I cease to be in that position and will not use any such

information even after I cease to be in that position unless I can demonstrate that such information has become generally known or easily accessible other than by the breach of an obligation of Franchisee under the Franchise Agreement.

6. Except as otherwise approved in writing by the Company, I shall not, while in my position with the Franchisee, for myself, or through, on behalf of, or in conjunction with any person, persons, partnership, corporation or limited liability company, own, maintain, engage in, be employed by, or have any interest in: (i) any other restaurant or business that (a) is offering to the public specialty drinks, bake goods, and/or other Approved Products offered by System Shops, or (b) otherwise generates twenty percent (20%) or more of its revenue from the combined sale the of specialty drinks, bake goods, and/or other Approved Products and/or other Approved Products offered by System Shops (each, a “Competing Business”); or (ii) offers or grants licenses or franchises, or establishes joint ventures, for the ownership or operation of a Competing Business. I also agree that I will not undertake any action to divert business from the Franchised Business to any Competing Business, or solicit any of the former customers or employees of Franchisee for any competitive business purpose.

6.1 *Post-Term Restrictive Covenant for Designated Manager of Franchised Business or Manager/Officers/Directors of Franchisee.* In the event I am a manager of the Franchised Business, or an officer/director/manager/partner of Franchisee that has not already executed a Personal Guaranty agreeing to be bound by the terms of the Franchise Agreement, then I further agree that I will not be involved in a Competing Business of any kind for a period of two (2) years after the expiration or termination of my employment with Franchisee for any reason: (i) at or within a five (5) mile radius of the Premises; or (ii) within a ten (10) mile radius of any other System Shop that exists at the time my employment with Franchisee ceases. During the two (2) year period described in this Section, I also agree that I will not: (a) be involved in the franchising or licensing of any Competing Business at any location within the United States where the Company can demonstrate it has offered or sold franchises as of the date my employment ceases with Franchisee; (b) undertake any action to divert business from the Franchised Business to any Competing Business; or (c) solicit any of the former customers or employees of Franchisee for any competitive business purpose.

7. I agree that 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 Agreement is held unreasonable or unenforceable by a court or agency having valid jurisdiction in an unappealed final decision to which the Company is a party, I expressly agree to be bound by any lesser covenant subsumed within the terms of such covenant that imposes the maximum duty permitted by law, as if the resulting covenant were separately stated in and made a part of this Agreement.

8. I understand and acknowledge that the Company shall have the right, in its sole discretion, to reduce the scope of any covenant set forth in this Agreement, or any portion thereof, without my consent, effective immediately upon receipt by me of written notice thereof; and I agree to comply forthwith with any covenant as so modified.

9. The Company is a third-party beneficiary of this Agreement and may enforce it, solely and/or jointly with the Franchisee. I am aware that my violation of this Agreement will cause the Company and the Franchisee irreparable harm; therefore, I acknowledge and agree that the Franchisee and/or the Company may apply for the issuance of an injunction preventing me from violating this Agreement, and I agree to pay the Franchisee and the Company all the costs it/they incur(s), including, without limitation, legal fees and expenses, if this Agreement is enforced against me. Due to the importance of this Agreement to the Franchisee and the Company, any claim I have against the Franchisee or the Company is a separate matter and does not entitle me to violate, or justify any violation of this Agreement.

10. This Agreement shall be construed under the laws of Michigan. The only way this Agreement can be changed is in writing signed by both the Franchisee and me.

IN WITNESS WHEREOF, this Agreement is made and entered into by the undersigned parties as of the Effective Date.

UNDERSIGNED

Signature: _____

Name: _____

Address: _____

Title: _____

ACKNOWLEDGED BY FRANCHISEE

[FRANCHISEE NAME]

By: _____

Title: _____

EXHIBIT F TO THE FRANCHISE AGREEMENT

CONDITIONAL ASSIGNMENT OF TELEPHONE NUMBERS AND DOMAIN NAMES

1. _____, doing business as a Milkshake Factory (the “Assignor”), in exchange for valuable consideration provided by Milkshake Factory Franchise, LLC (the “Assignee”), receipt of which is hereby acknowledged hereby conditionally assigns to Assignee all telephone numbers, facsimile numbers, domain names, as well as any listings associated therewith, utilized by Assignor in the operation of its Milkshake Factory franchised business located at _____

(collectively, the “Assigned Property”). The Assigned Property includes the following:

Telephone Number(s): _____
Facsimile Number(s): _____
Domain Name(s) (as permitted by Franchisor under the Franchise Agreement): _____
_____.

2. The conditional agreement will become effective automatically upon termination, expiration of Assignor's franchise. Upon the occurrence of that condition, Assignor must do all things required by the telephone company and/or domain name registrar to assure the effectiveness of the assignment of Assigned Property as if the Assignee had been originally issued such Assigned Property and the usage thereof.

3. Assignor agrees to pay the telephone company and/or domain name registrar, on or before the effective date of assignment, all amounts owed for the use of the Assigned Property up to the date this Assignment becomes effective. Assignor further agrees to indemnify Assignee for any sums Assignee must pay the telephone company or domain name registrar to effectuate this agreement, and agrees to fully cooperate with the telephone company and/or domain name registrar, as well as the Assignee, in effectuating this assignment.

ASSIGNOR:

By: _____ Date: _____
NAME, TITLE

ASSIGNEE:

MILKSHAKE FACTORY FRANCHISE, LLC

By: _____ Date: _____
Dan Reese, President

EXHIBIT C
TO THE MILKSHAKE FACTORY FRANCHISE, LLC
FRANCHISE DISCLOSURE DOCUMENT
DEVELOPMENT AGREEMENT

DEVELOPMENT AGREEMENT

This Development Agreement (“Agreement”) entered into on _____ (the “Effective Date”), between: (i) Milkshake Factory Franchise, LLC, a limited liability company with a business address at 106 E. Liberty Street, Suite 310, Ann Arbor, Michigan 48104 (the “Franchisor”); and (ii) _____, a (resident of) (corporation organized in) (limited liability company organized in) _____ with a business address at _____ (the “Developer”).

BACKGROUND

A. Franchisor and its affiliate/principals, as a result of the expenditure of time, skill, effort, and money, have developed a unique system (the “System”) for establishment and ongoing operation of a eating establishment (each, a “Shop”) featuring (a) an array of handspun milkshakes, craft sundaes and ancillary toppings, sauces and other add-on items, and (b) any other menu items and/or retail merchandise that the Franchisor designates or authorizes (collectively, the “Approved Products”), while utilizing the Franchisor’s then-current System and proprietary marks (collectively, the “Proprietary Marks”) and the aforementioned System.

B. Franchisor’s System is comprised of various proprietary and, in some cases, distinguishing elements, including without limitation, the following: proprietary recipes associated with each menu items and Approved Products, along with established supply chain resources for certain ingredients used to make certain Approved Products; methodologies, processes and procedures associated with the establishment and ongoing operation of a Shop; site selection guidance and criteria; specifications for the design, layout and construction of a Shop; standards and specifications for the furniture, fixtures and equipment located within a Shop; established relationships with approved or designated suppliers for certain products and services, including without; and various standards and specifications for advertising, bookkeeping, sales and other aspects of operating a Shop. The parties agree and acknowledge that Franchisor may change, improve, further develop, or otherwise modify the System from time to time as it deems appropriate in its discretion. Franchisee hereby acknowledges and agrees that: (i) while the System and Franchisor’s related materials contain information that, in isolated form, could be construed as being in the public domain, they also contain significant proprietary and confidential information which makes the System unique as a whole; and (ii) the combined methods, information, procedures, and theories that make up the total System or are contained in the relevant manuals that are proprietary and confidential.

C. The System and Shops are identified by Franchisor’s Proprietary Marks, including its current primary marks THE MILKSHAKE FACTORY® and MILKSHAKE FACTORY™, any of which Franchisor may modify, update, supplement, or substitute in the future as Franchisor deems appropriate. The parties agree and acknowledge that Franchisor has established substantial goodwill and business value in its Proprietary Marks, expertise, and System.

D. Franchisor grants qualified third parties the right to develop a certain number of Shops within a defined geographical area (the “Development Area”), in accordance with the terms of this Agreement to which Developer must be strictly adhere, with each Shop within the Development Area being opened and operating utilizing the Proprietary Marks and System pursuant to the terms and conditions set forth in a separate form of Franchisor’s then-current form of franchise agreement (each, a “Franchise Agreement”).

E. Developer recognizes the benefits of receiving the right to operate a Shop utilizing the System and desires to: (i) become a multi-unit operator subject to the terms of this Agreement; and (ii) receive the benefits provided by Franchisor under this Agreement.

F. Developer has applied for the right to open and operate a certain number of Shops within the Development Area as set forth in this Agreement (each, a “Franchised Business”), and Franchisor has approved such application in reliance on Developer’s representations made therein.

G. Developer hereby acknowledges that adherence to the terms of this Agreement, including Franchisor’s operations manual and other System standards and specifications, are essential to the operation of all Shops and the System as a whole.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

1. Development Area.

1.1 Subject to the terms and conditions set forth herein, Franchisor grants Developer the right, and Developer undertakes the obligation, to develop and establish _____ Franchised Businesses within the Development Area defined in the Data Sheet attached hereto as Exhibit A (the “Data Sheet”), provided Developer opens and commences operations of such Franchised Businesses in strict accordance with the mandatory development schedule also set forth in the Data Sheet (the “Development Schedule”) and otherwise subject to the terms and conditions set forth herein.

1.2 Except as provided in Section 1.3 and otherwise herein, during the term of this Agreement Franchisor will not open or operate, or license any third party the right to open or operate, any Shop utilizing the Proprietary Marks and System within the Development Area.

1.3 Developer agrees and acknowledges that Franchisor will have the right to modify the boundaries of the Development Area upon written notice to Developer to account for any designated territory that is granted to another System franchisee or developer in connection with a premises for a Shop at a location that (a) Developer secures, and (b) is close to the outer boundaries of the Development Area, to the extent necessary to avoid overlap between that designated territory and the Development Area. In the event Franchisor notifies Developer that it is modifying the Development Area as set forth in this Section, Developer agrees to cooperate with Franchisor to enter into an addendum to this Agreement detailing the modified Development Area.

