

**FRANCHISE DISCLOSURE DOCUMENT**  
Wahlburgers Franchising LLC  
A Massachusetts Limited Liability Company  
350 Lincoln Street, Suite 2501  
Hingham, MA 02043  
781-749-4972  
[www.wahlburgers.com](http://www.wahlburgers.com)



The franchisee will operate a restaurant under the name “Wahlburgers,” which features high quality gourmet hamburgers and certain ancillary branded merchandise such as clothing, souvenirs, and novelty items (“Wahlburgers Restaurant”).

The total investment necessary to begin operation of a Wahlburgers Restaurant ranges from approximately \$1,530,000 to \$2,755,000 for a full-service restaurant and from \$1,140,000 to \$1,995,000 for a fast casual restaurant. This includes \$55,000 that must be paid to the franchisor or its affiliate(s). If you sign an Area Development Agreement you will incur the total investment necessary for each location you commit to opening (minimum of two locations), plus a \$10,000 area development fee per location that must be paid to the franchisor or its affiliate(s).

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 Franchise Sales, 350 Lincoln Street, Suite 2501, Hingham, MA 02043, (781) 749-4972.

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

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

Issuance Date: April ~~28~~15, ~~2023~~2024

## How to Use This Franchise Disclosure Document

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

QUESTION	WHERE TO FIND INFORMATION
<b>How much can I earn?</b>	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 <a href="#">J</a> .
<b>How much will I need to invest?</b>	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.
<b>Does the franchisor have the financial ability to provide support to my business?</b>	Item 21 or Exhibit <a href="#">HG</a> includes financial statements. Review these statements carefully.
<b>Is the franchise system stable, growing, or shrinking?</b>	Item 20 summarizes the recent history of the number of company-owned and franchised outlets.
<b>Will my business be the only Wahlburgers Restaurant business in my area?</b>	Item 12 and the "territory" provisions in the franchise agreement describe whether the franchisor and other franchisees can compete with you.
<b>Does the franchisor have a troubled legal history?</b>	Items 3 and 4 tell you whether the franchisor or its management have been involved in material litigation or bankruptcy proceedings.
<b>What's it like to be a Wahlburgers franchisee?</b>	Item 20 or Exhibit <a href="#">J</a> lists current and former franchisees. You can contact them to ask about their experiences.
<b>What else should I know?</b>	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 A.

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 agreement requires you to resolve disputes with the franchisor by litigation only in Massachusetts. Out-of-state litigation may force you to accept a less favorable settlement for disputes. It may also cost more to litigate with the franchisor in Massachusetts than in your own state.

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.

**ADDITIONAL DISCLOSURES  
REQUIRED BY THE STATE OF MICHIGAN**

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

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

- (a) A prohibition of the right of a franchisee to join an association of franchisees.
- (b) A requirement that a franchisee assent to a release, assignment, novation, waiver, or estoppel which deprives a franchisee of rights and protections provided in the Michigan Franchise Investment Law. This shall not preclude a franchisee, after entering into a franchise agreement, from settling any and all claims.
- (c) A provision that permits a franchisor to terminate a franchise prior to the expiration of its term except for good cause. Good cause shall include the failure of the franchisee to comply with any lawful provision of the franchise agreement and to cure such failure after being given written notice thereof and a reasonable opportunity, which in no event need be more than 30 days, to cure such failure.
- (d) A provision that permits a franchisor to refuse to renew a franchise without fairly compensating the franchisee by repurchase or other means for the fair market value at the time of expiration of the franchisee's inventory, supplies, equipment, fixtures, and furnishings. Personalized materials which have no value to the franchisor and inventory, supplies, equipment, fixtures, and furnishings not reasonably required in the conduct of the franchise business are not subject to compensation. This subsection applies only if: (i) The term of the franchise is less than 5 years; and (ii) the franchisee is prohibited by the franchise or other agreement from continuing to conduct substantially the same business under another trademark, service mark, trade name, logotype, advertising, or other commercial symbol in the same area subsequent to the expiration of the franchise or the franchisee does not receive at least 6 months advance notice of franchisor's intent not to renew the franchise.
- (f) A provision that permits the franchisor to refuse to renew a franchise on terms generally available to other franchisees of the same class or type under similar circumstances. This section does not require a renewal provision.
- (g) A provision requiring that arbitration or litigation be conducted outside this state. This shall not preclude the franchisee from entering into an agreement, at the time of arbitration, to conduct arbitration at a location outside this state.
- (h) A provision which permits a franchisor to refuse to permit a transfer of ownership of a franchise, except for good cause. This subdivision does not prevent a franchisor from exercising a right of first refusal to purchase the franchise. Good cause shall include, but is not limited to:
  - (i) The failure of the proposed transferee to meet the franchisor's then current reasonable qualifications or standards.

(ii) The fact that the proposed transferee is a competitor of the franchisor or subfranchisor.

(iii) The unwillingness of the proposed transferee to agree in writing to comply with all lawful obligations.

(iv) The failure of the franchisee or proposed transferee to pay any sums owing to the franchisor or to cure any default in the franchise agreement existing at the time of the proposed transfer.

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

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

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

Any questions regarding this Notice shall be directed to the Attorney General's Office, Consumer Protection Division, 525 West Ottawa Street, G. Mennen Williams Building – 1<sup>st</sup> Floor, Lansing, Michigan 48913 (517) 373-7117.

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- A. List of State Administrators
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- C. Area Development Agreement
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Receipts

## ITEM 1

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

To simplify the language in this disclosure document, "Wahlburgers," "we," or "us" means Wahlburgers Franchising LLC, the franchisor. "You" means the person or legal entity who is granted the franchise. If you are a corporation, partnership, limited liability company, or other business entity, certain provisions of this disclosure document also apply to your owners and will be noted.

Wahlburgers is a Massachusetts limited liability company formed on April 9, 2014, whose principal business address is 350 Lincoln Street, Suite 2501, Hingham, MA 02043. We do business under the name "Wahlburgers." Our agents for service of process in various states are listed in Exhibit B.

We are wholly-owned by Wahlburgers Holding Company LLC ("WB Holding"), a ~~Massachusetts~~Delaware limited liability company which was initially formed as a Massachusetts limited liability company on June 8, 2011, whose principal business address is the same as ours. ~~(On March 31, 2014, WB Holding changed its name from E&P Burger Concepts LLC to Wahlburgers Holding Company LLC.)~~ WB Holding does not offer franchises in any business and does not engage in any business other than owning us and our affiliates. We do not have any predecessors.

We have been offering Wahlburgers franchises in the United States since August 2014 but have never operated a Wahlburgers Restaurant. Our affiliates, Paragon Funding Group III, LLC ("PFG"), Wahlburgers Fenway, LLC ("WF") ~~and~~ Wahlburgers Lynnfield, LLC ("WL") ~~and~~ WB Myrtle Beach LLC ("Myrtle") ~~and~~ ~~WB Frisco LLC ("Frisco")~~ each operate a Wahlburgers Restaurant. PFG is a Massachusetts limited liability company formed on June 9, 2011, WF is a Massachusetts limited liability company formed on May 6, 2014, WL is a Massachusetts limited liability company formed on March 31, 2014, ~~and~~ Myrtle is a Massachusetts limited liability company formed on February 28, ~~2019 and Frisco is a Massachusetts limited liability company formed on June 14, 2019.~~ The principal business address of each is the same as ours. PFG, WF, WL, ~~and~~ Myrtle ~~and Frisco~~ have not offered franchises in any line of business. As of ~~January 1~~December 31, 2023, there were ~~91~~106 franchised Wahlburgers Restaurants and ~~54~~ Wahlburgers Restaurants operated by our affiliates. We have not previously offered franchises in any line of business, nor do we engage in any other business.

Our affiliate, Wahlburgers Franchising International LLC ("WB International"), offers Wahlburgers franchises outside of the United States and Canada. WB International is a Massachusetts limited liability company formed on August 29, 2016, whose principal business address is the same as ours. WB International has been offering Wahlburgers franchises since its formation but has never operated a Wahlburgers Restaurant. WB International has not offered franchises in any other line of business, nor does it engage in any other business. WB International is currently not an approved supplier for any service or product.

### Wahlburgers Restaurants

We are offering, under the terms of this disclosure document, the opportunity to become a franchisee to develop and operate Wahlburgers Restaurants. Wahlburgers Restaurants are burger-oriented restaurants, featuring décor elements that emphasize the connection to the celebrity Wahlberg family, primarily well-known actor/producer/artists Mark and Donnie, along with their chef brother Paul. Wahlburgers Restaurants are contemporary and casual, with an emphasis on a colorful, fun, festive atmosphere in keeping with the family spirit. A full service Wahlburgers

Restaurant occupies approximately ~~4,500~~3,000 to 4,000 square feet and a fast casual Wahlburgers Restaurant occupies approximately 1,800 ~~to~~ 2,200 square feet. A full service Wahlburgers Restaurant includes a full bar, subject to license availability.

Wahlburgers Restaurants operate according to a unique and distinctive system (“System”), whose distinguishing characteristics include our décor, layout, color schemes and designs (collectively, “Trade Dress”); our menu items, recipes and food preparation and service techniques; our standards and specifications for equipment, equipment layouts, and interior and exterior accessories; and the accumulated experience reflected in our training program, operating procedures, and standards and specifications.

We have described our mandatory and recommended standards, specifications, and operating procedures in our confidential operating manuals (“Manual”). We will loan one copy of, or provide electronic access to, the Manual for the term of your franchise. We may periodically change, improve, add to, and further develop the Manual and the elements of the System.

We are offering the opportunity for you to develop multiple Wahlburgers Restaurants under an Area Development Agreement (“Development Agreement”) (Exhibit C). We also are offering the opportunity to develop a single Wahlburgers Restaurant. Before you acquire a site for a Franchised Restaurant, we must accept the site for the Franchised Restaurant (“Authorized Site”). Once the site is accepted, we will forward you a Franchise Agreement (Exhibit D) for the Authorized Site. The form of Franchise Agreement for the Franchised Restaurants to be developed by you will be the standard form in general use at the time that we accept the site for the applicable Franchised Restaurant, which may differ from the Franchise Agreement attached as Exhibit D.

Within 15 days after you receive the Franchise Agreement, you must sign and return it to us. We will sign the Franchise Agreement when we authorize the Franchised Restaurant to open to the public. You should not acquire any interest in a site for a Franchised Restaurant until you have signed the Franchise Agreement and we have accepted the site in writing.

Your receipt of this disclosure document does not mean you will be accepted as a franchisee or that you may develop or open a Franchised Restaurant. Before you may develop and open a Franchised Restaurant, among other things, we must approve you as a Wahlburgers franchisee (or if you already are a franchisee, approve you for expansion); you must sign the Franchise Agreement and pay the Initial Franchise Fee (as described in Item 5); we must accept the site for your proposed Franchised Restaurant in writing; and you (or your Operating Principal and, if applicable, your Multi-Unit Manager (each as defined in Item 15)) and those managerial personnel whom we designate must attend and successfully complete (as determined by us in our sole discretion) our Initial Training Program (“ITP”) (as described in Item 11).

### **Master Franchise Agreement**

In 2021, we entered into a master franchise agreement with NativeWahl LLC which granted NativeWahl the right to offer subfranchises for Wahlburgers Restaurants in the United States to be located at sites in locations owned by a Native American tribe (commonly referred to as “Reservation”, “Trust”, or “Fee Land”) and the opportunity to grant subfranchises for sites located within tribally controlled (but not owned) locations subject to our approval. Those subfranchises are offered by NativeWahl pursuant to a separate disclosure document and separate registrations.

### **Market and Competition**

The market for gourmet burger restaurants is well-developed. Your Franchised Restaurant will compete with other national and regional gourmet burger restaurants, as well as other

franchised, chain or independent restaurants. Some of our competitors have longer operating histories than ours. The restaurant business is highly competitive based on price, service, restaurant location and food quality and is subject to fluctuations in consumer tastes, economic conditions, population, and traffic patterns.

### **Industry-Specific Laws**

We are not aware of any laws applicable to a Wahlburgers Restaurant that would not apply to restaurant businesses generally. You must comply with all applicable local, state, and federal laws and regulations relating to alcoholic beverages, sanitation, food handling, food preparation, waste disposal, smoking restrictions and point of sale disclosures, including statements concerning nutritional and dietary characteristics of the food served at the Franchised Restaurant. If you will be operating a full service Franchised Restaurant, you also must obtain a liquor license before you open the Franchised Restaurant. The difficulty and cost of obtaining a liquor license and the procedures for securing the license vary greatly from area to area. There is also wide variation in state and local laws and regulations that govern the sale of alcoholic beverages. In addition, state dram shop laws give rise to potential liability for injuries that are directly or indirectly related to the sale and consumption of alcohol.

You should consult with your attorney concerning these and other laws and ordinances that may affect the operation of the Franchised Restaurant.

## **ITEM 2**

### **BUSINESS EXPERIENCE**

#### **President and Chief Executive Officer – ~~John C. Fuller~~; Randall K. Sharpe**

Mr. ~~Fuller~~Sharpe has served as our President ~~and~~ Chief Executive Officer ~~in Hingham, Massachusetts since May 2020~~March 2024. From ~~August 2015~~October 2018 to March ~~2020~~2024, he was President ~~and~~ Chief Executive Officer ~~for International Coffee & Tea LLC d/b/a The Coffee Bean & Tea Leaf~~and Board Member of Xperience Restaurant Group in ~~Los Angeles~~Cypress, California.

#### **Chief Financial Officer & Chief Legal and Administrative Officer: Alan E. McKenna**

Mr. McKenna has served as our Chief ~~Legal and~~Financial Officer & Chief Legal Officer since March 2024. ~~From March 2021 to March 2024, he was Chief Legal &~~ Administrative Officer ~~in Hingham, Massachusetts since March 2021~~. From June 2019 to March ~~2021~~2022, ~~he~~Mr. McKenna was Vice President and General Counsel. From May 2010 to May 2019, ~~Mr. McKenna was~~he as a partner in the law firm of Stevenson, McKenna & Callanan LLP in Boston, Massachusetts.

#### **Chief Franchise Operations and DevelopmentOperating Officer: James A. Smith Jr. Michael Foster**

~~Mr. Smith has served as our Chief Franchise Operations and Development Officer in Hingham, Massachusetts since January 2023. Prior to that, he was our Chief Operating Officer in Hingham, Massachusetts from January 2022 to December 2022. From June 2020 to January 2022, Mr. Smith was our Senior Vice President of Operations and Development in Hingham, Massachusetts. From December 2014 to June 2020, he was Vice President of Operations for International Coffee & Tea LLC d/b/a The Coffee Bean & Tea Leaf in Los Angeles, California.~~

**Senior Vice President of Global Supply Chain: Christopher Snyder**

~~Mr. Snyder has served as our Senior Vice President of Global Supply Chain in Hingham, Massachusetts since January 2023. From October 2017 to December 2022, he was our Vice President of Purchasing/Food & Beverage in Hingham, Massachusetts.~~

Mr. Foster has served as our Chief Operating Officer since March 2024. From September 2017 to March 2024, he was Chief Operating Officer for HGI Industries d/b/a Mellow Mushroom in Atlanta, Georgia.

**ITEM 3**

**LITIGATION**

*Leonard v. Wahlberg, CA No. 1783CVOO189 (Mass. Sup. Ct.)*

On February 21, 2017, William Leonard and Shipyard Burger, LLC, minority owners in WB Holding, filed this action in the Plymouth, Massachusetts Superior Court against Mark Wahlberg, Donnie Wahlberg, Paul Wahlberg, Closest to the Burger, LLC,, Dwahlburgers LLC, Nothing But the Burger LLC and our former Chief Executive Officer, Rick Vanzura, alleging that defendants breached a fiduciary duty they owed to plaintiffs, breached the terms of the operating agreement for WB Holding and misrepresented business opportunities to plaintiffs. Plaintiffs sought damages in an unspecified amount, production of certain records to which plaintiffs claim to be entitled under Massachusetts law and an accounting to determine the value of plaintiffs' ownership interests in WB Holding. On June 7, 2019, defendants and William Leonard entered into a settlement agreement under which Closest to the Burger, LLC agreed to acquire Mr. Leonard's interest in WB Holding for \$900,000. This action was dismissed with prejudice on July 31, 2019.

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

**ITEM 4**

**BANKRUPTCY**

No bankruptcy is required to be disclosed in this Item.

**ITEM 5**

**INITIAL FEES**

**Application Fee**

In connection with your completed franchise application, you must pay us an application fee in the amount of \$5,000 ("Application Fee"). We may not receive the Application Fee until at least 14 days after you have received the FDD. The Application Fee will be credited against the Development Fee or, if you do not sign a Development Agreement, the Franchise Agreement. If, however, you do not enter into a Development or Franchise Agreement, we will refund the Application Fee, less our actual costs and expenses incurred in reviewing your application and preparing and negotiating franchise-related agreements.

**Development Fee**

When you sign a Development Agreement, you must pay us a Development Fee equal to \$10,000 for each Franchised Restaurant that you agree to develop at the time you sign the Agreement, less any Application Fee paid by you. We may not receive the Development Fee until at least 14 days after you have received the FDD. The Development Fee is not refundable and is not credited against any other fees to be paid to us.

With respect to each Franchised Restaurant to be developed by you under the Development Agreement, you will execute the standard form of Franchise Agreement in general use at the time that we accept the site for that Franchised Restaurant, which may differ from the form of Franchise Agreement attached as Exhibit D.

### **Initial Franchise Fee**

On or before the date on which you sign the Franchise Agreement, you must pay us the Initial Franchise Fee. If the Franchised Restaurant is being developed pursuant to a Development Agreement, the Initial Franchise Fee is \$40,000, in addition to the Development Fee. If the Franchised Restaurant is not being developed pursuant to a Development Agreement, the Initial Franchise Fee is \$50,000, less any applicable Application Fee paid by you. The Initial Franchise Fee is fully earned by us when paid by you ~~and~~ is not credited against any other fees to be paid to us and is not refundable. We have no obligation to refund the Initial Franchise Fee in whole or in part for any reason.

### **On-Site Evaluation**

If we, at your request, provide on-site evaluation (as we consider advisable), you must reimburse us for all travel, living and other expenses incurred by our representatives in connection with such on-site evaluation. As of the issuance date of this disclosure document, we do not charge a fee to provide such on-site evaluation, although we reserve the right to do so, not to exceed \$5,000. If applicable, the on-site evaluation fee will be nonrefundable and will not be credited against any other fees to be paid to us. We have no obligation, however, to conduct any on-site evaluations of locations you propose.

### **Grand Opening Advertising**

You must conduct initial marketing for the Franchised Restaurant in accordance with a grand opening plan that you have prepared and to which we have consented ("Grand Opening Plan"). Under the Grand Opening Plan, you will be required to spend a minimum of \$15,000 on grand opening activities over the period beginning one month prior to opening and continuing through the second month after opening. As part of your Grand Opening Plan spending, provided you use our prototypes, we will provide website, menu and other design services (as we deem appropriate) for which you will pay us \$5,000 of the amount you are required to spend. The \$5,000 that you pay to us in connection with the Grand Opening Plan is nonrefundable and will not be credited against any other fees paid to us.

### **Construction Oversight**

If we provide construction review or oversight services, you must pay us a nonrefundable fee of \$1,250 per day. Any construction oversight fees paid to us will not be credited against any other fees paid to us. We estimate that, if we provide these services to you, on average, the total amount paid by you to us for these services will be \$5,000.

### **Training Fees**

**Initial Training Program (ITP).** We will provide the ITP to up to 4 individuals at no additional cost to you. Additional employees who desire to attend the ITP, and any replacement employees who are required to attend the ITP, may do so, subject to space availability and your payment of a training fee. The training fee for each additional employee currently is \$1,500 and is nonrefundable. You will be required to pay all travel, living and other expenses incurred by your employees while attending training.

**Opening Support.** If the Franchised Restaurant is one of the first 2 Wahlburgers Restaurants developed and opened by you or your affiliates, we may, in our sole discretion, provide assistance in opening the Franchised Restaurant and in training your employees as we deem appropriate in light of your needs and the availability of our personnel. If we provide on-site assistance, you must reimburse us for all travel, living and other expenses incurred by our training personnel and representatives while providing this assistance. If we determine that you require greater support than we believe to be reasonable, we may, but are not required to, provide that support, and we will charge you a nonrefundable fee of \$450 per day to provide that additional opening support.

\* \* \*

Generally, the fees identified in this Item 5 are uniformly imposed on all franchisees who receive this disclosure document. In our last fiscal year ~~2019~~, we ~~entered into an Area Development Agreement with a franchisee in which we reduced~~ agreed to reduce the Initial Franchise Fee to ~~\$25,000 since the~~ 10,000 for fast casual restaurants developed by a franchisee who agreed to assume all responsibility for training obligations. ~~That agreement was amended in 2021 to reduce the Initial Franchise Fee to \$20,000 and, for two fast casual restaurants developed by that franchisee. In fiscal year 2022, an existing franchisee paid an initial franchise fee of \$25,000 for a restaurant that replaced one the franchisee previously closed and the franchisee for 3 fast casual Wahlburgers Restaurants in casinos paid an initial franchise fee of \$20,00 for each restaurant~~ opened in captive market locations, we charged each a \$25,000 Initial Franchise Fee. The initial fees charged by NativeWahl for subfranchises may differ and are set forth in the subfranchise disclosure document.

## ITEM 6

### OTHER FEES

Type of Fee (1)	Amount	Due Date	Remarks
<b>Royalty</b>	6% of your Fiscal Period Gross Sales <del>(2)</del>	Before 5:00 pm on the 10 <sup>th</sup> day after the end of each Fiscal Period – by electronic funds transfer <del>(32)</del>	See Note <del>(43)</del> for a definition of Gross Sales and Note <del>(54)</del> for a definition of Fiscal Period.
<b>Brand Fund Contribution</b>	1% of Gross Sales.	Same as Royalty	You must spend and/or contribute for advertising up to 4% of the Fiscal Period Gross Sales of the Franchised Restaurant (“Advertising Obligation”), provided that the maximum Advertising Obligation may be increased if, at any time, 2/3 of all then-existing

Type of Fee (1)	Amount	Due Date	Remarks
			Wahlburgers Restaurants (both franchised and company-operated) vote in favor of such an increase. Your Advertising Obligation may be allocated among a Brand Fund, a Regional Advertising Fund (if established) and/or Local Marketing (each as described in Item 11). Currently, your Advertising Obligation is 3% of Fiscal Period Gross Sales, with 1% of Gross Sales being contributed to the Brand Fund and the balance spent on Local Store Marketing. Following written notice to you, we may increase the amount (as explained above) and re-allocate the Advertising Obligation; however, if a Regional Advertising Fund that covers the Franchised Location is established, we will not thereafter increase the Advertising Obligation by more than 0.5% of Gross Sales in any 24-month period.
<b>Point of Sale Materials</b>	Our cost	As incurred	If we develop any point-of-sale materials, we may offer to sell those to you at a reasonable cost.
<b>Transfer Fee – Development Agreement</b>	Greater of 10% of the Development Fee or \$10,000	Upon submission of request for consent to transfer	You will not be required to pay a transfer fee in connection with a transfer undertaken primarily for estate planning purposes, subject to certain conditions, or if you transfer to a business entity that you form for convenience of ownership, but you will need to comply with certain conditions.  This fee also applies to transfers of partial ownership interests and transfers upon death or permanent incapacity.
<b>Transfer Fee – Franchise Agreement</b>	\$5,000	Upon submission of request for consent to transfer	You will not be required to pay a transfer fee in connection with a transfer undertaken primarily for estate planning purposes, subject to certain conditions, or if you transfer to a business entity that you form for convenience of ownership, but you will need to comply with certain conditions.  This fee also applies to transfers of partial ownership interests and transfers upon death or permanent incapacity.
<b>Additional Training</b>	As of the issuance date of this disclosure document, there is no charge for attending additional training in the form of regularly-scheduled classes at our offices or	As incurred	We have the right to charge a fee for additional training, whether mandatory or optional. You must also pay all travel, living, and other expenses incurred by you (or your Operating Principal and, if applicable, your Multi-Unit Manager(s)) and your employees while attending any

Type of Fee (1)	Amount	Due Date	Remarks
	designated training facilities if space is available.		additional training programs.
<b>Training Facility Certification</b>	We currently do not charge a fee for certification of your training facility, although we reserve the right to do so.	Upon demand	You must establish a training facility (which may be the Franchised Restaurant) at which the Wahlburgers initial training program will be offered. We, in our sole discretion, will provide the assistance that we consider to be reasonably necessary to assist you in establishing the training facility. You must reimburse us for all travel, living, food and other expenses incurred while traveling to and from, and visiting, the training facility as we require.
<b>Audit and Inspection Costs</b>	Full cost of the inspection or audit, including travel, lodging, meals and wages of our representatives, and our reasonable professional fees	Upon demand	Payable only if an inspection or audit is made necessary by your failure to provide required reports or supporting records or provide such reports or records on a timely basis, or if the audit or inspection reveals an understatement of Gross Sales of greater than 2% for the audit period.
<b>Indemnification</b>	Actual losses and expenses incurred by us and our officers, affiliates, managers, members, etc.	As incurred	You must defend, indemnify and hold us and our officers, affiliates, managers, members, etc. harmless with respect to any and all claims arising directly or indirectly from, as a result of, or in connection with the Franchised Restaurant.
<b>Interest</b>	Interest on the amount owed from the due date until paid	When any payment due to us from you is not received in full by the due date	The interest rate is the lesser of the maximum rate permitted for indebtedness of this nature in the state in which the Franchised Restaurant is located (which is 10% in California or 18% per annum.
<b>Late Fee</b>	\$100	When any payment due to us from you is not received by the due date	Payable at our discretion. (In California, the highest lawful rate of interest is 10% per annum.)
<b>Collection Costs</b>	All costs and expenses that we incur, including reasonable professional fees	Upon demand	These costs and expenses may include commissions due a collection agency and all costs associated with litigation, in addition to interest charges on these costs. (In California, the highest lawful rate of interest is 10% per annum.)
<b>800 Number and Secret Shopper Programs</b>	If implemented, all costs associated with the 800 number, Secret Shopper programs or other programs as we may	As incurred	If implemented, you must participate in programs initiated to verify customer satisfaction and/or your compliance with all operational and other aspects of the System.

Type of Fee (1)	Amount	Due Date	Remarks
	require		
<b>Non-Cash Payment System</b>	All costs associated with non-cash payment systems	As incurred	You must accept debit cards, credit cards, stored value gift cards or other non-cash payment systems specified by us to enable customers to purchase authorized products.
<b>Market Research and Testing</b>	Proportionate cost of conducting test marketing programs	As incurred	We may periodically conduct market research and testing to determine consumer trends and the salability of new food products and services. You must cooperate with us in connection with the conduct of such test marketing programs at your own expense.
<b>New Product and Supplier Testing</b>	A reasonable fee, not to exceed the actual cost of inspecting and testing the proposed product or evaluating the proposed supplier, including personnel and travel costs	Within 30 days after receipt of invoice	Payable if you ask us to review a new supplier or new product, whether or not we approve the supplier or product (see Item 8 for a description of the supplier approval process).
<b>Reimbursement of Insurance Costs</b>	Cost of insurance, plus a reasonable fee for our services in procuring the insurance	Upon demand	Payable only if you fail to obtain and maintain the minimum insurance we require, and we choose to procure the required insurance for you.
<b>Relocation</b>	A reasonable fee, plus our reasonable expenses incurred in connection with consideration of your relocation request	Upon demand, if required	You may not relocate a Franchised Restaurant without our prior written consent, which we may withhold in our sole discretion.
<b>Taxes</b>	You must reimburse us for any taxes, fees, and/or assessments imposed on us by reason of our acting as franchisor or licensing the Proprietary Marks (as defined in Item 13)	Within 30 days after receipt of the invoice	
<b>Renewal Fee</b>	\$20,000	At the time that the new franchise agreement is signed	
<b>Site Analysis</b>	Cost of analysis	As incurred	As part of the site acceptance process, we may require a site analysis prepared by a third party vendor at your expense. We reserve the right to designate the third party vendor used to prepare the site analysis.
<b>QA Audit Costs</b>	All costs and expenses incurred in connection with next QA Audit	Within 10 days after receipt of invoice from us	Applicable if the Franchised Restaurant fails to obtain a passing score on any QA Audit
<b>Lost Revenue</b>	The aggregate of the	Within 15	If we terminate the Franchise

Type of Fee (1)	Amount	Due Date	Remarks
<b>Damages</b>	Royalty Fee and the Brand Fund contribution percentages multiplied by the average monthly Gross Sales of your Franchised Restaurant during the 12 full calendar months immediately preceding the termination date, multiplied by the number of calendar months in the Measurement Period.	days after the effective date of termination	Agreement because of your breach or if you terminate the Franchise Agreement without cause, you will pay us Lost Revenue Damages in an amount equal to the net present value of the Royalty Fee and the Brand Fund contribution that would have been paid had the Franchise Agreement not been terminated, from the date of termination to the earlier of: <b>(a)</b> five years following the date of termination, or <b>(b)</b> the scheduled expiration of the term of the Franchise Agreement ("Measurement Period").

**NOTES**

- (1) Unless otherwise noted, all fees are imposed by, collected by, and payable to Wahlburgers and are not refundable. Generally, the fees identified in this Item 6 are uniformly imposed on all franchisees who receive this disclosure document. However, we have agreed to cap the annual Brand Fund contribution at \$250,000 for a franchisee that operates ~~6783~~ franchised restaurants and for that franchisee to pay a ~~4.3~~ 4% royalty fee on additional development. We also agreed to a variable royalty fee for two captive market locations ranging from ~~3-7.2-4~~ 4%, depending on ~~the number of franchised restaurants it operates, for a franchisee operating in captive market locations~~ sales and years in operation. The fees charged by NativeWahl to subfranchisees may differ and are set forth in the subfranchise disclosure document.
- ~~(2) Since franchisees who operate multiple restaurants provide us certain efficiencies in providing services, we are offering a royalty incentive that is available beginning with the third Franchised Restaurant operated by a franchisee and its affiliates. Pursuant to this incentive, the royalty to be paid for an applicable Franchised Restaurant is as follows:~~

Gross Sales	Royalty to be Paid
<del>Between \$0 and \$2,000,000</del>	<del>4% of Gross Sales</del>
<del>Between \$2,000,001 and \$2,500,000</del>	<del>5% of Gross Sales</del>
<del>Between \$2,500,001 and 3,000,000</del>	<del>6% of Gross Sales</del>
<del>Between \$3,000,001 and \$3,500,000</del>	<del>7% of Gross Sales</del>
<del>Between \$3,500,001 and \$5,500,000</del>	<del>8% of Gross Sales</del>
<del>\$5,500,001 and above</del>	<del>6% of Gross Sales</del>

~~In order for the Franchised Restaurant to initially qualify, and continue to qualify, for the Royalty incentive, the following criteria must be satisfied, unless waived by us, and we have provided written notice that the Franchised Restaurant qualifies: (a) you must submit an~~

~~operating plan to us that demonstrates, as we determine in the exercise of our reasonable business judgment, that your affiliates and you have sufficient resources and a solid infrastructure such that we will realize efficiencies in providing services to the Franchised Restaurant and that you can assume certain of our functions and execute them in a quality manner; (b) you meet our minimum standard of organizational readiness, as we determine from time to time in the exercise of our sole discretion; (c) the Franchised Restaurant must be larger than 3,000 square feet; and (d) the Franchised Restaurant is likely, in the exercise of our reasonable business judgment, to derive at least 50% of its food revenues from sales in the full-service portion of the Franchised Restaurant. Any Franchised Restaurant that pays a Royalty of less than 6% of Gross Sales (exclusive of this Royalty incentive) will not be counted in determining the number of Franchised Restaurants in operation. We may discontinue this incentive at any time and, with respect to a Franchised Restaurant, the incentive will terminate if the Franchised Restaurant is in default or your affiliates and you no longer operate 3 qualified Franchised Restaurants.~~

- ~~(3)~~ You must participate in our electronic funds transfer program, which authorizes us to use a pre-authorized bank draft system. You must sign and complete the documents that we may require from time to time to authorize and direct your bank or financial institution to pay and deposit directly to our account. You must furnish to us and your bank all authorizations necessary to effect payment by the methods we specify. We reserve the right to modify, at our option, the method by which you must pay the Royalty, Advertising Obligation, and other amounts owed to us under the Franchise Agreement upon receipt of written notice by us.
- ~~(4)~~ “Gross Sales” include all revenue from the sale of all services and products (including, but not limited to, certain ancillary branded merchandise, such as clothing, souvenirs and novelty items (“Branded Merchandise”)) and all other income of every kind and nature (including stored value gift cards and gift certificates when redeemed, on-premise sales, other sales made or sold, at, in or upon or from the location of the Franchised Restaurant (“Franchised Location”), and any other type of sale) related to the Franchised Restaurant, whether for cash or credit and regardless of collection in the case of credit. Gross Sales also includes all ancillary charges or fees, including delivery fees and other service charges, that are paid to you by a customer or by a third-party delivery or catering service (e.g., Uber Eats, Postmates, Grubhub, ezCater, or DoorDash) (“Third-Party Service”) in connection with delivery or catering services related to the Franchised Restaurant (recognizing that though the Third-Party Service may pay you an amount equal to the purchase price charged to the customer less a commission, other fees, and any discounts, credits, or coupons applied to the order, such commission, fees, discounts, credits, and coupons will not be deducted from the Franchised Restaurant’s Gross Sales). Gross Sales will not include: **(a)** any bona fide documented federal, state, or municipal sales taxes collected by you from customers and paid by you to the appropriate taxing authority; **(b)** the sale of food, beverages, or merchandise for which refunds have been made in good faith to customers; **(c)** the sale of equipment used in the operation of the Franchised Restaurant; **(d)** authorized customer promotional discounts; and **(e)** employee meal discounts. If, due to applicable law, you may not pay a Royalty on alcoholic beverage sales, you will pay us a Royalty on all Gross Sales (except alcoholic beverage sales) in the same dollar amount as would have been paid if alcoholic beverage sales were included.
- ~~(5)~~ Currently, each “Fiscal Period” is a calendar week. We have the right, following written notice to you, to vary the time period that comprises a Fiscal Period.

**ITEM 7**

**ESTIMATED INITIAL INVESTMENT**

**YOUR ESTIMATED INITIAL INVESTMENT**

**FULL SERVICE RESTAURANT**

<b>Type of Expenditure</b>	<b>Amount (1)</b>	<b>Method of Payment</b>	<b>When Due</b>	<b>To Whom Payment Is To Be Made</b>
Initial Franchise Fee <b>(2)</b>	\$50,000	Lump Sum/Cash	No later than the date on which you sign the Franchise Agreement	Wahlburgers
Grand Opening Advertising <b>(3)</b>	\$15,000	As Arranged	As arranged	Vendors and/or Wahlburgers
Real Estate <b>(4)</b>	Variable	As Arranged	Before Opening	Landlord, Lender
Architectural Design Services <b>(5)</b>	\$25,000 - \$55,000	As Arranged	Before Opening	Independent Architects and Engineers
Construction/Leasehold Improvements <b>(6)</b>	\$900,000 - \$1,800,000	See Note 6	Before Opening	Construction Company and, if applicable, Wahlburgers
Travel and Living Expenses While Training <b>(7)</b>	\$25,000 - \$80,000	As Arranged	Before Beginning Training	Airlines, Hotels, Restaurants
Furnishing, Fixtures, Equipment <b>(8)</b>	\$350,000 - \$450,000	As Arranged	As Ordered	Approved Supplier
Signage <b>(8)</b>	\$25,000 - \$35,000	As Arranged	As Ordered	Approved Supplier
Smallwares	\$20,000 - \$50,000	As Arranged	As Ordered	Approved Supplier
Initial Inventory <b>(9)</b>	\$10,000 - \$20,000	As Arranged	Before Opening	Approved Supplier
Liquor Licenses <b>(10)</b>	Variable	As Arranged	As Incurred	Governmental Authority
Miscellaneous Opening Costs <b>(11)</b>	\$30,000 - \$60,000	As Arranged	Before Opening	Suppliers, Utilities, etc.
Register or Point of Sale System <b>(12)</b>	\$30,000 - \$40,000	As Arranged	As Arranged	Approved Supplier
Additional Funds -- 3 months <b>(13)</b>	\$50,000 - \$100,000	As Arranged	As Incurred	Employees, Suppliers, Utilities
<b>Total (14)</b>	\$1,530,000 - \$2,755,000 (Does not include real estate or liquor license costs)			

### Fast Casual Restaurant

Type of Expenditure	Amount	Method of Payment	When Due	To Whom Payment Is To Be Made
Initial Franchise Fee (2)	\$50,000	Lump Sum/Cash	No later than the date on which you sign the Franchise Agreement	Wahlburgers
Grand Opening Advertising (3)	\$15,000	As Arranged	As arranged	Vendors and/or Wahlburgers
Real Estate (4)	Variable	As Arranged	Before Opening	Landlord, Lender
Architectural Design Services (5)	\$25,000 - \$55,000	As Arranged	Before Opening	Independent Architects and Engineers
Construction/Leasehold Improvements (6)	\$600,000-\$1,200,000	See Note 6	Before Opening	Construction Company and, if applicable, Wahlburgers
Travel and Living Expenses While Training (7)	\$25,000 – \$80,000	As Arranged	Before Beginning Training	Airlines, Hotels, Restaurants
Furnishing, Fixtures, Equipment (8)	\$300,000-\$350,000	As Arranged	As Ordered	Approved Supplier
Signage (8)	\$15,000 - \$25,000	As Arranged	As Ordered	Approved Supplier
Smallwares	\$15,000-\$20,000	As Arranged	As Ordered	Approved Supplier
Initial Inventory (9)	\$10,000-\$20,000	As Arranged	Before Opening	Approved Supplier
Liquor Licenses (10)	Variable	As Arranged	As Incurred	Governmental Authority
Miscellaneous Opening Costs (11)	\$20,000-\$50,000	As Arranged	Before Opening	Suppliers, Utilities, etc.
Register or Point of Sale System (12)	\$15,000-\$30,000	As Arranged	As Arranged	Approved Supplier
Additional Funds -- 3 months (13)	\$50,000-\$100,000	As Arranged	As Incurred	Employees, Suppliers, Utilities
<b>Total (14)</b>	\$1,140,000 to \$1,995,000 (Does not include real estate or liquor license costs)			

### NOTES

- (1) Costs paid to us or our affiliates are not refundable. Whether any costs paid to third parties are refundable will vary based on the practice in the area where the Franchised Restaurant is located.
- (2) As described more fully in Item 5, if you sign a Development Agreement, you must pay us, at the time that you sign the Development Agreement, a nonrefundable Development Fee of \$10,000 for each Franchised Restaurant that you agree to develop, less any Application Fee paid by you. Other than the Development Fee, there is no other investment under the Development Agreement. As also described more fully in Item 5, the Initial Franchise Fee is

\$40,000 if the Franchised Restaurant is developed pursuant to a Development Agreement. If not, the Initial Franchise Fee is \$50,000, less any Application Fee paid by you.

- (3) You must conduct initial marketing for the Franchised Restaurant in accordance with a Grand Opening Plan. Under the Grand Opening Plan, you will be required to spend a minimum of \$15,000 on grand opening advertising over the period beginning one month prior to opening and continuing through the second month after opening. Within 10 days after the end of the period in which you conduct this initial marketing, you must submit appropriate documentation to verify compliance with the grand opening expenditure obligation. As noted in Item 5, you must pay us a portion of your Grand Opening Plan spending for website, menu and other design services.
- (4) The cost of acquiring a location for the Franchised Restaurant will vary significantly depending on the geographic location. We expect that you will lease the land and building for the Franchised Restaurant. Alternatively, you may wish to buy land for the Franchised Restaurant. If you chose to lease, the rent for a full service restaurant may range from \$20 to \$300 per square foot per year. This estimate is based on a restaurant of approximately 3,600 square feet. The rent for a fast casual restaurant may range from \$20 to \$200 per square foot per year. This estimate is based on a restaurant of approximately 1,800 square feet. You may be required to pay the first and last month's lease payment upon signing your lease agreement.
- (5) We will provide you prototypical plans and specifications for a Wahlburgers Restaurant, which you must adapt to suit the shape and dimensions of the Franchised Location. You must, at your cost, ensure that your proposed plans for the Franchised Restaurant ("Plans") comply with all applicable ordinances, building codes and permit requirements, lease requirements and restrictions and the Americans with Disabilities Act. The cost of architectural design services will vary depending on the geographic location, size and condition of the premises. In addition, if you do not use the services of our designated architect (for whose fees you will be solely responsible), your architect must meet in person with our design team to review your Plans.
- (6) The cost of constructing a Wahlburgers Restaurant will vary depending upon the size, condition, and location of the premises, price differences between various suppliers, and contractors and shipping distances from suppliers. These estimates are based on the buildout costs for a building shell for a full service Wahlburgers Restaurant of approximately ~~4,500~~3,000 to 4,000 square feet and for a fast casual Wahlburgers Restaurant of approximately 1,800 square feet in a typical retail center space with construction costs ranging from approximately \$200 to \$550 per square foot. All construction materials and fixtures must meet our standards and specifications but may be purchased from any supplier. These costs are normally payable to third parties prior to the opening of the Wahlburgers Restaurant or in periodic installments, depending on the type of financing arrangement you are able to obtain. We do not undertake to assist you in arranging financing, and there is no assurance that financing will be available to you. Generally, the availability and terms of financing will depend upon many factors, including, particularly, your creditworthiness.
- (7) As described in Item 11, prior to opening a Wahlburgers Restaurant, you (or your Operating Principal and, if applicable, your Multi-Unit Manager), the Franchise Restaurant's general manager, and any other managerial personnel whom we designate must attend the ITP. We do not charge tuition for this training program, but you are responsible for all salaries, benefits, and travel, living, and other expenses incurred by you and your employees while attending the training. The cost of these expenses will depend on the distance you must

travel, the types of accommodations, the number of your employees attending training, and their wages.

- (8) You must purchase certain items of furniture, fixtures, and equipment. The cost of purchasing equipment may vary as a result of price differences between suppliers and shipping distances from suppliers. You may purchase or lease approved brands and models of equipment and signs from any approved supplier. This estimate includes costs for a building sign and pylon sign (if allowed by the landlord and local code requirements). Payment for these items typically will be made prior to the opening of the Franchised Restaurant or in installments over a period of time, depending on the type of financing arrangement you are able to obtain. Generally, the availability and terms of financing will depend upon many factors, including your creditworthiness.
- (9) The cost of an opening inventory of food, beverages, ingredients, and other supplies and materials will vary depending on shipping distances from suppliers and price differences between suppliers. As described in Item 8, these items must conform to specifications established by us and/or be purchased from us and/or approved suppliers.
- (10) We cannot estimate the cost to obtain required liquor licenses since it varies greatly from jurisdiction to jurisdiction depending on the licensing activity involved and the local liquor license resale market, if any. You will be required, for a full service restaurant, to obtain all licenses required for the service of beer, wine and alcohol at the Franchised Restaurant.
- (11) This item covers such miscellaneous pre-opening costs and expenses as manager and employee labor, utilities and utility deposits, lighting supplies, office supplies, security deposit, pest control, postage and shipping, storage fees, bank service charges, payroll service charges, licenses, permits and a three-month premium for typical insurance coverage. Manager and employee labor expenses vary according to the wage rate and number of employees and managers hired and trained before opening your Franchised Restaurant.
- (12) A description of the computer system can be found in Item 11.
- (13) This is our estimate of your operating expenses for the initial 3 months of your business, including payroll costs for management, rent, insurance, and utilities. These expenses do not include advertising or royalty payments made to us. The estimate also does not take into account revenue you may take in. Your actual costs will depend on factors such as how closely you follow our methods and procedures; your management skill, experience and business acumen; financing costs; local economic conditions; the local market for the Franchised Restaurant; the prevailing wage rate; competition in the market place; and the sales level reached during the initial period.
- (14) We relied on the experience of our affiliates, PFG, WF, WL, ~~and~~ Myrtle ~~and Frisco~~ in the restaurant business to compile these estimates. You should review these figures carefully with a business advisor before making any decision to purchase a franchise. We do not offer financing directly or indirectly for any part of the initial investment.

## ITEM 8

### RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES

#### **Authorized Products and Services**

You may offer for sale and sell in the Franchised Restaurant only the products (including, but not limited to, Branded Merchandise), services, and brands that we have designated in the Manual or otherwise in writing. You must offer all items that we designate as mandatory for the service format utilized in your Franchised Restaurant. We may also designate some items as optional. We may change the mandatory and optional menu items, recipes, ingredients, and other products and services in our sole discretion. We may require that you sell certain brands and prohibit you from selling other brands. You may sell products only in the varieties, weights, sizes, forms, and packages that we have designated.

You must use only authorized ingredients and follow our recipes in the preparation of menu items. You may not use the Franchised Location for the sale or display of items not authorized by us. Within 15 days after we provide written notice to you, you must begin selling any newly authorized menu items (or using any newly authorized ingredients) or Branded Merchandise and cease selling any menu item or Branded Merchandise that is no longer authorized (or using any ingredient that is no longer authorized); however, if the discontinued menu item, ingredient or Branded Merchandise could pose a hazard to the public or prove detrimental to the system, you must cease selling or using that item, ingredient immediately or Branded Merchandise.

All food and beverages authorized for sale at the Franchised Restaurant must be offered for sale under the name that we specify. The design of the menus in the Franchise Restaurant must conform to our specifications and be approved in writing by us. We periodically will provide you suggested retail prices for the products and services offered at the Franchised Restaurant and, to the extent permitted by applicable law, we may require that you adhere to our suggested prices, including maximum prices. If you have a suggestion for a new menu item or ingredient or new Branded Merchandise, or for a change to an authorized menu item or ingredient or authorized Brand Merchandise, or you wish to participate in a test market program, you must notify us before you implement any such change or commence any such program. You may not add or modify any menu item or participate in a test market program without first obtaining our prior written approval.

