

FRANCHISE DISCLOSURE DOCUMENT



MTY Franchising USA, Inc.

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We offer *sweetFrog* franchises. As a franchisee, you will operate a restaurant called *sweetFrog* which offers frozen yogurt and other frozen dessert products (prepared using proprietary recipes) customarily using a self-serve delivery format on a take-out or eat-in basis, and branded, licensed products.

The total investment necessary to begin operation of a *sweetFrog* franchise ranges from ~~\$23948,500~~ to ~~\$60732,500~~ for a traditional restaurant, and from \$96,350 to ~~\$362707,00750~~ for a non-traditional restaurant (kiosk and standard counter floorplan) and from ~~\$122,900~~ to ~~\$275,300~~ for a non-traditional restaurant (vehicle). This includes \$30,500 to \$58,000 for a traditional restaurant, and \$13,500 to \$42,500 for a non-traditional restaurant that must be paid to the franchisor or its affiliate.

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

You may wish to receive your disclosure document in another format that is more convenient for you. To discuss the availability of disclosures in different formats, contact MTY Franchising USA, Inc., Attn: John Wuycheck, 9311 E. Via De Ventura, Scottsdale, Arizona 85258 and (480) 362-4800.

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

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

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

Issuance Date: March 28, 2023~~34~~

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 Exhibit U.
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 direction. 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 V includes 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 <i>sweetFrog</i> 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 franchisor 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 <i>sweetFrog</i> franchisee?	Item 20 or Exhibit U lists 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 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 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 B.

Your state also may 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 requires you to resolve disputes with the franchisor by mediation, arbitration and/or litigation only in Arizona. Out-of-state mediation, arbitration, or litigation may force you to accept a less favorable settlement for disputes. It may also cost more to mediate, arbitrate, or litigate with the franchisor in Arizona than in your own state.
2. **Spousal Liability**. Your spouse must sign a document that makes your spouse liable for all financial obligations under the franchise agreement even though your spouse has no ownership interest in the franchise. This guarantee will place both your and your spouse's marital and personal assets, perhaps including your house, at risk if your franchise fails.

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

The Franchisor

MTY Franchising USA, Inc. is the franchisor. To simplify the language in this “Disclosure Document,” MTY Franchising USA, Inc. may be referred to as “MTY USA,” “we,” “us,” “our” and “Franchisor.” “You” and “your” mean the person(s), partnership, corporation, limited liability company, or other entity that buys a unit franchise. If “you” are a business entity, “you” includes the shareholders, members or owners of the business to the extent each guarantees or otherwise agrees to perform or be bound by the obligations of the business entity.

We are in the business of franchising the right to own and operate quick service and full service restaurants. As it relates to this Disclosure Document, we conduct business under the name “sweetFrog.” Our principal business address is 9311 E. Via De Ventura, Scottsdale, Arizona 85258.

MTY Franchising USA, Inc. (formerly known as The Extreme Pita Franchising USA, Inc.), was incorporated in Delaware on March 14, 2001 and converted to MTY Franchising USA, Inc., a Tennessee corporation, as of October 9, 2019. You will see references to our former corporate names in our audited financial statements. As of November 30, 2022²³, there were 248 sweet Frog Shops (238 franchised in the United States and 10 internationally) plus 21 licensed franchisees.

Parents and Predecessors

Our direct corporate parent is MTY Franchising Inc. (formally known as MTY Tiki Ming Enterprises Inc.) (“MTY Canada”), a Canadian corporation incorporated on February 13, 1979 and having a principal business address at 8150 Route Transcanadienne, Suite 200, Ville Saint-Laurent, Quebec, H4S 1M5, Canada.

Our ultimate corporate parent is MTY Food Group, Inc. (formerly known as Matoyee Enterprises Inc.) (“MTY Food Group”), a Canadian corporation incorporated in 1979 and having a principal business address at 8150 Route Transcanadienne, Suite 200, Ville Saint-Laurent, Quebec, H4S 1M5, Canada. MTY Food Group is a public corporation listed on the Toronto Stock Exchange.

Effective as of September 1, 2018, we entered into an agreement to acquire the assets of, and in particular the rights to franchise, the sweetFrog brand from an unaffiliated third party by the name of SFF, LLC, a Virginia limited liability company having a principal business address at 10800 Midlothian Turnpike, Suite 300, Richmond, VA 23235, and certain of its affiliates (the “Prior Brand Owner”). This transaction closed on September 25, 2018, at which time the Prior Brand Owner retained 78 stores which became franchised stores of ours.

SweetFrog Enterprises, LLC (formerly known as Imagination Enterprises, Inc.), a Virginia corporation formed in February 2009, was the former parent company and predecessor of the Prior Brand Owner.

Agent for Service of Process

Our agents for service of process are listed in Exhibit C to this Disclosure Document. Unless otherwise specified, our registered agent for service of process is C T Corporation System, 300 Montvue Road, Knoxville, Tennessee 37919.

The Franchised Business and Franchise Unit Offering

Our principal business is the development of a system of retail quick service restaurants utilizing the sweetFrog name and other intellectual property, specializing in soft-serve yogurt and other authorized products, and customarily using a self-service format which allows customers to create individualized yogurt-based desserts. Most of these restaurants are operated by franchised operators (individuals and business entities) who are independent contractors. We and our affiliates also may operate various sweetFrog restaurants and other food facilities.

The Prior Brand Owner granted licenses to sweetFrog licensees (“Licensees”). We now manage the licensed system. We have the right to control how Licensees use the sweetFrog name and trademarks. We do not dictate operational standards or provide training and operational assistance to Licensees, so some Licensees have paid and will continue to pay fees that are different from the fees paid by our franchisees.

We currently do not own or operate any sweetFrog restaurants. The Prior Brand Owner and its predecessor, SweetFrog Enterprises, LLC, did operate and own sweetFrog restaurants since 2009.

Traditionally, sweetFrog restaurants are locations easily accessible by the general public, such as a free-standing building, in-line retail shop, location in a shopping mall or on a street front (a “traditional” sweetFrog restaurant). A traditional sweetFrog restaurant generally is 1,300 or more square feet, includes six to ten soft-serve machines, offers a full sweetFrog menu including about 40 or more toppings, and has ample tables and chairs for customers.

A “non-traditional” sweetFrog restaurant is a restaurant generally located within a separate, non-traditional marketplace (as determined in Franchisor’s sole discretion) such as an airport, amusement park, sports or entertainment venue, train station, travel plaza, toll road, cafeteria, retail store, convenience store, military base, hospital, office building, movie theater, hotel, casino, high school or college campus, or that is a kiosk, cart, truck or trailer as opposed to a brick-and-mortar location. A non-traditional sweetFrog restaurant generally offers a more limited version of the full sweetFrog menu, and occupies a smaller retail space than a traditional restaurant.

As of this Disclosure Document’s issuance date, there are three primary versions of a non-traditional restaurant:

1. A “Kiosk” is a non-traditional restaurant of approximately less than 1,000 square feet located in a non-traditional location, generally includes two to three soft-serve machines, and offers about ten to twenty toppings from our menu.
2. A “Standard Counter Floorplan” is a non-traditional restaurant of approximately 1,000 or more square feet located in a non-traditional location, generally includes six to ten soft-serve machines, and offers about 40 or more toppings from our menu.
3. A “Vehicle” is a sweetFrog-branded mobile unit, either a truck or trailer that generally includes two to three soft-serve machines and ten to twenty toppings from our menu, and offers and sells such approved sweetFrog food products and merchandise only from within the area specified in the Amendment to Franchise Agreement (for non-traditional locations excluding those co-branded with another affiliated brand; see Exhibit H: Amendment to Franchise Agreement) (the “Authorized Territory”).

A sweetFrog restaurant, whether traditional or non-traditional, is also referred to as the “Franchised Business.” You will assume all business risk associated with operating the Franchised Business.

sweetFrog restaurants serve the general public, and people of all ages consume the products offered by sweetFrog restaurants. Most sweetFrog restaurants may be operated throughout the year; however, the restaurant market for the products offered by sweetFrog restaurants is seasonal, as consumption of frozen yogurt and other frozen dessert products is typically higher in the summer and lower in the winter.

This Disclosure Document addresses the offering to qualified persons a non-exclusive right to operate a single Franchised Business, at a specific location approved by us, using the sweetFrog trademark and other trademarks, trade names, service marks, logotypes, and other commercial symbols, along with methods, standards, and procedures we adopt and authorize, for a specified time (collectively the “System”). To become a franchisee of the sweetFrog brand (“Franchisee”), you will be required to sign a written franchise agreement (Exhibit E-1: Franchise Agreement (New); Exhibit E-2: Franchise Agreement (Renewal); Exhibit E-3: Franchise Agreement (Transfer) – with all the preceding three franchise agreements collectively known as “Exhibit E: Franchise Agreement”), and operate your Franchised Business in strict accordance with our System. Franchise Agreements may be offered on varying terms as appears appropriate in our discretion.

Other Franchises Offered by Us, Our Parents, or Our Affiliates

WE ARE ONLY OFFERING A *SWEETFROG* UNIT FRANCHISE UNDER THIS DISCLOSURE DOCUMENT. EACH OF THE OTHER FRANCHISES DETAILED BELOW ARE OFFERED BY US, OUR PARENT, OR OUR AFFILIATE UNDER SEPARATE DISCLOSURE DOCUMENTS FOR EACH BRAND.

We have the following U.S.-based affiliates through common ownership by MTY Food Group, that also offer franchises in the United States and internationally: (1) Kahala Franchising, L.L.C. (“Kahala Franchising”), an Arizona limited liability company with a principal business address at 9311 E. Via De Ventura, Scottsdale, Arizona 85258 and successor-in-interest to Kahala Franchise Corp., with a principal business address at 9311 E. Via De Ventura, Scottsdale, Arizona 85258; (2) BF Acquisition Holdings, LLC (“BFAH”), a Delaware limited liability company with a principal business address at 9311 E. Via De Ventura, Scottsdale, Arizona 85258; (3) La Salsa Franchise, LLC, a Delaware limited liability company with a principal business address at 9311 E. Via De Ventura, Scottsdale, Arizona 85258, and (4) Papa Murphy’s International LLC, a Delaware limited liability company with a principal business address at 8000 NE Parkway Dr., Suite 350, Vancouver, Washington 98662.

The following summarizes sweetFrog and other quick service restaurant brands currently offered by us or a U.S.-based affiliate of ours as of November 30, 2022~~3~~, including the type of restaurant business, number of franchised units in operation as of November 30, 2022~~3~~, and the date we or our current or former affiliates started offering franchises in those brands:

BRANDS WE FRANCHISE:

Brand Name	Type of Restaurant Business	Number of Units as of November 30, 2022₃	Dates unit franchises began being offered by us or our predecessor
Ben & Florentine	Restaurant serving a superior breakfast & lunch experience	0 franchised units	From December 2018 under MTY USA
Built Custom Burgers	Fast casual restaurant featuring build-your-own burgers, signature burgers, side dishes, sandwiches, and salads	6 franchised units (3 in the United States and 3 internationally)	December 2017 under Built Franchise Systems, LLC. Then from March 2019 under MTY USA
Extreme Pita	Restaurants serving wrap-style hot and cold pita and wrap sandwiches	0 ₁ franchised units	From March 2001 to July 2014: The Extreme Pita Franchising USA, Inc.; since July 2014: MTY USA
Ginger Sushi Boutique + Poke Shop	Restaurant serving a variety of sushi menu items and drinks	0 franchised units	From September 2015 under MTY USA
Grabbagreen	Restaurants serving healthy food, juice, smoothies and related products	7 ₄ franchised units	Since February 2018 under MTY USA
La Diperie	Restaurant serving retail sale of an ice cream product and various dips and toppings	1 franchised unit	From April 2019 under MTY USA
Manchu WOK	Quick service restaurant serving fast and fresh Chinese cuisine	18 5 ₅ franchised units	March 2015: MTY USA
Mucho Burrito	Restaurants offering burritos, quesadillas, tacos, nachos, and other assorted food and drinks	0 ₁ franchised units	From January 2010 under Mucho Burrito Franchising USA, Inc., and from March 2019 under MTY USA

Brand Name	Type of Restaurant Business	Number of Units as of November 30, 202 2 ³	Dates unit franchises began being offered by us or our predecessor
sweetFrog	Restaurant offering frozen yogurt using a self-serve delivery format	2 3 ⁴ 26 franchised units (2 2 ¹ 16 in the United States which include 4 3 ⁹ licensed franchisees plus 10 internationally)	September 2018 under MTY USA
Thai Express	Restaurant serving "Thai-style" foods and drinks	8- 9 ⁷ franchised units <u>7 in the United States and 2 internationally</u> (plus 1 company-owned)	From February 2015 under MTY USA
The Counter	Full service restaurant featuring build-your-own burgers, signature burgers, side dishes, sandwiches, and salads	2 2 ¹ 5 franchised units (1 9 ⁴ in the United States and 3 1 ¹ internationally) <u>(plus 2 company-owned units)</u>	December 2017 under CB Franchise Systems, LLC. Then from March 2019 under MTY USA
Famous Dave's	Authentic barbecue	9 8 ⁸ franchised units (9 0 ⁸ 1 in the United States and 8 7 ⁷ internationally) plus 4 2 ³ 5 company-owned units	From March 1994 under Famous Dave's of America, Inc.
Village Inn	Restaurant specializing in pancakes, omelets, skilletts, eggs, and other popular breakfast items.	9 7 ¹ franchised units plus 23 company-owned units	From August 2020 under VI BrandCo, LLC
Barrio Queen	Authentic Southern Mexican	7 company-owned units	From March 2023 under BQ Concepts, LLC
<u>Champps Kitchen + Bar</u>	<u>sports theme restaurants that provide the public with high-quality food and beverage</u>	<u>2 franchised units plus 1 company-owned unit</u>	<u>From September 1999 to October 2008 under Champps Entertainment, Inc. and From August 2023 under BQ Concepts, LLC</u>

Brand Name	Type of Restaurant Business	Number of Units as of November 30, 2022 3	Dates unit franchises began being offered by us or our predecessor
<u>Sauce Pizza / Wine</u>	<u>Restaurants serving wood-fired pizzas, a variety of pasta dishes, and salads</u>	<u>13 company-owned units</u>	<u>March 2024</u>
Wetzel's Pretzels	Restaurant specializing in hand-rolled fresh-baked soft pretzels	329 <u>56</u> franchised units (322 <u>46</u> in the United States and 7 <u>10</u> internationally) plus 38 <u>40</u> company-owned units	From April 1996 under Wetzel's Pretzels, LLC

BRANDS OUR U.S.-BASED AFFILIATES FRANCHISE:

Brand Name	Type of Restaurant Business	Number of Units as of November 30, 2022 3	Dates unit franchises began being offered by our U.S.-based affiliates and their predecessors
America's Taco Shop	Restaurants serving freshly prepared Mexican food including tacos, burritos, and quesadillas	1 company-owned unit And, 2 licensed units.	From November 2011 under Kahala Franchising
Blimpie	Restaurants serving submarine sandwiches and salads	117 <u>06</u> franchised units (114 <u>04</u> in the United States and 3 <u>2</u> internationally) (plus 6 <u>4</u> company-owned units in the United States)	From 2006 until 2010 by Kahala Franchise Corp. and since August 2010 under Kahala Franchising
Cereality cereal bar & cafe	Restaurants serving hot and cold cereals and cereal blends with toppings, oatmeal, and parfaits	0 franchised units	From 2007 until 2010 by Kahala Franchise Corp. and since August 2010 under Kahala Franchising

Chicken Strips and Dips	Ghost kitchen concept serving primarily chicken tenders.	<u>46</u> franchised units	March 2022, Kahala Franchising.
Cold Stone Creamery	Restaurants serving super-premium freshly made ice cream, cakes, pies, smoothies, shakes, and other frozen dessert products	1,289 <u>348</u> franchised units (908 <u>52</u> in the United States and <u>384</u> <u>96</u> internationally)(plus <u>41</u> company-owned units). 10 <u>40</u> Cold Stone Creamery franchises also sell Rocky Mountain Chocolate Factory® products and 1 Cold Stone Creamery franchise also sells Tim Hortons® products. Additionally, <u>185</u> licensed units.	From May 2007 until March 2008 by Cold Stone Creamery, Inc., from March 2008 until March 2010 by Kahala Franchise Corp., and since August 2010 under Kahala Franchising
Frullati Cafe & Bakery	Restaurants serving sandwiches, salads, smoothies and baked goods	10 franchised units	From 1999 until 2004 under Frullati Franchise Systems, Inc., from 2004 until March 2010 under Kahala Franchise Corp., and from August 2010 under Kahala Franchising
Great Steak	Restaurants serving Philadelphia cheesesteak sandwiches, chicken sandwiches and French fries	<u>364</u> franchised units (<u>265</u> in the United States and <u>409</u> internationally) (plus 1 company-owned unit).	From 2004 until March 2010 under Kahala Franchise Corp., and from August 2010 under Kahala Franchising
Johnnie's New York Pizzeria	Restaurants serving New York style pizza, calzones, salads, and related Italian cuisine menu items	2 franchised units	From 2006 until March 2010 under Kahala Franchise Corp., and from August 2010 under Kahala Franchising

Kahala Coffee Traders	Restaurants serving coffee and espresso, tea, baked goods, parfaits, sandwiches and merchandise	35 franchised units. And 1 licensed unit.	From November 2011 under Kahala Franchising
Maui Wowi	Store fronts or portable units serving fruit smoothies, Hawaiian coffee and espresso	110-97 franchised units (102-89 in the United States and 8 internationally)	From November 2015 under Kahala Franchising
NrGize Lifestyle Cafe	Cafes serving smoothies, fruit drinks and nutritional supplements	6057 franchised units	From 2006 until March 2010 under Kahala Franchise Corp., and from August 2010 under Kahala Franchising
Pinkberry	Restaurants serving frozen yogurt, yogurt drinks, smoothies and frozen desserts	643 franchised units. And 2430 licensed units.	From July 2008 until April 2016 under Pinkberry Ventures, Inc., and from June 2016 under Kahala Franchising
Planet Smoothie	Restaurants serving smoothies, smoothie bowls, juices and nutritional supplements	15663 franchised units (1528 in the United States and 45 internationally) Additionally, as of fiscal year end there were 2 Tasti D-Lite outlets.	Since June 2016 under Kahala Franchising
Ranch One	Restaurants specializing in grilled and crispy breaded chicken sandwiches	2 franchised units	From 2001 until 2004 under Ranch *1 Group, Inc., from 2004 until March 2010 under Kahala Franchise Corp., and from August 2010 under Kahala Franchising
Rollerz Rolled Sandwiches	Restaurants serving gourmet rolled sandwiches, salads, soups and baked goods	1 franchised unit	From 2000 until 2004 under Rollerz Franchise Systems, L.L.C., from 2004 until March 2010 under Kahala Franchise Corp., and from August 2010

			under Kahala Franchising
Samurai Sam's Teriyaki Grill	Restaurants serving Japanese rice bowls and noodle bowls	132 franchised units	From 2003 until 2004 under SP Franchising, Inc., from 2004 until March 2010 under Kahala Franchise Corp., and from August 2010 under Kahala Franchising
Surf City Squeeze	Juice bars serving smoothies, fruit drinks and nutritional supplements	694 franchised units (plus 1 company-owned unit)	From 1994 until 2004 under Malibu Smoothie Franchise Corp. and Surf City Squeeze Franchise Corp., from 2004 until March 2010 under Kahala Franchise Corp., and from August 2010 under Kahala Franchising
TacoTime	Restaurants serving freshly-prepared Mexican food including burritos, tacos, quesadillas and nachos	2260 franchised units (40599 franchised in the United States and 121 internationally) (plus 1 company-owned unit) Additionally, there are 78 licensed units.	From 2003 until 2004 under Taco Time International, Inc., from 2004 until March 2010 under Kahala Franchise Corp., and from August 2010 under Kahala Franchising
Baja Fresh	Restaurant offering a limited menu featuring fresh high quality Mexican-style food products	769 franchised units (767 in the United States and 2 internationally) (plus 711 company-owned units)	October 2016 until July 2017 under Triune, LLC and since then under BF Acquisition Holdings, LLC
La Salsa	Restaurant offering a limited menu featuring fresh high quality Mexican-style food products	6 franchised units	October 2016 under La Salsa Franchise, LLC.

Papa Murphy's	Retail food outlets currently featuring take and bake pizza, salads, desserts and other related products	1,182 54 franchised units (1,145 19 franchised in the United States and 37 5 internationally plus 23 8 company-owned units)	From May 2019 Papa Murphy's International, Inc.
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We also have internationally-based parents and affiliates that offer franchises.

Our Canadian-based direct parent MTY Canada currently operates or has franchised over (55) different restaurant concepts and has over 2,500 units under following brands primarily in Canada and other international countries: Allo Mon Coco, Baton Rouge Steakhouse & Bar, Ben & Florentine, Big Smoke Burger, Bunsmaster, Café Depot, Casa Grecque, Country Style, Cultures, Dagwoods, Extreme Pita, Frat's Cucina, Giorgio, Jugo Juice, Kim Chi, Koryo, Koya, La Boite Verte, La Crémère, La Diperie (and Cakes & Shakes by La Dip), Madisons, Manchu Wok, Toujours Mikes, mmmuffins, Mr. Souvlaki, Mr. Sub, Mucho Burrito, Muffin Plus, O'Burger, Pizza Delight, SENSEASIAN, Scores, South St. Burger, Sukiyaki, Sushi Go, Sushman, Sushi Shop, Thai Express, Thaizone, The Works, Tiki Ming, Timothy's World Coffee, The COOP Wicked Chicken, Tosto, Turtle Jack's, Tutti Frutti, Valentine, Vanellis, Van Houtte, Vie & Nam, Villa Madina, Spice Brothers, Steak Frites, Wasabi Grill & Noodle and YUZU.

Our Canadian-based ultimate parent MTY or one of its Canadian-based subsidiaries is the master licensee for the following brands: TCBY (Canada), and Taco Time (Canada). Effective March 1, 2018, MTY through the merger of a wholly-owned subsidiary with Imvescor Restaurant Group Inc., a Canada corporation, ("IRG"), also acquired all the outstanding shares of IRG. At closing, IRG operated 5 brands in Canada and had 261 locations in operation.

We or our affiliates had previously also franchised the right to purchase a defined geographic area to become an area representee in; however, as of the issuance date of this Disclosure Document, we or our affiliates are not offering area representative agreements under a separate Area Representative Franchise Disclosure Document for any brands other than La Diperie, Planet Smoothie, and Blimpie, but may do so for additional brands in the future under a separate disclosure document.

Affiliates That Provide Products or Services to Our Franchisees

Kahala Advertising, LLC, an Arizona limited liability company ("Kahala Advertising"), is an affiliate of ours that helps administer the national advertising fund. Neptune Equipment Services, LLC, an Arizona limited liability company ("**Neptune Equipment**"), is an affiliate of ours that is an approved retailer of equipment and other logoed merchandise that sells, distributes, and coordinates logistics of equipment, menu boards, interior and exterior signage, and smallwares to franchisees and licensees. Kahala Management, L.L.C., an Arizona limited liability company ("Kahala Management"), an affiliate of ours, manages the gift card program and provides administrative, legal, accounting, sales, POS phone support, real estate, and marketing support services to MTY USA. In December of 2019 KGC, LLC, a Colorado limited liability company ("KGC") originally created to administer gift card programs, merged into Kahala Management.

Some existing restaurants of other concepts franchised by us are leased by either us or an affiliate of ours, such as Cold Stone Creamery Leasing Company, Inc., an Arizona limited liability company ("CSC Leasing"), or subsidiaries of our affiliate ("Blimpie Leasing Affiliates") KRES Holdings, L.L.C., an Arizona limited liability company ("KRES"). In these situations, we or our leasing affiliate enters into a direct lease with the property owner ("Master Lease") for the location of the restaurant, and then sublease the location to the franchisee for that particular restaurant, using our standard forms of Sublease (See Exhibits O-1 and O-2: Sublease, Guaranty of Sublease and State Addenda). In most other cases, you will enter into a lease for the premises of your Franchised Business directly with the property owner. CSC Real Estate Management, LLC, an Arizona limited liability company ("CSC Real Estate") provides real estate management services for us or our affiliates. The affiliates listed herein do not operate businesses of the type being franchised nor do they offer or sell franchises. Kahala Holdings, LLC, an Arizona limited liability company, and Kahala Restaurants, LLC, an Arizona limited liability company, are affiliates of ours that may own and operate company-owned outlets.

The principal business address for each of the above mentioned affiliates is 9311 E. Via De Ventura, Scottsdale, Arizona 85258.

Other Agreements

Effective November 30, 2016 we entered into an agreement to acquire the assets of, and in particular the rights to franchise, the Big Smoke Burger brand from BSB Franchising USA, Inc. ("BSB"). BSB operated the Big Smoke Burger brand in the United States, but the few stores it opened all closed in 2017. From February 2016 until the close of the agreement mentioned above, Big Smoke Burger unit franchises were offered in the United States. Since 2016 the brand has not been franchised in the United States and as of November 30, 2022²³, there was no Big Smoke Burger restaurant in the United States.

Kahala Franchising previously offered franchises for a take and bake pizza concept called "Pizza Fresh Take●N●Bake." It began franchising Pizza Fresh Take●N●Bake in November 2011 and ceased offering Pizza Fresh Take●N●Bake franchises in December 2014. During that time period, there were no Pizza Fresh Take●N●Bake franchises sold. Two corporately owned Pizza Fresh Take●N●Bake restaurants were opened in 2011 but both closed in 2014 and there are no Pizza Fresh Take●N●Bake restaurants currently in operation. Kahala Franchise Corp. previously offered franchises for a kiosk-style ice cream dessert concept called "Wafflō." It began franchising Wafflō in 2005 and ceased offering Wafflō franchises in December 2007. During that time period, there were 21 Wafflō franchises sold. As of November 30, 2022²³, no Wafflō restaurants were open. Additionally, Kahala Franchise Corp. previously offered franchises for a premium soft-serve frozen dessert product called "Tango." It began offering Tango franchises in May 2007 and ceased selling Tango franchises in November 2007. During that time, there were no Tango franchises sold, and there are no Tango franchise locations currently in operation. As mentioned above, Tasti D-Lite LLC, an affiliate of Kahala Franchising, previously franchised the Tasti D-Lite frozen dessert brand. Kahala Franchising is now offering Tasti D-Lite products as a menu offering in Planet Smoothie restaurants. As of November 30, 2022²³, there were 8 Tasti D-Lite franchises in the United States.

On August 8, 2022, MTY Franchising USA, Inc. and its wholly owned subsidiary Grill Merger Sub, Inc. ("Merger Sub") entered into an agreement with BBQ Holdings, Inc. ("BBQ"), a Minnesota corporation, providing for the acquisition of BBQ by MTY Franchising USA, Inc., consisting of a tender offer (the "Offer") for all of the outstanding shares of BBQ common stock, followed by a subsequent merger of Merger Sub with and into BBQ (the "BBQ Merger"), with BBQ surviving the BBQ Merger as a wholly-owned subsidiary of MTY Franchising USA, Inc. This transaction included the rights to franchise and/or operate the Barrio Queen, Famous Dave's, Village Inn, Bakers Square, Granite City Food and Brewery, Real Urban BBQ, Craft Republic Bar & Grill, Champps Kitchen + Bar, Fox &

Hound, and Tahoe Joe's Famous Steakhouse brands. BBQ, through its subsidiary, VI BrandCo, LLC a Delaware limited liability company, offers Village Inn restaurants. As of November 30, 2022²³, there were ~~120~~¹⁴ Village Inn restaurants (including franchised and company-owned) in the United States. BBQ, through its subsidiary, Famous Dave's of America, Inc., a Minnesota corporation, offers Famous Dave's restaurants. As of November 30, 2022²³, there were ~~133~~¹⁶ Famous Dave's restaurants (including franchised and company-owned) in the United States, and ~~8~~⁷ franchised restaurants internationally (in the UAE and Canada). With the merger closing that took place on September 27, 2022, MTY Franchising USA, Inc. is the parent company of both VI BrandCo, LLC and Famous Dave's of America, Inc.

On December 8, 2022, MTY Franchising USA, Inc. and its wholly owned subsidiary Twisted Merger Sub, Inc. ("WP Merger Sub"), a Delaware corporation, entered into an agreement with COP WP Parent, Inc. ("COP"), a Delaware corporation, providing for the acquisition of COP by MTY Franchising USA, Inc., consisting of a merger of WP Merger Sub with and into COP (the "COP Merger"), with COP surviving the COP Merger as a wholly-owned subsidiary of MTY Franchising USA, Inc., under the name Twisted Merger Sub, Inc. In November 2023, MTY Franchising USA, Inc. became the parent company of Wetzel's Pretzels, LLC ("Wetzel's Pretzels"), a California limited liability company. This transaction included the rights to franchise and/or operate the Wetzel Pretzel's brand, through ~~COP's subsidiary Wetzel's Pretzels, LLC, a California limited liability company.~~ As of November 30, 2022²³, there were ~~343~~⁸⁶ Wetzel Pretzels restaurants (including franchised and company-owned) in the United States and 7 franchised restaurants internationally. With the merger closing that took place on December 8, 2022, MTY Franchising USA, Inc. is the parent company of Wetzel's Pretzels, LLC.

On December 15, 2022, MTY Franchising USA, Inc. via its wholly owned subsidiary Sauce Restaurants, LLC ("Sauce Restaurants"), an Arizona limited liability company, simultaneously signed and closed an asset purchase agreement with Sauce, LLC, an Arizona limited liability company, Sauce Holdings, LLC, a Delaware limited liability company, and several other of their affiliates (collectively, "Sauce Sellers"), providing for the acquisition of the assets of Sauce Sellers by Sauce Restaurants. This transaction included the rights to operate (and ultimately franchise should Sauce Restaurants so desire) the Sauce Pizza and Wine brand. As of November 30, 2022²³, there were ~~153~~ Sauce Pizza and Wine restaurants (all of which were company-owned) in the United States. BBQ Holdings, Inc., a subsidiary of MTY Franchising USA, Inc., is the direct parent company of Sauce Restaurants.

Except as described above, neither we nor any of our affiliates, have offered any other franchises in any other line of business.

Competition and Regulation

You will compete with other restaurants, fast food outlets, supermarkets and other food retailers located in or otherwise servicing or marketing to, your venue or market area. Some of your competitors may include sweetFrog restaurants operated by other franchisees, licensees or our affiliates. The foodservice industry is highly competitive, and is sensitive to other factors both within and beyond the control of restaurant operators. The extent to which you may succeed at any particular location cannot be predicted. Successful operation of the sweetFrog restaurant will depend in part upon the best efforts, capabilities, management, and efficient operation by the Franchisee, as well as general economic trends and other local marketing conditions. sweetFrog restaurants also compete with other food facilities operated or franchised by us or our affiliates.

You must comply with all federal, state, and local laws, rules and regulations affecting your Franchised Business. A variety of laws, rules, and regulations govern commerce in general, and the food service industry in particular. Examples include public health laws, tax laws, labor, employment

and wage and hour laws, insurance laws, privacy laws, business licensing requirements, the public posting of notices regarding nutritional information and/or menu labeling, and the Americans with Disabilities Act (which may affect your building construction, site design, entrance ramps, parking, doors, bathrooms, etc.). It is your sole responsibility to comply with all federal, state, and local laws, rules and regulations affecting your Franchised Business. We strongly encourage you to make further inquiries about these laws, rules and regulations with your own legal counsel to be sure that you understand and comply with all applicable requirements.

ITEM 2: BUSINESS EXPERIENCE

Chairman of the Board and Chief Executive Officer: Eric Lefebvre

Mr. Lefebvre was promoted and became the Chief Executive Officer of MTY effective November 2018. Prior to that, Mr. Lefebvre was the Chief Financial Officer of MTY since June 2012, and was Vice President of Finance of MTY from November 2009 until June 2012.

Director, Chief Financial Officer: Renee St-Onge

Ms. St-Onge was promoted to Chief Financial Officer of MTY effective November 2018. Prior to that, Ms. St-Onge was with MTY as Controller since 2012.

Director, Chief Operating Officer: Jeff Smit

Mr. Smit has been the Chief Operating Officer of Kahala Brands since June 2009 and has been a Director of MTY USA since November 2018. Prior to that, Mr. Smit was the Blimpie Brand President from November 2007 until December 2010 and the Sr. Vice President of Operations for Cold Stone Creamery from February 2005 to December 2007.

Senior Vice President of Restaurant Operations: Anthony Crosby

Mr. Crosby joined Kahala Brands in October 2009 as the Vice President of Restaurant Operations. He assumed his current role in August 2011.

Vice President of Restaurant Operations: Blake Borwick

Mr. Borwick was a Cold Stone Creamery franchisee in Cedar Falls and Waterloo, Iowa from April 2005 to March 2014. From March of 2014 to January 2017, he was the Regional Director of Operations of Cold Stone Creamery and Blimpie. He was promoted to Vice President of Operations for the Blimpie brand in January 2017 and then became Vice President of Operations for the Cold Stone Creamery brand in March 2018. In May of 2021 he was promoted to Vice President of Restaurant Operations for Kahala Brands.

Vice President of Restaurant Operations: Logan Reves

Mr. Reves joined Kahala Brands in May 2021 in his current role. Prior to joining Kahala Brands, Mr. Reves was an Independent Restaurant Consultant from March 2020 through April 2021. Prior to that Mr. Reves was with Tilted Kilt Franchise Operating, LLC in Tempe, Arizona as Vice President of Operations from January 2014 to July 2016, Chief Operating Officer from July 2016 through December 2018, and as Senior Vice President of Franchise Operations of the Dick's Wings & Grill brand from January 2019 through March 2020.

General Counsel/Chief Legal Officer: Jenny Moody

Ms. Moody has been with the Kahala Brands' Legal department since June 2010. In August 2012 she was named Corporate Counsel, in September 2013 International Counsel, in September 2016 Deputy General Counsel, and in November 2019 General Counsel. In August 2023, Ms. Moody assumed her current role.

Vice President of Training and Customer Service: Kerri Kudla

Ms. Kudla joined the Cold Stone Creamery training team in June 2002. She became Director of Operations & Training Development in January 2009 and was promoted to Senior Director of Operations & Training Development in October 2012. In June 2014, Ms. Kudla assumed her current role.

Senior Vice President of Marketing: Steven Evans

Mr. Evans joined Kahala Brands in October 2007 as a National Marketing Manager for the Blimpie brand. In October 2009, he also became the Director of Marketing for the NrGize Lifestyle Cafe and Surf City Squeeze brands, and in January 2010, also the Director of Marketing for the TacoTime brand. In March 2011, Mr. Evans was promoted to Senior Director of Marketing, and in August 2011, he became the Vice President of Marketing. In January 2017, Mr. Evans was promoted to his current role.

Franchise Sales

Senior Vice President of Development: John Wuycheck

Mr. Wuycheck has served as Kahala Brands' Senior Vice President of Development since September 2014.

Vice President of Franchise Development: Jay Goldstein

~~Mr. Goldstein has held his current role since May of 2009. Prior to this, he served as Senior Director of Operations, then Senior Director of Development for Kahala Franchising and Mr. Goldstein has worked with the Cold Stone Creamery brand since October 2005. In January 2008, he became the Senior Director of Development for Kahala Franchising, and from January 2008 until November 2008, he served as Senior Director of Operations. Mr. Goldstein was promoted to Vice President of Franchise Development in May 2009.~~

Director of Franchise Development: Doug Merenda

Mr. Merenda joined Kahala Brands' sales team in October 2015 as a Director of Franchise Development and was a franchise broker for Kahala Brands from April 2015 through October 2015.

Vice President of Business Development – USA: Ramin (Ray) Zandi

Mr. Zandi is the Vice President of Business Development – USA, a position he has held since February 2009.

Franchise Development Manager: Traci Zandi

Ms. Zandi has assisted ~~Kahala Brands'~~our Development team in awarding franchise units since October 2016. She also served as Office Manager and Executive Assistant for Extreme Pita from April 2011 until October 2016.

Vice President of Franchise Development: Peter Tsafoulis

Mr. Tsafoulis is the Vice President of Franchise Development, a position he has held since March of 2018. Prior to that, he served as the Director of Franchising of IRG from January 2008 until March 2018.

Senior Director of Franchise Sales: Shemar Pucel

Shemar Pucel joined the company in November 2020 as Director of Franchise Sales and was promoted to Senior Director of Franchise Sales in February 2022. From October 2018 to August 2020, Ms. Pucel was a Director of Development for sweetFrog Premium Frozen Yogurt & Samurai Sam's. From October 2015 to October 2018, Ms. Pucel was with SFF, LLC (formerly SweetFrog Enterprises, LLC) where she first served as Manager of Franchise Marketing and Development and was promoted to Director of Franchise Marketing and Development in August 2016.

Jon Fischer: Head of Development – Wetzel's Pretzels

Jon Fischer serves as Head of Development - Wetzel's Pretzels as of March 2023. Previously, Mr. Fischer served as our Chief Development Officer from October 2019. Previous to that, Mr. Fischer held a variety of Vice-President positions, including in real estate and development, at Papa Murphy's International from August 2014 to October 2019.

Adam Lueras: Sr. Director of Franchise Sales

Adam Lueras became the Director of Franchise Sales for Wetzel's Pretzels effective March 2020 and was promoted to Sr. Director of Franchise Sales in February 2023. Mr. Lueras previously served as a Franchise Development Director with Jackson Hewitt Tax Service in Jersey City, New Jersey from March 2019 through November 2019. Prior to that Mr. Lueras served as a Franchise Development Director with Wyndham Hotel Group in Parsippany, New Jersey from March 2016 through July 2018. Prior to that, Mr. Lueras served as a National Sales Manager with Avalara Software in Seattle, Washington from February 2014 through March 2016.

Ross Duggal: Director of Franchise Sales – Non-Traditional

Ross Duggal became the Director of Franchise Sales – Non-Traditional for Wetzel's Pretzels effective July 2022. Mr. Duggal previously served as the Senior Director of Business Development for OLM Foods located in Sioux Falls, SD from June 2020 through July 2022. Prior to that, Mr. Duggal served as the Director of Business Development for Chester's International in Birmingham, AL from March 2015 through May 2020.

Diana Krankl: Franchise Sales Manager

Diana Krankl became the Franchise Sales Manager for Wetzel's Pretzels effective September 2021. Ms. Krankl previously owned and operated D's Superblends, a food truck business in Los Angeles, California from July 2016 through March 2020, where Ms. Krankl's responsibilities included training, customer service, human resources, quality control, event booking, maintaining and strengthening partner relationships, marketing, bookkeeping, inventory management, design development as well as menu and recipe development.

ITEM 3: LITIGATION

LITIGATION INVOLVING FRANCHISOR, PREDECESSORS AND AFFILIATES

Concluded Arbitration and Litigation Involving The Extreme Pita Franchising USA, Inc. predecessor in interest to MTY Franchising USA, Inc.

Purav Enterprises, LLC, Balwant Bahia, and Paramjit Samra v. The Extreme Pita Franchising USA, Inc., EP Development, Inc., and Feisal Ramjee; Superior Court of the State of Washington for King County; Case No. 15-2-15120-7.

On June 22, 2015, Purav Enterprises, LLC, Balwant Bahia, and Paramjit Samra (collectively "Plaintiffs"), filed a complaint against The Extreme Pita Franchising USA, Inc., EP Development, Inc., and Feisal Ramjee (collectively "Defendants"). Plaintiffs alleged: (i) violations under the Franchise Investment Protection Act in the State of Washington ("FIPA"); (ii) misrepresentation by the Area Developer of the financial performance of the franchise, omissions of mandatory and material information and inherently misleading information that were material factors in the Plaintiff's purchase of the franchise; and (iii) the Area Developer was not a registered broker in the State of Washington. Plaintiffs sought: (i) rescission of the franchise agreement, the corresponding personal guarantee and related agreements; (ii) treble damages under FIPA; and (iii) costs and attorney's fees. The parties entered into a settlement agreement on March 11, 2016, in which Defendants paid Plaintiffs the sum of \$20,000. The matter was dismissed on March 16, 2016.

~~Concluded State Administrative Actions, Arbitration, and Litigation Involving SFF, LLC, successor in interest to SweetFrog Enterprises, LLC~~

~~*In the Matter of SweetFrog Enterprises, LLC f.k.a. Imagination Enterprises, Inc., d/b/a Sweet Frog*; Administrative Proceeding Before the Securities Commissioner of Maryland, Case No. 2012-0055.~~

~~As a result of an inquiry into the franchise related activities of SweetFrog Enterprises, LLC, ("SFE") the Maryland Securities Commissioner ("Commissioner") concluded that grounds existed to allege that SFE violated the registration and disclosure provisions of the Maryland Franchise Law in relation to the offer and sale of certain license agreements. SFE acknowledged that those license agreements constituted franchises as defined under the Maryland Franchise Law. SFE represented that it entered into license agreements with eight Maryland licensees during the time it was not registered to offer and sell franchises in Maryland. On August 29, 2012, the Commissioner and SFE agreed to enter into a consent order whereby SFE, without admitting or denying any violations of the law, agreed to: (i) immediately and permanently cease from the offer and sale of franchises in violation of the Maryland Franchise Law; (ii) file and diligently pursue an application for an initial franchise registration in Maryland relating to the license agreements it offered and sold to Maryland licensees; and (iii) to offer to rescind the license agreements of all Maryland licensees to whom it sold unregistered franchises. We are not aware of any licensees that accepted the rescission and have made a good faith effort to obtain that information.~~

~~*Sun Yop Cho v. Imagination Enterprises, Inc.*, American Arbitration Association, Case No. 16-114-Y-00250-13.~~

~~On May 15, 2013, Sun Yop Cho ("Claimant"), a sweetFrog licensee, filed an arbitration action against Imagination Enterprises, Inc., predecessor to SweetFrog Enterprises, LLC ("Respondent"). Claimant asserted that: (i) Respondent breached the license agreement by violating the territorial exclusivity provision in the license agreement; (ii) Respondent violated the Virginia Retail Franchising Act; and (iii) Respondent breached an alleged oral promise to partner with Claimant in developing a sweetFrog shop in Leesburg, Virginia. Claimant sought: (i) damages in the amount of \$900,000; (ii) attorneys' fees; (iii) reformation of the license agreement; and (iv) injunctive relief. Respondent vehemently disputed Claimant's claims. On December 13, 2013, Claimant and Respondent entered into an~~

~~agreement pursuant to which: (i) the parties settled their disputes and jointly dismissed the arbitration proceeding with prejudice; and (ii) Respondent repurchased Claimant's License Agreement and acquired the assets of his sweetFrog shop for a total price of \$504,162.63.~~

~~Sweet Frog Stony Brook, Inc. and Sweet Frog Babylon, Inc. v. SweetFrog Enterprises, LLC; SFF, LLC and Ki Young Cha a/k/a Derek Cha; United States District Court, Eastern District of New York; Case No. 2:14-cv-02356-JS-WDW.~~

~~On April 11, 2014, Sweet Frog Stony Brook, Inc. and Sweet Frog Babylon, Inc., (collectively "Plaintiffs"), two sweetFrog franchisees, filed a lawsuit against SweetFrog Enterprises, LLC, SFF, LLC (collectively "Franchisor"), and Ki Young Cha a/k/a Derek Cha (collectively with Franchisor, "Defendants"). Plaintiffs alleged that Defendants: (i) violated the New York Franchise Sales Act; (ii) violated the New York General Business Law § 680, et seq. ("NYFSA") by making unauthorized and fraudulent pre-sale financial performance representations; and (iii) failed to register the franchise offering with the New York Attorney General prior to entering into franchise agreements with Plaintiffs. Plaintiffs demanded: (i) damages in excess of \$685,000; (ii) rescission of their franchise agreements; and (iii) recovery of their attorneys' fees. Defendants disputed Plaintiffs' claims, but agreed to mediate the dispute. Prior to the deadline to respond to the complaint, on July 29, 2014, the parties entered into an agreement pursuant to which: (i) Plaintiffs would attempt to sell their franchised shops and transfer their franchise agreements to any third party(ies) approved by Franchisor before November 1, 2014; and (ii) if Plaintiffs were unable to identify a suitable buyer for their franchised shops by November 1, 2014, the parties agreed to mutual termination of the franchise agreements and that Franchisor would purchase the equipment from each franchised shop at a price of \$50,000. The case was dismissed with prejudice on August 6, 2014.~~

~~Tri Star Consulting Group, Inc. and Sweet Frog Hauppauge, Inc. v. SweetFrog Enterprises, LLC; SFF, LLC, Ki Young Cha a/k/a Derek Cha; United States District Court, Eastern District of New York; Case No. 2:14-cv-02228-ADS-AKT.~~

~~On April 9, 2014, Tri Star Consulting Group, Inc., a licensee and area developer of SweetFrog Enterprises, LLC ("Plaintiff Tri Star"), and Sweet Frog Hauppauge, Inc., a licensee of SweetFrog Enterprises, LLC ("Plaintiff Hauppauge"); (collectively "Plaintiffs"); filed a lawsuit against SweetFrog Enterprises, LLC, ("Defendant SweetFrog"), SFF, LLC ("Defendant SFF"), and Ki Young Cha a/k/a Derek Cha (collectively "Defendants"). Plaintiff Tri Star alleged Defendant SweetFrog breached its license/area development agreement with Plaintiff Tri Star by: (i) terminating the license/area development agreement for nonpayment of royalty fees; (ii) licensing to Defendant SFF the right to sell franchises in New York City, Plaintiff Tri Star's development territory; and (iii) failing to pay fees allegedly owed to Plaintiff Tri Star related to the operation of franchised sweetFrog locations within Plaintiff Tri Star's development territory. Plaintiff Tri Star sought: (i) damages in excess of \$75,000; (ii) a declaration that it was not in default of the license/area development agreement; (iii) a declaration that Defendant SweetFrog was obligated to pay fees to Plaintiff Tri Star based on revenues of all franchised sweetFrog locations in New York City; (iv) an order enjoining Defendant SFF from selling franchises in New York City; and (v) recovery of its attorneys' fees. Prior to the deadline to respond to the complaint, on September 9, 2014, Plaintiff Tri Star and Defendants entered into an agreement pursuant to which (1) the parties agreed to mutual termination of Plaintiff Tri Star's license/area development agreement; (2) Defendant SweetFrog agreed to pay Plaintiff Tri Star \$19,830.58; (3) Defendant SFF agreed to pay Plaintiff Tri Star an ongoing commission equal to 2% of the net sales of all franchised sweetFrog locations in New York City through November 2031; and (4) Plaintiff Tri Star agreed not to operate any competitive business in New York City for so long as Defendant SFF was obligated to make commission payments to Plaintiff Tri Star.~~

~~Plaintiff Hauppauge asserted that Defendants: (i) violated the New York Franchise Sales Act, (ii) violated the New York General Business Law § 680, et seq. ("NYFSA"); (iii) committed fraudulent and~~

~~negligent representations by making unauthorized and fraudulent pre-sale financial performance representations; and (iv) failed to register the franchise offering with the New York Attorney General prior to entering into franchise agreements with Plaintiffs. Plaintiff Hauppauge sought: (i) damages in excess of \$330,000; (ii) rescission of its license agreement, and (iii) recovery of its attorneys' fees. Defendants disputed Plaintiffs' claims but agreed to mediate the dispute. Prior to the deadline to respond to the complaint, on September 9, 2014, Plaintiff Hauppauge, on the one hand, and Defendants on the other hand, entered into an agreement pursuant to which: (i) the parties agreed to mutual termination of Plaintiff Hauppauge's license agreement; and (ii) Defendant SweetFrog agreed to pay Plaintiff Hauppauge \$75,000. The case was dismissed with prejudice on September 20, 2014.~~

~~Urquieta Sweet Frog, LLC and Ana Urquieta v. SweetFrog Enterprises, LLC d/b/a SFF, LLC, American Arbitration Association; Case No. 01 14 0001 8086.~~

~~On December 23, 2014, Urquieta Sweet Frog, LLC and Ana Urquieta, a former sweetFrog franchisee and its owner (collectively "Plaintiffs"), filed a Demand for Arbitration against SweetFrog Enterprises, LLC ("Defendant"). Plaintiffs alleged: (i) Defendant engaged in fraud; (ii) unfair practices; and (iii) deceptive actions. On February 2, 2015, Defendant timely filed an Answer and Counterclaim and denied all allegations, and further asserted a counterclaim against Plaintiffs for unpaid royalties. This matter was settled in December of 2015. Under the settlement, Defendant agreed to pay Plaintiffs \$300,000 and the parties executed mutual releases.~~

~~SFF, LLC v. Carmel Village Yogurt Company LLC; City of Richmond, Virginia Circuit Court; Case No. CL16-3027.~~

~~On August 29, 2016, SFF, LLC ("Plaintiff") filed a lawsuit against three sweetFrog franchisee entities, Carmel Village Yogurt Company LLC ("Defendant Carmel YC"), Huntersville Yogurt Company, LLC ("Defendant Huntersville YC"), and Mooresville Yogurt Co, LLC ("Defendant Mooresville YC"), and their main member, Steve Anto ("Defendant Anto"); (all named Defendants collectively referred to as, "Anto Defendants"). Plaintiff alleged: (i) Defendant Carmel YC breached its franchise agreement through its unauthorized closure of its franchised shop; and (ii) as a result of the breach, Plaintiff had the contractual right to terminate Defendant Carmel YC's franchise agreement and cross terminate the franchise agreements of Defendant Huntersville YC and Defendant Mooresville YC. Plaintiff sought: (i) declaratory judgment that the three franchise agreements had terminated; (ii) specific performance of the Anto Defendants' post termination obligations; (iii) damages for past due fees; (iv) lost future royalties in excess of \$116,000; and (v) recovery of its attorneys' fees. In response to Plaintiff's complaint, Anto Defendants denied Plaintiff's claims and asserted counterclaims against Plaintiff and alleged: (i) Defendant Carmel YC's franchise agreement was unenforceable and, alternatively, that Plaintiff was in breach of Defendant Carmel YC's franchise agreement due to Plaintiff's allowance of another franchisee to open a shop within three miles of Defendant Carmel YC's shop. Anto Defendants sought: (i) a declaratory judgment that they were not in default of their franchise agreements; (ii) damages of not less than \$425,000; and (iii) recovery of their attorneys' fees. Plaintiff denied Anto Defendants' claims and filed a demurrer and pleas in bar seeking to have those claims dismissed. Prior to the court hearing and ruling on Plaintiff's motion, the parties entered into an agreement pursuant to which: (i) the parties acknowledged the valid termination of Defendant Carmel YC's franchise agreement; (ii) Defendant Carmel YC transferred the assets of its business to Plaintiff and Plaintiff paid Defendant Carmel YC \$25,000; (iii) Plaintiff reinstated Defendant Huntersville YC's and Defendant Mooresville YC's terminated franchise agreements; and (iv) Plaintiff granted Defendant Anto the right to develop a new sweetFrog shop at a mutually acceptable location on or before November 8, 2018. The case was dismissed with prejudice on December 15, 2016.~~

Concluded Arbitration and Litigation Involving Kahala Franchising, L.L.C.

KOHO, Inc. v. Kahala Franchising, L.L.C.; Superior Court of the State of California for the County of Los Angeles; Case No.: BC572565.

On or about February 17, 2015, Koho, Inc. (“Koho”) filed a Complaint against Kahala Franchising, L.L.C. (“Kahala”) alleging: (i) breach of contract; (ii) unjust enrichment; and (iii) declaratory relief. Koho sought: (i) no less than \$540,000 in special and general damages; (ii) litigation costs; (iii) prejudgment interest; (iv) reasonable attorney’s fees; and (v) declaratory relief. On or about May 5, 2015, Kahala filed a Cross-Complaint against Koho; Heeyong Kyle Chung; and Hannah Kim; alleging: (i) breach of contract; (ii) unjust enrichment; (iii) disgorgement and restitution; (iv) fraud-deceit and concealment; (v) negligent misrepresentation; (vi) conversion; (vii) negligence; and (viii) declaratory relief. Kahala sought: (i) breach of contract damages in amount according to proof; (ii) disgorgement and restitution on Unjust Enrichment cause of action; (iii) judicial determination that Kahala is permitted and entitled to set off amounts owed to it by Koho with funds in its possession which would otherwise have been due Koho; (iv) costs; (v) attorneys’ fees; (vi) punitive damages; and (vii) prejudgment interest; (viii) any other relief the Court deems just and proper. On or about June 15, 2015, Koho filed a Notice of Hearing on Demurrer and Demurrer to Kahala’s Cross-Complaint; Memorandum of Points and Authorities; Declaration of Daniel D. Hoffman and Exhibits in Support Thereof. Koho filed its Notice of Motion and Motion to Strike Certain Portions of Kahala’s Cross Complaint; Memorandum of Points and Authorities on June 17, 2015. On October 16, 2015, the Court overruled Koho’s Demurrer to Kahala’s Cross Complaint in its entirety and denied their motion to strike Kahala’s punitive damages claims; the Court sustained the Demurrer as to Hannah Kim. Mediation was held on May 3, 2016, which failed to yield a settlement between the two parties. On May 5, 2016, Kahala dismissed the claims against Koho and Kyle Chung because they satisfied the debts owed to Kahala, and, therefore, the claims were moot. Hannah Kim was subsequently awarded attorney’s fees on June 15, 2016, in the amount of \$10,233. A bench trial commenced on June 15, 2016, and ended on June 16, 2016. Upon the conclusion of Koho’s case, Kahala presented its case-in-chief and moved for judgment pursuant to Code of Civil Procedure section 631.8. The Court granted Kahala’s Judgment as Koho failed to establish the requisite elements of “breach” and “damages” on the three causes of action asserted in the Complaint. On July 18, 2016, the Court awarded Kahala attorneys’ fees in the amount of \$205,000. On September 22, 2016, Koho filed a Notice of Filing of Notice of Appeal and requested that Kahala participate in a mediation to resolve the outstanding award to Kahala. Koho failed to post an appeal bond. On February 13, 2017, Kahala commenced its self-help pursuant to Section 8(i) and (j) of the ARA and began withholding 100% of the Area Representative fees to which Koho would have otherwise been entitled. On June 19, 2017, the parties entered into a settlement agreement whereby Kahala repurchased Koho’s Area Developer territory for the sum of \$75,000 and forgave the remaining damages owed in the amount of \$130,000.

Texas Nrgize #1, Inc. v. Kahala Franchising, L.L.C., and Kahala Holdings, L.L.C.; 67th Judicial District Court, Tarrant County, Texas; Civil Action No.: 067-272652-14 subsequently removed to United States District Court for the Northern District of Texas; Case No.: 4:14-cv-544-Y.

On or about June 18, 2014, Texas Nrgize #1, Inc., an Nrgize franchisee (“Plaintiff”), filed a Petition and Request for Disclosure against Kahala Franchise Corp and Kahala Holdings, L.L.C. (collectively “Defendants”) alleging (i) violations of the Texas Business Opportunities Act, Tex. Bus. & Comm. Code §§ 51.001 and the Texas Deceptive Trade Practices Consumer Protection Act, Tex. Bus. & Comm. Code §17.46, and (ii) Breach of Contract and Warranties. Plaintiff sought: (i) economic damages in excess of \$200,000, plus treble damages and pre- and post-judgment interest at the maximum rates allowed by law; (ii) attorneys’ fees and costs; and (iii) such other relief to which the Plaintiff may be justly entitled. On July 16, 2014, Defendants filed a Notice of Removal to the United States District Court for the Northern District of Texas. On July 24, 2014, the judge executed the Order Granting the Unopposed Motion to Substitute Parties and Changing Case Style. Kahala

Franchising, L.L.C. ("Defendant") was substituted in as a defendant instead of Kahala Franchise Corp. On July 28, 2014, Defendant filed a Motion to Transfer Pursuant to 28 U.S.C. §1404(A) and Brief in Support. This motion sought an order to transfer the litigation to the United States District Court for the District of Arizona pursuant to the parties' forum selection clause contained in the franchise agreement. On August 1, 2014, Defendant filed its Answer, Counterclaim and Third Party Claim. The Counterclaim was against Plaintiff and the Third Party Claim was filed against Duane W. Martin, Argentina Saldivar, and Margena Wood ("Third Party Defendants"). Defendant alleged: (i) Breach of Franchise Agreement against Plaintiff, and (ii) Breach of Guaranty against Third Party Defendants. Defendant sought: (i) judgment against Plaintiff and the Third Party Defendants in an amount to be proven at trial; (ii) attorneys' fees; (iii) costs pursuant to A.R.S. §§12-341 and 12-341.01 and the parties' contractual agreements; and (iv) any other relief the Court deemed fit. Plaintiff filed its Response to Defendant's Motion to Transfer Pursuant to 28 U.S. C. §1404 (A) and Brief in Support on August 18, 2014, then filed its Answer to Defendant's Counterclaim on August 22, 2014. On August 28, 2014, Defendant filed its Reply in Support of Motion to Transfer Pursuant to 28 U.S. C. § 1404(A) and Brief in Support. On September 24, 2014, the United States District Court for the Northern District of Texas Court requested that each party submit a supplemental brief to benefit the Court in resolving the Defendant's Motion to Transfer. Mediation was held on September 29, 2014, but the parties failed to come to an agreement. On October 17, 2014, Third Party Defendants filed their Answer and Counterclaim. Third Party Defendants alleged: (i) violations of the Texas Business Opportunities Act, Tex. Bus. & Comm. Code §§ 51.001 and the Texas Deceptive Trade Practices Consumer Protection Act, Tex. Bus. & Comm. Code §17.46, and (ii) breach of contract and warranties. Third Party Defendants sought: (i) economic damages in excess of \$200,000, plus treble damages under the Code and pre- and-post judgment interest at the maximum rates allowed by law; (ii) attorney's fees; (iii) costs; and (iv) any other general or special relief that the Court deemed fit. On October 24, 2014, Defendant filed its Supplemental Briefing In Support of Its Motion to Transfer Pursuant to 28 U.S.C. §1404(A). On November 10, 2014, Defendant filed its Answer to the Third Party Counterclaims. On November 13, 2014, Defendant filed its Notice of Dismissal Without Prejudice as to Third Party Defendant Argentina Saldivar only. On November 14, 2014, Plaintiff filed its Response to Defendant's Supplemental Briefing In Support of Their Motion to Transfer Pursuant to 28 U.S.C. §1404(A). On November 26, 2014, Defendant filed its Reply to Plaintiff's Response to Defendant's Supplemental Briefing in Support of Its Motion to Transfer Pursuant to 28 U.S.C. §1404(A). On February 24, 2015, the Court granted Defendant's Motion to Transfer the case to the United States District Court of the District of Arizona; Phoenix Division; Case No.: CV15-0337 PHX DGC. In April 2015, Plaintiff moved to compel arbitration which was ultimately denied by the Court. The parties participated in a mediation in August 2015 which was unsuccessful. In December 2015, the parties executed a settlement agreement in which Defendant paid Plaintiff the sum of \$35,000. The parties filed a Stipulation to Dismiss With Prejudice on December 18, 2015.

Lawsuits Filed by Franchisor Kahala Franchising, L.L.C. Against Franchisees During Fiscal Year December 1, 2021 through November 30, 2022

~~Suit for Breach of Contract (Franchise Agreement); Open Account and Personal Guaranty~~

~~Kahala Franchising, L.L.C. v. Hadi's American Subs, LLC and Mohamad Wajdi El-Hadi; State of Michigan in the Wayne County Circuit Court; Case No. 22-001314 CB.~~

~~Suit for Breach of Contract (Franchise Agreement and Personal Guaranty) —~~

~~Kahala Franchising, L.L.C. and Kahala Holdings, L.L.C. v. Ay-Ray Enterprise, LLC, Mohammed Aiyaz Ali and Sofia Ali; In the Circuit Court of the State of Oregon for the County of Washington; Case No. 22CV36048.~~

Suit for Breach of Contract (Franchise Agreement)

~~*Kahala Franchising, L.L.C. v. Mustafa Shakruwala, Sakina Shakruwala, Murtuza Rajkotwala a/k/a Murtaza Rajkotwala, and Alifiya Rajkotwala a/k/a Alefiyah Rajkotwala; In the Circuit Court for the Thirteenth Judicial Circuit in and for Hillsborough County, Florida; Case No. 29022CA008402A001HC.*~~

Lawsuits Filed by MTY Franchising, USA, Inc. Against Franchisees During Fiscal Year December 1, 2021 through November 30, 2022

Suit for Breach of Contract (Franchise Agreement); Personal Guaranty (The Corbetts); and Unjust Enrichment (In the Alternative)

~~*MTY Franchising USA, Inc. v. Tebrock, David, L.L.C., Lawrence Corbett and Carolina Corbett; In the Superior Court of the State of Arizona in and for the County of Maricopa; Case No. CV2022-000086.*~~

Suit for Breach of Contract (Franchise Agreement and Personal Guaranty)

~~*MTY Franchising USA, Inc. v. Thanhson Nguyen Dinh, Thuy Thanh Tran and Does 1 through 20; Superior Court of California, County of Sacramento, Gordon D. Schaber Courthouse Unlimited Civil; Case No. 34 2022 00316197.*~~

Suit for Unlawful Detainer for failure to pay rent

~~*MTY Franchising USA, Inc. v. Trimurti Management, Inc.; Superior Court of California, County of Los Angeles; Case No. 22VECV01347.*~~

Concluded Arbitration and Litigation Involving Cold Stone Creamery, Inc.

~~*Kenneth J. Kirwin v. Cold Stone Creamery/Kahala Corp; Commonwealth of Massachusetts Plymouth Superior Court, Civil Action No. 13-01126A subsequently removed to the United States District Court of Massachusetts; Case No.: 1:14-cv-11691.*~~

On or about October 21, 2013, Kenneth J. Kirwin ("Plaintiff") filed a Complaint In Equity and Demand For Jury Trial against Kahala Corp, inadvertently named as Cold Stone Creamery/Kahala Corp ("Defendant"). The Complaint alleged: (i) promissory estoppel; breach of contract; breach of implied covenant of good faith and fair dealing; (ii) misrepresentation; fraud and deceit violation of M.G.L. Chap. 93A, §11; (iii) unjust enrichment; (iv) misrepresentation and deceit in violation of M.G.L. Chap. 93A, §11; and (v) intentional infliction of emotional distress. Plaintiff sought: (i) judgment against Defendant in an amount the Court deemed appropriate; (ii) interest; (iii) costs of the action; (iv) compensatory damages; (v) punitive damages; (vi) attorneys' fees; and (vii) court costs. On April 7, 2014, Defendant filed its Notice of Removal seeking removal to the United States District Court for the District of Massachusetts. On April 16, 2014, Defendant filed its Motion to Dismiss or Transfer; which Plaintiff opposed in its filing of the April 16, 2014 Opposition to Kahala Corporation's Motion to Dismiss. On May 5, 2014, Defendant filed its Reply to Plaintiff's Opposition to Motion to Dismiss. On May 16, 2014, Defendants filed a Petition to Compel Arbitration against Plaintiff in the United States District Court for the District of Arizona; Case No.: 2:14-cv-01059-NVW. Defendants sought a court order to compel Plaintiff to arbitrate before the American Arbitration Association in Phoenix, Arizona per the language of the franchise agreements. On June 2, 2014, Plaintiff executed a Declaration With Consent to Relief Requested agreeing to arbitrate before the American Arbitration Association in Phoenix, Arizona. On June 3, 2014, Defendants filed a Notice of Voluntary Dismissal against Plaintiff as he had agreed to arbitrate all claims. Mediation occurred on July 15, 2014, and the parties

arrived at a settlement in which Defendants would pay Plaintiff \$37,500 to settle all disputes. The Settlement Order of Dismissal was filed on July 17, 2014, in the United States District Court District of Massachusetts.

Gregory Fowler, and Doubri Enterprises, L.L.C. v. Cold Stone Creamery, Inc.; State of Rhode Island Kent Superior Court; Case No.: KC-13-0986; subsequently removed to United States District Court for the District of Rhode Island; Case No.: CA 1:13-cv-00662-S-PAS; subsequently removed to United States District Court for the District of Arizona; Case No.: 2:13-02414 PHX PGR.

On or about September 13, 2013, Gregory Fowler and Doubri Enterprises, LLC (collectively "Plaintiffs") filed a Complaint against Cold Stone Creamery, Inc. ("Defendant"). Plaintiffs alleged: (i) breach of sublease; (ii) breach of franchise agreement; (iii) breach of good faith and fair dealing; (iv) tortious interference with contractual relationships; (v) fraud; (vi) defamation of business character; and (vii) negligent infliction of emotional distress. Plaintiffs sought: (i) punitive damages; (ii) attorneys' fees; (iii) interest; and (iv) costs. On September 17, 2013, Defendant filed a Notice of Removal, removing the lawsuit to the United States District Court for the District of Rhode Island. On October 9, 2013, Defendant filed a Motion to Dismiss the Complaint, or alternatively, to transfer the lawsuit to the United States District Court for the District of Arizona. The Motion to transfer was granted on November 25, 2013, and the matter was transferred to the Arizona court. On December 9, 2013, Defendant filed its Answer to the Complaint. On March 5, 2014, the Court entered a scheduling order establishing dates for completion of discovery and pre-trial motions and setting the matter down for trial on October 28, 2014. The parties participated in mediation and ultimately entered into a settlement agreement whereby Defendant paid Plaintiffs \$250,000.

Cindy Kilman, Joseph "Buck" Kilman, and BCEK, L.L.C. v. Cold Stone Creamery, Inc.; American Arbitration Association; Case No.: 76 114 Y 00252 09 LGB.

~~On or about August 17, 2009, Cindy Kilman, Joseph "Buck" Kilman, and BCEK, L.L.C. (collectively "Claimants"), former Cold Stone Creamery franchisees, filed a Demand for Arbitration with the American Arbitration Association against Cold Stone Creamery, Inc. ("Respondent"). Claimants alleged: (i) intentional fraud/fraudulent inducement; (ii) negligent misrepresentations and omissions; (iii) wrongful termination of four franchise agreements and subleases; (iv) breach of implied covenant of good faith and fair dealing; (v) breach of contract; (vi) violations of Federal Anti-Trust law including "illegal tying" claims and "exclusive arrangements" under the Sherman Act and Clayton Act; (vii) violations of the Arizona Uniform State Antitrust Act, A.R.S. §§ 44-1401, et seq.; (viii) violations of the Texas Free Enterprise and Antitrust Act of 1983, Tex. Bus. & Com. Code Ann. §§15.01-15.26 (TFEAA); (ix) violations of Arizona's Consumer Fraud Act, A.R.S. § 44-1521, et seq.; (x) and violations of Texas' Deceptive Trade Practices Consumer Protection Act, Texas Bus. & Comm. Code Ann. §§17.41, et seq. Claimants sought: (i) damages in excess of \$1,100,000, which included their investment; (ii) future profits; (iii) future earnings; (iv) interest; (v) costs and expenses of the arbitration proceeding; (vi) attorneys' fees; (vii) rescission of their four franchise agreements and subleases; and (viii) declaratory relief that "None of the Kilmans (BCEK, L.L.C., Cindy Kilman or Joseph "Buck" Kilman), shall be responsible to Cold Stone Creamery, Inc. for contribution, or otherwise, relating to any rent or additional rent which Cold Stone Creamery, Inc. (or any of its affiliates) may owe or may have been adjudged to owe to any landlord in connection with any of the premises from which the Kilmans (or any one of them) operated their Cold Stone Franchises." Claimants filed an Amended Demand for Arbitration on or about February 9, 2010, stating with more specificity the allegations of each alleged misrepresentation. Respondent filed a Response to the Amended Demand for Arbitration and Counterclaim in which it alleged breach of contract and sought a dismissal of all claims raised by Claimants with prejudice and damages in the amount of \$85,000 plus reasonable attorneys' fees and costs. The arbitration occurred in March 2011, with the American Arbitration Association.~~

The arbitrator awarded Claimants \$349,542.07 on or about May 6, 2011. On or about May 20, 2011, Respondent filed a Notice of Appeal with the American Arbitration Association. On or about June 15, 2011, the American Arbitration Association asked to set up a conference call to initiate the appeal. When, as of June 17, 2011, counsel for the Claimants had not indicated any availability for or an agreement to participate in the conference call, Respondent appealed the decision to the Arizona District Court by filing a Complaint, Case No. 2:11-cv-01192, alleging breach of contract. Respondent sought an order compelling the Claimants to submit to AAA jurisdiction for an appeal of the award, reasonable attorneys' fees and costs, and any other relief the court deemed proper. On August 5, 2011, Respondent filed a Motion to Vacate and Modify Arbitration Award in which it sought an order amending the arbitration award in favor of Respondent in the amount of \$85,000 plus pre and post-judgment interest, or alternatively, an order vacating the arbitration award, and reasonable attorneys' fees and costs incurred and such other relief as the court deemed just and proper. On or about September 6, 2011, Claimants filed a Motion for Temporary Restraining Order and Preliminary Injunction seeking the court to disallow Respondent from any further activity in the appeal of the arbitration award and to disallow Respondent from enforcing the appeal of arbitration provision in the franchise agreement. Claimants filed an Answer and Counterclaims seeking an Order confirming the final arbitration award, a declaration that the appeal provision in the franchise agreement is unconscionable, and injunctive relief. On September 16, 2011, Respondent filed a Motion to Stay its earlier filed Petition to Vacate and Modify the Arbitration Award until the Court ruled on the underlying merits of the Complaint. On September 20, 2011, Claimants filed an Amended Answer to the Complaint asserting counter-claims against Respondent. Respondent filed a response to Claimants' Motion seeking a temporary restraining order. On October 3, 2011, Claimants filed a response to Respondent's Motion to Stay. On October 26, 2011, the United States District Court of Arizona Order granted Claimants' Motion for Temporary Restraining Order and Preliminary Injunction as well as its cross-motion seeking to confirm the arbitration award. The Order further denied Respondent's Motion to Stay as well as its Motion seeking to Vacate and/or Modify the arbitration. Following the October 2011 Order, Claimants filed a Motion for Attorneys' Fees and Non-Taxable Expenses in the amount of \$160,000. In May 2012, the Court ordered Respondent to pay Claimants \$70,000 in fees. Respondent appealed the United States District Court of Arizona's Order to the United States Court of Appeals for the Ninth Circuit in February 2012 and Claimants cross-appealed the May 2012 Order. While the appeal was pending, the parties continued to explore settlement discussions. In December 2012, the parties wished to settle all the issues and claims arising out of and/or relating to the (i) AAA Proceeding; (ii) the District Court Action; (iii) the AAA Appeal Proceeding; and (iv) the Court of Appeals Actions. Respondent agreed to pay Claimants \$371,160 in full satisfaction of the claims and attorneys' fees along with \$3,381 in AAA fees. In exchange, Claimants agreed to release and forever discharge Respondent from any and all claims related to or arising from the dispute. On January 17, 2013, the United States District Court executed an Order that dismissed all claims and counter-claims with prejudice with each party bearing its own costs and attorneys' fees.

Concluded Arbitration and Litigation Involving SFF, LLC, successor in interest to SweetFrog Enterprises, LLC

Sun Yop Cho v. Imagination Enterprises, Inc., American Arbitration Association, Case No. 16 114 Y 00250 13.

On May 15, 2013, Sun Yop Cho ("Claimant"), a sweetFrog licensee, filed an arbitration action against Imagination Enterprises, Inc., predecessor to SweetFrog Enterprises, LLC ("Respondent"). Claimant asserted that: (i) Respondent breached the license agreement by violating the territorial exclusivity provision in the license agreement; (ii) Respondent violated the Virginia Retail Franchising Act; and (iii) Respondent breached an alleged oral promise to partner with Claimant in developing a sweetFrog shop in Leesburg, Virginia. Claimant sought: (i) damages in the amount of \$900,000; (ii) attorneys'

fees; (iii) reformation of the license agreement; and (iv) injunctive relief. Respondent vehemently disputed Claimant's claims. On December 13, 2013, Claimant and Respondent entered into an agreement pursuant to which: (i) the parties settled their disputes and jointly dismissed the arbitration proceeding with prejudice; and (ii) Respondent repurchased Claimant's License Agreement and acquired the assets of his sweetFrog shop for a total price of \$504,162.63.

Sweet Frog Stony Brook, Inc. and Sweet Frog Babylon, Inc. v. SweetFrog Enterprises, LLC; SFF, LLC and Ki Young Cha a/k/a Derek Cha; United States District Court, Eastern District of New York; Case No. 2:14-cv-02356-JS-WDW.

On April 11, 2014, Sweet Frog Stony Brook, Inc. and Sweet Frog Babylon, Inc., (collectively "Plaintiffs"), two sweetFrog franchisees, filed a lawsuit against SweetFrog Enterprises, LLC, SFF, LLC (collectively "Franchisor"), and Ki Young Cha a/k/a Derek Cha (collectively with Franchisor, "Defendants"). Plaintiffs alleged that Defendants: (i) violated the New York Franchise Sales Act; (ii) violated the New York General Business Law § 680, et seq. ("NYFSA") by making unauthorized and fraudulent pre-sale financial performance representations; and (iii) failed to register the franchise offering with the New York Attorney General prior to entering into franchise agreements with Plaintiffs. Plaintiffs demanded: (i) damages in excess of \$685,000; (ii) rescission of their franchise agreements; and (iii) recovery of their attorneys' fees. Defendants disputed Plaintiffs' claims, but agreed to mediate the dispute. Prior to the deadline to respond to the complaint, on July 29, 2014, the parties entered into an agreement pursuant to which: (i) Plaintiffs would attempt to sell their franchised shops and transfer their franchise agreements to any third party(ies) approved by Franchisor before November 1, 2014; and (ii) if Plaintiffs were unable to identify a suitable buyer for their franchised shops by November 1, 2014, the parties agreed to mutual termination of the franchise agreements and that Franchisor would purchase the equipment from each franchised shop at a price of \$50,000. The case was dismissed with prejudice on August 6, 2014.

Tri Star Consulting Group, Inc. and Sweet Frog Hauppauge, Inc. v. SweetFrog Enterprises, LLC, SFF, LLC, Ki Young Cha a/k/a Derek Cha; United States District Court, Eastern District of New York; Case No. 2:14-cv-02228-ADS-AKT. On April 9, 2014, Tri Star Consulting Group, Inc., a licensee and area developer of SweetFrog Enterprises, LLC ("Plaintiff Tri Star"), and Sweet Frog Hauppauge, Inc., a licensee of SweetFrog Enterprises, LLC ("Plaintiff Hauppauge"); (collectively "Plaintiffs"); filed a lawsuit against SweetFrog Enterprises, LLC, ("Defendant SweetFrog"), SFF, LLC ("Defendant SFF"), and Ki Young Cha a/k/a Derek Cha (collectively "Defendants"). Plaintiff Tri Star alleged Defendant SweetFrog breached its license/area development agreement with Plaintiff Tri Star by: (i) terminating the license/area development agreement for nonpayment of royalty fees; (ii) licensing to Defendant SFF the right to sell franchises in New York City, Plaintiff Tri Star's development territory; and (iii) failing to pay fees allegedly owed to Plaintiff Tri Star related to the operation of franchised sweetFrog locations within Plaintiff Tri Star's development territory. Plaintiff Tri Star sought: (i) damages in excess of \$75,000; (ii) a declaration that it was not in default of the license/area development agreement; (iii) a declaration that Defendant SweetFrog was obligated to pay fees to Plaintiff Tri Star based on revenues of all franchised sweetFrog locations in New York City; (iv) an order enjoining Defendant SFF from selling franchises in New York City; and (v) recovery of its attorneys' fees. Prior to the deadline to respond to the complaint, on September 9, 2014, Plaintiff Tri Star and Defendants entered into an agreement pursuant to which (1) the parties agreed to mutual termination of Plaintiff Tri Star's license/area development agreement; (2) Defendant SweetFrog agreed to pay Plaintiff Tri Star \$19,830.58; (3) Defendant SFF agreed to pay Plaintiff Tri Star an ongoing commission equal to 2% of the net sales of all franchised sweetFrog locations in New York City through November 2031; and (4) Plaintiff Tri Star agreed not to operate any competitive business in New York City for so long as Defendant SFF was obligated to make commission payments to Plaintiff Tri Star.

Plaintiff Hauppauge asserted that Defendants: (i) violated the New York Franchise Sales Act, (ii) violated the New York General Business Law § 680, et seq. ("NYFSA"); (iii) committed fraudulent and negligent representations by making unauthorized and fraudulent pre-sale financial performance representations; and (iv) failed to register the franchise offering with the New York Attorney General prior to entering into franchise agreements with Plaintiffs. Plaintiff Hauppauge sought: (i) damages in excess of \$330,000; (ii) rescission of its license agreement, and (iii) recovery of its attorneys' fees. Defendants disputed Plaintiffs' claims but agreed to mediate the dispute. Prior to the deadline to respond to the complaint, on September 9, 2014, Plaintiff Hauppauge, on the one hand, and Defendants on the other hand, entered into an agreement pursuant to which: (i) the parties agreed to mutual termination of Plaintiff Hauppauge's license agreement; and (ii) Defendant SweetFrog agreed to pay Plaintiff Hauppauge \$75,000. The case was dismissed with prejudice on September 20, 2014.

Urquieta Sweet Frog, LLC and Ana Urquieta v. SweetFrog Enterprises, LLC d/b/a SFF, LLC, American Arbitration Association; Case No. 01 14 0001 8086.

On December 23, 2014, Urquieta Sweet Frog, LLC and Ana Urquieta, a former sweetFrog franchisee and its owner (collectively "Plaintiffs"), filed a Demand for Arbitration against SweetFrog Enterprises, LLC ("Defendant"). Plaintiffs alleged: (i) Defendant engaged in fraud; (ii) unfair practices; and (iii) deceptive actions. On February 2, 2015, Defendant timely filed an Answer and Counterclaim and denied all allegations, and further asserted a counterclaim against Plaintiffs for unpaid royalties. This matter was settled in December of 2015. Under the settlement, Defendant agreed to pay Plaintiffs \$300,000 and the parties executed mutual releases.

SFF, LLC v. Carmel Village Yogurt Company LLC; City of Richmond, Virginia Circuit Court; Case No. CL16-3927.

On August 29, 2016, SFF, LLC ("Plaintiff") filed a lawsuit against three sweetFrog franchisee entities, Carmel Village Yogurt Company LLC ("Defendant Carmel YC"), Huntersville Yogurt Company, LLC ("Defendant Huntersville YC"), and Mooresville Yogurt Co, LLC ("Defendant Mooresville YC"), and their main member, Steve Anto ("Defendant Anto"); (all named Defendants collectively referred to as, "Anto Defendants"). Plaintiff alleged: (i) Defendant Carmel YC breached its franchise agreement through its unauthorized closure of its franchised shop; and (ii) as a result of the breach, Plaintiff had the contractual right to terminate Defendant Carmel YC's franchise agreement and cross terminate the franchise agreements of Defendant Huntersville YC and Defendant Mooresville YC. Plaintiff sought: (i) declaratory judgment that the three franchise agreements had terminated; (ii) specific performance of the Anto Defendants' post-termination obligations; (iii) damages for past due fees; (iv) lost future royalties in excess of \$116,000; and (v) recovery of its attorneys' fees. In response to Plaintiff's complaint, Anto Defendants denied Plaintiff's claims and asserted counterclaims against Plaintiff and alleged: (i) Defendant Carmel YC's franchise agreement was unenforceable and, alternatively, that Plaintiff was in breach of Defendant Carmel YC's franchise agreement due to Plaintiff's allowance of another franchisee to open a shop within three miles of Defendant Carmel YC's shop. Anto Defendants sought: (i) a declaratory judgment that they were not in default of their franchise agreements; (ii) damages of not less than \$425,000; and (iii) recovery of their attorneys' fees. Plaintiff denied Anto Defendants' claims and filed a demurrer and pleas in bar seeking to have those claims dismissed. Prior to the court hearing and ruling on Plaintiff's motion, the parties entered into an agreement pursuant to which: (i) the parties acknowledged the valid termination of Defendant Carmel YC's franchise agreement; (ii) Defendant Carmel YC transferred the assets of its business to Plaintiff and Plaintiff paid Defendant Carmel YC \$25,000; (iii) Plaintiff reinstated Defendant Huntersville YC's and Defendant Mooresville YC's terminated franchise agreements; and (iv) Plaintiff granted Defendant Anto the right to develop a new sweetFrog shop at a mutually acceptable location on or before November 8, 2018. The case was dismissed with prejudice on December 15, 2016.

Concluded Arbitration and Litigation Involving Fresh Enterprises, LLC successor in interest to BF Acquisition, LLC

Fresh Enterprises v. Ledang Investment Group, LLC, Vincent Tienn Le, Ho Tien Le and Hue Thi Dang Superior Court of the State of California, County of Santa Clara, Case No. 1-13-CV-257219.

On July 2, 2013, Fresh Enterprises, as successor-in-interest to Baja Fresh Westlake Village, Inc. (“Plaintiff”), filed a complaint against Ledang Investment Group, LLC; Vincent Tien Le, Ho Tien Le and Hue Thi Dang (collectively “Defendants Ledang” or “Cross Claimants Ledang”) for: (i) implied indemnity; (ii) equitable indemnity; (iii) express indemnity; (iv) breach of contract; (v) declaratory relief seeking unspecified damages; (vi) indemnification; (viii) a judgment of unlawful detainer; and (ix) declaration that Defendants Ledang were obligated to reimburse Plaintiff for various expenses. On January 6, 2014, Cross Claimants Ledang filed a Cross-Complaint against Plaintiff, Baja Fresh Westlake Village, LLC, Triune Corporation and National Franchise Sales, Inc. (collectively “Counter Defendants”) for: (i) breach of contract; (ii) breach of covenant of good faith and fair dealing; (iii) negligent misrepresentation; and (iv) intentional misrepresentation. On February 19, 2014, Counter Defendants filed a Motion to Compel Arbitration, which was granted. The disputes between the parties were then arbitrated before the American Arbitration Association (Case Number 72-20-1400-0126). On February 2, 2015, the Arbitrator issued an award in favor of Cross Claimants Ledang in the amount of \$660,620.84. The parties entered into a Settlement and Release Agreement on July 20, 2015, under which Counter Defendants paid the Cross Claimants Ledang the sum of \$585,000 and the matter was dismissed with prejudice.

Concluded Arbitration and Litigation Involving Famous Dave’s of America, Inc.

Desert Ribs, LLC, Famous Gracie, LLC, Famous Freddie, LLC, Famous George, LLC and Famous Charlie, LLC v. Famous Dave’s of America, Inc., American Arbitration Association, Minneapolis, Minnesota, Case No. 01 16 0000 8549.

On March 14, 2016, the franchisees for the Famous Dave’s® Restaurants in Chandler, Peoria, Mesa and Gilbert, Arizona (“Claimants”) filed a Demand for Arbitration against Famous Dave’s alleging that Famous Dave’s (1) violated the Minnesota Franchise Act (“MFA”), (2) breached the implied covenant of good faith and fair dealing under the Famous Dave’s® Franchise Agreements with Claimants (the “Franchise Agreements”), and (3) breached certain express provisions of the Franchise Agreements. Claimants sought damages of \$2,984,098, and a permanent injunction prohibiting Famous Dave’s from engaging in discriminatory conduct in violation of the MFA. On July 20, 2016, the arbitrators ruled in partial favor of the pre-hearing motion filed by Famous Dave’s by dismissing Claimants’ MFA claims against Famous Dave’s. Upon the dismissal of the MFA claims, Claimants voluntarily dismissed their remaining claims against Famous Dave’s and entered into a confidential settlement agreement and mutual release (the “Settlement Agreement”), dated August 22, 2016, with Famous Dave’s. The Settlement Agreement included the following material terms: (i) the territorial rights granted to Claimants in the Franchise Agreements were modified; (ii) the managing member of Claimants (the “Consultant”) entered into a consulting agreement with Famous Dave’s that provided for the design, development and build-out of a counter-service/line-service prototype barbecue restaurant concept (the “Prototype”) and the payment of a consulting fee of \$410,000 to the Consultant in installments over a three-year period; and (iii) Claimants entered into a right of first offer agreement with Famous Dave’s granting to a Claimant the first right to enter into an area development agreement with Famous Dave’s for the development of seven Prototype restaurants in a reserved territory in Arizona.

Tacoma BBQ, Inc. et. al. v. Famous Dave’s of America, Inc., FORUM, Case No. FA1705001729911.

On or about April 10, 2017, former franchisees of the Famous Dave's® Restaurants in Midvale, Utah; Layton, Utah; Jordan, Utah; Tukwila, Washington; Puyallup, Washington; Tacoma, Washington; Silverdale, Washington; and Everett, Washington ("Claimants") filed a Demand for Arbitration against Famous Dave's disputing Famous Dave's assertion that the Claimants were in default under their Franchise Agreements and disputing Famous Dave's performance under the Franchise Agreements. On or about June 7, 2017, Famous Dave's filed its Answer and Counterclaim denying the Claimants' claims. The parties elected to enter into a confidential settlement agreement and mutual release of all claims (the "Settlement Agreement") dated December 6, 2017, which included the following material terms: (i) Famous Dave's consented to the sale of the Claimants' restaurants to CD Holding Company, LLC and, accordingly, terminated all of the applicable Franchise Agreements; (ii) the Claimants paid to Famous Dave's a settlement amount of \$350,000; and (iii) the Claimants and Famous Dave's executed a mutual release of all claims.

Famous Dave's of America, Inc. v. SR El Centro, Inc., et al., Superior Court of the State of California, County of Los Angeles, Central Division, Case No. BC589329, filed July 24, 2015.

Famous Dave's commenced this lawsuit against the former franchisees for the Famous Dave's® Restaurants in El Centro, Long Beach, Palmdale, Simi Valley, and Tracy, California, and others ("Defendants") based in part on the continued operation of the Restaurants as Famous Dave's® Restaurants using Famous Dave's Marks and Restaurant System after the termination of their Franchise Agreements by Famous Dave's for failure to cure breaches of the Franchise Agreement, including the failure to pay the Royalty and Marketing Fund Fees due under the Franchise Agreements, within the prescribed cure period after receipt of written notice, in violation of the post-termination obligations of the Franchise Agreements. Famous Dave's alleged Lanham Act violations, including federal trademark infringement, federal trademark dilution, federal unfair competition and false advertising, and federal trade dress dilution; trademark infringement, trademark dilution, unfair competition and false advertising under California law; common law trademark infringement; breach of the Franchise Agreements; breach of the implied covenant of good faith and fair dealing; and intentional interference with contract. Famous Dave's sought injunctive relief to enjoin Defendants from continuing to use the Marks and Restaurant System and enforcing compliance with the post-termination obligations of the Franchise Agreements, and also sought damages in an amount that was to be determined at trial, reasonable attorneys' fees, interest and costs of suit. On September 29, 2018, the parties agreed to enter into a confidential settlement agreement and a mutual release of claims (the "El Centro Settlement Agreement"), which contained the following material terms: (i) Famous Dave's paid \$75,000 to SR Restaurant Holdings Group, Inc. as reimbursement for a portion of the attorneys' and other professional fees it allegedly incurred; (ii) Allan Gantes paid to SR Restaurant Holdings Group, Inc. \$7,500; (iii) Defendants agreed to de-identify the Restaurants in Long Beach, California and Tracy, California; (iv) notices were provided to certain customers of the Long Beach, California and Tracy, California Restaurants; and (v) Famous Dave's consented to the sale of certain Restaurant assets by SR El Centro FD, Inc. to Shoreline FD Investors, LLC, John Gantes, and Allan Gantes (or an affiliate), so long as certain designated criteria were met. All of the Famous Dave's Franchise Agreements between the parties were terminated. As a result, the matter was dismissed by the Superior Court of the State of California, County of Los Angeles, Central Division on November 26, 2018.

On January 26, 2018, Famous Dave's commenced an arbitration action pursuant to FORUM Arbitration Rules against FDWNY, Inc. and Timothy Cloe, seeking past due fees, attorneys' fees, and costs. The parties agreed to settle the matter in exchange for the defendants' payment of a settlement amount in excess of \$165,000 to Famous Dave's.

SR El Centro, Inc., et al. v. Famous Dave's of America, Inc., Superior Court of the State of California, County of Los Angeles, Case No. NC060189, filed July 28, 2015.

The franchisees for the Famous Dave's® Restaurants in El Centro, Long Beach, Palmdale, Simi Valley, and Tracy, California ("Plaintiffs") filed a complaint against Famous Dave's in the South Judicial District of the Superior Court of the County of Los Angeles. On March 10, 2016, Plaintiffs re-filed this Complaint as a First Amended Cross-Complaint in matter described above [Famous Dave's of America, Inc. v. SR El Centro, Inc., et al., Superior Court of the State of California, County of Los Angeles, Central Division, Case No. BC589329] alleging that Famous Dave's breached the Franchise Agreements for these Restaurants by failing to provide certain marketing support and access to customer contact data, vendors, internet reporting and support to Plaintiffs, and failing to provide operations and preferred practices training to Plaintiffs' designated representative. Plaintiffs further alleged that such conduct by Famous Dave's was a breach of the covenant of good faith and fair dealing. Plaintiffs also alleged that Famous Dave's aided and abetted John and Allan Gantes in breach of their fiduciary duty to Plaintiffs. Plaintiffs sought compensatory damages in an amount not less than \$20 million, punitive damages, costs and attorneys' fees. On September 29, 2018, the parties agreed to settle the matter in the El Centro Settlement Agreement described above. As a result, the matter was dismissed by the Superior Court of the State of California, County of Los Angeles, Central Division on November 26, 2018.

Concluded Arbitration and Litigation Involving VI BrandCo, LLC

In re: Restaurants Acquisition I, LLC (Giuliano vs. W. Craig Barber et. al. United States Bankruptcy Court for the District of Delaware on December 2, 2015 (Case No. 15-12406 (KG)).

On December 1, 2017, the Chapter 7 trustee in the Restaurants Acquisition I, LLC ("RAI") bankruptcy proceeding filed suit in the United States Bankruptcy Court against our Chief Executive Officer W. Craig Barber, our Chief Concept Officer – Family Restaurant Division Robert Langford and companies owned jointly by them alleging avoidance, fraudulent transfer, breach of contract and breach of fiduciary duty in connection with their executive roles with RAI and as members of Dynamic Management Company, LLC related to the RAI's ownership and operation of Black-Eyed Pea and Dixie House restaurants. On March 6, 2019, Barber and Langford each settled with the Chapter 7 trustee by each agreeing to pay to the trustee and estate separate payments totaling \$150,000 each over a three-year period.

Concluded Arbitration and Litigation Involving Wetzel's Pretzels, LLC

Pretzelsdallas1, Inc. v. Wetzel's Pretzels, LLC (Los Angeles, California, AAA Case No.01-19-0002-9326).

On or about July 19, 2017, we entered into a franchise agreement with Pretzelsdallas1, Inc. (then known as Triple Scoops, Inc.). On or about September 11, 2019, Pretzelsdallas1, Inc., ("Claimant/Counter Respondent") a franchisee, filed a demand for arbitration against Wetzel's Pretzels, LLC ("Respondent/Counter Claimant") with the American Arbitration Association in which it alleged claims for (i) rescission and restitution for intentional misrepresentation, (ii) rescission and restitution for negligent misrepresentation and (iii) violation of the California Corporations Code §31201. Claimant/Counter Respondent sought \$368,837 in damages. On or about February 26, 2020, Respondent/Counter Claimant filed an answer and counterclaim against Claimant/Counter Respondent. Respondent/Counter Claimant alleged: (i) breach of contract- franchise agreement; (ii) breach of contract – sublease agreement; (iii) breach of guaranty. Respondent/Counter Claimant sought: judgment on its claims for payments on the franchise agreement in the amount of \$133,600; (ii) judgment on its claims for payments on the sublease agreement in the amount of \$14,8520; judgment in its favor on its claims for payments on the guaranty in the amount of \$148,450; (iv) interest on the sums; (v) attorney's fees; and (vi) any other relief the court deems fit. On September 24, 2021, the parties entered into a settlement agreement, in which a mutual release of all claims was agreed

to, and Respondent/Counter Claimant paid Claimant/Counter Respondent the sum of \$125,000. The matter was subsequently dismissed with prejudice.

Concluded Arbitration and Litigation Involving Papa Murphy's International, L.L.C.

DTD Pizza LLC, Brian Watson, Alton Spears, LMP Enterprises LLC, Pizza Enterprises LLC, Alan and Denise Barnett, DOB Enterprises, Inc., Douglas and Lesia Billing, Rob & Bud's Pizza, Robert J. Dickerson Trust UA, Rob Dickerson, 4LM Enterprises, Inc., Jana and Randell Liles, Ben and Kim Mayfield, SEAMS Holdings LLC, Scott and Erica Shelby, Robert Hoersting, PM Savannah LLC, James and Mona King, Hans King, Pizza For 4 Kings Corp, Alamo Quality Pizza I, LLC., Quality Pizza III, LLC., Gerardo Torres, George Knost, Arkel Food Services, LLC., Reece Alexander Overcash, III, Angelo S. Chantilis, Jr., Double AA Partners, LLC., Jeffrey L Comish, John Stalker, and Papa's of Tennessee, LLC. v. Papa Murphy's International LLC, Papa Murphy's Company Stores, Inc., PMI Holdings Inc., Papa Murphy's Intermediate Inc., Papa Murphy's Holdings, Inc., Lee Equity Partners LLC, John D. Barr, Ken Calwell, Thomas H. Lee, Yoo Jin Kim, Benjamin Hochberg, John D. Schafer, Achi Yaffe, Janet Pirus, Victoria Blackwell, Gail Lawson, Dan Harmon, Scott Mullen, Jayson Tipp, Kevin King, Stephen Maeker, Steve Millard, Steve Figiola; Washington Superior Court, Clark County, Case No. 14-2-00904-0.

and

Mitch and Kristen Brink, Brink Holdings Inc., Angela Buchanan, Tim Forester, Z-Axis, Inc., Heather and Gary Nychyk, Bar N Pizza, LLC, John DeMattia, DeMattia LLC, a Texas Limited Liability Company, Harry and Terry Olson, Hot Pizza Inc., Steven Pyatt, Craig Braun, David Mraz, JIM LLC, Philip and Maria Ahn Wilson, Papa South, LLC, Steven and Holly Mead, Thomas Lance, PMG Tampa, LLC, Ilya and Chantal Rubin, Pie in the Sky LLC, Joanna and Glenn Patcha, Alchemy Foods LLC, Ian Hasinoff and Susan Lorimer, Eddrachillis LLC, Cole Kilen, Eye on the Pie LLC, Ann and Harvey Callegan, Just for Fun, LLC, Eugene and Joy Hill, Conn, Edward Turnbull, Turnbull Restaurant Group LP, Turnbull Restaurant Group GP, Conn, LLC, Loralie and Trey Bennett, Pizza Revolution of Fort Walton Beach LLC, Pizza Revolution of Panama City LLC, Pizza Revolution at Tyndall LLC, Steven Terry, Matthew and Cindy Terry, Alice and Douglas Worthington, Thomas Stephenson, Make Dough Enterprises Inc., Jared Richardson, Russell Crader, and Red Rust, LLC, v. Papa Murphy's International LLC, Papa Murphy's Company Stores, Inc., PMI Holdings Inc., Papa Murphy's Intermediate Inc., Murphy's Holdings, Inc., Lee Equity Partners LLC, John D. Barr, Ken Calwell, Thomas H. Lee, , Yoo Jin Kim, Benjamin Hochberg, John D. Schafer, Achi Yaffe, Janet Pirus, Victoria Blackwell, Gail Lawson, Dan Harmon, Scott Mullen, Jayson Tipp, Kevin King, Stephen Maeker, Steve Millard, Steve Figiola; Washington Superior Court, Clark County, Case No. 14-2-01743-3.

These two related actions were commenced in April 2014 and June 2014, respectively, by separate groups of current and former franchisees against us, certain members of our board of managers and executive team, and others in Washington Superior Court (Clark County), alleging misrepresentations involving financial performance representations in ITEM 19 of our franchise disclosure document the franchisees' local marketing obligations, among other things, and brought claims for violation of the Washington Franchise Investment Protection Act ("WFIPA"), fraud, negligent misrepresentation and breach of contract. These two actions were consolidated in September 2014 under Case Number 14-2-00904-0.

Each of the plaintiff groups have entered into settlements with Papa Murphy's in which they dismissed all of their claims against defendants with prejudice and the action was dismissed in June 2020. The settlements are as follows: (1) one plaintiff group dismissed its claims against Papa Murphy's for no consideration; (2) two plaintiff groups agreed to pay amounts ranging from \$5,000 to \$8,000 to Papa Murphy's and remained in the system; (3) Papa Murphy's agreed to pay one plaintiff group's

advertising costs for one year, agreed to allow the franchisee to develop an additional franchise, and agreed to return the franchisee's initial development fee of \$10,000; (4) another plaintiff group agreed to remain in the system in exchange for Papa Murphy's paying 3.8% of the franchisees' sales towards local advertising for a period of two years and extending the franchise agreement's term for an additional ten years; (5) Papa Murphy's settled with fifteen different plaintiff groups and paid amounts ranging from \$10,000 per group to \$4 million per group; (6) Papa Murphy's agreed to purchase one plaintiff group's nine Papa Murphy's stores at an agreed upon value of the stores' assets plus \$500,000; and (7) Papa Murphy's agreed to purchase seven plaintiff groups' Papa Murphy's stores at an agreed upon value of the stores' assets.

Rob & Bud's Pizza, LLC v. Papa Murphy's International, Inc. and Papa Murphy's International, LLC; United States District Court for the Western District of Washington, Case No. 5:15-cv-05090-TLB.

In spring 2015, Papa Murphy's sent a notice of default to plaintiff for alleged defaults under the plaintiff's franchise agreements. In response, on April 17, 2015, the plaintiff brought an action seeking a declaratory judgment and injunction preventing Papa Murphy's from terminating the franchises. The plaintiff subsequently added claims in the case alleging that Papa Murphy's tortiously interfered with the plaintiff's employees and negligence in how Papa Murphy's handled the plaintiff's customer database, and sought compensatory damages, punitive damages and costs in an unspecified amount. The plaintiff was also a plaintiff in the LMP case described above. The case has been dismissed with prejudice as part of a settlement with plaintiff in this case and the LMP case under which Papa Murphy's purchased plaintiff's nine Papa Murphy's stores at an agreed upon value of the stores' assets plus \$500,000.

PUBLIC AGENCY ACTIONS AGAINST MTY USA, AFFILIATES AND/OR THEIR PREDECESSORS

Concluded State Administrative Actions Involving SFF, LLC, successor in interest to SweetFrog Enterprises, LLC

In the Matter of SweetFrog Enterprises, LLC f.k.a. Imagination Enterprises, Inc., d/b/a Sweet Frog, Administrative Proceeding Before the Securities Commissioner of Maryland, Case No. 2012-0055.

As a result of an inquiry into the franchise related activities of SweetFrog Enterprises, LLC, ("SFE") the Maryland Securities Commissioner ("Commissioner") concluded that grounds existed to allege that SFE violated the registration and disclosure provisions of the Maryland Franchise Law in relation to the offer and sale of certain license agreements. SFE acknowledged that those license agreements constituted franchises as defined under the Maryland Franchise Law. SFE represented that it entered into license agreements with eight Maryland licensees during the time it was not registered to offer and sell franchises in Maryland. On August 29, 2012, the Commissioner and SFE agreed to enter into a consent order whereby SFE, without admitting or denying any violations of the law, agreed to: (i) immediately and permanently cease from the offer and sale of franchises in violation of the Maryland Franchise Law; (ii) file and diligently pursue an application for an initial franchise registration in Maryland relating to the license agreements it offered and sold to Maryland licensees; and (iii) to offer to rescind the license agreements of all Maryland licensees to whom it sold unregistered franchises. We are not aware of any licensees that accepted the rescission and have made a good faith effort to obtain that information.

Concluded State Administrative Actions Involving Predecessor Blimpie Associates, Ltd.

In May 1992, Blimpie Associates, Ltd. (“Blimpie”) and Joseph Dornbush (formerly the President of Blimpie) (collectively “Respondents”) responded to a claim by the New York Department of Law that it had sold franchises during a period of time when Blimpie’s prospectus had not been updated by amendment. Without the admission of any wrongdoing, Respondents consented to the entry of an order in which Respondents agreed: (i) to entry of a judgment enjoining them from further violations of the New York Franchise Sales Act; and (ii) to pay the sum of \$18,000 to the State of New York as an additional allowance. Respondents paid the \$18,000 in May 1992 and executed the consent judgment on August 25, 1992.

Concluded State Administrative Actions Involving Maui Wowi Franchising, Inc., predecessor in interest to Kahala Franchising, L.L.C.

In the Matter of Maui Wowi Franchising, Inc., Before the Securities Commissioner of Maryland, Case No. 2005-0651.

On November 11, 2005, Maui Wowi Franchising, Inc., the predecessor franchisor of the Maui Wowi brand (“MWF”), entered into a Consent Order with the Securities Commissioner of Maryland (“Commissioner”) resulting from MWF inadvertently entering into four franchise agreements with Maryland residents after its registration in Maryland expired on June 9, 2004 (“Maryland Franchisees”). The Consent Order required MWF to cease and desist from the offer and sale of unregistered franchises in Maryland; to diligently pursue the completion of its then pending application; to register its Offering Circular in Maryland; to develop and implement new franchise law compliance procedures to ensure future compliance with the registration and disclosure provisions of Maryland Franchise Law; and to enroll an officer and a franchise compliance person in a franchise law compliance training program. Upon notification by the Commissioner, MWF sent to the Maryland Franchisees the registered Offering Circular, a copy of the Consent Order, and a letter notifying the Maryland Franchisees that they could rescind their franchise agreements. At this time, MWF is in full compliance with the Consent Order.

In the Matter of Maui Wowi Franchising, Inc., Before the Securities Commissioner of Maryland, Case No. 2007-0194.

On September 12, 2007, “MWF” entered into a Consent Order with the Maryland Commissioner resulting from MWF inadvertently entering into two franchise agreements with two Maryland residents (“Second Maryland Franchisees”) without delivering to them the appropriate Offering Circular. MWF was registered in the State of Maryland at the time of the offer and sale with an Offering Circular containing certain specific information required only by Maryland law. At the same time, MWF used a second form of Offering Circular in other states that did not contain all of the information required by Maryland law. Prior to the execution of the franchise agreements with the Second Maryland Franchisees, MWF accidentally delivered to them the Offering Circular that did not contain the Maryland-specific information. We subsequently reported these mistakes to the Commissioner. The Consent Order required MWF to cease and desist from the offer and sale of franchises in Maryland in violation of the Maryland Franchise Law; to diligently pursue the completion of its then pending application to register its Offering Circular in Maryland; to implement additional compliance measures to ensure future compliance with the Maryland Franchise Law; to employ an approved franchise law compliance training program or trainer to monitor MWF’s franchise activities in Maryland for two years; and to reimburse the Maryland Attorney General for its investigation and resolution costs in the total amount of \$2,500. Additionally, MWF was required to provide to the Second Maryland Franchisees the registered Offering Circular, a copy of the Consent Order, and a letter notifying the Second Maryland Franchisees that they have a right to rescind their franchise agreements. The

Commissioner and MWF subsequently entered into an Amended Consent Order in which MWF elected to withdraw from the State of Maryland instead of employing a compliance monitor, with the agreement to employ a monitor if MWF was to re-register in the State of Maryland. MWF fully complied with the Amended Consent Order, and subsequently employed a compliance monitor and was granted registration in the State of Maryland.

Concluded State Administrative Actions, Arbitration, and Litigation Involving BF Acquisition Holdings, LLC and/or its predecessors

State of Maryland Determination; Case Number 2012-0073.

In February 2012, the State of Maryland alleged that during the period January 1, 2009 to November 26, 2009, Triune, LLC ("Triune"): (i) did not retain signed acknowledgements of receipt reflecting the dates that its Franchise Disclosure Document was delivered to certain Maryland residents and non-residents; (ii) sold franchises to certain Maryland residents and non-residents without providing them with a copy of a 2009 Franchise Disclosure Document; (iii) sold franchises to certain Maryland residents and non-residents without providing them with a copy of a 2009 Franchise Disclosure Document that contained its 2008 financial statements with a going concern note from its auditors resulting from the unfavorable financial condition of its parent company; and (iv) sold franchises to certain Maryland residents and non-residents without including, or abiding with, a deferral condition in their Franchise Agreements that was imposed upon it by the State of Maryland, all as required by the Maryland Franchise Registration and Disclosure Law (the "Maryland Law") and in violation of the Maryland Law. Without admitting or denying the allegations, in September 2012, Triune voluntarily entered into a Consent Order with the Office of the Attorney General of Maryland and agreed to: (i) not violate the Maryland Law in the future; (ii) pay the Office of the Attorney General the sum of \$50,000 as a civil penalty; (iii) retain copies of all acknowledgments of receipt confirming dates that prospective Maryland franchisees received any Maryland Franchise Disclosure Documents; (iv) comply with the disclosure and antifraud provisions of the Maryland Franchise Law and the record keeping and escrow requirements of the Code of Maryland Regulations; and (v) send a copy of the Consent Order to certain Maryland franchisees.

State of Virginia Determination; Case Number SEC-2012-00027.

In February 2012, the Division of Securities and Retail Franchising of the State Corporation Commission (the "Commission") alleged that during 2009 Triune, LLC ("Triune"): (i) offered or sold franchises in Virginia in 2009 that were not registered under the Virginia Retail Franchising Act (the "Virginia Act"); (ii) offered or sold franchises in Virginia without disclosing that it was not registered to do so; (iii) failed to provide material information regarding the parent company's unfavorable financial condition and the potential impact that it could have on Triune as stated in a going concern note in its 2008 financial statements from its auditors; and (iv) failed to provide a prospective franchisee with a copy of its Franchise Disclosure Document as required by rule or order of the Commission at least 14 calendar days before the prospective franchisee signed a binding agreement or made any payment to it in connection with the sale or offer to sell a franchise in Virginia. Without admitting or denying the allegations, on November 26, 2012, Triune voluntarily entered into a Settlement Order with the Commission and agreed: (i) to not violate the Virginia Act in the future; (ii) to pay Virginia the sum of \$25,000 as a penalty and the sum of \$5,000 to defray the Commission's costs of investigation; (iii) to offer certain Virginia franchisees a refund of their initial franchise fees; and (iv) to send a copy of the Settlement Order to certain Virginia franchisees.