2. **Development Fee;** Developer shall pay Franchisor the development fee set forth in Section 3 of the Data Sheet (the “Development Fee”) as consideration for the rights associated with developing the foregoing Franchised Businesses within the Development Area, with the parties agreeing and acknowledging that this Development Fee is deemed fully earned upon payment and is not refundable under any circumstances.

3. **Initial Franchise Agreement.** Contemporaneous with the execution of this Agreement, Developer must enter into Franchisor’s current form of Franchise Agreement for the Initial Franchised Business that Developer is required to open within the Development Area (the “Initial FA”). In the event Developer is a business entity of any kind, then Developer’s principals/owners, as well as their respective spouses (at Franchisor’s option), must each execute the form of Personal Guaranty attached to (a) Initial FA, and (b) the forms of franchise agreement described in Section 4 below.

4. **Additional Franchise Agreements.** Developer agrees and acknowledges that it must: (i) enter into Franchisor’s then-current form of Franchise Agreement for each Additional Franchised Business that Developer is required to open under this Agreement; and (ii) enter into the form of Franchise Agreement

for a given Additional Franchised Business on or before the earlier of (a) the date Developer enters into a lease for the approved Premises of that Additional Franchised Business, or (b) at least 90 days prior to the date Developer is required to open and commence operations of that Additional Franchised Business under the Development Schedule.

5. **Development Obligations.** Developer must ensure that, at a minimum, Developer: (i) opens and commences operations of the number of new Franchised Businesses during each of the development periods defined in the Development Schedule (each, a “Development Period”); and (ii) has the minimum cumulative number of Franchised Businesses open and operating at the expiration of each such Development Period. The parties agree and acknowledge that time is of the essence with respect to the foregoing development obligations, and that Developer’s failure to comply with the Development Schedule in any manner with respect to any Development Period is grounds for immediate termination of this Agreement if not timely cured as set forth in Section 6.2 of this Agreement (and any future development rights granted hereunder).

6. **Term and Termination; Geographic Scope of Post-Term Non-Compete.**

6.1 This Agreement will commence as of the date it is fully executed and, unless earlier terminated by Franchisor, will expire on the earlier of: (i) the last day of the calendar month that the final Franchised Business is required to be opened and operating under the Development Schedule; or (ii) the date Developer actually opens the last Franchised Business that Developer is granted the right to open under this Agreement. Upon expiration or termination of this Agreement for any reason, Developer will not have any rights within the Development Area other than the territorial rights granted in connection with any “Designated Territory” associated with a Franchised Business that Developer has opened and commenced operating as of the date this Agreement is terminated or expires (as such rights are granted by Franchisor under the respective Franchise Agreement(s) into which Developer has entered for such Franchised Business(es)).

6.2 Franchisor will have the right, at its option, to terminate this Agreement and all rights granted to Developer hereunder, without affording Developer any opportunity to cure such default, effective upon written notice to Developer, upon the occurrence of any of the following events: (i) if Developer ceases to actively engage in development activities in the Development Area or otherwise abandons its development business for three (3) consecutive months, or any shorter period that indicates an objective intent by Developer to discontinue development of the Franchised Businesses within the Development Area; (ii) if Developer becomes insolvent or is adjudicated bankrupt, or if any action is taken by Developer, or by others against the Developer, under any insolvency, bankruptcy or reorganization act, or if Developer makes an assignment for the benefit of creditors or a receiver is appointed by the Developer; (iii) if Developer fails to meet its development obligations under the Development Schedule for any single Development Period, and fails to cure such default within 30 days of receiving notice thereof; or (iv) if any Franchise Agreement that is entered into in order to fulfill Developer’s development obligations under this Agreement is terminated or subject to termination by Franchisor, pursuant to the terms of that Franchise Agreement.

6.3 In the event this Agreement is terminated prior to its natural expiration for any reason, the parties agree and acknowledge that the geographic scope of the post-term non-compete described in Section 14(B)(2)(b) of the Initial FA shall also include (a) the Development Area, and (b) a 10-mile radius around the perimeter of the Development Area.

7. **Reservation of Rights.** Except as provided in Section 1 of this Agreement, the parties agree and acknowledge that the rights granted in this Agreement are non-exclusive and that Franchisor and its affiliates reserve all other rights not expressly granted to Developer herein.

8. **Sale or Assignment.** Developer's rights under this Agreement are personal and Developer may not sell, transfer, or assign any right granted herein without Franchisor's prior written consent, which may be withheld in its sole discretion. Notwithstanding, if Developer is an individual or a partnership, Developer has the right to assign its rights under this Agreement to a corporation or limited liability company that is wholly owned by Developer according to the same terms and conditions as provided in Developer's initial Franchise Agreement. Franchisor has the right to assign this Agreement in whole or in part in its sole discretion.

9. **Acknowledgment.** Developer acknowledges that this Agreement is not a Franchise Agreement and does not confer upon Developer any rights to use the Franchisor's Proprietary Marks or System.

10. **Notices.** All notices, requests and reports to be given under this Agreement are to be in writing, and delivered either by hand, overnight mail via recognized courier such as UPS or FedEx, or certified mail, return receipt requested, prepaid, to the addresses set forth above (which may be changed by written notice).

11. **Choice of Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan, without reference to this state's conflict of laws principles.

12. **Internal Dispute Resolution.** Developer must first bring any claim or dispute between Developer and Franchisor to Franchisor's management, after providing Franchisor with notice of and a reasonable opportunity to cure an alleged breach hereunder. Developer must exhaust this internal dispute resolution procedure before bringing a dispute before a third party. This agreement to first attempt resolution of disputes internally will survive termination or expiration of this Agreement.

13. **Mediation.** At Franchisor's option, all claims or disputes between Franchisor and Developer or its affiliates arising out of, or in any way relating to, this Agreement or any other agreement by and between Franchisor and Developer or its affiliates, or any of the parties' respective rights and obligations arising from such agreement, which are not first resolved through the internal dispute resolution procedure set forth in Section 12 above, must be submitted first to non-binding mediation, to be conducted at Franchisor's then-current headquarters (or other location that Franchisor approves in writing) under the auspices of the American Arbitration Association ("AAA"), in accordance with AAA's Commercial Mediation Rules then in effect. Before commencing any legal action against Franchisor or its affiliates with respect to any such claim or dispute, Developer must submit a notice to Franchisor, which specifies, in detail, the precise nature and grounds of such claim or dispute. Franchisor will have a period of thirty (30) days following receipt of such notice within which to notify Developer as to whether Franchisor or its affiliates elects to exercise its option to submit such claim or dispute to mediation. Developer may not commence any action against Franchisor or its affiliates with respect to any such claim or dispute in any court unless Franchisor fails to exercise its option to submit such claim or dispute to mediation, or such mediation proceedings have been terminated either: (i) as the result of a written declaration of the mediator(s) that further mediation efforts are not worthwhile; or (ii) as a result of a written declaration by Franchisor. Franchisor's rights to mediation, as set forth herein, may be specifically enforced by Franchisor.

13.1 The parties will not be required to first attempt to mediate a controversy, dispute, or claim through mediation as set forth in this Section 13 if such controversy, dispute, or claim concerns an allegation that a party has violated (or threatens to violate, or poses an imminent risk of violating): (i) any federally protected intellectual property rights in the Proprietary Marks, the System, or in any confidential/proprietary information of Franchisor (as such information is defined more fully in the Franchise Agreements); (ii) any of the restrictive covenants contained in this Agreement or any other Franchise Agreements executed in connection with the Franchised Businesses opened within the Development Area; and (iii) any of Developer's payment obligations under this Agreement or any such Franchise Agreement.

13.2 This agreement to mediate will survive any termination or expiration of this Agreement. The parties agree that there will be no class action mediation and that any mediation proceeding involving Franchisor and Developer or its principals that arises out of or relates to this Agreement in any manner must be mediated in a proceeding that does not involve any other third party, including any other franchisee or licensee of Franchisor's franchise system.

14. **Injunctive Relief.** Developer acknowledges and agrees that irreparable harm could be caused to Franchisor by Developer's violation of certain provisions of this Agreement and, as such, in addition to any other relief available at law or equity, Franchisor shall be entitled to obtain in any court of competent jurisdiction, without bond, restraining orders or temporary or permanent injunctions in order to enforce, among other items, the provisions of this Agreement relating to: (i) Developer's use of the Proprietary Marks and Franchisor's confidential information; (ii) Developer's covenant not to compete, as well as any other violations of the restrictive covenants set forth in this Agreement or any Franchise Agreement with Franchisor; (iii) Developer's obligations on termination or expiration of this Agreement; (iv) disputes and controversies based on or arising under the Lanham Act, or otherwise involving the Proprietary Marks, as now or hereafter amended; (v) disputes and controversies involving enforcement of the Franchisor's rights with respect to confidentiality under this Agreement; and (vi) prohibiting any act or omission by Developer or its employees that constitutes a violation of applicable law, threatens Franchisor's franchise system or threatens other franchisees of Franchisor. Developer's only remedy if such an injunction is entered will be the dissolution of the injunction, if appropriate, and Developer waives all damage claims if the injunction is wrongfully issued.

15. **Jurisdiction and Venue.** Subject to Sections 12 through 14 of this Agreement, the parties agree that any actions arising out of or related to this Agreement must be initiated and litigated to conclusion exclusively in the state court of general jurisdiction closest to Ann Arbor, Michigan or, if appropriate, the United States District Court for the Eastern District of Michigan (unless settled by the parties after such action is initiated). Developer acknowledges that Franchisor may bring an action in any other court of competent jurisdiction to seek and obtain injunctive relief as set forth in Section 15 above. Developer hereby irrevocably consents to the personal jurisdiction of the state and federal courts described in this Section.