#### **Supplier Approval Process**

We have the right to require that all food and non-food products (including, but not limited to, Branded Merchandise), supplies, equipment and services that you purchase for use, sale or resale in the Franchised Restaurant: **(a)** meet specifications that we establish from time to time; **(b)** be purchased only from suppliers that we have consented to (which may include us and/or our affiliates); and/or **(c)** be purchased only from a single source or from a limited number of designated sources (which may include us and/or our affiliates). To the extent that we establish specifications, require our consent to suppliers or designate specific suppliers for particular items, we will publish our requirements in the Manual or otherwise in writing (which includes electronic publication). We have developed and may continue to develop certain proprietary food products that will be prepared by or for us according to our proprietary special recipes and formulas, and you agree to purchase those food products developed by us pursuant to a special recipe or formula only from us, our affiliates or a third party designated and licensed by us to prepare and sell such products. We may create purchasing restrictions to control the quality and selection, and ensure the consistency, of menu items, ingredients, Branded Merchandise and other merchandise; to consolidate System purchases to reduce costs or ensure availability of products; or for other valid business reasons. You must purchase Branded Merchandise exclusively from Stran Promotional Solutions (“Stran”). During

fiscal year ~~2022~~2023, the total amount received from Stran from franchisee purchases of Branded Merchandise was ~~\$59,000~~42,863. This represents ~~0-70.8~~8% of total ~~2022~~2023 revenues of ~~\$8-89~~5.696 million.

As described in ~~Exhibit G~~E, we have established an Online Merchandise Revenue Sharing Program pursuant to which we share with qualifying franchisees a portion of the net revenue from sales of Branded Merchandise sold at [www.wahlgear.com](http://www.wahlgear.com). We reserve the right to modify or discontinue the Online Merchandise Revenue Sharing Program at any time.

You may not engage in “grey market” activities in which you take advantage of any group purchasing arrangements for Wahlburgers Restaurants to purchase products that you then resell to purchasers outside of the System or use in a business outside of the System.

As of the issuance date of this disclosure document, neither we nor any of our affiliates are approved suppliers for any product. We and our affiliates may earn income on sales of products (including, but not limited to, Branded Merchandise), ingredients, and/or supplies to you. We may receive rebates, commissions, or other payments from third-party suppliers based on your purchases from them. As of the issuance date of this disclosure document, however, except with respect to Branded Merchandise (as detailed above), such rebates, commissions, or other payments are returned to franchisees and/or contributed to the Brand Fund. You agree that we are entitled to retain such income and consideration.

As noted above, Branded Merchandise must be purchased from us or a source designated by us. If you would like to purchase other products or services from a supplier which we have not approved, you must submit a written request for approval. Criteria for approving proposed suppliers will be made available to you on your request. We have the right to inspect the proposed supplier’s facilities and test samples of the proposed products. You agree to pay to us a reasonable fee, not to exceed the actual cost of the inspection and testing the proposed product or evaluating the proposed supplier, including personnel and travel costs, whether or not the product or supplier is accepted. We have the right to grant, deny or revoke consent to products, services and suppliers in our sole discretion. We will notify you of our decision as soon as practicable following our evaluation, not to exceed 90 days. If approval is obtained, you may contract with the accepted supplier. We reserve the right to reinspect the facilities and products of any accepted supplier and revoke acceptance in writing upon the supplier’s failure to meet any of our then-current criteria.

We estimate that the purchase of products from us, our affiliates, or our approved or designated suppliers and/or products that are subject to our standards and specifications represents approximately 34-45% of your overall purchases in establishing the Franchised Restaurant and 25-35% of your overall purchases in operating the Franchised Restaurant. Currently, we do not provide material benefits to you based on your use of approved or designated suppliers. As of the issuance date of this disclosure document, we have negotiated system-wide purchasing arrangements, including pricing terms, with Sysco, Coca-Cola, Ecolab, Stran, Wolverine, Turano, FireKing and Lamb Wesson to maximize the combined purchasing power benefit of all Wahlburgers Restaurants. We do not currently have purchasing or distribution cooperatives, but we reserve the right to establish them.

There are no approved suppliers in which any of our officers own an interest; [however, Mark Wahlberg owns an interest in an approved band of tequila.](#)

## **Computer System**

See Item 11 for information regarding our current minimum standards for the computer system for the Franchised Restaurant and your related obligations under the Franchise Agreement.

## **Insurance**

During the term of the Franchise Agreement, you must maintain in full force and effect that insurance which you determine to be necessary, which must include at least the types of insurance and the minimum policy limits specified in the Manual or otherwise in writing. Each insurance policy must be written by an insurance company that maintains an “A+” or better rating by the latest edition of Best’s Insurance Rating Service (or another rating service designated by us). The insurance policy or policies must be in effect when you execute the Development Agreement and the Franchise Agreement. The insurance policy or policies must protect you, us, and our respective past, present, and future officers, directors, managers, members, owners, employees, servants, representatives, consultants, attorneys, and agents. We and any entity with an insurable interest designated by us must be named as additional insureds in the policy or policies (statutory policies excepted). Each policy must include a waiver of subrogation in our favor. We may require additional types of coverage or increase the minimum amount of coverage upon reasonable notice. Your obligation to obtain coverage is not limited in any way by insurance that we maintain. You must provide us with certificates of insurance evidencing the required coverage and proof of payment no later than the date on which you sign the Development Agreement and the Franchise Agreement. The evidence of insurance must include a statement by the insurer that the policy or policies will not be canceled or materially altered without at least 30 days’ prior written notice to us. If you fail to obtain and maintain insurance coverage as required by the Development Agreement or Franchise Agreement, we have the right, but not the obligation, to obtain the required insurance on your behalf and to charge you for the cost of the insurance, plus a reasonable fee for our services in procuring the insurance.

## **ITEM 9**

### **FRANCHISEE’S OBLIGATIONS**

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

<b>Obligation</b>	<b>Section in Franchise Agreement (FA) and Development Agreement (DA)</b>	<b>Disclosure Document Item</b>
a. Site selection and acquisition/lease	FA: Sections 3 and 4 DA: Section 5	Items 7 and 11
b. Pre-opening purchases/leases	FA: Sections 3, 4, 5.2 and 12.12 DA: Sections 5 and 6	Items 5, 7 and 8
c. Site development and other pre-opening requirements	FA: Sections 3 and 5 DA: Sections 3 and 5	Items 7 and 11
d. Initial and ongoing training	FA: Section 9 DA: Not Applicable	Items 6, 7 and 11
e. Opening	FA: Sections 5.2, 5.3, 10.1 and 10.2	Item 11

Obligation	Section in Franchise Agreement (FA) and Development Agreement (DA)	Disclosure Document Item
	DA: Not Applicable	
f. Fees	FA: Sections 3.2, 3.3, 5.3.2, 6, 8, 9, 10.2 and Exhibit C DA: Sections 4, 5.2, 5.3, 5.6 and Exhibit A	Items 5 and 6
g. Compliance with standards and policies/ Manual	FA: Sections 11 and 12 DA: Not Applicable	Items 8, 11, and 14
h. Trademarks and proprietary information	FA: Sections 8.8, 13 and 18 DA: Section 11.1	Items 13 and 14
i. Restrictions on products/services offered	FA: Sections 12.3 and 12.6 DA: Not Applicable	Item 16
j. Warranty and customer service requirements	FA: Sections 12.9, 12.10 and 12.11 DA: Not Applicable	Item 11
k. Territorial development and sales quotas	FA: Section 1.2 DA: Sections 1.1, 2, 3 and Exhibit A	Item 12
l. Ongoing product/service purchases	FA: Sections 12.3 and 12.6 DA: Not Applicable	Item 8
m. Maintenance, appearance and remodeling requirements	FA: Sections 12.7 and 12.8 DA: Not Applicable	Item 11
n. Insurance	FA: Section 12.12 DA: Sections 5.5 and 14.2	Items 6, 7 and 8
o. Advertising	FA: Section 8 DA: Not Applicable	Items 6 and 11
p. Indemnification	FA: Section 23 DA: Section 14	Item 6
q. Owner's participation/management/staffing	FA: Sections 12.10 and 12.11 DA: Section 7	Items 11 and 15
r. Records and reports	FA: Sections 6.4 and 7 DA: Not Applicable	Item 6
s. Inspections and audits	FA: Sections 5.1, 5.2, 7.4, 12.6.4, 12.13 and 13.3.6 DA: Not Applicable	Items 6, 8, and 11
t. Transfer	FA: Sections 15 and 16 DA: Sections 8 and 9	Items 6 and 17
u. Renewal	FA: Section 2.2 DA: Not Applicable	Item 17
v. Post-termination obligations	FA: Section 20 DA: Section 12.4	Item 17
w. Non-competition covenants	FA: Section 18 DA: Section 11	Item 17
x. Dispute resolution	FA: Section 28	Item 17

Obligation	Section in Franchise Agreement (FA) and Development Agreement (DA)	Disclosure Document Item
	DA: Section 19	

**ITEM 10**

**FINANCING**

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

**ITEM 11**

**FRANCHISOR’S ASSISTANCE, ADVERTISING, COMPUTER SYSTEMS AND TRAINING**

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

**Our Pre-Opening Obligations**

Before you open the Franchised Restaurant, we will:

1. Advise you in writing whether we have accepted the site within 60 days after we receive a complete site review report (as determined by us). If we do not respond within 60 days, we will be deemed to have rejected the site. (Development Agreement § 5.4.1, Franchise Agreement § 3.4.1)

2. Review the proposed sublease, lease, or purchase contract for the accepted site to ensure that it includes the provisions we require as set forth in the Franchise Agreement. (Development Agreement § 6, Franchise Agreement § 4)

3. Provide you prototypical plans and specifications for a Wahlburgers Restaurant. (Franchise Agreement § 5.1.1)

4. Provide you a list of the approved third-party suppliers of signs, fixtures, and initial inventories and goods for a Wahlburgers Restaurant. (Franchise Agreement § 12.6). We do not provide you specifications or deliver or install any items.

5. ~~4-~~ Loan you one copy of, or provide you with electronic access to, the Manual, which contains detailed standards, specifications, instructions, forms, reports, and procedures for management and operation of the Franchised Restaurant. You may keep the Manual for as long as the Franchise Agreement (or any Successor Franchise Agreement) remains in effect, but the Manual remains our property. We may revise the contents of the Manual, and you agree to comply with each new or changed section. (Franchise Agreement § 11). We will permit you to inspect a copy of the Manual at our offices before you purchase a franchise, if you first sign a Confidentiality Agreement, which is attached as Exhibit ~~FE~~.

6. ~~5-~~ Provide to you (or your Operating Principal and, if applicable, your Multi-Unit Manager), the Franchised Restaurant’s general manager, and any other managerial personnel that we designate the ITP. Our training program is described below. (Franchise Agreement § 9.1)

6. Provide consultation and advice to you with regard to construction or renovation of the Franchised Restaurant, building layout, furnishings, fixtures and equipment plans and specifications, employee selection and training and purchasing and inventory control. (Franchise Agreement § 10.1)

### **Our Obligations After Opening**

During the operation of the Franchised Restaurant, we will:

1. Collect, administer, and spend for advertising purposes monies paid by franchisees and company-operated Wahlburgers Restaurants into the Brand Fund and any Regional Advertising Fund (if established) as described below. (Franchise Agreement §§ 8.3 and 8.4)

2. Periodically change the System, including modifications to the Manual, the menu, the required equipment, the signage, the Proprietary Marks, and the Trade Dress. You must accept, use, or display in the Franchised Restaurant any such System changes and make such expenditures as the System changes require. We also have the right to vary System standards, in our reasonable judgment, to accommodate circumstances of individual franchisees. (Franchise Agreement § 12.2)

3. Provide additional ongoing training to you (or your Operating Principal and, if applicable, your Multi-Unit Manager), your managerial personnel, training personnel, and/or other previously trained and experienced staff members at the times and locations that we designate. (Franchise Agreement § 9.2)

4. Periodically advise and consult with you regarding the operation of the Franchised Restaurant and make available, as we believe appropriate, information regarding the System and new developments, techniques, and improvements in the areas of restaurant design, operations, management, menu development, sales and customer service, marketing, and other areas. We may provide these services through visits by our representatives to the Franchised Restaurant or your offices (although we are not obligated to make any visits), the distribution of printed or filmed material, an Intranet or other electronic forum, meetings or seminars, training programs, telephone communications, or other forms of communications. (Franchise Agreement § 10.3)

5. Provide the assistance that we consider to be reasonably necessary to assist you in establishing a training facility at which you will offer the Wahlburgers initial training program. The training facility must be certified by us before you commence any training at the training facility, and we may periodically visit and evaluate the training facility and your trainers to ensure that they continue to meet our standards. We may revoke our certification of the training facility if the training facility or your trainers cease to meet our standards. (Development Agreement § 5.6, Franchise Agreement § 9.3)

### **Brand Fund and Marketing**

**Grand Opening Plan.** Under the Grand Opening Plan, you will be required to spend a minimum of \$15,000 on grand opening activities over the period beginning one month prior to opening and continuing through the second month after opening. As noted in Item 5, you must pay us a portion of your Grand Opening Plan spending for website, menu and other design services. If you do not use our prototypes, we may charge you an additional fee. Within 10 days after the end of the period in which you conduct this initial marketing, you must submit appropriate documentation to verify compliance with this obligation.

**Advertising Obligation.** As of the date of this disclosure document, your Advertising Obligation is 3% of Gross Sales, which we may increase to 4% of Gross Sales following notice to

you. We may further increase your Advertising Obligation if 2/3 of all then-existing Wahlburgers Restaurants (both franchised and company-operated) vote in favor of such an increase. You will pay that portion of the Advertising Obligation as we direct to the Brand Fund (“Brand Fund Contribution”) as described below. The remainder of the Advertising Obligation is paid to a Regional Advertising Fund, if established, and/or will be spent by you for Local Marketing. Following written notice to you, we also have the unilateral right to re-allocate your Advertising Obligation. Once we establish a Regional Advertising Fund that covers the Franchised Location, we will not thereafter increase the Advertising Obligation by more than 0.5% of Gross Sales in any 24-month period. The portion of the Advertising Obligation allocated to the Brand Fund or a Regional Advertising Fund must be paid at the same time and in the same manner as the Royalty.

**Brand Fund.** We have established a Brand Fund to which you must contribute 1% of Gross Sales. There currently is no franchisee advertising council that advises us on advertising policy.

We may use the Brand Fund Contributions and any earnings of the Brand Fund for any costs associated with advertising, marketing, public relations, promotional programs and materials (which may be national, regional or local in scope), and/or any other activities that we believe would benefit the System, including the following: advertising campaigns in various media; point-of-purchase materials; review of locally-produced ads; free standing inserts; brochures; purchasing and/or developing promotional materials; market research, including secret shoppers; sponsorships; design and maintenance of a web site; celebrity endorsements; trade shows; association dues; search engine optimization costs; establishment of a third party facility for customizing local advertising; accounting costs; and holding an annual franchise convention. We will not use the Brand Fund for any activity whose sole purpose is the marketing of franchises or the soliciting of franchisees; however, you acknowledge that the Wahlburgers web site, public relations activities, community involvement activities, and other activities that may be supported by the Brand Fund may contain information about franchising opportunities.

We have the right to direct all programs supported by the Brand Fund, with final discretion over creative concepts, the materials and media used in the programs, and their placement. We may work with our in-house advertising department and/or a regional advertising agency to develop advertising for print and radio. We do not guarantee that you will benefit from the Brand Fund in proportion to your contributions to the Brand Fund. In spending advertising monies, we will not be obligated to make expenditures for any franchisee that are equivalent or proportionate to that franchisee’s contribution or to ensure that any particular franchisee benefits directly or on a pro rata basis from expenditures of the funds. We likewise will not be obligated to spend any amount on advertising in the area of territory in which your Franchised Restaurant is located. You must participate in all advertising, marketing, promotions, research, and public relations programs instituted by the Brand Fund.

We will not use any contributions to the Brand Fund to defray any of our general operating expenses, except for reasonable administrative costs and overhead that we incur in activities reasonably related to the administration of the Brand Fund or the management of Brand Fund-supported programs (including salaries of our personnel who devote time to Brand Fund activities). We will separately account for the Brand Fund, but we do not need to segregate Brand Fund monies from our other monies. We may terminate and subsequently restart the Brand Fund. On termination, we may spend the remaining monies for Brand Fund purposes or return the monies to the restaurants that contributed to the Brand Fund on a pro rata basis.

Any point-of-sale materials produced with Brand Fund monies will be made available to you at a reasonable cost, and the proceeds of such sales will be credited to the Brand Fund. We are not required to have an independent audit of the Brand Fund completed. We will make available an unaudited statement of contributions and expenditures for the Brand Fund no sooner than 90 days

after the close of our fiscal year to franchisees who make a written request for a copy. Wahlburgers Restaurants owned by us and/or our affiliates will contribute to the Brand Fund on the same basis as comparable franchisees. If we reduce the Brand Fund Contribution for franchisees, we will have the right to reduce by the same amount the required contribution for Wahlburgers Restaurants operated by us or our affiliates.

In our last fiscal year, of the total monies spent by the Brand Fund, approximately 35% was spent on brand strategy and agency fees; approximately ~~33~~36% was spent on business services, including consumer review providers and loyalty program; approximately 5% was spent on creative development, including photo/video shoots and point of purchase printing; approximately ~~8~~12% was spent on digital advertising programs (e.g., Google Ads, programmatic advertising); approximately ~~2~~1% was spent on website development; and approximately ~~47~~11% was spent on miscellaneous expenses, including sponsorships, consultants and legal fees. No money was spent by the Brand Fund to solicit new franchisees.

**Regional Advertising Fund.** We have the right, in our sole discretion, to establish one or more regional advertising funds for Wahlburgers Restaurants (“Regional Advertising Funds”). We will determine the geographic area covered by a Regional Advertising Fund based on the location of Wahlburgers Restaurants in the area and the reach of print, radio and television media in the area. If a Regional Advertising Fund is established for a geographical area that includes the Franchised Location, you must contribute to that Regional Advertising Fund in the amount that we specify.

We or our designee will direct all advertising, marketing, and public relations programs and activities financed by the Regional Advertising Fund, with sole discretion over the creative concepts, materials and endorsements used in those programs and activities, the geographic, market and media placement, and the allocation of advertising and marketing materials. The Regional Advertising Fund may be used to pay the costs of preparing and producing such associated materials and programs as we or our designee may determine, including video, audio, and written advertising materials; employing advertising agencies; sponsorship of sporting, charitable, or similar events; administering regional and multi-regional advertising programs, including, without limitation, purchasing direct mail and other media advertising and employing advertising agencies to assist with these efforts; and supporting public relations, market research, and other advertising, promotional, and marketing activities. You must participate in all advertising, marketing, promotions, research, and public relations programs instituted by the Regional Advertising Fund.

We will separately account for each Regional Advertising Fund, but we do not need to segregate any Regional Advertising Fund monies from our other monies. We are not required to have an independent audit of the Regional Advertising Fund completed. We will make available an unaudited statement of contributions and expenditures for a Regional Advertising Fund no sooner than 90 days after the close of our fiscal year to franchisees who contribute to that Regional Advertising Fund and who make a written request for a copy. We may terminate and subsequently restart any Regional Advertising Fund. On termination, we may spend the remaining monies for Regional Advertising Fund purposes or return the monies to the restaurants that contributed to that Regional Advertising Fund on a pro rata basis.

Wahlburgers Restaurants operated by us or our affiliates in an area covered by a Regional Advertising Fund will contribute to the Regional Advertising Fund on the same basis as comparable franchisees. As of the issuance date of this disclosure document, we have not yet established any Regional Advertising Funds.

\* \* \*

With respect to the Brand Fund or a Regional Advertising Fund, while we may spend in any fiscal year an amount greater or less than the aggregate contribution of Wahlburgers Restaurants to the applicable Fund, generally, we believe that we will spend all advertising payments during the taxable year in which the contribution and earnings are received. If we do not spend the advertising payments in one year, we will likely spend them in the following year or distribute any surplus to then-current franchisees who contribute to the applicable Fund and restaurants operated by us or our affiliates.

**Local Marketing.** You must spend that portion of the Advertising Obligation not otherwise spent or contributed to the Brand Fund or a Regional Advertising Fund (currently, 2% of Gross Sales) for local marketing in authorized advertising media and for authorized advertising expenditures. We or our designee periodically will advise you of the authorized advertising media and authorized advertising expenditures.

You must conduct all marketing in a dignified manner and in accordance with the standards and requirements we specify periodically. We may provide to you a marketing manual, guidelines for creating a marketing plan, scripts, and branding tools. You may be required to pay a reasonable fee for accessing and customizing local advertising and promotional materials. All advertising and promotional materials must bear the Proprietary Marks in the form, color, location, and manner that we prescribe. We will have the final decision on all creative development of advertising and promotional messages. We own all advertising and promotional materials developed by you, and you will take all actions we specify to vest ownership in us.

You must submit to us in writing for our prior acceptance all sales promotional materials and advertising that have not been prepared, or previously accepted, by us and identify the proposed media in which you propose to place the advertising. If our written consent to the material and its proposed placement is not received within 10 days after the date that we received the material, the material may not be used. In no event will your advertising or marketing materials contain any statement or material that, in our sole discretion, may be considered: **(a)** in bad taste or offensive to the public or to any group of persons; **(b)** defamatory of any person or an attack on any competitor; **(c)** to infringe upon the use, without permission, of any other persons' trade name, trademark, service mark or identification; **(d)** inconsistent with the public image of the System or the Proprietary Marks; or **(e)** not in accordance with any federal or state laws. We reserve the right to require you to discontinue the use of any advertising or marketing materials.

**Point-of-Sale Materials.** If we develop any point-of- sales materials, we may offer to sell those to you at a reasonable cost.

**Social Media.** You may not promote, offer, or sell any products or services relating to the Franchised Restaurant through, or use any of the Proprietary Marks in, any form of electronic communications, including Internet web sites, social networking sites, applications or other future technological avenues that enable users to create and share content or to participate in social networking (collectively, "Social Media"), without our prior written consent, which we may withhold for any or no reason. You must, at all times, comply with our Social Media policy, as modified periodically. Your use of any Social Media relating to the Franchised Restaurant is subject to our prior written approval. You may not establish an independent site or page on any Social Media. If we authorize you to have and/or design a site or a page on any Social Media for the Franchised Restaurant, your site and page may only be accessed from our site or page, and we may prohibit links between your site or page and any other site. Any use of Social Media by you with respect to the Franchised Restaurant constitutes advertising and promotion, and you must comply with the restrictions on advertising described above and any additional policies and standards we issue from time to time with respect to Social Media. Any copyright in your sites or pages on Social Media will be deemed to be owned by us, and you agree to sign any documents that we reasonably deem

necessary to affirm our ownership of the copyright. If necessary, you must ensure cooperation with us by any web site service provider or web site hosting company with which you do business. You must have or obtain the lawful right to use any proprietary materials of others that appear on your sites or pages on Social Media. We periodically may provide to you content for your sites and pages on Social Media, including copy, news stories and photographs. We must consent to any changes to your sites and pages on Social Media.

**Public and Media Relations.** You may not issue any press or other media releases or other communications without our prior consent. As a franchisee of the System, you may only participate in internal and external communications activities that create goodwill, enhance our public image, and build the Wahlburgers brand.

### **Computer System**

You must obtain and install, at your expense, a computerized point-of-sale system (“POS System”). We reserve the right to specify a vendor or supplier and, if acquired through us, charge you for such hardware, software, support, and other related services ourselves. As of the issuance date of this disclosure document, NCR Aloha is the only approved POS System. Your POS System must record customer transactions and collect and generate Gross Sales for the Franchised Restaurant and sales by categories. We also reserve the right to require you to replace your existing POS System with one designated by us, at your sole cost, but not more frequently than every 24 months. We may require you to install and maintain any software or other proprietary system designated by us, at your sole cost. The current cost to obtain the hardware and software system is approximately \$31,200 (without tablets) to \$35,700 (with tablets) with a monthly service fee of approximately \$685 that covers services, including Kitchen, Aloha, Loyalty, Online Ordering, Gift Cards, Insight, Aloha Enterprise, Mobile Pay, Encrypted Payments and Network protection.

We will have independent access to the information and data on the POS System, and there are no contractual limitations on our right to access that information. Neither we, our affiliates, nor any third parties are required to provide ongoing maintenance, repairs, upgrades, or updates to your computer system. Currently, there are no optional or required maintenance/upgrade contracts for your POS System. We estimate that the annual cost of optional or required maintenance, upgrades, or updates for your POS System is approximately \$6,000-\$12,000.

You must: **(a)** maintain on the computer system only the financial and operating data specified in the Manual; **(b)** transmit data to us in the form and at the times required by the Manual; **(c)** give us unrestricted access to your computer system at all times (including IDs and passwords, if necessary) to download and transfer via modem or other connection as we determine; **(d)** maintain the computer system in good working order at your own expense; **(e)** replace or upgrade the computer system as we require (but not more than every 24 months); **(f)** install high speed Internet and/or communications connections; **(g)** ensure that your employees are adequately trained in the use of the computer system and our related policies and procedures; **(h)** comply with the Payment Card Industry Data Security Standard (“PCI DSS”) at all times; **(i)** engage any vendor we designate to ensure the security of your data and compliance with the PCI DSS; and **(j)** use any proprietary software or support services and other proprietary materials that we provide to you in connection with the operation of the Franchised Restaurant and if we so require, execute a license agreement and pay to us a reasonable license fee for the use of such proprietary software. You may not install any software other than authorized upgrades or make any hardware modifications to the computer system without our express written consent. Because computer designs and functions change periodically, we may make substantial modifications to our computer requirements or require installation of entirely different systems during the term of the Franchise Agreement.

### **Selecting the Location of Your Franchised Restaurant**

We do not select the specific site for your Franchised Restaurant. You select the site for your Franchised Restaurant, subject to our acceptance based on the site selection criteria in effect at the time of your request. As noted in Item 1, you should not acquire any interest in a site for your Franchised Restaurant until we have approved you as a Wahlburgers franchisee and we have accepted the site. You must select the site from within a general area mutually agreed to in writing by you and us, and you must obtain acceptance for a site within 180 days after you sign the Franchise Agreement. If we do not accept a site within that time period, we, at our option, may terminate the Franchise Agreement. We do not own or lease any location to franchisees. We also do not provide assistance in conforming the premises to local ordinances and building codes, in obtaining any required permits, constructing, remodeling and decorating the premises or in hiring or training your employees, other than employees who attend Initial Training.

With respect to each proposed site, you must submit to us a site review report consisting of financial pro formas, a description of the site, photographs, demographic information, site characteristics (including access and egress points and the amount of road traffic), other restaurant options in the area, and any other information that we may require, including, but not limited to, a letter of intent or other evidence satisfactory to us, which confirms your favorable prospects for obtaining the site. ~~In addition, we~~ Our site selection criteria consider demographic characteristics, traffic patterns, parking, character of the neighborhood, competition from other businesses in the area, the proximity to other businesses (including restaurants operated or franchised by us or our affiliates), the nature of other businesses in proximity to the site and other commercial characteristics (including the purchase price, rental obligations and other lease terms for the proposed site) and the size, appearance and other physical characteristics.

We may require a site analysis prepared by a third party vendor at your expense. We reserve the right to designate the third party vendor used to prepare the site analysis. If the site review report is acceptable, we reserve the right to conduct one on-site evaluation of the proposed site before deciding whether to accept the site. If we conduct an on-site evaluation, we may charge you a fee as determined by us, and you must pay all travel, living and other expenses incurred by our representative. Within 60 days after receipt of a complete (as determined by us) site review report, we will advise you in writing whether we have accepted the site; however, we have no obligation to review any site review report if you or your affiliates are not in full compliance with all agreements with us and/or our affiliates. If we do not respond within that time period, we will be deemed to have denied acceptance of the site. Our acceptance or denial of acceptance of a site may be subject to reasonable conditions as determined in our sole discretion.

Our acceptance indicates only that we believe that the site meets our then-current site selection criteria. Applying criteria that have appeared effective with other sites might not accurately reflect the potential for all sites, and demographic and/or other factors included in or excluded from our criteria could change, altering the potential of a site. The uncertainty and instability of these criteria are beyond our control, and we are not responsible if a site we accept fails to meet your expectations. Your submission of a proposed site for our acceptance is based on your own independent investigation of the site's suitability for a Franchised Restaurant.

### **Typical Time Between Agreement Signing and Opening**

The length of time between signing of the Franchise Agreement and the opening of the Franchised Restaurant is typically 6 to 12 months. Factors affecting the length of time between the execution of the Franchise Agreement and the opening of the Franchised Restaurant include the sourcing of economically viable sites, site plan and building permit approvals, obtaining required liquor licenses, obtaining any site licenses and government approvals, constructing the building and site improvements, weather variations and hiring, and training managers and hourly employees.

## Training

**ITP.** At least 6 weeks before the Franchised Restaurant opens for business, you (or your Operating Principal and, if applicable, your Multi-Unit Manager), the Franchised Restaurant's general manager and at least 3 other managerial personnel whom we designate must attend, and become certified in, the ITP. The length of the ITP is 2 weeks. We offer the ITP during the year on an as-needed basis. Until you have established a training facility, we will provide your employees and you the ITP at a Wahlburgers Restaurant operated by us or our affiliates and/or our corporate office, which is currently in Hingham, Massachusetts. We will not authorize the Franchised Restaurant to open until those employees whom we designate have attended and successfully completed (as determined by us in our sole discretion) the ITP. Upon our request, as a prerequisite to the ITP, attendees must successfully complete (as determined by us in our sole discretion), at your cost, a ServSafe food safety training and certification program administered by the National Restaurant Association Educational Foundation.

We do not charge a training fee for the ITP for the first 4 individuals. Additional employees who desire to attend the ITP, and any replacement employees who are required to attend the ITP, however, may do so, subject to space availability and your payment of a training fee. You must pay all salaries, benefits, travel, living, and other expenses incurred by you and your employees while attending the training. We have the right to dismiss from the ITP any person whom we believe will not perform acceptably in the position for which he/she has been hired, and you must provide a suitable replacement within 30 days of dismissal. In such event, we will have no obligation to extend the Opening Date (as defined in the Franchise Agreement). Our ~~Director of Training, Elena Ford~~Chief Operating Officer, Michael Foster, whose information is disclosed in Item 2, is currently responsible for the training program. ~~Ms~~Mr. FordFoster has ~~approximately 31 years of experience in food and beverage services and 26~~more than 5 years of experience in training. ~~—She became Director of Training in October 2022.~~

If you (or your Operating Principal and/or, if applicable, your Multi-Unit Manager) fail to complete the ITP to our satisfaction, we may terminate the Franchise Agreement or permit you (or your Operating Principal and/or, if applicable, your Multi-Unit Manager) to repeat the ITP at the next available scheduled training session; however, we will have no obligation to extend the Opening Date. We reserve the right to charge a training fee if you (or your Operating Principal and/or, if applicable, your Multi-Unit Manager) are required to repeat the ITP.

**Certification of Your Training Facility.** You must establish a training facility (which may be the Franchised Restaurant) at which the ITP will be offered. We, in our sole discretion, will provide the assistance that we consider to be reasonably necessary to assist you in establishing the training facility. The training facility must be certified by us before you commence any training at the training facility, and we may periodically visit and evaluate the training facility and your trainers to ensure that they continue to meet our standards. We may revoke our certification of the training facility if the training facility or your trainers cease to meet our standards. We may charge a fee in connection with the initial certification and periodic reevaluation of the training facility. In addition, you must reimburse us for all travel, living, food and other expenses incurred while traveling to and from, and visiting, the training facility as we require. Following our certification, you will train all persons who must complete the initial training program at the training facility unless we advise you otherwise or our certification is revoked.

The following chart summarizes the subjects taught during ITP:

## TRAINING PROGRAM

SUBJECT	HOURS OF CLASSROOM TRAINING	HOURS OF ON-THE-JOB TRAINING	LOCATION
General Management/ Concept/Culture	5.25	0	Our corporate office which is currently located in Hingham, Massachusetts or an affiliate-owned Wahlburgers Restaurant
Front of the House	0	16	An affiliate-owned Wahlburgers Restaurant
Back of the House	0	16	An affiliate-owned Wahlburgers Restaurant
Shadow Manager on Duty	0	47.75	An affiliate-owned Wahlburgers Restaurant

**Ongoing Training; Training of Replacement Personnel.** We may require you (or your Operating Principal and, if applicable, your Multi-Unit Manager), your managerial personnel, training personnel, and/or other previously trained and experienced staff members to attend and complete satisfactorily various training courses that we periodically choose to provide at the times and locations that we designate, as well as periodic conventions, regional meetings, and conferences that we specify. We may charge a fee for these courses as determined by us. You must pay all salaries, benefits, travel, living, and other expenses incurred by you and your employees during all training courses and programs.

We require that your replacement managerial and training personnel satisfactorily complete our training programs within the time period required by the Manual after being designated as managerial or training personnel. We may charge a fee for these training programs as determined by us.

Any specific ongoing training or advice we provide does not create an obligation (whether by course of dealing or otherwise) to continue to provide such specific training or advice, all of which we may discontinue and modify from time to time.

**Training Materials and Methods.** Our training materials include our training manual, and on-the-job training guides. All training materials that we provide to you remain our property. Except for the ITP, we have the right to provide training programs in person, on DVD, via the Internet, in printed or electronic format, or by other means, as we determine.

## ITEM 12

### TERRITORY

#### **Development Agreement**

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

Under the Development Agreement, you will receive a Development Area, which will be mutually agreed upon by Wahlburgers and you. A description of the Development Area will be attached as an exhibit to the Development Agreement.

We reserve to ourselves the right to: **(a)** operate and license others to operate Wahlburgers Restaurants in the Development Area that are located in transportation facilities (including airports, train stations, subways and rail and bus stations); military bases and government offices; sports facilities (including stadiums and arenas); toll road plazas, highway rest stops and travel centers; educational facilities; hospital and health care facilities; recreational theme parks; Indian reservations; casinos; retail stores larger than 100,000 square feet operated under a trademark owned by a third party that are tourist destinations (e.g., Bass Pro Shops or Cabelas); any location in which foodservice is or may be provided by a master concessionaire; or any similar location that we believe, in the exercise of our reasonable judgment, to be a captive market location; **(b)** manufacture, and sell, or cause to be manufactured, distributed and sold, food, goods, wares, merchandise, services, products whether or not authorized for sale at Wahlburgers Restaurants, under the Proprietary Marks or other trademarks, service marks, logos or commercial symbols, at wholesale or retail, in the Development Area through any channel of distribution, including, but not limited, to, mail order and catalog, direct mail advertising, the Internet and other methods of distribution, other than through the operation of restaurant; **(c)** sell and distribute products identified by some or all of the Proprietary Marks to foodservice businesses in the Development Area (other than Wahlburgers Restaurants), provided those foodservice businesses are not licensed to use the Proprietary Marks in connection with their retail sales; **(d)** operate and license others to operate delivery kitchens devoted to the preparation of products authorized for sale at Wahlburgers Restaurants (often referred to as ghost, dark, delivery or cloud kitchens), which may use the Proprietary Marks and may deliver to customers regardless of their location; **(e)** sell and offer or sell virtual products or services on any virtual platform (including, without limitation, the metaverse); **(f)** develop and/or own other franchise systems for the same or similar products and services using trade names and trademarks other than the Proprietary Marks; and **(g)** purchase, be purchased by, merge or combine with, businesses that directly compete with Wahlburgers Restaurants.

Except as reserved in the paragraph above, we will not, during the term of the Development Agreement, operate or franchise others to develop Wahlburgers Restaurants in the Development Area, provided you are in compliance with the terms of the Development Agreement and any other agreements with us or our affiliates and you are current on all obligations due to us and our affiliates. The Development Agreement does not prohibit us or our affiliates from: **(1)** operating or licensing others to operate, during the term of the Development Agreement, Wahlburgers Restaurants at any location outside of the Development Area; **(2)** operating or licensing others to operate, after the Development Agreement terminates or expires, Wahlburgers Restaurants at any location, including locations inside the Development Area; **(3)** operating and licensing others to operate at any location, during or after the term of the Development Agreement, any type of foodservice business other than a Wahlburgers Restaurant; or **(4)** acquiring another restaurant franchise system or concept and operating, and/or licensing third parties to operate, restaurants under that system or concept, regardless of whether the restaurants are located in or outside of the Development Area, provided that, with respect to such restaurants located in the Development Area, during the Development Term, the restaurants may not be identified by the Proprietary Marks.

Continuation of the limited restrictions on our ability to operate and license others to operate Wahlburgers Restaurants in the Development Area does not depend on your achieving a certain sales volume, market penetration or other contingency. However, if you are in default of the Development Agreement (which may include, but is not limited to, a default for failing to comply with the Development Schedule) or any Franchise Agreement and fail to cure the default within the applicable cure period (if any), we may terminate the Development Agreement and your limited rights in the Development Area. There are no other circumstances in which we can unilaterally modify your limited rights in the Development Area.

There are no restrictions on the areas in which you or we may advertise or solicit customers, nor must we compensate you if we solicit or accept orders from inside the Development Area. We reserve all rights to use and license the System other than those we expressly grant under the Development Agreement and Franchise Agreement. The rights we reserve include the right to use any other channel of distribution, including the Internet, to make sales in the Development Area using the Proprietary Marks or different proprietary marks.

## **Franchise Agreement**

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

Nothing in the Franchise Agreement prohibits us or our affiliates from, among other things: **(a)** operating or licensing others to operate, during the term of the Franchise Agreement, Wahlburgers Restaurants at any location other than the Franchised Location; **(b)** operating or licensing others to operate, after the Franchise Agreement terminates or expires, Wahlburgers Restaurants at any location, including the Franchised Location; **(c)** manufacturing, distributing and selling, or causing to be manufactured, distributed and sold, food, goods, wares, merchandise, services, products and Branded Merchandise, whether or not authorized for sale at Wahlburgers Restaurants, under the Proprietary Marks or other trademarks, service marks, logos or commercial symbols, at wholesale or retail, at any location through any channel of distribution, including, but not limited to, mail order and catalog, direct mail advertising, the Internet and other methods of distribution, regardless of the proximity to any Wahlburgers Restaurant developed or under development at the Franchised Location or under consideration by you; **(d)** developing and owning other franchise systems for the same or similar products and services using trade names and trademarks other than the Proprietary Marks; and/or **(e)** purchasing, being purchased by, merging or combining with, businesses that directly compete with Wahlburgers Restaurants. We reserve to ourselves all rights to use and license the System and the Proprietary Marks other than those expressly granted under the Franchise Agreement.

You do not receive any right under the Franchise Agreement to develop or operate additional Franchised Restaurants. [The Franchise Agreement grants you the right to operate at a specific location.](#) Our prior written consent is required before you relocate the Franchised Restaurant. Factors used to approve a request for relocation include, without limitation, whether: **(1)** the need for relocation arises from adverse circumstances at the present site beyond your control; **(2)** the proposed new site meets our then-current standards for development; and **(3)** the proposed new site, in our opinion, will not adversely impact existing Wahlburgers Restaurants.

You may only sell or distribute products identified by some or all of the Proprietary Marks from the Franchised Location; you may not use any other method or channel of distribution. We do not impose any geographic restrictions on your ability to solicit customers; however, see Item 11 for restrictions on your use of Social Media. There are no restrictions on our ability to solicit customers, nor must we compensate you if we solicit or accept orders. We reserve the right to merchandise and distribute goods and services identified by the Proprietary Marks (or different proprietary marks) through any method or channel of distribution, including the Internet.

[We do not operate or plan to operate business under a different trademark that will sell good or services that are the same or similar to those offered in Wahlburgers Restaurants.](#)

## ITEM 13 TRADEMARKS

We grant you the right to operate a retail restaurant under the “Wahlburgers” name and mark and to use the Proprietary Marks in the operation of your Franchised Restaurant. By Proprietary Marks, we mean the “Wahlburgers” name and mark and certain other names, marks, logos, insignias, slogans, emblems, symbols, and designs that we have designated, or may in the future designate, for use with the System.

We have the right, following reasonable notice to you, to change, discontinue, or substitute any of the Proprietary Marks and adopt new Proprietary Marks for use with the System without any liability for any diminishment of the System. You must implement any such change at your expense within the time that we specify.

In addition to other registered trademarks, the following principal trademarks have been registered by our affiliate, Wahlburgers I, LLC (“WB I”), with the United States Patent and Trademark Office (“USPTO”) on the Principal Register, and all required affidavits of continued use have been filed and accepted:

Mark	Registration Number	Registration Date
WAHLBURGERS	4,328,948	April 30, 2013
OUR FAMILY. OUR STORY. OUR BURGERS	4,297,131	March 5, 2013
	4,637,134	November 11, 2014

[None of the registrations are yet up for renewal.](#) We have entered into a license agreement with WB I dated as of September 12, 2014 under which we have a perpetual license to use, and license third parties to use, the Proprietary Marks. We will provide you guidelines for the use of the Proprietary Marks. You must follow our guidelines and rules when you use the Proprietary Marks. You cannot use the Proprietary Marks in any manner not authorized by us or in any corporate or legal name. You cannot use any other trade names, service marks, or trademarks in conjunction with the Franchised Restaurant.

There are no presently effective material determinations of the USPTO, the Trademark Trial and Appeal Board, the trademark administrator of any state or any court relating to the principal Proprietary Marks. There are no pending infringement, opposition or cancellation proceedings or material litigation involving the principal Proprietary Marks. Except as stated above, there are no agreements currently in effect that significantly limit our right to use or license the use of the Proprietary Marks in any manner material to you. We do not know of either superior prior rights or infringing uses that could materially affect your use of the principal Proprietary Marks in any state.

The Franchise Agreement does not contain any provisions under which we are required to defend or indemnify you against any claims of infringement or unfair competition arising out of your use of the Proprietary Marks. The Franchise Agreement does require that you notify us promptly of any unauthorized use of the Proprietary Marks and any challenge by any person or entity to the

validity of, our ownership of, or our right to use, any of the Proprietary Marks. We have the right, but not the obligation, to initiate, direct, and control any litigation or administrative proceedings relating to the Proprietary Marks, including any settlement. You must sign all documents and provide any other assistance we believe is necessary for the defense or prosecution of any such litigation or proceeding. You may not, directly or indirectly, contest, or aid in contesting, the validity, or our ownership, of the Proprietary Marks.

## **ITEM 14**

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

We do not own any patents or registered copyrights, nor do we have any pending patent applications, that are material to your Franchised Restaurant or the System; however, we claim copyright protection in the Manual and certain forms, architectural, engineering and construction plans, advertising materials, product specifications, computer programs, newsletters, training materials, and operations and accounting materials. We have not registered those materials with the United States Registrar of Copyrights.

The Manual and these other materials contain our detailed standards, specifications, instructions, forms, reports, and procedures for the management and operation of the Franchised Restaurant. You must treat the Manual, training materials, and any other manuals or materials created or approved by us for use with the System as secret and confidential. You may not copy, duplicate, or otherwise reproduce the Manual or other materials provided by us. In addition, you may not make any confidential information or materials supplied by us available to any unauthorized person without our prior written consent.

You may not communicate, divulge, or use for any purpose other than the operation of the Franchised Restaurant any confidential information, knowledge, trade secrets, or know-how that may be communicated to you or that you may learn by virtue of the Franchise Agreement or the operation of the Franchised Restaurant. You may divulge confidential information only to your professional advisers, your employees who must have access to the information to develop or operate the Franchised Restaurant, your contractors, and your landlord, provided that you obtain our prior consent. All information, knowledge and know-how relating to us, our business plans, or the System are deemed confidential, except information that you can demonstrate came to your attention by lawful means prior to our disclosure, or that, at the time of our disclosure to you, had become a part of the public domain. At our request, you must require your employees and any other person or entity to whom you wish to disclose any confidential information to sign agreements providing that they will maintain the confidentiality of the disclosed information. The agreements must be in a form satisfactory to us and must identify us as a third-party beneficiary with the independent right to enforce the agreements.

## ITEM 15

### OBLIGATION TO PARTICIPATE IN THE ACTUAL OPERATION OF THE FRANCHISE BUSINESS

You are not obligated to participate personally in the day-to-day operation of the Franchised Restaurant, but we recommend that you do so. Each Franchised Restaurant must, however, at all times, be under the personal, on-premises supervision of one of the following designated individuals, who must meet our applicable training qualifications for their position: the Operating Principal (or, if applicable, the Multi-Unit Manager), a general manager or an assistant manager.

If you are a business entity, you must appoint an individual to serve as your Operating Principal. The Operating Principal: **(a)** must be accepted by us; **(b)** must be a 10% Owner (as defined below) and, as such, must personally guarantee the performance of your obligations under the Development and Franchise Agreements and agree to be personally bound by the covenants and indemnification obligations set forth in those agreements; and **(c)** unless you have named, and we have approved, a Multi-Unit Manager for the particular geographic market in which the Franchised Restaurant is located, as described below, **(1)** must live within a reasonable driving distance of the Development Area, and **(2)** must devote full-time to supervising the development and operation of the Franchised Restaurants. The Operating Principal must complete the ITP, have authority over all business decisions related to the Franchised Restaurant and have the authority to bind you in your dealings with us. We will provide all services to, and communicate primarily with, the Operating Principal. You must obtain our prior written consent before you change the Operating Principal. If the Operating Principal no longer qualifies as such, you must designate another qualified person to act as the Operating Principal within 30 days after the date the prior Operating Principal ceases to be qualified. We will advise you whether we have consented to the new Operating Principal within a reasonable time after receipt of your notice. If we do not consent, you will have 15 days from your receipt of our decision to designate another person to act as Operating Principal who satisfies the preceding qualifications.

Regardless of whether a Multi-Unit Manager is designated for the geographic area in which the Franchised Restaurant is located (as described below), the Operating Principal must remain active in overseeing the operations of the Franchised Restaurant, including without limitation, regular, periodic visits to the Franchised Restaurant and sufficient communications with us to ensure that the Franchised Restaurant's operations comply with the operating standards as detailed by us from time to time in the Manual or otherwise in written or oral communications.