Lawsuits Filed by Franchisor Kahala Franchising, L.L.C. Against Franchisees During Fiscal Year December 1, 2022 through November 30, 2023

Suit for Breach of Contract

Kahala Franchising, L.L.C. v. Hunter Hammond Enterprises, L.L.C. and Keith Hammond; In The Superior Court Of Harris County State Of Georgia; Civil Action File No.: 23-CV-379.

Fresh Enterprises v. Ledang Investment Group, LLC, Vincent Tienn Le, Ho Tien Le and Hue Thi Dang Superior Court of the State of California, County of Santa Clara, Case No. 1 13 CV 257219.

~~On July 2, 2013, Fresh Enterprises, as successor-in-interest to Baja Fresh Westlake Village, Inc. (“Plaintiff”), filed a complaint against Ledang Investment Group, LLC; Vincent Tien Le, Ho Tien Le and Hue Thi Dang (collectively “Defendants Ledang” or “Cross Claimants Ledang”) for: (i) implied indemnity; (ii) equitable indemnity; (iii) express indemnity; (iv) breach of contract; (v) declaratory relief seeking unspecified damages; (vi) indemnification; (viii) a judgment of unlawful detainer; and (ix) declaration that Defendants Ladang were obligated to reimburse Plaintiff for various expenses. On January 6, 2014, Cross Claimants Ledang filed a Cross Complaint against Plaintiff, Baja Fresh Westlake Village, LLC, Triune Corporation and National Franchise Sales, Inc. (collectively “Counter Defendants”) for: (i) breach of contract; (ii) breach of covenant of good faith and fair dealing; (iii) negligent misrepresentation; and (iv) intentional misrepresentation. On February 19, 2014, Counter Defendants filed a Motion to Compel Arbitration, which was granted. The disputes between the parties were then arbitrated before the American Arbitration Association (Case Number 72-20-1400-0126). On February 2, 2015, the Arbitrator issued an award in favor of Cross Claimants Ledang in the amount of \$660,620.84. The parties entered into a Settlement and Release Agreement on July 20, 2015, under which Counter Defendants paid the Cross Claimants Ledang the sum of \$585,000 and the matter was dismissed with prejudice.~~

Other than these actions, no litigation is required to be disclosed in this Item.

ITEM 4: BANKRUPTCY

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

ITEM 5: INITIAL FEES

The initial franchise fee (“Initial Franchise Fee”) for your first traditional Franchised Business is \$30,000. The Initial Franchise Fee is reduced for your second and each subsequent traditional Franchised Business to \$15,000. The Initial Franchise Fee for your non-traditional Franchised Business is \$15,000 for each Kiosk or Standard Counter Floorplan, and \$10,000 for each Vehicle.

If you are currently an active or active reserve member of the U.S. Armed Forces, have been honorably discharged from the U.S. Armed Forces (“Eligible Military”), or are a 501(c)(3) organization (“501(c)(3)”), you will receive a 20% discount on the Initial Franchise Fee.

The initial fees to be paid to us and/or our affiliate(s) before the Franchised Business opens are indicated on the chart below and in the notes to the chart. The initial fees to be paid to us and/or our affiliate(s) before the Franchised Business opens are the total of the Initial Franchise Fee, Grand Opening Marketing, Lease Guarantee Fee (if any), Lease Review Fee (if any), and the cost of equipment, furniture, menu boards, wall décor, interior and exterior signage and smallwares, and ranges from \$13,500 to \$42,500 for a non-traditional location, and from \$30,500 to \$58,000 for a traditional location. These amounts do not include the Document Administration Fee.

For the 2021 fiscal year, the formula used to calculate the range of initial fees paid to us and/or our affiliate(s) before the franchisee's Franchised Business opened was: the total of the initial franchise fee, lease guarantee fee (if any), lease review fee (if any), and the cost of equipment, furniture, menu boards, wall décor, interior and exterior signage and/or smallwares purchased from Neptune Equipment. The factors that determined these amounts were: (i) if the Initial Franchise Fee was discounted or waived; (ii) if the Franchised Business was traditional or non-traditional, and if non-traditional, what type of non-traditional; (iii) if the Franchised Business was the franchisee's first or subsequent Franchised Business; and (vi) the cost of equipment, furniture, menu boards, wall décor, interior and exterior signage and smallwares purchased from our affiliate, Neptune Equipment.

There are no refunds of an Initial Franchise Fee under any circumstances. We may periodically reduce the Initial Franchise Fee in connection with limited time promotions, new concepts and/or operational programs. We may vary the terms of our franchises in connection with testing new marketing, branding and/or operational programs. These tests are generally conducted with experienced, existing franchisees and may include incentives and other rights which are not available to all franchisees. If you sign the Franchise Agreement in connection with a transfer or renewal, you will not pay the Initial Franchise Fee.

We may offer you the option to purchase a license to sell additional signature products in your Franchised Business and to use the signature products trademark(s) as signature products are developed. The signature products that would be available for sweetFrog franchisees to sell in a Franchised Business are currently under development. We estimate that the fees associated with acquiring license(s) to sell additional products will be between \$2,500 and \$5,000 although these license fees may be modified from time to time.

CATEGORY	AMOUNT	METHOD OF PAYMENT	DUE DATE	TO WHOM PMT IS MADE	REFUNDABILITY
Initial Franchise Fee – first traditional Franchised Business	\$30,000 (reduced to \$24,000 for Eligible Military and 501(c)(3))	Lump Sum	Signing of the Franchise Agreement	Franchisor	See Note (1)
Initial Franchise Fee – second traditional Franchised Business and each afterward	\$15,000 (reduced to \$12,000 for Eligible Military and 501(c)(3))	Lump Sum	Signing of the Franchise Agreement	Franchisor	See Note (1)
Initial Franchise Fee – Kiosk or Standard Counter Floorplan	\$15,000 (reduced to \$12,000 for Eligible Military and 501(c)(3))	Lump Sum	Signing of the Franchise Agreement	Franchisor	See Note (1)
Initial Franchise Fee -- Vehicle	\$10,000 (reduced to \$8,000 for	Lump Sum	Signing of the Franchise Agreement	Franchisor	See Note (1)

CATEGORY	AMOUNT	METHOD OF PAYMENT	DUE DATE	TO WHOM PMT IS MADE	REFUNDABILITY
	Eligible Military and 501(c)(3))				
Grand Opening Marketing	\$10,000 for a traditional Franchised Business; \$5,000 for a non-traditional Franchised Business (Kiosk/Standard Counter Floorplan only)	Lump Sum	Prior to execution of a lease or prior to construction of premises (earlier of)	Franchisor or its affiliate	See Note (1)
Lease Guarantee Fee (optional)	10% of the total amount guaranteed, up to a maximum payment of \$10,000 (if applicable) (Note 2)	Lump Sum	Signing of the lease guarantee agreement (if applicable)	Franchisor or its affiliate who guarantees the lease	See Note (1)
Lease Review Fee (optional)	\$2,500 (Note 3)	Lump Sum	When you request review by Kahala Management's real estate department	Franchisor	See Note (1)
Equipment, furniture, wall décor, interior and exterior signage, menu boards, and/or smallwares	\$5,500 to \$10,000 (Note 4)	Lump Sum	When invoiced	Neptune Equipment	See Note (1)

Notes:

(1) There are no refunds under any circumstances. Franchisor does not offer any financing of the Initial Franchise Fee. We may periodically reduce the Initial Franchise Fee in connection with limited time promotions, new concepts and/or operational programs.

(2) If, after a request by you, Franchisor or any of its affiliates agree, in their sole and absolute discretion, to guarantee your lease with the applicable third party landlord for the Franchised Business you are developing, you will pay Franchisor or its affiliate a lease guarantee fee (“Lease Guarantee Fee”) in the amount of 10% of the total amount of the rental obligations being guaranteed under the lease upon the execution of the lease and associated guarantee with the third party landlord, up to a maximum payment of \$10,000. This fee is not refundable (See Exhibit M: Lease Guaranty Acknowledgement).

(3) If, prior to executing the lease, you request Kahala Management’s real estate department to review your lease and provide suggested changes to you, a \$2,500 lease review fee shall be paid by you to Franchisor (“Lease Review Fee”) upon your request to Kahala Management’s real estate department. The Lease Review Fee is non-refundable. This is an optional service, with the determination of whether to utilize Kahala Management’s real estate department to be made in your sole discretion.

(4) Certain of your equipment, furniture, wall décor, menu boards, interior and exterior signage and smallwares may be purchased from Neptune Equipment, an affiliate of ours.

ITEM 6: OTHER FEES

Column 1 Type of Fee	Column 2 Amount	Column 3 Due Date	Column 4 Remarks
Royalty Fee and Surcharge (Notes 1 and 13)	5% of Gross Sales plus a maximum Surcharge of \$10 per week (Note 2)	Withdrawn electronically from your Depository Account weekly (Note 3)	“Gross Sales” include all revenue from your Franchised Business excluding sales tax and authorized refunds, credits and allowances.
Advertising Fee (traditional Franchised Business) (Note 1)	2.5% of weekly Gross Sales	Same as Royalty Fee (Note 3)	The Advertising Fee is deposited as follows: 1.5% to the National Fund and 1% to the Regional Fund for your Cooperative or your Franchised Business (Note 4).
Advertising Fee (non-traditional Franchised Business) (Note 1)	1% of weekly Gross Sales	Same as Royalty Fee (Note 3)	The Advertising Fee is deposited as follows: 1% to the National Fund (Note 4).
Additional Persons Training Fee (Note 1)	\$1,250 per person (\$500 per person)	Before training	The training of two management

Column 1 Type of Fee	Column 2 Amount	Column 3 Due Date	Column 4 Remarks
	for the In-Store portion of the Training Program, and \$750 per person for the New Owner Training portion of the Training Program)		personnel is included in the Initial Franchise Fee. The Additional Persons Training Fee is for any additional persons who attend the Training Program.
Additional Training Fee (Note 1)	\$300 per person per day	Prior to attendance	Payable if we require or you request additional training after attending the Training Program.
Annual Meeting Registration Fee (Notes 1 and 5)	Up to \$1,000 plus incidental costs to attend	60-90 days prior to the Meeting	We will debit your Depository Account for this fee, which is non-refundable. This fee may be charged to all franchisees whether or not they attend the Meeting.
Depository Account	\$3,000 (must be replenished on a regular basis)	Signing of the Franchise Agreement	(Note 3)
Charitable Contributions	To be determined by us	As determined by us	(Note 6)
Data Fees (Notes 1 and 7)	Up to \$100 per month (subject to reasonable annual and/or service enhancement increases)	Same as Royalty Fee (Note 3)	Begins immediately after you open your Franchised Business.
Gift Card Redemption Fee	\$0.05 per activity (Note 14)	On or about the 25 th day of each month	Fee is charged by us and collected by a third party on our behalf.
Renewal Franchise Fee (Note 1)	50% of the then-current Initial Franchise Fee not including any discounts or reductions	Signing of new Franchise Agreement at renewal	Applicable if you are renewing your Franchise Agreement. Renewal term is five years.
Transfer Franchise Fee (Notes 1 and 10)	\$7,500 for traditional Franchised Business; \$5,000 for non-traditional Franchised Business	Prior to consummation of transfer	Payable if you are purchasing your Franchised Business as a result of a full transfer. A full transfer is including, but not limited to, a transfer of 50% or more ownership or control.

Column 1 Type of Fee	Column 2 Amount	Column 3 Due Date	Column 4 Remarks
Transfer Training Fee	\$1,500 for two (2) individuals (\$500 for each additional individual)	Prior to consummation of transfer	Payable if you are purchasing your Franchised Business as a result of a full transfer. A full transfer is including, but not limited to, a transfer of 50% or more ownership or control.
Relocation Fee (does not apply to Vehicles) (Note 1)	\$500	Signing of relocation amendment to Franchise Agreement	Payable if we approve the relocation of your Franchised Business.
Non-participation Fee	\$100 per day if you fail or refuse to participate in any required national, local, regional, seasonal, promotional or other program, initiative or campaign or in any new or modified product or service test or offering	Upon failing or refusing to participate	Payable to us.
Document Administration Fee	\$500 (Note 11)	As incurred	Applicable if an amendment must be prepared, including for an affiliate transfer.
Default Interest (Notes 1 and 12)	\$50 plus interest at 1.5% per month or maximum legal rate, if less ("Default Rate")	Payable upon assessment	Payable on all overdue amounts.
Document Late Charge (Notes 1 and 8)	\$100 per week or partial week	Payable upon assessment	Payable if any required financial statement, report or other document is delinquent.
Draft Draw Charge (Notes 1 and 9)	\$100 per day	As incurred	Payable to us.
Late Charge	5% of the unpaid amount or \$100, whichever is greater, on royalties, advertising payments, and	As incurred	Payable to us.

Column 1 Type of Fee	Column 2 Amount	Column 3 Due Date	Column 4 Remarks
	other amounts unpaid when due		
Sublease Late Charge	5% of the late or unpaid amount plus any late charges and interest incurred under the Master Lease as a result of the late payment (where applicable)	As incurred	Payable to our affiliate if you are subleasing your Franchised Business space from our affiliate.
Collection Costs (Note 1)	All collection costs including, but not limited to, reasonable attorneys' fees	Payable upon assessment	Payable only if we are required to retain an attorney or collection agency to collect delinquent payments from you. We will also collect as damages any attorneys' fees and costs incurred by us in defending claims that arise due to your actions as a <i>sweetFrog</i> franchisee.
Non-Sufficient Funds Fee (Note 1)	\$50 for each electronic funds transfer returned for non-sufficient funds; \$25 for each check or draft returned for non- sufficient funds	Payable upon assessment	Payable only if your electronic funds transfer from your Depository Account or any check you remit to us is returned for non- sufficient funds.
Audit (Note 1)	Cost of audit plus interest at Default Rate on underpayments (Note 9)	Payable upon assessment	Payable only if audit is caused by your failure to furnish reports or if audit reveals an understatement of fees or assessment of 5% or more.
Early Termination Damages (Note 1)	The average monthly Royalty and Advertising Fees paid for any consecutive 12 month period within the preceding 48 month period multiplied by the number of months remaining in the term of the Franchise	30 days prior to the early closing of the Franchised Business	You must provide us with 90 days prior written notice of the termination of your Franchise Agreement.

Column 1 Type of Fee	Column 2 Amount	Column 3 Due Date	Column 4 Remarks
	Agreement, and the product is divided by 2		
Attorneys' Fees and Costs	Will vary under the circumstances	As incurred	Payable to us.
Indemnification of us and/or our affiliates for damages suffered or incurred for your actions or omissions, including, but not limited to, amounts paid on your behalf or to cure your breaches under the Franchise Agreement	Will vary under the circumstances	As incurred	Payable to us.
Damages for Breach of Non-Compete Obligations under the Franchise Agreement	Will vary under the circumstances	As incurred	Payable to us.
Management Fee	6% of the Franchised Business' Gross Sales (in addition to the Royalty Fee and Advertising Fee) plus our direct out-of-pocket costs and expenses	Payable with Royalty and Advertising Fee	If we assume the management of your Franchised Business for any period of time.
Customer Satisfaction Programs	All costs related to the Franchised Business for these programs, which currently includes up to \$100 per visit for secret shoppers	Upon demand	You must participate in programs initiated to verify customer satisfaction and/or your compliance with all operational and other aspects of the System, including, but not limited to, secret shoppers.
Merchandise for Resale; Equipment; Décor Items	Reasonable cost, which currently ranges from \$3,000 to \$10,000	As invoiced	This cost will vary significantly based upon customer demand for these items. We will develop and make available to you certain merchandise using our Proprietary Marks, such as hats, t-shirts, toys, and other System memorabilia, and/or

Column 1 Type of Fee	Column 2 Amount	Column 3 Due Date	Column 4 Remarks
			certain equipment, décor items or other products and services.

Notes:

(1) These fees are collected by Franchisor, are payable to Franchisor, and are non-refundable. These fees are uniformly imposed by Franchisor; however, Franchisor, in its sole discretion, may reduce or waive a one-time fee (*i.e.*, transfer franchise fee, renewal franchise fee, etc.) or may waive or reduce an ongoing fee (*i.e.*, Royalty Fee or Advertising Fee) for a defined period of time.

(2) In our sole discretion, we may charge, in addition to the Royalty Fee, a Surcharge of up to \$10 per week if your Franchised Business is located in a state that imposes additional reporting requirements on a franchisor. Currently, New York is the only state that has imposed the additional reporting requirements.

(3) At the time you sign the Franchise Agreement, you will set up a depository account of a minimum of \$3,000 with your local banking institution. You are required to maintain a balance of \$3,000 in this account at all times. This will mean that you must replenish the depository account to a minimum of \$3,000 after Franchisor makes any withdrawals. (A Pre-Authorized Electronic Funds Transfer Form by and payable to franchisor is attached as Exhibit P).

(4) Franchisor directs that the Advertising Fee be paid to us, a national advertising fund (“National Fund”) designated by us, and/or, in our sole discretion, to a designated approved regional advertising fund (“Regional Fund,” and together with the National Fund, the “Advertising Fund” or “Fund”). Upon thirty (30) days’ notice by us to you, we may unilaterally increase the Advertising Fee from its current level not to exceed three percent (3%) of your weekly Gross Sales. We encourage the formation of franchisee cooperative advertising associations (each a “Cooperative”). If a Cooperative is formed for your region, you must financially contribute to the Cooperative as required by us. Failure to do so will be deemed a breach of the Franchise Agreement and you may also, in Franchisor’s sole discretion, lose your right to vote on decisions the Cooperative makes. The membership of the Cooperative is defined by us according to your market area. If no Cooperative exists where your Franchised Business is located, your Franchised Business will be considered a “single store” cooperative and you must contribute to the Regional Fund for your Franchised Business. Except in limited circumstances, all *sweetFrog* franchisees for traditional Franchised Businesses must contribute to the Regional Fund at the same rate, which is currently 1% of your weekly Gross Sales. In limited cases in our sole discretion (for example, certain international restaurants or non-traditional Franchised Businesses such as airport or university locations that require different advertising support), some Franchised Businesses may not be obligated to contribute to the Fund. For each of our company-owned or affiliate-owned restaurants, if any, it is our policy that such restaurants make contributions to the Fund at a rate equal to the lowest rate a *sweetFrog* franchisee is then-required to contribute. Company-owned or affiliate-owned restaurants have the same voting power as franchisee-owned Franchised Businesses. On our request, you must assist in establishing a Cooperative or in deciding how to allocate contributions we may make to the Cooperative. We reserve the right to establish general standards concerning the operation of a Cooperative, to specify the advertising agencies a Cooperative must retain, and to designate advertising programs a Cooperative must conduct. Notwithstanding anything to the contrary, no Cooperative may make decisions or spend advertising contributions without our prior written approval.

(5) If we hold an annual meeting (“Meeting”), the Meeting will be held at various locations throughout the United States and/or online as we may designate in our sole discretion, and may offer valuable continuing education programs. Because the planning and funding of the Meeting must be done well in advance and requires a substantial financial commitment, we have the right to debit your Depository Account for the Annual Meeting Registration Fee up to \$1,000 at any time 60 to 90 days prior to the first day of the Meeting. This fee is not refundable and will be debited from all franchisees’ accounts (even if you do not attend the Meeting). If you do not attend the Meeting, we will send to you one full set of the substantive materials that were presented at the Meeting.

(6) You must participate in all programs of a charitable nature designated by us from time-to-time, including the obligation to contribute a designated percentage of opening day sales (or sales for other periods) to a charity designated by you or us, as we may elect.

(7) We may collect a monthly polling fee up to \$75 per month subject to reasonable annual and/or service enhancement increases, for the collection of data from your Franchised Business sales for the POS System for your Franchised Business. Currently we do not charge this fee.

(8) If you fail to deliver or provide to us or your Area Representative (if applicable) any statement, report or other document or information required to be delivered (for example, sales reports, certificates of insurance and financial statements), by the applicable deadline, you will be assessed a late charge per week, or part thereof (until that statement, report or other document or information has been delivered or provided), which amount may be increased by us from time to time.

(9) If you fail to provide us with any necessary information or documentation with respect to our practice of drawing drafts against your bank accounts, you will be assessed a fee in the amount of \$100 per day.

(10) If you want to transfer your Franchised Business or franchise, or if you want to sell more than 50% of the equity of your business, you must first give us a right of first refusal, at the same price offered by any bona fide buyer. Before transfer, we must approve any new franchisee, transferee, stockholder, or assignee.

(11) The Document Administration Fee in the amount of \$500 will be charged to you if an amendment to your franchise documents must be prepared.

(12) Interest begins from the date of the underpayment.

(13) Royalties may be increased to up to fifteen percent (15%) of Gross Sales with respect to any period during which Franchisee is in breach or default of its/his/her obligations under the Franchise Agreement. The Royalties paid or owing to Franchisor with respect to the period during which Franchisee is in breach or default are referred to as “Breaching Royalties.” Breaching Royalties will be charged for a minimum fourteen (14) day period, regardless of the length of the actual breach or default.

(14) This fee may be increased to cover the potential of future increased costs affecting the gift card program, such as increased production and shipping costs and costs of processing. If fees are to increase, franchisees will receive 30 day advanced notice.

**ITEM 7: ESTIMATED INITIAL INVESTMENT
YOUR ESTIMATED INITIAL INVESTMENT**

Traditional Franchised Business

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Type of Expenditure	Amount (low)	Amount (high)	Method of Payment	When Due	To Whom Payment is to be Made
Initial Franchise Fee ⁽¹⁾	\$15,000	\$30,000	Lump Sum	At Signing of Franchise Agreement	Us
Leasehold Improvements/Construction ⁽²⁾	\$ 105 <u>10</u> ,000	\$ 240 <u>52</u> ,000	As Arranged	Prior to Opening	Approved Contractors and Vendors
Lease Review Fee Optional	\$0	\$2,500	Lump Sum	When you request review by Kahala Management's real estate department	Us
Furniture, Fixtures and Equipment, including soft-serve machines ⁽³⁾	\$ 56 <u>9</u> ,000	\$ 220 <u>31</u> ,000	As Arranged	Suppliers' Terms	Us or Approved Suppliers
Lease, Security Deposits ⁽⁴⁾	\$3,000	\$12,000	As incurred	Lease Terms	Landlord
Utility Deposits ⁽⁴⁾	\$500	\$2,000	As incurred	Prior to Opening	Utility Companies
Design and Architectural/Engineering Fees ⁽⁵⁾	\$ 7,0 <u>5</u> 00	\$ 156 ,000	As incurred	Prior to Opening	Licensed Design Architect
Interior and Exterior Signage; Décor Package ⁽⁶⁾	\$ 7,0 <u>5</u> 00	\$ 156 ,000	As Arranged	Contract Terms	Us or Approved Suppliers
Other Equipment ⁽⁷⁾	\$1,500	\$3,500	As incurred	Vendor's Terms	Us or Approved Suppliers
Grand Opening Marketing ⁽⁸⁾	\$10,000	\$10,000	Lump sum	Earlier of; prior to execution of a lease or prior to construction of premise	Us
Expenses during Initial Training ⁽⁹⁾	\$1,000	\$2,000	As Arranged	As incurred	Airlines, hotels, car rental agency and restaurants
Insurance ⁽¹⁰⁾	\$2,000	\$5,000	As Arranged	As Arranged	Insurance carrier
Business Licenses & Permits ⁽¹¹⁾	\$1,500	\$3,500	As Incurred	As invoiced	Governmental Agencies
Point of Sale Systems ⁽¹²⁾	\$3,000	\$5,000	As Arranged	Vendor Terms	Approved/Designated Suppliers
Office Equipment & Supplies (3 months) ⁽¹³⁾	\$500	\$1,000	As Incurred	As Incurred	Approved Suppliers

Column 1 Type of Expenditure	Column 2 Amount (low)	Column 3 Amount (high)	Column 4 Method of Payment	Column 5 When Due	Column 6 To Whom Payment is to be Made
Opening Inventory (1 week) ⁽¹⁴⁾	\$3,500	\$8,000	As Arranged	Prior to Opening	Us or Approved Suppliers
Professional Fees ⁽¹⁵⁾	\$0	\$10,000	As Incurred	As Incurred	Lawyer; Accountant
Depository Account ⁽¹⁶⁾	\$3,000	\$3,000	Lump Sum (must be replenish ed on a regular basis)	Signing of Franchise Agreement	Your bank (we have the right to withdraw from this account)
Additional Funds – For Initial 3 Month Period ⁽¹⁷⁾	\$20,000	\$20,000	As Incurred	As Incurred	Us, Employees, Various Third Parties
Total	\$23,948,500 \$48,500	\$67,32,500 \$32,500			

YOUR ESTIMATED INITIAL INVESTMENT

Non-Traditional Franchised Business

(Kiosk and Standard Counter Floorplan)

Column 1 Type of Expenditure	Column 2 Low Amount	Column 3 High Amount	Column 4 Method of Payment	Column 5 When Due	Column 6 To Whom Payment is to be Made
Initial Franchise Fee ⁽¹⁾	\$12,750	\$20,000	Lump Sum	At Signing of Franchise Agreement	Us
Leasehold Improvements /Construction ⁽²⁾	\$10,000	\$145 \$22,000	As Arranged	Prior to Opening	Approved Contractors and Vendors
Lease Review Fee Optional	\$0	\$2,500	Lump Sum	When you request review by Kahala Management's real estate department	Us
Furniture, Fixtures and Equipment, including soft- serve machines ⁽³⁾	\$35,000	\$112 \$9,000	As Arranged	Suppliers' Terms	Us or Approved Suppliers
Lease, Security Deposits ⁽⁴⁾	\$0	\$12,000	As Incurred	Lease Terms	Landlord

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Type of Expenditure	Low Amount	High Amount	Method of Payment	When Due	To Whom Payment is to be Made
Utility Deposits ⁽⁴⁾	\$500	\$2,000	As incurred	As required by Utility Company	Utility Company
Design and Architectural/ Engineering Fees ⁽⁵⁾	\$0	\$156,000	As incurred	Contract Terms	Suppliers
Interior and Exterior Signage; Décor Package ⁽⁶⁾	\$0	\$156,50250	As Arranged	Contract Terms	Us or Approved Suppliers
Other Equipment ⁽⁷⁾	\$1,500	\$3,500	As Incurred	Vendor's Terms	Us or Approved Suppliers
Grand Opening Marketing ⁽⁸⁾	\$5,000	\$5,000	Lump Sum	Earlier of; prior to execution of a lease or prior to construction of premise	Us
Expenses during Initial Training ⁽⁹⁾	\$1,000	\$2,000	As Arranged	During Training	Airlines, hotels, car rental agency and restaurants
Insurance ⁽¹⁰⁾	\$2,000	\$5,000	As Arranged	As Arranged	Insurance carrier
Business Licenses & Permits ⁽¹¹⁾	\$1,500	\$3,500	As Incurred	As invoiced	Governmental Agencies
Point of Sale Systems ⁽¹²⁾	\$3,000	\$5,000	Vendor Terms	Vendor Terms	Approved/Designated Suppliers
Office Equipment & Supplies (3 months) ⁽¹³⁾	\$100	\$1,000	As Incurred	As Incurred	Approved Suppliers
Opening Inventory (1 week) ⁽¹⁴⁾	\$6,000	\$10,000	As Arranged	As Arranged	Us or Approved Suppliers
Professional Fees ⁽¹⁵⁾	\$0	\$10,000	As Incurred	As Incurred	Lawyer; Accountant
Depository Account ⁽¹⁶⁾	\$3,000	\$3,000	Lump Sum; Must be replenished on a regular basis	At signing of Franchise Agreement	Your bank (We have the right to withdraw from this account)
Additional Funds – For Initial 3 Month Period ⁽¹⁷⁾	\$15,000	\$20,000	As Incurred	As Incurred	Us, Employees, Various Third Parties
Total	\$96,350	\$362707,00750			

YOUR ESTIMATED INITIAL INVESTMENT

Non-Traditional Franchised Business
(Vehicle)

Column 1 Type of Expenditure	Column 2 Low Amount	Column 3 High Amount	Column 4 Method of Payment	Column 5 When Due	Column 6 To Whom Payment is to be Made
Initial Franchise Fee ⁽¹⁾	\$8,000	\$10,000	Lump sum	At Signing of Franchise Agreement	Us
Truck ⁽¹⁸⁾	\$25,000	\$60 75,000	As Arranged; Before Delivery	Suppliers' Terms	Supplier
Furniture, Fixtures and Equipment, including soft-serve machines ^(3,18)	\$70,000	\$1407,000	As Arranged	Suppliers' Terms	Us or Approved Suppliers
Expenses during Initial Training ⁽⁹⁾	\$1,000	\$2,000	As Arranged	During Training	Airlines, hotels, car rental agency and restaurants
Insurance ⁽¹⁰⁾	\$2,000	\$5,000	As Arranged	As Arranged	Insurance carrier
Business Licenses & Permits ⁽¹¹⁾	\$1,500	\$3,500	As Incurred	As invoiced	Governmental Agencies
Point of Sale Systems ⁽¹²⁾	\$900	\$1,800	Vendor Terms	Vendor Terms	Approved/Designated Suppliers
Opening Inventory (1 week) ⁽¹⁴⁾	\$1,500	\$3,000	As Arranged	As Arranged	Us Approved Suppliers
Depository Account ⁽¹⁶⁾	\$3,000	\$3,000	Lump Sum (must be replenished on a regular basis)	Signing of Franchise Agreement	Your bank (we have the right to withdraw from this account)
Additional Funds – For Initial 3 Month Period ⁽¹⁷⁾	\$10,000	\$25,000	As Incurred	As Incurred	Us, Employees, Various Third Parties
Total	\$122,900	\$25375,300			

Notes:

(1) The Initial Franchise Fee includes the training fee for two individuals.

(2) The landlord may provide some leasehold improvements, but if not, they will be at your expense. The total amount of leasehold improvements for your Franchised Business will vary greatly, depending on the type of premises for your Franchised Business, condition of the premises, and what improvements you require. To avoid excessive construction costs, it is strongly recommended that you choose contractors carefully by obtaining several competitive bids before construction begins. These estimates are based on constructing a 1,400 square foot vanilla shell for a traditional Franchised Business or a 600 square foot vanilla shell for a non-traditional Franchised Business, electrical requirements of 400 amps 3-phase, and HVAC of one ton per 150 square feet per site

standards of the brand. This amount is based upon a national average for labor costs and does not include extensive renovations. Construction costs also vary considerably depending on fair market values in your area; size, condition, and location of the premises; labor costs (union versus non-union); and equipment requirements. The typical traditional Franchised Business is 1,400 square feet. The minimum target square footage needed to establish your Franchised Business is approximately 600 square feet for a non-traditional Franchised Business. There is a wide range of probable locations that a Franchised Business could be in, and therefore, a wide range for the approximate size of the property and building. Typical locations for a traditional Franchised Business are strip shopping centers, lifestyle centers, business centers, regional centers, malls or downtown areas that could range in size from 1,400 square feet for a stand-alone location to over one million square feet for a large regional shopping mall. Typical locations for a non-traditional Franchised Business are airports, kiosks, convenience stores, malls, stadiums, entertainment pavilions, amusement parks, sports or entertainment venues, train stations, travel plazas, toll roads, cafeterias, retail stores, military bases, hospitals, hotels, casinos and high school and college campuses.

(3) This amount includes estimated costs of furniture, furnishings, installations, equipment, trade fixtures, and certain other items on the Franchised Business' premises, the amount and specific items of which will vary depending upon the location, size and condition of a particular Franchised Business. This amount includes estimated costs of the equipment required to open a traditional Franchised Business, inclusive of the soft-serve machines, refrigerator, freezer, display refrigerator, tables, chairs and other related fixtures, furniture and equipment. Kiosks and Vehicles generally require less of these items. These costs will depend on available financing terms, size of the Franchised Business, and other factors. The low range amount reflects that you may be able to purchase used equipment that meets our standards and specifications. Based upon information that we receive from the supplier of certain equipment and/or franchisees, we believe several franchisees that opened new shops in the last three years have purchased used equipment. All equipment must be purchased from an approved supplier, us, or our affiliates. A list of approved distributors for our approved vendors is maintained by our purchasing department and will be provided to you during the pre-opening and/or construction phase for your Franchised Business. Updates will be provided to you as changes are made (i.e., additions and deletions) to the list of approved distributors for our approved vendors.

(4) Rent and Security Deposits listed are security deposits and first month's rent that may be required by your landlord. If you do not own a suitable premises approved by us, you must lease or purchase the premises for your Franchised Business. If you decide to lease the premises, the landlord will generally require a security deposit, the amount of which generally ranges from one month of monthly rent to six months of monthly rent. The amount of your security deposit will vary according to your area, the type of location (enclosed mall, strip center, or free-standing building), and various other factors. A lease security deposit may be non-refundable and is paid directly to the landlord of the premises. Utility Deposits are the deposits required by local utility companies for the establishment of electrical or other utility service. They will generally be refundable in accordance with the terms fixed by the telephone company and the other utility companies.

(5) Design and Architectural/Engineering Fees represent the fees and costs normally associated with the production of approved construction drawings and plans for your Franchised Business. These fees will vary based on the size and condition of the premises to be occupied and various other factors. These fees will be paid to the approved licensed architect or engineer producing the drawings for your site.

(6) This estimate is for the cost of signage at your Franchised Business. The lower estimate assumes normal use of signage (one exterior sign), and the higher assumes multiple exterior signs. These estimates include the costs for interior as well as exterior signage.

(7) Other Equipment includes things like office equipment, an on-site computer for general use, a safe, and other related business equipment, including, but not limited to, a surveillance system that we suggest, but do not require, that you install.

(8) You are required, to pay a Grand Opening Marketing fee of \$10,000 for a traditional Franchised Business or \$5,000 for a non-traditional Franchised Business payable to us on the earlier of (i) prior to you executing a lease for the premises where the Franchised Business will be located; or (ii) prior to construction commencing at the premises where the Franchised Business will be located. We or our designated affiliate will create a marketing plan for (i) a grand opening event at your Franchised Business, and (ii) the initial advertising of your Franchised Business, and will work with you to obtain your input on the marketing plan. We or our designated affiliate will use the Grand Opening Marketing fee to pay for the grand opening and initial advertising, but may, in our sole discretion, reimburse you for some local store marketing expenses that you pay if you received our prior approval. The Grand Opening Marketing fee should be used within six (6) months of the opening of your Franchised Business to the public. However, if a portion of the Grand Opening Marketing fee is not used within those six (6) months, we may, in our discretion, spend the remaining portion of the Grand Opening Marketing fee after six (6) months from the opening of your Franchised Business to the public.

(9) We provide initial training for two of your management personnel at no additional charge. The amounts in the chart include only your out-of-pocket costs for the expenses you or your employees incur during the initial training program, like travel, lodging, meals and wages. These costs will vary depending upon your selection of salary levels, lodging and dining facilities, mode of transportation and travel distance.

(10) This amount represents an estimate of the down payment on your annual insurance premiums. Initial premiums for commercial general liability insurance are subject to change due to market forces beyond either of our control. The cost of other coverages, including, but not limited to, workers' compensation and employer liability coverage and your discretionary purchases, varies widely.

(11) This is an estimated cost of the business licenses and permits required to operate your business. There may be additional costs depending on other factors such as the type and jurisdiction of the entity you select to operate your Franchised Business.

(12) We require you to purchase an approved point of sale (POS) system. Currently, we have only one approved POS system. The system must satisfy our internet-based reporting and data collection requirements and must include the number of terminals we require, a scale, two printers, and a secure router. You must also purchase the necessary equipment and software to run the POS system. You must secure and maintain internet connectivity and pay any additional costs required for the Franchised Business to function as a Wi-Fi hotspot. For all Franchised Businesses, your system must permit us to receive certain information from you in a format/media we specify and you must purchase and install any hardware or software necessary to be in compliance with Payment Card Industry Data Security Standards.

(13) Miscellaneous office supplies and equipment may be necessary during the initial three-month period of operations. As with any retail business, such may also be necessary for as long as you operate your Franchised Business.

(14) The initial opening inventory of products (including, but not limited to, food and other consumable inventory like napkins, spoons and cups and potentially merchandise) must be purchased in advance of the opening. It may be possible to arrange terms from your local approved suppliers to assist with this cost. As with any retail business, you will purchase inventory continuously as long as you operate your Franchised Business.

(15) You will incur legal and accounting fees to organize your business and review all legal documents on your behalf. The cost of professional services varies widely, and you should check rates for local service providers.

(16) At the time you sign the Franchise Agreement, you will set up a depository account of \$3,000 with your local banking institution. You are required to maintain a minimum balance of \$3,000 in this account at all times.

(17) You will need additional funds during the initial three months of business to cover operating and other costs. These expenses include, but are not limited to, payroll costs (excluding any wage or salary paid to you), restaurant supplies, yogurt and toppings, credit card fees, advertising, bank charges, other professional fees, rent and repairs and maintenance. These amounts do not include any estimates for debt service. You must also pay the royalty and other related fees described in Item 6 of this Disclosure Document, which are not included in this estimate. Your costs will depend on factors such as: how closely you follow our methods and procedures; your management skills, experience and business acumen; your active involvement at your Franchised Business; general and local economic conditions; the local market for our product; prevailing wage rates; the presence of any competition; and the sales level achieved during the initial period of operating your Franchised Business. The amount required for additional funds was formulated based upon our years of experience as a franchisor and our affiliates' years of experience operating restaurants in addition to information provided by other franchisees.

(18) If you will operate a Vehicle, you will need a truck or a trailer that meets our standards and specifications. We worked with our approved vendor to establish the cost estimate. Our estimate assumes you will lease or buy a basic truck. The low estimate assumes that you finance the truck. The high estimate reflects anticipated costs if you purchase the truck. Your costs may be higher if you choose a non-basic truck. We anticipate the total cost of a trailer will be \$25,000 to \$48,000 less than the total cost for a truck.

ITEM 8: RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES

Except as stated in this Item 8, you have no obligation to purchase or lease goods, services, supplies, fixtures, equipment, inventory or computer hardware relating to the establishment or operation of your Franchised Business from us or from any of our designees.

The Franchise Agreement requires that all present and future food and drink products, ingredients, equipment, computer hardware and software, furniture, fixtures, millwork, décor, signs, computer equipment, supplies and other products, services and materials which you will use in the operation of your Franchised Business meet our standards and be purchased only from approved distributors and suppliers. You may use any operational service providers, such as exterminators, refrigeration services companies, refuse removal companies, and similar service providers that you desire. If we organize a rollout for a new approved product or a new supplier of an approved product, you will be required to purchase such approved product(s) from our approved distributors of the approved supplier within 60 days of notification from us. We are not an approved supplier of any products or services. Neither our direct parent or ultimate parent is a supplier of any products or services. Neptune Equipment, an affiliate of ours, is currently one of the approved suppliers of certain

logoed merchandise, furniture, and interior décor. You are required to purchase certain wall covering, wall graphics, and other items from Neptune Equipment. Kahala Management is an approved service provider of real estate services. For a fee, Kahala Management will review your entire lease (including exhibits) and provide to you or your attorney its review of the entire lease and suggested changes to the lease. Kahala Management may, in its sole discretion, also assist in locating a potential site for a franchisee upon request from a franchisee. You may, but are not required, to use Kahala Management for real estate services.

We currently have other non-affiliated approved suppliers of other equipment, smallwares, furniture, POS Systems, beverage equipment, sound systems and certain ingredients and other logoed items utilized in your Franchised Business. None of our officers own an interest in any of the approved suppliers not affiliated with us. To become approved, a supplier must demonstrate, to our reasonable satisfaction, it can meet all of our standards and has adequate capacity to supply franchisee's quantity and delivery needs. We will provide you with a list of approved distributors of the approved suppliers for your market area during the pre-opening and/or construction phase for your Franchised Business. You can expect that the items you will purchase in accordance with our specifications will represent over 90% of the total purchases you will make to begin operations and over 80% of your annual operating expense for raw materials, products and supplies.

All requests for approving new or alternative suppliers must be submitted in writing by you and/or the supplier to our purchasing department. Each request will be reviewed in accordance with our then-current procedures and the supplier must meet our then-current requirements, which may include that our representatives be allowed to inspect the facilities of the proposed supplier, and that samples from the proposed supplier be delivered, at no charge to us, either to us or to our designee for testing. Our criteria for approving suppliers is available to franchisees upon written request to our purchasing department. There is no cost to you for the inspection and tests of the proposed supplier. If approved, in our sole reasonable discretion, we will notify you and/or the supplier in writing within 60 days of our receipt of an approval request. You must not offer for sale or sell any of the proposed alternative supplier's products until you receive our written approval of the proposed alternative supplier. We may, at our option, re-inspect the facilities and products of any approved supplier and revoke its approval upon the supplier's failure to meet any of our then-current minimum standards and specifications. If you receive a written notice of revocation from us, you must stop selling disapproved products and stop purchasing from the disapproved supplier.

We will provide you with one set of our confidential "ops package" which may consist of the operations manual, "ops toolkit" and related printed and electronic documents (collectively, the "Confidential Manual"). We provide all specifications and standards to you in the Confidential Manual, which we may modify from time to time by providing you with "rollout guides" for limited time offers, amendments, modifications or supplemental inserts through notices or bulletins, or by amending the Confidential Manual. A list of approved distributors for our approved vendors is maintained by our purchasing department and will be provided to you during the pre-opening and/or construction phase for your Franchised Business. Updates will be provided to you as changes are made (i.e., additions and deletions) to the list of approved distributors for our approved vendors.

We have negotiated special pricing arrangements or discounts with some of our suppliers. The arrangements may include special special contract pricing, volume discounts, and specific discounts from regular wholesale prices. Some or all of these discounts could be passed on to our franchisees, in our sole discretion. We do not provide any other material special benefits to franchisees based on their purchase from particular approved supplies or their use of particular approved suppliers.

We or our subsidiaries may also receive ~~rebates and/or~~ vendor allowances, usually ranging between 1% and 5%, from certain suppliers on purchases made by you and other franchisees. The ~~rebates and/or~~ vendor allowances are generally based upon a percentage of franchisee purchases,

will be included in our general revenue, and may be used by us for salaries of personnel that assist franchisees in trying to increase their sales, maintaining the customer service hotline, handling of inquiries and complaints from our franchisees' customers, tracking consumer service hotline trends, product research and development, franchisee crew training, supply chain information management systems, and a variety of ongoing programs, including but not limited to education, marketing, advertising, and franchisee meetings, seminars, conventions, conferences, and events. These ~~rebates~~ vendor allowances are usually based on an amount per unit, per case, per gallon, or per pound of product (i.e., properly specified and approved meat, dairy products, paper products, smallwares, beverages and apparel) purchased. We may use ~~rebate and~~ vendor allowance funds received from our suppliers to benefit the *sweetFrog* brand in our sole and absolute discretion.

The total revenues and expenses of MTY USA are consolidated, as reflected in the audited consolidated financial statements presented in this Disclosure Document. For the year ending November 30, 2022~~3~~ MTY USA and its subsidiaries, as of such date, derived revenues from the sales of products, services, and vendor allowances in the amount of ~~\$45,8905,02615831,789,676~~, which was approximately ~~87.512~~% of MTY USA and its affiliates total recognized revenue in the amount of ~~\$580,280,000263,686,000~~.

Various suppliers and vendors of MTY USA and its subsidiaries contribute marketing and other revenues to MTY USA and/or its subsidiaries based upon system-wide purchases from those suppliers and vendors. During our last fiscal year, MTY USA and its subsidiaries on a consolidated basis earned a total of ~~\$32,499,276 20,648,596~~ of the ~~\$453,8905,026158 31,789,676~~ from such vendors. Additional ~~miscellaneous~~ other revenues (for example, revenue from ~~the sale of branded merchandise from certain corporate-owned stores~~ miscellaneous fees and expenses from franchisees ~~the sale of branded merchandise from certain corporate-owned stores~~) in the amount of ~~\$7,744,1845,749,317 4,518,201~~ were also received by MTY USA and its subsidiaries during the last fiscal year.

A subsidiary of MTY USA that earned revenue from purchases of equipment, furniture, menu boards, interior and exterior signage, wall décor and smallwares made by us, our franchisees, and licensees is Neptune Equipment. Neptune Equipment provides the following services: purchases your equipment from various approved manufacturers; provides logistics services by arranging for bundled delivery to you; and assists with warranty support of the equipment purchased. Neptune Equipment charges a markup on the equipment and a handling fee for its services. During our last fiscal year, Neptune Equipment earned a total of ~~\$1,652,145 1,308,262~~ of the ~~\$453,8905,026158 31,789,676~~ from franchisee purchases.

During our last fiscal year, MTY USA on a consolidated basis with its subsidiaries, earned revenue from POS help desk support maintenance services and the sale of POS equipment in a total amount ~~\$1,739,420 3,082,617~~ of the ~~\$453,8905,02615831,789,676~~.

The processing fees received by Kahala Management do not currently cover the costs of the gift card program.

Our leasing affiliates do not derive revenue as a result of their leasing activities.

We may acquire certain used equipment and signage and offer it for sale to prospective or existing franchisees at a price that we believe to be equal to or less than the fair market value of that equipment and signage. If we make that offer to you, you have the option of purchasing that equipment and signage from us or purchasing new equipment and signage from approved third parties. In addition, we or our affiliate may offer to sell to prospective or existing franchisees an existing operational *sweetFrog* restaurant (including, but not limited to, the equipment, signage, fixtures, inventory and other items necessary to operate the restaurant) at a price that we believe to

be equal to or less than the fair market value of the restaurant. If we make that offer to you, you have the option of purchasing the existing operational *sweetFrog* restaurant or starting your own Franchised Business.

We have not arranged any purchasing or distribution cooperatives among our franchisees.

You must, at your own cost and expense, use our designated and approved third-party design architect, as detailed in the Confidential Manual, to prepare the initial design drawings for your Franchised Business. Except for the design architect designated and approved by us, no other architect may be used by you for the design of your Franchised Business. You must also, at your own cost and expense, retain a licensed architect of record to prepare the permitted construction set of drawings.

You must purchase an interior and exterior sign package and menu panels in accordance with our specifications indicated in the Confidential Manual and related documents provided to all franchisees. In addition, you must have your Franchised Business be consistent in color, design and style with the standards and specifications adopted and approved by us, and as we may modify those standards periodically. You must maintain the appearance and atmosphere of your Franchised Business, and the equipment and premises used in connection with your Franchised Business, in accordance with the standards we may adopt from time to time. Any variations in color, design, style, appearance or atmosphere must be approved in writing by us. Our current standards and specifications are included in the Confidential Manual.

You are required to acquire, from an approved supplier, and exclusively use an approved cash register/point of sale computer system and software during the operation of your Franchised Business. The components and specifications of this system are specifically identified in the Confidential Manual. You shall also be required to own a personal computer or similar device that allows you to receive online orders (if applicable) and to send and receive e-mails with us, and a fax machine to allow communication with us.

You are required to accept all approved debit and credit cards, along with our or our affiliate's stored value gift cards, loyalty cards, frequency cards, and any other similar Franchisor or affiliate sponsored electronic card and/or payment program (collectively, "Gift/Loyalty Card") from consumers at your Franchised Business. Prior to the opening of your Franchised Business, you will be required to acquire an approved debit, credit and Gift/Loyalty card processing system to use during the operation of your Franchised Business. The components and specifications of this system are specifically identified in the Confidential Manual. Additionally, you must utilize our approved third-party payment card processor, as identified in the Confidential Manual, for processing all such debit, credit, rewards, and Gift/Loyalty card transactions.

You must utilize our approved mobile application ("App") and online food ordering service (including any third-party delivery order integration) and may not use any other store-specific App or online ordering service. Olo is a Franchisor-approved online ordering vendor as of this Disclosure Document's issuance date. You must also utilize third-party delivery services if they are offered in your area, such as through DoorDash, or through another provider of your choice, unless we require you to use a specific third-party(ies) and provided that if required and/or if you choose to participate in such third-party delivery services, you may be required to utilize a point-of-sale integration directed by us.

You must complete a food safety manager training program at your cost. We will accept your local county or state required program or any other nationally recognized food safety program. You must provide us with a copy of your certificate prior to attending our Training Program.

We may, from time to time, provide referral incentives to franchisees, employees and others for qualified referrals of prospective franchisees. We may, from time to time, pay membership fees to public, quasi-public and private service providers who refer potential franchisees from identified groups (e.g. veterans or military personnel planning to leave the service).

We may vary the terms of our franchises in connection with testing new marketing, branding, research and development of new menu offerings, and/or operational programs. These tests are generally conducted with experienced, existing franchisees and may include incentives and other rights which are not available to all franchisees. We reserve the right to sell some of the products associated with the *sweetFrog* brand to different retail outlets such as grocery chains or membership-based retailers.

You may not maintain a World Wide Web site, social media site, an App (application) or otherwise maintain a presence or advertise on the Internet or any other public computer network in connection with the Franchised Business without our prior written approval.

Although not bound to do so, we may conduct, from time to time, additional research and development with regard to our specifications and standards. The criteria for evaluating any changes in these specifications will be whether such changes in the specifications will improve quality, be more efficient and have greater customer appeal, thus enhancing the *sweetFrog* brand name and image.

You must obtain all insurance we require and obtain it from an insurer having an A.M. Best's financial strength rating of "A-VIII" or better. Your insurance must: (i) insure the particular Franchisee listed on your Franchise Agreement; (ii) name us and our parents, subsidiaries, affiliates, directors, officers, and employees as additional insured; (iii) contain a waiver by the insurance carrier of all subrogation rights against us and our affiliates for casualty losses; (iv) provide that we will receive by an endorsement 30 days' prior written notice of cancellation; and (v) provide that failure by franchisee to comply with any term, condition or provision of the contract, or other conduct by franchisee, will NOT void or otherwise affect the coverage afforded us. Before you may open your Franchised Business, at the time you sign your lease, annually at least 10 days prior to renewal of your insurance coverage, and at any other time upon our request, you must provide a copy of your certificate of insurance to us which meets our requirements.

Our minimum insurance coverage requirements (subject to change, including to increase) for all traditional and non-traditional Franchised Businesses are below. You need to evaluate if your particular business will require greater coverage or other types of insurance. For example, we strongly recommend that you consult with an insurance broker to discuss whether your particular lease/situation requires and/or you should obtain additional common types of insurance (including, without limitation, business interruption, umbrella insurance and cyber liability/data breach insurance coverage). Such insurance may significantly increase your premiums but may also save you money in the long run. We make no representation that the minimum coverage that we specify will be sufficient for your business. You will pay your insurance premiums directly to your insurance broker or to the insurance company issuing the policy.

Traditional and Non-Traditional Franchised Businesses (Kiosk & Standard Counter Floorplan)

TYPE OF COVERAGE	LIMITS/SPECIFICATIONS
General Liability	\$1,000,000 Bodily Injury/Property Damage Per Occurrence / \$2,000,000 Aggregate
Building Improvements and Betterments	100% of Full Replacement Cost – No Coinsurance (minimum of \$100,000)

TYPE OF COVERAGE	LIMITS/SPECIFICATIONS
Business Personal Property	100% of Full Replacement Cost – No Coinsurance – Special Form or equivalent (minimum of \$100,000)
Spoilage	\$5,000
Flood, Earthquake and Volcanic Eruption	Subject to Territory Limitations – required if in a designated Flood Zone
Workers' Compensation and Employer's Liability Insurance	As required by law
Employment Practices Liability Insurance with Franchisor Defense coverage	\$1,000,000
Hired and Non-Owned Automobile Liability	\$1,000,000 Combined Single Limit per accident

Non-Traditional Franchised Businesses (Vehicle)

TYPE OF COVERAGE	LIMITS/SPECIFICATIONS
General Liability	\$1,000,000 Bodily Injury/Property Damage Per Occurrence / \$2,000,000 Aggregate.
Business Personal Property	100% of Full Replacement Cost of the mobile cart/trailer, inventory and any other personal property – No Coinsurance – Special Form or equivalent (minimum of \$100,000)
Flood, Earthquake and Volcanic Eruption	Subject to Territory Limitations – required if in a designated Flood Zone
Workers' Compensation and Employer's Liability Insurance	As required by law
Employment Practices Liability Insurance with Franchisor Defense coverage	\$1,000,000
Commercial Automobile Insurance including coverage for owned, Hired and Non-Owned Automobile Liability and physical damage to the trailer(s) (see notes)	\$1,000,000 Combined Single Limit per accident

You must always keep the required insurance coverage in force, and you must comply with any changes we make periodically to our insurance requirements. Upon 30 days' notice to you, we may require you to increase and/or otherwise change the minimum coverage of the insurance referred to above including to reflect identification of special risks, changes in law or standards of liability, higher damage awards or other relevant changes in circumstances. In the event you fail to obtain or maintain the required insurance coverage, we reserve the right, but are not obligated to, obtain the required insurance on your behalf and charge the insurance premium to you.

We want to ensure that our franchisees comply with their leases for the premises where their Franchised Businesses are located, the limitations on their use of the approved location, and their obligations to us. Thus, if you open and operate a Franchised Business, one of our affiliates may enter into a Master Lease for your Franchised Business and will then Sublease it back to you, using one of our approved Sublease forms (See Exhibit O-1: Sublease and Guaranty of Sublease

(Franchisee pays rent directly to Landlord); and Exhibit O-2: Sublease and Guaranty of Sublease (Franchisor or its affiliate collects rent from Franchisee and pays to Landlord) (the preceding two subleases collectively known as "Exhibit O: Sublease and Guaranty of Sublease"). The Sublease will contain substantially the same terms as the Master Lease. The term of the Sublease will be for the entire term of the Master Lease, less one day. You will sign the Sublease at the time our affiliate signs the Master Lease for the premises. You must provide all security deposits, guaranties, and other assurances the landlord of the premises requires. We or our affiliate will try to negotiate favorable terms under the Master Lease, but we cannot guarantee that the lease terms, including but not limited to rent, will be the most favorable terms available in the market. We encourage you to participate in the lease negotiation process, with the assistance of your attorney. Our attorneys represent us, not you.

We may, at our option, require you to enter into a lease for the Franchised Business premises directly with the landlord ("Direct Lease"). You and your attorneys must negotiate the terms of the Direct Lease. We have no liability to you regarding the terms or negotiations of the Direct Lease. The Direct Lease for the premises is subject to our final approval. You and the landlord under the Direct Lease must sign our approved Lease Addendum (See Exhibit L: Required Lease Terms). If we require you to enter into a Direct Lease, you must provide us with a copy of the Direct Lease and the Lease Addendum(s) for our approval at least 10 days before you sign the Direct Lease, and you must provide us with a copy of the executed Direct Lease and Lease Addendum(s) within 10 days after signing. If you do not provide us with all of the required documents, we will not approve your Direct Lease.

A non-traditional Franchised Business will generally be located inside an existing primary business. As a result, if you open and operate a non-traditional Franchised Business, there may not be a Sublease between you and our affiliate. If the circumstances make a Sublease appropriate, then you would sign a Sublease with our affiliate.

You should carefully read the Direct Lease, or the Sublease and Master Lease, and, if applicable, the sublicense agreement. The Sublease provides that a default under your Franchise Agreement is a default under the Sublease. It also provides that you will not raise any defense or counterclaim in any action we or our affiliates commence, other than a defense of payment.

If you operate a Vehicle, the Vehicle must conform to our specifications as set forth in the Confidential Manual or otherwise in writing including, but not limited to, insurance amounts and types, model, make, age, appearance, equipment, fixtures, cleanliness, display of our proprietary marks, maintenance and repair and notice of your ownership and operation of the Vehicle. We may require you to update the outside wrapping on the Vehicle; provided that, we will not do so more than once every 3 years (exclusive of remedies for breach). We may also require that you place GPS or other tracking devices on the Vehicle.

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	Article or Section in Franchise Agreement	Section in Sublease	Disclosure Document Item
a. Site selection and acquisition/lease	2.1 and 2.2	Preamble	7 and 11

Obligation	Article or Section in Franchise Agreement	Section in Sublease	Disclosure Document Item
b. Pre-opening purchases and leases	2.2, 3.3, 4.6 and 9.3	Not Applicable	5, 7, 8, 10 and 11
c. Site development and other pre-opening requirements	2.3 and 2.4	1.2	7, 8 and 11
d. Initial and ongoing training	4.1, 4.2 and 4.3	Not Applicable	11
e. Opening	3.1 (Note 1)	Not Applicable	7 and 11
f. Fees	5	3, 4, 5 and 18	5, 6, 7 and 11
g. Compliance with standards and policies/ Confidential Manual	1.4, 3.2, 4.5 and 9	Not Applicable	8, 11, 14 and 16
h. Trademarks and proprietary information	6 and 7	Not Applicable	13 and 14
i. Restrictions on products/ services offered	2.6, 3.2 and 9.2	6	8 and 16
j. Warranty and customer service requirements	No obligation imposed	Not Applicable	Not Applicable
k. Territorial development and sales quotas	No obligation imposed	Not Applicable	11
l. Ongoing product/service purchases	3.2, 9.2 and 9.3	Not Applicable	8
m. Maintenance, appearance and remodeling requirements	1.4, 2.3, 12.3 and 13	8	7 and 11
n. Insurance	9.5	12	7
o. Advertising	5.3, 5.4 and 10	Not Applicable	6, 7 and 11
p. Indemnification	8.2, 8.3, 14.7 and 16.17	2.3, 7, 11 and 16	13 and 14
q. Owner's participation/ management/staffing	4.1, 4.2, 4.3, 9.1 and 9.6	Not Applicable	11 and 15
r. Records and reports	5.2, 5.6 and 11.1	3	6 and 11
s. Inspections and audits	4.3, 4.4, 5.18, 9.7 and 11.2	3.3 and 13	6 and 11
t. Transfer	12	9	6, 16 and 17
u. Renewal	13	2.2	6, 16 and 17
v. Post-termination obligations	14.5	Not Applicable	17
w. Non-competition covenants	14.6	Not Applicable	15 and 17
x. Dispute resolution	16.3	Not Applicable	17
y. Other			

Obligation	Article or Section in Franchise Agreement	Section in Sublease	Disclosure Document Item
Personal Acceptance; Personal and Spousal Guarantees; Non-Disclosure and Non-Competition	9.8; Personal Acceptance of Sections 7.1, 7.2, 14.6 and 14.8; Guaranty of Franchise Agreement; and Non-Disclosure and Non-Competition Agreement	Guaranty of Sublease	10, 15

Note 1: Not applicable for renewal Franchise Agreements.

ITEM 10: FINANCING

We do not offer any direct or indirect financing or financing arrangement, nor will we guaranty your obligations under any note or other obligation, except potentially for the lease for your site or if you purchase a restaurant corporate-owned “as-is” by one of our affiliates, and only in our sole and absolute discretion and potentially for a corresponding fee.

If you are an individual and married, your spouse must execute and deliver to us a Guaranty of Franchise Agreement (See Exhibit F-1: Guaranty of Franchise Agreement) and a Non-Disclosure and Non-Competition Agreement (See Exhibit F-2: Non-Disclosure and Non-Competition Agreement) at the same time that you sign the Franchise Agreement unless your spouse is also signing the agreement as an individual. If you are a corporation, limited liability company, or other business entity, each of your shareholders, members, or other owners (and their respective spouses, if married) must execute and deliver to us a Guaranty of Franchise Agreement, and their respective spouses must execute and deliver to us a Non-Disclosure and Non-Competition Agreement, at the same time that you sign this Agreement. In the event any person who has not previously signed a Guaranty of Franchise Agreement or a Non-Disclosure and Non-Competition Agreement becomes your spouse or the holder of any class of your stock or ownership interests or a spouse of such holder, at any time after the execution of such agreement, you must cause such person(s) to immediately execute and deliver a Guaranty of Franchise Agreement and a Non-Disclosure and Non-Competition Agreement to us as appropriate.

If, in order to obtain the lease agreement for the site of your Franchised Business, the landlord requires you to obtain a third party lease guarantee, and we or one of our affiliates agrees to serve as such guarantor (with such determination to be made in our sole and absolute discretion), you will pay to us a lease guarantee fee in the amount of 10% of the total amount of the rental obligations being guaranteed under the lease during its term up to a maximum payment of \$10,000. If the franchisee is an individual, the individual franchisee (and his/her spouse, if married) must personally guarantee the debt. If the franchisee is a corporation, limited liability company, partnership, or other entity, each of the principals of the entity (and each of their respective spouses, if married) must personally guarantee the debt. Once paid, the lease guarantee fee is non-refundable under all circumstances. We do not offer financing for the lease guarantee fee as it is payable in full upon the execution of the guarantee. Neither we, nor any of our affiliates, are required to serve as a guarantor of your lease for the site of your Franchised Business. The decision of whether to serve as a guarantor of your lease shall be made at our sole and absolute discretion.

If you purchase a corporate restaurant “as-is” that is owned and operated by one of our affiliates, we may finance up to 100% of the purchase price, at our sole discretion. When you purchase a corporate-owned restaurant from one of our affiliates, you will enter into an “Asset Purchase Agreement” (See Exhibit D). If you finance any portion of the purchase price of the corporate-owned restaurant through Kahala Holdings or Kahala Restaurants, you will also enter into a “Promissory Note and Security Agreement” and a “Guaranty,” which are exhibits to the Asset Purchase Agreement. The purchase price may include the initial franchise fee, any transferrable furniture, fixtures, and equipment, the leasehold and/or any transferable leasehold improvements that are located in the restaurant at the time of purchase, along with any inventory that is in the restaurant at the time of purchase. The lender providing the financing is one of our affiliates, Kahala Holdings or Kahala Restaurants, whichever entity owns the restaurant. The annual rate of interest charged will be between 0% and 12% and will depend on the creditworthiness of the franchisee, the amount being financed, and the dollar amount being paid up-front by the franchisee. There are no finance charges associated with the Promissory Note and Security Agreement. The amount being financed will be required to be re-paid in equal monthly installments and the period of repayment will be between 12 months and 60 months, depending on the amount being financed. The security interest required by us is a first position lien on all equipment. If the franchisee is an individual, the individual franchisee (and his/her spouse, if married) must personally guarantee the debt. If the franchisee is a corporation, limited liability company, partnership, or other entity, each of the principals of the entity (and their respective spouses, if married) must personally guarantee the debt. The Promissory Note and Security Agreement may be pre-paid in full or in part at any time and from time to time without penalty. The franchisee’s potential liabilities upon default include: (i) an accelerated obligation to pay the entire amount due, including but not limited to all accrued and unpaid interest, if the default is not cured within seven calendar days; and the interest rate will be increased to an annual rate of 18%; (ii) obligation to pay costs and attorneys’ fees incurred in collecting the debt; (iii) termination of the franchise; and (iv) liabilities from cross defaults resulting from non-payment or from the loss of business property on franchisee’s other restaurants named in the Promissory Note and Security Agreement and granting either Kahala Holdings or Kahala Restaurants the right to take back the restaurant(s). The Promissory Note and Security Agreement requires franchisees to waive the following legal rights: demand, notice, diligence, protest, presentment for payment, and notice of extension, dishonor, protest, demand and nonpayment of the promissory note; any release or discharge by reason of any release or substitution of, or other change in, any security given for the indebtedness or the obligation of any person or entity who may become directly or indirectly liable for the note or any extension or other modification of the note; and rights to contest or appeal our exercise of the take back rights and not receiving compensation for the restaurant after the take back rights have been exercised. The Promissory Note and Security Agreement also bars the franchisee’s right to contest the take back rights.

We require a first lien position in all equipment as a security interest to be given by the franchisee. We do not intend to sell, assign or discount to a third party any financing arrangement. We do not arrange financing from other sources; therefore, we do not receive direct or indirect payments from placing financing.

The lease for a corporate restaurant is entered into by us or one of our affiliates. When you purchase the corporate restaurant, you will enter into a Sublease with us or our affiliate using our standard form of Sublease where you pay all monies owing under the Master Lease directly to the property owner, or our standard form of Sublease in which you pay all monies owing under the Master Lease to our affiliate and the affiliate will pay the property owner, which are exhibits to the Asset Purchase Agreement. The Sublease will contain substantially the same terms as the Master Lease. The term of the Sublease will be for the entire term of the Master Lease, less one day. If you are an individual, you (and your spouse, if married) must sign the Guaranty of Sublease (See Exhibit O: Guaranty of Sublease). If you are a corporation, limited liability company, partnership or other

business entity, each of your shareholders, members, partners or other owners (and their respective spouses, if married) must sign the Guaranty of Sublease.

We will, within 60 days after we receive the proposed Master Lease (and additional materials required by us), review the Master Lease to make sure it meets our minimum site requirements.

Upon submission of a proposed Master Lease, you must provide us with any additional documentation and information that we may require regarding the proposed site, the proposed lease, your financial condition and your Principals' financial condition. If we determine that you do not have the financial capacity to perform your obligations with respect to the site or the Master Lease, we may deny approval of the site and/or Master Lease. That disapproval will be deemed to be reasonable. In that event, we or our affiliates or franchisees may operate a *sweetFrog* restaurant at that site.

We or our affiliates may, in our sole discretion, lease the site approved by us for your Franchised Business and sublease the site to you. In addition, if and when you sign the Sublease, you must pay to us an amount equal to two months' base rent under the Master Lease, plus a security deposit in an amount equal to the security deposit required under the Master Lease. (We reserve the right, however, to require a greater security deposit, based upon your creditworthiness.)

Please note, if you intend to lease the site of your Franchised Business, the lease must include certain required provisions (See Exhibit L: Required Lease Terms; Exhibit E-1: Franchise Agreement (New) – Section 2.2; Exhibit E-2: Franchise Agreement (Renewal) – Section 2.2; Exhibit E-3: Franchise Agreement (Transfer) – Section 2.2 (all the preceding three franchise agreements collectively known as "Exhibit E: Franchise Agreement")).

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

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

If your Franchised Business will be located in an area that is subject to an area representative agreement, the Area Representative in that area may be responsible for providing to you some or all of the services required to be provided by us, other than new owner training. However, Area Representatives are not authorized to make promises or agreements on our behalf or to agree to modifications to your Franchise Agreement or other agreements relating to your Franchised Business. As of the issuance date of this Disclosure Document, there are no Area Representatives for the *sweetFrog* brand.

Pre-Opening Assistance

Before you open your Franchised Business, we will provide the following assistance to you:

Site Selection

1. For all Franchised Businesses except for Vehicles, you will either: (i) lease or purchase the premises for your Franchised Business directly from a third party; or (ii) one of our affiliates will lease or license the premises where you will locate your Franchised Business, and will provide you with a Sublease or sublicense of the premises, as applicable. You must select, and we must approve, an acceptable location that you open within one year after the effective date of the Franchise Agreement. The lease or purchase agreement will be subject to our prior approval, and you must provide us with a copy of the lease or purchase agreement at least 30 days prior to execution. We will notify you if we do not approve the site within 30 days of receiving your site

selection information. We will not unreasonably withhold our approval of the location. The location must be within a geographic area identified in Section 1.1 of the Franchise Agreement. The factors that we will consider in approving your proposed location include, among other things: occupancy costs, proximity to major retail activity and other Franchised Businesses, sign visibility, traffic volume and speeds, parking availability, neighborhood economic profile, population density, accessibility, competition and other tenants in the shopping center, mall, or applicable retail structure. If you cannot secure a location acceptable to us and open it within one year after the effective date of the Franchise Agreement, we may terminate your Franchise Agreement after giving you written notice (See Exhibit E-1: Franchise Agreement (New)—Section 2.1). The decision to establish and operate your Franchised Business at the location will be made solely by you, without any reliance upon any information provided (if any), recommendation made (if any) or approval given (if any) by us, any Area Representative (if any) or any of our or their respective shareholders, directors, officers, employees, representatives, agents or affiliates. You must purchase or lease your business location from independent third parties. If you intend to lease your business location, the lease must include certain required provisions (See Exhibit L: Required Lease Terms; Exhibit E: Franchise Agreement—Section 2.2).

2. If we determine that you do not have the financial capacity to perform your obligations with respect to the location or the Master Lease, we may deny approval of the location and/or Master Lease. Our disapproval will be deemed to be reasonable. In that event, we or our affiliates or franchisees may operate a *sweetFrog* or other restaurant concept at that site.

Construction and Furnishings

1. We will provide you with a copy of the design drawings, which is the detailed plans and specifications including landscaping and parking space, if applicable, for your Franchised Business upon our approval of the plans. You must hire and use, at your sole cost and expense, our designated and approved third party architect (See Exhibit E: Franchise Agreement—Section 2.3). You are solely responsible for conforming the premises to all codes and ordinances, including, but not limited to, the Americans with Disabilities Act (the “ADA”), and obtaining all required permits. You are solely responsible for constructing or remodeling and decorating the location to our system standards and subject to our approval. We do not provide assistance with conforming the premises to codes and ordinances, including, but not limited to, the ADA, obtaining permits, or constructing, remodeling or decorating your Franchised Business. You must provide us with one copy of the plans for your Franchised Business within 30 days after selection of the site, or vehicle (as applicable). We will then have 30 days to approve or disapprove of the plans. We must approve any and all changes or revisions to the plans required for your site or vehicle before you begin construction. Our approval of the plans is solely for complying with our system standards, and not for determining compliance with codes, ordinances, the ADA, or any lease-specific requirements.

2. We will identify the furnishings, fixtures, and equipment (including, but not limited to, cash registers, point of sale systems, and computer hardware and software), signs, products, materials, and supplies necessary or authorized for the Franchised Business to begin operation (See Exhibit E: Franchise Agreement—Sections 2.4, 3.2, 3.3, 4.5, 4.6, and 9.3).

3. We will provide you with all standards of operation that you must use or satisfy before you open the Franchised Business (See Exhibit E: Franchise Agreement—Sections 4.5 and 9.1).

4. We will provide you with the names and contact information of any distributors and/or suppliers you are required or authorized to use to supply you with products or services complying with our standards and specifications. The names and contact information of the approved distributors and suppliers and the written specifications for the approved equipment, signs, fixtures, opening inventory and supplies will be provided to you during the pre-opening and/or construction phase for your Franchised Business. Updates will be provided to you as changes are made (i.e.,

additions and deletions) to the list of approved distributors for our approved suppliers. We do not deliver or install any of these approved items (See Exhibit E: Franchise Agreement—Section 9.3).

Confidential Operations Manual

We will provide you, as part of the Confidential Manual, an electronic or print version of the Operations Manual, with operating procedures to assist you in complying with our standard methods of controls, production methods, and with policies, procedures and resources to support brand consistency and compliance. As of March 1, 2020, the Operations Manual is collectively 420 pages. The Operations Manual is confidential and remains our property. We may modify the Operations Manual as and when we desire, but no modification will materially alter your status and rights under the Franchise Agreement (See Exhibit E: Franchise Agreement—Section 4.5). The Table of Contents of the Operations Manual is attached to this Disclosure Document as Exhibit T.

Time to Open

The typical length of time between the earlier of the signing of the Franchise Agreement or the first payment of consideration for the franchise and the opening of the Franchised Business is 4 to 12 months for both a traditional and non-traditional Franchised Business. The factors that may affect this time are: lease or purchase negotiations; zoning procedures; financing applications; local ordinances and approvals; obtaining licenses and permits; construction delays; weather conditions; shortages; delayed installation of equipment, fixtures and signs; development or construction not in accordance with our requirements; labor disputes; Acts of God; and other reasons.

Training

1. We will make a Training Program available to you and your designated representative after you sign the Franchise Agreement. The following Table indicates the general subject matter, the number of hours of classroom training, and the number of hours of on-the-job training for each subject to be covered during the Training Program, and the location of the training. Our instructors have been adequately trained in the ownership and operation of a *sweetFrog* franchise, including but not limited to having, at a minimum, completed the entire Training Program, and having experience in training each of the subjects listed in the table below, with some trainers having five years' experience or more in training each of the subjects. Other personnel involved with on-the-job training of franchisees are Regional Directors of Operation, all who have more than one year experience with on-the-job training. During the classroom portion of the Training Program, New Owner Training will be taught using the following instructional materials: manuals, videos, and tests. You and anyone taking in-store training (including, but not limited to, employees of franchisees) must: sign the In-Store Training Release and Waiver of Liability Agreement (See Exhibit J). In-store training will be taught in a *sweetFrog* restaurant using the following instructional materials: manuals, job aids and tests. Certain portions of the entire Training Program may be adjusted as necessary as determined by us and based upon your skill sets. Further, substitute instructors may present certain portions of the Training Program.

TRAINING PROGRAM

Column 1 Subject	Column 2 Hours of classroom training	Column 3 Hours of on-the-job training	Column 4 Location
New Owner Training	40	---	Online, KTEC (Kahala Training & Education Center) in Scottsdale,

Column 1 Subject	Column 2 Hours of classroom training	Column 3 Hours of on-the-job training	Column 4 Location
			AZ, or at such other location designated by us
In-Store Training	---	24	Training store in Arizona or such other location designated by us

2. The training of two individuals is included in the Initial Franchise Fee. You or another partner, shareholder or member of your business organization must have successfully completed our Training Program to our satisfaction. Your manager, at your sole discretion, may be one of the two individuals you bring to training, or you may bring your manager in addition to the two individuals and pay the Additional Persons Training Fee. You and your Franchised Business managers must be able to read and write English adequately, in our good faith opinion, to satisfactorily complete our Training Program and to communicate with employees, customers and suppliers. Notwithstanding the foregoing, Franchisor has the right to require Franchisee and/or its manager(s) to attend additional in-store training in the event Franchisee is not operating the Franchised Business pursuant to Franchisor's Systems Standards. Please note, at our sole discretion, the Training Program for a non-traditional Franchised Business may differ slightly from the Training Program outlined above (See Exhibit H: Amendment to Franchise Agreement (for non-traditional locations excluding those co-branded with another affiliated brand); Exhibit I: Amendment to Franchise Agreement (for co-branded non-traditional locations)).

3. The classroom portion of the Training Program will be held online or from KTEC, which is located at our corporate offices in Scottsdale, Arizona, or at such other location(s) as we designate in our sole discretion, and the in-store portion of the Training Program will be held at one of our affiliated restaurants in the metropolitan Phoenix, Arizona area (if any), or at such other location(s) as we may designate in our sole discretion. You will need to arrange for transportation (such as flights and car rental), food, and lodging for you and your designated attendee. The costs you incur will depend on factors such as the distance you must travel, the type of accommodations you choose and the time of year you attend training. The estimated cost for travel and living expenses for two persons while training, not including salaries, if any, ranges from \$3,000 to \$7,500 (See Exhibit E: Franchise Agreement—Sections 4.1 and 9.6).

4. You must complete the Training Program no more than three months and no less than one day prior to the opening of your Franchised Business. The New Owner Training will be conducted once a month. The In-Store Training portion of the Training Program is scheduled as needed and determined by the Franchisor. We do not currently require you to attend additional training courses or refresher courses. However, if you would like additional training after completing the Training Program, we will provide additional training to you at a cost of \$300 per person per day. Notwithstanding the foregoing, Franchisor has the right to require Franchisee and/or its managers(s) to attend additional in-store training in the event Franchisee is not operating the Franchised Business pursuant to Franchisor's Systems Standards.

5. In addition to the Training Program, you must ensure that all of your employees are trained in *sweetFrog* restaurant procedures. You are solely responsible for hiring and training your employees. You must also ensure that the manager(s) and all employees whose duties include customer service are able to speak and read English and any other language that may be required to adequately meet the public needs in your Franchised Business. We believe training is important to the success of the System, and from time to time, we may offer informal training sessions to franchisees. We believe it is in your best interest to attend any such training sessions.

6. We will provide one of our representatives to come to your Franchised Business during opening week for up to five days, or if you are operating a non-traditional Vehicle then for one day during one of your initial events, at our expense to work with you and your manager on your grand opening, and on operating and marketing your Franchised Business. We may, in the future, hold refresher or additional training programs, conferences and seminars. Your attendance at these programs is mandatory. To help us defray the cost of sponsoring these programs, there may be a nominal registration fee, and you will also be required to pay the cost of transportation, food, lodging and other personal expenses of your attendance and those of your personnel at any such program. These programs will be held at locations within the United States that we will specify in our sole discretion (See Exhibit E: Franchise Agreement—Section 4.3).

Post-Opening Assistance

During the operation of the Franchised Business:

1. If you are opening a new restaurant, we or our designated affiliate will create a marketing plan for (i) a grand opening event and (ii) the initial advertising of your Franchised Business, and will work with you to obtain your input on the marketing plan. (See Exhibit E: Franchise Agreement—Sections 5.24 and 10.2).

2. We will maintain a continuing advisory relationship with you, including consulting with you in marketing, merchandising and general business operations which may help you in improving and developing your Franchised Business (See Exhibit E: Franchise Agreement—Sections 4.3 and 9.1).

3. We will provide you with information on our operating and other standards for your Franchised Business. We may modify these as, and when, we desire (See Exhibit E: Franchise Agreement—Sections 4.5 and 9.1).

4. We will continue our efforts to maintain high and uniform standards of quality, cleanliness, appearance and service at all Franchised Businesses in the System, including making periodic inspections and quality service checks of your Franchised Business (See Exhibit E: Franchise Agreement—Sections 4.3, 9.1, and 9.7).

5. We may make you aware of software available for purchase from an approved third party vendor to assist you in administrative, bookkeeping, accounting, and inventory control procedures (See Exhibit E: Franchise Agreement—Section 4.6 4.6).

6. We must review substitute locations for your Franchised Business, and you must obtain our prior approval if you desire to relocate your Franchised Business. (See Exhibit E: Franchise Agreement—Section 2.5 2.5).

7. We may offer you the option for a one-time renewal of your Franchise Agreement prior to its expiration for a maximum term of five years if you meet our requirements. Upon renewal, you must execute our form of Franchise Agreement being used at the time of your renewal and pay us the applicable Renewal Franchise Fee (See Exhibit E-1: Franchise Agreement (New)—Article 13; Exhibit E-3: Franchise Agreement (Transfer)).

Optional Assistance

1. Upon your request, we will reasonably assist you or provide recommendations regarding establishing pricing for the products you sell in your Franchised Business; however, the ultimate decision on the prices you charge is yours. We will not establish the prices for you.

2. Upon your request, we will reasonably assist you in resolving operating problems you may encounter.

Advertising

1. We (or, at our election, a third party that may be an affiliate of ours) will establish and administer the Fund that will include your Advertising Fees and those of other franchise owners in the System, in accordance with the Franchise Agreement. The Advertising Fee, which is currently two and one-half percent (2.5%) of your weekly Gross Sales for a traditional Franchised Business (See Exhibit E: Franchise Agreement—Section 5.3), or one percent (1%) of your weekly Gross Sales for a non-traditional Franchised Business (See Exhibit E: Franchise Agreement—Section 5.3), shall be due and payable with the Royalty Fee (See Exhibit E: Franchise Agreement—Section 5.2). Except in limited circumstances as described below, all *sweetFrog* franchisees must contribute to the National Fund at the same rate, which is currently one and one-half percent (1.5%) of your weekly Gross Sales for traditional Franchised Businesses and one percent (1%) of your weekly Gross Sales for non-traditional Franchised Businesses. If your traditional Franchised Business is located in a Cooperative, you must also contribute an additional one percent (1%) of your weekly Gross Sales to the Regional Fund for your Cooperative; if no Cooperative exists where your Franchised Business is located, your Franchised Business will be considered a “single store” cooperative and you must contribute the remaining one percent (1%) of your Gross Sales to the Regional Fund for your Franchised Business. In limited cases in our sole discretion (for example, certain international restaurants or non-traditional restaurants such as airport or university locations that require different advertising support), some franchisees may not be obligated to contribute to the Fund. For each of our company-owned or affiliate-owned restaurants, it is our policy that such restaurants make contributions to the Fund at a rate equal to the lowest rate a franchisee is then required to contribute. If an affiliate of ours administers the Fund or places advertising in connection with the System, such affiliate may be paid a fee that will not exceed the fee that would be payable to unrelated third parties for comparable services. Unless required by applicable law, we will have no obligation to create a trust account, escrow account or other special account for the Fund, and the monies comprising the Fund may be placed in our general account(s) if we desire. We may also reserve portions of the Fund for use in a subsequent year. The Fund is not audited, and the financial statements for the Fund and accounting of the Fund are not available to franchisees.

2. The Fund will be used for marketing, advertising, production and media expenses to promote the *sweetFrog* name, System, products and services. The Fund may be used to pay any and all costs of maintaining, administering, directing and preparing advertising, including, but not limited to, the cost of preparing and conducting television, radio, magazine, digital, and newspaper advertising campaigns and other public relations activities, employing advertising agencies to assist in such campaigns or other activities, and providing promotional brochures and other marketing materials to franchise owners. We are entitled to receive the following from the Fund: reimbursement of our expenses, overhead, and employee salaries for services, materials, supplies, facilities, equipment or capital provided to the Fund, and rent for office space provided to the Fund. Advertising funds not spent in the fiscal year in which they accrue are rolled over to the next fiscal year. We have no fiduciary responsibility to you on our management of the Fund, and no obligation to you to spend the Fund in your market area and/or in your Cooperative area, if applicable.

3. We, or our designee, will direct all advertising programs to be undertaken through the use of the Fund. We will have sole discretion over all creative concepts, materials and media used in such programs and the placement and allocation of such programs. Advertisements generally will be in print, digital, and broadcast media, initially with local coverage. We are not required to use any specific amounts from the Fund in your market. However, we in our sole discretion may use some amounts contributed by you to any approved Regional Fund, if any, in the same geographic area in

which your Franchised Business is located. We may use an outside advertising agency to create and place advertising. The Fund will be used to create new marketing material and promote the products and services offered by *sweetFrog* restaurants.

Advertising Fund expenditures during our most recent fiscal year ending November 30, 2022~~3~~ fell into the following categories:

Production	29.1 27.7%
Media Placement	47.1 46.8%
Administrative	16.8 8.7%
Other	6.9 16.8%
TOTAL	100%

The “other” expenses included public relations, research, concept development and communications. None of the Fund was used for the solicitation of franchises.

4. Unless your Franchised Business is located in an enclosed shopping mall or other enclosed structure identified in Section 1.1 of the Franchise Agreement, you will be required to insert a regular (white pages) listing and a classified (yellow pages) telephone directory advertisement in the main telephone directories serving the geographical area in which the restaurant is located, or you must participate in a multiple insertion in the event there is more than one franchise owner in such area. In either case, the telephone directory advertisement must be approved by us in advance (See Exhibit E: Franchise Agreement—Section 10.2).

5. In addition to contributions to the Fund and the telephone directory advertisements, if applicable, described above, we strongly recommend that you spend not less than 2% of your monthly Gross Sales on local advertising (See Exhibit E: Franchise Agreement—Sections 5.3 and 10.2).

6. All advertising by you in any medium must be conducted in a professional manner, must conform to the standards and requirements in our Confidential Manual, and must display our Proprietary Marks only in those forms approved by us. We may make available to you, from time to time, approved advertising, promotional plans and materials for purchase (See Exhibit E: Franchise Agreement—Sections 3.2 and 10.2).

7. You may not maintain a website, software application, an App (application), social media account (including, but not limited to, an account, group or page on Facebook®, Flickr®, Foursquare®, Google+®, Instagram®, LinkedIn®, Pinterest®, Snapchat®, Tumblr®, Twitter®, YouTube®, Vine®, VKontakte or Weibo®), or otherwise maintain a presence or advertise on the Internet or any other public computer network in connection with your restaurant without our prior written approval (See Exhibit E: Franchise Agreement—Section 3.4).

8. We will not prevent the formation of franchisee cooperatives. We encourage our franchisees to form and operate Cooperatives. Each Cooperative will coordinate advertising and marketing efforts and programs, and will attempt to maximize the efficient use of local advertising media. If a Cooperative is formed for your region, you must financially contribute to the Cooperative as required by us. Failure to do so will be deemed a breach of the Franchise Agreement and you may also, in Franchisor’s sole discretion, lose your right to vote as to Cooperative matters. The membership of the Cooperative is defined by us according to your market area. We are responsible for administering the Cooperative. We may prepare for each Cooperative a statement on the use of advertising collections and expenditures. We reserve the right at any time, in our sole discretion, to form, change, dissolve, or merge Cooperatives. (See Exhibit E: Franchise Agreement—Section 5.4).

9. We may contribute sums from the Fund to a Cooperative. On our request, you must assist in establishing a Cooperative and in deciding how to allocate contributions from the Fund to your Cooperative. We reserve the right to establish general standards concerning the operation of a Cooperative, advertising agencies the Cooperative retains, and advertising programs the Cooperative conducts. Notwithstanding anything to the contrary in this Disclosure Document, no Cooperative decisions will be made or advertising collections spent without our prior written approval. (See Exhibit E: Franchise Agreement—Section 5.4).

10. We are not, under any circumstances, obligated to contribute any advertising collections to any regional or national advertising account, fund, program, association, or other organization. We are not required to spend any advertising collections on advertising in the area where your restaurant is located. We carry forward any advertising collections not spent in a fiscal year and spend them in the next fiscal year.

Computer System

1. We require you to exclusively use an approved electronic point-of-sale system to record all your sales during the operation of your Franchised Business, the components of which are identified in the Confidential Manual ("POS System"). Prior to the opening of your Franchised Business, you will be required to acquire and to exclusively use an approved cash register/computer system POS System during the operation of the Franchised Business. We require that the manufacturer or its authorized representative on an ongoing basis service the POS System, at your cost. You will be required to maintain the POS System in good working order at all times, and to upgrade or update the POS System during the term of your Franchise Agreement as we may require from time to time. There are no contractual limitations on the frequency or cost for the franchisee to upgrade or update the POS System during the term of the Franchise Agreement. It will be your responsibility to enter into contracts for the maintenance, upgrades and updates to the POS System with an approved supplier of such services identified by us on the list of approved vendors and distributors or other notification to you from us advising of suppliers for your market area. Your POS System cost per Franchised Business will depend, among other things, on your Franchised Business' size and configuration, the system options you choose and/or we determine (such as drive-thru needs (if any), and printer needs), and the types of telephone and internet access services available. You may be required to obtain a high-speed/always-on internet connection service for your POS System. This requirement shall be defined by the then-current Confidential Manual, which may change from time to time. If high-speed/always-on internet connection service is not available in your area, dial-up Internet access may be used until high-speed/always-on internet connection service becomes available in your area. You may be required, from time to time, to upgrade the POS System's hardware and/or software, at your sole cost and expense, in order to maintain the POS System in conformity with our then-current requirements. You must complete training for the POS System as we require. If you are buying an existing restaurant with an older cash register system, it is a requirement for the transfer that you purchase and install the then-current POS System in the restaurant. (See Exhibit E: Franchise Agreement—Section 4.6).

a. We require you to use a POS System that meets our specifications in order to: (i) assist you in the operation of your Franchised Business; (ii) allow us to monitor your gross sales; (iii) enable us to develop chain-wide statistics that may improve purchasing; (iv) assist us in the development of new authorized products or the removal of existing unsuccessful authorized products; (v) enable us to refine existing authorized products; (vi) generally improve system-wide understanding of our marketing efforts; and (vii) obtain new types of information. The POS System must be configured so that we have independent and remote access to the information and data stored in it. This access allows us to exchange/collect data and other information on such basis as we shall from time to time communicate to you. There are no contractual limitations on our right to access the information in your POS System. All approved cash registers are capable of recording

accumulated sales and cannot be turned back or reset, and must be able to retain data in the event of power loss. You must purchase the approved electronic POS System from an approved vendor, as we have required our approved supplier to make special modifications to their equipment and systems to comply with our requirements (See Exhibit E: Franchise Agreement—Section 4.6). You must also purchase approved software for your restaurant. The cost of purchasing the POS System, including, but not limited to, the software, ranges from \$3,000 to \$5,000. The authorized POS System vendor may charge you a support fee of approximately \$~~100~~25 per month, and is subject to change by the supplier. It is recommended that you also purchase hardware support for all modules for the first year you operate your Franchised Business. The cost is approximately \$150 to \$1,300 per year depending on the equipment installed. This cost is subject to change by the supplier.

b. The approved POS System has in its specifications integrated “card swipe” systems that process Gift/Loyalty Cards sponsored by us or our affiliates. You must obtain credit card and gift card processing services from our approved vendors. The charges associated with credit card and gift card transactions are compiled per transaction and therefore will vary from Franchised Business to Franchised Business. We estimate that the costs associated with credit card transactions will be between 1% and 4% of your gross sales. Gift card transactions will cost you \$0.05 per activity, and may increase at any time with a 30 day notice. The Payment Card Industry (“PCI”) requires all companies that process, store, or transmit credit card information to protect the cardholders’ information by complying with the PCI Data Security Standard (“PCI DSS”). Therefore, as a franchisee who accepts credit cards, you are required to be PCI compliant by following and adhering to PCI DSS, completing an annual questionnaire and quarterly network PCI scans and installing a network firewall appliance for logging, tracking, reporting, and security assessment. We may require a particular firewall (hardware and/or software). The PCI compliance is mandated by the Payment Card Industry. The cost for the quarterly network security scans, network firewall appliance and annual questionnaire ranges from \$150 to \$1,300 per year. The cost is subject to change by supplier. You are also required to validate with us that your store is PCI compliant; to show validation, you must send us your Passing Certificate showing your store is PCI compliant and also verify that you have a PCI compliant firewall appliance installed at your Location if you process credit cards via high-speed internet connectivity.

c. You must purchase a computer and connect to the Internet so that you can report your gross sales online, so that you can receive online orders (if applicable), so that we can communicate by email, so that you can use Internet and Extranet services, and so that you can receive other electronic information we send. You also must, at your cost, maintain membership in a designated third party network, and maintain an active email account. We may revise our computer specifications. If we do so, we may require you to upgrade or update your computer. There is no contractual limitation on the frequency and cost of this obligation. There may be comparable equivalents on the market for the computer we require, but we have not yet tested or approved any comparable computer; however, we may do so in the future. You are responsible for backing up and otherwise protecting your data on your computer. You are also responsible for recording and restoring all software license keys. We may require you to upgrade the hardware and software as reasonably necessary to provide reports and information required by us. If/when online ordering is made available, all franchisees will be required to participate in the online ordering program. The fee structure once established for fees paid to the supplier of the online ordering website service will be communicated to you as soon as possible, and in no event less than thirty (30) days prior to when you will be required to accept online orders.

2. We require that you permit us to poll your sales information on a daily basis, and that you execute a Pre-Authorized Electronic Funds Transfer Form by and payable to us or our designated affiliate (which is attached to this Disclosure Document as Exhibit P), permitting us to weekly debit your account for payment of weekly royalty and advertising fees and debit your account as necessary for product purchases from us or our affiliates. (See Exhibit E: Franchise Agreement—Sections 5.2

and 5.3). We may require you to enter weekly inventory information, and if so, would require that you permit us to have remote access to that information (See Exhibit E: Franchise Agreement—Section 4.6). We may require you to permit us access to your POS system, restaurant management software, and financial records (or similar tools thereto) to poll your information daily, or more frequently, by electronic or other remote means (See Exhibit E: Franchise Agreement—Section 5.2).

3. The POS System and personal computers contain sales and labor data that can be generated and stored in the systems and that allows for the generation of financial and payroll reports.

ITEM 12: TERRITORY

The franchise is granted only for the location specified in the Franchise Agreement or a location to be approved by us. The specific site of your Franchised Business is subject to our approval. We will not unreasonably withhold our approval of the location.

For all Franchised Businesses other than Vehicles, you will not receive an exclusive territory. Vehicles will receive partial exclusivity to an Authorized Territory, meaning we will not operate or grant any third party the right to operate another Vehicle in the Authorized Territory; however, we may undertake any other activities in the Authorized Territory, including, but not limited to, operating and granting a third party the right to operate any other type of Franchised Business other than a Vehicle. You may face competition from other franchisees, from restaurants that we or our affiliates own, or from other channels of distribution or competitive brands that we or our affiliates control. You will not receive an option, right of first refusal or other rights under the Franchise Agreement to acquire additional franchises. We (and/or our affiliates) may establish other franchised or company-owned *sweetFrog* restaurants that may compete with your location, including, but not limited to, across the street from your location or in the same venue as your location, subject to Authorized Territory restrictions for Vehicles. We (and/or our affiliates) may co-brand *sweetFrog* with one or more of our other quick service restaurants or allow approved *sweetFrog* restaurants to sell additional approved menu items under a trademark license agreement we may have with other third-party restaurant concepts. We presently intend to develop *sweetFrog* restaurants throughout the United States and internationally. Except as expressly limited in the Franchise Agreement, we (for ourselves, our affiliates and our designees) retain all rights with respect to *sweetFrog* restaurants, the proprietary marks, all confidential and proprietary information, all copyrighted materials and the sale of *sweetFrog* products anywhere in the world, including, without limitation, the right to implement multi-area marketing programs that may allow us or others to solicit or sell to customers anywhere. We also reserve the right to issue mandatory policies to coordinate such multi-area marketing programs. One or more future *sweetFrog* restaurants may have an adverse effect on the revenues and profitability of existing *sweetFrog* restaurants, including, but not limited to, your Franchised Business.

In addition, we (and/or our affiliates) may market and/or test, directly or indirectly, *sweetFrog* products or services through channels of distribution other than *sweetFrog* restaurants operated by us, our affiliates and franchisees, including, but not limited to, through the Internet, catalog sales, telemarketing, grocery stores, movie theaters, limited access highway food facilities, mobile units, off-site sales accounts, electronic mail, converting other chains and other distribution opportunities, or vending machines and similar automated dispensing systems (“Other Channels”) which generally are not available for us to franchise to you, and typically involve trademark licensing and/or the sale of our branded products. We may also distribute, sell and/or license other persons or entities to distribute and/or sell products through all Other Channels. Where tests prove to be successful, we may expand our sale of products in similar businesses on a regional, national or international level. We reserve the right to establish Other Channels to make sales that may compete with your Franchised Business using our principal trademarks. These Other Channels could compete with you in the sale of your products. We are under no obligation to compensate franchisees on sales we or our affiliates make using Other Channels. We are under no obligation to compensate franchisees for

soliciting or accepting orders in the franchisee's territory. Franchisees may not use Other Channels, including, but not limited to, the Internet, catalog sales or telemarketing to make sales except that the Franchisee may provide catering services anywhere as long as such services comply with the current version of our Confidential Manual (provided that for Vehicles, such catering services must be done only within the Authorized Territory). All sales made from catering services must be included in the Franchisee's Gross Sales. We reserve the right, directly or through third parties, to manufacture or sell, or both, anywhere, other products which are the same as or similar to those sold in your Franchised Business, but which bear trademarks that are not confusingly similar to any of the trademarks you are authorized to use under the Franchise Agreement.

We reserve the right, either directly or through affiliated entities, to operate or license others to operate businesses other than the Franchised Business anywhere, including, but not limited to, locations of our other quick service restaurant concepts, and you agree that we or our affiliates may do so anywhere.

Certain of the restaurant concepts franchised by us or our affiliates offer goods or services that are the same or similar to those that you will offer under the *sweetFrog* brand. Our Canadian-based parent, MTY Canada, offers the same or similar goods or services as those you will offer under the *sweetFrog* brand as follows: (i) under the La Crémère trademark; and as of the issuance date of this Disclosure Document the La Crémère concept is not unit franchised or sub-franchised in the United States (it is only offered in Canada), and (ii) under the TCBY trademarks as sub-franchisee; and as of the issuance date of this Disclosure Document the TCBY concept is not franchised or sub-franchised by us or our affiliate in the United States (it is only offered in Canada) and has no plans at this time to expand to the United States as the TCBY brand is offered in the United States by Famous Brands International, unrelated to Franchisor. Our affiliate Kahala Franchising offers the same or similar goods or services as those you will offer under the *sweetFrog* brand as follows: (i) the Tasti D-Lite brand sells frozen dessert confections with a variety of mix-ins and toppings, shakes, smoothies and frozen cakes and pies, (ii) the Pinkberry brand sells frozen yogurt, and (iii) the La Diperie brand specializes in the retail sale of an ice cream product and various dips and toppings. We and our affiliates will provide support to all of its respective concepts regardless of the vicinity of a concept to another concept that sells similar products. The principal business address of these similar concepts in the United States is the same as Franchisor's address. We do not maintain separate offices or separate training facilities in the United States for the similar competing business set forth above.

We may merge with, acquire and/or be acquired by any other business, including, without limitation, a business that competes with your Franchised Business, or acquire and convert any retail stores, including, without limitation, retail stores operated by competitors, or otherwise operated independently or as part of, or in association with, any other system or chain, whether franchised or corporately owned.

As described in Item 1, in addition to the concepts franchised by us or our U.S.-based current or former affiliates, our Canadian-based affiliates franchise and subfranchise different restaurant concepts as well.

You must obtain our prior approval to relocate your Franchised Business. The approval or rejection by us of any proposed relocation shall be in our sole discretion. In order to relocate your Franchised Business, you must be in compliance with your Franchise Agreement, the relocation must be for a legitimate business reason, and we must approve the new location. In connection with any relocation, your Franchised Business may not be closed for business for more than thirty (30) days.

Your Franchise Agreement is for a specific location only, so you may not open additional Franchised Businesses under the same Franchise Agreement. You must obtain our prior approval to purchase and open additional Franchised Businesses. The approval or rejection by us shall be in



our sole discretion. In order to purchase an additional Franchised Business(es), you must be in compliance with your existing Franchise Agreement(s), you must qualify to operate additional restaurants, you must enter into our then-current form of Franchise Agreement and pay the initial franchise fee, and we must approve the location.

ITEM 13: TRADEMARKS

We will grant you the non-exclusive right to operate the Franchised Business specified in your Franchise Agreement or any amendments to your Franchise Agreement under the *sweetFrog* trademarks. You will also be granted the right to use our other current or future trademarks that we may from time to time designate as being available for use by franchisees in the System. By "trademarks" we mean trade names, trademarks, service marks, logos, Trade Dress (as defined below), and product identifiers used to identify your Franchised Business. "Trade Dress" is defined as the total appearance and image of the Franchised Business; the frozen yogurt and other frozen dessert products and related products and packaging; all related features such as size, texture, shape, color or color combinations, and graphics of Franchised Businesses and the frozen yogurt and other frozen dessert products and related products and packaging, and all advertising and marketing techniques used to promote the franchise, as well as specifically including all signage, menu boards, product displays, and any color schemes and designs utilized in connection with Franchised Business' interior walls, counters, table tops, chairs, and floors. You must not directly or indirectly contest our right to our trademarks.

You will not have the exclusive right to use the trademarks, nor will you acquire, by use or otherwise, any right, title or interest in or to the trademarks, other than as expressly contained in, and limited by, the Franchise Agreement. Your right to use the trademarks is limited and temporary. Upon expiration or termination of the Franchise Agreement, you may not, directly or indirectly, use the trademarks in any manner or for any purpose, and you may be required by us to renovate the premises of your Franchised Business to eliminate the trademarks and de-identify such premises to remove all Trade Dress, returning it to a "vanilla shell," at your expense.

The following trademarks have been registered with the United States Patent and Trademark Office on the Principal Register:

TRADEMARK	REGISTRATION NUMBER	REGISTRATION DATE
sweetFrog	3992399	July 12, 2011
	4218945	October 2, 2012
SWEETFROG	4102511	February 21, 2012
	4431157	November 12, 2013
SWEETFROG	4431150	November 12, 2013
SWEETFROG	4637921	November 11, 2014
SWEETFROG	7123088	July 25, 2023

All affidavits of use required to be filed to maintain these registrations have been filed.

There are no applications pending with the United States Patent and Trademark Office at this time.

~~We have applied to register the following Mark for registration with the United States Patent and Trademark Office on the Principal Register:~~

TRADEMARK	APPLICATION FILING DATE	APPLICATION NUMBER
SWEETFROG	March 21, 2022	97321943

No one other than Franchisor or its affiliates has an ownership interest in the above-referenced trademarks. We are the sole owner of the above-referenced trademarks and have all right, title, and interest in and to the trademarks and goodwill.

No agreements limit our right to use or license the use of our trademarks. You must follow our rules when you use our trademarks. Use of the service marks or trademarks must be accompanied by the registration (®), service mark (SM), trademark (TM) in close proximity to the trademark. You cannot use our trademarks as part of your corporate, partnership, limited liability company or other entity name, or register it as a trade name. You may not use our trademarks in connection with the sale of an unauthorized product or service or in a manner not authorized in writing by us. You may not directly or indirectly contest or aid in contesting the validity of the trademarks or the ownership of the trademarks by us, nor may you directly or indirectly apply to register or otherwise seek to use or control our trademarks or any confusingly similar variation or form in the United States or any other country, nor may you assist any others to do so. You must modify or discontinue the use of a trademark if we modify or discontinue it, at your sole cost.

You must immediately notify us of any apparent infringement of, or challenge to your use of, any of our trademarks, or any claim by any person of any rights in any of our trademarks. You must not communicate with any person other than us and our legal counsel in connection with any such infringement, challenge or claim. We will have the sole discretion to take such action as we may deem appropriate to protect our trademarks and the right to exclusively control any litigation, United States Patent and Trademark Office proceeding, or other proceeding arising out of any such infringement, challenge or claim or otherwise relating to our trademarks. The Franchise Agreement does not require us to take affirmative action when notified of these uses or claims, but indicates we have the sole discretion to take such action as we may deem appropriate. You must execute such documents, render such assistance, and do such acts and things as may, in the opinion of our counsel, be necessary or advisable to protect and maintain our interests in connection with any such litigation or proceeding, or to otherwise protect and maintain our interests in our trademarks.

The Franchise Agreement requires that we will indemnify and hold you harmless for, from and against any and all claims, liabilities, causes of action, demands, obligations, costs and expenses, including reasonable attorneys' fees, arising out of any claim of infringement or unfair competition in connection with your use of our trademarks, provided that such use is in accordance with the provisions of the Franchise Agreement.

We may, in our sole discretion, modify or discontinue use of any of the above-referenced trademarks and/or use one or more additional or substitute service marks or trademarks. If we decide to do so, you must do so also, at your own expense. The Franchise Agreement does not provide you any additional rights if we require you to modify or discontinue using a trademark. However, if we require you to modify or discontinue use of our trademarks and/or use other trademarks in its place at any time other than upon renewal of the Franchise Agreement, and that requirement is a direct result of proceedings or litigation that determined that our and our franchisees' use of the trademarks infringed

upon a third party's rights, we will bear the direct actual and reasonable cost of those modifications or discontinuances.

We do not know of any superior prior rights or infringing uses or effective material determinations of the United States Patent and Trademark Office, Trademark Trial and Appeal Board, trademark administrator of this state or of any court, nor do we know of any pending infringement, opposition or cancellation proceeding that could materially affect your use of our trademark. We do not know of any pending material federal or state court litigation regarding our use or ownership rights in the above registered trademarks or pending applications.

ITEM 14: PATENTS, COPYRIGHTS AND PROPRIETARY INFORMATION

We own proprietary information and rights in numerous items, such as menu formats, advertising designs, processes, techniques, recipes for *sweetFrog* frozen yogurt or other frozen dessert products, the method of production and storage of products and information contained in the Confidential Manual and related documents. In connection with the operation of the franchise, we may disclose to you certain information in which we claim proprietary rights. For example, our Manual incorporates certain information that we believe is protected under the law of trade secrets, including, but not limited to, sales and marketing techniques and restaurant operations. In addition, although we have not registered the copyright with the United States Copyright Office, the Confidential Manual is protected against unauthorized copying under United States Copyright laws for 100 years from the date of creation or 75 years from the date of publication, whichever is shorter. You must use the proprietary information only in the manner required by us and in no other manner. This information is strictly confidential and you may not disclose it to any person, or use any of that information for any purpose, except disclosure to a person who has signed and delivered to us the "Confidentiality Agreement" contained in the Confidential Manual, and you may only use this information as necessary in connection with the operation of your Franchised Business. In addition, you must fully and strictly comply with all security measures required by us for maintaining the confidentiality of all information designated by us as trade secrets.

No agreements limit our right to use or license the use of our statutory copyright of the Confidential Manual.

If you reproduce any items or materials suitable for copyright protection, you must make sure that each item bears a copyright notice in the form specified by us. You must use the proprietary information only in the manner required by us and in no other manner. This information is strictly confidential and you may not disclose to any person or use any of that information for any purpose, except disclosure to a person who has signed and delivered to us a confidentiality agreement, and use as necessary in connection with the operation of your Franchised Business. In addition, you must fully and strictly comply with all security measures required by us for maintaining the confidentiality of all information designated by us as trade secrets.

You will not have the exclusive right to use the innovations or any of our patents or patent applications, copyrights or proprietary information, nor will you acquire, by use or otherwise, any right, title or interest in or to the innovations, the copyrights or the proprietary information, other than as expressly contained in, and limited by, the Franchise Agreement. Your right to use the innovations, the claimed subject matter of any patents or patent applications, the copyrights and the proprietary information is limited and temporary. Upon expiration or termination of the Franchise Agreement, you may not, directly or indirectly, use the innovations, the claimed subject matter of any patents or patent applications, the copyrights or the proprietary information in any manner or for any purpose.

You must immediately notify us of any conduct that could constitute infringement of or challenge to the innovations, the patents or patent applications, the copyrights and our proprietary information. We will decide, in our sole discretion, whether to institute any action in connection with infringement of or challenge to the innovations, the patents or patent applications, the copyrights and our proprietary information, and will control all proceedings and litigation. The Franchise Agreement does not require us to take affirmative action when notified of infringement, but indicates we have the sole discretion to take such action as we may deem appropriate. We are not required to protect your right to use the innovations, the patents or patent applications, the copyrights and proprietary information. As indicated in the Franchise Agreement, we will indemnify you for all damages for which you are held liable in any lawsuit arising out of your proper use of the innovations, the patents or patent applications, the copyrights and our proprietary information in compliance with the Franchise Agreement.