16. **Third Party Beneficiaries.** Franchisor's officers, directors, shareholders, agents and/or employees are express third party beneficiaries of this Agreement and the dispute resolution procedures contained herein, including without limitation, the right to specifically utilize and exhaust the mediation procedure with respect to any and all claims asserted against such person(s) by Developer or its principals.

17. **JURY TRIAL WAIVER.** THE PARTIES HEREBY AGREE TO WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER AT LAW OR EQUITY, REGARDLESS OF WHICH PARTY BRINGS SUIT. THIS WAIVER WILL APPLY TO ANY MATTER WHATSOEVER BETWEEN THE PARTIES HERETO WHICH ARISES OUT OF OR IS RELATED IN ANY WAY TO THIS AGREEMENT, THE PERFORMANCE OF EITHER PARTY, AND/OR DEVELOPER'S PURCHASE FROM FRANCHISOR OF THE DEVELOPMENT RIGHTS DESCRIBED HEREIN.

18. **WAIVER OF CLASS ACTIONS.** THE PARTIES AGREE THAT ALL PROCEEDINGS ARISING OUT OF OR RELATED TO THIS AGREEMENT, OR THE SALE OF THE FRANCHISED BUSINESS, WILL BE CONDUCTED ON AN INDIVIDUAL, NOT A CLASS-WIDE BASIS, AND THAT ANY PROCEEDING BETWEEN DEVELOPER, DEVELOPER'S GUARANTORS AND FRANCHISOR OR ITS AFFILIATES/OFFICERS/EMPLOYEES MAY NOT BE CONSOLIDATED WITH ANY OTHER PROCEEDING BETWEEN FRANCHISOR AND ANY OTHER THIRD PARTY.

19. **Waiver of Punitive Damages.** Developer waives to the fullest extent permitted by law, any right to or claim for any punitive, exemplary, incidental, indirect, special or consequential damages (including, without limitation, lost profits) that Developer may have against Franchisor arising out of any cause whatsoever (whether such cause be based in contract, negligence, strict liability, other tort or otherwise) and agree that in the event of a dispute, Developer's recovery will be limited to actual damages. If any other term of this Agreement is found or determined to be unconscionable or unenforceable for any reason, the foregoing provisions will continue in full force and effect, including, without limitation, the waiver of any right to claim any consequential damages.

20. **Attorneys' Fees.** If either party institutes any judicial or other proceeding to enforce any monetary or nonmonetary obligation or interpret the terms of this Agreement and Franchisor prevails in the action or proceeding, Developer will be liable to Franchisor for all costs, including reasonable attorneys' fees and court costs, incurred in connection with such proceeding.

21. **Nonwaiver.** Franchisor's failure to insist upon strict compliance with any provision of this Agreement will not be a waiver of Franchisor's right to do so, any law, custom, usage or rule to the contrary notwithstanding. Delay or omission by Franchisor respecting any breach or default will not affect Franchisor's rights respecting any subsequent breaches or defaults. All rights and remedies granted in this Agreement will be cumulative. Franchisor's election to exercise any remedy available by law or contract will not be deemed a waiver or preclude exercise of any other remedy.

22. **Severability.** The parties agree that if any provisions of this Agreement may be construed in two ways, one of which would render the provision illegal or otherwise voidable or unenforceable and the other which would render it valid and enforceable, such provision will have the meaning, which renders it valid and enforceable. The provisions of this Agreement are severable, and this Agreement will be interpreted and enforced as if all completely invalid or unenforceable provisions were not contained herein, and partially valid and enforceable provisions will be enforced to the extent that they are valid and enforceable. If any material provision of this Agreement will be stricken or declared invalid, the parties agree to negotiate mutually acceptable substitute provisions. In the event that the parties are unable to agree upon such provisions, Franchisor reserves the right to terminate this Agreement.

23. **Construction of Language.** The language of this Agreement will be construed according to its fair meaning, and not strictly for or against either party. All words in this Agreement refer to whatever number or gender the context requires. If more than one party or person is referred to as Developer, their obligations and liabilities must be joint and several. Headings are for reference purposes and do not control interpretation.

24. **Successors.** References to "Franchisor" or "Developer" include the respective parties' successors, assigns or transferees, subject to the limitations of Section 8 of this Agreement.

25. **Additional Documentation.** Developer must, from time to time, subsequent to the date first set forth above, at Franchisor's request and without further consideration, execute and deliver such other documentation or agreements and take such other action as Franchisor may reasonably require in order to effectuate the transactions contemplated in this Agreement. In the event that Developer fails to comply with the provisions of this Section, Developer hereby appoints Franchisor as Developer's attorney-in-fact to execute any and all documents on Developer's behalf, as reasonably necessary to effectuate the transactions contemplated herein.

26. **No Right to Offset.** Developer may not withhold all or any part of any payment to Franchisor or any of its affiliates on the grounds of the alleged nonperformance of Franchisor or any of its affiliates or as an offset against any amount Franchisor or any of its affiliates may owe or allegedly owe Developer under this

Agreement or any related agreements.

27. **Entire Agreement.** This Agreement contains the entire agreement between the parties concerning Developer’s development rights within the Development Area; no promises, inducements or representations (other than those in the Franchise Disclosure Document) not contained in this Agreement have been made, nor will any be of any force or effect, or binding on the parties. Modifications of this Agreement must be in writing and signed by both parties. Franchisor reserves the right to change Franchisor’s policies, procedures, standards, specifications or manuals at Franchisor’s discretion. In the event of a conflict between this Agreement and any Franchise Agreement(s), the terms, conditions and intent of this Agreement will control. Nothing in this Agreement, or any related agreement, is intended to disclaim any of the representations Franchisor made to Developer in the Franchise Disclosure Document that Franchisor provided to Developer.

IN WITNESS WHEREOF, AND INTENDING TO BE LEGALLY BOUND HEREBY, THE PARTIES HERETO HAVE CAUSED THIS AGREEMENT TO BE EXECUTED EFFECTIVE THE DATE FIRST SET FORTH ABOVE.

FRANCHISOR:

DEVELOPER:

MILKSHAKE FACTORY FRANCHISE, LLC

By: _____
Dan Reese, President

By: _____
NAME, TITLE

Date: _____

Date: _____

SPOUSE NAME
Spouse Signature

Date: _____

**EXHIBIT A
to DEVELOPMENT AGREEMENT**

DATA SHEET

1. **Development Area.** The Development Area, as referred to in Section 1 of the Development Agreement, is described below (or an attached map) by geographic boundaries and will consist of the following area or areas: _____

2. **Development Schedule.** The Development Schedule referred to in Section 5 of the Development Agreement is as follows:

Expiration of Development Period (each, a "Development Period")	# of New Franchised Businesses Opened Within Development Period	Cumulative # of Franchised Businesses that Must Be Open and Operating
12 Months from Effective Date	1	1
24 Months from Effective Date	1	2
36 Months from Effective Date	1	3
48 Months from Effective Date	1	4
60 Months from Effective Date	2	6

3. **Development Fee.** The Development Fee that is due and payable to Franchisor immediately upon execution of this Agreement shall be \$ _____.

FRANCHISOR:

DEVELOPER:

MILKSHAKE FACTORY FRANCHISE, LLC

By: _____
Dan Reese, President

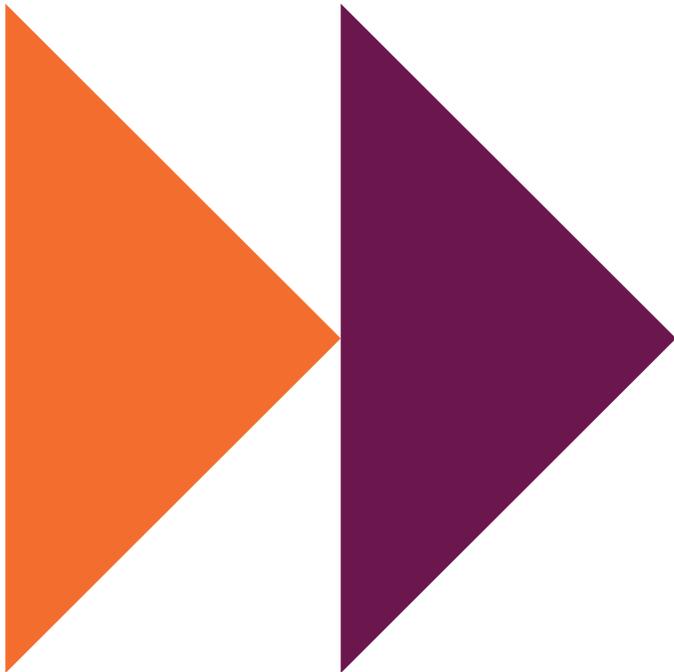
By: _____
NAME, TITLE

Date: _____

Date: _____

EXHIBIT D
TO THE MILKSHAKE FACTORY FRANCHISE, LLC
FRANCHISE DISCLOSURE DOCUMENT

FINANCIAL STATEMENTS



**MILKSHAKE FACTORY
FRANCHISE, LLC**

FINANCIAL STATEMENTS

DECEMBER 31, 2023

(With Independent Auditor's Report Thereon)

MILKSHAKE FACTORY FRANCHISE, LLC

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INDEPENDENT AUDITOR'S REPORT

To the Board of Directors and Members
Milkshake Factory Franchise, LLC

Report on the Audit of the Financial Statements

Opinion

We have audited the financial statements of Milkshake Factory Franchise, LLC, which comprise the balance sheet as of December 31, 2023, and the related statements of earnings and members' equity (deficit) and cash flows for the year then ended, and the related notes to the financial statements.

In our opinion, the accompanying financial statements presents fairly, in all material respects, the financial position of Milkshake Factory Franchise, LLC as of December 31, 2023, and the results of its operations and its cash flows for the year then ended in accordance with accounting principles generally accepted in the United States of America.

Basis for Opinion

We conducted our audit in accordance with auditing standards generally accepted in the United States of America (GAAS). Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of Milkshake Factory Franchise, LLC and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of the financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about Milkshake Factory Franchise, LLC's ability to continue as a going concern for one year after the date that the financial statements are issued.