If you are developing Franchised Restaurants in multiple geographic markets, for each market with respect to which the Operating Principal fails to satisfy the requirements described in (c) above, you must appoint an individual to serve as your Multi-Unit Manager. Each Multi-Unit Manager will be under the supervision of the Operating Principal. Each Multi-Unit Manager must be accepted by us, must live within a reasonable driving distance of the applicable market and must devote full-time and best efforts to supervising the development and operation of the Franchised Restaurants in the applicable market. Each Multi-Unit Manager must complete the ITP. You must obtain our prior written consent before you change any Multi-Unit Manager. If any Multi-Unit Manager no longer qualifies as such, you must designate another qualified person to act as the Multi-Unit Manager for the applicable market within 30 days after the date that the prior Multi-Unit Manager ceases to be qualified. We will advise you whether we have consented to the new Multi-Unit Manager within a reasonable time after receipt of your notice. If we do not consent, you will have 15 days from your receipt of our decision to designate another person to act as the Multi-Unit Manager for the applicable market who satisfies the preceding qualifications.

If you are a business entity, all direct or indirect holders of an equity interest in you of 10% or more (“10% Owners”) must jointly and severally guarantee your payment and performance of your obligations under the Development and Franchise Agreements and must bind themselves to the terms of those agreements by executing the guarantee attached thereto.

At our request, you will require your employees (including your manager and assistant manager) to sign agreements, which may be provided by us, under which they agree to maintain the confidentiality of information disclosed by us.

**ITEM 16**

**RESTRICTIONS ON WHAT THE FRANCHISEE MAY SELL**

You must use the Franchised Location solely for the operation of the Franchised Restaurant and maintain sufficient inventories, adequately staff each shift with qualified employees and continuously operate the Franchised Restaurant at its maximum capacity and efficiency for the minimum number of days and hours set forth in the Manual or as we otherwise specify in writing (subject to the requirements of local laws and licensing requirements). You may offer for sale and sell in the Franchised Restaurant only the products and services that we have approved in the Manual or otherwise in writing. (See Items 8 and 9 for additional information regarding authorized products and services.) We, in our sole discretion, and without limitation, may periodically change the System, including modifications to the Manual, the menu (including authorized products), the required equipment, the signage, the Proprietary Marks and the Trade Dress. You must accept, use or display in the Franchised Restaurant any such System changes and make such expenditures as the System changes require. We also have the right to vary System standards in particular instances as we deem appropriate in our reasonable judgment. We do not limit the customers to whom you may sell goods or services.

**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.**

**THE DEVELOPMENT AGREEMENT**

<b>Provision</b>	<b>Section In Development Agreement</b>	<b>Summary</b>
a. Length of the franchise term	Section 1.1	The Development Term begins on the effective date of the Development Agreement and terminates on the first to occur of: <b>(a)</b> the date that the last Franchised Restaurant is required to be opened pursuant to the Development Schedule; or <b>(b)</b> the date that the last Franchised Restaurant required by the Development Schedule opens for business.
b. Renewal or extension of the term	Not Applicable	
c. Requirements for you to renew or extend	Not Applicable	

<b>Provision</b>	<b>Section In Development Agreement</b>	<b>Summary</b>
d. Termination by you	Not Applicable	You may terminate under any grounds permitted by law.
e. Termination by us without cause	Not Applicable	
f. Termination by us with cause	Section 12.1	We may terminate upon default.
g. "Cause" defined -curable defaults	Section 12.2	You have 30 days (10 days for any monetary default) to cure defaults other than those discussed in Sections 12.1, 12.2.2 and 12.2.3 of the Development Agreement.
h. "Cause" defined – non-curable defaults	Sections 12.1.1 – 12.1.11 and 12.2.3	Non-curable defaults include: failure to comply with the Development Schedule (including failure to meet Site Acceptance Dates or Opening Dates); commencement of construction before you sign the Franchise Agreement for that location; insolvency; bankruptcy; execution levied against your business or property; material breach of Section 11 (Covenants); transfer without approval; material misrepresentation; falsification of reports; conviction or no contest plea to a crime likely to harm the System or our goodwill; default beyond cure period under any agreement with us or our affiliates (including, but not limited to, any Franchise Agreement), real estate lease, equipment lease or financing instrument relating to a Franchised Restaurant or any agreement with any vendor or supplier to a Franchised Restaurant, provided that, if default is not by you, you are given written notice and 10 days to cure; receipt of 2 or more notices of default within any 12-month period; and, with respect to any Franchised Restaurant developed under the Development Agreement, an entity that is not a party to the applicable Franchise Agreement is actually operating the Franchised Restaurant without our prior written consent.
i. Your obligations on termination/non-renewal	Section 12.4	Obligations include, but are not limited to: loss of right to develop; termination of limited exclusive rights in Development Area; return of materials to us; continued observance of covenants; payment of amounts due to us and our affiliates; and forfeiture of Development Fee. Termination of the Development Agreement for failure to comply with the Development Schedule will not constitute a default of any franchise agreement.
j. Assignment of contract by us	Section 8	There are no restrictions on our right to assign.
k. "Transfer" by you-defined	Section 9	Includes sale, assignment, transfer, conveyance, merger, give away, pledge, mortgage or other encumbrance of any interest in the Development Agreement, any direct or indirect ownership interest in you (if you are a business entity) or substantially all of your assets pertaining to your operations under the Development Agreement.
l. Our approval of transfer by you	Section 9	Generally, if you propose to undertake a Transfer, you must obtain our prior written consent. The decision as to whether to consent to a Transfer will be made in the exercise of our business judgment, but our consent will not be unreasonably withheld. A transfer of ownership interests in you to a trust for estate planning purposes will be permitted without our consent, subject to your satisfaction of certain specified conditions.
m. Conditions for our approval of transfer	Sections 9.3, 9.4	Except as provided below, if you propose to undertake a Transfer, the conditions for our consent include: compliance with the Development Agreement and any other agreement with us, our affiliates, any lenders that have provided financing to you and

Provision	Section In Development Agreement	Summary
		<p>your major suppliers; if applicable, payment of a transfer fee (see Item 6); simultaneous transfer of same interest with respect to all agreements with us in Development Area; qualified transferee; sign assignment agreement and any other agreements that we require to reflect the transfer; sign, at our option, any amendments to the Development Agreement and/or our then-current standard form of development agreement for a term ending on the expiration date of the Development Agreement; sign general release; sign guarantee; your affiliates' compliance with any Wahlburgers Area Development or Franchise Agreement to which they are a party and with any agreement with lenders that have provided financing pursuant to an arrangement with us; and reasonable sales price.</p> <p>If you propose to admit a new owner having less than a 10% ownership interest, remove an existing owner or change the distribution of ownership, conditions include: provide notice; submit copies of all proposed contracts and other information that we request; pay applicable transfer fee (see Item 6); compliance with Development Agreement and any other agreement with us, our affiliate, any lenders that have provided financing pursuant to an arrangement with us and your major suppliers; sign general release; and if applicable, sign guarantee; and comply with governing documents requirements.</p>
n. Our right of first refusal to acquire your business	Section 9.9	We have the right, exercisable within 30 days after we receive your notice of transfer, to send written notice to you that we intend to purchase the interest or assets proposed to be transferred. Our right of first refusal will not apply to transfers for convenience of ownership or transfers to your spouse or adult son or daughter as a result of death or permanent incapacity, provided that the transferee meets all criteria required for new franchisees.
o. Our option to purchase your business	Not Applicable	
p. Your death or disability	Section 9.6	If the Transfer is a transfer of direct or indirect ownership interests in you after the death or permanent incapacity of an owner, that person's executor, administrator or personal representative must apply to us within 3 months for consent to transfer the person's interest. All conditions of transfer apply (see m. above). If the interest is not disposed of within 6 months after the event, we may terminate the Development Agreement.
q. Non-competition covenants during the development term	Section 11.2	No interest in any Competitive Business. "Competitive Business" means any business, store, restaurant or location: <b>(1)</b> whose sales of hamburgers are reasonably likely to account for 10% or more of the food sales of the business in any calendar month; and/or <b>(2)</b> whose method of operation or trade dress is similar to that used in the System. "Competitive Business" does not, however, include those businesses in which any of your owners or you have a direct or indirect, legal or beneficial interest and: <b>(a)</b> that had been in operation prior to the date of the first franchise-related agreement between you and us; or <b>(b)</b> that your owners or you had contracted to develop prior to the date of the first franchise-related agreement between you and us, provided

<b>Provision</b>	<b>Section In Development Agreement</b>	<b>Summary</b>
		those businesses are listed in Exhibit A to the Development Agreement.  In addition, you may not divert any business or customer to any Competitive Business.
r. Non-competition covenants after the franchise is terminated or expires	Section 11.3	For 2 years following the expiration, termination or transfer of the Development Agreement, no interest in any Competitive Business that is located in the Development Area, within 2 miles of the border of the Development Area or within 2 miles of any other Wahlburgers Restaurant. In addition, you may not, for 2 years after expiration, termination or transfer of the Development Agreement, sell, assign, lease or transfer any Authorized Site to any person or entity that intends to operate a Competitive Business at that Authorized Site.
s. Modification of the agreement	Section 17	No modification generally without signed agreement, but we may modify the System.
t. Integration/merger clause	Section 17	Only the terms of the Development Agreement, the documents referred to therein and the Manual are binding (subject to state law). Any other oral or written promises related to the subject matter of the Development Agreement may not be enforceable. This is not intended to disclaim any representation made in this disclosure document.
u. Dispute resolution by arbitration or mediation	Not Applicable	
v. Choice of forum	Section 19.2	You can only file suit where our principal offices are located, and we must file suit in the jurisdiction where our principal offices are located (currently Massachusetts), where you reside or do business, where the Development Area or any Franchised Restaurant is or was located or where the claim arose. (subject to applicable state law)
w. Choice of law	Section 19.1	Subject to <a href="#">applicable</a> state law, Massachusetts law applies.

## FRANCHISE AGREEMENT

<b>Provision</b>	<b>Section In Franchise Agreement</b>	<b>Summary</b>
a. Length of the franchise term	Section 2.1	20 years from the date the Franchised Restaurant opens
b. Renewal or extension of the term	Section 2.2	You will have the option to obtain one successor franchise term, which will be for a period of 10 years, unless we decide to stop franchising the Wahlburgers concept or we decide to withdraw the Wahlburgers concept from the geographical market in which the Franchised Restaurant is located.
c. Requirements for you to renew or extend	Section 2.2	Conditions include: providing timely notice; substantial compliance with expiring franchise agreement; not be in default under any agreement with us or our affiliates; not be in default beyond the applicable cure period under any real estate lease, equipment lease, or financing instrument relating to the Franchised Restaurant or any agreement with any vendor or supplier to the Franchised Restaurant; have the right to continue

Provision	Section In Franchise Agreement	Summary
		<p>operating at the Franchised Restaurant for the full term of the successor franchise agreement; renovate and modernize the Franchised Restaurant to reflect the then-current image of Wahlburgers Restaurants; sign a general release; complete any additional training that we require; and pay a renewal fee.</p> <p>You also must sign our then-current form of Franchise Agreement, the terms of which likely will differ materially from your original Franchise Agreement, including, without limitation, those relating to royalty fees and advertising obligations.</p>
d. Termination by you	Not Applicable	You may terminate under any grounds permitted by law.
e. Termination by us without cause	Not Applicable	
f. Termination by us with cause	Section 19	We may terminate upon default. Termination of the Development Agreement for failure to comply with the Development Schedule will not constitute a default of the Franchise Agreement.
g. "Cause" defined -curable defaults	Section 19.2	You have 30 days (10 days for any monetary default) to cure defaults other than those discussed in Section 19.1 and 19.2.2 of the Franchise Agreement.
h. "Cause" defined -non-curable defaults	Section 19.1	<p>Non-curable defaults include: failure to complete the ITP; failure to open the Franchised Restaurant by the Opening Date; insolvency; bankruptcy; execution levied against your business or property; foreclosure; material breach of covenants; material misrepresentation; conviction or no contest plea to a crime that is likely to harm the System's reputation or our goodwill; transfer without obtaining our prior written consent; default beyond the applicable cure period under any agreement with us or our affiliates (including, but not limited to, any Development Agreement), any real estate lease, equipment lease, or financing instrument relating to the Franchised Restaurant or any agreement with any vendor or supplier to the Franchised Restaurant, provided that, if the default is not by you, you are given written notice and 10 days to cure; refuse to permit audit; conditions that seriously jeopardize public health or safety; loss of right to operate at the Franchised Location and, if applicable, failure to secure our acceptance of another site within required time period; failure to operate the Franchised Restaurant for 3 or more consecutive days, or 5 total days; receipt of 2 or more notices of default within any 12 month period; and an entity that is not a party to the Franchise Agreement is actually operating the Franchised Restaurant without our prior written consent.</p>
i. Your obligations on termination/non-renewal	Section 20	<p>Obligations include: immediately cease to operate the Franchised Restaurant and refrain from holding yourself out as a present or former franchisee of the System; cease to use the System, the Proprietary Marks, and the Manual; pay all sums due to us, our affiliates, and your suppliers; cease to use in any manner the confidential methods, procedures, and techniques associated with the System; continue to abide by the covenants; cease to use the Proprietary Marks and all other distinctive signs and names associated with the System; cancel any assumed name or equivalent registration and any domain name registration containing the Proprietary Marks; pay lost revenue damages; complete de-identification (if we do not exercise our option to purchase); deliver to us all hard copies, and delete all</p>

Provision	Section In Franchise Agreement	Summary
		electronic copies, of the Manual and all training materials, marketing materials, records, files, instructions, and correspondence containing confidential information; deliver to us all customer information you have compiled and uninstall any software that we have provided; assign all Listings (as defined in the Franchise Agreement) associated with the Proprietary Mark or the Franchised Restaurant, if we so elect; and, unless you operate another Franchised Restaurant, sell us all Branded Merchandise purchased from us.
j. Assignment of contract by us	Section 15	There are no restrictions on our right to assign.
k. "Transfer" by you-defined	Section 16.1	Includes sale, assignment, transfer, merger, conveyance, give away, pledge, mortgage, or other encumbrance of any interest in the Franchise Agreement, the Franchised Restaurant, the Franchised Location, the lease for the Franchised Restaurant, substantially all of the assets of the Franchised Restaurant, any direct or indirect ownership interests in you (if you are a business entity) or substantially all of your other assets pertaining to your operations under the Franchise Agreement. A transfer of ownership interests in you to a trust for estate planning purposes will be permitted without our consent, subject to your satisfaction of certain specified conditions.
l. Our approval of transfer by you	Section 16.2	If you propose to undertake a Transfer, you must obtain our prior written consent. The decision as to whether to consent to a Transfer will be made in the exercise of our business judgment, but our consent will not be unreasonably withheld.
m. Conditions for our approval of transfer	Sections 16.3, 16.4	Except as provided below, if you propose to undertake a Transfer, the conditions for our approval include: compliance with the Franchise Agreement and any other agreement with us, our affiliates, any lenders that have provided financing pursuant to an arrangement with us, and your major suppliers; if applicable, payment of a transfer fee (see Item 6); simultaneous Transfer of your Area Development Agreement (if applicable and if still in effect) and any other Franchised Restaurants developed under that Agreement and then-operated by you; submit a copy of all contracts, all other agreements or proposals, and all other information requested by us; qualified transferee; sign assignment agreement and any other agreements that we require to reflect the Transfer; sign, at our option, any amendments to the Franchise Agreement that we require and/or our then-current standard form of franchise agreement for a term ending on the expiration date of the Franchise Agreement; modernize and upgrade the Franchised Restaurant; sign general release; reasonable sales price and other proposed terms; your affiliates' compliance with any Wahlburgers Area Development or Franchise Agreement to which they are a party and with any agreement with lenders that have provided financing pursuant to an arrangement with us; and execute guarantee. In addition, transferee and those of transferee's employees whom we designated must complete the ITP.  If you propose to admit a new owner having less than a 10% ownership interest, remove an existing owner or change the distribution of ownership interests, conditions include: provide

Provision	Section In Franchise Agreement	Summary
		notice; submit copies of all proposed contracts and other information that we request; pay transfer fee (see Item 6); compliance with Franchise Agreement and any other agreement with us, our affiliate, any lenders that have provided financing pursuant to an arrangement with us and your major suppliers; sign assignment agreement and any other agreements we require to reflect the Transfer; sign, at our option, any amendments to the Franchise Agreement that we require and/or our then current standard form of franchise agreement for a term ending on the expiration date of the Franchise Agreement; sign general release; and comply with governing documents requirement.
n. Our right of first refusal to acquire your business	Section 16.9	We have the right, exercisable within 30 days after we receive your notice of Transfer, to send written notice to you that we intend to purchase the interest or assets proposed to be transferred. Our right of first refusal will not apply to transfers for convenience of ownership or transfers to your spouse or adult son or daughter, provided that the transferee meets all criteria for new franchisees.
o. Our option to purchase your business	Section 21	We have the right, exercisable within 30 days after the later of the effective date of termination or expiration or the date you cease operating the Franchised Restaurant, to purchase some or all of the Assets used in the Franchised Restaurant. We have the unrestricted right to assign this option to purchase your business. The purchase prices of the Assets will be their fair market value determined as of the effective date of termination or agreement expiration in a manner that accounts for reasonable depreciation and condition of the Assets. We may exclude from the Assets purchased any equipment, vehicles, furnishings, fixtures, signs, and inventory that do not meet our then-current standards.
p. Your death or disability	Section 16.6	If the Transfer is a transfer of direct or indirect ownership interests in you after the death or permanent incapacity of an owner, that person's executor, administrator, or personal representative must apply to us within 3 months for consent to transfer the person's interest. All conditions of transfer apply (see m. above). If the interest is not disposed of within 6 months after the date of death or appointment of a personal representative, we may terminate the Franchise Agreement.
q. Non-competition covenants during the term of the franchise	Section 18.2	No interest in any Competitive Business. "Competitive Business" means any business, store, restaurant or location: <b>(1)</b> whose sales of hamburgers are reasonably likely to account for 10% or more of the food sales of the business in any calendar month; and/or <b>(2)</b> whose method of operation or trade dress is similar to that used in the System. "Competitive Business" does not, however include those businesses in which any of your owners or you have a direct or indirect, legal or beneficial interest and: <b>(a)</b> that had been in operation prior to the date of the first franchise-related agreement between you and us; or <b>(b)</b> that your owners or you had contracted to develop prior to the date of the first franchise-related agreement between you and us, provided those businesses are listed in Exhibit A to the Franchise Agreement.  In addition, you may not divert any business or customer to any

Provision	Section In Franchise Agreement	Summary
		Competitive Business.
r. Non-competition covenants after the franchise is terminated or expires	Section 18.3	For 2 years following the expiration, termination or transfer of the Franchise Agreement, no interest in any Competitive Business that is located within 2 miles of the Franchised Location or within 2 miles of any other Wahlburgers Restaurant. In addition, you may not, for 2 years after expiration, termination, or transfer of the Franchise Agreement, sell, assign, lease, or transfer the Franchised Location to any person or entity that intends to operate a Competitive Business at the Franchised Location.
s. Modification of the agreement	Section 26	No modification generally without signed agreement, but we may modify the System.
t. Integration/merger clause	Section 26	Only the terms of the Franchise Agreement, the documents referred to therein and the Manual are binding (subject to state law). Any other oral or written promises related to the subject matter of the Franchise Agreement may not be enforceable. This is not intended to disclaim any representation made in this disclosure document.
u. Dispute resolution by arbitration or mediation	Not Applicable	
v. Choice of forum	Section 28.2	You can only file suit where our principal offices are located, and we must file suit in the jurisdiction where our principal offices are located (currently Massachusetts), where you reside or do business, where the Protected Area or the Franchised Restaurant is or was located or where the claim arose.(subject to applicable state law)
w. Choice of law	Section 28.1	Subject to <a href="#">applicable</a> state law, Massachusetts law applies.

Certain states require franchisors to make additional disclosures related to the information contained in this disclosure document. These disclosures are contained in Exhibit [H](#) to this disclosure document.

## ITEM 18

### PUBLIC FIGURES

Mark, Donnie and Paul Wahlberg have an indirect ownership in our parent, WB Holding, and promote the sale of our franchises. As such, each of the Wahlbergs will receive an indirect financial benefit from fees paid by franchisees to us. None of the Wahlbergs have made any direct investment in us.

## ITEM 19

### FINANCIAL PERFORMANCE REPRESENTATIONS

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

franchisor supplements the information provided in this Item 19, for example, by providing information about possible performance at a particular location or under particular circumstances.

We do not make any representations about a franchisee's financial performance or the past financial performance of company-owned or franchised outlets. We also do not authorize our employees or representatives to make any such representations either orally or in writing. If you are purchasing an existing outlet, however, we may provide you with the actual records of that outlet. If you receive any other financial performance information or projections of your future income, you should report it to the franchisor's management by contacting Alan McKenna, our Chief [Financial Officer and Chief Legal and Administrative Officer](#), at 350 Lincoln Street, Suite 2501, Hingham, MA 02043, (781) 749-4972, the Federal Trade Commission, and the appropriate state regulatory agencies.

## ITEM 20

### OUTLETS AND FRANCHISEE INFORMATION

**Table No. 1**  
**Systemwide Outlet Summary**  
**Fiscal Years ~~2020~~2021 to ~~2022~~2023 (1)**

Outlet Type	Year	Outlets at Start of Year	Outlets at End of Year	Net change
Franchised	<del>2020</del>	<del>25</del>	<del>42</del>	<del>+17</del>
	2021	42	<del>72</del> <u>74</u>	<del>+30</del> <u>+32</u>
	2022	<del>72</del> <u>74</u>	<del>94</del> <u>92</u>	<del>+19</del> <u>+18</u>
	<u>2023</u>	<u>92</u>	<u>106</u>	<u>+14</u>
Company-Owned	<del>2020</del>	<del>5</del>	<del>5</del>	<del>+0</del>
	2021	5	5	+0
	2022	5	5	+0
	<u>2023</u>	<u>5</u>	<u>4</u>	<u>-1</u>
Total Outlets	<del>2020</del>	<del>30</del>	<del>47</del>	<del>+17</del>
	2021	47	<del>77</del> <u>79</u>	<del>+30</del> <u>+32</u>
	2022	<del>77</del> <u>79</u>	<del>96</del> <u>97</u>	<del>+19</del> <u>+18</u>
	<u>2023</u>	<u>97</u>	<u>110</u>	<u>+13</u>

### NOTES

- (1) The numbers for ~~2020-2022~~2021-2023 are as of our fiscal year end (respectively, ~~January 3, 2021 and~~ January 2, 2022, ~~and~~ January 1, 2023 and December 31, 2023). Our fiscal year ends on the Sunday closest to December 31. As mentioned in Item 1, the Company-Owned Restaurants identified in this Table 1 are owned and operated by our affiliates.

**Table No. 2**  
**Transfers of Outlets from Franchisees to New Owners**  
**(Other than Wahlburgers)**  
**For Years ~~2020~~2021 to ~~2022~~2023 (1)**

State	Year	Number of Transfers
All States	<del>2020</del>	<del>0</del>
	2021	0
	2022	0
	<u>2023</u>	<u>0</u>
Total	<del>2020</del>	<del>0</del>
	2021	0
	2022	0
	<u>2023</u>	<u>0</u>

**NOTES**

- (1) The numbers for ~~2020-2022~~2021-2023 are as of our fiscal year end (respectively, ~~January 3, 2021 and~~ January 2, 2022, ~~and~~ January 1, 2023, and December 31, 2023). Our fiscal year ends on the Sunday closest to December 31.

**Table No. 3**  
**Status of Franchised Outlets**  
**For Years ~~2020~~2021 to ~~2022~~2023 (1) (3)**

**FULL SERVICE RESTAURANTS**

State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Us	Ceased Operations – Other Reasons	Outlets at End of the Year
<del>AL</del>	<del>2020</del>	<del>4</del>	<del>4</del>	<del>0</del>	<del>0</del>	<del>0</del>	<del>4</del>	<del>4</del>
<u>AL</u>	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	<u>2023</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>1</u>
<del>CA</del>	<del>2020</del>	<del>3</del>	<del>0</del>	<del>0</del>	<del>0</del>	<del>0</del>	<del>0</del>	<del>3</del>
<u>CA</u>	2021	3	0	0	0	0	2	1
	2022	1	<del>0</del> <u>2</u>	0	0	0	1	<del>0</del> <u>3</u>
	<u>2023</u>	<u>3</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>3</u>
<del>CT</del>	<del>2020</del>	<del>4</del>	<del>0</del>	<del>4</del>	<del>0</del>	<del>0</del>	<del>0</del>	<del>0</del>
<u>CT</u>	2021	0	0	0	0	0	0	0
	2022	0	0	0	0	0	0	0
<del>FL</del>	<del>2020</del> <u>2023</u>	<del>2</del> <u>0</u>	1	0	0	0	<del>2</del> <u>0</u>	1
<u>FL</u>	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
<u>GA</u>	<del>2020</del> <u>2023</u>	1	<del>0</del> <u>4</u>	0	0	0	<del>0</del> <u>1</u>	<del>2</del> <u>0</u>

State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Us	Ceased Operations – Other Reasons	Outlets at End of the Year
GA	2021	2	0	0	0	0	0	2
	2022	2	0	0	0	0	1	1
IA	2020 2023	1	0	0	0	0	0	1
IA	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
IL	2020 2023	0 <del>1</del>	4 <del>0</del>	0	0	0	0 <del>1</del>	4 <del>0</del>
IL	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
IN	2020 2023	0 <del>1</del>	4 <del>0</del>	0	0	0	0	1
IN	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
KS	2020 2023	1	0	0	0	0	0	1
KS	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	1	0
MA	2020	2	0	0	0	0	0	2
MA	2021	2	1	0	0	0	0	3
	2022	3	0	0	0	0	0	3
	2023	3	0	0	0	0	0	3
MI	2020	4	0	0	0	0	2	2
MI	2021	2	1	0	0	0	0	3
	2022	3	0	0	0	0	1	2
	2023	2	0	0	0	0	2	0
MN	2020	4	0	0	0	0	0	4
MN	2021	1	1	0	0	0	0	2
	2022	2	0	0	0	0	0	2
NJ	2020 2023	4 <del>2</del>	0	0	0	0	0 <del>1</del>	1
NJ	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
NV	2020 2023	1	0	0	0	0	0	1
NV	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
NY	2020 2023	1	0 <del>1</del>	0	0	0	4 0 <del>2</del>	0
	2021	0	0	0	0	0	0	0
	2022	0	0	0	0	0	0	0

State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Us	Ceased Operations – Other Reasons	Outlets at End of the Year
<u>OH</u>	2020	2	0	0	0	0	0	2
<u>OH</u>	2021	2	0	0	0	0	0	2
	2022	2	0	0	0	0	0	2
	<u>2023</u>	<u>2</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>1</u>	<u>1</u>
<u>PA</u>	2020	2	0	0	0	0	0	2
<u>PA</u>	2021	2	0	0	0	0	0	2
	2022	2	0	0	0	0	0	2
	<u>2023</u>	<u>2</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>1</u>	<u>1</u>
<u>TN</u>	2020	0	0	0	0	0	0	0
<u>TN</u>	2021	0	1	0	0	0	0	1
	2022	1	0	0	0	0	0	1
<u>WI</u>	2020	1	<del>0</del>	0	0	0	0	<del>2</del>
<u>WI</u>	<u>2023</u>	<u>2</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>1</u>
	2021	2	0	0	0	0	0	2
	2022	2	0	0	0	0	0	2
<b>Total</b>	2020	25	6	4	0	0	6	24
<b>Total</b>	2021	24	4	0	0	0	2	26
	2022	26	<del>0</del>	0	0	0	3	<del>23</del>
	<u>2023</u>	<u>25</u>	<u>2</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>9</u>	<u>18</u>

### FAST CASUAL RESTAURANTS

State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Us	Ceased Operations – Other Reasons	Outlets at End of the Year
<u>CA</u>	2020	0	0	0	0	0	0	0
<u>CA</u>	2021	0	1	0	0	0	0	1
	2022	1	<del>0</del>	0	0	0	0	<del>3</del>
	<u>2023</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>1</u>
<u>HI</u>	2020	0	0	0	0	0	0	0
<u>HI</u>	2021	0	0	0	0	0	0	0
	2022	0	1	0	0	0	0	1
	<u>2023</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>1</u>
<u>IA</u>	2020	0	5	0	0	0	0	5
<u>IA</u>	2021	5	9	0	0	0	0	14
	2022	14	7	0	0	0	0	21
	<u>2023</u>	<u>21</u>	<u>3</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>24</u>

State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Us	Ceased Operations – Other Reasons	Outlets at End of the Year
<u>IL</u>	2020	0	3	0	0	0	0	3
<u>IL</u>	2021	3	0	0	0	0	0	3
	2022	2	0	0	0	0	0	2
	2023	2	7	0	0	0	0	9
<u>KS</u>	2020	0	0	0	0	0	0	0
<u>KS</u>	2021	0	2	0	0	0	0	2
	2022	2	42	0	0	0	0	34
	2023	4	0	0	0	0	0	4
<u>MA</u>	2021	0	0	0	0	0	0	0
	2022	0	0	0	0	0	0	0
	2023	0	1	0	0	0	0	1
<u>MN</u>	2020	0	10	0	0	0	0	10
<u>MN</u>	2021	10	0	0	0	0	0	10
	2022	12	0	0	0	0	0	12
	2023	12	2	0	0	0	0	14
<u>MO</u>	2020	0	2	0	0	0	0	2
<u>MO</u>	2021	2	4	0	0	0	0	6
	2022	5	3	0	0	0	0	8
	2023	8	0	0	0	0	0	8
<u>NE</u>	2020	0	0	0	0	0	0	0
<u>NE</u>	2021	0	8	0	0	0	0	8
	2022	7	0	0	0	0	0	7
	2023	7	3	0	0	0	0	10
<u>NM</u>	2020	0	0	0	0	0	0	0
<u>NM</u>	2021	0	0	0	0	0	0	0
	2022	0	1	0	0	0	0	1
	2023	1	0	0	0	0	0	1
<u>OH</u>	2020	0	0	0	0	0	0	0
<u>OH</u>	2021	0	0	0	0	0	0	0
	2022	0	3	0	0	0	0	3
	2023	3	0	0	0	0	0	3
<u>SD</u>	2020	0	0	0	0	0	0	0
<u>SD</u>	2021	0	1	0	0	0	0	1
	2022	1	1	0	0	0	0	2
	2023	2	4	0	0	0	0	6
<u>WI</u>	2020	0	0	0	0	0	0	0
<u>WI</u>	2021	0	3	0	0	0	0	3
	2022	3	2	0	0	0	0	5
	2023	5	1	0	0	0	0	6

State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Us	Ceased Operations – Other Reasons	Outlets at End of the Year
Total	<del>2020</del>	<del>0</del>	<del>18</del>	<del>0</del>	<del>0</del>	<del>0</del>	<del>0</del>	<del>18</del>
	2021	18	<del>28</del> <u>30</u>	0	0	0	0	<del>46</del> <u>48</u>
	2022	<del>46</del> <u>48</u>	<del>24</del> <u>19</u>	0	0	0	0	<del>68</del> <u>67</u>
	<u>2023</u>	<u>67</u>	<u>21</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>88</u>

### NOTES

- (1) The numbers for ~~2020-2022~~2021-2023 are as of our fiscal year end (respectively, January ~~3, 2021 and January~~ 2, 2022 ~~and~~ January 1, 2023 and December 31, 2023). Our fiscal year ends on the Sunday closest to December 31. If multiple events occurred affecting a Wahlburgers Restaurant, this table shows the event that occurred last in time.
- (2) Attached as Exhibit J is a list of the addresses and telephone numbers of all franchised Wahlburgers locations and the name of the franchisee for each franchised location as of the end of our ~~2022~~2023 fiscal year.
- (3) No confidentiality agreements were signed with any franchisees that would restrict them from speaking openly with you about their experiences with us. Exhibit J includes a list of all Wahlburgers franchisees who had a franchised restaurant terminated, canceled or not renewed or otherwise voluntarily or involuntarily ceased to do business under a franchise agreement, including in connection with a transfer, during the period ~~January 2, 2022 to~~ January 1, 2023, through December 31, 2023, or failed to communicate with us within 10 weeks of the issuance date of this disclosure document. If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system. As of the issuance date of this disclosure document, there are no Wahlburgers franchisee organizations.

**Table No. 4**  
**Status of Company-Owned Outlets**  
For Years ~~2020~~2021 to ~~2022~~2023 (1) (2) (3)

State	Year	Outlets at Start of Year	Outlets Opened	Outlets Reacquired from Franchisees	Outlets Closed	Outlets Sold to Franchisees (3)	Outlets at End of Year
<del>MA</del>	<del>2020</del>	<del>3</del>	<del>0</del>	<del>0</del>	<del>0</del>	<del>0</del>	<del>3</del>
<u>MA</u>	2021	3	0	0	0	0	3
	2022	3	0	0	0	0	3
	<u>2023</u>	<u>3</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>3</u>
<del>SC</del>	<del>2020</del>	<del>4</del>	<del>0</del>	<del>0</del>	<del>0</del>	<del>0</del>	<del>4</del>
<u>SC</u>	2021	1	0	0	0	0	1
	2022	1	0	0	0	0	1
<del>TX</del>	<del>2020</del>	<del>1</del>	<del>0</del>	<del>0</del>	<del>0</del>	<del>0</del>	<del>1</del>
<u>TX</u>	<u>2023</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>1</u>
<u>TX</u>	2021	1	0	0	0	0	1

State	Year	Outlets at Start of Year	Outlets Opened	Outlets Reacquired from Franchisees	Outlets Closed	Outlets Sold to Franchisees (3)	Outlets at End of Year
	2022	1	0	0	0	0	1
	<u>2023</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>1</u>	<u>0</u>	<u>0</u>
Total	<del>2020</del>	<del>5</del>	<del>0</del>	<del>0</del>	<del>0</del>	<del>0</del>	<del>5</del>
	2021	5	0	0	0	0	5
	2022	5	0	0	0	0	5
	<u>2023</u>	<u>5</u>	<u>0</u>	<u>0</u>	<u>1</u>	<u>0</u>	<u>4</u>

### NOTES

- (1) The numbers for ~~2020-2022~~2021-2023 are as of our fiscal year end (respectively, January ~~3, 2021 and January~~ 2, 2022, and January 1, 2023, and December 31, 2023). Our fiscal year ends on the Sunday closest to December 31. ~~Our fiscal year ends on the Sunday closest to December 31.~~
- (2) If multiple events occurred affecting a Wahlburgers Restaurant, this table shows the event that occurred last in time.
- (3) The restaurants identified in this Table 4 are owned and operated by our affiliates and are full service restaurants.

**Table No. 5**  
**Projected Openings as of ~~January 1~~December 31, 2023**

State	Franchise Agreements Signed but Outlet Not Opened	Projected New Franchised Outlets in Next Fiscal Year	Projected New Company-Owned Outlets in Next Fiscal Year
CA	<del>0</del> <u>1</u>	<del>4</del> <u>0</u>	0
<del>CT</del> <u>FL</u>	1	1	0
<del>IA</del>	<del>0</del>	<del>8</del>	<del>0</del>
<del>IL</del>	<del>0</del>	<del>3</del>	<del>0</del>
MA	1	<del>2</del> <u>1</u>	0
<u>NY</u>	<u>1</u>	<u>1</u>	<u>0</u>
<del>MN</del>	<del>0</del>	<del>4</del>	<del>0</del>
<del>MO</del>	<del>0</del>	<del>2</del>	<del>0</del>
<del>NE</del>	<del>0</del>	<del>8</del>	<del>0</del>
<del>OK</del>	<del>0</del>	<del>4</del>	<del>0</del>
<del>SD</del>	<del>0</del>	<del>3</del>	<del>0</del>
<del>WI</del>	<del>0</del>	<del>2</del>	<del>0</del>
Total	<del>14</del> <u>4</u>	<del>35</del> <u>3</u>	0

## ITEM 21

### FINANCIAL STATEMENTS

Attached to this disclosure document as Exhibit HG are our audited financial statements for the fiscal years ending ~~January 3, 2021,~~ January 2, 2022 ~~and~~, January 1, 2023, and December 31, 2023.

## ITEM 22

### CONTRACTS

The following agreements related to a Franchised Restaurant are attached as exhibits to this disclosure document:

Exhibit C                      Area Development Agreement

Exhibit D                      Franchise Agreement

Exhibit E ~~—————~~ ~~Tiered Royalty Addenda~~

~~Exhibit F~~ ~~—————~~ Confidentiality Agreement

## ITEM 23

### RECEIPTS

The last two pages of this disclosure document are detachable receipt pages. Please sign and date each of them as of the date you received this disclosure document and return one copy to us.

***EXHIBIT A***  
***LIST OF STATE ADMINISTRATORS***

## LIST OF STATE ADMINISTRATORS

### California:

Department of Financial Innovation and  
Protection  
1-866-275-2677

[www.dfpi.ca.gov](http://www.dfpi.ca.gov)

[Ask.DFPI@dfpi.ca.gov](mailto:Ask.DFPI@dfpi.ca.gov)

### Los Angeles

320 West 4<sup>th</sup> Street, Suite 750  
Los Angeles, CA 90013-2344  
(213) 576-7500

### Sacramento

2101 Arena Boulevard,  
Sacramento, CA 95834  
(916) 445-7205

### San Diego

1350 Front Street, Room 2034  
San Diego, CA 92101-3697  
(619) 525-4233

### San Francisco

One Sansome Street, Suite 600  
San Francisco, CA 94104  
(415) 972-8559

### Hawaii:

Department of Commerce and  
Consumer Affairs  
Business Registration Division  
P.O. Box 40  
335 Merchant Street  
Room 203  
Honolulu, Hawaii 96810  
(808) 586-2744

### Illinois:

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

### Indiana:

Franchise Section  
Indiana Securities Division  
Secretary of State  
Room E-111  
302 West Washington Street  
Indianapolis, IN 46204  
(317) 232-6681

### Maryland:

Office of the Attorney General  
Division of Securities  
200 St. Paul Place  
Baltimore, MD 21202-2020  
(410) 576-6360

### Michigan:

Michigan Attorney General's Office  
Consumer Protection Division  
Attn.: Franchise Section  
G. Mennen Williams Bldg. – 1st Floor  
525 W. Ottawa Street  
Lansing, MI 48933  
(517) 335-7567

### Minnesota:

MN Department of Commerce  
Securities Unit  
85 7<sup>th</sup> Place East, Suite 280  
Saint Paul, MN 55101  
(651) 539-1500

**New York:**

NYS Department Of Law  
Investor Protection Bureau  
Franchise Section  
28 Liberty Street  
New York, NY 10005  
(212) 416-8222

**North Dakota:**

North Dakota Securities Department  
600 Boulevard Avenue, State Capitol  
Fourteenth Floor, Dept. 414  
Bismarck, ND 58505-0510  
(701) 328-4712

**Oregon:**

Division of Consumer and Business  
Services  
Finance & Corporate Securities  
350 Winter Street, NE  
Labor and Industries Building, Rm 21  
Salem, OR 97301-3881  
(503) 378-4100

**Rhode Island:**

Securities Division  
Department of Business  
Regulation  
1511 Pontiac Avenue  
John O. Pastore Complex-Bldg.  
69  
Cranston, Rhode Island 02920  
(401) 462-9527

**South Dakota:**

Department of Labor & Regulations  
Division of Securities  
124 S. Euclid, Suite 104  
Pierre, SD 57501  
(605) 773-3563

**Virginia:**

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

**Washington:**

Department of Financial Institutions  
Securities Division  
150 Israel Road, S  
P.O. Box 9033  
Olympia, WA 98507  
(360) 902-8760

**Wisconsin:**

Division of Securities  
Department of Financial  
Institutions  
345 W. Washington Avenue  
Madison, WI 53703  
(608) 266-2801

***EXHIBIT B***

***LIST OF AGENTS FOR SERVICE OF PROCESS***

## AGENTS FOR SERVICE OF PROCESS

### California:

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

[www.dfpi.ca.gov](http://www.dfpi.ca.gov)

[Ask.DFPI@dfpi.ca.gov](mailto:Ask.DFPI@dfpi.ca.gov)

### Hawaii:

Commissioner of Securities  
Dep't of Commerce and Consumer Affairs  
Business Registration Division  
Securities Compliance Branch  
King Kalakaua Building  
335 Merchant Street, Room 203  
Honolulu, Hawaii 96813

### Illinois:

Illinois Attorney General  
Office of the Attorney General  
500 South Second Street  
Springfield, IL 62706

### Indiana:

Franchise Section  
Indiana Securities Division  
Secretary of State  
302 W. Washington Street  
Room E-111  
Indianapolis, IN 46204

### Maryland:

Maryland Securities Commissioner  
200 St. Paul Place  
Baltimore, MD 21202

### Massachusetts:

Alan McKenna  
350 Lincoln Street, Suite 2501  
Hingham, MA 02043

### Michigan:

Michigan Department of Commerce  
Corporations and Securities Bureau  
525 W. Allegan Street  
Lansing, MI 48913

### Minnesota:

Commissioner of Commerce  
Minnesota Department of Commerce  
Securities Unit  
85 7<sup>th</sup> Place East, Suite 280  
Saint Paul, MN 55101

### New York:

Secretary of State  
99 Washington Avenue  
Albany, NY 12231

### North Dakota:

Securities Commissioner  
North Dakota Securities Department  
600 Boulevard Avenue  
State Capitol  
Fourteenth Floor, Dept. 414  
Bismarck, ND 58505-0510

### Rhode Island:

Director of Rhode Island Department of  
Business Regulation  
Securities Division  
1511 Pontiac Avenue  
John O. Pastore Complex – Building 69-1  
Cranston, Rhode Island 02920

### South Dakota:

Department of Labor and Regulations  
Division of Securities  
124 S. Euclid, Suite 104  
Pierre, South Dakota 57501

**Virginia:**

Clerk  
State Corporation Commission  
1300 E. Main Street  
Richmond, VA 23219

**Washington:**

Director of Dept. of Financial Institutions  
Securities Division  
150 Israel Road, SW  
Tumwater, Washington 98501

**Wisconsin:**

Administrator, Division of Securities  
Department of Financial Institutions  
345 W. Washington Avenue, Fourth Floor  
Madison, WI 53703

**EXHIBIT C**  
**AREA DEVELOPMENT AGREEMENT**

**WAHLBURGERS RESTAURANT  
AREA DEVELOPMENT AGREEMENT**

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Area Developer

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Effective Date

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Exhibit A – Development Information Exhibit B – Guarantee and Assumption of Area Developer’s Obligations

## WAHLBURGERS RESTAURANT AREA DEVELOPMENT AGREEMENT

This Area Development Agreement (“Agreement”) is made as of \_\_\_\_\_ (“Effective Date”) at Suite 2501, Hingham, MA 02043, and \_\_\_\_\_ (“Area Developer”, “you” or “your”), a \_\_\_\_\_ with a principal business address at \_\_\_\_\_.

### RECITALS

We and our affiliates have developed a distinctive format, appearance and set of specifications and operating procedures (collectively, “System”) relating to the development, establishment and operation of restaurants identified by the Proprietary Marks (defined below) that feature high quality gourmet hamburgers and certain ancillary branded merchandise such as clothing, souvenirs and novelty items (“Wahlburgers Restaurants”).

The distinguishing characteristics of the System include, but are not limited to, our décor, layout, color schemes and designs (collectively, “Trade Dress”); our menu items, recipes and food preparation and service techniques; our standards and specifications for equipment, equipment layouts and interior and exterior accessories; and the accumulated experience reflected in our training program, operating procedures and standards and specifications. We may periodically change, improve, add to and further develop the elements of the System.

The System is identified by means of the “Wahlburgers” name and mark and certain other names, marks, logos, insignias, slogans, emblems, symbols and designs that have been designated, or may in the future be designated, for use with the System (collectively, “Proprietary Marks”). We have the exclusive right to use, and permit our franchisees to use, the Proprietary Marks. We may modify the Proprietary Marks, including the principal Proprietary Marks.

You desire to be granted the opportunity, subject to the terms and conditions of this Agreement, to develop franchised Wahlburgers Restaurants (“Franchised Restaurants”) within a certain geographic area described in attached Exhibit A (“Development Area”).

You understand and acknowledge the importance of our high and uniform standards of quality, operations and service and the necessity of developing and operating the Franchised Restaurants in strict conformity with this Agreement and our confidential operating manuals (“Manual”).

We are willing to grant you the opportunity to develop Franchised Restaurants in the Development Area, subject to the terms and conditions of this Agreement.

**NOW, THEREFORE**, the parties agree as follows:

### 1. DEVELOPMENT RIGHTS AND OBLIGATIONS

**1.1 Grant and Development Area.** We hereby grant to you, subject to the terms and conditions of this Agreement, the right to develop Franchised Restaurants in the Development Area during the term of this Agreement (“Development Term”). The Development Term begins on the Effective Date and, unless this Agreement is terminated at an earlier date as provided in Section

12, expires on the first to occur of: **(a)** the date that the last Franchised Restaurant is required to be opened pursuant to the development schedule in attached Exhibit A (“Development Schedule”); or **(b)** the date that the last Franchised Restaurant required by the Development Schedule opens for business. There is no renewal term for this Agreement. You may only develop a Franchised Restaurant at a specific location in the Development Area accepted by us (“Authorized Site”).

**1.2 Development Rights Only.** This Agreement is not a license or franchise agreement. It does not give you the right to operate Wahlburgers Restaurants or use the System or the Proprietary Marks, nor does it give you any right to license others to operate Wahlburgers Restaurants. This Agreement only gives you the opportunity to enter into Franchise Agreements for the operation of Franchised Restaurants at Authorized Sites. Each Franchised Restaurant developed pursuant to this Agreement must be established and operated only in strict accordance with a separate Franchise Agreement.

