

## FRANCHISE DISCLOSURE DOCUMENT



**Kona Ice, Inc.**  
5945 Centennial Circle  
Florence, Kentucky 41042  
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Email: [Tony@Kona-Ice.com](mailto:Tony@Kona-Ice.com)  
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Kona Ice businesses provide flavored shaved ice, ice cream, and related products to the general public in a mobile environment (“Kona Ice Business(es)”). We offer franchises for single Kona Ice Businesses.

The total investment necessary to begin operation of a Kona Ice franchised business is between ~~\$167,115~~173,356 and ~~\$212,100~~222,141. This includes between ~~\$165,225~~167,966 and ~~\$179,950~~183,691 that must be paid to the franchisor or its affiliates.

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 Tony Lamb, 5945 Centennial Circle, Florence, Kentucky 41042 or at 1-800-566-2423.

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

Buying a franchise is a complex investment. The information in this disclosure document can help you make up your mind. More information on franchising, such as “A Consumer’s Guide to Buying a Franchise,” which can help you understand how to use this disclosure document, is available from the Federal Trade Commission. You can contact the FTC at 1-877-FTC-HELP, or by writing to the FTC at 600 Pennsylvania Avenue, NW, Washington, 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 ~~20, 2023~~18, 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:

<b>QUESTION</b>	<b>WHERE TO FIND INFORMATION</b>
<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 F.
<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 B 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 Kona Ice 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 Kona Ice franchisee?</b>	Item 20 or Exhibit F 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 franchise agreement requires you to resolve disputes with the franchisor by mediation, arbitration and/or litigation only in Kentucky. Out-of-state mediation, arbitration, or litigation may force you to accept a less favorable settlement for disputes. It may also cost more to mediate, arbitrate, or litigate with the franchisor in Kentucky than in your own state.
2. **Spousal Liability.** Your spouse must sign a document that makes your spouse liable for all financial obligations under the franchise agreement even though your spouse has no ownership interest in the franchise. This guarantee will place both your and your spouse's marital and personal assets, perhaps including your house, at risk if your franchise fails.
3. **Mandatory Minimum Payments.** You must make minimum royalty or advertising fund payments, regardless of your sales levels. Your inability to make the payments may result in termination of your franchise and loss of your investment.

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.



**NOTICE REQUIRED BY  
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 on the right of a franchisee to join an association of franchisees.
- (b) A requirement that the franchisee assent to a release, assignment, novation, waiver, or estoppel which deprives a franchisee of rights and protections provided in this act. This shall not preclude a franchisee, after entering into a franchise agreement, from settling any and all claims.
- (c) A provision that permits a franchisor to terminate a franchise prior to the expiration of its terms 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 six months advance notice of franchisor's intent not to renew the franchise.
- (e) A provision that permits the franchisor to refuse to renew a franchise on terms generally available to other franchisees of the same class or type or under similar circumstances. This section does not require a renewal provision.
- (f) A provision requiring that arbitration or litigation be conducted outside this state. This shall not preclude the franchisee from entering into an agreement, at the time of arbitration, to conduct arbitration at a location outside this state.
- (g) A provision which permits a franchisor to refuse to permit a transfer of ownership of a franchise, except for good cause. 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.

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

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

**The fact 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 should be directed to the Department of Attorney General, State of Michigan, 670 Williams Building, Lansing, Michigan 48913, telephone (517) 373-7117.

**THE MICHIGAN NOTICE APPLIES ONLY TO FRANCHISEES WHO ARE RESIDENTS OF MICHIGAN OR LOCATE THEIR FRANCHISES IN MICHIGAN.**



**TABLE OF CONTENTS**

<b><u>Item</u></b>	<b><u>Page</u></b>
ITEM 1	THE FRANCHISOR, AND ANY PARENTS, PREDECESSORS AND AFFILIATES ..... 1
ITEM 2	BUSINESS EXPERIENCE..... 4
ITEM 3	LITIGATION ..... 4
ITEM 4	BANKRUPTCY ..... 4
ITEM 5	INITIAL FEES ..... 5
ITEM 6	OTHER FEES ..... 6
ITEM 7	ESTIMATED INITIAL INVESTMENT ..... 16
ITEM 8	RESTRICTIONS ON SOURCES OF SERVICES AND PRODUCTS..... 19
ITEM 9	FRANCHISEE’S OBLIGATIONS ..... 22
ITEM 10	FINANCING ..... 23
ITEM 11	FRANCHISOR’S ASSISTANCE, ADVERTISING, COMPUTER SYSTEM, AND TRAINING..... 29
ITEM 12	TERRITORY ..... 35
ITEM 13	TRADEMARKS ..... 36
ITEM 14	PATENTS, COPYRIGHTS AND PROPRIETARY INFORMATION..... 42
ITEM 15	OBLIGATION TO PARTICIPATE IN THE ACTUAL OPERATION OF THE FRANCHISE BUSINESS ..... 44
ITEM 16	RESTRICTIONS ON WHAT THE FRANCHISEE MAY SELL ..... 45
ITEM 17	RENEWAL, TERMINATION, TRANSFER AND DISPUTE RESOLUTION ..... 45
ITEM 18	PUBLIC FIGURES ..... 48
ITEM 19	FINANCIAL PERFORMANCE REPRESENTATIONS ..... 49
ITEM 20	OUTLETS AND FRANCHISEE INFORMATION ..... 49
ITEM 21	FINANCIAL STATEMENTS ..... 61
ITEM 22	CONTRACTS ..... 61
ITEM 23	RECEIPTS ..... 62

**EXHIBITS:**

Exhibit A	State Administrators/Agents for Service of Process
Exhibit B	Financial Statements
Exhibit C	Franchise Agreement
Exhibit D	Franchise Disclosure Questionnaire
Exhibit E	Brand Manual Table of Contents
Exhibit F	List of Current and Former Franchisees
Exhibit G	State Addenda and Agreement Riders
Exhibit H	Contracts for use with the Kona Ice Franchise
Exhibit I	State Effective Dates
Exhibit J	Receipt



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

To simplify the language in this Franchise Disclosure Document, “KII,” “we,” “us,” and “our” means Kona Ice, Inc., the franchisor. “You,” “your,” and “Franchisee” means the business entity and its owners that buys the franchise from Kona Ice, Inc.

**The Franchisor**

Kona Ice, Inc. is a Kentucky corporation formed in February 2008. We operate under the name Kona Ice, Inc. and Kona Ice and no other name. Our principal business address is 5945 Centennial Circle, Florence, Kentucky 41042. We began offering Kona Ice franchises in March 2008. We operate Kona Ice businesses similar to the type being offered and have done so since June 2007. Except as described above, we have not engaged in or offered franchises in any other line of business.

**Parent, Predecessors and Affiliates**

We have several parent companies (our “Parents”). KII is a wholly-owned subsidiary of Kona Ice Holdings, LLC, which is a wholly-owned subsidiary of Kona Ice Intermediate Holdings, LLC, which is a wholly-owned subsidiary of Kona Ice Ultimate Holdings, LLC. Our Parents share our principal business address.

Our affiliate, Kreation's Flavoring, LLC (“Kreation's Flavoring”), offers products to our franchisees. Its principal business address is 624 Asher Ct. Leander, Texas 78641. Kreation's Flavoring sells flavoring for the Kona Ice shaved ice products.

Our affiliate, TMJ Insurance, LLC (“Kona Insurance”), offers comprehensive property and casualty insurance to our franchisees. Kona Insurance shares our principal business address.

Our affiliate, KonaOS Holdings, LLC (“Kona Software Affiliate”), offers software for our franchisees. Kona Software Affiliate shares our principal business address.

Our affiliate, Mobile Coffee Company, LLC (“Affiliate Franchisor”) has offered and sold Travelin’ Tom’s Coffee Truck franchises since April 2021. Our Affiliate Franchisor shares our principal business address. Travelin’ Tom’s Coffee Truck franchises operate mobile businesses that sell coffee, tea, and related products. Affiliate Franchisor operates three locations primarily in test markets and had ~~50~~139 franchisees as of December 31, ~~2023~~2022. Affiliate Franchisor is not engaged in any other business activity and has not offered or sold franchises in any other line of business.

Affiliate Franchisor, Kreation's Flavoring, Kona Insurance and Kona Fundraising Affiliate do not conduct, and have never conducted, businesses of the type described in this Franchise Disclosure Document. Other than Affiliate Franchisor, our affiliates do not and have not offered franchises in this or any line of business.

Our agent for service of process in Kentucky is Northwest Registered Agent LLC, 212 N. 2nd St., Suite 100, Richmond, Kentucky 40475. Our other agents for service of process are disclosed on Exhibit A. If a state is not listed, we have not appointed an agent for service of process in that state in connection with the requirements of franchise laws. There may be states in addition to those listed above in which we have appointed an agent for service of process. There may also be additional agents appointed in some of the states listed.



## The Franchise

We offer franchises (“Kona Ice Franchise(s)” or “Franchise(s)”) for the use of our “KONA ICE” trademarks, trade names, service marks, and logos (“Marks”) for the operation of Kona Ice Businesses. Kona Ice Businesses are operated under our proprietary Kona Ice system (“System”). The System may be changed or modified by us throughout your ownership of the Franchise. Kona Ice Businesses operate a mobile business which includes our proprietary Kona Ice truck, known as the Kona Entertainment Vehicle (“KEV”) with the patented “FlavorWave Self-Service System” (U.S. Patent Number 8,157,136), and other mobile units that sell flavored shaved ice, ice cream, and related products. Customers can also book the KEV or other mobile units for various events, including fundraising events, sports leagues, school events or sports, festivals and fairs, birthday parties, corporate events, picnics, church events, block parties, daycares and preschools, etc. You must use the KEV only for the operation of the Kona Ice Business and only to sell the products that we authorize.

You must sign our standard franchise agreement attached to this Franchise Disclosure Document as Exhibit C (“Franchise Agreement”). You must operate one KEV per Franchise Agreement. Each Franchise will be granted an exclusive territory which will be described in the Franchise Agreement (“Protected Territory”). Your Kona Ice Business must offer only those services and products that we have authorized. We reserve the right to add, modify, or delete any services or products that you must offer or sell at your Kona Ice Business at any time at our sole discretion.

Existing franchisees also have the option to purchase other Kona Ice equipment (“Additional Equipment”). As of the Issuance Date of this Franchise Disclosure Document, we currently offer the “Kona Entertainment Trailer,” “Kona Entertainment Kiosk,” “Kona Mini Truck” and the “KEV 2.0 Truck.” The KEV 2.0 Truck is a smaller version of the KEV and does not have a freezer. Existing Franchisees may trade in their KEV for a KEV 2.0 Truck (“KEV 2.0 Conversion”). If a Franchisee does a KEV 2.0 Conversion, or if a Franchisee purchases a KEV 2.0 Truck, all disclosures in this Franchise Disclosure Document that apply to a KEV will also apply to the KEV 2.0 Truck (including royalty calculation and compliance with the Franchise Agreement). If a franchisee purchases a KEV 2.0 Truck in addition to the KEV, the KEV 2.0 Truck will be treated as Additional Equipment for purposes of royalties and other fees and compliance with the Franchise Agreement. Currently, the purchase of Additional Equipment is not mandatory and can only be purchased after your Kona Ice Business is established. Franchisees must purchase the Additional Equipment from us or our affiliates but are not required to pay an additional initial franchise fee to use the Additional Equipment. Franchisees may only use the Additional Equipment in their Protected Territory.

As the Kona Ice Business is a mobile business, you will most likely operate your Kona Ice Franchise from your home, but you may choose to rent an executive suite office or other commercial office space. Depending on your local laws and community rules, you may need to rent or lease storage space for your KEV and any Additional Equipment at a commissary location or other location.

## Market and Competition

Kona Ice Businesses target their products and services to the general public. The market for frozen desserts and confections and other food and beverage products served in a mobile dining atmosphere is competitive and well-developed. Due to the nature of shaved ice and ice cream related products, sales are seasonal with more business activity in the warm months and little to no sales in colder months. The casual dining industry is highly competitive and is often affected by changes in eating habits, by local and national conditions affecting spending habits, and by population and traffic patterns. Kona Ice Businesses will compete with other local businesses, as well as many local, regional, and national restaurant businesses,



grocery stores, street vendors, and other food service businesses offering similar products for mobile consumption, take out, delivery, and catering services.

### Industry-Specific Laws

Many states and local jurisdictions have enacted laws, rules, regulations, and ordinances which may apply to the operation of your Kona Ice Business, including those which: (a) establish general standards, specifications, and requirements for the construction, design, and maintenance of the KEV and any Additional Equipment; (b) regulate matters affecting the health, safety, and welfare of your customers, such as general health and sanitation requirements; employee practices concerning the storage, handling, and preparation of food; special health, food service, and frozen dessert machine licensing requirements; restrictions on smoking and exposure to tobacco smoke or other carcinogens or reproductive toxicants and saccharin; availability of and requirements for public accommodations, including restrooms; (c) set standards pertaining to employee health and safety; (d) set standards and requirements for fire safety and general emergency preparedness, (e) regulate the proper use, storage, and disposal of waste, insecticides, and other hazardous materials, (f) establish general requirements or restrictions on advertising containing false or misleading claims, or health and nutrient claims on menus or otherwise, such as “low calorie” or “fat free,” and (g) establish requirements concerning withholdings and employee reporting of taxes on tips. Additionally, most states require a food handler’s license and possibly a hawkers or peddlers license which authorizes an individual to sell food from a mobile, outdoor business. Certain city or town clerks in the communities you plan to service may have additional licensing requirements.

Many local or state jurisdictions require food service permits for those preparing, handling and serving food to the public. You and your employees may need to pass a test or other certification process to obtain these permits. There may also be local ordinances and regulations governing food storage, preparation and serving. The operation of your Kona Ice Business, including maintenance of the equipment, conduct and appearance of personnel, and the preparation and sale of products from your Kona Ice Business may be regulated by various governmental and municipal laws, rules, regulations, and ordinances that you must follow. Should any product dispensed at your Kona Ice Business be in violation of any applicable law or regulations, or if the food items, premises, equipment, personnel or operation of the Kona Ice Business pose a health risk to the public, the applicable governing authorities or agencies may require you to immediately close your Kona Ice Business, terminate selling operations, destroy all contaminated products, eliminate the source of contamination, and remedy all unsanitary conditions present. These governing authorities or agencies may require that you undergo and pass inspection(s) before you reopen for business.

Any person who drives your KEV or KEV 2.0 Truck must have a valid driver’s license and each of your KEVs and KEV 2.0 Trucks must be properly licensed and registered. The requirements for these licenses may vary, depending on your location. If we require safety additions to your KEV or any Additional Equipment or if your KEV or KEV 2.0 Truck is subject to a manufacturer’s vehicle safety recall, you must immediately perform the required repairs, changes, maintenance and/or inspections before using your KEV or any Additional Equipment in the operation of your Kona Ice Business.

You should consult with a legal advisor about whether these and/or other requirements apply to your Kona Ice Business. Failing to comply with laws and regulations is a material breach of the Franchise Agreement.



**ITEM 2**  
**BUSINESS EXPERIENCE**

Chief Executive Officer, President, Secretary and Board Member: Tony Lamb

Mr. Lamb serves as our Chief Executive Officer, President and Secretary, and also serves as a member of our Board of Directors in Florence, Kentucky and has done so since our inception in February 2008. Mr. Lamb serves as the Chief Executive Officer, President and Secretary, and also serves as a member of the Board of Directors for Affiliate Franchisor in Florence, Kentucky and has done so since January 2021.

Board Member: Matthew Perelman

Mr. Perelman serves as a member of our Board of Directors in Florence, Kentucky and has done so since July 2019. Mr. Perelman also serves as a member of the Board of Directors for Affiliate Franchisor in Florence, Kentucky and has done so since January 2021. Mr. Perelman is a Co-Founder and has been a Managing Partner of Garnett Station Partners, an investment firm in New York, New York focused on retail and consumer companies, since September 2013. Mr. Perelman has been a Trustee of the Heckscher Foundation for Children since June 2016, and a Trustee of Reading Partners, both in New York, New York.

Board Member: Alexander Sloane

Mr. Sloane serves as a member of our Board of Directors in Florence, Kentucky and has done so since July 2019. Mr. Sloane also serves as a member of the Board of Directors for Affiliate Franchisor in Florence, Kentucky and has done so since January 2021. Mr. Sloane is a Co-Founder and has been a Managing Partner of Garnett Station Partners, an investment firm in New York, New York focused on retail and consumer companies, since September 2013. Mr. Sloane has been a Trustee of the Heckscher Foundation for Children since June 2009 and a Trustee of America Needs You since 2011, both in New York, New York.

Board Member: Robert A. Whitehouse II

Mr. Whitehouse serves as a member of our Board of Directors in Florence, Kentucky and has done so since July 2019. Mr. Whitehouse also serves as a member of the Board of Directors for Affiliate Franchisor in Florence, Kentucky and has done so since January 2021. Mr. Whitehouse has been the Chief Executive Officer of Eagle Financial Services, Inc. and affiliated entities in Florence, Kentucky, which focus on multi-state consumer lending, commercial real estate and furniture stores, since August 2014. Mr. Whitehouse is the past president and has been a member of the board of directors of the Ohio Financial Services Association in Columbus, Ohio since August 2014, and has been a member of the board of directors of the Kentucky Consumer Finance Association in Lexington, Kentucky since November 2014.

**ITEM 3**  
**LITIGATION**

No litigation is required to be disclosed in this Item.

**ITEM 4**  
**BANKRUPTCY**

No bankruptcy is required to be disclosed in this Item.



## ITEM 5 INITIAL FEES

### *Initial Franchise Fee*

You must pay us an initial franchise fee (“Initial Franchise Fee”) of \$15,000 when you sign the Franchise Agreement. The Initial Franchise Fee is payment for all of our pre-opening assistance that we provide to allow you to open your Kona Ice Business and also offsets some of our franchisee recruitment expenses. Each Franchise Agreement will grant you the right to operate one KEV and Additional Equipment in the Protected Territory. If you desire to operate more than one KEV, you will be required to purchase an additional Kona Ice Franchise for each KEV (unless you purchase a KEV 2.0 Truck as Additional Equipment which you may operate in your Protected Territory). The Initial Franchise Fee is due in full at the time you sign the Franchise Agreement(s), and is deemed fully earned by us once paid and is not refundable. During our last fiscal year, ended December 31, ~~2023~~<sup>2022</sup>, we collected Initial Franchise Fees of \$15,000.

### *Kona Entertainment Vehicle*

You will be required to purchase one KEV from us. You will be required to pay the then-current KEV price at the time you take delivery. As of the Issuance Date of this Franchise Disclosure Document, the current KEV price is for ~~\$139,250~~<sup>\$146,491</sup> to ~~\$148,250~~<sup>\$155,491</sup>. You will pay a nonrefundable \$5,000 deposit when you sign the Franchise Agreement and the remaining balance when you take delivery of your KEV (currently ~~\$134,250~~<sup>\$141,491</sup> to ~~\$137,450~~<sup>\$150,491</sup>). You will be required to pay for any optional customization or additional features that you request that are not standard on the KEV. KEV payments are nonrefundable even if you do not open a Kona Ice Franchise. The KEV will come equipped with initial equipment including an ice shaving machine, two cold plate freezers, our proprietary music system, and our proprietary patented FlavorWave Self-Service System. This station allows the customers to choose and apply their own flavorings to the shaved ice product. Franchisees are required to operate at least one KEV and may operate multiple KEVs in their Protected Territory. If a franchisee purchases multiple Franchises, franchisees may purchase KEV 2.0 Trucks instead of KEVs for the additional franchises (currently \$120,450 to \$128,450 per KEV 2.0 Truck).

### *KEV Compliance Fee*

We may require you to pay a fee in the event that we or our affiliate needs to modify any part of the KEV from our standard specifications in order to meet with relevant state or local health department requirements in your Protected Territory. If required, these modifications usually cost between \$0 and \$5,000. These payments are nonrefundable.

### *Initial Inventory*

We require all Franchisees to purchase an initial supply of cups and flavorings, a graphics package, and a Kona Ice welcome box that includes branded t-shirt uniforms from us before you begin operation of your Kona Ice Business. The cost of the initial inventory is \$6,475 and is to be paid prior to the start of your Kona Ice Business and is nonrefundable.

### *Optional Inventory*

You may, but are not required to, purchase Kona Ice branded merchandise from us such as stuffed penguins, ~~beach balls~~, shirts, and hats for approximately \$225, depending on the quantity you purchase. These payments are nonrefundable.



*Insurance*

You may, but are not required to, purchase your required insurance through our affiliate, Kona Insurance. You will be required to obtain your insurance prior to picking up your KEV. Your insurance will be approximately \$1,500 for three months of coverage, but may depend on various factors, including your location and whether you have had prior issues or claims from previous operations. These initial amounts owed may be paid up to three weeks following issuance, depending on state law. If you have had prior issues or claims from previous operations, your rates may be significantly higher. These payments are nonrefundable.

**ITEM 6**  
**OTHER FEES**

Type of Fee <sup>(1)</sup>	Amount	Due Date	Remarks
Royalty <sup>(2), (3)</sup>	\$3,000 for years one and two, <del>\$3,500</del> 4,000 for years three through six, <del>\$45,000</del> for years seven through ten	Three equal installments due June 30, July 31, and August 31 of each year or six equal installments due May 31, June 30, July 31, August 31, September 30 and October 31 or nine installments due <del>[dates]</del> April 30, May 31, June 30, July 31, August 31, September 30, October 31, November 30 and December 31. Payable beginning the first calendar year in which you take delivery of the KEV	This royalty (“ <u>Royalty</u> ”) is an ongoing payment that allows you to use the Marks and the intellectual property of the System and pays for our ongoing support and assistance. We reserve the right to charge additional royalties for the use of Additional Equipment. If you are renewing your franchise agreement, you must pay our then-current successor franchise royalty payments. If you are purchasing an existing Franchise, the date for determining royalty payments will be determined from the date the initial franchise agreement was signed.
Additional Equipment Royalty <sup>(4)</sup>	Varies based on the type of Additional Equipment (currently <del>\$1,000</del> 500 to <del>\$2,000</del> 500 per year)	Same as Royalty	You may purchase any Additional Equipment for use in your Protected Territory. You are not required to purchase any Additional Equipment during the term of the Franchise Agreement.
Additional Franchise Reservation Fee <sup>(5)</sup>	\$10,000 per territory	As incurred	Existing Franchisees may reserve territories in addition to the Protected Territory. The reservation fee (“ <u>Reservation Fee</u> ”) will be applied to the Initial Franchise Fee if you purchase an additional Franchise and a new KEV. The Reservation Fee will not be applied to the Initial Franchise Fee if you purchase a second-hand KEV. See Note 5 for more information.



Type of Fee <sup>(1)</sup>	Amount	Due Date	Remarks
Territory Infringement Fee	\$1,000 plus invoice amount for first violation; \$5,000 plus invoice amount for second and subsequent violations	As incurred	Payable to us if you infringe on another Kona Ice franchisee's Protected Territory by receiving payment for goods and/or services provided and/or rendered within the other franchisee's Protected Territory without that franchisee's and/or our permission. We may direct the funds at our option.
Initial Territory Adjustment Fee	\$1,000 to \$2,500	As incurred	We may, subject to availability and our approval, allow you to adjust your Protected Territory during your first 90 days of operation of your Kona Ice Business. You will be required to pay an "Initial Territory Adjustment Fee." This fee will be \$1,000 during the first 30 days of operation and \$2,500 beginning on the 31 <sup>st</sup> day. No revisions will be granted after 90 days of the delivery of the KEV.
Territory Relocation Fee	\$2,500	As incurred	This "Territory Relocation Fee" is payable to us if we approve the relocation of your Protected Territory.
Brand Fund Contribution	Currently \$500 per year for KEVs and KEV 2.0 Trucks, and an additional \$200 per year for <del>any</del> each piece of Additional Equipment you operate	Same as Royalty	We have established a system wide "Brand Fund." The Brand Fund contribution amount can be raised annually by up to 10%, and/or increased for marketing projects upon approval of the "Ad Council." See Item 11 for more information.
Unauthorized Advertising Fee	\$500 per occurrence	On demand	This fee is payable the Brand Fund if you use unauthorized advertising in violation of the terms of the Franchise Agreement.
Additional Training	Then-current fee (we do not currently charge for this) plus costs and expenses	As incurred	We may charge you for training newly-hired personnel, refresher training courses, advanced training courses, and additional or special assistance or training you may need or request. The fee amount will depend on the training required and experience level of the trainer. We may also require you to reimburse us for costs and expenses incurred in providing training to you.
Kona Email Address Fee/Google Voice Fee	\$168 per email address per year and \$14 per month	Same as Royalty	Payable to us for each email address we establish for you and for use of Google Voice. Each franchisee entity is required to have at least one Kona Ice email address. We reserve the right to increase this fee upon 30 days' written notice to you.



Type of Fee <sup>(1)</sup>	Amount	Due Date	Remarks
Technology Fee <sup>(6)</sup>	Then-current fee (currently \$500 per year)	Same as Royalty	You will pay this fee for each Kona Ice Franchise you operate. We may upgrade, modify and add new technologies and software. You are responsible for any increase in fees that result from any third-party price increases, upgrades, modifications or additional software, including any proprietary software. We reserve the right to increase this fee upon 30 days' written notice to you.
KonaOS Business Management Software Fee	<del>\$49</del> Then current price (currently <del>\$35</del> per month for one KEV operated by existing franchisees (beginning on month 13); \$29 per month for each additional KEV you operate; KEV: \$19 <del>20</del> per month for every ancillary unit you operate.).	Same as Royalty	The fee is paid directly to Kona Software Affiliate. You <del>are</del> will be responsible for any increase in <del>in this fee</del> fees that <del>results</del> result from any <del>third-party price increases, upgrades, or increased expenses, modifications, or additional systems</del> third-party price increases, upgrades, or increased expenses, modifications, or additional systems and for any increase in fees from <u>third-party providers</u> . We may allow you to use this software for non-Kona Ice Businesses for an additional charge.
Insurance	Reimbursement of our costs, plus a 20% administration charge	On demand	If you fail to obtain insurance, we may obtain insurance for you, and you must reimburse us for the cost of insurance obtained (currently \$500 per month) plus 20% of the premium for an administrative cost of obtaining the insurance.
Customer Satisfaction Reimbursement	Varies under circumstances	As incurred	We may, in our sole discretion, remedy any issues with customers of your Kona Ice Business, including full reimbursement of any fees paid to you. You must reimburse us for any such costs.
Misappropriated Brand Manual Fee <sup>(7)</sup>	Will vary under the circumstances	On demand	Our "Brand Manual" contains valuable intellectual property and trade secrets. Each franchisee will get one copy of the Brand Manual. If you lose, give away, make unauthorized copies, fail to return or otherwise misappropriate all or some of the Brand Manual, you must pay us liquidated damages according to the formula listed in Note 7 to offset the damages that we will incur as a result of this misappropriation.



Type of Fee <sup>(1)</sup>	Amount	Due Date	Remarks
Non-Compliance Fee	\$1,000 for the first violation; \$5,000 if violation is not corrected within 30 days; \$5,000 for the second violation.	As incurred	This fee is assessed if you receive notice that you are failing to follow our System Standards (defined in Item 8), failing to use the approved suppliers or products, failing to comply with the provisions of the Franchise Agreement or failing to follow the provisions of our Brand Manual. This fee is in addition to any and all remedies that we have available under the Franchise Agreement. If you commit three or more violations in a single year, we may terminate your Franchise Agreement.
Payment Service Fees	Up to 34% of total charge	As incurred	If payment is made to us or our affiliates by credit card for any fee required, we may include a service fee of up to 34% of the total charge.
Late Fees	\$25 per day, plus the lesser of the daily equivalent of 12% per year simple interest or the highest rate allowed by law	On demand	Payable if any payment due to us or our affiliate is not made by the due date. Interest accrues from the original due date until payment is received in full.
Returned Check or Insufficient Funds Fee	\$100	As incurred	Payable if any check or electronic funds transfer payment is not successful due to insufficient funds, stop payment, or any similar event.
Indemnification	Varies under circumstances	As incurred	You must indemnify and reimburse us for any expenses or losses that we or our representatives incur related in any way to your Kona Ice Business or Franchise.
Professional Fees and Expenses	Will vary under circumstances	As incurred	You must reimburse us for any legal or accounting fees that we incur as a result of any breach or termination of your Franchise Agreement. You must reimburse us if we are required to incur any expenses in enforcing our rights against you under the Franchise Agreement. You will also be required to pay any professional fees that we incur for certain transfers as discussed in this Item 6.
Renewal Franchise Fee	\$7,500	At the time you sign the successor franchise agreement	Payable if you qualify to renew your Franchise Agreement and choose to enter into a successor franchise agreement.



Type of Fee <sup>(1)</sup>	Amount	Due Date	Remarks
Transfer Fee	\$5,000 <del>to</del> <u>or \$7,500 plus \$1,000 for each piece of Additional Equipment.</u>	\$1,000 nonrefundable deposit at time of transfer application submittal and the remaining balance of fee at time of approved transfer	<p>This fee (“<u>Transfer Fee</u>”) is payable in connection with the transfer of your Kona Ice Business, your KEV, a transfer of ownership of your legal entity, or the Franchise Agreement. If you transfer to an existing Kona Ice franchisee, the Transfer Fee is \$5,000. <del>Otherwise, it is \$7,500 or \$7,500 if you transfer to a non-Kona Ice franchisee.</del> <u>In addition, you must pay a transfer fee of \$1,000 for each piece of Additional Equipment that you transfer.</u></p> <p>If you are transferring the Franchise Agreement to an entity that you control, family, or adding minority equity owners, you will not be required to pay a Transfer Fee, but you must pay our actual costs, including legal fees.</p>
Additional Equipment Transfer Fee	<del>\$500</del> <u>\$1,000</u> per Additional Equipment	At time of approved transfer	Payable in connection with the transfer of your Additional Equipment. You will be required to pay off any loans on the Additional Equipment prior to transfer.
KEV Remodel, KEV Upgrades or KEV 2.0 Truck	Will vary under circumstances (the average in <del>2023</del> <u>2022</u> was <del>\$27,213.84</del> <u>\$35,661.56</u> )	Upon execution of successor franchise agreement, upon a KEV rewrap or upon a transfer of an existing KEV (and KEV 2.0 Truck and Additional Equipment, if any) that has not completed the required remodels	You must keep your KEV (and KEV 2.0 Truck and Additional Equipment, if any) in compliance with current System Standards which includes a rewrap when required (at least every seven years of operation). You may need to pay this fee for the KEV (and KEV 2.0 Truck and Additional Equipment, if any): (1) upon execution of successor franchise agreement for a Kona Ice Franchise that has not completed the required remodels or is not in compliance with current standards; (2) for the transfer of a Kona Ice Business that has not completed the required remodels; or (3) if they are not in compliance with current standards.
Mystery Shopper Fee	\$1,000 per occurrence	On demand	We may require you to conduct a self-shop by sending photos of your KEV or any Additional Equipment. If the results of the self-shop are unsatisfactory or you do not participate, we may send a mystery shopper or similar third party to conduct a mystery shop. If the results of the mystery shop are unsatisfactory, we will conduct a mystery shop of your Kona Ice Franchise and you must pay us a fee of \$1,000 to cover our travel and expenses and you will be subject to non-compliance fees.



Type of Fee <sup>(1)</sup>	Amount	Due Date	Remarks
Monitor Content Management Software Fee	\$240 per year per monitor	Same as Royalty	All KEVs are equipped with a monitor on the exterior to allow both static and video images to be displayed including menu items, limited time offers, holiday messaging and content for specific events. Franchisees will have their own account to store, edit and customize the playlists on their monitor content. You will be required to follow the Monitor Guideline and Usage Policy contained in the Brand Manual.
Document Fee	\$250 per document	As incurred	You must pay us a document fee of \$250 (“ <u>Document Fee</u> ”) if you need an additional copy of your franchise disclosure document or signed Franchise Agreement. <del>You must be a current franchisee in good standing in order to obtain any documents from us.</del>
Lead Procurement Fee	\$15,000 or the third-party broker fee	As incurred	Payable only in connection with the transfer to a purchaser that was referred to you through one of our leads or through a third-party broker that we have a contract with. This fee is in addition to the Transfer Fee.
Audit	Cost of audit and any related accounting and legal expenses and related travel and administrative expenses (we estimate this cost to be between \$1,000 and \$10,000)	On demand	You will be required to pay these costs if an audit reveals that you have failed to submit required reports or other information that we require.
Branded Cup Audit Fee	\$3,000	On demand	You will be required to pay this fee if an audit reveals your purchases of branded cups equals less than 30% of your gross sales unless you can provide written substantiation of your proper usage of branded cups in the operation of your Kona Ice Business. This fee is in addition to all of other rights and remedies that we have in the Franchise Agreement.
Optional E-Lead Program Fee <sup>(8)</sup>	\$250 or \$500 per year	On demand	You will be required to pay this annual fee if you opt in to our optional “ <u>E-Lead Program</u> ” which provides digital marketing services.



Type of Fee <sup>(1)</sup>	Amount	Due Date	Remarks
Limited Time Offer Campaign Fee	Then-current fee (currently \$99 per kit)	On demand	The limited time offer campaign is a flavor and marketing campaign currently offered in the Spring, Summer and Fall. Each kit includes flavoring and marketing materials. You will be required to pay us this fee for each kit you purchase if you opt in to our optional limited time offer campaign. We reserve the right to require it upon 60 days' notice to you.
<u>Conference Fee</u>	<u>Then-current fee</u>	<u>On demand</u>	<u>Payable if you attend our annual conference. The conference fee for our last annual conference ranged from \$349 to \$500 depending on when you paid.</u>

Notes:

1. 1. — Fees. All fees paid to us or our affiliates are uniform and not refundable under any circumstances once paid. Fees paid to vendors or other suppliers may be refundable depending on the vendors and suppliers. We currently require you to pay fees and other amounts due to us and our affiliates via automated clearing house (“ACH”) or other similar means. You are required to complete the ACH authorization (in the form attached to this Franchise Disclosure Document in Exhibit H). We can require an alternative payment method or payment frequency for any fees or amounts owed to us or our affiliates under the Franchise Agreement. All fees are current as of the Issuance Date of this Franchise Disclosure Document. Certain fees that we have indicated may increase over the term of the Franchise Agreement.
2. 2. — Installment Payments. Franchisees currently have the option to pay certain fees annually or in installment payments on a three, six or ninth month schedule (“Installment Payments”). If you choose to pay in Installment Payments, your fees will be divided equally over the Installment Payment period you selected.
3. Royalty. Beginning on the opening date of your Kona Ice Business, and continuing for the term of this Franchise Agreement, including any interim period between franchise agreements, you agree to pay us the Royalty listed below annually in Installment Payments (“KEV Royalty Schedule”):



Time Period*	Total Royalty	KEV Royalty Schedule (If you make 3 installment payments per year)	KEV Royalty Schedule (If you make 6 installment payments per year)	KEV Royalty Schedule (If you make 9 installment payments per year)
Years 1-2	\$3,000	June 30: \$1,000 July 31: \$1,000 August 31: \$1,000	May 31: \$500 June 30: \$500 July 31: \$500 August 31: \$500 September 30: \$500 October 31: \$500	April 30: \$333 May 31: \$333 June 30: \$334 July 31: \$333 August 31: \$333 September 30: \$334 October 31: \$333 November 30: \$333 December 31: \$334
Years 3-6	\$3,500 <u>4,000</u>	June 30: \$1,166 <u>33</u> July 31: \$1,166 <u>33</u> August 31: \$1,168 <u>34</u>	May 31: \$583 <u>666</u> June 30: \$583 <u>667</u> July 31: \$584 <u>667</u> August 31: \$583 <u>666</u> September 30: \$583 <u>667</u> October 31: \$584 <u>667</u>	April 30: \$389 <u>444</u> May 31: \$389 <u>444</u> June 30: \$389 <u>445</u> July 31: \$389 <u>445</u> August 31: \$389 <u>444</u> September 30: \$389 <u>445</u> October 31: \$389 <u>444</u> November 30: \$389 <u>444</u> December 31: \$388 <u>445</u>



Time Period*	Total Royalty	KEV Royalty Schedule (If you make 3 installment payments per year)	KEV Royalty Schedule (If you make 6 installment payments per year)	KEV Royalty Schedule (If you make 9 installment payments per year)
Years 7-10 (plus any interim period between franchise agreements, if applicable)*	\$45,000	June 30: \$1,333 <u>6</u> <u>66</u> July 31: \$1,333 <u>6</u> <u>67</u> August 31: \$1,334 <u>6</u> <u>67</u>	May 31: \$666 <u>833</u> June 30: \$666 <u>833</u> July 31: \$667 <u>834</u> August 31: \$666 <u>833</u> September 30: \$666 <u>833</u> October 31: \$667 <u>834</u>	April 30: \$444 <u>555</u> May 31: \$444 <u>555</u> June 30: \$445 <u>556</u> July 31: \$445 <u>556</u> August 31: \$444 <u>555</u> September 30: \$445 <u>556</u> October 31: \$444 <u>555</u> November 30: \$444 <u>556</u> December 31: \$445 <u>556</u>

You may choose your Installment Payment schedule each year so long as you make your selection prior to our annual convention. If you do not make a selection before the convention, we will elect for you. If you qualify to renew your Franchise Agreement and choose to enter into a successor franchise agreement, or, if you are a transferee, the date for determining your KEV Royalty Schedule will be the date the initial franchise agreement was signed for the Kona Ice Business you are continuing to operate or acquired and you must pay our then-current successor royalty for successor franchise agreements which is currently \$45,000 for year 11; \$45,500 for years 12 through 15 and \$56,000 for years 16 through 20. For any other fees that can be paid as Installment Payments, you will pay each fee in accordance with our payment policies as stated in the Brand Manual.

4. 4. Additional Equipment Royalty. If you purchase Additional Equipment, you will be required to pay the additional equipment royalty (“AE Royalty”) for such Additional Equipment, which will be noted in an amendment to the Franchise Agreement.



As of the Issuance Date of this Franchise Disclosure Document, the Additional Equipment offered, the purchase price range, and the AE Royalty amount during the initial term is as follows:

Equipment	Amount	AE Royalty
Kona Entertainment Trailer	\$44,500 - \$51,500, plus shipping	\$1,000 <del>500</del> annually or Installment Payments
Kona Entertainment Kiosk	\$35,000 - \$40,500, plus shipping	\$1,000 <del>500</del> annually or Installment Payments
KEV 2.0 Truck*	\$120,450 - \$128,450, plus shipping	\$2,000 <del>500</del> annually or Installment Payments**
Kona Mini Truck	\$28,860 - \$33,860, plus shipping	\$1,000 <del>500</del> annually or Installment Payments

These amounts are subject to change. If you qualify to renew your Franchise Agreement and choose to enter into a successor franchise agreement, you must pay our then-current successor AE Royalty, which may be higher. You may not purchase any Additional Equipment until your KEV is operating in your Protected Territory. The AE Royalty will be due for as long as you own the Additional Equipment.

\*If you are doing a KEV 2.0 Conversion, you will be required to trade in your KEV to us and pay shipping for the KEV 2.0 Truck.

\*\*If you are doing a KEV 2.0 Conversion, you will be required to pay according to the KEV Royalty Schedule and not the AE Royalty listed in the chart above.

5. **Additional Franchise Reservation Fee.** Existing franchisees may also reserve an additional franchise and territory (“Reserved Franchise”) subject to availability and our approval by paying a Reservation Fee of \$10,000 per territory. You will pay this fee when you sign the “Additional Franchise Reservation Agreement” which is attached as Exhibit H-5 to this Franchise Disclosure Document. You will be able to reserve a territory for up to 12 months. We will also give you a right of first refusal for an additional 12 months if you do not purchase the Reserved Franchise within the 12-month period. You cannot renew the Additional Franchise Reservation Agreement if you fail to purchase the Reserved Franchise. The Reservation Fee will be applied to the Initial Franchise Fee if you purchase an additional Franchise and a new KEV. The Reservation Fee will not be applied to the Initial Franchise Fee if you purchase a second-hand KEV. The Reservation Fee is nonrefundable.
  
6. **Technology Fee.** We provide you with certain technical services in exchange for a technology fee (“Technology Fee”). The Technology Fee may change periodically based on changes to the technological services we provide and/or our costs to provide these services. We reserve the right to develop, license, sublicense and create additional software and technologies that Kona Ice franchisees must pay for and use. We can change the software and technology that must be used by our franchisees at any time, which may result in changes to the Technology Fee.



7. Misappropriated Brand Manual Fee. These liquidated damages are determined by taking our total revenue from our previous fiscal year, multiplied by the fraction which results from taking one divided by the current number of Kona Ice franchisees as of the date of the misappropriation, except that this fee will not, under any circumstances, be less than \$30,000.
8. Optional E-Lead Program Fee. The E-Lead Program is an optional digital marketing service to manage the placement of digital ads. Franchisees can choose the E-Lead Lite for \$250 or the E-Lead Plus for \$500. This fee is for administration of the program. Franchisees pay for the ads directly to third parties.

**ITEM 7**  
**ESTIMATED INITIAL INVESTMENT**

**YOUR ESTIMATED INITIAL INVESTMENT**

Type of Expenditure	Amount		Method of Payment	When Due	To Whom Payment is Made
	Low	High			
Initial Franchise Fee	\$15,000	\$15,000	Lump Sum	Upon signing the Franchise Agreement	Us
KEV and Installed Equipment <sup>(1)</sup>	\$139,250 <del>146,491</del>	\$148,250 <del>155,491</del>	Two Installments	\$5,000 due upon signing the Franchise Agreement and the balance of \$132,450 <del>141,491</del> to \$142,450 <del>150,491</del> due upon delivery or pick up of the KEV and related equipment	Us
Training Expenses <sup>(2)</sup>	\$140	\$950	As Incurred	As Incurred	Providers of Travel, Lodging, and Food Services
KEV Delivery <sup>(3)</sup>	\$0	\$10,000	Lump Sum	Upon delivery of the KEV and related equipment	Third Party
KEV Compliance Fee	\$1,000 <del>0</del>	\$5,000	As Incurred	As Incurred	Us or our affiliate
KEV Insurance for 3 Months <sup>(4)</sup>	\$500	\$1,500	As Incurred	As Incurred	Our affiliate or Insurance Companies
Tax, Title, and Licensing of KEV <sup>(5)</sup>	\$1,000	\$8,000	Lump Sum	Upon delivery or pick up of the KEV	Government Agencies



Type of Expenditure	Amount		Method of Payment	When Due	To Whom Payment is Made
	Low	High			
Initial Inventory <sup>(6)</sup>	\$9,975	\$9,975	Lump Sum	Before Opening	Us, <u>Third Parties</u>
Optional Inventory <sup>(7)</sup>	\$0	\$225	As Incurred	As Incurred	Us, Suppliers
Permits and Licenses <sup>(8)</sup>	\$250	\$1,500	Lump Sum	As Incurred	Government Agencies
Real Estate or KEV Storage <sup>(9)</sup>	\$0	<del>\$1,200</del> \$4,000	As Incurred	As Incurred	Third Parties
Computer System and Software	\$0	\$1,000	As Incurred	Before Opening	Suppliers
Additional Funds – 3 Months <sup>(10)</sup>	\$0	\$9,500	As Incurred	As Incurred	Us, Third Parties
TOTAL ESTIMATED INITIAL INVESTMENT <sup>(11)</sup>	<del>\$167,115</del> \$173,356	<del>\$212,100</del> \$222,141			

Notes:

These estimated initial expenses are our best estimate of the costs you may incur in establishing and operating your Kona Ice Franchise. You may be able to finance the purchase of your KEV or any Additional Equipment (See Item 10). All expenditures paid to us or our affiliates are uniform and nonrefundable under any circumstances once paid. All expenses payable to third parties are nonrefundable, except as you may arrange for utility deposits and other payments.

1. 1. — KEV and Installed Equipment. Only the KEV or Additional Equipment may be used in the operation of your Kona Ice Business. No other truck or vehicle may be used in the operation of your Kona Ice Business. These items must be purchased from us or our affiliate.
2. 2. — Training Expenses. We will pay for hotel and airfare for one attendee for our initial training program in Florence, Kentucky. If you are in a state with a fee deferral requirement, we will reimburse you for hotel and airfare (if applicable) for one attendee after your Kona Ice Business is open. You are responsible for all other costs for any initial training program attendees. The low estimate is for one attendee’s miscellaneous travel expenses, and assumes the attendee drives to the initial training program. The high estimate is for one additional attendee’s airfare, hotel and miscellaneous travel expenses.
3. 3. — KEV Delivery. You are responsible for picking up your KEV from the manufacturer located in Florence, Kentucky after initial training, or you may choose to have your KEV delivered. KEVs are delivered from Florence, Kentucky. If you choose delivery, you will pay the delivery fee directly to the transportation company based on the then-current delivery rate.
4. 4. — KEV Insurance for 3 Months. You must obtain and maintain, at your own expense, the insurance coverage we require, and satisfy other insurance-related obligations. Please note that if you have had prior issues or claims from previous operations unrelated to the operation of a Kona Ice Business, your rates may be significantly higher than those estimated above. You may, but are not required to, purchase this insurance through the captive insurance program offered through our affiliate.