Auditor's Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with GAAS, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit 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 Milkshake Factory Franchise, LLC's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about Milkshake Factory Franchise, LLC's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audit.



Troy, Michigan
March 25, 2024

MILKSHAKE FACTORY FRANCHISE, LLC

BALANCE SHEET DECEMBER 31, 2023

Assets

Cash	\$ 624,669
Accounts receivable - trade, net	13,500
Deferred franchise fees (note 3)	1,547,566
Prepaid expenses	<u>27,750</u>
Total assets	<u>\$ 2,213,485</u>

Liabilities and Members' Deficit

Liabilities	
Accounts payable - related party (note 2)	\$ 16,393
Accounts payable - trade	147,467
Accrued liabilities	235,458
Deferred franchise revenue (note 3)	2,361,375
Deferred training revenue (note 3)	<u>153,000</u>
Total liabilities	2,913,693
Members' deficit	<u>(700,208)</u>
Total liabilities and members' deficit	<u>\$ 2,213,485</u>

See accompanying notes to financial statements

MILKSHAKE FACTORY FRANCHISE, LLC

STATEMENT OF EARNINGS AND MEMBERS' EQUITY (DEFICIT) YEAR ENDED DECEMBER 31, 2023

Revenues	\$ 118,625
Operating expenses	<u>1,568,833</u>
Net loss	(1,450,208)
Members' equity - January 1, 2023	300,000
Contributions from members	<u>450,000</u>
Members' deficit - December 31, 2023	<u><u>\$ (700,208)</u></u>

See accompanying notes to financial statements

MILKSHAKE FACTORY FRANCHISE, LLC

STATEMENT OF CASH FLOWS YEAR ENDED DECEMBER 31, 2023

Cash flows from operating activities	
Net loss	\$ (1,450,208)
Adjustments	
Decrease/(increase) in assets	
Accounts receivable - trade, net	(13,500)
Deferred franchise fees	(1,547,566)
Prepaid expenses	(27,242)
Increase/(decrease) in liabilities	
Accounts payable - related party	16,393
Accounts payable - trade	146,959
Accrued liabilities	235,458
Deferred franchise revenue	2,361,375
Deferred training revenue	<u>153,000</u>
Total adjustments	<u>1,324,877</u>
Net cash used in operating activities	(125,331)
Cash flows from financing activities	
Contributions from members	<u>450,000</u>
Net increase in cash	324,669
Cash - January 1, 2023	<u>300,000</u>
Cash - December 31, 2023	<u><u>\$ 624,669</u></u>

See accompanying notes to financial statements

MILKSHAKE FACTORY FRANCHISE, LLC

NOTES TO FINANCIAL STATEMENTS DECEMBER 31, 2023

Note 1 – Nature of Business and Significant Accounting Policies

Nature of Business

Milkshake Factory Franchise, LLC (the “Company”) was formed in December 2022. The Company’s operations are principally related to the sale and support of franchises for milkshake restaurants under the “Milkshake Factory” name in the United States of America. The Company was formed as a multiple member LLC with a perpetual existence. The liability of the members of the Company is limited to the members’ total capital contributions.

Cash

The Company places its temporary cash investments with high credit quality financial institutions. At times, such investments may be in excess of the Federal Deposit Insurance Corporation (FDIC) insurance limit.

Accounts Receivable

Accounts receivable are stated at invoice amounts and consist of referral fees and billings due from franchisees for training fees that have not yet been received. Past due balances and other higher risk amounts are reviewed individually for collectability.

The Company recognizes an allowance for losses on accounts receivable in an amount equal to the current expected credit losses. The estimation of the allowance is based on an analysis of historical loss experience, current receivables aging, and management’s assessment of current conditions and reasonable and supportable expectation of future conditions, as well as an assessment of specific identifiable customer accounts considered at risk or uncollectible. The Company assesses collectability by pooling receivables where similar characteristics exist and evaluates receivables individually when specific customer balances no longer share those risk characteristics and are considered at risk or uncollectible.

The expense associated with the allowance for expected credit losses is recognized in operating expenses. The Company did not experience write-offs during 2023, and no allowance was recorded as of December 31, 2023. The Company has omitted all credit loss related disclosures.

The balance of accounts receivable is as follows:

Beginning	\$	-
Ending		13,500

MILKSHAKE FACTORY FRANCHISE, LLC

NOTES TO FINANCIAL STATEMENTS DECEMBER 31, 2023

Revenue Recognition

The Company earns revenue through franchise fees, training fees, and ongoing royalty and advertisement fees under the Company's franchise agreements.

Initial franchise fee revenue is recognized over the life of the franchise agreements, which is generally 10 years, as the fee is for the right to use the Company's intellectual property over the term of the agreement. Initial franchise fee payments received by the Company that have not yet been recognized as revenue are recorded as deferred franchise revenue. Expenses incurred related to the franchise agreements, consisting mostly of broker fees, are deferred and recognized as expense over the life of the associated franchise agreement. See Note 3 for further disclosures related to deferred franchise revenue and deferred franchise fees. During the year ended December 31, 2023, the Company's revenue was comprised entirely of franchise fees recognized "over time".

Estimates

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

Income Taxes

The Company is organized as a limited liability company in accordance with Delaware law. In accordance with the provisions of the Internal Revenue Code, a limited liability company is not subject to Federal income taxes and its income is included in its member's income tax returns. Therefore, no provision has been made in the accompanying financial statements for Federal income taxes or deferred income taxes.

The Company's income tax filings are subject to audit by various taxing authorities. The open audit period is 2022 - 2023.

Subsequent Events

The financial statements and related disclosures include evaluation of events up through and including March 25, 2024, which is the date the financial statements were available to be issued.

Note 2 – Related Party Transactions

The Company has a service agreement with Franworth, LLC related to management and accounting services, requiring fees of \$40,000 per month. Management fees of \$480,000 were incurred for the year ended December 31, 2023. At December 31, 2023, the Company had accounts payable due to Franworth, LLC of \$16,393, relating to expenses paid on the Company's behalf.

MILKSHAKE FACTORY FRANCHISE, LLC

NOTES TO FINANCIAL STATEMENTS DECEMBER 31, 2023

Note 3 – Deferred Franchise Fees and Revenue

Deferred franchise fees activity for the year ended December 31, 2023 can be summarized as follows:

Beginning	\$ -
Franchise development costs	1,619,000
Less: expense recognized	<u>(71,434)</u>
Ending	<u>\$ 1,547,566</u>

Deferred franchise revenue activity for the year ended December 31, 2023 can be summarized as follows:

Beginning	\$ -
Franchise fees	2,480,000
Less: franchise fee revenue recognized	<u>(118,625)</u>
Ending	<u>\$ 2,361,375</u>

Deferred franchise fees and revenue expected to be recognized in the future can be summarized as follows:

	Fees	Revenue
2024	\$ 338,729	\$ 516,750
2025	336,896	514,458
2026	293,229	459,250
2027	165,698	281,125
2028	104,694	168,000
Thereafter	<u>308,320</u>	<u>421,792</u>
Total	<u>\$ 1,547,566</u>	<u>\$ 2,361,375</u>

Deferred training revenue will be recognized as revenue once the training classes have been held. The balance of deferred training revenue is as follows:

Beginning	\$ -
Ending	153,000

MILKSHAKE FACTORY FRANCHISE, LLC

NOTES TO FINANCIAL STATEMENTS DECEMBER 31, 2023

Note 4 – Operating Agreement

The Company's operating agreement includes three types of membership units: Class A, B and Class C units. Class A units have full voting rights and Class B and C units are nonvoting.

Under the Company's Equity Incentive Plan, the Company may award its employees, officers, and directors up to 2,000 Class C units. The Plan is administered by the Company's Board of Directors.

As of December 31, 2023, the Company had issued 9,000 Class A units and no Class B or C units.

Note 5 – Franchise Information

The Company entered into franchise agreements for single franchise units that totaled 18 units for the year ended December 31, 2023.

The following is a summary of the franchise activity for franchises for the year ended December 31, 2023.

Franchises open at beginning of period	-
Franchises opened during the period	-
Franchises closed during the period	<u>-</u>
Franchises open at end of period	<u><u>-</u></u>

Note 6 – Uncertainty

The accompanying financial statements have been prepared assuming that the Company will continue operations, which contemplates the realization of assets and liabilities in the normal course of business. The Company incurred a net loss of \$1,450,208 for the year ended December 31, 2023. The Company also had members' deficit of \$700,208 as of December 31, 2023.

At December 31, 2023, Franworth, LLC and Edwards Holdings, LLC were members of the Company. The members have historically provided the necessary working capital to meet the Company's short-term obligations and the necessary capital to offset the net operating losses incurred by the Company. The members have pledged to continue their financial support and management believes that these actions will enable the Company to continue its operations through March 25, 2025.

EXHIBIT E
TO THE MILKSHAKE FACTORY FRANCHISE, LLC
FRANCHISE DISCLOSURE DOCUMENT

STATE SPECIFIC ADDENDA
TO THE FDD, FRANCHISE AGREEMENT AND DEVELOPMENT AGREEMENT

STATE SPECIFIC ADDENDA

If the franchise is located in or if franchisee is a resident of any of the following states, then the designated provisions in the Franchise Disclosure Document (“Disclosure Document”) and Franchise Agreement will be amended as follows:

CALIFORNIA

ADDENDUM TO DISCLOSURE DOCUMENT

California Corporations Code, Section 31125 requires the franchisor to give the franchisee a disclosure document, approved by the Department of Financial Protection and Innovation, prior to a solicitation of a proposed material modification of an existing franchise.

Our website has not been reviewed or approved by the California Department of Financial Protection and Innovation. Any complaints concerning the content of this website may be directed to the California Department of Financial Protection and Innovation at www.dfpi.ca.gov.

THE CALIFORNIA FRANCHISE INVESTMENT LAW REQUIRES THAT A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE FRANCHISE BE DELIVERED TOGETHER WITH THE DISCLOSURE DOCUMENT.