We may, in our sole discretion, modify or discontinue use of the innovations, the patents or patent applications, the copyrights and our proprietary information and/or use other information and/or rights in its place. If we decide to do so, you must do so also, at your expense. The Franchise Agreement does not provide you any additional rights if we require you to modify or discontinue use of the innovations, the patents or patent applications, the copyrights and our proprietary information. However, if we require you to modify or discontinue use of the innovations, the patents or patent applications, the copyrights and our proprietary information and/or use other information and/or rights in its place at any time other than upon renewal of the Franchise Agreement, and that requirement is a direct result of proceedings or litigation that determined that our and our franchisees' use of the innovations, the patents or patent applications, the copyrights and the proprietary information infringed upon a third party's rights, we will bear the actual direct and reasonable cost of those modifications or discontinuances. The rights granted in this paragraph are your sole and exclusive remedy for any infringement by any part of the System.

We have no pending patent applications or patent registrations that are material to the franchise. We do not know of any current material determinations of the United States Patent and Trademark Office, United States Copyright Office, or of any court, nor do we know of any effective determinations or any material proceedings pending in the United States Patent and Trademark Office or of any court regarding the patent application. We do not know of any patent or copyright infringement that could materially affect the franchisee.

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

While the Franchise Agreement does not specifically require you or your principals to personally participate in the direct operation of the franchise, it is our intention to select as franchisees only those who plan to actively participate in the direct operation and daily affairs of the Franchised Business. The franchise must be personally managed with on-premises supervision and directly operated by you or another partner, shareholder or member of your business organization, or a manager who must have successfully completed the Training Program.

If you are an individual and married, your spouse must: sign the Guaranty of Franchise Agreement in which your spouse agrees to perform, and guarantees, all of the franchisee's obligations to us and our affiliates contained in the Franchise Agreement (See Exhibit F-1) and a Non-Disclosure and Non-Competition Agreement (See Exhibit F-2); if applicable; sign the Guaranty of Sublease in which your spouse agrees to perform, and guarantees, all of the sublessee's obligations to us and our affiliates contained in the Sublease (See Exhibit Q); and, if you purchase a corporate restaurant, sign the Guaranty of Promissory Note and Security Agreement and Guaranty of Sublease in which your spouse agrees to perform, and guarantees, all of the franchisee's obligations to us and our affiliates contained in the Promissory Note and Security Agreement, and all of the sublessee's obligations to us and our affiliates contained in the Sublease (See Exhibit D: Guaranty of Promissory

Note and Security Agreement and Exhibit O: Guaranty of Sublease). Each person, corporation, partnership, limited liability company or other entity that owns, directly or indirectly, an equity interest in the franchised entity ("Principal"), and each executive officer must sign the Personal Acceptance attached to the Franchise Agreement ("Personal Acceptance") in which the Principal agrees to be bound by the restrictive covenants, the confidentiality provisions and certain other provisions contained in the Franchise Agreement. Each Principal (and his/her spouse, if married) must also: sign the Guaranty of Franchise Agreement in which the Principal (and his/her spouse, if married) agrees to perform, and guarantee, all of the franchisee's obligations to us and our affiliates contained in the Franchise Agreement; his/her spouse, if married, sign the Non-Disclosure and Non-Competition Agreement; if applicable, sign the Guaranty of Sublease in which the Principal (and his/her spouse, if married) agrees to perform, and guarantee, all of the sublessee's obligations to us and our affiliates contained in the Sublease; and if purchasing a corporate restaurant, sign the Guaranty of Promissory Note and Security Agreement and Guaranty of Sublease in which each Principal (and his or her spouse, if married) agrees to perform, and guarantees, all of the franchisee's obligations to us and our affiliates contained in the Promissory Note and Security Agreement and all of the sublessee's obligations to us and our affiliates contained in the Sublease. In the event that any person who has not signed an appropriate guaranty becomes your spouse or the holder of any class or your stock or ownership interests or a spouse of such holder, at any time after the execution of the respective agreement as referenced above, you must cause such person(s) to immediately execute and deliver the required guaranty to us.

We are not seeking to license you to operate a Franchised Business if your Principals are merely seeking a passive investment.

We strongly recommend that you devote a substantial amount of time to your Franchised Business, whether or not you hire a manager. Franchisees that do not devote their full time efforts to the establishment and operation of their Franchised Business may have lower gross sales, higher operating costs and lesser name recognition in their areas than those franchisees that do devote their full efforts to the business. Examples of the types of functions that you might perform include training and supervision of employees, inventory checks, review of sales and food costs, local store marketing, bookkeeping and all reasonable efforts to ensure smooth and efficient operations.

Additionally, you must employ on a full time basis at least one on-premises supervisor (the "Manager") for the Franchised Business. The Manager of the Franchised Business must at all times be a person who meets our criteria as a qualified restaurant operator. The Manager is not required to have any equity interest in the Franchised Business. The Manager must devote his or her entire time during normal business hours to the management, operation and development of the Franchised Business and must maintain the confidentiality of the trade secrets and proprietary information, comply with the use of the proprietary marks, conform with the covenants not to compete, and conform with the operating standards in the Franchise Agreement and Confidential Manual. The Manager is required to sign the Confidentiality Agreement.

In the interest of safe and efficient job performance, business operation and public health and safety, you must have a Manager on each shift who is able to read and understand our written materials and communicate with your employees and customers in the English language. This requirement will not restrict the Manager or your employees from speaking in any other language with you, other employees or customers, and shall not apply to any employee while on personal time or breaks.

All personnel employed by you in connection with the operation of your Franchised Business must maintain standards of sanitation, cleanliness and demeanor as may be established by us. All personnel must wear a uniform or other clothing approved by us. In addition, you must ensure that all employees whose duties include customer service have sufficient literacy and fluency in the

English language (or such other language that is the primary language in your market) to adequately serve the public at your Franchised Business.

ITEM 16: RESTRICTIONS ON WHAT THE FRANCHISEE MAY SELL

We require that your business is solely that of a *sweetFrog* restaurant, and you may not conduct any other business or activity at the site of the Franchised Business without our prior written approval. For traditional restaurants, you must offer the full menu prescribed by us, subject to change from time to time in our sole discretion. Non-traditional restaurants may offer a more limited menu than the traditional restaurant, as detailed in the Confidential Manual. We have the right to require you to sell additional authorized products and services from time to time that we believe will be successful. You will be obligated to offer and sell those new products and to participate in all local, regional, seasonal and promotional programs, initiatives and campaigns adopted by us in which we require you to participate. We reserve 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 periodically 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 our right to require you to offer and sell those new products or to participate in those programs, initiatives and campaigns. You may not add any item to your menu unless it is first researched and tested through our research and development center and approved by us in writing. In addition, you may not offer or sell any products or services specified by us in any configuration, form or manner (including, but not limited to, items for resale) other than those specifically approved by us. You may not market your Franchised Business or use the Proprietary Marks on the Internet without our prior approval. You are prohibited from offering or selling any products or services not authorized or approved by us. You may only use products, materials, ingredients, supplies, paper goods, uniforms, fixtures, furnishings, signs, equipment, POS System, debit and credit card and Gift/Loyalty Card processing service, and methods of product preparation and delivery that meet our requirements as specified in the Confidential Manual.

If we believe in good faith that any product offered by you may be unhealthy, unsafe or unsanitary, and we request that you discard that product, you must do so immediately. In addition, we may require you to close your Franchised Business until we are satisfied that any unhealthy, unsafe or unsanitary condition has been completely corrected.

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.

Provision	Section or Article in Franchise Agreement	Summary
a. Length of the Term of the Franchise	Section 1.3	If you are <u>purchasing a new or existing non-operating Franchised Business</u> , the term is (i) 10 years from the date the restaurant opens to the public if you own the property, or enter into a lease directly with the landlord or other third party, or (ii) the term of the sublease if you enter into a sublease with our affiliate, excluding any extensions and renewal options. <u>If you are purchasing an existing</u>

Provision	Section or Article in Franchise Agreement	Summary
		<p>and operating Franchised Business, the term is (i) 10 years from the effective date of the franchise agreement if you own the property, or enter into a lease directly with the landlord or other third party, or (ii) the term of the sublease if you enter into a sublease with our affiliate, excluding any extensions or renewal options. <u>If you are purchasing a Franchised Business that will be co-branded into another brand franchised by us or our affiliate</u>, the term of your franchise agreement for this brand will equal the remaining term of the existing franchise agreement for the store which this brand will be co-branded into, so both franchise agreements will expire concurrently. <u>If you are entering into a renewal agreement for your Franchised Business</u>, the term is five years from the effective date of your renewal Franchise Agreement.</p>
b-1. Renewal or extension of the Term	Article 13 (New & Transfer)	If you are not in default and satisfy certain conditions, you may renew for a single renewal term of five years, with no further right to renew at the end of the renewal term.
c-1. Requirements for you to renew or extend	Article 13 (New & Transfer)	<p>“Renewal” means to sign a renewal Franchise Agreement (which will be in the form of the Franchise Agreement then customarily used by us in renewing franchises) and all other agreements then customarily used by us in the granting of franchises. The renewal Franchise Agreement may have materially different terms and conditions than the original Franchise Agreement, including higher royalty and advertising fees. If offered, you must: give at least 120 days’ notice prior to the expiration date of the term; not be in default; be in compliance with the terms of the Franchise Agreement and Confidential Manual; not have received more than 3 notices of default or breach of the Franchise Agreement during its term, nor more than 2 such notices during the 5 years immediately before the proposed renewal date; have a premises; sign a new Franchise Agreement which may have materially different terms and conditions than the original Franchise Agreement; pay a renewal franchise fee; remodel or refurbish if necessary; and be current on all financial obligations to us. You must also sign the General Release in form attached to the Disclosure Document as <u>Exhibit Q</u>.</p>
b-2. Successor Term	Section 13 (Renewal)	If at the end of your renewal term, you are not in default and satisfy certain conditions, you may apply for a successor term.

Provision	Section or Article in Franchise Agreement	Summary
c-2 Requirements for you to obtain a successor term	Section 13 (Renewal)	Applying for and entering into a “successor” term means to sign a new Franchise Agreement (which will be in the form of the Franchise Agreement then customarily used by us in entering into new franchises) and all other agreements then customarily used by us in the granting of franchises. The successor term Franchise Agreement may have materially different terms and conditions than the original Franchise Agreement, including higher royalty and advertising fees. In the event you desire to apply to us to extend your rights to operate the Franchised Business for a successor term, you must: give at least 120 days’ notice prior to the expiration date of the renewal term; not be in default; be in compliance with the terms of the Franchise Agreement and Confidential Manual; not have received more than 3 notices of default or breach of the Franchise Agreement during its term, nor more than 2 such notices during the 5 years immediately before the proposed successor term effective date; have a premises; sign a Franchise Agreement which may have materially different terms and conditions than the original Franchise Agreement; pay an initial franchise fee; remodel or refurbish if necessary; and be current on all financial obligations to us. You must also sign the General Release in form attached to the Disclosure Document as <u>Exhibit Q</u> . We reserve the right to reject your application for a successor term, at our sole discretion, for any reason, including, without limitation, failure to meet our then-current standards or requirements for new franchisees. If we decide to reject your application for a successor term to operate the Franchise Business, we will give you a notice to that effect within sixty (60) days after you deliver to us your notice of intent to apply for a successor term.
d. Termination by you	Not Applicable	-----
e. Termination by us without cause	Not Applicable	-----
f. Termination by us with cause	Sections 3.1 (New and Transfer) and 14.1	We can terminate only if you are in default under the Franchise Agreement or any other Franchise Agreements or other agreements between you and us.
g. "Cause" defined— defaults that can be cured	Sections 14.1 and 14.2	You have an immediate cure period of less than 24 hours to cure defaults of your violation of our social media policy regarding posting content containing inappropriate public displays of affection, confidential information, violations of health or safety standards,

Provision	Section or Article in Franchise Agreement	Summary
		<p>foul or obscene language, or images that have not been consented to. You have 24 hours to cure defaults of your violation of (i) any law, regulation, or order; (ii) our standards relating to health, sanitation, or safety; (iii) our policy regarding posting defamatory or offensive comments on social media sites; or (iv) you cease to operate your store for a period of 48 hours without our consent. You have 48 hours to cure defaults of your violation of our social media policy where you have a social media site in connection with your Franchised Business without approval or hold out your social media site to be an official site of <i>sweetFrog</i>, or if you fail to participate in any limited time product offering, value offering, contest, promotion or charity event. You have 7 days to cure defaults of failure to (i) pay any monies owing to us or any Fund (inclusive of any Cooperative); or (ii) maintain insurance. You have 14 days to cure other defaults, except those which have no cure period. If a statute in the state or municipality in which the restaurant is located requires application of that state or municipal law, and that statute requires a cure period for the applicable default which is longer than the cure period listed in the Franchise Agreement, the statutory cure period will apply.</p>

Provision	Section or Article in Franchise Agreement	Summary
h. "Cause" defined— defaults that cannot be cured	Sections 12.1, 14.1 and 14.2	Non-curable defaults: failure to open your Franchised Business within the time period listed in your Franchise Agreement; non-compliance with applicable laws and regulations; failure to adhere to the highest standards of honesty, integrity, fair dealing and ethical conduct; involvement in any business practice which may be injurious to the System or goodwill associated with the Proprietary Marks; defaulting on your lease or sublease and failure to cure such default, lease or sublease is terminated due to your default, or location is lost for failure to comply with lease or sublease; you, or any owner or principal of the franchise, is convicted of a felony, a crime involving moral turpitude, or any other crime or offense that is reasonably likely to adversely affect the System, the goodwill associated therewith, or our interest therein; closing or relocating your Franchised Business, without our express advance written consent; transferring or attempting to transfer your Franchise Agreement or Franchised Business to a third party without our express advance written consent; bankruptcy, insolvency and similar events; conviction of felony; making any false representations or warranties; repeated defaults even if previously cured; abandonment; trademark misuse; unauthorized use of any of the components of the System; materially impair the goodwill or reputation of the System; breach of confidentiality or non-competition covenants; fraud with respect to obligations under the Franchise Agreement; you or any of your members, shareholders, partners, owners, principals, officers, directors, or managers violate any anti-bribery, corruption, or similar law or appear on a "blocked" persons list, or receive funding from any embargoed country; falsify financial data; selling from/to outside the Authorized Territory (for Vehicles only); failure to promptly provide upon request financial data and records specified in the Franchise Agreement; and intentionally underreporting weekly Gross Sales.
i. Your obligations on termination/non-renewal	Sections 14.5, 14.6, 14.7 and 14.9	Obligations include cessation of your operation of the Franchised Business in all matters, complete de-identification, payment of amounts due us (also see "r" below) including early termination damages if any, transfer of telephone numbers, maintenance of records, and compliance with any confidentiality requirements and covenants not to compete.
j. Assignment of contract by us	Section 12.5	No restriction on our right to assign.

Provision	Section or Article in Franchise Agreement	Summary
k. "Transfer" by you— definition	Section 12.1	Any voluntary, involuntary (including by operation of law), direct or indirect assignment, sale, gift or other transfer by you.
l. Our approval of transfer by franchise owner	Section 12.1	We have the right to approve all transfers, but we will not unreasonably withhold approval.
m. Conditions for our approval of transfer	Section 12.3	New franchise owner qualifies; no existing defaults; transfer franchise fee paid; all obligations under the Franchise Agreement are fully paid and satisfied; any local store marketing funds used that were not yet contributed by current franchisee to be reimbursed to us; new franchisee completes training, remodels or refurbishes if necessary, and keeps existing store telephone number; release signed by you; and new agreements signed.
n. Our right of first refusal to acquire your business	Section 12.2	We can match any offer.
o. Our option to purchase your business	Section 12.2	We can match any offer.
p. Your death or disability	Section 12.4	If representative of franchisee wants the Franchised Business to continue operating, it must be transferred within 90 days to an approved buyer. Upon non-compliance, all of franchisee's rights under the Franchise Agreement will be automatically terminated.
q. Non-competition covenants during the term of the franchise	Section 14.6	No involvement in any competing business.
r. Non-competition covenants after the Franchise Agreement is terminated or expires	Section 14.6	No competing business for 2 years, within 10 miles of another <i>sweetFrog</i> restaurant.
s. Modification of the Agreement	Sections 4.5 and 16.13	Confidential Manual subject to change at any time; otherwise no modifications unless in writing and signed by both parties.
t. Integration/merger clause	Section 16.14	Only the terms of the Franchise Agreement are binding (subject to state law). Any representations or promises outside the Disclosure Document and Franchise Agreement may not be enforceable.

Provision	Section or Article in Franchise Agreement	Summary
u. Dispute resolution by arbitration or mediation	Section 16.3	Any dispute that cannot be resolved by, or is not subject to, mediation shall be settled by arbitration administered by the American Arbitration Association in Maricopa County, Arizona. This does not apply to a dispute where we bring an action for an express obligation to pay monies, declaratory relief, preliminary or permanent equitable relief, any action at law for damage to our goodwill, the proprietary information, the trademarks or other property or for fraudulent conduct by franchisee, or if a delay in the mediation process may adversely affect the public. Either party may appeal the arbitrator's final award, if it is over \$100,000, to the appropriate U.S. District Court.
v. Choice of forum	Section 16.4	Litigation must be in Maricopa County, Arizona.
w. Choice of law	Section 16.4	Except to the extent governed by the United States trademark laws or the franchise laws of any state, Arizona law applies.

Sublease

This table lists certain important provisions of the Sublease. You should read these provisions in the agreements attached to this Disclosure Document.

Provision	Section in Sublease	Summary
a. Term of the Sublease	2.1	Ends one day before expiration of Master Lease, including any renewals of Master Lease.
b. Renewal or extension of the term	2.2 and 2.3	If the Master Lease contains a renewal option, you must notify us to exercise it.
c. Requirements for you to renew or extend	2.2 and 2.3	You must be in good standing and you must notify us of your intent to renew at least 60 (but not more than 90) days before we are required to notify the Master Landlord of intent to renew.
d. Termination by you	Not Applicable	You have no right to terminate the Sublease.
e. Termination by us without cause	Not Applicable	There is no right to terminate the Sublease without cause.
f. Termination by us with cause	15	Our affiliate may terminate the Sublease for cause. Our affiliate can terminate only if you default under the Master Lease, Sublease or the Franchise Agreement.
g. "Cause" defined – curable defaults	15.1	Our affiliate can terminate if you default in the: (i) payment of any sums you owe; (ii) performance of any of the terms, covenants, or conditions of the Master Lease or Sublease; or (iii) default under the Franchise Agreement or any other agreement between you or your affiliates and us or our affiliates.

Provision	Section in Sublease	Summary
h. "Cause" defined – defaults that cannot be cured	15.1	Bankruptcy of, or general assignment for the benefit of creditors by, franchisee; defaults under the Master Lease that are not curable
i. Your obligations on termination/nonrenewal	15	Our affiliate may enter and take possession of the Franchised Business and all of the furniture, fixtures, equipment, signage, inventory and other items covered by our lien under Section 4.2 of the Sublease; you are not relieved of further obligations under the Sublease.
j. Assignment of agreement by us	22	Our affiliate has the right to assign under the Master Lease.
k. "Transfer" by you – defined	9 and 22	Approval of our affiliate is required.
l. Our approval of transfer by you	9	Approval of our affiliate, at its sole discretion, and approval of landlord may be required.
m. Conditions for our approval of transfer	9	Our affiliate must consent.
n. Our right of first refusal to acquire your business	Not Applicable	None. Our affiliate already holds the Master Lease.
o. Our option to purchase your business	Not Applicable	None. Our affiliate already holds the Master Lease.
p. Your death or disability	Not Applicable	None
q. Non-competition covenants during the term of the franchise	Not Applicable	None
r. Non-competition covenants after the franchise is terminated or expires	Not Applicable	None
s. Modification of the agreement	Not Applicable	None
t. Integration/merger clause	24	The Sublease, including any exhibits, contains the entire agreement of the parties.
u. Dispute resolution by arbitration or mediation	Not Applicable	None
v. Choice of forum	Not Applicable	None
w. Choice of law	20	Arizona law applies

ITEM 18: PUBLIC FIGURES

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

ITEM 19: FINANCIAL PERFORMANCE REPRESENTATIONS

The FTC's Franchise Rule permits a franchisor to provide information about the actual or potential financial performance of its franchised and/or franchisor-owned outlets, if there is a

reasonable basis for the information, and if the information is included in the disclosure document. Financial performance information that differs from that included in Item 19 may be given only if: (1) a franchisor provides the actual records of an existing outlet you are considering buying; or (2) a franchisor supplements the information provided in this Item 19, for example, by providing information about possible performance at a particular location or under particular circumstances.

The average gross sales amounts contained in the table below pertain to the historic performance of all sweetFrog franchised stores located in the United States that were existing outlets that did not open for the first time during the past fiscal year. The time period measured was December 1, 2020¹², through November 30, 2022²³.

	Average Gross Sales	Median Gross Sales	Number of Stores Measured	Number of stores that met or exceeded the Average Gross Sales	Percentage of stores that met or exceeded the Average Gross Sales	Number of stores that met or exceeded the Median Gross Sales	Percentage of stores that met or exceeded the Median Gross Sales
All franchised outlets	\$429,665	\$412,960	194	90	46%	96	49%
Top 20% Traditional franchised outlets	\$760,970	\$715,468	39	17	33%	20	51%
Bottom 20% Traditional franchised outlets	\$130,340	\$110,194	39	13	44%	20	51%

Notes:

1. As of November 30, 2022²³, there were 216 franchised stores open in the United States. Of these 216 outlets, 194 of these outlets were franchised, existing locations that did not open for the first time during the past fiscal year, were located in the United States, were not temporarily closed as of fiscal year end, and reported sales based on the gross sales and not based on estimates.
2. The information is based upon gross sales, which means the total revenue derived from the sales of goods and services less sales tax, discounts, allowances and returns, of franchised, stores
3. **Some outlets have sold this amount. Your individual results may differ. There is no assurance that you'll sell as much.**
4. The above table and information were prepared from sales reports provided to us by franchisees. We have not audited the information provided by the franchisees.
5. We will provide to you the spreadsheets as written substantiation for the representations made in this Item 19 upon reasonable request.

Other than the preceding financial performance representation, we do not make any financial performance representations. 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 John Wuycheck, Kahala Franchising, L.L.C., 9311 E. Via De Ventura, Scottsdale, Arizona 85258, (480) 362-4800, the Federal Trade Commission, and the appropriate state regulatory agencies.

ITEM 20: OUTLETS AND FRANCHISEE INFORMATION

Table No. 1

**Systemwide Outlet Summary
For years 2020~~1~~ to 2022~~3~~**

Column 1	Column 2	Column 3	Column 4	Column 5
Outlet Type	Year	Outlets at the Start of the Year	Outlets at the End of the Year	Net Change
Franchised*	2021	257	238	-19
	2022	238	221	-17
	2023	221	216	-5
Company-Owned / Affiliate-Owned	2021	0	0	0
	2022	0	0	0
	2023	0	0	0
Total Outlets	2021	257	238	-19
	2022	238	221	-17
	2023	221	216	-5

*Figures include franchisees that signed license agreements, which are no longer offered.

Table No. 2

**Transfers of Outlets from Franchisees to New Owners (other than the Franchisor)
For years 2020~~1~~ to 2022~~3~~**

Column 1	Column 2	Column 3
State	Year	Number of Transfers
Delaware	2021	0
	2022	2
	2023	0
Florida		
	2021	0
	2022	1
	2023	0
Georgia		
	2021	0
	2022	1
	2023	0
Illinois		
	2021	0
	2022	1
	2023	0
Indiana		
	2021	0
	2022	1
	2023	0
Maryland		
	2021	4
	2022	4
	2023	0
New York		
	2021	1
	2022	2
	2023	0
North Carolina		
	2021	4
	2022	1
	2023	7
Ohio		
	2021	0

	2022	1
	2023	0
Pennsylvania		
	2021	1
	2022	1
	2023	2
Texas		
	2021	0
	2022	2
	2023	0
Virginia		
	2021	8
	2022	6
	2023	4
Total		
	2021	16
	2022	23
	2023	13

Table No. 3

**Status of Franchised Outlets
For years 20201 to 20223**

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9
State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations - Other Reasons	Outlets at End of the Year
AL								
	2021	2	0	0	0	0	0	2
	2022	2	0	0	0	0	0	2
	2023	2	0	0	0	0	0	2
CA								
	2021	3	0	0	0	0	0	3
	2022	3	0	0	1	0	0	2
	2023	2	0	0	0	0	1	1

CT								
	2021	4	0	0	0	0	0	4
	2022	4	0	0	1	0	0	3
	2023	3	0	0	0	0	0	3
DE								
	2021	2	0	0	0	0	0	2
	2022	2	0	0	0	0	0	2
	2023	2	0	0	0	0	0	2
FL								
	2021	17	0	0	1	0	1	15
	2022	15	0	0	0	0	3	12
	2023	12	0	0	0	0	2	10
GA								
	2021	3	0	0	0	0	0	3
	2022	3	0	0	0	0	0	3
	2023	3	0	0	0	0	0	3
IL								
	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
IN								
	2021	2	0	0	0	0	0	2
	2022	2	0	0	0	0	0	2
	2023	2	0	0	0	0	0	2
KY								
	2021	0	0	0	0	0	0	0
	2022	0	0	0	0	0	0	0
	2023	0	0	0	0	0	0	0
LA								
	2021	2	0	0	1	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
MA								
	2021	2	0	0	0	0	0	2
	2022	2	0	0	0	0	0	2
	2023	2	1	0	0	0	0	3
MD								
	2021	25	0	0	0	0	2	23
	2022	23	0	0	0	0	0	23
	2023	23	1	0	0	0	0	24
ME								
	2021	2	0	0	0	0	0	2

	2022	2	0	0	0	0	0	2
	2023	2	0	0	0	0	0	2
NC								
	2021	34	0	0	0	0	0	34
	2022	34	1	0	0	0	0	35
	2023	35	0	0	1	0	1	33
NV								
	2021	4	0	0	0	0	0	4
	2022	4	0	0	1	0	1	2
	2023	2	0	0	0	0	2	0
NY								
	2021	16	0	0	0	0	0	16
	2022	16	0	0	0	0	1	15
	2023	15	0	0	2	0	0	13
OH								
	2021	8	0	0	0	0	0	8
	2022	8	0	0	0	0	1	7
	2023	7	0	0	0	0	0	7
PA								
	2021	18	0	0	2	0	4	12
	2022	12	0	0	0	0	0	12
	2023	12	0	0	0	0	0	12
SC								
	2021	10	0	0	0	0	0	10
	2022	10	0	0	0	0	0	10
	2023	10	2	0	1	0	0	11
TN								
	2021	5	0	0	1	0	0	4
	2022	4	0	0	1	0	0	3
	2023	3	0	0	0	0	0	3
TX								
	2021	20	1	0	1	0	1	19
	2022	19	1	0	0	0	1	19
	2023	19	1	0	1	0	0	19
VA								
	2021	71	2	0	3	0	4	66
	2022	66	1	0	3	0	5	59
	2023	59	3	0	1	0	1	60
WI								
	2021	1	0	0	0	0	1	0
	2022	0	0	0	0	0	0	0
	2023	0	0	0	0	0	0	0

WV								
	2021	5	0	0	0	0	0	5
	2022	5	0	0	0	0	1	4
	2023	4	0	0	0	0	0	4
Totals								
	2021	257	3	0	9	0	13	238
	2022	238	3	0	7	0	13	221
	2023	221	8	0	6	0	7	216

Table No. 4

**Status of Company-Owned Outlets / Affiliate-Owned Outlets
For years 20201 to 20223**

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
State	Year	Outlets at Start of Year	Outlets Opened	Outlets Reacquired From Franchisees	Outlets Closed	Outlets Sold to Franchisees	Outlets at End of Year
All States							
	2021	0	0	0	0	0	0
	2022	0	0	0	0	0	0
	2023	0	0	0	0	0	0
Totals							
	2021	0	0	0	0	0	0
	2022	0	0	0	0	0	0
	2023	0	0	0	0	0	0

Table No. 5

Projected Franchise Openings as of November 30, 20223

State	Franchise Agreements Signed But Outlet Not Opened	Projected New Franchised Outlets In The Next Fiscal Year	Projected New Company-Owned or Affiliate-Owned Outlets in the Next Fiscal Year
CA	1	0	0

State	Franchise Agreements Signed But Outlet Not Opened	Projected New Franchised Outlets In The Next Fiscal Year	Projected New Company-Owned or Affiliate-Owned Outlets in the Next Fiscal Year
NC	1	0	0
SC	1	1	0
TX	5	0	0
VA	2	1	0
TOTAL	10	2	0

Exhibit U to this disclosure document contains a list of the names, addresses, and telephone numbers of all franchised Shops as of November 30, 2022~~3~~.

Exhibit U also includes a list of the franchisees who had an agreement terminated, canceled, not renewed, or who otherwise voluntarily or involuntarily ceased to do business under a Franchise Agreement and all franchisees that have not communicated with us within ten weeks before the issuance date of this Disclosure Document and also includes a list of the franchisees who had an outlet transfer during the past fiscal year.

We had 13 franchise owners who had an outlet terminated, canceled, not renewed, or otherwise voluntarily or involuntarily ceased to do business under the Franchise Agreements during the year ending November 30, 2022~~3~~. We had 13 franchise owners transfer an outlet during the year ending November 30, 2022~~3~~. We have not had any franchisees who have not communicated with us for the 10-week period before the date of this Disclosure Document.

No independent trademark-specific franchisee organizations have asked to be included in this Disclosure Document, and there are no franchisee organizations sponsored or endorsed by us.

If you buy a Franchised Business from us, your contact information may be disclosed to other buyers when you leave the franchise system. In some instances, current and former franchisees sign provisions restricting their ability to speak openly about their experience with the *sweetFrog* franchise system. You may wish to speak with current and former franchisees, but be aware that not all such franchisees will be able to communicate with you.

If you are purchasing a company-owned restaurant from us or one of our affiliates that was previously owned by a franchisee but is now owned and operated corporately by us or our affiliate, we will provide you with an addendum to this Disclosure Document disclosing additional information for that outlet for the last five fiscal years. A sample form of the addendum is attached to this Disclosure Document as Exhibit X.

ITEM 21: FINANCIAL STATEMENTS

Attached to this Disclosure Document as Exhibit V are our audited financial statements for the years ended November 30, 2022~~3~~, 2021~~2~~, and ~~2020~~ for the fiscal years ended on November 30, 2022, 2021 and 2020.

ITEM 22: CONTRACTS

Attached to this Disclosure Document are the following franchise-related contracts:

Exhibit D	Asset Purchase Agreement (For Sale of a Corporate Store to a Franchisee) with Promissory Note and Security Agreement and Guaranty (if applicable)
Exhibit E-1	Franchise Agreement (New)
Exhibit E-2	Franchise Agreement (Renewal)
Exhibit E-3	Franchise Agreement (Transfer)
Exhibit F-1	Guaranty of Franchise Agreement
Exhibit F-2	Non-Disclosure and Non-Competition Agreement
Exhibit G	Collateral Assignment and Irrevocable Special Power of Attorney
Exhibit H	Amendment to Franchise Agreement (for non-traditional locations excluding those co-branded with another affiliated brand)
Exhibit I	Amendment to Franchise Agreement (for co-branded non-traditional locations)
Exhibit J	In-Store Training Release and Waiver of Liability Agreement
Exhibit K	Addendum to the Franchise Agreement for SBA Loans
Exhibit L	Required Lease Terms (Lease Addendum to Lease Agreement)
Exhibit M	Lease Guaranty Acknowledgment
Exhibit N	Lease Review and/or Negotiation Agreement and Release and State Addenda
Exhibit O-1	Sublease and Guaranty of Sublease (Franchisee pays rent directly to Landlord)
Exhibit O-2	Sublease and Guaranty of Sublease (Franchisor or its affiliate collects rent from Franchisee and pays to Landlord)
Exhibit P	Pre-Authorized Electronic Funds Transfer Form
Exhibit P-1	Participation Agreement
Exhibit Q	General Release for Renewal of Franchise Agreement
Exhibit R-1	Consent to Transfer and Release Agreement (without Sublease)
Exhibit R-2	Consent to Transfer and Release Agreement (with Sublease)
Exhibit S	State Addenda to Franchise Documents
Exhibit W	Reserved
Exhibit X	Addendum for Sale of Company-Affiliated Owned Stores
Exhibit Y	Receipts

ITEM 23: RECEIPTS

Exhibit Y to this Disclosure Document is a detachable receipt. You are to keep one copy and return the other copy to us.

EXHIBIT D

TO THE FRANCHISE DISCLOSURE DOCUMENT

**Asset Purchase Agreement
(For Sale of a Corporate Store to a Franchisee)
with
Promissory Note and Security Agreement and Guaranty (if applicable)**

ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT ("Agreement"), dated _____ ("Execution Date") and which will be effective as of the Closing Date as defined in Section 5(a) below is by and between [SELLING ENTITY], a [state] [Corporation/Limited Liability Company, etc.] [LIQUOR LICENSE ENITITY if applicable] ("Seller" or as may be applicable the "Seller Parties"), and _____, a [state] [Corporation/Limited Liability Company, etc.] ("Purchaser"). Seller [or as applicable the Seller Parties] and Purchaser may also be referred to in this Agreement each individually as a "Party" and collectively as the "Parties."

Recitals

A. Seller owns certain assets of, maintains certain licenses of, and operates sweetFrog restaurant no. ____ ("Franchised Business") located at [store address, city and state] ("Premises"). [LIQUOR LICENSE ENITITY if applicable] owns certain assets of and maintains certain licenses of the Franchised Business [and executed a master lease] with respect to the Premises.

B. [LEASING ENTITY,] a(n) _____, affiliated with Seller ("Sublessor"), has executed a lease with respect to the Premises. [MONTH TO MONTH LANGUAGE IF APPLICABLE: Notwithstanding the foregoing, the Lease Agreement is currently on a month-to-month basis, and Purchaser is currently in direct negotiations with the landlord for the Premises to enter into a new lease directly with the landlord. Upon execution of said newly negotiated lease, the Lease Agreement shall be terminated and become null and void.]

C. Seller desires to sell and transfer to Purchaser, and Purchaser desires to purchase and acquire from Seller, substantially all of the assets owned by Seller and to be used in connection with the operation of the Franchised Business.

D. In conjunction with the execution of this Agreement, Purchaser executed a franchise agreement[, as amended,] to be effective as of the Closing Date (collectively, the "Franchise Agreement") with MTY Franchising USA, Inc., a Tennessee corporation, affiliated with Seller ("Franchisor").

E. In conjunction with the execution of this Agreement, Purchaser executed a sublease to be effective as of the Closing Date ("Sublease Agreement") with Sublessor and shall comply with all terms and conditions in the Sublease, including but not limited to, paying any additional security deposits, if required. [MONTH TO MONTH LANGUAGE IF APPLICABLE: Notwithstanding the foregoing, the Sublease Agreement is currently on a month-to-month basis and may be terminated by Sublessor with thirty (30) days prior written notice to Purchaser. As stated above, Purchaser is currently in direct negotiations with the landlord for the Premises to enter into a new lease directly with the landlord and upon execution of said newly negotiated lease, the Sublease Agreement shall be terminated and become null and void.]

Agreement

NOW, THEREFORE, in consideration of the foregoing promises and the mutual covenants and

agreements contained herein, the Parties hereby agree as follows:

1. Sale of Assets.

(a) **The Transferred Assets.** On the Closing Date (as defined in Section 5(a), below), Seller shall sell, transfer, convey, assign and deliver to Purchaser, and Purchaser shall purchase and acquire from Seller, all of the furniture, fixtures and equipment and other items owned by Seller and to be used in connection with the Franchised Business (excluding cash, company record books and tax records) (collectively, "Transferred Assets"), and to Seller's knowledge, free and clear of all liens, claims, charges, encumbrances and security interests of any nature or type whatsoever][**OR**][subject to the terms of the Franchise Agreement]. A list of the Transferred Assets is attached hereto as **Schedule 1 to Exhibit A.** Seller makes no representation or warranty, express or implied, regarding the merchantability of the Transferred Assets or the condition or quality thereof AND HEREBY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE and the Parties hereby agree that the Transferred Assets are being purchased in as "**AS IS**" condition. Each reference in this Agreement to the "Transferred Assets" of the Franchised Business shall mean and refer to the following:

- (i) All of the fixtures, equipment, signs and other tangible assets of the Franchised Business ("Equipment") as more fully described on **Schedule 1** attached to this Agreement and incorporated into this Agreement by reference.
- (ii) [IF LIQUOR LICENSE: The State of [_____] [State Agency Name] ("____") liquor license no. [_____] issued on [_____] and maintained by [entity] and used by [entity] in the operation of the Franchised Business ("License"), to the extent that such license is fully transferable or partially transferable in connection with Purchaser securing its own continuing operations permit (or something similar) with the [State Agency Name].

(b) **Excluded Assets.** The following assets shall be excluded from this transaction ("Excluded Assets"):

- (i) All cash in any safe located at the Franchised Business or any cash in banks and/or other financial institution accounts associated with the Franchised Business.
- (ii) The business records which relate to the operations of the Franchised Business for all periods prior to the date immediately preceding the Closing Date ("Business Records").
- (iii) All refunds of federal, state or local income or franchise taxes or worker's compensation insurance premiums due to either Seller or as may be applicable the Seller Parties, as of the date immediately preceding the Closing Date.
- (iv) All intellectual property rights of either Seller or as may be applicable the Seller Parties and/or Franchisor, as applicable.

(c) **Inventory.** The Purchase Price (as defined in Section 2) does not include: (i) consumable inventory including food products, perishables and paper products; or (ii) cash on hand.

2. Purchase Price.

(a) In consideration of the sale of the Transferred Assets, Purchaser shall pay:

[Simultaneously with the execution and delivery of this Agreement, the Purchase Price (as defined in Section 2(b) below) by electronic funds transfer, wire transfer, or cashiers' or certified check of immediately available funds.]

[OR]

[Simultaneously with the execution and delivery of this Agreement, the Purchase Price (as defined in Section 2(b) below) payable as set forth in the attached Promissory Note (as defined below) ("Deferred Payment").]

[OR]

[(i) Simultaneously with the execution and delivery of this Agreement, a non-refundable deposit in the amount of XX Thousand Dollars (**\$XX,000**) ("Deposit"), by electronic funds transfer, wire transfer, or cashiers' or certified check of immediately available funds; and

(ii) On the Closing Date, an amount equal to the difference between the Purchase Price (as defined in Section 2(b) below) minus the Deposit (such difference is referred to as "Purchase Price Balance"), by electronic funds transfer, wire transfer, or cashiers' or certified check of immediately available funds. OR On the Closing Date, XX Thousand Dollars (**\$XX,000**) ("Deferred Payment"), payable as set forth in the attached Promissory Note.]

(b) The "Purchase Price" is XX Thousand Dollars (**\$XX,000**), which shall be allocated as follows: [(i) XX Thousand Dollars (**\$XX,000**) to the leasehold improvements at the Premises;] [(ii) XX Thousand Dollars (**\$XX,000**) to the Transferred Assets, including all furniture, fixtures and equipment, as more fully described in Schedule 1 to the Bill of Sale, attached hereto as Exhibit A, and incorporated herein by reference.]

3. Representations and Warranties.

(a) To induce Purchaser to enter into this Agreement and to perform Purchaser's obligations hereunder, and with full knowledge that Purchaser will rely thereon, Seller represents and warrants as follows:

(i) Seller has title to and rightful possession to the Transferred Assets, and each of the Transferred Assets is and shall, upon the delivery thereof to Purchaser, be free and clear of recorded and publicly available liens, claims, charges, encumbrances and security interests.

(ii) Seller is a limited liability company duly organized, validly existing and in good standing under the law of the State of [State].

- (iii) Seller has full right, power and authority to execute and deliver this Agreement, and to consummate the transactions contemplated hereby.
 - (iv) This Agreement has been duly executed and delivered by Seller and constitutes the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms.
 - (v) Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will conflict with, violate or result in a breach of or default under (with or without the giving of notice or the passage of time, or both): (a) any license, instrument, contract or agreement to which Seller is a party or by which Seller is bound, or (b) the articles of incorporation or the bylaws of Seller. Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will result in the creation of any lien, claim, charge, encumbrance or security interest of any nature or type whatsoever with respect to the Transferred Assets. Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will require any consent or approval of, or any filing with, any governmental entity or other person.
 - (vi) On the Closing Date, the Transferred Assets are being purchased in “**AS IS**” condition and will comprise all of the assets and property necessary to conduct the Franchised Business in accordance with Franchisor’s confidential operations manual (“Confidential Manual”).
 - (vii) The development and/or conduct of the Franchised Business, and the ownership and use of the Transferred Assets in accordance with Franchisor’s Confidential Manual, complies, or will (as of the Closing Date) comply, with all applicable federal, foreign, state and local laws, regulations and ordinances; provided, however, that Purchaser may be required to obtain certain licenses and permits in connection with the operation of the Franchised Business.
- (b) To induce Seller to enter into this Agreement and to perform Seller’s obligations hereunder, and with full knowledge that Seller will rely thereon, Purchaser represents and warrants as follows:
- (i) Purchaser is a [type of entity] duly organized, validly existing and in good standing under the law of the State of [state].
 - (ii) Purchaser has full right, power and authority to execute and deliver this Agreement, and to consummate the transactions contemplated hereby.
 - (iii) This Agreement has been duly executed and delivered by Purchaser and constitutes the legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms.
 - (iv) Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will conflict with, violate or result in a breach of or default under (with or without the giving of

notice or the passage of time, or both): (a) any license, instrument, contract or agreement to which Purchaser is a party or by which Purchaser is bound, or (b) the certificate of incorporation or the bylaws (or other comparable charter documents) of Purchaser. Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will require any consent or approval of, or any filing with, any governmental entity or other person.

- (v) Purchaser acknowledges that:
 - (a) There are several potential locations for the location of Purchaser's sweetFrog restaurant;
 - (b) The decision to establish and operate Purchaser's sweetFrog restaurant at the Premises was made solely by Purchaser, without any reliance upon any information provided (if any), recommendation made (if any) or approval given by Seller, any area representative, Sublessor, or any of their respective shareholders, directors, officers, employees, representatives, agents or affiliates;
 - (c) Seller's selection and approval of the Premises as a site for sweetFrog restaurant provides no assurance or guaranty as to Purchaser's results of operations in connection with its sweetFrog restaurant at the Premises;
 - (d) Purchaser has reviewed the lease (including all amendments and addendums) with respect to the Premises and approves of the terms thereof, including rental payment amounts;
 - (e) Purchaser accepts full responsibility for the consequences of Purchaser's decision to open and operate sweetFrog restaurant at the Premises.

4. Interim Period [ONLY IF APPLICABLE].

- (a) Between the Execution Date and the Closing Date, as applicable, Seller has operated the Franchised Business, in accordance with Seller's standard operating procedures for operating sweetFrog restaurants and the Franchised Business is open to the public for business.
- (b) Purchaser shall attend Franchisor's training program, if so required by Franchisor in the Franchise Agreement.

5. Closing.

- (a) Subject to the conditions set forth in Sections 5(b) and 5(c) hereof, the transactions contemplated by this Agreement shall be consummated on the date that Seller turns over the Franchised Business to Purchaser which is estimated to be on or around _____ ("Closing Date") at an office designated by Seller or at another mutually agreeable location.

(b) Notwithstanding anything contained in this Agreement to the contrary, the obligations of Seller to consummate the transactions contemplated by this Agreement are subject to the satisfaction at or prior to the Closing Date of the following conditions, any of which may be waived by Seller, in its sole discretion. Purchaser shall use its best efforts to cause each and every one of the following conditions to be satisfied at or before the Closing Date.

[(i) Purchaser shall have delivered to Seller the [Purchase Price] or [Purchase Price Balance], as set forth in Section 2 of this Agreement;]

[OR]

[(i) Purchaser shall have executed and delivered to Seller the Promissory Note and Security Agreement attached hereto as **Exhibit B** (“Promissory Note”) in the amount of the Deferred Payment and any upfront, non-refundable payments due pursuant to Section 2 in the form of cash or by cashiers’ or certified check;]

(ii) Purchaser shall have executed and delivered to Franchisor the Franchise Agreement and to Sublessor the Sublease with respect to the Premises, in the forms then being executed by new franchisees of Franchisor and sublessees of Sublessor;

(iii) Purchaser shall have delivered to Sublessor the Sublease Security Deposit in the amount of _____ Dollars (\$_____) as defined in the Sublease [and a Lease Security Deposit in the amount of _____ Dollars (\$_____)] as defined in the Sublease in connection with the Premises as contemplated by the Sublease and pursuant to Section 5(d) below, as applicable;

(iv) Purchaser shall have delivered to Franchisor the Initial Franchise Fee in the amount of _____ Dollars (\$_____) as defined in the Franchise Agreement; and

(v) The representations and warranties of Purchaser contained in this Agreement shall be true and correct on and as of the Closing Date, and each and all of the terms, covenants, conditions and agreements to be performed or complied with by Purchaser on or before the Closing Date shall have been performed or complied with. This provision shall be self-executing, and the consummation of the transactions contemplated by this Agreement by Purchaser shall constitute Purchaser’s certification of the conditions stated herein.

Assuming that Seller satisfied all of the conditions precedent contained in Section 5(c), if any of the requirements of this Section 5(b) have not been satisfied by the Closing Date, Purchaser shall be in breach of its obligations hereunder.

- (c) Notwithstanding anything contained in this Agreement to the contrary, the obligations of Purchaser to consummate the transactions contemplated by this Agreement are subject to the satisfaction at or prior to the Closing Date of the following conditions, any of which may be waived by Purchaser, in its sole discretion. Seller shall use its best efforts to cause each and every one of the following conditions to be satisfied at or before the Closing Date.
- (i) As of the Closing Date, there shall have been no material adverse change in the Franchised Business, the Transferred Assets or the Premises, or the condition thereof, since the date of this Agreement, other than changes contemplated by Section 5;
 - (ii) Seller shall have delivered to Purchaser the Bill of Sale executed by Seller; and
 - (iii) The representations and warranties of Seller contained in this Agreement shall be true and correct on and as of the Closing Date, with the same effect as though such representations and warranties had been made on and as of the Closing Date; and each and all of the terms, covenants, conditions and agreements to be performed or complied with by Seller on or before the Closing Date shall have been performed or complied with. This provision shall be self-executing, and the consummation of the transactions contemplated by this Agreement by Seller shall constitute Seller's certification of the conditions stated herein.

Assuming that Purchaser has satisfied all of the conditions precedent contained in Section 5(b), if any of the requirements of this Section 5(c) (other than the requirement contained in clause (i) if such material adverse change shall be beyond the control of Seller) has not been satisfied by the Closing Date, Seller shall be in breach of its obligations hereunder.

- (d) The rent payable pursuant to the lease for the Premises shall be paid by Sublessor for the month in which the Closing Date occurs and Purchaser shall pay to Sublessor (on a per diem basis, based upon a thirty (30)-day month) an amount equal to the rent prepaid by Sublessor with respect to the period on and after the Closing Date, via an EFT, ACH, or other type of debit authorized (in which case Seller or Sublessor, as may be applicable, will bill Purchaser for such pro-rated rent amount).
- (e) Seller shall be responsible for all compensation to employees of the Franchised Business for the period through the date immediately preceding the Closing Date. Purchaser shall be responsible for all compensation to employees of the Franchised Business for the period on and after the Closing Date. Notwithstanding anything contained in this Agreement to the contrary, Purchaser shall not be obligated to employ any of Seller's employees after the Closing Date.
- (f) Seller shall be responsible for all costs, fees and expenses relating to the Franchised Business, including but not limited to CAM reconciliation charges and property taxes, on a pro-rated basis for the period through the date immediately preceding the Closing Date. Purchaser shall be responsible for all costs, fees and expenses relating to the Franchised Business, including but not limited to CAM

reconciliation charges and property taxes, on a pro-rated basis for the period on and after the Closing Date.

- (g) As of and after the Closing Date, Purchaser shall assume, acquire, take over, become responsible for, and promise to pay all contracts, leases, agreements and other liabilities (collectively the "Assumed Liabilities") in connection with the Franchised Business except for those contracts, leases, agreements and other liabilities which are specifically excluded as set forth below:

__ [List all contracts, leases, agreements and other liabilities which Purchaser is NOT assuming] OR [List "None"] __

- (h) Purchaser shall indemnify, defend and hold Seller free and harmless from and against any and all "Losses" (as defined below), which Seller shall incur or suffer which arise or result from the operation or conduct of the business of the Franchised Business by Purchaser as of and after the Closing Date, including, but not limited to, any Losses arising from any default of Purchaser arising under the Franchise Agreement or Sublease, and from any default of Purchaser with respect to the Assumed Liabilities. "Losses" shall mean any and all obligations, liabilities, costs (including, but not limited to, reasonable attorneys' fees), expenses, damages and losses actually incurred by Seller, net of any insurance proceeds and material tax adjustments, benefits, savings or reductions to which Seller is entitled by virtue of such obligations, liabilities, costs, expenses, damages and losses; provided however, that "Losses" exclude all consequential damages of any kind (including, but not limited to, loss of revenue or income, cost of capital or loss of business reputation or opportunity). As of and prior to the Closing Date, Seller shall have good and marketable title to the Transferred Assets, free and clear of any and all liens, claims, judgments, taxes, encumbrances, security interests, debts or other adverse claims or rights of any kind, except as otherwise provided herein. Seller agrees to indemnify Purchaser from and against any and all liens, claims, judgments, taxes, encumbrances, security interests, debts or other adverse claims or rights of any kind, which accrued up through the date immediately preceding the Closing Date, whether or not known by either Seller or Purchaser (including those discovered at any future date). Any and all liens, claims, judgments, taxes, encumbrances, security interests, debts or other adverse claims or rights of any kind which accrue on or after the Closing Date are the sole obligation and responsibility of the Purchaser.

6. Notices. All notices, consents, approvals or other instruments required or permitted to be given by either Party pursuant to this Agreement shall be in writing and given by (a) hand delivery, (b) facsimile, (c) express overnight delivery service or (d) certified or registered mail, return receipt requested, and shall be deemed to have been delivered upon (i) receipt, if hand-delivered, (ii) transmission, if delivered by facsimile, (iii) the next business day following the date of deposit with the delivery service, if delivered by express overnight delivery service, or (iv) the third business day following the day of deposit of such notice with the United States Postal Service, if sent by

certified or registered mail, return receipt requested. Notices shall be provided to the Parties at the addresses and facsimile numbers specified below:

If to Seller: [Selling Entity]
Attention: Legal Department
9311 East Via De Ventura
Scottsdale, Arizona 85258
Telephone Number: (480) 362-4800
Facsimile Number: (480) 362-4819

If to Liquor License Entity (if applicable) [Liquor License Entity]
Attention: Legal Department
9311 East Via De Ventura
Scottsdale, Arizona 85258
Telephone Number: (480) 362-4800
Facsimile Number: (480) 362-4819

If to Purchaser: [Purchaser]
[address]
Telephone Number:
Facsimile Number: OR Email:

Any Party may change its address or facsimile number by giving notice in writing, stating its new address or facsimile number, to the other Party to this Agreement as provided in the foregoing manner.

7. **[USE ONLY IF BROKER INVOLVED WITH SALE, OTHERWISE RESERVE][Brokers' Fees.** Seller has retained Broker Entity ("Broker") as broker in connection with the sale of the Transferred Assets contemplated hereby. The Seller shall be solely responsible for the payment of any fees due Broker in connection with the sale of the Transferred Assets contemplated hereby.]

8. **Survival.** Each of the representations, warranties and covenants contained herein shall survive the Closing Date, irrespective of any investigation or inquiry made by, or any knowledge of, any Party.

9. **Successors and Assigns.** This Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective assigns, legal representatives, executors, heirs and successors.

10. **Amendment, Modification or Waiver.**

- (a) No amendment, modification or waiver of any condition, provision or term of this Agreement shall be valid or of any effect unless made in writing, signed by the Parties and specifying with particularity the nature and extent of the amendment,

modification or waiver. Waiver of any matter shall not be deemed a waiver of the same or any other matter on any future occasion.

- (b) Failure on the part of any Party to complain of any act or failure to act of the other Party or to declare the other Party in default, irrespective of how long the failure continues, shall not constitute a waiver by that Party of its rights under this Agreement.

11. Entire Agreement. This Agreement, including the exhibits hereto, contains the entire understanding and agreement of the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings between the Parties with respect to such subject matter. Each of the exhibits is incorporated in this Agreement by this reference and constitutes a part of this Agreement.

12. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Party.

13. Dispute Resolution.

- (a) Except as otherwise provided herein, any dispute, claim or controversy arising out of or relating to this Agreement, the breach hereof, the rights and obligations of the Parties hereto or the relationship between the Parties, or the entry, making, interpretation, or performance of either Party under this Agreement ("Dispute"), which cannot be resolved by mediation under Section 13(d) below or is not subject to mediation under the terms of this Agreement, shall be settled by arbitration administered by the American Arbitration Association ("AAA") in accordance with its Commercial Arbitration Rules as modified below.
- (b) Any arbitration shall take place before a sole arbitrator in Maricopa County, Arizona or, if Seller's headquarters are no longer located in Maricopa County, Arizona, then the arbitration shall take place in the county in which Seller's principal place of business is located at the time the arbitration is commenced. Purchaser agrees to conducting the arbitration where Seller is located is appropriate. The Parties agree that the arbitrator shall be an attorney licensed to practice law in the United States and must have a minimum of five (5) years of experience in franchise law. Judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The arbitrator shall, in the award, allocate all of the costs of the arbitration, including but not limited to the fees of the arbitrator and the reasonable attorney's fees of the prevailing Party, against the Party who did not prevail. To the extent permitted by applicable law, no issue of fact or law shall be given preclusive or collateral estoppel effect in any other dispute, arbitration proceeding or litigation, except to the extent such issue may have been specifically determined in another proceeding between the Parties. This agreement to arbitrate shall survive any termination or expiration of this Agreement, however effected. The Parties agree that any arbitration shall be solely between them (including any affiliates) and shall not include as a party, by consolidation, joinder, or in any other manner, any other person or entity, unless both Parties consent in writing. Both Parties shall have the absolute right to refuse such consent. Further, the Parties expressly waive any right to bring and/or participate in any class or other consolidated, joined or multi-party arbitration claim or proceeding, whether or not

permissible under the AAA Commercial Arbitration Rules, including, but not limited to, any claim brought on their behalf by an association of which it, he or she is a member. At the request of any Party, the arbitration shall be conducted in a manner that maintains the confidentiality of the proceedings.

- (c) The arbitrator(s) will issue a reasoned award, with findings of fact and conclusions of law. Actions to enforce an express obligation to pay monies may be brought under the Expedited Procedures of the AAA's Commercial Arbitration Rules. The Federal Arbitration Act shall govern, excluding all state arbitration laws. Arizona law will govern all other issues. With respect to discovery, the arbitrator shall require each Party to make a good cause showing before any discovery exceeding that specifically authorized by the AAA Commercial Arbitration Rules will be granted.
- (d) Prior to the commencement of an arbitration proceeding, the Parties must first submit any Dispute to non-binding mediation. At the request of any Party, the mediation will be confidential. The mediation shall be conducted in Maricopa County, Arizona or in the county in which Seller's headquarters are located at the time of mediation, unless the Parties shall mutually agree to a different location. The Parties to the mediation will share equally in its costs and expenses, except those costs and expenses incurred separately by each Party, including, without limitation, counsel fees and expenses. The mediation process will be deemed "Completed" when the Parties agree that it has been completed, the mediator declares that any impasse exists or sixty (60) days have elapsed since the date of the initiating Party's notice to the other Party that it is initiating the mediation process, whichever occurs first.
- (e) Notwithstanding anything contained in this Agreement to the contrary, the provisions of Sections 13(a), 13(b), 13(c) and 13(d) do not apply to a Dispute where: (i) Seller brings an action for an express obligation to pay monies, declaratory relief, preliminary or permanent equitable relief, any action at law for damage to Seller's goodwill, the confidential information, the proprietary marks or for fraudulent conduct by Purchaser; or (ii) the delay resulting from the mediation process may endanger or adversely affect the public (for example, unhealthy, unsafe or unsanitary conditions would continue to exist). For such disputes, Seller may bring an action in any federal or state court having jurisdiction, whether for monetary damages and/or for temporary preliminary and permanent injunctive relief or specific performance in addition to, and not exclusive of, any other remedies available to Seller. Purchaser hereby consents to and waives any objection or defense and agrees not to contest venue, forum non conveniens or jurisdiction of such court or arbitration.
- (f) Disputes concerning the validity or scope of arbitration, including, but not limited to, whether a dispute is subject to arbitration, are beyond the authority of the arbitrator(s) and will be determined by a court of competent jurisdiction pursuant to the Federal Arbitration Act, 9 U.S.C. § 1 et seq., as amended from time to time.
- (g) Either Party may appeal the final award of the arbitrator, if it is over One Hundred Thousand Dollars (\$100,000), to the appropriate U.S. District Court. The Court's review of the arbitrator's findings of fact will be under the clearly erroneous standard, and the Court's review of all legal rulings will be *de novo*. If it should be

determined that this provision for federal court review is not enforceable, then either Party may appeal the arbitrator's final award, if it is over One Hundred Thousand Dollars (\$100,000), to a panel of three arbitrators chosen under AAA procedures, which will employ the same standards of review stated immediately above.

14. Applicable Law and Forum; Waiver of Jury; Statute of Limitations.

Except to the extent that the United States Trademark Act of 1946, as amended (15 U.S.C., § 1051 et seq.) or the franchising laws of any state may be applicable, the laws of the State of Arizona govern all rights and obligations of the Parties under this Agreement. Seller and Purchaser agree, subject to the mandatory mediation and arbitration provisions of Section 13 of this Agreement, that any appropriate state or federal court located in Maricopa County, Arizona has exclusive jurisdiction over any Dispute arising under or in connection with this Agreement and is the proper forum in which to adjudicate the case or controversy. Notwithstanding the foregoing, any action initiated by Seller may, at Seller's election, be brought in any jurisdiction where Purchaser is domiciled or that has jurisdiction over Purchaser. The Parties hereto irrevocably submit to the jurisdiction of, and venue in, any such court, and hereby waive any objection or defense thereto. THE PARTIES AGREE THAT ALL DISPUTES SUBMITTED TO THE COURT PURSUANT TO THIS SECTION SHALL BE TRIED TO THE COURT SITTING WITHOUT A JURY, NOTWITHSTANDING ANY STATE OR FEDERAL CONSTITUTIONAL OR STATUTORY RIGHTS OR PROVISIONS.

Notwithstanding anything contained in this Agreement to the contrary, the Parties agree that any claims under, arising out of, or related to, this Agreement must be brought within two (2) years of the date on which the underlying cause of action accrued, and Seller and Purchaser hereby waive any right to bring any such action after such two-year period except for the collection of any unpaid amounts due to Seller or its affiliate.

15. Attorneys' Fees. In the event of any claim, controversy or dispute arising out of or relating to this Agreement, including, but not limited to, the breach thereof, the prevailing Party may recover reasonable attorneys' fees incurred in connection with any court or arbitration proceeding.

16. Remedies Cumulative. The remedies of the Parties under this Agreement are cumulative and shall not exclude any other remedies to which any Party may be lawfully entitled.

17. Captions. Captions used throughout this Agreement are for convenience of reference only and shall not be considered in any manner in the construction or interpretation hereof.

18. Additional Actions. Each Party agrees to do all acts and things and to make, execute and deliver such written instruments as may from time to time be reasonably required to carry out the terms and provisions of this Agreement.

19. Construction. The Parties acknowledge that each Party was represented (or had the opportunity to be represented) by legal counsel in connection with this Agreement, the exhibits hereto and the transactions contemplated by this Agreement and that each of them and its counsel have reviewed this Agreement, or have had an opportunity to do so, and that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not

be employed in the interpretation of this Agreement or any amendments or any exhibits hereto or thereto.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto, by and through its respective representatives with full rights, power and authority to enter into and bind his or her respective Party without further consent or approval of any kind, has duly executed and delivered this Agreement as of the ~~Effective Execution Date~~ and effective as of the Effective Date.

SELLER:

[SELLING ENTITY,]
a(n) _____

By: _____
[Name,] [Title]

[Liquor License Entity (if applicable)]:

[ENTITY,]
a(n) _____

By: _____
[Name,] [Title]

PURCHASER:

[PURCHASER],
a(n) _____

By: _____
[Name, Title]

By: _____
[Name, Title]

EXHIBIT A
TO ASSET PURCHASE AGREEMENT
(BILL OF SALE)

BILL OF SALE

This BILL OF SALE, dated _____, executed by [SELLING ENTITY], a(n) _____ [IF LIQUOR LICENSE ENTITY] ("Grantor") in favor of [PURCHASER], a(n) _____ ("Grantee").

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, Grantor does hereby convey, grant, bargain, sell, transfer, set over, assign, alien, remise, release, deliver and confirm unto Grantee, its successors and assigns forever, free and clear of all liens, security interests, claims, charges or encumbrances of any kind, the assets listed on **Schedule 1** attached hereto (collectively, " Transferred Assets"), TO HAVE AND TO HOLD all of the Assets unto Grantee, its successors and assigns to their own use and behoof forever.

The following are excluded assets and are excluded from **Schedule 1**:

- a. Cash deposits, including, but not limited to, any utility and security deposits, banks accounts, certificates of deposit, securities or evidences of indebtedness received prior to and including the date of this Bill of Sale;
- b. Credit card or house accounts receivable from sales generated from the Franchised Business and constituting a part thereof, prior to and including the date of this Bill of Sale, any other accounts receivable, or choses of action accruing on or before the Closing Date, as defined in the Asset Purchase Agreement; and
- c. Consumable inventory including, but not limited to, food products, perishables, paper products, cash on hand and other goods.

EXECUTED as of the date first set forth above.

[IF LIQUOR LICENSE ENTITY]

GRANTOR:

[SELLING ENTITY],
a(n) _____

By: _____
[Name, Title]

Schedule 1 to Bill of Sale

List of Assets

1. All telephone numbers used in connection with the Franchised Business, including, without limitation, the following:
2. The leasehold under the master lease along with all improvements which may be associated with the Franchised Business.
3. All goodwill associated with the Franchised Business.
4. [IF LIQUOR LICENSE: The License maintained by [Entity] as may be transferrable under [applicable State] law.
5. All of Grantor's furniture, fixtures and equipment, appliances and personal property located at the Franchised Business, including, without limitation, the following:

Quantity

Description

Serial Number

EXHIBIT B
TO ASSET PURCHASE AGREEMENT

(PROMISSORY NOTE AND SECURITY AGREEMENT)

[Attached]

[Not Applicable] [OR] [Applicable only if Purchaser enters into a Promissory Note and Security Agreement]

PROMISSORY NOTE AND SECURITY AGREEMENT

Note Amount:
[\$AMOUNT]

Scottsdale, Arizona
[DATE]

1. Promise to Pay. For value received, [NAME], a(n) [_____ corporation / limited liability company / individual] (“Maker”), promises to pay to the order of [Holder Entity], a [state] [Corporation/Limited Liability Company, etc.] (“Holder”), at 9311 East Via De Ventura, Scottsdale, Arizona 85258, or at such other address as Holder may designate at any time by written notice to Maker, in lawful money of the United States of America, the principal sum of XX Thousand Dollars (**XX,000.00**) together with all then-accrued and unpaid interest and other amounts that are Maker’s obligations under this Promissory and Security Agreement (“Note”), if any. Maker and Holder may also be referred to in this Agreement as a “Party” and collectively as “Parties.” The Note balance represents the principal amount owing by Maker to Holder for the purchase price of the Store (as defined below) due under the Asset Purchase Agreement in the aggregate amount of XX Thousand Dollars (**XX,000.00**) [plus the UCC-1 filing fee (as described in Section 7) in the amount of One Hundred Dollars (\$100)(collectively,]“Debt”) for the sweetFrog store number ___ at the following location _____ (“Store”).

2. Computation of Interest. Except as otherwise set forth in this Note, this Note shall [not bear interest OR bear interest at the rate of ___% per annum] based on a ___ [month/year] amortization schedule.

3. Required Payments; Method of Payment. Principal and interest, if any, shall be repaid to Holder in a total of _____ (XX) [weekly/monthly] installments, consisting of the first _____ (XX) installments in the amount of _____ **AND xx/100 DOLLARS (\$_____.__)**, and the final installment in the amount of _____ **AND xx/100 DOLLARS (\$_____.__)** which installments shall be due on the [day of the week, or date of the month] (X^{xx}) of each consecutive [week / month], with the first installment due on [DATE] and the final installment due on [DATE], all as set forth on the Amortization Schedule attached hereto as **EXHIBIT “1”** and incorporated herein by reference. Maker authorizes Holder (or one of its affiliates) to deduct payments owed by Maker (or one of its affiliates) to Holder under this Note out of Maker’s bank accounts via electronic funds transfer in the same way Holder (or one of its affiliates) is authorized to collect payment under the Franchise Agreement entered into by and between Holder and Maker dated _____, 20__ or other franchise documents that Maker (or a related entity) entered into with Holder (or one of its affiliates) for the Store (individually and collectively, “Franchise Agreement”). All payments due under this Note shall be deducted by Holder’s close of business from Maker’s Depository Account (as defined in the Franchise Agreement) on the day they are due (or the preceding banking business day if such date is a holiday or falls on a weekend). Holder shall not be responsible for any interest charges for any overage collected due to Maker’s failure to timely authorize payment. Additionally, Holder shall not be responsible for any bank service charges incurred by Maker which result in the withdrawal of funds from Maker’s Depository Account. Maker shall pay Holder FIFTY AND 00/100 DOLLARS (\$50.00) for each withdrawal attempted from Maker’s Depository Account pursuant to this Section 3 that is returned for non-sufficient funds. Maker shall also reimburse Holder for all other costs incurred by Holder in collecting or attempting to collect funds due Holder from the Depository Account (for example, without limitation, charges for non-sufficient funds, uncollected funds or other discrepancies in deposits or maintenance of the Depository Account balance in accordance with the terms of the Franchise Agreement). Holder does not have to make or give “presentment, demand, protest or notice” to get paid. Maker hereby waives any right to “presentment, demand, protest and notice” as set forth in Section 10 below.

4. Application of Payments. All payments and other credits due under this Note shall be applied: [if part of Note balance a non-refundable fee (i) first to the amount of principal allocated to the Initial Franchisee Fee/Renewal Fee/Transfer Fee,] [(i) first][(ii) second,] to fees, costs and expenses payable by Maker under this Note, [(ii) second,][(iii) third,] to accrued and unpaid interest, if any, and [(iii) third][(iv) fourth,] to principal.

5. Collection Costs. If suit, arbitration, or other legal proceeding or any non-judicial foreclosure proceeding is instituted or any other action is taken by Holder to collect all or any part of the indebtedness evidenced hereby or to proceed against the Collateral (as defined below) for any portion of such indebtedness or against any guarantor of the payment of any portion of the indebtedness, Maker promises to pay Holder's attorneys' fees and other costs (to be determined by the court and not by a jury) incurred thereby. Such fees and costs shall be included in any judgment or arbitration award obtained by Holder, and shall bear interest at the default rate set forth in Section 12.

6. Optional Prepayments. Maker shall have the option to prepay this Note, in full or in part, at any time and from time to time, without penalty. Maker shall identify each optional prepayment of principal as such by written notice to Holder at the time of payment, and no such prepayment shall decrease or defer the monthly installment payments required by Section 3 above.

7. Security Interest. The indebtedness evidenced by this Note shall be secured by, and Maker hereby grants to Holder, a security interest in the equipment, inventory, leasehold improvements, and all proceeds thereof, and all increases, additions, accessories, accessions, substitutions, and replacements thereto located at the Store including, without limitation, insurance proceeds ("Collateral"). A description of the Collateral is attached hereto as **EXHIBIT "2"** and incorporated herein by reference. Concurrent with the execution of this Note or at any time after the execution of this Note so long as a balance remains outstanding under this Note, Maker shall execute and deliver to Holder, or alternatively Maker gives Holder permission to file, at Maker's expense, a UCC-1 financing statement, evidencing the security interest granted by this Section 7.

8. Guaranty of Promissory Note and Security Agreement. [If Maker is an individual and married, Maker represents and warrants that Maker's obligations under this Note are guaranteed by Maker's spouse and/or any other individuals requested by Holder as consideration for its agreements herein (together, "Guarantors"), pursuant to the Guaranty of Promissory Note and Security Agreement attached hereto as **EXHIBIT "3"** and incorporated herein by reference.] If Maker is a corporation, limited liability company, or other business entity, Maker represents and warrants that Maker's obligations under this Note are guaranteed by each of the persons who are shareholders, members, or other owners, direct or indirect, of Maker (and their respective spouses, if married); and/or any other individuals requested by Holder as consideration for its agreements herein (together, also "Guarantors"), pursuant to the Guaranty of Promissory Note and Security Agreement attached hereto as **EXHIBIT "3"** and incorporated herein by reference. In the event any person who has not previously signed a Guaranty of Promissory Note and Security Agreement becomes Maker's spouse; person who is a shareholder, member, or other owner, direct or indirect, of Maker (or their respective spouses, if married); and/or any other individual requested by Holder as consideration for its agreements herein, at any time after the execution of this Agreement, Maker must cause such person(s) to immediately execute and deliver a Guaranty of Franchise Agreement to Holder.

9. Maker's Representations and Warranties. Maker represents and warrants the

following:

A. Collateral.

(i) Maker will make sure that the Collateral is maintained and in good operating condition, necessary to the conduct of Maker's business. All maintenance must also comply with any legal or regulatory requirements.

(ii) Maker will make sure that Maker has not suffered any material adverse change in Maker's financial condition or operations.

(iii) Maker will protect and preserve the Collateral and Holder's security interest therein, and assist Holder in all ways in enforcing Holder's security interests in the Collateral.

(iv) Maker will not incur any debts beyond Maker's ability to pay such debts as they mature.

(v) Maker will pay, before they become delinquent, all taxes and claims, assessments, charges, and the like, as well as all amounts due under all agreements with third parties.

(vi) Maker will take all actions necessary or appropriate to protect the Collateral that consists of technology and proprietary information. This includes, without limitation, filing all applicable documentation with the United States and foreign patent and trademark offices.

(vii) Holder will give Maker prior notice if Holder, or Holder's agents, want to inspect the Collateral. Holder may inspect the Collateral during regular business hours. Holder will take reasonable steps not to interfere with Maker's business operations during any such inspection. If Holder finds during an inspection that Maker is not complying with this Note or if Maker is otherwise in default under this Note, Maker (and not Holder) will pay Holder's reasonable travel, meals and lodging costs, Holder's salary costs, and Holder's costs and fees and those of Holder's agents for re-inspection. Maker will promptly cure any problems with the Collateral that are discovered during Holder's inspections.

(viii) Maker will use the Collateral only for business purposes. Maker will obey all legal and regulatory requirements in Maker's use of the Collateral and the conduct of Maker's business.

(ix) Maker will make all additions, modifications and improvements to the Collateral to the extent necessary. Otherwise, Maker will not alter the Collateral without Holder's written permission.

(x) Maker will not remove the Collateral from the Store location.

(xi) Maker has and will continue to have good and merchantable title to all of the Collateral, free and clear of all security interests, liens and other encumbrances, with the exception of Holder's lien described in Section 7 above.

(xii) Maker will not convey, assign, sell, mortgage, transfer, encumber, pledge, hypothecate, grant a security interest in, grant options with respect to, lease or otherwise dispose of all or any part of any interest whatsoever in or to any or all of the Collateral, or any interest therein.

B. Insurance.

(i) Until Maker has made all payments to Holder under this Note in full, Maker will keep the Collateral insured. The amount of insurance, the coverage, and the insurance company must be acceptable to Holder.

(ii) If Maker does not provide Holder with written evidence of insurance that is acceptable to Holder, Holder may buy the insurance, at Maker's expense. Maker will promptly pay Holder the cost of this insurance. Holder has no obligation to purchase any insurance. Any insurance that Holder purchases will be Holder's insurance, and not Maker's, and Holder may insure the Collateral beyond the date of satisfaction of the Debt.

(iii) Insurance proceeds may be used to repair or replace damaged or lost Collateral or to pay Holder the present value of the payments described herein.

(iv) Maker appoints Holder as Maker's "attorney-in-fact" to make claims under the insurance policies, to receive payments under the insurance policies, and to endorse Maker's name on all documents, checks or drafts relating to insurance claims for Collateral. Upon request by Maker, Holder will provide Maker with copies of any and all documents signed as Maker's attorney-in-fact. Holder agrees to pay Maker any insurance proceeds received by Holder in excess of the any and all amounts due Holder under this Note.

10. Waivers and Acknowledgments. Maker, and any sureties, endorsers and guarantors of all or any portion of the indebtedness evidenced by this Note waive: (a) demand, notice, diligence, protest, presentment for payment, and notice of extension, dishonor, protest, demand and nonpayment of this Note; and (b) any release or discharge by reason of (i) any release or substitution of, or other change in, any security given for the indebtedness evidenced by this Note or the obligation of any other person or entity who or which is now or may become directly or indirectly liable for all or any portion of the indebtedness evidenced by this Note, or (ii) any extension or other modification of the time or terms of payment of all or any portion of the indebtedness evidenced by this Note. Maker, and any sureties, endorsers and guarantors agree that their liability for the indebtedness evidenced hereby shall be joint and several.

11. Default, Take-Back Rights and Additional Remedies.

A. Default. Maker will be in default if any of the following occurs:

(i) Maker does not pay Holder, within seven (7) days after written notice is received by Maker from Holder, any payment that Maker owes Holder under this Note, the Franchise Agreement (including, but not limited to, royalty and advertising fees) or any other agreement, loan, debt, lease or other financial arrangement that Maker has with Holder or one of its affiliates (each a "Payment Default").

(ii) Any of the financial information that Maker gives Holder is not materially true and complete, or Maker fails to tell Holder anything that would make the financial information not materially misleading.

(iii) Maker does something it is not permitted to do, or Maker fails to do anything that is required of them, under this Note, the Franchise Agreement or any other lease, loan, debt or other financial arrangement that Maker has with Holder and such breach continues uncured for a period of seven (7) days after Holder has given written notice of such default to Maker, provided that such cure period shall not apply to any covenant relating to insurance covering the Collateral described in Section 7.

(iv) An event of default occurs under the Franchise Agreement, or under any other lease, loan, debt or obligation of Maker (or any guarantor) that exceeds Fifty Thousand Dollars (\$50,000) in the aggregate that results in the acceleration or mandatory prepayment thereof.

(v) Maker files bankruptcy, or involuntary bankruptcy is filed against Maker or any guarantor and such involuntary bankruptcy is not dismissed within sixty (60) days.

(vi) Maker is subject to any other insolvency proceeding other than bankruptcy (for example, a receivership action or an assignment for the benefit of creditors) and such proceeding that is involuntary is not dismissed within sixty (60) days.

(vii) Without Holder's permission, Maker sells all or a substantial part of Maker's assets, merges or consolidates (other than with an affiliate where Maker is the surviving entity), or a majority of Maker's voting stock or interests (or any guarantor's voting stock or interests) is transferred.

(viii) There is a material adverse change in Maker's financial condition, business or operations.

B. "Take Back Rights." In the event of a Payment Default, Maker hereby grants Holder the following "Take Back Rights" (as defined below in this Section 11.B.) with respect to the Store. Maker shall have seven (7) days after receipt of written notice from Holder to cure any such Payment Default. If Maker does not timely cure the Payment Default, Maker hereby grants Holder the irrevocable right to immediately enter the Store and take possession and full ownership of the Store going forward, and further agrees to execute any and all reasonably necessary documents to transfer ownership of the Store, including all assets located therein, to Holder or its designee and to assign the lease for the premises of the Store to Holder or its designee ("Take Back Rights"). In the event of an uncured Payment Default, Maker further acknowledges and agrees to the following: (i) the Take Back Rights represent Holder's liquidated damages for Maker's Payment Default; (ii) that such damages are reasonable under the circumstances; (iii) that Maker shall have no right to contest, and hereby waives any such rights to contest or appeal, Holder's Take Back Rights, including Holder's entry into the Store and subsequent possession, control; and ownership of the Store thereafter; and (iv) that Maker shall receive no compensation or other monetary consideration from Holder for the Store. For purposes of the Take Back Rights under this Section 11, all notices shall be sent by certified mail, return receipt requested, or via overnight delivery service, to the other Party at the addresses listed in Section 16.

C. Acceleration in the Event of Default. In the event of any default, including a Payment Default, under this Note which is not cured within seven (7) calendar days after receipt of written notice from Holder, the principal sum hereof, together with all accrued and unpaid interest, shall, at the option of the Holder (and without limiting any remedies available to Holder),

9311 East Via De Ventura
Scottsdale, Arizona 85258
Telephone Number: (480) 362-4800
Facsimile Number: (480) 362-4819

If to Maker:

Telephone Number:
Facsimile Number:

17. Governing Law. This Note shall be construed according to the substantive laws and judicial decisions of the State of Arizona, without regard to any conflict of laws principles. Any action brought to enforce this Note may be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa. Maker and any sureties, endorsers and guarantors irrevocably consent to jurisdiction and venue in such court for such purposes.

18. RELEASE. IN EXCHANGE FOR HOLDER'S AGREEMENT TO ARRANGE FOR MAKER'S PAYMENT OF THE DEBT, MAKER AND EACH OF ITS CURRENT, PAST AND FUTURE PREDECESSORS, SUCCESSORS AND ASSIGNS, AND EACH OF ITS AND THE FOREGOING ENTITIES' RESPECTIVE PARENTS, SUBSIDIARIES, SHAREHOLDERS, MEMBERS, MANAGERS, OWNERS, PARTNERS, DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNS, GUARANTORS, INSURERS, SPOUSES, HEIRS, EXECUTORS, TRUSTEES, AND ESTATES, IF ANY, OF ANY AND ALL SUCH ENTITIES (COLLECTIVELY WITH MAKER "MAKER PARTIES"), HEREBY IRREVOCABLY AND UNCONDITIONALLY RELEASE, REMISE AND FOREVER DISCHARGE HOLDER AND EACH OF ITS CURRENT, PAST AND FUTURE PREDECESSORS, SUCCESSORS AND ASSIGNS, AND EACH OF ITS AND THE FOREGOING ENTITIES RESPECTIVE PARENTS, SUBSIDIARIES, SHAREHOLDERS, MEMBERS, MANAGERS, OWNERS, PARTNERS, DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNS, GUARANTORS, INSURERS, SPOUSES, HEIRS, EXECUTORS, TRUSTEES, AND ESTATES, IF ANY, OF ANY AND ALL SUCH ENTITIES (COLLECTIVELY WITH HOLDER "HOLDER PARTIES"), FROM ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, SUITS, DEBTS, DUTIES, ACCOUNTS, COVENANTS, CONTRACTS, AGREEMENTS, PROMISES, DAMAGES, JUDGMENTS, TAXES, LIABILITIES AND OBLIGATIONS, BOTH CONTINGENT AND FIXED, KNOWN AND UNKNOWN, NOW EXISTING OR HEREAFTER, OF EVERY KIND AND NATURE WHATSOEVER, IN LAW OR EQUITY, OR OTHERWISE, UNDER LOCAL, STATE, OR FEDERAL LAW OR THE LAW OF ANY OTHER APPLICABLE JURISDICTION, THAT ANY OF THE MAKER PARTIES HAVE AGAINST ANY OF THE HOLDER PARTIES, INCLUDING, WITHOUT LIMITATION, THOSE ARISING FROM, IN CONNECTION WITH OR RELATING TO: (I) THE FRANCHISE AGREEMENT (INCLUDING ANY AMENDMENTS OR MODIFICATIONS THERETO); (II) THE OPERATION, LEASING OR SUBLEASING OF THE STORE; AND (III) THE OFFERING AND SALE OF THE FRANCHISE FOR THE STORE; ARISING FROM AN ACT, OMISSION, CONDUCT OR ACTIVITY OCCURRING BEFORE AND INCLUDING THE DATE OF THIS NOTE WRITTEN ABOVE.

IT IS UNDERSTOOD BY MAKER THAT IF THE FACTS OR LAW WITH RESPECT TO THE FOREGOING RELEASE HEREAFTER TURN OUT TO BE DIFFERENT FROM THE FACTS OR LAW KNOWN TO BE OR BELIEVED BY MAKER TO BE TRUE AT THE TIME OF

EXECUTION OF THIS NOTE, THEN MAKER EXPRESSLY ASSUMES THE RISK OF THE FACTS OR LAW TURNING OUT TO BE SO DIFFERENT, AND AGREES THAT THE FOREGOING RELEASE SHALL BE IN ALL RESPECTS EFFECTIVE AND NOT SUBJECT TO TERMINATION OR RESCISSION, IN WHOLE OR IN PART, BASED UPON SUCH DIFFERENCES.

19. Counterparts; Signatures. This Note may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Note and all of which, when taken together, shall be deemed to constitute one and the same Note. The signatures required for execution may be transmitted to the other Party via facsimile or a scanned .pdf file sent via email and such signature shall be deemed a duplicate original, shall be effective upon receipt by the other Party, may be admitted in evidence and shall fully bind the Party and person making such signature.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Maker, by and through its respective representative with full rights, power and authority to enter into and bind his or her respective Party without further consent or approval of any kind, has duly executed and delivered this Note as of the date first written above.

MAKER:

_____, a(n) _____

By: _____
[Name, Title]

EXHIBIT "1" TO PROMISSORY NOTE
AMORTIZATION SCHEDULE

(Attached)

EXHIBIT "2" TO PROMISSORY NOTE

COLLATERAL

All assets owned by [NAME], a(n) [State] [corporation / limited liability company] ("Borrower"), whether now owned or hereafter acquired by Borrower and located at the following location: [Store Address], including, without limitation, the following properties of Borrower:

- (a) All accounts, contract rights, rights to payment, accounts receivable, chattel paper, leases, instruments, notes, securities, documents of title, deposit accounts, certificates of deposit and general intangibles;
- (b) All inventory, including, without limitation, raw materials, work-in-process or materials used or consumed in the business of Borrower, whether in the possession of Borrower, warehouseman, bailee or any other person or entity;
- (c) All machinery, furniture, fixtures and other equipment;
- (d) All negotiable and nonnegotiable documents of title;
- (e) All proceeds of any of the above-described property;
- (f) All books and records pertaining to any of the above-described property, including, without limitation, any computer readable memory and any computer hardware or software necessary to process such memory;
- (g) All rights under contracts of insurance covering any of the above-described property;
- (h) All attachments, accessions, tools, parts, supplies, increases and additions to and all replacements of and substitutions for any of the above-described property; and
- (i) All products of any of the above-described property.

EXHIBIT "3" TO PROMISSORY NOTE

**[GUARANTY OF PROMISSORY NOTE AND SECURITY AGREEMENT] or [NOT
APPLICABLE]**

GUARANTY OF PROMISSORY NOTE AND SECURITY AGREEMENT

This GUARANTY OF PROMISSORY NOTE AND SECURITY AGREEMENT ("Guaranty") is dated as of [Date] ("Effective Date"), and is executed by each of the undersigned ([individually and collectively,]"Guarantor") in favor of [SELLING ENTITY], a [state] [Corporation/Limited Liability Company, etc.] ("Seller"). To the extent this Guaranty contains terms and conditions that differ from those contained in the Note (as defined in Recital A below), this Guaranty shall control. All capitalized terms not otherwise defined in this Guaranty will have the same meanings ascribed to such terms in the Note.

Recitals

A. As an inducement for Seller to provide debt to [Franchisee], a [State] [corporation/limited liability company], ("Franchisee"), and to perform Seller's obligations under the Promissory Note and Security Agreement dated [Start Date] ("Note") in the amount of _____ Dollars (\$_____), Guarantor has agreed to jointly and severally guarantee the obligations of Franchisee under the Note.

B. Franchisee and MTY Franchising USA, Inc. signed a Franchise Agreement, as amended, with respect to sweetFrog Store No. _____ ("Franchise") dated [Franchise Agreement Date] ("Franchise Agreement").

C. Guarantor is an individual who owns, directly or indirectly, a five percent (5%) or greater equity interest in the Franchise, has agreed to guarantee the Franchisee's obligations pursuant to the Franchise Agreement and Note, or is Franchisee's spouse.

NOW THEREFORE, in consideration of the foregoing, the execution and delivery of the Note by Seller, and the performance of Seller's obligations under the Note, Guarantor agrees, for the benefit of Seller and its affiliates as follows:

Agreement

1. Guarantor unconditionally guarantees and promises to pay to Seller and/or its affiliates and to perform, for the benefit of Seller and/or its affiliates, on demand, any and all obligations and liabilities of Franchisee in connection with, with respect to, or arising out of, the Note and all Schedules entered into in connection therewith ("Obligations").

2. This is a guaranty of payment and not of collection. This Guaranty will remain in full force and effect until all amounts payable by Guarantor have been validly, finally and irrevocably paid-in-full and all Obligations will have been validly, finally and irrevocably satisfied or performed-in-full.

3. Guarantor's Obligations under this Guaranty are joint and several and are independent of the obligations of Franchisee. A separate action or actions may be brought and prosecuted against Guarantor regardless of whether an action is brought against the Franchisee or whether the Franchisee (or, if more than one Guarantor, the other Guarantors) is joined in any such action. Guarantor waives the benefit of any statute of limitations affecting Guarantor's liability under this Guaranty or the enforcement of this Guaranty. Guarantor waives its rights under A.R.S. Section 12-1641, *et seq.* and Rule 17(f) of the Arizona Rules of Civil Procedure for the Superior Courts of Arizona, which set forth certain rights and obligations among guarantors, debtors and creditors, if applicable, including the right to require Seller to bring an action against the Franchisee prior to enforcing its rights under this Guaranty. Guarantor waives any right to require Seller to proceed against or exhaust any security interest held in the property of Franchisee or to pursue any other remedies that Seller may have. Guarantor waives all

requirements as to presentment, demand for performance, notice of non-performance, protest, notice of protest, notice of dishonor, and notice of acceptance of this Guaranty and of the existence, creation or incurring of new or additional Obligations or indebtedness.

4. Guarantor authorizes Seller, without notice or demand and without affecting Guarantor's liability under this Guaranty, to renew, compromise, modify, extend, accelerate or otherwise change the terms of any present or future Obligations and/or agreements between Franchisee and Seller or Seller's affiliates. Any change in the Obligations and/or agreements will have no effect on Guarantor's liability under this Guaranty. Guarantor will remain liable for the Obligations as set forth in this Guaranty if Franchisee fails to satisfy any of its obligations.

5. If any one or more of the provisions in this Guaranty will be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision of this Guaranty, and this Guaranty will be construed as if such provision had never been contained herein. Notwithstanding the foregoing, if the provision held invalid, illegal or unenforceable is a material part of this Guaranty, as determined by Seller, the parties shall promptly negotiate a substitute provision consistent with then-current law and the parties' original intent to replace the provision held to be invalid, illegal or unenforceable.

6. If Seller is required to take any legal action to enforce its rights under this Guaranty, Seller may recover from Guarantor Seller's costs and expenses in connection therewith, including, without limitation, reasonable attorneys' fees, whether or not suit is filed, and all costs of collection, suit, and preparation for suit (whether at the trial or appellate level).

7. Nothing in this Guaranty will constitute a waiver or limitation of any other rights or remedies of Seller or its affiliates against Franchisee or Guarantor. No failure or delay on the part of Seller or its affiliates in exercising its rights under this Guaranty will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any right will be effective unless given in writing, specifying with particularity the nature of the waiver. No waiver of any right will be deemed a waiver of any other right. The rights provided for in this Guaranty are cumulative and are not exclusive of any other rights, powers, privileges or remedies provided by law.

8. Guarantor agrees that it will not exercise any rights of subrogation that Guarantor may acquire due to any payment or performance of the Obligations of the Franchisee pursuant to this Guaranty unless and until all amounts payable to Seller or its affiliates, and all Obligations for the benefit of Seller or its affiliates, due under the Note will have been validly, finally and irrevocably paid and performed in full.

9. This Guaranty will be binding upon Guarantor and its respective successors, heirs and assigns, and will inure to the benefit of Seller, its affiliates and their respective successors and assigns.

10. If more than one person signs this Guaranty, each Guarantor's obligations will be joint and several. Guarantor acknowledges and agrees that Seller will materially rely upon Guarantor's promises and obligations under this Guaranty.

11. [The undersigned _____][include name(s) here of each of the undersigned who is not married] each represents that he/she is not married as of the Effective Date.

This Guaranty will be governed by, and construed and enforced in accordance with, the law of the State of Arizona, notwithstanding any conflict of law provisions to the contrary.

Guarantor agrees that any litigation in connection with this Guaranty will be commenced and maintained only in the courts located in Maricopa County, Arizona, and Guarantor consents to the jurisdiction of such courts.

GUARANTOR:

[Name], an individual

[Name], an individual

[Name], an individual

[Name], an individual

EXHIBIT E-1

TO THE FRANCHISE DISCLOSURE DOCUMENT

Franchise Agreement (New)

sweetFrog

**FRANCHISE AGREEMENT
(New)**

between

MTY FRANCHISING USA, INC.

and

_____, a(n) _____

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**SWEETFROG
FRANCHISE AGREEMENT
(“Agreement”)**

PARTIES:

MTY FRANCHISING USA, INC.,
a Tennessee corporation
Attn: Legal Department
9311 E. Via De Ventura
Scottsdale, Arizona 85258

(“Franchisor”)

a(n) _____

Telephone No.: _____

([individually and collectively,] “Franchisee”)

RESTAURANT NO.: _____

EFFECTIVE DATE: _____

(“Effective Date”)

TRADITIONAL RESTAURANT (YES or NO): _____

RESTAURANT DESCRIPTION IF NON-TRADITIONAL: _____

A “traditional” restaurant (also known as a traditional franchised business) is a restaurant that is easily accessible by the general public, such as a free-standing building, inline retail shop, shopping mall and street front location. A traditional *sweetFrog* restaurant normally offers a full menu. A “non-traditional” restaurant (also known as a non-traditional franchised business) is a *sweetFrog* restaurant that is located in a non-traditional marketplace, as determined by us (in our sole discretion), such as an airport, amusement park, sports or entertainment venue, train station, travel plaza, toll roads, cafeteria, retail store, convenience store, military base, hospital, office building, movie theater, hotel, casino, high school or college campus or that is a kiosk, cart, truck or trailer. A non-traditional restaurant may also be a *sweetFrog* restaurant that is co-branded into another brand restaurant, at Franchisor’s sole discretion. A non-traditional *sweetFrog* restaurant normally offers a limited version of the full *sweetFrog* menu.

To simplify the language in this Agreement, the terms “we,” “us,” “our” and the like may be used to refer to the Franchisor, and the terms “you,” “your” and the like may be used to refer to the Franchisee. The term “you” as used herein is applicable to one (1) or more persons, a corporation, partnership, trust, other entity, association or form of organization as the case may be, and the singular usage includes the plural, masculine, neuter, feminine, and possessive usages. Franchisor and Franchisee may individually be referred to as a “party” and collectively referred to as the “parties.”

RECITALS:

This Agreement is entered into with reference to the following facts and circumstances:

A. We have, over a period of time and at considerable expense, developed and established a uniform and unique method of operation, customer service, advertising, publicity, processes, recipes, techniques and technical knowledge in connection with the restaurant business, specializing in soft-serve yogurt and other authorized products, and customarily using a self-service format which allows customers to create individualized yogurt-based desserts. These restaurants do business under the trade name “*sweetFrog*”. These recipes, techniques, processes and methods constitute our “Trade Secrets.” All of our knowledge, experience, Trade Secrets, processes, methods, specifications, techniques, Proprietary Marks (as defined in Recital B.), System Standards (as defined in *Section 1.4*) and information are referred to in this Agreement as the “System.” The System may be changed, supplemented, improved and further developed by us from time to time.

B. We have owned and issued franchises to others for the operation of franchised restaurants in the United States and in other countries. We have registered and applied for proprietary marks with the United States Patent and Trademark Office and with offices in other countries serving similar functions. These proprietary interests, trademarks, service marks, logos, insignias, trade names and trade dress are referred to in this Agreement as the “Proprietary Marks.”

C. We are engaged in the business of licensing the right to use the Proprietary Marks in connection with the operation and promotion of the System.

D. You understand and recognize that: (1) our Trade Secrets, Proprietary Marks, developments and other properties as recited above are of considerable value; and (2) it is of importance to us and all of our franchisees to maintain the development of the System in a uniform and distinctive manner, allowing you and our other franchisees to enjoy a public image and reputation greater than most single franchisees could establish.

E. You desire to make use of the “*sweetFrog*” trademark and to enjoy the benefits of that mark, the other Proprietary Marks, and the System; and to establish a “*sweetFrog*” franchise to be operated in accordance with System Standards set forth from time to time by us. System Standards are set forth in, without limitation, the confidential “ops package,” which consists of the “operations manual” (“Operations Manual”), “ops toolkit” and related printed and electronic documents, both now existing and hereinafter developed (individually and collectively, “Confidential Manual”). We are willing to grant you the right to do so under the terms, conditions and provisions set forth in this Agreement, which includes any and all appendices, addenda, amendments, attachments and exhibits.

F. You recognize the necessity and desirability of protecting our reputation, goodwill, Trade Secrets, and other confidential business information; and that disclosure of Trade Secrets and confidential business information, including specifics of the System to any third party, will cause irreparable damage and harm to us.

AGREEMENT:

The parties agree as follows:

ARTICLE 1. GRANT OF FRANCHISE; TERM; SYSTEM STANDARDS

1.1 Franchise Grant.

We hereby grant to you a *sweetFrog* franchise that includes the right to use the System (“Franchised Business”) as provided in this Agreement, at the following location:

Arena, Mall, Facility, or Center Name: _____
(if applicable)

Street Address: _____

City/State/Zip Code: _____ (“Location”)

1.2 Location of the Franchised Business; No Exclusive Territory or Other Rights.

You must operate the Franchised Business only from the Location, including any catering services of *sweetFrog* menu items you provide. You acknowledge that the *sweetFrog* franchise granted under this Agreement is non-exclusive, that we are not granting you any territorial protection or any other exclusive rights, and that we, directly or through one (1) or more affiliates, reserve the right in our sole discretion, and without compensating you or seeking your prior approval: (i) to establish, and grant to other franchisees or licensees the right to establish, a *sweetFrog* restaurant or any other business using the Proprietary Marks, the System or any variation thereof, in any location other than the approved Location (including locations in the immediate vicinity of your Location), on any terms and conditions that we deem appropriate; (ii) to establish, and grant to other franchisees or licensees the right to establish, any restaurant concept other than *sweetFrog* in any location on any terms and conditions that we deem appropriate (including locations in the immediate vicinity of the Location); (iii) to sell products identified by the Proprietary Marks or other trademarks, service marks or commercial symbols in any location through any distribution channels, including grocery stores, convenience stores, supermarkets, club stores, vending machines, delivery services and restaurants other than *sweetFrog* restaurants; and (iv) to take any other action that we are not expressly prohibited from taking under this Agreement.

We hereby grant to you during the term of this Agreement, a non-exclusive right and license to operate a single restaurant at the Location only, according to the System Standards and subject to the terms, conditions and restrictions contained in this Agreement. This Agreement is limited to the operation of one traditional restaurant, unless otherwise amended, and does not grant you the right to buy, own or operate additional restaurants.

Except as expressly limited in this Agreement, we (for ourselves and our affiliates and designees) retain all rights with respect to all Proprietary Marks and the sale of *sweetFrog* products anywhere in the world with no compensation or liability to you, including the right to:

a. Establish and operate (or license to any other person or entity the right to establish and operate) *sweetFrog* restaurants owned or licensed by us at any location;

b. Develop, market, own, operate and participate in any other business under the Proprietary Marks or any other trademarks (including trademarks identified in the Franchise Disclosure Document (“Disclosure Document”) and other trademarks we or our affiliates own or have the right to license);

c. Develop, lease and license the use of, at any location, trademarks other than the Proprietary Marks, in connection with the operation of a system that offers products or services that are the same as, or similar to, those offered by us under this Agreement on any terms or conditions that we deem advisable, in our sole discretion;

d. Merge with, acquire or be acquired by any other business, including a business that competes with your Franchised Business, or acquire and convert any retail stores, including retail stores operated by competitors, or otherwise operated independently or as part of, or in association with, any other system or chain, whether franchised or corporate-owned;

e. Distribute, sell and license to other persons or entities to distribute and sell products through all other channels of distribution, including catalog sales, telemarketing, grocery stores, warehouses, big box shops, specialty shops, limited access highway food facilities, vending machines and similar automated dispensing systems, mobile units, off-site sales accounts, electronic mail, Internet sales, and movie theaters (individually and collectively, "Other Channels"); and

f. Implement multi-area marketing programs that may allow us or others to solicit or sell to customers anywhere. We also reserve the right to issue mandatory policies to coordinate such multi-area marketing programs.

1.3 Term of Agreement.

This Agreement will commence on the Effective Date and continue as set forth in either *Section 1.3a.* or *1.3b.* below ("Term").

a. If you are purchasing a new or existing non-operating Franchised Business, the Term will expire on either: (1) the ten (10) year anniversary of the date you open this Franchised Business to the public if you own the property where this Franchised Business is located or if you enter into a lease directly with the landlord or other third party for the property where this Franchised Business is located; or (2) if you have entered into a sublease with one of our affiliates, the expiration of the term of the sublease for the Location excluding any extensions or renewal options, unless terminated earlier in accordance with *Article 14* or any other provisions of this Agreement, renewed in accordance with *Article 13*, or transferred in accordance with *Article 12*; or

b. If you are purchasing an existing and operating Franchised Business, the Term will expire on either: (1) the ten (10) year anniversary of the Effective Date if you own the property where this Franchised Business is located or if you enter into a lease directly with the landlord or other third party for the property where this Franchised Business is located; or (2) if you have entered into a sublease with one of our affiliates, the expiration of the term of the sublease for the Location excluding any extensions or renewal options, unless terminated earlier in accordance with *Article 14* or any other provisions of this Agreement, renewed in accordance with *Article 13*, or transferred in accordance with *Article 12*.

1.4 System Standards.

You shall operate the restaurant in accordance with our standards, including the following:

a. restaurant design, maintenance, health and safety and remodeling;

- b. types, models, brands and suppliers of required fixtures, furnishings, equipment, signs, materials and supplies;
- c. recipes and ingredients, menu items and menu design;
- d. cooperation with and participation in sales, marketing, advertising and promotional programs (including loyalty programs, online ordering programs, discount coupons, discount gift cards, special menu promotions, and entering into product and service agreements directly with third-party vendors and service providers as required by us) and materials and media used in those programs, including discontinued use and removal of promotional materials as directed by us;
- e. use and display of the Proprietary Marks;
- f. restaurant operations, including matters related to the management of the restaurant; training of your employees consistent with the System Standards; and commercial impression of the Franchised Business to the public;
- g. cooperation with and participation consistent with our responses and resolutions in response to customer feedback;
- h. cooperation with and participation in: (i) market research and testing; and (ii) product and service development programs;
- i. acceptance of our stored value gift cards, including gift cards sold at a discount, loyalty cards, frequency cards, gift certificates, vouchers, and any other similar electronic card and payment programs (individually and collectively, "Gift/Loyalty Card"), credit and debit cards, other payment systems, check verification services and use of point of sale computer systems; You agree to enter into a separate participation agreement with the approved vendor for data processing services;
- j. bookkeeping, accounting, data processing and record keeping systems; computer hardware and software; connections to the Internet or to proprietary networks; forms, methods, formats, content and frequency of reports to us of Gross Sales (as defined in *Article 5*), financial performance and condition; and providing tax returns and other operating and financial information to us; and
- k. conduct and maintain the Franchised Business and Location so as not to distract from or interfere with the integrity of the System (individually and collectively, "System Standards"). We may, in whole or in part, change, improve, update and further develop the System Standards, from time to time during the Term. You shall comply with the updated System Standards as directed by us.

The operation and maintenance of your restaurant according to the System Standards are essential to the well-being and vitality of the System and to preserve the goodwill of the Proprietary Marks for us and for all other franchisees operating under the System. It is critical to the System for all restaurants operating under the System to present a uniform and professional image to *sweetFrog* customers regardless of which location the customer visits. Any information regarding the operation of the restaurant will be considered a mandatory System Standard, unless it is clear

from the express language of our communication that the information is merely optional or is intended by us as a suggestion, rather than a requirement.

You agree that System Standards constitute binding provisions of this Agreement as if they were an integral part of this Agreement.

ARTICLE 2. SELECTION OF LOCATION; CONSTRUCTION AND RELOCATION

2.1 Location Selection Procedures.

You must select a Location that satisfies our minimum site requirements (such confirmation will be provided to you by us in writing), for your Franchised Business within ~~one-nine~~ (94) months~~year~~ from the Effective Date. If you cannot secure an acceptable Location for your Franchised Business within ~~one-nine~~ (94) months~~year~~ from the Effective Date, then we may terminate this Agreement by giving you notice to that effect. You are ultimately responsible for the selection of the Location. We will not have any liability to you with respect to your selection of the Location, any assistance we provide you in making your selection, our recommendation of any location or a third party to assist you in selecting a location, or our allowing you to move forward on any location. You agree that your selection of the Location will be based on your own independent investigation of the suitability of the Location.

2.2 Lease and Purchase Approval.

If you intend to lease the Location for your Franchised Business, the lease will be subject to our prior limited review and acknowledgment so that we can confirm that certain lease terms are incorporated into the lease. You must provide us, at least thirty (30) days prior to executing the lease, a copy of the lease and details relating to square footage, rent per square foot, the term of the lease, and either confirmation that such other terms as we reasonably require are incorporated into the lease or that you and the landlord agree to incorporate the lease addendum to lease agreement as an exhibit to the lease. You or your attorney shall be responsible for negotiating the terms of the lease, which shall be subject to our final limited review and acknowledgment. If you do not submit all of the required documents to us, we will not allow you to move forward with your lease. We have no liability to you regarding the terms or negotiations of the lease.

If, prior to executing the lease, you or your attorney request a full review of your lease, including any and all exhibits attached thereto, and we or our designated affiliate review your entire lease and exhibits and provide to you or your attorney its review of the entire lease and suggested changes to the lease ("Lease Review"), you must pay a Lease Review Fee (as defined in *Section 5.7*) to compensate for time and effort in reviewing the lease. The Lease Review is optional and only completed by us or our designated affiliate at your or your attorney's request. The Lease Review Fee is due only in the event that you or your attorney request us or our designated affiliate to complete a Lease Review. Each lease must contain the required lease terms set forth in the lease addendum to lease agreement. If we cure any default by you under the lease, any amounts that we pay to cure the default will be payable by you to us on demand, together with interest thereon, at the lesser rate of one and one-half percent (1½%) or the maximum rate that does not violate applicable state usury laws ("Default Rate") per month from the date we make such payment.

You acknowledge and agree that on the earlier of thirty (30) days after: (i) you receive a fully-executed copy of your lease for the Location of your Franchised Business; or (ii) you open your Franchised Business to the public, you must provide a fully-executed copy of your lease for the Location of your Franchised Business to us. Failure to timely provide us with a fully-executed copy of the lease will result in a default under this Agreement.

If you intend to purchase the Location for your Franchised Business, the terms of such purchase shall be subject to our prior approval, and you must provide us, at least thirty (30) days prior to executing the purchase agreement, a copy of the purchase agreement and details relating to square footage, price per square foot and such other terms as we reasonably require.

You acknowledge and understand that our confirmation that you may move forward with any specific location, lease or purchase agreement does not in any way guarantee or ensure the success or profitability of the Franchised Business, or the conformity of the Location, lease or purchase agreement to applicable laws, and such confirmations are only for our own benefit.

2.3 Construction.

a. You must, at your sole cost and expense, construct, furnish, make improvements to and equip, if necessary, the Franchised Business at the Location selected by you and meeting our minimum site requirements, in accordance with plans and specifications approved by us or our third-party approved architect, if applicable. Our approval of plans is solely for complying with our System Standards and not for determining compliance with codes, ordinances and other legal requirements, including the Americans with Disabilities Act ("ADA") or any requirements under the lease for your Location. You are solely responsible for ensuring that your Location conforms to all codes and ordinances, including the ADA, and all lease-specific requirements. You must, at your sole cost and expense, use our designated and approved third-party design architect ("Design Architect") to prepare the initial design drawings for any construction, alterations or improvements, as applicable, for your Franchised Business. The Design Architect must provide us with one (1) set of the design drawings, including landscaping and parking spaces if applicable, which are the detailed plans and specifications ("Plans") for your Franchised Business. We will provide you with a copy of the Plans upon our approval of the Plans. You must also, at your sole cost and expense, retain a licensed architect of record to prepare the permitted construction set of drawings for any construction, alterations or improvements. The permitted construction set of drawings must be submitted to us for our files prior to the start of construction, alterations or improvements. In addition, you must obtain the appropriate construction documents and all mechanical, plumbing, electrical and architectural plans must be sealed and stamped, as we may require, even if local laws in the jurisdiction where your restaurant is located do not require same.

b. Any material modifications to the approved Plans must be submitted to us for approval and you will not undertake any construction, alterations or improvements until such modifications have been approved by us. Approval of such modifications does not constitute any representation by us of compliance with applicable zoning laws, building codes or other laws.

c. You will be solely responsible for the cost and expense of obtaining all necessary governmental construction permits and licenses, and you must, at your sole cost and expense, comply with all laws, zoning ordinances, rules and regulations of any governmental agencies that may govern any construction, alterations or improvements of the Franchised Business in accordance with the approved Plans. We will have the right, but are not required, to meet with the Design Architect and to inspect any construction, alterations or improvements during its

course to ensure that the provisions of this *Section 2.3* are being observed; and you agree to allow our authorized representatives, at any and all times while construction, alterations or improvements are in progress, to meet with the licensed architect and general contractor and enter onto the Location for this purpose. If we determine in good faith that the provisions of this *Section 2.3* are not being observed, you will, at your sole cost and expense, immediately take all necessary corrective action.

d. You must, at your sole cost and expense, use a general contractor that is licensed, and if applicable, registered in the state and local jurisdiction where your restaurant is located for any and all construction, alterations and improvements. The general contractor must have prior experience in the construction, alterations and improvement of quick-service restaurants.

e. You acknowledge that the design and appearance of the *sweetFrog* restaurant is part of the System, and that uniformity is essential to the System. Therefore, you agree that after the restaurant has been constructed, altered or improved, you will not make any material changes to the building plan or design or its appearance without our prior written consent, and you will, at your sole cost and expense, maintain the interior and exterior décor of the restaurant in a first class condition and in such manner as we may reasonably prescribe from time to time. In addition to any remodeling required by us upon the transfer of the Franchised Business and upon the renewal of this Agreement, as set forth in *Articles 12* and *13*, respectively, you will, upon thirty (30) days' prior notice from us, and at your sole cost and expense, remodel and make all alterations and improvements in and to your Franchised Business as reasonably determined by us to reflect the then-current System specifications, standards, format, image and appearance.

f. A certificate of occupancy for your Franchised Business must be submitted to us approximately six (6) days prior to the day you open your Franchised Business to the public and as otherwise requested by us throughout the Term.