5. ~~5.~~ Tax, Title, and Licensing of KEV. You are required to pay all federal and state tax, title, licenses, and other costs of titling the KEV or KEV 2.0 Truck. The estimates above include a sales (or usage) tax of an estimated 6% of the purchase price of the KEV. The actual amount may be more depending on the tax rate in the jurisdiction where you title your KEV. You should check with your local county clerk's office or other governmental titling office for your state's tax rate and the exact cost to title and license your KEV.
6. Initial Inventory. You must purchase an initial inventory of mixing drum, initial operating supplies, sanitation kit, cups and flavorings, a graphics package, and a Kona Ice welcome box that includes branded t-shirt uniforms to begin operation of your Kona Ice Business. These items must be purchased from us or our affiliate, and you are not permitted to purchase any of these items, from alternate sources. You must also purchase an initial inventory of ice and sugar, which may be purchased from any supplier. These estimates include \$3,500 for three month's inventory of ice and sugar.
7. Optional Inventory. You may choose to purchase pre-packaged ice cream products from any vendor of your choosing, but you are not required to do so. You may also purchase Kona Ice branded merchandise such as stuffed penguins, ~~beach balls~~, shirts, and hats from us; however you are not required to do so.
8. ~~8.~~ Permits and Licenses. You are required to pay for local permits and licenses, usually required in each city, county, and state where you operate. You should check with your local taxing authorities and with your tax advisor for the amount of such governmental charges.
9. ~~9.~~ Real Estate or KEV Storage. Because most of our franchisees will operate their Kona Ice Business out of their residences, this chart does not include estimates for items such as real property, real estate deposits, leases, leasehold improvements, furniture, fixtures, fixed assets, remodeling, construction, decorating costs, utility deposits, or security deposits, which will likely not apply unless you choose to acquire a business premises. In addition, we assume that you will not need to obtain desks, chairs, and other standard office supplies and equipment and do not include estimates for these items. You may need to rent a storage area for your KEV and any Additional Equipment. The low end assumes that you can store your KEV at your residence. The high estimate provides for three months of storage at an outdoor vehicle storage area.
10. ~~10.~~ Additional Funds. These amounts represent our estimate of the amount needed to cover your expenses for the initial three-month start-up phase of your Kona Ice Business. Expenses could include office/warehouse space (if required), utilities, special event fees, uniforms, as well as additional operating capital for other variable costs such as fuel, vehicle maintenance, internet service, and mobile phones/telephone. In the event you intend to hire employees to operate your KEV, you should add their expected salary to this figure. These figures include \$3,000 in royalty fees and \$500 in Brand Fund contributions, and \$500 in Technology Fee payments, which may be due within your initial three-month start-up phase. These figures also include \$500 payable to us if you chose to participate in the E-Lead Program in your first three months' of operations. We have elected to include certain fees as line items above, including the KEV insurance payments. These fees could also be included in our Additional Funds amounts. For purposes of this disclosure, we estimated the start-up phase to be three months from the date your Kona Ice Business opens for business. We have relied on our operation of similar businesses since 2007 and our franchising experience since 2008 to arrive at these estimates. ~~Your costs will depend on factors such as: how well you follow our methods and procedures; your management skills, experience, and business acumen; local economic conditions; the local market for your products and services; the prevailing wage rate; competition; and the sales level reached during the start-up period.~~



11. This is an estimate of your initial start-up expenses for one Kona Ice Franchise. ~~You should review these figures carefully with a business advisor before making any decision to purchase the Franchise.~~

## ITEM 8 RESTRICTIONS ON SOURCES OF SERVICES AND PRODUCTS

### System Standards

To ensure the highest degree of quality and service is maintained, you must operate the Kona Ice Business in strict conformity with the methods, standards, and specifications (“System Standards”) we list in our proprietary and confidential operating manual (“Brand Manual”), which may exist in various parts, locations, and formats, and may include a combination of audio, video, written material, electronic media, website content, and/or software components. Our Brand Manual will include our “Success Guide” and may also include other written components.

System Standards may regulate, among other things, the types, models, and brands of supplies, equipment, furnishings, and signs; services, products, and supplies the Kona Ice Franchise must offer; unauthorized and prohibited services and products; inventory requirements; and designated and approved suppliers of these items. You must not: (i) deviate from these methods, standards, and specifications without our prior written consent, or (ii) otherwise operate in any manner which reflects adversely on our Marks or the System. Your Kona Ice Business must prepare and sell only the products that we designate and approve. We have the right to periodically make modifications to these products and you must comply with these modifications. You may not offer or sell any other product or service without our prior written consent. Establishing and enforcing System Standards are the mechanism by which we maintain the quality and consistency of the Kona Ice brand. If any product dispensed at your Kona Ice Business violates our System Standards or any applicable laws or regulations, or poses a health risk to the public, we may require that you immediately close your Kona Ice Business and not reopen until approved to do so by us after our inspection. In order to protect the public from any risk of harm and to protect the goodwill and reputation of the System, we may seek immediate injunctive relief seeking an order to close your Kona Ice Business if you fail to close your Kona Ice Business upon our request.

We will notify you of new or modified specifications, standards, and guidelines through periodic amendments or supplements to the Brand Manual or through written communication (including electronic communication). We will issue copies of our standards and specifications to you unless these standards and specifications contain our confidential information. We may require you to remodel, and modernize, ~~and redecorate~~ the KEV or KEV 2.0 Truck, and any Additional Equipment, at your sole expense, so that the KEV or KEV 2.0 Truck reflects our then-current System Standards as to image and quality.

You must use the computer hardware and software, including the point-of-sale system that we periodically designate to operate your Kona Ice Franchise. You must obtain the computer hardware, software licenses, maintenance and support services, and other related services that meet our specifications from the suppliers we specify.

### KEV Appearance

You must maintain the appearance of the KEV in accordance with our System Standards, including a rewrapping as required by us based on the condition of the KEV (but no later than seven years after you purchase the KEV) at your expense. You will be required to update the KEV appearance as follows: (1) the execution of successor franchise agreement for a Kona Ice Franchise with a KEV that has not completed



the required remodels or is not in compliance with current standards; (2) for the transfer of a Kona Ice Business with a KEV that has not completed the required remodels; or (3) for a KEV that is not in compliance with current standards. See Item 11 for more information. You must use our approved supplier for the window tinting, wrapping and upfitting of your KEV. You may be required to purchase a new KEV depending on age, condition and wear.

### Additional Equipment

You must maintain the appearance of Additional Equipment in accordance with our System Standards, including a rewrapping, at your expense, as required by us based on the condition of Additional Equipment (but no later than seven years after you purchase Additional Equipment). See Item 11 for more information. You must use our approved supplier for the window tinting, wrapping and upfitting of your Additional Equipment.

### Insurance

You must obtain and maintain at your own expense and from a supplier rated “A-” or better by Best’s Insurance Reports, the insurance coverage that we periodically require and satisfy other insurance-related obligations. You currently must have the following coverage:

- A. If you have employees, workers’ compensation insurance in an amount not less than \$500,000 or a higher amount as required by state statute or rule in the state in which your Kona Ice Business is located;
- B. Comprehensive business automobile insurance, including physical damage for the KEV and KEV 2.0 Truck, if applicable, in an amount of ~~\$139,250~~146,491 or greater, except that an appropriate deductible clause (maximum \$5,000 deductible) will be permitted. Also including any ancillary equipment and any other property used in the operation of the Kona Ice Business;
- C. Comprehensive general liability insurance and product liability insurance coverage in such amounts and upon such terms as may generally be customary for a shaved ice business located in your Protected Territory, but not less than \$1,000,000, insuring both you and us against all claims, suits, obligations, liabilities and damage, including attorney fees, based upon or arising out of actual or alleged personal injuries or property damage relating to the use or condition of the Franchise;
- D. You must procure, maintain and provide evidence of automobile (truck) vehicle liability insurance covering the driving of the KEV or KEV 2.0 Truck, Hire/Non Owned Autos and any Additional Equipment or vehicles used in your business in an amount of not less than \$1,000,000; and
- E. Such additional insurance as may be required by the terms of any lease or mortgage for the Franchise.

We may periodically increase the amounts of coverage required under these insurance policies and/or require different or additional insurance coverage at any time. You may purchase all of your insurance through the captive insurance program offered by our affiliate, Kona Insurance. The captive insurance program is a comprehensive property and casualty insurance program covering the Kona Ice Franchisee’s in the following areas: Commercial Auto Liability; Commercial Auto Physical Damage; Commercial General Liability; Property Coverage and Inland Marine; Workers Compensation; and



Commercial Umbrella. The program is underwritten by Great American Insurance Group and administered by Cornerstone Insurance.

All insurance policies, except for employment liability insurance policies, must name us and any affiliates we designate as additional named insured parties and provide for 30 days prior written notice to us of a policy's material modification, cancellation or expiration. You must furnish us with a copy of your Certificate of Insurance within ten days after the policy is issued or renewed.

### Approved Products and Services

We may develop proprietary food products ("Products") and may develop and own proprietary recipes ("Proprietary Recipes"). In order to protect their trade secrets and to monitor the manufacture, packaging, processing, and sale of Products, we or our affiliate will: (i) manufacture, supply, and sell Products to Kona Ice franchisees; and/or (ii) disclose Proprietary Recipes to a limited number of suppliers, including our affiliate.

You must obtain services and products from: (1) designated suppliers, (2) approved suppliers, and/or (3) according to our specifications. We will issue you a list of the designated and approved suppliers. If you want to use or sell a product or service that we have not yet evaluated or if you want to purchase or lease a product or service from a supplier or provider that we have not yet approved (for services and products that require supplier approval), you must follow the policies and procedures contained in our Brand Manual. Our approval generally will be based on the supplier's ability to consistently make the manufactured product to our standards, requirements, and/or specifications; the supplier's willingness to protect our confidential information; production, delivery, and service capability to meet supply and service commitments; and other criteria as may be detailed in the Brand Manual. We will use commercially reasonable efforts to notify you within 60 days after receiving all requested information and materials whether you are authorized to purchase or lease the product or service from that supplier or provider. Costs associated with gaining approval may be your responsibility and/or the supplier's where existing suppliers are capable of providing an existing product. We may periodically re-inspect approved suppliers' facilities and products, and we reserve the right to revoke our approval of any supplier, provider, product or service that does not continue to meet our specifications. We do not provide material benefits to you based solely on your use of designated or approved suppliers, other than that you will not be in default, will be able to renew or transfer, and will have the intangible benefit of uniform quality standards. Some of our officers own an interest in our affiliate, Kona Insurance, which is an approved supplier of comprehensive property and casualty insurance. Some of our officers own an interest in Kona Software Affiliate which is the only approved supplier of the business management software, KonaOS. Some of our officers own an interest in KII, which is the only approved supplier of the KEV, the Additional Equipment and certain branded merchandise. Some of our officers own an interest in Kreations Flavoring, LLC, which is an approved supplier of flavoring. One of our directors is an officer of Eagle Financial Services, Inc., which is an approved supplier of financing. The owner of Eagle Financial Services, Inc. has an indirect small minority interest in us.

We estimate that approximately 90% of purchases required to open your Kona Ice Franchise and 15% of purchases required to operate your Kona Ice Franchise will be from us or from other approved suppliers or under our specifications. During our last fiscal year, ended December 31, 2023~~2022~~, we received \$17,427,961~~141,571,847~~ in revenue from these required purchases. This number represents revenue and not profit from product sales and includes those products which franchisee may choose to buy from us but are not required (such as merchandise). This number represents 47.5~~74.6~~% of our total revenues of \$36,680,494~~55,749,089~~. During our last fiscal year, ended December 31, 2023~~2022~~, our affiliate Kreations Flavoring received \$3,424,412~~871,007~~ in revenue from these required purchases. During our



last fiscal year, ended December 31, ~~2023~~~~2022~~, our affiliate Kona Insurance received \$~~1,984,658~~~~2,544,154~~ in revenue from these required purchases. During our last fiscal year, ended December 31, ~~2023~~~~2022~~, our affiliate Kona Software Affiliate received \$~~59,900~~~~425,299~~ in revenue from usage of proprietary software.

We have negotiated purchase arrangements with suppliers and distributors for the benefit of our Franchisees, and we may receive rebates or volume discounts (maximum of 3% to 5%) from our purchase of equipment and supplies that we resell to you.

Additional Equipment

You may, but are not required to, purchase any Additional Equipment that we offer for use in your Protected Territory during the term of the Franchise Agreement. If you purchase Additional Equipment, you will be required to pay the AE Royalty as stated in Item 6.

Approval of New Suppliers

We may update the list of approved suppliers in the Brand Manual. If you desire to have a non-approved supplier of a product or service designated as an approved supplier, you must submit samples of the supplier’s products or services to us, along with a written statement describing why such items, services, or suppliers should be approved for use in the System. We do not make our supplier specifications and/or standards generally available to franchisees or suppliers. While we will be required to respond to a request within 60 days, we generally respond to a request for an additional approved supplier within seven days. Our written approval must be received before you use products not purchased from an approved supplier. We may revoke our approval at any time if we determine, in our discretion, that the supplier no longer meets our standards. You must stop selling any products and/or purchasing products from any supplier if we notify you we no longer approve of that specific product or supplier.

**ITEM 9**  
**FRANCHISEE’S OBLIGATIONS**

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

Obligation	Section in Franchise Agreement	Franchise Disclosure Document Item
a. Site selection and acquisition/lease	<del>Sections 2, 3A, &amp; 3B</del> <u>Section 7</u>	Items 7 & 11
b. Pre-opening purchases/leases	<del>Section 3</del> <u>Sections 7 and 19</u>	Item 7
c. Site development and other pre-opening requirements	Sections 3, 4A, 4B, 5A, & <del>9</del> <u>7 and 19</u>	Item 11
d. Initial and ongoing training	<del>Sections 5A, 5B, &amp; 5C</del> <u>Section 8</u>	Item 11
e. Opening	<del>Section 3</del> <u>Sections 7 and 12</u>	Item 7 & 11
f. Fees	Sections <del>3D, 4, 5D, 9I, 9K, 13C, 14A</del> <u>5, 6, 7, 8, 12, 13, 14, 16, 19, 20 and 21</u>	Items 5, 6 & 7
g. Compliance with standards and policies/Franchise Operations Manual	Sections <del>5C, 5D</del> <u>9, 12, and 9</u> <del>13</del>	Items 8, 15, & 16



Obligation	Section in Franchise Agreement	Franchise Disclosure Document Item
h. Trademarks and proprietary information	Sections <del>6 &amp; 7</del> , 14, and 17	Items 13 & 14
i. Restrictions on products/services offered	<u>Section 13</u> Sections <del>9B &amp; 9D</del>	Items 8 & 16
j. Warranty and customer service requirements	Sections <del>1A, 1B &amp; 9E</del> <u>Section 13</u>	Not Applicable
k. Territorial development and sales quotas	Section <del>24</del>	Item 12
l. On-going product/service purchases	Section <del>9D</del> <u>13</u>	Item 8
m. Maintenance, appearance, and remodeling requirements	Sections <del>3 &amp; 9</del> <u>Section 13</u>	Items 7, 8, & 11
n. Insurance	Section <del>9G</del> <u>19</u>	Item 7
o. Advertising	Section 10	Items 6 & 11
p. Indemnification	Section <del>17D</del> <u>22</u>	Item 6
q. Owner's participation/management and staffing	Sections <del>3, 5E, 5F, &amp; 9F</del> <u>Section 10</u>	Items 11 & 15
r. Records and reports	Section <del>11</del> <u>20</u>	Item 17
s. Inspections and audits	Section <del>12</del> <u>21</u>	Item 6
t. Transfer	Sections <del>15 and 16</del> <u>Section 13</u>	Item 17
u. Renewal	Section <del>14</del> <u>5</u>	Item 17
v. Post-termination obligations	Section <del>16</del> Sections <u>18 and 25</u>	Item 17
w. Non-competition covenants	Section <del>16D</del> <u>18</u>	Item 17
x. Dispute resolution	Section <del>18</del> <u>27</u>	Item 17

## **ITEM 10** **FINANCING**

KII offers indirect financing to franchisees as described below. Neither KII nor any agent or affiliate of ours offers direct financing. We do not guarantee your note, lease or obligation. We do not have any past or present practice to sell, assign or discount to any third party, in whole or in part, any financing arrangements. We reserve the right to offer financing or assist franchisees in obtaining financing in the future.

At their sole discretion, and if you qualify, the following lenders may offer you financing for the purchase of your KEV; KEV 2.0 Truck, kiosk, mini or trailer; and/or initial inventory (“Financing”): (i) Eagle Financial Services, Inc. (“Eagle”); (ii) a hybrid of Ally Financial, Inc. (“Ally”) and Eagle (together, “Ally-Eagle”); (iii) Auxilior Capital Partners (“Auxilior”); and (iv) Osgood Bank (“Osgood Bank”). The owner of Eagle has an indirect small minority ownership interest in us. An officer of Eagle is also one of our directors.



## Eagle Financing

Eagle may also offer you Financing for the purchase of your KEV, KEV 2.0 Truck, kiosk, mini or trailer. You will be required to enter into a commercial promissory note (“Note”) attached in Exhibit H to this Franchise Disclosure Document. Neither we nor any affiliate or agent receives any consideration for using Eagle for Financing. The following table summarizes the Financing Eagle may offer you:

### **SUMMARY OF EAGLE FINANCING OFFERED<sup>(1)</sup>**

Item Financed	Purchase price of a KEV, KEV 2.0 Truck, kiosk, mini or trailer
Amount Financed	Full balance of a kiosk, mini or trailer
Down Payment	Balance of purchase price after Financing amount has been determined
Term	36 months
APR %	9 <u>10.99</u> %
Monthly Payment	36 equal monthly installments; varies according to amount financed
Prepayment Penalty	None
Security Required	Partner or shareholder and personal guarantee and pledge of the Franchise <sup>(2)</sup>
Liability Upon Default	Late penalty; including accrued interest as allowed by law; acceleration of amounts due; fees <sup>(3)</sup>
Loss of Legal Right On Default	Includes waiver of trial by jury and right to interpose any defense, set-off, or counterclaim of any nature or description <sup>(4)</sup>

The Financing for a kiosk, mini or trailer is paid in 36 equal monthly installments at an interest rate of 910.99%.

#### Notes:

1. If your franchisee entity is a partnership, corporation or other recognized legal entity, the Note must be guaranteed individually by all partners or shareholders. The Note must be secured by the assets of the Kona Ice Franchise.
2. In the case of nonpayment or other default under the Note, Eagle can require immediate payment of all amounts due them and can collect reasonable attorney fees and all costs and expenses of collection.
3. The Note requires that you waive trial by jury and the right to interpose any defense, set-off or counterclaim of any nature or description, as well as waive demand, presentment, protest, notice of dishonor, notice of protest, notice of default and all suretyship defenses.

## Ally-Eagle Financing

Ally and Eagle in combination may also offer you Financing for the purchase of your KEV or KEV 2.0 Truck and initial inventory pack. You will be required to enter into the Note for Eagle and a



Retail Installment Contract – Motor Vehicle – Simple Interest for Ally (“Retail Contract”) both attached in Exhibit H to this Franchise Disclosure Document. Neither we nor any affiliate or agent receives any consideration for our franchisees’ use of Ally or Ally-Eagle for Financing. The following table summarizes the Financing Ally-Eagle may offer you:

**SUMMARY OF ALLY-EAGLE FINANCING OFFERED<sup>(1)</sup>**

Item Financed	Purchase price of one KEV or KEV 2.0 Truck and initial inventory pack
Amount Financed	Full balance of KEV (currently <del>\$139,250</del> <u>146,491</u> to <del>\$148,250</del> <u>155,491</u> ) or KEV 2.0 Truck (currently \$120,450 to \$128,450) plus initial inventory pack (currently \$6,475), split between Ally and Eagle
Down Payment	Balance of purchase price after Financing amount has been determined
Term	60 months
APR %	For Ally portion of loan: rate based on credit application results (best results have been approved at <del>7</del> <u>10</u> %, subject to change) For Eagle portion of loan: <del>9</del> <u>10.99</u> %
Monthly Payment	For Ally portion of loan: 60 equal monthly installments; varies according to amount financed and rate For Eagle portion of loan: 60 equal monthly installments; varies according to amount financed
Prepayment Penalty	None
Security Required	Partner or shareholder and personal guarantee and pledge of the Franchise <sup>(2)</sup>
Liability Upon Default	Late penalty, including 5% of the installment if the installment is in excess of \$200, or \$10.00 if the installment is for \$20 or less (Ally); and late penalty; including accrued interest as allowed by law; acceleration of amounts due; fees <sup>(3)</sup> (Eagle); acceleration of amounts due; fees <sup>(3)</sup>
Loss of Legal Right On Default	Includes waiver of trial by jury and right to interpose any defense, set-off, or counterclaim of any nature or description <sup>(4)</sup>

For the Ally portion of the Loan: the Financing for the chassis and hard components is paid in 60 equal monthly installments of an interest rate based on credit application results.

For the Eagle portion of the Loan: the Financing for the remaining portion of the KEV or KEV 2.0 Truck and inventory pack is paid in 60 equal monthly installments at an interest rate of ~~9~~10.99%.

Notes:

1. If you elect this option, you will submit an application to Ally, and if approved by Ally, Ally will finance up to \$65,000 of your KEV. Once Ally has approved your application, a separate application is not required by Eagle. If approved, Eagle may finance the remaining balance of your KEV.



2. If your franchisee entity is a partnership, corporation or other recognized legal entity, the Retail Contract and Note must be guaranteed individually by all partners or shareholders. The Retail Contract and Note must be secured by the assets of the Kona Ice Franchise.
3. If you are late on your payments, Ally and Eagle can charge a late penalty. In the case of nonpayment or other default under the Retail Contract and Note, Ally and Eagle can require immediate payment of all amounts due them, and can collect reasonable attorney fees and all costs and expenses of collection.
4. The Retail Contract and Note require that you waive trial by jury and the right to interpose any defense, set-off or counterclaim of any nature or description, a waiver of demand, presentment, protest, notice of dishonor, notice of protest, notice of default and all suretyship defenses (Eagle), and arbitration or trial by judge will take place on an individual basis without any form of class action and the lender is not liable for specific performance for any loss, damages, delay or failure to deliver equipment (Ally).

**Auxilior Financing**

Auxilior may offer you Financing for the purchase of your KEV and initial inventory pack. You will be required to enter into a loan and security agreement (“Loan and Security Agreement”) attached in Exhibit H to this Franchise Disclosure Document. The following table summarizes the Financing Auxilior may offer you:

**SUMMARY OF AUXILIOR FINANCING OFFERED<sup>(1)</sup>**

Item Financed	One KEV and/or KEV 2.0 Truck plus initial inventory pack. <u>Optional items - Kona Entertainment Trailer, Kona Entertainment Kiosk and Kona Mini Truck</u>
Amount Financed	Up to full purchase price of KEV (currently <del>\$139,250</del> <u>146,491</u> to <del>\$148,250</del> <u>155,491</u> ), less down payment, <u>and/or</u> KEV 2.0 Truck (currently \$120,450 to \$128,450), less down payment, plus purchase price of initial inventory pack (currently \$6,475). <u>Optional additions are Kona Entertainment Trailer (currently \$44,500 to \$51,500), Kona Entertainment Kiosk (currently \$35,000 to \$40,500) and/or Kona Mini Truck (currently \$28,860 to 33,860), less down payment.</u>
Down Payment	Balance of purchase price after Financing amount has been determined
Term	36 to 66 months (includes up to 6 months of deferments)
APR %	(A Credit) 8.24 <u>99</u> % (regardless of enrollment in deferments) or (B Credit) 10.99% (with deferments); rates may vary based on swap rates.
Monthly Payment	36 to 66 monthly installments (includes up to 6 months of deferments); may vary according to amount financed <sup>(2)</sup>
Prepayment Penalty	One percent (1%) for each year or partial year remaining on the loan
Security Required	Partner or shareholder and personal guarantee and pledge of the Franchise <sup>(3)</sup>



Liability Upon Default	Late penalty of the higher of 10% of the amount due or \$25.00, as permitted by law; acceleration of amounts due; fees <sup>(4)</sup>
Loss of Legal Right On Default	Includes waiver of trial by jury and right to interpose any defense, set-off, or counterclaim of any nature or description <sup>(5)</sup>

As consideration for using this lender for Financing, we may receive trade show sales and marketing support, including trade show assistance and promotional materials. The specific amount of support and materials are negotiated on a case-by-case basis, but typically ranges from 0.0% to 0.5% of the principal amount for new loans during the year. We also receive sponsorship fees to support certain conventions, which range from 50 to 100 basis points (0.5% to 1%) of the principal amount for new loans and from 50 to 150 basis points (0.5% to 1.5%) of the principal amount for refinances. Neither we nor any affiliate or agent receives any additional consideration for our franchisees' use of this lender for Financing.

Notes:

1. Auxilior reserves the right to change the terms, interest rate, and amounts financed.
2. Payment structure will reflect the seasonal nature of the Kona Ice Business. During the first year, contact payment of \$100/per month will be required in off-season months (up to four months) and during the second year, contact payments of \$100/per month in off-season months (up to two months) will be required. Payments made during the remaining months of the year will be higher to allow for repayment of the loan.
3. If your franchisee entity is a partnership, corporation, or other recognized legal entity, the Loan and Security Agreement must be guaranteed individually by all partners or shareholders. The Loan and Security Agreement must be secured by the assets of the Kona Ice Franchise.
4. If you are late on your payments, Auxilior can charge a late penalty. In the case of nonpayment or other default under the Loan and Security Agreement, Auxilior can require immediate payment of all amounts due them and can collect reasonable attorney fees and all costs and expenses of collection.
5. The Loan and Security Agreement requires that you waive trial by jury and the right to interpose any defense, set-off, or counterclaim of any nature or description. Arbitration or trial by judge will take place on an individual basis without any form of class action. Auxilior is not liable for specific performance for any loss, damages, delay or failure to deliver equipment.

### Osgood Bank Financing

Osgood Bank may offer you Financing for the purchase of your KEV or KEV 2.0 Truck and initial inventory pack. You will be required to enter into a promissory note, guaranty, security agreement



("Promissory Note and Security Agreement") attached in Exhibit H to this Franchise Disclosure Document. The following table summarizes the Financing Osgood Bank may offer you:

**SUMMARY OF OSGOOD BANK FINANCING OFFERED<sup>(1)</sup>**

Item Financed	One KEV or KEV 2.0 Truck and initial inventory pack	
Amount Financed	Up to full purchase price of KEV or KEV 2.0 Truck and related equipment and inventory, less any down payment made by borrower to KII	
Down Payment	Balance of purchase price after financing amount has been determined	
Term	3060 to 6072 months	
APR %	APR % Rate is fixed for the life of loan. Rate varies based on personal credit score of applicants as shown below (rates subject to change with WSJ Prime):	
	640-700 score	WSJ Prime + 4.25%, currently 8.459.99%
	700-750 score	WSJ Prime + 3.50%, currently 8.15%
	750+ score	WSJ Prime +2.75%, currently 7.858.75%
Monthly Payment	60 installment payments <sup>(2)</sup>	
Prepayment Penalty	Two percent (2%) of the original loan balance if paid in full during the first two years of the loan	
Security Required	Personal Guaranty of Owner, Partner or Shareholder and pledge of the Franchise <sup>(3)</sup>	
Liability Upon Default	Late penalty; acceleration of amounts due; fees <sup>(4)</sup>	
Loss of Legal Right On Default	Waiver of trial by jury and right to interpose any defense, set-off, or counterclaim of any nature or description <sup>(5)</sup>	
Fee(s)	\$200 documentation fee. Amount can be financed in loan	

Neither we nor any affiliate or agent receives any consideration for our franchisees' use of Osgood Bank for Financing.

Notes:

- Osgood Bank reserves the right to change the terms, interest rate and amounts financed.
- Payment structure will reflect the seasonal nature of the Kona Ice Business. During the first year, contact payments of \$100/per month will be required in off-season months (up to four months) and contact payments of \$100/per month will be required in off-season months (up to two months). Payments made during the remaining months of the year will be higher to allow for repayment of the loan.
- If your franchisee entity is a partnership, corporation, or other recognized legal entity, the Promissory Note and Security Agreement must be guaranteed individually by all partners or



shareholders. The Promissory Note and Security Agreement must be secured by the assets of your Kona Ice Franchise, including applicable titles.

4. If you are late on your payments, Osgood Bank can charge a late penalty. In the case of nonpayment or other default under the Promissory Note and Security Agreement, Osgood Bank can require immediate payment of all amounts due them and can collect reasonable attorney fees and all costs and expenses of collection.
5. The Promissory Note and Security Agreement requires that you waive trial by jury and the right to interpose any defense, set-off, or counterclaim of any nature or description.

### **ITEM 11**

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

**Except as listed below, KII is not required to provide you with any assistance.**

#### Pre-opening Obligations

Before you open the Kona Ice Franchise, we (or our affiliate or designees) will provide the following assistance and services to you:

1. Because you do not have to locate a site from which to operate your Kona Ice Business, we do not provide you with assistance in doing so. You may open an office, but it is not required and does not need to be approved by us. You must find a location to store the KEV and any Additional Equipment, which may be at your residence if permitted. Before you purchase the Kona Ice Franchise, you and we will jointly agree on the Protected Territory in which you will operate your Kona Ice Business. If we cannot agree on a territory location, we will not award you a Kona Ice Franchise (Franchise Agreement – ~~Sections 3A and 3B~~Section 4).
2. Provide you with mandatory and discretionary specifications for the Kona Ice Business, including standards and suggested criteria for design, image, and branding of KEV and Additional Equipment (Franchise Agreement – ~~Sections 3 and 9~~Section 13).
3. Identify products, supplies, and designated and approved suppliers that you must use to develop and operate the Kona Ice Business; establish minimum standards and specifications that you must satisfy while operating the Kona Ice Business (Franchise Agreement – ~~Sections 3 and 9~~Section 13).
4. Loan you or make available to you on our website one copy of our Brand Manual. The Brand Manual contains approximately ~~114~~195 pages. The table of contents for the Brand Manual is attached to this Franchise Disclosure Document as Exhibit E (Franchise Agreement – ~~Section 5D~~9.1).
5. Provide an initial training program for one attendee (Franchise Agreement – ~~Section 5A~~8.1).
6. Provide you with the KEV. We reserve the right to establish requirements regarding the design, image, and branding of the KEV, and the right to control and approve all content of the KEV, including the right to use the KEV to advertise our brand, products, and services (Franchise Agreement – ~~Sections 3 and 9~~Section 13.13).



7. Provide you with advice and guidance regarding your pricing policies in compliance with the applicable laws. We have the right to recommend retail prices and prescribe minimum and/or maximum retail prices for the products and/or services offered and sold at your Kona Ice Business. (Franchise Agreement – Section ~~9H~~13.1).

We do not provide the above services to renewal franchisees and may not provide all of the above services to franchisees that purchase existing Kona Ice Businesses.

### Schedule for Opening

We estimate that it will take two to 12 weeks after you sign the Franchise Agreement before you open your Kona Ice Business. The factors affecting this length of time include the time necessary for you to obtain the KEV and equipment, schedule your initial training, and hire and train any necessary employees.

### Continuing Obligations

During the operation of your Kona Ice Franchise, we (or our affiliates or designees) will provide the following assistance and services to you:

1. Upon reasonable request, provide advice regarding the Kona Ice Business operations based on your reports and our inspections. We also will guide you on standards, specifications, and operating procedures, and methods that Kona Ice Businesses use; purchasing required and authorized operating assets and other items and arranging for their distribution to you from us or the suppliers; advertising and marketing materials and programs; employee training; and administrative, bookkeeping, accounting, and inventory control procedures. We will guide you through the Brand Manual in bulletins or other written materials, through the use of electronic media, telephone conferences, and/or meetings at our offices or at your Kona Ice Business (Franchise Agreement – Section ~~5C~~9.2).

2. Continue to loan you or make available to you on our website one copy of the Brand Manual, which may consist of electronic media, and/or written materials. We may modify the Brand Manual periodically to reflect changes in System Standards (Franchise Agreement – Section ~~5D~~9.1).

3. We may periodically modify System Standards, and those modifications may require you to invest additional capital in the Kona Ice Business and/or incur higher operating expenses (Franchise Agreement – ~~Section 9~~Sections 9.1 and 13.1).

4. License the Marks (Franchise Agreement – Section ~~7~~17).

5. License to you for your use our Marks, as set forth in greater detail below in Item 13 (Franchise Agreement – ~~Sections 6A and 6B~~Section 17).

6. Maintain and administer one or more websites to advertise, market, and promote Kona Ice Businesses and the services and products offered (Franchise Agreement – Section ~~10E~~9.3).

7. Your KEV will come wrapped in vinyl containing the Kona Ice® design and insignia. You are required to update the wrap every seven years, or sooner, if needed, at your expense to comply with our current System Standards. All necessary updates, removal of vinyl, and installation of vinyl must be performed at an authorized upfit facility. The upfit facility is currently located in Florence, Kentucky (Franchise Agreement – Section ~~3E~~13.13).



8. Provide additional training to you for newly-hired personnel regarding the Kona Ice brand and System Standards through our learning management system, refresher training courses, and additional training or assistance that you need or request subject to our discretion. We may require you to pay additional fees for this training or assistance (Franchise Agreement – Section 58).

#### Optional Assistance

During the term of the Franchise Agreement, we (or our affiliates or designees) may, but are not required to, provide the following assistance and services to you:

1. Modify, update, or change the System, including the adoption and use of new or modified trade names, trademarks, service marks, or copyrighted materials, new products, new menu items, new equipment, or new techniques.

2. Maintain and administer the Brand Fund. We may dissolve the Brand Fund upon written notice (Franchise Agreement—~~Section 10A and 10B~~11).

3. Hold periodic national or regional conferences to discuss business and operational issues affecting Kona Ice franchisees.

4. Our affiliate, Kona Insurance, may offer a comprehensive property and casualty insurance program to you.

#### Advertising

##### *Brand Fund*

We have established a Brand Fund for marketing, developing and promoting the System, the Marks and Kona Ice Franchises. The Brand Fund was previously called the “Advertising Fund.” You are required to pay \$500 per year to the Brand Fund for each Kona Ice Franchise you own and \$200 per year for any each piece of Additional Equipment you operate. This amount can be raised annually by up to 10% in our sole discretion. The amount of the Brand Fund contribution may also be increased at any time upon super-majority (75%) of the “Ad Council” (which is defined below) and upon 30 days’ notice to you of the increase. We may use the Brand Fund for local, regional or national marketing, advertising, sales promotion and promotional materials, public and consumer relations, website development and search engine optimization, the development of technology for the System and any other purpose to promote the Kona Ice brand. The Brand Fund may be held in a separate bank account, commercial account, or savings account, but we are not required to do so. The Brand Fund is administered by us or one of our affiliates, and we may use a professional advertising agency or media buyer to assist us with the supervision and administration of the Brand Fund. Your contribution to the Brand Fund will be in addition to all other advertising requirements set out in this Item 11.

We may reimburse ourselves, our authorized representatives, or our affiliate from the Brand Fund for administrative costs, independent audits, reasonable accounting, bookkeeping, reporting and legal expenses, taxes, and all other reasonable direct or indirect expenses that may be incurred by us or our authorized representatives and associated with the programs funded by the Brand Fund. We assume no fiduciary duty to you or other direct or indirect liability or obligation to collect amounts due to the Brand Fund or to maintain, direct, or administer the Brand Fund. Any unused funds in any calendar year will be applied to the following year’s funds, and we reserve the right to contribute or loan additional funds to the Brand Fund on any terms we deem reasonable. Because we do not have this fund audited, audited financial statements are not available to Kona Ice franchisees. We will provide to you each year an annual accounting



for the Brand Fund that shows how the Brand Fund proceeds have been spent for the previous year upon written request (Franchise Agreement – Section ~~10B~~11). We do not guarantee that advertising expenditures from the Brand Fund will benefit you or any other franchisee directly, on a pro rata basis, or at all.

We are not obligated to spend any amount on advertising in the geographical area where you are or will be located. We will not use the Brand Fund payments for advertising that is principally a solicitation for the sale of Franchises, but we reserve the right to include a notation in any advertisement indicating “Franchises Available” or similar phrasing.

During our most recent fiscal year ended December 31, ~~2023~~2022, the Brand Fund was spent as follows: ~~71.96~~64.48% on content creation, ~~8.21~~14.06% with Google AdWords, ~~12.33~~4% for social media advertising, ~~3.14~~6% on public relations, ~~3.59~~19% on print and email marketing, and ~~15.47~~% on website development.

### *Local Advertising*

You are not required to advertise on a local basis as an individual Kona Ice Business, and you are not required to spend a minimum of your gross revenues on local marketing and promotion in your Protected Territory. You are not required to participate in a local or regional advertising cooperative. We may conduct market research and testing to determine consumer trends and the marketability of new food products and services. You agree, at your sole cost and expense, to issue and offer such rebates, giveaways, and other promotions in accordance with advertising programs established by us, and further agree to honor the rebates, giveaways, and other promotions issued by other Kona Ice franchisees under any such program, so long as such compliance does not contravene any applicable law, rule, or regulation. You will not create or issue any gift cards/certificates and will only sell gift cards/certificates that have been issued or sponsored by us and which are accepted at all Kona Ice Businesses, and you will not issue coupons or discounts of any type except as approved by us. We may conduct market research and testing to determine consumer trends and the marketability of new food products and services.

You will not participate in any crowdfunding campaigns or similar money-raising programs for your Kona Ice Business. You agree to cooperate by participating in our market research programs, test marketing new food products and services in the Kona Ice Business and providing us with timely reports and other relevant information regarding such market research. You must conduct and participate in promotional campaigns (“Promotions”) which we may periodically require in the Brand Manual, and you must conduct and participate in those Promotions in accordance with the policies and provisions set forth in the Brand Manual. This may include requiring you to offer free products to customers on certain days or providing coupons (not to exceed \$500 per year unless authorized by the Ad Council). If we require you to conduct and participate in any Promotion, we reserve the right (but we are not required) to use a portion of the Brand Fund to defray a portion of any costs attributable to the Promotions (Franchise Agreement – Section ~~10D~~11).

It is a material breach of the Franchise Agreement to use other marketing material, logos, and our Marks without obtaining our prior written approval. If you desire to use your own advertising materials, you must obtain our prior approval, which may be granted or denied in our sole discretion. You may not use third party marketing companies that we have not approved. We will review your request and we will respond in writing within 30 days from the date we receive all requested information. Our failure to notify you in the specified time frame will be deemed a disapproval of your request. Use of logos, Marks, and other name identification materials must be consistent with our approved standards (Franchise Agreement – Section ~~10B~~ and ~~10D~~12.4).



### *System Website*

We have established a website for Kona Ice Businesses (“System Website”). We reserve the right to develop a local website or local pages on the System Website. If you wish to advertise online, you must follow our online policy, which is contained in our Brand Manual. Our online policy may change as technology and the internet changes. Under our online policy, we may retain the sole right to market on the internet, including all use of websites, domain names, advertising, and co-branding arrangements. We may restrict your use of social media. We may not allow you to independently market on the internet, or use any domain name, address, locator, link, metatag, or search technique with words or symbols similar to the Marks. We intend that any franchisee website will be accessed only through our home page. As long as we maintain a System Website, we will have the right to use the Brand Fund assets to develop, maintain, and update the System Website.

We are only required to reference your Kona Ice Business on the System Website while you are in full compliance with your Franchise Agreement and all System Standards. If you are in default of any obligation under the Franchise Agreement or System Standards, then we may temporarily remove references to your Kona Ice Business from the System Website until you fully cure the subject default(s) (Franchise Agreement – Section ~~10E~~9.3).

### *Ad Council*

We have created a brand advisory board (“Ad Council”) (formerly known as the “Brand Advisory Board”) to help determine the type of advertising (television, radio, billboard, internet, or other medium) we will use. The Ad Council has written governing documents approved by us. Members of the Ad Council would consist of franchisees and at least one franchisor representative. We will choose the number and members of the Ad Council in our sole discretion. In order to be chosen for the Ad Council, the franchisee must be in good standing, operate multiple Franchises, and be actively involved in the betterment of the Kona Ice System. A copy of these governing documents will be available to you upon written request. We have the power to change the Ad Council, the selection process, and the members at any time. We also have the power to dissolve the Ad Council.

### *E-Lead Program*

We operate a digital marketing service (“E-Lead Program”) where we manage the placement of our franchisees’ digital advertisements. Franchisees that enroll in our E-Lead Program pay an annual, non-refundable administrative fee of either \$250 (for E-Lead Lite) or \$500 (for E-Lead Plus), plus the actual costs of the digital advertisements. The E-Lead Program is currently optional, but we reserve the right to make it mandatory in the future upon 60 days’ written notice.

### Computer System

You must have regular access to a computer that is capable of connecting to the internet for the operation of your Kona Ice Business. You may use a computer that you own. If you were to purchase a computer, we estimate the cost to be approximately \$200 to \$1,000. You may need to buy and/or license third-party software such as QuickBooks and Microsoft Office to use in the operation of your Kona Ice Business. You must use the KonaOS software. We reserve the right to specify required computer hardware or software and to specify other computer-related standards in the future. We may require you to purchase other point-of-sales hardware and/or software (“POS System”) in the future. Kona Ice will not have independent access to the information generated by or stored in your computer, but you are required to provide sales and other reports that we require in the Brand Manual. You are responsible for maintaining proper anti-virus and other cybersecurity measures for the Computer System and any other devices that



access Kona Ice information. You must periodically check your email and the portion of our website devoted to franchise owners. We reserve the right to market and sell over the internet. You must use any payment vendors and methods that we determine.

We need not provide you with any ongoing maintenance, repairs, upgrades, updates, or support for your computer system (Franchise Agreement – Section ~~3~~14.1). You must arrange for the installation, maintenance, and support of the computer system at your cost. There are no limitations in the Franchise Agreement regarding the costs of such required support, maintenance, repairs, or upgrades relating to the computer system. You may need to upgrade your hardware and/or software in order to utilize the computerized system as technological advances require, which may include a POS System. You will be responsible for the cost of such upgrades. Because we do not require you to purchase a computer, there will not be required costs for maintaining, updating, or upgrading it.

**Training**

*Initial Training*

Your Managing Owner (defined in Item 15) and any designated manager or representative that we require must complete the training program to our reasonable satisfaction before you open your Kona Ice Franchise. You will be enrolled in the initial training program which we call “Kona Kollege.” We provide initial training at no cost for one attendee. We will pay for hotel and airfare for one attendee for our initial training program. You will not receive any other compensation or reimbursement for services or expenses for participation in the initial training program and are responsible for all other costs of attendance, including ground transportation, food, and similar expenses. Franchisees that purchase existing Kona Ice Franchises as a result of a transfer are also required to attend Kona Kollege and are responsible for their own travel and hotel expenses. Initial training classes are held whenever necessary to train new franchisees. We plan to provide the training listed in the table below. The hours presented for each subject are estimates and may change as our training program continues to evolve.

**TRAINING PROGRAM**

Subject	Hours of Classroom Training	Hours of On-The-Job Training	Location
KEV & Equipment Operation	<u>04</u>	4	Our corporate office in Florence, Kentucky
KEV & Equipment Maintenance	<u>02</u>	<u>42</u>	Our corporate office in Florence, Kentucky
Field Sales and Customer Service	<u>08</u>	<u>8-124</u>	Our corporate office in Florence, Kentucky
TOTAL HOURS	<u>014</u>	<u>16-2010</u>	

Notes:

1. The training may be less than the times indicated above depending on the number and experience of the attendees. Training includes the actual operation of a KEV under our supervision. The instructional materials for the training program consist of the KEV and its equipment, manufacturer brochures and operational manuals, and the Brand Manual.