Registration of this franchise does not constitute approval, recommendation, or endorsement by the Commissioner of the Department of Financial Protection and Innovation.

1. The following language is added to the end of Item 3 of the Disclosure Document:

Neither Milkshake Factory Franchise, LLC, nor any person identified in Item 2, or an affiliate or franchise broker offering franchises under our principal trademark is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities and Exchange Act of 1934, 15 U.S.C.A. 78a et seq., suspending or expelling such person from membership in such association or exchange.

2. The following paragraphs are added at the end of Item 17 of the Disclosure Document:

The Franchise Agreement requires franchisee to execute a general release of claims upon 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 thereunder is void.

California Business and Professions Code Sections 20000 through 20043 provide rights to franchisees concerning termination, transfer or non-renewal of a franchise. If the Franchise Agreement contains a provision that is inconsistent with the law, the law will control.

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.).

The Franchise Agreement contains a covenant not to compete which extends beyond the termination of the franchise. This provision may not be enforceable under California law.

The Franchise Agreement requires application of the laws of the state where the business is located. This provision may not be enforceable under California law.

The Franchise Agreement requires litigation. The litigation will occur in Michigan, with the costs being borne by the non-prevailing party. The prevailing party shall be entitled to recover reasonable compensation for expenses, costs and fees in connection with arbitration, including reasonable attorney’s fees. Prospective franchisees are encouraged to consult private legal counsel to determine the applicability of

California and federal laws (such as Business and Professions Code Section 20040.5 Code of Civil Procedure Section 1281, and the Federal Arbitration Act) to any provisions of a franchise agreement restricting venue to a forum outside the State of California.

The Franchise Agreement contains a liquidated damages clause. Under California Civil Code Section 1671, certain liquidated damages clauses are unenforceable.

Section 23 of the Franchise Agreement is deleted in its entirety.

3. The following language is added to the end of Item 19 of the Disclosure Document:

The earnings claim set forth in certain portions of Item 19 of the Disclosure Document only describes Gross Sales (as defined therein) and therefor does not include costs of sales, operating expenses, or other costs or expenses that must be deducted from gross revenue or gross sales figures to obtain net income or profit.

The Franchise Agreement is amended to state the following: “No statement, questionnaire, or acknowledgement 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.”

California’s Franchise Investment Law (Corporations Code sections 31512 and 31512.1) states that any provision of a franchise agreement or related document requiring the franchisee to waive specific provisions of the law is contrary to public policy and is void and unenforceable. The law also prohibits a franchisor from disclaiming or denying (i) representations it, its employees, or its agents make to you, (ii) your ability to rely on any representations it makes to you, or (iii) any violations of the law.

ILLINOIS

ADDENDUM TO DISCLOSURE DOCUMENT

1. The “**Summary**” section of Item 17(v), entitled **Choice of forum**, is deleted in its entirety.
2. The “**Summary**” section of Item 17(w), entitled **Choice of law**, is deleted and replaced with the following:

Illinois law applies.
3. Illinois law governs the agreement(s) between the parties to this franchise.
4. Any provision in a franchise agreement that designates jurisdiction or venue in a forum outside of Illinois is void, provided that arbitration may take place outside of Illinois. 815 ILCS 705/4 (West 2010)
5. Any condition, stipulation, or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of the Illinois Franchise Disclosure Act or any other law of Illinois is void. 815 ILCS 705/41 (West 2010)

The Franchise Agreement is amended to state the following: “No statement, questionnaire, or acknowledgement 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.”

ILLINOIS

AMENDMENT TO FRANCHISE AGREEMENT AND DEVELOPMENT AGREEMENT

The Franchise Agreement and Development Agreement are specifically amended as follows:

In recognition of the requirements of the Illinois Franchise Disclosure Act of 1987 (as amended), the parties to the attached Franchise Agreement and/or Development Agreement (“**Agreement**”) agree as follows:

1. Governing Law.

EXCEPT TO THE EXTENT GOVERNED BY THE UNITED STATES TRADEMARK ACT OF 1946 (LANHAM ACT, 15 U.S.C. SECTIONS 1051 ET SEQ.), THE FEDERAL ARBITRATION ACT, OR OTHER FEDERAL LAW, THIS AGREEMENT AND THE RIGHTS OF THE PARTIES HEREUNDER SHALL BE INTERPRETED AND CONSTRUED UNDER THE LAWS OF THE STATE OF ILLINOIS.

2. Section 4 of the Illinois Franchise Disclosure Act provides that any provision in a franchise agreement/development agreement that designates jurisdiction or venue outside of the State of Illinois is void. However, a franchise agreement/development agreement may provide for arbitration in a venue outside of Illinois.

3. Section 41 of the Illinois Franchise Disclosure Act provide that any condition, stipulation or provision purporting to bind any person acquiring any franchise to waive compliance with the Illinois Franchise Disclosure Act or any other law of Illinois is void. Accordingly, insofar as the Franchise Agreement requires you to waive your rights under the Illinois franchise law, these requirements are deleted from the Franchise Agreement. This provision will not prevent the franchisor from requiring you to sign a general release of claims as part of a negotiated settlement of a dispute or actual lawsuit filed under any of the provisions of the Act, nor shall it prevent the arbitration of any claim pursuant to the provisions of Title 9 of the United States Code.

The Franchise Agreement and/or Development Agreement is amended to state the following: “No statement, questionnaire, or acknowledgement 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.”

IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Amendment, understands and consents to be bound by all of its terms.

Milkshake Factory Franchise, LLC

[INSERT FRANCHISEE NAME]

By: _____

By: _____

Title: _____

Title: _____

INDIANA

ADDENDUM TO DISCLOSURE DOCUMENT

1. Item 17 of the Disclosure Document is amended to reflect the requirement under Indiana Code 23-2-2.7-1 (9), which states that any post term non-compete covenant must not extend beyond the franchisee’s exclusive territory.
2. Item 17 is amended to state that this is subject to Indiana Code 23-2-2.7-1 (10).
3. Under Indiana Code 23-2-2.7-1 (10), jurisdiction and venue must be in Indiana if the franchisee so requests. This amends Section 22.6 of the Franchise Agreement.
4. Under Indiana Code 23-2-2.7-1 (10), franchisee may not agree to waive any claims or rights.
5. The Franchise Agreement is amended to state the following: “No statement, questionnaire, or acknowledgement 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.”

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

ATTEST

Milkshake Factory Franchise, LLC

Witness

By: _____
Name: _____
Title: _____

FRANCHISEE:

Witness

MARYLAND

ADDENDUM TO DISCLOSURE DOCUMENT

1. The “**Summary**” section of Item 17(h) entitled “**Cause defined (defaults which cannot be cured)**”, is amended by adding the following:

The Franchise Agreement provides for termination upon your bankruptcy. This provision might not be enforceable under federal bankruptcy law (11 U.S.C. Sections 101 et seq.), but we will enforce it to the extent enforceable.

2. The “**Summary**” sections of Item 17(c) entitled **Requirements for renewal or extension**, and Item 17(m) entitled **Conditions for franchisor approval of transfer**, are amended by adding the following:

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

3. The following are added to the end of the chart in Item 17:

Despite any contradicting provision in the Franchise Agreement, you have 3 years from the date on which we grant you the franchise to bring a claim under the Maryland Franchise Registration and Disclosure Law.

A franchisee may bring a lawsuit in Maryland for claims arising under the Maryland Franchise Registration and Disclosure Law.

Based upon the franchisor's financial condition, the Maryland Securities Commissioner has required a financial assurance. Therefore, 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.

The Franchise Agreement is amended to state the following: “No statement, questionnaire, or acknowledgement 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.”

MARYLAND

AMENDMENT TO FRANCHISE AGREEMENT AND DEVELOPMENT AGREEMENT

The Franchise Agreement and/or Development Agreement are specifically amended as follows:

Based upon the franchisor's financial condition, the Maryland Securities Commissioner has required a financial assurance. Therefore, 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.

Any provision requiring Franchisee to execute a general release of any and all claims against Franchisor shall not apply to claims arising under the Maryland Franchise Registration and Disclosure Law.

Termination upon bankruptcy of the Franchisee might not be enforceable under federal bankruptcy law (11 U.S.C. Sections 101 et seq.), but Franchisor intends to enforce it to the extent enforceable.

The Franchise Agreement shall be supplemented by the following additional language:

Provided, however, that this limitation of claims shall not act to reduce the three (3) year statute of limitations afforded franchisee for bringing a claim under the Maryland Franchise Registration and Disclosure Law.

Section 23 of the Franchise Agreement is deleted in its entirety.

The Franchise Agreement and Development Agreement are amended to state the following: "A franchisee may bring a lawsuit in Maryland for claims arising under the Maryland Franchise Registration and Disclosure Law."

The Franchise Agreement and Development Agreement are amended to state the following: "All representations requiring prospective franchisees to assent to a release, estoppel or waiver of liability are not intended to nor shall they act as a release, estoppel or waiver of any liability incurred under the Maryland Franchise Registration and Disclosure Law."

The Franchise Agreement and Development Agreement are amended to state the following: "No statement, questionnaire, or acknowledgement 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."

IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Amendment, understands and consents to be bound by all of its terms.

Milkshake Factory Franchise, LLC

Franchisee: _____

By: _____

By: _____

Title: _____

Title: _____

MICHIGAN

ADDENDUM TO DISCLOSURE DOCUMENT

The following disclosures are required by the State of Michigan:

1. 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.