2.4 Signage.

You will acquire, repair and replace, as necessary, and maintain in a first class condition throughout the Term, signs for advertising and identifying the Franchised Business as a *sweetFrog* restaurant. All signs must be in accordance with the System Standards, specifications and any local governing body (i.e., city or county governments), as well as any other applicable laws, including the ADA, and exterior signage must be the maximum size allowed by the landlord and local governing body. You acknowledge that quality control is essential to protect and promote our Proprietary Marks, standards, and uniform image, and you shall acquire all signs only from approved suppliers. In addition, you shall prominently display on all communications, forms, advertising, business stationery and business cards, and on a sign easily visible to consumers at the Franchised Business, the following words: "INDEPENDENTLY OWNED AND OPERATED."

2.5 Relocation.

a. If you desire to relocate the Franchised Business, you may request our consent upon the following conditions:

(i) Not less than sixty (60) days prior to the desired date of relocation (unless prior notice is impractical because of a required relocation, due to a third-party or our request, in which event notice shall be made as soon as possible), you must make a written request for

consent to relocate, describing the reasons for the relocation and providing details respecting any proposed new location.

(ii) Within twenty-one (21) days after receiving your written request, we shall advise you in writing whether the proposed new location meets our minimum real estate site requirements as provided in *Section 2.1* and whether you have our authorization to proceed with the relocation. In the event of our denial to proceed with the relocation, you may request an alternative proposed new location pursuant to the provisions of this *Section 2.5*.

(iii) The Term will not be extended in connection with the requested relocation.

b. At the time you request to relocate the Franchised Business, you must also meet each of the following requirements:

(i) You must not be in default under this Agreement or any other agreement or note then in effect between you and us or any affiliate of ours, and no event shall have occurred that, with the giving of notice, the passage of time, or both, would constitute a default under this Agreement;

(ii) You must neither have received more than three (3) notices of default or breach during the Term; nor more than two (2) notices of default or breach during the five (5) years immediately preceding the effective date of the proposed relocation;

(iii) The equipment, fixtures and signage used in connection with the operation of the Franchised Business must either meet our then-existing System specifications and System Standards, or you must agree, within a timeframe required by us, to replace or refurbish such items, and otherwise modify the methods of operation of the Franchised Business at your cost and expense, in order to comply with our System specifications and System Standards then applicable to new franchise owners; and

(iv) You shall have paid to us a Relocation Fee (as defined in *Section 5.14*).

c. If we approve the relocation of your Franchised Business, (i) you and we must execute an amendment to this Agreement indicating the address for your relocated Franchised Business and you must sign a general release provided by us, and (ii) you must open your Franchised Business at the new location within thirty (30) days after you close your Franchised Business at the current Location. Provided that you comply with all of the terms and conditions set forth in this Agreement including this Section 2.5, during the period of time between the closure of your Franchised Business at the current Location, and the opening of the Franchised Business at the approved relocation address, you will not owe the Royalty Fee (as defined in *Section 5.2*).

2.6 Restricted Use of Restaurant Location.

You may not wholly or partially sublet the Location without our prior written consent. The Location may be used only for the operation of a *sweetFrog* restaurant in compliance with this Agreement and the System Standards. You shall not conduct other businesses or activities at the Location without our prior written consent.

2.7 Not Applicable.

ARTICLE 3. OPERATIONS

3.1 Commencing Operations.

You agree to start operating your Franchised Business at the confirmed Location within ~~one-eighteen (18) year-months~~ from the Effective Date. You acknowledge that before starting operations you must, at your sole cost and expense, do the following (in addition to any other requirements set forth in this Agreement):

- a. Complete a food safety training program at your sole cost and expense. We will accept the certificate for the required program through your local county or state health department or any other nationally recognized food safety program. You must provide us with a copy of your certificate prior to commencing training;
- b. Successfully complete the Training Program described in *Section 4.1*;
- c. Purchase, lease or otherwise acquire from the list of approved sources provided by us all the signage, supplies, equipment, fixtures, inventory and other items necessary to operate the Franchised Business; and
- d. Obtain liability insurance in accordance with the requirements described in *Section 9.5* and provide to us evidence that such insurance has been obtained.

Prior to opening the Franchised Business, you must notify us that you have satisfied all requirements to begin operations, and provide us with such documents as we may reasonably request that show your compliance with all such requirements. Upon receipt of our acknowledgment that such requirements have been satisfied, you will have five (5) days to begin operations of your Franchised Business. If you do not begin operations of your restaurant at the confirmed Location before the expiration of the ~~one-eighteen (18) year-month~~ period from the Effective Date, then we may terminate this Agreement by giving you notice to that effect.

3.2 Supplies and Promotional Materials; Rollouts.

You agree to sell only those menu items, products and services authorized under the terms of this Agreement and as specified in the Confidential Manual, and you shall use only supplies and ingredients in making those menu items that are in compliance with the standards as set forth in the Confidential Manual or other documents provided by, or approved by, us as they presently exist or may exist in the future. You shall purchase all such services, supplies and ingredients only from approved vendors and utilize approved distributor(s) as specified in the documents provided by, or approved by, us as they presently exist or may exist in the future. You must purchase promotional materials containing the Proprietary Marks, including stationery, business cards, promotional and advertising materials and similar items, from suppliers approved by us, except that we must first approve all such promotional and advertising materials before you use them, and all such printed materials containing any of the Proprietary Marks shall be accompanied by the words "INDEPENDENTLY OWNED AND OPERATED." Additionally, during the Term, you agree to participate in any Rollout of new products and suppliers, as defined in *Section 9.3*.

3.3 Fixtures, Furnishings, and Equipment.

Unless otherwise approved by us in writing, you will: (i) acquire, repair and replace, as necessary, and maintain in a first class condition throughout the Term, fixtures, furnishings, and equipment to be used in the operation of your Franchised Business that is in accordance with the System Standards, specifications set forth by us in the Confidential Manual or other documents provided by, or approved by, us as they presently exist or may exist in the future, and with applicable laws including, without limitation, the ADA; and (ii) procure the fixtures, furnishings, and equipment from suppliers or vendors previously approved in writing by us.

3.4 Online Presence.

You may not maintain a website, software application, an App (application), social media account (including an account, group or page on Facebook®, Flickr®, Foursquare®, Google+®, Instagram®, LinkedIn®, Pinterest®, Snapchat®, Tumblr®, Twitter®, YouTube®, Vine®, VKontakte or Weibo®), or otherwise maintain a presence or advertise on the Internet or any other public computer network (individually and collectively, “Site”) in connection with the Franchised Business without our prior written approval, which we may withhold in our sole discretion. If we grant you written approval, you agree to submit to us for approval before use, true and correct printouts of all Site pages you propose to use in connection with the Franchised Business. You understand and agree that our right of approval of all such Site pages is necessitated by the fact that such Site pages will include and be inextricably linked with our Proprietary Marks. If we approve your use of a Site, you may only use Site pages that we have approved. Your Site must conform to all online presence requirements, policies and procedures per our System Standards. You agree to provide all information regarding your online presence that we require. If we grant approval for a Site, you may not use any of the Proprietary Marks on the Site except as we expressly permit. You may not post any of our proprietary, confidential or copyrighted material or information on the Site without our prior written permission. If you wish to modify your approved Site, all proposed modifications must also receive our prior written approval. You explicitly understand that you may not post on any Site (whether yours or someone else’s) any material in which a third party has any direct or indirect ownership interest (including video clips, photographs, sound bites, copyrighted text, trademarks or service marks, or any other text or image in which any third party may claim intellectual property or other rights). If we grant approval, you agree to list on the Site any website and social media account maintained by us, and any other information we require in the manner we dictate. You agree to obtain our prior written approval for any Internet domain name, home page address and Uniform Resource Locator. The requirement for our prior approval set forth in this *Section 3.4* will apply to all activities on the Internet or other communications network to be conducted by you, except that you may maintain one (1) or more e-mail addresses and may conduct individual e-mail communications without our prior written approval. You agree to obtain our prior approval as provided above if you propose to send advertising to multiple addressees via e-mail or text messages. You may not use a Site to represent that: (i) the Site is an official account, application, page or group of, or video produced by us; or (ii) you are the owner of the *sweetFrog* brand. On any Site you use in connection with the Franchised Business, you must affirmatively state: (i) that you are a franchisee and the opinion and content being expressed are your own and not that of the *sweetFrog* brand; and (ii) the Location of your Franchised Business.

3.5 Continuing Working Capital Requirement.

You must have Fifteen Thousand Dollars (\$15,000) in working capital at the time you open your Franchised Business.

ARTICLE 4. TRAINING, ASSISTANCE AND START-UP MATERIALS

4.1 Training Program.

We will provide up to two (2) natural persons (individually and collectively, "Trainees") with a training program designed to inform the participants as to the fundamentals of operating the Franchised Business prior to your opening of the Franchised Business. At minimum, one (1) of the two (2) natural persons must have an ownership interest in the Franchised Business. The remaining position may be filled by a natural person with an ownership interest in or management responsibility for the Franchised Business. The training program is made up of the "In-Store Training," which is approximately twenty-four (24) hours, and "New Owner Training," which is approximately forty (40) hours (collectively, "Training Program"). You will be solely responsible for all transportation costs, food, lodging and other personal expenses incurred by you and your employees in connection with the Training Program. The New Owner Training will be conducted either online or in person at our sole discretion. If the New Owner Training is conducted in person, it will be at the Franchisor training and education center in Scottsdale, Arizona or at such other location as we may designate at our sole discretion. The In-Store Training will be conducted at a training store in Arizona or such other location as we may designate at our sole discretion. You acknowledge that adequate knowledge regarding the operation of the Franchised Business is essential to the growth of your franchise and to the promotion of the System. Notwithstanding the foregoing, Franchisor has the right to require Franchisee and/or its manager(s) to attend additional training and pay the Additional Training Fee (as defined below), as provided for in this *Section 4.1* and *Section 5.10*, in the event Franchisee is not operating the Franchised Business pursuant to the System Standards.

4.2 Employee Training.

You acknowledge that the employees of your Franchised Business are an integral and important part of the Franchised Business, as they will have substantial contact with customers. You alone are responsible, and acknowledge that we have no direct or indirect control and no right or authority, for the hiring, firing, training, supervising, setting the terms and conditions of employment (including employee tasks and work schedules), and compensation of your employees; maintaining employment records; the safety of your employees; and for your employees' compliance with the System Standards. The System Standards are in place to protect our interests in the System and not for exercising any control over you, your employees or your Franchised Business. You must ensure that your employees who have direct interaction with the public are able to speak and read English and any other language that may be required to adequately meet the public needs in your Franchised Business.

4.3 Additional Programs; Continuing Assistance.

We will provide one (1) of our representatives to come to your restaurant during opening week for up to five (5) days, at our expense, to work with you or your manager on your grand opening and on operating and marketing your restaurant. We may, in the future, request that Trainees participate in refresher or additional training programs. We may also hold an annual

conference to introduce new products, discuss sales and marketing techniques, personnel training, advertising programs, merchandising procedures and other subjects. You may be charged a nominal registration fee for these programs, and you will be solely responsible for the cost of transportation, food, lodging and other expenses incurred by Trainees at any such program. Attendance at these additional training programs and conferences is mandatory. They will be held in the metropolitan Phoenix, Arizona area, or at other locations in the United States chosen by us, at our sole discretion.

In addition to the initial training available under *Section 4.1*, we shall provide such periodic evaluations or inspections as we deem appropriate, utilizing our field representatives who may visit the Franchised Business from time to time. The frequency and duration of such visits to a Franchised Business by our representatives shall be in our sole discretion. Any such evaluation or inspection is not intended to exercise any control over your employees or the daily operation of your Franchised Business. In addition, we will be available on an ongoing basis at our offices for consultation and guidance with respect to the operation and management of the Franchised Business. In addition to the Confidential Manual, we may, but are not required to, from time to time provide you with additional materials relating to the Franchised Business.

4.4 Area Representatives.

We may retain the services of an independent third-party area representative ("Area Representative") to represent us in the area in which the restaurant is located and perform some or all of the services we provide under this Agreement. The services the Area Representative may perform could include: (i) assistance in location selection and evaluating and confirming that the Location meets our minimum site requirements; (ii) advice and guidance regarding lease negotiations; (iii) assistance in opening new *sweetFrog* locations; (iv) assistance with training on the approved POS System (as defined in *Section 4.6a.*); (v) assistance with marketing advice; (vi) periodic Quality Service Cleanliness and Experience ("QSCE") evaluations; (vii) assistance with collection of the various sums due to us from franchisees; and (viii) coordination with other franchisees in your area and general supervision and monitoring of your Franchised Business on our behalf. You agree in advance to our delegation to an Area Representative of some or all of our obligations, and assignment to an Area Representative of some or all of our rights under this Agreement. You agree that we may require you to submit to an Area Representative any reports you are required to submit to us. Upon our request, you will provide the Area Representative with access, inspection and audit rights to the same extent we have those rights under this Agreement. You are not a third-party beneficiary of any agreement between us and any Area Representative. If we have designated an Area Representative for your restaurant as of the Effective Date, the name and contact information of the Area Representative is shown in *Section 17.3h*. We reserve the right in our sole discretion to remove any Area Representative in your area at any time and to appoint any other Area Representative for your area. We have no obligation to appoint an Area Representative in the area in which your restaurant is located, and we have no obligation to appoint a new Area Representative after we have removed an Area Representative.

You acknowledge that Area Representatives and their owners and employees may not contractually bind us without our express written authorization. You further acknowledge no Area Representative has the authority to: (i) enter into agreements or execute any agreements on our behalf; or (ii) bind us in any way without our prior written consent. Unless expressly authorized and agreed to by us in writing, we disavow any agreements, whether verbal or written, entered into by an Area Representative that in any way attempts to bind us. In any litigation or arbitration proceeding, you agree to waive any claim or defense that an Area Representative is our express

or implied agent and such an assertion by you would constitute a material default under this Agreement.

4.5 Confidential Manual.

To protect the reputation and goodwill of the System and to maintain the uniform standards of operation under the Proprietary Marks, you must conduct your business in accordance with our Confidential Manual. The Confidential Manual is confidential and remains our property.

The Operations Manual is available to Franchisee via the Franchisee portal at: <https://portal.kahalamgmt.com>. In the event Franchisee desires to receive a hard copy of the Operations Manual, then Franchisee shall submit such request in writing to training@kahalamgmt.com. Upon such request, a hard copy of the Operations Manual will be mailed to Franchisee via regular mail within approximately forty-five (45) days thereafter.

So that you may benefit from new knowledge gained by us as to improved techniques in the operation of the Franchised Business, we may from time to time revise, amend, restate or supplement the content of the Confidential Manual or other documents provided by, or approved by, us as they presently exist or may exist in the future. You will at all times ensure that your copy of the Confidential Manual is kept current and up to date. In the event of a dispute regarding any of the content of the Confidential Manual, the master copies maintained by us at our corporate office will control.

4.6 Computer Systems; Debit and Credit Card Processing.

a. Prior to the opening of your restaurant, you will be required to acquire, to maintain, and to exclusively use an approved cash register/computer system ("POS System") during the operation of the Franchised Business. You and your employees must complete training for the POS System as we require, and you will be required to use the POS System to produce sales reports, keep inventory control and post sales tax, refunds, credits and allowances and submit that information to us immediately upon our request. You are required to obtain high-speed/always-on internet connection service for your POS System. If high-speed/always-on internet is not available in your area, dial-up Internet access may be used until high-speed/always-on service becomes available in your area. The POS System must be configured so that we will have remote access to the information and data stored in the POS System, which may include inventory information. This access will allow us to exchange/collect data and other information on such bases as we will communicate to you from time to time. You will be required to maintain the POS System in good working order at all times, and to upgrade or update the POS System during the Term as we may require from time to time. It will be your responsibility to enter into contracts for the maintenance, upgrades and updates to the POS System with an approved supplier of such services identified by us on the list of approved vendors and distributors or other notification to you from us advising of suppliers for your market area. You shall also be required to own a personal computer or similar device with access to the Internet that allows you to report your Gross Sales (as defined in *Section 5.2*) online, to send and receive e-mails with us, and if/when online ordering is made available to receive online orders. All *sweetFrog* franchisees of traditional restaurants are required to participate in the online ordering program. We may require you to upgrade the hardware and software including, but not limited to, your operating system, as reasonably necessary to provide reports and information required by us.

b. You are required to accept debit and credit cards and Gift/Loyalty Cards from consumers at the Franchised Business and participate in any online ordering programs which Franchisor may require. Prior to the opening of your restaurant, you will be required to acquire and maintain an approved debit, credit and Gift/Loyalty Card processing system to use during the operation of the Franchised Business. Additionally, you must utilize our approved third-party Gift/Loyalty payment card processor for processing all such Gift/Loyalty Card transactions, including entering into a Gift Card Participation Agreement with one of our affiliates, or its successors or assigns, or other approved vendor for the Gift/Loyalty Card processing services. The Payment Card Industry (“PCI”) requires all companies that process, store, or transmit credit card information to protect the cardholders’ information by complying with the PCI Data Security Standard (“PCI DSS”). Therefore, as a franchisee who accepts credit cards, you are required to be PCI compliant by following and adhering to PCI DSS, which includes ensuring that your POS System, back office computer (if supplied), and any other device that is plugged into the network is **only** used for business purposes. You are also required to complete an annual questionnaire and quarterly network PCI scans and install a network firewall appliance for logging, tracking, reporting, and security assessment. You are also required to validate with Franchisor that your store is PCI compliant, and Franchisor may in its sole discretion require you to install a particular type of firewall (hardware and/or software). To show such validation you must send us your Passing Certificate showing your store is PCI compliant. You are also required to verify that you have a PCI compliant firewall appliance installed at your location if you process credit cards via high speed internet connectivity. We require your Franchised Business’ POS System, including terminals, computers, and software to be in compliance with the PCI DSS at all times. The PCI DSS is often updated, and you are required to obtain and comply with all updated standards. You must also be PCI compliant in order to obtain cyber liability/data breach insurance coverage.

ARTICLE 5. FEES AND DEPOSITS

You agree to pay each of the following amounts to us via a lump sum, with each and every amount being non-refundable because of our investment in time and money, in addition to any other benefits conferred upon you, including processing your application, reviewing your documents, and providing you with relevant information, unless otherwise expressly specified below, in accordance with the provisions set forth in this *Article 5*. Notwithstanding any designation by you to the contrary, we have the sole discretion to apply any of your payments, in part or in whole, to any of your indebtedness to us.

5.1 Initial Franchise Fee.

The initial franchise fee is Thirty Thousand Dollars (\$30,000) (“Initial Franchise Fee”). The Initial Franchise Fee will be due and payable by you to us by cashier’s check, wire transfer or other form of immediately available funds acceptable to us, upon your execution of this Agreement. You and we agree that our grant of the franchise and your payment of the Initial Franchise Fee provided for in this *Section 5.1* does not give you any rights with respect to other franchises, if any, as we in our sole discretion may elect to make available in the future.

5.2 Royalty Fee and Surcharge.

For the period of time commencing on the later of the Effective Date or the date the Franchised Business opens to the public, and for the duration of the Term, you must pay to us a weekly royalty fee equal to five percent (5%) of total Gross Sales (as defined below) (“Royalty Fee”). If we or the landlord of the Location require you to remodel your Franchised Business in

such a way that your Franchised Business (including catering) stops offering items to the public, or if there is a disaster at your Franchised Business, such as a fire, flood or damage caused by an act of God, that requires you to temporarily close your Franchised Business, you are not required to pay the Royalty Fee during the period of time of such temporary closure; provided you provide us or our authorized representative with notice of such temporary closure as soon as reasonably possible, but in no event more than twenty-four (24) hours after such closure begins. Notwithstanding the above, all amounts owed to us under this Agreement prior to the temporary closure shall still be fully due and payable. The temporary closure of your Franchised Business shall not exceed ninety (90) days, but may be extended on a case-by-case basis at our sole discretion and with our prior written approval.

In our sole discretion, we may charge, in addition to the Royalty Fee, a surcharge of up to Ten Dollars (\$10) per week if your Franchised Business is located in a state that imposes additional reporting requirements on a franchisor ("Surcharge"). The Royalty Fee and applicable Surcharge shall be due and payable no later than ~~Monday~~ Thursday of each week, which day may be modified by us without prior notice to or approval from you, for the week ending on the preceding ~~Tuesday~~ Sunday in which applicable Gross Sales (as defined below) were earned from the Franchised Business. The weekly Royalty Fee and applicable Surcharge shall be paid by electronic funds transfer, as detailed below.

For the period of time commencing on the later of the Effective Date or the date the Franchised Business opens to the public, and for the duration of the Term, you are required to report Gross Sales to our designated accounting office, which as of the Effective Date, is via the Internet at <http://franchisee.kahalamgmt.com>, as set forth in *Section 5.6*. Nothing herein shall prevent Franchisor from electronically polling Franchisee's POS system, restaurant management software, and financial records (or similar tools thereto) daily, or more frequently, by electronic or other remote means and Franchisee hereby grants Franchisor authority to do so; however, such authority does not negate Franchisee's requirement to ensure all sales are timely and accurately reported each week. You shall be required to establish a Depository Account (as defined in *Section 5.6*) at the time you execute this Agreement as set forth in *Section 5.6*. Payment of the Royalty Fee, Advertising Fee (as defined in *Section 5.3*), and all other fees due under this Agreement to us shall be made via electronic transfer of funds from the Depository Account. To accomplish this electronic transfer of funds from the Depository Account, you must complete, sign and deliver to us, and maintain for the duration of the Term, a current Electronic Funds Transfer Authorization in a form that we provide.

As used in this Agreement, "Gross Sales" means all sales, money or things of value, received or receivable, directly or indirectly, by Franchisee on account of the Franchised Business, less applicable sales taxes and any properly documented refunds, credits and allowances given by you to customers in accordance with the System Standards, but without deducting any of your income taxes, costs and other expenses. All sales made from catering services must be included in the Gross Sales.

5.3 Advertising Fee.

a. You must pay to us, or directly into a national advertising fund or also any regional advertising funds, as designated by us at our sole discretion, (individually and collectively, "Advertising Fund") a weekly advertising fee of two and one-half percent (2.5%) of the Gross Sales for the preceding week ("Advertising Fee"). Upon thirty (30) days' notice by us to you, we may unilaterally increase the Advertising Fee from its current level not to exceed three percent

(3%) of your weekly Gross Sales. The Advertising Fee shall be due and payable with the Royalty Fee under *Section 5.2*. The Advertising Fee is our property and may be deposited by us into our general operating account.

b. The Advertising Fund will be used for marketing, advertising, production and media expenses to promote the *sweetFrog* name, System, products and services. We are entitled to deduct, free of charge, the following from the Advertising Fund: (i) reimbursement of expenses, overhead, and employee salaries for services provided; and (ii) rent for office space provided to the Advertising Fund. We have no fiduciary obligation to you in connection with the operation of any Advertising Fund. No interest on an unexpended Advertising Fee shall be imputed or otherwise charged for the benefit of, or payable to, you. You understand and agree that the only obligations we have regarding the collection and spending of the Advertising Fee or the administration of the Advertising Fund are the express contractual obligations in this *Section 5.3*. We are not acting as a trustee, fiduciary, agent or in any other special capacity. We do not give any representation or warranty regarding the quality or effectiveness of the advertising and marketing activities funded by the Advertising Fee or of the Advertising Fund, and we will have no liability to you with respect to how these funds are spent.

c. One and one-half percent (1.5%) of your Gross Sales is deposited into the national Advertising Fund; if a cooperative exists where your Franchised Business is located, the remaining one percent (1%) of your Gross Sales is deposited into the regional Advertising Fund for your cooperative, and if no cooperative exists where your Franchised Business is located, your Franchised Business will be considered a “single store” cooperative and you must contribute the remaining one percent (1%) of your Gross Sales to the regional Advertising Fund for your store. Your own local marketing and advertising should be developed to maximize your particular customer base.

5.4 Cooperative Advertising.

a. We encourage the formation and operation of franchisee cooperative advertising associations (each an “Association”). Each Association will help coordinate advertising, marketing efforts and programs, and attempt to maximize the efficient use of local advertising media. If an Association is formed for your region, you must contribute financially to the Association as required by us. Failure to do so will be deemed a breach of this Agreement, and you may also, in Franchisor’s sole discretion, lose your right to vote as to decisions regarding advertising and marketing efforts and programs.

b. Upon our request, you will assist in establishing an Association or in deciding how to allocate all or part of any Advertising Fund contribution we elect to distribute to the Association. We will decide in our sole discretion whether to make contributions from the Advertising Fund to an Association and how much to contribute. We reserve the right to establish general standards concerning the operation of an Association, advertising agencies retained by an Association, and advertising programs conducted by an Association. Notwithstanding anything to the contrary, no Association decision will be made or advertising collections spent without our prior written approval.

5.5 Not Applicable.

5.6 Depository Account; Payment Procedures.

You are required to establish, at the time you execute this Agreement, and maintain for the duration of the Term a depository account (“Depository Account”) at a bank or other federally insured financial institution (“Depository”) under the same name as Franchisee under this Agreement. You will initially deposit no less than Three Thousand Dollars (\$3,000) into the Depository Account and are required to maintain a balance of at least Three Thousand Dollars (\$3,000) in the Depository Account at all times during the Term by replenishing the Depository Account to at minimum Three Thousand Dollars (\$3,000) after any withdrawals. We shall not be responsible for any bank service charges incurred by you which result from the withdrawal of funds from your Depository Account.

On Tuesday of each week, you must submit a report to us regarding the weekly period which ended on the preceding ~~Saturday~~Sunday, including details on Gross Sales and other statistical data as provided in this Agreement or the Confidential Manual or as otherwise specified from time to time by us. We will withdraw funds electronically on Thursday of each week from the Depository Account. The withdrawals are based upon the figures you report and constitute the Royalty Fee and Advertising Fee as described in *Sections 5.2 and 5.3*. If you do not submit a report on any Tuesday, we may estimate the Royalty Fee and Advertising Fee based upon prior reports and withdraw the estimated amounts up to the entire Three Thousand Dollars (\$3,000). We will return or credit back to you, in our sole discretion, any overage within thirty (30) days after our receipt of your report(s). We shall not be responsible to you for any interest charges for any overage collected due to your failure to timely report your sales. You shall instruct the Depository to disburse each week to our designated bank, via electronic funds transfer by the close of business on Thursday (or preceding banking business day, if Thursday is a bank holiday), the weekly Royalty Fee and Advertising Fee and other fees due for that week, which week shall end on the preceding ~~Saturday~~Sunday. The days of the week specified above may be modified by us without prior notice to or approval from you.

You will be charged a monthly fee, in the amount of One Hundred Dollars (~~\$100~~25), by the authorized POS System vendor, and this is subject to change by the supplier. Under no circumstances shall such access to the Depository Account be deemed control or joint control of the Depository Account by us.

Subject to reasonable advance notice for non-recurring payment amounts, we have the right to debit your Depository Account, or any other depository account you have with us, according to the terms of your Electronic Funds Transfer Authorization for any of the payments described in this Agreement. If you do not pay all amounts due by the due date, we may suspend our and our affiliates’ services and support until your payment default is cured. Repeated failure to pay all amounts when due, whether or not the defaults are subsequently cured, may be cause for termination under *Article 14*.

You shall pay us Fifty Dollars (\$50) for each electronic funds transfer attempted from your Depository Account pursuant to this *Section 5.6* that is returned for non-sufficient funds. You shall also reimburse us for all other costs and expenses incurred by us in collecting or attempting to collect funds due to us from the Depository Account (for example, without limitation, charges for non-sufficient funds, uncollected funds or other discrepancies in deposits or maintenance of the Depository Account balance in accordance with the terms hereof). The Depository Account shall be established and maintained solely for the purposes set forth in this *Section 5.6* and any other

fees authorized under this Agreement and any other agreements between you and us or any of our affiliates.

5.7 Lease Review Fee.

If you request us or one of our designated affiliates to complete a Lease Review, you are required to pay us or our designated affiliate a lease review fee in the amount of Two Thousand Five Hundred Dollars (\$2,500) ("Lease Review Fee") for reviewing and providing comments to your proposed lease.

5.8 Lease Guarantee Fee.

If, in order to obtain the lease agreement for the Location of your Franchised Business, the landlord requires you to obtain a lease guarantee, and we or one of our affiliates agree to serve as such guarantor, you will pay us or our affiliate a fee in the amount of ten percent (10%) of the total amount of the rental obligations being guaranteed under the lease during its term up to a maximum fee of Ten Thousand Dollars (\$10,000) ("Lease Guarantee Fee"). The Lease Guarantee Fee will be due and payable upon our or our affiliate's execution of the applicable lease guarantee agreement with the landlord. Neither we nor any of our affiliates are required to serve as a guarantor of your lease for the Location of your Franchised Business; rather, the decision of whether to serve as a guarantor shall be made in our sole discretion. In the event that you request us or our affiliate to either agree to be the tenant under the lease or execute a separate guarantee to the lease, and you pay the required Lease Guarantee Fee, you agree and acknowledge that payment of the Lease Guarantee Fee shall not, in any manner, be deemed as an insurance policy which limits your liability in connection with the Franchised Business, including any and all financial liability under the sublease or lease related to the Location. You further agree and acknowledge that our or our affiliate's agreement to act as tenant or guarantor under the lease, and your payment of the Lease Guarantee Fee to us or our affiliate, does not result in the assumption or transfer of your liability, in connection with the Franchised Business, by or to us or our affiliate.

5.9 Additional Persons Training Fee.

The training of two (2) individuals is included in the Initial Franchise Fee. If you desire to have more than two (2) people attend the Training Program, you must pay an additional training fee of Five Hundred Dollars (\$500) for each such person to attend the In-Store Training and an additional Seven Hundred Fifty Dollars (\$750) for each such person to attend the New Owner Training (individually and collectively, "Additional Persons Training Fee") (see *Section 4.1*).

5.10 Additional Training Fee.

If, after attending the Training Program, you desire to receive additional training, we will provide additional training time to you for a fee of Three Hundred Dollars (\$300) per person per day. Such additional training will be at a time reasonably agreed to by you and us, and will be conducted at Franchisor's headquarters, online, or such other location as we may designate in our sole discretion. You will be solely responsible for all transportation costs and expenses, food, lodging and other personal costs and expenses incurred by you and your employees in connection with this additional training.

5.11 Document Administration Fee.

A document administration fee of Five Hundred Dollars (\$500) ("Document Administration Fee") is payable to us when we must prepare an amendment to your franchise documents—(see *Section 12.3g*).

5.12 Renewal Franchise Fee.

A renewal franchise fee of fifty percent (50%) of the then-current initial franchise fee not including any discounts or reductions ("Renewal Franchise Fee") is payable to us when you renew this Agreement (see *Section 13i*).

5.13 Transfer Franchise Fee.

a. Not applicable.

b. A Potential Transferee (as defined in *Section 12.1c*.) receiving this Agreement, as may be amended, in connection with a Full Transfer (as defined in *Section 12.1a.1*.), must pay to us a transfer franchise fee of Seven Thousand Five Hundred Dollars (\$7,500) ("Transfer Franchise Fee").

5.14 Relocation Fee.

A relocation fee of Five Hundred Dollars (\$500) ("Relocation Fee") is payable to us when you sign the amendment to this Agreement for your relocation (see *Section 2.5*).

5.15 Transfer Training Fee.

A Potential Transferee receiving this Agreement, as may be amended, in connection with a Full Transfer, must pay to us, in addition to the Transfer Franchise Fee, a transfer training fee of One Thousand Five Hundred Dollars (\$1,500) ("Transfer Training Fee"). The Transfer Training Fee is used to provide training for two (2) individuals, and a fee of Five Hundred Dollars (\$500) will be charged for each additional individual trained over two (2).

5.16 Annual Meeting Registration Fee.

If we hold an annual meeting ("Meeting"), the Meeting may be held at various locations throughout the United States and/or online as we may designate in our sole discretion. Because the planning and funding of the Meeting must be done well in advance and requires a substantial financial commitment, we have the right to debit your Depository Account for up to One Thousand Dollars (\$1,000) for the Meeting registration fee at any time sixty (60) to ninety (90) days prior to the first day of the Meeting. Even if you do not attend the Meeting, this fee may be debited from your Depository Account. You will also be solely responsible for all costs incidental to attending the Meeting. If you do not attend the Meeting, we will make available to you one (1) full set of the substantive materials that were presented at the Meeting.

5.17 Late Report; Interest; Late Charge; Non-Sufficient Funds Fee; Breaching Royalties; Draft Draw Charge.

If you fail to submit to us any financial statements, forms, reports or records required to be provided under this Agreement by its due date, including your weekly Gross Sales report for

calculating your Royalty Fee and Advertising Fee, you must pay to us a late report charge of One Hundred Dollars (\$100) per week or part thereof.

If any fees or assessments due under this Agreement, including the Royalty Fee and Advertising Fee, are not paid when due, interest shall accrue on the late payment (from the date payment is due until the date payment is made) at the Default Rate, which amount, plus a late charge of five percent (5%) of the unpaid amount, or One Hundred Dollars (\$100), whichever is greater, shall be added to each late payment. For any payments made by you to us under this Agreement which are returned for non-sufficient funds of a processed check, you shall be charged a non-sufficient funds fee of Twenty-Five Dollars (\$25) per occurrence. Pursuant to *Section 5.6*, for each electronic funds transfer that is attempted from the Depository Account but returned for non-sufficient funds, you shall be charged a Fifty Dollars (\$50) non-sufficient funds fee per occurrence.

Franchisor has the absolute right to charge Franchisee three (3) times the fixed Royalty Fee or, if on a percentage Royalty Fee, the Royalty Fee will be increased to up to fifteen percent (15%) of Gross Sales, with respect to any period during which Franchisee is in breach or default of its/his/her obligations under this Agreement without providing Franchisee advance notice or right to cure. The Royalty Fees paid or owing to Franchisor with respect to the period during which Franchisee is in breach or default are referred to as "Breaching Royalties." Breaching Royalties will be charged for a minimum fourteen (14) day period, regardless of the length of the actual breach or default.

If you fail to provide us any necessary information or documentation with respect to our practice of drawing drafts against your bank accounts, you must pay us a draft draw charge in the amount of One Hundred Dollars (\$100) per day that the failure continues.

If, as a result of your failure to remit payments required under any provision of this Agreement, we retain an attorney or a collection agency to collect such payments, you must pay all collection costs and expenses, including reasonable attorneys' fees and expenses, whether or not legal proceedings are initiated. Our rights under this *Section 5.17* are in addition to any other rights or remedies that we may have as a result of your default under this Agreement.

5.18 Audit Fees.

For the purpose of this *Section 5.18*, we have the right, at any time during business hours, and with or without prior notice to you, to inspect and audit, or cause to be inspected and audited, the business records, cash control devices, bookkeeping and accounting records, sales and income tax records and returns and other records of the Franchised Business and, if applicable, your entity's books and records.

You hereby grant us access to any computers utilized by you for such purposes and we will have the ability, at all times, via modem, to obtain daily and weekly sales reports and other financial records that the POS System provides. You will fully cooperate with our representatives, the Area Representative, if applicable, and independent accountants hired by us to conduct any such inspection or audit. In addition, in the event such inspection or audit is made necessary by your failure to furnish reports, supporting records or other information, as required herein, or to furnish such reports, records or information on a timely basis, or if an understatement of Gross Sales, resulting in an underpayment of the Royalty Fee or Advertising Fee for the period of any audit (which shall not be for less than one (1) month) is determined by any such audit or inspection

to be five percent (5%) or greater, you will pay to us, immediately after receipt of the inspection or audit report, any additional Royalty Fee and Advertising Fee and other amounts due as a result of any such understatement, plus interest at the Default Rate from the date originally due until the date of payment and you must reimburse us for such audit or inspection, including the charges of any independent accountants and the travel expenses, room, board and compensation of such accountants and our employees.

The remedies in this *Section 5.18* will be in addition to all other remedies and rights available to us under this Agreement or otherwise available.

5.19 Data Fee.

We may require you to pay us or a third party we designate a data fee of up to Seventy-Five Dollars (\$75) per month for polling or collecting data from your POS System.

5.20 Reserved.

5.21 New Supplier Approval Fee.

All requests for approving new or alternative suppliers must be submitted in writing by you or the supplier to our purchasing department. Each request will be reviewed in accordance with our then-current procedures and the supplier must meet our then-current requirements, which may include that our representatives be allowed to inspect the facilities of the proposed supplier, and that samples from the proposed supplier be delivered, at no charge, either to us or to our designee for testing. A charge not to exceed the amounts incurred in connection with the inspection and the test, with such cumulative amount not to exceed Five Thousand Dollars (\$5,000), must be paid to us. If approved, in our sole discretion, we will notify you or the supplier in writing within sixty (60) days after our receipt of an approval request. You must not offer or sell in any manner any of the proposed alternative supplier's products until our written approval of the proposed alternative supplier is received.

5.22 Reserved.

5.23 Non-participation Fee.

You must offer and sell at the Location of the Franchised Business all products designated by us, consistent with our System Standards. In addition, you must immediately incorporate into the Franchised Business all new or modified products and services designated by us and must fully participate in all local, regional, seasonal, promotional and other programs, initiatives and campaigns adopted by us in which we require you to participate. If you fail or refuse to fully participate in such, you may, in our sole discretion, be required to pay a non-participation fee of One Hundred Dollars (\$100) per day that you are not in compliance ("Non-participation Fee").

5.24 Grand Opening Marketing.

Ten Thousand Dollars (\$10,000) ("Grand Opening Marketing") is payable to us on the earlier of: (i) prior to you executing a lease for the premises where the Franchised Business will be located; or (ii) prior to construction commencing at the premises where the Franchised Business will be located. We or our designated affiliate will create a marketing plan for (i) a grand opening event at your Franchised Business, and (ii) the initial advertising of your Franchised

Business, and will work with you to obtain your input on the marketing plan. We or our designated affiliate will use the Grand Opening Marketing to pay for the grand opening and initial advertising, but may, in our sole discretion, reimburse you for some local store marketing expenses that you pay if you received our prior approval. The Grand Opening Marketing should be used within six (6) months of the opening of your Franchised Business to the public. However, if a portion of the Grand Opening Marketing is not used within those six (6) months, we may, in our discretion, spend the remaining portion of the Grand Opening Marketing after six (6) months from the opening of your Franchised Business to the public.

5.25 through 5.35 Not Applicable.

ARTICLE 6. PROPRIETARY MARKS

6.1 Ownership and Right to Use.

We warrant to you that:

- a. We are the owner of all right, title and interest in and to the Proprietary Marks;
- b. We have granted to you the personal, non-exclusive, limited, revocable right and license to use the Proprietary Marks in connection with the operation of your Franchised Business;
- c. We have taken and will take all steps reasonably necessary to preserve and protect our rights in the Proprietary Marks; and
- d. We will only permit you to use the Proprietary Marks in accordance with the System Standards.

6.2 Covenants of Franchise Owners.

a. You acknowledge our ownership of the Proprietary Marks, and you agree that during the Term and after its expiration or termination, you will not directly or indirectly contest, or aid in contesting, the validity of the Proprietary Marks or our ownership of the Proprietary Marks, nor will you take any action which might impair or prejudice our ownership of the Proprietary Marks. You shall not, directly or indirectly, apply to register, register or otherwise seek to own or control any of the Proprietary Marks, or any confusingly similar mark thereto, whether in whole or in part, in any place or jurisdiction either within or outside of the United States; nor will you assist any others to do so.

b. You agree that the license granted pursuant to this Agreement authorizes you to use the Proprietary Marks solely in connection with the Franchised Business only at the Location, and for no other purpose. You have no right to license or sublicense any aspect of the System Standards or any of the Proprietary Marks.

c. You agree to use the Proprietary Marks only in the manner and to the extent specifically licensed by this Agreement. You further agree that any unauthorized use or continued use of the Proprietary Marks after the termination or expiration of this Agreement will constitute irreparable harm and is subject to injunctive relief.

d. The license granted by this Agreement includes only the Proprietary Marks, now existing or which may exist in the future. This license does not include the right to use any other

trademarks, service marks, trade names or trade dress owned by us or our licensor anywhere in the world. You agree that any and all goodwill associated with and identified by your use of the Proprietary Marks will inure directly and exclusively to our benefit, and that, on the expiration or termination of this Agreement, no monetary amount will be due or payable to you as a result of any goodwill associated with your ownership or operation of the Franchised Business.

6.3 Limitations on Franchisee's Use of Proprietary Marks.

To develop and maintain high and uniform standards of quality and service and thereby protect our reputation and goodwill and that of the System, you agree:

a. To operate and advertise the Franchised Business only under the Proprietary Marks authorized by us;

b. To adopt and use the Proprietary Marks licensed by this Agreement solely in the manner prescribed by us;

c. That your corporate, partnership or other entity name including trade name (if applicable), will not include any of the Proprietary Marks, in whole or in part, or any terms confusingly similar thereto, unless first authorized by us in writing;

d. To submit all advertising, promotional materials and all printed matter, including stationery, business cards, and any materials to be used on the Internet, to us for our written approval before you use any of these items; and

e. That we may from time to time change or modify the System Standards, including modifying existing Proprietary Marks or adopting new marks. You agree, at your own cost and expense, to adopt, use and display any such new or modified Proprietary Marks within ninety (90) days after notification from us. However, if we require you to modify or discontinue use of our proprietary information or use other information or rights in its place at any time other than upon renewal of this Agreement, and that requirement is a direct result of proceedings or litigation that determined that our and our franchisees' use of the proprietary information infringed upon a third-party's rights, we or our affiliate will bear the actual, direct, and reasonable costs of those modifications or discontinuances. The rights granted to Franchisee under this Section shall be Franchisee's sole and exclusive remedy for any infringement by any part of the System.

Upon your abandonment of the Franchised Business (whether voluntary or involuntary) or termination or expiration of this Agreement, you must immediately cease to use, in any manner whatsoever, any of the Proprietary Marks or any other marks which, in whole or in part, may be confusingly similar to any of the Proprietary Marks.

6.4 Non-Exclusive License of Proprietary Marks.

You understand and agree that your license to use the Proprietary Marks is non-exclusive; that we, in our sole discretion, can grant to other franchisees the right to use the Proprietary Marks and obtain the benefits of the System Standards, in addition to the licenses and rights granted to you under this Agreement; and that we or our affiliates may develop and license other proprietary marks in conjunction with concepts other than the *sweetFrog* concept, on any terms and conditions we deem advisable. You will have no right or interest in any such other licenses, proprietary marks or systems.

6.5 Notification of Infringement and Claims.

You agree that you will notify us immediately of any apparent infringement of, or challenge to your use of, any of the Proprietary Marks, or any claim by any person of any rights in any of the Proprietary Marks. You agree that you will not communicate with any person, other than us and our legal counsel, in connection with any such infringement, challenge or claim. We will have the sole discretion to take such action as we may deem appropriate to protect the Proprietary Marks and the exclusive right to control any litigation, United States Patent and Trademark Office proceeding, or other proceeding arising out of any such infringement, challenge, claim or otherwise relating to any Proprietary Marks. You agree to execute any and all instruments and documents, render such assistance, and do such acts and things as may, in the opinion of our counsel, be necessary or advisable to protect and maintain our interests in connection with any such litigation or proceeding, or to otherwise protect and maintain our interests in the Proprietary Marks.

ARTICLE 7. TRADE SECRETS AND PROPRIETARY INFORMATION

7.1 Innovations.

During the Term, you and your principals, officers, managers and employees may conceive, invent, create, design or develop various ideas, techniques, methods, processes and procedures, recipes, formulae, products, packaging or other concepts and features relating to restaurant operations, business practices or the manufacturing, production, marketing and sale of frozen yogurt or other frozen dessert products, and related goods now in existence or later developed, adopted, or improved in connection with the Franchised Business (individually and collectively, "Innovations"). You, without further consideration, hereby assign any and all of your rights, title and interest in the Innovations, including any intellectual property rights, to us, and also agree to cooperate with us and our counsel in the protection of the Innovations, including the perfecting of title thereto in us. In addition, you will require all of your principals, officers, managers and employees to sign an agreement in the form set forth in our System Standards and incorporated herein by reference ("Confidentiality Agreement"), and shall be liable to us for obligating your principals, officers, managers and employees to assign all of their rights, title and interest to the Innovations to us and requiring your principals, officers, managers and employees to cooperate in obtaining, protecting, maintaining and enforcing our right, title and interest in the Innovations.

7.2 Confidentiality Agreement.

a. In connection with the operation of the Franchised Business, you will from time to time receive, have access to, or learn certain information and materials that are proprietary to us or our affiliate. You and any person signing this Agreement under the heading "Personal Acceptance of *Sections 7.1, 7.2, 14.6 and 14.8*" agree that you will keep confidential, and will not use for your own purposes, nor supply or divulge to any other person, any of our Trade Secrets, including our methods of operation, processes, techniques, formulae and procedures, information a reasonable person would believe to be confidential and any other proprietary information regardless of whether such is expressly marked as confidential ("Confidential Information"). You acknowledge that much of the information imparted to you by us is confidential, constitutes Trade Secrets, are unique to us, and remains our sole exclusive property. Our Confidential Information includes the following:

1. The Confidential Manual and any amendments thereto;
2. Ingredients, recipes, and methods of preparation of food products;
3. Methods of operation of *sweetFrog* restaurants;
4. Information about products, services, or procedures before they become public knowledge;
5. Information which relates in any manner to our business or the System Standards, whether oral or reduced to writing, and which is not generally known to, or readily ascertainable by, other persons who might derive economic benefit from its disclosure or use; and
6. Any other information which may be imparted to you from time to time and designated by us as confidential.

b. You and any person signing this Agreement under the heading "Personal Acceptance of *Sections 7.1, 7.2, 14.6 and 14.8*" acknowledge and agree that the Confidential Information and any business goodwill of the Franchised Business is our sole and exclusive property, and that you will preserve the confidentiality thereof. Upon termination or expiration of this Agreement, all items, records or documentation recording or incorporating any Confidential Information, including any copies thereof, will be immediately turned over by you to us or our authorized representative.

c. You agree to take all steps necessary, at your own cost and expense, to protect the Confidential Information, including our Trade Secrets, and to adopt and implement all reasonable procedures prescribed by us from time to time to prevent the unauthorized use or disclosure of any of the Confidential Information. We require that all of your executive officers, agents, directors, shareholders, trustees, beneficiaries, partners and managers who may or are likely to obtain knowledge concerning the Confidential Information (and who do not sign this Agreement under the heading "Personal Acceptance of *Sections 7.1, 7.2, 14.6 and 14.8*") sign the Confidentiality Agreement binding such person to preserve the confidentiality of the Confidential Information as part of the terms and conditions of such person's employment or association with you. You must obtain a Confidentiality Agreement signed by any such person prior to or at the same time that you begin employment of, or association with, that person. This will be a continuing obligation on your part throughout the Term. You must keep each original signed Confidentiality Agreement and provide us with a copy of each Confidentiality Agreement when requested by us or our authorized representative.

d. Notwithstanding the above, Confidential Information shall not include information which you can reasonably prove: (i) entered the public domain through no breach by you or your affiliate of any duty of confidentiality, or (ii) you received our prior express written consent to disclose in the manner in which you disclosed it.

e. If anyone under a Confidentiality Agreement is legally compelled or required by a regulatory body to disclose any Confidential Information, he/she/it will notify us as soon as possible and will use his/her/its best efforts to obtain, and give us an opportunity to obtain, appropriate assurances of confidential treatment.

f. The requirements under this *Section 7.2* will remain in full force and effect during the Term and after termination or expiration of this Agreement.

ARTICLE 8. RELATIONSHIP OF THE PARTIES AND INDEMNIFICATION

8.1 Relationship of the Parties.

You and we agree that this Agreement does not create any fiduciary or employment relationship between you, or any of your employees, and us, that you are an independent contractor, and that nothing in this Agreement is intended to make either you or us a general or special agent, legal representative, subsidiary, joint venture, partner, employee or servant of the other for any purpose. You shall not enter into any agreement on behalf of or otherwise bind us for any purpose.

Should it ever be asserted that Franchisor is the employer, joint employer or co-employer of any of your or your affiliate's employees in any private or government investigation, action, proceeding, arbitration, or other setting, you irrevocably agree to assist Franchisor in defending said allegation, including (if necessary) appearing at any venue requested by Franchisor to testify on our behalf (and, as may be necessary, submitting itself to depositions, other appearances and/or preparing affidavits dismissive of any allegation that Franchisor is the employer, joint employer or co-employer of any of your employees).

8.2 Indemnification of Franchisor.

You agree to indemnify, defend and hold us and our affiliates (including our parent and subsidiary companies, current, past and future predecessors, successors and assigns), and each of our shareholders, owners, directors, officers, members, managers, partners, joint venturers, attorneys, employees, contractors, agents, representatives, guarantors, insurers, spouses, heirs, executors, trustees, estates, successors and assigns (collectively with us, "Indemnified Parties") harmless for, from and against any and all claims, liabilities, causes of action, suits, debts, duties, accounts, covenants, contracts, agreements, promises, taxes, demands, obligations, costs and expenses (including reasonable attorneys' fees), damages, judgments, and proceedings, of every kind and nature whatsoever, whether actual or threatened, in law or equity, or otherwise, under local, state or federal law including, without limitation, the ADA or the law of any other applicable jurisdiction (individually and collectively, "Claims"), suffered or incurred by any of the Indemnified Parties arising out of or relating to your construction, ownership, marketing, promotions, operation (including your failure to comply with PCI DSS or any law, statute, regulation, order, rule, or ordinance), or management of the Franchised Business, except for Claims held to have resulted solely from our gross negligence or willful misconduct. Notwithstanding the foregoing, we will have the right, at our option, to defend any Claim, but you must reimburse us upon demand for the costs and expenses of such defense. You shall immediately give us notice of any demand, investigation, written inquiry, action, suit, proceeding, or claim in any way related to us or the sweetFrog brand.

8.3 Indemnification of Franchisee.

We agree to indemnify, defend and hold you and your affiliates, and their shareholders, directors, officers, members, managers, partners, employees, agents, successors and assigns harmless for, from and against any and all Claims, suffered or incurred by any of them arising out

of any Claim of infringement or unfair competition in connection with your authorized use of the Proprietary Marks or Confidential Information, provided that such use is in accordance with the provisions of this Agreement. However, if we require you to modify or discontinue use of our Proprietary Marks or Confidential Information or use other information or rights in its place at any time other than upon renewal of this Agreement, and that requirement is a direct result of proceedings or litigation that determined that our and our franchisees' use of the Proprietary Marks or Confidential Information infringed upon a third-party's rights, we will bear the cost of those modifications or discontinuances as set forth in this Agreement.

8.4 Special Power of Attorney.

You agree to cooperate with and assist us as we may request from time to time to obtain, protect, maintain or enforce our intellectual property and Proprietary Marks, including executing documents and appearing as a witness. You hereby appoint us as your attorney-in-fact and hereby grant us an irrevocable Special Power of Attorney, coupled with an interest, with full power and authority for the purpose of executing documents or taking such action as necessary or appropriate as you might or could do if personally present, hereby ratifying all that we, as your attorney-in-fact, shall lawfully do or cause to be done by virtue of this Special Power of Attorney to obtain, protect, maintain or enforce our intellectual property and Proprietary Marks if we are, for any reason, unable to obtain your cooperation or assistance. The Special Power of Attorney granted by this *Section 8.4*, shall survive your dissolution, death, incompetence or disability and the termination or expiration of this Agreement.

ARTICLE 9. OPERATING STANDARDS AND DUTIES OF FRANCHISE OWNER

9.1 Compliance with System Standards and Confidential Manual.

You understand and acknowledge that every detail of the operation of the Franchised Business is important in order to develop and maintain high and uniform standards of quality, cleanliness, appearance, service, facilities and techniques; to increase the demand for the System; and to protect our reputation and goodwill and that of other *sweetFrog* franchisees. You also acknowledge that the operation of the Franchised Business is your sole responsibility, and that neither we nor our affiliates have any responsibility to obtain customers for you. The System Standards will constitute provisions of this Agreement as if fully set forth herein.

9.2 Authorized Products and Services.

a. You agree that you will not, without our prior written approval, offer at the Location any menu items, beverages, products or services that are not authorized by us for the Franchised Business, as set forth in the System Standards.

b. You have complete discretion in establishing the minimum price you charge for your products. Although we may suggest pricing strategy, you will have the final pricing decision.

c. Notwithstanding the terms of *Section 9.2b.*, we may conduct periodic promotional campaigns during which a specified product or products are promoted at a specified price. During the promotional period, you may not charge your customers more than the specified promotional price, although you may charge less than the promotional price.

d. We may conduct new marketing, research and development, branding and operational program tests, which will generally be conducted with experienced, existing franchisees and may include incentives and other rights that are not available to all franchisees.

e. You hereby consent to third-party vendors, suppliers and distributors sharing with us any and all information, reports, invoices and related documentation covering and otherwise detailing your purchases for the Franchised Business, and to us sharing your contact information with them when we reasonably believe they may offer you a desired benefit.

f. You are required to accept debit and credit cards (including Visa®, MASTERCARD® and AMERICAN EXPRESS®) and Gift/Loyalty Cards from consumers at the Franchised Business. Prior to the opening of your Franchised Business, you are required to acquire, and maintain during the Term, an approved debit, credit and Gift/Loyalty Card processing system ("Card Processing System") to use during the operation of the Franchised Business. Additionally, you must utilize our approved third-party payment card processor, as identified in the System Standards, for processing all Card Processing System transactions.

9.3 Specifications and Standards for Supplies; Approved Suppliers; Rollouts.

a. You must purchase or otherwise acquire certain proprietary or required equipment and supplies utilized in the Franchised Business only from our designated approved distributors or suppliers. If, during the Term, we change designated approved distributors or suppliers for any of the proprietary or required equipment and supplies utilized in the Franchised Business, you shall change to the new designated approved distributor or supplier within sixty (60) days after written notification of such change from us.

You acknowledge Franchisor and/or its affiliates has the right to receive commissions, volume discounts, purchase discounts, performance payments, bonuses, rebates, marketing and advertising allowances, co-op advertising, administrative fees, enhancements, price discounts, economic benefits and/or other payments ("Payments") based upon the actual purchases of the foods, beverages, and other products by Franchisor, its affiliates, area developers and franchisees from suppliers. Any such Payments made to Franchisor may be retained by Franchisor or distributed to franchisees in such amounts and using such allocation methods as Franchisor deems appropriate, in its sole discretion. All Payments received from a supplier for a designated purpose (such as participation at an annual convention, etc.) will be spent in accordance with the supplier's designated purpose.

b. If you desire to purchase or otherwise acquire any equipment, supplies or inventory items required by the System Standards but not previously approved by us, or from sources not previously approved by us, you must submit to us sufficient specifications, photographs, drawings and other information sufficient to allow us to determine whether such equipment, supplies or inventory items meet our System Standards. We may require that our representatives be allowed to inspect the facilities of the proposed supplier and revoke its approval upon the supplier's failure to meet any of our then-current minimum System Standards. We may also require that samples from the proposed supplier be delivered, at no charge to us, either to us or to our designee for testing. A charge not to exceed the reasonable cost and expense of the inspection and the actual cost and expense of the test must be paid to us either by you or by the proposed supplier. We will notify you within sixty (60) days after your request of our approval or disapproval of the proposed product or supplier, with such determination to be made at our sole discretion. You acknowledge and agree that our approval of any item or supplier of equipment, supplies or

inventory not previously approved by us will not, in and of itself, make the supplier of that item an approved supplier for other *sweetFrog* franchise owners in the System. We may, in our sole discretion, at any time and from time to time, re-inspect the facilities and products of any approved supplier and revoke its approval upon the supplier's failure to meet any of our then-current System Standards. If you receive a notice of revocation from us, you must immediately stop selling disapproved products and purchasing from the disapproved supplier.

c. We will provide to you a list of all recommended and required items of equipment, fixtures, supplies, smallwares and interior décor. This list will be included in the System Standards.

d. At any time and from time to time, we may at our sole option engage in new product rollouts to add to or change the menu items offered for sale in the Franchised Business and the ingredients or supplier of ingredients utilized in the preparation of the menu items sold in the Franchised Business (“Rollout”). If we engage in a Rollout, you shall participate in the changes that are the subject of such Rollout, including offering the new menu items, changing the menu items, changing to the new supplier of the ingredients utilized in the preparation of the menu items, and changing to the new ingredients utilized in the preparation of the menu items. If we engage in a Rollout, we will notify you of the details of the Rollout and provide you sixty (60) days from said notification to take the applicable actions required by the Rollout.

9.4 Compliance with Legal Requirements and Good Business Practices.

You must, at your sole cost and expense, operate the Franchised Business in full compliance with all applicable federal, state and local statutes, laws, ordinances and regulations, including health and safety regulations, food and drug laws, disability laws, labor and employment laws and data privacy laws, as may be amended, supplemented or enacted from time to time. You must pay all costs and expenses incurred by, and in the conduct of, the Franchised Business, including all rent, salaries, taxes (excluding our income taxes), disbursements, license or permit fees, insurance premiums, traveling expenses and any other business expenses when they become due. If you receive any demand, action, suit or proceeding, or the issuance of any demand, complaint, order, writ, injunction, award, decree, or other similar document of any court, agency or other governmental instrumentality relating to your Franchised Business, you must immediately notify us, and in no event, later than three (3) days after your receipt. Any such notice must be accompanied by a copy of the demand, complaint, order, writ, injunction, award, decree or other similar document. You must, in all dealings with your employees, customers, suppliers, the public and us, adhere to the highest standards of honesty, integrity, fair dealing and ethical conduct. You agree to refrain from any business practice that may be injurious to the System or the goodwill associated with the Proprietary Marks.

9.5 Maintenance of Insurance.

At all times during the Term, you must maintain in full force and effect at least the minimum types and amounts of insurance coverage that we require, under one (1) or more policies of insurance (each of which shall be primary coverage and shall not be contributory or secondary to any other coverage maintained by us), insured under the particular name of the Franchisee and for the particular address of the Franchised Business.

Such insurance policies must be issued by insurers acceptable to us having an A.M. Best’s financial strength rating of at minimum “A-VIII,” and grant us authority to obtain copies of your

certificate of insurance directly from the carrier or your agent/broker. The particular requirements of our minimum insurance coverage will be made available to you throughout the Term. Currently, the general liability insurance required by this Agreement must: (i) name MTY Franchising USA, Inc. as the certificate holder; (ii) name MTY Franchising USA, Inc. and Kahala Franchising, L.L.C. and their parents, subsidiaries, affiliates, officers, directors, and employees as additional insureds; (iii) contain a waiver by the insurance carrier of all subrogation rights against us and our affiliates and our affiliates' respective officers, directors and employees for casualty losses; (iv) indicate the address of the Franchised Business being insured; and (v) provide, via an endorsement, that we will receive thirty (30) days' prior notice of cancellation of any such policy. Additional minimum insurance coverage requirements (subject to increase or otherwise change in our sole discretion) are as follows:

TYPE OF COVERAGE	LIMITS/SPECIFICATIONS
General Liability	\$1,000,000 Bodily Injury/Property Damage Per Occurrence / \$2,000,000 Aggregate
Building Improvements and Betterments	100% of Full Replacement Cost – No Coinsurance (minimum of \$100,000)
Business Personal Property	100% of Full Replacement Cost – No Coinsurance – Special Form or equivalent (minimum of \$100,000)
Spoilage	\$5,000
Flood, Earthquake and Volcanic Eruption	Subject to Territory Limitations – required if in a designated Flood Zone
Workers' Compensation and Employer's Liability Insurance	As required by law
Employment Practices Liability Insurance with Franchisor Defense coverage	\$1,000,000
Hired and Non-Owned Automobile Liability	\$1,000,000 Combined Single Limit per accident

You need to evaluate if your particular business will require greater coverage or other types of insurance. For example, we strongly recommend that you consult with an insurance broker to discuss whether your particular lease/situation requires and/or should obtain additional common types of insurance (including, without limitation, umbrella insurance, and cyber liability/data breach insurance coverage).

You are responsible for maintaining insurance coverage and limits as required by us, at minimum, pursuant to this *Section 9.5*; provided, if your landlord requires additional coverage, higher limits, or any other requirements not required by us, then you are responsible for maintaining such additional items as well. You must always keep the required insurance coverage in force at all times during the operation of the Franchised Business, and you must comply with any changes we make periodically to our insurance requirements. Upon 30 days' notice to you, we may require you to increase and/or otherwise change the minimum coverage of the insurance referred to above, including to reflect identification of special risks, changes in law or standards of liability, higher damage awards or other relevant changes in circumstances.

Subject to *Section 3.1*, before you may open your restaurant, annually thereafter at least ten (10) days prior to renewal of your insurance coverage, and at any other time on our request, you must provide us with certificates of insurance or copies of insurance policies showing that

you are in compliance with our insurance requirements, as well as proof that you have paid the premiums you owe for the insurance we require. You will pay your insurance premiums to your insurance broker or to the insurance company issuing the policy. We or our affiliate may, at our option and in addition to our other rights and remedies under this Agreement, obtain such insurance coverage on your behalf, and you must promptly execute any applications or other forms or instruments required to obtain any such insurance and pay to us, on demand, any costs, expenses and premiums (in whole or part) incurred by us. Your obligation to obtain and maintain the insurance described above will not be limited in any way by reason of any insurance maintained by us, nor will your performance of such obligations relieve you of any obligations under *Section 8.2*.

9.6 Management of the Franchised Business.

You are directly responsible for all aspects of operating the Franchised Business, and you agree that you will, at all times, operate the Franchised Business and use your best efforts to enhance your Franchised Business and the System. The Franchised Business must be personally managed and directly operated by either you or another partner, shareholder, member, or other owner of your business organization (if applicable), or a manager.

9.7 Inspections by Franchisor.

For the purpose of this *Section 9.7*, you must make available to us or our authorized representative such financial and other information concerning the Franchised Business, and you must permit us or our authorized representative to have full and free access to such information at your Location during regular business hours without prior notice. We and our authorized representative will have the right to communicate freely with your employees, and make extracts from, and copies of, all such information. Our authorized representative may make announced or unannounced inspections of your Franchised Business to ensure compliance with all of the requirements of this Agreement.

9.8 Personal Guaranty; ~~Non-Disclosure and Non-Competition Agreement.~~

If you are an individual and married, your spouse must execute and deliver to us a Guaranty of Franchise Agreement ~~and a Non-Disclosure and Non-Competition Agreement~~ at the same time that you sign the Agreement unless your spouse is also signing the Agreement as an individual.

If you are a corporation, limited liability company, or other business entity, each of your shareholders, members, or other owners, whether direct or indirect (and their respective spouses, if married) must execute and deliver to us a Guaranty of Franchise Agreement at the same time that you sign this Agreement.

In the event any person who has not previously signed a Guaranty of Franchise Agreement ~~or a Non-Disclosure and Non-Competition Agreement~~ becomes your spouse or shareholder, member, or other owner, direct or indirect, or a spouse of such shareholders, members, or other owner, at any time after the execution of this Agreement, you must cause such person(s) to immediately execute and deliver to us a Guaranty of Franchise Agreement ~~and, as applicable, a Non-Disclosure and Non-Competition Agreement.~~

Failure to provide to us a Guaranty of Franchise Agreement or a Non-Disclosure and Non-Competition Agreement may, in our sole discretion, be grounds for termination of this Agreement as set forth in *Section 14.2a*.

9.9 Not Applicable.

ARTICLE 10. ADVERTISING AND PROMOTION

10.1 Advertising by Franchisor.

We (or at our election a third party which may be an affiliate of ours) will administer the Advertising Fund that will include your Advertising Fee and those of other franchise owners in the System. If an affiliate of ours administers the Advertising Fund or places advertising in connection with the System, such affiliate may be paid a fee that will not exceed the fee that would be payable to unrelated third parties for comparable services. Unless required by applicable law, we will have no obligation to create a trust account, escrow account or other special account for the Advertising Fund, and the monies comprising the Advertising Fund may be placed in our general account. We may also reserve the Advertising Fee for use in a subsequent year.

We will direct all advertising and promotional programs. We will have sole discretion over all creative concepts, materials and media used in such programs and the placement and allocation of such programs. The Advertising Fund will be used for marketing, advertising, production and media expenses to promote the *sweetFrog* trade name, System, products and services. We are entitled to deduct, free of charge, the following from the Advertising Fund: reimbursement of expenses, overhead, and employee salaries for services provided; and rent for office space provided to the Advertising Fund. We are not required to use any specific amounts from the Advertising Fund in your market. However, in our sole discretion, we may use some amounts contributed by you to any Advertising Fund, if any (see *Section 5.3*), in the same geographic area in which your Franchised Business is located.

10.2 Advertising by Franchisee.

In addition to your Advertising Fee, if applicable, and your grand opening promotional advertising program required under *Section 5.24*, and unless your Franchised Business is located in an enclosed shopping mall or other enclosed structure identified in *Section 1.1*, you agree to pay for a regular (white pages) and classified (yellow pages) telephone directory advertisement in the main directory distributed in the area where your Franchised Business is located, in such directory categories as we specify, utilizing forms of listing and classified directory advertisements approved by us. We also recommend that, in addition to your Advertising Fee, you spend at least two percent (2%) of your monthly Gross Sales on local advertising.

Your own local marketing and advertising plan should be developed to maximize your particular customer base. You should not rely upon a marketing program or plan by us as the sole means of obtaining customers. All marketing and advertising materials must be reviewed by our marketing department for look and feel. Our marketing department's review is not for determining compliance with federal, state and local laws.

All advertising by you in any medium must be conducted in a professional manner and must conform to the System Standards. We may make available to you, from time to time, advertising, promotional plans and materials for purchase.

Under no circumstances may you use, without limitation, the name, services, image, or voice of a celebrity, public figure, character or other person in connection with the Proprietary Marks or the Franchised Business without our prior written consent. We retain the sole and exclusive right to use, without limitation, the name, services, image, or voice of any celebrity, public figure, character or other person in advertising, endorsing or recommending the System.

ARTICLE 11. ACCOUNTING PROCEDURES AND REPORTS

11.1 Maintenance of Records.

You shall keep full, complete, and accurate books and accounts in accordance with generally accepted accounting principles, and in the form and manner indicated below or as from time to time further required by us. You agree to submit reports and data to us electronically if we advise you to do so. You agree:

- a. to submit to us electronically the weekly Gross Sales as set forth in *Section 5.6*;
- b. to submit to us, on or before the thirtieth (30th) day of each month, commencing with the opening of the Franchised Business, in a format and method approved by us (including through a third-party vendor that franchisee may be required to pay for), a profit and loss statement of the Franchised Business for the preceding calendar month prepared in accordance with generally accepted accounting principles;
- c. to submit to us, within ninety (90) days after the end of each calendar year, commencing with the opening of the Franchised Business, in a format approved by us, a profit and loss statement and balance sheet (including a statement of retained earnings or partnership account) of the Franchised Business for the preceding calendar year prepared in accordance with generally accepted accounting principles;
- d. to submit to us, at the times required, such other periodic forms, reports and information as may from time to time be required by us;
- e. to preserve, in the English language and for the time periods set forth below, all accounting records and supporting documents related to the Franchised Business (individually and collectively, "Records"), including:
 1. daily cash reports;
 2. cash receipts journal and general ledger;
 3. cash disbursements journal and weekly payroll register;
 4. monthly bank statements, daily deposit slips and canceled checks;
 5. all tax returns, including your personal returns and those of your officers, shareholders, partners and members;
 6. suppliers invoices (paid and unpaid);
 7. dated cash register tapes (detailed and summary);
 8. semi-annual balance sheets and monthly profit and loss statements;

9. daily production, throwaway and finishing records and weekly inventories;
 10. records of promotion and coupon redemptions;
 11. records of all outside sales; and
 12. such other records as we may from time to time request.
- f. to record all sales on cash registers approved by us, as specified in the Confidential Manual;
- g. to file all of your federal and state tax returns on a timely basis and to provide copies of them to us. We may, where applicable, require that tax returns from all of your shareholders, members or partners be provided to us, if you are other than an individual;
- h. During the Term, you shall preserve the Records for at least the current fiscal year and for the three (3) immediately preceding fiscal years. For three (3) years after the date of any transfer of an interest in this Agreement, the transferor of such interest will preserve the Records for its last three (3) fiscal years of operation under this Agreement. For three (3) years after the expiration of the Term (or after any earlier termination), you shall preserve the Records for the last three (3) fiscal years of operation of the Franchised Business; and
- i. In connection with our efforts to attract additional franchise owners to the System, we will have the right to use (without identifying you, except as required or allowed by law) any financial statements, sales reports, profit and loss statements or balance sheets provided by you and, in connection therewith, you authorize us to disclose any information contained on such financial reports as may be required by any federal or state registration or disclosure law.

11.2 Audit by Franchisor.

We will have the right, at any time during business hours, and with or without prior notice to you, to inspect and audit, or cause to be inspected and audited, the Records and cash control devices of the Franchised Business, and your corporate, partnership, limited liability company, or other entity books and records (if you are a corporation, partnership, limited liability company, or other entity). You agree that we may access any computers utilized by you for such purposes.

You will fully cooperate with our authorized representatives and independent accountants hired by us to conduct any such inspection or audit. In the event any such inspection or audit discloses an understatement of your Gross Sales for any period in question, you will pay to us, immediately after receipt of the inspection or audit report, any additional Royalty Fee or Advertising Fee due as a result of any such understatement, plus interest at the Default Rate from the date originally due until the date such understatement is paid in full.

In addition, in the event such inspection or audit is made necessary by your failure to timely furnish Records, or if an understatement of the Royalty Fee or Advertising Fee for the period of any audit (which period shall not be for less than one (1) month) is determined by any such audit or inspection to be five percent (5%) or greater, you must reimburse us all amounts incurred in connection with such audit or inspection including our employee costs and expenses, any independent accountants' and attorneys' fees, transportation, room, and meal expenses.

The remedies in this *Section 11.2* will be in addition to all our other remedies and rights under this Agreement or under applicable law.

ARTICLE 12. TRANSFER

Sections 12.1 through 12.4 apply to all transfers, except transfers by us, which are described in Section 12.5.

12.1 Prior Consent of Franchisor.

a. As used in this Agreement, “Transfer” means any voluntary, involuntary (including by operation of law), direct or indirect assignment, sale, gift or other transfer by you, including:

1. “Full Transfer,” which is any act or circumstance, except those set forth in Section 12.1a.2., by which fifty percent (50%) or more of the ownership or control is shifted from any individual or corporation, partnership or other business entity (individually and collectively, “Entity”) to another, including:

(i) Transfer of this Agreement or the Franchised Business, or any right or interest granted by this Agreement;

(ii) Transfer of an interest in you, if you are an Entity;

(iii) Merger, consolidation or issuance of additional ownership interests or redemption of ownership interests in you, if you are an Entity; or

(iv) Transfer of an interest in any other Entity holding an interest in this Agreement or you, if you are an Entity.

2. “Affiliate Transfer,” which includes:

(i) Transfer in a separation or divorce, regardless of how much of the ownership or control is shifted from any individual or Entity to another;

(ii) Transfer of this Agreement or the Franchised Business, or any right or interest granted by this Agreement, from your name as an individual(s) to your Entity name in which you are the sole owner(s) of the Entity;

(iii) Transfer of this Agreement or the Franchised Business, or any right or interest granted by this Agreement, from your Entity name in which you are the sole owner(s) to your name as an individual(s);

(iv) Transfer of this Agreement or the Franchised Business, or any right or interest granted by this Agreement, from one Entity name to another Entity name in which the owners of the entities are the same;

(v) Removing an owner from the Franchisee (unless the person has a fifty percent (50%) or more ownership interest);

(vi) Adding an owner to the Franchisee (unless the person has a fifty percent (50%) or more ownership interest); or

(vii) Transfer by which less than fifty percent (50%) of the ownership or control is shifted from any individual or entity to another for any act or circumstance listed in *Section 12.1a.1*.

b. We are entering into this Agreement based upon our knowledge of and faith in your ability. Therefore, the Franchised Business and all the rights granted by this Agreement are personal to you and you may not Transfer without our prior written consent. Any attempted Transfer without our prior written consent will be null and void, and will give us the right to terminate this Agreement and your rights under it, in addition to any remedies which we may have for the breach of this covenant by reason of an attempted Transfer.

c. We shall not unreasonably withhold or delay our consent to a Transfer, so long as it is shown to our satisfaction that the potential transferee ("Potential Transferee") can perform a franchisee's obligations under the then-current form of franchise agreement and all other agreements, legal instruments and documents required of new franchisees.

12.2 Advance Notice of Proposed Terms and Right of First Refusal.

a. If you, or any of your shareholders, members or partners (if applicable), have received and desire to accept a signed bona fide written offer from a third party to Transfer, you shall notify us and provide us with a complete copy of the offer (letter of intent) which must include the name, address and telephone number for every Potential Transferee. You must also include information as to the identity of all who will own an interest in this Agreement or in the Franchised Business after the completion of the Transfer, their respective interests, and the proposed terms and conditions of sale and payment.

b. We shall have the right and option, exercisable within thirty (30) days after the date we receive a copy of the offer, to purchase the interest proposed to be transferred, at the price and upon the same terms and conditions specified in the notice.

c. If we do not exercise our option, and the terms of the unaccepted offer are altered, you must, in each such instance, notify us of the changed offer; and we will again have thirty (30) days to exercise our right to purchase on the altered terms. If we do not exercise our option, then the Transfer may take place on the terms and price set forth in the notice; provided: (i) we give our written consent; (ii) the Transfer takes place no later than six (6) months from receipt of our written refusal to exercise our option to purchase; and (iii) all the conditions set forth in *Section 12.3* are satisfied.

12.3 Requirement for Consent to Transfer.

If a Transfer is proposed and we do not exercise our right of first refusal pursuant to *Section 12.2*, then we will consent to the Transfer, provided that:

a. All your obligations under this Agreement are fully paid and satisfied, including the Royalty Fee and Advertising Fee; you are not in default under any provisions of this Agreement or any other agreement, legal instrument or document with us or any of our affiliates; and you enter into written agreements with us, including (except where prohibited by law) a general release by you of all claims against us;

b. Potential Transferee provides to us a completed application and financial documents, is financially acceptable, is not associated with any of our competitors, is of good moral character and reputation, and meets our criteria, which includes: work experience and aptitude; ability to devote time and best efforts to the Franchised Business; equity interest in the Franchised Business; ability to speak and read English sufficient in our opinion to communicate with employees, customers and suppliers and to satisfactorily complete our training; no conflicting interests; and other criteria and conditions that we apply to new franchisees;

c. Potential Transferee provides us with copies of all governing documents of Potential Transferee (e.g., certificate of incorporation or organization, by-laws, stock certificates, operating agreement, membership certificates (if any)) which must be reasonably satisfactory to us in our sole discretion;

d. You provide to us a copy of the purchase and sale agreement, if a Full Transfer, or other documentation evidencing the Transfer, if an Affiliate Transfer, and following our analysis of the terms and conditions of the proposed Transfer, we, in our sole discretion, conclude that such terms and conditions will not interfere with the financial feasibility of the future operation of the Franchised Business;

e. Potential Transferee enters into all agreements, legal instruments and other documents, whether our then-current agreements, legal instruments and documents or a transfer of this Agreement and related legal instruments and documents, as determined by us (individually and collectively, "Transfer Documents"). The terms of the Transfer Documents may vary materially from the current agreements used by us, including the payment of a higher Royalty Fee and Advertising Fee;

f. Not applicable;

g. Potential Transferee pays to us the transfer franchise fee set forth in the Transfer Documents, if a Full Transfer; or Potential Transferee pays us the Document Administration Fee, if an Affiliate Transfer; Franchisee shall be liable to the Franchisor for the transfer franchise fee or Document Administration Fee in the event the Potential Transferee fails to pay such fee that is owing in full;

h. Potential Transferee pays to us the transfer training fee set forth in the Transfer Documents, if a Full Transfer; Franchisee shall be liable to Franchisor for the training fee if Potential Transferee fails to pay the training fee owing in full; if Potential Transferee or any of its employees or representatives cancel or reschedule participation in any training course or program which Potential Transferee schedules with Franchisor, Potential Transferee or Franchisee must reimburse Franchisor for all of its employee's travel expenses, wages and other expenses incurred as a result of such cancellation or rescheduling;

i. Potential Transferee successfully completes the training program required by the Transfer Documents, if a Full Transfer;

j. Potential Transferee agrees to complete all remodeling and improvements as required by us, and must upgrade the POS System to the then-current required POS System, within the time period specified by us, if a Full Transfer;

k. You and Potential Transferee agree not to assert any security interest, lien, right or claim now or in the future, in the Franchised Business. Any security interest, lien, claim or right asserted with respect to any personal property at the Location must not include any after-acquired property and must be subject, junior and subordinate to any security interest, lien, right or claim now or in the future, asserted by us, our successors or assigns; and

l. You agree to complete and sign a letter of agency, letter of authorization, or equivalent and provide it to Potential Transferee so that Potential Transferee may keep the existing telephone number when the store is transferred to Potential Transferee.

12.4 Death or Incapacity of Individual Franchisee; Change in Entity.

a. Death or incapacity of Franchisee when Franchisee is an individual:

(i) In the event of your death or incapacity, your legal representative may, for a period of ninety (90) days from the date of death or incapacitation, continue to operate the Franchised Business, provided that the operation is conducted in accordance with this Agreement and any other agreements with us.

(ii) If your representative desires to continue the operation of the Franchised Business beyond the ninety (90) day period, then, prior to the expiration of this period, your legal representative must apply in writing for the right to transfer the Franchised Business to the person or persons (whether spouse, heir, devisee, purchaser, or any other person), as the legal representative may specify. The application for transfer will be treated in the same manner as any other proposed Transfer under this Agreement.

(iii) If your legal representative does not comply with the provisions of the preceding paragraph, or does not propose a Potential Transferee acceptable to us under the standards set forth in this Agreement, all rights licensed to you under this Agreement will terminate immediately and automatically revert to us. We shall have the right and option, in our sole discretion, exercisable upon such termination, to purchase all removable furniture, fixtures, signs, equipment and other chattels, but not leasehold improvements, at a price to be agreed upon by us and your legal representative or, if no agreement as to price is reached by us and your legal representative, at such price as may be determined by a qualified appraiser, approved by both us and your legal representative, such approval not to be unreasonably withheld. We shall give notice of our intent to exercise the option no later than twenty-one (21) days prior to termination.

b. Death or incapacity of any shareholder, partner, or member in Franchisee when Franchisee is a business entity:

(i) In the event of the death or incapacity of any of your shareholders, partners, or members, the surviving shareholders, partners, or members may, for a period of ninety (90) days from the date of death or incapacitation, continue to operate the Franchised Business, provided that the operation is conducted in accordance with this Agreement and any other agreements with us.

(ii) If your shareholders, partners or members desire to continue the operation of the Franchised Business beyond the ninety (90) day period, then, prior to the expiration of this period, your shareholders, partners, or members must apply jointly with all surviving shareholders, partners or members in writing, for the right to transfer the Franchised Business (or the interest of the deceased or incapacitated shareholder, partner, or member in the Franchised Business), to the

person or business entity as the surviving shareholders, partners, or members may specify. The application for transfer will be treated in the same manner as any other proposed Transfer under this Agreement.

(iii) If all surviving shareholders, partners or members do not comply with the provisions of the preceding paragraph, or do not propose a Potential Transferee acceptable to us under the standards set forth in this Agreement, all rights licensed to you under this Agreement will terminate immediately and automatically revert to us. We shall have the right and option, in our sole discretion, exercisable upon such termination, to purchase all removable furniture, fixtures, signs, equipment and other chattels, but not leasehold improvements, at a price to be agreed upon by us and all surviving shareholders, partners or members or, if no agreement as to price is reached by us and all surviving shareholders, partners or members, at such price as may be determined by a qualified appraiser, approved by both us and all surviving shareholders, partners or members, such approval not to be unreasonably withheld. We shall give notice of our intent to exercise the option no later than twenty-one (21) days prior to termination.

12.5 Assignment by Franchisor.

You agree and affirm that we may, without your prior consent, sell our business, our assets, or our System, in whole or in part, to a third party; may issue a public offering of our securities; may engage in private placement of some or all of our securities; may merge with or acquire other corporations, or be acquired by another corporation; and may undertake a refinancing, recapitalization, leveraged buyout or other economic or financial restructuring. You further agree and affirm that we have the right, now and in the future, without your prior consent, to purchase, merge, acquire or affiliate with an existing competitive or non-competitive franchise network, chain or any other business regardless of the location of such franchise network, chain or business, which you acknowledge may be proximate to your Franchised Business, and to operate, franchise or license such franchise networks, chains or businesses operating under the Proprietary Marks or any other marks following our purchase, merger, acquisition or affiliation. With regard to any of the above sales, assignments and dispositions, you expressly and specifically waive any claims, demands or damages against us arising from or related to the loss of your rights to use the System as authorized under this Agreement.

This Agreement will inure to the benefit of our successors and assigns. In conjunction with one (1) or more of the transactions contemplated above, or as otherwise determined by us, we have the right to assign our rights and obligations under this Agreement to any person or entity, without your prior consent. Upon such assignment, we will be relieved of all obligations or liabilities then existing or thereafter able to be asserted under this Agreement.

12.6 Restrictions on Security Interests and Subfranchising.

Except as otherwise set forth in this *Section 12.6*, you shall not have any rights to pledge, encumber, hypothecate or otherwise give any third party a security interest in this Agreement in any manner whatsoever, nor subfranchise or otherwise transfer, or attempt to subfranchise or transfer the Franchised Business, in whole or in part, so long as it is operated as the Franchised Business, without our express prior written permission, which permission may be withheld for any reason whatsoever in our sole discretion. Notwithstanding anything contained herein to the contrary, you shall have the right to pledge your accounts receivable, net of royalties and rent, without our prior written consent for the sole purpose of obtaining financing for the operation of

the Franchised Business, provided you are in full compliance with this Agreement and any other agreement, arrangement or understanding with us or any of our affiliates.

ARTICLE 13. RENEWAL

Subject to the terms and conditions described below, you will have the right to renew your license to operate the Franchised Business for an additional term of five (5) years. In the event you desire to renew your license, you must give us notice to that effect at least one hundred twenty (120) days prior to the expiration date of the Term. In addition to giving the notice of renewal referred to above in a timely manner, in order to have the right to renew the license to operate the Franchised Business for an additional term, you must also meet each of the following requirements:

a. You must not then be in default under this Agreement or any other agreement, legal instrument or document with us or any of our affiliates, and no event shall have occurred that, with the giving of notice, the passage of time, or both, would constitute a default under this Agreement or any other agreement, legal instrument or document with us or any of our affiliates, including all financial obligations to us;

b. You must be in complete compliance with the terms of this Agreement, including all financial obligations to us, and the then-current Confidential Manual;

c. You must not have received more than three (3) notices of default or breach of this Agreement during the Term, nor more than two (2) notices of default or breach during the five (5) years immediately preceding the effective date of the proposed renewal;

d. You must have the existing right to maintain possession of the Location or you must have secured and developed a suitable substitute location that meets our then-current minimum site requirements (such confirmation will be provided to you by us in writing);

e. You must sign a general release provided by us;

f. You and we must execute all agreements, legal instruments and other documents (individually and collectively, "Renewal Documents") then used by us in the renewal of franchises and then being required of new franchise owners in connection with the System. The Renewal Documents will supersede this Agreement, but will not terminate your liability to perform any obligations which you have not yet performed under this Agreement, or which survive the termination of this Agreement; nor will the Renewal Documents terminate or supersede any Guaranty of Franchise Agreement, Confidentiality Agreement, or Non-Disclosure and Non-Competition Agreement executed pursuant to this Agreement. The terms of the Renewal Documents may vary materially from the current agreements used by us, including the payment of a higher Royalty Fee and Advertising Fee;

g. The equipment, fixtures and signage used in connection with the operation of the Franchised Business must either meet our then-existing System specifications and standards, or you must agree, within a timeframe required by us, to replace or refurbish such items, and otherwise modify the methods of operation of the Franchised Business at your sole cost and expense, in order to comply with our System specifications and standards then applicable to new franchise owners;

h. You agree to complete all remodeling and improvements as required by us, and must upgrade the POS System to the then-current required POS System, within the time period specified by us; and

i. You shall have paid to us the Renewal Franchise Fee as required under *Section 5.12*.

If you do not meet any of the requirements for renewal, we will give you a notice to that effect which will specify the requirements not met. The notice will be given to you within sixty (60) days after you deliver to us your notice of intent to renew.

ARTICLE 14. DEFAULT AND TERMINATION

14.1 Default; Termination.

a. You will be in default under this Agreement:

(i) If: (a) you become insolvent or make an assignment for the benefit of creditors; (b) you file a petition in bankruptcy, or if such a petition is filed against and consented to by you, and such petition is not dismissed within thirty (30) days from the filing date of such petition; (c) you are adjudicated bankrupt; (d) a bill in equity or other proceeding for the appointment of your receiver or other custodian for your business or assets is filed and is consented to by you or is not dismissed within thirty (30) days from the filing date of such bill or other proceeding; (e) a receiver or other custodian is appointed; (f) proceedings for composition with creditors under any state or federal law is instituted by or against you; (g) the real or personal property of the Franchised Business is sold at levy thereupon by any sheriff, marshal or constable, or sold by a secured party under any state's Commercial Code;

(ii) If you fail to pay, perform, observe or comply with any of your duties and obligations under this Agreement or the Confidential Manual, including failure to provide a fully-executed copy of the lease to us when due and failure to pay, when due, any sum due to us under this Agreement (including the Royalty Fee and Advertising Fee) or to any Advertising Fund (inclusive of any Association); or if you breach any of your obligations under any lease, sublease, mortgage, equipment agreement, promissory note, vendor account, conditional sales contract or other contract arising from, or in connection with, the Franchised Business, to which you are a party or by which you are bound, whether or not we are a party thereto;

(iii) If you are in default under your lease or sublease for the Location of the Franchised Business and you fail to cure such default as provided in the lease or sublease; such lease or sublease is terminated for reason of default by you; or the Location is lost as a result of your failure to comply with such lease or sublease;

(iv) If you fail, within thirty (30) days of the entry of a final judgment against you in an amount exceeding Two Thousand Dollars (\$2,000), to discharge, vacate or reverse the judgment or to stay its execution pending appeal, or to discharge any judgment which is not vacated or reversed within thirty (30) days after expiration of the stay of execution;

(v) If we determine that a serious health or safety problem exists at the Franchised Business, in which case, we may require you to immediately correct the problem or cease operating until the problem is corrected;

(vi) If you, or any owner or principal of the Franchised Business, is convicted of a felony, a crime involving moral turpitude, or any other crime or offense that is reasonably likely to adversely affect the System, the goodwill associated therewith, or our interest therein;

(vii) Except for any reason provided in *Section 5.2*, if you abandon the Franchised Business, which abandonment shall conclusively be deemed established if the Franchised Business is closed for more than three (3) consecutive days;

(viii) Except for any reason provided in *Section 5.2*, if you close or relocate the Franchised Business, without our express advance written consent;

(ix) If you fail to maintain an independent contractor relationship with us;

(x) If you either negligently or knowingly inaccurately report, or fail to report, any information in your franchise application;

(xi) If you or any owner or principal of the Franchised Business commits an act, or permits an act to be committed, that violates any federal, state or local law that adversely impacts the Franchised Business;

(xii) If you fail to participate in any Rollout detailed in *Section 9.3*;

(xiii) If you violate any of the provisions of *Sections 2.3, 3.2, 9.2, 9.3 or 9.4* including the requirement that you: (a) sell or offer for sale only those products and services authorized by us; (b) purchase such authorized products and services only from suppliers or service providers who are approved in writing by us; and (c) utilize or switch to any of our designated approved suppliers, including a supplier who has entered into a national or regional master supplier agreement with us;

(xiv) If you transfer or attempt to transfer any rights or obligations under this Agreement or any other property or assets to any third party in violation of the provisions of *Article 12*;

(xv) If you or any of your members, shareholders, partners, owners, principals, officers, directors, or managers (as applicable): (a) become subject to U.S. Executive Order 13224 or are involved in any activity that violates the U.S. Foreign Corrupt Practices Act or any other anti-corruption, bribery or any other laws, orders or governmental notices affecting your ability to conduct business in or with the United States, as may be amended and whether in effect as of the Effective Date or at any time during the Term, (b) are identified on the U.S. Department of the Treasury's Office of Foreign Assets Control Specialty Designated National and Blocked Persons list, or (c) receive any funding from any country that is subject to an embargo by the United States, any foreign government or government official, political party, or international organization; or

(xvi) If you intentionally made any false representations and warranties under *Section 17.1*.

b. **Cross-default:** A default by you under this Agreement will be deemed a default of all agreements between: (i) you and your principals in his or her individual capacity or any other entity in which your principals are members, shareholders, partners, owners, principals, or

managers (individually and collectively, “Franchisee Entity”); and (ii) us or any of our affiliates or predecessors (individually and collectively, “Franchisor Entity”). A Franchisee Entity’s default of any other agreement, legal instrument or other document between the Franchisee Entity and a Franchisor Entity will be deemed a default under this Agreement. A default by any guarantor of your obligations under this Agreement or any agreement, legal instrument or document between a Franchisee Entity and a Franchisor Entity will be deemed a default of this Agreement.

c. Termination: If you fail to cure any default to our satisfaction, within the applicable period following notice from us, if applicable, or otherwise breach this Agreement, we may, in addition to all other remedies at law or in equity or as otherwise set forth in this Agreement, immediately terminate this Agreement. This termination will be effective immediately upon the giving of notice pursuant to *Article 15*.

d. Cross-termination: If this Agreement is terminated as a result of your default of this Agreement or any other agreement related to the Franchised Business, we may, at our option, elect to terminate any or all other agreements, legal instruments or documents between a Franchisee Entity and a Franchisor Entity. If any agreement, legal instrument or document between a Franchisee Entity and a Franchisor Entity is terminated as a result of a default by the Franchisee Entity, we may, at our sole discretion, elect to terminate this Agreement. It is agreed that an incurable or uncured default under this Agreement or any other agreement, legal instrument or document between a Franchisee Entity and a Franchisor Entity will be grounds for termination of this Agreement or any other agreement, legal instrument or document between a Franchisee Entity and a Franchisor Entity, without additional notice or opportunity to cure.

14.2 Opportunity to Cure.

a. Fourteen-Day Cure Period - Except as otherwise provided in this *Section 14.2*, you will have the right to cure your default under this Agreement within fourteen (14) days after notice of default is given by us pursuant to *Article 15*. Notwithstanding the foregoing, the following lesser periods will apply under the circumstances described:

b. Seven-Day Cure Period - A seven (7) day cure period will apply if you fail, refuse, or neglect to pay when due, any monies owing to us (including the Royalty Fee and Advertising Fee), or otherwise to any Advertising Fund (inclusive of any Association), or if you fail to maintain the insurance coverage set forth in this Agreement;

c. 48-Hour Cure Period – A forty-eight (48) hour cure period will apply (1) if you are in default of *Section 3.4* or (2) if you fail to participate in any limited time product offering, value offering, contest, promotion or charity event. You must initiate your participation in such offering, contest, promotion or charity event within forty-eight (48) hours and fully participate in such offering, contest, promotion or charity event as soon as reasonably possible, in our sole discretion, thereafter;

d. 24-Hour Cure Period - A twenty-four (24) hour cure period will apply to your violation of any law, regulation, order or our standards relating to health, sanitation or safety; or, except as provided in *Section 5.2*, if you cease to operate the Franchised Business for a period of forty-eight (48) hours without our prior written consent. In addition, a twenty-four (24) hour cure period will apply if you post on any Site or direct others to any site or page, post, blog or other social media site where there are posted any defamatory or offensive comments about: other franchisees; the *sweetFrog* brand; other brands franchised by us or one of our affiliates; your or

other franchisees' customers; any of our, your or franchisees' vendors; us or any of our affiliates; or any of our, your or franchisees' competitors;

e. Immediate Cure Period (less than 24 hours) – An immediate cure period (less than twenty-four (24) hours) will apply if you post any content to a Site in which the content includes any inappropriate public displays of affection, our or others' confidential information or materials, violations of health or safety standards, foul or obscene language, or any images of or information about any persons from whom you did not obtain prior written consent;

f. No Cure Period - No cure period will be available: (1) if you are in default of *Sections 3.1, 7.2, 9.4, 14.1a.(i), 14.1a.(iii), 14.1a.(vi), 14.1a.(vii), 14.1a.(viii), 14.1a.(xiv), 14.1a.(xv), or 14.6*; (2) if you intentionally underreport weekly Gross Sales, falsify financial data, fail to promptly provide upon our request financial data and records specified in this Agreement, or otherwise commit an act of fraud with respect to your rights or obligations under this Agreement; (3) if you repeatedly fail to comply with the provisions of this Agreement, whether or not subsequently cured; (4) if you, having twice previously cured a default of this Agreement, commit the default again; (5) if you made any false representations and warranties under *Sections 17.1f., 17.1g., 17.1m. or 17.1n.*; or (6) if you engage in trademark misuse or otherwise materially misuse or make an unauthorized use of any of the components of the System or commit any other act which does, or can reasonably be expected to, materially impair the goodwill or reputation associated with any aspect of the System;

g. Statutory Cure Period - If a statute in the state or municipality in which the Franchised Business is located requires application of that state or municipal law, and that statute requires a cure period for the applicable default which is longer than any cure period specified in this *Article 14*, the statutory cure period will apply.

14.3 Our Right to Take Over Management.

We have the right (but not the obligation), under the circumstances described below, to enter the Franchised Business and assume the Franchised Business' management for any period of time we feel is appropriate. If we assume the Franchised Business' management, you must pay us, in addition to the Royalty Fee and Advertising Fee, six percent (6%) of the Gross Sales, plus our direct out-of-pocket cost and expenses, for the period of time we assume the Franchised Business' management. If we assume the Franchised Business' management, you acknowledge that our duty is limited to using our reasonable efforts, and we will not be liable to you or your owners for any debts, losses or obligations the Franchised Business incurs, or to any of your creditors for any supplies or services the Franchised Business purchases. We may assume the Franchised Business' management if you abandon the Franchised Business or if you fail to comply with any provision of this Agreement and did not cure the failure within the time period we specify in our notice to you. You agree to complete and sign a letter of agency, letter of authorization, or equivalent and provide it to us upon our request if we assume the Franchised Business' management so that we may keep the existing telephone, facsimile, alarm, and credit card machine numbers (as applicable) in operation under our phone service provider. You also agree to keep the phone, water, gas, and electric service (as applicable) turned on and active for one (1) week after we assume the Franchised Business' management to allow us to switch the services over to us or our affiliate. Our exercise of our management rights under this *Section 14.3* will not affect our right to terminate this Agreement.

14.4 Remedies.

a. Interest, Costs and Damages - If you fail to remit when due any payments required under this Agreement, you agree to pay, in addition to the unpaid amounts, all of our collection costs and expenses, expert fees, reasonable attorneys' fees, and costs and expenses, including all fees, costs and expenses of court (including all appeals), with interest on the unpaid amounts at the Default Rate. If you fail to cure a default, following notice, within the applicable time period set forth in *Section 14.2*, or if this Agreement is terminated as a result of your default, you shall pay to us all damages of any kind and nature whatsoever and all collection costs and expenses, expert fees, reasonable attorneys' fees, and costs and expenses, including all fees, costs and expenses of court (including all appeals), together with interest at the Default Rate. If you fail to report Gross Sales in accordance with *Sections 5.2* and *5.6*, we may estimate your Royalty Fee and Advertising Fee based on prior reports, and may sue for and obtain judgment for such estimates unless you prove, prior to the entry of any default order or judgment, that your Royalty Fee and Advertising Fee are different than the estimates.

b. Waiver of Punitive Damages - Both we and you waive, to the full extent permitted by law, any right they otherwise may have had to claim, pursue, demand or receive any exemplary or punitive damages arising out of or related in any way to this Agreement and its addenda, amendments, appendices, exhibits and attachments.

c. If you breach any of the terms of this Agreement, including if you are in default of this Agreement, we may enforce our rights by injunction, specific performance, or any other remedy available under this Agreement, at law or in equity, including termination. These remedies are cumulative and not exclusive and we may use all remedies available. In addition, we may elect to terminate this Agreement and all your rights under it as set forth in *Section 14.5*.

d. If you breach any of the terms of this Agreement, including if you are in default of this Agreement, we have the right to have a receiver appointed to take possession, manage and control the assets of the Franchised Business, collect the profits, and pay the net income for the operation of the Franchised Business as ordered by a court of competent jurisdiction. The right to appoint a receiver will be available regardless of whether waste or danger of loss or destruction of the assets exists.

14.5 Effect of Termination or Expiration.

Upon termination or expiration of this Agreement, we can advise all suppliers of *sweetFrog* proprietary food items and other supplies bearing any of the Proprietary Marks or service marks to cease delivering the items and products to you.

Upon your abandonment of the Franchised Business (whether voluntary or involuntary), any termination of this Agreement (whether pursuant to *Sections 14.1, 14.2, 14.4*, or otherwise), or upon expiration of the Term, you must immediately cease to hold yourself out to the public as a franchise owner of the System, and you must comply with the following:

a. Immediately pay to us or any affiliate of ours all sums owing from you to us or such affiliate, including the Royalty Fee and Advertising Fee, for any period prior to the date of termination, the applicable Early Termination Damages (as defined in *Section 14.9* below), and all amounts owed for services, supplies or other items purchased by you from us or any affiliate of ours, or that were financed by us or any affiliate of ours, or which we or any affiliate of ours

loaned to you, together with any interest or late fees accrued thereon, together with all other sums due us under this Agreement, and all damages of any kind or nature whatsoever that may be allowed by law;

b. Immediately cease to use, in any manner whatsoever, including in all advertising, the Proprietary Marks, any Trade Secrets, any Confidential Information, any benefits of the System or any part thereof, any methods associated with the System, and any forms, recipes, Confidential Manual, slogans, signs, sign posts, marks, symbols, or devices used in connection with the operation of the Franchised Business; and you must deliver or destroy all of the above-mentioned materials, including any materials containing or referencing any of the foregoing, to us as directed by us. If we do not recover any such items, such items shall be valued at their then-current replacement cost, for purposes of determining the damages owing by you to us for failure to return such items, if we pursue a claim as a result thereof;

c. Immediately discontinue all advertising as a franchisee of the System, and thereafter refrain from any advertising that would indicate that you are or ever were a franchisee or licensee of ours, or otherwise were associated with the *sweetFrog* brand or the System;

d. Immediately take such steps as may be necessary or appropriate to:

(i) delete your listing in all telephone directories, if applicable, and terminate any other listings that indicate that you are or were a franchisee or licensee of ours, or otherwise were associated with the *sweetFrog* brand or the System; and

(ii) transfer to our designee or us all telephone numbers used by you in connection with the Franchised Business. You acknowledge that between you and us, we have the sole right and interest in all telephone numbers and directory listings associated with any Proprietary Marks, and you authorize us and appoint us and any officer or agent of ours, as your attorney-in-fact, to direct the telephone company and all listings agencies to accept such direction, or this Agreement, as conclusive evidence of our exclusive rights in such telephone numbers and directory listings and our authority to direct their transfer;

e. Immediately take such action as may be required to cancel all fictitious or assumed names, amend any entity name, or dissolve any entity that contains any Proprietary Marks, in whole or in part, regardless of whether the entity name was authorized by us, and amend or cancel any and all equivalent registrations relating to your use of any Proprietary Marks. You acknowledge that between you and us, we have the sole right and interest in all such fictitious or assumed names, entity name, and equivalent registrations, and you authorize us and appoint us and any officer or agent of ours as your attorney-in-fact, to effect the termination or cancellation of such fictitious or assumed names or equivalent registrations should you fail or refuse to do so, and the appropriate federal, state, and local agencies may accept your direction or this Agreement as conclusive evidence of our exclusive rights in such fictitious or assumed names or equivalent registrations, and our authority to direct their termination or cancellation;

f. Comply with the confidentiality requirements and the covenant against competition in this Agreement for the specified period. You acknowledge that you, or (if an entity) your authorized representative, has carefully reviewed the confidentiality requirements and the covenant against competition in this Agreement; and that you have agreed to be bound by all the requirements and covenants; and

g. Maintain at a place made known to us all books, records and reports required under this Agreement for a period of not less than three (3) years after the date of termination or expiration of this Agreement, in order to allow us to make a final inspection of your books and records for the purpose of verifying that all amounts owing have been paid.

If you fail to do any of the foregoing, we may pursue any remedy available at law or in equity against: (i) you; (ii) any or all guarantors of your obligations under this Agreement; and (iii) you and any or all guarantors of your obligations under this Agreement.

h. Right of First Refusal. We have the right, but not the obligation, to purchase from you any assets or property (but not leasehold improvements) used in the operation of the Franchised Business for an amount equal to the Value (as defined below), as of the expiration date or termination date, as applicable ("RoFR"). If we are required, by law, regulation or court order, to purchase the equipment and other tangible assets used in connection with the Franchised Business, the purchase price will be equal to the Value. For purposes of this Agreement, the term "Value" means, subject to applicable law, an amount equal to your cost for such assets, less depreciation and amortization using a two hundred percent (200%) declining balance method over a five (5) year period. If all, or any portion of, your assets that are being purchased by us or our authorized representative are subject to lien(s), we or our authorized representative may pay, on your behalf, the lienholder(s) that portion of the purchase price for your assets (which may be the entire purchase price) that is necessary to obtain the release of those assets from the lien(s), in lieu of paying you those funds. Further, we may offset any amounts payable to you pursuant to this Section 14.5.h, or otherwise pursuant to this Agreement, against any unpaid amounts payable to us or our affiliates pursuant to this Agreement or any agreement executed in connection with this Agreement.

14.6 Covenant Not to Compete; Conflicting Interest.

a. During the Term and for a period of two (2) years after your abandonment of the Franchised Business, expiration of this Agreement, or termination of this Agreement (whether voluntary or involuntary), you shall not engage in any Competing Business (as defined in Section 14.6c.) with any *sweetFrog* restaurant, nor shall you have any Conflicting Interest (as defined in Section 14.6d.) in a Competing Business. The provisions of this Agreement bind you in any capacity, including as a franchisee, sole proprietor, partner, limited partner, member, employer, franchisor, shareholder, officer, director or employee.

b. During the Term and for a period of two (2) years after your abandonment of the Franchised Business, expiration of this Agreement, or termination of this Agreement (whether voluntary or involuntary), you shall not divert or attempt to divert any business, customers, or potential customers of the System to any Competing Business, by direct or indirect inducement or otherwise. In addition, you shall not at any time do or perform any act, directly or indirectly, which harms the goodwill or reputation of us or any of our affiliates or the System.

c. For purposes of this Section 14.6, "Competing Business" means a business which is primarily engaged in the sale of frozen yogurt, other dessert products prepared or served with frozen yogurt as an ingredient, other frozen desserts, and all variations thereof, within a geographical area consisting of: (1) during the Term, anywhere else; and (2) after abandonment of the Franchised Business or expiration or termination of this Agreement, within a ten (10) mile radius from the Location or location of any *sweetFrog* restaurant of ours, our third-party licensees or our third-party franchisees. The term "*sweetFrog* restaurant" includes not only the restaurants

now in existence, but also those established at a later date. The term of this covenant will be extended by any time consumed in litigation to enforce it in both trial and appellate courts. If a court of competent jurisdiction determines that the restrictions in this paragraph are excessive in time, geographic scope, or otherwise, the court may reduce the restriction to the level that provides the maximum restriction allowed by law.

d. For purposes of this *Section 14.6*, "Conflicting Interest" means an interest by which you, or your executive officers, directors and shareholders (if you are a corporation), or your partners (if you are a partnership), or your members (if you are a limited liability company), or your designated manager, spouses, and/or guarantor(s) directly or indirectly, have a controlling interest in, lend money to, consult with or otherwise assist any Competing Business. If any of the persons named above do not sign this Agreement under the heading "Personal Acceptance of *Sections 7.1, 7.2, 14.6 and 14.8*," then you agree to obtain the execution by such person of a written agreement setting forth the foregoing in a form acceptable to us.

14.7 Continuing Obligations.

All your obligations that expressly survive the expiration or termination of this Agreement, including *Sections 14.5 and 14.6*, or by the implicit nature thereof require performance after the expiration or termination of this Agreement, will continue in full force and effect (subsequent to, and notwithstanding, your abandonment of the Franchised Business (whether voluntary or involuntary), the expiration of the Term, or termination of this Agreement), until they are satisfied in full or by their nature expire. The indemnities and obligations set forth in *Article 8* will continue in full force and effect subsequent to, and notwithstanding, the expiration or termination of this Agreement.

14.8 Remedies.

You acknowledge and agree that the restrictions contained in this Agreement, including in this *Article 14*, are fair and reasonable and necessary for the protection of our legitimate business interests and you intend and agree that such restrictions be enforceable and enforced to their fullest extent. You further understand and agree that, notwithstanding any other provision of this Agreement, your breach of your obligations under this *Article 14*, will cause us irreparable harm for which recovery of monetary damages alone would not be an adequate remedy. Both parties shall be entitled to obtain timely injunctive relief, including a temporary restraining order and preliminary and permanent injunctions, to protect their rights under this Agreement, in addition to and not exclusive of any and all other remedies available to each party.