2. Ultimately, Tony Lamb, our CEO, President, Secretary and Board Member, ~~currently oversees our training program~~ the process of franchisee onboarding and development, to which he brings more than 25 years of management experience.
3. ~~Other~~ The Operational Support and Development Department at Kona Ice develops the curriculum and manages the content, instructors ~~will include~~, and flow of the learning experience. Our instructors are subject matter experts from various departments at Kona Ice, including Truck Support, Marketing, Franchising, and Product Development departments.
3. Additional instructors include our “Kona Coaches”, who are veteran franchisees currently operating successful Kona Ice franchises and other franchisees who have had at least two years of experience in the operation and management of a Kona Ice Business or have successfully completed Kona Kollege.

### *Ongoing Training*

We may require that you, designated managers, and other employees periodically attend system-wide refresher or additional training courses. Some of these courses may be optional, while others may be required. If you appoint a new designated manager, that person must attend and successfully complete ~~our initial~~ the training program required for all new managers. Any new designated manager must complete this training before assuming responsibility for the management of your Kona Ice Business. If we conduct an inspection of your Kona Ice Business and determine you are not operating in compliance with the Franchise Agreement or our System Standards, we may require you to temporarily close your Kona Ice Business, and we may require that you attend remedial training that addresses your operational deficiencies and pass our inspection before reopening. You may also request that we provide additional training (either at corporate headquarters or at your Kona Ice Business). You are responsible for costs and expenses for all training attendees. We may charge a fee for providing training and may require you to reimburse us for our associated costs and expenses.

## **ITEM 12** **TERRITORY**

The Franchise Agreement for your Kona Ice Business grants you an exclusive territory based on the geographic area and population properties within that area and other relevant demographic characteristics. We will generally grant only one license to a franchisee for any area with a population up to 100,000. We will use the population as listed on zip-codes.com, which is derived from known delivery information, household occupancy rates, as well as any other sources that we believe are reliable for determining the current population in and around your Protected Territory. In certain densely populated metropolitan areas, a territory may be considerably smaller, while franchisees operating in less densely populated urban areas may have significantly larger areas. If the population of your Protected Territory increases by more than 25%, we may reduce the size of your Protected Territory to 100,000 people unless you purchase an additional KEV.

You will operate a single Kona Ice Business and a single KEV within the Protected Territory identified in the Franchise Agreement. You are not restricted from the amount of Additional Equipment that you may operate in your Protected Territory. Your Protected Territory will be identified in an exhibit to your Franchise Agreement. The boundaries of your territory will coincide with the boundaries of one or more adjacent zip codes. You will be permitted to engage in direct advertising and solicitation of clients only within the boundaries of your Protected Territory unless we approve otherwise. Other than as described below, while the Franchise Agreement is in effect and you are not in default, we and our affiliate



will not, in your Protected Territory, operate a company-owned unit or grant a franchise for a similar or competitive business. You will only have the right to operate the Kona Ice Business in your Protected Territory under the terms and conditions of the Franchise Agreement, and we reserve all other rights to ourselves and our affiliate. You may not operate, solicit, or accept orders outside your Protected Territory unless we allow otherwise in our sole discretion.

We reserve all rights not expressly granted in the Franchise Agreement. Affiliate Franchisor's franchisees may operate franchises in your Protected Territory. We or our affiliate may own, operate, or authorize others to own or operate Kona Ice Businesses or any other form of Kona Ice's business outside your Protected Territory, including co-branding activities, and may operate other kinds of businesses under other marks within your Protected Territory. We and our affiliate may conduct, or authorize others to conduct, any form of business at any location selling any type of product or service not offered under the Marks. We reserve the right to use and license the use of technology to non-franchisee locations inside and outside your Protected Territory. We also reserve the right to issue mandatory policies to coordinate such multi-area marketing programs.

Although we have not done so, we and our affiliate may sell products under the Marks within and outside your Protected Territory through any method of distribution other than through a dedicated Kona Ice Business, including sales through such channels of distribution as the internet, mail order sales, telemarketing, or other direct marketing sales, wholesalers, unrelated retail outlets or other distribution outlets (together, "Alternative Distribution Channels"). You may not use Alternative Distribution Channels to make sales outside or inside your Protected Territory and you will receive no compensation for our sales through Alternative Distribution Channels except as described in the following paragraph.

If we engage in electronic commerce through the internet, or sell through any other Alternative Distribution Channel, and we receive orders for any products or services calling for delivery or performance in your Protected Territory, then we will offer the order to you at the price we establish. If you choose not to fulfill the order or are unable to do so, then we, our affiliate, or a third party we designate (including another Kona Ice Business) may fulfill the order, and you will be entitled to no compensation in connection with the sale.

Your Kona Ice Business and Protected Territory do not depend upon obtaining any certain sales quotas, sales goals, market penetration, or any other contingency. You must not relocate the Kona Ice Business without obtaining our written consent of the relocation. If you wish to purchase an additional Kona Ice Business, you must apply to us, and we may offer an additional Franchise to you.

If you wish to revise, amend, or relocate your Protected Territory, you must apply to us to do so, and we may, but are not required, to grant your request. We may condition our approval of such request on any terms or conditions which we deem reasonable, including, but not limited to, requiring you to pay an Initial Territory Adjustment Fee or a Territory Relocation Fee of \$2,500 as discussed in Item 6.

We do not grant a right of first refusal to franchisees to purchase new or existing locations, but we do allow you to reserve adjacent territories by signing the Additional Franchise Reservation Agreement and paying Reservation Fee.

### **ITEM 13** **TRADEMARKS**

The Franchise Agreement and your payment of Royalties grant you the non-exclusive right and license to use the System, which includes the use of the proprietary Marks. We are the owner of the registrations of the following trademarks with the United States Patent and Trademark Office ("USPTO"):

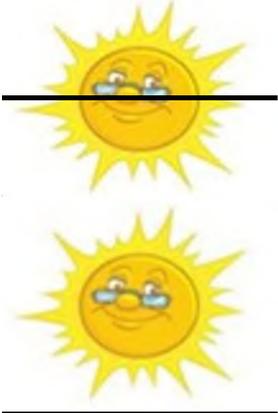


Mark	Registration Date	Registration No.	Register
KONA ICE	January 20, 2009	3,563,488	Principal
PENGUIN DESIGN 	May 26, 2009	3,625,423	Principal
KONA ICE	October 1, 2013	4,410,379	Principal
	October 27, 2015	4,839,900	Principal



Mark	Registration Date	Registration No.	Register
	September 8, 2015	4,807,108	Principal
	August 21, 2012	4,194,476	Principal
	August 28, 2021	4,198,450	Principal
BE GOOD. DO GOOD. FOR GOOD.	February 9, 2021	6,264,006	Principal
FLAVORWAVE	March 26, 2013	4,309,830	Principal



Mark	Registration Date	Registration No.	Register
	March 26, 2013	4,309,831	Principal
MOONFLOWER	November 19, 2019	5,916,534	Principal
	August 21, 2012	4,194,470	Principal
	June 11, 2013	4,348,800	Principal



Mark	Registration Date	Registration No.	Register
	May 24, 2022	6,734,116	Principal
KONA ICE	<del>February 7, 2023</del> 69,744,67	<del>6,974,467</del> February 7, 2023	Principal
	March 28, 2023 70,094,18	<del>7,009,418</del> March 28, 2023	Principal



We have applied to register the following trademarks with the USPTO:

Mark	Serial No.	Filing Date	Status
	97,389,190	April 29, 2022	Pending on the Principal Register
<b><u>TOPZ</u></b>	<u>98,122,312</u>	<u>August 8, 2023</u>	<u>Pending on the Principal Register</u>

We do not have a federal registration for the principal trademarks listed in the second chart above. Therefore, our trademark does not have as many legal benefits and rights as a federally-registered trademark. If our right to use the trademark is challenged, you may have to change to an alternative trademark, which may increase your expenses.

There are no effective adverse material determinations of the USPTO, the Trademark Trial and Appeal Board, or the trademark administrator of any state or any court, and no pending infringement, opposition, or cancellation proceedings or material litigation involving the Marks. All required affidavits and renewals have been filed for the registered Marks.

No agreement significantly limits our right to use or license the Marks in any manner material to the Kona Ice Business. We do not know of any superior prior rights or infringing uses that could materially affect your use of the trademarks. You must follow our rules when using the Marks. You cannot use our name or Marks as part of a corporate name or with modifying words, designs, or symbols unless you receive our prior written consent. You must indicate to the public in any contract, advertisement, and with a conspicuous sign in your KEV or KEV 2.0 that you are an independently owned and operated licensed franchisee of Kona Ice, Inc. You may not use the Marks in the sale of unauthorized services or products or in any manner we do not authorize. You may not use the Marks in any advertising for the transfer, sale, or other disposition of the Kona Ice Business or any interest in the Franchise. All rights and goodwill from the use of the Marks accrue to us.

We will defend you against any claim brought against you by a third party that your use of the Marks in accordance with the Franchise Agreement infringes upon that party's intellectual property rights. We may require your assistance, but you are not permitted to control any proceeding or litigation relating to our Marks. We have no obligation to pursue any infringing users of our Marks. If we learn of an infringing user, we may take any action we deem appropriate, but we are not required to take any action if we do not feel it is warranted. You must notify us within three days if you learn that any party is using the



Marks or a trademark that is confusingly similar to the Marks. We have the sole discretion to take such action as we deem appropriate to exclusively control any litigation or administrative proceeding involving a trademark licensed by us to you.

If it becomes advisable at any time, in our sole discretion, for us and/or you to modify or discontinue using any Mark and/or use one or more additional or substitute trademarks or service marks, you must comply with our directions within a reasonable time after receiving notice. We will not reimburse you for your direct expenses of changing signage, for any loss of revenue, or other indirect expenses due to any modified or discontinued Mark, or for your expenses of promoting a modified or substituted trademark or service mark.

You must not directly or indirectly contest our right to the Marks. We may acquire, develop, and use additional marks not listed here, and may make those marks available for your use and for use by other franchisees.

**ITEM 14**  
**PATENTS, COPYRIGHTS AND PROPRIETARY INFORMATION**

We have patent protection of our FlavorWave Self-Service Station. This station allows the customer to choose and apply his or her own flavorings to the shaved ice product.

Our patent protection for the components of our FlavorWave Self-Service Station is summarized below:

Patent Title	Patent Number	Issue Date	Type	Duration <del>Expiration</del> Date	Status
Mobile Confectionary Apparatus with Protectable Dispensing System	8,157,136	April 7, 2012	Mechanical	<del>20 years from Issue Date</del> December 24, 2030	Issued and Active
Mobile Confectionary Apparatus with Protectable Dispensing System	8,915,407	December 23, 2014	Mechanical	<del>20 years from Issue Date</del> December 24, 2030	Issued and Active
Liquid Toppings Dispensing System	9,321,387	April 26, 2016	Mechanical	<del>20 years from Issue Date</del> February 27, 2033	Issued and Active
Liquid Toppings Dispensing System	9,751,447	September 5, 2017	Mechanical	<del>20 years from Issue Date</del> February 27, 2033	Issued and Active

We have applied for patent protection for the following patent with the USPTO:

Patent Title	Application Number	Publication Date	Type	Duration	Status
Liquid Toppings Dispensing System	17/829,836	June 1, 2022	Mechanical	20 years from Issue Date	Pending



Patent Title	Application Number	Publication Date	Type	Duration	Status
<u>Ice Shaving System</u>	<u>11,821,670</u>	<u>November 21, 2023</u>	<u>Mechanical</u>	<u>20 years from Issue Date</u>	<u>Pending</u>

Kona Ice has filed patent infringement lawsuits against Tikiz Franchising, LLC and Tikiz Enterprises, LLC (“Tikiz”) for their violation of Kona Ice’s United States Patent No. 9,751,447 (“the ‘447 patent”). Tikiz has not asserted any patent infringement claims against KII or KII’s franchisees. Tikiz has denied infringement and alleged that the ‘447 patent is invalid and/or unenforceable. KII’s franchisees’ ability to utilize their vehicles and the equipment covered by the 447 patent will not be affected regardless of the lawsuit. This patent dispute will not materially affect Kona Ice’s franchisees’ ability or right to operate their businesses. Our right to use or license the patents is not materially limited by any agreement or known infringing use. There are no agreements or claims of infringement which limit the use of our patents or pending patents.

There are no determinations in effect that significantly limit our rights to use or license others to use the patents in any manner material to the franchise by the USPTO, the Patent Trial And Appeal Board, or the patent administrator of any state or any court, nor any pending interference, opposition or cancellation proceeding or litigation involving the patent.

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

We may, in our sole discretion, modify or discontinue use of the patents or patent applications and/or use other information and/or rights in its place. If we decide to do so, you must do so also, at your expense. The Franchise Agreement does not provide you any additional rights if we require you to modify or discontinue use of the patents or patent applications. We may require you to modify or discontinue use of the patents or patent applications and/or use other information and/or rights in its place upon renewal of the Franchise Agreement.

We will defend you against any claim brought against you by a third party that your use of our patent in accordance with the Franchise Agreement that infringes upon that party’s intellectual property rights. We may require your assistance, but you are not permitted to control any proceeding or litigation relating to our patent. We have no obligation to pursue any infringing users of our patent. If we learn of an infringing user, we may take any action we deem appropriate, but we are not required to take any action if we do not feel it is warranted. You must notify us within three days if you learn that any unauthorized party is using the patent. We have the sole discretion to take such action as we deem appropriate to exclusively control any litigation or administrative proceeding involving the patents.

We are not required to participate in your defense nor are we required to indemnify you for expenses or damages in a proceeding involving a patent, patent application, or copyright licensed to you. You must also agree not to contest our interest in these or our other trade secrets. If we decide to add, modify, or discontinue the use of an item or process covered by a patent or copyright, you must also do so.



We claim copyrights in the Brand Manual, which contains trade secrets, advertising and marketing materials, the System Website, and similar items used in operating a Kona Ice Business. We have not registered these copyrights with the United States Registrar of Copyrights, but need not do so at this time to protect them. You may use these items only as we specify while operating your Kona Ice Business (and must stop using them if we so direct you).

There are no effective adverse determinations of the USPTO, the Copyright Office (Library of Congress), or any court regarding the copyrighted materials. No agreement limits our right to use or allow others to use the copyrighted materials. We do not actually know of any infringing uses of our copyrights that could materially affect your use of the copyrighted materials in any state. We need not protect or defend copyrights, although we intend to do so if in the System's best interests. We may control any action we choose to bring, even if you voluntarily bring the matter to our attention. We need not participate in your defense and/or indemnify you for damages or expenses in a proceeding involving a copyright.

Our Brand Manual, passwords, and other materials contain our confidential information (some of which constitutes trade secrets under applicable law). This information includes site selection criteria; training and operations materials; methods, formats, specifications, standards, systems, procedures, sales and marketing techniques, knowledge, and experience used in developing and operating Kona Ice Businesses; marketing and advertising programs for Kona Ice Businesses; any computer software or similar technology that is proprietary to us or the System; knowledge of, specifications for, and suppliers of operating assets and other products and supplies; and knowledge of the operating results and financial performance of Kona Ice Businesses other than your Kona Ice Business.

All ideas, concepts, techniques, or materials concerning a Kona Ice Business, whether or not they are protected intellectual property and whether created by or for you or your owners or employees, must be promptly disclosed to us and will be deemed to be our sole and exclusive property, part of the System, and works-made-for-hire for our use. If any item does not qualify as a "work-made-for-hire" for us, you must assign ownership of that item, and all related rights to that item, to us and must take whatever action, including executing an assignment agreement or other documents, that we request to show our ownership or to help us obtain intellectual property rights in the subject item(s).

You may not use our confidential information in an unauthorized manner. You must take reasonable steps to prevent its improper disclosure to others and use non-disclosure and non-competition agreements with those having access to such information. We may regulate the form of confidentiality agreement that you use and must be included as a third-party beneficiary with independent enforcement rights in that agreement.

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

You must own your Kona Ice Franchise in a legal entity. The sole purpose of your legal entity will be the development and operation of a Kona Franchise. The Kona Ice Franchise shall be managed by one of your owners who is a natural person with at least a 51% ownership interest and voting power in the entity ("Managing Owner"). During the term of the Franchise Agreement, the Managing Owner shall directly supervise and participate in the day-to-day operation of the Kona Ice Business.

Because our franchisees who have actually been owner/operators in the past have generally proven to have greater success than passive owners, we require you (or your Managing Owner) to be an active owner and operator of your Kona Ice Business for at least the first 60 days that you operate as a Kona Ice franchisee.



Under certain circumstances, after the first 60 days of operation, we may allow you to appoint a designated manager (“Designated Manager”), who has been approved by us, to run the day-to-day operations of the Kona Ice Business. The Designated Manager must successfully complete our Kona Kollege training program (See Item 11). The Designated Manager need not have an ownership interest in the Kona Ice Business. If you replace a Designated Manager for any reason, the new Designated Manager must satisfactorily complete our Kona Kollege training program at your own expense.

Any Designated Manager and any officer that does not own equity in the Franchisee entity, must sign the “System Protection Agreement,” the form of which is attached to this Franchise Disclosure Document in Exhibit H. All of your employees, independent contractors, agents, or representatives that may have access to our confidential information must sign a “Confidentiality Agreement” (unless they already signed a System Protection Agreement), the current form of which is attached to this Franchise Disclosure Document in Exhibit H. Each direct and indirect owner (i.e., each person holding a direct or indirect ownership interest in your entity) of the Franchisee entity must sign an “Owners” “Franchise Owner Agreement,” the form of which is attached to the Franchise Agreement as Attachment C. We also require that the spouses of the Kona Ice Franchise owners sign the Owners Agreement. The Owners Agreement extends the obligations of the Franchise Agreement to each owner and their spouse with each owner and spouse bound to and liable for the terms of the Franchise Agreement.

**ITEM 16**  
**RESTRICTIONS ON WHAT THE FRANCHISEE MAY SELL**

You must offer for sale only products and services that have been approved and specified by us in the Brand Manual and any updates that are periodically incorporated in the Brand Manual. You must sell or offer for sale all types of products and services specified by us. You may not offer for sale any products or services not specifically approved by us in writing. There are no limitations on our rights to make changes to the required products and services offered by you.

You may not use the KEV or any Additional Equipment or our marks for purposes other than selling flavored shaved ice, ice cream and related products without our express permission. You may not establish an account or participate in any social networking sites, crowdfunding campaigns, or blogs or mention or discuss the Kona Ice Franchise, us, or our affiliate, without our prior written consent and as subject to our online policy. Our online policy may completely prohibit you from any use of the Marks in social networking sites or other online use. You may not sell products through other channels of distribution such as wholesale, internet or mail order sales.

**ITEM 17**  
**RENEWAL, TERMINATION, TRANSFER AND DISPUTE RESOLUTION**

**THE FRANCHISE RELATIONSHIP**

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

Provision	Section in Franchise Agreement	Summary
(a) Length of the Franchise term	Section 4D <u>5.1</u>	Ten years.
(b) Renewal or extension of the term	Section 4A <u>5.1</u>	If you are in good standing and you meet other requirements, you may apply for two successive terms of ten years.



Provision	Section in Franchise Agreement	Summary
(c) Requirements for Franchisee to renew or extend	<del>Sections 14A &amp; 14B</del> <u>Section 5.2</u>	The term “renewal” refers to extending our franchise relationship at the end of your initial term and any other renewal or extension of the initial term. Your successor franchise rights permit you to remain as a Franchisee after the initial term of your Franchise Agreement expires. Written notice must be provided and you must be fully compliant with the Franchise Agreement. You must sign our then-current Franchise Agreement and ancillary documents for the successor term, and this new franchise agreement may have materially different terms and conditions (including, e.g., higher royalty and advertising contributions) from the Franchise Agreement that covered your original term. You will be required to pay the highest tier of royalty payment under the new franchise agreement (meaning that you will not be able to take advantage of any step-up royalty schedules that may be offered to new franchisees).
(d) Termination by Franchisee	<del>Section 15A</del> <u>23</u>	You may terminate the Franchise Agreement if you are in compliance with it and we are in material breach, and we fail to cure that breach within <del>30</del> 60 days of receiving written notice, subject to applicable state law.
(e) Termination by franchisor without cause	Not Applicable	Not Applicable.
(f) Termination by franchisor with cause	<del>Section 15B</del> <u>24</u>	We can terminate upon, among other things, certain violations of the Franchise Agreement by you.
(g) “Cause” defined - curable defaults	<del>Section 15B</del> <u>24</u>	You have three days to cure health, safety, or sanitation law violations or failure to operate safely. You have ten days to cure monetary defaults. You have 30 days to cure the operational defaults listed in Section 15B of the Franchise Agreement.
(h) “Cause” defined - non-curable defaults	<del>Section 15B</del> <u>Sections 24.1 and 24.2</u>	Non-curable defaults: the defaults listed in <del>Section 15</del> <u>Sections 24.1 and 24.2</u> of the Franchise Agreement.
(i) Franchisee’s obligations on termination/non-renewal	<del>Section 16</del> <u>Sections 18.3 and 25</u>	Obligations include ceasing operating the franchised business; ceasing use of all confidential information, trade secrets and trademarks; delivering property containing the trademarks; cancelling assumed similar name registrations; payment of outstanding amounts and damages; return of Brand Manual; assignment of phone numbers to us; and compliance with all other covenants.
(j) Assignment of contract by franchisor	<del>Section 13A</del> <u>15</u>	No restriction on our right to assign.



Provision	Section in Franchise Agreement	Summary
(k) “Transfer” by Franchisee - definition	Section <del>13B</del> <u>16.1</u>	Includes any voluntary, involuntary, direct, or indirect assignment, sale, gift, exchange, grant of a security interest, or change of ownership in you (if you are an entity), the KEV, Franchise Agreement, the Kona Ice Franchise or any interest in the Kona Ice Franchise.
(l) Franchisor’s approval of transfer by Franchisee	<del>Sections 13B &amp; 13C</del> <u>Section 16.1</u>	We have the right to approve all transfers, including the transfer of Additional Equipment.
(m) Conditions for franchisor’s approval of transfer	Section <del>13C</del> <u>16.3</u>	Our requirements for approving the transfer of this Franchise Agreement include, but are not limited to: full compliance with the Franchise Agreement; all amounts paid in full; completion of training; transfer fee paid; agreement of transferee to all terms of Franchise Agreement; the execution of other possible documents including a general release; the transferee meets certain suitability requirements and passes our training program; the transferee and its owners or affiliates and family members are not involved in a competitive business; the transferee agrees to remodel the KEV and any Additional Equipment; and we will be reimbursed for the fees of our broker or other placement agent. You must also fully de-identify your KEV if you wish to transfer it to any party besides us or another franchisee.
(n) Franchisor’s right of first refusal to acquire Franchisee’s business	Section <del>13G</del> <u>16.2</u>	We have 30 days to match any offer for your Kona Ice Business or your KEV.
(o) Franchisor’s right to purchase Franchisee’s business	Section <del>16E</del> <u>26</u>	We may, but are not required to, purchase your Kona Ice Franchise, inventory, KEV, or equipment at fair market value if your Kona Ice Franchise is terminated for any reason by giving you written notice of our intent to exercise this option within 30 days after the date of termination or expiration of the Franchise Agreement.
(p) Death or disability of Franchisee	Section <del>13E</del> <u>16.5</u>	Franchisee must be a legal entity. Upon the Managing Owner’s death or disability, the Managing Owner’s interest must be assigned to a qualified party within 90 days of death or disability of the Managing Owner or the Franchise Agreement may be terminated.



Provision	Section in Franchise Agreement	Summary
(q) Non-competition covenants during the term of the Franchise	Section <del>8</del> <u>18.2</u>	Neither you, your principal owners, nor any immediate family members of you or your principal owners may participate in competitive business, have no owning interest in, loan money to, or perform services for a competitive business anywhere. You may not interfere with us, our affiliates, or any other Kona Ice Franchise. These provisions are subject to applicable state law.
(r) Non-competition covenants after the Franchise is terminated or expires	Section <del>16D</del> <u>18.3</u>	Owners cannot have an interest in, own, manage, operate, finance, control, or participate in any competitive business within a 20-mile radius from any Kona Ice Business, whether owned by us or a franchisee, that is operating or under development, for two years. Owners may not solicit any customer of Kona Ice or any Kona Ice Franchise for two years. These provisions are subject to applicable state law.
(s) Modification of the agreement	Section <del>18L</del> <u>Sections 9.1 and 29.9</u>	No modifications of the Franchise Agreement during the term unless agreed to in writing, but the Brand Manual is subject to change at any time in our discretion. Modifications of the Franchise Agreement are permitted on renewal.
(t) Integration/merger clause	Section <del>18N</del> <u>29.9</u>	Only the terms of the Franchise Agreement and other related written agreements are binding (subject to state, FTC, or federal law). Any representations or promises outside of this Franchise Disclosure Document and Franchise Agreement may not be enforceable.
(u) Dispute resolution by arbitration or mediation	Sections <del>18F &amp; 18G</del> <u>Section 27</u>	Except for certain claims, all disputes must be mediated and arbitrated in the principal city closest to our principal place of business (currently Florence, Kentucky), subject to applicable state law.
(v) Choice of forum	Section <del>18I</del> <u>27.4</u>	All disputes must be mediated, arbitrated, and if applicable, litigated in the principal city closest to our principal place of business (currently Florence, Kentucky), subject to applicable state law.
(w) Choice of law	Section <del>18H</del> <u>29.1</u>	Kentucky law, except for The Kentucky Business Opportunity Investment Act applies, subject to applicable state law.

**ITEM 18**  
**PUBLIC FIGURES**

We do not use any public figures to promote the Franchise.



**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 which is 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 future financial performance or the past financial performance of company-owned or franchised outlets. We also do not authorize our employees or representatives to make any such representations either orally or in writing. If you are purchasing an existing outlet, however, we may provide you with the actual records of that outlet. If you receive any other financial performance information or projections of your future income, you should report it to the franchisor’s management by contacting Tony Lamb, 5945 Centennial Circle, Florence, Kentucky 41042 and 1-800-566-2423, the Federal Trade Commission, and the appropriate state regulatory agencies.

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

Table No. 1

System-wide Outlet Summary  
For Years 2021 - 2023~~2020—2022~~

Outlet Type	Year	Outlets at the Start of the Year	Outlets at the End of the Year	Net Change
Franchised	<del>2020</del> 2021*	<del>1289</del> *1181	<del>1363</del> *1304	+12374
	<del>2022</del> 2021*	<del>1363</del> *1289*	<del>1484</del> *1363*	+74121
	<del>2022</del> 2023	13631476	14841670	+121194
Company-Owned	<del>2020</del> 2019	1420	2014	±6
	<del>2022</del> 2020	2014	140	-614
	<del>2022</del> 2023	140	0	-140
Total Outlets	<del>2021</del> 2020	<del>1309</del> *1195	<del>1377</del> *1324*	+12968
	<del>2022</del> 2021	<del>1377</del> *1309*	<del>1484</del> *1377	+68107
	<del>2022</del> 2023	13771476	14841670	+107194

\*See Note 1

Table No. 2

Transfers of Outlets from Franchisees to New Owners (other than the Franchisor)  
For Years 2020—2021 – 2023~~2022~~

State	Year	Number of Transfers
Alabama	<u>2021</u>	<u>0</u>
	<u>2022</u>	<u>0</u>



State	Year	Number of Transfers
	<u>2023</u>	<u>1</u>
<u>Arizona</u>	<u>2021</u>	<u>0</u>
	<u>2022</u>	<u>0</u>
	<u>2023</u>	<u>6</u>
Arkansas	<del>2021</del> <u>2020</u>	<u>20</u>
	<u>2021</u>	<u>0</u>
	<u>2022</u>	<u>3</u>
	<u>2023</u>	<u>1</u>
California	<del>2021</del> <u>2020</u>	<u>812</u>
	<del>2021</del>	<u>12</u>
	<u>2022</u>	<u>4</u>
	<u>2023</u>	<u>2</u>
Colorado	<del>2021</del> <u>2020</u>	<u>31</u>
	<del>2021</del>	<u>1</u>
	<u>2022</u>	<u>5</u>
	<u>2023</u>	<u>5</u>
Florida	<del>2021</del> <u>2020</u>	<u>149</u>
	<del>2021</del>	<u>9</u>
	<u>2022</u>	<u>10</u>
	<u>2023</u>	<u>9</u>
Georgia	<del>2021</del> <u>2020</u>	<u>67</u>
	<del>2021</del>	<u>7</u>
	<u>2022</u>	<u>12</u>
	<u>2023</u>	<u>7</u>
Illinois	<del>2021</del> <u>2020</u>	<u>02</u>
	<del>2021</del>	<u>2</u>
	<u>2022</u>	<u>2</u>
	<u>2023</u>	<u>1</u>
Indiana	<del>2021</del> <u>2020</u>	<u>10</u>
	<del>2021</del>	<u>0</u>
	<u>2022</u>	<u>2</u>
<u>Iowa</u>	<del>2020</del> <u>2023</u>	<u>02</u>
<u>Iowa</u>	<u>2021</u>	<u>2</u>
	<u>2022</u>	<u>1</u>
	<u>2023</u>	<u>0</u>
Louisiana	<del>2021</del> <u>2020</u>	<u>50</u>
	<del>2021</del>	<u>0</u>



State	Year	Number of Transfers
	2022	3
	<u>2023</u>	<u>0</u>
Maryland	<del>2021</del> 2020	<del>0</del> <u>7</u>
	<del>2021</del>	7
	2022	2
	<u>2023</u>	<u>1</u>
Michigan	<del>2021</del> 2020	<del>0</del> <u>2</u>
	<del>2021</del>	2
	2022	0
Minnesota	2020	3
	<del>2023</del> 2021	0
	2022	0
Mississippi	<del>2021</del> 2020	<del>0</del> <u>9</u>
	<del>2021</del>	9
	2022	0
	<u>2023</u>	<u>0</u>
Missouri	<del>2021</del> 2020	<del>1</del> <u>0</u>
	<u>2022</u>	<u>0</u>
	<u>2023</u>	<u>4</u>
Montana	2021	0
	2022	0
<del>New Jersey</del>	<del>2020</del> 2023	<del>4</del> <u>1</u>
<del>Nevada</del>	2021	0
	2022	<u>4</u>
	<u>2023</u>	<u>2</u>
New MexicoHampshire	<del>2021</del> 2020	<del>0</del>
	<u>2022</u>	<u>0</u>
	<u>2023</u>	<u>3</u>
<del>New Jersey</del>	2021	0
	2022	<u>3</u>
<del>New York</del>	<del>2020</del> 2023	1
<del>New Mexico</del>	2021	0
	2022	<del>0</del> <u>3</u>
	<u>2023</u>	<u>0</u>
North Carolina	<del>2021</del> 2020	<del>2</del> <u>4</u>
	<del>2021</del>	4
	2022	9



State	Year	Number of Transfers
<del>Ohio</del>	<del>2020</del> 2023	<del>3</del> 0
<u>Ohio</u>	2021	2
	2022	1
	<u>2023</u>	<u>2</u>
Oklahoma	<del>2021</del> 2020	<del>0</del> 3
	<del>2021</del>	3
	2022	0
	<u>2023</u>	<u>0</u>
Oregon	<del>2021</del> 2020	<del>0</del> 2
	<del>2021</del>	2
	2022	0
	<u>2023</u>	<u>0</u>
South Carolina	<del>2021</del> 2020	<del>1</del> 2
	<del>2021</del>	2
	2022	4
	<u>2023</u>	<u>1</u>
Tennessee	<del>2021</del> 2020	<del>3</del> 4
	<del>2021</del>	4
	2022	1
<del>Texas</del>	<del>2020</del> 2023	<del>12</del> 1
<u>Texas</u>	2021	8
	2022	12
<del>Utah</del>	<del>2020</del> 2023	<del>0</del> 6
<u>Utah</u>	2021	1
	2022	0
<del>Virginia</del>	<del>2020</del> 2023	<del>5</del> 1
	<del>2021</del>	0
	2022	0
Washington	<del>2021</del> 2020	<del>0</del> 2
	<del>2021</del>	2
	2022	0
	<u>2023</u>	<u>0</u>
Wisconsin	<del>2021</del> 2020	<del>1</del> 0
	<del>2021</del>	0
	2022	0
<del>Totals</del>	<del>2020</del> 2023	<del>75</del> 2



State	Year	Number of Transfers
<u>Totals</u>	2021	79
	2022	78
	<u>2023</u>	<u>59</u>

Table No. 3

Status of Franchised Outlets  
For Years ~~2020 – 2022~~2021 – 2023

State	Year	Outlets at Start of the Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations-Other Reasons	Outlets at End of the Year
Alabama	<del>2021</del> <u>20</u>	<del>25</del> <u>28</u>	<u>34</u>	0	0	0	0	<u>28</u> <u>32</u>
	<del>2022</del> <u>21</u>	<u>28</u> <u>32</u>	<u>42</u>	0	0	0	0	<u>32</u> <u>34</u>
	<del>2022</del> <u>23</u>	<u>32</u> <u>34</u>	<u>25</u>	0	0	0	0	<u>34</u> <u>39</u>
Alaska	<del>2021</del> <u>20</u>	1	0	0	0	0	0	1
	<del>2022</del> <u>21</u>	1	0	0	0	0	0	1
	<del>2022</del> <u>23</u>	1	0	0	0	0	0	1
Arizona	<del>2021</del> <u>20</u>	<del>29</del> <u>26</u>	<u>42</u>	0	0	0	<u>70</u>	<u>26</u> <u>28</u>
	<del>2021</del> <u>21</u>	<u>26</u>	<u>2</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>28</u>
	2022	28	2	0	0	0	0	30
	<u>2023</u>	<u>30</u>	<u>13</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>43</u>
Arkansas	<del>2021</del> <u>20</u>	<del>17</del> <u>16</u>	<u>02</u>	0	0	0	<u>10</u>	<u>16</u> <u>18</u>
	<del>2021</del> <u>21</u>	<u>16</u>	<u>2</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>18</u>
	2022	18	0	0	0	0	0	18
<u>California</u>	<del>2020</del> <u>23</u>	<del>138</del> <u>18</u>	<u>150</u>	0	0	<u>30</u>	<u>61</u>	<u>144</u> <u>17</u>
<u>California</u>	2021	144	2	0	0	2	2	142
	2022	142	14	0	0	3	0	153
<u>Colorado</u>	<del>2020</del> <u>23</u>	<del>35</del> <u>152</u>	<u>115</u>	0	0	0	<u>02</u>	<u>36</u> <u>165</u>
<u>Colorado</u>	2021	36	0	0	0	0	0	36
	2022	36	4	0	0	0	0	40
	<u>2023</u>	<u>43</u>	<u>2</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>1</u>	<u>44</u>



State	Year	Outlets at Start of the Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations-Other Reasons	Outlets at End of the Year
Connecticut	<del>2021</del> 20	2	0	0	0	0	0	2
	<del>2021</del>	2	0	0	0	0	0	2
	2022	2	2	0	0	0	0	4
	2023	4	2	0	0	0	0	6
Delaware	<del>2021</del> 20	23	10	0	0	0	0	3
	<del>2022</del> <del>20</del> 21	3	0	0	0	0	0	3
	<del>2022</del> 20 23	3	0	0	0	0	0	3
Florida	2020	116	12	0	0	4	2	122
Florida	2021	122	12	0	0	1	1	132
	2022	132	15	0	0	0	3	144
<del>Georgia</del>	<del>2020</del> 20 23	<del>72</del> 145	<del>13</del> 26	0	0	<del>20</del>	<del>0</del> 2	<del>83</del> 169
Georgia	2021	83	1	0	0	0	0	84
	2022	84	3	0	0	1	0	86
<del>Hawaii</del>	<del>2020</del> 20 23	<del>688</del>	<del>0</del> 2	0	0	0	<del>2</del> 1	<del>489</del>
Hawaii	2021	4	1	0	0	0	0	5
	2022	5	0	0	0	0	0	5
<del>Idaho</del>	<del>2020</del> 20 23	<del>65</del>	0	0	0	0	0	<del>65</del>
Idaho	2021	6	3	0	0	0	0	9
	2022	9	0	0	0	0	0	9
<del>Illinois</del>	<del>2020</del> 20 23	<del>189</del>	1	0	0	0	0	<del>19</del> 10
Illinois	2021	19	3	0	0	0	0	22
	2022	22	2	0	0	0	2	22
<del>Indiana</del>	<del>2020</del> 20 23	<del>29</del> 22	<del>6</del> 9	0	0	0	0	<del>35</del> 31
Indiana	2021	35	2	0	0	0	0	37
	2022	37	7	0	0	0	2	42
<del>Iowa</del>	<del>2020</del> 20 23	<del>84</del> 2	<del>18</del>	0	0	0	0	<del>95</del> 0
Iowa	2021	9	2	0	0	0	0	11
	2022	11	2	0	0	1	0	12



State	Year	Outlets at Start of the Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations-Other Reasons	Outlets at End of the Year
<del>Kansas</del>	<del>2020</del> <u>23</u>	<del>13</del> <u>12</u>	<del>3</del> <u>2</u>	0	0	0	0	<del>16</del> <u>14</u>
<u>Kansas</u>	2021	16	3	0	0	0	0	19
	2022	19	3	0	0	0	0	22
<del>Kentucky</del>	<del>2020</del> <u>23</u>	<del>18</del> <u>21</u>	<del>7</del> <u>1</u>	0	0	0	0	<del>25</del> <u>22</u>
<u>Kentucky</u>	2021	25	17	0	0	14	0	28
	2022	28	3	0	0	7	0	24
	<u>2023</u>	<u>27</u>	<u>4</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>31</u>
Louisiana	<del>2021</del> <u>20</u>	<del>22</del> <u>29</u>	<del>7</del> <u>0</u>	0	0	0	0	29
	<del>2021</del>	<del>29</del>	<del>0</del>	<del>0</del>	<del>0</del>	<del>0</del>	<del>0</del>	<del>29</del>
	2022	29	4	0	0	0	2	31
<del>Maryland</del>	<del>2020</del> <u>23</u>	<del>32</del> <u>25</u>	<del>7</del> <u>3</u>	0	0	0	<del>0</del> <u>1</u>	<del>39</del> <u>27</u>
<u>Maine</u>	<u>2021</u>	<u>0</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>1</u>
	<u>2022</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>1</u>
	<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>Maryland</u>	2021	39	0	0	0	0	0	39
	2022	39	4	0	0	0	2	41
	<u>2023</u>	<u>40</u>	<u>8</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>1</u>	<u>47</u>
Massachusetts	<del>2021</del> <u>20</u>	<del>3</del> <u>10</u>	<del>7</del> <u>0</u>	0	0	0	0	10
	<del>2021</del>	<del>10</del>	<del>0</del>	<del>0</del>	<del>0</del>	<del>0</del>	<del>0</del>	<del>10</del>
	2022	10	0	0	0	0	0	10
	<u>2023</u>	<u>6</u>	<u>2</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>8</u>
Michigan	<del>2021</del> <u>20</u>	<del>18</del> <u>16</u>	<del>0</del> <u>5</u>	0	0	0	<del>2</del> <u>0</u>	<del>16</del> <u>21</u>
	<del>2021</del>	<del>16</del>	<del>5</del>	<del>0</del>	<del>0</del>	<del>0</del>	<del>0</del>	<del>21</del>
	2022	21	6	0	0	0	0	27
	<u>2023</u>	<u>27</u>	<u>9</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>36</u>
Minnesota	<del>2021</del> <u>20</u>	6	1	0	0	<del>1</del> <u>0</u>	0	<del>6</del> <u>7</u>
	<del>2021</del>	<del>6</del>	<del>1</del>	<del>0</del>	<del>0</del>	<del>0</del>	<del>0</del>	<del>7</del>
	2022	7	1	0	0	0	0	8
	<u>2023</u>	<u>8</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>9</u>
Mississippi	<del>2021</del> <u>20</u>	<del>14</del> <u>17</u>	<del>3</del> <u>0</u>	0	0	0	0	17



State	Year	Outlets at Start of the Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations-Other Reasons	Outlets at End of the Year
	<del>2021</del>	17	0	0	0	0	0	17
	2022	17	0	0	0	0	0	17
	<u>2023</u>	<u>16</u>	<u>2</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>18</u>
Missouri	<del>2021</del> <del>20</del>	<del>26</del> <u>30</u>	<del>1</del> <u>4</u>	0	0	<del>0</del> <u>2</u>	<del>0</del> <u>2</u>	<del>30</del> <u>27</u>
	<del>2021</del>	30	4	0	0	2	2	27
	2022	27	3	0	0	0	1	29
	<u>2023</u>	<u>33</u>	<u>5</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>38</u>
Montana	<del>2021</del> <del>20</del>	0	<del>0</del> <u>1</u>	0	0	0	0	<del>0</del> <u>1</u>
	<del>2021</del>	0	1	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>1</u>	<u>0</u>
Nebraska	<del>2021</del> <del>20</del>	<del>4</del> <u>11</u>	<del>7</del> <u>1</u>	0	0	0	0	<del>4</del> <u>12</u>
	<del>2021</del>	11	1	0	0	0	0	12
	2022	12	0	0	0	0	0	12
Nevada	<del>2020</del> <del>23</del>	<del>12</del> <u>13</u>	<del>2</del> <u>3</u>	0	0	0	0	<del>14</del> <u>16</u>
Nevada	2021	14	1	0	0	0	0	15
	2022	15	2	0	0	0	1	16
	<u>2023</u>	<u>18</u>	<u>2</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>1</u>	<u>19</u>
New Hampshire	<del>2021</del> <del>20</del>	<del>9</del> <u>8</u>	0	0	0	0	<del>1</del> <u>0</u>	8
	<del>2021</del>	8	0	0	0	0	0	8
	2022	8	1	0	0	0	0	9
	<u>2023</u>	<u>9</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>10</u>
New Jersey	<del>2021</del> <del>20</del>	<del>24</del> <u>20</u>	<del>5</del> <u>5</u>	0	0	<del>3</del> <u>0</u>	<del>2</del> <u>0</u>	<del>20</del> <u>25</u>
	<del>2021</del>	20	5	0	0	0	0	25
	2022	25	2	0	0	0	0	27
	<u>2023</u>	<u>27</u>	<u>8</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>35</u>
New Mexico	<del>2021</del> <del>20</del>	<del>8</del> <u>9</u>	1	0	0	0	0	<del>9</del> <u>10</u>
	<del>2021</del>	9	1	0	0	0	0	10
	2022	10	0	0	0	1	0	9
	<u>2023</u>	<u>9</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>9</u>



State	Year	Outlets at Start of the Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations-Other Reasons	Outlets at End of the Year
New York	<del>2021</del> 20	<u>14</u> <u>11</u>	<u>0</u> <u>1</u>	0	0	0	<u>3</u> <u>0</u>	<u>14</u> <u>12</u>
	<del>2021</del>	<u>11</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>12</u>
	2022	12	0	0	0	0	0	12
	<u>2023</u>	<u>12</u>	<u>4</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>16</u>
North Carolina	<del>2021</del> 20	<u>50</u> <u>55</u>	<u>7</u> <u>1</u>	0	0	0	<u>2</u> <u>0</u>	<u>55</u> <u>56</u>
	<del>2021</del>	<u>55</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>56</u>
	2022	56	5	0	0	0	3	58
<del>Ohio</del>	<del>2020</del> <u>23</u>	<u>41</u> <u>58</u>	<u>9</u> <u>7</u>	0	0	<u>2</u> <u>0</u>	<u>4</u> <u>0</u>	<u>47</u> <u>65</u>
<u>Ohio</u>	2021	47	5	0	0	0	0	52
	2022	52	8	0	0	0	0	60
<del>Oklahoma</del>	<del>2020</del> <u>23</u>	<u>15</u> <u>63</u>	<u>4</u> <u>10</u>	0	0	0	1	<u>18</u> <u>72</u>
<u>Oklahoma</u>	2021	18	0	0	0	0	0	18
	2022	18	6	0	0	0	0	24
<del>Oregon</del>	<del>2020</del> <u>23</u>	<u>10</u> <u>18</u>	<u>3</u> <u>1</u>	0	0	0	0	<u>13</u> <u>19</u>
<u>Oregon</u>	2021	13	1	0	0	0	0	14
	2022	14	5	0	0	0	0	19
	<u>2023</u>	<u>19</u>	<u>4</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>23</u>
Pennsylvania	<del>2021</del> 20	<u>31</u> <u>35</u>	4	0	0	0	0	<u>35</u> <u>39</u>
	<del>2021</del>	<u>35</u>	4	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>39</u>
	2022	39	5	0	0	0	0	44
	<u>2023</u>	<u>44</u>	<u>7</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>1</u>	<u>50</u>
Rhode Island	<del>2021</del> 20	<u>3</u> <u>2</u>	0	0	0	0	<u>1</u> <u>0</u>	2
	<del>2021</del>	<u>2</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>2</u>
	2022	2	1	0	0	0	0	3
	<u>2023</u>	<u>3</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>3</u>
South Carolina	<del>2021</del> 20	<u>30</u> <u>35</u>	<u>5</u> <u>2</u>	0	0	<u>0</u> <u>2</u>	<u>0</u> <u>2</u>	<u>35</u> <u>33</u>
	<del>2021</del>	<u>35</u>	<u>2</u>	<u>0</u>	<u>0</u>	<u>2</u>	<u>2</u>	<u>33</u>
	2022	33	4	0	0	0	1	36
	<u>2023</u>	<u>39</u>	<u>5</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>44</u>
South Dakota	<del>2021</del> 20	<u>0</u> <u>1</u>	<u>1</u> <u>0</u>	0	0	0	0	1



State	Year	Outlets at Start of the Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations-Other Reasons	Outlets at End of the Year
	<del>2021</del>	<u>1</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>1</u>
	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>
Tennessee	<del>2021</del> <del>20</del>	<u>2629</u>	<u>37</u>	0	0	0	0	<u>2936</u>
	<del>2021</del>	<u>29</u>	<u>7</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>36</u>
	2022	36	7	0	0	0	1	42
<del>Texas</del>	<del>2020</del> <del>23</del>	<u>18640</u>	<u>185</u>	0	0	<u>40</u>	0	<u>20045</u>
<u>Texas</u>	2021	200	7	0	0	0	0	207
	2022	207	6	0	0	0	3	210
<del>Utah</del>	<del>2020</del> <del>23</del>	<u>3209</u>	<u>217</u>	0	0	0	0	<u>5226</u>
<u>Utah</u>	2021	5	0	0	0	0	0	5
	2022	5	2	0	0	0	0	7
<del>Virginia</del>	<del>2020</del> <del>23</del>	<u>326</u>	<u>82</u>	0	0	0	<u>01</u>	<u>407</u>
<u>Virginia</u>	2021	40	0	0	0	0	0	40
	2022	40	4	0	0	0	0	44
	<u>2023</u>	<u>37</u>	<u>4</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>41</u>
Washington	<del>2021</del> <del>20</del>	<u>1217</u>	<u>50</u>	0	0	0	0	17
	<del>2021</del>	<u>17</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>17</u>
	2022	17	3	0	0	1	0	19
	<u>2023</u>	<u>19</u>	<u>6</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>25</u>
West Virginia	<del>2020</del> <del>21</del>	2	<u>04</u>	0	0	0	0	<u>26</u>
	<del>2021</del>	<u>2</u>	<u>4</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>6</u>
	2022	6	0	0	0	0	0	6
	<u>2023</u>	<u>6</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>7</u>
Wisconsin	<del>2020</del> <del>21</del>	<u>98</u>	0	0	0	0	<u>10</u>	8
	<del>2021</del>	<u>8</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>8</u>
	2022	8	3	0	0	0	0	11
	<u>2023</u>	<u>11</u>	<u>2</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>1</u>	<u>12</u>
Wyoming	<del>2020</del> <del>21</del>	<u>42</u>	0	0	0	0	<u>20</u>	2
	<del>2021</del>	<u>2</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>2</u>



State	Year	Outlets at Start of the Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations-Other Reasons	Outlets at End of the Year
	2022	2	0	0	0	0	0	2
<u>Totals</u>	<del>2020</del> <u>23</u>	<del>1181</del> <u>2</u>	<del>1760</del> <u>0</u>	0	0	<u>190</u>	<u>340</u>	<del>1304</del> <u>*2</u>
<u>Totals</u>	2021	1289*	<del>1021</del> <u>03</u>	0	0	21	7	1363
	2022	1363	141	0	0	14	21	1484
	<u>2023</u>	<u>1476</u>	<u>209</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>15<sup>(1)</sup></u>	<u>1670</u>

\*See Note 1

<sup>(1)</sup>All outlets that ceased operations in 2023 were KEVs that transferred to a new owner in a different state. Those outlets that ceased operations are represented in Table 2 above and are included in the List of Former Franchisees in Exhibit F.