**1.3 Forms of Agreement.** Over time, we may enter into agreements with other area developers and franchisees that may contain provisions, conditions and obligations that differ from those contained in this Agreement. The existence of different forms of agreement and the fact that we and other area developers and franchisees may have different rights and obligations does not affect our or your duties to comply with the terms of this Agreement.

## **2. LIMITED TERRITORIAL PROTECTION**

**2.1 Reserved Rights.** The System (including the products sold under the Proprietary Marks) has been developed, and is designed, to function effectively in a wide variety of retail environments, many of which are not practically available to you. Accordingly, we reserve to ourselves and our affiliates the rights to:

**2.1.1** Operate and license others to operate Wahlburgers Restaurants in the Development Area that are located in transportation facilities (including airports, train stations, subways and rail and bus stations); military bases and government offices; sports facilities (including stadiums and arenas); toll road plazas, highway rest stops and travel centers; educational facilities; hospitals and health care facilities; recreational theme parks; Indian reservations; casinos; retail stores larger than 100,000 square feet operated under a trademark owned by a third party that are tourist destinations (e.g., Bass Pro Shops or Cabelas); any location in which foodservice is or may be provided by a master concessionaire; or any other similar location we believe, in the exercise of our reasonable judgment, to be a captive market location.

**2.1.2** Manufacture, distribute and sell, or cause to be manufactured, distributed and sold, food, goods, wares, merchandise, services and products, whether or not authorized for sale at Wahlburgers Restaurants, under the Proprietary Marks or other trademarks, service marks, logos or commercial symbols, at wholesale or retail, in the Development Area through any channel of distribution, including, but not limited to, mail order and catalog, direct mail advertising, the Internet and other methods of distribution, other than through the operation of a restaurant.

**2.1.3** Sell and distribute products identified by some or all of the Proprietary Marks to foodservice businesses in the Development Area (other than Wahlburgers Restaurants), provided those foodservice businesses are not licensed to use the Proprietary Marks in connection with their retail sales.

**2.1.4** Operate and license others to operate delivery kitchens devoted to the preparation of products authorized for sale at Wahlburgers Restaurants (often referred to as ghost, dark, delivery or cloud kitchens), which may use the Proprietary Marks and may deliver to customers regardless of their location.

**2.1.5** Sell and offer or sell virtual products or services on any virtual platform (including, without limitation, the metaverse).

**2.1.6** Develop and/or own other franchise systems for the same or similar products and services using trade names and trademarks other than the Proprietary Marks.

**2.1.7** Purchase, be purchased by, merge or combine with, businesses that directly compete with Wahlburgers Restaurants.

**2.2 Limited Exclusivity.** Except as reserved in the preceding paragraph, we will not, during the Development Term, operate or franchise others to operate Wahlburgers Restaurants in the Development Area, provided you are in compliance with the terms of this Agreement and any other agreements with us or our affiliates, and you are current on all obligations due to us and our affiliates. This Section 2 does not prohibit us or our affiliates from: **(a)** operating, or licensing others to operate, during the Development Term, Wahlburgers Restaurants at any location outside of the Development Area; **(b)** operating, or licensing others to operate, after this Agreement terminates or expires, Wahlburgers Restaurants at any location, including locations inside the Development Area; **(c)** operating or licensing others to operate at any location, during or after the Development Term, any type of foodservice business other than a Wahlburgers Restaurant; or **(d)** acquiring another restaurant franchise system or concept and operating, and/or licensing third parties to operate, restaurants under that system or concept, regardless of whether the restaurants are located in or outside of the Development Area, provided that, with respect to such restaurants located in the Development Area, during the Development Term, the restaurants may not be identified by the Proprietary Marks.

**2.3 Exclusion for Existing Restaurants.** The restrictions contained in this Section 2 do not apply to Wahlburgers Restaurants in operation, under lease or construction or other commitment to open in the Development Area as of the Effective Date.

### **3. DEVELOPMENT SCHEDULE**

**3.1 Your Development Obligations.** During the Development Term, you must develop, open and continuously operate in the Development Area the number of Franchised Restaurants specified in the Development Schedule. For each Franchised Restaurant to be developed during the Development Term, you must obtain our written acceptance of the site by the applicable site acceptance date listed in the Development Schedule ("Site Acceptance Date") and develop and open the Franchised Restaurant by the applicable opening date listed in the Development Schedule ("Opening Date"). Your strict compliance with the Development Schedule is essential to this Agreement. Any failure by you in fulfilling your obligations to obtain site acceptance for a Franchised Restaurant by the applicable Site Acceptance Date or develop and open a Franchised Restaurant by the applicable Opening Date will constitute a material, non-curable breach of this Agreement, which will permit us to terminate this Agreement immediately by giving you written notice of termination. **TIME IS OF THE ESSENCE.**

**3.2 Effect of Sale of Franchised Restaurant.** If, during the Development Term, you sell (and we consent to the sale of) a Franchised Restaurant developed pursuant to this Agreement, and you are not in default of the Franchise Agreement for that Franchised Restaurant, we will continue to count that Wahlburgers Restaurant as a Franchised Restaurant under the Development Schedule, provided that the restaurant continues to be operated pursuant to a franchise agreement with us.

**3.3 Affiliated Entity.** At your request, we will permit the Franchise Agreement for any

Franchised Restaurant in the Development Area to be executed by a business entity formed by you to develop and operate the Franchised Restaurant (“Affiliated Entity”), provided all of the following conditions are met: **(a)** you and your owners own at least 51% of the ownership interests in the Affiliated Entity; **(b)** the Affiliated Entity conducts no business other than the operation of the Franchised Restaurant; **(c)** you and your owners agree to assume full and unconditional liability for, and agree to perform all obligations, covenants and agreements contained in, the Franchise Agreement; **(d)** the Affiliated Entity and all those with ownership interests in the Affiliated Entity meet our financial, operational and other standards, as determined by us in our sole discretion, and you provide us all reasonably requested information to permit us to make such a determination; and

**(e)** you make the request in writing and provide us a copy of the Affiliated Entity’s governing documents and any other information required by this Section 3.3 at the time that you submit the applicable site acceptance package.

#### **4. DEVELOPMENT FEE**

**4.1 Development Fee.** You must pay us, at the time that this Agreement is executed, a development fee equal to \$10,000 for each Franchised Restaurant that you have agreed to develop in the Development Area during the Development Term (“Development Fee”), less any unapplied application fee paid by you to us. The total amount of the Development Fee paid by you is set forth in Exhibit A. You acknowledge and agree that the Development Fee is fully earned by us when paid, is not refundable, and is not credited against any other fees to be paid to us.

**4.2 Initial Franchise Fee.** In addition to the Development Fee, you must pay us an initial franchise fee in the amount of \$40,000 for each Franchised Restaurant that you develop under this Agreement (“Initial Franchise Fee”). You acknowledge and agree that the Initial Franchise Fee is fully earned by us when paid, is not refundable, and is not credited against any other fees to be paid to us.

#### **5. DEVELOPMENT PROCEDURES**

**5.1 Your Responsibility.** You assume all cost, liability and expense for locating, obtaining and developing sites for Franchised Restaurants and constructing and equipping Franchised Restaurants at Authorized Sites as required by our standards. You may not make any binding commitments to purchase or lease a site until we have accepted the site in writing.

If requested by us, you will develop and submit to us a business plan for the length of the Development Term. The business plan must outline the actions you will take to ensure the development and management of Franchised Restaurants in accordance with our standards. If prepared, during the Development Term, you agree to revise the business plan as requested by us and further agree to implement the business plan as approved by us.

**5.2 Site Selection Assistance.** We may, but are not required to, provide you with the following site selection assistance: **(a)** our site selection guidelines and, as you may request, a reasonable amount of consultation with respect thereto; and **(b)** such on-site evaluation as we may deem advisable (subject to the availability of our personnel) as part of our evaluation of your request for site acceptance, provided that, if we provide this assistance at your request, you must pay us a fee in an amount determined by us, not to exceed \$5,000, and reimburse us for all travel, living and other expenses incurred by our representatives in connection with such on-site evaluation. Notwithstanding the foregoing, we have no obligation to conduct any on-site evaluations of locations you propose.

**5.3 Site Information and Evaluation.** For each proposed site, you must submit to us a

site review report consisting of financial pro formas, a description of the site, photographs, demographic information, site characteristics (including access and egress points and the amount of road traffic), other restaurant options in the area, and any other information that we may require, including, but not limited to, a letter of intent or other evidence satisfactory to us, which confirms your favorable prospects for obtaining the site. In addition, we may require a site analysis prepared by a third party vendor at your expense. We reserve the right to designate the third party vendor used to prepare the site analysis. If the site review report is acceptable, we reserve the right to conduct an on-site evaluation of the proposed site before deciding whether to accept the site.

#### **5.4 Site Acceptance.**

**5.4.1** Within 60 days after our receipt of a complete (as determined by us) site review report, we will review that information, evaluate the proposed site and advise you in writing whether we have accepted the site; however, we have no obligation to review any site review report if you or your affiliates are not in full compliance with all agreements with us and/or our affiliates. If we do not respond within that time period, we will be deemed to have rejected the site. Our acceptance or rejection of a site may be subject to reasonable conditions as determined in our sole discretion.

**5.4.2** You acknowledge that, in order to preserve and enhance the reputation and goodwill of the System and all Wahlburgers Restaurants and the goodwill of the Proprietary Marks and the Trade Dress, all Wahlburgers Restaurants must be properly developed, operated and maintained. Accordingly, you agree that we may refuse to accept a site for a proposed Franchised Restaurant unless you demonstrate sufficient financial capabilities, in our sole judgment, applying standards consistent with criteria that we use to establish restaurants in other comparable market areas, to properly develop, operate and maintain the proposed Franchised Restaurant. To that end, you must provide us with such financial statements and other information regarding you and the development and operation of the proposed Franchised Restaurant, including, without limitation, investment and financing plans for the proposed Franchised Restaurant, as we may reasonably require.

**5.4.3** Our acceptance of a site does not constitute a representation or warranty of any kind, express or implied, of the site's suitability for a Wahlburgers Restaurant or any other purpose. Our acceptance indicates only that we believe that the site meets our then-current site selection criteria. Applying criteria that have appeared effective with other sites might not accurately reflect the potential for all sites, and demographic and/or other factors included in or excluded from our criteria could change, altering the potential of a site. The uncertainty and instability of these criteria are beyond our control, and we are not responsible if a site we accept fails to meet your expectations. Your submission of a proposed site for our acceptance is based on your own independent investigation of the site's suitability for a Franchised Restaurant.

**5.5 Execution of Franchise Agreements.** If we accept the site for a Franchised Restaurant, we will prepare and forward to you a Franchise Agreement for the Authorized Site. The form of Franchise Agreement for the Franchised Restaurants to be developed by you pursuant to this Agreement will be the standard form in general use at the time that we accept the site for the applicable Franchised Restaurant. Within 15 days after you receive the Franchise Agreement, the Affiliated Entity or you, as applicable, must sign the Franchise Agreement and return it to us along with the Initial Franchise Fee. We will countersign the Franchise Agreement when we authorize the opening of the Franchised Restaurant. Nevertheless, the partially executed Franchise Agreement for each Franchised Restaurant will govern the development, construction and opening of the Franchised Restaurant. While developing the Franchised Restaurant, the Affiliated Entity or you, as applicable, must have in place the insurance required by the Franchise Agreement.

**5.6 Training By You and Certification of Your Training Facility.** You will conduct such initial and continuing training programs for your employees as we may periodically require. In addition, you will establish a training facility (which may be a Franchised Restaurant) in the Development Area at which the Wahlburgers initial training program will be offered (“Training Facility”). We, in our sole discretion, will provide the assistance that we consider to be reasonably necessary to assist you in establishing the Training Facility. The Training Facility must be certified by us before you commence any training at the Training Facility, and we may periodically visit and evaluate the Training Facility and your trainers to ensure that they continue to meet our standards. We may revoke our certification of the Training Facility if the Training Facility or your trainers cease to meet our standards. We may charge a fee in connection with the initial certification and periodic reevaluation of the Training Facility. In addition, you must reimburse us for all travel, living, food and other expenses incurred while traveling to and from, and visiting, the Training Facility as we require. Following our certification, you will train all persons who must complete the initial training program at the Training Facility unless we advise you otherwise or our certification is revoked.

## **6. LEASE PROVISIONS**

**6.1 Required Lease Provisions.** You must obtain our consent to the proposed sublease, lease or purchase contract (collectively, “lease”) for each Authorized Site prior to its execution. The lease must, in form and substance, be satisfactory to us and may not contain any covenants or other obligations that would prevent you from performing your obligations under this Agreement. In addition, the lease must contain the following provisions:

**6.1.1** The landlord agrees to provide us (at the same time as sent to you) a copy of any notices of default pertaining to the lease, and we will have the right, but not the obligation, to cure any default of yours under the lease within the time periods provided by the lease. If you fail to do so, the landlord agrees that we may enter the Authorized Site to make those alterations and modifications.

**6.1.2** The landlord agrees that, following the expiration or earlier termination of the lease or the Franchise Agreement, you will have the right to make those alterations and modifications (including removal and demolition of improvements installed by you if necessary) to the Authorized Site as may be necessary to clearly distinguish to the public the Authorized Site from a Wahlburgers Restaurant and also to make those specific additional changes as we reasonably may require for that purpose.

**6.1.3** You may assign the lease to us, our parent, affiliates or subsidiaries (without the landlord’s consent) or to our designee (with the landlord’s consent, which consent will not be unreasonably withheld) and without payment of any assignment fee or similar charge or increase in any rentals or other charges payable to the landlord.

Our consent to the lease does not constitute a warranty or representation of any kind, express or implied, as to its fairness or suitability or as to your ability to comply with its terms, and we do not assume any liability or responsibility to you or to any third parties due to such consent. You must deliver a copy of the fully signed lease to us within 7 days after its execution. You may not begin construction of the Franchised Restaurant until we have received a fully-executed copy of the lease.

## **7. YOUR ORGANIZATION**

### **7.1 Governing Documents.**

**7.1.1** If you are (or Transfer your interests in this Agreement to) a business entity, during the Development Term, your (or the transferee's) governing documents must provide that your (or its) activities are limited exclusively to the development of Wahlburgers Restaurants and other restaurants operated by you that are franchised by us and that no Transfer (as defined in Section 9) of an ownership interest may be made except in accordance with Section 9. Any stock or other ownership certificates that you issue must bear a conspicuous printed legend to that effect.

**7.1.2** You represent that you have furnished us with a list of all holders of direct or indirect equity interests in you and their respective percentage interests, as well as copies of your governing documents (and any amendments thereto) and any other corporate documents, books or records that we may request, and that all such information is current as of the date on which you sign this Agreement. Your direct and indirect owners and their respective equity interests as of the Effective Date are identified in Exhibit A. You must promptly update this information as changes occur.

**7.2 Operating Principal.** You must appoint an individual to serve as your Operating Principal. The Operating Principal: **(a)** must be accepted by us; **(b)** must be a 10% Owner (as defined in Section 7.4); and **(c)** unless you have named, and we have approved, a Multi-Unit Manager for the Development Area in accordance with Section 7.3: **(1)** must live within a reasonable driving distance of the Development Area; and **(2)** must devote full-time and best efforts to supervising the development and operation of the Franchised Restaurants. The Operating Principal as of the Effective Date is identified in Exhibit A. The Operating Principal must complete our initial training program, have authority over all business decisions related to this Agreement and have the authority to bind you in your dealings with us. We will provide all services to, and communicate primarily with, the Operating Principal. You must obtain our prior written consent before you change the Operating Principal. If the Operating Principal no longer qualifies as such, you must designate another qualified person to act as the Operating Principal within 30 days after the date the prior Operating Principal ceases to be qualified. We will advise you whether we have consented to the new Operating Principal within a reasonable time after receipt of your notice. If we do not consent, you will have 15 days from your receipt of our decision to designate another person to act as Operating Principal who satisfies the preceding qualifications.

**7.3 Multi-Unit Managers.** If the Operating Principal fails to satisfy the requirements of Section 7.2(c) in the Development Area because you are developing Franchised Restaurants in multiple geographic markets, you must appoint an individual to serve as your Multi-Unit Manager in the Development Area. The Multi-Unit Manager will be under the supervision of the Operating Principal, must be accepted by us, must live within a reasonable driving distance of the Development Area and must devote full-time and best efforts to supervising the development and operation of the Franchised Restaurants in the Development Area. If applicable, the Multi-Unit Manager as of the Effective Date is identified in Exhibit A. The Multi-Unit Manager must complete our initial training program. You must obtain our prior written consent before you change the Multi-Unit Manager. If the Multi-Unit Manager no longer qualifies as such, you must designate another qualified person to act as the Multi-Unit Manager within 30 days after the date that the prior Multi-Unit Manager ceases to be qualified. We will advise you whether we have consented to the new Multi-Unit Manager within a reasonable time after receipt of your notice. If we do not consent, you will have 15 days from your receipt of our decision to designate another person to act as the Multi-Unit Manager who satisfies the preceding qualifications.

**7.4 Guarantees.** All holders of direct or indirect equity interests in you of 10% or more ("10% Owners") must jointly and severally guarantee your payment and performance under this Agreement and must bind themselves to the terms of this Agreement pursuant to the Guarantee and Assumption of Area Developer's Obligations attached as Exhibit B ("Guarantee").

Notwithstanding the foregoing, we reserve the right, in our sole discretion, to waive the requirement that some or all of the 10% Owners execute the Guarantee and/or to limit the scope of the Guarantee. We reserve the right to require that any guarantor provide personal financial statements to us from time to time.

You acknowledge that, unless otherwise agreed to in writing by us, it is our intent to have individuals (and not corporations, limited liability companies or other entities) execute the Guarantee. Accordingly, if any 10% Owner is not an individual, we will have the right to have the Guarantee executed by individuals who have only an indirect ownership interest in you. (By way of example, if a 10% Owner is a corporation, we have the right to require that the Guarantee be executed by individuals who have an ownership interest in that corporation.)

If you, any guarantor or any parent, subsidiary or affiliate of yours holds any interest in other businesses that are franchised by us, at our request, the party who owns that interest will execute, concurrently with this Agreement, a form of cross-guarantee to us for the payment of all obligations for such businesses, unless waived in writing by us in our sole discretion. For purposes of this Agreement, an affiliate of yours is any company controlled, directly or indirectly, by you or your parent or subsidiary.

## **8. TRANSFERS BY US**

We have the unrestricted right to transfer or assign ownership interests in us and all or any part of our interest in this Agreement to any person or legal entity without your consent. You agree that we will have no liability after the effective date of transfer or assignment for the performance of, or any failure to perform, any obligations transferred. We also have the right to delegate to others the performance of any of our duties under this Agreement.

## **9. TRANSFERS BY YOU**

**9.1 Definition of Transfer.** For purposes of this Agreement, "Transfer" means any sale, assignment, transfer, conveyance, merger, give away, pledge, mortgage or other encumbrance, either voluntarily or by operation of law (such as through divorce or bankruptcy proceedings) of: **(a)** any interest in this Agreement; **(b)** if you are a business entity, any direct or indirect ownership interests in you; or **(c)** substantially all of your assets pertaining to your operations under this Agreement.

**9.2 No Transfer Without Our Consent.** You acknowledge that this Agreement is personal to you and we have selected you as an area developer based on our reliance on your (and your direct and indirect owners') character, skill, aptitude and business and financial capacity. Neither you nor any of your direct or indirect owners may undertake any Transfer or permit any Transfer to occur without obtaining our prior written consent. The decision as to whether to consent to a Transfer will be made in the exercise of our business judgment, but our consent will not be unreasonably withheld. We have the right to communicate with and counsel you, your direct and indirect owners and the proposed transferee on any aspect of a proposed Transfer. You agree to provide any information and documentation relating to the proposed Transfer that we reasonably require, including, but not limited to, a copy of the proposed offer. Unless otherwise agreed, we do not waive any claims against the transferring party if we consent to a Transfer.

**9.3 Transfer Generally.** Except as otherwise provided in this Section 9, if you or your direct or indirect owners propose to undertake a Transfer, the following conditions apply (unless waived by us):

**9.3.1** You and your direct and indirect owners must:

**(a)** Be in compliance with all obligations to us under this Agreement and any other agreements you have with us, our affiliates, any lenders that have provided financing to you and your major suppliers as of the date of the request for our consent to the Transfer.

**(b)** Pay to us a transfer fee equal to the greater of 10% of the Development Fee or \$10,000 to reimburse us for our reasonable costs and expenses incurred in reviewing and documenting the Transfer, including legal and accounting fees, provided that you will not be required to pay us a transfer fee in connection with a Transfer undertaken in accordance with Sections 9.5 and 9.6.

**(c)** Make the Transfer only in conjunction with a simultaneous Transfer of the same rights and interest with respect to all agreements with us in the Development Area.

**(d)** Advise us in writing of any proposed Transfer, submit (or cause the proposed transferee to submit) a franchise application for the proposed transferee, submit a copy of all contracts and all other agreements or proposals and submit all other information requested by us relating to the proposed Transfer.

**9.3.2** The proposed transferee (and, if the proposed transferee is a business entity, all persons that have any direct or indirect ownership interest in the transferee as we may require) must demonstrate to our satisfaction extensive experience in high quality restaurant operations of a character and complexity similar to Wahlburgers Restaurants; must meet the managerial, operational, experience, quality, character and business standards for an area developer promulgated by us from time to time; must possess a good character, business reputation and credit rating; must have an organization whose management culture is compatible with our management culture; and must have adequate financial resources and working capital to meet the development obligations under this Agreement. If the proposed transferee is an existing Wahlburgers area developer or franchisee, the transferee and its direct and indirect owners must not be in default under their agreements with us and must have substantially complied with our operating standards.

**9.3.3** An assignment agreement and/or any other agreements that we require to reflect the Transfer must be signed by the transferor and the proposed transferee. In addition, we may require, at our option, that amendments to this Agreement and/or our then-current standard form of area development agreement (for a term ending on the expiration of the Development Term) be signed.

**9.3.4** You, your 10% Owners, all of your guarantors under this Agreement and the transferee must execute a general release, in a form prescribed by us, of all claims against us and our past, present and future affiliates, officers, directors, members, managers, shareholders, agents and employees. You, your 10% Owners and your guarantors under this Agreement will remain liable to us for all obligations arising before the effective date of the Transfer.

**9.3.5** The price and other proposed terms of the Transfer must not, in our reasonable business judgment, have the effect of negatively impacting the prospects of timely completing the Development Schedule or the future viability of the Franchised Restaurants.

**9.3.6** If the transferee is a business entity, those persons or entities designated by us, which may include, but are not limited to, those with a direct or indirect ownership interest of 10% or more in the transferee, must execute our then-current form of Guarantee.

**9.3.7** Each of your affiliates that have entered into an area development or franchise agreement with us must, as of the date of the request for our consent to the Transfer, be in compliance with all obligations to us under those agreements and with all obligations under any agreement with any lenders that have provided financing pursuant to an arrangement with us.

**9.4 Transfer of Partial Ownership Interest.** If you propose to admit a new owner who will have less than a 10% ownership interest in you, remove an existing owner or change the distribution of ownership interests among the owners shown on Exhibit A, you must give us advance notice and submit a copy of all proposed contracts and other information concerning the Transfer that we may request. You must also pay to us a transfer fee as provided in Section 9.3.1(b). We may withhold our consent on any reasonable grounds or give our consent subject to reasonable conditions, including the conditions in Sections 7.1, 9.3.1(a), 9.3.4 and 9.3.6. Any new owner must submit a franchise application and, if applicable, execute our then-current form of Guarantee.

**9.5 Transfer for Convenience of Ownership.** If you are an individual or a partnership, we will consent to the Transfer of this Agreement to a business entity that you form for the convenience of ownership, provided that: **(a)** the entity has and will have no business other than the development and operation of Wahlburgers Restaurants; **(b)** you comply with the requirements in Sections 7.1, 9.3.1(a), 9.3.3, 9.3.4 and 9.3.6; **(c)** your owners hold equity interests in the new entity in the same proportion shown on Exhibit A; and **(d)** the top-level management of your organization does not change. You will not be required to pay a transfer fee for a Transfer under this Section 9.5.

**9.6 Transfer for Estate Planning Purposes.** We agree that a Transfer of ownership interests in you to a trust for estate planning purposes, will be permitted without our prior written consent, provided that: **(a)** we receive a copy of all trust documents prior to the Transfer; **(b)** the trust documents authorize entry into this Agreement and indemnify the trustee for his actions with respect to this Agreement; **(c)** the trustee executes all agreements with us in his personal capacity and as trustee; **(d)** the applicable owner of the ownership interests retains voting control over the ownership interests transferred to the trust; and **(e)** the proposed transferee provides us written notice of its intent to undertake the Transfer at least 30 days prior to the effective date of the Transfer, together with documents demonstrating that the Transfer meets the requirements of this Section.

**9.7 Transfer upon Death or Permanent Incapacity.** If the Transfer is a transfer of direct or indirect ownership interests in you following the death or permanent incapacity (as reasonably determined by us) of a person that has a direct or indirect ownership interest in you, that person's executor, administrator or personal representative must apply to us in writing within 3 months after the death or declaration of permanent incapacity for consent to Transfer the person's interest. The Transfer will be subject to the provisions of Sections 9.3 and 9.4, as applicable. In the case of Transfer by bequest or by intestate succession, if the heirs or beneficiaries are unable to meet the conditions of Section 9.3 or 9.4, the executor may Transfer the decedent's interest to another successor that we have accepted, subject to all of the terms and conditions for Transfers

contained in this Agreement. If an interest is not disposed of under this Section 9.7 within 6 months after the date of death or appointment of a personal representative, we may terminate this Agreement under Section 12.1.

**9.8 Securities Offerings.** If you are a business entity, ownership interests in you may be sold, by private or public offering, only with our prior written consent (whether or not our written consent is required under any other provision of this Section), which consent will not be unreasonably withheld. In addition to the requirements of Section 9.3 or 9.4, as applicable, prior to the time that any public offering or private placement of securities or partnership interests in you is made available to potential investors, you, at your expense, must deliver to us a copy of the offering documents. You, at your expense, also must deliver to us an opinion of your legal counsel (addressed to us and in a form acceptable to us) that the offering documents properly use the Proprietary Marks and accurately describe your relationship with us and/or our affiliates. The indemnification provisions of Section 14.1 will also include any losses or expenses incurred by us and/or our affiliates in connection with any statements made by or on behalf of you in any public or private offering of your securities.

**9.9 Non-Conforming Transfers.** Any purported Transfer that is not in compliance with this Section 9 is null and void and constitutes a material breach of this Agreement, for which we may terminate this Agreement without opportunity to cure. Our consent to a Transfer does not constitute a waiver of any claims that we have against the transferor, nor is it a waiver of our right to demand exact compliance with the terms of this Agreement.

**9.10 Right of First Refusal.** We have the right, exercisable within 30 days after receipt of the notice (and information) specified in Section 9.2, to send written notice to you that we intend to purchase the interest or assets proposed to be transferred. We may assign our right of first refusal to someone else either before or after we exercise it. However, our right of first refusal will not apply with regard to Transfers under Section 9.5 or Transfers to the spouse, son or daughter of a direct or indirect owner in you (including Transfers to a spouse, son or daughter as a result of death or permanent incapacity as described in Section 9.7), provided that the transferees meet all criteria required of new franchisees.

**9.10.1** If the Transfer is proposed to be made pursuant to a sale, we or our designee may purchase the interest proposed to be transferred on the same economic terms and conditions offered by the third-party. Closing on our purchase must occur within 60 days after the date of our notice to the seller electing to purchase the interest (or, if the parties cannot agree on the cash equivalent, as provided in the next sentence, within 60 days after the appraiser's determination). If we cannot reasonably be expected to furnish the same consideration as the third-party, we may substitute the reasonable equivalent in cash. If the parties cannot agree within 30 days on the reasonable equivalent in cash, we and you will each select a professionally certified appraiser and the two selected appraisers will select a third professionally certified appraiser to determine the fair market value of the interest proposed to be transferred. The third appraiser will appraise the fair market value of the interest proposed to be transferred and the value set by the third appraiser will be conclusive. The appraisers' fees and costs will be borne equally by us and you. Any material change in the terms of the offer from a third party after we have elected not to purchase the seller's interest will constitute a new offer subject to the same right of first refusal as the third party's initial offer.

**9.10.2** If a Transfer is proposed to be made by gift, we and you will each select a professionally certified appraiser and the two selected appraisers will select a third professionally certified appraiser to determine the fair market value of the interest proposed to be transferred. The third appraiser will appraise the fair market value of the interest proposed to be transferred and the value set by the third appraiser will be conclusive. We may purchase the interest at the fair

market value determined by the appraiser. Closing on the purchase will occur within 30 days after our notice to the transferor of the appraiser's determination of fair market value. The appraisers' fees and costs will be borne equally by us and you.

**9.10.3** At any point, we may decline to exercise our rights under this Section. Our and/or our designee's declining to exercise such right of first refusal will not constitute our consent to the proposed Transfer or a waiver of any other provision of this Section 9 with respect to the proposed Transfer. If we elect not to exercise our rights under this Section, the transferor may not complete the Transfer until he has complied with this Section 9. Closing of the Transfer must occur within 60 days of our election (or such longer period as applicable law may require); otherwise, the third-party's offer will be treated as a new offer subject to our right of first refusal. The Transfer is conditional upon our determination that the Transfer was completed on terms substantially the same as those offered to us. You must provide to us copies of all fully-executed agreements and any other information we request relating to the Transfer.

## **10. GENERAL RELEASE**

You (on behalf of yourself and your parent, subsidiaries and affiliates) (collectively, "Releasers") freely and without any influence forever release and covenant not to sue us, our parent, subsidiaries and affiliates and their respective past and present officers, directors, shareholders, members, managers, agents and employees, in their corporate and individual capacities, with respect to any and all claims, demands, liabilities and causes of action of whatever kind or nature, whether known or unknown, vested or contingent, suspected or unsuspected (collectively, "Claims"), that any Releaser now owns, has or claims to have or holds, or may in the future own or hold, or at any prior time owned, held, had or claimed to have, based on, arising out of or relating to, in whole or in part any fact, event, conduct or omission occurring on or before the date of this Agreement, including, without limitation, Claims arising under federal, state and local laws, rules and ordinances and Claims arising out of, or relating to this Agreement and all other agreements between any Releaser and us or our parent, subsidiaries or affiliates, the sale of any franchise to any Releaser, the development and operation of the Franchised Restaurants and the development and operation of all other restaurants operated by any Releaser that are franchised by us. Releasers expressly agree that fair consideration has been given by us for this release, and they fully understand that this is a negotiated, complete and final release of all Claims.

Notwithstanding the foregoing, Claims arising from representations in the Wahlburgers Franchise Disclosure Document, or its exhibits or amendments, are expressly excluded from this release.

## **11. COVENANTS**

**11.1 Confidential Information.** During and after the Development Term, you may not communicate, divulge or use for any purpose other than the development and/or operation of the Franchised Restaurants, any confidential information, knowledge, trade secrets or know-how which may be communicated to you or which you may learn by virtue of this Agreement or the operation of the Franchised Restaurants. You may divulge confidential information only to your professional advisers, your employees who must have access to the information to develop or operate the Franchised Restaurants, your contractors and your landlords, provided that you obtain our prior consent. All information, knowledge and know-how relating to us, our business plans or the System are deemed confidential for purposes of this Agreement, except information that you can demonstrate came to your attention by lawful means prior to our disclosure, or that is or becomes a part of the public domain other than through you. At our request, you will require your employees and any other person or entity to whom you wish to disclose any confidential information, to sign agreements providing that they will maintain the confidentiality of the disclosed information. The

agreements, which may be provided by us, must be in a form satisfactory to us and must identify us as a third-party beneficiary with the independent right to enforce the agreements.

**11.2 Restrictions During the Development Term.** You acknowledge and agree that:

(a) pursuant to this Agreement, you will have access to valuable trade secrets, specialized training and confidential information from us and our affiliates regarding the development, operation, management, purchasing, sales and marketing methods and techniques of the System; (b) the System and the opportunities, associations and experience established by us and acquired by you under this Agreement are of substantial and material value; (c) in developing the System, we and our affiliates have made and continue to make substantial investments of time, technical and commercial research and money; (d) we would be unable to adequately protect the System and its trade secrets and confidential information against unauthorized use or disclosure and would be unable to adequately encourage a free exchange of ideas and information among Wahlburgers Restaurants if franchisees were permitted to hold interests in competitive businesses; and (e) restrictions on your right to hold interests in, or perform services for, competitive businesses will not hinder your activities. Accordingly, you agree that, during the Development Term, you will not, without our prior written consent, either directly or indirectly through any other person or entity:

**11.2.1** Divert or attempt to divert any business or customer, or potential business or customer, of any Wahlburgers Restaurant to any Competitive Business (as defined in Section 11.2.4).

**11.2.2** Own, manage, engage in, advise, make loans to, be employed by, assist or have any interest in any Competitive Business (as defined in Section 11.2.4).

**11.2.3** During the Development Term, there is no geographical limitation on these restrictions.

**11.2.4** As used in this Agreement, the term "Competitive Business" means any business, store, restaurant or location: (a) whose sales of hamburgers are reasonably likely to account for 10% or more of the food sales of the business in any calendar month; and/or (b) whose method of operation or trade dress is similar to that used in the System. Notwithstanding the foregoing, the term "Competitive Business" does not include those businesses in which any of your owners or you have a direct or indirect, legal or beneficial interest and: (i) that had been in operation prior to the date of the first franchise-related agreement between you and us; or (ii) that your owners or you had contracted to develop prior to the date of the first franchise-related agreement between you and us, provided those businesses are listed in Exhibit A ("Existing Businesses").

**11.3 Restrictions After Termination, Expiration or Transfer.** In light of your acknowledgments and agreements as set forth in Section 11.2, you agree as follows:

**11.3.1** For a period of 2 years following the expiration or termination of this Agreement or a Transfer, you covenant and agree that you will not own, manage, engage in, advise, make loans to, be employed by, assist or have any interest in any Competitive Business that is (or is intended to be) located in, or within 2 miles of the border of, the Development Area or within 2 miles of any other Wahlburgers Restaurant.

**11.3.2** For a period of 2 years following the expiration, termination or Transfer of this Agreement, you further covenant and agree that you will not, either directly or indirectly, for yourself, or through, on behalf of, or in conjunction with any person, firm, partnership, corporation, or other entity, sell, assign, lease or transfer any Authorized Site to any person, firm, partnership,

corporation, or other entity which you know, or have reason to know, intends to operate a Competitive Business at that Authorized Site. You, by the terms of any conveyance selling, assigning, leasing or transferring your interest in any Authorized Site, must include restrictive covenants as are necessary to ensure that a Competitive Business that would violate this Section is not operated at that Authorized Site for this 2-year period, and you must take all steps necessary to ensure that these restrictive covenants become a matter of public record.

**11.4 Modification.** We have the right, in our sole discretion, to reduce the scope of any covenant in this Section 11 effective immediately upon your receipt of written notice, and you agree that you will comply forthwith with any covenant as so modified, which will be fully enforceable notwithstanding the provisions of Section 17. If any part of these restrictions is found to be unreasonable in time or distance, each month of time or mile of distance may be deemed a separate unit so that the time or distance may be reduced by appropriate order of the court to that deemed reasonable. If, at any time during the 2-year period following expiration, termination or Transfer of this Agreement, you fail to comply with your obligations under this Section, that period of noncompliance will not be credited toward your satisfaction of the 2-year obligation. Following the resolution of any dispute regarding the enforceability of this Section that is resolved in our favor, the 2-year period (or such other period as may be deemed reasonable by the court) will run from the date of the resolution.

**11.5 Applicability.** The restrictions contained in this Section 11 apply to you, all 10% Owners and all guarantors under this Agreement. This Section 11 does not prohibit you or any 10% Owner or any guarantor under this Agreement from having: **(a)** interests in any franchise-related agreement with us or our affiliates that remains in effect; or **(b)** ownership of less than 5% of the outstanding equity securities of any publicly-held corporation, as defined in the Securities and Exchange Act of 1934.

**11.6 Enforcement.** You agree that the existence of any claim you may have against us, whether or not arising from this Agreement, will not constitute a defense to our enforcement of this Section 11. You agree to pay all costs and expenses that we reasonably incur in enforcing this Section 11, including reasonable attorneys' fees. You acknowledge that a violation of the terms of this Section 11 would result in irreparable injury to us for which no adequate remedy at law may be available. Accordingly, you consent to the issuance of an injunction prohibiting any conduct in violation of the terms of this Section 11. Such injunctive relief will be in addition to any other remedies that we may have.

**11.7 Survival.** The terms of this Section 11 will survive the termination, expiration, or any Transfer of this Agreement. The parties agree this Section 11 will be construed as independent of any other provision of this Agreement.

## **12. DEFAULT AND TERMINATION**

**12.1 Grounds for Termination.** In addition to the grounds for termination stated elsewhere in this Agreement, we may terminate this Agreement, and the rights granted by this Agreement, upon written notice to you without an opportunity to cure upon the occurrence of any of the following events:

**12.1.1** You fail to obtain our written acceptance of a site by the applicable Site Acceptance Date or fail to develop and open a Franchised Restaurant by the applicable Opening Date. Termination of this Agreement pursuant to this Section 12.1.1 will not constitute a default of any Franchise Agreement.

**12.1.2** At any time during the Development Term, you fail to have open and

operating the number of Franchised Restaurants required by the Development Schedule. Termination of this Agreement pursuant to this Section 12.1.2 will not constitute a default of any Franchise Agreement.

**12.1.3** You begin construction of a Franchised Restaurant before you execute the Franchise Agreement for that location.

**12.1.4** You are insolvent or unable to pay your creditors (including us); file a petition in bankruptcy, an arrangement for the benefit of creditors or a petition for reorganization; there is filed against you a petition in bankruptcy, an arrangement for the benefit of creditors or petition for reorganization that is not dismissed within 60 days of the filing; you make an assignment for the benefit of creditors; or a receiver or trustee is appointed for you and not dismissed within 60 days of the appointment.

**12.1.5** Execution is levied against your business or property; suit to foreclose any lien or mortgage against the premises or equipment of any Franchised Restaurant developed hereunder is instituted against you and is not dismissed within 60 days; or the real or personal property of any Franchised Restaurant developed hereunder is sold after levy thereupon by any sheriff, marshal or constable.

**12.1.6** There is a material breach of any obligation under Section 11.

**12.1.7** Any Transfer that requires our prior written consent occurs without your having obtained that prior written consent.

**12.1.8** We discover that you made a material misrepresentation or omitted a material fact in the information that you furnished to us in connection with our decision to enter into this Agreement.

**12.1.9** You knowingly falsify any report required to be furnished to us or make any material misrepresentation in your dealings with us or fail to disclose any material facts to us.

**12.1.10** You, any 10% Owner, any guarantor under this Agreement or any of your officers, managers, members or directors is convicted of, or pleads no contest to, a crime that we reasonably believe is likely to harm the System or our goodwill.

**12.1.11** You, the Operating Principal, any 10% Owner, any Affiliated Entity or any other entity that is a Wahlburgers franchisee and in which you, your Operating Principal or any 10% Owner have a direct or indirect ownership interest remain in default beyond the applicable cure period under: **(a)** any other agreement with us or our affiliates; **(b)** any real estate lease, equipment lease or financing instrument relating to a Franchised Restaurant; or **(c)** any agreement with any vendor or supplier to a Franchised Restaurant; provided that if the default is not by you, you are given written notice of the default and 10 days to cure the default.

**12.1.12** With respect to any Franchised Restaurant developed under this Agreement, an entity that is not a party to the applicable Franchise Agreement is operating the Franchised Restaurant without our prior written consent.

## **12.2 Termination Following Expiration of Cure Period.**

**12.2.1** Except for those items listed in Sections 12.1, 12.2.2 and 12.2.3, you will have 30 days after written notice of default from us within which to remedy the default and provide evidence of that remedy to us. If any such default is not cured within that time, this Agreement will terminate without further notice to you effective immediately upon expiration of that time, unless

we notify you otherwise in writing. Notwithstanding the foregoing, if the default cannot be corrected within 30 days, you will have such additional time to correct the default as we believe to be reasonably required (not to exceed 90 days) provided that you begin taking the actions necessary to correct the default during the 30-day cure period and diligently and in good faith pursue those actions to completion. You will be in default under this Section 12.2.1 for any failure to materially comply with any of the requirements imposed by this Agreement or otherwise in writing, or to carry out the terms of this Agreement in good faith.

**12.2.2** Notwithstanding the provisions of Section 12.2.1, if you fail to pay any monies owed to us or our affiliates when those monies become due and payable, and you fail to pay those monies within 10 days after receiving written notice of default, this Agreement will terminate effective immediately upon expiration of that time, unless we notify you otherwise in writing.

**12.2.3** If you have received 2 or more notices of default under this Agreement within the previous 12 months, we will be entitled to send you a notice of termination upon your next default under this Agreement in that 12-month period without providing you an opportunity to remedy that default.

**12.3 Statutory Limitations.** If any valid, applicable law or regulation of a competent governmental authority with jurisdiction over this Agreement requires a notice or cure period prior to termination longer than set forth in this Agreement, this Agreement will be deemed amended to conform to the minimum notice or cure period required by the applicable law or regulation.

**12.4 Obligations on Termination or Expiration.** Upon termination or expiration of this Agreement:

**12.4.1** You will have no further right to develop or open Franchised Restaurants in the Development Area, except that you will be entitled to complete and open a Franchised Restaurant for which a franchise agreement has been executed by your Affiliated Entity or you. Notwithstanding anything to the contrary in any franchise agreement between your Affiliated Entity or you and us, termination or expiration of this Agreement alone will not affect your right (or your Affiliated Entity's right) to continue to operate Franchised Restaurants that were open and operating as of the date this Agreement terminated or expired.

**12.4.2** The limited exclusive rights granted to you in the Development Area will terminate, and we will have the right to operate, and license others to operate, Wahlburgers Restaurants anywhere in the Development Area.

**12.4.3** You must promptly return to us all materials and information furnished by us or our affiliates, except materials and information furnished with respect to a Franchised Restaurant which is open and operating pursuant to an effective franchise agreement.

**12.4.4** You and all persons and entities subject to the covenants contained in Section 11 will continue to abide by those covenants and must not, directly or indirectly, take any action that violates those covenants.

**12.4.5** You must immediately pay to us and our affiliates all sums due and owing us or our affiliates pursuant to this Agreement.

**12.4.6** We will retain the Development Fee.

## **13. RELATIONSHIP OF THE PARTIES**

This Agreement does not create a fiduciary or other special relationship or make you or us an agent, legal representative, joint venturer, joint employer, partner, employee or servant of each other for any purpose. You are not authorized to make any contract, agreement, warranty or representation on our behalf, or to create any obligation, express or implied, on our behalf.

## **14. INDEMNIFICATION AND INSURANCE**

**14.1 Indemnification.** You agree to defend, indemnify, and hold harmless us and our past, present and future parents, affiliates, officers, directors, members, managers, shareholders, agents, attorneys, consultants, and employees against any claims, losses, costs, expenses, liabilities and damages arising directly or indirectly from, as a result of, or in connection with your activities under this Agreement, as well as the costs of defending against such Claims (including, but not limited to, reasonable attorneys' fees, costs of investigation, settlement costs and interest). You promptly will give us written notice of any litigation, proceeding, or dispute filed or instituted against you that could directly or indirectly affect us or any of the other indemnities under this Section and, upon request, you will furnish us with copies of any documents from such matters as we may request.

With respect to any threatened or actual litigation, proceeding, or dispute that could directly or indirectly affect us or any of the other indemnitees under this Section 14.1, we will have the right, but not the obligation, to: **(a)** choose counsel; **(b)** direct and control the handling of the matter; and/or **(c)** settle any claim against the indemnitees. Our exercise of these rights does not affect your obligation to indemnify and hold us harmless in accordance with this Section. This Section will survive the expiration or termination of this Agreement, and applies to Claims even if they exceed the limits of your insurance coverage.

**14.2 Insurance.** During the Development Term, you must maintain in full force and effect that insurance which you determine to be necessary, which must include at least the types of insurance and the minimum policy limits specified in the Manual or otherwise in writing. Each insurance policy must be written by an insurance company that maintains an "A+" or better rating by the latest edition of Best's Insurance Rating Service (or another rating service designated by us). The insurance policy or policies must protect you, us and our respective past, present and future officers, directors, members, managers, owners, employees, representatives, consultants, attorneys and agents. We and any entity with an insurable interest designated by us must be named as additional insureds in the policy or policies (statutory policies excepted). Each policy must include a waiver of subrogation in our favor. We may require additional types of coverage or increase the required minimum amount of coverage upon reasonable notice. Your obligation to obtain coverage is not limited in any way by insurance that we maintain. You must provide us with certificates of insurance evidencing the required coverage and proof of payment therefor no later than the date you sign this Agreement. The evidence of insurance must include a statement by the insurer that the policy or policies will not be canceled or materially altered without at least 30 days' prior written notice to us. If you fail to obtain and maintain insurance coverage as required by this Agreement, we have the right, but not the obligation, to obtain the required insurance on your behalf and to charge you for the cost of the insurance, plus a reasonable fee for our services in procuring the insurance.

## **15. CONSENTS AND WAIVERS**

**15.1 Consent.** Whenever our prior written approval, acceptance or consent is required under this Agreement, you agree to make a timely written request to us for such consent. Our approval, acceptance or consent must be in writing and signed by an authorized officer or manager to be effective.

**15.2 No Warranties.** We make no warranties or guarantees upon which you may rely by

providing any waiver, approval, consent or suggestion to you in connection with this Agreement and assume no liability or obligation to you therefor, or by reason of any neglect, delay, or denial of any request therefor. We will not, by virtue of any waivers, approvals, consents, advice or services provided to you, assume responsibility or liability to you or to any third parties to which we would not otherwise be subject.