14.9 Early Termination Damages.

If you discontinue operating your Franchised Business before this Agreement expires, with or without obtaining our prior written consent, or in the event of a termination of this Agreement arising from or related to your default or breach of its provisions, you will become obligated to pay Franchisor early termination damages ("Early Termination Damages"). The Early Termination Damages shall be considered damages and not a penalty and are not in lieu of other damages, and your payment of these damages shall not constitute a release of any other obligation owed to us. Franchisor, Franchisee, each individual signing on behalf of Franchisee, and each guarantor guaranteeing Franchisee's obligations hereunder, hereby acknowledge and agree that Franchisor's losses due to Franchisee's unilateral closure of the Franchised Business or termination of this Agreement would be highly difficult or impossible to calculate with reasonable

certainty and, therefore, have agreed at the outset of this Agreement that the Early Termination Damages, and the formula for calculating these damages, constitutes a reasonable, good faith forecast of Franchisor's estimated losses and damages due to the premature closure of the Franchised Business or termination of this Agreement.

The amount of the Early Termination Damages is calculated as follows:

- a. Compute the average monthly Royalty Fee and Advertising Fee due for any consecutive twelve (12) month period within the forty-eight (48) months immediately preceding the date we receive notification from you of the closure or, if you failed to timely notify us of the closure, then immediately preceding the date the Franchised Business closed, or, if the Franchised Business has been open for less than twelve (12) months, the average monthly Royalty Fee and Advertising Fee due since the opening of the Franchised Business ("Monthly Average");
- b. Multiply the Monthly Average by the number of months remaining in the Term; and
- c. Divide the resulting total computed in b. above by two (2).

For example purposes only: If the average monthly Royalty Fee and Advertising Fee were collectively \$1,000 and there were five years (60 months) remaining in the Term, the Early Termination Damages would be \$30,000, calculated as follows: $\$1,000 \times 60 \text{ months} = \$60,000 \div 2 = \$30,000$.

If you unilaterally close the Franchised Business and/or unilaterally terminate this Agreement prior to the end of the Term, you must give us ninety (90) days prior notice of the early termination ("Early Termination Notice"), pursuant to the applicable notice requirements as set forth in Article 15 of this Agreement. For avoidance of doubt, sending the Early Termination Notice via facsimile, email or through other electronic means does not constitute proper notice. Within ten (10) days after our receipt of your Early Termination Notice, we will calculate the Early Termination Damages, which will be due and payable thirty (30) days prior to the closure of your Franchised Business. In the event of a closure or termination arising from or related to your default under this Agreement, or that you do not: (i) timely or properly provide us with the Early Termination Notice at least ninety (90) days prior to the early termination of your Franchised Business and this Agreement; (ii) remain open for at least ninety (90) days after providing us with the Early Termination Notice; and (iii) pay the Early Termination Damages in full at least thirty (30) days prior to closing of the Franchised Business, the Early Termination Damages due may, in our sole discretion, be increased as follows: it will be calculated by multiplying the Monthly Average by the number of months remaining in the Term, and will not be divided by two (2).

If you have not paid your Royalty Fee and Advertising Fee for any period(s) within the forty-eight (48) months prior to notifying us of your early closure or termination, or if you have not reported your Gross Sales for any period(s) within the forty-eight (48) months prior to notifying us of your intended early termination, we will estimate the Royalty Fee and Advertising Fee based upon prior reports to calculate the Monthly Average.

ARTICLE 15. NOTICES

Unless otherwise provided in this *Article 15*, all notices specified by this Agreement or required by law must be in writing and given by personal delivery, sent by carrier (i.e., FedEx®, UPS®,

etc.), U.S. certified mail, return receipt requested. All notices to us must be given at the address set forth on page 1 of this Agreement or to such other address as we may designate in writing from time to time in accordance with this *Article 15*. All notices to you may be given at the address set forth on page 1 of this Agreement, at the address of the Franchised Business, at any of your franchised restaurants, at your residence (if an individual), or at the residence of your principal shareholder(s), partner(s), or member(s) (if a business entity). Notices will be conclusively deemed to be given, delivered, and effective when sent pre-paid and actually left in the custody of an adult agent, employee or resident at a place of business or residence if given by personal delivery; or if given by carrier, twenty-four (24) hours after deposited with carrier, or if by U.S. certified mail, three (3) days after deposited with the U.S. Postal Service. You have an obligation to promptly notify us pursuant to this *Article 15* whenever your mailing address, phone number or email address change. Notwithstanding the foregoing, ~~we only Franchisor may~~ has the right to give you written notice via email to an email address you provide us regarding all notices specified by this Agreement or required by law, with such email notification to be deemed received by you twenty-four (24) hours after we send it, unless you otherwise earlier acknowledge receipt.

ARTICLE 16. CONSTRUCTION AND ENFORCEMENT; MISCELLANEOUS

16.1 Independent Contractors.

The relationship between you and us is that of independent contractors. You are in no way to be deemed our partner, joint venturer, agent, employee, or servant. You have no authority to bind us to any contractual obligation or incur any liability for or on our behalf. You shall identify yourself as an independent owner of the Franchised Business in all dealings with customers, lessors, contractors, suppliers, public officials, employees, and others.

16.2 Severability and Substitution of Provisions.

Except as provided to the contrary in this Agreement, each article, section, term and provision of this Agreement, and any portion thereof, will be considered severable, and if, for any reason, any such portion of this Agreement is held to be invalid, contrary to, or in conflict with any applicable present or future law or regulation, or as a result of a final, non-appealable ruling issued by any court, agency or tribunal with competent jurisdiction in a proceeding to which we are a party, that regulation or ruling will not impair the operation of, or have any other effect upon, such other portions of this Agreement as may otherwise remain valid, and such other portions will continue to be given full force and effect and bind the parties to this Agreement. If the severed provision is material to this Agreement, we shall promptly provide a substitute provision to replace the invalid severed provision consistent with then-current law and the original intent of the parties.

If any applicable and binding law or rule of any jurisdiction requires a greater prior notice of the termination of, or refusal to renew, this Agreement than is required under this Agreement, or the taking of some other action not required under this Agreement, or if under any applicable law, regulation, or court ruling of any jurisdiction, any provision of this Agreement or any specification, standard or operating procedure prescribed by us is invalid or unenforceable, the prior notice or other action required by such law, regulation, or court ruling will be substituted for the comparable provisions of this Agreement, and we will have the right, in our sole discretion, to modify such invalid or unenforceable provision, specification, standard or operating procedure to the extent required to be valid and enforceable. Such modifications to this Agreement shall be effective only in such jurisdiction, unless we elect to give them greater applicability, and this

Agreement shall otherwise be enforced as originally made and entered into in all other jurisdictions.

16.3 Dispute Resolution.

a. Except as otherwise provided herein, any dispute, claim or controversy arising out of or relating to this Agreement, the breach hereof, the rights and obligations of the parties hereto or the relationship between the parties, or the entry, making, interpretation, or performance of either party under this Agreement ("Dispute"), which cannot be resolved by mediation under *Section 16.3d.* or is not subject to mediation under the terms of this Agreement, shall be settled by arbitration administered by the American Arbitration Association ("AAA") in accordance with its Commercial Arbitration Rules as modified below.

b. Any arbitration shall take place before a sole arbitrator in Maricopa County, Arizona or, if our headquarters are no longer located in Maricopa County, Arizona, then the arbitration shall take place in the county in which our headquarters are located at the time the arbitration is commenced. You agree that conducting the arbitration where we are located is appropriate due to the multiple locations throughout the United States where our franchisees are located. The parties agree that the arbitrator shall be an attorney licensed to practice law in the United States and must have a minimum of five (5) years of experience in franchise law. Judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The arbitrator shall, in the award, allocate all of the costs and expenses of the arbitration, including the fees of the arbitrator and the reasonable attorneys' fees of the prevailing party, against the party who did not prevail. To the extent permitted by applicable law, no issue of fact or law shall be given preclusive or collateral estoppel effect in any other dispute, arbitration proceeding or litigation, except to the extent such issue may have been specifically determined in another proceeding between the parties. This agreement to arbitrate shall survive any termination or expiration of this Agreement, however effected. The parties agree that any arbitration shall be solely between them (including any affiliates) and shall not include as a party, by consolidation, joinder, or in any other manner, any other person or entity, unless both parties consent in writing. Both parties shall have the absolute right to refuse such consent. Further, the parties expressly waive any right to bring or participate in any class or other consolidated, joined or multi-party arbitration claim or proceeding, whether or not permissible under the AAA Commercial Arbitration Rules, including any claim brought on their behalf by an association of which it, he or she is a member. At the request of any party, the arbitration shall be conducted in a manner that maintains the confidentiality of the proceedings.

c. The arbitrator will issue a reasoned award, with findings of fact and conclusions of law. Actions to enforce an express obligation to pay monies may be brought under the Expedited Procedures of the AAA's Commercial Arbitration Rules. The Federal Arbitration Act shall govern, excluding all state arbitration laws. Arizona law will govern all other issues. With respect to discovery, the arbitrator shall require each party to make a good cause showing before any discovery exceeding that specifically authorized by the AAA Commercial Arbitration Rules will be granted.

d. Prior to the commencement of an arbitration proceeding, the parties must first submit any Dispute to non-binding mediation. At the request of any party, the mediation will be confidential. The mediation shall be conducted in Maricopa County, Arizona or in the county in which our headquarters are located at the time of mediation, unless the parties shall mutually agree to a different location. The parties to the mediation will share equally in its costs and

expenses, except those costs and expenses incurred separately by each party, including counsel fees and expenses. The mediation process will be deemed "Completed" when the parties agree that it has been completed, the mediator declares that any impasse exists, or sixty (60) days have elapsed since the date of the initiating party's notice to the other party that it is initiating the mediation process, whichever occurs first.

e. Notwithstanding anything contained in this Agreement to the contrary, the provisions of Sections 16.3a., 16.3b., 16.3c. and 16.3d. do not apply to a Dispute where: (i) we bring an action for an express obligation to pay monies, declaratory relief, preliminary or permanent equitable relief, any action at law for damage to our goodwill, the Confidential Information, the Proprietary Marks or for fraudulent conduct by you; or (ii) the delay resulting from the mediation process may endanger or adversely affect the public (for example, unhealthy, unsafe or unsanitary conditions would continue to exist). For such disputes, we may bring an action in any federal or state court having jurisdiction, whether for monetary damages, temporary preliminary and permanent injunctive relief or specific performance in addition to, and not exclusive of, any other remedies available to us. You hereby consent to and waive any objection or defense and agree not to contest venue, forum non conveniens or jurisdiction of such court or arbitration.

f. Disputes concerning the validity or scope of arbitration, including whether the Dispute is subject to arbitration, are beyond the authority of the arbitrator and will be determined by a court of competent jurisdiction pursuant to the Federal Arbitration Act, 9 U.S.C. §1 et seq., as amended from time to time.

g. Either party may appeal the final award of the arbitrator, if it is over One Hundred Thousand Dollars (\$100,000), to the appropriate U.S. District Court. The Court's review of the arbitrator's findings of fact will be under the clearly erroneous standard, and the Court's review of all legal rulings will be *de novo*. If it should be determined that this provision for federal court review is not enforceable, then either party may appeal the arbitrator's final award, if it is over One Hundred Thousand Dollars (\$100,000), to a panel of three (3) arbitrators chosen under AAA Optional Appellate Arbitration Rules , which will employ the same standards of review stated immediately above.

16.4 Applicable Law and Forum; Waiver of Jury; Statute of Limitations.

a. Except to the extent that the United States Trademark Act of 1946, as amended (15 U.S.C., § 1051 et seq.) or the franchising laws of any state may be applicable, the laws of the State of Arizona govern all rights and obligations of the parties under this Agreement without regard to conflict of law. The parties agree, subject to the mandatory mediation and arbitration provisions of *Section 16.3*, that any appropriate state or federal court located in Maricopa County, Arizona has exclusive jurisdiction over any Dispute arising under or in connection with this Agreement and is the proper forum in which to adjudicate the case or controversy. Notwithstanding the foregoing any action initiated by us may, at our election, be brought in any jurisdiction where you are domiciled or that has jurisdiction over you. The parties hereto irrevocably submit to the jurisdiction of, and venue in, any such court, and hereby waive any objection or defense thereto. THE PARTIES AGREE THAT ALL DISPUTES SUBMITTED TO THE COURT PURSUANT TO THIS SECTION SHALL BE TRIED TO THE COURT SITTING WITHOUT A JURY, NOTWITHSTANDING ANY STATE OR FEDERAL CONSTITUTIONAL OR STATUTORY RIGHTS OR PROVISIONS.

b. Notwithstanding anything contained in this Agreement to the contrary, the parties agree that any claims under, arising out of, or related to, this Agreement must be brought within two (2) years of the date on which the underlying cause of action accrued, and the parties hereby waive any right to bring any such action after such two (2)-year period, except for the collection of any unpaid Royalty Fee, Advertising Fee, and any other amount due to us or our affiliate.

c. **YOU HEREBY WAIVE THE RIGHT TO SEEK OR COLLECT PUNITIVE, MULTIPLE, CONSEQUENTIAL AND SPECIAL DAMAGES IN ANY FORUM, INCLUDING ARBITRATION. YOU HEREBY FURTHER WAIVE THE RIGHT, IF ANY, OF ANY ASSOCIATION OR MEMBERSHIP GROUP TO ASSERT CLAIMS ON YOUR BEHALF IN ANY ACTION.**

d. **YOU HEREBY WAIVE THE RIGHT TO ANY DAMAGES IN CONNECTION WITH OR RESULTING FROM THE WRONGFUL ISSUANCE OF AN INJUNCTION.**

e. The parties agree that the maximum damages that you may recover in connection with a wrongful termination of your franchise and this Agreement will be an amount equal to the product of:

(i) the annual net profit (as defined below) multiplied by

(ii) the lesser of:

(a) The number of full years existing between the date on which the franchise and this Agreement were wrongfully terminated and the date on which the Term would have otherwise expired; or

(b) Three.

For purposes of this Agreement, the term "net profit" means an amount equal to the net profits of your Franchised Business, as reflected on your tax return filed with the Internal Revenue Service prior to such termination; provided that if such tax return reflects the operations of your Franchised Business for a period less than one (1) year, such net profits will be annualized based upon the net profits reflected in such tax return.

16.5 No Guarantee of Franchisee's Success.

You have been informed of and acknowledge the highly competitive nature of the business involved, and agree that the successful operation of your Franchised Business will depend in part, upon your best efforts, capabilities, management, and efficient operation, as well as the general economic trend and other market conditions.

16.6 Existence of Various Forms of Franchise Agreements.

You acknowledge that our present and future franchisees operate under a number of forms or versions of franchise agreements and, consequently, our obligations and rights with respect to our various franchisees may differ materially in certain instances. The existence of different forms or versions of the franchise agreement does not entitle you to benefit from any such difference; nor does it operate to alter or amend the agreement of the parties set forth in this Agreement.

16.7 Franchise Owner May Not Withhold Payments.

You agree that you will not, on grounds of alleged or actual nonperformance or breach by us of any of our obligations under this Agreement, withhold payment of any Royalty Fee, Advertising Fee, amounts due to us or any of our affiliates for goods or services purchased by you, or any other amounts due to us or any of our affiliates.

16.8 Remedies Are Cumulative.

The rights and remedies of the parties to this Agreement are cumulative and not exclusive, and no exercise or enforcement by either party of any right or remedy under this Agreement shall preclude the exercise or enforcement by such party of any other right or remedy under this Agreement or otherwise available at law or in equity to such party.

16.9 Interpretation.

All the terms and provisions of this Agreement will be binding upon and inure to the benefit of the successors and assigns of the parties. However, nothing in this *Section 16.9* may be construed as our consent to the Transfer of this Agreement or any rights by you.

16.10 Waiver.

Our failure to insist upon the strict performance of any term, covenant or condition contained in this Agreement will not constitute or be construed as a waiver or relinquishment of our right to enforce thereafter any such term, covenant or condition and such term, covenant or condition will continue in full force and effect. For example, Franchisor's acceptance of any payments made, or Franchisor's failure to require any payments, by Franchisee after a breach of this Agreement shall not be, nor be construed as, a waiver by Franchisor of any breach by Franchisee of any term, covenant or condition of this Agreement or of Franchisor's right to later require such payments as a result of such prior breach.

16.11 Litigation Expense.

If an action at law or suit in equity is brought to establish, obtain or enforce any right by either of the parties to this Agreement, the prevailing party in the suit or action, in the trial and appellate courts, will be entitled to recover from the non-prevailing party reasonable attorneys' fees, costs and expenses and disbursements incurred in such suit or action.

16.12 No Third-Party Beneficiaries.

This Agreement is not intended to benefit any other person or entity except the named parties hereto and no other person or entity shall be entitled to any rights hereunder by virtue of so-called "third-party beneficiary rights" or otherwise.

16.13 Binding Effect; Modification.

This Agreement is binding upon the parties to this Agreement and their respective executors, administrators, personal representatives, heirs, permitted assigns and successors in interest. No amendment, change, or modification of this Agreement shall be binding on any party unless executed in writing by you and us.

16.14 Entire Agreement; Nature and Scope; Construction.

This Agreement, all exhibits, attachments, addendums, and amendments, constitute the entire understanding and agreement between the parties, and there are no other oral or written understandings or agreements between us and you relating to the subject matter of this Agreement. If required to be signed, any state specific addendums are incorporated herein by reference. Any representation not specifically contained in this Agreement made prior to entering into this Agreement does not survive subsequent to the execution of this Agreement. We and you have entered into this Agreement for the sole purpose of authorizing you to use the System licensed by this Agreement in the operation of the Franchised Business during the Term in which those specific items designated by us for sale and use in such locations are offered for sale and use in individual, face-to-face transactions with patrons visiting the Franchised Business (and equivalent telephone or mail transactions accepted as a convenience to that customer group). All consideration being furnished by us to you during the course of performance of this Agreement has been determined based on the limited rights and other limitations expressed herein. No other rights have been bargained for or paid for. This provision is intended to define the nature and extent of the parties' mutual contractual intent, there being no mutual intent to enter into contract relations, whether by agreement or by implication, other than as set forth in this Agreement. The parties further acknowledge that these limitations are intended to achieve the highest possible degree of certainty in the definition of the contract being formed, in recognition of the fact that uncertainty creates economic risks for both parties which, if not addressed as provided in this Agreement, would affect the economic terms of this bargain.

Nothing in this Agreement or in any related agreement is intended to disclaim the representations we made in the Disclosure Document. Nothing in this Agreement is intended, nor shall be deemed, to confer any rights or remedies upon any person or legal entity not a party hereto.

16.15 Terminology.

In addition to the terms defined elsewhere in this Agreement, the following terms defined below are incorporated in this Agreement by reference and shall be deemed to include all persons who succeed to the interest of the original, where applicable:

The term "affiliate" means any person who, directly or indirectly through one (1) or more intermediaries, controls, is controlled by, or is under common control with any person;

The term "Dollars" means United States Dollars and all amounts due under this Agreement shall be paid in United States currency;

The use of the terms "includes" and "including" in any provision of this Agreement followed by specific examples used shall not be construed to limit application of the provision to only the specific examples used;

The term "person" means any natural person, corporation, partnership, trust, other entity, association or form of organization;

The term "will" and "shall" shall be synonymous, and shall be mandatory and not discretionary, unless otherwise specifically provided herein; and

Any references to articles or sections refer to articles and sections in this Agreement unless specified otherwise.

16.16 Counterparts.

This Agreement may be executed in one (1) or more original counterparts, and all of which, when taken together, shall be deemed to be one (1) original Agreement. The signatures required for execution may be transmitted to the other party via facsimile or a scanned .pdf file sent via email and such signature shall be deemed a duplicate original, shall be effective upon receipt by the other party, may be admitted in evidence and shall fully bind the party and person making such signature. A fully-executed copy of this Agreement shall be of the same force and effect as the original.

16.17 Offerings.

If you are a corporation, partnership or other entity, and if you intend to offer securities, partnership interests or other ownership interests in you through any public or private offering, you shall not use any Proprietary Marks in such public or private offering, except to reflect your franchise relationship with us; nor shall you misrepresent your relationship with us by any statement or omission of an essential statement. You shall indemnify and hold us harmless from any liability in connection with such offering. Nothing in the foregoing shall modify the provisions of *Article 12*, and no such offering shall be made without first complying with any applicable provisions of *Article 12*.

16.18 Time.

Time is of the essence of each and every provision of this Agreement.

16.19 Force Majeure.

Neither of the parties will be liable for loss or damage or be deemed to be in breach of this Agreement if the failure to perform the party's obligations results from: (a) transportation shortages, inadequate supply of equipment, merchandise, supplies, labor, material or energy, or the voluntary foregoing of the right to acquire or use any of the foregoing in order to accommodate or comply with the orders, requests, regulations, recommendations or instructions of any government or any department or agency thereof, or (b) acts of God, and in each case being unforeseeable forces which Franchisee could not by the exercise of due diligence have avoided; provided that Franchisee must: (i) immediately upon the start of the above-mentioned act, provide written notice to Franchisor that Franchisee expressly enacts its/his/her rights granted under this Section, and (ii) use all commercially reasonable efforts to mitigate the effect of the event of Force Majeure upon its/his/her performance and to fulfill its/his/her obligations under this Agreement. Any delay resulting from any of these causes will extend performance accordingly or excuse performance, in whole or in part, as may be reasonable, except that no such cause will excuse payments of amounts owed at the time of such occurrence or payment of the Royalty Fee and all other amounts due to us and our affiliates thereafter, or permit Franchisee to permanently close the Franchised Business.

16.20 Plurals and Captions.

Words in the singular number include the plural when the context requires (and vice-versa). The table of contents and the captions are inserted only for convenience and are not a part of this Agreement or a limitation of the scope of the particular article or section to which each refers.

16.21 Joint and Several Liability.

If you consist of two (2) or more individuals, whether in the form of separate individuals or a business entity controlled by the individuals, then each individual will be jointly and severally liable under the provisions of this Agreement.

16.22 Trademark Notice.

All trademarks referenced in this Agreement are those of their respective owners.

16.23 No Accord or Satisfaction.

If you pay, or we otherwise receive, a lesser amount than the full amount provided for under this Agreement for any payment due hereunder, such payment or receipt may, in our sole discretion, be applied against the earliest amount due us. In addition, if interest or late fees are owed, we may, in our sole discretion, apply any amounts paid to the late fees and interest before such amounts are applied to the principal amount owed. We may accept any check or other payment in any amount without prejudice to our right to recover the entire balance of the amount due or to pursue any other right or remedy. No endorsement or statement by you on any check or payment or in any letter accompanying any check or payment or elsewhere shall constitute or be construed as an accord or satisfaction.

ARTICLE 17. ACKNOWLEDGMENTS AND REPRESENTATIONS OF FRANCHISEE

17.1 Certain Representations and Warranties of Franchisee.

You represent and warrant that the following statements are true and complete as of the Effective Date:

a. You do not seek to obtain the Franchised Business for speculative or investment purposes and have no present intention to sell or transfer or attempt to sell or transfer the Franchised Business except as previously approved by Franchisor and subject and conditioned to *Article 12* of this Agreement.

b. You understand and acknowledge the value to the System of uniform and ethical standards of quality, appearance and service described in and required by the Confidential Manual and the necessity of operating the Franchised Business under the System Standards. You represent that you have the capabilities, professionally, financially and otherwise, to comply with our System Standards.

c. If you are a corporation, limited liability company, partnership, or other form of entity, you are duly incorporated, organized, or formed and are qualified to do business in the state and any other applicable jurisdiction within which the Franchised Business is located, and you are and shall remain duly organized and in good standing during the Term.

d. You represent and warrant that: (i) if you are an individual, you are; or (ii) if you are an entity, that each of your shareholders, partners, members, owners, principals, and managers are, a United States citizen or a lawful resident alien of the United States.

e. All financial and other information that you have provided to us or otherwise made available to us in connection with your application for this franchise is true, complete, accurate, and not intentionally misleading.

f. The execution of this Agreement by you will not constitute or violate any other agreement or commitment to which you are a party.

g. Any individual executing this Agreement on your behalf is duly authorized to do so and the Agreement shall constitute your valid and binding obligation and, if applicable, all of your partners, members, shareholders, or other owners, if you are a partnership, limited liability company, corporation, or other entity.

h. You have, or if you are a partnership, corporation or other entity, your partners, shareholders, or other owners or principals have, carefully read this Agreement and all other related documents to be executed by you concurrently or in conjunction with the execution hereof; that you have obtained, or had the opportunity to obtain, the advice of counsel in connection with the execution and delivery of this Agreement; and that you understand the nature of this Agreement and that you intend to comply with and be bound by this Agreement.

i. You have read and understand the information and disclosures made in the Disclosure Document provided to you as acknowledged in *Section 17.3e*. You understand and acknowledge that: (i) estimates for initial start-up expenses are estimates only and there can be additional start-up expenses; and (ii) your sales may differ substantially from any sales provided in Item 19 of the Disclosure Document, and there is no assurance that your sales will meet or exceed any sales listed in Item 19 of the Disclosure Document. You have had the opportunity to and have consulted or elected not to consult with your attorney, accountant and business advisors before entering into this Agreement.

j. You understand and agree that, while not applicable in every case, our past experience indicates that owner-operated restaurants generally perform better than absentee owners with hired managers. The food business is a personal business and is dependent upon your business skill and judgment. This includes your choice of employees. Your skill in hiring the right people to work in your Franchised Business is very important in determining whether people decide to purchase menu items from your Franchised Business or from another restaurant in the same vicinity.

k. You understand and agree that ownership of a franchise and the Franchised Business carries certain risks. These risks include the loss of your initial investment, other continued financial losses such as rent payments due under lease obligations and other contractual obligations, the loss of your time and energy in starting up and running your Franchised Business, and loss of earnings and investment income from your investment in the Franchised Business. You understand and agree that the Franchised Business may make money and may lose money and you are entering this business venture with this express understanding. You are not relying upon anything which is not contained within this Agreement or the Disclosure Document in determining and deciding to become a franchisee.

l. Notwithstanding the foregoing, you understand and agree that the System must not remain static if it is to meet (without limitation) presently unforeseen changes in technology, competitive circumstances, demographics, populations, consumer trends, social trends and other marketplace variables, and if it is to best serve the interests of us, you and all other franchisees. Accordingly, you expressly understand and agree that we may from time to time change the components of the System, including altering the products, programs, services, methods, standards, forms, policies and procedures of that System; abandoning the System altogether in favor of another system in connection with a merger, acquisition or other business combination or for other reasons; adding to, deleting from or modifying those products, programs and services which your Franchised Business is authorized and required to offer; modifying or substituting entirely the equipment, signage, trade dress, décor, color schemes and uniform System Standards and specifications and all other unit constructions, design, appearance and operation attributes which you are required to observe under this Agreement; and abandoning, changing, improving, modifying or substituting the Proprietary Marks. You expressly agree to comply with any such modifications, changes, additions, deletions, substitutions and alterations. You shall accept, use and effectuate any such changes or modifications to, or substitution of, the System as if they were part of the System at the time that this Agreement was executed. Except as provided herein, we shall not be liable to you for any expenses, losses or damages sustained by you as a result of any of the modifications contemplated hereby.

m. You represent that neither you nor any of your affiliates, officers, directors, managers, members, or partners (as applicable) or funding sources are subject to U.S. Executive Order 13224, identified on the U.S. Department of the Treasury's Office of Foreign Assets Control Specially Designated National and Blocked Persons list, or any terrorist list or other blocked persons list. In addition, you represent that you have not received funding from, nor are you owned, controlled, or acting on behalf of the government of any country that is subject to an embargo by the United States, any foreign government or government official, political party or international organization, and that no foreign government or government official, political party or international organization has any financial interest in the Franchised Business or any monies earned by the Franchised Business.

n. You represent, warrant and agree that you, your officers, directors, managers, members, or partners (as applicable) will each at all times conduct themselves in an ethical manner and avoid any activity that might result in a violation of the U.S. Foreign Corrupt Practices Act, Anti-Terrorism Laws, or any other applicable anti-corruption or bribery laws.

17.2 Additional Information Respecting Franchisee.

a. You have delivered to us or will deliver concurrent herewith, complete and accurate copies of all of your organizational documents, including all partnership agreements, certificates of partnership, articles of organization, operating agreements, articles or certificates of incorporation, by-laws and shareholder agreements, including all amendments, side letters and other items modifying such documents.

b. Reserved.

17.3 Acknowledgements of Franchisee.

a. You acknowledge that you have conducted an independent investigation of the business venture contemplated by this Agreement and recognize that this business venture

involves substantial business risks and will largely depend upon your ability. Other than the financial performance representation contained in Item 19 of the Disclosure Document, if any, we expressly disclaim making, and you acknowledge that you have not received or relied on, any warranty or guarantee, express or implied, as to the potential volume, profits, or success of the Franchised Business contemplated by this Agreement.

Franchisee Initials ____/____

b. You hereby certify that none of our employees, no other person speaking on our behalf, and no Area Representative, if applicable, have: (i) made any oral, written, visual, or other representation, agreement, commitment, claim, or statement that stated or suggested any level or range of actual or potential sales, costs, income, expenses, profits, cash flow, or otherwise other than any financial performance representation contained in Item 19 of the Disclosure Document; or (ii) made any oral, written, visual, or other representation, agreement, commitment, claim, or statement from which any level or range of actual or potential sales, costs, income, expenses, profits, cash flow, or otherwise might be ascertained, related to a *sweetFrog* franchise, that is different from, contrary to, or not contained in the Disclosure Document; or (iii) made any representation, agreement, commitment, claim or statement to you that is different from, contrary to, or not contained in, the Disclosure Document. You acknowledge and agree that we do not make or endorse, nor do we allow any of our employees or other persons speaking on our behalf to make or endorse, any additional oral, written, visual, or other representation, agreement, commitment, claim, or statement that states or suggests any level or range of actual or potential sales, costs, income, expenses, profits, cash flow, or otherwise with respect to a *sweetFrog* franchise other than any financial performance representation contained in Item 19 of the Disclosure Document.

Franchisee Initials ____/____

c. You acknowledge that you have received, read and understand this Agreement and the related exhibits, attachments and amendments and that we have afforded you sufficient time and opportunity to consult with advisors selected by you about the potential benefits and risks of entering into this Agreement.

Franchisee Initials ____/____

d. You understand that this Agreement, including any amendments and exhibits, contains the entire agreement between the parties concerning the Franchised Business, and that any prior oral or written statements that are not set out in this Agreement, including any amendments, exhibits and attachments will not be binding. You acknowledge and agree that we do not permit any representations, agreements, commitments, claims, or statements or approve any changes in this Agreement or any of the amendments, exhibits and attachments to this Agreement, except by means of a written amendment or addendum signed by all parties to this Agreement. You acknowledge that nothing in this Agreement or in any related agreement is intended to disclaim the representations we made in the Disclosure Document.

Franchisee Initials ____/____

e. You acknowledge receipt of our Disclosure Document fourteen (14) days prior to the execution of this Agreement or your payment of any monies to us or our agent (or sooner if required by applicable state law).

Franchisee Initials ____/____

f. You acknowledge that, other than what was previously disclosed to you in our Disclosure Document to which you acknowledge receipt thereof, you have not: (1) received any financial statements for us or any of our parent or affiliated companies; or (2) relied on the financial condition of us or of any of our parent or affiliated companies when making the decision to purchase the Franchised Business.

Franchisee Initials ____/____

g. You acknowledge, as detailed in *Section 2.3*, that you must, at your own cost and expense, use only our designated and approved Design Architect for the design of your Franchised Business.

Franchisee Initials ____/____

h. Reserved.

i. Reserved.

j. You acknowledge there have been no other inducements made with any person or entity, including the identified Area Representative, encouraging you to purchase the Franchised Business, such as a “side deal” or other promise or agreement not included in the Agreement.

Franchisee Initials ____/____

k. You acknowledge and understand that *Article 6* covers the use of the *sweetFrog* trademark and prohibition on registration of our Proprietary Marks. You acknowledge the ownership of the Proprietary Marks by us, and you agree that during the Term and after its expiration or termination, you will not, directly or indirectly, apply to register, register or otherwise seek to use or control or in any way use “*sweetFrog*”, or any other of our proprietary marks, or any confusingly similar form or variation, in any place or jurisdiction either within or outside the United States; nor will you assist any others to do so. You further agree that your corporate, partnership or other entity name (if applicable) will not include any of the Proprietary Marks or phrases similar thereto as a part thereof. Furthermore, you acknowledge and understand that you are prohibited from filing applications for the registration of our trade names used in connection with your Franchised Business.

Franchisee Initials ____/____

l. You acknowledge and understand that in the event you have registered a trade name or entity name containing our trademarks, you will be required to immediately discontinue all further use of the trademark, all Proprietary Marks and any other marks or names confusingly similar thereto in your entity name (if applicable). Furthermore, you will take such action as may be required to amend your entity name (if applicable) and affirmatively cancel or terminate and dissolve all fictitious or assumed names or other registrations that contain our Proprietary Marks. In the event you do not comply with and execute any and all instruments and documents necessary to protect and maintain our interests in the Proprietary Marks, we will then have power of attorney to execute any documents necessary to protect and maintain our interests in the

Proprietary Marks.

Franchisee Initials ____ / ____

ARTICLE 18. SUBMISSION OF AGREEMENT

The submission of this Agreement to you does not constitute an offer and this Agreement shall become effective only upon the execution thereof by the parties. THIS AGREEMENT SHALL NOT BE BINDING ON US UNLESS AND UNTIL IT SHALL HAVE BEEN ACCEPTED AND SIGNED BY FRANCHISOR.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, each party hereto, by and through its respective representative with full rights, power and authority to enter into and bind his or her respective party without further consent or approval of any kind, has duly executed and delivered this Agreement as of the Effective Date.

FRANCHISEE: _____, a(n) _____

By: _____
[Name, Title]

By: _____
[Name, Title]

FRANCHISOR: MTY Franchising USA, Inc., a Tennessee corporation

By: _____
[Name, Title]

PERSONAL ACCEPTANCE OF SECTIONS 7.1, 7.2, 14.6, AND 14.8

Each of the undersigned individually and personally accepts and agrees to be bound by the provisions of Sections 7.1, 7.2, 14.6, and 14.8 of the foregoing Franchise Agreement.

_____, _____, an
individual
(signature) Date: _____

_____, _____, an
individual
(signature) Date: _____

_____, _____, an
individual
(signature) Date: _____

_____, _____, an
(signature) individual
Date: _____

EXHIBIT E-2

TO THE FRANCHISE DISCLOSURE DOCUMENT

Franchise Agreement (Renewal)

sweetFrog

**FRANCHISE AGREEMENT
(Renewal)**

between

MTY FRANCHISING USA, INC.

and

_____, a(n) _____

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SWEETFROG
FRANCHISE AGREEMENT
(“Agreement”)

PARTIES:

MTY FRANCHISING USA, INC.,
a Tennessee corporation
Attn: Legal Department
9311 E. Via De Ventura
Scottsdale, Arizona 85258

(“Franchisor”)

a(n) _____

Telephone No.: _____

([individually and collectively,] “Franchisee”)

RESTAURANT NO.: _____

EFFECTIVE DATE: _____

(“Effective Date”)

TRADITIONAL RESTAURANT (YES or NO): _____

RESTAURANT DESCRIPTION IF NON-TRADITIONAL: _____

A “traditional” restaurant (also known as a traditional franchised business) is a restaurant that is easily accessible by the general public, such as a free-standing building, inline retail shop, shopping mall and street front location. A traditional *sweetFrog* restaurant normally offers a full menu. A “non-traditional” restaurant (also known as a non-traditional franchised business) is a *sweetFrog* restaurant that is located in a non-traditional marketplace, as determined by us (in our sole discretion), such as an airport, amusement park, sports or entertainment venue, train station, travel plaza, toll roads, cafeteria, retail store, convenience store, military base, hospital, office building, movie theater, hotel, casino, high school or college campus or that is a kiosk, cart, truck or trailer. A non-traditional restaurant may also be a *sweetFrog* restaurant that is co-branded into another brand restaurant, at Franchisor’s sole discretion. A non-traditional *sweetFrog* restaurant normally offers a limited version of the full *sweetFrog* menu.

To simplify the language in this Agreement, the terms “we,” “us,” “our” and the like may be used to refer to the Franchisor, and the terms “you,” “your” and the like may be used to refer to the Franchisee. The term “you” as used herein is applicable to one (1) or more persons, a corporation, partnership, trust, other entity, association or form of organization as the case may be, and the singular usage includes the plural, masculine, neuter, feminine, and possessive usages. Franchisor and Franchisee may individually be referred to as a “party” and collectively referred to as the “parties.”

RECITALS:

This Agreement is entered into with reference to the following facts and circumstances:

A. We have, over a period of time and at considerable expense, developed and established a uniform and unique method of operation, customer service, advertising, publicity, processes, recipes, techniques and technical knowledge in connection with the restaurant business, specializing in soft-serve yogurt and other authorized products, and customarily using a self-service format which allows customers to create individualized yogurt-based desserts. These restaurants do business under the trade name “*sweetFrog*”. These recipes, techniques, processes and methods constitute our “Trade Secrets.” All of our knowledge, experience, Trade Secrets, processes, methods, specifications, techniques, Proprietary Marks (as defined in Recital B.), System Standards (as defined in *Section 1.4*) and information are referred to in this Agreement as the “System.” The System may be changed, supplemented, improved and further developed by us from time to time.

B. We have owned and issued franchises to others for the operation of franchised restaurants in the United States and in other countries. We have registered and applied for proprietary marks with the United States Patent and Trademark Office and with offices in other countries serving similar functions. These proprietary interests, trademarks, service marks, logos, insignias, trade names and trade dress are referred to in this Agreement as the “Proprietary Marks.”

C. We are engaged in the business of licensing the right to use the Proprietary Marks in connection with the operation and promotion of the System.

D. You understand and recognize that: (1) our Trade Secrets, Proprietary Marks, developments and other properties as recited above are of considerable value; and (2) it is of importance to us and all of our franchisees to maintain the development of the System in a uniform and distinctive manner, allowing you and our other franchisees to enjoy a public image and reputation greater than most single franchisees could establish.

E. You desire to make use of the “*sweetFrog*” trademark and to enjoy the benefits of that mark, the other Proprietary Marks, and the System; and to establish a “*sweetFrog*” franchise to be operated in accordance with System Standards set forth from time to time by us. System Standards are set forth in, without limitation, the confidential “ops package,” which consists of the “operations manual” (“Operations Manual”), “ops toolkit” and related printed and electronic documents, both now existing and hereinafter developed (individually and collectively, “Confidential Manual”). We are willing to grant you the right to do so under the terms, conditions and provisions set forth in this Agreement, which includes any and all appendices, addenda, amendments, attachments and exhibits.

F. You recognize the necessity and desirability of protecting our reputation, goodwill, Trade Secrets, and other confidential business information; and that disclosure of Trade Secrets and confidential business information, including specifics of the System to any third-party, will cause irreparable damage and harm to us.

AGREEMENT:

The parties agree as follows:

ARTICLE 1. GRANT OF FRANCHISE; TERM; SYSTEM STANDARDS

1.1 Franchise Grant.

We hereby grant to you a *sweetFrog* franchise that includes the right to use the System (“Franchised Business”) as provided in this Agreement, at the following location:

Arena, Mall, Facility, or Center Name: _____
(if applicable)

Street Address: _____

City/State/Zip Code: _____ (“Location”)

1.2 Location of the Franchised Business; No Exclusive Territory or Other Rights.

You must operate the Franchised Business only from the Location, including any catering services of *sweetFrog* menu items you provide. You acknowledge that the *sweetFrog* franchise granted under this Agreement is non-exclusive, that we are not granting you any territorial protection or any other exclusive rights, and that we, directly or through one (1) or more affiliates, reserve the right in our sole discretion, and without compensating you or seeking your prior approval: (i) to establish, and grant to other franchisees or licensees the right to establish, a *sweetFrog* restaurant or any other business using the Proprietary Marks, the *sweetFrog* System or any variation thereof, in any location other than the approved Location (including locations in the immediate vicinity of your Location), on any terms and conditions that we deem appropriate; (ii) to establish, and grant to other franchisees or licensees the right to establish, any restaurant concept other than *sweetFrog* in any location on any terms and conditions that we deem appropriate (including locations in the immediate vicinity of the Location); (iii) to sell products identified by the Proprietary Marks or other trademarks, service marks or commercial symbols in any location through any distribution channels, including grocery stores, convenience stores, supermarkets, club stores, vending machines, delivery services and restaurants other than *sweetFrog* restaurants; and (iv) to take any other action that we are not expressly prohibited from taking under this Agreement.

We hereby grant to you during the term of this Agreement, a non-exclusive right and license to operate a single restaurant at the Location only, according to the System Standards and subject to the terms, conditions and restrictions contained in this Agreement. This Agreement is limited to the operation of one traditional restaurant, unless otherwise amended, and does not grant you the right to buy, own or operate additional restaurants.

Except as expressly limited in this Agreement, we (for ourselves and our affiliates and designees) retain all rights with respect to all Proprietary Marks and the sale of *sweetFrog* products anywhere in the world with no compensation or liability to you, including the right to:

a. Establish and operate (or license to any other person or entity the right to establish and operate) *sweetFrog* restaurants owned or licensed by us at any location;

b. Develop, market, own, operate and participate in any other business under the Proprietary Marks or any other trademarks (including trademarks identified in the Franchise Disclosure Document (“Disclosure Document”) and other trademarks we or our affiliates own or have the right to license);

c. Develop, lease and license the use of, at any location, trademarks other than the Proprietary Marks, in connection with the operation of a system that offers products or services that are the same as, or similar to, those offered by us under this Agreement on any terms or conditions that we deem advisable, in our sole discretion;

d. Merge with, acquire or be acquired by any other business, including a business that competes with your Franchised Business, or acquire and convert any retail stores, including retail stores operated by competitors, or otherwise operated independently or as part of, or in association with, any other system or chain, whether franchised or corporate-owned;

e. Distribute, sell and license other persons or entities to distribute and sell products through all other channels of distribution, including catalog sales, telemarketing, grocery stores, warehouses, big box shops, specialty shops, limited access highway food facilities, vending machines and similar automated dispensing systems, mobile units, off-site sales accounts, electronic mail, Internet sales, and movie theaters (individually and collectively, "Other Channels"); and

f. Implement multi-area marketing programs that may allow us or others to solicit or sell to customers anywhere. We also reserve the right to issue mandatory policies to coordinate such multi-area marketing programs.

1.3 Term of Agreement.

a. The term for this Agreement is for a single renewal term that will commence on the Effective Date and will expire on the five (5) year anniversary of the Effective Date, unless terminated earlier in accordance with *Article 14* or any other provisions of this Agreement, or transferred in accordance with *Article 12* ("Term").

1.4 System Standards.

You shall operate the restaurant in accordance with our standards, including the following:

- a. restaurant design, maintenance, health and safety and remodeling;
- b. types, models, brands and suppliers of required fixtures, furnishings, equipment, signs, materials and supplies;
- c. recipes and ingredients, menu items and menu design;
- d. cooperation with and participation in sales, marketing, advertising and promotional programs (including loyalty programs, online ordering programs, discount coupons, discount gift cards, special menu promotions, and entering into product and service agreements directly with third-party vendors and service providers as required by us) and materials and media used in those programs, including discontinued use and removal of promotional materials as directed by us;
- e. use and display of the Proprietary Marks;
- f. restaurant operations, including matters related to the management of the restaurant; training of your employees consistent with the System Standards; and commercial impression of the Franchised Business to the public;

g. cooperation with and participation consistent with our responses and resolutions in response to customer feedback;

h. cooperation with and participation in: (i) market research and testing; and (ii) product and service development programs;

i. acceptance of our stored value gift cards, including gift cards sold at a discount, loyalty cards, frequency cards, gift certificates, vouchers, and any other similar electronic card and payment programs (individually and collectively, "Gift/Loyalty Card"), credit and debit cards, other payment systems, check verification services and use of point of sale computer systems; You agree to enter into a separate participation agreement with the approved vendor for data processing services;

j. bookkeeping, accounting, data processing and record keeping systems; computer hardware and software; connections to the Internet or to proprietary networks; forms, methods, formats, content and frequency of reports to us of Gross Sales (as defined in *Article 5*), financial performance and condition; and providing tax returns and other operating and financial information to us; and

k. conduct and maintain the Franchised Business and Location so as not to distract from or interfere with the integrity of the System (individually and collectively, "System Standards"). We may, in whole or in part, change, improve, update and further develop the System Standards, from time to time during the term. You shall comply with the updated System Standards as directed by us.

The operation and maintenance of your restaurant according to the System Standards are essential to the well-being and vitality of the System and to preserve the goodwill of the Proprietary Marks for us and for all other franchisees operating under the System. It is critical to the System for all restaurants operating under the System to present a uniform and professional image to *sweetFrog* customers regardless of which location the customer visits. Any information regarding the operation of the restaurant will be considered a mandatory System Standard, unless it is clear from the express language of our communication that the information is merely optional or is intended by us as a suggestion, rather than a requirement.

You agree that System Standards constitute binding provisions of this Agreement as if they were an integral part of this Agreement.

ARTICLE 2. SELECTION OF LOCATION; CONSTRUCTION AND RELOCATION

2.1 Location Selection Procedures.

You are ultimately responsible for the selection of the Location. We will not have any liability to you with respect to your selection of the Location, any assistance we provide you in making your selection, our recommendation of any location or a third party to assist you in selecting a location, or our allowing you to move forward on any location. You agree that your selection of the Location will be based on your own independent investigation of the suitability of the Location.

2.2 Lease and Purchase Approval.

If you intend to lease the Location for your Franchised Business, the lease will be subject to our prior limited review and acknowledgment so that we can confirm that certain lease terms

are incorporated into the lease. You must provide us, at least thirty (30) days prior to executing the lease, a copy of the lease and details relating to square footage, rent per square foot, the term of the lease, and either confirmation that such other terms as we reasonably require are incorporated into the lease or that you and the landlord agree to incorporate the lease addendum to lease agreement as an exhibit to the lease. You or your attorney shall be responsible for negotiating the terms of the lease, which shall be subject to our final limited review and acknowledgment. If you do not submit all of the required documents to us, we will not allow you to move forward with your lease. We have no liability to you regarding the terms or negotiations of the lease.

If, prior to executing the lease, you or your attorney request a full review of your lease, including any and all exhibits attached thereto, and we or our designated affiliate review your entire lease and exhibits and provide to you or your attorney its review of the entire lease and suggested changes to the lease ("Lease Review"), you must pay a Lease Review Fee (as defined in *Section 5.7*) to compensate for time and effort in reviewing the lease. The Lease Review is optional and only completed by us or our designated affiliate at your or your attorney's request. The Lease Review Fee is due only in the event that you or your attorney request us or our affiliate to complete a Lease Review. Each lease must contain the required lease terms set forth in the Lease Addendum to Lease Agreement, and must specifically state that we are a third-party beneficiary of the lease. If we cure any default by you under the lease, any amounts that we pay to cure the default will be payable by you to us on demand, together with interest thereon, at the lesser rate of one and one-half percent (1½%) or the maximum rate that does not violate applicable state usury laws ("Default Rate") per month from the date we make such payment.

You acknowledge and agree that on the earlier of thirty (30) days after: (i) you receive a fully executed copy of your lease for the Location of your Franchised Business; or (ii) you open your Franchised Business to the public, you must provide a fully-executed copy of your lease for the Location to us. Failure to timely provide us with a fully-executed copy of the lease will result in a default under this Agreement.

If you intend to purchase the Location for your Franchised Business, the terms of such purchase shall be subject to our prior approval, and you must provide us, at least thirty (30) days prior to executing the purchase agreement, a copy of the purchase agreement and details relating to square footage, price per square foot and such other terms as we reasonably require.

You acknowledge and understand that our confirmation that you may move forward with any specific location, lease or purchase agreement does not in any way guarantee or ensure the success or profitability of the Franchised Business, or the conformity of the Location, lease or purchase agreement to applicable laws, and such confirmations are only for our own benefit.

2.3 Construction.

a. You must, at your sole cost and expense, construct, furnish, make improvements to and equip, if necessary, the Franchised Business at the Location selected by you and meeting our minimum site requirements, in accordance with plans and specifications approved by us or our third-party approved architect, if applicable. Our approval of plans is solely for complying with our System Standards and not for determining compliance with codes, ordinances and other legal requirements, including the Americans with Disabilities Act ("ADA") or any requirements under the lease for your Location. You are solely responsible for ensuring that your Location conforms to all codes and ordinances, including the ADA, and all lease-specific requirements. You must, at your sole cost and expense, use our designated and approved third-party design architect ("Design Architect") to prepare the initial design drawings for any construction, alterations or

improvements, as applicable, for your Franchised Business. The Design Architect must provide us with one (1) set of the design drawings, including landscaping and parking spaces if applicable, which are the detailed plans and specifications (“Plans”) for your Franchised Business. We will provide you with a copy of the Plans upon our approval of the Plans. You must also, at your sole cost and expense, retain a licensed architect of record to prepare the permitted construction set of drawings for any construction, alterations or improvements. The permitted construction set of drawings must be submitted to us for our files prior to the start of construction, alterations or improvements. In addition, you must obtain the appropriate construction documents and all mechanical, plumbing, electrical and architectural plans must be sealed and stamped, as we may require, even if local laws in the jurisdiction where your restaurant is located do not require same.

b. Any material modifications to the approved Plans must be submitted to us for approval and you will not undertake any construction, alterations or improvements until such modifications have been approved by us. Approval of such modifications does not constitute any representation by us of compliance with applicable zoning laws, building codes or other laws.

c. You will be solely responsible for the cost and expense of obtaining all necessary governmental construction permits and licenses, and you must, at your sole cost and expense, comply with all laws, zoning ordinances, rules and regulations of any governmental agencies that may govern any construction, alterations or improvements of the Franchised Business in accordance with the approved Plans. We will have the right, but are not required, to meet with the Design Architect and to inspect any construction, alterations or improvements during its course to ensure that the provisions of this *Section 2.3* are being observed; and you agree to allow our authorized representatives, at any and all times while construction, alterations or improvements are in progress, to meet with the licensed architect and general contractor and enter onto the Location for this purpose. If we determine in good faith that the provisions of this *Section 2.3* are not being observed, you will, at your sole cost and expense, immediately take all necessary corrective action.

d. You must, at your sole cost and expense, use a general contractor that is licensed, and if applicable, registered in the state and local jurisdiction where your restaurant is located for any and all construction, alterations and improvements. The general contractor must have prior experience in the construction, alterations and improvement of quick-service restaurants.

e. You acknowledge that the design and appearance of the *sweetFrog* restaurant is part of the System, and that uniformity is essential to the System. Therefore, you agree that after the restaurant has been constructed, altered or improved, you will not make any material changes to the building plan or design or its appearance without our prior written consent, and you will, at your sole cost and expense, maintain the interior and exterior décor of the restaurant in a first class condition and in such manner as we may reasonably prescribe from time to time. In addition to any remodeling required by us upon the transfer of the Franchised Business and upon the granting of a successor term to operate the Franchised Business, as set forth in *Articles 12* and *13*, respectively, you will, upon thirty (30) days’ prior notice from us, and at your sole cost and expense, remodel and make all alterations and improvements in and to your Franchised Business as reasonably determined by us to reflect the then-current System specifications, standards, format, image and appearance.

f. You must submit to us a certificate of occupancy for your Franchised Business at any time upon our request.

2.4 Signage.

You will acquire, repair and replace, as necessary, and maintain in a first class condition throughout the Term, signs for advertising and identifying the Franchised Business as a *sweetFrog* restaurant. All signs must be in accordance with the System Standards, specifications and any local governing body (i.e., city or county governments), as well as any other applicable laws, including the Americans with Disabilities Act (“ADA”), and exterior signage must be the maximum size allowed by the landlord and local governing body. You acknowledge that quality control is essential to protect and promote our Proprietary Marks, standards, and uniform image, and you shall acquire all signs only from approved suppliers. In addition, you shall prominently display on all communications, forms, advertising, business stationery and business cards, and in a sign easily visible to consumers at the Franchised Business, the following words: “INDEPENDENTLY OWNED AND OPERATED.”

2.5 Relocation.

a. If you desire to relocate the Franchised Business, you may request our consent upon the following conditions:

(i) Not less than sixty (60) days prior to the desired date of relocation (unless prior notice is impractical because of a required relocation, due to a third-party or our request, in which event notice shall be made as soon as possible), you must make a written request for consent to relocate, describing the reasons for the relocation and providing details respecting any proposed new location.

(ii) Within twenty-one (21) days after receiving your written request, we shall advise you in writing if the proposed new location meets our minimum real estate site requirements as provided in *Section 2.1* and if you have our authorization to proceed with the relocation. In the event of our denial to proceed with the relocation, you may request an alternative proposed new location pursuant to the provisions of this *Section 2.5*.

(iii) The Term will not be extended in connection with the requested relocation.

b. At the time you request to relocate the Franchised Business, you must also meet each of the following requirements:

(i) You must not be in default under this Agreement or any other agreement or note then in effect between us or you and any affiliate of ours, and no event shall have occurred that, with the giving of notice, the passage of time, or both, would constitute a default under this Agreement;

(ii) You must neither have received more than three (3) notices of default or breach during the Term; nor more than two (2) notices of default or breach during the five (5) years immediately preceding the effective date of the proposed relocation;

(iii) The equipment, fixtures and signage used in connection with the operation of the Franchised Business must either meet our then-existing System specifications and System Standards, or you must agree, within a timeframe required by us, to replace or refurbish such items, and otherwise modify the methods of operation of the Franchised Business at your cost and expense, in order to comply with our System specifications and System Standards then applicable to new franchise owners; and

(iv) You shall have paid to us a Relocation Fee (as defined in *Section 5.14*).

c. If we approve the relocation of your Franchised Business, (i) you and we must execute an amendment to this Agreement indicating the address for your relocated Franchised Business and you must sign a general release provided by us, and (ii) you must open your Franchised Business at the new location within thirty (30) days after you close your Franchised Business at the current Location. Provided that you comply with all of the terms and conditions set forth in this Agreement including this Section 2.5, during the period of time between the closure of your Franchised Business at the current Location, and the opening of the Franchised Business at the approved relocation address, you will not owe the Royalty Fee (as defined in *Section 5.2*).

2.6 Restricted Use of Restaurant Location.

You may not wholly or partially sublet the Location without our prior written consent. The Location may be used only for the operation of a *sweetFrog* restaurant in compliance with this Agreement and the System Standards. You shall not conduct other businesses or activities at the Location without our prior written consent.

2.7 Not Applicable.

ARTICLE 3. OPERATIONS

3.1 Not Applicable.

3.2 Supplies and Promotional Materials; Rollouts.

You agree to sell only those menu items, products and services authorized under the terms of this Agreement and as specified in the Confidential Manual, and you shall use only supplies and ingredients in making those menu items that are in compliance with the standards as set forth in the Confidential Manual or other documents provided by, or approved by, us as they presently exist or may exist in the future. You shall purchase all such services, supplies and ingredients only from approved vendors and utilize approved distributor(s) as specified in the documents provided by, or approved by, us as they presently exist or may exist in the future. You must purchase promotional materials containing the Proprietary Marks, including stationery, business cards, promotional and advertising materials and similar items, from suppliers approved by us, except that we must first approve all such promotional and advertising materials before you use them, and all such printed materials containing any of the Proprietary Marks shall be accompanied by the words "INDEPENDENTLY OWNED AND OPERATED." Additionally, during the Term, you agree to participate in any Rollout of new products and suppliers, as defined in *Section 9.3*.

3.3 Fixtures, Furnishings, and Equipment.

Unless otherwise approved by us in writing, you will: (1) acquire, repair and replace, as necessary, and maintain in a first class condition throughout the Term, fixtures, furnishings, and equipment to be used in the operation of your Franchised Business that is in accordance with the System Standards, specifications set forth by us in the Confidential Manual or other documents provided by, or approved by, us as they presently exist or may exist in the future, and with applicable laws including, without limitation, including the Americans with Disabilities Act ("ADA"); and (2) procure the fixtures, furnishings, and equipment from suppliers or vendors previously approved in writing by us.

3.4 Online Presence.

You may not maintain a website, software application, an App (application), social media

account (including an account, group or page on Facebook®, Flickr®, Foursquare®, Google+®, Instagram®, LinkedIn®, Pinterest®, Snapchat®, Tumblr®, Twitter®, YouTube®, Vine®, VKontakte or Weibo®), or otherwise maintain a presence or advertise on the Internet or any other public computer network (individually and collectively, “Site”) in connection with the Franchised Business without our prior written approval, which we may withhold in our sole discretion. If we grant you written approval, you agree to submit to us for approval before use, true and correct printouts, of all Site pages you propose to use in connection with the Franchised Business. You understand and agree that our right of approval of all such Site pages is necessitated by the fact that such Site pages will include and be inextricably linked with our Proprietary Marks. If we approve your use of a Site, you may only use Site pages that we have approved. Your Site must conform to all online presence requirements, policies and procedures per our System Standards. You agree to provide all information regarding your online presence that we require. If we grant approval for a Site, you may not use any of the Proprietary Marks on the Site except as we expressly permit. You may not post any of our proprietary, confidential or copyrighted material or information on the Site without our prior written permission. If you wish to modify your approved Site, all proposed modifications must also receive our prior written approval. You explicitly understand that you may not post on any Site (whether yours or someone else’s) any material in which a third-party has any direct or indirect ownership interest (including video clips, photographs, sound bites, copyrighted text, trademarks or service marks, or any other text or image which any third-party may claim intellectual property or other rights in). If we grant approval, you agree to list on the Site any website and social media account maintained by us, and any other information we require in the manner we dictate. You agree to obtain our prior written approval for any Internet domain name, home page address and Uniform Resource Locator. The requirement for our prior approval set forth in this *Section 3.4* will apply to all activities on the Internet or other communications network to be conducted by you, except that you may maintain one (1) or more e-mail addresses and may conduct individual e-mail communications without our prior written approval. You agree to obtain our prior approval as provided above if you propose to send advertising to multiple addressees via e-mail or text messages. You may not use a Site to represent that: (1) the Site is an official account, application, page or group of, or video produced by us; or (2) you are the owner of the *sweetFrog* brand. On any Site you use in connection with the Franchised Business, you must affirmatively state: (a) that you are a franchisee and the opinion and content being expressed are your own and not that of the *sweetFrog* brand; and (b) the Location of your Franchised Business.

3.5 Continuing Working Capital Requirement.

You must have Fifteen Thousand Dollars (\$15,000) in working capital at the time you open your Franchised Business.

ARTICLE 4. TRAINING, ASSISTANCE AND START-UP MATERIALS

4.1 Training Program.

The training program is made up of the “In-Store Training,” which is approximately twenty-four (24) hours, and “New Owner Training,” which is approximately forty (40) hours (collectively, “Training Program”). You will be solely responsible for all transportation costs, food, lodging and other personal expenses incurred by you and your employees in connection with the Training Program. The New Owner Training will be conducted either online or in person at our sole discretion. If the New Owner Training is conducted in person, it will be at the Franchisor training and education center in Scottsdale, Arizona or at such other location as we may designate at our sole discretion and the In-Store Training will be conducted at a training store in Arizona or such other location as we may designate at our sole discretion. You acknowledge that adequate

knowledge regarding the operation of the Franchised Business is essential to the growth of your franchise and to the promotion of the System. Notwithstanding the foregoing, Franchisor has the right to require Franchisee and/or its manager(s) to attend additional In-Store Training (as defined below), as provided for in this *Section 4.1*, in the event Franchisee is not operating the Franchised Business pursuant to Franchisor's Systems Standards. Notwithstanding the foregoing, because Franchisee has prior experience in the food service industry, and in particular with the operation of Franchisor's concept restaurant, Franchisor hereby waives the requirement for Franchisee to attend and successfully complete the Training Program at the time Franchisee executes this Agreement. Franchisor and Franchisee hereby agree that Franchisor has no obligation to provide the Training Program to Franchisee, or any persons who have an ownership interest in the Franchised Business, prior to, or in connection with Franchisee's continuing operations of the Franchised Business. Franchisee understands and agrees that the foregoing waiver is not a permanent waiver by Franchisor and Franchisor does not waive and hereby reserves the right to require Franchisee to later attend and successfully complete any training as may be prescribed by Franchisor at any time during the Term. Furthermore, Franchisor has the right to require Franchisee and/or its manager(s) to attend additional training and pay the Additional Training Fee, as provided for in this *Section 4.1 and Section 5.10*, in the event Franchisee is not operating the Franchised Business pursuant to Franchisor's Systems Standards.

4.2 Employee Training.

You acknowledge that the employees of your Franchised Business are an integral and important part of the Franchised Business, as they will have substantial contact with customers. You alone are responsible, and acknowledge that we have no direct or indirect control and no right or authority, for the hiring, firing, training, supervising, setting the terms and conditions of employment (including employee tasks and work schedules), compensation of your employees, or maintaining employment records, for the safety of your employees and for your employees' compliance with the System Standards. The System Standards are in place to protect our interests in the System and not for exercising any control over you, your employees or your Franchised Business. You must ensure that your employees who have direct interaction with the public are able to speak and read English and any other language that may be required to adequately meet the public needs in your Franchised Business.

4.3 Additional Programs; Continuing Assistance.

We may, in the future, request that you participate in refresher or additional training programs. We may also hold an annual conference to introduce new products, discuss sales and marketing techniques, personnel training, advertising programs, merchandising procedures and other subjects. You may be charged a nominal registration fee for these programs and you will be solely responsible for the cost of transportation, food, lodging and other expenses incurred by you at any such program. Attendance at these additional training programs and conferences is mandatory. They will be held in the metropolitan Phoenix, Arizona area, or at other locations in the United States chosen by us, at our sole discretion.

We shall provide such periodic evaluations or inspections as we deem appropriate, utilizing our field representatives who may visit the Franchised Business from time to time. The frequency and duration of such visits to a Franchised Business by our representatives shall be in our sole discretion. Any such evaluation or inspection is not intended to exercise any control over your employees or the daily operation of your Franchised Business. In addition, we will be available on an ongoing basis at our offices for consultation and guidance with respect to the operation and management of the Franchised Business. In addition to the Confidential Manual,

we may, but are not required to, from time to time provide you with additional materials relating to the Franchised Business.

4.4 Area Representatives.

We may retain the services of an independent third-party area representative ("Area Representative") to represent us in the area in which the restaurant is located and perform some or all of the services we provide under this Agreement. The services the Area Representative may perform could include: (i) assistance in location selection and evaluating and confirming that the Location meets our minimum site requirements; (ii) advice and guidance regarding lease negotiations; (iii) assistance in opening new *sweetFrog* locations; (iv) assistance with training on the approved POS System (as defined in *Section 4.6a.*); (v) assistance with marketing advice; (vi) periodic Quality Service Cleanliness and Experience ("QSCE") evaluations; (vii) assistance with collection of the various sums due to us from franchisees; and (viii) coordination with other franchisees in your area and general supervision and monitoring of your Franchised Business on our behalf. You agree in advance to our delegation to an Area Representative of some or all of our obligations, and assignment to an Area Representative of some or all of our rights under this Agreement. You agree that we may require you to submit to an Area Representative any reports you are required to submit to us. Upon our request, you will provide the Area Representative with access, inspection and audit rights to the same extent we have those rights under this Agreement. You are not a third-party beneficiary of any agreement between us and any Area Representative. If we have designated an Area Representative for your restaurant as of the Effective Date, the name and contact information of the Area Representative is shown in *Section 17.3h.* We reserve the right in our sole discretion to remove any Area Representative in your area at any time and to appoint any other Area Representative for your area. We have no obligation to appoint an Area Representative in the area in which your restaurant is located, and we have no obligation to appoint a new Area Representative after we have removed an Area Representative.

You acknowledge that Area Representatives and their owners and employees may not contractually bind us without our express written authorization. You further acknowledge no Area Representative has the authority to: (i) enter into agreements or execute any agreements on our behalf; or (ii) bind us in any way without our prior written consent. Unless expressly authorized and agreed to by us in writing, we disavow any agreements, whether verbal or written, entered into by an Area Representative that in any way attempts to bind us. In any litigation or arbitration proceeding, you agree to waive any claim or defense that an Area Representative is our express or implied agent and such an assertion by you constitutes a material default under this Agreement.

4.5 Confidential Manual.

To protect the reputation and goodwill of the System and to maintain the uniform standards of operation under the Proprietary Marks, you must conduct your business in accordance with our Confidential Manual. The Confidential Manual is confidential and remains our property.

The Operations Manual is available to Franchisee via the Franchisee portal at: <https://portal.kahalamgmt.com>. In the event Franchisee desires to receive a hard copy of the Operations Manual, then Franchisee shall submit such request in writing to training@kahalamgmt.com. Upon such request, a hard copy of the Operations Manual will be mailed to Franchisee via regular mail within approximately forty-five (45) days thereafter.

So that you may benefit from new knowledge gained by us as to improved techniques in the operation of the Franchised Business, we may from time to time revise, amend, restate or supplement the content of the Confidential Manual or other documents provided by, or approved

by, us as they presently exist or may exist in the future. You will at all times ensure that your copy of the Confidential Manual is kept current and up to date. In the event of a dispute regarding any of the content of the Confidential Manual, the master copies maintained by us at our corporate office will control.

4.6 Computer Systems; Debit and Credit Card Processing.

a. You are required to acquire, as necessary, to maintain, and to exclusively use an approved cash register/computer system ("POS System") during the operation of the Franchised Business. You and your employees must complete training for the POS System as we require, and you will be required to use the POS System to produce sales reports, keep inventory control and post sales tax, refunds, credits and allowances and submit that information to us immediately upon our request. You are required to obtain high-speed/always-on internet connection service for your POS System. If high-speed/always-on internet is not available in your area, dial-up Internet access may be used until high-speed/always-on service becomes available in your area. The POS System must be configured so that we will have remote access to the information and data stored in the POS System, which may include inventory information. This access will allow us to exchange/collect data and other information on such bases as we will communicate to you from time to time. You will be required to maintain the POS System in good working order at all times, and to upgrade or update the POS System during the Term as we may require from time to time. It will be your responsibility to enter into contracts for the maintenance, upgrades and updates to the POS System with an approved supplier of such services identified by us on the list of approved vendors and distributors or other notification to you from us advising of suppliers for your market area. You shall also be required to own a personal computer or similar device with access to the Internet that allows you to report your Gross Sales (as defined in *Section 5.2*) online, send and receive e-mails with us, and if/when online ordering is made available receive online orders. If/when online ordering is made available, all franchisees of traditional restaurants will be required to participate in the online ordering program. We may require you to upgrade the hardware and software including, but not limited to, your operating system, as reasonably necessary to provide reports and information required by us.

b. You are required to accept debit and credit cards and Gift/Loyalty Cards from consumers at the Franchised Business and participate in any online ordering programs which Franchisor may require. Prior to the opening of your restaurant, you will be required to acquire and maintain an approved debit, credit and Gift/Loyalty Card processing system to use during the operation of the Franchised Business. Additionally, you must utilize our approved third-party Gift/Loyalty payment card processor for processing all such Gift/Loyalty Card transactions, including entering into a Gift Card Participation Agreement with one of our affiliates, or its successors or assigns, or other approved vendor for the Gift/Loyalty Card processing services. The Payment Card Industry ("PCI") requires all companies that process, store, or transmit credit card information to protect the cardholders' information by complying with the PCI Data Security Standard ("PCI DSS"). Therefore, as a franchisee who accepts credit cards, you are required to be PCI compliant by following and adhering to PCI DSS, which includes ensuring that your POS System, back office computer (if supplied), and any other device that is plugged into the network is **only** used for business purposes. You are also required to complete an annual questionnaire and quarterly network PCI scans and install a network firewall appliance for logging, tracking, reporting, and security assessment. You are also required to validate with Franchisor that your store is PCI compliant, and Franchisor may in its sole discretion require you to install a particular type of firewall (hardware and/or software). To show such validation you must send us your Passing Certificate showing your store is PCI compliant. You are also required to verify that you have a PCI compliant firewall appliance installed at your location if you process credit cards via

high speed internet connectivity. We require your Franchised Business' POS System, including terminals, computers, and software to be in compliance with the PCI DSS at all times. The PCI DSS is often updated, and you are required to obtain and comply with all updated standards. You must also be PCI compliant in order to obtain cyber liability/data breach insurance coverage.

ARTICLE 5. FEES AND DEPOSITS

You agree to pay each of the following amounts to us via a lump sum, with each and every amount being non-refundable because of our investment in time and money, in addition to any other benefits conferred upon you, including processing your application, reviewing your documents, and providing you with relevant information, unless otherwise expressly specified below, in accordance with the provisions set forth in this *Article 5*. Notwithstanding your designation to the contrary, we have the sole discretion to apply any of your payments, in part or in whole, to any of your indebtedness to us.

5.1 Not Applicable.

5.2 Royalty Fee and Surcharge.

For the period of time commencing on the later of the Effective Date or the date the Franchised Business opens to the public, and for the duration of the Term, you must pay to us a weekly royalty fee equal to five percent (5%) of total Gross Sales (as defined below) ("Royalty Fee"). If we or the landlord of the Location require you to remodel your Franchised Business in such a way that your Franchised Business (including catering) stops offering items to the public, or if there is a disaster at your Franchised Business, such as a fire, flood or damage caused by an act of God, that requires you to temporarily close your Franchised Business, you are not required to pay the Royalty Fee during the period of time of such temporary closure; provided you provide us or our authorized representative with notice of such temporary closure as soon as reasonably possible, but in no event more than twenty-four (24) hours after such closure begins. Notwithstanding the above, all amounts owed to us under this Agreement prior to the temporary closure shall still be fully due and payable. The temporary closure of your Franchised Business shall not exceed ninety (90) days, but may be extended on a case-by-case basis at our sole discretion and with our prior written approval.

In our sole discretion, we may charge, in addition to the Royalty Fee, a surcharge of up to Ten Dollars (\$10) per week if your Franchised Business is located in a state that imposes additional reporting requirements on a franchisor ("Surcharge"). The Royalty Fee and applicable Surcharge shall be due and payable no later than ~~Monday~~ Thursday of each week, which day may be modified by us without prior notice to or approval from you, for the week ending on the preceding ~~Tuesday~~ Sunday in which applicable Gross Sales (as defined below) were earned from the Franchised Business. The weekly Royalty Fee and applicable Surcharge shall be paid by electronic funds transfer, as detailed below.

For the period of time commencing on the later of the Effective Date or the date the Franchised Business opens to the public, and for the duration of the Term, you are required to report Gross Sales to our designated accounting office, which as of the Effective Date, is via the Internet at <http://franchisee.kahalamgmt.com>, as set forth in *Section 5.6*. Nothing herein shall prevent Franchisor from electronically polling Franchisee's POS system, restaurant management software, and financial records (or similar tools thereto) daily, or more frequently, by electronic or other remote means and Franchisee hereby grants Franchisor authority to do so; however, such authority does not negate Franchisee's requirement to ensure all sales are timely and accurately reported each week. You shall be required to establish a Depository Account (as defined in

Section 5.6) at the time you execute this Agreement as set forth in Section 5.6. Payment of the Royalty Fee, Advertising Fee (as defined in Section 5.3), and all other fees due under this Agreement to us shall be made via electronic transfer of funds from the Depository Account. To accomplish this electronic transfer of funds from the Depository Account, you must complete, sign and deliver to us, and maintain for the duration of the Term, a current Electronic Funds Transfer Authorization in a form that we provide.

As used in this Agreement, "Gross Sales" means all sales, money or things of value, received or receivable, directly or indirectly, by Franchisee on account of the Franchised Business, less applicable sales taxes and any properly documented refunds, credits and allowances given by you to customers in accordance with the System Standards, but without deducting any of your income taxes, costs and other expenses. All sales made from catering services must be included in the Gross Sales.

5.3 Advertising Fee.

a. You must pay to us, or directly into a national advertising fund or also any regional advertising funds, as designated by us at our sole discretion, (individually and collectively, "Advertising Fund") a weekly advertising fee of two and one-half percent (2.5%) of the Gross Sales for the preceding week ("Advertising Fee"). Upon thirty (30) days' notice by us to you, we may unilaterally increase the Advertising Fee from its current level not to exceed three percent (3%) of your weekly Gross Sales. The Advertising Fee shall be due and payable with the Royalty Fee under Section 5.2. The Advertising Fee is our property and may be deposited by us into our general operating account.

b. The Advertising Fund will be used for marketing, advertising, production and media expenses to promote the *sweetFrog* name, System, products and services. We are entitled to deduct, free of charge the following from the Advertising Fund: (i) reimbursement of expenses, overhead, and employee salaries for services provided; and (ii) rent for office space provided to the Advertising Fund. We have no fiduciary obligation to you in connection with the operation of any Advertising Fund. No interest on an unexpended Advertising Fee shall be imputed or otherwise charged for the benefit of, or payable to, you. You understand and agree that the only obligations we have regarding the collection and spending of the Advertising Fee or the administration of the Advertising Fund are the express contractual obligations in this Section 5.3. We are not acting as a trustee, fiduciary, agent or in any other special capacity. We do not give any representation or warranty regarding the quality or effectiveness of the advertising and marketing activities funded by the Advertising Fee or of the Advertising Fund, and we will have no liability to you with respect to how these funds are spent.

c. One and one-half percent (1.5%) of your Gross Sales is deposited into the national Advertising Fund; and, if a cooperative exists where your Franchised Business is located, the remaining one percent (1%) of your Gross Sales is deposited into the regional Advertising Fund for your cooperative, if no cooperative exists where your Franchised Business is located, your Franchised Business will be considered a "single store" cooperative and you must contribute the remaining one percent (1%) of your Gross Sales to the regional Advertising Fund for your store. Your own local marketing and advertising should be developed to maximize your particular customer base.

5.4 Cooperative Advertising.

a. We encourage the formation and operation of franchisee cooperative advertising associations (each an "Association"). Each Association will help coordinate advertising,

marketing efforts and programs, and attempt to maximize the efficient use of local advertising media. If an Association is formed for your region, you must contribute financially to the Association as required by us. Failure to do so will be deemed a breach of this Agreement and you may also, in Franchisor's sole discretion, lose your right to vote as to decisions regarding advertising and marketing efforts and programs.

b. Upon our request, you will assist in establishing an Association or in deciding how to allocate all or part of any Fund contribution we elect to distribute to the Association. We will decide in our sole discretion whether to make contributions from the Fund to an Association and how much to contribute. We reserve the right to establish general standards concerning the operation of an Association, advertising agencies retained by an Association, and advertising programs conducted by an Association. Notwithstanding anything to the contrary, no Association decision will be made or advertising collections spent without our prior written approval.

5.5 Not Applicable.

5.6 Depository Account; Payment Procedures.

As of the Effective Date, you are required to maintain for the duration of the Term a depository account ("Depository Account") at a bank or other federally insured financial institution ("Depository") under the same name as Franchisee under this Agreement. You are required to maintain a balance of at least Three Thousand Dollars (\$3,000) in the Depository Account at all times during the Term by replenishing the Depository Account to at minimum Three Thousand Dollars (\$3,000) after any withdrawals. We shall not be responsible for any bank service charges incurred by you which result from the withdrawal of funds from your Depository Account.

On Tuesday of each week, you must submit a report to us regarding the weekly period which ended on the preceding ~~Saturday~~Sunday, including details on Gross Sales and other statistical data as provided in this Agreement, Confidential Manual, or as otherwise specified from time to time by us. We will withdraw funds electronically on Thursday of each week from the Depository Account. The withdrawals are based upon the figures you report and constitute the Royalty Fee and Advertising Fee as described in *Sections 5.2 and 5.3*. If you do not submit a report on any Tuesday, we may estimate the Royalty Fee and Advertising Fee based upon prior reports and withdraw the estimated amounts up to the entire Three Thousand Dollars (\$3,000). We will return or credit back to you, in our sole discretion, any overage within thirty (30) days after our receipt of your report(s). We shall not be responsible to you for any interest charges for any overage collected due to your failure to timely report your sales. You shall instruct the Depository to disburse each week to our designated bank, via electronic funds transfer by the close of business on Thursday (or preceding banking business day, if Thursday is a bank holiday), the weekly Royalty Fee and Advertising Fee and other fees due for that week, which week shall end on the preceding ~~Saturday~~Sunday. The days of the week specified above may be modified by us without prior notice to or approval from you.

You will be charged a monthly fee, in the amount of ~~\$100~~25, by the authorized POS vendor, and this is subject to change by the supplier. Under no circumstances shall such access to the Depository Account be deemed control or joint control of the Depository Account by us.

Subject to reasonable advance notice for non-recurring payment amounts, we have the right to debit your Depository Account, or any other depository account you have with us, according to the terms of your Electronic Funds Transfer Authorization for any of the payments described in this Agreement. If you do not pay all amounts due by the due date, we may suspend our and our affiliates' services and support until your payment default is cured. Repeated failure

to pay all amounts when due, whether or not the defaults are subsequently cured, may be cause for termination under *Article 14*.

You shall pay us Fifty Dollars (\$50) for each electronic funds transfer attempted from your Depository Account pursuant to this *Section 5.6* that is returned for non-sufficient funds. You shall also reimburse us for all other costs and expenses incurred by us in collecting or attempting to collect funds due to us from the Depository Account (for example, without limitation, charges for non-sufficient funds, uncollected funds or other discrepancies in deposits or maintenance of the Depository Account balance in accordance with the terms hereof). The Depository Account shall be established and maintained solely for the purposes set forth in this *Section 5.6* and any other fees authorized under this Agreement and any other agreements between you and us or any of our affiliates.

5.7 Lease Review Fee.

If you request us or one of our designated affiliates to complete a Lease Review, you are required to pay us or our designated affiliate a lease review fee in the amount of Two Thousand Five Hundred Dollars (\$2,500) ("Lease Review Fee") for reviewing and providing comments to your proposed lease.

5.8 Lease Guarantee Fee.

If, in order to obtain the lease agreement for the Location of your Franchised Business, the landlord requires you to obtain a lease guarantee, and we or one of our affiliates agree to serve as such guarantor, you will pay us or our affiliate a fee in the amount of ten percent (10%) of the total amount of the rental obligations being guaranteed under the lease during its term up to a maximum fee of Ten Thousand Dollars (\$10,000) ("Lease Guarantee Fee"). The Lease Guarantee Fee will be due and payable upon our or our affiliate's execution of the applicable lease guarantee agreement with the landlord. Neither we nor any of our affiliates are required to serve as a guarantor of your lease for the Location of your Franchised Business; rather, the decision of whether to serve as a guarantor shall be made in our sole discretion. In the event that you request us or our affiliate to either agree to be the tenant under the lease or execute a separate guarantee to the lease, and you pay the required Lease Guarantee Fee, you agree and acknowledge that payment of the Lease Guarantee Fee shall not, in any manner, be deemed as an insurance policy which limits your liability in connection with the Franchised Business, including any and all financial liability under the sublease or lease related to the Location. You further agree and acknowledge that our or our affiliate's agreement to act as tenant or guarantor under the lease, and your payment of the Lease Guarantee Fee to us or our affiliate, does not result in the assumption or transfer of your liability, in connection with the Franchised Business, by or to us or our affiliate.

5.9 Not Applicable.

5.10 Additional Training Fee.

If you desire to receive additional training, we will provide additional training time to you for a fee of Three Hundred Dollars (\$300) per person per day. Such additional training will be at a time reasonably agreed to by you and us, and will be conducted at Franchisor's headquarters, online, or such other location as we may designate in our sole discretion. You will be solely responsible for all transportation costs and expenses, food, lodging and other personal costs and expenses incurred by you and your employees in connection with this additional training.

5.11 Document Administration Fee.

A document administration fee of Five Hundred Dollars (\$500) ("Document Administration Fee") is payable to us when we must prepare an amendment to your franchise documents—(see *Section 12.3g*).

5.12 Not Applicable.

5.13 Transfer Franchise Fee.

a. Not applicable.

b. A Potential Transferee (as defined in *Section 12.1c*.) receiving this Agreement, as may be amended, in connection with a Full Transfer (as defined in *Section 12.1a.1*.), must pay to us a transfer franchise fee of Seven Thousand Five Hundred Dollars (\$7,500) ("Transfer Franchise Fee").

5.14 Relocation Fee.

A relocation fee of Five Hundred Dollars (\$500) ("Relocation Fee") is payable to us when you sign the amendment to your Franchise Agreement for your relocation (see *Section 2.5*).

5.15 Transfer Training Fee.

A Potential Transferee receiving this Agreement, as may be amended, in connection with a Full Transfer, must pay to us, in addition to the Transfer Franchise Fee, a transfer training fee of One Thousand Five Hundred Dollars (\$1,500) ("Transfer Training Fee"). The Transfer Training Fee is used to provide training for two (2) individuals, and a fee of Five Hundred Dollars (\$500) will be charged for each additional individual trained over two (2).

5.16 Annual Meeting Registration Fee.

If we hold an annual meeting ("Meeting"), the Meeting may be held at various locations throughout the United States and/or online as we may designate in our sole discretion. Because the planning and funding of the Meeting must be done well in advance and requires a substantial financial commitment, we have the right to debit your Depository Account for up to One Thousand Dollars (\$1,000) for the Meeting registration fee at any time sixty (60) to ninety (90) days prior to the first day of the Meeting. This fee may be debited from your account (even if you do not attend the Meeting). You will also be solely responsible for all costs incidental to attending the Meeting. If you do not attend the Meeting, we will make available to you one (1) full set of the substantive materials that were presented at the Meeting.

5.17 Late Report; Interest; Late Charge; Non-Sufficient Funds Fee; Breaching Royalties; Draft Draw Charge.

If you fail to submit to us any financial statements, forms, reports or records required to be provided under this Agreement by its due date, including your weekly Gross Sales report for calculating your Royalty Fee and Advertising Fee, you must pay to us a late report charge of One Hundred Dollars (\$100) per week or part thereof.

If any fees or assessments due under this Agreement, including the Royalty Fee and Advertising Fee, are not paid when due, interest shall accrue on the late payment (from the date

payment is due until the date payment is made) at the Default Rate, which amount, plus a late charge of five percent (5%) of the unpaid amount, or One Hundred Dollars (\$100), whichever is greater, shall be added to each late payment. For any payments made by you to us under this Agreement which are returned for non-sufficient funds of a processed check, you shall be charged a non-sufficient funds fee of Twenty-Five Dollars (\$25) per occurrence. Pursuant to *Section 5.6*, for each electronic funds transfer that is attempted from the Depository Account but returned for non-sufficient funds, you shall be charged a Fifty Dollars (\$50) non-sufficient funds fee per occurrence.

Franchisor has the absolute right to charge Franchisee the greater of: three (3) times the fixed Royalty Fee; or, if on a percentage Royalty Fee, the Royalty Fee will be increased up to fifteen percent (15%) of Gross Sales, with respect to any period during which Franchisee is in breach or default of its/his/her obligations under this Agreement without providing Franchisee advance notice or right to cure. The Royalty Fees paid or owing to Franchisor with respect to the period during which Franchisee is in breach or default are referred to as "Breaching Royalties." Breaching Royalties will be charged for a minimum fourteen (14) day period, regardless of the length of the actual breach or default.

If you fail to provide us any necessary information or documentation with respect to our practice of drawing drafts against your bank accounts, you must pay us a draft draw charge in the amount of One Hundred Dollars (\$100) per day that that failure continues.

If, as a result of your failure to remit payments required under any provision of this Agreement, we retain an attorney or a collection agency to collect such payments, you must pay all collection costs and expenses, including reasonable attorneys' fees and expenses, whether or not legal proceedings are initiated. Our rights under this *Section 5.17* are in addition to any other rights or remedies that we may have as a result of your default under this Agreement.

5.18 Audit Fees.

For the purpose of this *Section 5.18*, we have the right, at any time during business hours, and with or without prior notice to you, to inspect and audit, or cause to be inspected and audited, the business records, cash control devices, bookkeeping and accounting records, sales and income tax records and returns and other records of the Franchised Business and your entity's books and records.

You hereby grant us access to any computers utilized by you for such purposes and we will have the ability, at all times, via modem, to obtain daily and weekly sales reports and other financial records that the POS System provides. You will fully cooperate with our representatives, the Area Representative, if applicable, and independent accountants hired by us to conduct any such inspection or audit. In addition, in the event such inspection or audit is made necessary by your failure to furnish reports, supporting records or other information, as required herein, or to furnish such reports, records or information on a timely basis, or if an understatement of Gross Sales, resulting in an underpayment of the Royalty Fee or Advertising Fee for the period of any audit (which shall not be for less than one (1) month) is determined by any such audit or inspection to be five percent (5%) or greater, you will pay to us, immediately after receipt of the inspection or audit report, any additional Royalty Fee and Advertising Fee and other amounts due as a result of any such understatement, plus interest at the Default Rate from the date originally due until the date of payment and you must reimburse us for such audit or inspection, including the charges of any independent accountants, and the travel expenses, room, board and compensation of such accountants and our employees.

The remedies in this *Section 5.18* will be in addition to all other remedies and rights available to us under this Agreement or otherwise available.

5.19 Data Fee.

We may require you to pay us or a third-party we designate a data fee of up to Seventy-Five Dollars (\$75) per month for polling or collecting data from your POS System.

5.20 Reserved.

5.21 New Supplier Approval Fee.

All requests for approving new or alternative suppliers must be submitted in writing by you or the supplier to our Purchasing Department. Each request will be reviewed in accordance with our then-current procedures and the supplier must meet our then-current requirements, which may include that our representatives be allowed to inspect the facilities of the proposed supplier, and that samples from the proposed supplier be delivered, at no charge, either to us or to our designee for testing. A charge not to exceed the amounts incurred in connection with the inspection and the test, with such cumulative amount not to exceed Five Thousand Dollars (\$5,000), must be paid to us. If approved, in our sole discretion, we will notify you or the supplier in writing within sixty (60) days after our receipt of an approval request. You must not offer or sell in any manner any of the proposed alternative supplier's products until you receive our written approval of the proposed alternative supplier.

5.22 Reserved.

5.23 Non-participation Fee.

You must offer and sell at the Location of the Franchised Business all products designated by us, consistent with our System Standards. In addition, you must immediately incorporate into the Franchised Business all new products and services designated by us and must fully participate in all local, regional, seasonal, promotional and other programs, initiatives and campaigns adopted by us in which we require you to participate. If you fail or refuse to fully participate in any such program, initiative or campaign, you may, in our sole discretion, be required to pay a non-participation fee of One Hundred Dollars (\$100) per day that you are not in compliance ("Non-participation Fee").

5.24 Not Applicable.

5.25 through 5.35 Not Applicable.

ARTICLE 6. PROPRIETARY MARKS

6.1 Ownership and Right to Use.

We warrant to you that:

- a. We are the owner of all right, title and interest in and to the Proprietary Marks;
- b. We have granted to you the personal, non-exclusive, limited, revocable right and license to use the Proprietary Marks in connection with the operation of your Franchised Business;

c. We have taken and will take all steps reasonably necessary to preserve and protect our rights in the Proprietary Marks; and

d. We will only permit you to use the Proprietary Marks in accordance with the System Standards.

6.2 Covenants of Franchise Owners.

a. You acknowledge our ownership of the Proprietary Marks, and you agree that during the Term and after its expiration or termination, you will not directly or indirectly contest, or aid in contesting, the validity of the Proprietary Marks or our ownership of the Proprietary Marks, nor will you take any action which might impair or prejudice our ownership of the Proprietary Marks. You shall not, directly or indirectly, apply to register, register or otherwise seek to own or control any of the Proprietary Marks, or any confusingly similar mark thereto, whether in whole or in part, in any place or jurisdiction either within or outside of the United States; nor will you assist any others to do so.

b. You agree that the license granted pursuant to this Agreement authorizes you to use the Proprietary Marks solely in connection with the Franchised Business only at the Location, and for no other purpose. You have no right to license or sublicense any aspect of the System Standards or any of the Proprietary Marks.

c. You agree to use the Proprietary Marks only in the manner and to the extent specifically licensed by this Agreement. You further agree that any unauthorized use or continued use of the Proprietary Marks after the termination or expiration of this Agreement will constitute irreparable harm and is subject to injunctive relief.

d. The license granted by this Agreement includes only the Proprietary Marks, now existing or which may exist in the future. This license does not include the right to use any other trademarks, service marks, trade name or trade dress owned by us or our licensor anywhere in the world. You agree that any and all goodwill associated with and identified by your use of the Proprietary Marks will inure directly and exclusively to our benefit, and that, on the expiration or termination of this Agreement, no monetary amount will be due or payable to you as a result of any goodwill associated with your ownership or operation of the Franchised Business.

6.3 Limitations on Franchisee's Use of Proprietary Marks.

To develop and maintain high and uniform standards of quality and service and thereby protect our reputation and goodwill and that of the System, you agree:

a. To operate and advertise the Franchised Business only under the Proprietary Marks authorized by us;

b. To adopt and use the Proprietary Marks licensed by this Agreement solely in the manner prescribed by us;

c. That your corporate, partnership or other entity name including trade name, will not include any of the Proprietary Marks, in whole or in part, or any terms confusingly similar thereto, unless first authorized by us in writing;

d. To submit all advertising, promotional materials and all printed matter, including stationery, business cards, and any materials to be used on the Internet to us for our written approval before you use any of these items; and

e. That we may from time to time change or modify the System Standards, including modifying existing Proprietary Marks or adopting new marks. You agree, at your own expense, to adopt, use and display any such new or modified Proprietary Marks within ninety (90) days after notification from us. However, if we require you to modify or discontinue use of our proprietary information or use other information or rights in its place at any time other than upon us granting you a successor term to operate the Franchised Business pursuant to *Article 13*, and that requirement is a direct result of proceedings or litigation that determined that our and our franchisees' use of the proprietary information infringed upon a third-party's rights, we or our affiliate will bear the actual, direct, and reasonable costs of those modifications or discontinuances. The rights granted to Franchisee under this Section shall be Franchisee's sole and exclusive remedy for any infringement by any part of the System.

Upon your abandonment of the Franchised Business (whether voluntary or involuntary), termination or expiration of this Agreement, you must immediately cease to use, in any manner whatsoever, any of the Proprietary Marks or any other marks which, in whole or in part, may be confusingly similar to any of the Proprietary Marks.

6.4 Non-Exclusive License of Proprietary Marks.

You understand and agree that your license to use the Proprietary Marks is non-exclusive; that we, in our sole discretion, can grant to other franchisees the right to use the Proprietary Marks and obtain the benefits of the System Standards, in addition to the licenses and rights granted to you under this Agreement; and that we or our affiliates may develop and license other proprietary marks in conjunction with concepts other than the *sweetFrog* concept, on any terms and conditions we deem advisable. You will have no right or interest in any such other licenses, proprietary marks or systems.

6.5 Notification of Infringement and Claims.

You agree that you will notify us immediately of any apparent infringement of, or challenge to your use of any of the Proprietary Marks, or any claim by any person of any rights in any of the Proprietary Marks. You agree that you will not communicate with any person, other than us and our legal counsel, in connection with any such infringement, challenge or claim. We will have the sole discretion to take such action as we may deem appropriate to protect the Proprietary Marks and the exclusive right to control any litigation, United States Patent and Trademark Office proceeding, or other proceeding arising out of any such infringement, challenge, claim or otherwise relating to any Proprietary Marks. You agree to execute any and all instruments and documents, render such assistance, and do such acts and things as may, in the opinion of our counsel, be necessary or advisable to protect and maintain our interests in connection with any such litigation or proceeding, or to otherwise protect and maintain our interests in the Proprietary Marks.

ARTICLE 7. TRADE SECRETS AND PROPRIETARY INFORMATION

7.1 Innovations.

During the Term, you and your principals, officers, managers and employees may conceive, invent, create, design or develop various ideas, techniques, methods, processes and

procedures, recipes, formulae, products, packaging or other concepts and features relating to restaurant operations, business practices or the manufacturing, production, marketing and sale of frozen yogurt or other frozen dessert products, and other food and beverage items, and related goods now in existence or later developed, adopted, or improved in connection with the Franchised Business (individually and collectively, "Innovations"). You, without further consideration, hereby assign any and all of your rights, title and interest in the Innovations, including any intellectual property rights, to us, and also agree to cooperate with us and our counsel in the protection of the Innovations, including the perfecting of title thereto in us. In addition, you will require all of your principals, officers, managers and employees to sign an agreement in the form set forth in our System Standards and incorporated herein by reference ("Confidentiality Agreement"), and shall be liable to us for obligating your principals, officers, managers and employees to assign all of their rights, title and interest to the Innovations to us and requiring your principals, officers, managers and employees to cooperate in obtaining, protecting, maintaining and enforcing our right, title and interest in the Innovations.

7.2 Confidentiality Agreement.

a. In connection with the operation of the Franchised Business, you will from time to time receive, have access to, or learn certain information and materials that are proprietary to us or our affiliate. You and any person signing this Agreement under the heading "Personal Acceptance of *Sections 7.1, 7.2, 14.6 and 14.8*" agree that you will keep confidential, and will not use for your own purposes, nor supply or divulge to any other person, any of our Trade Secrets, including our methods of operation, processes, techniques, formulae and procedures, information a reasonable person would believe to be confidential and any other proprietary information regardless of whether such is expressly marked as confidential ("Confidential Information"). You acknowledge that much of the information imparted to you by us is confidential, constitutes Trade Secrets, are unique to us, and remains our sole exclusive property. Our Confidential Information includes the following:

1. The Confidential Manual and any amendments thereto;
2. Ingredients, recipes, and methods of preparation of food products;
3. Methods of operation of *sweetFrog* restaurants;
4. Information about products, services, or procedures before they become public knowledge;
5. Information which relates in any manner to our business or the System Standards, whether oral or reduced to writing, and which is not generally known to, or readily ascertainable by, other persons who might derive economic benefit from its disclosure or use; and
6. Any other information which may be imparted to you from time to time and designated by us as confidential.

b. You and any person signing this Agreement under the heading "Personal Acceptance of *Sections 7.1, 7.2, 14.6 and 14.8*" acknowledge and agree that the Confidential Information and any business goodwill of the Franchised Business is our sole and exclusive property, and that you will preserve the confidentiality thereof. Upon termination or expiration of this Agreement, all items, records or documentation recording or incorporating any Confidential

Information, including any copies thereof, will be immediately turned over by you to us or our authorized representative.

c. You agree to take all steps necessary, at your own expense, to protect the Confidential Information, including our Trade Secrets, and to adopt and implement all reasonable procedures prescribed by us from time to time to prevent the unauthorized use or disclosure of any of the Confidential Information. We require that all of your executive officers, agents, directors, shareholders, trustees, beneficiaries, partners and managers who may or are likely to obtain knowledge concerning the Proprietary Information (and who do not sign this Agreement under the heading "Personal Acceptance of Sections 7.1, 7.2, 14.6 and 14.8") sign the Confidentiality Agreement binding such person to preserve the confidentiality of the Confidential Information as part of the terms and conditions of such person's employment or association with you. You must obtain a Confidentiality Agreement signed by any such person prior to or at the same time that you begin employment of, or association with, that person. This will be a continuing obligation on your part throughout the Term. You must keep each original signed Confidentiality Agreement and provide us with a copy of each Confidentiality Agreement when requested by us or our authorized representative.

d. Notwithstanding the above, Confidential Information shall not include information which you can reasonably prove: (i) entered the public domain through no breach by you or your affiliate of any duty of confidentiality, or (ii) you received our prior express written consent to disclose in the manner in which you disclosed it.

e. If anyone under a Confidentiality Agreement is legally compelled or required by a regulatory body to disclose any Confidential Information, he/she/it will notify us as soon as possible and will use his/her/its best efforts to obtain, and give us an opportunity to obtain, appropriate assurances of confidential treatment.

f. The requirements under this Section 7.2 will remain in full force and effect during the Term and after termination or expiration of this Agreement.

ARTICLE 8. RELATIONSHIP OF THE PARTIES AND INDEMNIFICATION

8.1 Relationship of the Parties.

You and we agree that this Agreement does not create any fiduciary or employment relationship between you, or any of your employees, and us, that you are an independent contractor, and that nothing in this Agreement is intended to make either you or us a general or special agent, legal representative, subsidiary, joint venture, partner, employee or servant of the other for any purpose. You shall not enter into any agreement on behalf of or otherwise bind us for any purpose.

Should it ever be asserted that Franchisor is the employer, joint employer or co-employer of any of your or your affiliate's employees in any private or government investigation, action, proceeding, arbitration, or other setting, you irrevocably agree to assist Franchisor in defending said allegation, including (if necessary) appearing at any venue requested by Franchisor to testify on our behalf (and, as may be necessary, submitting itself to depositions, other appearances and/or preparing affidavits dismissive of any allegation that Franchisor is the employer, joint employer or co-employer of any of your employees).

8.2 Indemnification of Franchisor.

You agree to indemnify, defend and hold us and our affiliates (including our parent and subsidiary companies, current, past and future predecessors, successors and assigns), and each of our shareholders, owners, directors, officers, members, managers, partners, joint venturers, attorneys, employees, contractors, agents, representatives, guarantors, insurers, spouses, heirs, executors, trustees and estates (collectively with us, "Indemnified Parties") harmless for, from and against any and all claims, liabilities, causes of action, suits, debts, duties, accounts, covenants, contracts, agreements, promises, taxes, demands, obligations, costs and expenses, including reasonable attorneys' fees, damages, judgments, and proceedings, of every kind and nature whatsoever, whether actual or threatened, in law or equity, or otherwise, under local, state or federal law including, without limitation the Americans with Disabilities Act ("ADA"), or the law of any other applicable jurisdiction (individually and collectively, "Claims") suffered or incurred by any of the Indemnified Parties arising out of or relating to your construction, ownership, marketing, Promotions (as defined in Article 10), operation, including your failure to comply with PCI DSS or any law, statute, regulation, order, rule, or ordinance, or management of the Franchised Business, except for Claims held to have resulted solely from our gross negligence or willful misconduct. Notwithstanding the foregoing, we will have the right, at our option, to defend any Claim, but you must reimburse us upon demand for the costs and expenses of such defense. You shall immediately give us notice of any demand, investigation, written inquiry, action, suit, proceeding, or claim in any way related to us or the sweetFrog brand.

8.3 Indemnification of Franchisee.

We agree to indemnify, defend and hold you and your affiliates, and their shareholders, directors, officers, members, managers, partners, employees, agents, successors and assignees harmless for, from and against any and all Claims, arising out of any Claim of infringement or unfair competition in connection with your authorized use of the Proprietary Marks or Confidential Information, provided that such use is in accordance with the provisions of this Agreement. However, if we require you to modify or discontinue use of our Proprietary Marks or Confidential Information or use other information or rights in its place at any time other than upon us granting you a successor term to operate the Franchised Business pursuant to *Article 13*, and that requirement is a direct result of proceedings or litigation that determined that our and our franchisees' use of the Proprietary Marks or Confidential Information infringed upon a third-party's rights, we will bear the cost of those modifications or discontinuances as set forth in this Agreement.

8.4 Special Power of Attorney.

You agree to cooperate with and assist us as we may request from time to time to obtain, protect, maintain or enforce our intellectual property and Proprietary Marks, including executing documents and appearing as a witness. You hereby appoint us as your attorney-of-fact and hereby grant us an irrevocable Special Power of Attorney, coupled with an interest, with full power and authority for the purpose of executing documents or taking such action as necessary or appropriate as you might or could do if personally present, hereby ratifying all that we, as your attorney-in-fact, shall lawfully do or cause to be done by virtue of this Special Power of Attorney to obtain, protect, maintain or enforce our intellectual property and Proprietary Marks if we are, for any reason, unable to obtain your cooperation or assistance. The Special Power of Attorney granted by this *Section 8.4*, shall survive your dissolution, death, incompetence or disability and the termination or expiration of this Agreement.

ARTICLE 9. OPERATING STANDARDS AND DUTIES OF FRANCHISE OWNER

9.1 Compliance with System Standards and Confidential Manual.

You understand and acknowledge that every detail of the operation of the Franchised Business is important in order to develop and maintain high and uniform standards of quality, cleanliness, appearance, service, facilities and techniques; to increase the demand for the System; and to protect our reputation and goodwill and that of other *sweetFrog* franchisees. You also acknowledge that the operation of the Franchised Business is your sole responsibility, and that neither we nor our affiliates have any responsibility to obtain customers for you. The System Standards will constitute provisions of this Agreement as if fully set forth herein.

9.2 Authorized Products and Services.

a. You agree that you will not, without our prior written approval, offer at the Location any menu items, beverages, products or services that are not authorized by us for the Franchised Business, as set forth in the System Standards.

b. You have complete discretion in establishing the minimum price you charge for your products. Although we may suggest pricing strategy, you will have the final pricing decision.

c. Notwithstanding the terms of *Section 9.2b.*, we may conduct periodic promotional campaigns during which a specified product or products are promoted at a specified price. During the promotional period, you may not charge your customers more than the specified promotional price, although you may charge less than the promotional price.

d. We may conduct new marketing, research and development, branding and operational program tests, which will generally be conducted with experienced, existing franchisees and may include incentives and other rights that are not available to all franchisees.

e. You hereby consent to third-party vendors, suppliers and distributors sharing with us any and all information, reports, invoices and related documentation covering and otherwise detailing your purchases for the Franchised Business, and to us sharing your contact information with them when we reasonably believe they may offer you a desired benefit.

f. You are required to accept debit and credit cards (including Visa®, MASTERCARD® and AMERICAN EXPRESS®) and Gift/Loyalty Cards from consumers at the Franchised Business. You are required to acquire, as necessary, and maintain during the Term, an approved debit, credit and Gift/Loyalty Card processing system ("Card Processing System") to use during the operation of the Franchised Business. Additionally, you must utilize our approved third-party payment card processor, as identified in the System Standards, for processing all Card Processing System transactions.

9.3 Specifications and Standards for Supplies; Approved Suppliers; Rollouts.

a. You must purchase or otherwise acquire certain proprietary or required equipment and supplies utilized in the Franchised Business only from our designated approved distributors or suppliers. If, during the Term, we change designated approved distributors or suppliers for any of the proprietary or required equipment and supplies utilized in the Franchised Business, you shall change to the new designated approved distributor or supplier within sixty (60) days after written notification of such change from us.

You acknowledge Franchisor and/or its affiliates has the right to receive commissions, volume discounts, purchase discounts, performance payments, bonuses, rebates, marketing and advertising allowances, co-op advertising, administrative fees, enhancements, price discounts, economic benefits and/or other payments (“Payments”) based upon the actual purchases of the foods, beverages, and other products by Franchisor, its affiliates, area developers and franchisees from suppliers. Any such Payments made to Franchisor may be retained by Franchisor or distributed to franchisees in such amounts and using such allocation methods as Franchisor deems appropriate, in its sole discretion. All Payments received from a supplier for a designated purpose (such as participation at an annual convention, etc.) will be spent in accordance with the supplier’s designated purpose.

b. If you desire to purchase or otherwise acquire any equipment, supplies or inventory items required by the System Standards but not previously approved by us, or from sources not previously approved by us, you must submit to us sufficient specifications, photographs, drawings and other information sufficient to allow us to determine whether such equipment, supplies or inventory items meet our System Standards. We may require that our representatives be allowed to inspect the facilities of the proposed supplier and revoke its approval upon the supplier's failure to meet any of our then-current minimum System Standards. We may also require that samples from the proposed supplier be delivered, at no charge to us, either to us or to our designee for testing. A charge not to exceed the reasonable cost and expense of the inspection and the actual cost and expense of the test must be paid to us either by you or by the proposed supplier. We will notify you within sixty (60) days after your request of our approval or disapproval of the proposed product or supplier, with such determination to be made at our sole discretion. You acknowledge and agree that our approval of any item or supplier of equipment, supplies or inventory not previously approved by us will not, in and of itself, make the supplier of that item an approved supplier for other *sweetFrog* franchise owners in the System. We may, in our sole discretion, at any time and from time to time, re-inspect the facilities and products of any approved supplier and revoke its approval upon the supplier's failure to meet any of our then-current System Standards. If you receive a notice of revocation from us, you must immediately stop selling disapproved products and purchasing from the disapproved supplier.

c. We will provide to you a list of all recommended and required items of equipment, fixtures, supplies, smallwares and interior decor. This list will be included in the System Standards.

d. At any time and from time to time, we may in our sole option engage in new product rollouts to add to or change the menu items offered for sale in the Franchised Business and the ingredients or supplier of ingredients utilized in the preparation of the menu items sold in the Franchised Business (“Rollout”). If we engage in a Rollout, you shall participate in the changes that are the subject of such Rollout, including offering the new menu items, changing the menu items, changing to the new supplier of the ingredients utilized in the preparation of the menu items, and changing to the new ingredients utilized in the preparation of the menu items. If we engage in a Rollout, we will notify you of the details of the Rollout and provide you sixty (60) days from said notification to take the applicable actions required by the Rollout.

9.4 Compliance with Legal Requirements and Good Business Practices.

You must, at your sole expense, operate the Franchised Business in full compliance with all applicable Federal, state and local statutes, laws, ordinances and regulations, including health and safety regulations, food and drug laws, disability laws, labor and employment laws and data privacy laws, as may be amended, supplemented or enacted from time to time. You must pay all costs and expenses incurred by, and in the conduct of, the Franchised Business, including all

rent, salaries, taxes (excluding our income taxes), disbursements, license or permit fees, insurance premiums, traveling expenses and any other business expenses when they become due. If you receive any demand, action, suit or proceeding, or the issuance of any order, writ, injunction, award or decree of any court, agency or other governmental instrumentality relating to your Franchised Business, you must immediately notify us, and in no event, later than three (3) days after your receipt. Any such notice must be accompanied by a copy of the demand, complaint, order, writ, injunction, award, decree or other similar document. You must, in all dealings with your employees, customers, suppliers, the public and us adhere to the highest standards of honesty, integrity, fair dealing and ethical conduct. You agree to refrain from any business practice that may be injurious to the System or the goodwill associated with the Proprietary Marks.

9.5 Maintenance of Insurance.

At all times during the Term, you must maintain in full force and effect at least the minimum types and amounts of insurance coverage that we require, under one (1) or more policies of insurance (each of which shall be primary coverage and shall not be contributory or secondary to any other coverage maintained by us), insured under the particular name of the Franchisee and for the particular address of the Franchised Business.