Table 4

Status of Company-Owned Outlets  
For Years ~~2020~~—~~2022~~2021 - 2023

State	Year	Outlets at Start of Year	Outlets Opened	Outlets Reacquired From Franchisee	Outlets Closed	Outlets Sold to Franchisee	Outlets at End of Year
Kentucky	<del>2020</del> <u>21</u>	<u>1420</u>	0	<u>1914</u>	0	<u>1320</u>	<u>2014</u>
	<del>2022</del> <u>21</u>	<u>2014</u>	0	14	0	<u>2028*</u>	<u>140</u>
	<del>2022</del> <u>23</u>	<u>140</u>	0	<u>140</u>	0	<u>28*0</u>	0
Total Outlets	<del>2020</del> <u>21</u>	<u>1420</u>	0	<u>1914</u>	0	<u>1320</u>	<u>2014</u>
	<del>2022</del> <u>21</u>	<u>2014</u>	0	14	0	<u>2028*</u>	<u>140</u>
	<del>2022</del> <u>23</u>	<u>140</u>	0	<u>140</u>	0	<u>28*0</u>	0

\*Outlets reacquired by Franchisor may have been sold to franchisees in other states, but all franchises are accounted for in Table 3 as an Outlets Opened.

Table No. 5

Projected Openings as of  
December 31, ~~2022~~2023

State	Franchise Agreements Signed But Outlet Not Opened	Projected New Franchised Outlets in the Next Fiscal Year	Projected New Company-Owned Outlets in the Next Fiscal Year
Alabama	<u>40</u>	2	0
<del>Arizona</del> Alaska	<u>30</u>	<u>91</u>	0



State	Franchise Agreements Signed But Outlet Not Opened	Projected New Franchised Outlets in the Next Fiscal Year	Projected New Company-Owned Outlets in the Next Fiscal Year
<del>Arkansas</del> Arizona	01	03	0
California	45	713	0
Colorado	40	42	0
<del>Connecticut</del> Florida	40	144	0
<del>Florida</del> Georgia	40	214	0
<del>Georgia</del> Illinois	1	4	0
Idaho	0	1	0
Illinois	2	10	0
Indiana	30	42	0
Iowa	0	2	0
Kansas	0	42	0
<del>Kentucky</del>	0	4	0
<del>Louisiana</del>	0	0	0
<del>Maine</del>	0	0	0
Maryland	40	32	0
Massachusetts	01	1	0
Michigan	1	63	0
<del>Minnesota</del>	0	0	0
Mississippi	0	42	0
Missouri	0	1	0
Nebraska	0	21	0
<del>Nevada</del>	0	2	0
<del>New Hampshire</del>	0	0	0
New Jersey	30	34	0
New Mexico	0	1	0
New York	01	31	0
North Carolina	43	49	0
Ohio	1	2	0
Oklahoma	0	02	0
Oregon	0	3	0
Pennsylvania	01	65	0
<u>Rhode Island</u>	1	1	0
South Carolina	40	24	0
Tennessee	1	43	0
Texas	30	68	0



State	Franchise Agreements Signed But Outlet Not Opened	Projected New Franchised Outlets in the Next Fiscal Year	Projected New Company-Owned Outlets in the Next Fiscal Year
Utah	<u>0</u> <u>1</u>	0	0
Virginia	1	<u>5</u> <u>4</u>	0
Washington	0	<u>3</u> <u>4</u>	0
West Virginia	<u>4</u> <u>0</u>	1	0
Wisconsin	0	2	0
Totals	<u>2</u> <u>9</u> <u>2</u> <u>1</u>	<u>1</u> <u>1</u> <u>2</u> <u>1</u> <u>2</u> <u>2</u>	0

\*Note 1: This Item 20 includes System data for -our previous three fiscal years available as of ~~April 22, 2022~~ January 30, 2024, subject to personnel transfer of historical institutional knowledge. System change totals for ~~2023~~2024 show reconciliation differences due to a clerical error regarding the number of outlets at the end of ~~2020~~2022.

The names, addresses, and telephone numbers of our current franchisees are attached to this Franchise Disclosure Document as Exhibit F. The name and last known address and telephone number of every franchisee who has had a Kona Ice Franchise terminated, cancelled, not renewed, or otherwise voluntarily or involuntarily ceased to do business under the franchise agreement during the most recently completed fiscal year ending December 31, ~~2022~~2023, or who has not communicated with us within ten weeks of the Franchise Disclosure Document Issuance Date, is listed in Exhibit F.

In some instances, current and former franchisees sign provisions restricting their ability to speak openly about their experiences with the Kona Ice System. You may wish to speak with current and former franchisees, but be aware that not all such franchisees will be able to communicate with you. During the last three fiscal years, certain current and former franchisees have signed confidentiality provisions that would restrict their ability to speak openly about their experience with the Kona Ice System. 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 Franchise Disclosure Document, there are no franchisee organizations sponsored or endorsed by us and no independent franchisee organizations that have asked to be included in this Franchise Disclosure Document. We do not have any trademark-specific franchisee organizations.

## **ITEM 21** **FINANCIAL STATEMENTS**

Exhibit B contains the financial statements required to be included with this Franchise Disclosure Document: audited financial statements as of December 31, 2023, 2022, and 2021 ~~and 2020~~. Our fiscal year end is December 31<sup>st</sup>.

## **ITEM 22** **CONTRACTS**

Exhibit C      Franchise Agreement



- Exhibit D Franchise Disclosure Questionnaire
- Exhibit G State Addenda and Agreement Riders
- Exhibit H Contracts for use with the Kona Ice Franchise

**ITEM 23**  
**RECEIPTS**

The last page of this Franchise Disclosure Document, Exhibit J, is a detachable document in duplicate. Please detach, sign, date, and return one copy of the Receipt to us, acknowledging you received this Franchise Disclosure Document. Please keep the second copy for your records.



**EXHIBIT A**

**STATE ADMINISTRATORS AND  
AGENTS FOR SERVICE OF PROCESS**



**STATE ADMINISTRATORS AND  
AGENTS FOR SERVICE OF PROCESS**

**CALIFORNIA**

State Administrator and Agent for Service of Process:

Commissioner  
Department of Financial  
Protection and Innovation  
320 W. 4<sup>th</sup> Street, #750  
Los Angeles, CA 90013  
(213) 576-7500  
(866) 275-2677

**HAWAII**

Commissioner of Securities of  
the State of Hawaii  
335 Merchant Street, Room 203  
Honolulu, HI 96813  
(808) 586-2722

Agent for Service of Process:

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

**ILLINOIS**

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

**INDIANA**

Secretary of State  
Securities Division  
Room E-018  
302 W. Washington Street  
Indianapolis, IN 46204  
(317) 232-6681

**MARYLAND**

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

**MARYLAND CONTINUED**

Agent for Service of Process:

Maryland Securities Commissioner  
200 St. Paul Place  
Baltimore, MD 21202-2020

**MICHIGAN**

Michigan Department of Attorney General  
Consumer Protection Division  
525 W. Ottawa Street  
Lansing, MI 48913  
(517) 373-7117

**MINNESOTA**

Department of Commerce  
Commissioner of Commerce  
85 Seventh Place East, Suite 280  
St. Paul, MN 55101-3165  
(651) 539-1600

**NEW YORK**

Administrator:

NYS Department of Law  
Investor Protection Bureau  
28 Liberty Street, 21<sup>st</sup> Floor  
New York, NY 10005  
(212) 416-8222

Agent for Service of Process:

Secretary of State  
99 Washington Avenue  
Albany, NY 12231

**NORTH DAKOTA**

Administrator:

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

Agent for Service of Process:

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

**RHODE ISLAND**

Department of Business Regulation  
1511 Pontiac Avenue, Bldg. 68-2  
Cranston, RI 02920  
(401) 462-9527

**SOUTH DAKOTA**

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

**VIRGINIA**

State Corporation Commission  
Division of Securities and  
Retail Franchising  
1300 E. Main Street, 9<sup>th</sup> Floor  
Richmond, VA 23219

Agent for Service of Process:

Clerk of the State Corporation Commission  
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**WISCONSIN**

Department of Financial Institutions  
Division of Securities  
201 W. Washington Avenue  
Madison, WI 53703  
(608) 266-3364

Rev. 012723090723



**EXHIBIT B**  
**FINANCIAL STATEMENTS**



# **Kona Ice, Inc. and Subsidiaries**

**Consolidated Financial Statements  
Years Ended December 31, 2023 and 2022  
With Independent Auditors' Report**

**KONA ICE, INC. AND SUBSIDIARIES**

**Consolidated Financial Statements  
Years Ended December 31, 2023 and 2022**

**Table of Contents**

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	<b><u>Page(s)</u></b>
Independent Auditors' Report	1 - 2
Consolidated Financial Statements:	
Consolidated Balance Sheets	3 - 4
Consolidated Statements of Income	5
Consolidated Statements of Equity	6
Consolidated Statements of Cash Flows	7 - 8
Notes to Consolidated Financial Statements	9 - 19



## Independent Auditors' Report

To the Stockholder of  
Kona Ice, Inc. and Subsidiaries (A Wholly-Owned Subsidiary of Kona Ice Holdings, LLC)  
Florence, Kentucky

### Opinion

We have audited the accompanying consolidated financial statements of Kona Ice, Inc. (a corporation) (the "Company") and Subsidiaries, which comprise the consolidated balance sheets as of December 31, 2023 and 2022, and the related consolidated statements of income, equity, and cash flows for the years then ended, and the related notes to the financial statements.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the Company and Subsidiaries as of December 31, 2023 and 2022, and the results of their operations and their cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

### 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 the Company and Subsidiaries and to meet our other ethical responsibilities in accordance with the relevant ethical requirements relating to our audits. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of the consolidated 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 consolidated financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the consolidated financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Company and Subsidiaries' ability to continue as a going concern within one year after the date that the consolidated 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 consolidated financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditors' 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 consolidated financial statements.

**BARNES DENNIG**

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**Independent Auditors' Report  
(Continued)**

**Auditors' Responsibilities for the Audit of the Financial Statements (Continued)**

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 consolidated 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 the Company and Subsidiaries' 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 consolidated financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the Company and Subsidiaries' 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.

*Barnes, Dennig & Co., Ltd.*

April 11, 2024  
Crestview Hills, Kentucky

## KONA ICE, INC. AND SUBSIDIARIES

### Consolidated Balance Sheets December 31, 2023 and 2022

	2023	2022
<b>Assets</b>		
<b>Current:</b>		
Cash	\$ 7,480,087	\$ 7,070,846
Inventory	9,345,221	6,483,321
Accounts receivable - net	2,709,586	1,755,219
Accounts receivable - related parties	4,736,728	400,000
Deposits	96,000	324,000
Prepaid expenses	676,392	263,572
Total current assets	25,044,014	16,296,958
<b>Fixed assets:</b>		
Property and equipment	2,622,701	2,171,356
Less: Accumulated depreciation	(1,478,451)	(1,263,758)
Total fixed assets	1,144,250	907,598
<b>Other:</b>		
Right-of-use assets - operating leases	12,557,793	12,974,957
Net deferred tax asset	2,451,836	2,745,404
Accounts receivable - net	60,000	60,000
Accounts receivable - related parties	2,586,528	6,482,206
Total other assets	17,656,157	22,262,567
Total assets	\$ 43,844,421	\$ 39,467,123

(Continued)

## KONA ICE, INC. AND SUBSIDIARIES

### Consolidated Balance Sheets (Continued) December 31, 2023 and 2022

	2023	2022
<b>Liabilities</b>		
<b>Current:</b>		
Notes payable - current portion	\$ 21,861	\$ 21,861
Lease liability - current portion	264,400	230,600
Accounts payable	2,943,425	1,540,598
Accounts payable - related party	3,807,922	1,982,791
Accrued expenses	642,271	1,090,941
Deferred royalty revenue	724,418	333,207
Deferred franchise fee revenue	1,981,500	1,692,000
Deferred Konvention fee revenue	831,065	462,931
Customer deposits	2,091,250	2,407,821
	<b>13,308,112</b>	<b>9,762,750</b>
<b>Long-term:</b>		
Deferred royalty revenue - net of current portion	381,969	971,390
Deferred franchise fee revenue - net of current portion	7,533,000	7,105,000
Notes payable - net of current portion and loan fees	20,423	30,543
Lease liability - net of current portion	12,692,100	12,956,500
	<b>20,627,492</b>	<b>21,063,433</b>
	<b>33,935,604</b>	<b>30,826,183</b>
<b>Equity</b>		
Common stock - 1,000 shares authorized, issued and outstanding - \$0 par value at December 31, 2023 and 2022	-	-
Additional paid in capital	4,370,075	4,370,075
Retained earnings	5,538,742	4,270,865
	<b>9,908,817</b>	<b>8,640,940</b>
	<b>\$ 43,844,421</b>	<b>\$ 39,467,123</b>

The accompanying notes are an integral part of these consolidated financial statements

**KONA ICE, INC. AND SUBSIDIARIES**

**Consolidated Statements of Income  
Years Ended December 31, 2023 and 2022**

	<u>2023</u>	<u>2022</u>
<b>Revenues</b>	\$ 55,749,089	\$ 36,680,494
<b>Cost of goods sold</b>	<u>31,536,545</u>	<u>18,265,680</u>
Gross profit	24,212,544	18,414,814
<b>Operating expenses:</b>		
Selling, general and administrative expenses	<u>15,278,825</u>	<u>13,939,353</u>
Income before other income (expense)	<u>8,933,719</u>	<u>4,475,461</u>
<b>Other income (expense):</b>		
Other income (expense) - net	138,281	(6,514)
Management fee income	4,624,728	288,000
Employee retention credits	1,159,176	159,959
Interest income	224,754	3,707
Loss on sale of property and equipment	-	(209,901)
Interest expense	(8,273)	(5,798)
Bad debt expense	<u>(7,037)</u>	<u>(17,286)</u>
Total other income (expense)	<u>6,131,629</u>	<u>212,167</u>
Income before income taxes	<u>15,065,348</u>	<u>4,687,628</u>
<b>Income tax (expense) benefit:</b>		
Current	(3,503,903)	(1,490,293)
Deferred	<u>(293,568)</u>	<u>316,535</u>
Total income tax (expense) benefit	<u>(3,797,471)</u>	<u>(1,173,758)</u>
Net income	<u>\$ 11,267,877</u>	<u>\$ 3,513,870</u>

The accompanying notes are an integral part of these consolidated financial statements

**KONA ICE, INC. AND SUBSIDIARIES**

**Consolidated Statements of Equity  
Years Ended December 31, 2023 and 2022**

	<u>Common Stock</u>	<u>Additional Paid in Capital</u>	<u>Retained Earnings</u>
<b>Balance at December 31, 2021</b>	\$ -	\$ 4,370,075	\$ 5,011,467
Net income	-	-	3,513,870
Dividends	<u>-</u>	<u>-</u>	<u>(4,254,472)</u>
<b>Balance at December 31, 2022</b>	-	4,370,075	4,270,865
Net income	-	-	11,267,877
Dividends	<u>-</u>	<u>-</u>	<u>(10,000,000)</u>
<b>Balance at December 31, 2023</b>	<u>\$ -</u>	<u>\$ 4,370,075</u>	<u>\$ 5,538,742</u>

The accompanying notes are an integral part of these consolidated financial statements

## KONA ICE, INC. AND SUBSIDIARIES

### Consolidated Statements of Cash Flows Years Ended December 31, 2023 and 2022

	2023	2022
<b>Cash flows from operating activities:</b>		
Net income	\$ 11,267,877	\$ 3,513,870
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation	214,693	228,703
Right-of-use assets - operating lease expense	186,564	212,143
Debt issuance cost amortization included in interest expense	13,100	66,433
Loss on sale of property and equipment	-	209,901
Changes in:		
Inventory	(2,861,900)	(3,363,032)
Accounts receivable - net	(954,367)	(561,424)
Prepaid expenses	(412,820)	6,221
Deposits	228,000	(324,000)
Net deferred tax asset	293,568	(316,535)
Accounts receivable - related parties	(441,050)	802,035
Accounts payable	1,402,827	975,375
Accounts payable - related party	1,825,131	1,801,541
Accrued expenses	(448,670)	16,492
Deferred revenue	887,424	155,555
Customer deposits	(316,571)	778,625
	<b>10,883,806</b>	<b>4,201,903</b>
<b>Cash flows from investing activities:</b>		
Capital expenditures for property and equipment	(451,345)	(436,218)
Proceeds from sale of property and equipment	-	442,950
	<b>(451,345)</b>	<b>6,732</b>
<b>Cash flows from financing activities:</b>		
Principal payments on notes payable	(23,220)	(22,595)
Payment of loan fees	-	(26,201)
Dividends	(10,000,000)	(4,254,472)
	<b>(10,023,220)</b>	<b>(4,303,268)</b>

(Continued)

## KONA ICE, INC. AND SUBSIDIARIES

### Consolidated Statements of Cash Flows (Continued) Years Ended December 31, 2023 and 2022

	<u>2023</u>	<u>2022</u>
<b>Net change in cash</b>	409,241	(94,633)
<b>Cash beginning of year</b>	<u>7,070,846</u>	<u>7,165,479</u>
<b>Cash end of year</b>	<u>\$ 7,480,087</u>	<u>\$ 7,070,846</u>
<b>Supplemental disclosure of cash flow information</b>		
Cash paid during the year for interest	<u>\$ 8,273</u>	<u>\$ 5,798</u>
Cash paid during the year for taxes	<u>\$ 4,015,643</u>	<u>\$ 2,182,304</u>

#### **Supplemental disclosure of non-cash transactions:**

During 2022, right-of-use assets obtained in exchange for lease obligations were approximately \$13,364,000.

The accompanying notes are an integral part of these consolidated financial statements

## **KONA ICE, INC. AND SUBSIDIARIES**

### **Notes to Consolidated Financial Statements**

#### **NOTE 1 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

##### ***Nature of Operations***

Kona Ice, Inc. and Subsidiaries is a corporation providing franchise services and operating trucks, mini karts, trailers, and kiosks in the shaved ice industry throughout the United States of America. They contract directly with individuals for the purchase or leasing of a shaved ice truck and a territory in which to operate. The Company provides marketing services and advertising for the franchisees.

##### ***Leases***

The Company determines whether an arrangement is a lease at the inception of the arrangement based on the terms and conditions in the contract. Operating and finance lease right of use assets and lease obligations are recognized at the commencement date based on the present value of lease payments over the lease term.

##### ***Adoption of New Accounting Standard***

In June 2016, the Financial Accounting Standards Board FASB issued guidance (FASB ASC 326) which significantly changed how entities will measure credit losses for most financial assets and certain other instruments that aren't measured at fair value through net income. The most significant change in this standard is the shift from the incurred loss model to the expected loss model. Under the standard, disclosures are required to provide users of the consolidated financial statements with useful information in analyzing an entity's exposure to credit risk and the measurement of credit losses. Financial assets held by the Company that are subject to the guidance in FASB ASC 326 were trade accounts receivable. The Company adopted the standard effective January 1, 2023. The impact of the adoption was not considered material to the financial statements and primarily resulted in new/enhanced disclosures only.

##### ***Principles of Consolidation***

The consolidated financial statements include the account of Kona Ice, Inc. and its wholly owned subsidiaries. All significant inter-company accounts and transactions have been eliminated.

##### ***Use of Estimates***

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

**KONA ICE, INC. AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements  
(Continued)**

**NOTE 1 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)**

***Accounts Receivable***

Accounts receivable are uncollateralized customer obligations due under normal trade terms generally requiring payment within 30 days from the invoice date. Currently, the Company may charge interest on delinquent accounts receivable. Accounts receivable are stated at the amount billed to the customer. Gross accounts receivable (short and long-term) had a balance at December 31, 2023, 2022, and 2021 of \$2,777,244, \$1,822,877, and \$1,266,013, respectively.

Payments of accounts receivable are allocated to the specific invoices identified on the customer's remittance advice or, if unspecified, are applied to the earliest unpaid invoices. The carrying amount of accounts receivable is reduced by a valuation allowance that reflects management's best estimate of the amounts that may not be collected. Management individually reviews all accounts receivable balances that exceed 90 days from invoice date and based on an assessment of current creditworthiness, estimates the portion, if any, of the balances that will not be collected. Management also uses past experiences and future economic conditions in estimating the total uncollectible amount. Based on these criteria, the allowance for credit losses at December 31, 2023 and 2022 is \$7,658.

***Property and Equipment***

Property and equipment are carried at cost and are depreciated over their useful lives using both the accelerated and straight-line methods. When assets are retired or otherwise disposed of, the cost and related accumulated depreciation are removed from the accounts, and any resulting gain or loss is included in income for the period. The cost of maintenance and repairs is charged to income as incurred; significant betterments are capitalized.

***Warranty Accrual***

The Company warrants the parts and equipment on the Kona Entertainment Vehicle for two years, except for the chassis which is warranted by the manufacturer. The warranty accrual is a reasonable estimate by management based on incurred warranty expense on previous sales.

	2023	2022
Beginning accrual balance	\$ 129,169	\$ 134,066
Less: Claims	(245,964)	(178,813)
Plus: Additional provisions	256,225	173,916
Ending accrual balance	\$ 139,430	\$ 129,169

## KONA ICE, INC. AND SUBSIDIARIES

### Notes to Consolidated Financial Statements (Continued)

#### NOTE 1 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

##### ***Advertising Costs***

Advertising costs are charged to operations when incurred. Advertising costs charged to operations were \$480,605 and \$445,799 for the years ended December 31, 2023 and 2022, respectively.

##### ***Income Taxes***

Effective July 3, 2019, the Company elected, under Section 1361(a)(2) of the Internal Revenue Code, to be taxed as a corporation. Prior to that date the Company was taxed as an S corporation. Under those provisions, most of the tax benefits and liabilities from the corporation passed directly to the shareholders. Accordingly, no provision for federal income taxes was made before the Company elected to be taxed as a corporation.

The subsidiaries have elected to be taxed as disregarded entities.

Income taxes are provided for the tax effects of transactions reported in the consolidated financial statements and consist of taxes currently due plus deferred taxes. Deferred taxes are recognized for the difference between the basis of assets and liabilities for financial statement versus income tax purposes. The differences relate primarily to depreciable assets (use of different depreciation methods and lives for financial statement and income tax purposes), amortization, prepaid expenses, inventory, and deferred revenue. The deferred tax assets or liabilities represent the future tax consequences of those differences, which will be either taxable or deductible when the assets and liabilities are recovered or settled. Valuation allowances are established when necessary to reduce deferred tax assets to the amount expected to be realized. Income tax expense is the tax payable or refundable for the period plus or minus the change during the period in deferred tax assets and liabilities.

The Company adheres to the GAAP provisions of Accounting for Uncertainty in Income Taxes. These provisions clarify the accounting for uncertainty in income taxes recognized in an entity's financial statements and prescribes a recognition threshold and measurement principles for the financial statement recognition and measurement of tax positions taken or expected to be taken on a tax return that are not certain to be realized.

##### ***Concentration of Credit Risk***

The Company maintains its cash in bank deposit accounts which, at times, may exceed federally insured limits. The Company has not experienced any losses in such accounts and believes it is not exposed to any significant credit risk.

##### ***Revenue Recognition***

The new truck, used truck, and equipment sales are considered separate performance obligations, based on significant judgments, and recognized upon delivery. Payment is due, and revenue is recognized, for these items upon delivery.

The leasing of trucks is recorded on a straight-line basis over the life of the lease agreement.

## KONA ICE, INC. AND SUBSIDIARIES

### Notes to Consolidated Financial Statements (Continued)

#### NOTE 1 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

##### *Revenue Recognition (Continued)*

Franchise fee revenue is paid when the franchise agreement is signed and recognized over the ten year franchise period on a straight-line basis once the truck is delivered and every anniversary date subsequent to the delivery. The current portion of the deferred franchise revenue is based on anniversary date.

Annual marketing and royalty fees (contractually fixed fees) are paid over one to four months and are recognized on a straight-line basis over the fiscal year. A portion of the royalty fees is deferred over the first seven years of the franchise agreement and recognized once a rewrap (new vinyl truck wrap) is performed.

Konvention attendance fee revenue is paid several months before the event and revenue is recognized when the event occurs. Inventory sales, and transfer fees are recognized at a point in time when performance obligations are completed and paid under customary payment terms.

The majority of the revenue recognized by the Company is at a point in time with the remainder recognized over time. Approximately \$46,150,500 and \$28,638,200 of total revenue is recognized at a point in time with approximately \$9,598,600 and \$8,042,300 recognized over time in 2023 and 2022, respectively.

##### *Reclassifications*

Certain reclassifications were made to the 2022 amounts in order to be consistent with the classifications adopted for reporting in 2023. These reclassifications had no effect on net income.

##### *Subsequent Event Evaluation*

In preparing the consolidated financial statements, the Company has evaluated events subsequent to the balance sheet date through April 11, 2024, which is the date the consolidated financial statements were available to be issued.

#### NOTE 2 INVENTORY

Inventory is value at the lower of cost (determined on a FIFO basis) or market. It consists primarily of trucks that are in various stages of construction and supplies. Inventory consisted of the following at December 31:

	<u>2023</u>	<u>2022</u>
Trucks and truck supplies	\$ 3,352,897	\$ 1,793,490
Kiosks	781,073	190,769
Entertainment trailers	397,045	361,900
Upfits	178,061	136,274
Mini trailers	104,067	69,202
Merchandise and parts	<u>4,532,078</u>	<u>3,931,686</u>
	<u>\$ 9,345,221</u>	<u>\$ 6,483,321</u>

**KONA ICE, INC. AND SUBSIDIARIES**  
**Notes to Consolidated Financial Statements**  
**(Continued)**

**NOTE 3 PROPERTY AND EQUIPMENT**

Property and equipment consisted of the following at December 31:

	<u>2023</u>	<u>2022</u>
Equipment	\$ 370,369	\$ 367,811
Computer equipment	70,087	70,087
Leasehold improvements	394,251	153,360
Furniture and fixtures	70,267	70,267
Software	10,694	5,909
Vehicles	<u>1,707,033</u>	<u>1,503,922</u>
	<u>\$ 2,622,701</u>	<u>\$ 2,171,356</u>

Depreciation was \$214,693 and \$228,703 for the years ended December 31, 2023 and 2022, respectively.

**NOTE 4 LINE OF CREDIT**

The Company has available a \$12,500,000 operating line of credit with a bank. The line of credit bears interest at the greater of (a) 0% and (b) Term 1 month SOFR (5.38% and 4.06% as of December 31, 2023 and 2022, respectively) plus .11%, plus 1.75%. The line of credit matures in October 31, 2024, with an option to extend to October 31, 2025. The note is secured by substantially all of the Company's assets. The line of credit is subject to certain financial covenants. The line of credit is guaranteed by the Company and related parties. There was no outstanding balance at December 31, 2023 and 2022.

**KONA ICE, INC. AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements  
(Continued)**

**NOTE 5 NOTES PAYABLE**

	2023	2022
Note payable to Ally due in monthly installments of \$918.70 including both principal and interest. This note is bearing an interest rate of 4.89%. The note matures in January 2026. This note is collateralized by a vehicle.	\$ 30,325	\$ 43,845
Note payable to Ally due in monthly installments of \$919 including both principal and interest. This note is bearing an interest rate of 4.89%. The note matures in January 2026. This note is collateralized by a vehicle.	21,785	31,485
Less: current portion	52,110 (21,861)	75,330 (21,861)
	30,249	53,469
Less: Unamortized loan fees	(9,826)	(22,926)
Net long-term debt	\$ 20,423	\$ 30,543

Current maturities for the next five years are as follows at December 31, 2023:

2024	\$ 21,861	
2025	25,626	
2026	4,623	
	\$ 52,110	

**NOTE 6 INCOME TAXES PAYABLE**

The income tax (provision) benefit for the years ended December 31, 2023 and 2022 consisted of the following:

	2023	2022
State and local taxes	\$ (734,265)	\$ (264,218)
Federal income taxes	(2,769,638)	(1,226,075)
Net effect of temporary timing differences	(293,568)	316,535
Total income tax expense	\$ (3,797,471)	\$ (1,173,758)

**KONA ICE, INC. AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements  
(Continued)**

**NOTE 6 INCOME TAXES PAYABLE (CONTINUED)**

The tax effect of temporary timing differences that give rise to significant portions of the deferred tax assets and liabilities as of December 31, 2023 and 2022 is as follows:

	2023	2022
<b>Deferred tax assets:</b>		
Amortization	\$ 89,727	\$ 98,096
Accrued expenses	39,693	97,343
Inventory	21,994	13,134
Deferred royalty revenue	258,563	304,884
Deferred franchise fee revenue	2,268,292	2,144,314
Employee Retention Credit	-	270,890
R&D	186,381	83,543
Other	1,790	1,359
<b>Total deferred tax assets</b>	<b>2,866,440</b>	<b>3,013,563</b>
<b>Deferred tax liabilities:</b>		
Property, plant and equipment, principally due to differences in depreciation	(256,531)	(206,562)
Prepaid expenses currently deductible	(158,073)	(61,597)
<b>Total deferred tax liabilities</b>	<b>(414,604)</b>	<b>(268,159)</b>
<b>Net deferred tax asset</b>	<b>\$ 2,451,836</b>	<b>\$ 2,745,404</b>

The Company has reflected deferred income taxes at 24% for December 31, 2023 and 2022, which represents a blended statutory federal and state income tax rate.

The following reconciles the statutory income tax rate to the rate used for the income tax expense:

2023	Gross	Tax Effect	Rate
Net income before taxes - 21%	\$ 15,065,348	\$ 3,163,723	21.00%
Permanent differences - 21%	114,455	24,036	0.16%
Permanent true up - 21%	(578)	(121)	0.00%
State tax - 79%	771,951	609,841	4.05%
Other	-	(8)	0.00%
	<b>\$ 15,951,176</b>	<b>\$ 3,797,471</b>	<b>25.21%</b>

**KONA ICE, INC. AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements  
(Continued)**

**NOTE 6 INCOME TAXES PAYABLE (CONTINUED)**

<u>2022</u>	<u>Gross</u>	<u>Tax Effect</u>	<u>Rate</u>
Net income before taxes - 21%	\$ 4,687,628	\$ 984,402	21.00%
Permanent differences - 21%	47,369	9,947	0.21%
Permanent true up - 21%	10,568	2,219	0.05%
State tax - 79%	223,487	176,555	3.77%
Other	-	635	0.01%
	<u>\$ 4,969,052</u>	<u>\$ 1,173,758</u>	<u>25.03%</u>

**NOTE 7 RELATED PARTY TRANSACTIONS/SALE OF RECEIVABLES**

The Company sells a portion of its accounts receivable at a discount to a related party, which specializes in sales finance contracts. The Company may recover some of the discount based on the performance of the portfolio as a whole. These discount recoveries are recognized when received. Any recourse obligation is immaterial, and no liability has been recorded. The companies are related through common ownership. The sole shareholder of the related party owns 5% (via interest in parent) of Kona Ice, Inc., as of December 31, 2023 and 2022. The Company sold accounts receivable to the related party of \$6,824,848 and \$3,772,512 and received \$5,713,333 and \$3,203,569, for the sale of accounts receivable, not including discount recoveries of \$650,000 and \$-0- for the years ended December 31, 2023 and 2022, respectively. The receivable sales transactions are comparable with other sales finance purchases made by the related party. The discount and recoveries are included in operating expenses.

The Company also sold accounts receivable to an unrelated entity for face value of \$31,286,255 and \$13,950,661 for the years ended December 31, 2023 and 2022, respectively.

The Company has receivables in the amount of \$7,323,256 and \$6,882,206 due from related parties at December 31, 2023 and 2022, respectively. \$4,736,728 and \$400,000 is expected to be collected in the next year, while the remaining balance is listed as long term. The Company has payables in the amount of \$3,807,922 and \$1,982,791 due to related parties at December 31, 2023 and 2022, respectively.

The Company charges a management fee to certain other related parties for use of the Company's employees, use of facilities, and other administrative functions. The Company also charges one related party a 4% royalty fee on all truck sales and a 10% commission fee on truck sales/franchise fees for each new franchisor the Company introduces to the related party. The royalty and commission fees are included in the management fee. Management fee income was \$4,624,728 and \$288,000 for the years ended December 31, 2023 and 2022, respectively.

The Company is charged a management fee from a related party for certain oversight services of the Company. Management fee expense was \$500,000 for the years ended December 31, 2023 and 2022.

## KONA ICE, INC. AND SUBSIDIARIES

### Notes to Consolidated Financial Statements (Continued)

#### NOTE 8 LEASES

The Company leases its office and warehouse facilities from a third party. The lease is noncancellable with an expiration date of January 2041, with a renewal option of 20 years. Lease expense for these leases is recognized within the Statements of Income on a straight-line basis over the lease term. Operating lease right of use assets and liabilities are recognized at the commencement date based on the present value of lease payments over the lease term.

Lease expense was \$1,198,322 and \$1,164,692 for the years ended December 31, 2023 and 2022, respectively. Additionally, the Company has certain short-term leases that are greater than one month, but less than one year in length. The costs associated with these short-term leases for the years ended December 31, 2023 and 2022 were \$43,490 and \$3,951, respectively.

The Company has lease agreements with lease and non-lease components, which are generally accounted for separately. For certain leases, such as the office and warehouse lease, we account for the lease and non-lease components as a single lease component. For arrangements accounted for as a single lease component, there may be variability in future lease payments as the amount of the non-lease components are typically revised from one period to the next. These variable lease payments, which are primarily comprised of real estate taxes that are paid on the lessor's behalf are recognized in operating expenses in the period in which the obligation for those payments was incurred. The amount of variable lease payments for the years ended December 31, 2023 and 2022, were \$42,086 and \$42,263, respectively.

The Company has options to renew lease terms for buildings. The exercise of lease renewal options is generally at the sole discretion of the Company. The Company evaluates each renewal and termination option at the lease commencement date to determine if it is reasonably certain to exercise its options based on economic factors. The weighted average remaining lease term on operating leases was eighteen and nineteen years as of December 31, 2023 and 2022, respectively.

In determining the discount rate used to measure the right-of-use asset and lease liability, the Company uses rates implicit in the lease, or if not readily available, the Company uses their incremental borrowing rate. The Company's incremental borrowing rate is based on an estimated secured rate comprised of a credit spread as secured by our assets. Determining a credit spread as secured by our assets may require significant judgment. The weighted average discount rate used to measure the Company's lease liabilities as of December 31, 2023 and 2022 was 5.8% for operating leases.

The Company also considers whether certain service contracts contain a lease. A contract contains a lease if the contract depends on the use of an identified asset, the customer obtains substantially all of the economic benefits from using the asset and the customer determines how and for what purpose the asset is used during the lease term. The Company allocates consideration in these contracts as lease payments based on estimated standalone values. There were no service contracts containing a lease for the year ending December 31, 2023 and 2022.

## KONA ICE, INC. AND SUBSIDIARIES

### Notes to Consolidated Financial Statements (Continued)

#### NOTE 8 LEASES (CONTINUED)

The following table shows the Company's lease liabilities as of December 31, 2023, the lease payments due (undiscounted cash flows) on an annual basis for the next five fiscal years and the present value of those lease payments.

<u>Years Ending</u>	<u>Operating Leases</u>
2024	\$ 997,731
2025	1,017,686
2026	1,038,039
2027	1,058,800
2028	1,079,976
Thereafter	<u>16,171,497</u>
Total	21,363,729
Less: Interest amount	<u>(8,407,229)</u>
Present value of cash flows	<u>\$ 12,956,500</u>

#### NOTE 9 RISKS AND UNCERTAINTIES

The Company is regulated by state laws and regulations in each state in which it operates, including those governing franchise sales and licensing, which are subject to change. These laws and regulations, among other things, establish franchise and licensing requirements which regulate the Company's ability to issue franchise rights. Any adverse change in or interpretation of existing laws or regulations or the failure to comply with any such laws and regulations could result in fines, class action litigation, or interruption or cessation of certain business activities of the Company. Any of these events could have a material effect on the Company's business. In addition, there can be no assurance that amendments to such laws and regulations or new or more restrictive laws or regulations, or interpretations thereof will not be adopted in the future which may make compliance more difficult or expensive, further limit or restrict fees and other charges, curtail the current operations of the Company, restrict the Company's ability to expand its operations or otherwise materially adversely affect the business or prospects of the Company.

## KONA ICE, INC. AND SUBSIDIARIES

### Notes to Consolidated Financial Statements (Continued)

#### NOTE 10 FRANCHISES IN OPERATIONS

The following summarizes the franchise ownership changes for the years then ended:

	2023	2022
Franchises in operation at beginning of year	1,385	1,288
Franchises sold	182	108
Franchises taken out of service	(5)	-
Franchises repurchased by franchisor	-	(11)
Franchises in operation at end of year	1,562	1,385

#### NOTE 11 401(K) PLAN

The Company has a defined contribution 401(k) plan, which began January 1, 2014, covering employees who meet stated eligibility requirements. Company contributions are made at the discretion of management. The Company contribution expense was \$330,587 and \$284,409 in 2023 and 2022, respectively.

#### NOTE 12 EMPLOYEE RETENTION CREDITS (“ERC”)

On December 27, 2020, the Consolidated Appropriations Act 2021 (CAA) was signed into law, which substantially expanded the ERC program to allow eligible employers to claim a credit on qualified employee wages retroactively to March 12, 2020 and through September 30, 2021. Eligibility and credit calculations under the ERC program include meeting requirements based on a decline in gross receipts during a comparative quarter.

For the years ended December 31, 2023 and 2022 the Company has determined its eligibility under the ERC program and filed with the Internal Revenue Service to claim credits during the ERC period in the amount of \$1,159,176 and \$159,959, respectively. In June 2020, the AICPA issued Technical Question and Answer (TQA) 3200.18, *Borrower Accounting for a Forgivable Loan Received Under the Small Business Administration Paycheck Protection Program*. The TQA addresses accounting for governmental assistance for nongovernmental entities that are not Not-For-Profits, i.e. business entities. The TQA further states companies may analogize to International Accounting Standard (IAS) 20 to account for governmental assistance. In analogizing to IAS 20, the Company considers the ERC a grant and have recognized the ERC as other income in 2023 and 2022 in the statements of income.

# **Kona Ice, Inc. and Subsidiaries**

**Consolidated Financial Statements  
Years Ended December 31, 2022 and 2021  
With Independent Auditors' Report**

# KONA ICE, INC. AND SUBSIDIARIES

## Consolidated Financial Statements Years Ended December 31, 2022 and 2021

### Table of Contents

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	<b><u>Page(s)</u></b>
Independent Auditors' Report	1 - 2
Consolidated Financial Statements:	
Consolidated Balance Sheets	3 - 4
Consolidated Statements of Income	5
Consolidated Statements of Equity	6
Consolidated Statements of Cash Flows	7 - 8
Notes to Consolidated Financial Statements	9 - 20



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## Independent Auditors' Report

To the Stockholder of  
Kona Ice, Inc. and Subsidiaries (A Wholly-Owned Subsidiary of Kona Ice Holdings, LLC)  
Florence, Kentucky

### Opinion

We have audited the accompanying consolidated financial statements of Kona Ice, Inc. (a corporation) (the "Company") and Subsidiaries, which comprise the consolidated balance sheets as of December 31, 2022 and 2021, and the related consolidated statements of income, equity, and cash flows for the years then ended, and the related notes to the financial statements.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the Company and Subsidiaries as of December 31, 2022 and 2021, and the results of their operations and their cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

### 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 the Company and Subsidiaries and to meet our other ethical responsibilities in accordance with the relevant ethical requirements relating to our audits. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of the consolidated 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 consolidated financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the consolidated financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Company and Subsidiaries' ability to continue as a going concern within one year after the date that the consolidated 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 consolidated financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditors' 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 consolidated financial statements.

**BARNES DENNIG**

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**Independent Auditors' Report  
(Continued)**

**Auditors' Responsibilities for the Audit of the Financial Statements (Continued)**

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 consolidated 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 the Company and subsidiaries' 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 consolidated financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the Company and subsidiaries' 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.