Each of the following provisions is void and unenforceable if contained in any documents related to a franchise:

- A. A prohibition on the right of a franchisee to join an association of franchisees.
- B. A requirement that a franchisee assent to a release, assignment, novation, waiver or estoppel which deprives a franchisee of rights and protections provided in the Michigan Franchise Investment Act. This shall not preclude a franchisee, after entering into a franchise agreement, from settling any and all claims.
- C. A provision that permits a franchisor to terminate a franchise prior to the expiration of 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.
- D. A provision that permits a franchisor to refuse to renew a franchise without fairly compensating the franchisee by repurchase or other means for the fair market value at the time of expiration of the franchisee's inventory, supplies, equipment, fixtures and furnishings. Personalized materials which have no value to the franchisor and inventory, supplies, equipment, fixtures and furnishings not reasonably required in the conduct of the franchise business are not subject to compensation. This subsection applies only if: (i) the term of the franchise is less than 5 years, and (ii) the franchisee is prohibited by the franchise or other agreement from continuing to conduct substantially the same business under another trademark, service mark, trade name, logotype, advertising or other commercial symbol in the same area subsequent to the expiration of the franchise or the franchisee does not receive at least 6 months advance notice of franchisor's intent not to renew the franchise.
- E. A provision that permits the franchisor to refuse to renew a franchise on terms generally available to other franchisees of the same class or type under similar circumstances. This section does not require a renewal provision.
- F. A provision requiring that arbitration or litigation be conducted outside this state. This shall not preclude the franchisee from entering into an agreement, at the time of arbitration, to conduct arbitration at a location outside this state.
- G. A provision which permits a franchisor to refuse to permit a transfer of ownership of a franchise, except for good cause. 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:
- 1) The failure of the proposed transferee to meet the franchisor's then-current reasonable qualifications or standards.
 - 2) The fact that the proposed transferee is a competitor of the franchisor or subfranchisor.
 - 3) The unwillingness of the proposed transferee to agree in writing to comply with all lawful obligations.
 - 4) The failure of the franchisee or proposed transferee to pay any sums owing to the franchisor or to cure any default in the franchise agreement existing at the time of the proposed transfer.
- H. A provision that requires the franchisee to resell to the franchisor items that are not uniquely identified with the franchisor. This subdivision does not prohibit a provision that grants to a franchisor a right of first refusal to purchase the assets of a franchise on the same terms and conditions as a bona fide third party willing and able to purchase those assets, nor does this subdivision prohibit a provision that grants the franchisor the right to acquire the assets of a franchise for the market or

appraised value of such assets if the franchisee has breached the lawful provisions of the franchise agreement and has failed to cure the breach in the manner provided in subdivision (C).

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

2. If the franchisor's most recent financial statements are unaudited and show a net worth of less than \$100,000.00 the franchisor shall, at the request of a franchisee, arrange for the escrow of initial investment and other funds paid by the franchisee until the obligations 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.

3. 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 direct to:

State of Michigan
Consumer Protection Division
Attention: Franchise
670 G. Mennen Williams Building
525 West Ottawa
Lansing, MI 48933
(517) 373-1160

Note: Despite paragraph F above, we intend to enforce fully the provisions of the arbitration section contained in the Franchise Agreement. We believe that paragraph F is unconstitutional and cannot preclude us from enforcing our arbitration section. You acknowledge that we will seek to enforce this section as well.

The Franchise Agreement and/or Development Agreement is amended to state the following: "No statement, questionnaire, or acknowledgement 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

ADDENDUM TO DISCLOSURE DOCUMENT

In accordance with the requirements of the state of Minnesota the following disclosure should be read in conjunction with the Disclosure Document. Any inconsistency with the information contained in the Disclosure Document will be resolved in favor of this Minnesota Addendum.

1. Item 13 **Trademarks** is amended by adding the following:

As required by the Minnesota Franchise Act, Minn. Stat. Sec. 80C.12(g), we will reimburse you for any of your costs incurred in the defense of your right to use the Marks, so long as you were using the Marks in the manner authorized by us, and so long as we are timely notified of the claim and are given the right to manage the defense of the claim including the right to compromise, settle or otherwise resolve the claim, and to determine whether to appeal a final determination of the claim.

2. Item 17 **Renewal, Termination, Transfer and Dispute Resolution** is amended by adding the following:

- A. **Renewal and Termination**

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 for non-renewal of the Agreement.

- B. **Choice of Forum**

Nothing in the Disclosure Document or Agreement can abrogate or reduce any of your rights as provided for in Minnesota Statutes 1984, Chapter 80C, or your rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction.

- C. **Releases**

A general release shall not relieve any person from liability imposed by the Minnesota Franchise Law, Minn. Stat., Chapter 80C, Sections 80C.22.

NSF checks and related interest and attorneys' fees are governed by Minnesota Statute § 604.113, which puts a cap of \$30 on initial service charges and requires notice and opportunity to cure prior to assessing interest and attorneys' fees.

Minnesota Rules 2860.4400(G) prohibits a franchisor from imposing on a franchisee by contract or rule, whether written or oral, any standard of conduct that is unreasonable.

These franchises have been registered under the Minnesota Franchise Act, registration does not constitute approval, recommendation, or endorsement by the Commissioner of Commerce of Minnesota or a finding by the Commissioner that the information provided herein is true, complete, and not misleading.

The Minnesota Franchise Act makes it unlawful to offer or sell any franchise in this state which is subject to registration without first providing to the franchisee, at least 7 days prior to the execution by the prospective franchisee of any binding franchise or other agreement, or at least 7 days prior to the payment of any consideration, by the franchisee, whichever occurs first, a copy of this Disclosure Document, together with a copy of all proposed agreements relating to the franchise. This Disclosure Document contains a summary only of certain material provisions of the Franchise Agreement. The contract or agreement should be referred to for an understanding of all rights and obligations of both the franchisor and the franchisee.

The Franchise Agreement is amended to state the following: "No statement, questionnaire, or acknowledgement 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

AMENDMENT TO FRANCHISE AGREEMENT AND DEVELOPMENT AGREEMENT

The Franchise Agreement and/or Development Agreement is specifically amended 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 to the attached Franchise Agreement (“Agreement”) agree as follows:

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

As required by Minnesota Franchise Act, Minn. Stat. Sec. 80C.12(g), Franchisor will reimburse Franchisee for any costs incurred by Franchisee in the defense of Franchisee’s right to use the Marks, so long as Franchisee was using the Marks in the manner authorized by Franchisor, and so long as Franchisor is timely notified of the claim and is given the right to manage the defense of the claim including the right to compromise, settle or otherwise resolve the claim, and to determine whether to appeal a final determination of the claim.

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

A general release shall not relieve any person from liability imposed by the Minnesota Franchise Law, Minn. Stat., Chapter 80C, Section 80C.22.

The franchisee cannot consent to franchisor obtaining injunctive relief. The franchisor may seek injunctive relief. *See* Minn. Rule 2860.4400J. A court will determine if a bond is required.

Nothing in the Disclosure Document or Agreement can abrogate or reduce any of your rights as provided for in Minnesota Statutes 1984, Chapter 80C, or your rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction.

Any claims brought pursuant to the Minnesota Franchises Act, § 80.C.01 et seq. must be brought within 3 years after the cause of action accrues. To the extent that any provision of the Franchise Agreement imposes a different limitations period, the provision of the Act shall control.

Any liquidated damages are not enforceable under Minnesota Rule 2860.4400(J).

NSF checks and related interest and attorneys’ fees are governed by Minnesota Statute § 604.113, which puts a cap of \$30 on initial service charges and requires notice and opportunity to cure prior to assessing interest and attorneys’ fees.

Minnesota Rules 2860.4400(G) prohibits a franchisor from imposing on a franchisee by contract or rule, whether written or oral, any standard of conduct that is unreasonable.

The Franchise Agreement and/or Development Agreement is amended to state the following: “No statement, questionnaire, or acknowledgement 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.”

IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Amendment, understands and consents to be bound by all of its terms.

Milkshake Factory Franchise, LLC

Franchisee: _____

By: _____

By: _____

Title: _____

Title: _____

NEW YORK

ADDENDUM TO DISCLOSURE DOCUMENT

The Disclosure Document is amended as follows:

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

INFORMATION COMPARING FRANCHISORS IS AVAILABLE. CALL THE STATE ADMINISTRATORS LISTED IN EXHIBIT A OR YOUR PUBLIC LIBRARY FOR SOURCES OF INFORMATION. REGISTRATION OF THIS FRANCHISE BY NEW YORK STATE DOES NOT MEAN THAT NEW YORK STATE RECOMMENDS IT OR HAS VERIFIED THE INFORMATION IN THIS FRANCHISE DISCLOSURE DOCUMENT. IF YOU LEARN THAT ANYTHING IN THE FRANCHISE DISCLOSURE DOCUMENT IS UNTRUE, CONTACT THE FEDERAL TRADE COMMISSION AND NEW YORK STATE DEPARTMENT OF LAW, INVESTOR PROTECTION BUREAU, 28 LIBERTY STREET, 21ST FLOOR, NEW YORK, NEW YORK 10005. THE FRANCHISOR MAY, IF IT CHOOSES, NEGOTIATE WITH YOU ABOUT ITEMS COVERED IN THE FRANCHISE DISCLOSURE DOCUMENT. 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 FRANCHISE DISCLOSURE DOCUMENT.

The following is added at the end of Item 3:

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

- A. No such party has an administrative, criminal or civil action pending against that person alleging: a felony, a violation of a franchise, antitrust, or securities law, fraud, embezzlement, fraudulent conversion, misappropriation of property, unfair or deceptive practices, or comparable civil or misdemeanor allegations.
- B. No such party has pending actions, other than routine litigation incidental to the business, which are significant in the context of the number of franchisees and the size, nature or financial condition of the franchise system or its business operations.
- C. No such party has been convicted of a felony or pleaded nolo contendere to a felony charge or, within the 10 year period immediately preceding the application for registration, has been convicted of or pleaded nolo contendere to a misdemeanor charge or has been the subject of a civil action alleging: violation of a franchise, antifraud, or securities law; fraud; embezzlement; fraudulent conversion or misappropriation of property; or unfair or deceptive practices or comparable allegations.
- D. No such party is subject to a currently effective injunctive or restrictive order or decree relating to the franchise, or under a Federal, State, or Canadian franchise, securities, antitrust, trade regulation or trade practice law, resulting from a concluded or pending action or proceeding brought by a public agency; or is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities and Exchange Act of 1934, suspending or expelling such person from membership in such association or exchange; or is subject to a currently effective injunctive or restrictive order relating to any other business activity as a result of an action brought by a public agency or department, including, without limitation, actions affecting a license as a real estate broker or sales agent.