Such insurance policies must be issued by insurers acceptable to us having an A.M. Best's financial strength rating of at minimum "A-VIII," and grant us authority to obtain copies of your certificate of insurance directly from the carrier or your agent/broker. The particular requirements of our minimum insurance coverage will be made available to you throughout your term. Currently, the general liability insurance required by this Agreement must: (i) name MTY Franchising USA, Inc. as the certificate holder; (ii) name MTY Franchising USA, Inc. and Kahala Franchising, L.L.C. and their parents, subsidiaries, affiliates, officers, directors, and employees as additional insureds; (iii) contain a waiver by the insurance carrier of all subrogation rights against us and our affiliates and our affiliates' respective officers, directors and employees for casualty losses; (iv) indicate the address of the Franchised Business being insured; and (v) provide that we will receive a copy, via an endorsement, thirty (30) days' prior notice of cancellation of any such policy. Additional minimum insurance coverage requirements (subject to increase or otherwise change in our sole discretion) are as follows:

TYPE OF COVERAGE	LIMITS/SPECIFICATIONS
General Liability	\$1,000,000 Bodily Injury/Property Damage Per Occurrence / \$2,000,000 Aggregate
Building Improvements and Betterments	100% of Full Replacement Cost – No Coinsurance (minimum of \$100,000)
Business Personal Property	100% of Full Replacement Cost – No Coinsurance – Special Form or equivalent (minimum of \$100,000)
Spoilage	\$5,000
Flood, Earthquake and Volcanic Eruption	Subject to Territory Limitations – required if in a designated Flood Zone

TYPE OF COVERAGE	LIMITS/SPECIFICATIONS
Workers' Compensation and Employer's Liability Insurance	As required by law
Employment Practices Liability Insurance with Franchisor Defense coverage	\$1,000,000
Hired and Non-Owned Automobile Liability	\$1,000,000 Combined Single Limit per accident

You need to evaluate if your particular business will require greater coverage or other types of insurance. For example, we strongly recommend that you consult with an insurance broker to discuss whether your particular lease/situation requires and/or should obtain additional common types of insurance (including without limitation, umbrella insurance, and cyber liability/data breach insurance coverage). Such insurance may significantly increase your premiums, but may also save you money in the long run.

You are responsible for maintaining insurance coverage and limits as required by us, at minimum, pursuant to this *Section 9.5*, provided, if your landlord requires additional coverage, higher limits, or any other requirements not required by us, then you are responsible for maintaining such additional items as well. You must always keep the required insurance coverage in force at all times during the operation of the Franchised Business, and you must comply with any changes we make periodically to our insurance requirements. Upon 30 days' notice to you, we may require you to increase and/or otherwise change the minimum coverage of the insurance referred to above, including to reflect identification of special risks, changes in law or standards of liability, higher damage awards or other relevant changes in circumstances.

Subject to *Section 3.1*, before you may open your restaurant, annually thereafter at least ten (10) days prior to renewal of your insurance coverage, and at any other time on our request, you must provide us with certificates of insurance or copies of insurance policies showing that you are in compliance with our insurance requirements, as well as proof that you have paid the premiums you owe for the insurance we require. You will pay your insurance premiums to your insurance broker or to the insurance company issuing the policy. We or our affiliate may, at our option and in addition to our other rights and remedies under this Agreement, obtain such insurance coverage on your behalf, and you must promptly execute any applications or other forms or instruments required to obtain any such insurance and pay to us, on demand, any costs, expenses and premiums (in whole or part) incurred by us. Your obligation to obtain and maintain the insurance described above will not be limited in any way by reason of any insurance maintained by us, nor will your performance of such obligations relieve you of any obligations under *Section 8.2*.

9.6 Management of the Franchised Business.

You are directly responsible for all aspects of operating the Franchised Business, and you agree that you will, at all times, operate the Franchised Business and use your best efforts to enhance your Franchised Business and the System. The Franchised Business must be personally managed and directly operated by either you or another partner, shareholder or member of your business organization, or a manager.

9.7 Inspections by Franchisor.

For the purpose of this *Section 9.7*, you must make available to us or our authorized representatives such financial and other information concerning the Franchised Business, and you must permit us or our authorized representatives to have full and free access to such information at your Franchised Business Location during regular business hours without prior notice. We and our authorized representatives will have the right to communicate freely with your employees, and make extracts from, and copies of, all such information. Our authorized representative may make announced or unannounced inspections of your Franchised Business to ensure compliance with all of the requirements of this Agreement.

9.8 ~~Personal Guaranty; Non-Disclosure and Non-Competition Agreement.~~

If you are an individual and married, your spouse must execute and deliver to us a Guaranty of Franchise Agreement ~~and a Non-Disclosure and Non-Competition Agreement~~ at the same time that you sign the Agreement unless your spouse is also ~~singing~~ signing the Agreement as an individual.

If you are a corporation, limited liability company, or other business entity, each of your shareholders, members, or other owners, whether direct or indirect (and their respective spouses, if married) must execute and deliver to us a Guaranty of Franchise Agreement ~~and a Non-Disclosure and Non-Competition Agreement~~ at the same time that you sign this Agreement.

In the event any person who has not previously signed a Guaranty of Franchise Agreement ~~or a Non-Disclosure and Non-Competition Agreement~~ becomes your spouse or shareholder, member, or other owner, direct or indirect or a spouse of such shareholders, members, or other owner, at any time after the execution of this Agreement, you must cause such person(s) to immediately execute and deliver a Guaranty of Franchise Agreement ~~and a Non-Disclosure and Non-Competition Agreement~~ to us.

Failure to provide a Guaranty of Franchise Agreement ~~or a Non-Disclosure and Non-Competition Agreement~~ to us may, in our sole discretion, be grounds for termination of this Agreement as set forth in *Section 14.2a*.

9.9 Not Applicable.

ARTICLE 10. ADVERTISING AND PROMOTION

10.1 Advertising by Franchisor.

We (or at our election a third-party which may be an affiliate of ours) will administer the Advertising Fund that will include your Advertising Fee and those of other franchise owners in the System. If an affiliate of ours administers the Advertising Fund or places advertising in connection with the System, such affiliate may be paid a fee that will not exceed the fee that would be payable to unrelated third-parties for comparable services. Unless required by applicable law, we will have no obligation to create a trust account, escrow account or other special account for the Advertising Fund, and the monies comprising the Advertising Fund may be placed in our general account. We may also reserve the Advertising Fee for use in a subsequent year.

We will direct all advertising and promotional programs. We will have sole discretion over all creative concepts, materials and media used in such programs and the placement and allocation of such programs. The Advertising Fund will be used for marketing, advertising,

production and media expenses to promote the *sweetFrog* trade name, System, products and services. We are entitled to deduct, free of charge, the following from the Advertising Fund: reimbursement of expenses, overhead, and employee salaries for services provided; and rent for office space provided to the Advertising Fund. We are not required to use any specific amounts from the Advertising Fund in your market. However, we in our sole discretion, may use some amounts contributed by you to any Advertising Fund, if any (see *Section 5.3*), in the same geographic area in which your Franchised Business is located.

10.2 Advertising by Franchisee.

In addition to your Advertising Fee, if applicable, and unless your Franchised Business is located in an enclosed shopping mall or other enclosed structure identified in *Section 1.1*, you agree to pay for a regular (white pages) and classified (yellow pages) telephone directory advertisement in the main directory distributed in the area where your Franchised Business is located, in such directory categories as we specify, utilizing forms of listing and classified directory advertisements approved by us. We also recommend that, in addition to your Advertising Fee, you spend at least two percent (2%) of your monthly Gross Sales on local advertising.

Your own local marketing and advertising plan should be developed to maximize your particular customer base. You should not rely upon a marketing program or plan by us as the sole means of obtaining customers. All marketing and advertising materials must be reviewed by the marketing department for look and feel. The marketing department's review is not for determining compliance with federal, state and local laws.

All advertising by you in any medium must be conducted in a professional manner and must conform to the System Standards. We may make available to you, from time to time, advertising, promotional plans and materials for purchase.

Under no circumstances may you use, without limitation, the name, image, or voice of a celebrity, public figure, character or other person in connection with the Proprietary Marks or the Franchised Business without our prior written consent. We retain the sole and exclusive right to use, without limitation, the name, services or image of any celebrity, public figure, character or other person in advertising, endorsing or recommending the System.

ARTICLE 11. ACCOUNTING PROCEDURES AND REPORTS

11.1 Maintenance of Records.

You shall keep full, complete, and accurate books and accounts in accordance with generally accepted accounting principles, and in the form and manner indicated below or as from time to time further required by us. You agree to submit reports and data to us electronically if we advise you to do so. You agree:

- a. to submit to us electronically the weekly Gross Sales as set forth in *Section 5.6*;
- b. to submit to us, on or before the thirtieth (30th) day of each month, commencing with the opening of the Franchised Business, in a format and method approved by us (including through a third-party vendor that franchisee may be required to pay for), a profit and loss statement of the Franchised Business for the preceding calendar month prepared in accordance with generally accepted accounting principles;

c. to submit to us, within ninety (90) days after the end of each calendar year, commencing with the opening of the Franchised Business, in a format approved by us, a profit and loss statement and balance sheet (including a statement of retained earnings or partnership account) for the preceding calendar year;

d. to submit to us, at the times required, such other periodic forms, reports and information as may from time to time be required by us;

e. to preserve, in the English language and for the time periods set forth below, all accounting records and supporting documents related to the Franchised Business (individually and collectively, "Records"), including:

1. daily cash reports;
2. cash receipts journal and general ledger;
3. cash disbursements journal and weekly payroll register;
4. monthly bank statements, daily deposit slips and canceled checks;
5. all tax returns, including your personal returns and those of your officers, shareholders, partners and members;
6. suppliers invoices (paid and unpaid);
7. dated cash register tapes (detailed and summary);
8. semi-annual balance sheets and monthly profit and loss statements;
9. daily production, throwaway and finishing records and weekly inventories;
10. records of promotion and coupon redemptions;
11. records of all outside sales; and
12. such other records as we may from time to time request.

f. to record all sales on cash registers approved by us, as specified in the Confidential Manual;

g. to file all of your federal and state tax returns on a timely basis and to provide copies of them to us. We may, where applicable, require that tax returns from all of your shareholders, members or partners be provided to us, if you are other than an individual;

h. During the Term, you shall preserve the Records for at least the current fiscal year and for the three (3) immediately preceding fiscal years. For three (3) years after the date of any transfer of an interest in this Agreement, the transferor of such interest will preserve the Records for its last three (3) fiscal years of operation under this Agreement. For three (3) years after the expiration of the Term (or after any earlier termination), you shall preserve the Records for the last three (3) fiscal years of operation of the Franchised Business; and

i. In connection with our efforts to attract additional franchise owners to the System, we will have the right to use (without identifying you, except as required or allowed by law) any financial statements, sales reports, profit and loss statements or balance sheets provided by you

and, in connection therewith, you authorize us to disclose any information contained on such financial reports as may be required by any federal or state registration or disclosure law.

11.2 Audit by Franchisor.

We will have the right, at any time during business hours, and with or without prior notice to you, to inspect and audit, or cause to be inspected and audited, the Records and cash control devices of the Franchised Business, and your corporate, partnership or limited liability company books and records (if you are a corporation, partnership, limited liability company, or other entity). You agree that we may access any computers utilized by you for such purposes.

You will fully cooperate with our authorized representatives and independent accountants hired by us to conduct any such inspection or audit. In the event any such inspection or audit discloses an understatement of your Gross Sales for any period in question, you will pay to us, immediately after receipt of the inspection or audit report, any additional Royalty Fee or Advertising Fee due as a result of any such understatement, plus interest at the Default Rate from the date originally due until the date such understatement is paid in full.

In addition, in the event such inspection or audit is made necessary by your failure to timely furnish Records, or if an understatement of the Royalty Fee or Advertising Fee for the period of any audit (which period shall not be for less than one (1) month) is determined by any such audit or inspection to be five percent (5%) or greater, you must reimburse us all amounts incurred in connection with such audit or inspection including our employee costs and expenses, any independent accountants' and attorneys' fees, transportation, room, and meal expenses.

The remedies in this *Section 11.2* will be in addition to all our other remedies and rights under this Agreement or under applicable law.

ARTICLE 12. TRANSFER

Sections 12.1 through *12.4* apply to all transfers, except transfers by us, which are described in *Section 12.5*.

12.1 Prior Consent of Franchisor.

a. As used in this Agreement, "Transfer" means any voluntary, involuntary (including by operation of law), direct or indirect assignment, sale, gift or other transfer by you, including:

1. "Full Transfer," which is any act or circumstance, except those set forth in *Section 12.1.a.2.*, by which fifty percent (50%) or more of the ownership or control is shifted from any individual or corporation, partnership or other business entity (individually and collectively, "Entity") to another, including:

(i) Transfer of this Agreement or the Franchised Business, or any right or interest granted by this Agreement;

(ii) Transfer of an interest in you, if you are an Entity;

(iii) Merger, consolidation or issuance of additional ownership interests or redemption of ownership interests in you, if you are an Entity; or

(iv) Transfer of an interest in any other Entity holding an interest in this Agreement or you, if you are an Entity.

2. "Affiliate Transfer," which includes:

(i) Transfer in a separation or divorce, regardless of how much of the ownership or control is shifted from any individual or Entity to another;

(ii) Transfer of this Agreement or the Franchised Business, or any right or interest granted by this Agreement from your name as an individual(s) to your Entity name in which you are the sole owner(s) of the Entity;

(iii) Transfer of this Agreement or the Franchised Business, or any right or interest granted by this Agreement, from your Entity name in which you are the sole owner(s) to your name as an individual(s);

(iv) Transfer of this Agreement or the Franchised Business, or any right or interest granted by this Agreement from one Entity name to another Entity name in which the owners of the entities are the same;

(v) Removing an owner from the Franchisee (unless the person has a fifty percent (50%) or more ownership interest);

(vi) Adding an owner to the Franchisee (unless the person has a fifty percent (50%) or more ownership interest); or

(vii) Transfer by which less than fifty percent (50%) of the ownership or control is shifted from any individual or entity to another for any act or circumstance listed in *Section 12.1.a.1.*

b. We are entering into this Agreement based upon our knowledge of and faith in your ability. Therefore, the Franchised Business and all the rights granted by this Agreement are personal to you and you may not Transfer without our prior written consent. Any attempted Transfer without our prior written consent will be null and void, and will give us the right to terminate this Agreement and your rights under it, in addition to any remedies which we may have for the breach of this covenant by reason of an attempted Transfer.

c. We shall not unreasonably withhold or delay our consent to a Transfer, so long as it is shown to our satisfaction that the potential transferee ("Potential Transferee") can perform a franchisee's obligations under the then-current form of franchise agreement and all other agreements, legal instruments and documents required of new franchisees.

12.2 Advance Notice of Proposed Terms and Right of First Refusal.

a. If you, or any of your shareholders, members or partners, have received and desire to accept a signed bona fide written offer from a third-party to Transfer, you shall notify us and provide us with a complete copy of the offer (letter of intent) which must include the name, address and telephone number for every Potential Transferee. You must also include information as to the identity of all who will own an interest in this Agreement or in the Franchised Business after the completion of the Transfer, their respective interests, and the proposed terms and conditions of sale and payment.

b. We shall have the right and option, exercisable within thirty (30) days after the date we receive a copy of the offer, to purchase the interest proposed to be transferred, at the price and upon the same terms and conditions specified in the notice.

c. If we do not exercise our option, and the terms of the unaccepted offer are altered, you must, in each such instance, notify us of the changed offer; and we will again have thirty (30) days to exercise our right to purchase on the altered terms. If we do not exercise our option, then the Transfer may take place on the terms and price set forth in the notice; provided: (i) we give our written consent; (ii) the Transfer takes place no later than six (6) months from receipt of our written refusal to exercise our option to purchase; and (iii) all the conditions set forth in *Section 12.3* are satisfied.

12.3 Requirement for Consent to Transfer.

If a Transfer is proposed and we do not exercise our right of first refusal pursuant to *Section 12.2*, then we will consent to the Transfer, provided that:

a. All your obligations under this Agreement are fully paid and satisfied, including the Royalty Fee and Advertising Fee; you are not in default under any provisions of this Agreement or any other agreement, legal instrument or document with us or any of our affiliates; and you enter into written agreements with us, including (except where prohibited by law) a general release by you of all claims against us;

b. Potential Transferee provides to us a completed application and financial documents, is financially acceptable, is not associated with any of our competitors, is of good moral character and reputation, and meets our criteria, which includes: work experience and aptitude; ability to devote time and best efforts to the Franchised Business; equity interest in the Franchised Business; ability to speak and read English sufficient in our opinion to communicate with employees, customers and suppliers and to satisfactorily complete our training; no conflicting interests; and other criteria and conditions that we apply to new franchisees;

c. Potential Transferee provides us with copies of all governing documents of Potential Transferee (e.g., certificate of incorporation or organization, by-laws, stock certificates, operating agreement, membership certificates (if any)) which must be reasonably satisfactory to us in our sole discretion;

d. You provide to us a copy of the purchase and sale agreement, if a Full Transfer, or other documentation evidencing the Transfer, if an Affiliate Transfer, and following our analysis of the terms and conditions of the proposed Transfer, we, in our sole discretion, conclude that such terms and conditions will not interfere with the financial feasibility of the future operation of the Franchised Business;

e. Potential Transferee enters into all agreements, legal instruments and other documents, whether our then-current agreements, legal instruments and documents or a transfer of this Agreement and related legal instruments and documents, as determined by us (individually and collectively, "Transfer Documents"). The terms of the Transfer Documents may vary materially from the current agreements used by us, including the payment of a higher Royalty Fee and Advertising Fee;

f. Not applicable;

g. Potential Transferee pays to us the transfer franchise fee set forth in the Transfer Documents, if a Full Transfer; or Potential Transferee pays us the Document Administration Fee, if an Affiliate Transfer; Franchisee shall be liable to the Franchisor for the transfer franchise fee or Document Administration Fee in the event the Potential Transferee fails to pay such fee that is owing in full;

h. Not applicable;

i. Potential Transferee successfully completes the training program required by the Transfer Documents, if a Full Transfer;

j. Potential Transferee agrees to complete all remodeling and improvements as required by us, and must upgrade the POS System to the then-current required POS System, within the time period specified by us, if a Full Transfer;

k. You and Potential Transferee agree not to assert any security interest, lien, right or claim now or in the future, in the Franchised Business. Any security interest, lien, claim or right asserted with respect to any personal property at the Location must not include any after-acquired property and must be subject, junior and subordinate to any security interest, lien, right or claim now or in the future, asserted by us, our successors or assigns; and

l. You agree to complete and sign a letter of agency, letter of authorization, or equivalent and provide it to Potential Transferee so that Potential Transferee may keep the existing telephone number when the store is transferred to Potential Transferee.

12.4 Death or Incapacity of Individual Franchisee; Change in Entity.

a. Death or incapacity of Franchisee when Franchisee is an individual:

(i) In the event of your death or incapacity, your legal representative may, for a period of ninety (90) days from the date of death or incapacitation, continue to operate the Franchised Business, provided that the operation is conducted in accordance with this Agreement and any other agreements with us.

(ii) If your representative desires to continue the operation of the Franchised Business beyond the ninety (90) day period, then, prior to the expiration of this period, your legal representative must apply in writing for the right to transfer the Franchised Business to the person or persons (whether spouse, heir, devisee, purchaser, or any other person), as the legal representative may specify. The application for transfer will be treated in the same manner as any other proposed Transfer under this Agreement.

(iii) If your legal representative does not comply with the provisions of the preceding paragraph, or does not propose a Potential Transferee acceptable to us under the standards set forth in this Agreement, all rights licensed to you under this Agreement will terminate immediately and automatically revert to us. We shall have the right and option, in our sole discretion, exercisable upon such termination, to purchase all removable furniture, fixtures, signs, equipment and other chattels, but not leasehold improvements, at a price to be agreed upon by the parties or, if no agreement as to price is reached by the parties, at such price as may be determined by a qualified appraiser, approved by both parties, such approval not to be unreasonably withheld. We shall give notice of our intent to exercise the option no later than twenty-one (21) days prior to termination.

b. Death or incapacity of any shareholder, partner, or member in Franchisee when Franchisee is a business entity:

(i) In the event of the death or incapacity of any of your shareholders, partners, or members, the surviving shareholders, partners, or members may, for a period of ninety (90) days from the date of death or incapacitation, continue to operate the Franchised Business, provided that the operation is conducted in accordance with this Agreement and any other agreements with us.

(ii) If your shareholders, partners or members desire to continue the operation of the Franchised Business beyond the ninety (90) day period, then, prior to the expiration of this period, your shareholders, partners, or members must apply jointly with all surviving shareholders, partners or members in writing, for the right to transfer the Franchised Business (or the interest of the deceased or incapacitated shareholder, partner, or member in the Franchised Business), to the person or business entity as the surviving shareholders, partners, or members may specify. The application for transfer will be treated in the same manner as any other proposed Transfer under this Agreement.

(iii) If all surviving shareholders, partners or members do not comply with the provisions of the preceding paragraph, or do not propose a Potential Transferee acceptable to us under the standards set forth in this Agreement, all rights licensed to you under this Agreement will terminate immediately and automatically revert to us. We shall have the right and option, in our sole discretion, exercisable upon such termination, to purchase all removable furniture, fixtures, signs, equipment and other chattels, but not leasehold improvements, at a price to be agreed upon by the parties or, if no agreement as to price is reached by the parties, at such price as may be determined by a qualified appraiser, approved by both parties, such approval not to be unreasonably withheld. We shall give notice of our intent to exercise the option no later than twenty-one (21) days prior to termination.

12.5 Assignment by Franchisor.

You agree and affirm that we may, without your prior consent, sell our business, our assets, or our System, in whole or in part, to a third-party; may issue a public offering of our securities; may engage in private placement of some or all of our securities; may merge with or acquire other corporations, or be acquired by another corporation; and may undertake a refinancing, recapitalization, leveraged buyout or other economic or financial restructuring. You further agree and affirm that we have the right, now and in the future, without your prior consent, to purchase, merge, acquire or affiliate with an existing competitive or non-competitive franchise network, chain or any other business regardless of the location of such franchise network, chain or business, which you acknowledge may be proximate to your Franchised Business, and to operate, franchise or license such franchise networks, chains or businesses operating under the Proprietary Marks or any other marks following our purchase, merger, acquisition or affiliation. With regard to any of the above sales, assignments and dispositions, you expressly and specifically waive any claims, demands or damages against us arising from or related to the loss of your rights to use the System as authorized under this Agreement.

This Agreement will inure to the benefit of our successors and assigns. In conjunction with one (1) or more of the transactions contemplated above, or as otherwise determined by us, we have the right to assign our rights and obligations under this Agreement to any person or entity, without your prior consent. Upon such assignment, we will be relieved of all obligations or liabilities then existing or thereafter able to be asserted under this Agreement.

12.6 Restrictions on Security Interests and Subfranchising.

Except as otherwise set forth in this *Section 12.6*, you shall not have any rights to pledge, encumber, hypothecate or otherwise give any third-party a security interest in this Agreement in any manner whatsoever, nor subfranchise or otherwise transfer, or attempt to subfranchise or transfer the Franchised Business, in whole or in part, so long as it is operated as the Franchised Business, without our express prior written permission, which permission may be withheld for any reason whatsoever in our sole discretion. Notwithstanding anything contained herein to the contrary, you shall have the right to pledge your accounts receivable, net of royalties and rent, without our prior written consent for the sole purpose of obtaining financing for the operation of the Franchised Business, provided you are in full compliance with this Agreement and any other agreement, arrangement or understanding with us.

ARTICLE 13. SUCCESSOR TERM

We have no obligation under any circumstances to extend your rights to operate the Franchised Business beyond the Term. Notwithstanding the foregoing, in the event the Term expires in accordance with *Section 1.3*, you may apply to us to extend your rights to operate the Franchised Business for a successor term. In the event you desire to apply to us to extend your rights to operate the Franchised Business for a successor term, you must give us notice to that effect at least one hundred twenty (120) days prior to the expiration date of the Term. In addition to giving the notice of intent to apply for a successor term referred to above in a timely manner, in order to qualify for a license to operate the Franchised Business for a successor term, you must also, at a minimum, meet each of the following requirements:

- a. You must successfully complete the then-current application process required of new franchisees;
- b. You must not then be in default under this Agreement or any other agreement, legal instrument or document with us or any of our affiliates, and no event shall have occurred that, with the giving of notice, the passage of time, or both, would constitute a default under this Agreement, including all financial obligations to us;
- c. You must be in complete compliance with the terms of this Agreement, including all financial obligations to us, and the then-current Confidential Manual;
- d. You must not have received more than three (3) notices of default or breach of this Agreement during its term, nor more than two (2) notices of default or breach during the five (5) years immediately preceding the effective date of the proposed successor term;
- e. You must have the existing right to maintain possession of the Location or you must have secured and developed a suitable substitute location that meets our then-current minimum site requirements (such confirmation will be provided to you by us in writing);
- f. You must sign a general release provided by us;
- g. You and we must execute all agreements, legal instruments and other documents (individually and collectively, "Successor Franchise Documents") then used by us in the granting of franchises and then being required of new franchise owners in connection with the System. The Successor Franchise Documents will supersede this Agreement, but will not terminate your liability to perform any obligations which you have not yet performed under this Agreement, or which survive the termination of this Agreement; nor will the Successor Franchise Documents

terminate or supersede any Guaranty of Franchise Agreement, Confidentiality Agreement, or Non-Disclosure and Non-Competition Agreement executed pursuant to this Agreement. The terms of the Successor Franchise Documents may vary materially from the current agreements used by us, including the payment of a higher Royalty Fee and Advertising Fee;

h. The equipment, fixtures and signage used in connection with the operation of the Franchised Business must either meet our then-existing System specifications and standards, or you must agree, within a timeframe required by us, to replace or refurbish such items, and otherwise modify the methods of operation of the Franchised Business at your cost and expense, in order to comply with our System specifications and standards then applicable to new franchise owners;

i. You agree to complete all remodeling and improvements as required by us, and must upgrade the POS System to the then-current required POS System, within the time period specified by us; and

j. You shall have paid to us the then-current initial franchise fee.

We reserve the right to reject your application for a successor term, at our sole discretion, for any reason, without limitation, failure to meet our then-current standards or requirements for new franchisees. If we decide to reject your application for a successor term to operate the Franchise Business, we will give you a notice to that effect within sixty (60) days after you deliver to us your notice of intent to apply for a successor term.

ARTICLE 14. DEFAULT AND TERMINATION

14.1 Default; Termination.

a. You will be in default under this Agreement:

(i) If: (a) you become insolvent or make an assignment for the benefit of creditors; (b) you file a petition in bankruptcy, or if such a petition is filed against and consented to by you, and such petition is not dismissed within thirty (30) days from the filing date of such petition; (c) you are adjudicated bankrupt; (d) a bill in equity or other proceeding for the appointment of your receiver or other custodian for your business or assets is filed and is consented to by you or is not dismissed within thirty (30) days from the filing date of such bill or other proceeding; (e) a receiver or other custodian is appointed; (f) proceedings for composition with creditors under any state or federal law is instituted by or against you; (g) the real or personal property of the Franchised Business is sold at levy thereupon by any sheriff, marshal or constable, or sold by a secured party under any state's Commercial Code;

(ii) If you fail to pay, perform, observe or comply with any of your duties and obligations under this Agreement or the Confidential Manual, including failure to provide a fully-executed copy of the lease to us when due and failure to pay when due, any sum due to us under this Agreement (including the Royalty Fee and Advertising Fee) or to any Advertising Fund (inclusive of any Association); or if you breach any of your obligations under any lease, sublease, mortgage, equipment agreement, promissory note, vendor account, conditional sales contract or other contract arising from, or in connection with, the Franchised Business, to which you are a party or by which you are bound, whether or not we are a party thereto;

(iii) If your lease or sublease for the Location of the Franchised Business is either: (a) in default and you fail to cure such default as provided in the lease or sublease; (b) is

terminated for reason of default by you; or (c) the Location is lost as a result of your failure to comply with the lease or sublease;

(iv) If you fail, within thirty (30) days of the entry of a final judgment against you in an amount exceeding Two Thousand Dollars (\$2,000), to discharge, vacate or reverse the judgment or to stay its execution pending appeal, or to discharge any judgment which is not vacated or reversed within thirty (30) days after expiration of the stay of execution;

(v) If we determine that a serious health or safety problem exists at the Franchised Business, in which case, we may require you to immediately correct the problem or cease operating until the problem is corrected;

(vi) If you, or any owner, co-owner or principal of the Franchised Business, is convicted of a felony, a crime involving moral turpitude, or any other crime or offense that is reasonably likely to adversely affect the System, the goodwill associated therewith, or our interest therein;

(vii) Except for any reason provided in *Section 5.2*, if you abandon the Franchised Business, which abandonment shall conclusively be deemed established if the Franchised Business is closed for more than three (3) consecutive days;

(viii) Except for any reason provided in *Section 5.2*, if you close or relocate the Franchised Business, without our express advance written consent;

(ix) If you fail to maintain an independent contractor relationship with us;

(x) If you either negligently or knowingly inaccurately report, or fail to report, any information in your franchise application;

(xi) If you or any owner, co-owner or principal of the Franchised Business commits an act, or permits an act to be committed, that violates any federal, state or local law that adversely impacts the Franchised Business;

(xii) If you fail to participate in any Rollout detailed in *Section 9.3*;

(xiii) If you violate any of the provisions of *Sections 2.3, 3.2, 9.2, 9.3 or 9.4* including the requirement that you: (a) sell or offer for sale only those products and services authorized by us; (b) purchase such authorized products and services only from suppliers or service providers who are approved in writing by us; and (c) utilize or switch to any of our designated approved suppliers, including a supplier who has entered into a national or regional master supplier agreement with us;

(xiv) If you transfer or attempt to transfer any rights or obligations under this Agreement or any other property or assets to any third-party in violation of the provisions of *Article 12*;

(xv) If you or any of your owners, officers, directors, managers, members, or partners (as applicable): (a) become subject to U.S. Executive Order 13224 or are involved in any activity that violates the U.S. Foreign Corrupt Practices Act or any other anti-corruption, bribery or any other laws, orders or governmental notices affecting your ability to conduct business in or with the United States, as may be amended and whether in effect as of the Effective Date or at any time during the Term, (b) are identified on the U.S. Department of the Treasury's Office of

Foreign Assets Control Specialty Designated National and Blocked Persons list, or (c) receive any funding from any country that is subject to an embargo by the United States, any foreign government or government official, political party; or

(xvi) If you intentionally made any false representations and warranties under *Section 17.1*.

b. Cross-default: A default by you under this Agreement will be deemed a default of all agreements between: (i) you and your principals in his or her individual capacity or any other entity in which your principals are owners, members, managers, shareholders or partners (individually and collectively, "Franchisee Entity"); and (ii) us or any of our affiliates or predecessors (individually and collectively, "Franchisor Entity"). A Franchisee Entity's default of any other agreement, legal instrument or other document between the Franchisee Entity and a Franchisor Entity will be deemed a default under this Agreement. A default by any guarantor of your obligations under this Agreement or any agreement, legal instrument or document between a Franchisee Entity and a Franchisor Entity will be deemed a default of this Agreement.

c. Termination: If you fail to cure any default to our satisfaction, within the applicable period following notice from us, if applicable, or otherwise breach this Agreement, we may, in addition to all other remedies at law or in equity or as otherwise set forth in this Agreement, immediately terminate this Agreement. This termination will be effective immediately upon the giving of notice pursuant to *Article 15*.

d. Cross-termination: If this Agreement is terminated as a result of your default of this Agreement or any other agreement related to the Franchised Business, we may, at our option, elect to terminate any or all other agreements, legal instruments or documents between a Franchisee Entity and a Franchisor Entity. If any agreement, legal instrument or document between a Franchisee Entity and a Franchisor Entity is terminated as a result of a default by the Franchisee Entity, we may, at our sole discretion, elect to terminate this Agreement. It is agreed that an incurable or uncured default under this Agreement or any other agreement, legal instrument or document between a Franchisee Entity and a Franchisor Entity will be grounds for termination of this Agreement or any other agreement, legal instrument or document between a Franchisee Entity and a Franchisor Entity, without additional notice or opportunity to cure.

14.2 Opportunity to Cure.

a. Fourteen-Day Cure Period - Except as otherwise provided in this *Section 14.2*, you will have the right to cure your default under this Agreement within fourteen (14) days after notice of default is given by us pursuant to *Article 15*. Notwithstanding the foregoing, the following lesser periods will apply under the circumstances described:

b. Seven-Day Cure Period - A seven (7) day cure period will apply if you fail, refuse, or neglect to pay when due, any monies owing to us (including the Royalty Fee and Advertising Fee), or otherwise to any Advertising Fund (inclusive of any Association), or if you fail to maintain the insurance coverage set forth in this Agreement;

c. 48-Hour Cure Period - A forty-eight (48) hour cure period will apply (1) if you are in default of *Section 3.4* or (2) if you fail to participate in any limited time product offering, value offering, contest, promotion or charity event. You must initiate your participation in such offering, contest, promotion or event within forty-eight (48) hours and fully participate in such offering, contest, promotion or event as soon as reasonably possible, in our sole discretion, thereafter;

d. 24-Hour Cure Period - A twenty-four (24) hour cure period will apply to your violation of any law, regulation, order or our standards relating to health, sanitation or safety; or, except as provided in *Section 5.2*, if you cease to operate the Franchised Business for a period of forty-eight (48) hours without our prior written consent. In addition, a twenty-four (24) hour cure period will apply if you post on any Site or direct others to any site or page, post, blog or other social media site where there are posted any defamatory or offensive comments about: other franchisees; the *sweetFrog* brand; other brands franchised by us or one of our affiliates; your or other franchisees' customers; any of our, your or franchisees' vendors; us or any of our affiliates; or any of our, your or franchisees' competitors;

e. Immediate Cure Period (less than 24 hours) – An immediate cure period (less than twenty-four (24) hours) will apply if you post any content to a Site in which the content includes any inappropriate public displays of affection, our or others' confidential information or materials, violations of health or safety standards, foul or obscene language, or any images of or information about any persons from whom you did not obtain prior written consent;

f. No Cure Period - No cure period will be available: (1) if you are in default of *Sections 3.1, 7.2, 9.4, 14.1a.(i), 14.1a.(iii), 14.1a.(vi), 14.1a.(vii), 14.1a.(viii), 14.1a.(xiv), 14.1a.(xv)*, or *14.6*; (2) if you intentionally underreport weekly Gross Sales, falsify financial data, fail to promptly provide upon our request financial data and records specified in this Agreement, or otherwise commit an act of fraud with respect to your rights or obligations under this Agreement; (3) if you repeatedly fail to comply with the provisions of this Agreement, whether or not subsequently cured; (4) if you, having twice previously cured a default of this Agreement, commit the default again; (5) if you made any false representations and warranties under *Sections 17.1f., 17.1g., 17.1m. or 17.1n.*; or (6) if you engage in trademark misuse or otherwise materially misuse or make an unauthorized use of any of the components of the System or commit any other act which does, or can reasonably be expected to, materially impair the goodwill or reputation associated with any aspect of the System;

g. Statutory Cure Period - If a statute in the state or municipality in which the Franchised Business is located requires application of that state or municipal law, and that statute requires a cure period for the applicable default which is longer than any cure period specified in this *Article 14*, the statutory cure period will apply.

14.3 Our Right to Take Over Management.

We have the right (but not the obligation), under the circumstances described below, to enter the Franchised Business and assume the Franchised Business' management for any period of time we feel is appropriate. If we assume the Franchised Business' management, you must pay us, in addition to the Royalty Fee and Advertising Fee, six percent (6%) of the Gross Sales, plus our direct out-of-pocket cost and expenses, for the period of time we assume the Franchised Business' management. If we assume the Franchised Business' management, you acknowledge that our duty is limited to using our reasonable efforts, and we will not be liable to you or your owners for any debts, losses or obligations the Franchised Business incurs, or to any of your creditors for any supplies or services the Franchised Business purchases. We may assume the Franchised Business' management if you abandon the Franchised Business or if you fail to comply with any provision of this Agreement and did not cure the failure within the time period we specify in our notice to you. You agree to complete and sign a letter of agency, letter of authorization, or equivalent and provide it to us upon our request if we assume the Franchised Business' management so that we may keep the existing telephone, facsimile, alarm, and credit card machine numbers (as applicable) in operation under our phone service provider. You also agree to keep the phone, water, gas, electric service (as applicable) turned on and active for one

(1) week after we assume the Franchised Business's management to allow us to switch the services over to us or our affiliate. Our exercise of our management rights under this *Section 14.3* will not affect our right to terminate this Agreement.

14.4 Remedies.

a. Interest, Costs and Damages - If you fail to remit when due any payments required under this Agreement, you agree to pay, in addition to the unpaid amounts, all of our collection costs and expenses, expert fees, reasonable attorneys' fees, and costs and expenses, including all fees, costs and expenses of court, including all appeals, with interest on the unpaid amounts at the Default Rate or the highest permissible rate. If you fail to cure a default, following notice, within the applicable time period set forth in *Section 14.2*, or if this Agreement is terminated as a result of your default, you shall pay to us all damages of any kind and nature whatsoever and all collection costs and expenses, expert fees, reasonable attorneys' fees, and costs and expenses, including all fees, costs and expenses of court, including all appeals, together with interest at the Default Rate or the highest permissible rate. If you fail to report Gross Sales in accordance with *Sections 5.2* and *5.6*, we may estimate your Royalty Fee and Advertising Fee based on prior reports, and may sue for and obtain judgment for such estimates unless you prove, prior to the entry of any default order or judgment, that your Royalty Fee and Advertising Fee are different than the estimates.

b. Waiver of Punitive Damages - Both we and you waive, to the full extent permitted by law, any right they otherwise may have had to claim, pursue, demand or receive any exemplary or punitive damages arising out of or related in any way to this Agreement and its addenda, amendments, appendices, exhibits and attachments.

c. If you breach any of the terms of this Agreement, including if you are in default of this Agreement, we may enforce our rights by injunction, specific performance, or any other remedy available under this Agreement, at law or in equity, including termination. These remedies are cumulative and not exclusive and we may use all remedies available. In addition, we may elect to terminate this Agreement and all your rights under it as set forth in *Section 14.5*.

d. If you breach any of the terms of this Agreement, including if you are in default of this Agreement, we have the right to have a receiver appointed to take possession, manage and control the assets of the Franchised Business, collect the profits, and pay the net income for the operation of the Franchised Business as ordered by a court of competent jurisdiction. The right to appoint a receiver will be available regardless of whether waste or danger of loss or destruction of the assets exists.

14.5 Effect of Termination or Expiration.

Upon termination or expiration of this Agreement, we can advise all suppliers of *sweetFrog* proprietary food items and other supplies bearing any of the Proprietary Marks or service marks to cease delivering the items and products to you.

Upon your abandonment of the Franchised Business (whether voluntary or involuntary), any termination of this Agreement (whether pursuant to *Sections 14.1*, *14.2*, *14.4*, or otherwise), or upon expiration of the Term, you must immediately cease to hold yourself out to the public as a franchise owner of the System, and you must comply with the following:

a. Immediately pay to us or any affiliate of ours all sums owing from you to us or such affiliate, including the Royalty Fee and Advertising Fee, for any period prior to the date of

termination, the applicable Early Termination Damages (as defined in Section 14.9 below), and all amounts owed for services, supplies or other items purchased by you from us or any affiliate of ours, or that were financed by us or any affiliate of ours, or which we or any affiliate of ours loaned to you, together with any interest or late fees accrued thereon, together with all other sums due us under this Agreement, and all damages of any kind or nature whatsoever that may be allowed by law;

b. Immediately cease to use, in any manner whatsoever, including in all advertising, the Proprietary Marks, any Trade Secrets, any Confidential Information, any benefits of the System or any part thereof, any methods associated with the System, any forms, recipes, Confidential Manual, slogans, signs, sign posts, marks, symbols, or devices used in connection with the operation of the Franchised Business; and you must deliver or destroy all of the above-mentioned materials, including any materials containing or referencing any of the foregoing, to us as directed by us. If we do not recover any such items, such items shall be valued at their then-current replacement cost, for purposes of determining the damages owing by you to us for failure to return such items, if we pursue a damage claim as a result thereof;

c. Immediately discontinue all advertising as a franchisee of the System, and thereafter refrain from any advertising that would indicate that you are or ever were a franchisee or licensee of ours, or otherwise were affiliated with us or the System;

d. Immediately take such steps as may be necessary or appropriate to:

(i) delete your listing in all telephone directories, if applicable, and terminate any other listings that indicate that you are or were a franchisee or licensee of ours, or otherwise were affiliated with us or the System; and

(ii) transfer to our designee or us all telephone numbers used by you in connection with the Franchised Business. You acknowledge that between you and us, we have the sole right and interest in all telephone numbers and directory listings associated with any Proprietary Marks, and you authorize us and appoint us and any officer or agent of ours, as your attorney-in-fact, to direct the telephone company and all listings agencies to accept such direction, or this Agreement, as conclusive evidence of our exclusive rights in such telephone numbers and directory listings and our authority to direct their transfer;

e. Immediately take such action as may be required to cancel all fictitious or assumed names, amend any entity name, or dissolve any entity that contains any Proprietary Mark, in whole or in part, regardless of whether the entity name was authorized by us, and amend or cancel any and all equivalent registrations relating to your use of any Proprietary Mark. You acknowledge that between you and us, we have the sole right and interest in all such fictitious or assumed names, entity name, and equivalent registrations, and you authorize us and appoint us and any officer or agent of ours as your attorney-in-fact, to effect the termination or cancellation of such fictitious or assumed names or equivalent registrations should you fail or refuse to do so, and the appropriate federal, state, and local agencies may accept your direction or this Agreement as conclusive evidence of our exclusive rights in such fictitious or assumed names or equivalent registrations, and our authority to direct their termination or cancellation;

f. Comply with the confidentiality requirements and the covenant against competition in this Agreement for the specified period. You acknowledge that you, or (if an entity) your authorized representative, has carefully reviewed the confidentiality requirements and the covenant against competition in this Agreement; and that you have agreed to be bound by all the requirements and covenants; and

g. Maintain at a place made known to us all books, records and reports required under this Agreement for a period of not less than three (3) years after the date of termination or expiration of this Agreement, to allow us to make a final inspection of your books and records for the purpose of verifying that all amounts owing have been paid.

If you fail to do any of the foregoing, we may pursue any remedy available at law or in equity against: (i) you; (ii) any or all guarantors of your obligations under this Agreement; and (iii) you and any or all guarantors of your obligations under this Agreement.

h. Right of First Refusal. We have the right, but not the obligation, to purchase from you any assets or property (but not leasehold improvements) used in the operation of the Franchised Business for an amount equal to the Value (as defined below), as of the expiration date or termination date, as applicable ("RoFR"). If we are required, by law, regulation or court order, to purchase the equipment and other tangible assets used in connection with the Franchised Business, the purchase price will be equal to the Value. For purposes of this Agreement, the term "Value" means, subject to applicable law, an amount equal to your cost for such assets, less depreciation and amortization using a two hundred percent (200%) declining balance method over a five (5) year period. If all, or any portion of, your assets that are being purchased by us or our authorized representative are subject to lien(s), we or our authorized representative may pay, on your behalf, the lienholder(s) that portion of the purchase price for your assets (which may be the entire purchase price) that is necessary to obtain the release of those assets from the lien(s), in lieu of paying you those funds. Further, we may offset any amounts payable to you pursuant to this Section 14.5.h, or otherwise pursuant to this Agreement, against any unpaid amounts payable to us or our affiliates pursuant to this Agreement or any agreement executed in connection with this Agreement.

14.6 Covenant Not to Compete; Conflicting Interests.

a. During the Term and for a period of two (2) years after your abandonment of the Franchised Business, expiration of this Agreement, or termination of this Agreement (whether voluntary or involuntary), you shall not engage in any Competing Business (as defined in Section 14.6c.) with any *sweetFrog* restaurant, nor shall you have any Conflicting Interest (as defined in Section 14.6d.) in a Competing Business. The provisions of this Agreement bind you in any capacity, including as a franchisee, sole proprietor, partner, limited partner, member, employer, franchisor, shareholder, officer, director or employee.

b. During the Term, and for a period of two (2) years after your abandonment of the Franchised Business, expiration of this Agreement, or termination of this Agreement (whether voluntary or involuntary), you shall not divert or attempt to divert any business, customers, or potential customers of the System to any Competing Business, by direct or indirect inducement or otherwise. In addition, you shall not at any time do or perform any act, directly or indirectly, which harms the goodwill or reputation of us or the System.

c. For purposes of this Section 14.6, "Competing Business" means a business which is primarily engaged in the sale of frozen yogurt, other dessert products prepared or served with frozen yogurt as an ingredient, other frozen desserts, and all variations thereof, within a geographical area consisting of: (1) during the Term, anywhere else; and (2) after abandonment, expiration or termination of this Agreement, within a ten (10) mile radius from the Location or location of any *sweetFrog* restaurant of ours, our third-party licensees or our third-party franchisees. The term "*sweetFrog* restaurant" includes not only the restaurants now in existence, but also those established at a later date. The term of this covenant will be extended by any time consumed in litigation to enforce it in both trial and appellate courts. If a court of competent

jurisdiction determines that the restrictions in this paragraph are excessive in time, geographic scope, or otherwise, the court may reduce the restriction to the level that provides the maximum restriction allowed by law.

d. For purposes of this *Section 14.6*, "Conflicting Interest" means an interest by which you, or your executive officers, directors and shareholders (if you are a corporation), or your partners (if you are a partnership), or your members (if you are a limited liability company), or your designated manager, spouses, and/or guarantor(s) directly or indirectly, have a controlling interest in, lend money to, consult with or otherwise assist any Competing Business. If any of the persons named above do not sign this Agreement under the heading "Personal Acceptance of *Sections 7.1, 7.2, 14.6 and 14.8*," then you agree to obtain the execution by such person of a written agreement setting forth the foregoing in a form acceptable to us.

14.7 Continuing Obligations.

All your obligations that expressly survive the expiration or termination of this Agreement, including *Sections 14.5 and 14.6*, or by the implicit nature thereof require performance after the expiration or termination of this Agreement, will continue in full force and effect (subsequent to, and notwithstanding, your abandonment of the Franchised Business (whether voluntary or involuntary) the expiration of the Term, or termination of this Agreement), until they are satisfied in full or by their nature expire. The indemnities and obligations set forth in *Article 8* will continue in full force and effect subsequent to, and notwithstanding, the expiration or termination of this Agreement.

14.8 Remedies.

You acknowledge and agree that the restrictions contained in this Agreement, including in this *Article 14*, are fair and reasonable and necessary for the protection of our legitimate business interests and you intend and agree that such restrictions be enforceable and enforced to their fullest extent. You further understand and agree that, notwithstanding any other provision of this Agreement, your breach of your obligations under this *Article 14*, will cause us irreparable harm for which recovery of monetary damages alone would not be an adequate remedy. Both parties shall be entitled to obtain timely injunctive relief, including a temporary restraining order, preliminary and permanent injunctions, to protect their rights under this Agreement, in addition to and not exclusive of any and all other remedies available to each party.

14.9 Early Termination Damages.

If you discontinue operating your Franchised Business before this Agreement expires, with or without obtaining our prior written consent, or in the event of a termination of this Agreement arising from or related to your default and breach of its provisions, you will become obligated to pay Franchisor early termination damages ("Early Termination Damages"). The Early Termination Damages shall be considered damages and not a penalty, are not in lieu of other damages, and your payment of these damages shall not constitute a release of any other obligation owed to us. Franchisor, Franchisee, each individual signing on behalf of Franchisee, and each guarantor guaranteeing Franchisee's obligations hereunder, hereby acknowledge and agree that Franchisor's losses due to Franchisee's unilateral closure of the Franchised Business or termination of this Agreement would be highly difficult or impossible to calculate with reasonable certainty and, therefore, have agreed at the outset of this Agreement that the Early Termination Damages, and the formula for calculating these damages, constitutes a reasonable, good faith forecast of Franchisor's estimated losses and damages due to the premature closure of the Franchised Business or termination of this Agreement.

The amount of the Early Termination Damages is calculated as follows:

- a. Compute the average monthly Royalty Fee and Advertising Fee due for any consecutive twelve (12) month period within the forty-eight (48) months immediately preceding the date we receive notification of the closure, or if you failed to timely notify us of the closure then the date the Franchise Business closed, or, if the Franchised Business has been open for less than twelve (12) months, the average monthly Royalty Fee and Advertising Fee due since the opening of the Franchised Business ("Monthly Average");
- b. Multiply the Monthly Average by the number of months remaining in the Term; and
- c. Divide the resulting total computed in b. above by two (2).

For example purposes only: If the average monthly Royalty Fee and Advertising Fee were collectively \$1,000 and there were five years (60 months) remaining in the Term, the Early Termination Damages would be \$30,000, calculated as follows: $\$1,000 \times 60 \text{ months} = \$60,000 \div 2 = \$30,000$.

If you unilaterally close the Franchised Business and/or unilaterally terminate this Agreement prior to the end of the Term, you must give us ninety (90) days prior notice of the early termination ("Early Termination Notice"), pursuant to the applicable notice requirements as set forth in Article 15 of this Agreement. For avoidance of doubt, sending the Early Termination Notice via facsimile, email or through other electronic means does not constitute proper notice. Within ten (10) days after our receipt of your Early Termination Notice, we will calculate the Early Termination Damages, which will be due and payable thirty (30) days prior to the closure of your Franchised Business. In the event of a closure or termination arising from or related to your default under this Agreement, or that you do not: (i) timely or properly provide us with the Early Termination Notice at least ninety (90) days prior to the early termination of your Franchised Business and this Agreement; (ii) remain open for at least ninety (90) days after providing us with the Early Termination Notice; and (iii) pay the Early Termination Damages in full at least thirty (30) days prior to closing of the Franchised Business, the Early Termination Damages due may, in our sole discretion, be increased as follows: it will be calculated by multiplying the Monthly Average by the number of months remaining in the Term, and will not be divided by two (2).

If you have not paid your Royalty Fee and Advertising Fee for any period(s) within the forty-eight (48) months prior to notifying us of your early closure or termination, or if you have not reported your Gross Sales for any period(s) within the forty-eight (48) months prior to notifying us of your intended early termination, we will estimate the Royalty Fee and Advertising Fee based upon prior reports to calculate the Monthly Average.

ARTICLE 15. NOTICES

Unless otherwise provided in this *Article 15*, all notices specified by this Agreement or required by law must be in writing and given by personal delivery, sent by carrier (i.e., FedEx®, UPS®, etc.), U.S. certified mail, return receipt requested. All notices to us must be given at the address set forth on page 1 of this Agreement or to such other address as we may designate in writing from time to time in accordance with this *Article 15*. All notices to you may be given at the address set forth on page 1 of this Agreement, at the address of the Franchised Business, at any of your franchised restaurants, at your residence (if an individual), or at the residence of your principal shareholder(s), partner(s), or member(s) (if a business entity). Notices will be conclusively deemed to be given, delivered, and effective when sent pre-paid and actually left in the custody of an adult agent, employee or resident at a place of business or residence if given by personal delivery; or if given

by carrier, twenty-four (24) hours after deposited with carrier, or if by U.S. certified mail, three (3) days after deposited with the U.S. Postal Service. You have an obligation to promptly notify us pursuant to this *Article 15* whenever your mailing address, phone number or email address change. Notwithstanding the foregoing, ~~we only Franchisor may~~ has the right to give you written notice via email to an email address you provide us regarding all notices specified by this Agreement or required by law, with such email notification to be deemed received by you twenty-four (24) hours after we send it, unless you otherwise earlier acknowledge receipt.

ARTICLE 16. CONSTRUCTION AND ENFORCEMENT; MISCELLANEOUS

16.1 Independent Contractors.

The relationship between you and us is that of independent contractors. You are in no way to be deemed our partner, joint venturer, agent, employee, or servant. You have no authority to bind us to any contractual obligation or incur any liability for or on our behalf. You shall identify yourself as an independent owner of the Franchised Business in all dealings with customers, lessors, contractors, suppliers, public officials, employees, and others.

16.2 Severability and Substitution of Provisions.

Except as provided to the contrary in this Agreement, each article, section, term and provision of this Agreement, and any portion thereof, will be considered severable, and if, for any reason, any such portion of this Agreement is held to be invalid, contrary to, or in conflict with any applicable present or future law or regulation, or as a result of a final, non-appealable ruling issued by any court, agency or tribunal with competent jurisdiction in a proceeding to which we are a party, that regulation or ruling will not impair the operation of, or have any other effect upon, such other portions of this Agreement as may otherwise remain valid, and such other portions will continue to be given full force and effect and bind the parties to this Agreement. If the severed provision is material to this Agreement, we shall promptly provide a substitute provision to replace the invalid severed provision consistent with then-current law and the original intent of the parties.

If any applicable and binding law or rule of any jurisdiction requires a greater prior notice of the termination of, or refusal to renew or grant a successor term to, this Agreement than is required under this Agreement, or the taking of some other action not required under this Agreement, or if under any applicable law, regulation, or court ruling of any jurisdiction, any provision of this Agreement or any specification, standard or operating procedure prescribed by us is invalid or unenforceable, the prior notice or other action required by such law, regulation, or court ruling will be substituted for the comparable provisions of this Agreement, and we will have the right, in our sole discretion, to modify such invalid or unenforceable provision, specification, standard or operating procedure to the extent required to be valid and enforceable. Such modifications to this Agreement shall be effective only in such jurisdiction, unless we elect to give them greater applicability, and otherwise shall be enforced as originally made and entered into in all other jurisdictions.

16.3 Dispute Resolution.

a. Except as otherwise provided herein, any dispute, claim or controversy arising out of or relating to this Agreement, the breach hereof, the rights and obligations of the parties hereto or the relationship between the parties, or the entry, making, interpretation, or performance of either party under this Agreement ("Dispute"), which cannot be resolved by mediation under *Section 16.3d.* or is not subject to mediation under the terms of this Agreement, shall be settled

by arbitration administered by the American Arbitration Association ("AAA") in accordance with its Commercial Arbitration Rules as modified below.

b. Any arbitration shall take place before a sole arbitrator in Maricopa County, Arizona or, if our headquarters are no longer located in Maricopa County, Arizona, then the arbitration shall take place in the county in which our headquarters are located at the time the arbitration is commenced. You agree that conducting the arbitration where we are located is appropriate due to the multiple locations throughout the United States where our franchisees are located. The parties agree that the arbitrator shall be an attorney licensed to practice law in the United States and must have a minimum of five (5) years of experience in franchise law. Judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The arbitrator shall, in the award, allocate all of the costs and expenses of the arbitration, including the fees of the arbitrator and the reasonable attorneys' fees of the prevailing party, against the party who did not prevail. To the extent permitted by applicable law, no issue of fact or law shall be given preclusive or collateral estoppel effect in any other dispute, arbitration proceeding or litigation, except to the extent such issue may have been specifically determined in another proceeding between the parties. This agreement to arbitrate shall survive any termination or expiration of this Agreement, however effected. The parties agree that any arbitration shall be solely between them (including any affiliates) and shall not include as a party, by consolidation, joinder, or in any other manner, any other person or entity, unless both parties consent in writing. Both parties shall have the absolute right to refuse such consent. Further, the parties expressly waive any right to bring or participate in any class or other consolidated, joined or multi-party arbitration claim or proceeding, whether or not permissible under the AAA Commercial Arbitration Rules, including any claim brought on their behalf by an association of which it, he or she is a member. At the request of any party, the arbitration shall be conducted in a manner that maintains the confidentiality of the proceedings.

c. The arbitrator will issue a reasoned award, with findings of fact and conclusions of law. Actions to enforce an express obligation to pay monies may be brought under the Expedited Procedures of the AAA's Commercial Arbitration Rules. The Federal Arbitration Act shall govern, excluding all state arbitration laws. Arizona law will govern all other issues. With respect to discovery, the arbitrator shall require each party to make a good cause showing before any discovery exceeding that specifically authorized by the AAA Commercial Arbitration Rules will be granted.

d. Prior to the commencement of an arbitration proceeding, the parties must first submit any Dispute to non-binding mediation. At the request of any party, the mediation will be confidential. The mediation shall be conducted in Maricopa County, Arizona or in the county in which our headquarters are located at the time of mediation, unless the parties shall mutually agree to a different location. The parties to the mediation will share equally in its costs and expenses, except those costs and expenses incurred separately by each party, including counsel fees and expenses. The mediation process will be deemed "Completed" when the parties agree that it has been completed, the mediator declares that any impasse exists, or sixty (60) days have elapsed since the date of the initiating party's notice to the other party that it is initiating the mediation process, whichever occurs first.

e. Notwithstanding anything contained in this Agreement to the contrary, the provisions of Sections 16.3a., 16.3b., 16.3c. and 16.3d. do not apply to a Dispute where: (i) we bring an action for an express obligation to pay monies, declaratory relief, preliminary or permanent equitable relief, any action at law for damage to our goodwill, the Confidential Information, the Proprietary Marks or for fraudulent conduct by you; or (ii) the delay resulting from the mediation process may endanger or adversely affect the public (for example, unhealthy,

unsafe or unsanitary conditions would continue to exist). For such disputes, we may bring an action in any federal or state court having jurisdiction, whether for monetary damages, temporary preliminary and permanent injunctive relief or specific performance in addition to, and not exclusive of, any other remedies available to us. You hereby consent to and waive any objection or defense and agree not to contest venue, forum non conveniens or jurisdiction of such court or arbitration.

f. Disputes concerning the validity or scope of arbitration, including whether the Dispute is subject to arbitration, are beyond the authority of the arbitrator and will be determined by a court of competent jurisdiction pursuant to the Federal Arbitration Act, 9 U.S.C. §1 et seq., as amended from time to time.

g. Either party may appeal the final award of the arbitrator, if it is over One Hundred Thousand Dollars (\$100,000), to the appropriate U.S. District Court. The Court's review of the arbitrator's findings of fact will be under the clearly erroneous standard, and the Court's review of all legal rulings will be *de novo*. If it should be determined that this provision for federal court review is not enforceable, then either party may appeal the arbitrator's final award, if it is over One Hundred Thousand Dollars (\$100,000), to a panel of three (3) arbitrators chosen under AAA Optional Appellate Arbitration Rules , which will employ the same standards of review stated immediately above.

16.4 Applicable Law and Forum; Waiver of Jury; Statute of Limitations.

a. Except to the extent that the United States Trademark Act of 1946, as amended (15 U.S.C., § 1051 et seq.) or the franchising laws of any state that may be applicable, the laws of the State of Arizona govern all rights and obligations of the parties under this Agreement without regard to conflict of law. The parties agree, subject to the mandatory mediation and arbitration provisions of *Section 16.3*, that any appropriate state or federal court located in Maricopa County, Arizona has exclusive jurisdiction over any Dispute arising under or in connection with this Agreement and is the proper forum in which to adjudicate the case or controversy. Notwithstanding the foregoing any action initiated by us may, at our election, be brought in any jurisdiction where you are domiciled or that has jurisdiction over you. The parties hereto irrevocably submit to the jurisdiction of, and venue in, any such court, and hereby waive any objection or defense thereto. THE PARTIES AGREE THAT ALL DISPUTES SUBMITTED TO THE COURT PURSUANT TO THIS SECTION SHALL BE TRIED TO THE COURT SITTING WITHOUT A JURY, NOTWITHSTANDING ANY STATE OR FEDERAL CONSTITUTIONAL OR STATUTORY RIGHTS OR PROVISIONS.

b. Notwithstanding anything contained in this Agreement to the contrary, the parties agree that any claims under, arising out of, or related to, this Agreement must be brought within two (2) years of the date on which the underlying cause of action accrued, and the parties hereby waive any right to bring any such action after such two (2)-year period, except for the collection of any unpaid Royalty Fee, Advertising Fee, and any other amount due to us or our affiliate.

c. YOU HEREBY WAIVE THE RIGHT TO SEEK OR COLLECT PUNITIVE, MULTIPLE, CONSEQUENTIAL AND SPECIAL DAMAGES IN ANY FORUM, INCLUDING ARBITRATION. YOU HEREBY FURTHER WAIVE THE RIGHT, IF ANY, OF ANY ASSOCIATION OR MEMBERSHIP GROUP TO ASSERT CLAIMS ON YOUR BEHALF IN ANY ACTION.

d. YOU HEREBY WAIVE THE RIGHT TO ANY DAMAGES IN CONNECTION WITH OR RESULTING FROM THE WRONGFUL ISSUANCE OF AN INJUNCTION.

e. The parties agree that the maximum damages that you may recover in connection with a wrongful termination of your franchise and this Agreement will be an amount equal to the product of:

(i) the annual net profit (as defined below) multiplied by

(ii) the lesser of:

(a) The number of full years existing between the date on which the franchise and this agreement were wrongfully terminated and the date on which the Term would have otherwise expired; or

(b) Three.

For purposes of this Agreement, the term "net profit" means an amount equal to the net profits of your Franchised Business, as reflected on your tax return filed with the Internal Revenue Service prior to such termination; provided, however, that if such tax return reflects the operations of your Franchised Business for a period less than one (1) year, such net profits will be annualized based upon the net profits reflected in such tax return.

16.5 No Guarantee of Franchisee's Success.

You have been informed of and acknowledge the highly competitive nature of the business involved, and agree that the successful operation of your Franchised Business will depend in part, upon your best efforts, capabilities, management, and efficient operation; as well as the general economic trend and other market conditions.

16.6 Existence of Various Forms of Franchise Agreements.

You acknowledge that our present and future franchisees operate under a number of forms of franchise agreements and consequently, our obligations and rights with respect to our various franchisees may differ materially in certain instances. The existence of different forms or versions of the franchise agreement does not entitle you to benefit from any such difference; nor does it operate to alter or amend the agreement of the parties set forth in this Agreement.

16.7 Franchise Owner May Not Withhold Payments.

You agree that you will not, on grounds of alleged or actual nonperformance or breach by us of any of our obligations under this Agreement, withhold payment of any Royalty Fee, Advertising Fee, amounts due to us or any of our affiliates for goods or services purchased by you, or any other amounts due to us or any of our affiliates.

16.8 Remedies Are Cumulative.

The rights and remedies of the parties to this Agreement are cumulative and not exclusive, and no exercise or enforcement by either party of any right or remedy under this Agreement shall preclude the exercise or enforcement by such party of any other right or remedy under this Agreement or otherwise available at law or in equity to such party.

16.9 Interpretation.

All the terms and provisions of this Agreement will be binding upon and inure to the benefit of the successors and assigns of the parties. However, nothing in this *Section 16.9* may be construed as our consent to the Transfer of this Agreement or any rights by you.

16.10 Waiver.

Our failure to insist upon the strict performance of any term, covenant or condition contained in this Agreement will not constitute or be construed as a waiver or relinquishment of our right to enforce thereafter any such term, covenant or condition and such term, covenant or condition will continue in full force and effect. For example, Franchisor's acceptance of any payments made, or Franchisor's failure to require any payments, by Franchisee after a breach of this Agreement shall not be, nor be construed as, a waiver by Franchisor of any breach by Franchisee of any term, covenant or condition of this Agreement or of Franchisor's right to later require such payments as a result of such prior breach.

16.11 Litigation Expense.

If an action at law or suit in equity is brought to establish, obtain or enforce any right by either of the parties to this Agreement, the prevailing party in the suit or action, in the trial and appellate courts, will be entitled to recover from the non-prevailing party reasonable attorneys' fees, costs and expenses and disbursements incurred in such suit or action.

16.12 No Third-Party Beneficiaries.

This Agreement is not intended to benefit any other person or entity except the named parties hereto and no other person or entity shall be entitled to any rights hereunder by virtue of so-called "third-party beneficiary rights" or otherwise.

16.13 Binding Effect; Modification.

This Agreement is binding upon the parties to this Agreement and their respective executors, administrators, personal representatives, heirs, permitted assigns and successors in interest. No amendment, change, or modification of this Agreement shall be binding on any party unless executed in writing by you and us.

16.14 Entire Agreement; Nature and Scope; Construction.

This Agreement, all exhibits, attachments, addendums, and amendments, constitute the entire understanding and agreement between the parties, and there are no other oral or written understandings or agreements between us and you relating to the subject matter of this Agreement. If required to be signed, any state specific addendums are incorporated herein by reference. Any representation not specifically contained in this Agreement made prior to entering into this Agreement does not survive subsequent to the execution of this Agreement. We and you have entered into this Agreement for the sole purpose of authorizing you to use the System licensed by this Agreement in the operation of the Franchised Business during the Term in which those specific items designated by us for sale and use in such locations are offered for sale and use in individual, face-to-face transactions with patrons visiting the Franchised Business (and equivalent telephone or mail transactions accepted as a convenience to that customer group). All consideration being furnished by us to you during the course of performance of this Agreement has been determined based on the limited rights and other limitations expressed herein. No other

rights have been bargained for or paid for. This provision is intended to define the nature and extent of the parties' mutual contractual intent, there being no mutual intent to enter into contract relations, whether by agreement or by implication, other than as set forth in this Agreement. The parties further acknowledge that these limitations are intended to achieve the highest possible degree of certainty in the definition of the contract being formed, in recognition of the fact that uncertainty creates economic risks for both parties which, if not addressed as provided in this Agreement, would affect the economic terms of this bargain.

Nothing in this Agreement or in any related agreement is intended to disclaim the representations we made in the Disclosure Document. Nothing in this Agreement is intended, nor shall be deemed, to confer any rights or remedies upon any person or legal entity not a party hereto.

16.15 Terminology.

In addition to the terms defined elsewhere in this Agreement, the following terms defined below are incorporated in this Agreement by reference and shall be deemed to include all persons who succeed to the interest of the original, where applicable:

The term "affiliate" means any person who, directly or indirectly through one (1) or more intermediaries, controls, is controlled by, or is under common control with any person;

The term "Dollars" means United States Dollars and all amounts due under this Agreement shall be paid in United States currency;

The use of the terms "includes" and "including" in any provision of this Agreement followed by specific examples used shall not be construed to limit application of the provision to only the specific examples used;

The term "person" means any natural person, corporation, partnership, trust, other entity, association or form of organization;

The term "will" and "shall" shall be synonymous, and shall be mandatory and not discretionary, unless otherwise specifically provided herein; and

Any references to articles or sections refer to articles and sections in this Agreement unless specified otherwise.

16.16 Counterparts.

This Agreement may be executed in one (1) or more original counterparts, and all of which, when taken together, shall be deemed to be one (1) original Agreement. The signatures required for execution may be transmitted to the other party via facsimile or a scanned .pdf file sent via email and such signature shall be deemed a duplicate original, shall be effective upon receipt by the other party, may be admitted in evidence and shall fully bind the party and person making such signature. A fully-executed copy of this Agreement shall be of the same force and effect as the original.

16.17 Offerings.

If you are a corporation, partnership or other entity, and if you intend to offer securities, partnership interests or other ownership interests in you through any public or private offering,

you shall not use any Proprietary Marks in such public or private offering, except to reflect your franchise relationship with us; nor shall you misrepresent your relationship with us by any statement or omission of an essential statement. You shall indemnify and hold us harmless from any liability in connection with such offering. Nothing in the foregoing shall modify the provisions of *Article 12*, and no such offering shall be made without first complying with any applicable provisions of *Article 12*.

16.18 Time.

Time is of the essence of each and every provision of this Agreement.

16.19 Force Majeure.

Neither of the parties will be liable for loss or damage or be deemed to be in breach of this Agreement if the failure to perform the party's obligations results from: (a) transportation shortages, inadequate supply of equipment, merchandise, supplies, labor, material or energy, or the voluntary foregoing of the right to acquire or use any of the foregoing in order to accommodate or comply with the orders, requests, regulations, recommendations or instructions of any government or any department or agency thereof, or (b) acts of God, in each case, being unforeseeable forces which Franchisee could not by the exercise of due diligence have avoided; provided however that Franchisee must: (i) immediately upon the start of the above-mentioned act, provide written notice to Franchisor that it expressly enacts its rights granted under this Section, and (ii) use all commercially reasonable efforts to mitigate the effect of the event of Force Majeure upon its performance and to fulfill its obligations under this Agreement. Any delay resulting from any of these causes will extend performance accordingly or excuse performance, in whole or in part, as may be reasonable, except that no such cause will excuse payments of amounts owed at the time of such occurrence or payment of the Royalty Fee and all other amounts due to us and our affiliates thereafter, or permit Franchisee to permanently close the Franchised Business.

16.20 Plurals and Captions.

Words in the singular number include the plural when the context requires (and vice-versa). The table of contents and the captions are inserted only for convenience and are not a part of this Agreement or a limitation of the scope of the particular article or section to which each refers.

16.21 Joint and Several Liability.

If you consist of two (2) or more individuals, whether in the form of separate individuals or a business entity controlled by the individuals, then each individual will be jointly and severally liable under the provisions of this Agreement.

16.22 Trademark Notice.

All trademarks referenced in this Agreement are those of their respective owners.

16.23 No Accord or Satisfaction.

If you pay, or we otherwise receive, a lesser amount than the full amount provided for under this Agreement for any payment due hereunder, such payment or receipt may, in our sole discretion, be applied against the earliest amount due us. In addition, if interest or late fees are owed, we may, in our sole discretion, apply any amounts paid to the late fees and interest before

such amounts are applied to the principal amount owed. We may accept any check or other payment in any amount without prejudice to our right to recover the entire balance of the amount due or to pursue any other right or remedy. No endorsement or statement by you on any check or payment or in any letter accompanying any check or payment or elsewhere shall constitute or be construed as an accord or satisfaction.

ARTICLE 17. ACKNOWLEDGMENTS AND REPRESENTATIONS OF FRANCHISEE

17.1 Certain Representations and Warranties of Franchisee.

You represent and warrant that the following statements are true and complete as of the Effective Date:

a. You do not seek to obtain the Franchised Business for speculative or investment purposes and have no present intention to sell or transfer or attempt to sell or transfer the Franchised Business except as previously approved by Franchisor and subject and conditioned to Article 12 of this Agreement.

b. You understand and acknowledge the value to the System of uniform and ethical standards of quality, appearance and service described in and required by the Confidential Manual and the necessity of operating the Franchised Business under the System Standards. You represent that you have the capabilities, professionally, financially and otherwise, to comply with our System Standards.

c. If you are a corporation, limited liability company, partnership, or other form of entity, you are duly incorporated, organized, or formed and are qualified to do business in the state and any other applicable jurisdiction within which the Franchised Business is located, and you are and shall remain duly organized and in good standing during the Term.

d. You represent and warrant that: (i) if you are an individual, you are; or (ii) if you are an entity, that each of your owners, shareholders, partners, and members are, a United States citizen or a lawful resident alien of the United States.

e. All financial and other information that you have provided to us or otherwise made available to us in connection with your application for this franchise is true, complete, accurate, and not intentionally misleading.

f. The execution of this Agreement by you will not constitute or violate any other agreement or commitment to which you are a party.

g. Any individual executing this Agreement on your behalf is duly authorized to do so and the Agreement shall constitute your valid and binding obligation and, if applicable, all of your partners, members, or shareholders, if you are a partnership, limited liability company, or corporation.

h. You have, or if you are a partnership, corporation or other entity, your partners or principals have, carefully read this Agreement and all other related documents to be executed by you concurrently or in conjunction with the execution hereof; that you have obtained, or had the opportunity to obtain, the advice of counsel in connection with the execution and delivery of this Agreement; that you understand the nature of this Agreement and that you intend to comply with and be bound by this Agreement.

i. You have read and understand the information and disclosures made in the Disclosure Document provided to you as acknowledged in *Section 17.3e*. You understand and acknowledge that: (i) estimates for initial start-up expenses are estimates only and there can be additional start-up expenses; and (ii) your sales may differ substantially from any sales provided in Item 19 of the Disclosure Document, and there is no assurance that your sales will meet or exceed any sales listed in Item 19 of the Disclosure Document. You have had the opportunity to and have consulted or elected not to consult with your attorney, accountant and business advisors before entering into this Agreement.

j. You understand and agree that, while not applicable in every case, our past experience indicates that owner-operated restaurants generally perform better than absentee owners with hired managers. The food business is a personal business and is dependent upon your business skill and judgment. This includes your choice of employees. Your skill in hiring the right people to work in your Franchised Business is very important in determining whether people decide to purchase menu items from your Franchised Business or from another restaurant in the same vicinity.

k. You understand and agree that ownership of a franchise and the Franchised Business carries certain risks. These risks include the loss of your initial investment, other continued financial losses such as rent payments due under lease obligations and other contractual obligations, the loss of your time and energy in starting up and running your Franchised Business, and loss of earnings and investment income from your investment in the Franchised Business. You understand and agree that the Franchised Business may make money and may lose money and are entering this business venture with this express understanding. You are not relying upon anything which is not contained within this Agreement or the Disclosure Document in determining and deciding to become a franchisee.

l. Notwithstanding the foregoing, you understand and agree that the System must not remain static if it is to meet (without limitation) presently unforeseen changes in technology, competitive circumstances, demographics, populations, consumer trends, social trends and other market place variables, and if it is to best serve the interests of us, you and all other franchisees. Accordingly, you expressly understand and agree that we may from time to time change the components of the System, including altering the products, programs, services, methods, standards, forms, policies and procedures of that System; abandoning the System altogether in favor of another system in connection with a merger, acquisition or other business combination or for other reasons; adding to, deleting from or modifying those products, programs and services which your Franchised Business is authorized and required to offer, modifying or substituting entirely the equipment, signage, trade dress, décor, color schemes and uniform System Standards and specifications and all other unit constructions, design, appearance and operation attributes which you are required to observe under this Agreement; and, abandoning, changing, improving, modifying or substituting the Proprietary Marks. You expressly agree to comply with any such modifications, changes, additions, deletions, substitutions and alterations. You shall accept, use and effectuate any such changes or modifications to, or substitution of, the System as if they were part of the System at the time that this Agreement was executed. Except as provided herein, we shall not be liable to you for any expenses, losses or damages sustained by you as a result of any of the modifications contemplated hereby.

m. You represent that neither you nor any of your affiliates, officers, directors, managers, members, or partners (as applicable) or funding sources are subject to U.S. Executive Order 13224, identified on the U.S. Department of the Treasury's Office of Foreign Assets Control Specially Designated National and Blocked Persons list, or any terrorist list or other blocked persons list. In addition, you represent that you have not received funding from, nor are you

owned, controlled, or acting on behalf of the government of any country that is subject to an embargo by the United States, any foreign government official, political party or international organization, and that no foreign government or government official, political party or international organization has any financial interest in the Franchised Business or any monies earned by the Franchised Business.

n. You represent, warrant and agree that you, your officers, directors, managers, members, or partners (as applicable) will each at all times conduct themselves in an ethical manner and avoid any activity that might result in a violation of the U.S. Foreign Corrupt Practices Act, Anti-Terrorism Laws, or any other applicable anti-corruption or bribery laws.

17.2 Additional Information Respecting Franchisee.

a. You have delivered to us or will deliver concurrent herewith, complete and accurate copies of all of your organizational documents, including all partnership agreements, certificates of partnership, articles of organization, operating agreements, articles or certificates of incorporation, by-laws and shareholder agreements, including all amendments, side letters and other items modifying such documents.

b. Reserved.

17.3 Acknowledgements of Franchisee.

a. You acknowledge that you have conducted an independent investigation of the business venture contemplated by this Agreement and recognize that this business venture involves substantial business risks and will largely depend upon your ability. Other than the financial performance representation contained in Item 19 of the Disclosure Document, if any, we expressly disclaim making, and you acknowledge that you have not received or relied on, any warranty or guarantee, express or implied, as to the potential volume, profits, or success of the Franchised Business contemplated by this Agreement.

Franchisee Initials _____/_____

b. You hereby certify that none of our employees, no other person speaking on our behalf, and no Area Representative, if applicable, have: (i) made any oral, written, visual, or other representation, agreement, commitment, claim, or statement that stated or suggested any level or range of actual or potential sales, costs, income, expenses, profits, cash flow, or otherwise other than any financial performance representation contained in Item 19 of the Disclosure Document; or (ii) made any oral, written, visual, or other representation, agreement, commitment, claim, or statement from which any level or range of actual or potential sales, costs, income, expenses, profits, cash flow, or otherwise might be ascertained, related to a *sweetFrog* franchise, that is different from, contrary to, or not contained in the Disclosure Document; or (iii) made any representation, agreement, commitment, claim or statement to you that is different from, contrary to, or not contained in, the Disclosure Document. You acknowledge and agree that we do not make or endorse, nor do we allow any of our employees or other persons speaking on our behalf to make or endorse, any additional oral, written, visual, or other representation, agreement, commitment, claim, or statement that states or suggests any level or range of actual or potential sales, costs, income, expenses, profits, cash flow, or otherwise with respect to a *sweetFrog* franchise other than any financial performance representation contained in Item 19 of the Disclosure Document.

Franchisee Initials _____/_____

c. You acknowledge that you have received, read and understand this Agreement and the related exhibits, attachments and agreements and that we have afforded you sufficient time and opportunity to consult with advisors selected by you about the potential benefits and risks of entering into this Agreement.

Franchisee Initials ____/____

d. You understand that this Agreement, including any amendments and exhibits, contains the entire agreement between the parties concerning the Franchised Business, and that any prior oral or written statements that are not set out in this Agreement, including any amendments, exhibits and attachments will not be binding. You acknowledge and agree that we do not permit any representations, agreements, commitments, claims, or statements or approve any changes in this Agreement or any of the amendments, exhibits and attachments to this Agreement, except by means of a written amendment or addendum signed by all parties to this Agreement. You acknowledge that nothing in this Agreement or in any related agreement is intended to disclaim the representations we made in the Disclosure Document.

Franchisee Initials ____/____

e. You acknowledge receipt of our Disclosure Document fourteen (14) days prior to the execution of this Agreement or your payment of any monies to us or our agent (or sooner if required by applicable state law).

Franchisee Initials ____/____

f. You acknowledge that, other than what was previously disclosed to you in our Disclosure Document to which you acknowledge receipt thereof, you have not: (1) received any financial statements for us or any of our parent or affiliated companies; or (2) relied on the financial condition of us or any of our parent or affiliated companies when making the decision to purchase the Franchised Business.

Franchisee Initials ____/____

g. You acknowledge, as detailed in *Section 2.3*, that you must, at your own cost and expense, use only our designated and approved Design Architect for the design of your Franchised Business.

Franchisee Initials ____/____

h. Reserved.

i. Reserved.

j. You acknowledge there have been no other inducements made with any person or entity encouraging you to purchase the Franchised Business, such as a "side deal" or other promise or agreement not included in the Agreement.

Franchisee Initials ____/____

k. You acknowledge and understand that *Article 6* covers the use of the *sweetFrog* trademark and prohibition on registration of our Proprietary Marks. You acknowledge the ownership of the Proprietary Marks by us, and you agree that during the Term and after its

expiration or termination, you will not, directly or indirectly, apply to register, register or otherwise seek to use or control or in any way use "sweetFrog", or any other of our proprietary marks, or any confusingly similar form or variation, in any place or jurisdiction either within or outside the United States; nor will you assist any others to do so. You further agree that your corporate, partnership or other entity name will not include any of the Proprietary Marks or phrases similar thereto as a part thereof. Furthermore, you acknowledge and understand that you are prohibited from filing applications for the registration of our trade names used in connection with your Franchised Business.

Franchisee Initials ____/____

I. You acknowledge and understand that in the event you have registered a trade name or entity name containing our trademarks, you will be required to immediately discontinue all further use of the trademark, all Proprietary Marks and any other marks or names confusingly similar thereto in your entity name. Furthermore, you will take such action as may be required to amend your entity name and affirmatively cancel or terminate and dissolve all fictitious or assumed names or other registrations that contain our Proprietary Marks. In the event you do not comply and execute any and all instruments and documents necessary to protect and maintain our interests in the Proprietary Marks, we will then have power of attorney to execute any documents necessary to protect and maintain our interests in the Proprietary Marks.

Franchisee Initials ____/____

ARTICLE 18. SUBMISSION OF AGREEMENT

The submission of this Agreement to you does not constitute an offer and this Agreement shall become effective only upon the execution thereof by the parties. THIS AGREEMENT SHALL NOT BE BINDING ON US UNLESS AND UNTIL IT SHALL HAVE BEEN ACCEPTED AND SIGNED BY FRANCHISOR.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, each party hereto, by and through its respective representative with full rights, power and authority to enter into and bind his or her respective party without further consent or approval of any kind, has duly executed and delivered this Agreement as of the Effective Date.

FRANCHISEE: _____, a(n) _____

By: _____
[Name, Title]

By: _____
[Name, Title]

FRANCHISOR: MTY Franchising USA, Inc, a Tennessee corporation

By: _____
[Name, Title]

PERSONAL ACCEPTANCE OF SECTIONS 7.1, 7.2, 14.6, AND 14.8

Each of the undersigned individually and personally accepts and agrees to be bound by the provisions of Sections 7.1, 7.2, 14.6, and 14.8 of the foregoing Franchise Agreement.

_____, _____, an
individual
(signature) Date: _____

_____, _____, an
individual
(signature) Date: _____

_____, _____, an
individual
(signature) Date: _____

_____, _____, an
individual
(signature) Date: _____

EXHIBIT E-3

TO THE FRANCHISE DISCLOSURE DOCUMENT

Franchise Agreement (Transfer)

sweetFrog

**FRANCHISE AGREEMENT
(Transfer)**

between

MTY FRANCHISING USA, INC.

and

_____, a(n) _____

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**SWEETFROG
FRANCHISE AGREEMENT
(“Agreement”)**

PARTIES:

MTY FRANCHISING USA, INC.,
a Tennessee corporation
Attn: Legal Department
9311 E. Via De Ventura
Scottsdale, Arizona 85258

(“Franchisor”)

a(n) _____

Telephone No.: _____

([individually and collectively,] “Franchisee”)

RESTAURANT NO.: _____

EFFECTIVE DATE: _____

(“Effective Date”)

TRADITIONAL RESTAURANT (YES or NO): _____

RESTAURANT DESCRIPTION IF NON-TRADITIONAL: _____

A “traditional” restaurant (also known as a traditional franchised business) is a restaurant that is easily accessible by the general public, such as a free-standing building, inline retail shop, shopping mall and street front location. A traditional *sweetFrog* restaurant normally offers a full menu. A “non-traditional” restaurant (also known as a non-traditional franchised business) is a *sweetFrog* restaurant that is located in a non-traditional marketplace, as determined by us (in our sole discretion), such as an airport, amusement park, sports or entertainment venue, train station, travel plaza, toll roads, cafeteria, retail store, convenience store, military base, hospital, office building, movie theater, hotel, casino, high school or college campus or that is a kiosk, cart, truck or trailer. A non-traditional restaurant may also be a *sweetFrog* restaurant that is co-branded into another brand restaurant, at Franchisor’s sole discretion. A non-traditional *sweetFrog* restaurant normally offers a limited version of the full *sweetFrog* menu.

To simplify the language in this Agreement, the terms “we,” “us,” “our” and the like may be used to refer to the Franchisor, and the terms “you,” “your” and the like may be used to refer to the Franchisee. The term “you” as used herein is applicable to one (1) or more persons, a corporation, partnership, trust, other entity, association or form of organization as the case may be, and the singular usage includes the plural, masculine, neuter, feminine, and possessive usages. Franchisor and Franchisee may individually be referred to as a “party” and collectively referred to as the “parties.”

RECITALS:

This Agreement is entered into with reference to the following facts and circumstances:

A. We have, over a period of time and at considerable expense, developed and established a uniform and unique method of operation, customer service, advertising, publicity, processes, recipes, techniques and technical knowledge in connection with the restaurant business, specializing in soft-serve yogurt and other authorized products, and customarily using a self-service format which allows customers to create individualized yogurt-based desserts. These restaurants do business under the trade name “*sweetFrog*”. These recipes, techniques, processes and methods constitute our “Trade Secrets.” All of our knowledge, experience, Trade Secrets, processes, methods, specifications, techniques, Proprietary Marks (as defined in Recital B.), System Standards (as defined in *Section 1.4*) and information are referred to in this Agreement as the “System.” The System may be changed, supplemented, improved and further developed by us from time to time.

B. We have owned and issued franchises to others for the operation of franchised restaurants in the United States and in other countries. We have registered and applied for proprietary marks with the United States Patent and Trademark Office and with offices in other countries serving similar functions. These proprietary interests, trademarks, service marks, logos, insignias, trade names and trade dress are referred to in this Agreement as the “Proprietary Marks.”

C. We are engaged in the business of licensing the right to use the Proprietary Marks in connection with the operation and promotion of the System.

D. You understand and recognize that: (1) our Trade Secrets, Proprietary Marks, developments and other properties as recited above are of considerable value; and (2) it is of importance to us and all of our franchisees to maintain the development of the System in a uniform and distinctive manner, allowing you and our other franchisees to enjoy a public image and reputation greater than most single franchisees could establish.

E. You desire to make use of the “*sweetFrog*” trademark and to enjoy the benefits of that mark, the other Proprietary Marks, and the System; and to establish a “*sweetFrog*” franchise to be operated in accordance with System Standards set forth from time to time by us. System Standards are set forth in, without limitation, the confidential “ops package,” which consists of the “operations manual” (“Operations Manual”), “ops toolkit” and related printed and electronic documents, both now existing and hereinafter developed (individually and collectively, “Confidential Manual”). We are willing to grant you the right to do so under the terms, conditions and provisions set forth in this Agreement, which includes any and all appendices, addenda, amendments, attachments and exhibits.

F. You recognize the necessity and desirability of protecting our reputation, goodwill, Trade Secrets, and other confidential business information; and that disclosure of Trade Secrets and confidential business information, including specifics of the System to any third-party, will cause irreparable damage and harm to us.

AGREEMENT:

The parties agree as follows:

ARTICLE 1. GRANT OF FRANCHISE; TERM; SYSTEM STANDARDS

1.1 Franchise Grant.

We hereby grant to you a *sweetFrog* franchise that includes the right to use the System (“Franchised Business”) as provided in this Agreement, at the following location:

Arena, Mall, Facility, or Center Name: _____
(if applicable)

Street Address: _____

City/State/Zip Code: _____ (“Location”)

1.2 Location of the Franchised Business; No Exclusive Territory or Other Rights.

You must operate the Franchised Business only from the Location, including any catering services of *sweetFrog* menu items you provide. You acknowledge that the *sweetFrog* franchise granted under this Agreement is non-exclusive, that we are not granting you any territorial protection or any other exclusive rights, and that we, directly or through one (1) or more affiliates, reserve the right in our sole discretion, and without compensating you or seeking your prior approval: (i) to establish, and grant to other franchisees or licensees the right to establish, a *sweetFrog* restaurant or any other business using the Proprietary Marks, the System or any variation thereof, in any location other than the approved Location (including locations in the immediate vicinity of your Location), on any terms and conditions that we deem appropriate; (ii) to establish, and grant to other franchisees or licensees the right to establish, any restaurant concept other than *sweetFrog* in any location on any terms and conditions that we deem appropriate (including locations in the immediate vicinity of the Location); (iii) to sell products identified by the Proprietary Marks or other trademarks, service marks or commercial symbols in any location through any distribution channels, including grocery stores, convenience stores, supermarkets, club stores, vending machines, delivery services and restaurants other than *sweetFrog* restaurants; and (iv) to take any other action that we are not expressly prohibited from taking under this Agreement.

We hereby grant to you during the term of this Agreement, a non-exclusive right and license to operate a single restaurant at the Location only, according to the System Standards and subject to the terms, conditions and restrictions contained in this Agreement. This Agreement is limited to the operation of one traditional restaurant, unless otherwise amended, and does not grant you the right to buy, own or operate additional restaurants.

Except as expressly limited in this Agreement, we (for ourselves and our affiliates and designees) retain all rights with respect to all Proprietary Marks and the sale of *sweetFrog* products anywhere in the world with no compensation or liability to you, including the right to:

a. Establish and operate (or license to any other person or entity the right to establish and operate) *sweetFrog* restaurants owned or licensed by us at any location;

b. Develop, market, own, operate and participate in any other business under the Proprietary Marks or any other trademarks (including trademarks identified in the Franchise Disclosure Document (“Disclosure Document”) and other trademarks we or our affiliates own or have the right to license);

c. Develop, lease and license the use of, at any location, trademarks other than the Proprietary Marks, in connection with the operation of a system that offers products or services that are the same as, or similar to, those offered by us under this Agreement on any terms or conditions that we deem advisable, in our sole discretion;

d. Merge with, acquire or be acquired by any other business, including a business that competes with your Franchised Business, or acquire and convert any retail stores, including retail stores operated by competitors, or otherwise operated independently or as part of, or in association with, any other system or chain, whether franchised or corporate-owned;

e. Distribute, sell and license other persons or entities to distribute and sell products through all other channels of distribution, including catalog sales, telemarketing, grocery stores, warehouses, big box shops, specialty shops, limited access highway food facilities, vending machines and similar automated dispensing systems, mobile units, off-site sales accounts, electronic mail, Internet sales, and movie theaters (individually and collectively, "Other Channels"); and

f. Implement multi-area marketing programs that may allow us or others to solicit or sell to customers anywhere. We also reserve the right to issue mandatory policies to coordinate such multi-area marketing programs.

1.3 Term of Agreement.

a. This Agreement will commence on the Effective Date and will expire on either: (1) the ten (10) year anniversary of the Effective Date if you own the property where this Franchised Business is located or if you enter into a lease directly with the landlord or other third-party for the property where this Franchised Business is located; or (2) if you have entered into a sublease with one of our affiliates, the expiration of the term of the sublease for the Location excluding any extensions or renewal options, unless terminated earlier in accordance with *Article 14* or any other provisions of this Agreement, renewed in accordance with *Article 13*, or transferred in accordance with *Article 12* ("Term").

1.4 System Standards.

You shall operate the restaurant in accordance with our standards, including the following:

a. restaurant design, maintenance, health and safety and remodeling;

b. types, models, brands and suppliers of required fixtures, furnishings, equipment, signs, materials and supplies;

c. recipes and ingredients, menu items and menu design;

d. cooperation with and participation in sales, marketing, advertising and promotional programs (including loyalty programs, online ordering programs, discount coupons, discount gift cards, special menu promotions, and entering into product and service agreements directly with third-party vendors and service providers as required by us) and materials and media used in those programs, including discontinued use and removal of promotional materials as directed by us;

- e. use and display of the Proprietary Marks;
- f. restaurant operations, including matters related to the management of the restaurant; training of your employees consistent with the System Standards; and commercial impression of the Franchised Business to the public;
- g. cooperation with and participation consistent with our responses and resolutions in response to customer feedback;
- h. cooperation with and participation in: (i) market research and testing; and (ii) product and service development programs;
- i. acceptance of our stored value gift cards, including gift cards sold at a discount, loyalty cards, frequency cards, gift certificates, vouchers, and any other similar electronic card and payment programs (individually and collectively, "Gift/Loyalty Card"), credit and debit cards, other payment systems, check verification services and use of point of sale computer systems; You agree to enter into a separate participation agreement with the approved vendor for data processing services;
- j. bookkeeping, accounting, data processing and record keeping systems; computer hardware and software; connections to the Internet or to proprietary networks; forms, methods, formats, content and frequency of reports to us of Gross Sales (as defined in *Article 5*), financial performance and condition; and providing tax returns and other operating and financial information to us; and
- k. conduct and maintain the Franchised Business and Location so as not to distract from or interfere with the integrity of the System (individually and collectively, "System Standards"). We may, in whole or in part, change, improve, update and further develop the System Standards, from time to time during the term. You shall comply with the updated System Standards as directed by us.

The operation and maintenance of your restaurant according to the System Standards are essential to the well-being and vitality of the System and to preserve the goodwill of the Proprietary Marks for us and for all other franchisees operating under the System. It is critical to the System for all restaurants operating under the System to present a uniform and professional image to *sweetFrog* customers regardless of which location the customer visits. Any information regarding the operation of the restaurant will be considered a mandatory System Standard, unless it is clear from the express language of our communication that the information is merely optional or is intended by us as a suggestion, rather than a requirement.

You agree that System Standards constitute binding provisions of this Agreement as if they were an integral part of this Agreement.

ARTICLE 2. SELECTION OF LOCATION; CONSTRUCTION AND RELOCATION

2.1 Location Selection Procedures.

You are ultimately responsible for the selection of the Location. We will not have any liability to you with respect to your selection of the Location, any assistance we provide you in making your selection, our recommendation of any location or a third party to assist you in

selecting a location, or our allowing you to move forward on any location. You agree that your selection of the Location will be based on your own independent investigation of the suitability of the Location.

2.2 Lease and Purchase Approval.

If you intend to lease the Location for your Franchised Business, the lease will be subject to our prior limited review and acknowledgment so that we can confirm that certain lease terms are incorporated into the lease. You must provide us, at least thirty (30) days prior to executing the lease, a copy of the lease and details relating to square footage, rent per square foot, the term of the lease, and either confirmation that such other terms as we reasonably require are incorporated into the lease or that you and the landlord agree to incorporate the lease addendum to lease agreement as an exhibit to the lease. You or your attorney shall be responsible for negotiating the terms of the lease, which shall be subject to our final limited review and acknowledgment. If you do not submit all of the required documents to us, we will not allow you to move forward with your lease. We have no liability to you regarding the terms or negotiations of the lease.

If, prior to executing the lease, you or your attorney request a full review of your lease, including any and all exhibits attached thereto, and we or our designated affiliate review your entire lease and exhibits and provide to you or your attorney its review of the entire lease and suggested changes to the lease ("Lease Review"), you must pay a Lease Review Fee (as defined in *Section 5.7*) to compensate for time and effort in reviewing the lease. The Lease Review is optional and only completed by us or our designated affiliate at your or your attorney's request. The Lease Review Fee is due only in the event that you or your attorney request us or our affiliate to complete a Lease Review. Each lease must contain the required lease terms set forth in the Lease Addendum to Lease Agreement, and must specifically state that we are a third-party beneficiary of the lease. If we cure any default by you under the lease, any amounts that we pay to cure the default will be payable by you to us on demand, together with interest thereon, at the lesser rate of one and one-half percent (1½%) or the maximum rate that does not violate applicable state usury laws ("Default Rate") per month from the date we make such payment.

You acknowledge and agree that on the earlier of thirty (30) days after: (i) you receive a fully executed copy of your lease for the Location of your Franchised Business; or (ii) you open your Franchised Business to the public, you must provide a fully-executed copy of your lease for the Location to us. Failure to timely provide us with a fully-executed copy of the lease will result in a default under this Agreement.

If you intend to purchase the Location for your Franchised Business, the terms of such purchase shall be subject to our prior approval, and you must provide us, at least thirty (30) days prior to executing the purchase agreement, a copy of the purchase agreement and details relating to square footage, price per square foot and such other terms as we reasonably require.

You acknowledge and understand that our confirmation that you may move forward with any specific location, lease or purchase agreement does not in any way guarantee or ensure the success or profitability of the Franchised Business, or the conformity of the Location, lease or purchase agreement to applicable laws, and such confirmations are only for our own benefit.

2.3 Construction.

a. You must, at your sole cost and expense, construct, furnish, make improvements to and equip, if necessary, the Franchised Business at the Location selected by you and meeting our minimum site requirements, in accordance with plans and specifications approved by us or our third-party approved architect, if applicable. Our approval of plans is solely for complying with our System Standards and not for determining compliance with codes, ordinances and other legal requirements, including the Americans with Disabilities Act (“ADA”) or any requirements under the lease for your Location. You are solely responsible for ensuring that your Location conforms to all codes and ordinances, including the ADA, and all lease-specific requirements. You must, at your sole cost and expense, use our designated and approved third-party design architect (“Design Architect”) to prepare the initial design drawings for any construction, alterations or improvements, as applicable, for your Franchised Business. The Design Architect must provide us with one (1) set of the design drawings, including landscaping and parking spaces if applicable, which are the detailed plans and specifications (“Plans”) for your Franchised Business. We will provide you with a copy of the Plans upon our approval of the Plans. You must also, at your sole cost and expense, retain a licensed architect of record to prepare the permitted construction set of drawings for any construction, alterations or improvements. The permitted construction set of drawings must be submitted to us for our files prior to the start of construction, alterations or improvements. In addition, you must obtain the appropriate construction documents and all mechanical, plumbing, electrical and architectural plans must be sealed and stamped, as we may require, even if local laws in the jurisdiction where your restaurant is located do not require same.

b. Any material modifications to the approved Plans must be submitted to us for approval and you will not undertake any construction, alterations or improvements until such modifications have been approved by us. Approval of such modifications does not constitute any representation by us of compliance with applicable zoning laws, building codes or other laws.

c. You will be solely responsible for the cost and expense of obtaining all necessary governmental construction permits and licenses, and you must, at your sole cost and expense, comply with all laws, zoning ordinances, rules and regulations of any governmental agencies that may govern any construction, alterations or improvements of the Franchised Business in accordance with the approved Plans. We will have the right, but are not required, to meet with the Design Architect and to inspect any construction, alterations or improvements during its course to ensure that the provisions of this *Section 2.3* are being observed; and you agree to allow our authorized representatives, at any and all times while construction, alterations or improvements are in progress, to meet with the licensed architect and general contractor and enter onto the Location for this purpose. If we determine in good faith that the provisions of this *Section 2.3* are not being observed, you will, at your sole cost and expense, immediately take all necessary corrective action.

d. You must, at your sole cost and expense, use a general contractor that is licensed, and if applicable, registered in the state and local jurisdiction where your restaurant is located for any and all construction, alterations and improvements. The general contractor must have prior experience in the construction, alterations and improvement of quick-service restaurants.

e. You acknowledge that the design and appearance of the *sweetFrog* restaurant is part of the System, and that uniformity is essential to the System. Therefore, you agree that after the restaurant has been constructed, altered or improved, you will not make any material changes to the building plan or design or its appearance without our prior written consent, and you will, at your sole cost and expense, maintain the interior and exterior décor of the restaurant in a first class condition and in such manner as we may reasonably prescribe from time to time. In addition to any remodeling required by us upon the transfer of the Franchised Business and upon the renewal of this Agreement, as set forth in *Articles 12* and *13*, respectively, you will, upon thirty (30) days' prior notice from us, and at your sole cost and expense, remodel and make all alterations and improvements in and to your Franchised Business as reasonably determined by us to reflect the then-current System specifications, standards, format, image and appearance.

f. A certificate of occupancy for your Franchised Business must be submitted to us approximately six (6) days prior to the day you open your Franchised Business to the public and as otherwise requested by us throughout the Term.

2.4 Signage.

You will acquire, repair and replace, as necessary, and maintain in a first class condition throughout the Term, signs for advertising and identifying the Franchised Business as a *sweetFrog* restaurant. All signs must be in accordance with the System Standards, specifications and any local governing body (i.e., city or county governments), as well as any other applicable laws, including the Americans with Disabilities Act ("ADA"), and exterior signage must be the maximum size allowed by the landlord and local governing body. You acknowledge that quality control is essential to protect and promote our Proprietary Marks, standards, and uniform image, and you shall acquire all signs only from approved suppliers. In addition, you shall prominently display on all communications, forms, advertising, business stationery and business cards, and in a sign easily visible to consumers at the Franchised Business, the following words: "INDEPENDENTLY OWNED AND OPERATED."

2.5 Relocation.

a. If you desire to relocate the Franchised Business, you may request our consent upon the following conditions:

(i) Not less than sixty (60) days prior to the desired date of relocation (unless prior notice is impractical because of a required relocation, due to a third-party or our request, in which event notice shall be made as soon as possible), you must make a written request for consent to relocate, describing the reasons for the relocation and providing details respecting any proposed new location.

(ii) Within twenty-one (21) days after receiving your written request, we shall advise you in writing if the proposed new location meets our minimum real estate site requirements as provided in *Section 2.1* and if you have our authorization to proceed with the relocation. In the event of our denial to proceed with the relocation, you may request an alternative proposed new location pursuant to the provisions of this *Section 2.5*.

(iii) The Term will not be extended in connection with the requested relocation.

b. At the time you request to relocate the Franchised Business, you must also meet each of the following requirements:

(i) You must not be in default under this Agreement or any other agreement or note then in effect between us or you and any affiliate of ours, and no event shall have occurred that, with the giving of notice, the passage of time, or both, would constitute a default under this Agreement;

(ii) You must neither have received more than three (3) notices of default or breach during the Term; nor more than two (2) notices of default or breach during the five (5) years immediately preceding the effective date of the proposed relocation;

(iii) The equipment, fixtures and signage used in connection with the operation of the Franchised Business must either meet our then-existing System specifications and System Standards, or you must agree, within a timeframe required by us, to replace or refurbish such items, and otherwise modify the methods of operation of the Franchised Business at your cost and expense, in order to comply with our System specifications and System Standards then applicable to new franchise owners; and

(iv) You shall have paid to us a Relocation Fee (as defined in *Section 5.14*).

c. If we approve the relocation of your Franchised Business, (i) you and we must execute an amendment to this Agreement indicating the address for your relocated Franchised Business and you must sign a general release provided by us, and (ii) you must open your Franchised Business at the new location within thirty (30) days after you close your Franchised Business at the current Location. Provided that you comply with all of the terms and conditions set forth in this Agreement including this Section 2.5, during the period of time between the closure of your Franchised Business at the current Location, and the opening of the Franchised Business at the approved relocation address, you will not owe the Royalty Fee (as defined in *Section 5.2*).

2.6 Restricted Use of Restaurant Location.

You may not wholly or partially sublet the Location without our prior written consent. The Location may be used only for the operation of a *sweetFrog* restaurant in compliance with this Agreement and the System Standards. You shall not conduct other businesses or activities at the Location without our prior written consent.

2.7 Not Applicable.

ARTICLE 3. OPERATIONS

3.1 Commencing Operations.

You agree to start operating your Franchised Business at the Location as of the Effective Date. You acknowledge that before starting operations you must, at your own expense, do the following (in addition to any other requirements set forth in this Agreement):

a. Complete a food safety training program at your sole cost and expense. We will accept the certificate for the required program through your local county or state health

department or any other nationally recognized food safety program. You must provide us with a copy of your certificate prior to commencing training;

- b. Successfully complete the Training Program described in *Section 4.1*;
- c. Purchase, lease or otherwise acquire from the list of approved sources provided by us all the signage, supplies, equipment, fixtures, inventory and other items necessary to operate the Franchised Business; and
- d. Obtain liability insurance in accordance with the requirements described in *Section 9.5* and provide to us evidence that such insurance has been obtained.

Prior to starting operations of the Franchised Business, you must notify us that you have satisfied all requirements to begin operations, and provide us with such documents as we may reasonably request that show your compliance with all such requirements. If you do not begin operations of your restaurant at the Location as of the Effective Date, then we may terminate this Agreement by giving you notice to that effect.

3.2 Supplies and Promotional Materials; Rollouts.

You agree to sell only those menu items, products and services authorized under the terms of this Agreement and as specified in the Confidential Manual, and you shall use only supplies and ingredients in making those menu items that are in compliance with the standards as set forth in the Confidential Manual or other documents provided by, or approved by, us as they presently exist or may exist in the future. You shall purchase all such services, supplies and ingredients only from approved vendors and utilize approved distributor(s) as specified in the documents provided by, or approved by, us as they presently exist or may exist in the future. You must purchase promotional materials containing the Proprietary Marks, including stationery, business cards, promotional and advertising materials and similar items, from suppliers approved by us, except that we must first approve all such promotional and advertising materials before you use them, and all such printed materials containing any of the Proprietary Marks shall be accompanied by the words "INDEPENDENTLY OWNED AND OPERATED." Additionally, during the Term, you agree to participate in any Rollout of new products and suppliers, as defined in *Section 9.3*.

3.3 Fixtures, Furnishings, and Equipment.

Unless otherwise approved by us in writing, you will: (1) acquire, repair and replace, as necessary, and maintain in a first class condition throughout the Term, fixtures, furnishings, and equipment to be used in the operation of your Franchised Business that is in accordance with the System Standards, specifications set forth by us in the Confidential Manual or other documents provided by, or approved by, us as they presently exist or may exist in the future, and with applicable laws including, without limitation, including the Americans with Disabilities Act ("ADA"); and (2) procure the fixtures, furnishings, and equipment from suppliers or vendors previously approved in writing by us.

3.4 Online Presence.

You may not maintain a website, software application, an App (application), social media account (including an account, group or page on Facebook®, Flickr®, Foursquare®, Google+®,

Instagram®, LinkedIn®, Pinterest®, Snapchat®, Tumblr®, Twitter®, YouTube®, Vine®, VKontakte or Weibo®), or otherwise maintain a presence or advertise on the Internet or any other public computer network (individually and collectively, “Site”) in connection with the Franchised Business without our prior written approval, which we may withhold in our sole discretion. If we grant you written approval, you agree to submit to us for approval before use, true and correct printouts, of all Site pages you propose to use in connection with the Franchised Business. You understand and agree that our right of approval of all such Site pages is necessitated by the fact that such Site pages will include and be inextricably linked with our Proprietary Marks. If we approve your use of a Site, you may only use Site pages that we have approved. Your Site must conform to all online presence requirements, policies and procedures per our System Standards. You agree to provide all information regarding your online presence that we require. If we grant approval for a Site, you may not use any of the Proprietary Marks on the Site except as we expressly permit. You may not post any of our proprietary, confidential or copyrighted material or information on the Site without our prior written permission. If you wish to modify your approved Site, all proposed modifications must also receive our prior written approval. You explicitly understand that you may not post on any Site (whether yours or someone else’s) any material in which a third-party has any direct or indirect ownership interest (including video clips, photographs, sound bites, copyrighted text, trademarks or service marks, or any other text or image which any third-party may claim intellectual property or other rights in). If we grant approval, you agree to list on the Site any website and social media account maintained by us, and any other information we require in the manner we dictate. You agree to obtain our prior written approval for any Internet domain name, home page address and Uniform Resource Locator. The requirement for our prior approval set forth in this *Section 3.4* will apply to all activities on the Internet or other communications network to be conducted by you, except that you may maintain one (1) or more e-mail addresses and may conduct individual e-mail communications without our prior written approval. You agree to obtain our prior approval as provided above if you propose to send advertising to multiple addressees via e-mail or text messages. You may not use a Site to represent that: (1) the Site is an official account, application, page or group of, or video produced by us; or (2) you are the owner of *sweetFrog* brand. On any Site you use in connection with the Franchised Business, you must affirmatively state: (a) that you are a franchisee and the opinion and content being expressed are your own and not that of the *sweetFrog* brand; and (b) the Location of your Franchised Business.