*Barnes, Dennig & Co., Ltd.*

March 16, 2023  
Crestview Hills, Kentucky

## KONA ICE, INC. AND SUBSIDIARIES

### Consolidated Balance Sheets December 31, 2022 and 2021

	2022	2021
<b>Assets</b>		
<b>Current:</b>		
Cash	\$ 7,070,846	\$ 7,165,479
Inventory	6,483,321	3,120,289
Accounts receivable - net	1,755,219	1,253,795
Accounts receivable - related parties	400,000	6,173,103
Deposits	324,000	-
Prepaid expenses	263,572	269,793
Total current assets	16,296,958	17,982,459
<b>Fixed assets:</b>		
Property and equipment	2,171,356	2,654,885
Less: Accumulated depreciation	(1,263,758)	(1,301,951)
Total fixed assets	907,598	1,352,934
<b>Other:</b>		
Right-of-use assets - operating leases	12,974,957	-
Net deferred tax asset	2,745,404	2,428,869
Accounts receivable - long-term	60,000	-
Accounts receivable - related parties	6,482,206	1,511,138
Total other assets	22,262,567	3,940,007
Total assets	\$ 39,467,123	\$ 23,275,400

(Continued)

## KONA ICE, INC. AND SUBSIDIARIES

### Consolidated Balance Sheets (Continued) December 31, 2022 and 2021

	2022	2021
<b>Liabilities</b>		
<b>Current:</b>		
Notes payable - current portion	\$ 21,861	\$ 23,382
Lease liability - current portion	230,600	-
Accounts payable	1,540,598	565,223
Accounts payable - related party	1,982,791	181,250
Accrued expenses	1,090,941	1,074,449
Deferred royalty revenue	333,207	187,222
Deferred franchise fee revenue	1,692,000	1,695,000
Deferred Konvention fee revenue	462,931	332,286
Customer deposits	2,407,821	1,629,196
Total current liabilities	9,762,750	5,688,008
<b>Long-term:</b>		
Deferred royalty revenue - net of current portion	971,390	1,279,465
Deferred franchise fee revenue - net of current portion	7,105,000	6,915,000
Notes payable - net of current portion and loan fees	30,543	11,385
Lease liability - net of current portion	12,956,500	-
Total long-term liabilities	21,063,433	8,205,850
Total liabilities	30,826,183	13,893,858
<b>Equity</b>		
Common stock - 1,000 shares authorized, issued and outstanding - \$0 par value at December 31, 2022 and 2021	-	-
Additional paid in capital	4,370,075	4,370,075
Retained earnings	4,270,865	5,011,467
Total equity	8,640,940	9,381,542
Total liabilities and equity	\$ 39,467,123	\$ 23,275,400

The accompanying notes are an integral part of these consolidated financial statements

## KONA ICE, INC. AND SUBSIDIARIES

### Consolidated Statements of Income Years Ended December 31, 2022 and 2021

	<u>2022</u>	<u>2021</u>
<b>Revenues</b>	\$ 36,680,494	\$ 27,399,855
<b>Cost of goods sold</b>	<u>18,265,680</u>	<u>11,609,664</u>
Gross profit	18,414,814	15,790,191
<b>Operating expenses:</b>		
Selling, general and administrative expenses	<u>13,939,353</u>	<u>9,726,880</u>
Operating income	<u>4,475,461</u>	<u>6,063,311</u>
<b>Other income (expense):</b>		
Other income - net	441,445	239,425
Interest income	3,707	17,112
Gain (loss) on sale of property and equipment	(209,901)	255,329
Interest expense	(5,798)	(1,207,585)
Bad debt expense	<u>(17,286)</u>	<u>-</u>
Total other income (expense)	<u>212,167</u>	<u>(695,719)</u>
Income before income taxes	<u>4,687,628</u>	<u>5,367,592</u>
<b>Income tax (expense) benefit:</b>		
Current	(1,490,293)	(1,406,341)
Deferred	<u>316,535</u>	<u>(86,708)</u>
Total income tax (expense) benefit	<u>(1,173,758)</u>	<u>(1,493,049)</u>
Net income	<u>\$ 3,513,870</u>	<u>\$ 3,874,543</u>

The accompanying notes are an integral part of these consolidated financial statements

## KONA ICE, INC. AND SUBSIDIARIES

### Consolidated Statements of Equity Years Ended December 31, 2022 and 2021

	<u>Common Stock</u>	<u>Additional Paid in Capital</u>	<u>Retained Earnings</u>
<b>Balance at December 31, 2020</b>	\$ -	\$ 4,370,075	\$ 1,136,924
Net income	<u>-</u>	<u>-</u>	<u>3,874,543</u>
<b>Balance at December 31, 2021</b>	-	4,370,075	5,011,467
Net income	-	-	3,513,870
Dividends	<u>-</u>	<u>-</u>	<u>(4,254,472)</u>
<b>Balance at December 31, 2022</b>	<u>\$ -</u>	<u>\$ 4,370,075</u>	<u>\$ 4,270,865</u>

The accompanying notes are an integral part of these consolidated financial statements

## KONA ICE, INC. AND SUBSIDIARIES

### Consolidated Statements of Cash Flows Years Ended December 31, 2022 and 2021

	2022	2021
<b>Cash flows from operating activities:</b>		
Net income	\$ 3,513,870	\$ 3,874,543
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation	228,703	263,770
Right-of-use assets - operating lease expense	212,143	-
Debt issuance cost amortization included in interest expense	66,433	599,757
(Gain) loss on sale of property and equipment	209,901	(255,329)
Changes in:		
Inventory	(3,363,032)	3,186,129
Accounts receivable - net	(561,424)	427,234
Prepaid expenses	6,221	(226,191)
Deposits	(324,000)	-
Other assets	-	750
Net deferred tax asset	(316,535)	86,708
Accounts payable	975,375	(985,336)
Accounts payable - related party	1,801,541	181,250
Accrued expenses	16,492	328,432
Deferred revenue	155,555	142,816
Customer deposits	778,625	103,432
	<u>3,399,868</u>	<u>7,727,965</u>
<b>Net cash provided by operating activities</b>		
<b>Cash flows from investing activities:</b>		
Payments from accounts receivable - related parties	6,255,553	1,638,250
Advances on accounts receivable - related parties	(5,453,518)	(416,250)
Capital expenditures for property and equipment	(436,218)	(686,936)
Proceeds from sale of property and equipment	442,950	591,564
	<u>808,767</u>	<u>1,126,628</u>
<b>Net cash provided by investing activities</b>		
<b>Cash flows from financing activities:</b>		
Principal payments on long-term debt	(22,595)	(28,022,356)
Payment of loan fees	(26,201)	(71,053)
Dividends	(4,254,472)	-
	<u>(4,303,268)</u>	<u>(28,093,409)</u>
<b>Net cash used in financing activities</b>		

(Continued)

## KONA ICE, INC. AND SUBSIDIARIES

### Consolidated Statements of Cash Flows (Continued) Years Ended December 31, 2022 and 2021

	<u>2022</u>	<u>2021</u>
<b>Net change in cash</b>	(94,633)	(19,238,816)
<b>Cash beginning of year</b>	<u>7,165,479</u>	<u>26,404,295</u>
<b>Cash end of year</b>	<u>\$ 7,070,846</u>	<u>\$ 7,165,479</u>
<b>Supplemental disclosure of cash flow information</b>		
Cash paid during the year for interest	<u>\$ 5,798</u>	<u>\$ 1,207,585</u>
Cash paid during the year for taxes	<u>\$ 2,182,304</u>	<u>\$ 1,189,869</u>

#### **Supplemental disclosure of non-cash transactions:**

During 2022, right-of-use assets obtained in exchange for lease obligations were approximately \$13,364,000.

The accompanying notes are an integral part of these consolidated financial statements

## KONA ICE, INC. AND SUBSIDIARIES

### Notes to Consolidated Financial Statements

#### NOTE 1 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

##### *Nature of Operations*

Kona Ice, Inc. and Subsidiaries is a corporation providing franchise services and operating trucks, mini karts, trailers, and kiosks in the shaved ice industry throughout the United States of America. They contract directly with individuals for the purchase or leasing of a shaved ice truck and a territory in which to operate. The Company provides marketing services and advertising for the franchisees.

##### *Adoption of New Accounting Standard*

Effective January 1, 2022, the Company adopted FASB Accounting Standards Update 2016-02, Leases ("ASU 842"). The standard requires all leases with lease terms over 12 months to be capitalized as a right-of-use asset and lease liability on the balance sheet at the date of lease commencement. Leases are classified as either finance or operating. The standard requires a modified retrospective transition approach for all leases existing at, or entered into after, the date of initial application, with an option to use certain transition relief. Adoption of the new standard resulted in the recording of additional right-of-use lease assets and liabilities of approximately \$-0- as of the first day of the year ended December 31, 2022. The standard did not materially impact net income and had no impact on cash flows. Additionally, there was no cumulative effect of adoption on retained earnings in the Statements of Retained Earnings.

The Company determines whether an arrangement is a lease at the inception of the arrangement based on the terms and conditions in the contract. Operating and finance lease right of use assets and lease obligations are recognized at the commencement date based on the present value of lease payments over the lease term.

Upon adoption of ASC 842, the Company elected the package of three practical expedients. This election allowed the Company not to reassess certain items upon adoption of the standard. This included whether expired or existing contracts contained leases under the new definition of a lease, lease classification for expired or existing leases and whether previously capitalized initial direct costs would qualify for capitalization under ASC 842.

The Company also elected the short-term lease recognition exemption for all leases that qualify. The Company will not recognize right of use assets or lease liabilities for all leases that qualify. In addition, the Company elected the practical expedient to not separate lease and non-lease components for all leases.

##### *Principles of Consolidation*

The consolidated financial statements include the account of Kona Ice, Inc. and its wholly owned subsidiaries. All significant inter-company accounts and transactions have been eliminated.

##### *Recently Issued Accounting Standards*

In June 2016, the FASB issued ASU 2016-13, Financial Instruments – Credit Losses: Measurement of Credit Losses on Financial Instruments. The standard modifies the impairment model for most financial assets and certain other instruments to utilize an expected loss methodology in place of the currently used incurred loss methodology. The standard will be effective for the Company for the fiscal year ending December 31, 2023. The Company is currently in the process of evaluating the impact of adoption of this ASU on its financial statements.

## KONA ICE, INC. AND SUBSIDIARIES

### Notes to Consolidated Financial Statements (Continued)

#### NOTE 1 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

##### *Use of Estimates*

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

##### *Accounts Receivable*

Accounts receivable are uncollateralized customer obligations due under normal trade terms generally requiring payment within 30 days from the invoice date. Currently, the Company may charge interest on delinquent accounts receivable. Accounts receivable are stated at the amount billed to the customer. Accounts receivable had a balance at December 31, 2022, 2021, and 2020 of \$1,822,877, \$1,266,013, and \$1,716,429, respectively.

Payments of accounts receivable are allocated to the specific invoices identified on the customer's remittance advice or, if unspecified, are applied to the earliest unpaid invoices. The carrying amount of accounts receivable is reduced by a valuation allowance that reflects management's best estimate of the amounts that may not be collected. Management individually reviews all accounts receivable balances that exceed 90 days from invoice date and based on an assessment of current creditworthiness, estimates the portion, if any, of the balances that will not be collected. Management also uses past experiences and future economic conditions in estimating the total uncollectible amount. Based on these criteria, the allowance for doubtful accounts at December 31, 2022 and 2021 is \$7,658 and \$12,218, respectively.

##### *Property and Equipment*

Property and equipment are carried at cost and are depreciated over their useful lives using both the accelerated and straight-line methods. When assets are retired or otherwise disposed of, the cost and related accumulated depreciation are removed from the accounts, and any resulting gain or loss is included in income for the period. The cost of maintenance and repairs is charged to income as incurred; significant betterments are capitalized.

##### *Warranty Accrual*

The Company warrants the parts and equipment on the Kona Entertainment Vehicle for two years, except for the chassis which is warrantied by the manufacturer. The warranty accrual is a reasonable estimate by management based on incurred warranty expense on previous sales.

	2022	2021
Beginning accrual balance	\$ 134,066	\$ 182,162
Less: Claims	(178,813)	(96,192)
Plus: Additional provisions	173,916	48,096
Ending accrual balance	\$ 129,169	\$ 134,066

## KONA ICE, INC. AND SUBSIDIARIES

### Notes to Consolidated Financial Statements (Continued)

#### NOTE 1 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

##### ***Advertising Costs***

Advertising costs are charged to operations when incurred. Advertising costs charged to operations were \$445,799 and \$634,662 for the years ended December 31, 2022 and 2021, respectively.

##### ***Income Taxes***

Effective July 3, 2019, the Company elected, under Section 1361(a)(2) of the Internal Revenue Code, to be taxed as a corporation. Prior to that date the Company was taxed as an S corporation. Under those provisions, most of the tax benefits and liabilities from the corporation passed directly to the shareholders. Accordingly, no provision for federal income taxes was made before the Company elected to be taxed as a corporation.

The subsidiaries have elected to be taxed as disregarded entities.

Income taxes are provided for the tax effects of transactions reported in the consolidated financial statements and consist of taxes currently due plus deferred taxes. Deferred taxes are recognized for the difference between the basis of assets and liabilities for financial statement versus income tax purposes. The differences relate primarily to depreciable assets (use of different depreciation methods and lives for financial statement and income tax purposes), amortization, prepaid expenses, inventory, and deferred revenue. The deferred tax assets or liabilities represent the future tax consequences of those differences, which will be either taxable or deductible when the assets and liabilities are recovered or settled. Valuation allowances are established when necessary to reduce deferred tax assets to the amount expected to be realized. Income tax expense is the tax payable or refundable for the period plus or minus the change during the period in deferred tax assets and liabilities.

The Company adheres to the GAAP provisions of Accounting for Uncertainty in Income Taxes. These provisions clarify the accounting for uncertainty in income taxes recognized in an entity's financial statements and prescribes a recognition threshold and measurement principles for the financial statement recognition and measurement of tax positions taken or expected to be taken on a tax return that are not certain to be realized.

##### ***Concentration of Credit Risk***

The Company maintains its cash in bank deposit accounts which, at times, may exceed federally insured limits. The Company has not experienced any losses in such accounts and believes it is not exposed to any significant credit risk.

##### ***Revenue Recognition***

The new truck, used truck, and equipment sales are considered separate performance obligations, based on significant judgments, and recognized upon delivery. Payment is due, and revenue is recognized, for these items upon delivery.

The leasing of trucks is recorded on a straight-line basis over the life of the lease agreement.

## KONA ICE, INC. AND SUBSIDIARIES

### Notes to Consolidated Financial Statements (Continued)

#### NOTE 1 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

##### *Revenue Recognition (Continued)*

Franchise fee revenue is paid when the franchise agreement is signed and recognized over the ten year franchise period on a straight-line basis once the truck is delivered and every anniversary date subsequent to the delivery. The current portion of the deferred franchise revenue is based on anniversary date.

Annual marketing and royalty fees (contractually fixed fees) are paid over one to four months and are recognized on a straight-line basis over the fiscal year. A portion of the royalty fees is deferred over the first seven years of the franchise agreement and recognized once a rewrap (new vinyl truck wrap) is performed.

Konvention attendance fee revenue is paid several months before the event and revenue is recognized when the event occurs. Inventory sales, and transfer fees are recognized at a point in time when performance obligations are completed and paid under customary payment terms.

The majority of the revenue recognized by the Company is at a point in time with the remainder recognized over time. Approximately \$28,638,200 and \$19,945,900 of total revenue is recognized at a point in time with approximately \$7,964,300 and \$7,454,000 recognized over time in 2022 and 2021, respectively.

##### *Fair Value Measurements*

The financial statements have been prepared in accordance with the GAAP provisions for fair value measurements. These provisions define fair value, establish a framework for measuring fair value and expand disclosures about fair value measurements. These provisions emphasize that fair value is market-based measurement and should be determined based on assumptions that a market participant would use when pricing an asset or liability. Additionally, the provisions establish a fair value hierarchy that provides the highest priority to quoted prices in active markets and the lowest priority to unobservable data.

In determining fair value, the Company uses various valuation approaches. GAAP provisions establish a hierarchy for inputs used in measuring fair value that maximizes the use of observable inputs and minimizes the use of unobservable inputs by requiring that the most observable inputs be used when available.

Observable inputs are inputs that market participants would use in pricing the asset or liability developed based on market data obtained from sources independent of the Company. Unobservable inputs are inputs that reflect the Company's assumptions about the assumptions market participants would use in pricing the asset or liability developed based on the best information available in the circumstances.

The hierarchy is broken down into three levels based on the ability to observe inputs as follows:

*Level 1* – Quoted prices (unadjusted) in active markets for identical assets or liabilities that the reporting entity has the ability to access at the measurement date.

## KONA ICE, INC. AND SUBSIDIARIES

### Notes to Consolidated Financial Statements (Continued)

#### NOTE 1 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

##### *Fair Value Measurements (Continued)*

*Level 2* – Directly or indirectly observable inputs not included in Level 1. Inputs can be quoted prices for similar assets or liabilities in active markets, quoted prices for identical or similar assets or liabilities in markets that are not active, that is, markets in which there are few transactions for the asset or liability, the prices are not current, or price quotations vary substantially either over time or among market makers (for example, some brokered markets), or in which little information is released publicly (for example, a principal-to-principal market), inputs other than quoted prices that are observable for the asset or liability (for example, interest rates and yield curves observable at commonly quoted intervals, volatilities, prepayment speeds, loss severities, credit risks, and default rates), inputs that are derived principally from or corroborated by observable market data by correlation or other means (market-corroborated inputs).

*Level 3* – Unobservable inputs that are significant to the overall fair value measurement. Unobservable inputs shall be used to measure fair value to the extent that observable inputs are not available, thereby allowing for situations in which there is little, if any, market activity for the asset or liability at the measurement date. However, the fair value measurement objective remains the same, that is, an exit price from the perspective of a market participant that holds the asset or owes the liability. Therefore, unobservable inputs shall reflect the reporting entity's own assumptions about the assumptions that market participants would use in pricing the asset or liability (including assumptions about risk).

##### *Subsequent Event Evaluation*

In preparing the consolidated financial statements, the Company has evaluated events subsequent to the balance sheet date through March 16, 2023, which is the date the consolidated financial statements were available to be issued.

#### NOTE 2 INVENTORY

Inventory is value at the lower of cost (determined on a FIFO basis) or market. It consists primarily of trucks that are in various stages of construction and supplies. Inventory consisted of the following at December 31:

	<u>2022</u>	<u>2021</u>
Trucks and truck supplies	\$ 1,793,490	\$ 987,974
Kiosks	190,769	308,611
Entertainment trailers	361,900	66,064
Upfits	136,274	58,132
Mini trailers	69,202	15,436
Merchandise and parts	<u>3,931,686</u>	<u>1,684,072</u>
	<u>\$ 6,483,321</u>	<u>\$3,120,289</u>

## KONA ICE, INC. AND SUBSIDIARIES

### Notes to Consolidated Financial Statements (Continued)

#### NOTE 3 PROPERTY AND EQUIPMENT

Property and equipment consisted of the following at December 31:

	<u>2022</u>	<u>2021</u>
Equipment	\$ 367,811	\$ 351,982
Computer equipment	70,087	37,127
Leasehold improvements	153,360	516,491
Furniture and fixtures	70,267	71,642
Software	5,909	5,909
Vehicles	1,503,922	1,651,474
Construction in progress	<u>-</u>	<u>20,260</u>
	<u>\$ 2,171,356</u>	<u>\$2,654,885</u>

Depreciation was \$228,703 and \$263,770 for the years ended December 31, 2022 and 2021, respectively.

#### NOTE 4 LINE OF CREDIT

The Company has available a \$12,500,000 operating line of credit with a bank. The line of credit bears interest at the greater of (a) 0% and (b) Term 1 month SOFR (4.06% as of December 31, 2022) plus .11%, plus 1.75%. The line of credit matures in October 31, 2024, with an option to extend to October 31, 2025. The note is secured by substantially all of the Company's assets. The line of credit is subject to certain financial covenants. The line of credit is guaranteed by the Company and related parties. There was no outstanding balance at December 31, 2022 and 2021.

**KONA ICE, INC. AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements  
(Continued)**

**NOTE 5 NOTES PAYABLE**

	<b>2022</b>	<b>2021</b>
Note payable to Ally due in monthly installments of \$918.70 including both principal and interest. This note is bearing an interest rate of 4.89%. The note matures in January 2027. This note is collateralized by a vehicle.	\$ 43,845	\$ 55,682
Note payable to Ally due in monthly installments of \$919 including both principal and interest. This note is bearing an interest rate of 4.89%. The note matures in January 2026. This note is collateralized by a vehicle.	31,485	40,722
Capital lease for a copier due in monthly installments of \$135 including both principal and interest. The final payment of this lease was due December 2022. This lease was collateralized by the copier.	<u>-</u>	<u>1,521</u>
	75,330	97,925
Less: current portion	<u>(21,861)</u>	<u>(23,382)</u>
	53,469	74,543
Less: Unamortized loan fees	<u>(22,926)</u>	<u>(63,158)</u>
Net long-term debt	<u>\$ 30,543</u>	<u>\$ 11,385</u>

Current maturities for the next five years are as follows at December 31, 2022:

2023	\$	(21,861)
2024		24,419
2025		25,637
2026		<u>3,413</u>
	<u>\$</u>	<u>31,608</u>

## KONA ICE, INC. AND SUBSIDIARIES

### Notes to Consolidated Financial Statements (Continued)

#### NOTE 6 INCOME TAXES PAYABLE

The income tax (provision) benefit for the years ended December 31, 2022 and 2021 consisted of the following:

	2022	2021
State and local taxes	\$ (264,218)	\$ (231,836)
Federal income taxes	(1,226,075)	(1,174,505)
Net effect of temporary timing differences	316,535	(86,708)
Total income tax expense	\$ (1,173,758)	\$ (1,493,049)

The tax effect of temporary timing differences that give rise to significant portions of the deferred tax assets and liabilities as of December 31, 2022 and 2021 is as follows:

	2022	2021
<b>Deferred tax assets:</b>		
Amortization	\$ 98,096	\$ 106,403
Accrued expenses	97,343	130,920
Inventory	13,134	16,248
Deferred royalty revenue	304,884	342,765
Deferred franchise fee revenue	2,144,314	2,065,557
Employee Retention Credit	270,890	91,232
R&D	83,543	-
Other	1,359	2,855
Total deferred tax assets	3,013,563	2,755,980
<b>Deferred tax liabilities:</b>		
Property, plant and equipment, principally due to differences in depreciation	(206,562)	(264,060)
Prepaid expenses currently deductible	(61,597)	(63,051)
Total deferred tax liabilities	(268,159)	(327,111)
Net deferred tax asset	\$ 2,745,404	\$ 2,428,869

## KONA ICE, INC. AND SUBSIDIARIES

### Notes to Consolidated Financial Statements (Continued)

#### NOTE 6 INCOME TAXES PAYABLE (CONTINUED)

The Company has reflected deferred income taxes at 24% and 26% for December 31, 2022 and 2021, respectively, which represents a blended statutory federal and state income tax rate.

The following reconciles the statutory income tax rate to the rate used for the income tax expense:

2022	Gross	Tax Effect	Rate
Net income before taxes - 21%	\$ 4,687,628	\$ 984,402	21.00%
Permanent differences - 21%	47,369	9,947	0.21%
Permanent true up - 21%	10,568	2,219	0.05%
State tax - 79%	223,487	176,555	3.77%
Other	-	635	0.01%
	<u>\$ 4,969,052</u>	<u>\$ 1,173,758</u>	<u>25.03%</u>
2021	Gross	Tax Effect	Rate
Net income before taxes - 21%	\$ 5,367,592	\$ 1,127,194	21.00%
Permanent differences - 21%	43,688	9,174	0.17%
Permanent true up - 21%	(16,501)	(3,465)	-0.06%
State tax - 79%	424,167	335,092	6.24%
Current year research credit - 100%	16,502	16,502	0.31%
Other	-	8,551	0.16%
	<u>\$ 5,835,448</u>	<u>\$ 1,493,049</u>	<u>27.35%</u>

#### NOTE 7 RELATED PARTY TRANSACTIONS/SALE OF RECEIVABLES

The Company sells a portion of its accounts receivable at a discount to a related party, which specializes in sales finance contracts. The Company may recover some of the discount based on the performance of the portfolio as a whole. These discount recoveries are recognized when received. Any recourse obligation is immaterial, and no liability has been recorded. The companies are related through common ownership. The sole shareholder of the related party owns 5% (via interest in parent) of Kona Ice, Inc., as of December 31, 2022 and 2021. The Company sold accounts receivable to the related party of \$3,772,512 and \$3,316,532 and received \$3,203,569 and \$2,803,385, for the sale of accounts receivable, not including discount recoveries of \$-0- and \$1,325,118, for the years ended December 31, 2022 and 2021, respectively. The receivable sales transactions are comparable with other sales finance purchases made by the related party. The discount and recoveries are included in operating expenses.

The Company also sold accounts receivable to an unrelated entity for face value of \$13,950,661 and \$11,808,043 for the years ended December 31, 2022 and 2021, respectively.

## KONA ICE, INC. AND SUBSIDIARIES

### Notes to Consolidated Financial Statements (Continued)

#### NOTE 7 RELATED PARTY TRANSACTIONS/SALE OF RECEIVABLES (CONTINUED)

The Company has receivables in the amount of \$6,882,206 and \$7,684,241 due from related parties at December 31, 2022 and 2021, respectively. \$400,000 is expected to be collected in the next year, while the remaining balance is listed as long term. The Company has payables in the amount of \$1,982,791 and \$181,250 due to related parties at December 31, 2022 and 2021, respectively.

The Company charges a management fee to certain other related parties for use of the Company's employees and other administrative functions. Management fee income was \$288,000 and \$240,000 for the years ended December 31, 2022 and 2021, respectively.

The Company is charged a management fee from a related party for certain oversight services of the Company. Management fee expense was \$500,000 for the years ended December 31, 2022 and 2021.

#### NOTE 8 LEASES

The Company leases its office and warehouse facilities from a third party. The lease is noncancellable with an expiration date of January 2041, with a renewal option of 20 years. Lease expense for these leases is recognized within the Statements of Income on a straight-line basis over the lease term. Operating lease right of use assets and liabilities are recognized at the commencement date based on the present value of lease payments over the lease term.

Lease expense was \$1,164,692 and \$202,250 for the years ended December 31, 2022 and 2021, respectively. All of the 2021 lease expense was paid to a related party. Additionally, the Company has certain short-term leases that are greater than one month, but less than one year in length. The costs associated with these short-term leases for the years ended December 31, 2022 and 2021 were \$3,951 and \$9,181, respectively.

The Company has lease agreements with lease and non-lease components, which are generally accounted for separately. For certain leases, such as the office and warehouse lease, we account for the lease and non-lease components as a single lease component. For arrangements accounted for as a single lease component, there may be variability in future lease payments as the amount of the non-lease components are typically revised from one period to the next. These variable lease payments, which are primarily comprised of real estate taxes that are paid on the lessor's behalf are recognized in operating expenses in the period in which the obligation for those payments was incurred. The amount of variable lease payments for the years ended December 31, 2022 and 2021, were \$42,263 and \$-0-, respectively.

The Company has options to renew lease terms for buildings. The exercise of lease renewal options is generally at the sole discretion of the Company. The Company evaluates each renewal and termination option at the lease commencement date to determine if it is reasonably certain to exercise its options based on economic factors. The weighted average remaining lease term on operating leases was nineteen years as of December 31, 2022.

**KONA ICE, INC. AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements  
(Continued)**

**NOTE 8 LEASES (CONTINUED)**

In determining the discount rate used to measure the right-of-use asset and lease liability, the Company uses rates implicit in the lease, or if not readily available, the Company uses their incremental borrowing rate. The Company's incremental borrowing rate is based on an estimated secured rate comprised of a credit spread as secured by our assets. Determining a credit spread as secured by our assets may require significant judgment. The weighted average discount rate used to measure the Company's lease liabilities as of December 31, 2022 was 5.8% for operating leases.

The Company also considers whether certain service contracts contain a lease. A contract contains a lease if the contract depends on the use of an identified asset, the customer obtains substantially all of the economic benefits from using the asset and the customer determines how and for what purpose the asset is used during the lease term. The Company allocates consideration in these contracts as lease payments based on estimated standalone values. There were no service contracts containing a lease for the year ending December 31, 2022.

The following table shows the Company's lease liabilities as of December 31, 2022, the lease payments due (undiscounted cash flows) on an annual basis for the next five fiscal years and the present value of those lease payments.

<b>Years Ending</b>	<b>Operating Leases</b>
2023	\$ 978,168
2024	997,731
2025	1,017,686
2026	1,038,039
2027	1,058,800
Thereafter	17,251,474
Total	22,341,898
Less: Interest amount	(9,154,798)
Present value of cash flows	\$ 13,187,100

## KONA ICE, INC. AND SUBSIDIARIES

### Notes to Consolidated Financial Statements (Continued)

#### NOTE 9 RISKS AND UNCERTAINTIES

The Company is regulated by state laws and regulations in each state in which it operates, including those governing franchise sales and licensing, which are subject to change. These laws and regulations, among other things, establish franchise and licensing requirements which regulate the Company's ability to issue franchise rights. Any adverse change in or interpretation of existing laws or regulations or the failure to comply with any such laws and regulations could result in fines, class action litigation, or interruption or cessation of certain business activities of the Company. Any of these events could have a material effect on the Company's business. In addition, there can be no assurance that amendments to such laws and regulations or new or more restrictive laws or regulations, or interpretations thereof will not be adopted in the future which may make compliance more difficult or expensive, further limit or restrict fees and other charges, curtail the current operations of the Company, restrict the Company's ability to expand its operations or otherwise materially adversely affect the business or prospects of the Company.

#### NOTE 10 FRANCHISES IN OPERATIONS

The following summarizes the franchise ownership changes for the years then ended:

	<u>2022</u>	<u>2021</u>
Franchises in operation at beginning of year	1,288	1,225
Franchises sold	108	69
Franchises taken out of service	-	(1)
Franchises repurchased by franchisor	<u>(11)</u>	<u>(5)</u>
Franchises in operation at end of year	<u>1,385</u>	<u>1,288</u>

#### NOTE 11 401(K) PLAN

The Company has a defined contribution 401(k) plan, which began January 1, 2014, covering employees who meet stated eligibility requirements. Company contributions are made at the discretion of management. The Company contribution expense was \$284,409 and \$234,616 in 2022 and 2021, respectively.

**EXHIBIT C**  
**FRANCHISE AGREEMENT**



EXHIBIT C



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[2024 FA v1F]

**KONA\_ICE, INC.**

**FRANCHISE AGREEMENT**

**Franchisee:** \_\_\_\_\_

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



TABLE OF CONTENTS

1. INTRODUCTION ..... 1  
2. GRANT OF FRANCHISE ..... 1  
3. FRANCHISEE AS ENTITY ..... 3  
4. TERRITORIAL RIGHTS AND LIMITATIONS..... 5  
5. TERM AND RENEWAL ..... 7  
6. FEES ..... 9  
7. ESTABLISHING YOUR FRANCHISED BUSINESS..... 14  
8. TRAINING AND CONFERENCES ..... 15  
9. OTHER ASSISTANCE ..... 16  
10. MANAGEMENT AND STAFFING ..... 18  
11. BRAND FUND..... 19  
12. FRANCHISEE MARKETING AND ADVERTISING ..... 20  
13. SYSTEM STANDARDS..... 23  
14. TECHNOLOGY ..... 28  
15. TRANSFER BY US ..... 29  
16. TRANSFER BY YOU..... 34  
17. INTELLECTUAL PROPERTY ..... 38  
18. BRAND COVENANTS ..... 53  
19. INSURANCE..... 55  
20. REPORTING REQUIREMENTS ..... 56  
21. INSPECTION AND AUDIT ..... 59  
22. INDEMNITY..... 69  
23. TERMINATION BY YOU..... 70  
24. TERMINATION BY US ..... 74  
25. POST TERM OBLIGATIONS..... 78  
26. RIGHT TO PURCHASE ..... 80  
27. DISPUTE RESOLUTION ..... 82  
28. SECURITY INTEREST ..... 96  
29. GENERAL PROVISIONS ..... 96

**Section** ..... **Page**

ATTACHMENTS:

- ATTACHMENT A – FRANCHISE DATA SHEET
- ATTACHMENT B – STATEMENT OF OWNERSHIP
- ATTACHMENT C – FRANCHISE OWNER AGREEMENT

~~ATTACHMENT A~~ — FRANCHISE DATA SHEET

~~ATTACHMENT B~~ — OWNERSHIP INTERESTS

~~ATTACHMENT C~~ — OWNERS AGREEMENT



ATTACHMENT D—\_ADDITIONAL EQUIPMENT AMENDMENT



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# FRANCHISE AGREEMENT

~~THIS FRANCHISE AGREEMENT (this “Franchise Agreement”) is made and, entered into and effective as of the “Effective Date” set forth in Attachment A to this Franchise Agreement, by and between Kona Ice, Inc., a Kentucky corporation, with its principal business address at 5945 Centennial Circle, Florence, Kentucky, 41042 (“Franchisor,” “we,” “us,” or “our”), and the franchise owner identified on the signature block of franchisee set forth in Attachment A to this Franchise Agreement (“Franchisee,” “you” or “your”), made effective as of the date”). If more than one person or entity is listed in Attachment A (the “Effective Date”), as the franchisee, each such person or entity shall be jointly and severally liable for all rights, duties, restrictions and obligations under this Franchise Agreement.~~

## 1. PREAMBLES, ACKNOWLEDGMENTS, AND INTRODUCTION

This Franchise Agreement includes several attachments, each of which are legally binding and are a part of the complete Franchise Agreement. It is your responsibility to read through the entire Franchise Agreement. This Franchise Agreement creates legal obligations you must follow. We recommend that you consult with a legal professional to ensure that you understand these obligations. If you have questions, or if you do not understand a certain provision or section, please review it with your legal and financial advisors before you sign this Franchise Agreement.

This Franchise Agreement has defined terms. A defined term is a shorthand reference within a document that refers to another name or idea in the document. Defined terms are underlined and surrounded by double quotes, typically with capitalized first letters, and may be contained in parentheses throughout the Franchise Agreement.

## 1.2. GRANT OF FRANCHISE.

### 1.A. PREAMBLES.

- ~~(1) We have developed a unique system of selling~~As a Kona Ice franchisee, you will operate a business providing flavored shaved ice, ice cream, and related products to the general public within a mobile environment (“Kona Ice Franchised Business(es)”). ~~Kona Ice Businesses have distinctive business formats, methods, procedures, designs, standards, and specifications, all of which we may improve, further develop, or otherwise modify.”)~~ The Franchised Business will operate under our service marks, trademarks, trade names, trade dress, logos, slogans and commercial symbols as we may from time to time.
- ~~(2) We and our affiliates authorize or direct you to use, promote, and license certain trademarks, service marks, and other commercial symbols to be used in connection with the operation of Kona Ice Businesses, and we may create, use, and license other trademarks, service marks, and commercial symbols for the same use (collectively, the “the Franchised Business (the “Marks”)).~~

We and our affiliates use, promote, and license a registered patent to be used in connection with the operation of Kona Ice Franchised Businesses, and we may create, use, and license other patents for the same use (the “Patent”). This Franchise Agreement grants you the right to operate one proprietary Kona Ice truck, known as the Kona Entertainment Vehicle (“KEV”) within the Territory (defined below).

We grant franchises (“Kona Ice Franchise” or “Franchise”) to persons who meet our qualifications, and are willing to undertake the investment and effort, to own and operate a Kona Ice Business offering the



~~services and goods we authorize using under our “System” you a non-exclusive license to own and operate a single Franchised Business using the business formats, methods, procedures, signs, designs, standards, specifications, distinguishing elements, and intellectual property (the “System”) that we authorize strictly in compliance with the terms and conditions set forth in this Franchise Agreement, within the Territory or other areas we may specify in Attachment A to this Franchise Agreement. You recognize and acknowledge the distinctive significance to the public of the System and Marks and acknowledge and understand our high and uniform standards of quality, appearance and service to the value of the System. You acknowledge that we may change, improve or otherwise modify the System as we deem appropriate in our discretion and you agree to promptly accept and comply with any such changes, improvements or modifications. You further acknowledge that our grant to operate a Franchised Business is based on the representations made in your application. You acknowledge and agree this Franchise Agreement does not grant you the right or option to open any additional Franchised Businesses or any right to sublicense or subfranchise any of the rights we grant you in this Franchise Agreement. You may only open an additional Franchised Business under a separate franchise agreement with us, which we may grant in our sole discretion. Standards,” which consist of business formats, methods, procedures, signs, designs, standards, specifications, Patent, and Marks we authorize (the “System”).~~

- ~~(3) — As part of accepting our grant for you to own and operate a Kona Ice Franchise owner, you must comply with this Franchise Agreement and all System Standards to maintain the high and consistent quality, critical to attracting customers of Kona Ice Businesses and preserving the goodwill of the Marks.~~

#### ~~1.B — ACKNOWLEDGMENTS.~~

~~You acknowledge and agree:~~

- ~~(1) — That like any other business, the nature of the business Franchised Business, you hereby represent that a Kona Ice Franchise conducts may, and probably will, evolve and change over time.~~
- ~~(2) — That attracting customers to your Kona Ice Franchise will require you to make continual marketing efforts.~~
- ~~(3) — That retaining customers for your Kona Ice Franchise will require: (i) you to have a high level of customer service and adhere strictly to and maintain the System and our System Standards.~~
- ~~(4) — That in all of their dealings with you, received a copy of our officers, directors, employees, and agents act only in a representative, and not in an individual capacity and that business dealings between you and them as a result of this Franchise Agreement are deemed only between you and us.~~
- ~~(5) — That you have represented to us, to induce our entry into this Franchise Agreement, that all statements you have made and all materials you have given us are accurate and complete and that you have made no misrepresentations or material omissions in obtaining the current franchise.~~
- ~~(6) — That this Franchise Agreement’s terms and covenants are reasonably necessary for us to maintain our high standards of quality and service and to protect and preserve the goodwill of the Marks.~~



~~(7) That disclosure document; (ii) you are aware of the fact that other present or future franchisees of ours may operate under different forms of agreement and consequently that our obligations and rights with respect to our various franchisees may differ materially in certain circumstances;~~

~~That; (iii) you are aware of the fact that we may have negotiated terms or offered concessions to other franchisees and we have no obligation to offer you the same or similar negotiated terms or concessions; and (iv) this Franchise Agreement does not grant you the right to pursue any of our or our affiliates' business concepts other than the Franchised Business.~~

~~(8) That you have been afforded an opportunity to ask any questions you have and to review any materials of interest to you concerning the Kona Ice Franchise except those materials prohibited or restricted under applicable federal and state law and/or regulations.~~

~~(9) That you alone will exercise day to day control over all operations, activities, and elements of the Kona Ice Franchise and that under no circumstance shall we do so or be deemed to do so. You further acknowledge and agree, and will never contend otherwise, that the various requirements, restrictions, prohibitions, specifications, and procedures of the System which you are required to comply with under this Franchise Agreement, whether set forth in the Brand Manual (defined in Section 5C) or otherwise, do not directly or indirectly constitute, suggest, infer, or imply that we control any aspect or element of the day to day operations of the Kona Ice Franchise, which you alone control, but only constitute standards you must adhere to when exercising your control of the day to day operations of the Kona Ice Franchise.~~

#### 1.C LEGAL ENTITY.

You are required to be a legal entity ("Entity"). You agree and represent that:

### **3. FRANCHISEE AS ENTITY**

#### **3.1 Entity Representations**

For purpose of this Franchise Agreement, "Owner(s)" means any person holding a direct or indirect ownership interest (whether of record, beneficially, or otherwise) or voting rights in you, this Franchise Agreement, or the Franchised Business. If you are a corporation, partnership, limited liability company or other form of business entity ("Entity"), you agree and represent that:

3.1.1 Authority. You have the authority to execute, deliver, and perform your obligations under this Franchise Agreement and all related agreements and are duly organized or formed and, validly existing, and in good standing under the laws of the state of your incorporation or formation;

3.1.2 Your organizational documents, operating agreement, or partnership agreement, as applicable, Company Documents. At our request, you will furnish copies of all documents and contracts governing the rights and obligations of your Owners (such as, Articles of Incorporation or Organization and partnership, operating or shareholder agreements or similar documents, the "Company Documents"). You will not alter, change, or amend your Company Documents, without obtaining our prior written approval, which approval we will not unreasonably deny or withhold, and will grant if such changes will not prevent you from performing your obligations under this Franchise Agreement.



~~1.13.1.3~~ Transfer Restrictions. Your Company Documents will recite that this Franchise Agreement restricts the issuance and transfer of any ownership interests in you, and all certificates and other documents representing ownership interests in you will bear a legend referring to this Franchise Agreement’s restrictions.

3.1.4 Naming. You agree not to use the name “Kona Ice” or any similar wording in the name of your Entity.

3.1.5 Owner Identification. You certify that Attachment- B to this Franchise Agreement completely and accurately describes all of your ~~direct and indirect owners (i.e. each person or entity holding a direct or indirect ownership in you under this Franchise Agreement),~~ (each a “**Owner**”) and Owners and their interests in you as of the Effective Date;

~~Each of your Owners and your Owners’ spouses will execute the Owners Agreement in the form attached hereto as Attachment C undertaking personally to be bound, jointly and severally, by all provisions of this Franchise Agreement and any ancillary agreements between you and us. Subject to our rights and your obligations under Section 13, you and your Owners agree. You agree to sign and deliver to us a revised versions of Attachment- B from time to time to reflect any permitted changes in the information that Attachment- B now contains;~~

3.1.6 Single Purpose Entity. The ~~Kona Ice Franchise Franchised Business~~ will be the only business you ~~that the Entity may operate during the term of this Franchise Agreement,~~ and your organizational documents must reflect this (although ~~you~~the Owners in the Entity may own have other, ~~noncompetitive~~ business interests); and subject to any restrictions on competitive businesses contained in this Franchise Agreement).

(2) ~~You have identified on Attachment A one of your Owners who is a natural person with at least 51% ownership interest and voting power in you and has the authority of a chief executive officer (the “Managing Owner”). If you are an entity with multiple Owners, one of your Owners who is a natural person must have at least 51% ownership interest and voting power in you (including a spouse’s interest). You have delivered to us a completed Attachment A to accurately identify the Managing Owner.~~

#### 1.D — GRANT AND TERM OF FRANCHISE AGREEMENT.

~~We grant you a Franchise to own and operate a Kona Ice Business. You must operate one proprietary Kona Ice truck, known as the Kona Entertainment Vehicle (“KEV”) within the Protected Territory. The term of the Kona Ice Franchise and this Franchise Agreement begins on the Effective Date and expires ten years after the Effective Date (“Initial Term”), unless sooner terminated. You agree at all times faithfully, honestly, and diligently to perform your obligations under this Franchise Agreement and to use your best efforts to promote the Kona Ice Business. If you are signing this franchise agreement as a successor franchise agreement, the references to the “Initial Term” shall mean the applicable renewal term of the successor agreement. If you do not sign a successor franchise agreement prior to the expiration of this Franchise Agreement and continue to accept the benefits of this Franchise Agreement after its expiration, then, at our option, this Franchise Agreement may be treated either as (i) expired as of the date of expiration with your continued operation being a violation of this Franchise Agreement; or (ii) continued on a month-to-month basis (“Interim Period”) until one party provides the other with written notice of such party’s intent to terminate the Interim Period, in which case the Interim Period will terminate 30 days after receipt of the notice to terminate the Interim Period. In the latter case, all obligations of Franchisee shall remain in full force and effect during the Interim Period as if this Franchise Agreement had not~~



~~expired, and all covenants, obligations, and restrictions imposed on Franchisee upon expiration of this Franchise Agreement shall be deemed to take effect upon termination of the Interim Period.~~

#### ~~1.E — RIGHT TO OPERATE MULTIPLE KEVS.~~

~~———— You must operate one KEV during the Initial Term pursuant to the terms of this Franchise Agreement. If you would like to operate more than one KEV, you will be required to purchase an additional Kona Ice Franchise for each KEV (except you may purchase a “KEV 2.0 Truck” as “Additional Equipment” (defined in Section 3D) to operate in your Protected Territory) and execute an additional franchise agreement. The KEV 2.0 Truck is a smaller version of the KEV and does not have a freezer. Existing Franchisees may trade in their KEV for a KEV 2.0 Truck, provided you pay the shipping costs for the KEV 2.0 Truck (“KEV 2.0 Conversion”).~~

#### ~~2. — TERRITORY.~~

##### ~~2.A — TERRITORIAL RIGHTS.~~

~~3.1.7 As long as you are not in default under the Franchise Agreement, except as permitted by this Section, we (including our affiliates) will not establish, or franchise any entity to establish, a Kona Ice Business within Franchise Owner Agreement. All Owners and their spouses must sign the Franchise Owner Agreement, attached as Attachment C to this Franchise Agreement. You agree that, if any person or Entity ceases to be one of your Owners, or if any individual or Entity becomes an Owner of you (such ownership change must comply with the “Transfer Conditions” discussed later in this Franchise Agreement), you will require the new Owner (and the new Owner’s spouse) to execute all documents required by us, including the Franchise Owner Agreement.~~

~~3.1.8 No Offerings. You agree that you will not offer any securities (in a public or private offering or otherwise) or engage in any type of fundraising (like crowdfunding) without our prior written consent, which may be withheld in our sole discretion.~~

#### **4. TERRITORIAL RIGHTS AND LIMITATIONS**

~~We will grant you a designated territory consisting of the geographic area described in Attachment A (the “Protected Territory”)-identified in Attachment A (“Territory”). We will not operate, or grant a franchise or license to a third party to operate, a Franchised Business that operates within your Territory, except as otherwise provided in this Section. If the population of your Protected Territory increases during the Initial Term of this Franchise Agreement by by more than 25% (using the population listed on zip-codes.com) during the initial Term of this Franchise Agreement, we may reduce the size of your Protected Territory to no less than 100,000 people upon 30 days’ notice unless you purchase an additional KEV or KEV 2.0 Truck, and sign an additional franchise agreement with us and pay all applicable fees.~~

~~We, and our affiliates, have the right to operate, and to license others to operate, Franchised Businesses at any location outside the Territory, even if doing so will or might affect your operation of your Franchised Business.~~

~~We retain all territorial rights not expressly granted to you. This includes, but is not limited to, the right to (i) to own, franchise, or operate Franchised Businesses at any location outside of the Territory, regardless of the proximity to your Franchised Business; (ii) to use the Marks and the System to sell any products or services, similar to those which you will sell, through any alternate channels of distribution within or outside of the Territory, including, but not limited to, other channels of distribution such as television, mail order,~~



catalog sales, wholesale to unrelated retail outlets, or over the Internet; (iii) to use and license the use of other proprietary and non-Marks or methods which are not the same as or confusingly similar to the Marks, at any location, including within the Territory, which may be similar to or different from your Franchised Business; (iv) to engage in any transaction (including purchases, mergers or conversions), involving the System or a new system, with any business, including businesses that directly or indirectly compete with your Franchised Business, regardless of their location, provided that any competing businesses located inside your Territory will not operate under the Marks; (v) to implement multi-area marketing programs which may allow us or others to solicit or sell to customers anywhere; (vi) to engage in any other business activities not expressly prohibited by this Franchise Agreement. We are not required to pay you if we exercise any of our rights, including within your Territory. We are not required to pay you compensation for soliciting or accepting orders inside your Territory including orders accepted or solicited by other Kona Ice franchisees, or for exercising any of our rights within or outside of your Territory. You agree that you may face competition from us, from other franchisees and from other channels of distribution or competitive brands that we control within the Territory.