**15.3 Waivers.** No delay or failure to exercise any right under this Agreement or to insist upon your strict compliance with any obligation or condition, and no custom or practice that differs from the terms of this Agreement, will constitute a waiver of our right to exercise the contractual right or demand your strict compliance with the terms of this Agreement. Our waiver of any particular default does not affect or impair our rights with respect to any subsequent default you may commit. Our waiver of a default by another developer or franchisee does not affect or impair our right to demand your strict compliance with the terms of this Agreement. Our acceptance of any payments due from you does not waive any prior defaults.

## 16. NOTICES

Notices related to this Agreement will be effective upon receipt (or first rejection) and may be given by any of the following delivery methods: **(a)** certified or registered mail; **(b)** U.S. Priority Mail or national commercial delivery service (e.g., UPS, Federal Express); or **(c)** email (if receipt is verified within 24 hours of transmission). Notices sent by (a) or (b) must be sent to the addresses on the first page of this Agreement. Email notices must be sent to the email address provided by the party. Either party can change its notice address by informing the other party.

## 17. ENTIRE AGREEMENT

Each element of this Agreement is essential and material. This Agreement, the Manual, the attachments to this Agreement and the documents referred to in this Agreement constitute the entire agreement between you and us with respect to your development rights in the Development Area and supersede all prior negotiations, representations, correspondence and agreements concerning the same subject matter. Except for the Wahlburgers Franchise Disclosure Document and any Franchise Agreement executed pursuant to this Agreement, there are no other representations, inducements, promises, agreements, arrangements, or undertakings, oral or written, between the parties relating to the matters covered by this Agreement other than those set forth in this Agreement and in the attachments. No obligations or duties that contradict or are inconsistent with the express terms of this Agreement may be implied into this Agreement. Except as expressly set forth in this Agreement, no amendment, change or variance from this Agreement will be binding on either party unless mutually agreed to by the parties and executed in writing. Notwithstanding the foregoing, nothing in this Agreement is intended to disclaim any representation made in the Wahlburgers Franchise Disclosure Document.

## 18. SEVERABILITY AND CONSTRUCTION

**18.1 Severability.** Each provision of this Agreement is severable from the others. If, for any reason, any provision is determined by a court to be invalid, the invalidity will not impair the operation of the remaining provisions of this Agreement. The latter will continue to be given full force and effect and bind us and you; the invalid provision(s) will be deemed not to be a part of this Agreement.

**18.2 Survival.** Each provision of this Agreement that, expressly, or by reasonable implication, is to be performed, in whole or in part, after the expiration, termination or Transfer of this Agreement will survive expiration, termination or Transfer.

**18.3 Interpretation.** This Agreement will not be interpreted in favor of or against any

party based on a party's sophistication or based on the party that drafted this Agreement. Except as otherwise expressly provided, nothing in this Agreement is intended, or will be deemed, to confer any rights or remedies upon any person or legal entity other than you and us.

**18.4 Our Discretion.** Whenever we have a right and/or the discretion to take or withhold an action, or to grant or decline to grant you a right to take or withhold an action, except as otherwise expressly and specifically provided in this Agreement, we may make that decision or exercise our right and/or discretion on the basis of our judgment of what is in the best interests of the System. Our judgment of what is in the best interests of the System, at the time our decision is made or our right or discretion is exercised, can be made without regard to whether: **(a)** other reasonable alternative decisions or actions, or even arguably preferable alternative decisions or actions, could have been made by us; **(b)** our decision or the action taken promotes our financial or other interest; **(c)** our decision or the action taken applies differently to you and one or more other developers or franchisees or our company-owned or affiliate-owned operations; or **(d)** our decision or the action taken is adverse to your interests. We will have no liability to you for any such decision or action. We and you intend that the exercise of our right or discretion will not be subject to limitation or review. If applicable law implies a covenant of good faith and fair dealing in this Agreement, we and you agree that such covenant will not imply any rights or obligations that are inconsistent with a fair construction of the terms of this Agreement and that this Agreement grants us the right to make decisions, take actions and/or refrain from taking actions not inconsistent with your rights and obligations under this Agreement.

**18.5 Force Majeure.** If the performance of any obligation by you or us under this Agreement is prevented, hindered or delayed by reason of Force Majeure, which cannot be overcome by reasonable commercial measures, your and our respective obligations (to the extent that you and we, having exercised best efforts, are prevented, hindered or delayed in such performance) will be suspended during the period of the Force Majeure event. The party whose performance is affected by an event of Force Majeure will give prompt written notice of the Force Majeure event to the other party of the Force Majeure event and an estimate as to its duration.

As used in this Agreement, "Force Majeure" means any act of God, strike, lock-out or other industrial disturbance, war (declared or undeclared), riot, epidemic, pandemic, outbreak of disease, fire or other catastrophe, act of any government or a third party and any other cause not within the control of the affected party (including, without limitation, any act of terrorism). The existence of Force Majeure will not affect your obligation to pay us, our affiliates or any supplier any monies owed to us when due. Your inability to obtain financing or pay us any monies owed to us (regardless of the reason) will not constitute Force Majeure.

## 19. DISPUTE RESOLUTION

**19.1 Choice of Law.** This Agreement and the relationship between the parties is governed by and will be construed in accordance with the laws of the Commonwealth of Massachusetts. Nothing in this Section is intended, or will be deemed, to make any Massachusetts law regulating the offer or sale of franchises or the franchise relationship applicable to this Agreement if such law would not otherwise be applicable.

**19.2 Choice of Forum.** The parties agree that, to the extent any disputes cannot be resolved directly between them, you must file any suit against us only in the federal or state court having jurisdiction where our principal offices are located at the time suit is filed. We must file suit in the federal or state court located in the jurisdiction where our principal offices are located at the time suit is filed or in the jurisdiction where you reside or do business or where the Development Area or any Franchised Restaurant is or was located or where the claim arose. You consent to the personal jurisdiction of those courts over you and to venue in those courts.

**19.3 Limitation of Actions.** Any legal action or proceeding (including a proceeding related to the offer and sale of a franchise to you) brought or instituted with respect to any dispute arising from or related to this Agreement or with respect to any breach of the terms of this Agreement must be brought or instituted within a period of 2 years after the initial occurrence of any act or omission that is the basis of the legal action or proceeding, regardless of when discovered. The preceding limitation period does not apply: **(a)** with respect to payments owed by one party to the other; **(b)** if prohibited by applicable law; or **(c)** if applicable law provides for a shorter limitations period.

**19.4 Mutual Waiver of Jury Trial.** Each of us irrevocably waives trial by jury in any litigation.

**19.5 Mutual Waiver of Punitive Damages.** Each of us waives any right to or claim of punitive, exemplary, multiple or consequential damages against the other in litigation and agrees to be limited to the recovery of actual damages sustained.

**19.6 Remedies Not Exclusive.** Except as provided in Sections 19.1 through 19.5, no right or remedy that the parties have under this Agreement is exclusive of any other right or remedy under this Agreement or under applicable law.

**19.7 Reimbursement of Costs and Expenses.** If either party brings an action to enforce this Agreement in a judicial proceeding, the party prevailing in that proceeding will be entitled to reimbursement of costs and expenses, including, but not limited to, reasonable accountants', attorneys', attorneys' assistants' and expert witness fees, the cost of investigation and proof of facts, court costs, other litigation expenses, and travel and living expenses, whether incurred prior to, in preparation for, or in contemplation of the filing of, the proceeding. If we utilize legal counsel (including in-house counsel employed by us) in connection with any failure by you to comply with this Agreement, you must reimburse us for any of the above-listed costs and expenses incurred by us. In any judicial proceeding, the amount of these costs and expenses will be determined by the court and not by a jury.

**19.8 Rights of Parties are Cumulative.** The parties' rights under this Agreement are cumulative, and the exercise or enforcement of any right or remedy under this Agreement will not preclude the exercise or enforcement by a party of any other right or remedy under this Agreement that it is entitled by law or this Agreement to exercise or enforce.

**19.9 Survival.** The provisions of this Section 19 will survive the expiration or earlier termination of this Agreement.

## **20. MISCELLANEOUS**

**20.1 Gender and Number.** All references to gender and number will be construed to include such other gender and number as the context may require.

**20.2 Captions.** All captions in this Agreement are intended solely for the convenience of the parties and none will be deemed to affect the meaning or construction of any provision of this Agreement.

**20.3 Counterparts and Signatures.** This Agreement may be executed in counterparts, and each copy so executed and delivered will be deemed an original. This Agreement may be signed using electronic signatures, and such signatures will have full legal force and effect.

**20.4 Time.** Time is of the essence of this Agreement for each provision in which time is a factor.

**20.5 Injunctive Relief.** You recognize that your failure to comply with the terms of this Agreement, including, but not limited to, the failure to fully comply with all post-termination obligations, is likely to cause irreparable harm to us, our affiliates and the System. Therefore, you agree that, in the event of a breach or threatened breach of any of the terms of this Agreement by you, we will be entitled to declaratory and injunctive relief (both preliminary and permanent) restraining that breach and/or to specific performance without showing or proving actual damages and without posting any bond or security.

**20.6 Compliance with U.S. Laws.** You acknowledge that under applicable U.S. law, including, without limitation, Executive Order 13224, signed on September 23, 2001 ("Order"), we are prohibited from engaging in any transaction with any person engaged in, or with a person aiding any person engaged in, acts of terrorism, as defined in the Order. Accordingly, you represent and warrant to us that, as of the date of this Agreement, neither you nor any person holding any ownership interest in you, controlled by you, or under common control with you is designated under the Order as a person with whom business may not be transacted by us, and that you: **(a)** do not, and hereafter will not, engage in any terrorist activity; **(b)** are not affiliated with and do not support any individual or entity engaged in, contemplating, or supporting terrorist activity; and **(c)** are not acquiring the rights granted under this Agreement with the intent to generate funds to channel to any individual or entity engaged in, contemplating, or supporting terrorist activity, or to otherwise support or further any terrorist activity.

## **21. ACKNOWLEDGEMENTS**

You represent, acknowledge and warrant to us (and you agree that these representations, acknowledgments and warranties will survive termination of this Agreement) that:

**21.1** This Agreement involves significant legal and business rights and risks. We do not guarantee your success. You have read this Agreement in its entirety, conducted an independent investigation of the business contemplated by this Agreement, have been thoroughly advised with regard to the terms and conditions of this Agreement by legal counsel or other advisors of your choosing, recognize that the nature of the business conducted by Wahlburgers Restaurants may change over time and have had ample opportunity to investigate all representations made by or on behalf of us. The prospect for success of the business undertaken by you is speculative and depends to a material extent upon your personal commitment, capability and direct involvement in

the day-to-day management of the business.

**21.2** Acceptance of one or more sites by us and our refusal to accept other sites is not a representation that a Franchised Restaurant at an Authorized Site will achieve a certain sales volume or a certain level of profitability, or that a Franchised Restaurant at an Authorized Site will have a higher sales volume or be more profitable than a site which we did not accept. Acceptance by us merely means that the minimum criteria which we have established for identifying suitable sites for proposed Wahlburgers Restaurants have been met. Because real estate development is an art and not a precise science, you agree that acceptance, or refusal to accept a proposed site by us, whether or not a site report is completed and/or submitted to us will not impose any liability or obligation on us. The decision whether to develop a particular site is yours, subject to acceptance of the site by us. Preliminary acceptance of a proposed site by any of our representatives is not conclusive or binding, because his or her recommendation may be rejected by us.

**21.3** We expressly disclaim the making of, and you acknowledge that you have not received, any warranty or guaranty, express or implied, as to the potential volume, profits or success of the business venture contemplated by this Agreement. We do not, by virtue of any approvals or advice provided to you, assume responsibility or liability to you or any third-party to which we would otherwise not be subject.

**21.4** We have entered, and will continue to enter, into agreements with other area developers and franchisees. The manner in which we enforce our rights and the area developers' and franchisees' obligations under any of those other agreements will not affect our ability to enforce our rights or your obligations under this Agreement.

**21.5** The Development Fee is not refundable for any reason.

**21.6** We may change or modify the System, from time to time, including the Manual, and you will be required to make such expenditures as such changes or modifications in the System may require.

**21.7** You have not received from us or our affiliates or anyone acting on our behalf any representation of your potential sales, expenses, income, profit or loss.

**21.8** You have not received from us or our affiliates or anyone acting on our behalf any representations other than those contained in our Franchise Disclosure Document provided to you as inducements to enter this Agreement.

**21.9** Even though this Agreement contains provisions requiring you to develop the Franchised Restaurants in compliance with the System: **(a)** we and our affiliates do not have actual or apparent authority to control the day-to-day conduct and operation of your business or employment decisions; **(b)** neither you nor we intend for us or our affiliates to incur any liability in connection with or arising from any aspect of the System or your use of the System, whether or not in accordance with the requirements of the Manual; and **(c)** you are the sole employer of your employees and you and we are not joint employers.

**21.10** You will be solely responsible for: **(a)** hiring, training and supervising efficient, competent and courteous employees of good character for the operation of the Franchised Restaurants; **(b)** the terms of their employment and compensation; and **(c)** the proper training of the employees in the operation of the Franchised Restaurants.

**21.11** You understand that there are certain limitations to your exclusive rights in the Development Area during the Development Term and that, following termination or expiration of

the Development Term, we may develop and operate, or license others to develop and operate Wahlburgers Restaurants at any location in the Development Area.

**21.12** In the event of a dispute between us, you and we have waived our right to a jury trial.

**21.13** Your execution of this Agreement does not and will not conflict or interfere, directly or indirectly, intentionally or otherwise, with the terms of any other agreement with any third party to which you, any of your owners or any affiliate of yours is a party, including, but not limited to, any noncompetition provision.

**21.14** You have received the Wahlburgers Franchise Disclosure Document at least 14 days prior to your signing this Agreement or payment of any monies to us, or earlier if required by applicable law.

**IN WITNESS WHEREOF**, the parties have executed this Agreement by their duly authorized representatives.

**AREA DEVELOPER:**

**WAHLBURGERS:**

**WAHLBURGERS FRANCHISING LLC**

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

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

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

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

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**  
**DEVELOPMENT**  
**INFORMATION**

1. **Development Area.** The Development Area will be \_\_\_\_\_

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Your rights in the Development Area are subject to the limitations described in Section 2. Any political boundaries contained in the description of the Development Area will be considered fixed as of the Effective Date and will not change notwithstanding a political reorganization or a change in those boundaries. Unless otherwise specified, all street boundaries are deemed to include only the inside portion of the stated boundary.

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

3. **Development Schedule.** During the Development Term, you will develop and continue to operate a total of \_\_\_\_\_ Franchised Restaurants in the Development Area in accordance with the following schedule:

Number of Franchised Restaurants	Site Acceptance Date	Opening Date	Cumulative Number of Franchised Restaurants to be Open and Operating on the Opening Date, Including the Franchised Restaurant to be Established

4. **Ownership:** If you are a business entity, the following is a list of all holders of a direct or indirect equity interest in you and their respective percentage interests:

Name	Address	Ownership Interest

5. **Operating Principal:** \_\_\_\_\_

6. **Multi-Unit Manager (if applicable):** \_\_\_\_\_

**7. Existing Businesses:**

Name of Business	Description of Business

## EXHIBIT B

### GUARANTEE AND ASSUMPTION OF AREA DEVELOPER'S OBLIGATIONS

In consideration of, and as an inducement to, the execution of the Wahlburgers Restaurant Area Development Agreement dated as of \_\_\_\_\_ ("Agreement") by Wahlburgers Franchising LLC ("Wahlburgers"), entered into with \_\_\_\_\_ ("Area Developer"), the undersigned (collectively, "Guarantors") hereby personally and unconditionally agree as follows:

**1. Guarantee To Be Bound By Certain Obligations.** Guarantors hereby personally and unconditionally guarantee to Wahlburgers and its successors and assigns, for the Development Term and thereafter as provided in the Agreement or at law or in equity, that each will be personally bound by the restrictions contained in Section 11 of the Agreement.

**2. Guarantee and Assumption of Area Developer's Obligations.** Guarantors hereby: **(A)** guarantee to Wahlburgers and its successors and assigns, for the Development Term and thereafter as provided in the Agreement or at law or in equity, that Area Developer and any assignee of Area Developer's interest under the Agreement will: **(1)** punctually pay and perform each and every undertaking, agreement and covenant set forth in the Agreement and **(2)** punctually pay all other monies owed to Wahlburgers and/or its affiliates; **(B)** agree to be personally bound by each and every provision in the Agreement, including, without limitation, the provisions of Sections 11 and 14.1; and **(C)** agree to be personally liable for the breach of each and every provision in the Agreement.

**3. General Release.** Each Guarantor (if an individual, on behalf of him/herself and his/her heirs, representatives, successors and assigns, and if a business entity, on behalf of itself and its parent, subsidiaries and affiliates) (collectively, "Releasers"), freely and without any influence, forever releases and covenants not to sue Wahlburgers, its parent, subsidiaries and affiliates and their respective past and present officers, directors, managers, members, shareholders, agents and employees, in their corporate and individual capacities, with respect to any and all claims, demands, liabilities and causes of action of whatever kind or nature, whether known or unknown, vested or contingent, suspected or unsuspected (collectively, "Claims"), that any Releaser now owns, has or claims to have or holds, or may in the future own or hold, or at any prior time owned, held, had or claimed to have, based on, arising out of or relating to, in whole or in part, any fact, event, conduct or omissions occurring on or before the date of this Guarantee, including, without limitation, Claims arising under federal, state and local laws, rules and ordinances and Claims arising out of, or relating to this Guarantee, the Agreement and all other agreements between any Releaser and Wahlburgers or its parent, subsidiaries or affiliates, the sale of any franchise to any Releaser, the development and operation of any Franchised Restaurants and the development and operation of all other restaurants operated by any Releaser that are franchised by Wahlburgers. Releasers expressly agree that fair consideration has been given by Wahlburgers for this release, and they fully understand that this is a negotiated, complete and final release of all Claims.

**4. General Terms and Conditions.** The following general terms and conditions will apply to this Guarantee:

**A.** Each of the undersigned waives: **(1)** acceptance and notice of acceptance by Wahlburgers of the foregoing undertakings; **(2)** notice of demand for payment of any indebtedness or nonperformance of any obligations hereby guaranteed; **(3)** protest and notice of default to any party with respect to the indebtedness or nonperformance of any obligations hereby

guaranteed; **(4)** any right he/she/it may have to require that an action be brought against Area Developer or any other person as a condition of liability; **(5)** all rights to payments and claims for reimbursement or subrogation which any of the undersigned may have against Area Developer arising as a result of the execution of and performance under this Guarantee by the undersigned; **(6)** any law or statute which requires that Wahlburgers make demand upon, assert claims against or collect from Area Developer or any others, foreclose any security interest, sell collateral, exhaust any remedies or take any other action against Area Developer or any others prior to making any demand upon, collecting from or taking any action against the undersigned with respect to this Guarantee; **(7)** any and all other notices and legal or equitable defenses to which he may be entitled; and **(8) any and all right to have any legal action under this Guarantee decided by a jury.**

**B.** Each of the undersigned consents and agrees that: **(1)** his/her/its direct and immediate liability under this Guarantee will be joint and several; **(2)** he/she/it will render any payment or performance required under the Agreement if Area Developer fails or refuses punctually to do so; **(3)** such liability will not be contingent or conditioned upon pursuit by Wahlburgers of any remedies against Area Developer or any other person; **(4)** such liability will not be diminished, relieved or otherwise affected by any amendment of the Agreement, any extension of time, credit or other indulgence which Wahlburgers may from time to time grant to Area Developer or to any other person, including, without limitation, the acceptance of any partial payment or performance or the compromise or release of any claims, none of which will in any way modify or amend this Guarantee, which will be continuing and irrevocable during the term of the Agreement and for so long thereafter as there are monies or obligations owing from Area Developer to Wahlburgers or its affiliates under the Agreement; and **(5)** monies received from any source by Wahlburgers for application toward payment of the obligations under the Agreement and under this Guarantee may be applied in any manner or order deemed appropriate by Wahlburgers. In addition: **(a)** each Guarantor acknowledges that the obligations under this Guarantee will continue to remain in force and effect unless Wahlburgers in its sole discretion, in writing, releases him/her/it from this Guarantee; and **(b)** following any Transfer, the obligations of each Guarantor under this Guarantee will continue to remain in force and effect unless Wahlburgers in its sole discretion, in writing, releases the Guarantor from this Guarantee. Notwithstanding the provisions of the previous sentence, unless prohibited by applicable law, the obligations contained in Section 11.3 of the Agreement will remain in force and effect for a period of 2 years after any such release by Wahlburgers. A release by Wahlburgers of any Guarantor will not affect the obligations of any other Guarantor.

**C.** If Wahlburgers brings a legal action to enforce this Guarantee, the prevailing party in such proceeding will be entitled to reimbursement of its costs and expenses, including, but not limited to, reasonable accountants', attorneys', attorneys' assistants' and expert witness fees, cost of investigation and proof of facts, court costs, other litigation expenses and travel and living expenses, whether incurred prior to, in preparation for or in contemplation of the filing of any such proceeding. In any judicial proceeding, these costs and expenses will be determined by the court and not by a jury.

**D.** If Wahlburgers utilizes legal counsel (including in-house counsel employed by Wahlburgers or its affiliates) in connection with any failure by the undersigned to comply with this Guarantee, the undersigned will reimburse Wahlburgers for any of the above-listed costs and expenses incurred by it.

**E.** If any of the following events occur, a default ("Default") under this Guarantee will exist: **(1)** failure of timely payment or performance of the obligations under this Guarantee; **(2)** breach of any agreement or representation contained or referred to in this Guarantee; **(3)** the dissolution of, termination of existence of, loss of good standing status by,

appointment of a receiver for, assignment for the benefit of creditors of, or the commencement of any insolvency or bankruptcy proceeding by or against, any of the undersigned; and/or (4) the entry of any monetary judgment or the assessment against, the filing of any tax lien against, or the issuance of any writ of garnishment or attachment against any property of or debts due any Guarantor. If a Default occurs, the obligations of each Guarantor will be due immediately and payable without notice. Upon the death of a Guarantor, the estate will be bound by this Guarantee for all obligations existing at the time of death. The obligations of the surviving Guarantors will continue in full force and effect.

**F.** This Guarantee will inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns. Wahlburgers' interests in and rights under this Guarantee are freely assignable, in whole or in part, by Wahlburgers. Any assignment will not release the undersigned from this Guarantee.

**G.** Section 19 of the Agreement is incorporated by reference into this Guarantee and all capitalized terms that are not defined in this Guarantee will have the meaning given them in the Agreement.

**IN WITNESS WHEREOF**, each of the undersigned has hereunto affixed his signature.

**GUARANTORS:**

Date: \_\_\_\_\_

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

Address: \_\_\_\_\_

Date: \_\_\_\_\_

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

Address: \_\_\_\_\_

***EXHIBIT D***  
***FRANCHISE AGREEMENT***

**WAHLBURGERS RESTAURANT FRANCHISE AGREEMENT**

\_\_\_\_\_  
Franchisee

\_\_\_\_\_  
Effective Date

\_\_\_\_\_  
Franchised Location

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Exhibit A – Franchise Information

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Exhibit C – Advertising Obligation

## WAHLBURGERS RESTAURANT FRANCHISE AGREEMENT

This Franchise Agreement (“Agreement”) is made as of \_\_\_\_\_ (“Effective Date”) by and between Wahlburgers Franchising LLC (“Wahlburgers,” “we” or “us”), a Massachusetts limited liability company with a principal business address at 350 Lincoln Street, Suite 2501, Hingham, MA 02043, and \_\_\_\_\_ (“Franchisee,” “you” or “your”), a \_\_\_\_\_ with a principal business address at \_\_\_\_\_.

### RECITALS

We and our affiliates have developed a distinctive format, appearance and set of specifications and operating procedures (collectively, “System”) relating to the development, establishment and operation of restaurants identified by the Proprietary Marks, as defined below, (“Wahlburgers Restaurants”) that feature high quality gourmet hamburgers and certain ancillary branded merchandise such as clothing, souvenirs and novelty items (“Branded Merchandise”).

The distinguishing characteristics of the System include, but are not limited to, our décor, layout, color schemes and designs (collectively, “Trade Dress”); our menu items, recipes and food preparation and service techniques; our standards and specifications for equipment, equipment layouts and interior and exterior accessories; and the accumulated experience reflected in our training program, operating procedures and standards and specifications. We may periodically change, improve, add to and further develop the elements of the System.

The System is identified by means of the “Wahlburgers” name and mark and certain other names, marks, logos, insignias, slogans, emblems, symbols and designs that have been designated, or may in the future be designated, for use with the System (collectively, “Proprietary Marks”). We have the exclusive right to use, and permit our franchisees to use, the Proprietary Marks. We may modify the Proprietary Marks used to identify the System, including the principal Proprietary Marks.

You desire to be granted the opportunity to develop and operate a franchised Wahlburgers Restaurant (“Franchised Restaurant”) at the location identified on Exhibit A (“Franchised Location”).

You understand and acknowledge the importance of our high and uniform standards of quality, operations and service and the necessity of developing and operating the Franchised Restaurant in strict conformity with this Agreement and our confidential operating manuals (“Manual”).

We are willing to grant you the opportunity to develop and operate the Franchised Restaurant at the Franchised Location, subject to the terms and conditions of this Agreement.

**NOW THEREFORE**, the parties agree as follows:

# 1 GRANT OF FRANCHISE

## 1.1 Grant.

**1.1.1** Subject to the terms and conditions of this Agreement, we hereby grant to you the right, and you undertake the obligation, to use the Proprietary Marks and the System to continuously operate the Franchised Restaurant at the Franchised Location during the term of this Agreement (“Term”). The Franchised Restaurant will be operated in the format specified in Exhibit A.

**1.1.2** You may not use the Proprietary Marks or the System at any location other than the Franchised Location. You may not relocate the Franchised Restaurant without our prior written consent, which we may withhold in our sole discretion. We have the right to require you to pay a reasonable fee, plus our reasonable expenses incurred in connection with consideration of your relocation request.

**1.1.3** You agree that you will, at all times, faithfully, honestly and diligently perform your obligations under this Agreement, that you will continuously exert your best efforts to promote and enhance the business of the Franchised Restaurant and that you will not engage in any other business or activity that may conflict with your obligations under this Agreement, except the operation of other Wahlburgers Restaurants or other businesses that you operate and that are franchised by us. Without our prior written consent, you may not use the Proprietary Marks or the System or sell our proprietary food and beverage products or Branded Merchandise in any wholesale, e-commerce or other channel of distribution besides the retail operation of the Franchised Restaurant at the Franchised Location.

**1.1.4** We have entered, and may continue to enter, into agreements with other franchisees that may contain provisions, conditions and obligations that differ from those contained in this Agreement. The existence of different forms of agreement and the fact that we and other franchisees may have different rights and obligations does not affect our or your duties to comply with the terms of this Agreement.

**1.2 No Exclusivity.** This Agreement does not give you any exclusive rights to use the System or the Proprietary Marks in any geographic area. Nothing in this Agreement prohibits us or our affiliates from, among other things: **(a)** operating or licensing others to operate, during the term of this Agreement, Wahlburgers Restaurants at any location other than the Franchised Location; **(b)** operating or licensing others to operate, after this Agreement terminates or expires, Wahlburgers Restaurants at any location, including the Franchised Location; **(c)** manufacturing, distributing and selling, or causing to be manufactured, distributed and sold, food, goods, wares, merchandise, services, products and Branded Merchandise, whether or not authorized for sale at Wahlburgers Restaurants, under the Proprietary Marks or other trademarks, service marks, logos or commercial symbols, at wholesale or retail, at any location through any channel of distribution, including, but not limited to, mail order and catalog, direct mail advertising, the Internet and other methods of distribution, regardless of the proximity to any Wahlburgers Restaurant developed or under development at the Franchised Location or under consideration by you; **(d)** developing and owning other franchise systems for the same or similar products and services using trade names and trademarks other than the Proprietary Marks; and/or **(e)** purchasing, being purchased by, merging or combining with, businesses that directly compete with Wahlburgers Restaurants. We reserve to ourselves all rights to use and license the System and the Proprietary Marks other than those expressly granted under this Agreement.

## 2 TERM; SUCCESSOR FRANCHISE TERM

**2.1 Term.** The Term begins on the Effective Date and, unless this Agreement is terminated at an earlier date as provided in Section 19, expires at midnight on the day preceding the 20<sup>th</sup> anniversary of the date the Franchised Restaurant first opened for business. (We may complete and forward to you a notice to memorialize the date the Franchised Restaurant first opened for business.) If, during the Term, you lose the right to possession of the Franchised Location through no action or failure to act on your part (other than the failure to extend the lease for the Franchised Location through the Term), you may relocate the Franchised Restaurant (without paying us any additional initial franchise fee) at your expense, and the Term will not expire if: **(a)** we accept the new location; **(b)** you construct and equip a new Franchised Restaurant at the new location in accordance with our then-current System standards and specifications; **(c)** the Franchised Restaurant is open to the public for business at the new location within 6 months after your loss of possession of the Franchised Location; and **(d)** you reimburse us for all reasonable expenses actually incurred by us in connection with the acceptance of the new location. We may condition our consent to your relocation request upon, among other things, your payment of an agreed upon minimum Royalty to us during the period in which the Franchised Restaurant is not in operation.

**2.2 Successor Franchise Term.** When this Agreement expires, you will have the option to obtain one successor franchise term of 10 years, unless: **(a)** we have announced a decision to stop franchising the Wahlburgers concept; or **(b)** we decide to withdraw the Wahlburgers concept from the geographic market in which the Franchised Restaurant is located. You must give us written notice of your desire to exercise your option not more than 18 months and not less than 12 months before the end of the Term. We may require you to satisfy any or all of the following as a condition of exercising your option for the successor franchise term:

**2.2.1** You must execute the standard form of Wahlburgers Restaurant Franchise Agreement that we are then offering to new franchisees (or the standard form that we most recently offered, if we are not then offering franchises) ("Successor Franchise Agreement"). The terms of the Successor Franchise Agreement may be substantially different from the terms of this Agreement. We will modify the Successor Franchise Agreement to delete terms inapplicable to the successor term (such as opening deadlines).

**2.2.2** During the Term, you have substantially complied with this Agreement and the System.

**2.2.3** Neither you nor your affiliates may be in default under this Agreement or any other agreements between you or your affiliates and us or our affiliates; you and your affiliates must not be in default beyond the applicable cure period under any real estate lease, equipment lease or financing instrument relating to the Franchised Restaurant; and you must not be in default beyond the applicable cure period with any vendor or supplier to the Franchised Restaurant.

**2.2.4** You must have the right to continue operating at the Franchised Location for the full term of the Successor Franchise Agreement.

**2.2.5** You must renovate and modernize the Franchised Restaurant to reflect the then-current image of Wahlburgers Restaurants.

**2.2.6** You, all 10% Owners (as defined in Section 14.2) and all guarantors under this Agreement must sign a general release, in a form we prescribe, of any and all claims against

us, our affiliates and our past, present and future officers, directors, members, managers, shareholders and employees arising out of or relating to the Franchised Restaurant.

**2.2.7** You, your Operating Principal (as defined in Section 12.11.3), your Multi-Unit Manager (as defined in Section 12.11.4) (if applicable) and those of your employees designated by us must successfully complete (as determined by us in our sole discretion) any additional training courses that we then require.

**2.2.8** You must pay us a renewal fee of \$20,000.

### **3 DEVELOPMENT PROCEDURES**

This Section 3 will not be applicable if the Franchised Restaurant is being developed pursuant to a Wahlburgers Area Development Agreement ("Development Agreement") to which you are a party. In addition, Sections 3.1-3.3, 3.4.1 and 3.4.4 will not be applicable if, as of the date of this Agreement, the location for the Franchised Restaurant has been accepted in writing by us.

**3.1 Your Responsibility.** You must select a site that is located within a general area to which you and we have mutually agreed in writing. Within 180 days after your execution of this Agreement, you must obtain site acceptance from us for the Franchised Restaurant. If we have not accepted a site within this time period, we, at our option, may terminate this Agreement pursuant to Section 19. You assume all cost, liability and expense for locating, obtaining and developing a site for the Franchised Restaurant. You may not make any binding commitments to purchase or lease a site until we have accepted the site in writing.

**3.2 Site Selection Assistance.** We may, but are not required to, provide you with the following site selection assistance: **(a)** our site selection guidelines and, as you may request, a reasonable amount of consultation with respect thereto; and **(b)** such on-site evaluation as we may deem advisable (subject to the availability of our personnel) as part of our evaluation of your request for site acceptance, provided that, if we provide this assistance at your request, you must pay us a fee in an amount determined by us, not to exceed \$5,000, and reimburse us for all travel, living and other expenses incurred by our representatives in connection with such on-site evaluation. Notwithstanding the foregoing, we have no obligation to conduct any on-site evaluations of locations you propose.

**3.3 Site Information and Evaluation.** For each proposed site, you must submit to us a site review report consisting of financial pro formas, a description of the site, photographs, demographic information, site characteristics (including access and egress points and the amount of road traffic), other restaurant options in the area, and any other information that we may require, including, but not limited to, a letter of intent or other evidence satisfactory to us, which confirms your favorable prospects for obtaining the site. In addition, we may require a site analysis prepared by a third party vendor at your expense. We reserve the right to designate the third party vendor used to prepare the site analysis. If the site review report is acceptable, we reserve the right to conduct an on-site evaluation of the proposed site before deciding whether to accept the site.

#### **3.4 Site Acceptance.**

**3.4.1** Within 60 days after our receipt of a complete (as determined by us) site review report, we will review that information, evaluate the proposed site and advise you in writing whether we have accepted the site; however, we have no obligation to review any site review

report if you and/or your affiliates are not in full compliance with all agreements with us and/or our affiliates. If we do not respond within that time period, we will be deemed to have rejected the site. Our acceptance or rejection of a site may be subject to reasonable conditions we determine in our sole discretion.

**3.4.2** You acknowledge that, in order to preserve and enhance the reputation and goodwill of the System, all Wahlburgers Restaurants and the goodwill of the Proprietary Marks and the Trade Dress, all Wahlburgers Restaurants must be properly developed, operated and maintained. Accordingly, you agree that we may refuse to accept a site for a proposed Franchised Restaurant unless you demonstrate sufficient financial capabilities, in our sole judgment, applying standards consistent with criteria that we use to establish restaurants in other comparable market areas, to properly develop, operate and maintain the proposed Franchised Restaurant. To that end, you must provide us with such financial statements and other information regarding you and the development and operation of the proposed Franchised Restaurant, including, without limitation, investment and financing plans for the proposed Franchised Restaurant, as we may reasonably require.

**3.4.3** Our acceptance of a site does not constitute a representation or warranty of any kind, express or implied, of the site's suitability for a Wahlburgers Restaurant or any other purpose. Our acceptance indicates only that we believe that the site meets our then-current site selection criteria. Applying criteria that have appeared effective with other sites might not accurately reflect the potential for all sites, and demographic and/or other factors included in or excluded from our criteria could change, altering the potential of a site. The uncertainty and instability of these criteria are beyond our control, and we are not responsible if a site we accept fails to meet your expectations. Your submission of a proposed site for our acceptance is based on your own independent investigation of the site's suitability for a Franchised Restaurant.

**3.4.4** Upon our acceptance of a site in accordance with this Section 3, we will identify the Franchised Location on the cover page and in Exhibit A of this Agreement.

## **4 LEASE PROVISIONS**

**4.1 Required Lease Provisions.** You must obtain our consent to the proposed sublease, lease or purchase contract (collectively, "lease") for the Franchised Location prior to its execution. The lease must, in form and substance, be satisfactory to us and may not contain any covenants or other obligations that would prevent you from performing your obligations under this Agreement. In addition, the lease must contain the following provisions:

**4.1.1** The landlord agrees to provide us (at the same time as sent to you) a copy of any notices of default pertaining to the lease, and we will have the right, but not the obligation, to cure any default of yours under the lease within the time periods provided by the lease.

**4.1.2** The landlord agrees that, following the expiration or earlier termination of the lease or this Agreement, you will have the right to make those alterations and modifications (including removal and demolition of improvements installed by you if necessary) to the Franchised Location as may be necessary to clearly distinguish to the public the Franchised Location from a Wahlburgers Restaurant and also to make those specific additional changes as we reasonably may require for that purpose. If you fail to timely do so, the landlord agrees that we may enter the Franchised Location to make those alterations and modifications.

**4.1.3** You may assign the lease to us, our parent, affiliates or subsidiaries (without the landlord's consent) or to our designee (with the landlord's consent, which consent will not be unreasonably withheld) and without payment of any assignment fee or similar charge or increase in any rentals or other charges payable to the landlord.

Our consent to the lease does not constitute a warranty or representation of any kind, express or implied, as to its fairness or suitability or as to your ability to comply with its terms, and we do not assume any liability or responsibility to you or to any third parties due to such approval. You must deliver a copy of the fully signed lease to us within 7 days after its execution. You may not begin construction of the Franchised Restaurant until you have delivered a copy of the fully signed lease to us.

## **5 CONSTRUCTION OF FRANCHISED RESTAURANT; OPENING DATE**

### **5.1 Restaurant Development.**

**5.1.1** You assume all cost, liability and expense for developing, constructing and equipping the Franchised Restaurant. We will provide you prototypical plans and specifications for a Wahlburgers Restaurant, which you must adapt, at your cost, to suit the shape and dimensions of the Franchised Location, and you must ensure that your proposed plans for the Franchised Restaurant ("Plans") comply with all applicable ordinances, building codes and permit requirements, lease requirements and restrictions and the Americans with Disabilities Act. In addition, if you do not use the services of our designated architect (for whose fees you will be solely responsible), your architect must meet in person with our design team to review your Plans. You must use only registered architects, engineers and professional and licensed contractors, each of whom must be approved by us. You must submit the Plans to us and revise the Plans as we require. Once we consent to the Plans, you may not change them unless you again obtain our consent. You may not submit the Plans to your local government agency or begin site preparation or construction before we have notified you, in writing, that we have consented to the Plans. You may not commence construction until you have obtained all required permits and licenses. To the extent permitted by applicable law, you must use union labor in constructing the Franchised Restaurant if such practice is then customary in the geographical area in which the Franchised Restaurant is located. We have no obligation to visit the Franchised Location during the course of construction, but if we choose to do so, you must (and require your architect, engineer, contractors and subcontractors to) cooperate fully with us and our representatives.

**5.1.2** You acknowledge that you, and not us, will be constructing the Franchised Restaurant and that you will have the ability to keep track of the construction on a regular basis. We make no representation or warranty regarding the suitability of the prototypical plans and specifications that we may provide you, the construction of the Franchised Restaurant or compliance with those laws, ordinances and/or regulations that may be applicable to the Franchised Restaurant, the Plans and your construction of the Franchised Restaurant. If we provide you construction review or oversight services, we have the right to charge you a fee as we determine.

### **5.2 Opening Date.**

**5.2.1** You must open the Franchised Restaurant for business at the Franchised Location no later than 180 days after we have consented to the proposed site ("Opening Date"). By the Opening Date, you must: **(a)** obtain and maintain all required building, utility, sign, health, sanitation, liquor, business and other applicable permits and licenses; **(b)** construct all required improvements to the Franchised Location and decorate the exterior and interior of the Franchised

Restaurant as required by the Plans to which we have consented; **(c)** purchase or lease and install all specified and required fixtures, equipment, furnishings and signs for the Franchised Restaurant from suppliers designated or consented to by us (which may include us or our affiliates); and **(d)** purchase an opening inventory for the Franchised Restaurant of only authorized products and other materials and supplies.

**5.2.2** You must notify us at least 60 days before the anticipated opening date and the date of issuance of the certificate of occupancy. Upon our request, you must submit a copy of the certificate of occupancy to us. We reserve the right to conduct a final inspection of the Franchised Restaurant after receiving your notice to ensure that you have complied with this Agreement. You may not open for business without our prior written consent, which will not be granted unless you have satisfied the conditions in Section 5.3; however, our consent will not be unreasonably withheld. If you do not open the Franchised Restaurant for business by the Opening Date and we do not extend the deadline, we will have the right to terminate this Agreement under Section 19.1.2.

**5.3 Right to Open the Franchised Restaurant.** We will not authorize the opening of the Franchised Restaurant unless all of the following conditions have been met:

**5.3.1** You are not in material default under this Agreement; you and your affiliates are not in material default of any other agreements with us; you and your affiliates are not in default beyond the applicable cure period under any real estate lease, equipment lease or financing instrument relating to the Franchised Restaurant; and you are not in default beyond the applicable cure period with any vendor or supplier to the Franchised Restaurant.

**5.3.2** You and your 10% Owners are current on all obligations due to us.

**5.3.3** We are satisfied that the Franchised Restaurant was constructed substantially in accordance with the Plans accepted by us, this Agreement and state and local codes and that you have hired and trained a staff as required by this Agreement and the System.

**5.3.4** If the Franchised Location is leased or subleased, we have received a copy of the fully-executed lease or sublease.

**5.3.5** You have obtained a certificate of occupancy and all other required building, utility, sign, health, safety, fire department, sanitation, business and liquor permits and licenses.

**5.3.6** You have certified to us, in writing, that all furnishings, fixtures, equipment, signage, computer terminals, artwork/wall graphics and related equipment, supplies and other items are in place.

**5.3.7** You have certified to us, in writing, that all furnishings, fixtures, equipment, signage, computer terminals, artwork/wall graphics and related equipment, supplies, other items and the color scheme in the Franchised Restaurant conform to our specifications.

**5.3.8** You (or your Operating Principal and, if applicable, your Multi-Unit Manager) and those of your employees designated by us have attended and successfully completed (as determined by us in our sole discretion) the ITP (as defined in Section 9.1.1).

**5.3.9** You have provided us with copies of all insurance policies required by Section 12.12 or other evidence of insurance coverage and payment of premiums as we may reasonably request.

**5.3.10** You have provided us a Grand Opening Plan (as defined in Section 8.1) at least 60 days prior to the opening of the Franchised Restaurant.

## **6 FEES**

**6.1 Initial Franchise Fee.** No later than the date you sign this Agreement, you must pay us an initial franchise fee in the amount of set forth in Exhibit A (“Initial Franchise Fee”), less any unapplied application fee paid by you to us. You acknowledge and agree that the Initial Franchise Fee is fully earned by us when paid and is not refundable.

### **6.2 Royalty Fee.**

**6.2.1** In addition to all other amounts that you will pay to us, you must pay to us a nonrefundable royalty fee (“Royalty”) in an amount equal to 6% of your Fiscal Period Gross Sales (as defined below). As of the date of this Agreement, each Fiscal Period is a calendar week. We have the right, following written notice to you, to vary the time period that comprises each Fiscal Period. If, due to applicable law, you may not pay a Royalty on alcoholic beverage sales, you will pay us a Royalty on all Gross Sales (except alcoholic beverage sales) in the same dollar amount as would have been paid if alcoholic beverage sales were included.

**6.2.2** The term “Gross Sales” includes all revenue from the sale of all services and products (including, but not limited to, Branded Merchandise) and all other income of every kind and nature (including stored value gift cards and gift certificates when redeemed, on-premise sales, other sales made or sold, at, in or upon or from the Franchised Location, and any other type of sale) related to the Franchised Restaurant, whether for cash or credit and regardless of collection in the case of credit. Gross Sales also includes all ancillary charges or fees, including delivery fees and other service charges, that are paid to you by a customer or by a third-party delivery or catering service (e.g., Uber Eats, Postmates, Grubhub, ezCater, or DoorDash) (“Third-Party Service”) in connection with delivery or catering services related to your Franchised Restaurant (recognizing that though the Third-Party Service may pay you an amount equal to the purchase price charged to the customer less a commission, other fees, and any discounts, credits, or coupons applied to the order, such commission, fees, discounts, credits, and coupons will not be deducted from your Gross Sales). Gross Sales will not include: **(a)** any bona fide documented federal, state, or municipal sales taxes collected by you from customers and paid by you to the appropriate taxing authority; **(b)** the sale of food, beverage or merchandise for which refunds have been made in good faith to customers; **(c)** the sale of equipment used in the operation of the Franchised Restaurant; **(d)** authorized customer promotional discounts; and **(e)** employee meal discounts.

**6.3 Advertising Obligation.** You must spend and/or contribute for advertising up to 4% of your Fiscal Period Gross Sales (“Advertising Obligation”), provided that the maximum Advertising Obligation may be increased if, at any time, 2/3 of all then-existing Wahlburgers Restaurants (both franchised and company-operated) vote in favor of such an increase. The exact amount of the Advertising Obligation to be spent and/or contributed by you, and the allocation of the Advertising Obligation, as of the date of this Agreement, are set forth in Exhibit C.

**6.4 Sales Reports.** By 5:00 p.m. on the day after the end of each Fiscal Period, you must submit to us, in writing, by email, polling by computer or such other form or method as we may designate, the amount of Gross Sales of the Franchised Restaurant during the preceding Fiscal Period and any other data or information as we may require.

**6.5 Payment of Fees.** You must participate in our electronic funds transfer program, which authorizes us to use a pre-authorized bank draft system. You agree to sign and complete such documents as we may require from time to time to authorize and direct your bank or financial institution to pay and deposit directly to our account. Your Royalty and Advertising Obligation and other amounts owed under this Agreement, including any interest charges, must be received by us or credited to our account by pre-authorized bank debit before 5:00 p.m. on the 10th day after the end of each Fiscal Period or at a later point periodically specified by us ("Due Date"). You must furnish to us and your bank all authorizations necessary to effect payment by the methods we specify. We reserve the right to modify, at our option, the method by which you must pay the Royalty, Advertising Obligation and other amounts owed under this Agreement upon receipt of written notice from us. You may not, under any circumstances, set off, deduct or otherwise withhold any Royalties, Advertising Obligation, interest charges or any other monies payable under this Agreement on grounds of our alleged non-performance of any obligations. Following written notice from us, you also must make all payments to our affiliates through our electronic funds transfer program unless otherwise specified.