The following is added to the end of Item 4:

Neither the franchisor, its affiliate, its predecessor, officers, or general partner during the 10-year period immediately before the date of the offering circular: (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 bankruptcy code; or (c) was a principal officer of a company or a general partner in a partnership that either filed as a debtor (or had filed against it) a petition to start an action under the U.S. Bankruptcy Code or that obtained a discharge of its debts under the U.S. Bankruptcy Code during or within 1 year after that officer or general partner of the franchisor held this position in

the company or partnership.

The following is added to the end of Item 5:

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

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

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

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

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

The following is added to the end of the “Summary” section of Item 17(j), titled “**Assignment of contract by franchisor**”:

However, no assignment will be made except to an assignee who in good faith and judgment of the franchisor, is willing and financially able to assume the franchisor’s obligations under the Franchise Agreement.

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

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

The Franchise Agreement is amended to state the following: “No statement, questionnaire, or acknowledgement 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.”

RHODE ISLAND

ADDENDUM TO DISCLOSURE DOCUMENT

The following language is added to Item 17(v) entitled **Choice of forum**:

, except as otherwise required by the Rhode Island Franchise Investment Act

The Franchise Agreement is amended to state the following: “No statement, questionnaire, or acknowledgement 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.”

RHODE ISLAND

AMENDMENT TO FRANCHISE AGREEMENT AND DEVELOPMENT AGREEMENT

In recognition of the requirements of the Rhode Island Franchise Investment Act (Section 19-28.1-14), the parties to the attached Franchise Agreement agree as follows:

§19-24.1-14 of the Rhode Island Franchise Investment Act 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 this Act.”

The Franchise Agreement is amended to state the following: “No statement, questionnaire, or acknowledgement 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.”

IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Amendment, understands and consents to be bound by all of its terms.

Milkshake Factory Franchise, LLC

Franchisee: _____

By: _____

By: _____

Title: _____

Title: _____

VIRGINIA

ADDENDUM TO DISCLOSURE DOCUMENT

1. In recognition of the restrictions contained in Section 13.1-564 of the Virginia Retail Franchising Act, the Franchise Disclosure Document for Milkshake Factory Franchise, LLC for use in the Commonwealth of Virginia shall be amended as follows:

Additional Disclosure. The following statements are added to Item 12.

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

Pursuant to Section 13.1-564 of the Virginia Retail Franchising Act, it is unlawful for a franchisor to use undue influence to induce a franchisee to surrender any right given to him under the franchise. If any provision of the Franchise Agreement involves the use of undue influence by the franchisor to induce a franchisee to surrender any rights given to him under the franchise, that provision may not be enforceable.

2. In recognition of the restrictions contained in Section 13.1-564 of the Virginia Retail Franchising Act, the Franchise Disclosure Document for Milkshake Factory Franchise, LLC for use in the Commonwealth of Virginia shall be amended as follows:

Additional Disclosure. The following statements are added to Item 17.h.

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

3. The Franchise Agreement is amended to state the following: “No statement, questionnaire, or acknowledgement signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (a) 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.”

IN WITNESS WHEREOF, the parties hereto have duly executed, sealed and delivered this Addendum dated this ____ day of _____, 20__.

ATTEST

Witness

Milkshake Factory Franchise, LLC

By: _____
Name: _____
Title: _____

FRANCHISEE:

WISCONSIN

AMENDMENT TO FRANCHISE AGREEMENT AND DEVELOPMENT AGREEMENT

This Amendment shall pertain to franchises sold in the State of Wisconsin and shall be for the purpose of complying with the Wisconsin Fair Dealership Law. Notwithstanding anything which may be contained in the body of the Franchise Agreement to be contrary, the Agreements shall be amended as follows:

1. Ch. 135, Stats., the Wisconsin Fair Dealership Law, supersedes any provisions of this Agreement or a related document between Franchisor and franchisee inconsistent with the Law.

2. The Franchise Agreement is amended to state the following: “No statement, questionnaire, or acknowledgement signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (a) 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.”

ATTEST

Milkshake Factory Franchise, LLC

Witness

By: _____
Name: _____
Title: _____

FRANCHISEE:

Witness

WISCONSIN

ADDENDUM TO DISCLOSURE DOCUMENT

For franchises and franchisees/developers subject to the Wisconsin Fair Dealership Law, the following information supersedes or supplements, as the case may be, the corresponding disclosures in the main body of the text of the Milkshake Factory Franchise, LLC Wisconsin Franchise Disclosure Document.

Item 17.

For Wisconsin franchisee/developers, ch. 135, Stats., the Wisconsin Fair Dealership Law, supersedes any provisions of the Franchise Agreement or a related contract between Franchisor and franchisee inconsistent with the Law.

EXHIBIT F
TO THE MILKSHAKE FACTORY FRANCHISE, LLC
FRANCHISE DISCLOSURE DOCUMENT
OPERATIONS MANUAL TABLE OF CONTENTS

Operations Manual

Table of Contents

Welcome	I
Preface	II
1. How to Use This Manual	II
2. Confidentiality Reminder	III
3. Contact Information	IV
4. Core Purpose	V

Chapter 1: Signature Product (Approximately 7 - 10 pages)

This chapter is about describing the signature products we deliver to our guests. It includes our philosophy, brand messaging and language used in the business.

Chapter 2: Operating the Franchise (Approximately 15 - 20 pages)

This chapter outlines the process for operating the business to brand standards. It includes information on:

- Franchisee / Franchisor Relationship
- Key Elements of Success
- Required Menu & Retail Offerings
- Pricing Guidelines
- Brand Standards/Compliance Review

Chapter 3: Personnel (Approximately 35 - 40 pages)

This chapter is about the internal customer - Employees. It will start with an Overview & Disclaimer which explains Joint Employer. It then includes information on:

- Disclaimer
- Labor Law Compliance
- Job Descriptions
- Recruitment Strategy
- Orientation & Training
- Managing Performance

Chapter 4: Daily Operations (Approximately 30 - 50 pages)

This chapter outlines daily business activity. It includes information on:

- Guest Service Policy
- Product Quality
- Food Safety
- Standards (Hours of Operation, Signage & Marketing, Decor, Music, Lighting, Cleanliness, Hygiene, etc.)
- Workstation Responsibilities
- Inventory Management
- POS System

Chapter 5: Business Management (15 - 20 pages)

This chapter outlines the administrative processes. It includes an Overview and information on:

- Proforma/Business Goals
- Accounting Methods
- Managing Costs
- Banking
- Reporting Requirements
- Regulatory Requirements/Legal Compliance
- Risk Management
- Key Performance Indicators

Chapter 6: Marketing (Approximately 30 – 40 pages)

This chapter includes a Preface and information on:

- Marketing Planning & Expenditure
- Digital Presence
- Promotions
- Advertising Options
- Public Relations & Publicity
- Customer Loyalty/Engagement

Chapter 7: Facility Maintenance & Safety (Approximately 15 -20 pages)

This chapter includes information on:

- Prevention
- Emergency Preparedness
- Standard Emergency Guidelines
- Security
- Losses

Total Pages: Approximately (147- 200 pages)

EXHIBIT G
TO THE MILKSHAKE FACTORY FRANCHISE, LLC
FRANCHISE DISCLOSURE DOCUMENT
SAMPLE TERMINATION AND RELEASE AGREEMENT

SAMPLE FORM OF GENERAL RELEASE

This General Release (“Release”) is made and entered into on this _____ day of _____, 20____ (the “Effective Date”) by and between 4Ever Young Franchising, LLC (“Franchisor”) and _____ (“Franchisee”).

WITNESSETH:

WHEREAS, Franchisor and Franchisee are parties to a The Now Franchise Agreement (the “Franchise Agreement”) dated _____, 20__, granting Franchisee the right to operate a franchised business under Franchisor’s proprietary marks and system at the following location (the Franchised Business”): _____.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained in this Release, and other good and valuable consideration, receipt of which is hereby acknowledged by each of the parties hereto, the parties hereto agree as follows:

Franchisee, for itself and its successors, predecessors, assigns, beneficiaries, executors, trustees, agents, representatives, employees, officers, directors, shareholders, partners, members, subsidiaries and affiliates (jointly and severally, the “Releasors”), irrevocably and absolutely releases and forever discharges Franchisor and its successors, predecessors, assigns, beneficiaries, executors, trustees, agents, representatives, employees, officers, directors, shareholders, partners, members, subsidiaries and affiliates (jointly and severally, the “Releasees”), of and from all claims, obligations, actions or causes of action (however denominated), whether in law or in equity, and whether known or unknown, present or contingent, for any injury, damage, or loss whatsoever arising from any acts or occurrences occurring as of or prior to the date of this Release relating to the Franchise Agreement, the business operated under the Franchise Agreement, and/or any other agreement between any of the Releasees and any of the Releasors. The Releasors, and each of them, also covenant not to sue or otherwise bring a claim against any of the Releasees regarding any of the claims being released under this Release. Releasors hereby acknowledge that this release is intended to be a full and unconditional general release, as that phrase is used and commonly interpreted, extending to all claims of any nature, whether or not known, expected or anticipated to exist.

Each of the Releasors expressly acknowledges that they are familiar with the provisions of Section 1542 of the California Civil Code which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing a release, which if known by him or her must have materially affected his or her settlement with the debtor.

Each of the Releasors hereby specifically and expressly waives all rights that it may have under Section 1542 of the California Civil Code or any similar provision of law in any other jurisdiction. This Release shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law. Releasors acknowledge and agree that they have read the terms of this Release, they fully understand and voluntarily accept the terms, and that they have entered into this Release voluntarily and without any coercion.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Release as of the Effective Date.