~~“Territory Infringement” occurs when a Kona Ice franchisee generates income from a customer by receiving payment for goods and/or services provided and/or rendered within the protected territory of another Kona Ice franchisee without first obtaining that franchisee’s and our written permission. A franchisee who infringes upon another franchisee’s protected territory is subject to the following fines, payable to us within five days after the infringement(s) is/are proven:~~

- ~~(1) — first violation — \$1,000 plus the invoice amount for the products or services sold; and~~
- ~~(2) — second violation and subsequent violations — \$5,000 plus the invoice amount for the products or services performed.~~

~~The collected fine amounts shall become our property and any distribution of these funds shall be in our sole discretion. The total violations count is cumulative over the life of this Franchise Agreement regardless of where and when the violations occur. ———~~

You may provide services and sell products to customers located outside of the ~~Protected Territory~~ without being subject to Territory Infringement under the following circumstance: ~~-(1) there is no other Kona Ice franchisee or area developer in that area; (2) the customer initiates the contact with you; and (3) you first receive our express written consent, which may be withheld in our sole discretion. You are prohibited from directly marketing to or soliciting customers whose principal business office (or principal residence, if the customer is an individual) is outside of your Protected Territory unless we specify otherwise to you in writing. You We may not advertise in any media whose primary circulation is outside of the Protected Territory without our revoke that permission, unless the advertisement is part of a cooperative advertising program. We do not grant a right of first refusal to franchisees to purchase new or existing locations. This Franchise Agreement does not grant you rights to pursue any of Franchisor’s or its affiliates’ business concepts other than the if that area becomes the territory of another Kona Ice Franchisee.~~  
franchisee.



If you commit Territory Infringement, you will be subject to the following fines, payable to us within five days after the Territory Infringement(s) is/are proven:

(1) first violation - \$1,000 plus the invoice amount for the products or services sold; and

(2) second violation and each subsequent violation - \$5,000 plus the invoice amount for the products or services performed.

Any fines we collect shall become our sole property and may be distributed by us in our sole discretion. You agree that violations are counted cumulatively over the life of the Franchised Business regardless of where and when they occur, including in any prior terms if this is a Successor Franchise Agreement.

## **5. TERM AND RENEWAL**

### **5.1 Generally**

The term of this Franchise Agreement will begin on the Effective Date and continue for 10 years (“Term”). If this Franchise Agreement is the initial franchise agreement for your Franchised Business, you may enter into a maximum of two successor franchise agreements (a “Successor Franchise Agreement”), as long as you meet the conditions for renewal specified below. The Successor Franchise Agreement shall be the current form of franchise agreement we use in granting Kona Ice franchises as of the expiration of the Term. The terms and conditions of the Successor Franchise Agreement may vary materially and substantially from the terms and conditions of this Franchise Agreement. Each successor term will be 10 years. If you are signing this Franchise Agreement as a Successor Franchise Agreement, the references to “Term” shall mean the applicable renewal term of the Successor Franchise Agreement. Except as otherwise provided in this Section, you will have no further right to operate your Franchised Business following the expiration of the successor term unless we grant you the rights to enter into another franchise agreement, in our sole discretion. If you are renewing a prior franchise agreement with us under this Franchise Agreement, the renewal provisions in your initial franchise agreement will dictate the length of the Term of this Franchise Agreement, and your remaining renewal rights, if any.

### **5.2 Renewal Requirements**

To enter into a Successor Franchise Agreement, you must:

5.2.1 Notice. Notify us in writing of your desire to enter into a Successor Franchise Agreement not less than six months nor more than twelve months before the expiration of the Term;

5.2.2 No Defaults. Not be in default under this Franchise Agreement or any other agreement with us or any affiliate of ours at the time you send the renewal notice or the time you sign the Successor Franchise Agreement and you must not have received more than three separate written notices of default from us in the previous Term;

5.2.3 Modifications. Have the right to maintain possession of your KEV and, if your KEV is not in compliance with our current standards you must replace, remodel, repair and/or or upgrade the KEV and any Additional Equipment (as defined in Section 7.4 of this Franchise Agreement) you have for your Franchised Business in accordance with Section 13.4 of this Franchise Agreement, as well as add or replace improvements, assets, signage, and otherwise modify the Franchised Business as we require to comply with our then-current System standards for new Kona Ice franchised businesses at your sole cost and expense;



5.2.4 Successor Franchise Agreement. Sign the Successor Franchise Agreement and all ancillary documents we require franchisees to sign;

5.2.5 General Release. Sign and have each of your Owners sign our current form of general release which contains a release of all claims, known or unknown, against us and our affiliates and subsidiaries, and our and their respective members, officers, directors, agents and employees, in both their corporate and individual capacities. Unless otherwise prevented by state law, we will consider your failure to sign and return the release within 30 days after it is delivered to you to be an election not to acquire a Successor Franchise;

5.2.6 Renewal Fee. Pay us a non-refundable renewal fee of \$7,500 (“Renewal Fee”); and

5.2.7 Additional Actions. Take any additional actions we reasonably require.

### **5.3 Notice Regarding Renewal Decision**

Within six months after we receive your notice of intent to renew the Franchise Agreement, we will give you written notice of our decision to: (a) grant you a Successor Franchise Agreement; (b) grant you a Successor Franchise Agreement on the condition you correct existing deficiencies of the Franchised Business or in your operation of the Franchised Business; (c) not grant you a Successor Franchise Agreement based on our determination you or your Owners have not fully complied with this Franchise Agreement during its Term or were not in full compliance with this Franchise Agreement and all System standards on the date you gave us written notice of your election to enter into a Successor Franchise Agreement; or (d) not grant you a Successor Franchise Agreement because we no longer maintain a franchise program for Kona Ice. If applicable, our notice will: describe the remodeling, expansion, improvements, and/or modifications required to bring your Franchised Business, the KEV, and if applicable, any Additional Equipment into compliance with our current standards for new Kona Ice franchised businesses, and state the actions you must take to correct operating deficiencies and the time in which you must correct those deficiencies.

If we elect not to grant you a Successor Franchise Agreement, our notice will describe the reasons for our decision. If we elect to grant you a Successor Franchise Agreement, your right to acquire a Successor Franchise Agreement is subject to your full compliance with all of the terms and conditions of this Franchise Agreement through the date of its expiration, in addition to your compliance with the obligations described in our notice. If our notice states that you must remodel the Franchised Business and/or must cure certain deficiencies of the Franchised Business or its operation as a condition to our granting you a Successor Franchise Agreement, we will give you written notice of our decision not to grant a Successor Franchise Agreement, based upon your failure to complete the remodeling and/or to cure those deficiencies, not less than 90 days before this Franchise Agreement expires, provided, however, that we need not give you this 90 days’ notice if we decide not to grant you a Successor Franchise Agreement due to your breach of this Franchise Agreement during the 90 day period before it expires. We may allow this Franchise Agreement to continue on an Interim Term (defined below) to give you either reasonable time to correct deficiencies or the 90 days’ notice of our refusal to grant a Successor Franchise Agreement.

### **5.4 Interim Term**



If you do not sign a Successor Franchise Agreement after the expiration of the Term and you continue to accept the benefits of this Franchise Agreement, then, at our option, this Franchise Agreement may be treated either as: (i) expired as of the date of the expiration meaning you are operating the Franchised Business without a valid franchise agreement in violation of our rights; or (ii) continued on a month-to-month basis (“Interim Term”) until either party provides the other party with 30 days’ prior written notice of their intention to terminate the Interim Term. In the latter case, all of your obligations will remain in full force and effect during the Interim Term as if this Franchise Agreement had not expired, and all obligations, restrictions and covenants imposed on you upon the expiration or termination of this Franchise Agreement will be deemed to take effect upon the termination of the Interim Term. Except as permitted by this Section, you have no right to continue to operate your Franchised Business following the expiration of the Term.

## FEES

### 2.B — TERRITORIAL RIGHTS WE RESERVE.

~~We and our affiliates retain certain rights with respect to the sale of similar, or dissimilar, services and products, and any other activities. These rights include the right to:~~

- ~~(1) — use, and to license others to use, the Marks and the System for the operation of Kona Iee Franchises at any location other than in the Protected Territory, including co-branding activities, regardless of proximity to the Protected Territory;~~
- ~~(2) — use, license, and franchise the use of trademarks or service marks other than the Marks, whether in alternative channels of distribution or at any location, including the Protected Territory, in association with operations that are similar to or different than the Kona Iee Franchise, including co-branding activities;~~
- ~~(3) — use the Marks and the System in connection with the provision of other services and products, or in alternative channels of distribution at any location outside the Protected Territory;~~
- ~~(4) — offer the services or products similar to those offered by Kona Iee Franchises, or grant others the right to offer the services or products, whether using the Marks or other trademarks or service marks, through alternative channels of distribution, including without limitation, by Internet, mail order sales, telemarketing, or other direct marketing sales, wholesalers, retail outlets, or other distribution outlets (other than Kona Iee Franchises), whether inside or outside the Protected Territory;~~
- ~~(5) — utilize any websites, including social media websites, utilizing a domain name incorporating the word “Kona Iee”, or the Marks, or similar derivatives thereof;~~
- ~~(6) — to engage in any transaction, including to purchase or be purchased by, merge, or combine with, to convert to the System or be converted into a new system or chain with any business, whether franchised or corporately owned, including, but not limited to, a business that competes directly with your Kona Iee Franchise, wherever located, provided that in such situations the newly acquired businesses located in your Protected Territory will not operate using the Marks;~~
- ~~(7) — to use and license the use of technology to non-franchisee locations inside and outside the Protected Territory;~~



- ~~(8) — implement multi-area marketing programs which may allow Franchisor or others to solicit or sell to customers anywhere or direct such customers to the Kona Ice Franchise that Franchisor chooses, in its discretion. Franchisor reserves the right to issue mandatory policies to coordinate such multi-area marketing programs; and~~
- ~~(9) — to engage in any other business activities not expressly prohibited by this Franchise Agreement, both within and outside your Protected Territory.~~

~~If we engage in electronic commerce through the Internet, or sell through any other alternative channel of distribution, and we receive orders for any products or services calling for delivery or performance in your Protected Territory, then we will offer the order to you at the price we establish. If you choose not to fulfill the order or are unable to do so, then we, our affiliate, or a third party we designate (including another Kona Ice Business) may fulfill the order, and you will be entitled to no compensation in connection with the sale.~~

### ~~3. DEVELOPMENT AND OPENING OF THE KONA ICE FRANCHISE.~~

#### ~~3.A FRANCHISE PREMISES.~~

**~~6. Kona Ice Franchises are typically operated out of the franchisee's home or KEV but may be operated from office buildings, business parks, and other commercial real estate locations. If you decide to operate your Kona Ice Franchises~~**

#### 6.1 Late Fee

If any sums due under this Franchise Agreement have not been received by us when due then, in addition to those sums, you must pay us \$25 per day, plus the daily equivalent of twelve percent (12%) per year simple interest or the highest rate allowed by law, whichever is less ("Late Fees"). Such interest will be in addition to any other remedies we may have under law or equity. We may debit your bank account automatically or deduct from amounts we owe you for service charges and interest. You acknowledge this Section is not our agreement to accept any payments after they are due or our commitment to extend credit to, or otherwise finance your operation of, the Franchised Business. If no due date has been specified by us, then interest accrues from the original due date until payment is received in full.

#### 6.2 Payment Methods

You must complete our automated clearing house (ACH) authorization form allowing us to electronically debit a bank account you designate ("Franchise Account") for: (i) all fees payable to us under this Franchise Agreement (other than the Initial Franchise Fee); and (ii) any other amounts you owe to us or any of our affiliates including, but not limited to, those owed for the purchase of products or services. We will debit your Franchise Account for these payments on or after the due date. You must sign and deliver to us any other documents we or your bank may require authorizing us to debit your Franchise Account for these amounts.

You must deposit all revenue you generate from operating your Franchised Business into the Franchise Account. You must make sufficient funds available for withdrawal from the Franchise Account by electronic transfer before each due date. If any check or electronic payment is unsuccessful due to insufficient funds, stop payment or any similar event, any excess amounts you owe will be payable upon demand, together with a non-sufficient funds fee of \$100 per occurrence plus Late Fees. If we allow you make any payment to us or our affiliate(s) by credit card for any fee required, we may charge a payment



service fee of up to 4% of the total charge. We reserve the right to periodically specify (in the Brand Manual or otherwise in writing) different required payment methods for any payment due to us or our affiliates.

### **6.3 Payment Frequency**

We reserve the right to periodically specify (in the Brand Manual or otherwise in writing) different payment frequencies (for example, weekly/biweekly/monthly payments) for any payment due to us or our affiliates.

### **6.4 Application of Payments**

We have sole discretion to apply any payments from you to any past due indebtedness of yours or in any other manner we feel appropriate. We are not obligated to follow any instructions you provide for allocation of the payments. We may set off any amounts you or your Owners owe us or our affiliates against any amounts we or our affiliates owe you or your Owners. You may not withhold payment of any amounts you owe us due to our alleged nonperformance of any of our obligations under this Franchise Agreement.

### **6.5 Payment Obligations**

Your obligations to pay us the fees under this Franchise Agreement are absolute and unconditional, and will remain in full force and effect throughout the entire duration of this Franchise Agreement, and shall continue for such period of time thereafter as you owe us fees under this Franchise Agreement. You will have no right to offset any fees paid to us and must pay us all fees regardless of any claims you may have against us. We will have the right, at any time before or after termination of this Franchise Agreement, without notice to you, to offset any amounts or liabilities you may owe to us against any amounts or liabilities we may owe you under this Franchise Agreement or any other agreement, loan, transaction or relationship between the parties. Without limiting the generality of the foregoing, you agree that you will not, on grounds of the alleged nonperformance by us of any of our obligations, withhold any fees due to us or our affiliates or amounts due to us for purchases by you or any other amounts due to us.

### **6.6 Initial Franchise Fee**

You agree to pay us the “Initial Franchise Fee” listed in Attachment A in one lump sum when you sign this Franchise Agreement. The Initial Franchise Fee is fully earned by us and is non-refundable once this Franchise Agreement has been signed. If this Franchise Agreement is the renewal of a prior franchise agreement with us for an existing Franchised Business or the transfer of the Franchised Business from another franchisee, then no Initial Franchise Fee is due.

### **6.7 Royalty**

Beginning on the Opening Date, and continuing for the term of this Franchise Agreement, including any Interim Period, you agree to pay us the royalty fees listed below (the “Royalty” or “Royalties”) in either three, six, or nine installments per year (“KEV Royalty Schedule”):



<u>Time Period*</u>	<u>Total Royalty</u>	<u>KEV Royalty Schedule (If you make 3 installment payments per year)</u>	<u>KEV Royalty Schedule (If you make 6 installment payments per year)</u>	<u>KEV Royalty Schedule (If you make 9 installment payments per year)</u>
<u>Years 1-2</u>	<u>\$3,000</u>	<u>June 30: \$1,000</u> <u>July 31: \$1,000</u> <u>August 31: \$1,000</u>	<u>May 31: \$500</u> <u>June 30: \$500</u> <u>July 31: \$500</u> <u>August 31: \$500</u> <u>September 30: \$500</u> <u>October 31: \$500</u>	<u>April 30: \$333</u> <u>May 31: \$333</u> <u>June 30: \$334</u> <u>July 31: \$333</u> <u>August 31: \$333</u> <u>September 30: \$334</u> <u>October 31: \$333</u> <u>November 30: \$333</u> <u>December 31: \$334</u>
<u>Years 3-6</u>	<u>\$4,000</u>	<u>June 30: \$1,333</u> <u>July 31: \$1,333</u> <u>August 31: \$1,334</u>	<u>May 31: \$666</u> <u>June 30: \$667</u> <u>July 31: \$667</u> <u>August 31: \$666</u> <u>September 30: \$667</u> <u>October 31: \$667</u>	<u>April 30: \$444</u> <u>May 31: \$444</u> <u>June 30: \$445</u> <u>July 31: \$445</u> <u>August 31: \$444</u> <u>September 30: \$445</u> <u>October 31: \$444</u> <u>November 30: \$444</u> <u>December 31: \$445</u>
<u>Years 7-10 (plus any interim period between franchise agreements, if applicable)*</u>	<u>\$5,000</u>	<u>June 30: \$1,666</u> <u>July 31: \$1,667</u> <u>August 31: \$1,667</u>	<u>May 31: \$833</u> <u>June 30: \$833</u> <u>July 31: \$834</u> <u>August 31: \$833</u> <u>September 30: \$833</u> <u>October 31: \$834</u>	<u>April 30: \$555</u> <u>May 31: \$555</u> <u>June 30: \$556</u> <u>July 31: \$556</u> <u>August 31: \$555</u> <u>September 30: \$556</u> <u>October 31: \$555</u> <u>November 30: \$556</u> <u>December 31: \$556</u>

\*If you are an existing franchisee and this Franchise Agreement is a Successor Franchise Agreement or if you are a transferee signing this Franchise Agreement, the date for determining your KEV Royalty Schedule will be determined from the date the initial Franchise Agreement was signed for the Franchised Business you are continuing to operate or acquired. Your Royalty will be \$5,000 for year 11, \$5,500 for years 12 through 15 and \$6,000 for years 16 through 20.

If you purchase Additional Equipment you will be required to pay additional royalty fees for the Additional Equipment (“AE Royalty”). The AE Royalty will depend on the type of Additional Equipment and will be the then-current rate at the time you enter into the Additional Equipment Amendment. The AE Royalty will be due for as long as you own the Additional Equipment. For this Franchise Agreement, all references to Royalty shall include any AE Royalty unless otherwise noted. We reserve the right to adjust your Royalty annually based on the Consumer Price Index as defined by the U.S. Bureau of Labor Statistics.



## **6.8 Brand Fund Contribution**

You must pay a “Brand Fund Contribution” in the amount we specify in our Brand Manual, which is currently \$500 per year. The Brand Fund Contribution is increased by \$200 per year for each piece of Additional Equipment you own. Brand Fund Contributions are due at the same time as your Royalty or at such other date we choose, as may be more fully set forth in the Brand Manual. We reserve the right to increase your Brand Fund Contributions annually by up to 10% in our sole discretion. The Council (see Section 12.8, below) may increase your Brand Fund Contributions at any time upon 75% approval from the Council’s members. The Brand Fund Contribution will be used for the Kona Ice brand fund (“Brand Fund”) to promote awareness of our brand and improve our System.

## **6.9 Technology Fee and Business Management Software Fee**

You must pay us our then-current technology (“Technology Fee”) throughout the Term of this Franchise Agreement beginning on the date your Franchised Business opens for the use of certain technologies used in the Franchised Business. The Technology Fee is currently \$500 per year. In addition, you must pay us our then-current fee for the usage of our proprietary KonaOS operating software (the “Business Management Software Fee”).

We can change the software and technology that must be used by Franchised Business at any time we deem appropriate in our sole discretion, which may result in changes to the Technology Fee and/or Business Management Software Fee. An increase in third-party fees may also cause the Technology Fee and/or Business Management Software Fee to increase. You will be responsible for any increase in fees that result from any upgrades, modification, or additional software by us or by third-party vendors. We may modify the Technology Fee and/or Business Management Software Fee upon written notice to you.

You must pay our then-current technology business solutions fees to approved suppliers for certain business solutions that will support your business efficiencies. These may include phone systems, security systems, scheduling software, employee shift/task management software, inventory solution and any other solutions we may require in the Brand Manual for your Franchised Business. We reserve the right to upgrade, modify and add new systems, which may result in additional initial and ongoing expenses that you will be responsible for. You will be responsible for any increase in fees that result from any upgrades, modifications or additional systems and for any increase in fees from third-party providers. We may include these third-party fees in the Technology Fee and/or Business Management Software Fee and pay suppliers directly on our behalf.

## **6.10 Document Fee**

You must pay us a document fee of \$250 if you need an additional copy of our franchise disclosure document or your signed Franchise Agreement.

## **6.11 Monitor Content Management Fee**

Your KEV will be equipped with an exterior monitor for displaying content that you can customize in accordance with our Monitor Guideline and Usage Policy contained in our Brand Manual. You will pay us a “Monitor Content Management Software Fee” of \$240 per year per monitor. The Monitor Content Management Software Fee is due at the same time as your Royalty.



## **6.12 Other Fees and Payments**

You agree to pay all other fees, expense reimbursements, and all other amounts specified in this Franchise Agreement in a timely manner. You also agree to promptly pay us an amount equal to all taxes levied or assessed against us based upon products or services you sell or based upon products or services we furnish to you (other than income taxes we pay based on amounts).

## **7. ESTABLISHING YOUR FRANCHISED BUSINESS**

### **7.1 Opening**

You must open your Franchised Business to the public within 3 months of the Effective Date. You may not open your Franchised Business before: (i) all required attendees have successfully completed the Initial Training (defined below); (ii) you purchase all required insurance and provide us with all required insurance certificates; (iii) you obtain all required licenses, permits and other governmental approvals required to establish, open and operate the Franchised Business; (iv) you pay all initial fees owed to us; and (v) you receive our written approval.

If you believe we have failed to adequately provide pre-opening services or training to you as provided in this Franchise Agreement, you shall notify us in writing within 30 days following the opening of the Franchised Business. If you do not provide such notice in a timely manner, it will be viewed as you conclusively acknowledging that all pre-opening and opening services and training required to be provided by us were sufficient and satisfactory in your judgment.

### **7.2 Site Selection**

Because most of the Kona Ice franchisees will operate their Franchised Business out of their residence, we do not provide site selection assistance. If you decide to operate your Franchised Business out of an office, you will be solely liable for its compliance with all applicable business ordinances and building codes, and for obtaining all necessary health, building, sign, and other permits, licenses, and bonds, as may be required for the operation of the office.

### **3.B — KONA ENTERTAINMENT VEHICLE.**

### **7.3 Territory Revision**

You must purchase the KEV from us or our affiliate. You may not revise or amend your Territory (a “Territory Revision”) without our express written consent, which we may withhold in our sole discretion. If you request and we approve of a Territory Revision, you will pay the current cost of the KEV in effect at the time as a fee of \$1,000 if the Territory Revision is made within 30 days of delivery, which may be of the KEV; or \$2,500 if the Territory Revision is made between 31 and 90 days of delivery of the KEV. You cannot request a Territory Revision more than 90 days after the delivery of the KEV.

You may not relocate your Territory (a “Territory Relocation”) without our express written consent, which we may withhold in our sole discretion. If you request and we approve of a Territory Relocation, you will pay us a fee of \$2,500.

If you wish to amend your Territory after the Effective Date, you must submit to us a written request for approval of the proposed Territory Revision or Territory Relocation, which we may accept or reject in our sole discretion. If we grant your request for a Territory Revision or Territory Relocation, in addition to



payment of the applicable fee, we may condition such approval on fulfillment of any conditions that we deem reasonable.

#### **7.4 Additional Equipment**

We may make additional equipment (“Additional Equipment”) available for purchase in the future for use in the Territory. The purchase of such Additional Equipment will be optional. If we make such Additional Equipment available and you decide to purchase Additional Equipment, you must sign our then-current “Additional Equipment Amendment,” the current form of which is attached as Attachment D. You will also pay the then-current Additional Equipment Royalty. The Additional Equipment offered and the Additional Equipment Royalty for such equipment may change during the Term and any successor terms. You will not be permitted to purchase any Additional Equipment until your KEV is open and operating and you are in compliance with this Franchise Agreement.

You may not transfer any Additional Equipment without our prior written consent. We may approve or reject your request to transfer Additional Equipment in our sole discretion. In addition, we reserve the right to condition our approval of a transfer on: (i) you being in good standing under this Franchise Agreement at the time of transfer, (ii) you paying off any loans or debts related to the Additional Equipment; (iii) Additional Equipment being modified in such a way to protect the System and/or any proprietary interests or trade secrets we have in the Additional Equipment; (iv) that the purchaser of the Additional Equipment be an existing Kona Ice franchisee; and/or (v) such additional conditions that we deem reasonable in the circumstances. If we approve of your request for a transfer of Additional Equipment, you will pay us a transfer fee of \$1,000 per Additional Equipment.

### **8. TRAINING AND CONFERENCES**

#### **8.1 Initial Training Program**

You are required to complete our initial training program at the times and places we designate (“Initial Training”). The Managing Owner and, if applicable, Designated Manager must attend and complete Initial Training to our satisfaction prior to the Franchised Business opening for business (“Initial Training Deadline”). If you have purchased an existing franchised business pursuant to this Franchise Agreement, the Initial Training Deadline will be the Effective Date.

We will provide our Initial Training program at no charge for one attendee. Additional persons may attend Initial Training and will pay our then-current training fees. We will pay for hotel and airfare for one attendee to attend the Initial Training, unless the Franchised Business is being acquired as the result of a transfer. You are responsible for all other costs of attendance, including any and all travel and/or living expenses which you or any other attendees incur. We reserve the right to charge a fee for providing training and may require you to reimburse us for our associated costs and expenses. Any new Managing Owner or Designated Manager must also complete the training required for all new managers before assuming responsibility for the management of your Franchised Business. If any of your attendees are unable to complete Initial Training to our satisfaction, we may terminate this Franchise Agreement without refunding your Initial Franchise Fee. If you own multiple Franchised Businesses, we will provide Initial Training only for the first Franchised Business that you open. We reserve the right to vary the length and content of Initial Training as we deem appropriate in our sole discretion based on the experience of the attendee. We shall determine the scheduling, exact duration, contents and manner of Initial Training in our discretion and may delay your attendance until a suitable time near the grand opening date for your Franchised Business in our discretion.



## **8.2 Additional Training**

We may offer periodic refresher training courses or develop additional training courses. Attendance at these training programs may be optional or mandatory. You may be required to pay the then-current fee for this training as specified in our Brand Manual.

## **8.3 Requested Training**

Upon your written request, we may provide additional assistance or training to you at a mutually convenient time. You may be required to pay the then-current fee for this training as specified in our Brand Manual.

## **8.4 Remedial Training**

If we determine, in our sole discretion, that you are not operating your Franchised Business in compliance with this Franchise Agreement and/or the Brand Manual, we may require that you, your employees and other designees attend remedial training relevant to your operational deficiencies. You must pay us the then-current training fee as specified in our Brand Manual.

## **8.5 Conventions**

We may hold periodic national or regional conferences to discuss various business issues and operational and general business concerns affecting Kona Ice franchisees. Attendance at these conferences may be mandatory or optional. You are responsible for paying our then-current conference fee for any conferences that you attend.

## **8.6 Training Expenses**

You are solely responsible for all expenses and costs that your trainees incur for all trainings and conferences under this Section, including wages, travel, lodging, food and living expenses. You also agree to reimburse us for all expenses and costs we incur to travel to your Franchised Business under this Section, including travel, food, lodging and living expenses.

## **9. OTHER ASSISTANCE**

### **9.1 Brand Manual**

We will lend you our confidential franchise operations manual (the “Brand Manual”) in text or electronic form for the Term of this Franchise Agreement. The Brand Manual will help you establish and operate your Franchised Business in accordance with the System. The information in the Brand Manual is confidential and proprietary and may not be disclosed to third parties without our prior written approval. The Brand Manual may be updated and modified throughout the Term, both formally through amendments to the Brand Manual and informally through email or other written materials we provide to you. You acknowledge that your compliance with the Brand Manual is vitally important to us and other System



franchisees because it is necessary to protect our reputation, the goodwill of the Marks, the Patent and maintain the uniform quality of the System.

You agree to establish and operate your Franchised Business strictly in accordance with the Brand Manual. The Brand Manual may contain, among other things: (i) a description of the authorized products and services you may offer at your Franchised Business; (ii) mandatory and suggested specifications, operating procedures, and quality standards for goods, products, services, that you use or offer at your Franchised Business; (iii) policies and procedures we prescribe from time to time for our franchisees; (iv) mandatory reporting and insurance requirements; (v) policies and procedures pertaining to any gift card program we establish; and (vi) a written list of furniture, fixtures, equipment, products and services (or specifications for such items) you must purchase for the development and operation of your Franchised Business and a list of any designated or approved suppliers for such items. The Brand Manual establishes and protects our brand standards and the uniformity and quality of the products and services offered by our franchisees. We can modify the Brand Manual at any time. The modifications will become binding as soon as we send you notice of the modification. All mandatory provisions in the Brand Manual (whether they are included now or in the future) are binding on you.

In addition, if you lose, give away, make unauthorized copies, fail to return or otherwise misappropriate, all or some of the Brand Manual, you will be required to pay us liquidated damages to offset the damages we will incur as a result of this misappropriation. These liquidated damages are determined by taking our total revenue from our previous fiscal year, multiplied by the fraction which results from taking one divided by the current number of Kona Ice franchisees as of the date of the misappropriation, except that this fee will not, under any circumstances, be less than \$30,000. At our option, we may post some or all of the Brand Manual on a restricted website or extranet to which you will have access. If we do so, you agree to monitor and access the website or extranet for any updates to the Brand Manual or System standards. Any passwords or other digital identifications necessary to access the Brand Manual on a website or extranet will be deemed part of Confidential Information (defined below).

While the Brand Manual is intended to protect our reputation and goodwill of the Marks, you will be responsible for the day-to-day operation of your Franchised Business and the Brand Manual is not designed to control the day-to-day operation of the Franchised Business.

## **9.2 General Guidance**

We will, upon reasonable request, provide advice or guidance regarding your Franchised Business's operation based on reports or inspections or discussions with you. We will provide reasonable marketing consulting, guidance and support throughout the Term we deem appropriate. Any advice will be given during our regular business hours and via written materials, electronic media, telephone or other methods, in our discretion.

We maintain a staff to manage and operate the Kona Ice System and our staff members can change as employees come and go. We cannot guarantee the continued participation by or employment of any of our shareholders, directors, officers, employees or staff.

## **9.3 Website**

We will maintain a website for Franchised Businesses ("System Website") that will include the information about your Franchised Business we deem appropriate. We may modify the content of and/or discontinue the System Website at any time in our sole discretion. We are only required to reference your Franchised Business on our System Website while you are in full compliance with this Franchise



Agreement and all System standards. We must approve all content about your Franchised Business. We will own the System Website (including any webpages for your Franchised Business) and domain names. We intend that any franchisee website will be accessed only through this System Website. You must obtain and use at least one Kona Ice email address from us. You must pay us \$168 per year for each email address you obtain, which is currently due at the same time as your Royalty. We reserve the right to increase this fee upon 30 days' written notice to you.

#### **9.4 Supplier Agreements**

We may, but are not required to, negotiate agreements with suppliers to obtain products or services for our franchisees. If we negotiate an agreement, we may arrange for you to purchase the products directly from the supplier. We may receive rebates from these suppliers based on your purchases. We may also purchase certain items from suppliers in bulk and resell them to you at our cost (including overhead and salaries), plus shipping fees and a reasonable markup, in our sole discretion.

### **10. MANAGEMENT AND STAFFING**

#### **10.1 Owner Participation**

If you are an Entity, you must designate an Owner who will be principally responsible for communicating with us about the Franchised Business (“Managing Owner”). If you are an individual, you are the Managing Owner. The Managing Owner must have the authority and responsibility for the day-to-day operations of your Franchised Business and must have at least 51% equity. You acknowledge that a major requirement for the success of your Franchised Business is the active, continuing and substantial personal involvement and hands-on supervision by your Managing Owner, who must at all times be actively involved in operating the Franchised Business on a full-time basis and provide in-person and supervision, unless we permit you to delegate management functions to a Franchise Manager, see below. If you appoint a new Managing Owner, the new Managing Owner, must attend and successfully complete our then-current initial training program.

#### **10.2 Designated Manager**

Subject to this Section, the Managing Owner shall directly supervise and participate in the day-to-day operation of the Franchised Business during the term of this Franchise Agreement. At your request, we may, but are not obligated to, agree for you to employ a Designated Manager after the first 60 days of operation (other than the Franchisee/Managing Owner) to operate the Franchised Business. The term “Designated Manager” means an individual with primary day-to-day responsibility for the Franchised Business’ operations, and may be you (if you are an individual) or an Owner, officer, director, or employee of yours (if you are other than an individual). The Designated Manager shall have similar responsibilities as a Managing Owner. You must deliver to us an amended Attachment B accurately identifying such appointed Designated Manager. The Designated Manager will be obligated to devote his or her full time, best efforts, and constant personal attention to the Franchised Business’ operations, and must have full authority in order to comply with this Franchise Agreement. You must not hire any Designated Manager or successor Designated Manager without first receiving our written approval of such Designated Manager’s qualifications. Each Designated Manager must attend and complete our Initial Training and sign a System Protection Agreement, the current form of which is attached to the Franchise Disclosure Document in Exhibit H. You must forward to us a copy of each such signed agreement. If we determine, in our sole discretion, during or following completion of the Initial Training program, that your Designated Manager (if any) is not qualified to act as designated manager of the Franchised Business, then we have the right to require you to choose (and obtain our approval of) a new individual for that position. If you are



required to appoint a new Designated Manager, you must do so within 30 days of the termination of the previous Designated Manager.

### **10.3 Staff**

You must determine appropriate staffing levels for your Franchised Business to ensure full compliance with this Franchise Agreement and our System standards. You are solely responsible to hire, train and supervise employees or independent contractors to assist you with the proper operation of the Franchised Business. You must pay all wages, commissions, fringe benefits, worker's compensation premiums and payroll taxes (and other withholdings levied or fixed by any city, state or federal governmental agency, or otherwise required by law) due for your employees or as applicable, for your independent contractors. These employees and independent contractors will be your employees or contractors, not ours. We do not control the day-to-day activities of your employees or independent contractors or the manner in which they perform their assigned tasks. You must inform your employees and independent contractors you are exclusively responsible for supervising their activities and dictating the manner in which they perform their assigned tasks. In this regard, you must use your legal business entity name (not our Marks or a fictitious name) on all employee applications, paystubs, pay checks, employment agreements, consulting agreements, time cards and similar items.

You must hire and supervise efficient, competent, and courteous persons as your employees for the operation of your Kona Ice Franchise. You must require all your employees to work in clean uniforms approved by us, but furnished at your cost or the employees' cost as you may determine. You understand and acknowledge it is your responsibility to hire and supervise a satisfactory number of employees in order to efficiently operate the Kona Ice Business and meet your obligations under this Franchise Agreement.

You have sole responsibility and authority for all employment-related decisions, including employee selection and promotion, firing, hours worked, rates of pay and other benefits, work assignments, training and working conditions, compliance with wage and hour requirements, personnel policies, recordkeeping, supervision and discipline. We will not provide you with any advice or guidance on these matters. You must require your employees and independent contractors to review and sign any acknowledgment form we prescribe that explains the nature of the franchise relationship and notifies the employee or independent contractor that you are his or her sole employer. You agree that any direction you receive from us regarding employment/engagement policies should be considered as examples, that you alone are responsible for establishing and implementing your own policies, and that you understand that you should do so in consultation with local legal counsel competent in employment law. Your employees hired working for you will be your employees alone and will not, for any purpose, be deemed our employees or subject to our control, including with respect to any mandated or other insurance coverage, tax, or contributions, or requirements pertaining to withholdings, levied or fixed by any city, state, or federal governmental agency. You agree to inform each of your employees that you alone are the employer, and that we are not. You and we will file our own tax, regulatory, and payroll reports, and be responsible for all employee benefits and workers compensation payments with respect to our respective employees and operations, and we will save and indemnify one another of and from any liability of any nature whatsoever by virtue thereof.

## **11. BRAND FUND**

The Brand Fund is used to promote public awareness of our brand and to improve our System. You are required to pay the Brand Fund Contribution. The Brand Fund may be administered by us or our affiliate or designees, at our discretion. We may use the Brand Fund for any expenditure that we, in our sole discretion, deem necessary or appropriate to promote or improve the System or the Kona Ice brand. We may incorporate the Brand Fund or operate it through a separate entity whenever we deem appropriate.



To illustrate, these may include, but are not limited to, the following: (i) developing, maintaining, administering, directing, preparing or reviewing advertising and marketing materials, promotions and programs, including social media management; (ii) public awareness of any of the Marks; (iii) public and consumer relations and publicity; (iv) brand development; (v) research and development of technology, products and services; (vi) website development (including social media) and search engine optimization; (vii) development and implementation of quality control programs and other reputation management functions; (viii) conducting market research; (ix) changes and improvements to the System; (x) the fees and expenses of any advertising agency we engage to assist in producing or conducting advertising or marketing efforts; (xi) the proportionate salary share of our employees that devote time and provide services for advertising, promotion, collection, accounting or administration of the Brand Fund; (xii) preparing and distributing financial accountings of the Brand Fund; (xiii) training tools; and (xiv) our and our affiliates' expenses associated with direct or indirect labor, administrative, overhead, or other expenses incurred in relation to any of these activities.

We have sole discretion in determining the content, concepts, materials, media, endorsements, frequency, placement, location, and all other matters pertaining to any of the foregoing activities. Any surplus of monies in the Brand Fund may be invested. Any unused funds collected in any calendar year will be applied to the following year's funds, and we reserve the right to contribute or loan additional funds to the Brand Fund on any terms we deem reasonable. The Brand Fund is not a trust, and we have no fiduciary obligations to you regarding our administration of the Brand Fund. We may spend more or less than the total Brand Fund payments in that year, lend to the Brand Fund (paying reasonable interest) to cover deficits, or invest any surplus funds for future use. We will use all interest earned on Brand Fund payments to pay costs before using the Brand Fund's other assets. We will prepare an annual, unaudited statement of Brand Fund collections and expenses and give you the statement within 45 days upon the receipt of a written request.

We do not ensure that our expenditures from the Brand Fund in or affecting any geographic area are proportionate or equivalent to the Brand Fund Contribution by our franchisees operating in that geographic area or that any of our franchisees benefit directly or in proportion to their Brand Fund Contribution. We reserve the right to change, merge, re-form or dissolve the Brand Fund in our discretion. We will not use the Brand Fund for advertising principally for the solicitation for the sale of Franchises, but we reserve the right to include a notation in any advertisement or website indicating "franchises available" or similar phrasing. We may, upon 30 days' prior written notice to you, reduce or suspend Brand Fund Contribution and operations for one or more periods of any length and terminate and/or reinstate the Brand Fund. We will spend all amounts before any termination of the Brand Fund.

## **12. FRANCHISEE MARKETING AND ADVERTISING**

### **12.1 Standards**

All advertisements and promotions you create or use must be completely factual and conform to the highest standards of ethical advertising and comply with all federal, state and local laws, rules and regulations and our standards and requirements in the Brand Manual. You must ensure that your advertisements and promotional materials do not infringe upon the intellectual property or legal rights of others. You may not advertise in any media whose primary circulation is outside of the Territory without our permission unless the advertisement is part of a cooperative advertising program.



## **12.2 Promotional Programs**

We may periodically create advertising and sales promotion programs and materials to enhance the collective success of all Kona Ice franchisees operating under the System. You must conduct and participate in promotional campaigns (the “Promotions”) which may from time to time be required, and you must conduct and participate in those Promotions in accordance with our policies and procedures. This may include requiring you to offer free products to customers on certain days or providing coupons (not to exceed \$500 per year unless authorized by the Council). The value of Promotions you must offer may be increased at any time upon super-majority (75%) of the Council and upon 30 days’ notice to you, but will not exceed \$1,500 per calendar year. If we require you to conduct and participate in any Promotion, we reserve the right (but we are not required) to use a portion of the Brand Fund to help our franchisees defray a portion of any costs attributable to the Promotions. If we exercise this right, we will use the Brand Fund on a pro rata basis .

You agree, at your sole cost and expense, to issue and offer such rebates, giveaways, and other promotions in accordance with advertising programs established by us, and further agree to honor the rebates, giveaways, and other promotions issued by other Kona Ice franchisees under any such program, so long as such compliance does not contravene any applicable law, rule, or regulation. You will not create or issue any gift cards/certificates and will only sell gift cards/certificates that have been issued or sponsored by us and which are accepted at all franchised businesses, and you will not issue coupons or discounts of any type except as approved by us.

## **12.3 Marketing Materials**

You must order any sales and marketing material from us, or our designated suppliers (which may be an affiliate), that we require. We may create and make available to you, advertising and other marketing materials. We may charge you for these materials. We may make these materials available over the Internet (in which case you must arrange for printing the materials and paying all printing costs). We may also enter into relationships with third party suppliers who will create the advertising or marketing materials for your purchase.

## **12.4 Approval**

We must approve all advertising and promotional materials we did not prepare or previously approve (including materials we prepared or approved and you modify) before you use them. We will be deemed to have disapproved the materials if we fail to issue our approval within 30 days after receipt. You may not use any advertising or promotional materials that we have disapproved (including materials that we previously approved and later disapprove). If you use any advertising or promotional materials that are not approved by us (including materials that we previously approved and later disapprove) then, in addition to any other remedies under this Franchise Agreement, you will pay us (or the Brand Fund, if established) an unauthorized advertising fee of \$1,000 per occurrence.

## **12.5 Grand Opening Advertising**

Although you are encouraged to engage in grand opening advertising, you do not have to spend any minimum amount on grand opening advertising to promote your Franchised Business.

## **12.6 Local Advertising Requirement**



Although you are encouraged to engage in local advertising, you do not have to spend any minimum amount on local advertising to promote your Franchised Business. You agree to participate in our market research programs, test marketing new food products and services at the Franchised Business and providing us with timely reports and other relevant information regarding such market research.

### **12.7 Online Advertising**

You may not maintain a separate website, conduct e-commerce, or otherwise maintain a presence on the Internet in connection with your Franchised Business without our express written permission, which we may revoke at any time, in our sole discretion. Any website we permit you to establish will be subject to all of your marketing and advertising requirements under this Franchise Agreement and the Brand Manual. If you wish to utilize social media or advertise online, you must follow our online policy contained in our Brand Manual. Our online policy may change as technology and the Internet changes. We may require that you utilize our designated supplier for social media marketing services, at your expense. You may not use the Marks in any fundraising campaign, including crowdfunding. We may restrict your use of social media. We restrict your ability to independently market on the Internet, and we may not allow you to use any domain name, address, locator, link, metatag or search technique with words or symbols similar to the Marks.