3.5 Continuing Working Capital Requirement.

You must have Fifteen Thousand Dollars (\$15,000) in working capital at the time you open your Franchised Business.

ARTICLE 4. TRAINING, ASSISTANCE AND START-UP MATERIALS

4.1 Training Program.

We will provide up to two (2) natural persons (individually and collectively, “Trainees”) with a training program designed to inform the participants as to the fundamentals of operating the Franchised Business prior to your opening of the Franchised Business. At minimum, one (1) of the two (2) natural persons must have an ownership interest in the Franchised Business. The remaining position may be filled by a natural person with an ownership interest in or management responsibility for the Franchised Business. The training program is made up of the “In-Store Training,” which is approximately twenty-four (24) hours, and “New Owner Training,” which is approximately forty (40) hours (collectively, “Training Program”). You will be

solely responsible for all transportation costs, food, lodging and other personal expenses incurred by you and your employees in connection with the Training Program. The New Owner Training will be conducted either online or in person at our sole discretion. If the New Owner Training is conducted in person, it will be at the Franchisor training and education center in Scottsdale, Arizona or at such other location as we may designate at our sole discretion and the In-Store Training will be conducted at a training store in Arizona or such other location as we may designate at our sole discretion. You acknowledge that adequate knowledge regarding the operation of the Franchised Business is essential to the growth of your franchise and to the promotion of the System. Notwithstanding the foregoing, Franchisor has the right to require Franchisee and/or its manager(s) to attend additional training and pay the Additional Training Fee (as defined below), as provided for in this *Section 4.1* and *Section 5.10*, in the event Franchisee is not operating the Franchised Business pursuant to Franchisor's Systems Standards.

4.2 Employee Training.

You acknowledge that the employees of your Franchised Business are an integral and important part of the Franchised Business, as they will have substantial contact with customers. You alone are responsible, and acknowledge that we have no direct or indirect control and no right or authority, for the hiring, firing, training, supervising, setting the terms and conditions of employment (including employee tasks and work schedules), compensation of your employees, or maintaining employment records, for the safety of your employees and for your employees' compliance with the System Standards. The System Standards are in place to protect our interests in the System and not for exercising any control over you, your employees or your Franchised Business. You must ensure that your employees who have direct interaction with the public are able to speak and read English and any other language that may be required to adequately meet the public needs in your Franchised Business.

4.3 Additional Programs; Continuing Assistance.

We will provide one (1) of our representatives to come to your restaurant during opening week for up to five (5) days, at our expense, to work with you or your manager on operating your restaurant. We may, in the future, request that Trainees participate in refresher or additional training programs. We may also hold an annual conference to introduce new products, discuss sales and marketing techniques, personnel training, advertising programs, merchandising procedures and other subjects. You may be charged a nominal registration fee for these programs and you will be solely responsible for the cost of transportation, food, lodging and other expenses incurred by Trainees at any such program. Attendance at these additional training programs and conferences is mandatory. They will be held in the metropolitan Phoenix, Arizona area, or at other locations in the United States chosen by us, at our sole discretion.

In addition to the initial training available under *Section 4.1*, we shall provide such periodic evaluations or inspections as we deem appropriate, utilizing our field representatives who may visit the Franchised Business from time to time. The frequency and duration of such visits to a Franchised Business by our representatives shall be in our sole discretion. Any such evaluation or inspection is not intended to exercise any control over your employees or the daily operation of your Franchised Business. In addition, we will be available on an ongoing basis at our offices for consultation and guidance with respect to the operation and management of the

Franchised Business. In addition to the Confidential Manual, we may, but are not required to, from time to time provide you with additional materials relating to the Franchised Business.

4.4 Area Representatives.

We may retain the services of an independent third-party area representative (“Area Representative”) to represent us in the area in which the restaurant is located and perform some or all of the services we provide under this Agreement. The services the Area Representative may perform could include: (i) assistance in location selection and evaluating and confirming that the Location meets our minimum site requirements; (ii) advice and guidance regarding lease negotiations; (iii) assistance in opening new *sweetFrog* locations; (iv) assistance with training on the approved POS System (as defined in *Section 4.6a.*); (v) assistance with marketing advice; (vi) periodic Quality Service Cleanliness and Experience (“QSCE”) evaluations; (vii) assistance with collection of the various sums due to us from franchisees; and (viii) coordination with other franchisees in your area and general supervision and monitoring of your Franchised Business on our behalf. You agree in advance to our delegation to an Area Representative of some or all of our obligations, and assignment to an Area Representative of some or all of our rights under this Agreement. You agree that we may require you to submit to an Area Representative any reports you are required to submit to us. Upon our request, you will provide the Area Representative with access, inspection and audit rights to the same extent we have those rights under this Agreement. You are not a third-party beneficiary of any agreement between us and any Area Representative. If we have designated an Area Representative for your restaurant as of the Effective Date, the name and contact information of the Area Representative is shown in *Section 17.3h*. We reserve the right in our sole discretion to remove any Area Representative in your area at any time and to appoint any other Area Representative for your area. We have no obligation to appoint an Area Representative in the area in which your restaurant is located, and we have no obligation to appoint a new Area Representative after we have removed an Area Representative.

You acknowledge that Area Representatives and their owners and employees may not contractually bind us without our express written authorization. You further acknowledge no Area Representative has the authority to: (i) enter into agreements or execute any agreements on our behalf; or (ii) bind us in any way without our prior written consent. Unless expressly authorized and agreed to by us in writing, we disavow any agreements, whether verbal or written, entered into by an Area Representative that in any way attempts to bind us. In any litigation or arbitration proceeding, you agree to waive any claim or defense that an Area Representative is our express or implied agent and such an assertion by you constitutes a material default under this Agreement.

4.5 Confidential Manual.

To protect the reputation and goodwill of the System and to maintain the uniform standards of operation under the Proprietary Marks, you must conduct your business in accordance with our Confidential Manual. The Confidential Manual is confidential and remains our property.

The Operations Manual is available to Franchisee via the Franchisee portal at: <https://portal.kahalamgmt.com>. In the event Franchisee desires to receive a hard copy of the Operations Manual, then Franchisee shall submit such request in writing to

training@kahalamgmt.com. Upon such request, a hard copy of the Operations Manual will be mailed to Franchisee via regular mail within approximately forty-five (45) days thereafter.

So that you may benefit from new knowledge gained by us as to improved techniques in the operation of the Franchised Business, we may from time to time revise, amend, restate or supplement the content of the Confidential Manual or other documents provided by, or approved by, us as they presently exist or may exist in the future. You will at all times ensure that your copy of the Confidential Manual is kept current and up to date. In the event of a dispute regarding any of the content of the Confidential Manual, the master copies maintained by us at our corporate office will control.

4.6 Computer Systems; Debit and Credit Card Processing.

a. You will be required to acquire, to maintain, and to exclusively use, an approved cash register/computer system ("POS System") during the operation of the Franchised Business. You and your employees must complete training for the POS System as we require, and you will be required to use the POS System to produce sales reports, keep inventory control and post sales tax, refunds, credits and allowances and submit that information to us immediately upon our request. You are required to obtain high-speed/always-on internet connection service for your POS System. If high-speed/always-on internet is not available in your area, dial-up Internet access may be used until high-speed/always-on service becomes available in your area. The POS System must be configured so that we will have remote access to the information and data stored in the POS System, which may include inventory information. This access will allow us to exchange/collect data and other information on such bases as we will communicate to you from time to time. You will be required to maintain the POS System in good working order at all times, and to upgrade or update the POS System during the Term as we may require from time to time. It will be your responsibility to enter into contracts for the maintenance, upgrades and updates to the POS System with an approved supplier of such services identified by us on the list of approved vendors and distributors or other notification to you from us advising of suppliers for your market area. You shall also be required to own a personal computer or similar device with access to the Internet that allows you to report your Gross Sales (as defined in *Section 5.2*) online, send and receive e-mails with us, and if/when online ordering is made available to receive online orders. If/when online ordering is made available, all *sweetFrog* franchisees of traditional restaurants will be required to participate in the online ordering program. We may require you to upgrade the hardware and software including, but not limited to, your operating system, as reasonably necessary to provide reports and information required by us.

b. You are required to accept debit and credit cards and Gift/Loyalty Cards from consumers at the Franchised Business and participate in any online ordering programs which Franchisor may require. Prior to the opening of your restaurant, you will be required to acquire and maintain an approved debit, credit and Gift/Loyalty Card processing system to use during the operation of the Franchised Business. Additionally, you must utilize our approved third-party Gift/Loyalty payment card processor for processing all such Gift/Loyalty Card transactions, including entering into a Gift Card Participation Agreement with one of our affiliates, or its successors or assigns, or other approved vendor for the Gift/Loyalty Card processing services. The Payment Card Industry ("PCI") requires all companies that process, store, or transmit credit card information to protect the cardholders' information by complying with the PCI Data Security Standard ("PCI DSS"). Therefore, as a franchisee who accepts credit cards, you are required to be PCI compliant by following and adhering to PCI DSS, which includes ensuring that your POS

System, back office computer (if supplied), and any other device that is plugged into the network is **only** used for business purposes. You are also required to complete an annual questionnaire and quarterly network PCI scans and install a network firewall appliance for logging, tracking, reporting, and security assessment. You are also required to validate with Franchisor that your store is PCI compliant, and Franchisor may in its sole discretion require you to install a particular type of firewall (hardware and/or software). To show such validation you must send us your Passing Certificate showing your store is PCI compliant. You are also required to verify that you have a PCI compliant firewall appliance installed at your location if you process credit cards via high speed internet connectivity. We require your Franchised Business' POS System, including terminals, computers, and software to be in compliance with the PCI DSS at all times. The PCI DSS is often updated, and you are required to obtain and comply with all updated standards. You must also be PCI compliant in order to obtain cyber liability/data breach insurance coverage.

ARTICLE 5. FEES AND DEPOSITS

You agree to pay each of the following amounts to us via a lump sum, with each and every amount being non-refundable because of our investment in time and money, in addition to any other benefits conferred upon you, including processing your application, reviewing your documents, and providing you with relevant information, unless otherwise expressly specified below, in accordance with the provisions set forth in this *Article 5*. Notwithstanding your designation to the contrary, we have the sole discretion to apply any of your payments, in part or in whole, to any of your indebtedness to us.

5.1 Not Applicable.

5.2 Royalty Fee and Surcharge.

For the period of time commencing on the later of the Effective Date or the date the Franchised Business opens to the public, and for the duration of the Term, you must pay to us a weekly royalty fee equal to five percent (5%) of total Gross Sales (as defined below) ("Royalty Fee"). If we or the landlord of the Location require you to remodel your Franchised Business in such a way that your Franchised Business (including catering) stops offering items to the public, or if there is a disaster at your Franchised Business, such as a fire, flood or damage caused by an act of God, that requires you to temporarily close your Franchised Business, you are not required to pay the Royalty Fee during the period of time of such temporary closure; provided you provide us or our authorized representative with notice of such temporary closure as soon as reasonably possible, but in no event more than twenty-four (24) hours after such closure begins. Notwithstanding the above, all amounts owed to us under this Agreement prior to the temporary closure shall still be fully due and payable. The temporary closure of your Franchised Business shall not exceed ninety (90) days, but may be extended on a case-by-case basis at our sole discretion and with our prior written approval.

In our sole discretion, we may charge, in addition to the Royalty Fee, a surcharge of up to Ten Dollars (\$10) per week if your Franchised Business is located in a state that imposes additional reporting requirements on a franchisor ("Surcharge"). The Royalty Fee and applicable Surcharge shall be due and payable no later than ~~Monday~~ Thursday of each week, which day may be modified by us without prior notice to or approval from you, for the week ending on the preceding ~~Tuesday~~ Sunday in which applicable Gross Sales (as defined below)

were earned from the Franchised Business. The weekly Royalty Fee and applicable Surcharge shall be paid by electronic funds transfer, as detailed below.

For the period of time commencing on the later of the Effective Date or the date the Franchised Business opens to the public, and for the duration of the Term, you are required to report Gross Sales to our designated accounting office, which as of the Effective Date, is via the Internet at <http://franchisee.kahalamgmt.com>, as set forth in *Section 5.6*. Nothing herein shall prevent Franchisor from electronically polling Franchisee's POS system, restaurant management software, and financial records (or similar tools thereto) daily, or more frequently, by electronic or other remote means and Franchisee hereby grants Franchisor authority to do so; however, such authority does not negate Franchisee's requirement to ensure all sales are timely and accurately reported each week. You shall be required to establish a Depository Account (as defined in *Section 5.6*) at the time you execute this Agreement as set forth in *Section 5.6*. Payment of the Royalty Fee, Advertising Fee (as defined in *Section 5.3*), and all other fees due under this Agreement to us shall be made via electronic transfer of funds from the Depository Account. To accomplish this electronic transfer of funds from the Depository Account, you must complete, sign and deliver to us, and maintain for the duration of the Term, a current Electronic Funds Transfer Authorization in a form that we provide.

As used in this Agreement, "Gross Sales" means all sales, money or things of value, received or receivable, directly or indirectly, by Franchisee on account of the Franchised Business, less applicable sales taxes and any properly documented refunds, credits and allowances given by you to customers in accordance with the System Standards, but without deducting any of your income taxes, costs and other expenses. All sales made from catering services must be included in the Gross Sales.

5.3 Advertising Fee.

a. You must pay to us, or directly into a national advertising fund or also any regional advertising funds, as designated by us at our sole discretion, (individually and collectively, "Advertising Fund") a weekly advertising fee of two and one-half percent (2.5%) of the Gross Sales for the preceding week ("Advertising Fee"). Upon thirty (30) days' notice by us to you, we may unilaterally increase the Advertising Fee from its current level not to exceed four percent (4%) of your weekly Gross Sales. The Advertising Fee shall be due and payable with the Royalty Fee under *Section 5.2*. The Advertising Fee is our property and may be deposited by us into our general operating account.

b. The Advertising Fund will be used for marketing, advertising, production and media expenses to promote the *sweetFrog* name, System, products and services. We are entitled to deduct, free of charge the following from the Advertising Fund: (i) reimbursement of expenses, overhead, and employee salaries for services provided; and (ii) rent for office space provided to the Advertising Fund. We have no fiduciary obligation to you in connection with the operation of any Advertising Fund. No interest on an unexpended Advertising Fee shall be imputed or otherwise charged for the benefit of, or payable to, you. You understand and agree that the only obligations we have regarding the collection and spending of the Advertising Fee or the administration of the Advertising Fund are the express contractual obligations in this *Section 5.3*. We are not acting as a trustee, fiduciary, agent or in any other special capacity. We do not give any representation or warranty regarding the quality or effectiveness of the advertising and marketing activities funded by the Advertising Fee or of the Advertising Fund, and we will have no liability to you with respect to how these funds are spent.

c. One and one-half percent (1.5%) of your Gross Sales is deposited into the national Advertising Fund; and, if a cooperative exists where your Franchised Business is located, the remaining one percent (1%) of your Gross Sales is deposited into the regional Advertising Fund for your cooperative, if no cooperative exists where your Franchised Business is located, your Franchised Business will be considered a “single store” cooperative and you must contribute the remaining one percent (1%) of your Gross Sales to the regional Advertising Fund for your store. Your own local marketing and advertising should be developed to maximize your particular customer base.

5.4 Cooperative Advertising.

a. We encourage the formation and operation of franchisee cooperative advertising associations (each an “Association”). Each Association will help coordinate advertising, marketing efforts and programs, and attempt to maximize the efficient use of local advertising media. If an Association is formed for your region, you must contribute financially to the Association as required by us. Failure to do so will be deemed a breach of this Agreement and you may also, in Franchisor’s sole discretion, lose your right to vote as to decisions regarding advertising and marketing efforts and programs.

b. Upon our request, you will assist in establishing an Association or in deciding how to allocate all or part of any Fund contribution we elect to distribute to the Association. We will decide in our sole discretion whether to make contributions from the Fund to an Association and how much to contribute. We reserve the right to establish general standards concerning the operation of an Association, advertising agencies retained by an Association, and advertising programs conducted by an Association. Notwithstanding anything to the contrary, no Association decision will be made or advertising collections spent without our prior written approval.

5.5 Not Applicable.

5.6 Depository Account; Payment Procedures.

You are required to establish, at the time you execute this Agreement, and maintain for the duration of the Term a depository account (“Depository Account”) at a bank or other federally insured financial institution (“Depository”) under the same name as Franchisee under this Agreement. You will initially deposit no less than Three Thousand Dollars (\$3,000) into the Depository Account and are required to maintain a balance of at least Three Thousand Dollars (\$3,000) in the Depository Account at all times during the Term by replenishing the Depository Account to at minimum Three Thousand Dollars (\$3,000) after any withdrawals. We shall not be responsible for any bank service charges incurred by you which result from the withdrawal of funds from your Depository Account.

On Tuesday of each week, you must submit a report to us regarding the weekly period which ended on the preceding ~~Saturday~~Sunday, including details on Gross Sales and other statistical data as provided in this Agreement, Confidential Manual, or as otherwise specified from time to time by us. We will withdraw funds electronically on Thursday of each week from the Depository Account. The withdrawals are based upon the figures you report and constitute the Royalty Fee and Advertising Fee as described in *Sections 5.2 and 5.3*. If you do not submit a report on any Tuesday, we may estimate the Royalty Fee and Advertising Fee based upon prior reports and withdraw the estimated amounts up to the entire Three Thousand Dollars

(\$3,000). We will return or credit back to you, in our sole discretion, any overage within thirty (30) days after our receipt of your report(s). We shall not be responsible to you for any interest charges for any overage collected due to your failure to timely report your sales. You shall instruct the Depository to disburse each week to our designated bank, via electronic funds transfer by the close of business on Thursday (or preceding banking business day, if Thursday is a bank holiday), the weekly Royalty Fee and Advertising Fee and other fees due for that week, which week shall end on the preceding ~~Saturday~~Sunday. The days of the week specified above may be modified by us without prior notice to or approval from you.

You will be charged a monthly fee, in the amount of ~~\$100~~25, by the authorized POS vendor, and this is subject to change by the supplier. Under no circumstances shall such access to the Depository Account be deemed control or joint control of the Depository Account by us.

Subject to reasonable advance notice for non-recurring payment amounts, we have the right to debit your Depository Account, or any other depository account you have with us, according to the terms of your Electronic Funds Transfer Authorization for any of the payments described in this Agreement. If you do not pay all amounts due by the due date, we may suspend our and our affiliates' services and support until your payment default is cured. Repeated failure to pay all amounts when due, whether or not the defaults are subsequently cured, may be cause for termination under *Article 14*.

You shall pay us Fifty Dollars (\$50) for each electronic funds transfer attempted from your Depository Account pursuant to this *Section 5.6* that is returned for non-sufficient funds. You shall also reimburse us for all other costs and expenses incurred by us in collecting or attempting to collect funds due to us from the Depository Account (for example, without limitation, charges for non-sufficient funds, uncollected funds or other discrepancies in deposits or maintenance of the Depository Account balance in accordance with the terms hereof). The Depository Account shall be established and maintained solely for the purposes set forth in this *Section 5.6* and any other fees authorized under this Agreement and any other agreements between you and us or any of our affiliates.

5.7 Lease Review Fee.

If you request us or one of our designated affiliates to complete a Lease Review, you are required to pay us or our designated affiliate a lease review fee in the amount of Two Thousand Five Hundred Dollars (\$2,500) ("Lease Review Fee") for reviewing and providing comments to your proposed lease.

5.8 Lease Guarantee Fee.

If, in order to obtain the lease agreement for the Location of your Franchised Business, the landlord requires you to obtain a lease guarantee, and we or one of our affiliates agree to serve as such guarantor, you will pay us or our affiliate a fee in the amount of ten percent (10%) of the total amount of the rental obligations being guaranteed under the lease during its term up to a maximum fee of Ten Thousand Dollars (\$10,000) ("Lease Guarantee Fee"). The Lease Guarantee Fee will be due and payable upon our or our affiliate's execution of the applicable lease guarantee agreement with the landlord. Neither we nor any of our affiliates are required to serve as a guarantor of your lease for the Location of your Franchised Business; rather, the decision of whether to serve as a guarantor shall be made in our sole discretion. In the event

that you request us or our affiliate to either agree to be the tenant under the lease or execute a separate guarantee to the lease, and you pay the required Lease Guarantee Fee, you agree and acknowledge that payment of the Lease Guarantee Fee shall not, in any manner, be deemed as an insurance policy which limits your liability in connection with the Franchised Business, including any and all financial liability under the sublease or lease related to the Location. You further agree and acknowledge that our or our affiliate's agreement to act as tenant or guarantor under the lease, and your payment of the Lease Guarantee Fee to us or our affiliate, does not result in the assumption or transfer of your liability, in connection with the Franchised Business, by or to us or our affiliate.

5.9 Additional Persons Training Fee.

The training of two (2) individuals is included in the fee as set forth in *Section 5.13*. If you desire to have more than two (2) people attend the Training Program, you must pay an additional training fee of Five Hundred Dollars (\$500) for each such person to attend the In-Store Training and an additional Seven Hundred Fifty Dollars (\$750) for each such person to attend the New Owner Training (individually and collectively, "Additional Persons Training Fee") (see *Section 4.1*).

5.10 Additional Training Fee.

If, after attending the Training Program, you desire to receive additional training, we will provide additional training time to you for a fee of Three Hundred Dollars (\$300) per person per day. Such additional training will be at a time reasonably agreed to by you and us, and will be conducted at Franchisor's headquarters, online, or such other location as we may designate in our sole discretion. You will be solely responsible for all transportation costs and expenses, food, lodging and other personal costs and expenses incurred by you and your employees in connection with this additional training.

5.11 Document Administration Fee.

A document administration fee of Five Hundred Dollars (\$500) ("Document Administration Fee") is payable to us when we must prepare an amendment to your franchise documents (~~see *Section 12.3g*.~~).

5.12 Renewal Franchise Fee.

A renewal franchise fee of fifty percent (50%) of the then-current initial franchise fee not including any discounts or reductions ("Renewal Franchise Fee") is payable to us when you renew this Agreement (see *Section 13.i*).

5.13 Transfer Franchise Fee.

a. A transfer franchise fee and other applicable initial fees, as set forth in the Consent to Transfer and Release Agreement executed contemporaneously herewith and to which Franchisee is also a party, are payable to us when you sign this Agreement.

b. If, following the Effective Date, Franchisee desires to complete a Full Transfer (as defined in *Section 12.1.a.1.*) of this Agreement, we will require the Potential Transferee (as defined in *Section 12.1.c.*) to pay us Seven Thousand Five Hundred Dollars (\$7,500) ("Transfer

Franchise Fee") as one of the conditions for Franchisee to receive Franchisor's consent for such Transfer (as required in *Section 12.1.b.*).

5.14 Relocation Fee.

A relocation fee of Five Hundred Dollars (\$500) ("Relocation Fee") is payable to us when you sign the amendment to your Franchise Agreement for your relocation (see *Section 2.5*).

5.15 Transfer Training Fee.

A Potential Transferee receiving this Agreement, as may be amended, in connection with a Full Transfer, must pay to us, in addition to the Transfer Franchise Fee, a transfer training fee of One Thousand Five Hundred Dollars (\$1,500) ("Transfer Training Fee"). The Transfer Training Fee is used to provide training for two (2) individuals, and a fee of Five Hundred Dollars (\$500) will be charged for each additional individual trained over two (2).

5.16 Annual Meeting Registration Fee.

If we hold an annual meeting ("Meeting"), the Meeting may be held at various locations throughout the United States and/or online as we may designate in our sole discretion. Because the planning and funding of the Meeting must be done well in advance and requires a substantial financial commitment, we have the right to debit your Depository Account for up to One Thousand Dollars (\$1,000) for the Meeting registration fee at any time sixty (60) to ninety (90) days prior to the first day of the Meeting. This fee may be debited from your account (even if you do not attend the Meeting). You will also be solely responsible for all costs incidental to attending the Meeting. If you do not attend the Meeting, we will make available to you one (1) full set of the substantive materials that were presented at the Meeting.

5.17 Late Report; Interest; Late Charge; Non-Sufficient Funds Fee; Breaching Royalties; Draft Draw Charge.

If you fail to submit to us any financial statements, forms, reports or records required to be provided under this Agreement by its due date, including your weekly Gross Sales report for calculating your Royalty Fee and Advertising Fee, you must pay to us a late report charge of One Hundred Dollars (\$100) per week or part thereof.

If any fees or assessments due under this Agreement, including the Royalty Fee and Advertising Fee, are not paid when due, interest shall accrue on the late payment (from the date payment is due until the date payment is made) at the Default Rate,, which amount, plus a late charge of five percent (5%) of the unpaid amount, or One Hundred Dollars (\$100), whichever is greater, shall be added to each late payment. For any payments made by you to us under this Agreement which are returned for non-sufficient funds of a processed check, you shall be charged a non-sufficient funds fee of Twenty-Five Dollars (\$25) per occurrence. Pursuant to *Section 5.6*, for each electronic funds transfer that is attempted from the Depository Account but returned for non-sufficient funds, you shall be charged a Fifty Dollars (\$50) non-sufficient funds fee per occurrence.

Franchisor has the absolute right to charge Franchisee the greater of: three (3) times the fixed Royalty Fee; or, if on a percentage Royalty Fee, the Royalty Fee will be increased up to fifteen percent (15%) of Gross Sales, with respect to any period during which Franchisee is in

breach or default of its/his/her obligations under this Agreement without providing Franchisee advance notice or right to cure. The Royalty Fees paid or owing to Franchisor with respect to the period during which Franchisee is in breach or default are referred to as “Breaching Royalties.” Breaching Royalties will be charged for a minimum fourteen (14) day period, regardless of the length of the actual breach or default.

If you fail to provide us any necessary information or documentation with respect to our practice of drawing drafts against your bank accounts, you must pay us a draft draw charge in the amount of One Hundred Dollars (\$100) per day that that failure continues.

If, as a result of your failure to remit payments required under any provision of this Agreement, we retain an attorney or a collection agency to collect such payments, you must pay all collection costs and expenses, including reasonable attorneys’ fees and expenses, whether or not legal proceedings are initiated. Our rights under this *Section 5.17* are in addition to any other rights or remedies that we may have as a result of your default under this Agreement.

5.18 Audit Fees.

For the purpose of this *Section 5.18*, we have the right, at any time during business hours, and with or without prior notice to you, to inspect and audit, or cause to be inspected and audited, the business records, cash control devices, bookkeeping and accounting records, sales and income tax records and returns and other records of the Franchised Business and your entity’s books and records.

You hereby grant us access to any computers utilized by you for such purposes and we will have the ability, at all times, via modem, to obtain daily and weekly sales reports and other financial records that the POS System provides. You will fully cooperate with our representatives, the Area Representative, if applicable, and independent accountants hired by us to conduct any such inspection or audit. In addition, in the event such inspection or audit is made necessary by your failure to furnish reports, supporting records or other information, as required herein, or to furnish such reports, records or information on a timely basis, or if an understatement of Gross Sales, resulting in an underpayment of the Royalty Fee or Advertising Fee for the period of any audit (which shall not be for less than one (1) month) is determined by any such audit or inspection to be five percent (5%) or greater, you will pay to us, immediately after receipt of the inspection or audit report, any additional Royalty Fee and Advertising Fee and other amounts due as a result of any such understatement, plus interest at the Default Rate from the date originally due until the date of payment and you must reimburse us for such audit or inspection, including the charges of any independent accountants, and the travel expenses, room, board and compensation of such accountants and our employees.

The remedies in this *Section 5.18* will be in addition to all other remedies and rights available to us under this Agreement or otherwise available.

5.19 Data Fee.

We may require you to pay us or a third-party we designate a data fee of up to Seventy-Five Dollars (\$75) per month for polling or collecting data from your POS System.

5.20 Reserved.

5.21 New Supplier Approval Fee.

All requests for approving new or alternative suppliers must be submitted in writing by you or the supplier to our Purchasing Department. Each request will be reviewed in accordance with our then-current procedures and the supplier must meet our then-current requirements, which may include that our representatives be allowed to inspect the facilities of the proposed supplier, and that samples from the proposed supplier be delivered, at no charge, either to us or to our designee for testing. A charge not to exceed the amounts incurred in connection with the inspection and the test, with such cumulative amount not to exceed Five Thousand Dollars (\$5,000), must be paid to us. If approved, in our sole discretion, we will notify you or the supplier in writing within sixty (60) days after our receipt of an approval request. You must not offer or sell in any manner any of the proposed alternative supplier's products until you receive our written approval of the proposed alternative supplier.

5.22 Reserved.

5.23 Non-participation Fee.

You must offer and sell at the Location of the Franchised Business all products designated by us, consistent with our System Standards. In addition, you must immediately incorporate into the Franchised Business all new products and services designated by us and must fully participate in all local, regional, seasonal, promotional and other programs, initiatives and campaigns adopted by us in which we require you to participate. If you fail or refuse to fully participate in any such program, initiative or campaign, you may, in our sole discretion, be required to pay a non-participation fee of One Hundred Dollars (\$100) per day that you are not in compliance ("Non-participation Fee").

5.24 Not Applicable.

5.25 through 5.35 Not Applicable.

ARTICLE 6. PROPRIETARY MARKS

6.1 Ownership and Right to Use.

We warrant to you that:

- a. We are the owner of all right, title and interest in and to the Proprietary Marks;
- b. We have granted to you the personal, non-exclusive, limited, revocable right and license to use the Proprietary Marks in connection with the operation of your Franchised Business;
- c. We have taken and will take all steps reasonably necessary to preserve and protect our rights in the Proprietary Marks; and
- d. We will only permit you to use the Proprietary Marks in accordance with the System Standards.

6.2 Covenants of Franchise Owners.

a. You acknowledge our ownership of the Proprietary Marks, and you agree that during the Term and after its expiration or termination, you will not directly or indirectly contest, or aid in contesting, the validity of the Proprietary Marks or our ownership of the Proprietary Marks, nor will you take any action which might impair or prejudice our ownership of the Proprietary Marks. You shall not, directly or indirectly, apply to register, register or otherwise seek to own or control any of the Proprietary Marks, or any confusingly similar mark thereto, whether in whole or in part, in any place or jurisdiction either within or outside of the United States; nor will you assist any others to do so.

b. You agree that the license granted pursuant to this Agreement authorizes you to use the Proprietary Marks solely in connection with the Franchised Business only at the Location, and for no other purpose. You have no right to license or sublicense any aspect of the System Standards or any of the Proprietary Marks.

c. You agree to use the Proprietary Marks only in the manner and to the extent specifically licensed by this Agreement. You further agree that any unauthorized use or continued use of the Proprietary Marks after the termination or expiration of this Agreement will constitute irreparable harm and is subject to injunctive relief.

d. The license granted by this Agreement includes only the Proprietary Marks, now existing or which may exist in the future. This license does not include the right to use any other trademarks, service marks, trade name or trade dress owned by us or our licensor anywhere in the world. You agree that any and all goodwill associated with and identified by your use of the Proprietary Marks will inure directly and exclusively to our benefit, and that, on the expiration or termination of this Agreement, no monetary amount will be due or payable to you as a result of any goodwill associated with your ownership or operation of the Franchised Business.

6.3 Limitations on Franchisee's Use of Proprietary Marks.

To develop and maintain high and uniform standards of quality and service and thereby protect our reputation and goodwill and that of the System, you agree:

a. To operate and advertise the Franchised Business only under the Proprietary Marks authorized by us;

b. To adopt and use the Proprietary Marks licensed by this Agreement solely in the manner prescribed by us;

c. That your corporate, partnership or other entity name including trade name, will not include any of the Proprietary Marks, in whole or in part, or any terms confusingly similar thereto, unless first authorized by us in writing;

d. To submit all advertising, promotional materials and all printed matter, including stationery, business cards, and any materials to be used on the Internet to us for our written approval before you use any of these items; and

e. That we may from time to time change or modify the System Standards, including modifying existing Proprietary Marks or adopting new marks. You agree, at your own

expense, to adopt, use and display any such new or modified Proprietary Marks within ninety (90) days after notification from us. However, if we require you to modify or discontinue use of our proprietary information or use other information or rights in its place at any time other than upon renewal of this Agreement, and that requirement is a direct result of proceedings or litigation that determined that our and our franchisees' use of the proprietary information infringed upon a third-party's rights, we or our affiliate will bear the actual, direct, and reasonable costs of those modifications or discontinuances. The rights granted to Franchisee under this Section shall be Franchisee's sole and exclusive remedy for any infringement by any part of the System.

Upon your abandonment of the Franchised Business (whether voluntary or involuntary), termination or expiration of this Agreement, you must immediately cease to use, in any manner whatsoever, any of the Proprietary Marks or any other marks which, in whole or in part, may be confusingly similar to any of the Proprietary Marks.

6.4 Non-Exclusive License of Proprietary Marks.

You understand and agree that your license to use the Proprietary Marks is non-exclusive; that we, in our sole discretion, can grant to other franchisees the right to use the Proprietary Marks and obtain the benefits of the System Standards, in addition to the licenses and rights granted to you under this Agreement; and that we or our affiliates may develop and license other proprietary marks in conjunction with concepts other than the *sweetFrog* concept, on any terms and conditions we deem advisable. You will have no right or interest in any such other licenses, proprietary marks or systems.

6.5 Notification of Infringement and Claims.

You agree that you will notify us immediately of any apparent infringement of, or challenge to your use of any of the Proprietary Marks, or any claim by any person of any rights in any of the Proprietary Marks. You agree that you will not communicate with any person, other than us and our legal counsel, in connection with any such infringement, challenge or claim. We will have the sole discretion to take such action as we may deem appropriate to protect the Proprietary Marks and the exclusive right to control any litigation, United States Patent and Trademark Office proceeding, or other proceeding arising out of any such infringement, challenge, claim or otherwise relating to any Proprietary Marks. You agree to execute any and all instruments and documents, render such assistance, and do such acts and things as may, in the opinion of our counsel, be necessary or advisable to protect and maintain our interests in connection with any such litigation or proceeding, or to otherwise protect and maintain our interests in the Proprietary Marks.

ARTICLE 7. TRADE SECRETS AND PROPRIETARY INFORMATION

7.1 Innovations.

During the Term, you and your principals, officers, managers and employees may conceive, invent, create, design or develop various ideas, techniques, methods, processes and procedures, recipes, formulae, products, packaging or other concepts and features relating to restaurant operations, business practices or the manufacturing, production, marketing and sale of frozen yogurt or other frozen dessert products, and related goods now in existence or later developed, adopted, or improved in connection with the Franchised Business (individually and collectively, "Innovations"). You, without further consideration, hereby assign any and all of your

rights, title and interest in the Innovations, including any intellectual property rights, to us, and also agree to cooperate with us and our counsel in the protection of the Innovations, including the perfecting of title thereto in us. In addition, you will require all of your principals, officers, managers and employees to sign an agreement in the form set forth in our System Standards and incorporated herein by reference ("Confidentiality Agreement"), and shall be liable to us for obligating your principals, officers, managers and employees to assign all of their rights, title and interest to the Innovations to us and requiring your principals, officers, managers and employees to cooperate in obtaining, protecting, maintaining and enforcing our right, title and interest in the Innovations.

7.2 Confidentiality Agreement.

a. In connection with the operation of the Franchised Business, you will from time to time receive, have access to, or learn certain information and materials that are proprietary to us or our affiliate. You and any person signing this Agreement under the heading "Personal Acceptance of *Sections 7.1, 7.2, 14.6 and 14.8*" agree that you will keep confidential, and will not use for your own purposes, nor supply or divulge to any other person, any of our Trade Secrets, including our methods of operation, processes, techniques, formulae and procedures, information a reasonable person would believe to be confidential and any other proprietary information regardless of whether such is expressly marked as confidential ("Confidential Information"). You acknowledge that much of the information imparted to you by us is confidential, constitutes Trade Secrets, are unique to us, and remains our sole exclusive property. Our Confidential Information includes the following:

1. The Confidential Manual and any amendments thereto;
2. Ingredients, recipes, and methods of preparation of food products;
3. Methods of operation of *sweetFrog* restaurants;
4. Information about products, services, or procedures before they become public knowledge;
5. Information which relates in any manner to our business or the System Standards, whether oral or reduced to writing, and which is not generally known to, or readily ascertainable by, other persons who might derive economic benefit from its disclosure or use; and
6. Any other information which may be imparted to you from time to time and designated by us as confidential.

b. You and any person signing this Agreement under the heading "Personal Acceptance of *Sections 7.1, 7.2, 14.6 and 14.8*" acknowledge and agree that the Confidential Information and any business goodwill of the Franchised Business is our sole and exclusive property, and that you will preserve the confidentiality thereof. Upon termination or expiration of this Agreement, all items, records or documentation recording or incorporating any Confidential Information, including any copies thereof, will be immediately turned over by you to us or our authorized representative.

c. You agree to take all steps necessary, at your own expense, to protect the Confidential Information, including our Trade Secrets, and to adopt and implement all reasonable procedures prescribed by us from time to time to prevent the unauthorized use or disclosure of any of the Confidential Information. We require that all of your executive officers, agents, directors, shareholders, trustees, beneficiaries, partners and managers who may or are likely to obtain knowledge concerning the Proprietary Information (and who do not sign this Agreement under the heading "Personal Acceptance of *Sections 7.1, 7.2, 14.6 and 14.8*") sign the Confidentiality Agreement binding such person to preserve the confidentiality of the Confidential Information as part of the terms and conditions of such person's employment or association with you. You must obtain a Confidentiality Agreement signed by any such person prior to or at the same time that you begin employment of, or association with, that person. This will be a continuing obligation on your part throughout the Term. You must keep each original signed Confidentiality Agreement and provide us with a copy of each Confidentiality Agreement when requested by us or our authorized representative.

d. Notwithstanding the above, Confidential Information shall not include information which you can reasonably prove: (i) entered the public domain through no breach by you or your affiliate of any duty of confidentiality, or (ii) you received our prior express written consent to disclose in the manner in which you disclosed it.

e. If anyone under a Confidentiality Agreement is legally compelled or required by a regulatory body to disclose any Confidential Information, he/she/it will notify us as soon as possible and will use his/her/its best efforts to obtain, and give us an opportunity to obtain, appropriate assurances of confidential treatment.

f. The requirements under this *Section 7.2* will remain in full force and effect during the Term and after termination or expiration of this Agreement.

ARTICLE 8. RELATIONSHIP OF THE PARTIES AND INDEMNIFICATION

8.1 Relationship of the Parties.

You and we agree that this Agreement does not create any fiduciary or employment relationship between you, or any of your employees, and us, that you are an independent contractor, and that nothing in this Agreement is intended to make either you or us a general or special agent, legal representative, subsidiary, joint venture, partner, employee or servant of the other for any purpose. You shall not enter into any agreement on behalf of or otherwise bind us for any purpose.

Should it ever be asserted that Franchisor is the employer, joint employer or co-employer of any of your or your affiliate's employees in any private or government investigation, action, proceeding, arbitration, or other setting, you irrevocably agree to assist Franchisor in defending said allegation, including (if necessary) appearing at any venue requested by Franchisor to testify on our behalf (and, as may be necessary, submitting itself to depositions, other appearances and/or preparing affidavits dismissive of any allegation that Franchisor is the employer, joint employer or co-employer of any of your employees).

8.2 Indemnification of Franchisor.

You agree to indemnify, defend and hold us and our affiliates (including our parent and subsidiary companies, current, past and future predecessors, successors and assigns), and each of our shareholders, owners, directors, officers, members, managers, partners, joint venturers, attorneys, employees, contractors, agents, representatives, guarantors, insurers, spouses, heirs, executors, trustees and estates (collectively with us, "Indemnified Parties") harmless for, from and against any and all claims, liabilities, causes of action, suits, debts, duties, accounts, covenants, contracts, agreements, promises, taxes, demands, obligations, costs and expenses, including reasonable attorneys' fees, damages, judgments, and proceedings, of every kind and nature whatsoever, whether actual or threatened, in law or equity, or otherwise, under local, state or federal law including, without limitation the Americans with Disabilities Act ("ADA"), or the law of any other applicable jurisdiction (individually and collectively, "Claims") suffered or incurred by any of the Indemnified Parties arising out of or relating to your construction, ownership, marketing, Promotions (as defined in Article 10), operation, including your failure to comply with PCI DSS or any law, statute, regulation, order, rule, or ordinance, or management of the Franchised Business, except for Claims held to have resulted solely from our gross negligence or willful misconduct. Notwithstanding the foregoing, we will have the right, at our option, to defend any Claim, but you must reimburse us upon demand for the costs and expenses of such defense. You shall immediately give us notice of any demand, investigation, written inquiry, action, suit, proceeding, or claim in any way related to us or the sweetFrog brand.

8.3 Indemnification of Franchisee.

We agree to indemnify, defend and hold you and your affiliates, and their shareholders, directors, officers, members, managers, partners, employees, agents, successors and assignees harmless for, from and against any and all Claims, arising out of any Claim of infringement or unfair competition in connection with your authorized use of the Proprietary Marks or Confidential Information, provided that such use is in accordance with the provisions of this Agreement. However, if we require you to modify or discontinue use of our Proprietary Marks or Confidential Information or use other information or rights in its place at any time other than upon renewal of this Agreement, and that requirement is a direct result of proceedings or litigation that determined that our and our franchisees' use of the Proprietary Marks or Confidential Information infringed upon a third-party's rights, we will bear the cost of those modifications or discontinuances as set forth in this Agreement.

8.4 Special Power of Attorney.

You agree to cooperate with and assist us as we may request from time to time to obtain, protect, maintain or enforce our intellectual property and Proprietary Marks, including executing documents and appearing as a witness. You hereby appoint us as your attorney-of-fact and hereby grant us an irrevocable Special Power of Attorney, coupled with an interest, with full power and authority for the purpose of executing documents or taking such action as necessary or appropriate as you might or could do if personally present, hereby ratifying all that we, as your attorney-in-fact, shall lawfully do or cause to be done by virtue of this Special Power of Attorney to obtain, protect, maintain or enforce our intellectual property and Proprietary Marks if we are, for any reason, unable to obtain your cooperation or assistance. The Special Power of Attorney granted by this *Section 8.4*, shall survive your dissolution, death, incompetence or disability and the termination or expiration of this Agreement.

ARTICLE 9. OPERATING STANDARDS AND DUTIES OF FRANCHISE OWNER

9.1 Compliance with System Standards and Confidential Manual.

You understand and acknowledge that every detail of the operation of the Franchised Business is important in order to develop and maintain high and uniform standards of quality, cleanliness, appearance, service, facilities and techniques; to increase the demand for the System; and to protect our reputation and goodwill and that of other *sweetFrog* franchisees. You also acknowledge that the operation of the Franchised Business is your sole responsibility, and that neither we nor our affiliates have any responsibility to obtain customers for you. The System Standards will constitute provisions of this Agreement as if fully set forth herein.

9.2 Authorized Products and Services.

a. You agree that you will not, without our prior written approval, offer at the Location any menu items, beverages, products or services that are not authorized by us for the Franchised Business, as set forth in the System Standards.

b. You have complete discretion in establishing the minimum price you charge for your products. Although we may suggest pricing strategy, you will have the final pricing decision.

c. Notwithstanding the terms of *Section 9.2b.*, we may conduct periodic promotional campaigns during which a specified product or products are promoted at a specified price. During the promotional period, you may not charge your customers more than the specified promotional price, although you may charge less than the promotional price.

d. We may conduct new marketing, research and development, branding and operational program tests, which will generally be conducted with experienced, existing franchisees and may include incentives and other rights that are not available to all franchisees.

e. You hereby consent to third-party vendors, suppliers and distributors sharing with us any and all information, reports, invoices and related documentation covering and otherwise detailing your purchases for the Franchised Business, and to us sharing your contact information with them when we reasonably believe they may offer you a desired benefit.

f. You are required to accept debit and credit cards (including Visa®, MASTERCARD® and AMERICAN EXPRESS®) and Gift/Loyalty Cards from consumers at the Franchised Business. Prior to the opening of your Franchised Business, you are required to acquire, and maintain during the Term, an approved debit, credit and Gift/Loyalty Card processing system ("Card Processing System") to use during the operation of the Franchised Business. Additionally, you must utilize our approved third-party payment card processor, as identified in the System Standards, for processing all Card Processing System transactions.

9.3 Specifications and Standards for Supplies; Approved Suppliers; Rollouts.

a. You must purchase or otherwise acquire certain proprietary or required equipment and supplies utilized in the Franchised Business only from our designated approved distributors or suppliers. If, during the Term, we change designated approved distributors or suppliers for any of the proprietary or required equipment and supplies utilized in the Franchised

Business, you shall change to the new designated approved distributor or supplier within sixty (60) days after written notification of such change from us.

You acknowledge Franchisor and/or its affiliates has the right to receive commissions, volume discounts, purchase discounts, performance payments, bonuses, rebates, marketing and advertising allowances, co-op advertising, administrative fees, enhancements, price discounts, economic benefits and/or other payments ("Payments") based upon the actual purchases of the foods, beverages, and other products by Franchisor, its affiliates, area developers and franchisees from suppliers. Any such Payments made to Franchisor may be retained by Franchisor or distributed to franchisees in such amounts and using such allocation methods as Franchisor deems appropriate, in its sole discretion. All Payments received from a supplier for a designated purpose (such as participation at an annual convention, etc.) will be spent in accordance with the supplier's designated purpose.

b. If you desire to purchase or otherwise acquire any equipment, supplies or inventory items required by the System Standards but not previously approved by us, or from sources not previously approved by us, you must submit to us sufficient specifications, photographs, drawings and other information sufficient to allow us to determine whether such equipment, supplies or inventory items meet our System Standards. We may require that our representatives be allowed to inspect the facilities of the proposed supplier and revoke its approval upon the supplier's failure to meet any of our then-current minimum System Standards. We may also require that samples from the proposed supplier be delivered, at no charge to us, either to us or to our designee for testing. A charge not to exceed the reasonable cost and expense of the inspection and the actual cost and expense of the test must be paid to us either by you or by the proposed supplier. We will notify you within sixty (60) days after your request of our approval or disapproval of the proposed product or supplier, with such determination to be made at our sole discretion. You acknowledge and agree that our approval of any item or supplier of equipment, supplies or inventory not previously approved by us will not, in and of itself, make the supplier of that item an approved supplier for other *sweetFrog* franchise owners in the System. We may, in our sole discretion, at any time and from time to time, re-inspect the facilities and products of any approved supplier and revoke its approval upon the supplier's failure to meet any of our then-current System Standards. If you receive a notice of revocation from us, you must immediately stop selling disapproved products and purchasing from the disapproved supplier.

c. We will provide to you a list of all recommended and required items of equipment, fixtures, supplies, smallwares and interior decor. This list will be included in the System Standards.

d. At any time and from time to time, we may in our sole option engage in new product rollouts to add to or change the menu items offered for sale in the Franchised Business and the ingredients or supplier of ingredients utilized in the preparation of the menu items sold in the Franchised Business ("Rollout"). If we engage in a Rollout, you shall participate in the changes that are the subject of such Rollout, including offering the new menu items, changing the menu items, changing to the new supplier of the ingredients utilized in the preparation of the menu items, and changing to the new ingredients utilized in the preparation of the menu items. If we engage in a Rollout, we will notify you of the details of the Rollout and provide you sixty (60) days from said notification to take the applicable actions required by the Rollout.

9.4 Compliance with Legal Requirements and Good Business Practices.

You must, at your sole expense, operate the Franchised Business in full compliance with all applicable Federal, state and local statutes, laws, ordinances and regulations, including health and safety regulations, food and drug laws, disability laws, labor and employment laws and data privacy laws, as may be amended, supplemented or enacted from time to time. You must pay all costs and expenses incurred by, and in the conduct of, the Franchised Business, including all rent, salaries, taxes (excluding our income taxes), disbursements, license or permit fees, insurance premiums, traveling expenses and any other business expenses when they become due. If you receive any demand, action, suit or proceeding, or the issuance of any order, writ, injunction, award or decree of any court, agency or other governmental instrumentality relating to your Franchised Business, you must immediately notify us, and in no event, later than three (3) days after your receipt. Any such notice must be accompanied by a copy of the demand, complaint, order, writ, injunction, award, decree or other similar document. You must, in all dealings with your employees, customers, suppliers, the public and us adhere to the highest standards of honesty, integrity, fair dealing and ethical conduct. You agree to refrain from any business practice that may be injurious to the System or the goodwill associated with the Proprietary Marks.

9.5 Maintenance of Insurance.

At all times during the Term, you must maintain in full force and effect at least the minimum types and amounts of insurance coverage that we require, under one (1) or more policies of insurance (each of which shall be primary coverage and shall not be contributory or secondary to any other coverage maintained by us), insured under the particular name of the Franchisee and for the particular address of the Franchised Business.

Such insurance policies must be issued by insurers acceptable to us having an A.M. Best's financial strength rating of at minimum "A-VIII," and grant us authority to obtain copies of your certificate of insurance directly from the carrier or your agent/broker. The particular requirements of our minimum insurance coverage will be made available to you throughout your term. Currently, the general liability insurance required by this Agreement must: (i) name MTY Franchising USA, Inc. as the certificate holder; (ii) name MTY Franchising USA, Inc. and Kahala Franchising, L.L.C. and their parents, subsidiaries, affiliates, officers, directors, and employees as additional insureds; (iii) contain a waiver by the insurance carrier of all subrogation rights against us and our affiliates and our affiliates' respective officers, directors and employees for casualty losses; (iv) indicate the address of the Franchised Business being insured; and (v) provide that we will receive a copy, via an endorsement, thirty (30) days' prior notice of cancellation of any such policy. Additional minimum insurance coverage requirements (subject to increase or otherwise change in our sole discretion) are as follows:

TYPE OF COVERAGE	LIMITS/SPECIFICATIONS
General Liability	\$1,000,000 Bodily Injury/Property Damage Per Occurrence / \$2,000,000 Aggregate
Building Improvements and Betterments	100% of Full Replacement Cost – No Coinsurance (minimum of \$100,000)
Business Personal Property	100% of Full Replacement Cost – No

TYPE OF COVERAGE	LIMITS/SPECIFICATIONS
	Coinsurance – Special Form or equivalent (minimum of \$100,000)
Spoilage	\$5,000
Flood, Earthquake and Volcanic Eruption	Subject to Territory Limitations – required if in a designated Flood Zone
Workers' Compensation and Employer's Liability Insurance	As required by law
Employment Practices Liability Insurance with Franchisor Defense coverage	\$1,000,000
Hired and Non-Owned Automobile Liability	\$1,000,000 Combined Single Limit per accident

You need to evaluate if your particular business will require greater coverage or other types of insurance. For example, we strongly recommend that you consult with an insurance broker to discuss whether your particular lease/situation requires and/or should obtain additional common types of insurance (including without limitation, umbrella insurance, and cyber liability/data breach insurance coverage). Such insurance may significantly increase your premiums, but may also save you money in the long run.

You are responsible for maintaining insurance coverage and limits as required by us, at minimum, pursuant to this *Section 9.5*, provided, if your landlord requires additional coverage, higher limits, or any other requirements not required by us, then you are responsible for maintaining such additional items as well. You must always keep the required insurance coverage in force at all times during the operation of the Franchised Business, and you must comply with any changes we make periodically to our insurance requirements. Upon 30 days' notice to you, we may require you to increase and/or otherwise change the minimum coverage of the insurance referred to above, including to reflect identification of special risks, changes in law or standards of liability, higher damage awards or other relevant changes in circumstances.

Subject to *Section 3.1*, before you may open your restaurant, annually thereafter at least ten (10) days prior to renewal of your insurance coverage, and at any other time on our request, you must provide us with certificates of insurance or copies of insurance policies showing that you are in compliance with our insurance requirements, as well as proof that you have paid the premiums you owe for the insurance we require. You will pay your insurance premiums to your insurance broker or to the insurance company issuing the policy. We or our affiliate may, at our option and in addition to our other rights and remedies under this Agreement, obtain such insurance coverage on your behalf, and you must promptly execute any applications or other forms or instruments required to obtain any such insurance and pay to us, on demand, any costs, expenses and premiums (in whole or part) incurred by us. Your obligation to obtain and maintain the insurance described above will not be limited in any way by reason of any insurance maintained by us, nor will your performance of such obligations relieve you of any obligations under *Section 8.2*.

9.6 Management of the Franchised Business.

You are directly responsible for all aspects of operating the Franchised Business, and you agree that you will, at all times, operate the Franchised Business and use your best efforts to enhance your Franchised Business and the System. The Franchised Business must be personally managed and directly operated by either you or another partner, shareholder or member of your business organization, or a manager.

9.7 Inspections by Franchisor.

For the purpose of this *Section 9.7*, you must make available to us or our authorized representatives such financial and other information concerning the Franchised Business, and you must permit us or our authorized representatives to have full and free access to such information at your Franchised Business Location during regular business hours without prior notice. We and our authorized representatives will have the right to communicate freely with your employees, and make extracts from, and copies of, all such information. Our authorized representative may make announced or unannounced inspections of your Franchised Business to ensure compliance with all of the requirements of this Agreement.

9.8 Personal Guaranty; ~~Non-Disclosure and Non-Competition Agreement.~~

If you are an individual and married, your spouse must execute and deliver to us a Guaranty of Franchise Agreement ~~and a Non-Disclosure and Non-Competition Agreement~~ at the same time that you sign the Agreement unless your spouse is also ~~singing~~ signing the Agreement as an individual.

If you are a corporation, limited liability company, or other business entity, each of your shareholders, members, or other owners, whether direct or indirect (and their respective spouses, if married) must execute and deliver to us a Guaranty of Franchise Agreement ~~and a Non-Disclosure and Non-Competition Agreement~~ at the same time that you sign this Agreement.

In the event any person who has not previously signed a Guaranty of Franchise Agreement ~~or a Non-Disclosure and Non-Competition Agreement~~ becomes your spouse or shareholder, member, or other owner, direct or indirect or a spouse of such shareholders, members, or other owner, at any time after the execution of this Agreement, you must cause such person(s) to immediately execute and deliver a Guaranty of Franchise Agreement ~~and a Non-Disclosure and Non-Competition Agreement~~ to us.

Failure to provide a Guaranty of Franchise Agreement ~~or a Non-Disclosure and Non-Competition Agreement~~ to us may, in our sole discretion, be grounds for termination of this Agreement as set forth in *Section 14.2a*.

9.9 Not Applicable.

ARTICLE 10. ADVERTISING AND PROMOTION

10.1 Advertising by Franchisor.

We (or at our election a third-party which may be an affiliate of ours) will administer the Advertising Fund that will include your Advertising Fee and those of other franchise owners in the System. If an affiliate of ours administers the Advertising Fund or places advertising in connection with the System, such affiliate may be paid a fee that will not exceed the fee that would be payable to unrelated third-parties for comparable services. Unless required by applicable law, we will have no obligation to create a trust account, escrow account or other special account for the Advertising Fund, and the monies comprising the Advertising Fund may be placed in our general account. We may also reserve the Advertising Fee for use in a subsequent year.

We will direct all advertising and promotional programs. We will have sole discretion over all creative concepts, materials and media used in such programs and the placement and allocation of such programs. The Advertising Fund will be used for marketing, advertising, production and media expenses to promote the *sweetFrog* trade name, System, products and services. We are entitled to deduct, free of charge, the following from the Advertising Fund: reimbursement of expenses, overhead, and employee salaries for services provided; and rent for office space provided to the Advertising Fund. We are not required to use any specific amounts from the Advertising Fund in your market. However, we in our sole discretion, may use some amounts contributed by you to any Advertising Fund, if any (see *Section 5.3*), in the same geographic area in which your Franchised Business is located.

10.2 Advertising by Franchisee.

In addition to your Advertising Fee, if applicable, and unless your Franchised Business is located in an enclosed shopping mall or other enclosed structure identified in *Section 1.1*, you agree to pay for a regular (white pages) and classified (yellow pages) telephone directory advertisement in the main directory distributed in the area where your Franchised Business is located, in such directory categories as we specify, utilizing forms of listing and classified directory advertisements approved by us. We also recommend that, in addition to your Advertising Fee, you spend at least two percent (2%) of your monthly Gross Sales on local advertising.

Your own local marketing and advertising plan should be developed to maximize your particular customer base. You should not rely upon a marketing program or plan by us as the sole means of obtaining customers. All marketing and advertising materials must be reviewed by the marketing department for look and feel. The marketing department's review is not for determining compliance with federal, state and local laws.

All advertising by you in any medium must be conducted in a professional manner and must conform to the System Standards. We may make available to you, from time to time, advertising, promotional plans and materials for purchase.

Under no circumstances may you use, without limitation, the name, image, or voice of a celebrity, public figure, character or other person in connection with the Proprietary Marks or the Franchised Business without our prior written consent. We retain the sole and exclusive right to

use, without limitation, the name, services or image of any celebrity, public figure, character or other person in advertising, endorsing or recommending the System.

ARTICLE 11. ACCOUNTING PROCEDURES AND REPORTS

11.1 Maintenance of Records.

You shall keep full, complete, and accurate books and accounts in accordance with generally accepted accounting principles, and in the form and manner indicated below or as from time to time further required by us. You agree to submit reports and data to us electronically if we advise you to do so. You agree:

- a. to submit to us electronically the weekly Gross Sales as set forth in *Section 5.6*;
- b. to submit to us, on or before the thirtieth (30th) day of each month, commencing with the opening of the Franchised Business, in a format and method approved by us (including through a third-party vendor that franchisee may be required to pay for), a profit and loss statement of the Franchised Business for the preceding calendar month prepared in accordance with generally accepted accounting principles;
- c. to submit to us, within ninety (90) days after the end of each calendar year, commencing with the opening of the Franchised Business, in a format approved by us, a profit and loss statement and balance sheet (including a statement of retained earnings or partnership account) for the preceding calendar year;
- d. to submit to us, at the times required, such other periodic forms, reports and information as may from time to time be required by us;
- e. to preserve, in the English language and for the time periods set forth below, all accounting records and supporting documents related to the Franchised Business (individually and collectively, "Records"), including:
 1. daily cash reports;
 2. cash receipts journal and general ledger;
 3. cash disbursements journal and weekly payroll register;
 4. monthly bank statements, daily deposit slips and canceled checks;
 5. all tax returns, including your personal returns and those of your officers, shareholders, partners and members;
 6. suppliers invoices (paid and unpaid);
 7. dated cash register tapes (detailed and summary);
 8. semi-annual balance sheets and monthly profit and loss statements;
 9. daily production, throwaway and finishing records and weekly inventories;
 10. records of promotion and coupon redemptions;

11. records of all outside sales; and
12. such other records as we may from time to time request.

f. to record all sales on cash registers approved by us, as specified in the Confidential Manual;

g. to file all of your federal and state tax returns on a timely basis and to provide copies of them to us. We may, where applicable, require that tax returns from all of your shareholders, members or partners be provided to us, if you are other than an individual;

h. During the Term, you shall preserve the Records for at least the current fiscal year and for the three (3) immediately preceding fiscal years. For three (3) years after the date of any transfer of an interest in this Agreement, the transferor of such interest will preserve the Records for its last three (3) fiscal years of operation under this Agreement. For three (3) years after the expiration of the Term (or after any earlier termination), you shall preserve the Records for the last three (3) fiscal years of operation of the Franchised Business; and

i. In connection with our efforts to attract additional franchise owners to the System, we will have the right to use (without identifying you, except as required or allowed by law) any financial statements, sales reports, profit and loss statements or balance sheets provided by you and, in connection therewith, you authorize us to disclose any information contained on such financial reports as may be required by any federal or state registration or disclosure law.

11.2 Audit by Franchisor.

We will have the right, at any time during business hours, and with or without prior notice to you, to inspect and audit, or cause to be inspected and audited, the Records and cash control devices of the Franchised Business, and your corporate, partnership or limited liability company books and records (if you are a corporation, partnership, limited liability company, or other entity). You agree that we may access any computers utilized by you for such purposes.

You will fully cooperate with our authorized representatives and independent accountants hired by us to conduct any such inspection or audit. In the event any such inspection or audit discloses an understatement of your Gross Sales for any period in question, you will pay to us, immediately after receipt of the inspection or audit report, any additional Royalty Fee or Advertising Fee due as a result of any such understatement, plus interest at the Default Rate from the date originally due until the date such understatement is paid in full.

In addition, in the event such inspection or audit is made necessary by your failure to timely furnish Records, or if an understatement of the Royalty Fee or Advertising Fee for the period of any audit (which period shall not be for less than one (1) month) is determined by any such audit or inspection to be five percent (5%) or greater, you must reimburse us all amounts incurred in connection with such audit or inspection including our employee costs and expenses, any independent accountants' and attorneys' fees, transportation, room, and meal expenses.

The remedies in this *Section 11.2* will be in addition to all our other remedies and rights under this Agreement or under applicable law.

ARTICLE 12. TRANSFER

Sections 12.1 through 12.4 apply to all transfers, except transfers by us, which are described in Section 12.5.

12.1 Prior Consent of Franchisor.

a. As used in this Agreement, “Transfer” means any voluntary, involuntary (including by operation of law), direct or indirect assignment, sale, gift or other transfer by you, including:

1. “Full Transfer,” which is any act or circumstance, except those set forth in Section 12.1.a.2., by which fifty percent (50%) or more of the ownership or control is shifted from any individual or corporation, partnership or other business entity (individually and collectively, “Entity”) to another, including:

(i) Transfer of this Agreement or the Franchised Business, or any right or interest granted by this Agreement;

(ii) Transfer of an interest in you, if you are an Entity;

(iii) Merger, consolidation or issuance of additional ownership interests or redemption of ownership interests in you, if you are an Entity; or

(iv) Transfer of an interest in any other Entity holding an interest in this Agreement or you, if you are an Entity.

2. “Affiliate Transfer,” which includes:

(i) Transfer in a separation or divorce, regardless of how much of the ownership or control is shifted from any individual or Entity to another;

(ii) Transfer of this Agreement or the Franchised Business, or any right or interest granted by this Agreement from your name as an individual(s) to your Entity name in which you are the sole owner(s) of the Entity;

(iii) Transfer of this Agreement or the Franchised Business, or any right or interest granted by this Agreement, from your Entity name in which you are the sole owner(s) to your name as an individual(s);

(iv) Transfer of this Agreement or the Franchised Business, or any right or interest granted by this Agreement from one Entity name to another Entity name in which the owners of the entities are the same;

(v) Removing an owner from the Franchisee (unless the person has a fifty percent (50%) or more ownership interest);

(vi) Adding an owner to the Franchisee (unless the person has a fifty percent (50%) or more ownership interest); or

(vii) Transfer by which less than fifty percent (50%) of the ownership or control is shifted from any individual or entity to another for any act or circumstance listed in *Section 12.1.a.1*.

b. We are entering into this Agreement based upon our knowledge of and faith in your ability. Therefore, the Franchised Business and all the rights granted by this Agreement are personal to you and you may not Transfer without our prior written consent. Any attempted Transfer without our prior written consent will be null and void, and will give us the right to terminate this Agreement and your rights under it, in addition to any remedies which we may have for the breach of this covenant by reason of an attempted Transfer.

c. We shall not unreasonably withhold or delay our consent to a Transfer, so long as it is shown to our satisfaction that the potential transferee ("Potential Transferee") can perform a franchisee's obligations under the then-current form of franchise agreement and all other agreements, legal instruments and documents required of new franchisees.

12.2 Advance Notice of Proposed Terms and Right of First Refusal.

a. If you, or any of your shareholders, members or partners, have received and desire to accept a signed bona fide written offer from a third-party to Transfer, you shall notify us and provide us with a complete copy of the offer (letter of intent) which must include the name, address and telephone number for every Potential Transferee. You must also include information as to the identity of all who will own an interest in this Agreement or in the Franchised Business after the completion of the Transfer, their respective interests, and the proposed terms and conditions of sale and payment.

b. We shall have the right and option, exercisable within thirty (30) days after the date we receive a copy of the offer, to purchase the interest proposed to be transferred, at the price and upon the same terms and conditions specified in the notice.

c. If we do not exercise our option, and the terms of the unaccepted offer are altered, you must, in each such instance, notify us of the changed offer; and we will again have thirty (30) days to exercise our right to purchase on the altered terms. If we do not exercise our option, then the Transfer may take place on the terms and price set forth in the notice; provided: (i) we give our written consent; (ii) the Transfer takes place no later than six (6) months from receipt of our written refusal to exercise our option to purchase; and (iii) all the conditions set forth in *Section 12.3* are satisfied.

12.3 Requirement for Consent to Transfer.

If a Transfer is proposed and we do not exercise our right of first refusal pursuant to *Section 12.2*, then we will consent to the Transfer, provided that:

a. All your obligations under this Agreement are fully paid and satisfied, including the Royalty Fee and Advertising Fee; you are not in default under any provisions of this Agreement or any other agreement, legal instrument or document with us or any of our affiliates; and you enter into written agreements with us, including (except where prohibited by law) a general release by you of all claims against us;

b. Potential Transferee provides to us a completed application and financial documents, is financially acceptable, is not associated with any of our competitors, is of good moral character and reputation, and meets our criteria, which includes: work experience and aptitude; ability to devote time and best efforts to the Franchised Business; equity interest in the Franchised Business; ability to speak and read English sufficient in our opinion to communicate with employees, customers and suppliers and to satisfactorily complete our training; no conflicting interests; and other criteria and conditions that we apply to new franchisees;

c. Potential Transferee provides us with copies of all governing documents of Potential Transferee (e.g., certificate of incorporation or organization, by-laws, stock certificates, operating agreement, membership certificates (if any)) which must be reasonably satisfactory to us in our sole discretion;

d. You provide to us a copy of the purchase and sale agreement, if a Full Transfer, or other documentation evidencing the Transfer, if an Affiliate Transfer, and following our analysis of the terms and conditions of the proposed Transfer, we, in our sole discretion, conclude that such terms and conditions will not interfere with the financial feasibility of the future operation of the Franchised Business;

e. Potential Transferee enters into all agreements, legal instruments and other documents, whether our then-current agreements, legal instruments and documents or a transfer of this Agreement and related legal instruments and documents, as determined by us (individually and collectively, "Transfer Documents"). The terms of the Transfer Documents may vary materially from the current agreements used by us, including the payment of a higher Royalty Fee and Advertising Fee;

f. Not applicable;

g. Potential Transferee pays to us the Transfer Franchise Fee, if a Full Transfer; or Potential Transferee pays us the Document Administration Fee, if an Affiliate Transfer; Franchisee shall be liable to the Franchisor for the transfer franchise fee or Document Administration Fee in the event the Potential Transferee fails to pay such fee that is owing in full;

h. Not applicable;

i. Potential Transferee successfully completes the training program required by the Transfer Documents, if a Full Transfer;

j. Potential Transferee agrees to complete all remodeling and improvements as required by us, and must upgrade the POS System to the then-current required POS System, within the time period specified by us, if a Full Transfer;

k. You and Potential Transferee agree not to assert any security interest, lien, right or claim now or in the future, in the Franchised Business. Any security interest, lien, claim or right asserted with respect to any personal property at the Location must not include any after-acquired property and must be subject, junior and subordinate to any security interest, lien, right or claim now or in the future, asserted by us, our successors or assigns; and

I. You agree to complete and sign a letter of agency, letter of authorization, or equivalent and provide it to Potential Transferee so that Potential Transferee may keep the existing telephone number when the store is transferred to Potential Transferee.

12.4 Death or Incapacity of Individual Franchisee; Change in Entity.

a. Death or incapacity of Franchisee when Franchisee is an individual:

(i) In the event of your death or incapacity, your legal representative may, for a period of ninety (90) days from the date of death or incapacitation, continue to operate the Franchised Business, provided that the operation is conducted in accordance with this Agreement and any other agreements with us.

(ii) If your representative desires to continue the operation of the Franchised Business beyond the ninety (90) day period, then, prior to the expiration of this period, your legal representative must apply in writing for the right to transfer the Franchised Business to the person or persons (whether spouse, heir, devisee, purchaser, or any other person), as the legal representative may specify. The application for transfer will be treated in the same manner as any other proposed Transfer under this Agreement.

(iii) If your legal representative does not comply with the provisions of the preceding paragraph, or does not propose a Potential Transferee acceptable to us under the standards set forth in this Agreement, all rights licensed to you under this Agreement will terminate immediately and automatically revert to us. We shall have the right and option, in our sole discretion, exercisable upon such termination, to purchase all removable furniture, fixtures, signs, equipment and other chattels, but not leasehold improvements, at a price to be agreed upon by the parties or, if no agreement as to price is reached by the parties, at such price as may be determined by a qualified appraiser, approved by both parties, such approval not to be unreasonably withheld. We shall give notice of our intent to exercise the option no later than twenty-one (21) days prior to termination.

b. Death or incapacity of any shareholder, partner, or member in Franchisee when Franchisee is a business entity:

(i) In the event of the death or incapacity of any of your shareholders, partners, or members, the surviving shareholders, partners, or members may, for a period of ninety (90) days from the date of death or incapacitation, continue to operate the Franchised Business, provided that the operation is conducted in accordance with this Agreement and any other agreements with us.

(ii) If your shareholders, partners or members desire to continue the operation of the Franchised Business beyond the ninety (90) day period, then, prior to the expiration of this period, your shareholders, partners, or members must apply jointly with all surviving shareholders, partners or members in writing, for the right to transfer the Franchised Business (or the interest of the deceased or incapacitated shareholder, partner, or member in the Franchised Business), to the person or business entity as the surviving shareholders, partners, or members may specify. The application for transfer will be treated in the same manner as any other proposed Transfer under this Agreement.

(iii) If all surviving shareholders, partners or members do not comply with the provisions of the preceding paragraph, or do not propose a Potential Transferee acceptable to us under the standards set forth in this Agreement, all rights licensed to you under this Agreement will terminate immediately and automatically revert to us. We shall have the right and option, in our sole discretion, exercisable upon such termination, to purchase all removable furniture, fixtures, signs, equipment and other chattels, but not leasehold improvements, at a price to be agreed upon by the parties or, if no agreement as to price is reached by the parties, at such price as may be determined by a qualified appraiser, approved by both parties, such approval not to be unreasonably withheld. We shall give notice of our intent to exercise the option no later than twenty-one (21) days prior to termination.

12.5 Assignment by Franchisor.

You agree and affirm that we may, without your prior consent, sell our business, our assets, or our System, in whole or in part, to a third-party; may issue a public offering of our securities; may engage in private placement of some or all of our securities; may merge with or acquire other corporations, or be acquired by another corporation; and may undertake a refinancing, recapitalization, leveraged buyout or other economic or financial restructuring. You further agree and affirm that we have the right, now and in the future, without your prior consent, to purchase, merge, acquire or affiliate with an existing competitive or non-competitive franchise network, chain or any other business regardless of the location of such franchise network, chain or business, which you acknowledge may be proximate to your Franchised Business, and to operate, franchise or license such franchise networks, chains or businesses operating under the Proprietary Marks or any other marks following our purchase, merger, acquisition or affiliation. With regard to any of the above sales, assignments and dispositions, you expressly and specifically waive any claims, demands or damages against us arising from or related to the loss of your rights to use the System as authorized under this Agreement.

This Agreement will inure to the benefit of our successors and assigns. In conjunction with one (1) or more of the transactions contemplated above, or as otherwise determined by us, we have the right to assign our rights and obligations under this Agreement to any person or entity, without your prior consent. Upon such assignment, we will be relieved of all obligations or liabilities then existing or thereafter able to be asserted under this Agreement.

12.6 Restrictions on Security Interests and Subfranchising.

Except as otherwise set forth in this *Section 12.6*, you shall not have any rights to pledge, encumber, hypothecate or otherwise give any third-party a security interest in this Agreement in any manner whatsoever, nor subfranchise or otherwise transfer, or attempt to subfranchise or transfer the Franchised Business, in whole or in part, so long as it is operated as the Franchised Business, without our express prior written permission, which permission may be withheld for any reason whatsoever in our sole discretion. Notwithstanding anything contained herein to the contrary, you shall have the right to pledge your accounts receivable, net of royalties and rent, without our prior written consent for the sole purpose of obtaining financing for the operation of the Franchised Business, provided you are in full compliance with this Agreement and any other agreement, arrangement or understanding with us.

ARTICLE 13. RENEWAL

Subject to the terms and conditions described below, you will have the right to renew your license to operate the Franchised Business for an additional term of five (5) years. In the event you desire to renew your license, you must give us notice to that effect at least one hundred twenty (120) days prior to the expiration date of the Term. In addition to giving the notice of renewal referred to above in a timely manner, in order to have the right to renew the license to operate the Franchised Business for an additional term, you must also meet each of the following requirements:

a. You must not then be in default under this Agreement or any other agreement, legal instrument or document with us or any of our affiliates, and no event shall have occurred that, with the giving of notice, the passage of time, or both, would constitute a default under this Agreement, including all financial obligations to us;

b. You must be in complete compliance with the terms of this Agreement, including all financial obligations to us, and the then-current Confidential Manual;

c. You must not have received more than three (3) notices of default or breach of this Agreement during its term, nor more than two (2) notices of default or breach during the five (5) years immediately preceding the effective date of the proposed renewal;

d. You must have the existing right to maintain possession of the Location or you must have secured and developed a suitable substitute location that meets our then-current minimum site requirements (such confirmation will be provided to you by us in writing);

e. You must sign a general release provided by us;

f. You and we must execute all agreements, legal instruments and other documents (individually and collectively, "Renewal Documents") then used by us in the renewal of franchises and then being required of new franchise owners in connection with the System. The Renewal Documents will supersede this Agreement, but will not terminate your liability to perform any obligations which you have not yet performed under this Agreement, or which survive the termination of this Agreement; nor will the Renewal Documents terminate or supersede any Guaranty of Franchise Agreement, Confidentiality Agreement, or Non-Disclosure and Non-Competition Agreement executed pursuant to this Agreement. The terms of the Renewal Documents may vary materially from the current agreements used by us, including the payment of a higher Royalty Fee and Advertising Fee;

g. The equipment, fixtures and signage used in connection with the operation of the Franchised Business must either meet our then-existing System specifications and standards, or you must agree, within a timeframe required by us, to replace or refurbish such items, and otherwise modify the methods of operation of the Franchised Business at your cost and expense, in order to comply with our System specifications and standards then applicable to new franchise owners;

h. You agree to complete all remodeling and improvements as required by us, and must upgrade the POS System to the then-current required POS System, within the time period specified by us; and

i. You shall have paid to us the Renewal Franchise Fee as required under *Section 5.12*.

If you do not meet any of the requirements for renewal, we will give you a notice to that effect which will specify the requirements not met. The notice will be given to you within sixty (60) days after you deliver to us your notice of intent to renew.

ARTICLE 14. DEFAULT AND TERMINATION

14.1 Default; Termination.

a. You will be in default under this Agreement:

(i) If: (a) you become insolvent or make an assignment for the benefit of creditors; (b) you file a petition in bankruptcy, or if such a petition is filed against and consented to by you, and such petition is not dismissed within thirty (30) days from the filing date of such petition; (c) you are adjudicated bankrupt; (d) a bill in equity or other proceeding for the appointment of your receiver or other custodian for your business or assets is filed and is consented to by you or is not dismissed within thirty (30) days from the filing date of such bill or other proceeding; (e) a receiver or other custodian is appointed; (f) proceedings for composition with creditors under any state or federal law is instituted by or against you; (g) the real or personal property of the Franchised Business is sold at levy thereupon by any sheriff, marshal or constable, or sold by a secured party under any state's Commercial Code;

(ii) If you fail to pay, perform, observe or comply with any of your duties and obligations under this Agreement or the Confidential Manual, including failure to provide a fully-executed copy of the lease to us when due and failure to pay when due, any sum due to us under this Agreement (including the Royalty Fee and Advertising Fee) or to any Advertising Fund (inclusive of any Association); or if you breach any of your obligations under any lease, sublease, mortgage, equipment agreement, promissory note, vendor account, conditional sales contract or other contract arising from, or in connection with, the Franchised Business, to which you are a party or by which you are bound, whether or not we are a party thereto;

(iii) If your lease or sublease for the Location of the Franchised Business is either: (a) in default and you fail to cure such default as provided in the lease or sublease; (b) is terminated for reason of default by you; or (c) the Location is lost as a result of your failure to comply with the lease or sublease;

(iv) If you fail, within thirty (30) days of the entry of a final judgment against you in an amount exceeding Two Thousand Dollars (\$2,000), to discharge, vacate or reverse the judgment or to stay its execution pending appeal, or to discharge any judgment which is not vacated or reversed within thirty (30) days after expiration of the stay of execution;

(v) If we determine that a serious health or safety problem exists at the Franchised Business, in which case, we may require you to immediately correct the problem or cease operating until the problem is corrected;

(vi) If you, or any owner, co-owner or principal of the Franchised Business, is convicted of a felony, a crime involving moral turpitude, or any other crime or offense that is

reasonably likely to adversely affect the System, the goodwill associated therewith, or our interest therein;

(vii) Except for any reason provided in *Section 5.2*, if you abandon the Franchised Business, which abandonment shall conclusively be deemed established if the Franchised Business is closed for more than three (3) consecutive days;

(viii) Except for any reason provided in *Section 5.2*, if you close or relocate the Franchised Business, without our express advance written consent;

(ix) If you fail to maintain an independent contractor relationship with us;

(x) If you either negligently or knowingly inaccurately report, or fail to report, any information in your franchise application;

(xi) If you or any owner, co-owner or principal of the Franchised Business commits an act, or permits an act to be committed, that violates any federal, state or local law that adversely impacts the Franchised Business;

(xii) If you fail to participate in any Rollout detailed in *Section 9.3*;

(xiii) If you violate any of the provisions of *Sections 2.3, 3.2, 9.2, 9.3 or 9.4* including the requirement that you: (a) sell or offer for sale only those products and services authorized by us; (b) purchase such authorized products and services only from suppliers or service providers who are approved in writing by us; and (c) utilize or switch to any of our designated approved suppliers, including a supplier who has entered into a national or regional master supplier agreement with us;

(xiv) If you transfer or attempt to transfer any rights or obligations under this Agreement or any other property or assets to any third-party in violation of the provisions of *Article 12*;

(xv) If you or any of your owners, officers, directors, managers, members, or partners (as applicable): (a) become subject to U.S. Executive Order 13224 or are involved in any activity that violates the U.S. Foreign Corrupt Practices Act or any other anti-corruption, bribery or any other laws, orders or governmental notices affecting your ability to conduct business in or with the United States, as may be amended and whether in effect as of the Effective Date or at any time during the Term, (b) are identified on the U.S. Department of the Treasury's Office of Foreign Assets Control Specialty Designated National and Blocked Persons list, or (c) receive any funding from any country that is subject to an embargo by the United States, any foreign government or government official, political party; or

(xvi) If you intentionally made any false representations and warranties under *Section 17.1*.

b. Cross-default: A default by you under this Agreement will be deemed a default of all agreements between: (i) you and your principals in his or her individual capacity or any other entity in which your principals are owners, members, managers, shareholders or partners (individually and collectively, "Franchisee Entity"); and (ii) us or any of our affiliates or predecessors (individually and collectively, "Franchisor Entity"). A Franchisee Entity's default of

any other agreement, legal instrument or other document between the Franchisee Entity and a Franchisor Entity will be deemed a default under this Agreement. A default by any guarantor of your obligations under this Agreement or any agreement, legal instrument or document between a Franchisee Entity and a Franchisor Entity will be deemed a default of this Agreement.

c. Termination: If you fail to cure any default to our satisfaction, within the applicable period following notice from us, if applicable, or otherwise breach this Agreement, we may, in addition to all other remedies at law or in equity or as otherwise set forth in this Agreement, immediately terminate this Agreement. This termination will be effective immediately upon the giving of notice pursuant to *Article 15*.

d. Cross-termination: If this Agreement is terminated as a result of your default of this Agreement or any other agreement related to the Franchised Business, we may, at our option, elect to terminate any or all other agreements, legal instruments or documents between a Franchisee Entity and a Franchisor Entity. If any agreement, legal instrument or document between a Franchisee Entity and a Franchisor Entity is terminated as a result of a default by the Franchisee Entity, we may, at our sole discretion, elect to terminate this Agreement. It is agreed that an incurable or uncured default under this Agreement or any other agreement, legal instrument or document between a Franchisee Entity and a Franchisor Entity will be grounds for termination of this Agreement or any other agreement, legal instrument or document between a Franchisee Entity and a Franchisor Entity, without additional notice or opportunity to cure.

14.2 Opportunity to Cure.

a. Fourteen-Day Cure Period - Except as otherwise provided in this *Section 14.2*, you will have the right to cure your default under this Agreement within fourteen (14) days after notice of default is given by us pursuant to *Article 15*. Notwithstanding the foregoing, the following lesser periods will apply under the circumstances described:

b. Seven-Day Cure Period - A seven (7) day cure period will apply if you fail, refuse, or neglect to pay when due, any monies owing to us (including the Royalty Fee and Advertising Fee), or otherwise to any Advertising Fund (inclusive of any Association), or if you fail to maintain the insurance coverage set forth in this Agreement;

c. 48-Hour Cure Period – A forty-eight (48) hour cure period will apply (1) if you are in default of *Section 3.4* or (2) if you fail to participate in any limited time product offering, value offering, contest, promotion or charity event. You must initiate your participation in such offering, contest, promotion or event within forty-eight (48) hours and fully participate in such offering, contest, promotion or event as soon as reasonably possible, in our sole discretion, thereafter;

d. 24-Hour Cure Period - A twenty-four (24) hour cure period will apply to your violation of any law, regulation, order or our standards relating to health, sanitation or safety; or, except as provided in *Section 5.2*, if you cease to operate the Franchised Business for a period of forty-eight (48) hours without our prior written consent. In addition, a twenty-four (24) hour cure period will apply if you post on any Site or direct others to any site or page, post, blog or other social media site where there are posted any defamatory or offensive comments about: other franchisees; the *sweetFrog* brand; other brands franchised by us or one of our affiliates; your or other franchisees' customers; any of our, your or franchisees' vendors; us or any of our affiliates; or any of our, your or franchisees' competitors;

e. Immediate Cure Period (less than 24 hours) – An immediate cure period (less than twenty-four (24) hours) will apply if you post any content to a Site in which the content includes any inappropriate public displays of affection, our or others' confidential information or materials, violations of health or safety standards, foul or obscene language, or any images of or information about any persons from whom you did not obtain prior written consent;

f. No Cure Period - No cure period will be available: (1) if you are in default of *Sections 3.1, 7.2, 9.4, 14.1a.(i), 14.1a.(iii), 14.1a.(vi), 14.1a.(vii), 14.1a.(viii), 14.1a.(xiv), 14.1a.(xv), or 14.6*; (2) if you intentionally underreport weekly Gross Sales, falsify financial data, fail to promptly provide upon our request financial data and records specified in this Agreement, or otherwise commit an act of fraud with respect to your rights or obligations under this Agreement; (3) if you repeatedly fail to comply with the provisions of this Agreement, whether or not subsequently cured; (4) if you, having twice previously cured a default of this Agreement, commit the default again; (5) if you made any false representations and warranties under *Sections 17.1f., 17.1g., 17.1m. or 17.1n.*; or (6) if you engage in trademark misuse or otherwise materially misuse or make an unauthorized use of any of the components of the System or commit any other act which does, or can reasonably be expected to, materially impair the goodwill or reputation associated with any aspect of the System;

g. Statutory Cure Period - If a statute in the state or municipality in which the Franchised Business is located requires application of that state or municipal law, and that statute requires a cure period for the applicable default which is longer than any cure period specified in this *Article 14*, the statutory cure period will apply.

14.3 Our Right to Take Over Management.

We have the right (but not the obligation), under the circumstances described below, to enter the Franchised Business and assume the Franchised Business' management for any period of time we feel is appropriate. If we assume the Franchised Business' management, you must pay us, in addition to the Royalty Fee and Advertising Fee, six percent (6%) of the Gross Sales, plus our direct out-of-pocket cost and expenses, for the period of time we assume the Franchised Business' management. If we assume the Franchised Business' management, you acknowledge that our duty is limited to using our reasonable efforts, and we will not be liable to you or your owners for any debts, losses or obligations the Franchised Business incurs, or to any of your creditors for any supplies or services the Franchised Business purchases. We may assume the Franchised Business' management if you abandon the Franchised Business or if you fail to comply with any provision of this Agreement and did not cure the failure within the time period we specify in our notice to you. You agree to complete and sign a letter of agency, letter of authorization, or equivalent and provide it to us upon our request if we assume the Franchised Business' management so that we may keep the existing telephone, facsimile, alarm, and credit card machine numbers (as applicable) in operation under our phone service provider. You also agree to keep the phone, water, gas, electric service (as applicable) turned on and active for one (1) week after we assume the Franchised Business's management to allow us to switch the services over to us or our affiliate. Our exercise of our management rights under this *Section 14.3* will not affect our right to terminate this Agreement.

14.4 Remedies.

a. Interest, Costs and Damages - If you fail to remit when due any payments required under this Agreement, you agree to pay, in addition to the unpaid amounts, all of our

collection costs and expenses, expert fees, reasonable attorneys' fees, and costs and expenses, including all fees, costs and expenses of court, including all appeals, with interest on the unpaid amounts at the Default Rate or the highest permissible rate. If you fail to cure a default, following notice, within the applicable time period set forth in *Section 14.2*, or if this Agreement is terminated as a result of your default, you shall pay to us all damages of any kind and nature whatsoever and all collection costs and expenses, expert fees, reasonable attorneys' fees, and costs and expenses, including all fees, costs and expenses of court, including all appeals, together with interest at the Default Rate or the highest permissible rate. If you fail to report Gross Sales in accordance with *Sections 5.2* and *5.6*, we may estimate your Royalty Fee and Advertising Fee based on prior reports, and may sue for and obtain judgment for such estimates unless you prove, prior to the entry of any default order or judgment, that your Royalty Fee and Advertising Fee are different than the estimates.

b. Waiver of Punitive Damages - Both we and you waive, to the full extent permitted by law, any right they otherwise may have had to claim, pursue, demand or receive any exemplary or punitive damages arising out of or related in any way to this Agreement and its addenda, amendments, appendices, exhibits and attachments.

c. If you breach any of the terms of this Agreement, including if you are in default of this Agreement, we may enforce our rights by injunction, specific performance, or any other remedy available under this Agreement, at law or in equity, including termination. These remedies are cumulative and not exclusive and we may use all remedies available. In addition, we may elect to terminate this Agreement and all your rights under it as set forth in *Section 14.5*.

d. If you breach any of the terms of this Agreement, including if you are in default of this Agreement, we have the right to have a receiver appointed to take possession, manage and control the assets of the Franchised Business, collect the profits, and pay the net income for the operation of the Franchised Business as ordered by a court of competent jurisdiction. The right to appoint a receiver will be available regardless of whether waste or danger of loss or destruction of the assets exists.

14.5 Effect of Termination or Expiration.

Upon termination or expiration of this Agreement, we can advise all suppliers of *sweetFrog* proprietary food items and other supplies bearing any of the Proprietary Marks or service marks to cease delivering the items and products to you.

Upon your abandonment of the Franchised Business (whether voluntary or involuntary), any termination of this Agreement (whether pursuant to *Sections 14.1, 14.2, 14.4*, or otherwise), or upon expiration of the Term, you must immediately cease to hold yourself out to the public as a franchise owner of the System, and you must comply with the following:

a. Immediately pay to us or any affiliate of ours all sums owing from you to us or such affiliate, including the Royalty Fee and Advertising Fee, for any period prior to the date of termination, the applicable Early Termination Damages (as defined in *Section 14.9* below), and all amounts owed for services, supplies or other items purchased by you from us or any affiliate of ours, or that were financed by us or any affiliate of ours, or which we or any affiliate of ours loaned to you, together with any interest or late fees accrued thereon, together with all other

sums due us under this Agreement, and all damages of any kind or nature whatsoever that may be allowed by law;

b. Immediately cease to use, in any manner whatsoever, including in all advertising, the Proprietary Marks, any Trade Secrets, any Confidential Information, any benefits of the System or any part thereof, any methods associated with the System, any forms, recipes, Confidential Manual, slogans, signs, sign posts, marks, symbols, or devices used in connection with the operation of the Franchised Business; and you must deliver or destroy all of the above-mentioned materials, including any materials containing or referencing any of the foregoing, to us as directed by us. If we do not recover any such items, such items shall be valued at their then-current replacement cost, for purposes of determining the damages owing by you to us for failure to return such items, if we pursue a damage claim as a result thereof;

c. Immediately discontinue all advertising as a franchisee of the System, and thereafter refrain from any advertising that would indicate that you are or ever were a franchisee or licensee of ours, or otherwise were affiliated with us or the System;

d. Immediately take such steps as may be necessary or appropriate to:

(i) delete your listing in all telephone directories, if applicable, and terminate any other listings that indicate that you are or were a franchisee or licensee of ours, or otherwise were affiliated with us or the System; and

(ii) transfer to our designee or us all telephone numbers used by you in connection with the Franchised Business. You acknowledge that between you and us, we have the sole right and interest in all telephone numbers and directory listings associated with any Proprietary Marks, and you authorize us and appoint us and any officer or agent of ours, as your attorney-in-fact, to direct the telephone company and all listings agencies to accept such direction, or this Agreement, as conclusive evidence of our exclusive rights in such telephone numbers and directory listings and our authority to direct their transfer;

e. Immediately take such action as may be required to cancel all fictitious or assumed names, amend any entity name, or dissolve any entity that contains any Proprietary Mark, in whole or in part, regardless of whether the entity name was authorized by us, and amend or cancel any and all equivalent registrations relating to your use of any Proprietary Mark. You acknowledge that between you and us, we have the sole right and interest in all such fictitious or assumed names, entity name, and equivalent registrations, and you authorize us and appoint us and any officer or agent of ours as your attorney-in-fact, to effect the termination or cancellation of such fictitious or assumed names or equivalent registrations should you fail or refuse to do so, and the appropriate federal, state, and local agencies may accept your direction or this Agreement as conclusive evidence of our exclusive rights in such fictitious or assumed names or equivalent registrations, and our authority to direct their termination or cancellation;

f. Comply with the confidentiality requirements and the covenant against competition in this Agreement for the specified period. You acknowledge that you, or (if an entity) your authorized representative, has carefully reviewed the confidentiality requirements and the covenant against competition in this Agreement; and that you have agreed to be bound by all the requirements and covenants; and

g. Maintain at a place made known to us all books, records and reports required under this Agreement for a period of not less than three (3) years after the date of termination or expiration of this Agreement, to allow us to make a final inspection of your books and records for the purpose of verifying that all amounts owing have been paid.

If you fail to do any of the foregoing, we may pursue any remedy available at law or in equity against: (i) you; (ii) any or all guarantors of your obligations under this Agreement; and (iii) you and any or all guarantors of your obligations under this Agreement.

h. Right of First Refusal. We have the right, but not the obligation, to purchase from you any assets or property (but not leasehold improvements) used in the operation of the Franchised Business for an amount equal to the Value (as defined below), as of the expiration date or termination date, as applicable ("RoFR"). If we are required, by law, regulation or court order, to purchase the equipment and other tangible assets used in connection with the Franchised Business, the purchase price will be equal to the Value. For purposes of this Agreement, the term "Value" means, subject to applicable law, an amount equal to your cost for such assets, less depreciation and amortization using a two hundred percent (200%) declining balance method over a five (5) year period. If all, or any portion of, your assets that are being purchased by us or our authorized representative are subject to lien(s), we or our authorized representative may pay, on your behalf, the lienholder(s) that portion of the purchase price for your assets (which may be the entire purchase price) that is necessary to obtain the release of those assets from the lien(s), in lieu of paying you those funds. Further, we may offset any amounts payable to you pursuant to this Section 14.5.h, or otherwise pursuant to this Agreement, against any unpaid amounts payable to us or our affiliates pursuant to this Agreement or any agreement executed in connection with this Agreement.

14.6 Covenant Not to Compete; Conflicting Interests.

a. During the Term and for a period of two (2) years after your abandonment of the Franchised Business, expiration of this Agreement, or termination of this Agreement (whether voluntary or involuntary), you shall not engage in any Competing Business (as defined in Section 14.6c.) with any *sweetFrog* restaurant, nor shall you have any Conflicting Interest (as defined in Section 14.6d.) in a Competing Business. The provisions of this Agreement bind you in any capacity, including as a franchisee, sole proprietor, partner, limited partner, member, employer, franchisor, shareholder, officer, director or employee.

b. During the Term, and for a period of two (2) years after your abandonment of the Franchised Business, expiration of this Agreement, or termination of this Agreement (whether voluntary or involuntary), you shall not divert or attempt to divert any business, customers, or potential customers of the System to any Competing Business, by direct or indirect inducement or otherwise. In addition, you shall not at any time do or perform any act, directly or indirectly, which harms the goodwill or reputation of us or the System.

c. For purposes of this Section 14.6, "Competing Business" means a business which is primarily engaged in the sale of frozen yogurt, other dessert products prepared or served with frozen yogurt as an ingredient, other frozen desserts, and all variations thereof, within a geographical area consisting of: (1) during the Term, anywhere else; and (2) after abandonment, expiration or termination of this Agreement, within a ten (10) mile radius from the Location or location of any *sweetFrog* restaurant of ours, our third-party licensees or our third-party franchisees. The term "*sweetFrog* restaurant" includes not only the restaurants now in

existence, but also those established at a later date. The term of this covenant will be extended by any time consumed in litigation to enforce it in both trial and appellate courts. If a court of competent jurisdiction determines that the restrictions in this paragraph are excessive in time, geographic scope, or otherwise, the court may reduce the restriction to the level that provides the maximum restriction allowed by law.

d. For purposes of this *Section 14.6*, “Conflicting Interest” means an interest by which you, or your executive officers, directors and shareholders (if you are a corporation), or your partners (if you are a partnership), or your members (if you are a limited liability company), or your designated manager, spouses, and/or guarantor(s) directly or indirectly, have a controlling interest in, lend money to, consult with or otherwise assist any Competing Business. If any of the persons named above do not sign this Agreement under the heading “Personal Acceptance of *Sections 7.1, 7.2, 14.6 and 14.8*,” then you agree to obtain the execution by such person of a written agreement setting forth the foregoing in a form acceptable to us.

14.7 Continuing Obligations.

All your obligations that expressly survive the expiration or termination of this Agreement, including *Sections 14.5 and 14.6*, or by the implicit nature thereof require performance after the expiration or termination of this Agreement, will continue in full force and effect (subsequent to, and notwithstanding, your abandonment of the Franchised Business (whether voluntary or involuntary) the expiration of the Term, or termination of this Agreement), until they are satisfied in full or by their nature expire. The indemnities and obligations set forth in *Article 8* will continue in full force and effect subsequent to, and notwithstanding, the expiration or termination of this Agreement.

14.8 Remedies.

You acknowledge and agree that the restrictions contained in this Agreement, including in this *Article 14*, are fair and reasonable and necessary for the protection of our legitimate business interests and you intend and agree that such restrictions be enforceable and enforced to their fullest extent. You further understand and agree that, notwithstanding any other provision of this Agreement, your breach of your obligations under this *Article 14*, will cause us irreparable harm for which recovery of monetary damages alone would not be an adequate remedy. Both parties shall be entitled to obtain timely injunctive relief, including a temporary restraining order, preliminary and permanent injunctions, to protect their rights under this Agreement, in addition to and not exclusive of any and all other remedies available to each party.

14.9 Early Termination Damages.

If you discontinue operating your Franchised Business before this Agreement expires, with or without obtaining our prior written consent, or in the event of a termination of this Agreement arising from or related to your default and breach of its provisions, you will become obligated to pay Franchisor early termination damages (“Early Termination Damages”). The Early Termination Damages shall be considered damages and not a penalty, are not in lieu of other damages, and your payment of these damages shall not constitute a release of any other obligation owed to us. Franchisor, Franchisee, each individual signing on behalf of Franchisee, and each guarantor guaranteeing Franchisee’s obligations hereunder, hereby acknowledge and agree that Franchisor’s losses due to Franchisee’s unilateral closure of the Franchised Business

or termination of this Agreement would be highly difficult or impossible to calculate with reasonable certainty and, therefore, have agreed at the outset of this Agreement that the Early Termination Damages, and the formula for calculating these damages, constitutes a reasonable, good faith forecast of Franchisor's estimated losses and damages due to the premature closure of the Franchised Business or termination of this Agreement.

The amount of the Early Termination Damages is calculated as follows:

- a. Compute the average monthly Royalty Fee and Advertising Fee due for any consecutive twelve (12) month period within the forty-eight (48) months immediately preceding the date we receive notification of the closure, or if you failed to timely notify us of the closure then the date the Franchise Business closed, or, if the Franchised Business has been open for less than twelve (12) months, the average monthly Royalty Fee and Advertising Fee due since the opening of the Franchised Business ("Monthly Average");
- b. Multiply the Monthly Average by the number of months remaining in the Term;
and
- c. Divide the resulting total computed in b. above by two (2).

For example purposes only: If the average monthly Royalty Fee and Advertising Fee were collectively \$1,000 and there were five years (60 months) remaining in the Term, the Early Termination Damages would be \$30,000, calculated as follows: $\$1,000 \times 60 \text{ months} = \$60,000 \div 2 = \$30,000$.

If you unilaterally close the Franchised Business and/or unilaterally terminate this Agreement prior to the end of the Term, you must give us ninety (90) days prior notice of the early termination ("Early Termination Notice"), pursuant to the applicable notice requirements as set forth in Article 15 of this Agreement. For avoidance of doubt, sending the Early Termination Notice via facsimile, email or through other electronic means does not constitute proper notice. Within ten (10) days after our receipt of your Early Termination Notice, we will calculate the Early Termination Damages, which will be due and payable thirty (30) days prior to the closure of your Franchised Business. In the event of a closure or termination arising from or related to your default under this Agreement, or that you do not: (i) timely or properly provide us with the Early Termination Notice at least ninety (90) days prior to the early termination of your Franchised Business and this Agreement; (ii) remain open for at least ninety (90) days after providing us with the Early Termination Notice; and (iii) pay the Early Termination Damages in full at least thirty (30) days prior to closing of the Franchised Business, the Early Termination Damages due may, in our sole discretion, be increased as follows: it will be calculated by multiplying the Monthly Average by the number of months remaining in the Term, and will not be divided by two (2).

If you have not paid your Royalty Fee and Advertising Fee for any period(s) within the forty-eight (48) months prior to notifying us of your early closure or termination, or if you have not reported your Gross Sales for any period(s) within the forty-eight (48) months prior to notifying us of your intended early termination, we will estimate the Royalty Fee and Advertising Fee based upon prior reports to calculate the Monthly Average.

ARTICLE 15. NOTICES

Unless otherwise provided in this *Article 15*, all notices specified by this Agreement or required by law must be in writing and given by personal delivery, sent by carrier (i.e., FedEx®, UPS®, etc.), U.S. certified mail, return receipt requested. All notices to us must be given at the address set forth on page 1 of this Agreement or to such other address as we may designate in writing from time to time in accordance with this *Article 15*. All notices to you may be given at the address set forth on page 1 of this Agreement, at the address of the Franchised Business, at any of your franchised restaurants, at your residence (if an individual), or at the residence of your principal shareholder(s), partner(s), or member(s) (if a business entity). Notices will be conclusively deemed to be given, delivered, and effective when sent pre-paid and actually left in the custody of an adult agent, employee or resident at a place of business or residence if given by personal delivery; or if given by carrier, twenty-four (24) hours after deposited with carrier, or if by U.S. certified mail, three (3) days after deposited with the U.S. Postal Service. You have an obligation to promptly notify us pursuant to this *Article 15* whenever your mailing address, phone number or email address change. Notwithstanding the foregoing, ~~we only Franchisor may~~ has the right to give you written notice via email to an email address you provide us regarding all notices specified by this Agreement or required by law, with such email notification to be deemed received by you twenty-four (24) hours after we send it, unless you otherwise earlier acknowledge receipt.

ARTICLE 16. CONSTRUCTION AND ENFORCEMENT; MISCELLANEOUS

16.1 Independent Contractors.

The relationship between you and us is that of independent contractors. You are in no way to be deemed our partner, joint venturer, agent, employee, or servant. You have no authority to bind us to any contractual obligation or incur any liability for or on our behalf. You shall identify yourself as an independent owner of the Franchised Business in all dealings with customers, lessors, contractors, suppliers, public officials, employees, and others.

16.2 Severability and Substitution of Provisions.

Except as provided to the contrary in this Agreement, each article, section, term and provision of this Agreement, and any portion thereof, will be considered severable, and if, for any reason, any such portion of this Agreement is held to be invalid, contrary to, or in conflict with any applicable present or future law or regulation, or as a result of a final, non-appealable ruling issued by any court, agency or tribunal with competent jurisdiction in a proceeding to which we are a party, that regulation or ruling will not impair the operation of, or have any other effect upon, such other portions of this Agreement as may otherwise remain valid, and such other portions will continue to be given full force and effect and bind the parties to this Agreement. If the severed provision is material to this Agreement, we shall promptly provide a substitute provision to replace the invalid severed provision consistent with then-current law and the original intent of the parties.

If any applicable and binding law or rule of any jurisdiction requires a greater prior notice of the termination of, or refusal to renew, this Agreement than is required under this Agreement, or the taking of some other action not required under this Agreement, or if under any applicable law, regulation, or court ruling of any jurisdiction, any provision of this Agreement or any specification, standard or operating procedure prescribed by us is invalid or unenforceable, the prior notice or other action required by such law, regulation, or court ruling will be substituted for

the comparable provisions of this Agreement, and we will have the right, in our sole discretion, to modify such invalid or unenforceable provision, specification, standard or operating procedure to the extent required to be valid and enforceable. Such modifications to this Agreement shall be effective only in such jurisdiction, unless we elect to give them greater applicability, and otherwise shall be enforced as originally made and entered into in all other jurisdictions.

16.3 Dispute Resolution.

a. Except as otherwise provided herein, any dispute, claim or controversy arising out of or relating to this Agreement, the breach hereof, the rights and obligations of the parties hereto or the relationship between the parties, or the entry, making, interpretation, or performance of either party under this Agreement (“Dispute”), which cannot be resolved by mediation under *Section 16.3d.* or is not subject to mediation under the terms of this Agreement, shall be settled by arbitration administered by the American Arbitration Association (“AAA”) in accordance with its Commercial Arbitration Rules as modified below.

b. Any arbitration shall take place before a sole arbitrator in Maricopa County, Arizona or, if our headquarters are no longer located in Maricopa County, Arizona, then the arbitration shall take place in the county in which our headquarters are located at the time the arbitration is commenced. You agree that conducting the arbitration where we are located is appropriate due to the multiple locations throughout the United States where our franchisees are located. The parties agree that the arbitrator shall be an attorney licensed to practice law in the United States and must have a minimum of five (5) years of experience in franchise law. Judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The arbitrator shall, in the award, allocate all of the costs and expenses of the arbitration, including the fees of the arbitrator and the reasonable attorneys’ fees of the prevailing party, against the party who did not prevail. To the extent permitted by applicable law, no issue of fact or law shall be given preclusive or collateral estoppel effect in any other dispute, arbitration proceeding or litigation, except to the extent such issue may have been specifically determined in another proceeding between the parties. This agreement to arbitrate shall survive any termination or expiration of this Agreement, however effected. The parties agree that any arbitration shall be solely between them (including any affiliates) and shall not include as a party, by consolidation, joinder, or in any other manner, any other person or entity, unless both parties consent in writing. Both parties shall have the absolute right to refuse such consent. Further, the parties expressly waive any right to bring or participate in any class or other consolidated, joined or multi-party arbitration claim or proceeding, whether or not permissible under the AAA Commercial Arbitration Rules, including any claim brought on their behalf by an association of which it, he or she is a member. At the request of any party, the arbitration shall be conducted in a manner that maintains the confidentiality of the proceedings.

c. The arbitrator will issue a reasoned award, with findings of fact and conclusions of law. Actions to enforce an express obligation to pay monies may be brought under the Expedited Procedures of the AAA’s Commercial Arbitration Rules. The Federal Arbitration Act shall govern, excluding all state arbitration laws. Arizona law will govern all other issues. With respect to discovery, the arbitrator shall require each party to make a good cause showing before any discovery exceeding that specifically authorized by the AAA Commercial Arbitration Rules will be granted.

d. Prior to the commencement of an arbitration proceeding, the parties must first submit any Dispute to non-binding mediation. At the request of any party, the mediation will be

confidential. The mediation shall be conducted in Maricopa County, Arizona or in the county in which our headquarters are located at the time of mediation, unless the parties shall mutually agree to a different location. The parties to the mediation will share equally in its costs and expenses, except those costs and expenses incurred separately by each party, including counsel fees and expenses. The mediation process will be deemed "Completed" when the parties agree that it has been completed, the mediator declares that any impasse exists, or sixty (60) days have elapsed since the date of the initiating party's notice to the other party that it is initiating the mediation process, whichever occurs first.

e. Notwithstanding anything contained in this Agreement to the contrary, the provisions of Sections 16.3a., 16.3b., 16.3c. and 16.3d. do not apply to a Dispute where: (i) we bring an action for an express obligation to pay monies, declaratory relief, preliminary or permanent equitable relief, any action at law for damage to our goodwill, the Confidential Information, the Proprietary Marks or for fraudulent conduct by you; or (ii) the delay resulting from the mediation process may endanger or adversely affect the public (for example, unhealthy, unsafe or unsanitary conditions would continue to exist). For such disputes, we may bring an action in any federal or state court having jurisdiction, whether for monetary damages, temporary preliminary and permanent injunctive relief or specific performance in addition to, and not exclusive of, any other remedies available to us. You hereby consent to and waive any objection or defense and agree not to contest venue, forum non conveniens or jurisdiction of such court or arbitration.

f. Disputes concerning the validity or scope of arbitration, including whether the Dispute is subject to arbitration, are beyond the authority of the arbitrator and will be determined by a court of competent jurisdiction pursuant to the Federal Arbitration Act, 9 U.S.C. §1 et seq., as amended from time to time.

g. Either party may appeal the final award of the arbitrator, if it is over One Hundred Thousand Dollars (\$100,000), to the appropriate U.S. District Court. The Court's review of the arbitrator's findings of fact will be under the clearly erroneous standard, and the Court's review of all legal rulings will be *de novo*. If it should be determined that this provision for federal court review is not enforceable, then either party may appeal the arbitrator's final award, if it is over One Hundred Thousand Dollars (\$100,000), to a panel of three (3) arbitrators chosen under AAA Optional Appellate Arbitration Rules , which will employ the same standards of review stated immediately above.