**6.6 Interest and Late Fee.** If any payments by you due to us are not received in full by the Due Date, in addition to paying the amount owed, you must pay to us interest on the amount owed from the Due Date until paid at the lesser of the maximum rate permitted for indebtedness of this nature in the state in which the Franchised Restaurant is located or 18% per annum. In addition, a late fee of \$100 may be assessed at our discretion on all payments by you due to us and not received by us by the Due Date. Payment of a late fee and/or interest by you on past due obligations is in addition to all other remedies and rights available to us pursuant to this Agreement or under applicable law.

**6.7 Partial Payments.** No payment by you of a lesser amount than due will be treated as anything other than a partial payment on account, regardless of whether you include an endorsement, statement or accompanying letter to the effect that payment of the lesser amount constitutes full payment. We have sole discretion to apply any payments by you to any past due indebtedness and we have the right to accept payment from any other entity as payment by you without that entity being substituted for you.

**6.8 Collection Costs and Expenses.** You agree to pay us on demand any and all costs and expenses we incur in enforcing the terms of this Agreement, including costs and commissions due a collection agency, attorneys' fees (including attorneys' fees for in-house counsel employed by us), costs incurred in creating or replicating reports demonstrating Gross Sales of the Franchised Restaurant, court costs, expert witness fees, discovery costs and reasonable attorneys' fees and costs on appeal, together with interest charges on all of the foregoing.

## **7 COMMUNICATIONS, ACCOUNTING AND RECORDS**

**7.1 Recordkeeping.** You will keep complete and accurate books, records and accounts in the form and manner prescribed in the Manual. You must preserve all of your books and records in electronic form for at least 7 years from the date of preparation, or longer as required by government regulations, and make them available to us within 5 days after our written request.

**7.2 Computer System.** You must obtain and install, at your expense, the hardware, software, and network connections that we specify from time to time. We reserve the right to specify a vendor or supplier and, if acquired through us, charge you for such hardware, software, support, and other related services ourselves. You agree to: **(a)** maintain on the computer system

only the financial and operating data specified in the Manual; **(b)** transmit data to us in the form and at the times required by the Manual; **(c)** give us unrestricted access to your computer system at all times (including user IDs and passwords, if necessary) to download and transfer data via modem or other connection as we determine; **(d)** maintain the computer system in good working order at your own expense; **(e)** replace or upgrade the computer system as we require (but not more than once every 24 months); **(f)** install high speed Internet and/or communications connections; **(g)** ensure that your employees are adequately trained in the use of the computer system and our related policies and procedures; **(h)** comply with the Payment Card Industry Data Security Standard (“PCI DSS”) at all times; **(i)** engage any vendor we designate to ensure the security of your data and compliance with the PCI DSS; and **(j)** use any proprietary software or support service and other proprietary materials that we provide to you in connection with the operation of the Franchised Restaurant and, if we so require, execute a license agreement and pay to us a reasonable license fee for the use of such proprietary software. You may not install any software other than authorized upgrades or make any hardware modifications to the computer system without our express written consent. You acknowledge that computer designs and functions change periodically and that we may make substantial modifications to our computer specifications or to require installation of entirely different systems during the Term.

**7.3 Reports and Financial Statements.** You must, at your expense, submit to us, in the form prescribed by us, the following reports for the Franchised Restaurant: **(a)** a monthly profit and loss and balance sheet (both of which may be unaudited) within 20 days after the end of each calendar month; **(b)** a year to date quarterly profit and loss statement and balance sheet (both of which may be unaudited) within 30 days after the end of each fiscal quarter (as defined by us) during each fiscal year (as defined by us); **(c)** a fiscal year profit and loss statement and balance sheet (both of which may be unaudited) within 60 days after the end of each fiscal year (as defined by us). We will have the right, to be exercised in our sole discretion, to require that you provide us profit and loss statements and balance sheets, or other reports and information relating to the Franchised Restaurant at other times that we request. We also reserve the right, in our reasonable discretion, to require that you, at your expense, submit audited financial statements prepared by a certified public accounting firm acceptable to us for any fiscal years. You or your treasurer or chief financial officer must sign each statement and balance sheet, attesting that it is correct and complete and uses accounting principles applied on a consistent basis that accurately and completely reflect your financial condition.

**7.4 Audit Rights.** During and after the Term, we have the right to inspect, copy and audit your books and records, your federal, state and local tax returns and any other forms, reports, information or data that we may reasonably designate. We will provide you 10 days’ written notice before conducting an in-person financial examination or audit. We (or our designees) may conduct the examination or audit at our offices or those of a third party, in which case we may require you to send us your records. If the examination or audit reveals an understatement of Gross Sales, you must immediately pay to us any Royalty, Advertising Obligation or other amounts owed, plus interest (and a late fee at our discretion) as provided in Section 6.6. If an inspection or audit is made necessary by your failure to provide reports or supporting records as required under this Agreement, or to provide such reports or records on a timely basis, or if the audit or inspection reveals an understatement of Gross Sales of greater than 2% for the audit period, you must reimburse us for the full cost of the inspection or audit, including travel, lodging, meals and wages of our representatives and the reasonable charges of any attorneys or independent accountants we use for the inspection or audit and, upon our request, you must thereafter provide us with periodic audited financial statements. The remedies set forth in this Section are in addition to any other remedies and rights available to us under this Agreement or applicable law.

**7.5 Ownership of Data.** You agree that all data that you collect from customers or others in connection with the Franchised Restaurant, including customer lists, is deemed to be owned by us. You have the right to use the customer data while this Agreement or a Successor Franchise Agreement is in effect, but only in accordance with any privacy policy that we may establish from time to time.

**7.6 Data Protection.** You agree to:

**7.6.1** Comply with the provisions of all applicable laws, regulations and best practices relating to privacy and data protection ("Data Protection Laws") in the use and processing of any personal data, including customer contact information (such as name, telephone numbers, e-mail and postal addresses), and transactional information collected by you from customers and prospective customers of the Franchised Restaurant ("Customer Personal Data").

**7.6.2** Refrain from otherwise modifying, amending or altering the contents of the Customer Personal Data or disclosing or permitting the disclosure of any of the Customer Personal Data to any third party unless required by applicable law or specifically authorized in writing by us.

**7.6.3** Implement and maintain throughout the Term appropriate technical and organizational measures to protect Customer Personal Data against an unauthorized or unlawful processing, access or use and/or accidental loss, destruction, damage, alteration or disclosure ("Data Breach").

**7.6.4** Promptly notify us in writing if you suspect there has been a Data Breach, in which event you will do all such acts and things (at your own expense) as we may require in order to remedy or mitigate the effects of the Data Breach.

**7.6.5** Promptly notify us of any complaint, communication or request relating to the Applicable Data Protection Laws.

## **8 BRAND FUND AND MARKETING**

**8.1 Grand Opening Plan.** You must conduct initial marketing for the Franchised Restaurant in accordance with a grand opening plan that you have prepared and to which we have consented ("Grand Opening Plan"). Under the Grand Opening Plan, you will be required to spend a minimum of \$15,000 on grand opening activities over the period beginning one month prior to opening and continuing through the second month after opening. Within 10 days after the end of the period in which you conduct this initial marketing, you must submit appropriate documentation to verify compliance with the grand opening expenditure obligation. As part of your Grand Opening Plan spending, provided you use our prototypes, we will provide website, menu and other design services (as we deem appropriate) for which you will pay us \$5,000 of the amount you are required to spend. If you do not use our prototypes, we may charge you an additional fee.

**8.2 Contributions/Expenditures.** During the Term, you will have a Fiscal Period Advertising Obligation as set forth in Exhibit C. Following written notice to you, we may modify the amount and allocation of the Advertising Obligation subject to the provisions of Section 8.6. The portion of the Advertising Obligation allocated to a Brand Fund or a Regional Advertising Fund (as those terms are defined in this Section 8) will be paid at the same time and in the same manner as the Royalty.

### **8.3 Brand Fund.**

**8.3.1** We have established a brand fund ("Brand Fund") to which you must contribute in the amount set forth in Exhibit C, as subsequently modified by us. We may use the Brand Fund Contributions and any earnings of the Brand Fund for any costs associated with advertising, marketing, public relations, promotional programs and materials (which may be national or regional in scope) and/or any other activities that we believe would benefit the System, including the following: advertising campaigns in various media; point-of-purchase materials; review of locally-produced ads; free standing inserts; brochures; purchasing and/or developing promotional materials; market research, including secret shoppers; sponsorships; design and maintenance of a web site; celebrity endorsements; trade shows; association dues; search engine optimization costs; establishment of a third party facility for customizing local advertising; accounting costs; and holding an annual franchise convention. We will not use the Brand Fund for any activity whose sole purpose is the marketing of franchises; however, you acknowledge that the Wahlburgers web site, public relations activities, community involvement activities and other activities that may be supported by the Brand Fund may contain information about franchising opportunities. We have the right to direct all programs supported by the Brand Fund, with final discretion over creative concepts, the materials and media used in the programs and their placement. We do not guarantee that you will benefit from the Brand Fund in proportion to your contributions to the Brand Fund. You agree to participate in all advertising, marketing, promotions, research, public relations and other programs instituted by the Brand Fund.

**8.3.2** Wahlburgers Restaurants operated by us and/or our affiliates will contribute to the Brand Fund on the same basis as comparable franchisees. If we reduce the Brand Fund Contribution for franchisees, we will have the right to reduce the required contribution for applicable Wahlburgers Restaurants operated by us or our affiliates by the same amount.

**8.3.3** We will not use any contributions to the Brand Fund to defray any of our general operating expenses, except for reasonable administrative costs and overhead that we incur in activities reasonably related to the administration of the Brand Fund or the management of Brand Fund-supported programs (including salaries of our personnel who devote time to Brand Fund activities). We will separately account for the Brand Fund, but we do not need to segregate Brand Fund monies from our other monies.

**8.3.4** Any point-of-sale materials produced with Brand Fund monies will be made available to you at a reasonable cost, and the proceeds of such sales will be credited to the Brand Fund. We are not required to have an independent audit of the Brand Fund completed. We may spend in any fiscal year an amount greater or less than the aggregate contribution of all Wahlburgers Restaurants to the Brand Fund during that year or cause the Brand Fund to invest any surplus for its future use or distribute any surplus to then-current franchisees who contributed to the Brand Fund and restaurants operated by us or our affiliates. (The Brand Fund will reimburse us for any monies advanced by us.) We will make available an unaudited statement of contributions and expenditures for the Brand Fund no sooner than 90 days after the close of our fiscal year to franchisees who make a written request for a copy.

**8.3.5** We may terminate and subsequently restart the Brand Fund. On termination, we may spend the remaining monies in accordance with Section 8.3.1 or return the monies to the restaurants that contributed to the Brand Fund on a pro rata basis.

## **8.4 Regional Advertising Fund.**

**8.4.1** We have the right, in our sole discretion, to establish one or more regional advertising funds for Wahlburgers Restaurants (“Regional Advertising Funds”). If a Regional Advertising Fund is established for a geographical area that includes the Franchised Location, you must contribute to that Regional Advertising Fund in the amount set forth in Exhibit C, as may be subsequently modified by us. Wahlburgers Restaurants operated by us or our affiliates in an area covered by a Regional Advertising Fund will contribute to the Regional Advertising Fund on the same basis as comparable franchisees.

**8.4.2** We or our designee will direct all advertising, marketing, and public relations programs and activities financed by the Regional Advertising Fund, with sole discretion over the creative concepts, materials and endorsements used in those programs and activities, and the geographic, market and media placement and allocation of advertising and marketing materials. You agree that the Regional Advertising Fund may be used to pay the costs of preparing and producing such associated materials and programs as we or our designee may determine, including video, audio and written advertising materials; employing advertising agencies; sponsorship of sporting, charitable or similar events; administering regional and multi-regional advertising programs, including, without limitation, purchasing direct mail and other media advertising and employing advertising agencies to assist with these efforts; and supporting public relations, market research and other advertising, promotional and marketing activities. You agree to participate in all advertising, marketing, promotions, research, public relations and other programs instituted by the Regional Advertising Fund.

**8.4.3** We will separately account for each Regional Advertising Fund, but we do not need to segregate any Regional Advertising Fund monies from our other monies. We are not required to have an independent audit of the Regional Advertising Fund completed. We may spend in any fiscal year an amount greater or less than the aggregate contribution of all applicable Wahlburgers Restaurants to a particular Regional Advertising Fund during that year or cause the Regional Advertising Fund to invest any surplus for its future use or distribute any surplus to then-current franchisees who contributed to the Regional Advertising Fund and restaurants operated by us or our affiliates. (A Regional Advertising Fund will reimburse us for any monies advanced by us.) If we spend in any fiscal year an amount greater than the aggregate contribution of Wahlburgers Restaurants to a Regional Advertising Fund, we may advance monies to the Fund and be reimbursed from contributions made in the next fiscal year. We will make available an unaudited statement of contributions and expenditures for a Regional Advertising Fund no sooner than 90 days after the close of our fiscal year to franchisees who contribute to that Regional Advertising Fund and who make a written request for a copy.

**8.4.4** We may terminate and subsequently restart any Regional Advertising Fund. On termination, we may spend the remaining monies in accordance with Section 8.4.2 or return the monies to the restaurants that contributed to that Regional Advertising Fund on a pro rata basis.

## **8.5 Local Marketing.**

**8.5.1** You will spend, at a minimum, that portion of the Advertising Obligation not otherwise spent or contributed pursuant to this Section 8 for local marketing in authorized advertising media and for authorized advertising expenditures. We or our designee periodically will advise you of the authorized advertising media and authorized advertising expenditures.

**8.5.2** You agree to conduct all marketing in a dignified manner and in accordance with the standards and requirements we specify periodically. You agree that all advertising and

promotional materials must bear the Proprietary Marks in the form, color, location and manner that we prescribe. We will have the final decision on all creative development of advertising and promotional messages. You also agree that we own all advertising and promotional materials developed by you, and you will take all actions we specify to vest ownership in us.

**8.5.3** You must submit to us in writing for our prior acceptance all sales promotion materials and advertising that have not been prepared, or previously accepted, by us and identify the proposed media in which you propose to place the advertising. If our written consent to the material and its proposed placement is not received within 10 days after the date that we received the material, the material may not be used. In no event will your advertising or marketing materials contain any statement or material that, in our sole discretion, may be considered: **(a)** in bad taste or offensive to the public or to any group of persons; **(b)** defamatory of any person or an attack on any competitor; **(c)** to infringe upon the use, without permission, of any other persons' trade name, trademark, service mark or identification; **(d)** inconsistent with the public image of the System or the Proprietary Marks; or **(e)** not in accordance with any federal or state law. We reserve the right to require you to discontinue the use of any advertising or marketing materials.

**8.6 Changes in the Advertising Obligation.** We have the right, following written notice to you, to reallocate the Advertising Obligation and to increase the Advertising Obligation as provided in Section 6.3; however, if we establish a Regional Advertising Fund that covers the Franchised Location, we will not thereafter increase the Advertising Obligation by more than ½% of Gross Sales in any 24-month period.

**8.7 Point of Sale Materials.** If we develop any point-of-sale materials (other than through the use of Brand Fund monies), we may offer to sell those to you at our cost.

**8.8 Social Media.** You agree not to promote, offer or sell any products or services relating to the Franchised Restaurant through, or use any of the Proprietary Marks in, any form of electronic communications, including Internet web sites, social networking sites, applications or other future technological avenues that enable users to create and share content or to participate in social networking (collectively, "Social Media"), without our prior written consent, which we may withhold for any or no reason. You must, at all times, comply with our Social Media policy, as modified periodically. You expressly acknowledge and agree that your use of any Social Media relating to the Franchised Restaurant is subject to our prior written approval. You may not establish an independent site or page on any Social Media. If we authorize you to have and/or design a site or a page on any Social Media for the Franchised Restaurant, your site and page may only be accessed from our site or page, and we may prohibit links between your site or page and any other site. You acknowledge that any use of Social Media by you with respect to the Franchised Restaurant constitutes advertising and promotion subject to this Section 8, and you agree to comply with any additional policies and standards we issue from time to time with respect to Social Media. You acknowledge that any copyright in your sites or pages on any Social Media will be deemed to be owned by us, and you agree to sign any documents that we reasonably deem necessary to affirm our ownership of the copyright. If necessary, you must ensure cooperation with us by any web site service provider or web site hosting company with which you do business. You represent that you have or will have the lawful right to use any proprietary materials of others that appear on your sites or pages on Social Media. We periodically may provide to you content for your sites and pages on Social Media, including copy, news stories and photographs. We must consent to any changes to your sites and pages on Social Media.

**8.9 Public and Media Relations.** You agree that you will not issue any press or other media releases or other communications without our prior consent. As a franchisee of the System,

you agree to only participate in internal and external communications activities that create goodwill, enhance our public image and build the Wahlburgers brand.

## **9 TRAINING**

### **9.1 Initial Training Program.**

**9.1.1** Before the Franchised Restaurant opens for business, you (or your Operating Principal and, if applicable, your Multi-Unit Manager), the Franchised Restaurant's general manager, and at least 3 other managerial personnel whom we designate must attend, and become certified in, the Initial Training Program ("ITP"). We will provide the ITP at a Wahlburgers Restaurant operated by us or our affiliates and/or at our designated training facilities until you have established a training facility as required by Section 9.3. We will not authorize the Franchised Restaurant to open until those employees whom we designate have attended and successfully completed (as determined by us in our sole discretion) the ITP.

**9.1.2** Upon our request, as a prerequisite to the ITP, attendees must successfully complete (as determined by us in our sole discretion), at your cost, a ServSafe food safety training and certification program administered by the National Restaurant Association Educational Foundation.

**9.1.3** You must pay all salaries, benefits, travel, living and other expenses incurred by you and your employees while attending the training. We have the right to dismiss from the ITP any person whom we believe will not perform acceptably in the position for which he/she has been hired, and you must provide a suitable replacement within 30 days of dismissal. In such event, we have no obligation to extend the Opening Date. Additional employees who desire to attend the ITP may do so, subject to space availability and your payment of a training fee as determined by us.

**9.1.4** If you (or your Operating Principal and/or, if applicable, your Multi-Unit Manager) fail to complete the ITP to our satisfaction, we may terminate this Agreement pursuant to Section 19.1.1 or permit you (or your Operating Principal and/or, if applicable, your Multi-Unit Manager) to repeat the ITP at the next available scheduled training session; however, we will have no obligation to extend the Opening Date. We may charge a fee as determined by us if you (or your Operating Principal and/or, if applicable, your Multi-Unit Manager) are required to repeat the ITP.

### **9.2 Ongoing Training; Training of Replacement Personnel.**

**9.2.1** We may require you (or your Operating Principal and, if applicable, your Multi-Unit Manager), your managerial personnel, training personnel and/or other previously trained and experienced staff members to attend and complete satisfactorily various training courses that we periodically choose to provide at the times and locations that we designate, as well as periodic conventions, regional meetings, and conferences that we specify. We may charge a fee as determined by us for these courses. You will be required to pay all salaries, benefits, travel, living and other expenses incurred by you and your employees during all training courses and programs.

**9.2.2** We require that, subject to space availability, your replacement managerial and training personnel satisfactorily complete our training programs within the time period required by the Manual after being designated as managerial or training personnel. We may charge a fee for these training programs as determined by us.

**9.2.3** You understand and agree that any specific ongoing training or advice we provide does not create an obligation (whether by course of dealing or otherwise) to continue to provide such specific training or advice, all of which we may discontinue and modify from time to time.

**9.3 Certification of Your Training Facility.** You will establish a training facility (which may be the Franchised Restaurant) at which the ITP will be offered ("Training Facility"). We, in our sole discretion, will provide the assistance that we consider to be reasonably necessary to assist you in establishing the Training Facility. The Training Facility must be certified by us before you commence any training at the Training Facility, and we may periodically visit and evaluate the Training Facility and your trainers to ensure that they continue to meet our standards. We may revoke our certification of the Training Facility if the Training Facility or your trainers cease to meet our standards. We may charge a fee in connection with the initial certification and periodic reevaluation of the Training Facility. In addition, you must reimburse us for all travel, living, food and other expenses incurred while traveling to and from, and visiting, the Training Facility as we require. Following our certification, you will train all persons who must complete the ITP at the Training Facility unless we advise you otherwise or our certification is revoked.

**9.4 Training Materials and Methods.** All training materials that we provide to you remain our property. We have the right to provide training programs in person, on DVD, via the Internet and/or an Intranet, in printed or other electronic format or by other means, as we determine.

## **10 ADDITIONAL SERVICES OFFERED BY US**

**10.1 Pre-Opening Assistance.** We may provide consultation and advice to you, as we deem appropriate, with regard to construction or renovation and operation of the Franchised Restaurant, building layout, furnishings, fixtures and equipment plans and specifications, employee selection and training, purchasing and inventory control and those other matters that we deem appropriate.

**10.2 Opening Assistance.** If the Franchised Restaurant is one of the first 2 Wahlburgers Restaurants developed and opened by you or your affiliates, we may, in our sole discretion, provide assistance in opening the Franchised Restaurant and in training your employees as we deem appropriate in light of your needs and the availability of our personnel. If we elect to provide on-site assistance beyond your first 2 Wahlburgers Restaurants, we have the right to charge you a fee for the opening training support team as determined by us, and you must pay all travel, living and other expenses incurred by our training personnel and representatives while providing this assistance. In addition, if we determine that you require opening assistance for the Franchised Restaurant beyond that which we deem reasonable, we reserve the right to charge you a fee for that additional assistance.

**10.3 Post-Opening Assistance.** We periodically, as we deem appropriate, will advise and consult with you regarding the operation of the Franchised Restaurant. We, as we believe appropriate, will make available to you information regarding the System and new developments, techniques and improvements in the areas of restaurant design, operations, management, menu-development, sales and customer service, marketing and other areas. We may provide these services through visits by our representatives to the Franchised Restaurant or your offices (although we are not obligated to make any visits), the distribution of printed or filmed material, an Intranet or other electronic format, meetings or seminars, training programs, telephone communications or other forms of communications.

## 11 MANUAL

**11.1** We will furnish you with one copy of, or provide electronic access to, the Manual, on loan, for as long as this Agreement or, if applicable, a Successor Franchise Agreement remains in effect. (As used in this Agreement, the term "Manual" also includes all written and electronic correspondence from us regarding the System, other publications, materials, drawings, memoranda, videotapes, CDs, DVDs, audio tapes, and electronic media that we from time to time may provide to you.) The Manual contains detailed standards, specifications, instructions, forms, reports and procedures for management and operation of the Franchised Restaurant. We reserve the right to furnish all or part of the Manual to you in electronic form or online (including via an Intranet) and establish terms of use for access to any restricted portion of our web site.

**11.2** You acknowledge that we own the copyright in the Manual and that all copies of the Manual in your possession remain our property. You agree to treat the Manual, training materials and any other manuals or materials created or authorized by us for use with the System as secret and confidential. You agree not to copy, duplicate, record or otherwise reproduce the Manual or other materials provided by us, in whole or in part. In addition, you agree not to make any confidential information or materials supplied by us available to any unauthorized person without our prior written consent.

**11.3** We periodically may amend the Manual by letter, email, bulletin, DVD, CD, videotape, audio tapes, software or other forms of communication. We also reserve the right to replace the entire Manual with an updated version at our sole discretion. You agree to keep your copy of the Manual up-to-date to acquire all equipment and related services to do so and to comply with each new or changed standard promptly upon receipt of notice from us. If a dispute relating to the contents of the Manual develops, our copy of the Manual maintained at our principal office controls. You agree to operate the Franchised Restaurant at all times in strict conformity with the Manual.

## 12 OPERATIONS

**12.1 Compliance with Standards.** In recognition of the mutual benefits that come from maintaining the System's reputation for quality, you agree to comply with all mandatory specifications and procedures set forth periodically in the Manual or otherwise in writing. You acknowledge that the appearance, Trade Dress, services and operation of the Franchised Restaurant are important to us and all Wahlburgers franchisees.

**12.2 System Modifications.** We, in our sole discretion, may periodically change the System, including modifications to the Manual, the menu, the required equipment, the signage, the Proprietary Marks and the Trade Dress. You must accept, use or display in the Franchised Restaurant any such System changes and make such expenditures as the System changes require. We also have the right to vary System standards in particular instances as we deem appropriate in our reasonable judgment.

**12.3 Authorized Products and Services.** You may offer for sale and sell in the Franchised Restaurant only the products (including, but not limited to, Branded Merchandise), services and brands that we have designated in the Manual or otherwise in writing. You must offer all items that we designate as mandatory for the service format utilized in your Franchised Restaurant. We may also designate some items as optional. We may change the mandatory and optional menu items, recipes, ingredients and other products and services in our sole discretion. We may require that you sell certain brands and prohibit you from selling other brands. You may sell products only in the varieties, weights, sizes, forms and packages that we have designated.

You must use only authorized ingredients and follow our recipes in the preparation of menu items. You may not use the Franchised Location for the sale or display of items not authorized by us. Within 15 days after we provide written notice to you, you must begin selling any newly authorized menu items (or using any newly authorized ingredients) or Branded Merchandise and cease selling any menu item or Branded Merchandise that is no longer authorized (or using any ingredient that is no longer authorized); however, if the discontinued menu item or ingredient could pose a hazard to the public or prove detrimental to the system, you must cease selling or using that item or ingredient immediately. All food and beverages authorized for sale at the Franchised Restaurant must be offered for sale under the name that we specify. The design of the menu used in the Franchised Restaurant must conform with our specifications and be approved by us in writing. We periodically will provide you suggested retail prices for the products and services offered at the Franchised Restaurant and, to the extent permitted by applicable law, we may require that you adhere to our suggested prices, including maximum prices. If you have a suggestion for a new menu item or ingredient (or for a change to an authorized menu item or ingredient) or new Branded Merchandise or you wish to participate in a test market program, you must notify us before you implement any such change or commence any such program. You may not add or modify any menu item or participate in a test market program without first obtaining our prior written approval.

**12.4 Market Research and Testing.** We may periodically conduct market research and testing to determine consumer trends and the salability of new food products and services. You must cooperate with us in connection with the conduct of such test marketing programs at your own expense and you must comply with our procedures that we establish from time to time in connection such programs as set forth in the Manual, including your obligation to keep appropriate records and report their results to us.

**12.5 Your Development of System Improvements.** If you develop any new concepts, processes or improvements (including new menu items or ingredients) relating to the System or any other development or material relating to the System, you must promptly notify us and provide us with all information regarding the new concept, process, improvement, development or material, all of which will become our property and may be incorporated into the System without any payment to you. You, at your expense, promptly must take all actions deemed necessary or desirable by us to vest in us ownership of such concepts, processes or improvements.

## **12.6 Sourcing of Products and Services.**

**12.6.1** We have the right to require that all food and non-food products (including, but not limited to, Branded Merchandise), supplies, equipment and services that you purchase for use, sale or resale in the Franchised Restaurant: **(a)** meet specifications that we establish from time to time; **(b)** be purchased only from suppliers to whom we have consented (which may include us and/or our affiliates); and/or **(c)** be purchased only from a single source or from a limited number of designated sources (which may include us and/or our affiliates). To the extent that we establish specifications, require our consent to suppliers or designate specific suppliers for particular items, we will publish our requirements in the Manual or otherwise in writing. We have developed and may continue to develop certain proprietary food products that will be prepared by or for us according to our proprietary special recipes and formulas, and you agree to purchase those food products developed by us pursuant to a special recipe or formula only from us, our affiliates or a third party designated and licensed by us to prepare and sell such products. We may create purchasing restrictions to control the quality and selection, and ensure the consistency, of menu items, ingredients, Branded Merchandise and other merchandise; to consolidate System purchases to reduce costs or ensure availability of products; or for other valid business reasons.

**12.6.2** You may not engage in “grey market” activities, in which you take advantage of any group purchasing arrangements for Wahlburgers Restaurants to purchase products that you then resell to purchasers outside of the System or use in a business outside of the System.

**12.6.3** We and our affiliates may earn income on sales of products (including, but not limited to, Branded Merchandise), ingredients and/or supplies to you. If we or our affiliates receive any rebates, commissions or other payments from third-party suppliers based on your purchases from them, we may retain the rebates, commissions or other payments. You agree that we are entitled to such income and consideration.

**12.6.4** Branded Merchandise must be purchased from us or a source designated by us. If you would like to purchase other products or services from a supplier who we have not consented to, you must submit a written request for consent. We have the right to inspect the proposed supplier’s facilities and test samples of the proposed products. You agree to pay to us a reasonable fee, not to exceed the actual cost of the inspection and testing the proposed product or evaluating the proposed supplier, including personnel and travel costs, whether or not the product or supplier is accepted. We have the right to grant, deny or revoke consent to products, services and suppliers in our sole discretion. We will notify you of our decision as soon as practicable following our evaluation. We reserve the right to reinspect the facilities and products of any accepted supplier and revoke acceptance upon the supplier’s failure to meet any of our then-current criteria.

**12.7 Upkeep of the Franchised Restaurant.** You must maintain the interior and exterior of the Franchised Restaurant and all fixtures, furnishings, signs and equipment in first-class condition and in the highest degree of cleanliness, orderliness, sanitation and repair in accordance with the requirements of the System and the Manual and the lease or sublease for the Franchised Location (if applicable). Expenditures in connection with signage (including point of sale, exterior and interior signage) and equipment (including equipment needed to prepare new menu items) are considered a maintenance expenditure (whether for repair or replacement) under this Section rather than a remodeling expenditure under Section 12.8. There is no limitation on the amount that you may be required to spend for repairs and maintenance. You may not make any alteration, addition, replacement or improvement in, or to, the interior or exterior of the Franchised Restaurant without our prior written consent.

**12.8 Remodeling.** In addition to ordinary maintenance and upkeep, we have the right to require you to undertake structural changes, remodeling and renovations and other modifications to the Franchised Restaurant to conform to the design, Trade Dress, color schemes and presentation of the Proprietary Marks that we are then requiring of new Wahlburgers Restaurants. You must undertake such a remodel of the Franchised Restaurant no later than 5 years after you last remodeled or 5 years after the Opening Date if you have not yet remodeled.

**12.9 Maximum Operation of the Franchised Restaurant.**

**12.9.1** During the Term, you must use the Franchised Location solely for the operation of the Franchised Restaurant and maintain sufficient inventories, adequately staff each shift with qualified employees and continuously operate the Franchised Restaurant at its maximum capacity and efficiency for the minimum number of days and hours set forth in the Manual or as we otherwise specify in writing (subject to the requirements of local laws and licensing requirements).

**12.9.2** You must immediately resolve any customer complaints regarding the quality of food or beverages, service and/or cleanliness of the Franchised Restaurant or any similar complaints. When any customer complaints cannot be immediately resolved, you must use your

best efforts to resolve the customer complaints as soon as practical and, whenever feasible, give the customer the benefit of the doubt. If we, in our sole discretion, determine that our intervention is necessary or desirable to protect the System or the goodwill associated with the System, or if we, in our sole discretion, believe that you have failed adequately to address or resolve any customer complaints, we may, without your consent, resolve any complaints and charge you an amount sufficient to cover our reasonable costs and expenses in resolving the customer complaints, which amount you must pay to us immediately on demand.

**12.10 Employees.** You have sole responsibility for all employment decisions and functions related to the Franchised Restaurant, including hiring, firing, compensation, benefits, work hours, work rules, training, recordkeeping, supervision and discipline of employees. You must enforce all dress and appearance standards for employees that we may establish. We may, from time to time, based upon our experience, provide you guidance in human resource matters such as hiring and scheduling. This guidance is provided as a resource only, and you will be entirely free to not adopt our suggestions, in your sole discretion. You must maintain a competent, conscientious, trained staff with enough members to operate the Franchised Restaurant in compliance with our standards. You must verify that your employees meet all state and local requirements for certification and meet all prerequisites for employment in the United States.

### **12.11 Management Supervision.**

**12.11.1** The Franchised Restaurant must at all times be under the personal, on-premises supervision of the Operating Principal (or, if applicable, the Multi-Unit Manager), a general manager or an assistant manager. At all times that the Franchised Restaurant is open for business, at least one person must be on site who has been trained in ServSafe as required by Section 9.1.2 and completed any other locally-required safety or health training.

**12.11.2** The Franchised Restaurant must employ 1 general manager and at least 3 assistant managers each of whom have met our training requirements for their position. Prior to participation in the ITP, you must provide us that information we request regarding your initial (and any subsequent) general manager, who must be accepted by us before he can assume that position and who must devote full-time and best efforts to supervising the operation of the Franchised Restaurant. You must also provide to us, prior to participation in the ITP, that information we request regarding your initial (and all subsequent) assistant managers, each of whom must be accepted by us before he can assume that position.

**12.11.3** You must appoint an individual to serve as your Operating Principal. The Operating Principal: **(a)** must be accepted by us, **(b)** must be a 10% Owner; and **(c)** unless you have named, and we have approved, a Multi-Unit Manager for the geographic market in which the Franchised Restaurant is located in accordance with Section 12.11.4, **(1)** must live within a reasonable driving distance of the Franchised Restaurant, and **(2)** must devote full-time and best efforts to supervising the operation of the Franchised Restaurant and other Wahlburgers Restaurants that you operate.

Regardless of whether a Multi-Unit Manager is designated for the geographic area in which the Franchised Restaurant is located in accordance with Section 12.11.4, the Operating Principal must remain active in overseeing the operations of the Franchised Restaurant, including without limitation, regular, periodic visits to the Franchised Restaurant and sufficient communications with us to ensure that the Franchised Restaurant's operations comply with the operating standards as promulgated by us from time to time in the Manual or otherwise in written or oral communications. The Operating Principal as of the Effective Date is identified in Exhibit A. The Operating Principal must complete the ITP, have authority over all business decisions related to the Franchised

Restaurant and have the authority to bind you in your dealings with us. We will provide all services to, and communicate primarily with, the Operating Principal.

You must obtain our prior written consent before you change the Operating Principal. If the Operating Principal no longer qualifies as such, you must designate another qualified person to act as the Operating Principal within 30 days after the date the prior Operating Principal ceases to be qualified. We will advise you whether we have consented to the new Operating Principal within a reasonable time after receipt of your notice. If we do not consent, you will have 15 days from your receipt of our decision to designate another person to act as Operating Principal who satisfies the preceding qualifications.

**12.11.4** If the Operating Principal fails to satisfy the requirements of Section 12.11.3(c) with respect to the Franchised Restaurant, you also must appoint an individual to serve as your Multi-Unit Manager. The Multi-Unit Manager will be under the supervision of the Operating Principal. The Multi-Unit Manager must be accepted by us, must live within a reasonable driving distance of the Franchised Restaurant and must devote full-time and best efforts to supervising the development and operation of Wahlburgers Restaurants in that geographic market. If applicable, your Multi-Unit Manager is identified in Exhibit A. The Multi-Unit Manager must complete the ITP. You must obtain our prior written consent before you change the Multi-Unit Manager. If the Multi-Unit Manager no longer qualifies as such, you must designate another qualified person to act as your Multi-Unit Manager within 30 days after the date that the prior Multi-Unit Manager ceases to be qualified. We will advise you whether we have consented to the new Multi-Unit Manager within a reasonable time after receipt of your notice. If we do not consent, you will have 15 days from your receipt of our decision to designate another person to act as the Multi-Unit Manager who satisfies the preceding conditions.

**12.12 Insurance.** You must maintain in full force and effect that insurance which you determine to be necessary, which must include at least the types of insurance and the minimum policy limits specified in the Manual or otherwise in writing. Each insurance policy must be written by an insurance company that maintains an “A+” or better rating by the latest edition of Best’s Insurance Rating Service (or another rating service designated by us). The insurance policy or policies must be in effect when you take possession of the Franchised Location. The insurance policy or policies must protect you, us and our respective past, present and future officers, directors, managers, members, owners, employees, representatives, consultants, attorneys and agents. We and any entity with an insurable interest designated by us must be named as additional insureds in the policy or policies (statutory policies excepted). Each policy must include a waiver of subrogation in our favor. We may require additional types of coverage or increase the required minimum amount of coverage upon reasonable notice. Your obligation to obtain coverage is not limited in any way by insurance that we maintain. You must provide us with certificates of insurance evidencing the required coverage and proof of payment therefor no later than the date you sign this Agreement. The evidence of insurance must include a statement by the insurer that the policy or policies will not be canceled or materially altered without at least 30 days’ prior written notice to us. If you fail to obtain and maintain insurance coverage as required by this Agreement, we have the right, but not the obligation, to obtain the required insurance on your behalf and to charge you for the cost of the insurance, plus a reasonable fee for our services in procuring the insurance.

**12.13 Inspections.** We and our designees have the right, but not the obligation, at any time during normal business hours to: **(a)** conduct inspections of (and photograph and record) the Franchised Location and the Franchised Restaurant; **(b)** interview your employees, suppliers and customers; and **(c)** review your business records, including those maintained electronically or off-premises. We can initiate these actions (collectively, “QA Audits”) with or without prior notice to

you, except that prior notice is required for a financial examination or audit as provided in Section 7.4. You must cooperate by giving our representatives unrestricted access and rendering such assistance as they may reasonably request. If we notify you of any deficiencies after a QA Audit, you must promptly take steps to correct them. If you fail to obtain a passing score on any QA Audit, you will reimburse us for all costs and expenses incurred in connection with the next QA Audit.

You agree to 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) an 800 number, secret shoppers or other programs as we may require. We will share the results of these programs, as they pertain to the Franchised Restaurant, with you. You will reimburse us for all costs related to the Franchised Restaurant associated with any and all of these programs.

#### **12.14 Taxes.**

**12.14.1** You must promptly pay when due all taxes levied or assessed (including, without limitation, unemployment and sales taxes) and all accounts and other indebtedness of every kind incurred by you in the conduct of the Franchised Restaurant under this Agreement. If any taxes, fees or assessments are imposed on us by reason of our acting as franchisor or licensing the Proprietary Marks, you must reimburse us the amount of those taxes, fees or assessments within 30 days after receipt of an invoice from us.

**12.14.2** In the event of any bona fide dispute as to your liability for taxes assessed or other indebtedness, you may contest the validity or the amount of the tax or indebtedness in accordance with procedures of the taxing authority or applicable law; however, in no event will you permit a tax sale or seizure by levy of execution or similar writ or warrant, or attachment by a creditor, to occur against the Franchised Restaurant and/or the Franchised Location (or any improvements thereon).

**12.15 Compliance with Laws and Good Business Practices.** You must secure and maintain in force in your name all required licenses, permits and certificates relating to the operation of the Franchised Restaurant, including, but not limited to, liquor licenses. You must operate the Franchised Restaurant in full compliance with all applicable laws, ordinances and regulations, including those governing or relating to the handling of food products, immigration and discrimination, occupational hazards and health insurance, employment laws, including workers' compensation insurance, unemployment insurance and the withholding and payment of federal and state income taxes, social security taxes and sales taxes. You must notify us, in writing, within 5 days after: **(a)** the commencement of any proceeding or the issuance of any decree of any court or government agency that may adversely affect the operation or financial condition of you or the Franchised Restaurant; or **(b)** receiving any notice of violation of any law, ordinance or regulation relating to health or sanitation at the Franchised Restaurant. In your dealings with customers, suppliers and the public, you will adhere to the highest standards of honesty, integrity, fair dealing and ethical conduct and you will refrain from any business or advertising practice that may harm the goodwill associated with the Proprietary Marks or the System.

**12.16 Adoption of Quality and Assurance Programs.** You must adopt, at your expense, those customer quality and assurance programs that we specify, including, but not limited to, participation in programs associated with guest satisfaction.

**12.17 Non-Cash Payment Systems.** You must accept debit cards, credit cards, stored value gift cards or other non-cash payment systems specified by us to enable customers to purchase authorized products and you must obtain all necessary hardware and/or software used in

connection with these non-cash payment systems. You will reimburse us for all costs associated with such non-cash payment systems as they pertain to the Franchised Restaurant.

**12.18 Amusement Equipment.** You will not permit at the Franchised Restaurant any juke box, vending or game machine, gum machine, game, ride, gambling or lottery device, coin or token operated machine, or any other music, film or video device not authorized by us.

### **13 PROPRIETARY MARKS AND TRADE DRESS**

**13.1 Limited Right to Use.** Your right to use the Proprietary Marks and Trade Dress applies only to the Franchised Restaurant operated at the Franchised Location as expressly provided in this Agreement. We will provide you guidelines for the use of the Proprietary Marks and Trade Dress. Both during and after the Term, you agree not to directly or indirectly contest or aid in contesting the validity of our rights and/or our affiliates' rights in the Proprietary Marks or take any action detrimental to our rights in the Proprietary Marks and Trade Dress.

**13.2 Acknowledgments.** You acknowledge that: **(a)** the Proprietary Marks are valid and serve to identify our products, services and Wahlburgers Restaurants; **(b)** your use of the Proprietary Marks and Trade Dress under this Agreement does not give you any ownership interest in them; and **(c)** all goodwill associated with the Proprietary Marks and Trade Dress inures exclusively to our benefit and is our property. Upon the expiration or termination of the Term, no monetary amount will be attributable to goodwill associated with your activities as a franchisee under this Agreement.

**13.3 Specific Restrictions on Use.** You agree:

**13.3.1** To use only the Proprietary Marks and Trade Dress that we designate, and only in the manner we authorize.

**13.3.2** To use the Proprietary Marks and Trade Dress only for the operation of the Franchised Restaurant at the Franchised Location and in authorized advertising for the Franchised Restaurant.

**13.3.3** To operate and advertise the Franchised Restaurant only under the name "Wahlburgers" without prefix or suffix.

**13.3.4** To display the Proprietary Marks in the Franchised Restaurant, on the Franchised Location, and on brochures and other printed materials, employee uniforms and vehicles only in the manner that we authorize.

**13.3.5** Not to use the Proprietary Marks or any names confusingly similar to the Proprietary Marks as part of your entity or legal name.

**13.3.6** To permit our representatives to inspect your operations to verify that you are properly using the Proprietary Marks and Trade Dress.

**13.3.7** To use the Proprietary Marks to promote and to offer for sale only the products and services that we have authorized, and not use any of the Proprietary Marks or Trade Dress in association with any other products, materials or services.

**13.3.8** Not to use or permit the use of the Proprietary Marks or any names confusingly similar to the Proprietary Marks as part of any Internet domain name or e-mail address or in the operation of any Internet web site without our prior written consent.

**13.3.9** Not to use the Proprietary Marks to incur any obligation or indebtedness on our behalf.

**13.3.10** To ensure that the Proprietary Marks bear the “®”, “™”, or “SM” symbol, as we prescribe from time to time.

**13.4 Changes to the Proprietary Marks.** We have the absolute right to change, discontinue, or substitute for any of the Proprietary Marks and to adopt new Proprietary Marks for use with the System without any liability for any impact to the System. You agree to implement any such change at your own expense, regardless of the reason for the change, within the time that we reasonably specify.

**13.5 Third-Party Challenges.** You agree to notify us promptly of any unauthorized use of the Proprietary Marks or Trade Dress that you suspect or of which you have knowledge. You also agree to inform us promptly of any challenge by any person or entity to the validity of, our ownership of, or our right to license others to use, any of the Proprietary Marks or Trade Dress. You acknowledge and agree that we have the right, but not the obligation, to initiate, direct and control any litigation or administrative proceeding relating to the Proprietary Marks or Trade Dress, including, but not limited to, any settlement. You agree to sign all documents and render any other assistance we may deem necessary to the defense or prosecution of any such proceeding.

## **14 YOUR ORGANIZATION**

### **14.1 Governing Documents.**

**14.1.1** If you are (or Transfer your interests in this Agreement to) a business entity, during the Term, your (or the transferee’s) governing documents must provide that your (or its) activities are limited exclusively to the development and operation of the Franchised Restaurant and other restaurants operated by you that are franchised by us and that no Transfer (as defined in Section 16) of an ownership interest may be made except in accordance with Section 16. Any stock or other ownership certificates that you issue must bear a conspicuous printed legend to that effect.

**14.1.2** You represent that you have furnished us with a list of all holders of direct or indirect equity interests in you and their respective percentage interests, as well as copies of your governing documents (and any amendments thereto) and any other corporate documents, books or records that we may request, and that all such information is current as of the date on which you sign this Agreement. Your direct and indirect owners and their respective equity interests as of the Effective Date are identified in Exhibit A. You must promptly update this information as changes occur.

**14.2 Guarantees.** All holders of direct or indirect equity interests in you of 10% or more (“10% Owners”) must jointly and severally guarantee your payment and performance under this Agreement and must bind themselves to the terms of this Agreement pursuant to the Guarantee and Assumption of Franchisee’s Obligations attached as Exhibit B (“Guarantee”). Notwithstanding the foregoing, we reserve the right, in our sole discretion, to waive the requirement that some or all of the 10% Owners execute the Guarantee and/or to limit the scope of the Guarantee. We reserve the right to require any guarantor to provide personal financial statements to us from time to time.

You acknowledge that, unless otherwise agreed to in writing by us, it is our intent to have individuals (and not corporations, limited liability companies or other entities) execute the Guarantee. Accordingly, if any 10% Owner is not an individual, we will have the right to have the

Guarantee executed by individuals who have only an indirect ownership interest in you. (By way of example, if a 10% Owner is a corporation, we have the right to require that the Guarantee be executed by individuals who have an ownership interest in that corporation.)

If you, any guarantor or any parent, subsidiary or affiliate of yours holds any interest in other businesses that are franchised by us, at our request, the party who owns that interest will execute, concurrently with this Agreement, a form of cross-guarantee to us for the payment of all obligations for such businesses, unless waived in writing by us in our sole discretion. For purposes of this Agreement, an affiliate of yours is any company controlled, directly or indirectly, by you, your owners or your parent or subsidiary.

## **15 TRANSFERS BY US**

We have the unrestricted right to transfer or assign ownership interests in us and all or any part of our interest in this Agreement to any person or legal entity without your consent. You agree that we will have no liability after the effective date of transfer or assignment for the performance of, or any failure to perform, any obligations transferred. We also have the right to delegate to others the performance of any of our duties under this Agreement.