### **12.8 Advisory Council**

We may form, change, merge or dissolve an advisory council (“Council”) at any time, in our sole discretion, to advise us on advertising policies and to promote communications between us and all franchisees. Any such Council will be governed by bylaws that will specify that members of the Council would consist of both franchisees and franchisor representatives and will specify how members are selected, subject to any changes to such bylaws or structure we deem necessary in our sole discretion. Any Council would serve in an advisory capacity only. If we appoint you to the Council, you agree to join, participate in, and actively support the Council. Your Brand Fund Contributions may be increased or decreased at any time upon super-majority (75%) approval of the Council, upon 30 days’ notice to you. We may grant the Council any operation or decision-making powers we deem appropriate.

### **12.9 E-Lead Program**

We operate a digital marketing service to manage the placement of digital ads (the “E-Lead Program”) that you may elect to use. If you elect to use the E-Lead Program, in addition to the actual costs of the digital advertisements themselves, you agree to pay us an annual administrative fee (the “E-Lead Fee”) of \$250 for E-Lead Lite or \$500 for E-Lead Plus. Your E-Lead Fee shall be paid when you enroll in the E-Lead Program, and shall be paid annually on the anniversary date of your enrollment. The E-Lead Program is currently optional, and you may un-enroll from the E-Lead Program at any time upon 30 days’ written notice to us. Any E-Lead Fees paid to us are non-refundable under any circumstances. We reserve the right to require you to enroll in the E-Lead Program in the future, upon 60 days’ written notice to you. We further reserve the right to discontinue the E-Lead Program, increase the fees and costs associated with the E-Lead Program, or otherwise revise the terms and conditions of the E-Lead Program at any time, in our sole discretion.

### **12.10 Limited Time Offer Campaign**

We have an optional a flavor and marketing campaign (“Limited Time Offer Campaign”) currently offered in the Spring, Summer and Fall. If you elect to participate in a Limited Time Offer Campaign, you may purchase kits that include flavoring and marketing materials. Each kit is currently \$150 to \$500. Your



will be required to pay us this fee for each kit you purchase if you opt in to our optional limited time offer campaign, and we reserve the right to increase this fee upon 30 days' written to you. We reserve the right to require your participation in a Limited Time Offer Campaign upon 60 days' notice to you.

### **13. SYSTEM STANDARDS**

#### **13.1 Generally**

You agree to operate your Franchised Business: (i) in a manner that will promote the goodwill of the Marks; and (ii) in full compliance with our standards and all other terms of this Franchise Agreement and the Brand Manual. Any required standards exist to protect our interests in the System and the Marks, and not for the purpose of establishing any control or duty to take control over those matters that are reserved to you. The required standards generally will be in the Brand Manual or other written materials and may be periodically modified over the Term. To protect our interests in the System and Marks, we reserve the right to determine if you are meeting a required standard and whether an alternative is suitable to any recommendations or guidelines.

We may, from time to time, make suggestions to you regarding your pricing policies in compliance with applicable laws. We retain the right to establish minimum and maximum prices to be charged by you, subject to applicable laws, but any exercise of that right will be specifically set forth in writing. It is furthermore understood and agreed that any list or schedule of prices furnished to you by us may unless otherwise specifically stated as to the minimum or maximum price be treated as a recommendation only and failure to accept or implement any such suggestion may not in any way affect the relationship between you and us.

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

The products or services offered by the Franchised Business are subject to change and we do not represent that your Franchised Business will always be permitted or required to offer all of the products or services currently offered. You agree to offer all products and services we require from time to time. You may not develop or offer any other products or services at your Franchised Business without our prior written permission. We may, without obligation to do so, add, modify or delete authorized products and services, and you must do the same upon notice from us. You may incur additional expenses to offer new products or services. Our addition, modification or deletion of one or more products or services shall not constitute a termination of this Franchise Agreement. You will not enter into any agreements with any third parties that can process orders for you on your behalf without our express written permission, which we may revoke at any time, in our sole discretion. We may, but are not required to, create Kona Ice proprietary products for sale at your Franchised Business. If we develop any of these products, you agree to maintain a reasonable inventory of these items at all times.

#### **13.3 Suppliers and Purchasing**

You agree to purchase or lease all products, supplies, equipment, services, and other items specified in the Brand Manual. If required by the Brand Manual, you agree to purchase or lease certain products and services only from suppliers designated or approved by us (which may include, or be limited exclusively to, us or our affiliates) including, by way of example, Kreations flavoring and Kona Ice branded cups. You acknowledge that our right to specify the suppliers you may use and add or remove suppliers is necessary and desirable so we can control the uniformity and quality of products and services used, sold or distributed in connection with the development and ongoing operation of your Franchised Business, maintain the confidentiality of our trade secrets, obtain discounted prices for our franchisees if we choose to do so, and



protect the reputation and goodwill associated with the System and the Marks. If we receive rebates or other financial consideration from these suppliers based upon your purchases or any other of our franchisee's purchases, we have no obligation to pass these amounts on to you or to use them for our benefit. If we do not require you to use a designated source or approved supplier for a particular item, you may purchase the item from any vendor you choose so long as your purchases conform to our System and specifications. We may restrict the sourcing of current and future items. You agree to maintain an adequate inventory of all items in accordance with the Brand Manual.

If you wish to purchase any items or supplies from a supplier we have not approved or wish to offer any new product or service we have not authorized in writing, you must send us a written notice specifying the supplier's name and qualifications or product or service information and provide any additional information we request. We will approve or reject your request within 30 days after we receive your notice and all additional information (and samples) that we require. If we fail to issue our approval within the 30-day period, it will have the same effect as a rejection to the request. You must reimburse us for all costs and expenses we incur in reviewing a proposed supplier within ten days after invoicing. We may revoke approval of any supplier, product or service in our sole discretion in which case you must stop purchasing from such supplier.

#### **13.4 Equipment Maintenance and Changes**

You agree that our ability to require Kona Ice franchisees to make significant changes to their KEV and Additional Equipment is critical to our ability to administer and change the System and to maintain the Kona brand's image of cleanliness, efficiency and quality. You agree to proactively maintain, modify, repair and upfit your KEV and Additional Equipment over time to meet our standards. Currently, we require that the KEV be upfitted every seven years.

Should we determine that the cleanliness or appearance of your KEV and/or any Additional Equipment fall below our standards, you must promptly address the issue at your sole cost and expense. This includes repairing any damages, updating equipment, and refreshing the KEV and Additional Equipment's aesthetic to maintain a "like new" condition and to meet our then-current standards and with the Brand Manual.

You acknowledge and agree that your KEV and Additional Equipment will depreciate, damage, wear out and become obsolete over time and that, depending on the age, mileage, condition and features of your KEV and Additional Equipment, we may require that you replace, repair, retrofit or upfit these items in accordance with our then-current standards and the Brand Manual over time. We reserve the right to require refurbishment, retrofitting and upfitting of the KEV and Additional Equipment to align with the latest branding and image standards in accordance with our directives and with the Brand Manual. Such refurbishment, retrofitting and upfitting may involve significant changes, replacements, modifications and new equipment, as well as any other updates specified by us. You further agree to purchase a replacement KEV and/or any Additional Equipment whenever these items no longer meet our standards. You must purchase a new KEV and/or any Additional Equipment within 30 days of our notice to you or such other time period that we designate. You must commence all maintenance and remodeling promptly upon receiving our notice and complete it within 60 days, or such other time period that we designate. You are solely responsible for all associated costs and expenses.

If the KEV and/or any Additional Equipment is damaged in an accident, totaled or is otherwise deemed unable to operate by you or by us in our discretion, then you agree to perform all repairs or obtain all a replacement KEV and/or any Additional Equipment at your sole cost and expense within 60 days or such other time period that we designate.



You acknowledge and agree that vehicle repairs and maintenance may occasionally result in unforeseen mechanical issues. In such cases, you will notify us of any issues encountered and provide reasonable opportunity for us to rectify the problem. You further agree that routine maintenance and occasional repairs are necessary for the proper functioning of the KEV and Additional Equipment and agree to bear any associated costs unless such issues arise directly from our gross negligence or willful misconduct.

You acknowledge and agree that your KEV, Additional Equipment and/or your entire Franchised Business may not be operational during the time that maintenance, repairs, upfits, retrofits or replacement occurs under this Section, which could be for a significant period of time. You also acknowledge and agree that replacing your KEV and/or other Additional Equipment may be delayed and is subject to availability. During such time periods, you acknowledge and agree that we are not be responsible or liable to you for any loss of revenue, profits or damages experienced by your Franchised Business. You agree that we shall not be liable for any mechanical issues or damages incurred by you as a result of such repairs, upfits, retrofits or maintenance. You also agree that we will not be responsible for any manufacturing or mechanical issues.

You agree to fully cooperate with us and our affiliates with all obligations under this Section.

### **13.5 Hours of Operation**

You must keep your Franchised Business open for the minimum hours and minimum days of operation as specified in the Brand Manual, which may change over the Term. We may require you to establish specific hours of operation and submit those hours to us for approval.

### **13.6 Customer Issues**

You acknowledge the importance to the System and uniform standards of quality, service and customer satisfaction, and recognize the necessity of opening and operating a Franchised Business in conformity with the System. You agree to manage the Franchised Business in an ethical and honorable manner and ensure that all those working at the Franchised Business provide courteous and professional service to customers. If you receive a customer complaint, you must promptly follow the complaint resolution process we specify to protect the goodwill associated with the Marks. Also, if we are contacted by a customer of your Franchised Business who wishes to lodge a complaint, we reserve the right to address the customer's complaint to preserve goodwill and prevent damage to the Marks. Our right to address complaints may include refunding money to a dissatisfied customer, in which case you must reimburse us for these amounts including the value of any gift card, refund or other value we provide to the customer as part of addressing the issue.

We may contact any customer of your Franchised Business at any time for any purpose. We, or our authorized representative, shall have the right, during regular business hours, or at such other times as may be mutually agreed upon by you and us, to inspect all client lists and documents and records related to the Franchised Business. Upon reasonable request, you must furnish to us in whatever format we require, all client information and records for the Franchised Business, both active and inactive, which shall include, but not be limited to, names, addresses, and telephone numbers of such clients ("Customer List"). You acknowledge and agree that we are the sole owner of the Customer List and that you shall not use the Customer List for any purpose other than for the operation of the Franchised Business or distribute, in any form or manner, the Customer List to any third party without our prior written consent.



### **13.7 Standards Compliance**

You acknowledge the importance of every standard and operating procedures to the reputation and integrity of the System and the goodwill associated with the Marks. If you fail to follow any of the System standards, we may send you a notice of violation and charge you a fee of \$1,000 for your first violation and an additional \$5,000 if you fail to comply with the System standard in the notice of violation within 30 days of the date of our notice. We may charge you a fee of \$5,000 for the second and each additional violation after your first. These fees are in addition to any and all remedies that we have available under this Franchise Agreement, including but not limited to termination.

### **13.8 Payment Vendors and Data Security**

You agree to maintain, at all times, credit card relationships with the credit and debit card issuers or sponsors, check or credit verification services, financial center services, payment providers, merchant service providers, loyalty and gift cards, and electronic fund transfer systems (together, “Payment Vendors”) that we may periodically designate as mandatory. The term “Payment Vendors” includes, among other things, companies that provide services for electronic payment. You agree not to use any Payment Vendor for which we have not given you our prior written approval or as to which we have revoked our earlier approval. We may modify our requirements and designate additional approved or required methods of payment and vendors for processing such payments, and to revoke our approval of any service provider. You agree to comply with the then-current Payment Card Industry Data Security Standards as those standards may be revised and modified by the PCI Security Standards Council, LLC, or any successor organization or standards we may reasonably specify. You agree to implement the enhancements, security requirements and other standards that PCI Security Standards Council, LLC (or its successor) requires of a merchant that accepts payment by credit and/or debit cards or electronic payments.

### **13.9 Gift Cards and Loyalty Programs**

You agree to participate in our gift card and loyalty programs, if any, and agree to make gift cards and loyalty programs available for purchase and redemption at your Franchised Business subject to the policies and procedures in the Brand Manual.

### **13.10 Privacy**

You agree to comply with all applicable international, federal, state and local laws pertaining to the privacy of customer, employee and transactional information (“Privacy Laws”). You agree to research and proactively ensure that your Franchised Business is in compliance with Privacy Laws, which may vary depending on the location of your Franchised Business. You also agree to comply with our standards and policies pertaining to Privacy Laws. ~~price at~~ You agree to inform us of any conflict between our standards and policies and any local or state Privacy Laws that govern your Franchised Business to ensure that your conduct complies with all those local or state Privacy Laws.

### **13.11 Remodeling**

You agree to remodel and make all improvements and alterations to your Franchised Business we reasonably require from time to time to reflect our then-current image, appearance specifications. There is no limitation on the cost of any remodeling that we may require.

### **13.12 Mystery Shopper**



We may require you to conduct a self-shop by sending us photos of your KEV and any Additional Equipment. If the results of the self-shop are unsatisfactory, or you do not participate in the self-shop, we may send a third-party mystery shopper to conduct a mystery shop. We also may inspect your KEV and any Additional Equipment at any time. You agree to fully cooperate with any such inspection. If the results of any mystery shopper determine that your Franchised Business is in violation of any System standard and we inspect your Franchised Business, and you must pay us a fee of \$1,000 to cover our travel and expenses. You will also be subject to non-compliance fees set forth in Section 13.7. Alternatively, we may be invoiced by the mystery shopper or quality assurance firm, in which case you must pay your proportional share of the total fee based on number of inspections performed. You agree to pay us this fee within ten days after invoicing.

### **KEV Kona Entertainment Vehicle**

You must purchase the KEV from us or our affiliate. You will pay the current cost of the KEV in effect at the time of delivery, which may increase from the time of the signing of this Franchise Agreement. The current cost range of the KEV is \$139,250 to \$148,250. You will pay a non-refundable \$5,000 deposit when you sign this Franchise Agreement and pay the entire remaining balance in full when you take delivery of your KEV. You may be able to obtain financing for the KEV upon the terms deposit is in addition to the Initial Franchise Disclosure Document Fee. KEV payments are non-refundable. You may not utilize any other truck or vehicle, other than the KEV or any "Additional Equipment," in the operation of your Kona Ice Franchised Business, and the KEV and any "Additional Equipment" must only be used for the operation of your Kona Ice Franchised Business and not for any other purpose. You must operate at least one KEV, and may only operate multiple KEVs or KEV 2.0 Trucks in the Protected Territory. We may not if we allow you to purchase any sign additional KEVs or Additional Equipment if you are in default of this Franchise Agreement or if you have any unpaid amounts due to franchise agreements with us or any of our affiliates.

Although all KEVs and KEV 2.0 Trucks will follow a consistent theme, the details of their design may differ often, based upon local requirements and you agree that your KEV may not be identical to those of other franchisees. If modifications to the KEV or KEV 2.0 Truck are necessary to comply with applicable local laws and/or ordinances, or if you request any optional customization or additional features, you may be required to pay a fee to us or our affiliate for the costs and expenses in making the necessary modifications to the KEV or KEV 2.0 Truck. You will also be required to purchase an initial inventory of Kona Ice equipment, uniforms, and supplies from us or our affiliates when you purchase the KEV. These payments are non-refundable.

Because you do not have to locate a site from which to operate your Kona Ice Business, we do not provide you with assistance in doing so. You may open an office, but it is not required and does not need to be approved by us. You must find a location to store the KEV or any Additional Equipment, which may be at your residence if permitted. You must use our approved supplier for the window tinting, wrapping, and upfitting of your KEV or KEV 2.0 Truck. Any person who drives your KEV or KEV 2.0 Truck must be 18 years of age or older and have a valid driver's license, and each of your KEVs or KEV 2.0 Trucks must be properly licensed, registered, and insured. Should your KEV or any Additional Equipment be subject to a manufacturer's vehicle safety recall, you must immediately notify us in writing and perform the required repairs, maintenance, and/or inspections at your sole cost and expense before using your KEV or any Additional Equipment in the operation of your Kona Ice Franchised Business. You acknowledge



and agree that we are not responsible for any obligations or costs associated with the operation of the KEV or any Additional Equipment, including any safety recall of the KEV or of any Additional Equipment.

### 3.C — COMPUTER SYSTEM, SOFTWARE & RELATED EQUIPMENT.

~~We reserve the right to periodically designate~~ Your KEV must meet our then-current standards that we specify and that are contained in the Brand Manual. You must not use the KEV for any purpose other than the operation of your Franchised Business. You agree to: (i) decorate and wrap your KEV under our then-current System standards, and at our request, periodically update or improve the decoration and wraps of the KEV (any such updates or improvements must be made within 30 days of our delivery of notice to you that such updates or improvements must be made); (ii) maintain the condition of the KEV consistent with the image of a Franchised Business and in accordance with the System standards; (iii) comply with all ongoing repair, maintenance, upfitting and replacement requirements described in Section 13.4 of this Franchise Agreement; (iv) not sell or otherwise transfer the KEV without first removing all of the Marks from the KEV; and (v) obtain and maintain all appropriate permits, business and contractor licenses and certifications including but not limited to valid driver's licenses for all drivers and current vehicle registrations for the KEV used in the Franchised Business. During the Term, you agree to take the following actions: (A) thoroughly clean, repaint, and redecorate the interior and exterior of the KEV and any additional equipment at intervals we prescribe; (B) repair the interior and exterior of the KEV and any additional equipment; and (C) at our request, to periodically improve and modify the KEV and any additional equipment to conform to the then-current System standards. You will place or display on the KEV and any Additional Equipment, only those signs, emblems, designs, artwork, lettering, logos, and display and advertising materials we approve from time to time. If at any time in our reasonable judgment, the general state of repair, appearance, or cleanliness of the KEV, and any additional equipment of the Franchised Business or its fixtures, furnishings, equipment, assets, or signs does not meet our standards, we may notify you and specify the action you must take to correct the deficiency. You agree to fully de-identify any KEV and any Additional Equipment you no longer utilize. These corrective actions will be performed at your sole expense.

## **14. TECHNOLOGY**

### **14.1 Technology**

You must utilize the technology, including software, computer hardware ~~or software, including and~~ components, point-of-sale system, ~~for you to use~~ cash register(s), communication equipment, and other related accessories or peripheral equipment (collectively, "Technology") that we require. We may change the Technology you must use for your Franchised Business at any time. You will utilize the Technology with the Franchised Business under our policies and procedures in the Brand Manual. You must pay the Technology Fee for the use of certain technologies used in the operation of your Franchised Business. For other required Technology, you agree at your expense to use any approved supplier we require. ~~We require you to use our proprietary KonaOS operating software in the operation of your Kona Ice Business. In order to~~ may change or add approved suppliers of this Technology at any time, in our sole discretion. You will, at your expense, purchase and maintain any required communication services, Internet services (including the requirement to maintain a high-speed Internet connection), dedicated telephone and power lines. You acknowledge and agree that changes to Technology are dynamic and not predictable within the Term of this Franchise Agreement. To provide for inevitable but unpredictable changes to the ~~technology~~ technological needs and opportunities, you agree that we will have the right to ~~may~~ establish, in writing, reasonable new standards for the implementation of technology in the System. If required by us, you agree to purchase point-of-sales hardware and/or software ("POS System") and pay ongoing POS



~~System fees to us, our affiliate, and/or the third party vendor we designate. We do not currently implementing Technology in the System and you agree to comply with those reasonable new standards we establish as if we periodically revised this Section for that purpose. You will keep the Technology in good maintenance and repair, and you will promptly install, at your expense, any additions, changes, modifications or substitutions to Technology, as we may specify periodically. There is no limitation on the frequency and cost of your obligation to maintain, update or upgrade your Technology or its components. You acknowledge that you are solely responsible for protecting your Franchised Business from computer viruses, bugs, failures, data breaches and attacks by hackers and other unauthorized intruders in the Technology.~~

## **14.2 Proprietary Software**

~~We may also develop proprietary software or technology that must be used by “Kona Ice” franchisees. If this occurs, you agree to enter into a license agreement with us (or an affiliate of ours) and pay us (or our affiliate) commercially reasonable licensing, support and maintenance fees. The license agreement will govern the terms under which you may utilize this software or technology. We also reserve the right to enter into a master software or technology license agreement with a third-party licensor and then sublicense the software or technology to you, in which case we may charge you for all amounts we must pay to the licensor based on your use of the software or technology.~~

## **14.3 Our Access**

~~You will provide any assistance we require to connect to the Technology. We will have the right at any time to retrieve data and other information from your Technology as we, in our sole discretion, deem necessary or desirable. You shall ensure that we have independent access to your computer system but reserve the right to conduct periodic audits for any accounting records contained in such hardware. You agree to at all times to any Technology we request, at your cost. You must provide us with any and all requested codes, passwords, and information necessary to access your computer system, point-of-sale systems, and software and Technology. You must receive our prior written approval before changing such codes, passwords, and other necessary information.~~

~~You will be responsible for any increase in fees that result from any upgrades, modifications, or additional systems or software and for any increases in fees from suppliers. We reserve the right to: (i) change or add approved suppliers or vendors of these services at any time, in our sole discretion; (ii) enter into a master license agreement with any software or technology supplier and sublicense the software or technology to you, in which case we may charge you for all amounts that we must pay to the licensor based on your use of the software or technology; (iii) create proprietary software or technology that must be used by Kona Ice franchisees, in which case we may require that you enter into a license agreement with us and pay us reasonable initial and ongoing licensing, support, and maintenance fees; and (iv) increase or decrease the Technology Fee, Business Management Software Fee, and other technology and licensing and expenses that you are required to pay under this Franchise Agreement at any time, upon 30 days’ written notice to Franchisee.~~

~~You must obtain and use at least one Kona Ice email address from us. You must pay us \$168 per year for each email address you obtain, which is currently due at the same time as your Royalty. We reserve the right to increase this fee upon 30 days’ written notice to you. ... Additionally, if you have more than one “Find a Kona Mini Website,” then you must have and pay for a different email address for each mini website. You must have access to accounting software such as QuickBooks and word processing software such as Microsoft Office.~~



3.D — ADDITIONAL EQUIPMENT.

**15. ~~During the Initial Term, you may, but are not required to, purchase any additional equipment (“Additional Equipment”) we offer for use in the Protected Territory. You must sign our then-current “Additional Equipment Amendment,” the current form of which is in Attachment D to this Franchise Agreement, for any Additional Equipment that you purchase and you will be required to pay the then-current “AE Royalty” as stated below in Section 4.C. The Additional Equipment offered and the AE Royalty for such equipment may change during the Initial Term and any successor terms. You will not be permitted to purchase any Additional Equipment until your KEV is open and operating and you are in compliance with this Franchise Agreement. You may not transfer any Additional Equipment without our prior written consent. We may approve or reject your request to transfer Additional Equipment in our sole discretion. In addition, we reserve the right to condition our approval of a transfer on: (i) you being in good standing under this Franchise Agreement at the time of transfer, (ii) you paying off any loans or debts related to the Additional Equipment; (iii) Additional Equipment being modified in such a way to protect the System and/or any proprietary interests or trade secrets we have in the Additional Equipment; (iv) that the purchaser of the Additional Equipment be an existing Kona Ice franchisee; and/or (v) such additional conditions that we deem reasonable in the circumstances. If we approve of your request for a transfer of Additional Equipment, you~~ TRANSFER BY US**

This Franchise Agreement is fully assignable by us (without prior notice to you) and shall inure to the benefit of any assignee(s) or other legal successor(s) to our interest in this Franchise Agreement; provided that we shall, subsequent to any such assignment, remain liable for the performance of our obligations under this Franchise Agreement up to the effective date of the assignment. We may also delegate some or all of our obligations under this Franchise Agreement to one or more designees without assigning this Franchise Agreement.

We may change our ownership or form and/or assign this Franchise Agreement and any other agreement to a third party without restriction. After our assignment of this Franchise Agreement to a third party who expressly assumes the obligations under this Franchise Agreement, we no longer will have any performance or other obligations under this Franchise Agreement.

agree to pay us a transfer fee of \$500 per Additional Equipment.

3.E — KONA ENTERTAINMENT VEHICLE AND ADDITIONAL EQUIPMENT STANDARDS.

Throughout the term of this Franchise Agreement, you must:

- (1) ~~operate and maintain the KEV and any Additional Equipment in accordance with our System Standards, as may be provided in the Brand Manual or otherwise in writing and, at our request, periodically update or improve the decoration and/or design of the KEV and any Additional Equipment. You may be required to pay a fee in the event that we or our affiliate needs to modify any part of the KEV and any Additional Equipment from our standard specifications in order to meet with relevant state or local health department requirements in your Protected Territory. Any required update or improvement must be made within 30 days of our delivery of notice to you that such updates or improvements must be made at your sole expense;~~



- ~~(2) — maintain the condition of the KEV and any Additional Equipment as clean, orderly, and consistent with the image of a Kona Ice Franchise as we prescribe from time to time, at your sole expense, including, but not limited to, allowing us to rewrap the KEV and any Additional Equipment, at your expense, as needed, but no later than after seven years of operation for your KEV (or your KEV 2.0 Truck if you did a KEV 2.0 Conversion). You agree to remodel each KEV (and KEV 2.0 Truck and any Additional Equipment) you operate at least once every seven years to meet our then current System Standards at your sole cost and expense or more frequently if any KEV (or KEV 2.0 Truck or any Additional Equipment) is not in compliance with our then current System Standards. All necessary updates, removal of vinyl, and installation of vinyl must be performed at an authorized upfit facility, which, as of the Effective Date, is currently located in Florence, KY (this location may change over the Initial Term);~~
- ~~(3) — not use the KEV or any Additional Equipment for any purpose other than the operation of the Kona Ice Franchise and store the KEV and Additional Equipment in accordance with our System Standards;~~
- ~~(4) — place or display on the KEV and any Additional Equipment only the signs, emblems, branding audio content, video content, lettering, and logos we provide or approve from time to time;~~
- ~~(5) — send us photographs of the KEV and any Additional Equipment at least once per calendar year, as we request;~~
- ~~(6) — allow us to inspect the KEV and any Additional Equipment in the frequencies and manners described in the Systems Standards; and~~
- ~~(7) — not transfer, sell, pledge, give away, decommission, or otherwise encumber the KEV and any Additional Equipment without our prior written approval and, except for a transfer or sale of the KEV or any Additional Equipment to us, our affiliates or another Kona Ice franchisee, you must fully decommission the KEV and any Additional Equipment by removing all proprietary items and Marks from the KEV and Additional Equipment in accordance with our System Standards including, but not limited to: all vinyl wraps, internal and external FlavorWave components and signage, bottle racks, drip trays, external fins and awnings, LED lighting, menu boards, stickers, decals, Kona Kompanion, KIB display monitor, K creations flavoring, and scent diffuser. Once the KEV and/or Additional Equipment has been fully decommissioned, you must allow us to inspect or send photographs to us for our review and prior approval.~~

~~3.F — BUSINESS OPENING.~~

~~You agree not to open the Kona Ice Business for business until:~~

- ~~(1) — we notify you in writing that the Kona Ice Franchise meets our standards and specifications;~~
- ~~(2) — your Managing Owner, your Designated Manager (as defined in Section 9F), and any other required attendees satisfactorily complete applicable portions of training before opening;~~
- ~~(3) — you pay the initial franchise fee and all other amounts then due to us; and~~



~~(4) you give us certificates for all required insurance policies (as described in Section 9G).~~

~~Subject to your compliance with these conditions, you agree to open the Kona Ice Business to the public no more than 12 weeks after the Effective Date. The date that the Kona Ice Franchise first opens to the public shall be the “Opening Date.”~~

### ~~3.G NOTICE.~~

~~If you believe that we (or our affiliates) have failed to adequately provide any assistance or services to you as provided in this Franchise Agreement, you will notify us in writing within 30 days following ours or our affiliates’ provision of such assistance or services. Without the timely provision of such notice to us, you will be deemed to conclusively acknowledge that all such assistance or services required to be provided by us or our affiliates were sufficient and satisfactory in your judgment.~~

## ~~4. FEES.~~

### ~~4.A INITIAL FRANCHISE FEE.~~

~~You must pay us an initial franchise fee of \$15,000 (“Initial Franchise Fee”) when you sign this Franchise Agreement. The Initial Franchise Fee is fully earned by us when paid and is not refundable under any circumstances.~~

### ~~4.B RESERVATION FEE.~~

~~Provided you are not in default of this Franchise Agreement or any other agreement with us, you may, subject to availability and our approval, reserve additional territories by paying us a territory reservation fee of \$10,000 per territory (“Reservation Fee”) and entering into our Additional Franchise Reservation Agreement, the current form of which is attached to the Franchise Disclosure Document in Exhibit H. The Reservation Fee and Additional Franchise Reservation Agreement allows you to hold a territory for up to 12 months and provides an additional right of first refusal for an additional 12 months, after which your rights will expire and will not be renewed. You can only operate in an additional territory under a separate franchise agreement with us and you must sign our then current franchise agreement in order to do so. If you are purchasing a new KEV, the Reservation Fee will be applied to the Initial Franchise Fee of the additional Kona Ice Franchise at the time you sign the corresponding franchise agreement. The Reservation Fee will not be applied to the Initial Franchise Fee if you purchase a used KEV. The Reservation Fee is non-refundable under any circumstances, even if you do not open an additional Kona Ice Franchise.~~

### ~~4.C ROYALTY FEE.~~

~~Beginning on the Opening Date, and continuing for the term of this Franchise Agreement, including any Interim Period, you agree to pay us the royalty fees listed below (the “Royalty” or “Royalties”) in either three, six, or nine installments per year (“KEV Royalty Schedule”):~~



Time Period*	Total Royalty	KEV Royalty Schedule (If you make 3 installment payments per year)	KEV Royalty Schedule (If you make 6 installment payments per year)	KEV Royalty Schedule (If you make 9 installment payments per year)
Years 1-2	\$3,000	June 30: — \$1,000 July 31: — \$1,000 August 31: — \$1,000	May 31: — \$500 June 30: — \$500 July 31: — \$500 August 31: — \$500 September 30: \$500 October 31: — \$500	April 30: — \$333 May 31: — \$333 June 30: — \$334 July 31: — \$333 August 31: — \$333 September 30: \$334 October 31: — \$333 November 30: \$333 December 31: \$334
Years 3-6	\$3,500	June — 30: — \$1,16 6 July — 31: — \$1,16 6 August — 31: — \$1,16 8	May 31: — \$583 June 30: — \$583 July 31: — \$584 August 31: — \$583 September 30: \$583 October 31: — \$584	April 30: — \$389 May 31: — \$389 June 30: — \$389 July 31: — \$389 August 31: — \$389 September 30: \$389 October 31: — \$389 November 30: \$389 December 31: \$388
Years 7-10 (plus any — Interim Period, — if applicable)*	\$4,000	June — 30: — \$1,33 3 July — 31: — \$1,33 3 August — 31: — \$1,33 4	May 31: — \$666 June 30: — \$666 July 31: — \$667 August 31: — \$666 September 30: \$666 October 31: — \$667	April 30: — \$444 May 31: — \$444 June 30: — \$445 July 31: — \$445 August 31: — \$444 September 30: \$445 October 31: — \$444 November 30: \$444 December 31: \$445

\*If you are an existing franchisee and this agreement is a successor franchise agreement or if you are a transferee signing this Franchise Agreement, the date for determining your KEV Royalty Schedule will be determined from the date the initial Franchise Agreement was signed for the Kona Ice Business you are continuing to operate or acquired. Your Royalty will be \$4,000 for year 11, \$4,500 for years 12 through 15 and \$5,000 for years 16 through 20.

~~If you purchase Additional Equipment you will be required to pay additional royalty fees for the Additional Equipment (“**AE Royalty**”). The AE Royalty will depend on the type of Additional Equipment and will be the then-current rate at the time you enter into the Additional Equipment Amendment. The AE Royalty will be due for as long as you own the Additional Equipment. For this Franchise Agreement, all references to Royalty shall include any AE Royalty unless otherwise noted. We reserve the right to adjust your Royalty annually based on the Consumer Price Index as defined by the U.S. Bureau of Labor Statistics.~~



## **16. TRANSFER BY YOU**

### **16.1 Approval**

For purposes of this Franchise Agreement, “Transfer” means any direct or indirect, voluntary or involuntary (including by judicial award, order or decree) assignment, sale, conveyance, subdivision, sublicense or other transfer or disposition of the Franchise Agreement, the Franchised Business (or any portion thereof), or a direct or indirect ownership interest in an Entity that is the franchisee (or any interest therein), including by merger or consolidation, by issuance of additional securities representing an ownership interest in the Entity that is the franchisee, or by operation of law, will or a trust upon the death of an Owner (including the laws of intestate succession).

Neither you nor any Owner may engage in any Transfer without our prior written approval. Any Transfer without our approval shall be void and constitute a breach of this Franchise Agreement. Our consent to a Transfer shall not constitute a waiver of any claims we may have against you or the Owners, nor shall it be deemed a waiver of our right to demand exact compliance with any of the terms or conditions of the Franchise Agreement by the transferee.

### **16.2 Our Right of First Refusal**

If you or an Owner desires to engage in a Transfer, you or the Owner, as applicable, must obtain a bona fide, signed written offer from the fully disclosed purchaser and submit an exact copy of the offer to us. We will have 30 days after receipt of the offer to decide whether we will purchase the Franchised Business (our “Right of First Refusal”). If we notify you that we intend to purchase the Franchised Business within such 30-day period, you or the Owner, as applicable, must sell the Franchised Business to us on the same terms as contained in the offer you received; provided that we may substitute cash for any non-cash form of payment proposed in the offer.

We will have at least an additional 30 days to conduct a due diligence review and to prepare for closing. You agree to provide us with all information and records we request about the Franchised Business, and we will have the absolute right to terminate the obligation to purchase the Franchised Business for any reason during the due diligence period. You and we will act in good faith to agree on the terms and conditions of the written offer, and closing will take place on the 61<sup>st</sup> day following receipt of your offer. We will be entitled to receive from you or the Owner, as applicable, all customary representations and warranties given by you as the seller of the assets or the Owner as the seller of the ownership interest or, at our election, the representations and warranties contained in the offer. If we do not exercise our right of first refusal, you or the Owner, as applicable, may complete the Transfer to the purchaser pursuant to and on the terms of the offer, subject to the requirements of this Section (including our approval of the transferee). However, if the sale to the purchaser is not completed within 120 days after delivery of the offer to us, or there is a material change in the terms of the sale, we will again have the Right of First Refusal specified in this Section.

Our Right of First Refusal is fully transferable by us to any affiliate or third party.

### **16.3 Transfer Conditions**

We will not unreasonably withhold our approval of any proposed Transfer; provided that the following conditions are all satisfied (“Transfer Conditions”):

16.3.1 Written Notice. You have provided us with written notice of the proposed Transfer at



least 45 days before the transaction. You must also submit a copy of the proposed purchase agreement together with all supporting documents and schedules between you and the proposed transferee to us for our review to ensure that the Transfer does not violate any term of this Franchise Agreement.

16.3.2 Qualified Transferee. The proposed transferee does not own or perform services for a Competitive Business, and is, in our opinion, an individual of good moral character with sufficient business experience, aptitude and financial resources to own and operate a Franchised Business and otherwise meets all of our then-applicable standards for franchisees and the purchase price and terms of the proposed transfer must not be so burdensome to the prospective transferee as to impair or threaten the future operation of the Franchised Business.

16.3.3 Monetary Obligations. All of your monetary obligations to us and our affiliates have been paid in full and you and the Owners are in full compliance with the terms of this Franchise Agreement and all other agreements with us or our affiliate(s) and have cured all existing defaults of this Franchise Agreement.

16.3.4 Compliance with Franchise Agreement. You have not violated any provision of this Franchise Agreement or any other agreement with us during both the 60-day period before you requested our consent to the transfer and the period between your request and the effective date of the transfer.

16.3.5 Training. The transferee has (or if the transferee is an Entity, its approved Managing Owner and any Franchise Manager have) successfully completed, or made arrangements to attend, the initial training program (and the transferee has paid us the training fee for each new person who must attend training).

16.3.6 Licenses and Permits. The transferee and its owners, to the extent necessary, have obtained all licenses and permits required by applicable law to own and operate the Franchised Business.

16.3.7 New Franchise Agreement. You must request that the transferee be provided with our then-current form of franchise disclosure document. You agree that we will not be liable for any representations that you or your Owners make that are inconsistent with such franchise disclosure document. The transferee and its owners sign our then-current form of franchise agreement and related documents, including, but not limited to, our then-current form of Franchise Owner Agreement or other guaranty (unless we, in our sole discretion, instruct you to assign this Franchise Agreement to the transferee), except that: (i) the Term and successor term(s) shall be the Term and successor term(s) remaining under this Franchise Agreement; and (ii) the transferee does not need to pay a separate initial franchise fee.

16.3.8 Transfer Fee. You pay us a transfer fee of: (i) \$5,000 if the transferee is an existing Kona Ice franchisee; or (ii) \$7,500 if the transferee is not a current Kona Ice franchisee plus \$1,000 for each piece of Additional Equipment that you transfer (“Transfer Fee”). You will pay the Transfer Fee to us as follows: (i) \$1,000 non-refundable deposit at the time of your transfer application request; and (ii) the remaining balance shall be due at or before the time you consummate the approved Transfer. If the transferee is a lead of ours or was referred to you by us, then in addition to the transfer fee, you agree to pay us \$15,000.

16.3.9 General Release. You and each of your Owners sign a general release in the form we prescribe for all known and unknown claims against us, our affiliates and subsidiaries, and our and their respective members, officers, directors, agents and employees, arising before or contemporaneously with the Transfer. If the proposed transferee has any previous relationship with us or our affiliates, then the proposed transferee must also execute a general release.



16.3.10 Right of First Refusal. We do not elect to exercise our Right of First Refusal.

16.3.11 Subordination. We may, in our sole discretion, require you to enter into an agreement with us to subordinate the transferee's obligations to you to the transferee's financial obligations owed to us under the Franchise Agreement.

16.3.12 Broker Costs. You must pay any broker costs, commissions or other placement fees we incur as a result of the Transfer.

16.3.13 KEV and Additional Equipment. The transferee must agree to take possession of the KEV, together with all Additional Equipment under this Franchise Agreement, as a condition to the transfer. The transferee must agree to pay us or our affiliates a remodel fee to upgrade, remodel, and refurbish the Franchised Business, including the KEV and any Additional Equipment, in accordance with our current requirements and specifications for the Franchised Business, within 45 days after the effective date of the transfer (we will advise the transferee before the effective date of the transfer of the specific actions it must take within this time period), and to deposit with us the estimated cost to complete the upgrade or remodel. If the KEV and/or any Additional Equipment does not meet our System standards then the transferee must replace such KEV and/or Additional Equipment at its sole cost and expense.

16.3.14 Other Conditions. You and each of your Owners agree to comply with all obligations that survive the termination, expiration or Transfer of this Franchise Agreement. The transfer must be made in compliance with any laws that apply to the transfer including all laws governing the offer and sale of franchises. You or the transferring Owner, as applicable, and the transferee have satisfied any other conditions we reasonably require as a condition to our approval of the Transfer.

#### **16.4 Transfer to an Entity**

If you are an individual, you may transfer your ownership interests to an Entity provided that: (i) the Owner or Owners of the Entity are the same persons who signed this Franchise Agreement and (ii) you comply with the Transfer Conditions. Our Right of First Refusal will not apply for a Transfer conducted under this Section and you must reimburse us for all of our fees and costs, including attorney fees (in lieu of the Transfer Fee), associated with your Transfer to the Entity. In lieu of entering into a new Franchise Agreement, you will be required to enter into any required documentation, which may include an approval of transfer agreement, a general release of claims and a Franchise Owner Agreement in the forms we prescribe.

#### **16.5 Death or Disability**



4.D—Upon the death or disability of you (if you are an individual) or of the Managing Owner (if you are an Entity), your interest in the Franchised Business or the Managing Owner’s ownership interest in you, as applicable, must be assigned to a third party or another Managing Owner approved by us within 90 days of such person’s death or disability, as the case may be. For purposes of this Section, a person is deemed to have a disability only if the person has a medical or mental illness, problem or incapacity that would prevent the person from substantially complying with his or her obligations under this Franchise Agreement or otherwise operating the Franchised Business in the manner required by this Franchise Agreement and the Brand Manual for a continuous period of at least 90 consecutive calendar days, and from which condition recovery within 90 days from the date of determination of disability is unlikely. If the parties disagree as to whether a person is disabled, the existence of disability will be determined by a licensed practicing physician selected by us, upon examination of the person; or if the person refuses to submit to an examination, then (for the purpose of this Section) the person automatically will be considered disabled as of the date of refusal. Your (or the deceased Managing Owner’s) estate or legal representative must apply to us for the right to Transfer to the next of kin within 60 calendar days after your or your Managing Owner’s death or disability. If, upon the Managing Owner’s death or disability, a manager approved by us is not managing the Franchised Business, your or the Managing Owner’s executor, administrator, conservator, guardian, or other personal representative must appoint a replacement manager within 15 days from the date of death or disability. The manager must complete our standard Initial Training at your expense. TERRITORY CHANGE.

~~You may not revise or amend your Protected Territory (a “**Territory Revision**”) without our express written consent, which we may approve or reject in our sole discretion. If you request and we approve of a Territory Revision, you agree to pay us a fee equal to \$1,000 if the revisions are made within 30 days of delivery of the KEV; or \$2,500 if the revisions are made between 31 and 90 days of delivery of the KEV. No revisions or amendments will be approved to your Protected Territory after 90 days of delivery of the KEV.~~

~~You may not relocate your Protected Territory (a “**Territory Relocation**”) without our express written consent, which we may approve or reject in our sole discretion. If you request and we approve of a Territory Relocation, you agree to pay us a fee of \$2,500.~~

~~If you wish to amend your Protected Territory after the Effective Date, you must submit to us a written request for approval of the proposed Territory Revision or Territory Relocation. We may, but have no obligation to, grant such a written request in our sole discretion. Among the other factors which we may consider are any of our or our affiliates obligations under any other contract, the effects that the Territory Revision or Territory Relocation might have on the customers’ services by your Protected Territory, the proximity to and possible effects of the Territory Revision or Territory Relocation on any other franchisee’s Protected Territory or Kona Ice Business, any possible effects of the Territory Revision or Territory Relocation on any aspect of the System, and any franchisee recruitment efforts that have been directed towards the areas that might be covered by or affected by the Territory Revision or Territory Relocation. If we grant your request for a Territory Revision or Territory Relocation, in addition to payment of the applicable fee by you, we may condition such approval on fulfillment of any conditions on that Territory Revision or Territory Relocation that we deem reasonable.~~

If applicable, a new Managing Owner acceptable to us also must be appointed for the Franchised Business within 30 days of the date of death or disability. .



## **17. INTELLECTUAL PROPERTY**

### **17.1 Ownership and Use of Intellectual Property**

For purposes of this Franchise Agreement, “Intellectual Property” means the Marks, the Patent, our copyrighted materials including all artworks and designs, “Confidential Information” (defined below), the System and “Improvements” (defined below). You acknowledge that: (i) we, or our affiliates, if applicable, are the sole and exclusive owner of the Kona Ice Intellectual Property and the goodwill associated with the Marks; (ii) your right to use the Intellectual Property is derived solely from this Franchise Agreement; and (iii) your right to use the Intellectual Property is limited to a license granted by us to operate your Franchised Business during the Term pursuant to, and only in compliance with, this Franchise Agreement, the Brand Manual, and all applicable standards, specifications and operating procedures we prescribe from time to time. You may not use any of the Intellectual Property in connection with the sale of any unauthorized product or service, or in any other manner not expressly authorized by us. Any unauthorized use of the Intellectual Property constitutes an infringement of our rights. You agree to comply with all provisions of the Brand Manual governing your use of the Intellectual Property. This Franchise Agreement does not confer to you any goodwill, title or interest in any of the Intellectual Property. You agree that during the Term of this Franchise Agreement and after its termination, expiration or Transfer you will not, directly or indirectly, contest our interest in the Intellectual Property.

For purposes of this Franchise Agreement, “Confidential Information” means all of our trade secrets and other proprietary information relating to the development, construction, marketing and/or operation of a Franchised Business, including, but not limited to, methods, techniques, specifications, procedures, policies, marketing strategies and information comprising the System, the Brand Manual, written directives and all drawings, equipment, computer and point of sale programs (and output from such programs), software including the Kona OS operating software, passwords, source code and any other information, know-how, techniques, material, data and similar items imparted or made available by us to you.

For purposes of this Franchise Agreement, “Improvements” means any improvements or additions to the System, Patent, Marks, marketing, method of operation, or the products or services offered by a Franchised Business.