FRANCHISOR

FRANCHISEE

MILKSHAKE FACTORY FRANCHISE, LLC
ENTITY]

— ***[INSERT NAME OR***

By: _____
Dan Reese, President

EXHIBIT H

~~TO THE TO THE MILKSHAKE FACTORY FRANCHISE, LLC
FRANCHISE DISCLOSURE DOCUMENT~~

LIST OF FRANCHISEES AND LICENSEES
LIST OF FRANCHISEES AS OF DECEMBER 31, 2023

~~*As we are a new franchise offering, we do not have any active Franchisees as of the Issue Date.*~~

Franchisee with Outlets Open

None

Franchisees with Franchise Agreements Signed But Not Open

<u>Franchisee/Licensees</u>	<u>Street Address</u>	<u>City</u>	<u>State</u>	<u>Zip</u>	<u>Mobile</u>
<u>Chan Braithwaite*</u>	<u>3249 E. Anika Dr.</u>	<u>Gilbert</u>	<u>AZ</u>	<u>85298</u>	<u>480-886-1557</u>
<u>Nathan Hackos*</u>	<u>597 County Road 65</u>	<u>Evergreen</u>	<u>CO</u>	<u>80439</u>	<u>303 638-7100</u>
<u>Jonathan & Micayla Bahr*</u>	<u>7623 Sand Lake Hts</u>	<u>Colorado Springs</u>	<u>CO</u>	<u>80908</u>	<u>719-728-0415</u>
<u>Lucien van Huyssteen</u>	<u>42 Cypress Dr</u>	<u>Stamford</u>	<u>CT</u>	<u>06903</u>	<u>917-565-0794</u>
<u>Robert Childers*</u>	<u>268 Parc Dr.</u>	<u>Canton</u>	<u>GA</u>	<u>30114</u>	<u>770-605-1071</u>
<u>Richard & Karen Strom*</u>	<u>8905 Moor Park Run</u>	<u>Duluth</u>	<u>GA</u>	<u>30097</u>	<u>770-833-4490</u>
<u>Dana Soucy*</u>	<u>2 Rockland Ct.</u>	<u>Frankfort</u>	<u>KY</u>	<u>40601</u>	<u>502-545-3835</u>
<u>Kindall Palmer*</u>	<u>216 Silver Creek Trl</u>	<u>Chapel Hill</u>	<u>NC</u>	<u>27517</u>	<u>720-560-4949</u>
<u>Manjesh Gorajala*</u>	<u>11445 McGinns Trace Ct.</u>	<u>Charlotte</u>	<u>NC</u>	<u>28277</u>	<u>704-303-1021</u>
<u>Brian Richards</u>	<u>15002 Marymont Ave.</u>	<u>Huntersville</u>	<u>NC</u>	<u>28078</u>	<u>704-877-2844</u>
<u>Manush Patel</u>	<u>6105 Hana Rd.</u>	<u>Edison</u>	<u>NJ</u>	<u>08817</u>	<u>732-925-7856</u>
<u>Chirag Parekh*</u>	<u>110 1st St, Apt 19C</u>	<u>Jersey City</u>	<u>NJ</u>	<u>07302</u>	<u>732-207-2754</u>
<u>Sivakumar Bodipudi*</u>	<u>2235 Koester Trce</u>	<u>Lewis Center</u>	<u>OH</u>	<u>43035</u>	<u>614-966-1183</u>
<u>Kyle Mason</u>	<u>1037 Glastonbury Way</u>	<u>Murfreesboro</u>	<u>TN</u>	<u>37129</u>	<u>615-519-2442</u>
<u>Scott Sheehan*</u>	<u>830 Silverwood Dr.</u>	<u>Southlake</u>	<u>TX</u>	<u>76092</u>	<u>713-301-3334</u>
<u>Maxwell De Monico</u>	<u>6117 Pine Leaf Trail</u>	<u>Austin</u>	<u>TX</u>	<u>78747</u>	<u>203-216-3898</u>
<u>Micah Paul Keith*</u>	<u>771 W. 1700 N</u>	<u>Orem</u>	<u>UT</u>	<u>84057</u>	<u>801-616-0834</u>
<u>John Vincent*</u>	<u>8980 Wild Willow Circle</u>	<u>Sandy</u>	<u>UT</u>	<u>84093</u>	<u>810-641-0166</u>

* These franchisees are also multi-unit developers.

EXHIBIT I

~~TO THE MILKSHAKE FACTORY FRANCHISE, LLC
FRANCHISE DISCLOSURE DOCUMENT~~

~~LIST OF CERTAIN FORMER FRANCHISEES THAT~~ AND LICENSEES WHO HAVE LEFT THE
SYSTEM IN PAST YEAR OR WHO HAS NOT COMMUNICATED WITH THE
FRANCHISOR WITHIN TEN (10) WEEKS OF THE ISSUANCE DATE

~~As we are~~ Below is a new franchise offering, we do not have any former ~~list of the franchisees that require
disclosure in~~ and Parent Licensees who ceased operations of their MilkShake Factory Franchise business
as of December 31, 2023.

None

If you buy this ~~Exhibit.~~ franchise, your contact information may be disclosed to other buyers when you leave the
franchise system.

EXHIBIT J
TO THE MILKSHAKE FACTORY FRANCHISE, LLC
FRANCHISE DISCLOSURE DOCUMENT

STATE EFFECTIVE DATES

STATE EFFECTIVE DATES

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

STATES	EFFECTIVE DATE
California	September 25, 2023 Not Registered
Hawaii	Not Registered
Illinois	September 18, 2023Pending
Indiana	Effective Pending
Maryland	Pending Registration
Michigan	Effective Pending
Minnesota	Pending Registration
New York	September 7, 2023Pending
North Dakota	Not Registered
Rhode Island	June 9, 2023 Pending
South Dakota	Not Registered
Virginia	November 1, 2023Pending
Washington	Not Registered
Wisconsin	May 19, 2023 Pending

Other states may require registration, filing, or exemption of a franchise under other laws, such as those that regulate the offer and sale of business opportunities or seller-assisted marketing plans.

EXHIBIT K
TO THE MILKSHAKE FACTORY FRANCHISE, LLC
FRANCHISE DISCLOSURE DOCUMENT

RECEIPTS

RECEIPT

This disclosure document summarized certain provisions of the franchise agreement and other information in plain language. Read this disclosure document and all agreements carefully.

If Milkshake Factory Franchise, LLC offers you a franchise, it must provide this disclosure document to you 14 days before you sign a binding agreement or make a payment to us or an affiliate in connection with the proposed franchise sale or grant or, if you live in New York and Rhode Island, at the earlier of the first personal meeting or 10 business days before the execution of the franchise or other agreements or payment of any consideration that relates the franchise relationship. Michigan requires that we give you this disclosure document at least 10 business days before the execution of any binding franchise or other agreement, or the payment of any consideration, whichever occurs first.

If Milkshake Factory Franchise, LLC does not deliver this disclosure document on time or if it contains a false or misleading statement, or a material omission, a violation of federal and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580 and to the appropriate state agency listed on Exhibit A.

The name, principal business address and telephone number of each franchise seller offering the franchise is:

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cary Tober	Storm Miller	<u>Trisha Evans</u>	
<u>c/o Rep'm Management, LLC</u>	c/o Rep'm Management, LLC	<u>c/o Rep'm Management, LLC</u>	
19924 Jetton Road, Suite 203;	<u>19924 Jetton Road, Suite</u>	<u>19924 Jetton Road, Suite</u>	
<u>203</u>		<u>203</u>	
<u>Cornelius, NC 28031</u>	Cornelius, NC 28031	<u>Cornelius, NC 28031</u>	
(513) 470-4013	<u>(267) 471-2921</u>	<u>(651) 315-0305</u>	

Issuance Date: ~~May 12, 2023~~, April 30, 2024.

See Exhibit A for our registered agent authorized to receive service of process.

I have received a disclosure document dated ~~May 12, 2023~~, April 30, 2024, that included the following:

- | | |
|--|--|
| Exhibit A – List of State Administrators and List of Agents for Service of Process | Exhibit H – List of Franchisees |
| Exhibit B – Franchise Agreement | Exhibit I – List of Former Franchisees |
| Exhibit C – Development Agreement | Exhibit J – State Effective Dates |
| Exhibit D – Financial Statements | Exhibit K – Receipt |
| Exhibit E – State Specific Addenda | |
| Exhibit F – Operations Manual Table of Contents | |
| Exhibit G – Sample Termination and Release Agreement | |

Date _____
Prospective Franchisee

Printed Name

Individually and as an officer, partner, member or manager of _____, a _____ organized under the laws of _____.

You may return one copy of this receipt by signing, dating and mailing it to Milkshake Factory Franchise, LLC, at 106 E. Liberty Street, Suite 310, Ann Arbor, Michigan 48104.

RECEIPT

If Milkshake Factory Franchise, LLC does not deliver this disclosure document on time or if it contains a false or misleading statement, or a material omission, a violation of federal and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580 and to the appropriate state agency listed on Exhibit A.

The name, principal business address and telephone number of each franchise seller offering the franchise is:

Table with 4 columns for franchise sellers: Cary Tober, Storm Miller, Trisha Evans, and an empty column. Each row contains name, company name, address, and phone number.

Issuance Date: May 12, 2023-April 30, 2024.

See Exhibit A for our registered agent authorized to receive service of process.

I have received a disclosure document dated May 12, 2023-April 30, 2024, that included the following:

- List of State Administrators and List of Agents for Service of Process
Exhibit B – Franchise Agreement
Exhibit C – Development Agreement
Exhibit D – Financial Statements
Exhibit E – State Specific Addenda
Exhibit F – Operations Manual Table of Contents
Exhibit G – Sample Termination and Release Agreement
Exhibit H – List of Franchisees
Exhibit I – List of Franchisees that Left the System in the Past Year or That Have Failed to Communicate with Us in the 10 Weeks Preceding the Issue Date
Exhibit J – State Effective Dates
Exhibit K – Receipt

Date _____
Prospective Franchisee
Printed Name _____

Individually and as an officer, partner, member or manager of _____, a _____ organized under the laws of _____.

You may return one copy of this receipt by signing, dating and mailing it to Milkshake Factory Franchise, LLC, at 106 E. Liberty Street, Suite 310, Ann Arbor, Michigan 48104.