## **16 TRANSFERS BY YOU**

**16.1 Definition of Transfer.** For purposes of this Agreement, "Transfer" means any sale, assignment, transfer, merger, conveyance, give away, pledge, mortgage or other encumbrance, either voluntarily or by operation of law (such as through divorce or bankruptcy proceedings) of: **(a)** any interest in this Agreement; **(b)** any interest in the Franchised Restaurant; **(c)** any interest in the Franchised Location; **(d)** the lease, or any interest in the lease, for the Franchised Restaurant; **(e)** if you are a business entity, any direct or indirect ownership interests in you; **(f)** substantially all of the assets of the Franchised Restaurant; or **(g)** substantially all of your other assets pertaining to your operations under this Agreement.

**16.2 No Transfer Without Our Consent.** You acknowledge that this Agreement is personal to you, and we have selected you as a franchisee based on our reliance on your (and your direct and indirect owners') character, skill, aptitude and business and financial capacity. Neither you nor any of your direct or indirect owners may undertake any Transfer or permit any Transfer to occur without obtaining our prior written consent. The decision as to whether to consent to a Transfer will be made in the exercise of our business judgment, but our consent will not be unreasonably withheld. We have the right to communicate with and counsel you, your direct and indirect owners and the proposed transferee on any aspect of a proposed Transfer. You agree to provide any information and documentation relating to the proposed Transfer that we reasonably require, including, but not limited to, a copy of the proposed offer. Unless otherwise agreed, we do not waive any claims against the transferring party if we consent to the Transfer.

**16.3 Transfer Generally.** Except as otherwise provided in this Section 16, if you or your direct or indirect owners propose to undertake a Transfer, the following conditions apply (unless waived by us):

**16.3.1** You and your direct and indirect owners must:

**(a)** Be in compliance with all obligations to us under this Agreement and any other agreements you have with us, our affiliates, any lenders that have provided financing to you and your major suppliers as of the date of the request for our consent to the Transfer.

**(b)** Pay to us a Transfer fee equal to \$5,000 to reimburse us for our reasonable costs and expenses incurred in reviewing and documenting the Transfer, including legal and accounting fees, provided that you will not be required to pay us a Transfer fee in connection with a Transfer undertaken in accordance with Sections 16.5 and 16.6.

**(c)** Make the Transfer only in conjunction with a simultaneous Transfer of the same rights and interests with respect to your Area Development Agreement (if applicable and if still in effect) and any other Franchised Restaurants developed pursuant to that Agreement and then-operated by you or your affiliates.

**(d)** Advise us in writing of any proposed Transfer, submit (or cause the proposed transferee to submit) a franchise application for the proposed transferee, submit a copy of all contracts and all other agreements or proposals and submit all other information requested by us relating to the proposed Transfer.

**16.3.2** The proposed transferee (and, if the proposed transferee is a business entity, all persons that have any direct or indirect ownership interest in the proposed transferee as we may require) must demonstrate to our satisfaction extensive experience in high quality restaurant operations of a character and complexity similar to Wahlburgers Restaurants; must meet the managerial, operational, experience, quality, character and business standards for a franchisee promulgated by us from time to time; must possess a good character, business reputation and credit rating; must have an organization whose management culture is compatible with our management culture; and must have adequate financial resources and working capital to meet the obligations under this Agreement. If the proposed transferee is an existing Wahlburgers franchisee, the transferee and its direct and indirect owners must not be in default under their agreements with us and must have substantially complied with our operating standards.

**16.3.3** An assignment agreement and/or any other agreements that we require to reflect the Transfer must be signed by the transferor and the proposed transferee. In addition, we may require, at our option, that amendments to this Agreement and/or our then-current standard form of franchise agreement (for an initial term ending on the expiration date of the Term) be signed which may provide for a different Royalty, Advertising Obligation, local marketing requirements and other rights and obligations than those provided in this Agreement. There is no limitation on the extent to which the terms of the amended or new franchise agreement may differ from the terms of this Agreement.

**16.3.4** We may require that the proposed transferee make arrangements to modernize and upgrade the Franchised Restaurant, at the transferee's expense, to comply with our standards and specifications for new Wahlburgers Restaurants.

**16.3.5** You, all 10% Owners, all of your guarantors under this Agreement and the transferee must execute a general release, in a form prescribed by us, of all claims against us, our affiliates and our and their past, present and future affiliates, officers, directors, members, managers, shareholders, agents and employees. You, your 10% Owners and your guarantors under this Agreement will remain liable to us for all obligations arising before the effective date of the Transfer.

**16.3.6** The price and other proposed terms of the Transfer must not, in our reasonable business judgment, have the effect of negatively impacting the future viability of the Franchised Restaurant.

**16.3.7** If the transferee is a business entity, those persons or entities designated by us, which may include, but are not limited to, those with a direct or indirect ownership interest of 10% or more in the transferee, must execute our then-current form of Guarantee.

**16.3.8** Unless waived by us in our sole discretion, the transferee and those employees of the transferee designated by us will complete the ITP in accordance with Section 9.1. Notwithstanding the provisions of Section 9.1.3, we may charge a fee to provide this training.

**16.3.9** Each of your affiliates that have entered into an area development or franchise agreement with us must, as of the date of the request for our consent to the Transfer, be in compliance with all obligations to us under those agreements and with all obligations under any agreement with any lenders that have provided financing relating to Wahlburgers Restaurants.

**16.4 Transfer of Partial Ownership Interest.** If you propose to admit a new owner who will have less than a 10% ownership interest in you, remove an existing owner or change the distribution of ownership interests among the owners shown on Exhibit A, you must give us advance notice and submit a copy of all proposed contracts and other information concerning the Transfer that we may request. You must also pay to us a Transfer fee as provided in Section 16.3.1(b). We may withhold our consent on any reasonable grounds or give our consent subject to reasonable conditions, including the conditions in Sections 16.3.1(a), 16.3.3, 16.3.5, and 14.1. Any new owner must submit a franchise application and, if applicable, execute our then-current form of Guarantee.

**16.5 Transfer for Convenience of Ownership.** If you are an individual or a partnership, we will consent to the Transfer of this Agreement to a business entity that you form for the convenience of ownership, provided that: **(a)** the entity has and will have no business other than the operation of Wahlburgers Restaurants; **(b)** you comply with the requirements in Sections 16.3.1(a), 16.3.3, 16.3.5, and 14.1; **(c)** the owners hold equity interests in the new entity in the same proportion shown on Exhibit A; and **(d)** the top-level management of the Franchised Restaurant does not change. You will not be required to pay a Transfer fee for a Transfer under this Section 16.5.

**16.6 Transfer for Estate Planning Purposes.** We agree that a Transfer of ownership interests in you to a trust for estate planning purposes, will be permitted without our prior written consent, provided that: **(a)** we receive a copy of all trust documents prior to the Transfer; **(b)** the trust documents authorize entry into this Agreement and indemnify the trustee for his actions with respect to this Agreement; **(c)** the trustee executes all agreements with us in his personal capacity and as trustee; **(d)** the applicable owner of the ownership interests retains voting control over the ownership interests transferred to the trust; and **(e)** the proposed transferee provides us written notice of its intent to undertake the Transfer at least 30 days prior to the effective date of the Transfer, together with documents demonstrating that the Transfer meets the requirements of this Section.

**16.7 Transfer upon Death or Permanent Incapacity.** If the Transfer is a transfer of direct or indirect ownership interests in you following the death or permanent incapacity (as reasonably determined by us) of a person that has a direct or indirect ownership interest in you, that person's executor, administrator or personal representative must apply to us in writing within 3 months after the death or declaration of permanent incapacity for consent to Transfer the person's interest. The Transfer will be subject to the provisions of Sections 16.3 and 16.4, as applicable. In the case of Transfer by bequest or by intestate succession, if the heirs or beneficiaries are unable to meet the conditions of Section 16.3 or 16.4, the executor may transfer the decedent's interest to another successor that we have accepted, subject to all of the terms and conditions for Transfers

contained in this Agreement. If an interest is not disposed of under this Section 16.7 within 6 months after the date of death or appointment of a personal representative, we may terminate this Agreement under Section 19.1.

**16.8 Securities Offerings.** If you are a business entity, ownership interests in you may be sold, by private or public offering, only with our prior written consent (whether or not our written consent is required under any other provision of this Section), which consent will not be unreasonably withheld. In addition to the requirements of Section 16.3 or 16.4, as applicable, prior to the time that any public offering or private placement of securities or partnership interests in you is made available to potential investors, you, at your expense, must deliver to us a copy of the offering documents. You, at your expense, also must deliver to us an opinion of your legal counsel (addressed to us and in a form acceptable to us) that the offering documents properly use the Proprietary Marks and accurately describe your relationship with us and/or our affiliates. The indemnification provisions of Section 23 will also include any losses or expenses incurred by us and/or our affiliates in connection with any statements made by or on behalf of you in any public or private offering of your securities.

**16.9 Non-Conforming Transfers.** Any purported Transfer that is not in compliance with this Section 16 is null and void and constitutes a material breach of this Agreement, for which we may terminate this Agreement without opportunity to cure. Our consent to a Transfer does not constitute a waiver of any claims that we have against the transferor, nor is it a waiver of our right to demand exact compliance with the terms of this Agreement.

**16.10 Right of First Refusal.** We have the right, exercisable within 30 days after receipt of the notice (and information) specified in Section 16.2 to send written notice to you that we intend to purchase the interest or assets proposed to be transferred. We may assign our right of first refusal to someone else either before or after we exercise it. However, our right of first refusal will not apply with regard to Transfers under Section 16.5 or Transfers to the spouse or adult son or daughter of a direct or indirect owner in you (including Transfers to a spouse or adult son or daughter as a result of death or permanent incapacity as described in Section 16.6), provided that the transferees meet all criteria required of new franchisees.

**16.10.1** If the Transfer is proposed to be made pursuant to a sale, we or our designee may purchase the interest proposed to be transferred on the same economic terms and conditions offered by the third-party. Closing on our purchase must occur within 60 days after the date of our notice to the seller electing to purchase the interest (or, if the parties cannot agree on the cash equivalent, as provided in the next sentence, within 60 days after the appraiser's determination). If we cannot reasonably be expected to furnish the same consideration as the third-party, we may substitute the reasonable equivalent in cash. If the parties cannot agree within 30 days on the reasonable equivalent in cash, we and you will each select a professionally certified appraiser and the two selected appraisers will select a third professionally certified appraiser to determine the fair market value of the interest proposed to be transferred. The third appraiser will appraise the fair market value of the interest proposed to be transferred and the value set by the third appraiser will be conclusive. Closing on the purchase will occur within 30 days after our notice to the transferor of the appraiser's determination of fair market value. The appraisers' fees and costs will be borne equally by us and you. Any material change in the terms of the offer from a third party after we have elected not to purchase the seller's interest will constitute a new offer subject to the same right of first refusal as the third party's initial offer.

**16.10.2** If a Transfer is proposed to be made by gift, we and you will each select a professionally certified appraiser and the two selected appraisers will select a third professionally certified appraiser to determine the fair market value of the interest proposed to be transferred.

The third appraiser will appraise the fair market value of the interest proposed to be transferred and the value set by the third appraiser will be conclusive. We may purchase the interest at the fair market value determined by the appraiser. Closing on the purchase will occur within 30 days after our notice to the transferor of the appraiser's determination of fair market value. The appraisers' fees and costs will be borne equally by us and you.

**16.10.3** At any point, we may decline to exercise our rights under this Section. Our and/or our designee's declining to exercise such right of first refusal will not constitute our consent to the proposed Transfer or a waiver of any other provision of this Section 16 with respect to the proposed Transfer. If we elect not to exercise our rights under this Section, the transferor may not complete the Transfer until he has complied with this Section 16. Closing of the Transfer must occur within 60 days of our election (or such longer period as applicable law may require); otherwise, the third-party's offer will be treated as a new offer subject to our right of first refusal. The Transfer is conditional upon our determination that the Transfer was completed on terms substantially the same as those offered to us. You must provide to us copies of all fully-executed agreements and any other information we request relating to the Transfer.

## **17 GENERAL RELEASE**

You (on behalf of yourself and your parent, subsidiaries and affiliates) (collectively, "Releasers") freely and without any influence forever release and covenant not to sue us, our parent, subsidiaries and affiliates and their respective past and present officers, directors, shareholders, members, managers, agents and employees, in their corporate and individual capacities, with respect to any and all claims, demands, liabilities and causes of action of whatever kind or nature, whether known or unknown, vested or contingent, suspected or unsuspected (collectively, "Claims"), that any Releaser now owns, has or claims to have or holds, or may in the future own or hold, or at any prior time owned, held, had or claimed to have, based on, arising out of or relating to, in whole or in part any fact, event, conduct or omission occurring on or before the Effective Date, including, without limitation, Claims arising under federal, state and local laws, rules and ordinances and Claims arising out of, or relating to this Agreement and all other agreements between any Releaser and us or our parent, subsidiaries or affiliates, the sale of any franchise to any Releaser, the development and operation of the Franchised Restaurant and the development and operation of all other restaurants operated by any Releaser that are franchised by us. Releasers expressly agree that fair consideration has been given by us for this release, and they fully understand that this is a negotiated, complete and final release of all Claims.

Notwithstanding the foregoing, claims arising from representations in the Wahlburgers Franchise Disclosure Document, or its exhibits or amendments, are expressly excluded from this release.

## **18 COVENANTS**

**18.1 Confidential Information.** During and after the Term, you may not communicate, divulge or use for any purpose other than the development and/or operation of the Franchised Restaurant any confidential information, knowledge, trade secrets or know-how which may be communicated to you or which you may learn by virtue of this Agreement or the operation of the Franchised Restaurant. You may divulge confidential information only to your professional advisers, your employees who must have access to the information to develop or operate the Franchised Restaurant, your contractors and your landlord, provided that you obtain our prior consent. All information, knowledge and know-how relating to us, our business plans or the System are deemed confidential for purposes of this Agreement, except information that you can demonstrate came to your attention by lawful means prior to our disclosure, or that is or becomes a

part of the public domain other than through you. At our request, you will require your employees, and any other person or entity to whom you wish to disclose any confidential information to sign agreements providing that they will maintain the confidentiality of the disclosed information. The agreements, which may be provided by us, must be in a form satisfactory to us and must identify us as a third-party beneficiary with the independent right to enforce the agreements.

**18.2 Restrictions During Term.** You acknowledge and agree that: **(a)** pursuant to this Agreement, you will have access to valuable trade secrets, specialized training and confidential information from us and our affiliates regarding the development, operation, management, purchasing, sales and marketing methods and techniques of the System; **(b)** the System and the opportunities, associations and experience established by us and acquired by you under this Agreement are of substantial and material value; **(c)** in developing the System, we and our affiliates have made and continue to make substantial investments of time, technical and commercial research, and money; **(d)** we would be unable to adequately protect the System and its trade secrets and confidential information against unauthorized use or disclosure and would be unable to adequately encourage a free exchange of ideas and information among Wahlburgers Restaurants if franchisees were permitted to hold interests in competitive businesses; and **(e)** restrictions on your right to hold interests in, or perform services for, competitive businesses will not hinder your activities. Accordingly, you agree that, during the Term, you will not, without our prior written consent, either directly or indirectly through any other person or entity:

**18.2.1** Divert or attempt to divert any business or customer, or potential business or customer, of any Wahlburgers Restaurant to any Competitive Business (as defined in Section 18.2.4).

**18.2.2** Own, manage, engage in, advise, make loans to, be employed by, assist or have any interest in any Competitive Business (as defined in Section 18.2.4).

**18.2.3** During the Term, there is no geographical limitation on these restrictions.

**18.2.4** As used in this Agreement, the term "Competitive Business" means any business, store, restaurant or location: **(a)** whose sales of hamburgers are reasonably likely to account for 10% or more of the food sales of the business in any calendar month; and/or **(b)** whose method of operation or trade dress is similar to that used in the System. Notwithstanding the foregoing, the term "Competitive Business" does not include those businesses in which any of your owners or you have a direct or indirect, legal or beneficial interest and: **(i)** that had been in operation prior to the date of the first franchise-related agreement between you and us; or **(ii)** that your owners or you had contracted to develop prior to the date of the first franchise-related agreement between you and us, provided those businesses are listed in Exhibit A ("Existing Businesses").

**18.3 Restrictions After Termination, Expiration or Transfer.** In light of your acknowledgments and agreements as set forth in Section 18.2, you agree as follows:

**18.3.1** For a period of 2 years following the expiration, termination or Transfer of this Agreement, you covenant and agree that you will not own, manage, engage in, advise, make loans to, be employed by, assist or have any interest in any Competitive Business that is (or is intended to be) located at or within 2 miles of the Franchised Location or within 2 miles of any other Wahlburgers Restaurant.

**18.3.2** For a period of 2 years following the expiration or termination of this Agreement or a Transfer, you further covenant and agree that you will not, either directly or

indirectly, for yourself, or through, on behalf of, or in conjunction with any person, firm, partnership, corporation, or other entity, sell, assign, lease or transfer the Franchised Location to any person, firm, partnership, corporation, or other entity which you know, or have reason to know, intends to operate a Competitive Business at the Franchised Location. You, by the terms of any conveyance selling, assigning, leasing or transferring your interest in the Franchised Location, must include restrictive covenants as are necessary to ensure that a Competitive Business that would violate this Section is not operated at the Franchised Location for this 2-year period, and you must take all steps necessary to ensure that these restrictive covenants become a matter of public record.

**18.4 Modification.** We have the right, in our sole discretion, to reduce the scope of any covenant in this Section 18 effective immediately upon your receipt of written notice, and you agree that you will comply forthwith with any covenant as so modified, which will be fully enforceable notwithstanding the provisions of Section 26. If any part of these restrictions is found to be unreasonable in time or distance, each month of time or mile of distance may be deemed a separate unit so that the time or distance may be reduced by appropriate order of the court to that deemed reasonable. If, at any time during the 2-year period following expiration, termination or Transfer of this Agreement, you fail to comply with your obligations under this Section, that period of noncompliance will not be credited toward your satisfaction of the 2-year obligation. Following the resolution of any dispute regarding the enforceability of this Section that is resolved in our favor, the 2-year period (or such other period as may be deemed reasonable by the court) will run from the date of the resolution.

**18.5 Applicability.** The restrictions contained in this Section 18 apply to you, all 10% Owners and all guarantors under this Agreement. This Section 18 does not prohibit you, any 10% Owner or any guarantor under this Agreement from having: **(a)** interests in any other franchise-related agreement with us or our affiliates that remains in effect; or **(b)** ownership of less than 5% of the outstanding equity securities of any publicly-held corporation, as defined in the Securities and Exchange Act of 1934.

**18.6 Enforcement.** You agree that the existence of any claim you may have against us, whether or not arising from this Agreement, will not constitute a defense to our enforcement of this Section 18. You agree to pay all costs and expenses that we reasonably incur in enforcing this Section 18, including reasonable attorneys' fees. You acknowledge that a violation of the terms of this Section 18 would result in irreparable injury to us for which no adequate remedy at law may be available. Accordingly, you consent to the issuance of an injunction prohibiting any conduct in violation of the terms of this Section 18. Such injunctive relief will be in addition to any other remedies that we may have.

**18.7 Survival.** The terms of this Section 18 will survive the termination, expiration, or any Transfer of this Agreement. The parties agree this Section 18 will be construed as independent of any other provision of this Agreement.

## **19 DEFAULT AND TERMINATION**

**19.1 Grounds for Termination.** In addition to the grounds for termination stated elsewhere in this Agreement, we may terminate this Agreement, and the rights granted by this Agreement, by written notice to you, without giving you an opportunity to cure, upon the occurrence of any of the following events:

**19.1.1** You (or the Operating Principal and/or, if applicable, the Multi-Unit Manager), the Franchised Restaurant's general manager, and/or any managerial personnel that we designate under Section 9.1.1 fail to complete the ITP.

**19.1.2** You fail to open the Franchised Restaurant for business by the Opening Date, unless we, in our sole discretion, extend this period to address unforeseen construction delays that are not within your control.

**19.1.3** You are insolvent or unable to pay your creditors (including us); file a petition in bankruptcy, an arrangement for the benefit of creditors or a petition for reorganization; there is filed against you a petition in bankruptcy, an arrangement for the benefit of creditors or petition for reorganization that is not dismissed within 60 days of the filing; you make an assignment for the benefit of creditors; or a receiver or trustee is appointed for you and not dismissed within 60 days of the appointment.

**19.1.4** Execution is levied against your business or property; suit to foreclose any lien or mortgage against the Franchised Location or equipment of the Franchised Restaurant is instituted against you and is not dismissed within 60 days; or the real or personal property of the Franchised Restaurant is sold after levy thereupon by any sheriff, marshal or constable.

**19.1.5** There is a material breach of any obligation under Section 18.

**19.1.6** We discover that you made a material misrepresentation or omitted a material fact in the information that you furnished to us in connection with our decision to enter into this Agreement.

**19.1.7** You knowingly falsify any report required to be furnished to us or make any material misrepresentation in your dealings with us or fail to disclose any material facts to us.

**19.1.8** You, any 10% Owner, any guarantor under this Agreement or any of your managers, members, officers or directors is convicted of, or pleads no contest to, a crime that we reasonably believe is likely to harm the reputation of the System or our goodwill.

**19.1.9** Any Transfer that requires our prior written consent occurs without your having obtained that prior written consent.

**19.1.10** You, your Operating Principal, any 10% Owner or any other entity that is a Wahlburgers franchisee and in which you, your Operating Principal or any 10% Owner have a direct or indirect ownership interest remain in default beyond the applicable cure period under: **(a)** any other agreement with us or our affiliates; **(b)** any real estate lease, equipment lease or financing instrument relating to the Franchised Restaurant; or **(c)** any agreement with any vendor or supplier to the Franchised Restaurant; provided that if the default is not by you, you are given written notice of the default and 10 days to cure the default.

**19.1.11** You refuse to permit, or try to hinder, an examination or audit of your books and records or inspection of the Franchised Restaurant or Franchised Location as permitted by this Agreement.

**19.1.12** Any condition exists with respect to the Franchised Restaurant that, in our reasonable judgment, seriously jeopardizes public health or safety.

**19.1.13** You lose the right to operate at the Franchised Location and, if applicable, fail to secure our acceptance of another site within the time permitted by Section 2.1.

**19.1.14** During any 12-month period, you fail to operate the Franchised Restaurant for 3 or more consecutive days, or 5 total days, that you were required to operate the Franchised Restaurant, unless we determine, in our sole discretion, that such failure was beyond your control.

**19.1.15** An entity that is not a party to this Agreement is operating the Franchised Restaurant without our prior written consent.

## **19.2 Termination Following Expiration of Cure Period.**

**19.2.1** Except for those items listed in Sections 19.1, 19.2.2 and 19.2.3, you will have 30 days after written notice of default from us within which to remedy the default and provide evidence of that remedy to us. If any such default is not cured within that time, this Agreement will terminate without further notice to you effective immediately upon expiration of that time, unless we notify you otherwise in writing. Notwithstanding the foregoing, if the default cannot be corrected within 30 days, you will have such additional time to correct the default as we believe to be reasonably required (not to exceed 90 days) provided that you begin taking the actions necessary to correct the default during the 30-day cure period and diligently and in good faith pursue those actions to completion. You will be in default under this Section 19.2.1 for any failure to materially comply with any of the requirements imposed by this Agreement or otherwise in writing, or to carry out the terms of this Agreement in good faith.

**19.2.2** Notwithstanding the provisions of Section 19.2.1, if you fail to pay any monies owed to us or our affiliates when those monies become due and payable and you fail to pay those monies within 10 days after receiving written notice of default, this Agreement will terminate effective immediately upon expiration of that time, unless we notify you otherwise in writing.

**19.2.3** If you have received 2 or more notices of default under this Agreement within the previous 12 months, we will be entitled to send you a notice of termination upon your next default under this Agreement in that 12-month period without providing you an opportunity to remedy that default.

**19.3 Statutory Limitations.** If any valid, applicable law or regulation of a competent governmental authority with jurisdiction over this Agreement requires a notice or cure period prior to termination longer than set forth in this Agreement, this Agreement will be deemed amended to conform to the minimum notice or cure period required by the applicable law or regulation.

## **20 OBLIGATIONS ON TERMINATION OR EXPIRATION**

**20.1 Your Obligations.** Upon termination or expiration of this Agreement for any reason, unless we direct you otherwise:

**20.1.1** All rights and licenses granted to you under this Agreement (including, without limitation, rights to use the System, the Manual and the Proprietary Marks) will immediately terminate and any right, title, and interest claimed by you to any such matters will immediately revert to us without further notice or documentation.

**20.1.2** You must immediately cease to operate the Franchised Restaurant and may not thereafter, directly or indirectly, represent to the public or hold yourself out as a present or former franchisee of the System.

**20.1.3** You will immediately and permanently cease to use, in any manner whatsoever, the System, the Proprietary Marks and the Manual.

**20.1.4** You must promptly pay all sums owing to us, our affiliates and your suppliers. These sums include, but are not limited to, the Royalty, Advertising Obligation, interest or other fees, damages, expenses and attorneys' fees incurred as a result of your default.

**20.1.5** You must cease to use in advertising or in any manner the confidential methods, procedures and techniques associated with the System, including all proprietary recipes, ingredients, and processes.

**20.1.6** You and all persons and entities subject to the restrictions contained in Section 18 will continue to abide by those restrictions and will not, directly or indirectly, take any action that violates those restrictions.

**20.1.7** Unless we direct you to maintain your existing signage while we determine if we will exercise our option to purchase under Section 21, you must immediately cease to use, by advertising or in any other manner, the name "Wahlburgers," all other Proprietary Marks and all other distinctive forms, slogans, signs, symbols, web sites, domain names, email addresses, and devices associated with the System. If you subsequently begin to operate another business, you must not use any reproduction, counterfeit, copy, or colorable imitation of the Proprietary Marks in connection with that business that is likely to cause confusion, mistake or deception, or which is likely to dilute our exclusive rights in and to the Proprietary Marks, nor any trade dress or designation of origin or description or representation that falsely suggests or represents an association or connection with us. Within 15 days, you must promptly take such action as may be necessary to cancel any assumed name registration or equivalent registration, and any domain name registration that contains the name "Wahlburgers" or any other Proprietary Marks.

**20.1.8** Unless we direct you to maintain the existing appearance of the Franchised Location while we determine if we will exercise our option under Section 21, you must make modifications or alterations to the Franchised Location and the Franchised Restaurant immediately upon termination or expiration of this Agreement as necessary to prevent the operation of any business in violation of this Section 20 and any specific additional changes we reasonably request for that purpose. Upon our request, you must return to us, at our cost, any signage that we specify. If you fail to comply with this Section within 30 days following termination or expiration of this Agreement, we have the right to enter the premises, without being guilty of trespass or any other tort, for the purpose of removing signs and any other articles that display the Proprietary Marks or Trade Dress. You agree to reimburse us on demand for our expenses in making such changes.

**20.1.9** You must immediately deliver to us all hard copies, and delete all electronic copies, of the Manual and all training materials, marketing materials, records, files, instructions, and correspondence in your possession or control that contain confidential information (as described in Section 18.1). You also must deliver to us all hard copies, and delete all electronic copies, of customer information and customer lists that you have compiled and uninstall any software that we have provided.

**20.1.10** Unless you operate another Franchised Restaurant, within 15 days after termination, you must sell to us, and we will buy, all Branded Merchandise which you purchased from us. You will pay all freight charges incurred in shipping these items to us and, except as described below, the purchase price for the Branded Merchandise will be the price paid by you less 10% for handling and restocking costs. We are not obligated to purchase, although we may

purchase, Branded Merchandise that is no longer authorized for sale in Wahlburgers Restaurants or Branded Merchandise that is not in saleable and useable condition (as we determine). The purchase price for that Branded Merchandise will be separately negotiated. We may deduct from the monies to be paid to you for repurchase of the Branded Merchandise all monies that you owe to us.

**20.2 Evidence of Compliance.** You will furnish to us, within 30 days after the effective date of termination or expiration, evidence (certified to be true, correct and complete, by an officer, manager or 10% Owner) satisfactory to us of your compliance with Section 20.1.

**20.3 Other Business Operations.** You will not, except with respect to a Wahlburgers Restaurant franchised by us that is then open and operating pursuant to an effective Franchise Agreement: **(a)** operate or do business under any name or in any manner that might tend to give the public the impression that you are connected in any way with us or our affiliates or have any right to use the System or the Proprietary Marks; **(b)** make, use or avail yourself of any of the materials or information furnished or disclosed by us or our affiliates under this Agreement or disclose or reveal any such materials or information or any portion thereof to anyone else; or **(c)** assist anyone not licensed by us to construct or equip a restaurant substantially similar to a Wahlburgers Restaurant.

**20.4 Listings.** We will have the option, exercisable by written notice within 30 days after the termination or expiration of this Agreement, to take an assignment of all telephone numbers, facsimile numbers, domain names, social media accounts (and associated domain names) or other numbers, names and directory listings (collectively, "Listings") associated with any Proprietary Mark or the Franchised Restaurant, and you must notify the telephone company, all telephone directory publishers, and all domain name registries and Internet service providers of the termination or expiration of your right to use any Listing associated with the Franchised Restaurant, and authorize and instruct their transfer to us or to a third party, at our direction and/or to instruct the telephone company, domain name registries and Internet service providers to forward all calls, e-mails and electronic communications made to your names, numbers or addresses to names, numbers or addresses we specify. If you fail to promptly make these notifications, you agree that we may do so as your attorney in fact. You are not entitled to any compensation from us if we exercise this option.

**20.5 Lost Revenue Damages.** If we terminate this Agreement because of your breach or if you terminate this Agreement without cause, you and we agree that it would be difficult, if not impossible, to determine the amount of damages that we would suffer due to the loss or interruption of the revenue stream we otherwise would have derived from your continued payment of the Royalty Fee and the Brand Fund contribution through the remainder of the term of this Agreement. Therefore, you and we agree that a reasonable estimate of such damages, less any cost savings we might have experienced ("Lost Revenue Damages"), is an amount equal to the net present value of the Royalty Fee and the Brand Fund contribution that would have been paid had this Agreement not been terminated, from the date of termination to the earlier of: **(a)** five years following the date of termination, or **(b)** the scheduled expiration of the term of this Agreement ("Measurement Period").

For the purposes of this Section, Lost Revenue Damages will be calculated as follows: **(1)** the aggregate of the Royalty Fee and the Brand Fund contribution percentages multiplied by the average monthly Gross Sales of your Franchised Restaurant during the 12 full calendar months immediately preceding the termination date (or, if as of the effective date of termination, your Franchised Restaurant has not been operating for at least 12 full calendar months, we will use the average monthly Gross Sales of all Wahlburgers Restaurants operating

during that 12 month period); **(2)** multiplied by the number of calendar months in the Measurement Period.

You agree to pay us Lost Revenue Damages, as damages and not as a penalty, as calculated in accordance with this Section, within 15 days after the effective date of termination, or on any later date that we determine. You and we agree that the calculation described in this Section is a calculation only of the Lost Revenue Damages and that nothing will preclude or limit us from proving and recovering any other damages caused by your breach of this Agreement.

## **21 OPTION TO PURCHASE**

**21.1 Scope.** Upon the expiration or termination of this Agreement for any reason, we will have the option to purchase from you some or all of the assets used in the Franchised Restaurant ("Assets"). We may exercise our option by giving written notice to you at any time following expiration or termination up until 30 days after the later of: **(a)** the effective date of expiration or termination; or **(b)** the date you cease operating the Franchised Restaurant. As used in this Section 21, "Assets" means, without limitation, equipment, vehicles, furnishings, fixtures, signs and inventory (non-perishable products, materials and supplies) used in the Franchised Restaurant, any liquor license and all other licenses necessary to operate the Franchised Restaurant (if transferable) and the real estate fee simple or the lease or sublease for the Franchised Location. As provided in Section 7.5, customer information and customer lists are owned by us and accordingly are not included within the definition of "Assets." Such customer information and customer lists will be returned to us without charge upon expiration or termination and you may not sell the information or lists to a third party. We will be entitled to the entry of interlocutory and permanent orders of specific performance by a court of competent jurisdiction if you fail or refuse to timely meet your obligations under this Section 21. We will have the unrestricted right to assign this option to purchase the Assets. We or our assignee will be entitled to all customary representations and warranties that the Assets are free and clear (or, if not, accurate and complete disclosure) as to: **(1)** ownership, condition and title; **(2)** liens and encumbrances; **(3)** environmental and hazardous substances; and **(4)** validity of contracts and liabilities inuring to us or affecting the Assets, whether contingent or otherwise.

**21.2 Purchase Price.** The purchase price for the Assets ("Purchase Price") will be their fair market value (or, for leased assets, the fair market value of your lease), determined as of the effective date of expiration or termination in a manner that accounts for reasonable depreciation and condition of the Assets; provided, however, that the Purchase Price will take into account the termination of this Agreement. Further, the Purchase Price for the Assets will not contain any factor or increment for any trademark, service mark or other commercial symbol used in connection with the operation of the Franchised Restaurant nor any goodwill or "going concern" value for the Franchised Restaurant. We may exclude from the Assets purchased in accordance with this Section any equipment, vehicles, furnishings, fixtures, signs, and inventory that are not accepted as meeting then-current standards for a Wahlburgers Restaurant or for which you cannot deliver a Bill of Sale in a form satisfactory to us.

**21.3 Certified Appraisers.** If we and you are unable to agree on the fair market value of the Assets within 30 days after the date you receive our notice expressing our intent to exercise our option to purchase the Assets, we and you will each select a professionally certified appraiser and the two selected appraisers will select a third professionally certified appraiser. The third appraiser will appraise the fair market value of the Assets. The value set by the third appraiser will be conclusive and will be the Purchase Price.

**21.4 Access to Franchised Restaurant.** The appraiser will be given full access to the Franchised Restaurant, the Franchised Location and your books and records during customary business hours to conduct the appraisal and will value the leasehold improvements, equipment, furnishings, fixtures, signs and inventory in accordance with the standards of this Section 21. The appraisers' fees and costs will be borne equally by us and you.

**21.5 Exercise of Option.** Within 10 days after the Purchase Price has been determined, we may exercise our option to purchase the Assets by so notifying you in writing ("Purchase Notice"). The Purchase Price will be paid in cash or cash equivalents at the closing of the purchase ("Closing"), which will take place no later than 60 days after the date of the Purchase Notice. From the date of the Purchase Notice until Closing:

**21.5.1** You will operate the Franchised Restaurant and maintain the Assets in the usual and ordinary course of business and maintain in full force all insurance policies required under this Agreement; and

**21.5.2** We will have the right to appoint a manager, at our expense, to control the day-to-day operations of the Franchised Restaurant, and you will cooperate, and instruct your employees to cooperate, with the manager appointed by us. Alternatively, we may require you to close the Franchised Restaurant during such time period without removing any Assets from the Franchised Restaurant.

**21.6 Due Diligence.** For a period of 30 days after the date of the Purchase Notice ("Due Diligence Period"), we will have the right to conduct such investigations as we deem necessary and appropriate to determine: **(a)** the ownership, condition and title of the Assets; **(b)** liens and encumbrances on the Assets; **(c)** environmental and hazardous substances at or upon the Franchised Location; and **(d)** the validity of contracts and liabilities inuring to us or affecting the Assets, whether contingent or otherwise. You will afford us and our representatives access to the Franchised Restaurant and the Franchised Location at all reasonable times for the purpose of conducting inspections of the Assets; provided that such access does not unreasonably interfere with your operations of the Franchised Restaurant.

**21.7 Our Rights During Due Diligence Period.** During the Due Diligence Period, at our sole option and expense, we may: **(a)** cause the title to the Assets that consist of real estate interests ("Real Estate Assets") to be examined by a nationally recognized title company and conduct lien searches as to the other Assets; **(b)** procure "AS BUILT" surveys of the Real Estate Assets; **(c)** procure environmental assessments and testing with respect to the Real Estate Assets; and/or **(d)** inspect the Assets that consist of leasehold improvements, equipment, vehicles, furnishings, fixtures, signs and inventory ("Fixed Assets") to determine if the Fixed Assets are in satisfactory working condition. Prior to the end of the Due Diligence Period, we will notify you in writing of any objections that we have to any finding disclosed in any title to lien search, survey, environmental assessment or inspection. If you cannot or elect not to correct any such title defect, environmental objection or defect in the working condition of the Fixed Assets, we will have the option to either accept the condition of the Assets as they exist or rescind our option to purchase on or before the Closing.

**21.8 Compliance With Law.** Prior to the Closing, we and you will comply with all applicable legal requirements, including the bulk sales provisions of the Uniform Commercial Code of the state in which the Franchised Restaurant is located and the bulk sales provisions of any applicable tax laws and regulations. You will, prior to or simultaneously with the Closing, pay all tax liabilities incurred in connection with the operation of the Franchised Restaurant prior to Closing. We will have the right to set off against and reduce the Purchase Price by any and all

amounts owed by you to us, and the amount of any encumbrances or liens against the Assets or any obligations assumed by us.

## **21.9 The Franchised Location.**

**21.9.1** If the Franchised Location is leased and the lease is assigned to us or we sublease the Franchised Location from you, we will indemnify and hold you harmless from any ongoing liability under the lease from the date we assume possession of the Franchised Location, and you will indemnify and hold us harmless from any liability under the lease prior to and including that date.

**21.9.2** If you own the Franchised Location, we, at our option, will either purchase the fee simple interest or, upon purchase of the other Assets, enter into a standard lease with you on terms comparable to those for which similar commercial properties in the area are then being leased. The initial term of this lease with you will be at least 20 years with one option to renew for 10 years and the rent will be the fair market rental value of the Franchised Location. If we and you cannot agree on the fair market rental value of the Franchised Location, appraisers (selected in the manner described in Section 21.3) will determine the rental value.

**21.10 Your Obligations at Closing.** At the Closing, you will deliver instruments transferring to us or our assignee: **(a)** good and merchantable title to the Assets purchased, free and clear of all liens and encumbrances (other than liens and security interests acceptable to us or our assignee), with all sales and other transfer taxes paid by you; **(b)** all licenses and permits for the Franchised Restaurant that may be assigned or transferred, with appropriate consents, if required; and **(c)** if applicable, the lease or sublease for the Franchised Location, with appropriate consents, if required. If you cannot deliver clear title to all of the purchased Assets as indicated in this Section, or if there are other unresolved issues, the Closing will be accomplished through an escrow.

## **22 RELATIONSHIP OF THE PARTIES**

This Agreement does not create a fiduciary or other special relationship or make you or us an agent, legal representative, joint venturer, joint employer, partner, employee or servant of each other for any purpose. You are not authorized to make any contract, agreement, warranty or representation on our behalf, or to create any obligation, express or implied, on our behalf. During the Term, you agree to hold yourself out to the public as an independent contractor operating the Franchised Restaurant under license from us, and you agree to exhibit a notice to that effect (the location and content of which we reserve the right to specify) in a conspicuous place at the Franchised Restaurant.

## **23 INDEMNIFICATION**

You agree to defend, indemnify, and hold harmless us and our past, present and future affiliates, officers, directors, managers, members, shareholders, agents, attorneys, consultants, and employees against any claims, losses, costs, expenses, liabilities and damages arising directly or indirectly from, as a result of, or in connection with the Franchised Restaurant, as well as the costs of defending against such claims, losses, costs, expenses, liabilities and damages (including, but not limited to, reasonable attorneys' fees, costs of investigation, settlement costs and interest). You promptly will give us written notice of any litigation, proceeding, or dispute filed or instituted against you that could directly or indirectly affect us or any of the other indemnitees under this Section and, upon request, you will furnish us with copies of any documents from such matters as we may request.

With respect to any threatened or actual litigation, proceeding, or dispute that could directly or indirectly affect us or any of the other indemnitees under this Section, we will have the right, but not the obligation, to: **(a)** choose counsel; **(b)** direct and control the handling of the matter; and/or **(c)** settle any claim against the indemnitees. Our exercise of these rights does not affect your obligation to indemnify and hold us harmless in accordance with this Section. This Section will survive the expiration or termination of this Agreement, and applies to Claims even if they exceed the limits of your insurance coverage.

## **24 CONSENTS AND WAIVERS**

**24.1 Consent.** Whenever our prior written approval, acceptance or consent is required under this Agreement, you agree to make a timely written request to us for such consent. Our approval, acceptance or consent must be in writing and signed by an authorized officer or manager to be effective.

**24.2 No Warranties.** We make no warranties or guarantees upon which you may rely by providing any waiver, approval, consent or suggestion to you in connection with this Agreement and assume no liability or obligation to you therefor, or by reason of any neglect, delay, or denial of any request therefor. We will not, by virtue of any waivers, approvals, consents, advice or services provided to you, assume responsibility or liability to you or to any third parties to which we would not otherwise be subject.

**24.3 Waivers.** No delay or failure to exercise any right under this Agreement or to insist upon your strict compliance with any obligation or condition, and no custom or practice that differs from the terms of this Agreement, will constitute a waiver of our right to exercise the contractual right or demand your strict compliance with the terms of this Agreement. Our waiver of any particular default does not affect or impair our rights with respect to any subsequent default you may commit. Our waiver of a default by another franchisee does not affect or impair our right to demand your strict compliance with the terms of this Agreement. Our acceptance of any payments due from you does not waive any prior defaults.

## **25 NOTICES**

Notices related to this Agreement will be effective upon receipt (or first rejection) and may be given by any of the following delivery methods: **(a)** certified or registered mail; **(b)** U.S. Priority Mail or national commercial delivery service (e.g., UPS, Federal Express); or **(c)** email (if receipt is verified within 24 hours of transmission). Notices sent by (a) or (b) must be sent to the addresses on the first page of this Agreement; however, we also may send notices addressed to you at the Franchised Location. Email notices must be sent to the email address provided by the party. Either party can change its notice address by informing the other party.

## **26 ENTIRE AGREEMENT**

Each element of this Agreement is essential and material. This Agreement, the Manual, the documents referred to in this Agreement and the attachments to this Agreement constitute the entire agreement between you and us with respect to the Franchised Restaurant at the Franchised Location and supersede all prior negotiations, representations, correspondence and agreements concerning the same subject matter. Except for the Wahlburgers Franchise Disclosure Document and your Development Agreement (if applicable), there are no other representations, inducements, promises, agreements, arrangements, or undertakings, oral or written, between the parties relating to the matters covered by this Agreement other than those set forth in this Agreement and in the attachments. No obligations or duties that contradict or are inconsistent with the express terms of

this Agreement may be implied into this Agreement. Except as expressly set forth in this Agreement, no amendment, change or variance from this Agreement will be binding on either party unless mutually agreed to by the parties and executed in writing.

## **27 SEVERABILITY AND CONSTRUCTION**

**27.1 Severability.** Each provision of this Agreement is severable from the others. If, for any reason, any provision is determined by a court to be invalid, the invalidity will not impair the operation of the remaining provisions of this Agreement. The latter will continue to be given full force and effect and bind us and you; the invalid provision(s) will be deemed not to be a part of this Agreement.

**27.2 Survival.** Each provision of this Agreement that, expressly, or by reasonable implication, is to be performed, in whole or in part, after the expiration, termination or Transfer of this Agreement will survive expiration, termination or Transfer.

**27.3 Interpretation.** This Agreement will not be interpreted in favor of or against any party based on a party's sophistication or based on the party that drafted this Agreement. Except as expressly otherwise provided, nothing in this Agreement is intended, or will be deemed, to confer any rights or remedies upon any person or legal entity other than you and us.

**27.4 Our Discretion.** Whenever we have a right and/or the discretion to take or withhold an action, or to grant or decline to grant you a right to take or withhold an action, except as otherwise expressly and specifically provided in this Agreement, we may make such decision or exercise our right and/or discretion on the basis of our judgment of what is in the best interests of the System. Our judgment of what is in the best interests of the System, at the time our decision is made or our right or discretion is exercised, can be made without regard to whether: **(a)** other reasonable alternative decisions or actions, or even arguably preferable alternative decisions or actions, could have been made by us; **(b)** our decision or the action taken promotes our financial or other individual interest; **(c)** our decision or the action taken applies differently to you and one or more other franchisees or our company-owned or affiliate-owned operations; or **(d)** our decision or the action taken is adverse to your interests. We will have no liability to you for any such decision or action. We and you intend that the exercise of our right or discretion will not be subject to limitation or review. If applicable law implies a covenant of good faith and fair dealing in this Agreement, we and you agree that such covenant will not imply any rights or obligations that are inconsistent with a fair construction of the terms of this Agreement and that this Agreement grants us the right to make decisions, take actions and/or refrain from taking actions not inconsistent with your rights and obligations under this Agreement.

**27.5 Force Majeure.** If the performance of any obligation by you or us under this Agreement is prevented, hindered or delayed by reason of Force Majeure, which cannot be overcome by reasonable commercial measures, your and our respective obligations (to the extent that you and we, having exercised best efforts, are prevented, hindered or delayed in such performance) will be suspended during the period of the Force Majeure event. The party whose performance is affected by an event of Force Majeure will give prompt written notice of the Force Majeure event to the other party of the Force Majeure event and an estimate as to its duration.

As used in this Agreement, "Force Majeure" means any act of God, strike, lock-out or other industrial disturbance, war (declared or undeclared), riot, epidemic, pandemic, outbreak of disease, fire or other catastrophe, act of any government or a third party and any other cause not within the control of the affected party (including, without limitation, any act of terrorism). The existence of Force Majeure will not affect your obligation to pay us, our affiliates or any supplier any monies

owed to us when due. Your inability to obtain financing or pay us any monies owed to us (regardless of the reason) will not constitute Force Majeure.

## **28 DISPUTE RESOLUTION**

**28.1 Choice of Law.** This Agreement and the relationship between the parties is governed by and will be construed in accordance with the laws of the Commonwealth of Massachusetts. Nothing in this Section is intended, or will be deemed, to make any Massachusetts law regulating the offer or sale of franchises or the franchise relationship applicable to this Agreement if such law would not otherwise be applicable.