16.4 Applicable Law and Forum; Waiver of Jury; Statute of Limitations.

a. Except to the extent that the United States Trademark Act of 1946, as amended (15 U.S.C., § 1051 et seq.) or the franchising laws of any state that may be applicable, the laws of the State of Arizona govern all rights and obligations of the parties under this Agreement without regard to conflict of law. The parties agree, subject to the mandatory mediation and arbitration provisions of *Section 16.3*, that any appropriate state or federal court located in Maricopa County, Arizona has exclusive jurisdiction over any Dispute arising under or in connection with this Agreement and is the proper forum in which to adjudicate the case or controversy. Notwithstanding the foregoing any action initiated by us may, at our election, be brought in any jurisdiction where you are domiciled or that has jurisdiction over you. The parties hereto irrevocably submit to the jurisdiction of, and venue in, any such court, and hereby waive any objection or defense thereto. THE PARTIES AGREE THAT ALL DISPUTES SUBMITTED TO THE COURT PURSUANT TO THIS SECTION SHALL BE TRIED TO THE COURT

SITTING WITHOUT A JURY, NOTWITHSTANDING ANY STATE OR FEDERAL CONSTITUTIONAL OR STATUTORY RIGHTS OR PROVISIONS.

b. Notwithstanding anything contained in this Agreement to the contrary, the parties agree that any claims under, arising out of, or related to, this Agreement must be brought within two (2) years of the date on which the underlying cause of action accrued, and the parties hereby waive any right to bring any such action after such two (2)-year period, except for the collection of any unpaid Royalty Fee, Advertising Fee, and any other amount due to us or our affiliate.

c. **YOU HEREBY WAIVE THE RIGHT TO SEEK OR COLLECT PUNITIVE, MULTIPLE, CONSEQUENTIAL AND SPECIAL DAMAGES IN ANY FORUM, INCLUDING ARBITRATION. YOU HEREBY FURTHER WAIVE THE RIGHT, IF ANY, OF ANY ASSOCIATION OR MEMBERSHIP GROUP TO ASSERT CLAIMS ON YOUR BEHALF IN ANY ACTION.**

d. **YOU HEREBY WAIVE THE RIGHT TO ANY DAMAGES IN CONNECTION WITH OR RESULTING FROM THE WRONGFUL ISSUANCE OF AN INJUNCTION.**

e. The parties agree that the maximum damages that you may recover in connection with a wrongful termination of your franchise and this Agreement will be an amount equal to the product of:

(i) the annual net profit (as defined below) multiplied by

(ii) the lesser of:

(a) The number of full years existing between the date on which the franchise and this agreement were wrongfully terminated and the date on which the Term would have otherwise expired; or

(b) Three.

For purposes of this Agreement, the term "net profit" means an amount equal to the net profits of your Franchised Business, as reflected on your tax return filed with the Internal Revenue Service prior to such termination; provided, however, that if such tax return reflects the operations of your Franchised Business for a period less than one (1) year, such net profits will be annualized based upon the net profits reflected in such tax return.

16.5 No Guarantee of Franchisee's Success.

You have been informed of and acknowledge the highly competitive nature of the business involved, and agree that the successful operation of your Franchised Business will depend in part, upon your best efforts, capabilities, management, and efficient operation; as well as the general economic trend and other market conditions.

16.6 Existence of Various Forms of Franchise Agreements.

You acknowledge that our present and future franchisees operate under a number of forms of franchise agreements and consequently, our obligations and rights with respect to our various franchisees may differ materially in certain instances. The existence of different forms or versions

of the franchise agreement does not entitle you to benefit from any such difference; nor does it operate to alter or amend the agreement of the parties set forth in this Agreement.

16.7 Franchise Owner May Not Withhold Payments.

You agree that you will not, on grounds of alleged or actual nonperformance or breach by us of any of our obligations under this Agreement, withhold payment of any Royalty Fee, Advertising Fee, amounts due to us or any of our affiliates for goods or services purchased by you, or any other amounts due to us or any of our affiliates.

16.8 Remedies Are Cumulative.

The rights and remedies of the parties to this Agreement are cumulative and not exclusive, and no exercise or enforcement by either party of any right or remedy under this Agreement shall preclude the exercise or enforcement by such party of any other right or remedy under this Agreement or otherwise available at law or in equity to such party.

16.9 Interpretation.

All the terms and provisions of this Agreement will be binding upon and inure to the benefit of the successors and assigns of the parties. However, nothing in this *Section 16.9* may be construed as our consent to the Transfer of this Agreement or any rights by you.

16.10 Waiver.

Our failure to insist upon the strict performance of any term, covenant or condition contained in this Agreement will not constitute or be construed as a waiver or relinquishment of our right to enforce thereafter any such term, covenant or condition and such term, covenant or condition will continue in full force and effect. For example, Franchisor's acceptance of any payments made, or Franchisor's failure to require any payments, by Franchisee after a breach of this Agreement shall not be, nor be construed as, a waiver by Franchisor of any breach by Franchisee of any term, covenant or condition of this Agreement or of Franchisor's right to later require such payments as a result of such prior breach.

16.11 Litigation Expense.

If an action at law or suit in equity is brought to establish, obtain or enforce any right by either of the parties to this Agreement, the prevailing party in the suit or action, in the trial and appellate courts, will be entitled to recover from the non-prevailing party reasonable attorneys' fees, costs and expenses and disbursements incurred in such suit or action.

16.12 No Third-Party Beneficiaries.

This Agreement is not intended to benefit any other person or entity except the named parties hereto and no other person or entity shall be entitled to any rights hereunder by virtue of so-called "third-party beneficiary rights" or otherwise.

16.13 Binding Effect; Modification.

This Agreement is binding upon the parties to this Agreement and their respective executors, administrators, personal representatives, heirs, permitted assigns and successors in

interest. No amendment, change, or modification of this Agreement shall be binding on any party unless executed in writing by you and us.

16.14 Entire Agreement; Nature and Scope; Construction.

This Agreement, all exhibits, attachments, addendums, and amendments, constitute the entire understanding and agreement between the parties, and there are no other oral or written understandings or agreements between us and you relating to the subject matter of this Agreement. If required to be signed, any state specific addendums are incorporated herein by reference. Any representation not specifically contained in this Agreement made prior to entering into this Agreement does not survive subsequent to the execution of this Agreement. We and you have entered into this Agreement for the sole purpose of authorizing you to use the System licensed by this Agreement in the operation of the Franchised Business during the Term in which those specific items designated by us for sale and use in such locations are offered for sale and use in individual, face-to-face transactions with patrons visiting the Franchised Business (and equivalent telephone or mail transactions accepted as a convenience to that customer group). All consideration being furnished by us to you during the course of performance of this Agreement has been determined based on the limited rights and other limitations expressed herein. No other rights have been bargained for or paid for. This provision is intended to define the nature and extent of the parties' mutual contractual intent, there being no mutual intent to enter into contract relations, whether by agreement or by implication, other than as set forth in this Agreement. The parties further acknowledge that these limitations are intended to achieve the highest possible degree of certainty in the definition of the contract being formed, in recognition of the fact that uncertainty creates economic risks for both parties which, if not addressed as provided in this Agreement, would affect the economic terms of this bargain.

Nothing in this Agreement or in any related agreement is intended to disclaim the representations we made in the Disclosure Document. Nothing in this Agreement is intended, nor shall be deemed, to confer any rights or remedies upon any person or legal entity not a party hereto.

16.15 Terminology.

In addition to the terms defined elsewhere in this Agreement, the following terms defined below are incorporated in this Agreement by reference and shall be deemed to include all persons who succeed to the interest of the original, where applicable:

The term "affiliate" means any person who, directly or indirectly through one (1) or more intermediaries, controls, is controlled by, or is under common control with any person;

The term "Dollars" means United States Dollars and all amounts due under this Agreement shall be paid in United States currency;

The use of the terms "includes" and "including" in any provision of this Agreement followed by specific examples used shall not be construed to limit application of the provision to only the specific examples used;

The term "person" means any natural person, corporation, partnership, trust, other entity, association or form of organization;

The term “will” and “shall” shall be synonymous, and shall be mandatory and not discretionary, unless otherwise specifically provided herein; and

Any references to articles or sections refer to articles and sections in this Agreement unless specified otherwise.

16.16 Counterparts.

This Agreement may be executed in one (1) or more original counterparts, and all of which, when taken together, shall be deemed to be one (1) original Agreement. The signatures required for execution may be transmitted to the other party via facsimile or a scanned .pdf file sent via email and such signature shall be deemed a duplicate original, shall be effective upon receipt by the other party, may be admitted in evidence and shall fully bind the party and person making such signature. A fully-executed copy of this Agreement shall be of the same force and effect as the original.

16.17 Offerings.

If you are a corporation, partnership or other entity, and if you intend to offer securities, partnership interests or other ownership interests in you through any public or private offering, you shall not use any Proprietary Marks in such public or private offering, except to reflect your franchise relationship with us; nor shall you misrepresent your relationship with us by any statement or omission of an essential statement. You shall indemnify and hold us harmless from any liability in connection with such offering. Nothing in the foregoing shall modify the provisions of *Article 12*, and no such offering shall be made without first complying with any applicable provisions of *Article 12*.

16.18 Time.

Time is of the essence of each and every provision of this Agreement.

16.19 Force Majeure.

Neither of the parties will be liable for loss or damage or be deemed to be in breach of this Agreement if the failure to perform the party’s obligations results from: (a) transportation shortages, inadequate supply of equipment, merchandise, supplies, labor, material or energy, or the voluntary foregoing of the right to acquire or use any of the foregoing in order to accommodate or comply with the orders, requests, regulations, recommendations or instructions of any government or any department or agency thereof, or (b) acts of God, and in each case being unforeseeable forces which Franchisee could not by the exercise of due diligence have avoided; provided however that Franchisee must: (i) immediately upon the start of the above-mentioned act, provide written notice to Franchisor that it expressly enacts its rights granted under this Section, and (ii) use all commercially reasonable efforts to mitigate the effect of the event of Force Majeure upon its performance and to fulfill its obligations under this Agreement. Any delay resulting from any of these causes will extend performance accordingly or excuse performance, in whole or in part, as may be reasonable, except that no such cause will excuse payments of amounts owed at the time of such occurrence or payment of the Royalty Fee and all other amounts due to us and our affiliates thereafter, or permit Franchisee to permanently close the Franchised Business.

16.20 Plurals and Captions.

Words in the singular number include the plural when the context requires (and vice-versa). The table of contents and the captions are inserted only for convenience and are not a part of this Agreement or a limitation of the scope of the particular article or section to which each refers.

16.21 Joint and Several Liability.

If you consist of two (2) or more individuals, whether in the form of separate individuals or a business entity controlled by the individuals, then each individual will be jointly and severally liable under the provisions of this Agreement.

16.22 Trademark Notice.

All trademarks referenced in this Agreement are those of their respective owners.

16.23 No Accord or Satisfaction.

If you pay, or we otherwise receive, a lesser amount than the full amount provided for under this Agreement for any payment due hereunder, such payment or receipt may, in our sole discretion, be applied against the earliest amount due us. In addition, if interest or late fees are owed, we may, in our sole discretion, apply any amounts paid to the late fees and interest before such amounts are applied to the principal amount owed. We may accept any check or other payment in any amount without prejudice to our right to recover the entire balance of the amount due or to pursue any other right or remedy. No endorsement or statement by you on any check or payment or in any letter accompanying any check or payment or elsewhere shall constitute or be construed as an accord or satisfaction.

ARTICLE 17. ACKNOWLEDGMENTS AND REPRESENTATIONS OF FRANCHISEE

17.1 Certain Representations and Warranties of Franchisee.

You represent and warrant that the following statements are true and complete as of the Effective Date:

a. You do not seek to obtain the Franchised Business for speculative or investment purposes and have no present intention to sell or transfer or attempt to sell or transfer the Franchised Business except as previously approved by Franchisor and subject and conditioned to Article 12 of this Agreement.

b. You understand and acknowledge the value to the System of uniform and ethical standards of quality, appearance and service described in and required by the Confidential Manual and the necessity of operating the Franchised Business under the System Standards. You represent that you have the capabilities, professionally, financially and otherwise, to comply with our System Standards.

c. If you are a corporation, limited liability company, partnership, or other form of entity, you are duly incorporated, organized, or formed and are qualified to do business in the state and any other applicable jurisdiction within which the Franchised Business is located, and you are and shall remain duly organized and in good standing during the Term.

d. You represent and warrant that: (i) if you are an individual, you are; or (ii) if you are an entity, that each of your owners, shareholders, partners, and members are, a United States citizen or a lawful resident alien of the United States.

e. All financial and other information that you have provided to us or otherwise made available to us in connection with your application for this franchise is true, complete, accurate, and not intentionally misleading.

f. The execution of this Agreement by you will not constitute or violate any other agreement or commitment to which you are a party.

g. Any individual executing this Agreement on your behalf is duly authorized to do so and the Agreement shall constitute your valid and binding obligation and, if applicable, all of your partners, members, or shareholders, if you are a partnership, limited liability company, or corporation.

h. You have, or if you are a partnership, corporation or other entity, your partners or principals have, carefully read this Agreement and all other related documents to be executed by you concurrently or in conjunction with the execution hereof; that you have obtained, or had the opportunity to obtain, the advice of counsel in connection with the execution and delivery of this Agreement; that you understand the nature of this Agreement and that you intend to comply with and be bound by this Agreement.

i. You have read and understand the information and disclosures made in the Disclosure Document provided to you as acknowledged in *Section 17.3e*. You understand and acknowledge that: (i) estimates for initial start-up expenses are estimates only and there can be additional start-up expenses; and (ii) your sales may differ substantially from any sales provided in Item 19 of the Disclosure Document, and there is no assurance that your sales will meet or exceed any sales listed in Item 19 of the Disclosure Document. You have had the opportunity to and have consulted or elected not to consult with your attorney, accountant and business advisors before entering into this Agreement.

j. You understand and agree that, while not applicable in every case, our past experience indicates that owner-operated restaurants generally perform better than absentee owners with hired managers. The food business is a personal business and is dependent upon your business skill and judgment. This includes your choice of employees. Your skill in hiring the right people to work in your Franchised Business is very important in determining whether people decide to purchase menu items from your Franchised Business or from another restaurant in the same vicinity.

k. You understand and agree that ownership of a franchise and the Franchised Business carries certain risks. These risks include the loss of your initial investment, other continued financial losses such as rent payments due under lease obligations and other contractual obligations, the loss of your time and energy in starting up and running your Franchised Business, and loss of earnings and investment income from your investment in the Franchised Business. You understand and agree that the Franchised Business may make money and may lose money and are entering this business venture with this express understanding. You are not relying upon anything which is not contained within this Agreement or the Disclosure Document in determining and deciding to become a franchisee.

l. Notwithstanding the foregoing, you understand and agree that the System must not remain static if it is to meet (without limitation) presently unforeseen changes in technology, competitive circumstances, demographics, populations, consumer trends, social trends and other market place variables, and if it is to best serve the interests of us, you and all other franchisees. Accordingly, you expressly understand and agree that we may from time to time change the components of the System, including altering the products, programs, services, methods, standards, forms, policies and procedures of that System; abandoning the System altogether in favor of another system in connection with a merger, acquisition or other business combination or for other reasons; adding to, deleting from or modifying those products, programs and services which your Franchised Business is authorized and required to offer, modifying or substituting entirely the equipment, signage, trade dress, décor, color schemes and uniform System Standards and specifications and all other unit constructions, design, appearance and operation attributes which you are required to observe under this Agreement; and, abandoning, changing, improving, modifying or substituting the Proprietary Marks. You expressly agree to comply with any such modifications, changes, additions, deletions, substitutions and alterations. You shall accept, use and effectuate any such changes or modifications to, or substitution of, the System as if they were part of the System at the time that this Agreement was executed. Except as provided herein, we shall not be liable to you for any expenses, losses or damages sustained by you as a result of any of the modifications contemplated hereby.

m. You represent that neither you nor any of your affiliates, officers, directors, managers, members, or partners (as applicable) or funding sources are subject to U.S. Executive Order 13224, identified on the U.S. Department of the Treasury's Office of Foreign Assets Control Specially Designated National and Blocked Persons list, or any terrorist list or other blocked persons list. In addition, you represent that you have not received funding from, nor are you owned, controlled, or acting on behalf of the government of any country that is subject to an embargo by the United States, any foreign government official, political party or international organization, and that no foreign government or government official, political party or international organization has any financial interest in the Franchised Business or any monies earned by the Franchised Business.

n. You represent, warrant and agree that you, your officers, directors, managers, members, or partners (as applicable) will each at all times conduct themselves in an ethical manner and avoid any activity that might result in a violation of the U.S. Foreign Corrupt Practices Act, Anti-Terrorism Laws, or any other applicable anti-corruption or bribery laws.

17.2 Additional Information Respecting Franchisee.

a. You have delivered to us or will deliver concurrent herewith, complete and accurate copies of all of your organizational documents, including all partnership agreements, certificates of partnership, articles of organization, operating agreements, articles or certificates of incorporation, by-laws and shareholder agreements, including all amendments, side letters and other items modifying such documents.

b. Reserved.

17.3 Acknowledgements of Franchisee.

a. You acknowledge that you have conducted an independent investigation of the business venture contemplated by this Agreement and recognize that this business venture involves substantial business risks and will largely depend upon your ability. Other than the financial performance representation contained in Item 19 of the Disclosure Document, if any, we expressly disclaim making, and you acknowledge that you have not received or relied on, any warranty or guarantee, express or implied, as to the potential volume, profits, or success of the Franchised Business contemplated by this Agreement.

Franchisee Initials _____/_____

b. You hereby certify that none of our employees, no other person speaking on our behalf, and no Area Representative, if applicable, have: (i) made any oral, written, visual, or other representation, agreement, commitment, claim, or statement that stated or suggested any level or range of actual or potential sales, costs, income, expenses, profits, cash flow, or otherwise other than any financial performance representation contained in Item 19 of the Disclosure Document; or (ii) made any oral, written, visual, or other representation, agreement, commitment, claim, or statement from which any level or range of actual or potential sales, costs, income, expenses, profits, cash flow, or otherwise might be ascertained, related to a *sweetFrog* franchise, that is different from, contrary to, or not contained in the Disclosure Document; or (iii) made any representation, agreement, commitment, claim or statement to you that is different from, contrary to, or not contained in, the Disclosure Document. You acknowledge and agree that we do not make or endorse, nor do we allow any of our employees or other persons speaking on our behalf to make or endorse, any additional oral, written, visual, or other representation, agreement, commitment, claim, or statement that states or suggests any level or range of actual or potential sales, costs, income, expenses, profits, cash flow, or otherwise with respect to a *sweetFrog* franchise other than any financial performance representation contained in Item 19 of the Disclosure Document.

Franchisee Initials _____/_____

c. You acknowledge that you have received, read and understand this Agreement and the related exhibits, attachments and agreements and that we have afforded you sufficient time and opportunity to consult with advisors selected by you about the potential benefits and risks of entering into this Agreement.

Franchisee Initials _____/_____

d. You understand that this Agreement, including any amendments and exhibits, contains the entire agreement between the parties concerning the Franchised Business, and that any prior oral or written statements that are not set out in this Agreement, including any amendments, exhibits and attachments will not be binding. You acknowledge and agree that we do not permit any representations, agreements, commitments, claims, or statements or approve any changes in this Agreement or any of the amendments, exhibits and attachments to this Agreement, except by means of a written amendment or addendum signed by all parties to this Agreement. You acknowledge that nothing in this Agreement or in any related agreement is intended to disclaim the representations we made in the Disclosure Document.

Franchisee Initials _____/_____

e. You acknowledge receipt of our Disclosure Document fourteen (14) days prior to the execution of this Agreement or your payment of any monies to us or our agent (or sooner if required by applicable state law).

Franchisee Initials ____/____

f. You acknowledge that, other than what was previously disclosed to you in our Disclosure Document to which you acknowledge receipt thereof, you have not: (1) received any financial statements for us or any of our parent or affiliated companies; or (2) relied on the financial condition of us or of any of our parent or affiliated companies when making the decision to purchase the Franchised Business.

Franchisee Initials ____/____

g. You acknowledge, as detailed in *Section 2.3*, that you must, at your own cost and expense, use only our designated and approved Design Architect for the design of your Franchised Business.

Franchisee Initials ____/____

h. Reserved.

i. Reserved.

j. You acknowledge there have been no other inducements made with any person or entity encouraging you to purchase the Franchised Business, such as a “side deal” or other promise or agreement not included in the Agreement.

Franchisee Initials ____/____

k. You acknowledge and understand that *Article 6* covers the use of the *sweetFrog* trademark and prohibition on registration of our Proprietary Marks. You acknowledge the ownership of the Proprietary Marks by us, and you agree that during the Term and after its expiration or termination, you will not, directly or indirectly, apply to register, register or otherwise seek to use or control or in any way use “*sweetFrog*”, or any other of our proprietary marks, or any confusingly similar form or variation, in any place or jurisdiction either within or outside the United States; nor will you assist any others to do so. You further agree that your corporate, partnership or other entity name will not include any of the Proprietary Marks or phrases similar thereto as a part thereof. Furthermore, you acknowledge and understand that you are prohibited from filing applications for the registration of our trade names used in connection with your Franchised Business.

Franchisee Initials ____/____

l. You acknowledge and understand that in the event you have registered a trade name or entity name containing our trademarks, you will be required to immediately discontinue all further use of the trademark, all Proprietary Marks and any other marks or names confusingly similar thereto in your entity name. Furthermore, you will take such action as may be required to amend your entity name and affirmatively cancel or terminate and dissolve all fictitious or assumed names or other registrations that contain our Proprietary Marks. In the event you do

not comply and execute any and all instruments and documents necessary to protect and maintain our interests in the Proprietary Marks, we will then have power of attorney to execute any documents necessary to protect and maintain our interests in the Proprietary Marks.

Franchisee Initials _____/_____

ARTICLE 18. SUBMISSION OF AGREEMENT

The submission of this Agreement to you does not constitute an offer and this Agreement shall become effective only upon the execution thereof by the parties. THIS AGREEMENT SHALL NOT BE BINDING ON US UNLESS AND UNTIL IT SHALL HAVE BEEN ACCEPTED AND SIGNED BY FRANCHISOR.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, each party hereto, by and through its respective representative with full rights, power and authority to enter into and bind his or her respective party without further consent or approval of any kind, has duly executed and delivered this Agreement as of the Effective Date.

FRANCHISEE: _____, a(n) _____

By: _____
[Name, Title]

By: _____
[Name, Title]

FRANCHISOR: MTY Franchising USA, Inc, a Tennessee corporation

By: _____
[Name, Title]

PERSONAL ACCEPTANCE OF SECTIONS 7.1, 7.2, 14.6, AND 14.8

Each of the undersigned individually and personally accepts and agrees to be bound by the provisions of Sections 7.1, 7.2, 14.6, and 14.8 of the foregoing Franchise Agreement.

_____, _____, an
individual
(signature) Date: _____

_____, _____, an
individual
(signature) Date: _____

_____, _____, an
individual
(signature) Date: _____

_____, _____, an
(signature) individual
Date: _____

EXHIBIT O-2

TO THE FRANCHISE DISCLOSURE DOCUMENT

Sublease and Guaranty of Sublease

(Franchisor or its affiliate collects rent from Franchisee and pays to Landlord)

SUBLEASE

This SUBLEASE ("Sublease") is effective as of the date set forth in Exhibit A attached hereto and incorporated herein by reference, executed by [LEASING ENTITY], a[n] _____ ("Sublessor"), and the sublessee identified in Exhibit A to this Sublease ("Sublessee").

WHEREAS, Sublessor, as tenant, previously entered into, or intends to enter into, that certain lease ("Lease") in the form of Exhibit B attached hereto and incorporated herein by reference, as may be amended from time to time, pursuant to which Sublessor leases certain premises ("Premises") as described in the Lease from the landlord under such Lease ("Landlord");

WHEREAS, Sublessor and Sublessee are parties to a sublease dated _____, as amended (collectively the "Prior Sublease"). Sublessee agrees and acknowledges that it remains liable under the Prior Sublease up through the date immediately preceding the Effective Date of this Sublease. Sublessor and Sublessee further acknowledge and agree that the Prior Sublease is deemed terminated as of and after the Effective Date of this Sublease.

WHEREAS, Sublessee has entered into that certain Franchise Agreement for sweetFrog Store No. _____ ("Franchise Agreement") with MTY Franchising USA, Inc. ("Franchisor");

WHEREAS, pursuant to the Franchise Agreement, the parties and Franchisor intend that Sublessee will establish and operate a sweetFrog restaurant at the location identified in the Franchise Agreement;

WHEREAS, Sublessee may only use and occupy the Premises as a sweetFrog restaurant selling sweetFrog-authorized products pursuant to the terms of the Franchise Agreement, and for no other purpose. Sublessee may not sell any other items at the Premises unless first authorized in writing by the Sublessor;

WHEREAS, Sublessee has selected the Premises for the location of the sweetFrog restaurant to be established and operated by Sublessee;

WHEREAS, in accordance with the Franchise Agreement, Sublessor desires to sublease to Sublessee, and Sublessee desires to sublease from Sublessor, the Premises and Sublessor's rights in the Premises pursuant to the Lease, upon the terms and conditions contained herein;

NOW, THEREFORE, in consideration of the foregoing premises, and the terms, conditions and covenants set forth in this Sublease, the parties hereby agree as follows:

1. Agreement to Sublease. Sublessor hereby demises and sublets to Sublessee the Premises, and Sublessor grants Sublessee all of its respective rights, privileges and appurtenances related to the Premises, and Sublessee takes from Sublessor, the Premises, for the Term (as defined in Section 2.1).

1.1. Assumption. As of the Effective Date (as defined in Exhibit A and attached hereto), Sublessee assumes, and agrees to abide by, all terms and conditions of the Lease with respect to the Premises, and will faithfully perform all obligations required thereunder to be performed by Sublessor during the Term and any obligations to be performed by Sublessor under the Lease prior to, as of and after the Commencement Date of the Lease (as defined in Exhibit A attached hereto) to the extent the same have not been fully performed by Sublessor as of the Effective Date hereof (including without limitation, any initial construction obligations).

1.2. Compliance with Lease. Notwithstanding anything to the contrary contained herein, the terms of this Sublease and Sublessee's use, occupancy, maintenance, repair and restoration of the Premises are subject and subordinate to the terms, covenants, conditions, agreements and requirements of the Lease. Sublessee will not commit or permit to be committed on the Premises any act or omission which will violate any term or condition of the Lease. To enforce the rights of Sublessor hereunder, Sublessor may exercise any and all remedies available to Landlord under the Lease, in addition to any other remedies provided hereunder or available at law or in equity.

2. Term; Renewal Options.

2.1. Term. This Sublease will be effective as of the Effective Date and will continue for the full term of the Lease ("Term"), as the same may be amended, earlier terminated, or renewed or extended from time to time pursuant to Section 2.2 below, minus one day.

2.2. Renewal Options. If the Lease, as may be amended by Sublessor from time to time, contains renewal options, Sublessee may exercise such options in accordance with this Section 2.2, provided that as of the time of the giving of the Renewal Notice, no event of default exists or would exist hereunder or under the Lease but for the passage of time or the giving of notice, or both. ***To exercise a renewal option, Sublessee must notify Sublessor in writing in accordance with Section 17 herein of Sublessee's intent to exercise such option ("Renewal Notice") not more than 90 days, or less than 60 days, before the date that Sublessor is required to notify Landlord pursuant to the Lease of its intention to exercise such option. Time is of the essence.*** Notwithstanding the foregoing, Sublessee acknowledges and agrees that the decision to exercise any renewal option in connection with the Lease is solely at the discretion of Sublessor.

2.3. Failure to Timely Deliver Renewal Notice. If Sublessee does not deliver the Renewal Notice within the time period set forth above, Sublessee's right to exercise the renewal option pursuant to this Section 2 will automatically become null and void and of no further force or effect. Sublessee's exercise of a renewal option, as evidenced by the Renewal Notice, will be irrevocable in all events. Upon receipt of an effective Renewal Notice, Sublessor will undertake to renew the Lease for the applicable renewal term and Sublessee will indemnify, defend and hold Sublessor and the Indemnified Parties (as defined in Section 11) harmless with respect to the exercise of the renewal term. Notwithstanding the foregoing, Sublessee acknowledges and agrees that the decision to exercise any renewal option in connection with the Lease is solely at the discretion of Sublessor.

3. Rent, Taxes, and Insurance.

3.1. Payment of Rent. The first month's Base Rent (as defined in this Section 3.1), the Sublease Security Deposit (as defined in Section 4.1 and set forth on Exhibit A) and the first monthly installment of estimated Operating Expenses (as defined in this Section 3.1) will be due and payable on the date hereof. Sublessee promises to pay to Sublessor in advance, without demand, deduction or set-off, regular installments of: (a) all base, minimum or fixed rent payable under the Lease ("Base Rent"), (b) any percentage rent or other rent based upon sales in, at, or from the Premises ("Percentage Rent") and (c) any other payments payable under the Lease for operating expenses, common area expenses, utilities, marketing funds, merchants associations, sprinkler fees and any other costs and expenses, including any annual reconciliation(s) of the same, as applicable (collectively, "Operating Expenses"), together with all sales, rental and privilege taxes due thereon. The foregoing costs are collectively referred to as "Rent."

3.1.1. From and after the Effective Date and through the Term hereof, Sublessee will pay to Sublessor on the earlier of: (i) the 25th day of the month, (ii) the fourth (4th) Friday of the month or (iii) on a day reasonably set by Sublessor to ensure timely payment of Rent under the Lease (as applicable, "Due Date"), an amount equal to 1/12th of the annual Base Rent and 1/12th of the estimated Operating Expenses and all applicable taxes thereon, as applicable, for the following month (i.e., Sublessee's first Base Rent and estimated Operating Expense payments payable under this Section 3.1.1 will be applied to the following month of the Term, so that Base Rent and Operating Expenses will always be paid one month in advance). To the extent Sublessee has paid Base Rent and estimated Operating Expenses in advance, Sublessee will not be obligated to pay the same on the Due Date the last month of the Term. If any of Sublessee's Base Rent and Operating Expenses payments are returned for non-sufficient funds, Sublessor has the option, at its sole discretion, to collect the Base Rent and Operating Expenses payments on a weekly basis one month in advance without prior notice to Sublessee. If Sublessor exercises this option, Sublessee will pay to Sublessor on each Friday for the remainder of the Term an amount equal to 1/52nd of the annual Base Rent and 1/52nd of the estimated Operating Expenses and all applicable taxes thereon, at least four (4) weeks in advance of the first of the month for which it is paid by Sublessor to Landlord.

3.1.2. In addition to Base Rent and estimated Operating Expenses paid in accordance with Section 3.1.1 above, commencing on the Effective Date, Sublessee will pay Percentage Rent and any other amounts due hereunder or under the Lease in the amounts and the same number of installments due from Sublessor, as tenant, to Landlord under the Lease, which payment will be made by Sublessee to Sublessor at least ten (10) days before the same is due to Landlord under the Lease; provided, however, at Sublessor's election, Percentage Rent will be paid by Sublessee in arrears on a weekly basis, in which

event Sublessee will also submit along with each payment of Percentage Rent, a sales report of Lease Gross Sales (as defined below) for the previous week in the form described in Section 3.3 below.

3.1.3. If requested by Sublessor, concurrently with Sublessee's execution hereof or at any time thereafter, Sublessee will sign a pre-authorization enabling Sublessor to draw against Sublessee's bank account for the full amount of the Rent and any other amounts due hereunder as and when the same become due. All Rent and other payments required to be made by Sublessee to Sublessor hereunder may be drawn against Sublessee's bank account by Sublessor, or at Sublessor's election, will be payable at such address as Sublessor may specify from time to time by written notice delivered in accordance herewith. Further, Sublessor may direct Sublessee to make full or partial payments of Base Rent, Percentage Rent, and/or Operating Expenses directly to Landlord, and Sublessee will immediately comply with such direction.

3.2. Payment of Taxes and Insurance. Sublessee promises to timely pay any and all taxes and insurance covering or incurred during the Term of this Sublease and due as required under the Lease or in connection with the Premises, when billed or invoiced from the respective taxing authority or insurance company, whether addressed to Sublessor or its affiliate or Sublessee, without demand, deduction or set-off, including any annual reconciliation(s), as applicable. Sublessee agrees and acknowledges that taxes and insurance may be collected by Sublessor either pursuant to Section 3.1.1 above or in such a manner reasonably determined by Sublessor to ensure timely payment of any and all taxes and insurance due under the Lease or in connection with the Premises to the requisite taxing authorities or insurance companies.

3.3. Sales Reports. Not later than the tenth (10th) day after the end of each calendar month in the Term and the fifteenth (15th) day after the end of each calendar year in the Term (including the last year in the Term), or such sooner periods as may be set forth in the Lease, Sublessee will submit to Sublessor (and Landlord, if the Lease requires the delivery of sales reports) an itemized and accurate written statement signed by Sublessee or its duly authorized officer, setting forth in reasonable detail the full amount of Lease Gross Sales made during the preceding calendar month or year, as applicable, and certifying to Sublessor and Landlord that the same is true and correct. If the total amount of Percentage Rent paid by Sublessee for any week, month or calendar year during the Term (including the last calendar year of the Term) shall be less than the actual amount due from Sublessee for such period, Sublessee will pay to Sublessor the difference between the amount paid by Sublessee and the actual amount due upon demand, but in no event later than fifteen (15) days after the end of such period; and if the total amount of Percentage Rent paid by Sublessee for any such week, month or year shall exceed such actual amount due from Sublessee for such period, then such excess will be credited against the next installment(s) of Rent due from Sublessee to Sublessor under this Sublease, or promptly refunded to Sublessee if this Sublease has expired or otherwise terminated and Sublessee is not then in default hereunder. Upon three (3) days' notice to Sublessee, Sublessor or its representatives will have the right to conduct an audit of Sublessee's books and records relating to Lease Gross Sales at the Premises at any time during the Term. If such audit reveals that Sublessee understated Lease Gross Sales, then Sublessee will pay to Sublessor the costs and expenses of the audit, together with Interest (as defined in Section 3.5 below) from the date Percentage Rent should have been paid hereunder and any interest, late fees or other penalties incurred by Sublessor under the Lease as a result of such underpayment. Sublessee will maintain all books and records relating to sales at the Premises for a minimum of three (3) years. The obligations under this Section 3.3 will survive the expiration or sooner termination of this Sublease.

3.4. Lease Gross Sales. As used herein, the term "Lease Gross Sales" will mean the total gross sales in, on, from or originating within the Premises on which percentage rent, if any, is payable under the terms of the Lease or, if not defined therein, will mean Gross Sales (as defined in the Franchise Agreement).

3.5. Late Charges. Sublessee acknowledges that late payment by Sublessee to Sublessor of any Rent or other payment due to Sublessor hereunder will cause Sublessor to incur costs not contemplated by this Sublease, the exact amount of such costs being extremely difficult and impractical to determine. Therefore, if Sublessee is delinquent in any installment of such which may be due and payable to Sublessor hereunder for more than three (3) days, Sublessee will pay to Sublessor on demand a late charge equal to five percent (5%) of such delinquent sum, *plus* any late charges and interest incurred by Sublessor under the Lease as a result of such late payment. The parties agree that such late charge represents a fair and reasonable estimate of the costs that Sublessor will incur by reason of such late payment by Sublessee. The provision for such late charge will be in addition to all of Sublessor's other rights and remedies hereunder or available at law or in equity and will not be construed as a penalty. In addition to the foregoing late charge, if Sublessee is delinquent in any installment of any payment which may be due to Sublessor hereunder for more than ten (10) days, then such delinquent sum will bear interest

at the rate of eighteen percent (18%) per annum or the highest rate permitted by law, whichever is less ("Interest"), from the due date until paid in full.

4. Sublease Security Deposit.

4.1. Cash Deposit. Contemporaneously with Sublessee's execution hereof, Sublessee will deposit with Sublessor a sublease security deposit, which shall not be less than one month's base rent, in the amount set forth on Exhibit A ("Sublease Security Deposit"). The Sublease Security Deposit will be held by Sublessor as security for the performance of Sublessee's obligations under this Sublease, Sublessee's Franchise Agreement with Franchisor, and any other agreement between Sublessee or its affiliates and Sublessor, Franchisor, or their affiliates. The Sublease Security Deposit is not an advance rental deposit or a measure of Sublessor's damages in case of Sublessee's default. Upon each occurrence of an Event of Default hereunder (as defined in Section 15 below), or monies owed to Sublessor, Sublessor or Franchisor or their affiliates may use all or part of the Sublease Security Deposit to pay delinquent payments due under this Sublease, the Franchise Agreement, and any other agreement between Sublessee or its affiliates and Sublessor, Franchisor, or their affiliates, and the cost of any damage, injury, expense or liability caused by such default, without prejudice to any other remedy provided herein or provided by law. Sublessee will pay Sublessor on demand, or Sublessor may draw on Sublessee's bank account, the amount that will restore the Sublease Security Deposit to its original amount. Sublessor's obligation respecting the Sublease Security Deposit is that of a debtor, not a trustee; no interest will accrue thereon unless otherwise required by law. The Sublease Security Deposit will be the property of Sublessee, but will be refunded to Sublessee when Sublessee's obligations under this Sublease, the Franchise Agreement, and any other agreement between Sublessee or its affiliates and Sublessor, Franchisor, or their affiliates have been completely fulfilled. Sublessee agrees and acknowledges that the Sublease Security Deposit is separate and distinct from the security deposit held by the Landlord in the amount set forth on Exhibit A ("Lease Security Deposit"). Sublessee further agrees and acknowledges that it will be required to deposit with Sublessor the Sublease Security Deposit and may be required to reimburse Sublessor for the Lease Security Deposit.

4.2. Security Agreement. Sublessee hereby grants Sublessor a security interest, and this Sublease constitutes a security agreement within the meaning of and pursuant to the Uniform Commercial Code of the state in which the Premises is located, in and to all of Sublessee's property situated in, or upon, or used in connection with the Premises (except merchandise sold in the ordinary course of business) (collectively, "Collateral") as security for all of Sublessee's obligations hereunder, including, without limitation, the obligation to pay Rent and other monetary amounts hereunder. Such property thus encumbered includes specifically all trade fixtures and any other fixtures removable by Sublessor, as tenant, pursuant to the Lease, inventory, equipment, signage, small wares, furniture, contract rights, accounts receivable and the proceeds thereof. Sublessee hereby irrevocably authorizes Sublessor to file such financing statements and other Uniform Commercial Code filings as Sublessor deems appropriate in order to perfect such security interest. Sublessee further agrees to execute such other financing statements as reasonably requested by Sublessor to further secure Sublessor's interest under this Section 4.2 as often as Sublessor in its discretion shall require.

5. Utilities. Sublessee will arrange for and pay for, prior to delinquency, the cost of any and all electricity, water, gas, sewer, telephone and other utilities consumed in the Premises commencing on the date Sublessee is permitted to access the Premises and continuing during the Term hereof (collectively, "Utilities"), unless Landlord expressly pays for the same pursuant to the Lease or the cost thereof is paid by Sublessee as Operating Expenses. Such payments will be made directly to the utility provider unless the Lease provides otherwise. Notwithstanding the foregoing, Sublessor may elect to arrange for and/or pay the cost of such Utilities directly to the utility provider. If Sublessor so elects, then Sublessee will pay to Sublessor any and all amounts due for such Utilities upon demand. Sublessor may draw against Sublessee's bank account from time to time for the full amount of the cost of such Utilities or Sublessee's reasonable estimate of the costs thereof. Any failure to pay the cost of Utilities to Sublessor or any utility provider, as applicable, when due will be deemed a failure to pay Rent hereunder and will entitle Sublessor to exercise its remedies hereunder.

6. Use. Sublessee will use the Premises solely for the operation of a sweetFrog restaurant in accordance with the terms and conditions of the Lease, this Sublease and all applicable federal, state and local laws, and for no other purpose whatsoever.

7. Sublessor's Obligations. Subject to the terms of this Sublease, Sublessor is conveying to Sublessee only those rights to the Premises that it has acquired by virtue of the Lease respectively.

Sublessee acknowledges that the Lease sets forth certain Landlord obligations, which, as between Sublessor and Sublessee, Sublessor is not obligated to perform. Sublessee waives and releases Sublessor from any and all claims Sublessee may now or hereafter have against Sublessor with respect to any and all such obligations and/or the contents of the Lease or any provision thereof, all of which have been read and approved by Sublessee. If Landlord fails to perform its obligations under the Lease, Sublessee will promptly send Sublessor written notice specifically describing the default in detail. Upon receipt of such notice, Sublessor will promptly notify Landlord of the alleged default. Sublessor will not be obligated to bring or defend any claim or action against Landlord and, if it declines to do so, Sublessee, at Sublessee's sole expense, will have the right to do so, in which event Sublessee will indemnify, defend and hold harmless the Indemnified Parties (as defined in Section 11 below) against the same.

8. Maintenance, Repair, and Alterations. Without limiting the generality of Section 1.1 herein, Sublessee will maintain the Premises in good condition and repair and will perform all of "Tenant's" (as defined in Exhibit A) maintenance, repair and replacement obligations under the Lease. Sublessee acknowledges that Sublessor will have no repair or maintenance obligations with respect to the Premises or the shopping center/development ("Project") in which the Premises is located. Sublessee will not perform any construction or make any alterations, additions or changes to the Premises without Sublessor's prior written consent and, if required by the Lease, Landlord's written approval. Upon the expiration of the Term or the sooner termination of this Sublease, Sublessee will surrender the Premises in good condition and repair, in as good a condition or better than required at the time of Sublessor's surrender under the Lease.

9. Assignment and Subletting. Without the prior written consent of Sublessor, which consent may be withheld in Sublessor's sole and absolute discretion, (a) Sublessee will not assign, transfer, convey, pledge or mortgage this Sublease or any interest therein, whether by operation of law or otherwise, (b) no interest in Sublessee may be assigned, transferred, conveyed, pledged or mortgaged, whether by operation of law or otherwise, including without limitation, a merger or consolidation of Sublessee with another entity or the dissolution of Sublessee, and (c) Sublessee will not sublet all or any part of the Premises. No assignment of this Sublease or subletting of the Premises consented to will relieve Sublessee of its obligations under this Sublease. Any assignment, transfer, conveyance, pledge, mortgage or subletting in violation of this Section 9 will be voidable at the sole option of Sublessor. Sublessee acknowledges that any assignment or subletting to which Sublessor may consent will be conditioned upon Landlord's consent thereto, if Landlord's consent is required under the Lease. Any assignment of this Lease or sublease of the Premises by Sublessee will be subject to the provisions of Section 6 above.

10. Risk of Loss. Except to the extent caused by the intentional misconduct of Sublessor and to the fullest extent permitted by law, (a) Sublessee assumes all risk of loss of or damage to Sublessee's property located within the Premises or the Project, including any loss or damage caused by water leakage, fire, windstorm, explosion, theft, vandalism, earthquake, act of God or act of any other tenant or third party; and (b) Sublessee waives any claim, demand and action against Sublessor for injury, death or property damage occurring in or around the Premises or Project during the Term.

11. Indemnification. To the fullest extent permitted by law, Sublessee hereby indemnifies, defends (with counsel acceptable to Sublessor), releases and holds harmless Sublessor, and each of its officers, directors, affiliates, contractors, agents, attorneys and employees (collectively, "Indemnified Parties"), against all claims, demands, damages, losses, causes of action and actions of any kind or nature whatsoever, and all related costs and expenses (including reasonable attorneys' fees) (a) for injury, death, disability, or illness of any person or damage to property, occurring in or around the Premises or Project or arising out of Sublessee's use of the Premises or Project, (b) in connection with or arising from the terms conditions, requirements and provisions of the Lease (or Sublessor's negotiation or documentation thereof) and this Sublease and (c) in connection with or arising from any mechanics' or materialmen's lien or claim filed against the Premises for work performed or materials furnished by or on behalf of Sublessee, except to the extent caused by the intentional misconduct of Sublessor. It is expressly agreed that Sublessee's obligations under this Section 11 will survive the expiration or earlier termination of this Sublease for any reason.

12. Insurance. Sublessee will provide such commercial general liability, property and other insurance coverages as Sublessor may reasonably request with respect to the operation of Sublessee's business in the Premises, but in no event less than the insurance coverage required to be carried by "Tenant" pursuant to the Lease (including loss of rent insurance, etc.). The insurance will be with companies reasonably acceptable to Sublessor, written on an occurrence basis, provide primary coverage, and name Sublessor (and Sublessor's area representative, if any) and Landlord as additional insureds or loss payees as their interests may appear, as applicable and as otherwise required of the "Tenant" under the Lease. The liability

policy will contain a contractual liability endorsement. Sublessee will deliver certificates evidencing the insurance required by this Section 12, which provide that the insurance may not be cancelled or materially changed in the scope or amount of coverage unless thirty (30) days advance written notice is given to Sublessor and Landlord.

13. Right to Inspect. Sublessor and its agents, employees or representatives will have the right to inspect the Premises during business hours to determine Sublessee's compliance with the terms of this Sublease and the Lease.

14. Acceptance of Premises; Sublessee's Representations. Upon the date that Landlord delivers possession of the Premises to Sublessor and Sublessor delivers possession of the Premises to Sublessee (which may occur simultaneously), Sublessee agrees to accept the Premises in an "AS IS" condition, without representation or warranty. Sublessee represents and confirms to Sublessor that Sublessee has selected the Premises for the location of the sweetFrog restaurant to be established and operated by Sublessee and that: (a) no representative, agent, attorney or employee of Sublessor made any representations, inducements or promises about the Premises, the Lease or the entry into this Sublease; (b) no representative, agent, attorney or employee of Sublessor made any representations, inducements or promises about the characteristics or conditions regarding or pertaining to the Premises or the shopping center/development in which the Premises is situated; (c) Sublessee has independently investigated the potential for the success of its operations in the Premises and has not relied upon any representations, inducements or promises by Sublessor's representatives, agents, attorney or employees, or any area representative; (d) Sublessee has concluded that the Premises has a reasonable opportunity for success as a sweetFrog restaurant; (e) Sublessee has inspected the Premises and finds the same in acceptable condition; (f) Sublessor has made no representation or warranty as to the suitability of the Premises for the conduct of Sublessor's business; (g) Sublessee waives any implied warranty that the Premises are suitable for Sublessee's intended purposes; (h) Sublessee accepts full responsibility for the consequences of Sublessee's decision to operate a sweetFrog restaurant at the Premises in accordance with the terms of this Sublease, the Lease and the Franchise Agreement; and (i) Sublessee has thoroughly reviewed the Lease and this Sublease and has been advised by its legal counsel regarding the Lease and this Sublease, or Sublessee has made a reasoned and fully informed decision not to be so represented by counsel and understands and acknowledges the significance and consequences of such decision, and Sublessee is fully knowledgeable about and is fully satisfied with the terms and provisions, and assumes all of its obligations as tenant under, the Lease and this Sublease. Sublessee acknowledges that the foregoing representations by Sublessee are a material inducement to Sublessor's execution of this Sublease.

15. Default.

15.1. An "Event of Default" will occur if at any time during the Term: (a) Sublessee defaults in the payment of Rent or other payment due hereunder and the same is not cured within three (3) days after written notice thereof; provided, however, Sublessor will be obligated to give only two (2) such notices in any calendar year, with subsequent payment default to be an Event of Default if such failure to pay continues for a period of three (3) days or more from the date such payment is due (without any notice); (b) Sublessee defaults in any other obligation under this Sublease, including, but not limited to causing or permitting the occurrence of any event which, but for the passage of time or the giving of notice, or both, would constitute a default under the Lease, and the same is not cured within ten (10) days after written notice thereof or such shorter cure period as may be set forth in the Lease; (c) Sublessee defaults in any obligation under the Franchise Agreement or any other agreement between Sublessor (or its affiliates) and Sublessee (or its affiliates), and the same is not cured within ten (10) days after written notice thereof; (d) any proceeding is begun by or against Sublessee to subject the assets of Sublessee to any bankruptcy or insolvency law or for an appointment of a receiver of Sublessee or for any of Sublessee's assets; or (e) Sublessee makes a general assignment of Sublessee's assets for the benefit of its creditors.

15.2. Upon an Event of Default, Sublessor may at any time thereafter at its election: (a) terminate this Sublease; (b) terminate Sublessee's right of possession in the Premises; (c) cure any such default and receive from Sublessee, as additional rent, all costs incurred in doing so, plus interest at the lesser of fifteen percent (15%) per annum or the highest rate permitted by law; (d) exercise any remedy available to Landlord under the Lease; and/or (e) pursue any other remedies available at law or in equity. All Sublessor remedies provided herein will be cumulative and non-exclusive. Upon the termination of this Sublease or termination of Sublessee's right of possession, it will be lawful for Sublessor, without formal demand or notice of any kind, to re-enter the Premises, by summary dispossession proceedings or otherwise, and to remove Sublessee and all persons and property therefrom. If Sublessor re-enters the Premises following an Event of Default, Sublessor will have the right to keep in place and use, or remove and store, all of the

furniture, fixtures, equipment, signage, inventory and other items covered by Sublessor's lien pursuant to Section 4.2 hereof. No action taken by Sublessor pursuant to this Section 15 will relieve Sublessee of its obligations under this Sublease or will be deemed an act terminating this Sublease or declaring the Term hereof ended unless notice is served upon Sublessee by Sublessor expressly setting forth therein that Sublessor elects to terminate this Sublease or declare the Term ended.

15.3. If, following an Event of Default, Sublessor terminates this Sublease, Sublessor may recover from Sublessee the sum of: (a) all Rent and all other amounts accrued hereunder to the date of such termination; (b) the cost of reletting the whole or any part of the Premises, including without limitation brokerage fees and/or leasing commissions incurred by Sublessor, and costs of removing and storing Sublessee's or any other occupant's property, and repairing, altering, remodeling, or otherwise putting the Premises into condition acceptable to a new tenant or tenants and the Landlord; (c) all reasonable expenses incurred by Sublessor in pursuing its remedies, including reasonable attorneys' fees and court costs; and (d) an amount in cash equal to the then present value of the Rent and other amounts payable by Sublessee under this Sublease as would otherwise have been required to be paid by Sublessee to Sublessor during the period following the termination of this Sublease measured from the date of such termination to the expiration date stated in this Sublease. Such present value will be calculated at a discount rate equal to the 90-day U.S. Treasury bill rate at the date of such termination.

15.4. If, following an Event of Default, Sublessor terminates Sublessee's right of possession (but not this Sublease), Sublessor may, but will be under no obligation to, relet the Premises for the account of Sublessee for such rent and upon such terms as shall be satisfactory to Sublessor without thereby releasing Sublessee from any liability hereunder and without demand or notice of any kind to Sublessee. If the Premises are not relet, then Sublessee will pay to Sublessor as damages a sum equal to the amount of the rental reserved in this Sublease for such period or periods, plus the cost of recovering possession of the Premises (including attorneys' fees and costs of suit), the unpaid Rent and other amounts accrued hereunder at the time of repossession, and the costs incurred in any attempt by Sublessor to relet the Premises. If the Premises are relet and a sufficient sum shall not be realized from such reletting after first deducting therefrom, for retention by Sublessor, the unpaid Rent and other amounts accrued hereunder at the time of reletting, the cost of recovering possession (including attorneys' fees and costs of suit), all of the costs and expense of repairs, changes, alterations, and additions, the expense of such reletting (including without limitation brokerage fees and leasing commissions) and the cost of collection of the rent accruing therefrom] to satisfy the rent provided for in this Sublease to be paid, then Sublessee will immediately satisfy and pay any such deficiency. Any such payments due Sublessor will be made upon demand therefor from time to time and Sublessee agrees that Sublessor may file suit to recover any sums falling due from time to time. Notwithstanding any such reletting without termination, Sublessor may at any time thereafter elect in writing to terminate this Sublease for such previous breach.

16. Brokerage. Sublessee represents and warrants that it has dealt with no broker, agent or other person in connection with this transaction and that no broker, agent or other person brought about this transaction. Without limited the foregoing, Sublessee will pay to any broker, agent or other person all commissions and other compensation due as a result of Sublessee's dealings with such broker, agent or other person in connection with this leasing transaction and will indemnify, defend and hold Sublessor harmless from and against any claims by such broker, agent or other person claiming a commission or other form of compensation by virtue of actually or allegedly having dealt with Sublessee with regard to this leasing transaction.

17. Notices. All communications or notices required or permitted to be given or served under this Sublease must be in writing and will be deemed to have been duly given or made if (a) delivered in person or by courier (including by Federal Express or other courier); (b) deposited in the United States mail, postage prepaid, for mailing by certified or registered mail, return receipt requested; or (c) faxed with confirmed transmission, followed by a hard copy in the mail on the next business day, and addressed as follows:

If to Sublessor: [LEASING ENTITY]
Attention: Real Estate Department
9311 E. Via de Ventura
Scottsdale, Arizona 85258
Facsimile: (480) 362-4792

with a copy to: [FRANCHISING ENTITY]
Attention: Legal Department

9311 E. Via de Ventura
Scottsdale Arizona 85258
Facsimile: (480) 362-4819

If to Sublessee: At the Premises or as designated
in the notice provision(s) of the
Franchise Agreement

All communications and notices will be effective upon delivery in person or by courier to the address set forth in this Sublease, upon being deposited in the United States mail in the manner set forth above or upon being faxed in the manner set forth above. Any party may change his, her or its address or fax number by giving notice in writing, stating his, her or its new address or fax number, to the other party to this Sublease as provided in the foregoing manner.

18. Personal Property Taxes. Sublessee will comply with all legal requirements for filing a personal property tax return for, and paying all taxes assessed against, all personal property, equipment and fixtures located within the Premises during the Term hereof, such payment to be made by Sublessee directly to the taxing authority on or before the due date thereof.

19. Quiet Enjoyment. So long as Sublessee pays all amounts due hereunder and performs all other covenants and agreements herein set forth, and so long as no Event of Default exists, Sublessee will peaceably and quietly have, hold and enjoy the Premises for the term hereof without hindrance from Sublessor subject to the terms and provisions of this Sublease. As this is a Sublease, Sublessee agrees to take the Premises subject to the terms of the Lease and all matters of record.

20. Governing Law. This Sublease and all questions relating to its validity, interpretation, performance and enforcement will be governed by and construed, interpreted and enforced in accordance with the laws of the State of Arizona, notwithstanding any Arizona or other conflict of laws provisions to the contrary.

21. Attorneys' Fees. If either party should prevail in any litigation or other legal proceeding instituted by or against the other related to this Sublease, the prevailing party, as determined by the court or the like, will receive from the non-prevailing party all costs and reasonable attorneys' fees (payable at standard hourly rates) incurred in such litigation or other legal proceeding, including costs on appeal, as determined by the court or the like. Sublessee will also pay to Sublessor, as additional rent, Sublessor's reasonable attorneys' fees incurred as a result of any breach or default by Sublessee under this Sublease.

22. Successors and Assigns. Subject to Section 9 hereof, which restricts Sublessee's rights to assign this Sublease and its rights hereunder, this Sublease will be binding upon and inure to the benefit of the parties and their respective assigns, legal representatives, executors, heirs and successors. Any attempt by Sublessee to assign this Sublease, or any of his rights hereunder, or to delegate its obligations hereunder, without compliance with the terms of Section 9 will be void. Notwithstanding anything contained in this Sublease to the contrary, Sublessor may assign this Sublease, or any of its rights hereunder, or delegate any of its obligations hereunder without the consent of Sublessee or any other person.

23. Joint and Several Liability. If Sublessee consists of more than one person or entity, the obligations hereunder will be joint and several.

24. Entire Agreement. This Sublease, including the exhibits hereto and the other agreements contained as exhibits to Franchisor's operations manual, contains the entire understanding and agreement of the parties with respect to the subject matter hereof and supersedes, replaces and extinguishes all prior agreements and understandings between the parties with respect to that subject matter. Each of the exhibits and other agreements (whether between the current parties or a former sublessee) is incorporated in this Sublease by this reference and constitute a part of this Sublease. This Sublease supersedes all Subleases and Agreements of Intent to Sublet between the parties (or their respective affiliates) with respect to the Premises.

25. Counterparts. This Sublease may be executed in two or more counterparts, each of which will be considered one and the same agreement and will become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties.

26. Time is of the Essence. Time is of the essence as to the performance of the parties' obligations under this Sublease.

27. Waiver of Right to Jury Trial, Class Action and Certain Damages. IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, BETWEEN SUBLESSOR AND SUBLESSEE ARISING OUT OF THIS SUBLEASE OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED IN CONNECTION HERewith OR THE TRANSACTIONS RELATED HERETO, SUBLESSEE HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, (A) THE RIGHT TO A JURY TRIAL OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, (B) THE RIGHT TO INITIATE OR PARTICIPATE IN A CLASS ACTION IN ANY FORUM, INCLUDING ARBITRATION, AND (C) THE RIGHT TO SEEK OR COLLECT PUNITIVE, CONSEQUENTIAL AND SPECIAL DAMAGES IN ANY FORUM, INCLUDING ARBITRATION.

28. Personal Guaranty. If Sublessee is an individual and married, the obligations and liabilities of Sublessee under this Sublease shall be personally guaranteed by the Sublessee's spouse, in the form of guaranty attached hereto as Exhibit D and incorporated herein by reference. If the Sublessee is a corporation, limited liability company, or other business entity, the obligations and liabilities of Sublessee shall be personally guaranteed by each of the Sublessee's shareholders, members, or other owners, direct or indirect (and their respective spouses, if married) in the form of a guaranty attached hereto as Exhibit D and incorporated herein by reference. In the event any person who has not previously signed said guaranty becomes Sublessee's spouse or Sublessee's shareholder, member, or other owner, direct or indirect, or a spouse of such owner, at any time after the execution of this Sublease, Sublessee must cause such person(s) to immediately execute and deliver said guaranty of the Sublease to Sublessor.

29. Plurals, Possessives and Captions. Words in the singular number include the plural when the context requires (and vice-versa), and defined terms include the possessive when the context requires (and vice-versa).

[SIGNATURE PAGE FOLLOWS]

SUBLESSOR'S SIGNATURE PAGE

SUBLESSOR: [LEASING ENTITY], an Arizona _____

By: _____
[Name, Title]

STATE OF ARIZONA)
) SS:
COUNTY OF MARICOPA)

The foregoing Sublease was acknowledged before me this _____ day of _____, 20____, by _____, the _____ of [LEASING ENTITY], an Arizona _____, on behalf of said entity.

_____ (Seal)

Notary Public

My Commission Expires

**Exhibit A
to
Sublease**

Effective Date of Sublease:	_____
Name of Sublessee:	_____, a(n) _____
Lease:	By and between [LEASING ENTITY] ("Tenant") and [LANDLORD] (" <u>Landlord</u> ")
Premises:	[Address City, State Zip]
Commencement Date of Lease:	_____, 20__
Expiration Date of Lease:	_____, 20__
How many option(s) to extend the Lease are remaining and Option Terms:	___ () ___ ()-year option(s) remaining [or N/A]
Lease Security Deposit currently held by Landlord:	\$X,XXX.XX - Amount set forth in Lease [verified by] [but not verified] by Landlord [or N/A]
Sublease Security Deposit:	\$X,XXX.XX [or N/A]
Exercise Renewal Option(s) Notice Date to Landlord:	[IF RENEWAL OPTIONS REMAIN] No earlier than _____, 20__, no later than _____, 20__ OR [IF NO RENEWAL OPTIONS REMAIN] As of the Effective Date, no renewal options remain under the Lease. If Sublessee is interested in exploring extending the subtenancy after the Lease expiration date, Sublessee is required to notify Sublessor of its desire to extend the tenancy no earlier than _____, 20__, no later than _____, 20__.

**Exhibit B
to
Sublease**

LEASE AGREEMENT

**Exhibit C
to
Sublease**

Lease Verification Checklist

By initialing below, Sublessee hereby acknowledges reviewing the attached Lease for the Premises, including all amendments and addendums (Exhibit B), and accepts to be bound by all the terms contained therein:

Sublessee acknowledges and agrees to be bound by all of the terms of the Lease, including, but not limited to, the following:

INITIALS:

Current monthly rental payment amounts (Sublessee acknowledges are subject to periodic increases as detailed in the Lease), including CAM, NNN, taxes and related fees

Lease term, including any renewal options

**Exhibit D
to
Sublease**

GUARANTY OF SUBLEASE

GUARANTY OF SUBLEASE

In order to induce MTY Franchising USA, Inc. ("Franchisor") to enter into that certain Franchise Agreement dated _____ ("Franchise Agreement") with _____ ("Franchisee"), and to induce [LEASING ENTITY], an affiliate company of Franchisor ("Sublessor") to enter into that certain sublease ("Sublease") dated _____, 20__ with Franchisee, as "Sublessee", covering the sweetFrog store located at: _____, the undersigned ([individually and collectively,] "Guarantor"), hereby personally guarantees the payment and performance of and agrees to pay and perform as a primary obligor all liabilities, obligations and duties (including, but not limited to, payment of rent) imposed upon Franchisee as Sublessee under the terms of the Sublease, as if Guarantor had executed the Sublease as Sublessee thereunder.

Recitals

- A. Guarantor is a shareholder, partner, member, or other person or entity interested in effecting the grant of the Sublease.
- B. Without this Guaranty of Sublease ("Guaranty"), Sublessor cannot be assured that there are sufficient assets to operate the sweetFrog store or to protect Sublessor in the event of a default by Sublessee.
- C. Sublessor is willing to enter into the Sublease only if Guarantor personally guarantees faithful performance of all the terms of the Sublease.
- D. Guarantor acknowledges Guarantor received and read the Sublease, and all exhibits thereto, and agrees to be bound to the obligations in this Guaranty with regard to the Sublease.

Agreement

1. In consideration of the above recitals, Guarantor personally guarantees, for the benefit of Sublessor, its parent, subsidiaries, affiliates and successors and assigns, the prompt and complete performance of all the covenants and conditions contained in the foregoing Sublease.
2. This Guaranty is effective until all terms of the Sublease have been fully and completely performed by Sublessee and shall continue through the entire term of the Sublease as may be renewed or extended. No release of Sublessee or discharge of Sublessee under bankruptcy law, or any other law, shall impair or effect the obligations of Guarantor to Sublessor hereunder.
3. Sublessor is not required to proceed first against the Sublessee, but may proceed first against Guarantor alone or concurrent with proceeding against Sublessee. The obligations of Guarantor hereunder are absolute and unconditional.
4. Sublessee and Sublessor may from time to time alter or modify the Sublease between themselves, possibly changing or increasing the extent of Guarantor's obligation under this Guaranty. Guarantor consents to any and all modifications or amendments of the Sublease and related documents, without requiring notice to Guarantor or Guarantor's consent.
5. Guarantor agrees specifically to be bound by any confidentiality requirements in the Sublease.
6. Guarantor waives notice of acceptance of this Guaranty and notice of non-performance or non-payment by Sublessee of any of its obligations or liabilities under the Sublease.
7. Guarantor agrees to pay all attorneys' fees, costs and expenses incurred by Sublessor in enforcing this Guaranty, whether or not suit or action is filed, and if suit or action is filed, then through trial and all appeals, and also in any proceedings or matter in Bankruptcy Court; Guarantor assumes all liability for all losses, costs, attorney's fees, and expenses that Sublessor incurs as a result of a default by Sublessee, including those fees and expenses incurred in a bankruptcy proceeding involving Sublessee.

8. Guarantor hereby agrees that upon notice of default or upon an uncured default of the Sublease or any other agreement between Guarantor (or a legal entity thereof) and Sublessor or its affiliates, and with no prior notice, Guarantor consents to Sublessor's (or its affiliates' or third-party contractors') acquisition and use of non-business consumer credit reports on Guarantor in order to evaluate as necessary the financial condition of Guarantor as principal, member, manager, franchisee, and/or guarantor in connection with the collection of monetary obligations as contemplated by the Franchise Agreement, the Sublease, this Guaranty, a promissory note, or any other agreements between Guarantor (or a legal entity thereof), and Sublessor or its affiliates. Guarantor hereby knowingly consents to the use of such credit reports consistent with the Federal Fair Credit Reporting Act as contained in 15 U.S.C. § 1681 et seq.

9. This Guaranty is personal to Guarantor and the obligations and duties imposed herein may not be delegated or assigned; provided, however, that this Guaranty shall be binding upon the successors, assigns and personal representatives of Guarantor. This Guaranty shall inure to the benefit of Sublessor, its affiliates, successors and assigns.

10. [The undersigned _____][include name(s) here of each of the undersigned who is not married] each represents that he/she is not married as of the date first set forth above.]

11. In the event that any one or more provisions contained herein shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Guaranty shall be construed to bind Guarantor to the maximum extent permitted by law that is subsumed within the terms of such provision as though it were separately articulated herein.

12. This Guaranty shall be interpreted and construed under the laws of the State of Arizona, which laws shall prevail in the event of any conflict of law. Any appropriate state or federal court located in Maricopa County, Arizona has exclusive jurisdiction over any case or controversy arising under or in connection with this Agreement and is the proper forum in which to adjudicate the case or controversy, and the parties hereto irrevocably submit to the jurisdiction of any such court. THE PARTIES AGREE THAT ALL DISPUTES ADMITTED TO THE COURT PURSUANT TO THIS SECTION 12 SHALL BE TRIED TO THE COURT SITTING WITHOUT A JURY, NOTWITHSTANDING ANY STATE OR FEDERAL CONSTITUTIONAL OR STATUTORY RIGHTS OR PROVISIONS.

13. If Guarantor consists of two (2) or more persons, then each person will be jointly and severally liable under the provisions of this Guaranty.

14. Guarantor acknowledges (i) that it is a condition to the granting of the Sublease to Sublessee that Guarantor shall execute and deliver this Guaranty to Sublessor, (ii) that Sublessor has entered into the Sublease in reliance upon the agreement of Guarantor to do so, and (iii) that, as owners of the Sublessee, if applicable, Guarantor has received adequate consideration to support its execution of this Guaranty. This Guaranty does not grant or create in Guarantor any interests, rights or privileges in any franchise or the Franchise Agreement.

GUARANTOR:

[Name], an individual

[Name], an individual

EXHIBIT U

TO THE FRANCHISE DISCLOSURE DOCUMENT

List of Franchise Owners

sweetFrog Franchised Businesses Open as of November 30, 2022~~3~~

Franchise Company	Owners	Address	City	State	Zip	Phone
Cary Frog, LLC	SFEbrands	3137 West Cary Street	Richmond	VA	23221	8042133089
Chantilly Froyo, LLC	Arash Yazdi, Mahmoud Sabouri-Yazdi	13061 Lee Jackson Memorial Hwy	Fairfax	VA	22033	7034889966
JSharon Inc.	Jennifer Sharon	10033 Jefferson Davis Hwy	Fredericksburg	VA	22407	5407100000
Sweetfrog Enterprises, LLC	Arash Yazdi	22855 Brambleton Plaza	Brambleton	VA	20148	7033273088
Eric Miller Group Virginia LLC	null, Rebecca "Kris" Kay	315 Garrisonville Road	Stafford	VA	22554	5406027163
Parham Frog, LLC	SFEbrands	1541 N Parham Road	Richmond	VA	23229	8045256624
Midlothian Frog, LLC	SFEbrands	11415-B Midlothian Turnpike	Richmond	VA	23235	8048933772
Sweet Pump, LLC	Dan Smith, Alexander Smith, Barry Armstrong	1211 Jefferson Davis Hwy	Fredericksburg	VA	22401	5403732221
SPS Sterling LLC	Saumya Singh, Praveena Billakuduru	20955 Davenport Dr	Sterling	VA	20165	7039569878
CZA Inc.	David Czahor	2236 General Booth Boulevard	Virginia Beach	VA	23456	7578167036
Bedrock, LLC		1339 Towne Square Blvd	Roanoke	VA	24012	5405957599
SweetFrog Rockwall, LLC	Luke Keiffer	1067 East Interstate 30	Rockwall	TX	75087	9727229779
Forney Frog, LLC	Luke Keiffer	501 FM 548	Forney	TX	75126	9725521749
Sweetfrog Enterprises, LLC	Vipul Patel	12918 South Freeway	Burleson	TX	76028	8172950004
Cherry Blue Partners, LLC	Vipul Patel	3748 Belt Line Road	Addison	TX	75001	4696206647
Sweet Frog Frisco LLC	Luke Keiffer	5105 El Dorado Pkwy	Frisco	TX	75033	2147057971
Sweet Frog Centreville, LLC	SFEbrands	14215 Centreville Square	Centreville	VA	20121	7035432553

Neelsville Frog, LLC	SFEbrands	20940-C Frederick Road	Germantown	MD	20876	3015280789
Munaza and Faisal LLC	Faisal Bhatti,Munaza Bhatti	9300 Woodmore Center Dr	Lanham	MD	20706	3017723764
Silver Spring 100 Frog, LLC	SFEbrands	100 Lexington Dr	Silver Spring	MD	20901	3015920021
Leesburg Sweets, LLC	Oksana Krempokha	55 Catoctin Circle NE	Leesburg	VA	20176	5719194493
JAINAT LLC	Jaimol Thomas	1867 Commercial Way	Spring Hill	FL	34606	3526839190
Supreme Assets Incorporated	Karim Harrell,Shawn Nady	201 W 21st St	Norfolk	VA	23517	7575027616
Hickory Frog LLC	Luke Shook	1754 Catawba Valley Blvd SE	Hickory	NC	28602	8288559778
ST John's Frog LLC	SFEbrands	4413 Town Center Parkway	Jacksonville	FL	32246	9043294689
Gibson Development, LLC	Josh Gibson	37 Burgess Road	Harrisonburg	VA	22801	5402098671
Annapolis 2562 Frog, LLC	SFEbrands	2562 Solomons Island Rd	Annapolis	MD	21401	4102243753
North Richland Hills SF LLC	Luke Keiffer	9143 Highway 26	North Richland Hills	TX	76180	8175144081
Vestal Frog LLC	SFEbrands	2421 Vestal Parkway East	Vestal	NY	13850	6072964013
Number5son, LLC	Michael Kenney	23064 Three Notch Road	California	MD	20619	3018634736
Dkone LLC	Devangkunar Patel,Dipakkumar Patel	1585 Central Avenue	Summerville	SC	29483	8432858310
Paris Frog LLC	SFEbrands	3594 Lamar Ave	Paris	TX	75460	9036098802
Oneonta Frog LLC	SFEbrands	5006 State Highway 23	Oneonta	NY	13820	6074332715
Goose Creek Frog LLC	SFEbrands	604 St James Avenue	Goose Creek	SC	29445	8437932919
Prince Frederick Frog LLC	SFEbrands	902 Costley Way	Prince Frederick	MD	20678	4439689752
Horseheads Frog LLC	SFEbrands	1625 County Road 64	Horseheads	NY	14845	6077398909
Plattsburgh Frog LLC	SFEbrands	200 Consumer Sq	Plattsburgh	NY	12901	5185611015
Bak, Inc.	SFEbrands	7321 Hancock Village Drive	Chesterfield	VA	23832	8046390110
Active Culture, LLC	Nadeem Bhatti	852 N. Rolling Rd	Catonsville	MD	21228	4107447609

JoJo Frogs Enterprise, LLC	SFEbrands	6917 Fayetteville Rd	Durham	NC	27713	9198084255
Trinity Enterprises, LLC	Suzanne Fields	6297 Towncenter Drive	Clemmons	NC	27012	3367781801
The6ofUs, LLC	Michael Black,Pamela Black	2233 Matthews Township Parkway	Matthews	NC	28105	7048460550
Sweet Frog - Raleigh LLC	Mia Johnson,Calvin Johnson	6260 Plantation Center Dr	Raleigh	NC	27616	9197909667
YO-FROG, LLC	Kenneth Egel,Peggy Egel,Robb Egel,Paula Egel	8528-10 Pit Stop Court	Concord	NC	28027	7046880592
YO-FROG, LLC	Robb Egel,Graham Harrison	2231-B Spider Drive	Kannapolis	NC	28083	7047210501
MP-FROG INC	Christopher Mulcahy,Sue Mulcahy	1105 Tryon Village Drive	Cary	NC	27518	9196222028
LAB Enterprises LLC	James Sherrill	4191 Sycamore Dairy Rd	Fayetteville	NC	28303	9108672207
YUM-FROG LLC	Robb Egel	401 Cox Rd	Gastonia	NC	28056	7048657884
Gibson Development, LLC	Josh Gibson	254 Highway 17 North	North Myrtle Beach	SC	29582	8436633456
New Day Ventures, Inc.	Josh Gibson	3699 Renee Drive	Myrtle Beach	SC	29579	8437963505
CJ Rhim Frog, Inc.	Chae Rhim,Choon Rhim	15568 Westchester Commons Way	Midlothian	VA	23113	8043787651
CHESTER YOGURT SHOP, LLC	Suman Singha,Manju Singha	11932 Iron Bridge Road	Chester	VA	23831	8047154006
ABLE Yogurt Company LLC	Jenny Chang (Jiyun Lee)	7225 Bell Creek Road	Mechanicsville	VA	23111	8047304249
Gibson Development, LLC	Josh Gibson	4018 Wards Road	Lynchburg	VA	24502	4342377003
Gibson Development, LLC	Josh Gibson	14805 Forest Road	Forest	VA	24551	4345253959
JMA Enterprises, Inc.	Yanyu Li	4907 Courthouse Street	Williamsburg	VA	23188	7572291004
Frozen Ventures, LLC	Matthew Stopp,Adam Balestino	2030 South Pleasant Valley Road	Winchester	VA	22601	5406624102
Gibson Development, LLC	Josh Gibson	165 Holt Garrison Parkway	Danville	VA	24540	4347995319

Sweet Ventures, LLC	Vibha Madan,Derek Madan	12515 Jefferson Avenue	Newport News	VA	23602	7578333764
LD's Daughter, LLC	Lisa Kyriakides	1801 Atlantic Avenue	Virginia Beach	VA	23451	7574253764
Sweet Frog Culpeper LLC	Stephen Walters	15323 Creativity Drive	Culpeper	VA	22701	5407271001
FroYo Marketing, LLC	Thornton "Bean" Stringfellow,Wendell Hollier,null,Robyn Stringfellow	3124 Lee Highway	Bristol	VA	24202	2766443764
Warrenton Froyo, LLC	Stephen Walters	488 Fletcher Dr	Warrenton	VA	20186	5403596401
Sweet Ventures, LLC	Vibha Madan,Derek Madan	7394 Harbour Town Pkwy	Suffolk	VA	23435	7576383764
LunchHour Investments, LLC	James Maloney,Don Grivetti,Pat Baise	4550 South Laburnum Road	Richmond	VA	23231	8042224808
Greenbrier Frog, Inc.	Kabsook Choi,Chris Choi	109 Volvo Parkway	Chesapeake	VA	23320	7574109988
Frozen Ventures, LLC	Matthew Stopp,Adam Balestino	245 Retail Commons Parkway	Martinsburg	WV	25403	3042639836
Number1son Limited Liability Company	Michael Kenney	2071 Springwood Rd	York	PA	17403	7176688646
AVACK, LLC.	Amy Campbell	63 Hebron Avenue	Glastonbury	CT	06033	8606570700
Sweet Peach, LLC	Dan Smith,Alexander Smith,Barry Armstrong	875 Lawrenceville Suwanee Road	Lawrenceville	GA	30043	7079786474
Hollier FroYo, LLC.	null	4201 Nelson Road	Lake Charles	LA	70605	3374803764
Goldrod, LLC.	Nag Varada	891 F Rockville Pike	Rockville	MD	20852	3013407318
IBBIDDY, INC.	Chelsea Geisel	531 Baltimore Pike	Bel Air	MD	21014	4435675826
YUM-FROG LLC	Robb Egel	1216 J Bridford Parkway	Greensboro	NC	27407	3368540299
The6ofUs, LLC	Pamela Black,Michael Black	2702 N Roberts Ave	Lumberton	NC	28358	9103744764
FAB-FROG, LLC	Paula Egel,Kenneth Egel,Peggy Egel,Michaelle Racz,Robb Egel	8156 S Tryon	Charlotte	NC	28273	7045882070
Pacetone Inc.	Jen-Hou "Eric" Chen	5640-35 Sunrise Highway	Sayville	NY	11782	6312565933

Sweet NEO, LLC	Andrew Smith,Matthew Lee	3030 Graham Rd	Stow	OH	44224	3306882290
Number 2 Son LLC	Michael Kenney	6416 Carlisle Pike	Mechanicsburg	PA	17050	7176208199
Number3Son LLC	Michael Kenney	1655-B Lititz Pike	Lancaster	PA	17601	7174906043
Broad Street Signs, Inc.	LaVerne Martin,Harry Martin	141 Wilson Ave	Hanover	PA	17331	7176300630
Beyond Beyond 320, LLC	Howard Strader	572 John Ross Pkwy	Rock Hill	SC	29730	8033663764
BCP I LLC	Kevin Alas,Michael Alas,Mary Alas,Manuel Alas,Brian Alas	33 Office Park Road	Hilton Head	SC	29928	8436893764
R4M Ventures, LLC	Mike Williams,Karen Williams	2726 Parkway	Pigeon Forge	TN	37863	8653651745
KUMAR ENTERPRISES INC	Charanjit Kumar	10901 Parkside Drive	Knoxville	TN	37934	8652884242
Frozen Yogurt. Inc.	Venkatesh Papishetty,Dasharath Baddam,Sravan Paduru,Jithender Vummadi	1472 Northpoint Village Center	Reston	VA	20194	5719269204
LD's Daughter LLC	Lisa Kyriakides	2810 Atlantic Avenue	Virginia Beach	VA	23451	7574220585
Frozen Ventures, LLC	Matthew Stopp,Adam Balestino	965 Target Way	Morgantown	WV	26501	3042882454
SWP, LLC.	Crystal Woodrum	304 Galleria Plaza	Beckley	WV	25801	3042527095
YUM-FROG LLC	Paul Tesi,Amy Tesi,Paula Egel,Robb Egel,Peggy Egel,Kenneth Egel	1023 Hanes Mall Boulevard	Winston-Salem	NC	27103	3367657400
Blacksburg Yogurt Co. LLC.	SFEbrands	801 University City Blvd	Blacksburg	VA	24060	5405520371
Pirate Frog, LLC	Paula Egel,Robb Egel,Amy Tesi,Paul Tesi,Peggy Egel,Kenneth Egel	740 Greenville Blvd	Greenville	NC	27858	2523297011
Sweet Ventures, LLC	Vibha Madan,Derek Madan	4360 George Washington Memorial Hwy	Yorktown	VA	23692	7578743764
Sweet Panhandle, LLC	Barry Armstrong,Alexander Smith,Dan Smith	3749-D Gulf Breeze Parkway	Gulf Breeze	FL	32563	8505836405

YUM-FROG LLC	Robb Egel	6443-C Old Monroe Road	Indian Trail	NC	28079	7046849162
YUM-FROG LLC	Kenneth Egel,Paula Egel,Peggy Egel,Amy Tesi,Paul Tesi,Robb Egel	2821 West Highway 74	Monroe	NC	28110	7042388333
Suffolk Frog, Inc.	Anne Weaver,Chris Choi	1217 North Main Street	Suffolk	VA	23434	7575390808
AIME, INC.	Melissa Villanueva	1505 U.S. Highway 41	Schererville	IN	46375	2194407093
J6 Enterprises Inc	Jeremy Banks,Janelle Banks	2405 F Herritage Street	Kinston	NC	27530	2526430897
Full Cups LLC	Josh Gibson	1581-1 Country Road 220	Fleming Island	FL	32003	9042151300
SSF Marshfield Inc.	Jeremy Stanford,Ashley Stanford,Robert A. Cornell	1899 Ocean St	Marshfield	MA	02050	7818373940
PJC Enterprise, Inc.	Joon Yang,Peter Yang	5841-A Crossroad Center Way	Falls Church	VA	22041	7039980066
Eric Miller Group Virginia LLC	Rebecca "Kris" Kay,Rebecca "Kris" Kay,null	13796 Smoketown Road	Woodbridge	VA	22192	7035903478
Leesburg Sweets, LLC	Oksana Krempokha	100 Purcellville Gateway Drive	Purcellville	VA	20132	5407519565
ABLE Waldorf LLC	Han S. Chang,Jiyun Lee	2954B Festival Way	Waldorf	MD	20601	3016329511
FROYO SHOP GM, LLC	James Sherrill	7760 Good Middling Drive	Fayetteville	NC	28304	9108679601
Cool Friends, LLC	Michael Kenney	14635-C Mt Airy Rd	Shrewsbury	PA	17361	7172270023
Frozen Ventures, LLC	Adam Balestino,Matthew Stopp	18081 Garland Groh Blvd	Hagerstown	MD	21740	3017917343
Frozen Ventures, LLC	Matthew Stopp,Adam Balestino	1602 - 1604 Osgood Drive	Altoona	PA	16602	8149421600
Sweet Pump, LLC	Barry Armstrong,Alexander Smith,Dan Smith	11321 W Broad Street	Glen Allen	VA	23060	8043601546
Frozen Ventures, LLC	Adam Balestino,Matthew Stopp	281 Northland Center	State College	PA	16803	8142389500
Sweetbiz, Inc.	Jonathon Duncan	748 W 23rd Street	Panama City	FL	32405	8504818252
Heavenly Divine Intervention II, LLC	Amy Campbell,Daniel Siracusa,Scott	1500 Pleasant Valley Rd	Manchester	CT	06042	8606480616

	Campbell, Wendy Martocchio					
MCE FROZEN ENTERPRISES LLC	Mike Sweeney, Sarah Sweeney	11211-A New Hampshire Avenue	Silver Spring	MD	20904	3013280457
GREG AND DONNA GORE ENTERPRISES LLC	Greg Gore, Donna Gore	600 Town Centre Drive	Glen Mills	PA	19342	6104591379
SF Bear, LLC	Jason Pease, Kathryn Pease	1225 Quintilio Drive	Bear	DE	19701	3028322360
Patriot Marketplace, LLC	Adil Bhatti, Nadeem Bhatti	3341 Corridor Marketplace	Laurel	MD	20724	3016044011
Manassas Frog, LLC	Nag Varada	11648 Sudley Manor Dr	Manassas	VA	20109	7033684051
FROYO MANASSAS LLC	Joseph Trotter	10077 Market Circle	Manassas	VA	20110	7032574635
Prattville Frog, Inc.	Paul Hackett	1963A Cobbs Ford Rd	Prattville	AL	36066	3344918899
Lee Branch Frog Inc	Paul Hackett, Joseph. De Marco, John Sciaccotta	250 Doug Baker Blvd	Birmingham	AL	35242	2054373775
TopUp Froyo LLC	Amruta Deshmukh, Ashish Shah, Hiral Shah, Ranjan Deshmukh	1104 Carlisle Road	Camp Hill	PA	17011	7174127207
ZLM Frozen Ventures, LLC	David Evans	8063 Brewerton Road	Cicero	NY	13039	3152885667
Frozen Ventures, LLC	Matthew Stopp, Adam Balestino	137 Town Center Drive	Johnstown	PA	15904	8142544569
Sweet NEO Green, LLC	Matthew Lee, Andrew Smith	3467 Massillon Road	Uniontown	OH	44685	3308999885
SF Rehoboth, LLC	Jason Pease, Kathryn Pease	18598 Coastal Highway	Rehoboth Beach	DE	19971	3027036990
DEKR, LLC	Kasondra Miller, Eric Miller, Alisha Rountree, Dave Miller	6771 West Indiantown Road	Jupiter	FL	33458	5617432787
MTN Ventures, LLC	Jeffrey Buchanan, Kelley Buchanan	201 N Main Street	Hendersonville	NC	28792	8286985200

Sweet KD Investments, LLC	David Robertson,Jack Singer,Ron Drogan	16000 Theme Park Way	Doswell	VA	23047	8048765000
Sweet CW Investments, LLC	Ron Drogan,David Robertson,Jack Singer	14523 Carowinds Blvd	Charlotte	NC	29708	7045882600
J6 Enterprises Inc	Janelle Banks,Jeremy Banks	1261 N Brightleaf Blvd	Smithfield	NC	27577	9193001481
Sweet Frog of Ocean City MD, LLC	Chris Gentry,Samuel Song	6701 Coastal Hwy	Ocean City	MD	21842	4436642935
Frozen Ventures, LLC	Matthew Stopp,Adam Balestino	116 Walnut Hill Drive	Uniontown	PA	15401	7244308120
Sweet NEO Fairlawn, LLC	Matthew Lee,Andrew Smith	2719 West Market Street	Fairlawn	OH	44333	2346780144
SF -- HILLTOP, LLC	Lisa Kyriakides,Chris Kyriakides	1340 N Great Neck Road	Virginia Beach	VA	23454	7579619333
Frankfort Yogurt LLC	Mark Doyle,Katherine Doyle	9645 Lincoln Way Lane	Frankfort	IL	60423	8152772269
Wheaton MD Frog LLC	SFEbrands	11923 Georgia Ave	Wheaton	MD	20902	3019333019
Gibson Development, LLC	Josh Gibson	706B North Ocean Blvd	Myrtle Beach	SC	29577	8432131437
Full Cups LLC	Josh Gibson	9918 Knockando Lane	Huntersville	NC	28078	7049875098
SunCres Inc.	Chowol "Rachel" Noh,Byungil Noh	444 W Broad Street	Falls Church	VA	22046	7039920095
Plainville Frog LLC	Wahida Rashid	17 Farmington Ave	Plainville	CT	06062	8604790440
	Todd Kramer,null	330 Market Street	Lewisburg	PA	17837	5707684988
Reed Enterprises, LLC	Doug Reed,Alison Reed,Doug Reed	878 B Stillwater Ave	Bangor	ME	04401	2079473764
YO-FROG, LLC	Robb Egel,Paula Egel,Kenneth Egel,Peggy Egel	6165 Bayfield Parkway	Concord	NC	28027	7047207627
Patriot Marketplace, LLC	Nadeem Bhatti,Adil Bhatti	1407 Merritt Blvd	Dundalk	MD	21222	4102843764
Westminster Froyo, LLC	Sarita Baddam	400 Englar Rd	Westminster	MD	21157	4108615707
LAWNN KENT ISLAND, INC.	Wasi Ansari,Asad Ansari	200 Abruzzi Dr	Chester	MD	21619	4432493155

Bindan LLC	Christina Herring	2721-E North Salisbury Blvd	Salisbury	MD	21801	4433585111
Best Sweet Frog, LLC	Nabil A. Asad	6071 Oxon Hill Road	Oxon Hill	MD	20745	3015671683
Lux Ventures, LLC	R. Stuart Hornsby	477 Turner McCall Boulevard NE	Rome	GA	30165	7064132477
Parkersburg Frog, LLC	null	2820 Pike Street	Parkersburg	WV	26101	3048939990
Dukes Frog Inc.	Joe Zoubi	30176 Hwy 64	Canton	TX	75103	9038656700
Chang Keun Kim	Sam Kim (Chang Keun Kim)	1867 East Main Street	Peekskill	NY	10566	9147888088
Frog @ Dunn LLC	Doug West	1725 W Cumberland Street	Dunn	NC	28334	9103041080
SF-24, LLC	Chris Kyriakides,Lisa Kyriakides	2316 Atlantic Ave	Virginia Beach	VA	23451	7573059918
MSQ Frog, LLC	Joe Zoubi	1515 Town East Boulevard	Mesquite	TX	75150	9726816232
Wilkesboro SF, LLC	Rajni Patel,Jaykant Patel,Jon Gambill	1448 Edgewood Drive	Mt. Airy	NC	27030	3367867938
Tart Enterprise Inc	Joshua Tart,Tonya Tart	317 N Spence Avenue	Goldsboro	NC	27534	9193304043
Patriot Marketplace, LLC	Nadeem Bhatti,Adil Bhatti	8652 Pulaski Highway	Rosedale	MD	21237	4103915888
J Brown Enterprises LLC	Jonathan Brown	1214 W 43rd Street	Houston	TX	77018	7136803764
KDK Sweet Life LLC	Kelly Kreimer,Dean Kreimer	4450 Eastgate Boulevard South	Cincinnati	OH	45245	5139471777
William & Jean Inc	Nadeem Bhatti	12274 Palmdale Road	Victorville	CA	92392	7605524140
SSF Quincy Inc.	Ashley Stanford,Jeremy Stanford,Robert A. Cornell	650 Adams St	Quincy	MA	02169	6174816747
Majneen, LLC	George Hanna	3632 Center Road	Brunswick	OH	44212	3304603132
Wilkesboro SF, LLC	Rajni Patel,Jaykant Patel,Jon Gambill	1510-B Winkler Mill Rd	Wilkesboro	NC	28697	3369737938
Super Sweet Frog LLC	Judy Bryan,Mark Bryan	2932 US Highway 27 North	Sebring	FL	33870	8633864917
Shrijee Desserts LLC	Jayna Patel	1273 Broad Street	Sumter	SC	29150	8039055540
Dom's Froyo LLC	Dominic Archuleta	560 W Ireland Rd	South Bend	IN	46614	5748551120

Sweet Pump, LLC	Barry Armstrong,Alexander Smith,Dan Smith	5715 Plank Road	Fredericksburg	VA	22407	5407853244
ZLM Frozen Ventures, LLC	David Evans	532 Towne Drive	Fayetteville	NY	13066	3156374097
Lima Kent Enterprises, LLC	Robert Wheeler DECEASED	2550 Tiffin Ave	Findlay	OH	45840	5675253064
Frog by the Beach LLC	Maria Swadley	15500 Panama City Beach Pkwy	Panama City	FL	32413	8505886539
SF-20, LLC	Lisa Kyriakides	2020 Atlantic Avenue	Virginia Beach	VA	23451	7574220585
Faisal & Munaza LLC	Faisal Bhatti,Munaza Bhatti	5599 Spectrum Dr	Frederick	MD	21703	2406515493
Wilkesboro SF, LLC	Jaykant Patel,Jon Gambill,Rajni Patel	276 Watauga Village Drive	Boone	NC	28607	8283861113
Full Cups LLC	Josh Gibson	168 G Norman Station Blvd	Mooresville	NC	28117	7046620999
Pelotte Enterprises, Inc.	Tonya Pelotte,Tonya and Jason Pelotte	72 Armory Rd	Waterville	ME	04901	2078779338
Majneen, LLC	George Hanna	3259 Maple Ave	Zanesville	OH	43701	7404871027
Sweet Parlor Group, LLC	Tosha Thornton,La Tonya Banks,Bonsondo Bayindu	117 Pavilion Parkway	Fayetteville	GA	30214	6785191406
Full Cups LLC	Josh Gibson	125 Stonebridge Plaza Ave	Richmond	VA	23225	8046744741
MJMC Ventures LLC	Melissa Marks,Matthew Meekins	210 England St	Ashland	VA	23005	8044966915
FTW SF, LLC	Luke Keiffer	8825 Tehama Ridge Parkway	Fort Worth	TX	76177	8176159042
FAZ FROG ENTERPRISES, INC	Walid Hajeer,Mustafa Hamad	101 South Coit Road	Richardson	TX	75080	4699066199
JAINAT LLC	Jaimol Thomas	23028 State Road 54	Lutz	FL	33549	8135911402
Kingstowne Frog, LLC	Daniel Shon,Samuel Shon	5926 Kingstowne Center	Kingstowne	VA	22315	5717776330
R4M Ventures, LLC	Mike Williams,Karen Williams	1259 Middle Creek Road	Sevierville	TN	37862	8653661685
Patriot Marketplace, LLC	Nadeem Bhatti,Adil Bhatti	2159 York Road	Lutherville	MD	21093	4438954899

Mobile SF, LLC	Luke Keiffer	8825 Tehama Ridge Parkway	Fort Worth	TX	76244	8176159042
Middletown NY Frog LLC	SFEbrands	470 NY-211	Middletown	NY	10940	8456731626
New Hartford NY Frog LLC	SFEbrands	8643 Clinton Street	New Hartford	NY	13413	3155074093
Camillus NY Frog LLC	SFEbrands	190 Township Blvd	Camillus	NY	13031	3159304474
Newburgh NY Frog LLC	SFEbrands	1217 NY-300	Newburgh	NY	12550	8457844248
DSG NY Enterprises, Inc.	Diane Gocha	2521 South Road	Poughkeepsie	NY	12601	8454633330
Sweet Panhandle, LLC	Barry Armstrong, Dan Smith, Alexander Smith	3439 Bannerman Rd	Tallahassee	FL	32312	8502944921
Springfield Frog, LLC	Samuel Shon, Daniel Shon, Martino Shon	6356 Springfield Plaza	Springfield	VA	22150	5713275211
Sweet Victoria, LLC	Tamara Joyce	19 Plaza Parkway	Lexington	NC	27292	3368431389
SERVINGHIM LLC	Jennifer.Lawrence	2114 Hwy 41	Mount Pleasant	SC	29466	8433529314
XU Sweet, LLC dba Sweet Frog DFW Midcities	Christine.Buczec, William.Buczec	2150 W Northwest Hwy	Grapevine	TX	76051	2147021209
FROYO MOBILE UNIT, LLC	James Sherrill	4191 Sycamore Dairy Rd	Fayetteville	NC	28303	9104966929
Midlothian SF, LLC	Luke Keiffer	2210 FM 663	Midlothian	TX	76065	9727755333
J & K Frog, LLC	Kimberly.Douglas, Jennifer.Roseboro	1390 Chain Bridge Rd #10008	McLean	VA	22101	7032614353
Hilliard Enterprise Incorporated	Leo.Hilliard	2052 - 8 South Independence Blvd	Virginia Beach	VA	23453	7579043953
MSQ FROG II, LLC	Hatoof.Hijazi, Nabil Alzienati	3148 State Hwy 161	Grand Prairie	TX	75052	9726816232
TRI SWEET LLC	Raid.Ettoum, Yousef .Zoubi	1288 W Main St	Lewisville	TX	75067	(214) 679-4593
Devasanu LLC	Nayan Patel, Manisha Shah	43114 Peacock Market Plaza	South Riding	VA	20152	7039573359
Pasquale, Jeanette & Thomas, Jon	Jeanette.Pasquale, Jon.Thomas	125 B Colony PI	Plymouth	MA	02360	5087463764
M&I ENTERPRISE LLC	Mario.Rodriguez, Inez.Rodriguez	10000 Emmett F Lowry Expy	Texas City	TX	77591	4094408552

M&l ENTERPRISE LLC	Inez.Rodriguez,Mari o.Rodriguez	2110 El Dorado Blvd	Friendswood	TX	77546	2819938054
TK62, INC.	Kay Allen,James "Tim" Allen	2702 North Roberts Avenue	Lumberton	NC	28358	910-374- 3461
FROZEN YOGURT OF ANNANDALE, S.W., INC.	Nabil A. Asad,Nabil.Hindi	7002 Columbia Pike	Annandale	VA	22003	7037553904
Patel, B., Patel, D., Patel, Dig & Patel H.	Bipinchandra.Patel, Devangkunar Patel,Digvijay.Patel, Hiteshkumar.Patel	5318 Sunset Blvd	Lexington	SC	29072	8033998294
Sweet Pump, LLC	Alexander Smith,Barry Armstrong,Dan Smith	72 Southgate Square	Colonial Heights	VA	23834	8048058824
Burke Frog, LLC	Samuel Shon	9564 Old Keene Mill Road	Burke	VA	22015	5716425442
SAANDYL SWEETS ON WHEELS LLC	Jayna Patel	1273 Broad Street	Sumter	SC	29150	
CZA Inc.	David Czahor	2236 General Booth Blvd	Virginia Beach	VA	23456	7578167036
RKHT LLC	Faisal Bhatti,Munaza Bhatti	1991 E Joppa Rd	Parkville	MD	21234	4108701270

**sweetFrog Franchisees who have signed Franchise Agreements but whose stores were
not open as of November 30, 2022³**

Franchise Company	Owners	Address	City	State	Zip	Phone	Owner Emails
Michael Ara	Michael.Ara		Glendale	CA		909-215-7022	mikeara22@yahoo.com
TRI SWEET LLC	Yousef.Zou bi,Raid.Etto um		Dallas	TX			sf35577@outlook.com,j oeyettoumevs@yahoo.c om
TRI SWEET LLC	Yousef.Zou bi,Raid.Etto um		Dallas	TX			sf35577@outlook.com,j oeyettoumevs@yahoo.c om
Madan, Vibha & Derek	Vibha Madan,Dere k Madan		Hampton	VA			vibhabutail@gmail.com, derek_madan@yahoo.c om

Johnson, Calvin & Johnson, Mia	Calvin Johnson, Mia Johnson		Rolesville	NC			mdjlynch@verizon.net, sweetfrog.raleighnc@gmail.com
Tesfaye, Samuel	Samuel.Tesfaye		Alexandria	VA			samuelnrn@yahoo.com
Drury, Benjamin & Diana	Benjamin.Drury, Diana.Drury		Fort Worth	TX			btdrury@gmail.com, timfan0523@yahoo.com

sweetFrog Franchisees who have had their Franchise Agreements terminated, canceled or not renewed by us or who otherwise voluntarily or involuntarily ceased to do business under its agreement with us during the year ending November 30, 2022³

Company Name	Owner Names	Owner Cities	Owner States	Owner Phones
Panchdev Gayatri, Inc	Bharat Bhatt, Nita Bhatt	Charlottesville	VA	,434-327-6181
SIL & KIM, INC	Dongseok Kim		FL	
Sweet Ashburn LLC	Amy Ruk, Brandon Ruk	Reston	VA	814-421-7891
Niskayuna Frog LLC	Sweetfrog Corp	Richmond	Virginia	8048356803
Greenville TX Frog LLC	Sweetfrog Corp	Richmond	Virginia	8048356803
PUSHKARA, LLC	Palakben Patel	Fort Mill	SC	704-907-0524
Minuteman Equity Group, LLC	Gary Ricco, Larry Copponi	Reno, Tracy	NV	(408) 300-8799, 408-209-8519
Binghamton Frog, LLC	Mike Gance		NY	
SKM Sweet Ventures, Inc.	Kimberly Morgan, Shaun Morgan	Norwood	NC	704-474-7190
Darius Enterprises, Inc.	Daniel Robinson, Darla Robinson	Northridge	CA	(301) 643-7593, 301-643-7593
Sweetfrog Enterprises, LLC	Sweetfrog Corp	Richmond	Virginia	8048356803
Minuteman Equity Group, LLC.	Gary Ricco, Larry Copponi	Reno, Tracy	NV	(408) 300-8799, 408-209-8519

**sweetFrog Franchisees who had an outlet transfer during the year ending November 30,
2023**

Prior Company Name	Prior Franchisee Names	City	State	Phone	Prior Franchisee Emails
Sweet Connor, LLC	Amy Ruk,Brandon Ruk	Reston	VA	814-421-7891	matas_amy@yahoo.com ,ruk52@yahoo.com
TK62, INC.	James Allen,Kay Allen	Lumberton	NC	910-374-3461	timandkayinc@gmail.com
RREM LLC	Jimmy Ahn,Todd Sumser	Midlothian,State College	pa,VA	(804) 334-0836	sweetfrogstatecollege@yahoo.com,todd@sumserins.com
Sweet Manassas LLC	Amy Ruk,Brandon Ruk	Reston	VA	814-421-7891	matas_amy@yahoo.com ,ruk52@yahoo.com
AaHir Froyo LLC	Ashish Shah	Mechanicsburg	PA		ashish_0706@hotmail.com
JC Heavenly Treats, INC.	Cherish Cyr,Jeffrey Cyr	Hendersonville	Hendersonville,NC	864-283-1531	jcheavenlytreats@gmail.com,peakwireless@yahoo.com
Huntersville Yogurt Company LLC	Sandy Anto,Steven Anto	Sherrills Ford	NC		stevensammy@msn.com
Wilkesboro SF, LLC	James Gambill,Jerry Davis,Jon Gambill,Rajni Patel	,Wilkesboro	,NC	,336-977-1104	,gambilljon@hotmail.com ,j_davis1978@yahoo.com
Wilkesboro SF, LLC	James Gambill,Jerry Davis,Jon Gambill,Rajni Patel	,Wilkesboro	,NC	,336-977-1104	,gambilljon@hotmail.com ,j_davis1978@yahoo.com
Wilkesboro SF, LLC	James Gambill,Jerry Davis,Jon Gambill,Rajni Patel	,Wilkesboro	,NC	,336-977-1104	,gambilljon@hotmail.com ,j_davis1978@yahoo.com
Mooresville Yogurt Company, LLC	Sandy Anto,Steven Anto	Sherrills Ford	NC		stevensammy@msn.com
SF Center of the Universe, LLC	David Robertson,Jack Singer,Ron Drogan	DUNNSVILLE	VA	8043992552	Dave@integriscapitalpartners.com,mail@jacksinger.com,rdrogan@gmail.com
Sweet South Riding LLC	Amy Ruk,Brandon Ruk	Reston	VA	814-421-7891	matas_amy@yahoo.com ,ruk52@yahoo.com

**sweetFrog Franchisees who have not communicated with us within ten weeks before the
issuance date of this disclosure document**

None

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

EXHIBIT X-1

STATE EFFECTIVE DATES

STATE EFFECTIVE DATES

The following states have franchise laws that require that the Franchise Disclosure Document be registered or filed with the state, or be exempt from registration:

California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington and Wisconsin.

This document is effective and may be used in the following states, where the document is filed, registered or exempt from registration, as of the Effective Date stated below:

California	March 28, 202 3 <u>4</u>
Hawaii	Not Registered
Illinois	March 28, 202 3 <u>4</u>
Indiana	March 28, 202 3 <u>4</u>
Maryland	Pending
Michigan	Pending
Minnesota	Pending
New York	March 28, 202 3 <u>4</u>
North Dakota	Pending
Rhode Island	Not Registered
South Dakota	Pending
Virginia	Pending
Washington	Pending
Wisconsin	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 Y
TO THE FRANCHISE DISCLOSURE DOCUMENT
Receipts

RECEIPT #1

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

If MTY Franchising USA, Inc. offers you a franchise, it must provide this disclosure document to you 14 calendar days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale.

[New York requires that we give you this disclosure document at the earlier of the first personal meeting or 10 business days before the execution of the franchise or other agreement or the payment of any consideration that relates to the franchise relationship.]

[Michigan 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 MTY Franchising USA, Inc. does not deliver this disclosure document on time or if it contains a false or misleading statement, or a material omission, a violation of federal law and state law may have occurred and should be reported to the Federal Trade Commission, Washington, DC 20580 and the state agency listed on Exhibit B.

The franchisor is MTY Franchising USA, Inc., located at 9311 E. Via De Ventura, Scottsdale, Arizona 85258. Its telephone number is (480) 362-4800. The franchise seller for this offering is _____, _____, (____) _____.

Issuance date: March 28, 20234.

MTY Franchising USA, Inc. authorizes the respective state agencies identified on Exhibit C to receive service of process for it in the particular state.

I received a sweetFrog Disclosure Document dated March 28, 20234, that included the following Exhibits:

A	State Addenda to Franchise Disclosure Document	M	Lease Guaranty Acknowledgement
B	Directory of State Agencies and Administrators	N	Lease Review and/or Negotiation Agreement and Release and State Addenda
C	Franchisor's Agent for Service of Process	O-1	Sublease and Guaranty of Sublease (Franchisee pays rent directly to Landlord)
D	Asset Purchase Agreement (For Sale of a Corporate Store to a Franchisee) with Promissory Note and Security Agreement and Guaranty (if applicable)	O-2	Sublease and Guaranty of Sublease (Franchisor or its affiliate collects rent from Franchisee and pays to Landlord)
E-1	Franchise Agreement (New)	P	Pre-Authorized Electronic Funds Transfer Form
E-2	Franchise Agreement (Renewal)	P-1	Participation Agreement
E-3	Franchise Agreement (Transfer)	Q	General Release for Renewal of Franchise Agreement
F-1	Guaranty of Franchise Agreement	R-1	Consent to Transfer and Release Agreement (without Sublease)
F-2	Non-Disclosure and Non-Competition Agreement	R-2	Consent to Transfer and Release Agreement (with Sublease)
G	Collateral Assignment and Irrevocable Special Power of Attorney	S	State Addenda to Franchise Documents
H	Amendment to Franchise Agreement (for non-traditional locations excluding those co-branded with another affiliated brand)	T	Table of Contents – Confidential Operations Manual
I	Amendment to Franchise Agreement (for co-branded non-traditional locations)	U	List of Franchise Owners
J	In-Store Training Release and Waiver of Liability Agreement	V	Financial Statements
K	Addendum to the Franchise Agreement for SBA Loans	W	Intentionally Omitted
L	Required Lease Terms (Lease Addendum to Lease Agreement)	X	Addendum for Sale of Company-Affiliated Owned Stores
		X-1	State Effective Dates
		Y	Receipts

Date: _____
(Do not leave blank)

Signature of Prospective Franchisee

Print Name

Receipt #1 must be signed and dated and remains in the Franchise Disclosure Document as the prospective franchisee's copy. Receipt #2 must be signed and dated by the prospective franchisee and returned to MTY Franchising USA, Inc. by mailing it to MTY Franchising USA, Inc. at 9311 E. Via De Ventura, Scottsdale, Arizona 85258.

RECEIPT #2

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		X-1	State Effective Dates
		Y	Receipts

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