**28.2 Choice of Forum.** The parties agree that, to the extent any disputes cannot be resolved directly between them, you must file any suit against us only in the federal or state court having jurisdiction where our principal offices are located at the time suit is filed. We must file suit in the federal or state court located in the jurisdiction where our principal offices are located at the time suit is filed or in the jurisdiction where you reside or do business or where the Franchised Restaurant is or was located or where the claim arose. You consent to the personal jurisdiction of those courts over you and to venue in those courts.

**28.3 Limitation of Actions.** Any legal action or proceeding (including a proceeding related to the offer and sale of a franchise to you) brought or instituted with respect to any dispute arising from or related to this Agreement or with respect to any breach of the terms of this Agreement must be brought or instituted within a period of 2 years after the initial occurrence of any act or omission that is the basis of the legal action or proceeding, regardless of when discovered. The preceding limitation period does not apply: **(a)** with respect to payments owed by one party to the other; **(b)** if prohibited by applicable law; or **(c)** if applicable law provides for a shorter limitations period.

**28.4 Mutual Waiver of Jury Trial.** Each of us irrevocably waives trial by jury in any litigation.

**28.5 Mutual Waiver of Punitive Damages.** Each of us waives any right to or claim of punitive, exemplary, multiple or consequential damages against the other in litigation and agrees to be limited to the recovery of actual damages sustained.

**28.6 Remedies Not Exclusive.** Except as provided in Sections 28.1 through 28.5, no right or remedy that the parties have under this Agreement is exclusive of any other right or remedy under this Agreement or under applicable law.

**28.7 Reimbursement of Costs and Expenses.** If either party brings an action to enforce this Agreement in a judicial proceeding, the party prevailing in that proceeding will be entitled to reimbursement of costs and expenses, including, but not limited to, reasonable accountants', attorneys', attorneys' assistants' and expert witness fees, the cost of investigation and proof of facts, court costs, other litigation expenses, and travel and living expenses, whether incurred prior to, in preparation for, or in contemplation of the filing of, the proceeding. If we utilize legal counsel (including in-house counsel employed by us) in connection with any failure by you to comply with this Agreement, you must reimburse us for any of the above-listed costs and expenses incurred by us. In any judicial proceeding, the amount of these costs and expenses will be determined by the court and not by a jury.

**28.8 Rights of Parties are Cumulative.** The parties' rights under this Agreement are cumulative and the exercise or enforcement of any right or remedy under this Agreement will not

preclude the exercise or enforcement by a party of any other right or remedy under this Agreement that it is entitled by law or this Agreement to exercise or enforce.

**28.9 Survival.** The provisions of this Section 28 will survive the expiration or earlier termination of this Agreement.

## **29 MISCELLANEOUS**

**29.1 Gender and Number.** All references to gender and number will be construed to include such other gender and number as the context may require.

**29.2 Captions.** All captions in this Agreement are intended solely for the convenience of the parties and none will be deemed to affect the meaning or construction of any provision of this Agreement.

**29.3 Counterparts and Signatures.** This Agreement may be executed in counterparts, and each copy so executed and delivered will be deemed an original. This Agreement may be signed using electronic signatures, and such signatures will have full legal force and effect.

**29.4 Time.** Time is of the essence of this Agreement for each provision in which time is a factor.

**29.5 Injunctive Relief.** You recognize that your failure to comply with the terms of this Agreement, including, but not limited to, the failure to fully comply with the restrictions contained in Section 13 or the failure to comply with all post-termination obligations, is likely to cause irreparable harm to us, our affiliates and the System. Therefore, you agree that, in the event of a breach or threatened breach of any of the terms of this Agreement by you, we will be entitled to declaratory and injunctive relief (both preliminary and permanent) restraining that breach and/or to specific performance without showing or proving actual damages and without posting any bond or security.

**29.6 Control During Crisis Situation.** If an event occurs at the Franchised Restaurant that has or reasonably may cause harm or injury to customers, guests or employees (*i.e.*, food spoilage/poisoning, food tampering/sabotage, slip and fall injuries, natural disasters, robberies, Data Breach, shootings, etc.) or may damage the Proprietary Marks, the System or our reputation (collectively "Crisis Situation"), you must: **(a)** immediately contact appropriate emergency care providers to assist it in curing the harm or injury; and **(b)** immediately inform us by telephone of the Crisis Situation. You must refrain from making any internal or external announcements (*i.e.*, no communication with the news media) regarding the Crisis Situation (unless otherwise directed by us or public health officials).

To the extent we deem appropriate, in our sole and absolute discretion, we or our designee may control the manner in which the Crisis Situation is handled by the parties, including, without limitation, conducting all communication with the news media, providing care for injured persons and/or temporarily closing the Franchised Restaurant. The parties acknowledge that, in directing the management of any Crisis Situation, we or our designee may engage the services of attorneys, experts, doctors, testing laboratories, public relations firms and those other professionals as we deem appropriate. You and your employees must cooperate fully with us or our designee in our efforts and activities in this regard and will be bound by all further Crisis Situation procedures developed by us from time to time hereafter. The indemnification under Section 23 will include all losses and expenses that may result from the exercise by us or our designee of the management rights granted in this Section 29.6.

**29.7 Compliance with U.S. Laws.** You acknowledge that under applicable U.S. law, including, without limitation, Executive Order 13224, signed on September 23, 2001 (“Order”), we are prohibited from engaging in any transaction with any person engaged in, or with a person aiding any person engaged in, acts of terrorism, as defined in the Order. Accordingly, you represent and warrant to us that, as of the date of this Agreement, neither you nor any person holding any ownership interest in you, controlled by you, or under common control with you is designated under the Order as a person with whom business may not be transacted by us, and that you: **(a)** do not, and hereafter will not, engage in any terrorist activity; **(b)** are not affiliated with and do not support any individual or entity engaged in, contemplating, or supporting terrorist activity; and **(c)** are not acquiring the rights granted under this Agreement with the intent to generate funds to channel to any individual or entity engaged in, contemplating, or supporting terrorist activity, or to otherwise support or further any terrorist activity.

## **30 ACKNOWLEDGEMENTS**

You represent, acknowledge and warrant to us (and you agree that these representations, acknowledgments and warranties will survive termination of this Agreement) that:

**30.1** This Agreement involves significant legal and business rights and risks. We do not guarantee your success. You have read this Agreement in its entirety, conducted an independent investigation of the business contemplated by this Agreement, have been thoroughly advised with regard to the terms and conditions of this Agreement by legal counsel or other advisors of your choosing, recognize that the nature of the business conducted by Wahlburgers Restaurants may change over time and have had ample opportunity to investigate all representations made by or on behalf of us. The prospect for success of the business undertaken by you is speculative and depends to a material extent upon your personal commitment, capability and direct involvement in the day-to-day management of the business.

**30.2** We expressly disclaim the making of, and you acknowledge that you have not received, any warranty or guaranty, express or implied, as to the potential volume, profits or success of the business venture contemplated by this Agreement. We do not, by virtue of any approvals or advice provided to you, assume responsibility or liability to you or any third-party to which we would otherwise not be subject.

**30.3** We have entered, and will continue to enter, into agreements with other franchisees. The manner in which we enforce our rights and the franchisees’ obligations under any of those other agreements will not affect our ability to enforce our rights or your obligations under this Agreement.

**30.4** The Initial Franchise Fee is not refundable for any reason.

**30.5** We may change or modify the System, from time to time, including the Manual, and you will be required to make such expenditures as such changes or modifications in the System may require.

**30.6** Nothing in this Agreement prohibits us or our affiliates from: **(a)** operating or licensing others to operate Wahlburgers Restaurants at any location other than the Franchised Location; **(b)** operating or licensing others to operate restaurants, other than Wahlburgers Restaurants, at any location; **(c)** utilizing the System or any part of the System in any manner other than operation by us or our affiliates of a Wahlburgers Restaurant at the Franchised Location; **(d)** manufacturing, distributing and selling, or causing to be manufactured, distributed and sold, food, goods, wares, merchandise, services, products and Branded Merchandise, whether or not

authorized for sale at Wahlburgers Restaurants, under the Proprietary Marks or other trademarks, service marks, logos or commercial symbols, at wholesale or retail, at any location through any other method or channel of distribution, including, but not limited to, mail order and catalog, direct mail advertising, the Internet and other methods of distribution, regardless of the proximity to the Franchised Location; **(e)** developing and owning other franchise systems for the same or similar products and services using trade names and trademarks other than the Proprietary Marks; and/or **(f)** purchasing, being purchased by, merging or combining with, businesses that directly compete with Wahlburgers Restaurants.

**30.7** You have not received from us or our affiliates or anyone acting on our behalf, any representation of your potential sales, expenses, income, profit or loss.

**30.8** You have not received from us or our affiliates or anyone acting on our behalf, any representations other than those contained in our Franchise Disclosure Document provided to you as inducements to enter this Agreement.

**30.9** Even though this Agreement contains provisions requiring you to operate the Franchised Restaurant in compliance with the System: **(a)** we and our affiliates do not have actual or apparent authority to control the day-to-day conduct and operation of your business or employment decisions; **(b)** neither you nor we intend for us or our affiliates to incur any liability in connection with or arising from any aspect of the System or your use of the System, whether or not in accordance with the requirements of the Manual; and **(c)** you are the sole employer of your employees and you and we are not joint employers.

**30.10** You will be solely responsible for: **(a)** hiring, training and supervising efficient, competent and courteous employees of good character for the operation of the Franchised Restaurant; **(b)** the terms of their employment and compensation; and **(c)** the proper training of the employees in the operation of the Franchised Restaurant.

**30.11** Your execution of this Agreement does not and will not conflict or interfere, directly or indirectly, intentionally or otherwise, with the terms of any other agreement with any third party to which you, any of your owners or any affiliate of yours is a party, including, but not limited to, any noncompetition provision.

**30.12** In the event of a dispute between us, you and we have waived our right to a jury trial.

**30.13** You have received the Wahlburgers Franchise Disclosure Document at least 14 days prior to your signing this Agreement or payment of any monies to us, or earlier if required by applicable law.

**IN WITNESS WHEREOF**, the parties have executed this Agreement by their duly authorized representatives.

**FRANCHISEE:**

\_\_\_\_\_

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

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

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

Date: \_\_\_\_\_

**WAHLBURGERS:**

**WAHLBURGERS FRANCHISING LLC**

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

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

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

Date: \_\_\_\_\_

**EXHIBIT A**  
**FRANCHISE INFORMATION**

1. **Franchised Location:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. **Service Format:** (check one)

\_\_\_\_\_ Full-Service

\_\_\_\_\_ Fast Casual

\_\_\_\_\_ Hybrid Full-Service/Fast Casual

3. **Initial Franchise Fee:** \_\_\_\_\_

4. **Ownership:** If you are a business entity, the following is a list of all holders of a direct or indirect equity interest in you and their respective percentage interests:

Name	Address	Ownership Interest

5. **Operating Principal:** \_\_\_\_\_

6. **Multi-Unit Manager (if applicable):** \_\_\_\_\_

7. **Existing Businesses:**

Name of Business	Description of Business

## EXHIBIT B

### GUARANTEE AND ASSUMPTION OF FRANCHISEE'S OBLIGATIONS

In consideration of, and as an inducement to, the execution of the Wahlburgers Restaurant Franchise Agreement dated as of \_\_\_\_\_ (“Agreement”) by Wahlburgers Franchising LLC (“Wahlburgers”), entered into with \_\_\_\_\_ (“Franchisee”), the undersigned (collectively, “Guarantors”) hereby personally and unconditionally agree as follows:

1. **Guarantee To Be Bound By Certain Obligations.** Guarantors hereby personally and unconditionally guarantee to Wahlburgers and its successors and assigns, for the term of the Agreement and thereafter as provided in the Agreement or at law or in equity, that each will be personally bound by the restrictions contained in Section 18 of the Agreement.

2. **Guarantee and Assumption of Franchisee's Obligations.** Guarantors hereby: **(A)** guarantee to Wahlburgers and its successors and assigns, for the term of the Agreement and thereafter as provided in the Agreement or at law or in equity, that Franchisee and any assignee of Franchisee's interest under the Agreement will: **(1)** punctually pay and perform each and every undertaking, agreement and covenant set forth in the Agreement and **(2)** punctually pay all other monies owed to Wahlburgers and/or its affiliates; **(B)** agree to be personally bound by each and every provision in the Agreement, including, without limitation, the provisions of Section 18 and 23; and **(C)** agree to be personally liable for the breach of each and every provision in the Agreement.

3. **General Release.** Each Guarantor (if an individual, on behalf of him/herself and his/her heirs, representatives, successors and assigns, and if a business entity, on behalf of itself and its parent, subsidiaries and affiliates) (collectively, “Releasors”), freely and without any influence, forever releases and covenants not to sue Wahlburgers, its parent, subsidiaries and affiliates and their respective past and present officers, directors, managers, members, shareholders, agents and employees, in their corporate and individual capacities, with respect to any and all claims, demands, liabilities and causes of action of whatever kind or nature, whether known or unknown, vested or contingent, suspected or unsuspected (collectively, “Claims”), that any Releasor now owns, has or claims to have or holds, or may in the future own or hold, or at any prior time owned, held, had or claimed to have, based on, arising out of or relating to, in whole or in part, any fact, event, conduct or omissions occurring on or before the date of this Guarantee, including, without limitation, Claims arising under federal, state and local laws, rules and ordinances and Claims arising out of, or relating to this Guarantee, the Agreement and all other agreements between any Releasor and Wahlburgers or its parent, subsidiaries or affiliates, the sale of any franchise to any Releasor, the development and operation of the Franchised Restaurant and the development and operation of all other restaurants operated by any Releasor that are franchised by Wahlburgers. Releasors expressly agree that fair consideration has been given by Wahlburgers for this release, and they fully understand that this is a negotiated, complete and final release of all Claims.

4. **General Terms and Conditions.** The following general terms and conditions will apply to this Guarantee:

**A.** Each of the undersigned waives: **(1)** acceptance and notice of acceptance by Wahlburgers of the foregoing undertakings; **(2)** notice of demand for payment of any indebtedness or nonperformance of any obligations hereby guaranteed; **(3)** protest and notice of default to any party with respect to the indebtedness or nonperformance of any obligations hereby guaranteed; **(4)** any right he/she/it may have to require that an action be brought against

Franchisee or any other person as a condition of liability; **(5)** all rights to payments and claims for reimbursement or subrogation which any of the undersigned may have against Franchisee arising as a result of the execution of and performance under this Guarantee by the undersigned; **(6)** any law or statute which requires that Wahlburgers make demand upon, assert claims against or collect from Franchisee or any others, foreclose any security interest, sell collateral, exhaust any remedies or take any other action against Franchisee or any others prior to making any demand upon, collecting from or taking any action against the undersigned with respect to this Guarantee; **(7)** any and all other notices and legal or equitable defenses to which he may be entitled; and **(8) any and all right to have any legal action under this Guarantee decided by a jury.**

**B.** Each of the undersigned consents and agrees that: **(1)** his/her/its direct and immediate liability under this Guarantee will be joint and several; **(2)** he/she/it will render any payment or performance required under the Agreement if Franchisee fails or refuses punctually to do so; **(3)** such liability will not be contingent or conditioned upon pursuit by Wahlburgers of any remedies against Franchisee or any other person; **(4)** such liability will not be diminished, relieved or otherwise affected by any amendment of the Agreement, any extension of time, credit or other indulgence which Wahlburgers may from time to time grant to Franchisee or to any other person including, without limitation, the acceptance of any partial payment or performance or the compromise or release of any claims, none of which will in any way modify or amend this Guarantee, which will be continuing and irrevocable during the term of the Agreement and for so long thereafter as there are monies or obligations owing from Franchisee to Wahlburgers or its affiliates under the Agreement; and **(5)** monies received from any source by Wahlburgers for application toward payment of the obligations under the Agreement and under this Guarantee may be applied in any manner or order deemed appropriate by Wahlburgers. In addition: **(a)** each Guarantor acknowledges that the obligations under this Guarantee will continue to remain in force and effect unless Wahlburgers in its sole discretion, in writing, releases him/her/it from this Guarantee; and **(b)** following any Transfer, the obligations of each Guarantor under this Guarantee will continue to remain in force and effect unless Wahlburgers in its sole discretion, in writing, releases the Guarantor from this Guarantee. Notwithstanding the provisions of the previous sentence, unless prohibited by applicable law, the obligations contained in Sections 18.3 of the Agreement will remain in force and effect for a period of 2 years after any such release by Wahlburgers. A release by Wahlburgers of any Guarantor will not affect the obligations of any other Guarantor.

**C.** If Wahlburgers brings a legal action to enforce this Guarantee, the prevailing party in such proceeding will be entitled to reimbursement of its costs and expenses, including, but not limited to, reasonable accountants', attorneys', attorneys' assistants' and expert witness fees, cost of investigation and proof of facts, court costs, other litigation expenses and travel and living expenses, whether incurred prior to, in preparation for or in contemplation of the filing of any such proceeding. In any judicial proceeding, these costs and expenses will be determined by the court and not by a jury.

**D.** If Wahlburgers utilizes legal counsel (including in-house counsel employed by Wahlburgers or its affiliates) in connection with any failure by the undersigned to comply with this Guarantee, the undersigned will reimburse Wahlburgers for any of the above-listed costs and expenses incurred by it.

**E.** If any of the following events occur, a default ("Default") under this Guarantee will exist: **(1)** failure of timely payment or performance of the obligations under this Guarantee; **(2)** breach of any agreement or representation contained or referred to in this Guarantee; **(3)** the dissolution of, termination of existence of, loss of good standing status by, appointment of a receiver for, assignment for the benefit of creditors of, or the commencement of

any insolvency or bankruptcy proceeding by or against, any of the undersigned; and/or (4) the entry of any monetary judgment or the assessment against, the filing of any tax lien against, or the issuance of any writ of garnishment or attachment against any property of or debts due any of the undersigned. If a Default occurs, the obligations of each Guarantor will be due immediately and payable without notice. Upon the death of a Guarantor, the estate will be bound by this Guarantee for all obligations existing at the time of death. The obligations of the surviving Guarantors will continue in full force and effect.

**F.** This Guarantee will inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns. Wahlburgers' interests in and rights under this Guarantee are freely assignable, in whole or in part, by Wahlburgers. Any assignment will not release the undersigned from this Guarantee.

**G.** Section 28 of the Agreement is incorporated by reference into this Guarantee and all capitalized terms that are not defined in this Guarantee will have the meaning given them in the Agreement.

**IN WITNESS WHEREOF**, each of the undersigned has hereunto affixed his signature.

**GUARANTORS:**

Date: \_\_\_\_\_

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

Address: \_\_\_\_\_

Date: \_\_\_\_\_

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

Address: \_\_\_\_\_

## EXHIBIT C

### ADVERTISING OBLIGATION

Franchisee's Advertising Obligation under Section 8 of the Franchise Agreement will be allocated as set forth below, unless and until modified by us as provided in Section 8:

- |    |                           |                     |
|----|---------------------------|---------------------|
| 1. | Brand Fund                | 1.0% of Gross Sales |
| 2. | Regional Advertising Fund | 0.0% of Gross Sales |
| 3. | Local Advertising         | 2.0% of Gross Sales |

**TOTAL ADVERTISING OBLIGATION: 3.0% of Gross Sales**

**EXHIBIT E**

**~~TIERED ROYALTY ADDENDA~~**



## ~~ROYALTY ADDENDUM TO THE WAHLBURGERS RESTAURANT AREA DEVELOPMENT AGREEMENT~~

~~THIS ADDENDUM to the Wahlburgers Restaurant Area Development Agreement dated as of \_\_\_\_\_ (“Development Agreement”) between Wahlburgers Franchising LLC (“Wahlburgers,” “we” or “us”) and \_\_\_\_\_ (“Area Developer,” “you” or “your”) is entered into simultaneously with the Development Agreement.~~

### ~~RECITALS~~

~~Pursuant to the terms of the Development Agreement, we granted you the right to develop multiple Franchised Restaurants in the Development Area.~~

~~Your owners may also have ownership interests in other Wahlburgers area developers who, in the exercise of our reasonable business judgment, have entered into domestic area development agreements that are geographically proximate to the Development Area. If so, those area development agreements are identified in Exhibit 1 (“Other ADAs”). (The Development Agreement and the Other ADAs will be collectively referred to as “Related ADAs”).~~

~~In light of the experience of your owners with high quality restaurant operations and the System, we will realize certain efficiencies in providing services to you and your Affiliated Entities. Accordingly, in recognition of these efficiencies, we have offered to modify the Royalty to be paid in connection with certain Franchised Restaurants.~~

~~The parties are entering into this Addendum to memorialize the modifications to the Royalty that will apply to certain Franchised Restaurants developed pursuant to the Development Agreement and the terms and conditions governing the Royalty modification.~~

~~**NOW, THEREFORE,** the parties agree to amend the Development Agreement as follows:~~

#### ~~1. Royalty Incentive.~~

~~A. Subject to satisfaction of the conditions precedent set forth in Sections 1.D. and 2, and provided the Royalty incentive has not been terminated, with respect to the third and each subsequent qualified Franchised Restaurant developed and operating pursuant to the Related ADAs and meeting the requirements of Section 1.D., the Royalty to be paid during each Fiscal Year (as defined below) will be as follows:~~

<b>Gross Sales of the Applicable Franchised Restaurant During Each Fiscal Year</b>	<b>Royalty to be Paid</b>
Between \$0 and \$2,000,000	4% of Gross Sales
Between \$2,000,001 and \$2,500,000	5% of Gross Sales
Between \$2,500,001 and \$3,000,000	6% of Gross Sales
Between \$3,000,001 and \$3,500,000	7% of Gross Sales
Between \$3,500,001 and \$5,500,000	8% of Gross Sales
\$5,500,001 and above	6% of Gross Sales

~~B. The term "Fiscal Year" means our fiscal year, which currently starts on the Monday closest to December 31 and ends on the Sunday closest to December 31. The above-referenced Gross Sales levels will be prorated for any year in which the applicable Franchised Restaurant is not open for the entire Fiscal Year.~~

~~C. As Gross Sales at the applicable Franchised Restaurant reach each Gross Sales level set forth above, the Royalty to be paid on additional Gross Sales will change as set forth above. Within 30 days after the end of each Fiscal Year, we will calculate the actual Royalty owed for the Fiscal Year on the basis of the actual cumulative Gross Sales during the Fiscal Year using the above table. If the Royalty paid for the Fiscal Year is less than what is owed, you or the applicable franchisee will pay us the difference within 10 days after receipt of a written invoice from us. If the Royalty paid for the Fiscal Year exceeds that which is owed, we will credit the overage against the Royalty to be paid for the applicable Franchised Restaurant during the next Fiscal Year until fully credited.~~

~~D. In order for a Franchised Restaurant to qualify, and continue to qualify, for the Royalty incentive, the following criteria must be satisfied, unless waived by us, and we have provided written notice that the Franchised Restaurant qualifies: (1) you (or the applicable Franchisee Entity, as defined in Section 2) must submit an operating plan to us that demonstrates, as we determine in the exercise of our reasonable business judgment, that the Franchisee Entities have sufficient resources and a solid infrastructure such that we will realize efficiencies in providing services to the proposed Franchised Restaurant and that you (or the applicable Franchisee Entity) can assume certain of our functions and execute them in a quality manner; (2) you (or the applicable Franchisee Entity) meet our minimum standard of organizational readiness, as we determine from time to time in the exercise of our sole discretion; (3) the Franchised Restaurant will be larger than 3,000 square feet; and (4) the Franchised Restaurant~~

~~is likely, in the exercise of our reasonable business judgment, to derive at least 50% of its food revenues from sales in the full-service portion of the Franchised Restaurant. Any Franchised Restaurant that pays a Royalty of less than 6% of Gross Sales (exclusive of this Royalty incentive) will not be counted in determining the number of Franchised Restaurants in operation.~~

~~E. Prior to the opening of a potentially qualifying Franchised Restaurant, the applicable franchisee must apply to us and request that the Franchised Restaurant receive the Royalty incentive. After receipt of all required information, we promptly will advise the applicable franchisee if, in the exercise of our reasonable business judgment, the Franchised Restaurant qualifies for the Royalty incentive.~~

~~**2. Conditions Precedent.** In addition to the requirements contained in Section 1, you, the Wahlburgers area developers who are parties to the Other ADAs (“Other Area Developers”) and all of your Affiliated Entities and the Other Area Developers’ Affiliated Entities (collectively, “Franchisee Entities”) must satisfy the following criteria: **(A)** each Franchisee Entity must be current on all monies owed to us; **(B)** each Franchisee Entity must be current on all payments to its suppliers; **(C)** each Franchisee Entity must be in compliance with all obligations under each agreement with us; and **(D)** we will provide each Franchisee Entity with a copy of all franchise related documents, if any, that have not been fully executed and each Franchisee Entity must execute those documents and return them to us.~~

### ~~**3. Termination of Royalty Incentive.**~~

~~**A.** The Royalty incentive provided for in this Addendum will terminate upon receipt of written notice, and each Franchisee Entity will immediately begin paying the Royalty set forth in the applicable Franchise Agreement (prior to the parties’ execution of this Addendum), if any Franchisee Entity fails to: **(1)** timely pay any monetary obligations owed to us or our affiliates; or **(2)** fails to timely execute any agreements or related documentation with us or our affiliates.~~

~~**B.** We may terminate the Royalty incentive without cause following 30 days’ written notice and each Franchisee Entity will immediately begin paying the Royalty set forth in the applicable Franchise Agreement (prior to the parties’ execution of this Addendum).~~

~~**C.** The Royalty incentive provided for in this Addendum will terminate, and each Franchisee Entity will immediately begin paying the Royalty set forth in the applicable Franchise Agreement (prior to the parties’ execution of this Addendum), following written notice, if: **(1)** any Franchisee Entity receives a written notice of nonmonetary default under any agreement with us and fails to cure the default within the applicable cure period, if any; or **(2)** the Franchisee Entities no longer collectively operate at least three qualified Franchised Restaurants developed under the Related ADAs.~~

~~**D.** If there is a transfer of ownership interests in a Franchisee Entity such that, as determined by us in the exercise of our reasonable business judgment, it no longer is your Affiliated Entity or no longer has substantially similar ownership with the Other Area Developers, the Royalty incentive will terminate with respect to the Franchised Restaurants operated by that Franchisee Entity.~~

~~E.If the franchise agreement for a qualified Franchised Restaurant is assigned to a third party who is not is your Affiliated Entity or who does not have substantially similar ownership with the Other Area Developers, the Royalty incentive will terminate with respect to that Franchised Restaurant.~~

~~4.Miscellaneous.~~

~~A.Capitalized Terms. Any capitalized term that is not defined in this Addendum will have the meaning given it in the Development Agreement or the applicable Franchise Agreement, as the context requires.~~

~~B.Captions. All captions in this Addendum are intended solely for the convenience of the parties, and none will be deemed to affect the meaning or construction of any provision of this Addendum.~~

~~C.Counterparts and Signatures. This Addendum may be executed in counterparts, and each copy so executed and delivered will be deemed to be an original. This Addendum may be signed using electronic signatures, and such signatures will have full legal force and effect.~~

~~D.Limited Modification. Except as expressly modified by this Addendum, the Development Agreement remains unmodified and in full force and effect.~~

~~IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives.~~

~~AREA DEVELOPER: \_\_\_\_\_ WAHLBURGERS:  
WAHLBURGERS FRANCHISING LLC~~

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

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

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

| Date: \_\_\_\_\_

Date: \_\_\_\_\_

## ~~ROYALTY ADDENDUM TO THE WAHLBURGERS RESTAURANT FRANCHISE AGREEMENT~~

~~THIS ROYALTY ADDENDUM~~ to the Wahlburgers Restaurant Franchise Agreement dated as of \_\_\_\_\_ (“Franchise Agreement”) between Wahlburgers Franchising LLC (“Wahlburgers,” “we” or “us”) and \_\_\_\_\_ (“Franchisee,” “you” or “your”) is entered into simultaneously with the Franchise Agreement.

### ~~RECITALS~~

~~Pursuant to the Franchise Agreement, we granted you the right to operate the Franchised Restaurant at the Franchised Location identified in Exhibit 1.~~

~~The Franchised Restaurant has been developed pursuant to a Wahlburgers Restaurant Area Development Agreement executed by you or another entity that has common ownership with you (“Area Developer”) and Area Developer and we have executed an Addendum to the Area Development Agreement (“ADA Addendum”) that provides for a modified Royalty for certain franchised Wahlburgers Restaurants.~~

~~In light of the experience of your owners with high quality restaurant operations and the System, we will realize certain efficiencies in providing services to you and your Affiliated Entities. Accordingly, in recognition of those efficiencies, we have offered to modify the Royalty to be paid in connection with certain franchised Wahlburgers Restaurants that meet certain criteria.~~

~~The Franchised Restaurant meets those criteria and the parties are entering into this Addendum to memorialize the modifications to the Royalty and the terms and conditions governing the Royalty modification.~~

~~**NOW, THEREFORE,** the parties agree to amend the Franchise Agreement as follows:~~

~~**1. Condition Precedent.** In order for the Franchised Restaurant to initially qualify, and continue to qualify, for the Royalty incentive, the following criteria must be satisfied, unless waived by us, and we have provided written notice that the Franchised Restaurant qualifies: **(A)** you must submit an operating plan to us that demonstrates, as we determine in the exercise of our reasonable business judgment, that your affiliates and you have sufficient resources and a solid infrastructure such that we will realize efficiencies in providing services to the Franchised Restaurant and that you can assume certain of our functions and execute them in a quality manner; **(B)** you meet our minimum standard of organizational readiness, as we determine from time to time in the exercise of our sole discretion; **(C)** the Franchised Restaurant will be larger than 3,000 square feet; and **(D)** the Franchised Restaurant is likely, in the exercise of our reasonable business judgment, to derive at least 50% of its food revenues from sales in the full-service portion of the Franchised Restaurant.~~

**2.Royalty Incentive.**

~~A. Notwithstanding the provisions of Section 6.2.1 of the Franchise Agreement, the Royalty to be paid during each Fiscal Year (as defined below) will be as follows:~~

<b>Gross Sales of the Franchised Restaurant During Each Fiscal Year</b>	<b>Royalty to be Paid</b>
Between \$0 and \$2,000,000	4% of Gross Sales
Between \$2,000,001 and \$2,500,000	5% of Gross Sales
Between \$2,500,001 and \$3,000,000	6% of Gross Sales
Between \$3,000,001 and \$3,500,000	7% of Gross Sales
Between \$3,500,001 and \$5,500,000	8% of Gross Sales
\$5,500,001 and above	6% of Gross Sales

~~B. The term "Fiscal Year" means our fiscal year, which currently starts on the Monday closest to December 31 and ends on the Sunday closest to December 31. The above-referenced Gross Sales levels will be prorated for any year in which the Franchised Restaurant is not open for the entire Fiscal Year.~~

~~C. As Gross Sales at the Franchised Restaurant reach each Gross Sales level set forth above, the Royalty to be paid on additional Gross Sales will change as set forth above. Within 30 days after the end of each Royalty Period, we will calculate the actual Royalty owed for the Royalty Period on the basis of the actual cumulative Gross Sales during the Royalty Period using the above table. If the Royalty paid for the Royalty Period is less than what is owed, you will pay us the difference within 10 days after receipt of a written invoice from us. If the Royalty paid for the Royalty Period exceeds that which is owed, we will credit the overage against the Royalty to be paid during the next Royalty Periods until fully credited.~~

**3. Termination of Royalty Incentive.** ~~We may terminate the Royalty incentive without cause following 30 days' written notice and you will immediately begin paying the Royalty set forth in the Franchise Agreement (prior to the parties' execution of this Addendum). In addition, the Royalty incentive provided for in this Addendum will terminate, and you will immediately begin paying the Royalty set forth in the Franchise Agreement, following written notice if:~~

~~A. The Franchised Restaurant no longer qualifies for the Royalty incentive.~~

~~B. The Royalty incentive is terminated pursuant to Sections 3.A. or 3.C. of the ADA Addendum.~~

~~C. The Franchise Entities (as defined in the ADA Addendum) no longer operate at least three qualified franchised Wahlburgers Restaurants.~~

~~D. There is a transfer of ownership interests in you such that, as determined by us in the exercise of our reasonable business judgment, you no longer are an Affiliated Entity of Area Developer.~~

~~E. The Franchise Agreement is assigned to a third party who is not an Affiliated Entity of Area Developer.~~

**4. Miscellaneous.**

~~A. **Capitalized Terms.** Any capitalized term that is not defined in this Addendum will have the meaning given it in the Area Development Agreement or the Franchise Agreement, as the context requires.~~

~~B. **Captions.** All captions in this Addendum are intended solely for the convenience of the parties, and none will be deemed to affect the meaning or construction of any provision of this Addendum.~~

~~C. **Counterparts and Signatures.** This Addendum may be executed in counterparts, and each copy so executed and delivered will be deemed to be an original. This Addendum may be signed using electronic signatures, and such signatures will have full legal force and effect.~~

~~D. **Limited Modification.** Except as expressly modified by this Addendum, the Franchise Agreement remains unmodified and in full force and effect.~~

~~**IN WITNESS WHEREOF**, the parties have executed this Agreement by their duly authorized representatives.~~

**FRANCHISEE:** \_\_\_\_\_

**WAHLBURGERS:**

**WAHLBURGERS FRANCHISING LLC**

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

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

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

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

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT 1 FRANCHISE INFORMATION**

**1. Franchised Location:** \_\_\_\_\_

***EXHIBIT F***

**CONFIDENTIALITY AGREEMENT**

In consideration of the willingness of Wahlburgers Franchising LLC (“Wahlburgers”) to permit me to review the confidential operating Manual (“Manual”) before entering into an Area Development Agreement and/or Franchise Agreement, I agree, individually and as an officer, member or partner of any entity that may enter into an agreement with Wahlburgers, as follows:

1. As used in this Agreement, the term “Confidential Information” means all information contained in the Manual and all other information relating to the Wahlburgers System disclosed to me except: information which is now, or hereafter becomes, generally known (other than by unauthorized disclosure, whether deliberate or inadvertent, by myself or by any other person or entity with which I am affiliated); information that was in my possession at the time of receipt of the Manual; and information that comes into my possession after the date of this Agreement from a source not under an obligation of secrecy to Wahlburgers.

2. I agree not to make any use of the Confidential Information, not to make any copies of the Confidential Information and not to reveal any of the Confidential Information to any person who has not signed a Confidentiality Agreement with Wahlburgers.

3. This Agreement will be governed and construed in accordance with the laws of the state in which I reside.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

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

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

Date: \_\_\_\_\_

***ONLINE MERCHANDISE SHARING PROGRAM***

Wahlburgers Franchising LLC and its affiliates (collectively, "Wahlburgers") offer for sale a variety of merchandise bearing one or more trademarks owned by Wahlburgers ("Branded Merchandise"). The Branded Merchandise is currently sold at [www.wahlgear.com](http://www.wahlgear.com) ("WB Website").

Under the Wahlburgers Area Development Agreement and Franchise Agreement, Wahlburgers retained the right to sell Branded Merchandise and retain all revenue from the sale of Branded Merchandise. Notwithstanding the foregoing, Wahlburgers has decided to allow its North America franchisees to participate in the net revenue realized from Branded Merchandise sales, as provided in this policy statement.

### **Qualifying Products**

The Online Merchandise Revenue Sharing Program ("Program") applies only to that Branded Merchandise that Wahlburgers decides to include sold through the WB Website. Wahlburgers reserves the right, in its sole discretion, to add or remove merchandise from the Program without providing advance notice. Wahlburgers may elect to not include certain merchandise in the Program for any reason.

### **Revenue Sharing**

Until modified by Wahlburgers, qualifying franchisees will share 10% of Program revenue net of expenses attributable to the Branded Merchandise, which include, but are not limited to, the cost of goods, fulfillment costs and the costs of maintaining the WB Website. By way of example, if annual revenue from the sale of Branded Merchandise was \$5,000,000 and expenses attributable to the Branded Merchandise Program were \$2,000,000, the net annual revenue from the Program would be \$3,000,000 and the revenue pool to be shared by franchisees would be 10% of that net annual revenue or \$300,000. The amount to be paid to each qualifying restaurant is to be determined by dividing the income pool by the number of qualifying restaurants. By way of example, if the income pool is \$300,000 and there were 50 qualifying restaurants, the amount to be paid to each qualifying restaurant would be \$6,000.

### **Qualifying Restaurants**

In order for a franchised restaurant to qualify to participate in the Program, the franchised restaurant must be a traditional full service restaurant (not a captive market, as determined by Wahlburgers in its sole discretion) located in North America. In addition, the restaurant must be operated in full compliance with all franchise guidelines and be current on all financial obligations to Wahlburgers, its affiliates and all suppliers. Wahlburgers will provide written notice if a franchised restaurant ceases to be qualified to participate in the Program. The determination as to whether a restaurant is qualified to participate will be made by Wahlburgers in its sole discretion and is not subject to review.

### **Payment Mechanics**

Payments under the Program will be made to qualifying franchised restaurants within 60 days after the end of each calendar quarter based on Wahlburgers' net revenue from the Program in the previous calendar quarter. With respect to any qualifying restaurant that did not operate the

entire calendar quarter, payment will be prorated for the number of days the restaurant operated in the calendar quarter.

### **Termination**

Wahlburgers reserves the right to modify and terminate the Program at any time without cause following notice to qualifying restaurants.

WAHLBURGERS FRANCHISING LLC  
FINANCIAL STATEMENTS  
DECEMBER 31, 2023 AND JANUARY 1, 2023



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## INDEPENDENT AUDITORS' REPORT

To the Members of  
Wahlburgers Franchising LLC  
Hingham, Massachusetts

### **Opinion**

We have audited the accompanying financial statements of Wahlburgers Franchising LLC, which comprise the balance sheets as of December 31, 2023 and January 1, 2023 and the related statements of operations, members' capital, and cash flows for the years then ended, and the related notes to the financial statements.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Wahlburgers Franchising LLC as of December 31, 2023 and January 1, 2023 and the results of their operations and cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

### **Basis for Opinion**

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Our responsibilities under those standards are further described in the Auditors' Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of Wahlburgers Franchising LLC and to meet other ethical responsibilities in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence obtained is sufficient and appropriate to provide a basis for our audit opinion.

### **Responsibilities of Management for the Financial Statements**

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

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

## **Auditors' Responsibilities for the Audit of the Financial Statements**

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

In performing an audit in accordance with generally accepted auditing standards, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of Wahlburgers Franchising LLC's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about Wahlburgers Franchising LLC's ability to continue as a going concern for a reasonable period of time.

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

*Clark Hirth, CPAs*

Farmington, Connecticut  
March 29, 2024

WAHLBURGERS FRANCHISING LLC  
BALANCE SHEETS  
DECEMBER 31, 2023 AND JANUARY 1, 2023

	<u>December 31, 2023</u>	<u>January 1, 2023</u>
<b>Assets:</b>		
Current assets:		
Cash and cash equivalents	\$ 1,917,808	\$ 2,719,324
Accounts receivable	203,546	346,245
Due from affiliates	725,971	242,814
Prepaid expenses	145,118	243,847
Total current assets	2,992,443	3,552,230
Property and equipment:		
Office equipment	118,140	86,948
Leasehold improvements	84,610	84,610
	202,750	171,558
Less accumulated depreciation	122,485	104,500
Property and equipment, net	80,265	67,058
Other assets:		
Operating lease right-of-use asset, net	162,676	244,014
Total assets	\$ 3,235,384	\$ 3,863,302
<b>Liabilities and Members' Capital:</b>		
Current liabilities:		
Accounts payable	\$ 39,861	\$ 73,081
Accrued expenses	256,841	282,208
Current portion of operating lease liability	79,112	73,097
Marketing fund liability	-	50,361
Current portion of deferred revenue	100,999	217,666
Total current liabilities	476,813	696,413
Long-term liabilities:		
Operating lease liability, net of current portion	100,046	179,158
Deferred revenue, net of current portion	1,232,668	1,219,001
Total long-term liabilities	1,332,714	1,398,159
Total liabilities	1,809,527	2,094,572
Members' capital	1,425,857	1,768,730
Total liabilities and members' capital	\$ 3,235,384	\$ 3,863,302

See Independent Auditors' Report

WAHLBURGERS FRANCHISING LLC  
STATEMENTS OF OPERATIONS  
FOR THE YEARS ENDED DECEMBER 31, 2023 AND JANUARY 1, 2023

	<u>December 31, 2023</u>	<u>January 1, 2023</u>
Franchise revenues:		
Area development and franchise fees	\$ 503,000	\$ 638,333
Royalties and management/license fees	4,527,713	5,303,918
Advertising fees	635,028	756,176
Other franchise income	29,796	42,133
Total revenues, net	5,695,537	6,740,560
Operating expenses:		
Salaries and wages	2,986,371	2,786,787
Other operating costs and expenses	1,793,273	1,784,107
General and administrative expenses	1,509,783	1,955,300
Total operating expenses	6,289,427	6,526,194
Other income/(expenses)		
Other income	-	828,247
Interest income	-	6,496
Interest expense	-	(556)
Settlement expense	(9,500)	(12,000)
Total other income/(expenses)	(9,500)	822,187
Net income/(loss)	\$ (603,390)	\$ 1,036,553

See Independent Auditors' Report

WAHLBURGERS FRANCHISING LLC  
STATEMENTS OF MEMBERS' CAPITAL  
FOR THE YEARS ENDED DECEMBER 31, 2023 AND JANUARY 1, 2023

Members' deficit balance, January 2, 2022	\$ (5,327,859)
Net income	1,036,553
Distributions	(214,203)
Contributions	<u>6,274,239</u>
Members' capital balance, January 1, 2023	1,768,730
Net loss	(603,390)
Distributions	-
Contributions	260,517
Members' capital balance, December 31, 2023	<u><u>\$ 1,425,857</u></u>

See Independent Auditors' Report

WAHLBURGERS FRANCHISING LLC  
STATEMENTS OF CASH FLOWS  
FOR THE YEARS ENDED DECEMBER 31, 2023 AND JANUARY 1, 2023

	<u>December 31, 2023</u>	<u>January 1, 2023</u>
Cash flows from operating activities:		
Net income/ (loss)	\$ (603,390)	\$ 1,036,553
Adjustments to reconcile net loss to net cash provided/ (used) by operating activities:		
Forgiveness of PPP loan	-	(701,313)
Depreciation and amortization	17,985	17,891
Amortization of right-of-use asset	81,338	81,338
Reduction of lease liability for operating leases	(73,097)	(73,097)
Changes in operating assets and liabilities:		
(Increase) decrease in:		
Accounts receivable	142,699	247,763
Due from affiliates	(483,157)	(242,814)
Prepaid expenses and other assets	98,729	7,369
Increase (decrease) in:		
Accounts payable	(33,220)	(184,646)
Accrued expenses	(25,367)	(461,727)
Marketing fund liability	(50,361)	(54,403)
Due to affiliates	-	1,011,793
Deferred revenue	(103,000)	(143,333)
Net cash provided/(used) by operating activities	<u>(1,030,841)</u>	<u>541,374</u>
Cash flows from investing activities:		
Purchases of property and equipment	<u>(31,192)</u>	<u>-</u>
Net cash provided/(used) by investing activities	<u>(31,192)</u>	<u>-</u>
Cash flows from financing activities:		
Due to affiliates	-	(7,863,444)
Members' distributions	-	(214,203)
Members' contributions	260,517	6,274,239
Net cash provided/(used) by financing activities	<u>260,517</u>	<u>(1,803,408)</u>
Net increase/(decrease) in cash and cash equivalents	(801,516)	(1,262,034)
Cash and cash equivalents, beginning of year	<u>2,719,324</u>	<u>3,981,358</u>
Cash and cash equivalents, end of year	<u>\$ 1,917,808</u>	<u>\$ 2,719,324</u>
Supplemental disclosures of cash flow information:		
Cash paid during the year for:		
Interest	<u>\$ -</u>	<u>\$ 556</u>
Income taxes	<u>\$ -</u>	<u>\$ -</u>

See Independent Auditors' Report

WAHLBURGERS FRANCHISING LLC  
NOTES TO FINANCIAL STATEMENTS  
DECEMBER 31, 2023 AND JANUARY 1, 2023

NOTE 1 ORGANIZATION

Wahlburgers Franchising LLC (the “Company”) is a single member limited liability company organized in the state of Massachusetts and established on April 9, 2014. The Company is a wholly owned subsidiary of Wahlburgers Holding Company LLC (“WHC”). The Company is a franchisor and licensor of restaurants in the better-burger segment of the restaurant industry, offering both fast casual and table service featuring a chef-inspired menu including burgers, sandwiches, salads, fries, tater tots, frappes as well as a full-service bar. The Company has franchise and license agreements with various operators to develop and operate the restaurants in the United States and Canada.

A summary of franchise and affiliate-owned until activity is as follows:

	<u>Franchise</u>	<u>Affiliate- Owned</u>
Units operating at January 2, 2022	82	7
Units opened	21	-
Units closed	(4)	-
Units operating at January 1, 2023	99	7
Units opened	21	1
Units closed	(9)	(1)
Units operating at December 31, 2023	<u>111</u>	<u>7</u>

NOTE 2 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Accounting

The accompanying financial statements have been prepared in accordance with accounting standards set by the Financial Accounting Standards Board (“FASB”). The FASB sets generally accepted accounting principles in the United States of America (“GAAP”) that the Company follows to ensure its financial conditions, results of operations, and cash flows are consistently reported. References to GAAP issued by the FASB in these footnotes are to the FASB Accounting Standards Codification (“FASB ASC”).

Fiscal Year

The Company operates on a 52/53-week fiscal year ending on the Sunday closest to December 31. Fiscal year 2022 was 52 weeks and included the period from January 3, 2022 through January 1, 2023. Fiscal year 2023 was 52 weeks and included the period from January 2, 2023 through December 31, 2023.

See Independent Auditors’ Report