### **17.2 Changes to Intellectual Property**

We may modify the Intellectual Property at any time in our sole and absolute discretion, including by changing the Marks, the System, our copyrights or the Confidential Information. If we modify or discontinue use of any of the Intellectual Property, then you must comply with any such instructions from us within 30 days, at your expense. We will not be liable to you for any expenses, losses or damages you incur (including the loss of any goodwill associated with a Mark or Patent) because of any addition, modification, substitution or discontinuation of the Intellectual Property.

### **17.3 Use of Marks and Patent**

#### **4.E — Your ~~TECHNOLOGY FEES~~.**

You must pay us our then-current technology fee (the “**Technology Fee**”), which is currently \$500 per year for each Kona Ice Business you operate. In addition to the Technology Fee, we charge you a separate fee for the usage of our proprietary KonaOS operating software (or then-current software) (the “**Business Management Software Fee**”). For existing franchisees, the Business Management Software Fee is currently \$49 per month for one KEV operated by existing franchisees and \$29 per month for each



~~additional KEV operated, and \$19 per month for every ancillary unit operated. We reserve the right to periodically increase the Technology Fee and Business Management Software Fee upon written notice to you based on updates, upgrades, modifications or additional software. We may permit you to use the Business Management Software for another business that is not your Kona Ice Business for an additional fee, which permission we may grant or withhold in our sole discretion.~~

#### ~~4.F — APPLICATION OF PAYMENTS.~~

~~Despite any designation you make, we may apply any of your payments to any of your past due indebtedness to us. We may set off any amounts you or your Owners owe us or our affiliates against any amounts we or our affiliates owe you or your Owners. You may not withhold payment of any amounts you owe us due to our alleged nonperformance of any of our obligations under this Franchise Agreement.~~

#### ~~4.G — METHOD OF PAYMENT.~~

~~The Royalty and “Brand Fund Contributions” (see Section 10.A below) shall be payable to Franchisor on a yearly basis via automated clearing house (“ACH”). You must complete our ACH authorization form allowing us to electronically debit a bank account you designate (“Franchise Account”) for: (i) all fees payable to us under this Franchise Agreement (other than the Initial Franchise Fee); and (ii) any other amounts you owe to us or any of our affiliates including, but not limited to, those owed for the purchase of products or services. We will debit your Franchise Account for these payments on or after the due date. You must sign and deliver to us any other documents we or your bank may require authorizing us to debit your Franchise Account for these amounts. We have the right to periodically specify (in the Brand Manual or otherwise in writing) different payees and/or payment methods, such as, but not limited to, weekly or monthly payment, payment by auto draft, credit card and payment by check. If you make any payment to us by credit card for any fee or required payment, we may charge a service charge of up to 3% of the total charge. You shall not subordinate to any other obligation its obligation to pay the Royalty or any other fee or charge due to us or our affiliate under this Franchise Agreement.~~

~~We may require you to remit fees and other amounts due to us under this Franchise Agreement via EFT or other similar means utilizing an approved computer system or otherwise. You agree to comply with our procedures and/or perform such acts and deliver and execute such documents as may be necessary to assist in or accomplish payment by such method.~~

~~Any other fees that are paid at the same time as your Royalty will be paid according to the relevant payment policies as stated in our Brand Manual.~~

#### ~~4.H — LATE PAYMENTS/INSUFFICIENT FUNDS.~~

~~Any payment not made by the due date will be deemed overdue. In the event of any overdue amounts, you will pay us, besides the overdue amounts, interest on such amounts from the date such amount were due until paid, at \$25 per day plus the lesser of: (i) 12% simple interest per year; or (ii) the highest interest rate allowed by law, whichever is less, calculated daily. Such interest will be in addition to any other remedies we may have under law or equity. We may debit your bank account automatically or deduct from amounts we owe you for service charges and interest. You acknowledge this Section is not our agreement to accept any payments after they are due or our commitment to extend credit to, or otherwise finance your operation of, the Kona Ice Franchise.~~



If any check or electronic fund transfer payment from you to us does not successfully convey funds due to insufficient funds, stop payment instructions, or any similar event, you shall pay, upon demand, a non-sufficient funds fee of \$100 per incidence.

#### ~~4.I — DOCUMENT FEE.~~

~~You must pay us a document fee of \$250 (“**Document Fee**”) if you need an additional copy of your franchise disclosure document or signed Franchise Agreement. You must be a current franchisee in good standing in order to obtain any documents from us.~~

#### ~~4.J — MONITOR CONTENT MANAGEMENT SOFTWARE FEE.~~

~~Your KEV will be equipped with an exterior monitor for displaying content that you can customize in accordance with our Monitor Guideline and Usage Policy contained in our Brand Manual. You will pay us a “**Monitor Content Management Software Fee**” of \$240 per year per monitor. The Monitor Content Management Software Fee is due at the same time as your Royalty.~~

#### ~~4.K. — BRANDED CUP FEE.~~

~~You will be required to pay this fee if an audit reveals your purchases of branded cups equals less than 30% of your gross sales unless you can provide written substantiation of your proper usage of branded cups in the operation of your Kona Ice Business. This fee is in addition to all of other rights and remedies that we have in the Franchise Agreement.~~

### ~~5. — TRAINING AND ASSISTANCE.~~

#### ~~5.A — INITIAL TRAINING.~~

~~You are required to complete our initial training program at the times and places we designate (“**Initial Training**”). Initial Training shall consist of a minimum of two and a maximum of four calendar days. The Managing Owner and, if applicable, “**Designated Manager**” (see Section 9.F) must attend and complete Initial Training to our satisfaction prior to the Kona Ice Franchise opening for business (“**Initial Training Deadline**”). If you have purchased an existing Kona Ice Franchise pursuant to this Franchise Agreement, the Initial Training Deadline will be the Effective Date.~~

~~———— We will provide Initial Training at no cost for one attendee. Additional persons may attend Initial Training at our then current training fees. We will pay for hotel and airfare for one attendee to attend the Initial Training (or reimburse one attendee’s hotel and airfare if you are in a fee deferral state), unless the Kona Ice Franchise is being acquired as the result of a Transfer. You are responsible for all other costs of attendance, including any and all travel and/or living expenses which you or any other attendees incur. We reserve the right to charge a fee for providing training and may require you to reimburse us for our associated costs and expenses. Any new Managing Owner or Designated Manager must also complete Initial Training to our satisfaction before assuming responsibility for the management of your Kona Ice Business. If any of your attendees are unable to complete Initial Training to our satisfaction, we may terminate this Franchise Agreement without refunding your Initial Franchise Fee.~~



## 5.B — ONGOING TRAINING.

~~Your previously trained and experienced employees and any newly hired employees must satisfactorily complete any required training courses and continuing education courses we periodically provide, or designate a third party to provide, at your cost at the times and locations we designate. You may also request that we provide you or your employees with additional training. If we agree to provide additional training, we may charge a tuition fee for these courses. You agree to pay all travel and living costs of your attendees. If we agree to provide additional training at your Kona Ice Business, you agree to pay us for all travel and living costs our trainers incur in traveling to your Kona Ice Business. You may attend, at your expense, all annual franchise conventions we may hold or sponsor and all meetings related to new products or services, new operational procedures or programs, training, management, sales or sales promotion, or similar topics. 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.~~

## 5.C — BRAND MANUAL.

~~We will loan you or provide you with access on our website to one copy of our proprietary and confidential operations manual (“**Brand Manual**”), which may include audio, video, websites, software, other electronic media, and/or written materials. The Brand Manual contains mandatory and suggested specifications, standards, operating procedures, and rules (“**System Standards**”) we periodically prescribe for operating a Kona Ice Business and information on your other obligations under this Franchise Agreement. You acknowledge that your compliance with the Brand Manual is vitally important to us and other System franchisees and is necessary to protect our reputation and the goodwill of the Marks and to maintain uniform quality of operation. However, while the Brand Manual is designed to protect our reputation and the goodwill of the Marks, it is not designed to control the day to day operation of the Kona Ice Business. We may modify the Brand Manual periodically to reflect changes in System Standards.~~

~~You agree to keep your copy of the **Brand Manual** current and in a secure location. If there is a dispute over its contents, our master copy of the Brand Manual shall control. You agree the Brand Manual’s contents are confidential and that you will not disclose the Brand Manual to any person other than Kona Ice Franchise employees who must know its contents. You will require anyone who may have access to the Brand Manual to sign a confidentiality agreement (the current form of which is attached to the Franchise Disclosure Document in Exhibit H). You may not copy, duplicate, record, or otherwise reproduce any part of the Brand Manual. If your copy of the Brand Manual is lost, destroyed, or significantly damaged, you agree to obtain a replacement copy at our then applicable charge. In addition, if you lose, give away, make unauthorized copies, fail to return or otherwise misappropriate, all or some of the Brand Manual, you will be required to pay us liquidated damages to offset the damages we will incur as a result of this misappropriation. These liquidated damages are determined by taking our total revenue from our previous fiscal year, multiplied by the fraction which results from taking one divided by the current number of Kona Ice franchisees as of the date of the misappropriation, except that this fee will not, under any circumstances, be less than \$30,000.~~

~~At our option, we may post some or all of the Brand Manual on a restricted website or extranet to which you will have access. If we do so, you agree to monitor and access the website or extranet for any updates to the Brand Manual or System Standards. Any passwords or other digital identifications necessary to access the Brand Manual on a website or extranet will be deemed part of Confidential Information (defined in Section 7 below).~~



#### ~~5.D — GENERAL GUIDANCE.~~

~~Upon reasonable request, we will advise you from time to time regarding the Kona Ice Franchise operation based on your reports or our inspections and will guide you with respect to: (1) standards, specifications, operating procedures, and methods that Kona Ice Franchises use; (2) purchasing required and authorized operating assets and other items and arranging for their distribution to you from us or the suppliers; (3) advertising and marketing materials and programs; (4) employee training; and (5) administrative, bookkeeping, accounting, and inventory control procedures. We will guide you in our Brand Manual; in bulletins or other written materials; by electronic media; by telephone consultation; and/or at our office or the Kona Ice Franchise. Our Brand Manual will also contain our “Success Guide.” We may provide you additional assistance upon your request, in our discretion. If we provide such assistance, you will be required to pay our then current fees.~~

#### ~~5.E — DELEGATION OF PERFORMANCE.~~

~~You agree we have the right to delegate to third party designees, whether these designees are our agents or independent contractors with whom we have contracted (1) the performance of any portion or all of our obligations under this Franchise Agreement, and (2) any right that we have under this Franchise Agreement. If we do so, such third party designees will be obligated to perform the delegated functions for you in compliance with this Franchise Agreement.~~

#### ~~5.F — STAFFING.~~

~~You must hire and supervise efficient, competent, and courteous persons as your employees for the operation of your Kona Ice Franchise. You must require all your employees to work in clean uniforms approved by us, but furnished at your cost or the employees’ cost as you may determine. You understand and acknowledge it is your responsibility to hire and supervise a satisfactory number of employees in order to efficiently operate the Kona Ice Business and meet your obligations under this Franchise Agreement. You alone are responsible for all employment decisions and functions of your Kona Ice Business, including, without limitation, those related to hiring, firing, training, establishing remuneration, compliance with wage and hour requirements, personnel policies, benefits, recordkeeping, supervision, and discipline of employees, regardless of whether you have received advice from us on these subjects or not. You will have sole authority and control over the day-to-day operations of the Kona Ice Business and its employees. We will have no duty or obligation to direct your employees or oversee your employment policies or practices, and we will have no liability for any action or settlement related to hiring, firing, training, establishing remuneration, compliance with wage and hour requirements, personnel policies, benefits, recordkeeping, supervision, and discipline of employees, and you agree to indemnify us for any such liabilities we incur. You agree that any direction you receive from us regarding employment policies should be considered as examples, and that you are responsible for establishing and implementing your own policies, and that you understand that you should do so in consultation with local legal counsel well versed in employment law. Your employees hired working for you will be your employees alone and will not, for any purpose, be deemed our employees or subject to our control, including with respect to any mandated or other insurance coverage, tax, or contributions, or requirements pertaining to withholdings, levied or fixed by any city, state, or federal governmental agency. You agree to inform each of your employees that you alone are the employer, and that we are not. You and we will file our own tax, regulatory, and payroll reports, and be responsible for all employee benefits and workers compensation payments with respect to our respective employees and operations, and we will save and indemnify one another of and from any liability of any nature whatsoever by virtue thereof.~~



## ~~6. INTELLECTUAL PROPERTY.~~

### ~~6.A OWNERSHIP AND GOODWILL OF MARKS.~~

~~Your right to use the Marks is derived use the Marks and the Patent are derived only from this Franchise Agreement and limited to your operating the Kona Ice FranchiseFranchised Business according to this Franchise Agreement and all System Standardsstandards we prescribe during its term. You agree that any use of the Marks and Patent by you and your Franchised Business shall contribute and inure to our benefit. Your unauthorized use of the Marks and/or Patent is a breach of this Franchise Agreement and infringes our rights in the Marks, and/or Patent. You acknowledge and agree that any unauthorized use of the Marks and/or Patent will cause us irreparable harm for which there is no adequate remedy at law and will entitle us to injunctive relief. You acknowledge and agree that your use of the Marks and Patent and any goodwill established by that use are exclusively for our benefit and this Franchise Agreement confers no does not confer any goodwill or other interests in the Marks or Patent upon you (other than the right to operate the Kona Ice FranchiseFranchised Business under this Franchise Agreement). All provisions of this Franchise Agreement relating to the Marks and Patent apply to any additional proprietary trade and service markstrademarks or patents we authorize you to use. You may not at any time during or after this Franchise Agreement's term contest or assist any other person in contesting the validity, or our ownership, of the Marks.~~

### ~~6.B LIMITATIONS ON YOUR USE OF MARKS.~~

~~You agree to use the Marks as the Kona Ice Franchise's sole identification, except you agree to of your Franchised Business; provided, however, you must identify yourself as its the independent owner and operator of your Franchised Business in the manner we prescribe. You have no right to sublicense or assign your right to use the Marks. You may not use any Mark (1) Marks in any modified form or as part of any corporate or legal business name, (2) or with any prefix, suffix, or other modifying words, terms, designs, or symbols (other than logos we have licensed to you), (3) in selling any unauthorized services or products, or (4) in any other manner we have not expressly authorized in writing. You may not use the KEV or any Additional Equipment or our Marks for purposes other than selling shaved ice, beverages, and related products without our express permission, which may be withheld in our sole discretion.~~

~~licensed to you by this Franchise Agreement). You may not use any Mark in advertising the transfer, sale, or other disposition of the Kona Ice Franchise or an ownership interest in you without our prior written consent, which we will not unreasonably withhold. You agree to: (i) prominently display the Marks prominently as we prescribe on the KEV and or in connection with any Additional Equipment and on forms, media advertising, supplies, and other promotional materials, posters and displays, receipts, stationery and forms that we designate. You agree, and in the manner we prescribe to give the notices notice of trade and service mark registrations we specify and to copyrights; and (ii) obtain any fictitious or assumed name registrations required under applicable law. You may not use the Marks in signing any contract, lease, mortgage, check, purchase agreement, negotiable instrument, or other legal obligation or in any manner that is likely to confuse or result in liability to us for any indebtedness or obligation of yours.~~

### ~~6.C NOTIFICATION OF INFRINGEMENTS AND CLAIMS.~~

~~You agree to notify us immediately of any apparent infringement or challenge to your use of any Mark, or of any person's claim of any rights in any Mark, and not to communicate with any person other than us, our attorneys, and your attorneys, regarding any infringement, challenge, or claim. Upon receipt of timely notice of action, claim, or demand against you related to any Mark, we shall have the sole right, but not the duty, to defend any such action. We may take the action we deem appropriate (including no~~



~~action) and exclusively control any litigation, U.S. Patent and Trademark Office proceeding, or other administrative proceeding arising from any infringement, challenge, or claim or otherwise concerning any Mark. If we, in our sole discretion, determine you have used the Marks under this Franchise Agreement, we will pay for such defense, including the cost of any judgment or settlement. In any defense or prosecution of any litigation related to any Mark, you shall cooperate with us. You agree to sign any documents and take any other reasonable action that, in the opinion of our attorneys, are necessary or advisable to protect and maintain our interests in any litigation or Patent and Trademark Office or other proceeding or otherwise to protect and maintain our interests in the Marks. At our option, you will join in any action, and, so long as we determine that your use of the Marks was in compliance with this Franchise Agreement, we shall reimburse you for any costs that you incur in joining the action. Any recovery will first go towards reimbursing us for any expenses that we incurred and the remainder, if any will be split equally between us.~~

#### ~~6.D — DISCONTINUANCE OF USE OF MARKS.~~

~~If it becomes advisable at any time for us and/or you to modify or discontinue using any Mark and/or to use one or more additional or substitute trade or service marks, you agree to comply with our directions within a reasonable time after receiving notice. We will not reimburse you for your direct expenses of changing Kona Ice Franchise signs, for any loss of revenue due to any modified or discontinued Mark, or for your expenses of promoting a modified or substitute trademark or service mark.~~

~~Our rights in this Section 6 apply to any and all of the Marks (and any portion of any Mark) we authorize you to use in this Franchise Agreement. We may exercise these rights at any time and for any reason, business or otherwise, in our sole discretion. You acknowledge both our right to take this action and your obligation to comply with our directions.~~

#### ~~6.E — COPYRIGHTED MATERIALS.~~

~~You acknowledge and agree that:~~

- ~~(1) — All right, title, and interest in and to all materials, including but not limited to, all artwork and designs, created by us, and used with the Marks or in association with the Kona Ice Franchise (“**Copyrighted Materials**”) is our property.~~
- ~~(2) — You shall not dispute, contest, or challenge, directly or indirectly, the validity or enforceability of the Copyrighted Materials or our ownership of the Copyrighted Materials, nor counsel, procure, or assist anyone else to do the same, nor will you take any action inconsistent with our ownership of the Copyrighted Materials, nor will you represent that you has any right, title, or interest in the Copyrighted Materials other than those expressly granted by this Franchise Agreement.~~
- ~~(3) — We may, in our sole and absolute discretion, apply to register or register any copyrights or patents with respect to the services and products associated with the System and the Copyrighted Materials. Our failure to obtain or maintain in effect any such application or registration is not a breach of this Franchise Agreement. You shall not, before or after termination or expiration of the Franchise Agreement, register or apply to register any Copyrighted Materials, anywhere in the world.~~



- ~~(4) Upon our request, you shall cooperate fully, both before and after termination or expiration of this Franchise Agreement and at our expense, in confirming, perfecting, preserving, and enforcing our rights in the Copyrighted Materials, including but not limited to, executing and delivering us such documents as we reasonably request for any such purpose, including but not limited to, assignments, powers of attorney, and copies of commercial documents showing sale and advertising of the services and products associated with the System. You hereby irrevocably appoint us as your attorney-in-fact for the purpose of executing such documents.~~
- ~~(5) We make no representation or warranty, express or implied, as to the use, exclusive ownership, validity, or enforceability of the copyrighted materials.~~
- ~~(6) You acknowledge and authorize us to use your likeness in a photograph in any and all of our publications, including printed and digital publications and on websites. You agree and understand that any photograph using your likeness will become our property and will not be returned. You agree and irrevocably authorize us to edit, alter, copy, exhibit, publish, or distribute any photograph of you for any lawful purpose. You agree and waive any rights to royalties or any other compensation related to our use of any photograph of you. You agree to hold harmless and forever discharge us from all claims, demands, and causes of action which you may have in connection with this authorization.~~

#### ~~6.F OWNERSHIP AND GOODWILL OF THE PATENT.~~

~~Your right to use the Patent is derived only from this Franchise Agreement and limited to your operating the Kona Ice Franchise according to this Franchise Agreement and all System Standards we prescribe during its term. Your unauthorized use of the Patent is a breach of this Franchise Agreement and infringes our rights in the Patent. You acknowledge and agree that any unauthorized use of the Patent will cause us irreparable harm for which there is no adequate remedy at law and will entitle us to injunctive relief. You acknowledge and agree that your use of the Patent and any goodwill established by that use are exclusively for our benefit and this Franchise Agreement does not confer any goodwill or other interests in the Patent upon you (other than the right to operate the Kona Ice Franchise under this Franchise Agreement). All provisions of this Franchise Agreement relating to the Patent apply to any additional patents we authorize you to use. You may not at any time during or after this Franchise Agreement's term contest or assist any other person in contesting the validity, or our ownership, of the Patent.~~

#### ~~6.G NOTIFICATION OF INFRINGEMENTS AND CLAIMS.~~

~~You agree to notify us immediately of any apparent infringement or challenge to your use of any Patent, or of any person's claim of any rights in any Patent, and not to communicate with any person other than us, our attorneys, and your attorneys, regarding any infringement, challenge, or claim. We may take the action we deem appropriate (including no action) and control exclusively any litigation, U.S. Patent and Trademark Office proceeding, or other administrative proceeding arising from any infringement, challenge, or claim or otherwise concerning any Patent. You agree to sign any documents and take any other reasonable action that, in the opinion of our attorneys, are necessary or advisable to protect and maintain our interests in any litigation or Patent and Trademark Office or other proceeding or otherwise to protect and maintain our interests in the Patent. We will reimburse you for your costs of taking any action we have directed you to take.~~



## ~~6.H — IMPROVEMENTS.~~

~~During the Initial Term, or any Interim Period, any improvements or additions to the System, patents, Copyrighted Materials, recipes, website, or any other documents or information pertaining to or relating to the System or the Kona Ice Franchise, or any new trade names, trade and service marks, logos, or commercial symbols related to the Kona Ice Franchise or any advertising and promotional ideas or inventions related to the Kona Ice Franchise (collectively, the “**Improvements**”) that you conceive or develop shall become our property. You agree to assign and do hereby assign to us, all right, title, and interest in and to the Improvements, including the right to grant sublicenses to any such Improvement. You shall fully disclose the Improvements to us, without disclosure of the Improvements to others, and shall obtain our written approval prior to using such Improvements. Any such Improvement may be used by us and all other Kona Ice franchisees without any obligation to you for royalties or other fees. We may, at our discretion, apply for and own copyrights, patents, trade names, trademarks, and service marks relating to any such Improvement and you shall cooperate with us in securing such rights. We may also consider such Improvements as our property and trade secrets. In return, we shall authorize you to utilize any Improvement that may be developed by other franchisees and is authorized generally for use by other franchisees. All Improvements created by you or any other person or entity retained or employed by you are our property, and we shall be entitled to use and license others to use such Improvements unencumbered by moral rights. If any of the Improvements are copyrightable materials, they shall be works made for hire within the meaning of the United States Copyright Act, and to the extent the Copyrighted Materials are not works made for hire or rights in the Copyrighted Materials do not automatically accrue to us, you irrevocably assign and agree to assign to us, its successors, and assigns, the entire right, title, and interest in perpetuity throughout the world in and to any and all rights, including all copyrights and related rights, in such Copyrighted Materials, which you and the author of such Copyrighted Materials warrant and represent as being created by and wholly original with the author. Where applicable, you agree to obtain any other assignments of rights in the Improvements from another person or entity necessary to ensure our right in the Improvements as required in this Section.~~

## ~~7. — CONFIDENTIAL INFORMATION.~~

### ~~7.A — KONA ICE CONFIDENTIAL INFORMATION.~~

~~We possess (and will continue to develop and acquire) certain confidential information, some of which constitutes trade secrets under applicable law (the “**Confidential Information**”), relating to developing and operating the Kona Ice Franchise, including (without limitation):~~

- ~~(1) — Protected Territory selection criteria;~~
- ~~(2) — training and operations materials and manuals;~~
- ~~(3) — methods, formats, specifications, standards, systems, procedures, sales and marketing techniques, knowledge, and experience used in developing and operating the Kona Ice Franchise;~~
- ~~(4) — marketing and advertising programs for the Kona Ice Franchise;~~
- ~~(5) — knowledge of, specifications for and suppliers of assets and other products and supplies;~~



- (6) ~~any computer software or similar technology proprietary to us or the System, including, without limitation, our proprietary KonaOS operating software, digital passwords and identifications and any source code of, and data, reports, and other printed materials generated by, the software or similar technology;~~
- (7) ~~knowledge of the operating results and financial performance of Kona Ice Franchises other than the Kona Ice Franchise; and~~
- (8) ~~all customer data, lists, and other information generated by Kona Ice Franchises.~~

#### **17.4 Any Use of Confidential Information**

~~You acknowledge that you will use the Confidential Information is our sole property, and you agree to never claim rights to or otherwise challenge our ownership of such only in operating the Franchised Business, and you will not disclose Confidential Information to others, except as expressly authorized by this Franchise Agreement. You will take all actions to preserve the confidentiality of all Confidential Information does not include information, knowledge, or know how which you can demonstrate lawfully came to your attention before we provided it to you directly or indirectly; which, when we disclosed it to you, already had lawfully become generally known in the food and beverage industry through publication or communication by others (without violating an obligation to us); or which, after we disclose it to you, lawfully becomes generally known in the food and beverage industry through publication or communication by others (without violating an obligation to us). However, if we include any matter in, including safeguarding access to the Brand Manual. You will not copy or permit copying of Confidential Information; anyone who claims it is not. Your obligations under this Section begin when you sign this Franchise Agreement and continue for trade secrets as long as they remain secret, and, for other Confidential Information must prove that one of the exclusions in this paragraph is fulfilled.~~

~~You, your Owners, and, if applicable, your, for as long as we continue to use the information in confidence (even if edited or revised) plus an additional three years afterwards. We will respond promptly and in good faith to any inquiry by you about continued protection of any Designated Manager must sign a written agreement, in the form attached to the Franchise Disclosure Document, to maintain confidential our Confidential Information described in Sections 7 and 16, and to abide by the covenants not to compete described in Section 16.~~

#### **7.B RESTRICTIONS ON CONFIDENTIAL INFORMATION.**

~~You acknowledge and agree that you will not acquire any interest in Confidential Information, other than the right to use it as we specify in operating the Kona Ice Franchise during the term of this Franchise Agreement, that such Confidential Information is proprietary, includes our trade secrets, and is disclosed to you only on the condition that you agree; and that you:~~

- (1) ~~will not use Confidential Information in any other business or capacity;~~

~~will keep each item deemed part of Confidential Information absolutely confidential, both during this Franchise Agreement's term and then thereafter for as long as the item is not generally known in the food and beverage industry, except for~~All data you collect, create, provide or otherwise develop (including, but not limited to, customer information and customer lists) is (and will be) owned exclusively by us, and we will have the right to use such data in any manner that we deem appropriate without compensation to you. Copies and/or originals of such data must be provided to us upon our request. We license use of such data back to you, at no additional cost, solely for the Term of this Franchise Agreement and solely for your use



in connection with the Franchised Business. You agree to provide us with the information we reasonably require regarding data and cybersecurity requirements. You agree to indemnify us for any loss of data, including, but not limited to, customer information resulting from a breach of such data caused, in whole or in part, by you. You agree to solely use customer lists and customer information for the operation of the Franchised Business and for no other purpose.

The restrictions on the disclosure and use of the Confidential Information will not apply to disclosure of Confidential Information: (i) made in confidence to a government official, either directly or indirectly, or to an attorney, solely for the purpose of reporting or investigating a suspected violation of law; (ii) made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal; or (iii) made in cases of suit for retaliation based on the reporting of a suspected violation of law, disclosure of Confidential Information to an attorney, and for use of the Confidential Information in such court proceeding, so long as any document containing the Confidential Information is filed under seal and Confidential Information is not otherwise disclosed except pursuant to a court order;

~~(2) — will We do not make unauthorized copies of any representation or warranty that your use of the System and Confidential Information disclosed via electronic medium or in written will not infringe on the patent, copyright or other tangible form; and~~

~~proprietary rights of third parties. You agree that we will adopt and implement reasonable procedures have no liability to prevent unauthorized use you if the System and/or disclosure of any Confidential Information, including, without limitation, restricting its disclosure to Kona Ice Franchise personnel is held not to be secret or confidential or in the event that any infringement of others' proprietary rights occurs because of your use of the System and others and using confidentiality agreements with those having access to Confidential Information. We have the right to regulate the form of agreements you use and to be a third party beneficiary of those agreements with independent enforcement rights.~~

## ~~8. — EXCLUSIVE RELATIONSHIP.~~

~~You acknowledge that we have granted you the Kona Ice Franchise in consideration of and reliance upon your agreement to deal exclusively with us. You therefore agree that, during this Franchise Agreement's term, neither you, any of your Owners, nor any of your or your Owners' spouses or other immediate family members will:~~

- ~~(1) — have any direct or indirect controlling or non-controlling interest as an owner — whether of record, beneficially, or otherwise, in a Competitive Business (as defined below), wherever located or operating (except that equity ownership of less than 5% of a Competitive Business whose stock or other forms of ownership interest are publicly traded on a recognized United States stock exchange will not be deemed to violate this subparagraph);~~
- ~~(2) — perform services as a director, officer, manager, employee, consultant, representative, or agent for a Competitive Business, wherever located or operating;~~
- ~~(3) — divert or attempt to divert any actual or potential business or customer of the Kona Ice Franchise to a Competitive Business;~~
- ~~(4) — loan money to a Competitive Business;~~
- ~~(5) — interfere with us, our affiliates, or any other Kona Ice Franchise; or~~



- ~~(6) — engage in any other activity which may injure the goodwill of the Marks, Patent, and/or the System.~~

~~The term “**Competitive Business**” means (i) any business providing shaved ice and beverage products and/or services, or any similar products and/or services that directly compete with shaved ice and beverage products or (ii) any business granting franchises or licenses to others to operate the type of business specified in subparagraph (i); provided that a franchise operated under a franchise agreement, with us or our affiliates, shall not be deemed a Competitive Business.~~

~~You agree to obtain similar covenants from the personnel we specify, including officers, directors, managers, and other employees attending our training program or having access to Confidential Information. We have the right to regulate the form of agreement you use and to be a third party beneficiary of that agreement with independent enforcement rights.~~

## ~~9. — SYSTEM STANDARDS.~~

### ~~9.A — CONDITION AND APPEARANCE OF THE KONA ICE FRANCHISE.~~

~~You agree that:~~

- ~~(1) — you will, at your own cost and expense, purchase, install, maintain, and refurbish the condition and appearance of the Kona Ice Franchise, including the KEV and any Additional Equipment, supplies, and signage, in accordance with System Standards and our specifications and requirements, and consistent with the image of a Kona Ice Franchise as an efficiently operated business offering high quality services and products and observing the highest standards of cleanliness, sanitation, efficient, courteous service and pleasant ambiance, and in furtherance of these standards will take, without limitation, the following actions during the term of this Franchise Agreement: (a) thorough cleaning, repainting, and redecorating of the interior and exterior of the KEV and any Additional Equipment at intervals we prescribe; (b) interior and exterior repair of the KEV and any Additional Equipment; and (c) repair or replacement of damaged, worn out, or obsolete assets used in the operation of the Kona Ice Franchise;~~
- ~~(2) — you will place or display on the KEV and any Additional Equipment, only those signs, emblems, designs, artwork, lettering, logos, and display, as we approve from time to time;~~
- ~~(3) — if at any time in our reasonable judgment, the general state of repair, appearance, or cleanliness of the KEV and any Additional Equipment of the Kona Ice Franchise or its fixtures, furnishings, equipment, assets, or signs does not meet our standards, we have the right to notify you, and specify the action you must take to correct the deficiency.~~
- ~~(4) — at our request, you will periodically improve and modify the KEV and any Additional Equipment to conform to the then current System Standards.~~

### ~~9.B — STANDARDS ON PRODUCTS AND SERVICES OFFERED.~~

~~You agree that: (1) the Kona Ice Franchise will offer the services and products we specify from time to time; (2) the Kona Ice Franchise will offer and sell services and products only by means of, and only at, the KEV and any Additional Equipment and/or in the manner we have prescribed; (3) you will not offer for sale, or sell any products or services we have not approved; and (4) you will discontinue selling~~



and offering for sale any products or services we at any time decide (in our sole discretion) to disapprove in writing.

#### 9.C — CUSTOMER INFORMATION.

~~We may contact any customer of any Kona Ice Franchise at any time for any purpose. Also, if a customer or other patron of the Kona Ice Franchise who wishes to lodge a complaint contacts us, we reserve the right to address the person's complaint to preserve goodwill and prevent damage to the brand. Our right to address complaints may include refunding money to the complaining person, in which case you must reimburse us for these amounts. We, or our authorized representative, shall have the right, during regular business hours, or at such other times as may be mutually agreed upon by you and us, to inspect all customer lists and documents and records related thereto. All data that you collect, create, provide, or otherwise develop in your Kona Ice Business, including customer information, is and will be owned by us, and we will have the right to use such data in any manner we deem appropriate without compensation to you. Upon reasonable request, you must furnish to us, in whatever format we require, all customer information and records for the Kona Ice Franchise.~~

#### 9.D — APPROVED PRODUCTS, DISTRIBUTORS AND SUPPLIERS.

~~We have developed or may develop standards and specifications for types, models, and brands of required assets, fixtures, equipment, signs, and other products, materials, and supplies. We reserve the right from time to time to approve specifications or suppliers and distributors of the above products that meet our reasonable standards and requirements. If we do so, you agree to purchase only such products meeting those specifications, and if we require it, only from distributors and other suppliers we have approved, including ourselves or our affiliates in accordance with the System Standards including, by way of example only, Kreations flavoring and Kona Ice branded cups. Any sale or use of unauthorized products, materials, supplies, or other violation of our System Standards by you will result in a notice of violation and the applicable violation fee set forth in Section 9.J.~~

~~We may designate ourselves as the approved distributor or supplier, or we may designate a single distributor or supplier for any product, service, equipment, supply, or material, and may approve a supplier or distributor only as to certain products, including your computer system. The designated supplier may be us or an affiliate of ours. You must provide us with any data relating to your Kona Ice Franchise we may request.~~

~~We may concentrate purchases with one or more suppliers or distributors to obtain lower prices or the best advertising support or services. ~~Approval~~ of a supplier or distributor may be conditioned on requirements relating to product quality, prices, consistency, reliability, financial capability, labor relations, customer relations, frequency of delivery, concentration of purchases, standards of service, including prompt attention to complaints, or other criteria and may be temporary, pending our continued evaluation of the supplier or distributor from time to time. You acknowledge and agree that we and/or our affiliates may derive revenue based on your purchases and leases, including, without limitation, from charging you for services and products we or our affiliates provide to you and from payments made to us or our affiliates by suppliers we designate or approve for some or all of our franchisees.~~

~~If you would like to purchase any items from any unapproved supplier or distributor, you must submit to us a written request for approval of the proposed supplier or distributor or have the proposed supplier or distributor submit its own request. We will use commercially reasonable efforts to notify you~~



~~within 60 days after receiving all requested information and materials whether you are authorized to purchase or lease the product or service from that supplier or provider. We may charge the cost of evaluating a proposed new vendor, supplier, or product to you, or the vendor or supplier. We have the right to inspect the proposed supplier's or distributor's facilities, and to require product samples from the proposed supplier or distributor to be delivered either directly to us or to any independent, certified laboratory which we designate for testing. We reserve the right to periodically re-inspect the facilities and products of any approved supplier or distributor and to revoke our approval if the supplier or distributor does not continue to meet any of our criteria.~~

~~9.E — COMPLIANCE WITH LAWS AND GOOD BUSINESS PRACTICES.~~

~~You must secure and maintain in force all required licenses, permits, and certificates relating to the operation of the Kona Ice Franchise and must at all times operate the Kona Ice Franchise in full compliance with all applicable laws, ordinances, and regulations including, without limitation, government regulations relating to truth in lending, Department of Transportation regulations, safety and sanitation, truth in advertising, occupational hazards, health, laws relating to non-discrimination in hiring and accessibility, worker's compensation and unemployment insurance. You must withhold and pay all applicable federal and state taxes, social security taxes and sales and service taxes. The Kona Ice Franchise must in all dealings with its customers, suppliers, us, and the public adhere to the highest standards of honesty, integrity, fair dealing, and ethical conduct. You agree to refrain from any business or advertising practice which may be injurious to our business and the goodwill associated with the Marks and other Kona Ice Franchise. You agree to comply with all applicable laws pertaining to the privacy of customer, employee, and transactional information ("**Privacy Laws**"). ~~You also agree to comply with our standards and policies pertaining to Privacy Laws.~~ If there is a conflict between our standards and policies pertaining to Privacy Laws and actual applicable law, you will: (a) comply with the requirements of applicable law; (b) immediately give us written notice of said conflict; and (c) promptly and fully cooperate with us and our counsel in determining the most effective way, if any, to meet our standards and policies pertaining to Privacy Laws within the bounds of applicable law. You agree not to publish, disseminate, implement, revise, or rescind a data privacy policy without our prior written consent as to said policy. You must notify us in writing within five days of the threat of or commencement of any action, suit, or proceeding, and of the issuance of any order, writ, injunction, award, or decree of any court, agency, or other governmental instrumentality, which may adversely affect your operation or financial condition or that of the Kona Ice Franchise and of any notice of violation of any law, ordinance, or regulation relating to the Kona Ice Franchise.~~

~~If any product dispensed by your Kona Ice Business violates our System Standards or any applicable laws or regulations, or poses a health risk to the public, we may require that you immediately close your Kona Ice Business and not reopen until approved to do so by us and, if applicable, by any governmental entity or agency. In order to protect the public from any risk of harm and to protect the goodwill and reputation of the System, we may seek immediate injunctive relief seeking an order to close your Kona Ice Business if you fail to close your Kona Ice Business upon our request. In the event that injunctive relief is necessary, you shall pay all costs and expenses, including our attorneys' fees and costs incurred. The remedies herein are in addition to and not in substitution for those stated elsewhere in this Franchise Agreement.~~



9.F — MANAGEMENT OF THE KONA ICE FRANCHISE.

**17.5** ~~Subject to this Section, the Managing Owner shall directly supervise and participate in the day-to-day operation of the Kona Ice Franchise during the term of this Franchise Agreement. At your request, we may, but are not obligated to, agree for you to employ a Designated Manager after the first 60 days of operation (other than the Franchisee/Managing Owner) to operate the Kona Ice Franchise. The term “Designated Manager” means an individual with primary day-to-day responsibility for the Kona Ice Franchise’s operations, and may be you (if you are an individual) or an Owner, officer, director, or employee of yours (if you are other than an individual). The Designated Manager shall have similar responsibilities as a Managing Owner. You must deliver to us an amended Attachment A accurately identifying such appointed Designated Manager. The Designated Manager will be obligated to devote his or her full time, best efforts, and constant personal attention to the Kona Ice Franchise’s operations, and must have full authority in order to comply with this Franchise Agreement. You must not hire any Designated Manager or successor Designated Manager without first receiving our written approval of such Designated Manager’s qualifications. Each Designated Manager must attend and complete our Initial Training program (as detailed in Section 5 of this Franchise Agreement) and sign a System Protection Agreement, the current form of which is attached to the Franchise Disclosure Document as Exhibit H. You must forward to us a copy of each such signed agreement. If we determine, in our sole discretion, during or following completion of the Initial Training program, that your Designated Manager (if any) is not qualified to act as designated manager of the Kona Ice Franchise, then we have the right to require you to choose (and obtain our approval of) a new individual for that position. If you are required to appoint a new Designated Manager, you must do so within 30 days of the termination of the previous Designated Manager.~~**Improvements**

If you conceive of or develop any Improvements, you agree to promptly and fully disclose the Improvements to us without disclosing the Improvements to others. You must obtain our approval before using any such Improvements. Any Improvement we approve may be used by us and any third parties we authorize to operate a Franchised Business, without any obligation to pay you royalties or other fees. You must assign to us or our designee, without charge, all rights to any such Improvement, including the right to grant sublicenses. In return, we will authorize you to use any Improvements we or other franchisees develop that we authorize for general use with the operation of a Franchised Business. These obligations shall survive the termination, expiration or Transfer of this Franchise Agreement.

**17.6 Notification of Intellectual Property Issues**

You must notify us as soon as possible, but no later than three business days of any: (i) apparent infringement of any of the Intellectual Property; (ii) challenge to your use of any of the Intellectual Property; or (iii) claim by any person of any rights in any of the Intellectual Property. You may not communicate with any person other than us and our counsel in connection with any such infringement, challenge or claim. We will have sole discretion to take such action as we deem appropriate. We have the right to exclusively control any litigation, Patent and Trademark Office proceeding, or other proceeding arising out of any such infringement, challenge or claim. You agree to execute any and all instruments and documents, render such assistance, and do such acts and things as may, in the opinion of our counsel, be necessary or advisable to protect and maintain our interest in any such litigation, Patent and Trademark Office proceeding, or other proceeding, or to otherwise protect and maintain our interest in the Intellectual Property.



## **18. BRAND COVENANTS**

### **18.1 Reason for Covenants**

The covenants in this Section 18 shall be referred to as the “Brand Covenants.”

You acknowledge that the System is distinctive and has been developed by us and/or our affiliates at great effort, time and expense, and that the Intellectual Property and the training and assistance we provide would not be acquired except through implementation of this Franchise Agreement. You also acknowledge that competition by you, the Owners, or persons associated with you or the Owners (including family members) could jeopardize the entire System because you and the Owners have received an advantage through knowledge of our day-to-day operations and Confidential Information related to the System. Accordingly, you and the Owners agree to comply with the covenants described in this Section to protect the Intellectual Property and our System.

### **18.2 Unfair Competition During the Term**

For purposes of this Franchise Agreement, “Competitive Business” means any business that: (i) operates as a food truck or primarily serves food and/or beverages from a vehicle, kiosk or other moveable property; (ii) derives at least 5% or more of its gross sales from the offering of shaved ice, snow cones, ice cream or similar products; (iii) sells or offers to sell products the same as or similar to the type of products sold by the Franchised Business as the concept evolves over time; (iv) provides or offers to provide services the same as or similar to the type of services sold by you; or (v) any business that grants franchises or licenses to others to operate the types of businesses specified in subparagraphs (i) through (iv), but excludes a Franchised Business operating under a franchise agreement with us or our affiliates. A Competitive Business shall not include ownership of up to five percent (5%) of any publicly-held company or mutual fund that owns, operates, has an interest in, or controls any business that otherwise would meet the definition of a Competitive Business.

You agree not to compete with us during the Term by engaging in any of the following activities (“Prohibited Activities”): (i) owning, operating, or having any other interest (as an owner, partner, director, officer, employee, manager, consultant, shareholder, creditor, representative, agent, or in any similar capacity) in any Competitive Business; (ii) diverting or attempting to divert any business from us (or one of our affiliates or franchisees); or (iii) inducing any customer of ours (or of one of our affiliates’ or franchisees’) to transfer their business to you or to any other person that is not then a franchisee of ours.

### **18.3 Unfair Competition After the Term**

For purposes of this Section, the “Restricted Period” means a period of two years after the termination, expiration or Transfer of this Franchise Agreement. For purposes of this Section, the “Restricted Territory” means the geographic area within: (i) a 20-mile radius of the Territory; and (ii) a 20-mile radius from all other Franchised Businesses that are operating as of the date of the termination, expiration or Transfer of this Franchise Agreement.

During the Restricted Period, you agree that you will not engage in any Prohibited Activities within the Restricted Territory and that you will cause each of your Owners to not engage in any Prohibited Activities within the Restricted Territory. If you or any Owner engages in a Prohibited Activity within the Restricted Territory during the Restricted Period, then the Restricted Period applicable to you (and applicable to each non-compliant Owner under the Franchise Owner Agreement) will be extended by the period of time during which you or the non-compliant Owner, as applicable, engaged in the Prohibited Activity.



#### **18.4 Employees and Others**

Any Franchise Manager and, if you are an Entity, any officer that does not own equity in you must sign our current System Protection Agreement. You must ensure that all of your employees, officers, directors, partners, members, independent contractors, and other persons associated with you or your Franchised Business who may have access to our Confidential Information, and who are not required to sign a System Protection Agreement, sign the Confidentiality Agreement before having access to our Confidential Information. You must use your best efforts to ensure these individuals comply with the terms of the Confidentiality Agreements and System Protection Agreements, and you must immediately notify us of any breach that comes to your attention. You agree to reimburse us for all expenses we incur in enforcing a Confidentiality Agreement or System Protection Agreement, including reasonable attorney fees and court costs.

#### **18.5 Covenants Reasonable**

The parties agree that the Brand Covenants will be construed as independent of any other covenant or provision of this Franchise Agreement. It is the parties' intent that the provisions of this Section be judicially enforced to the fullest extent permissible under applicable law. If all or any portion of any Brand Covenant is held unreasonable or unenforceable by a court or agency having valid jurisdiction in a final decision to which we are a party, you agree to be bound by any lesser covenant subsumed within the terms of such Brand Covenant that imposes the maximum duty permitted by law, as if the resulting Brand Covenant were separately stated in and made a part of this Section. Accordingly, the parties agree that any reduction in scope or modification of any part of the non-competition provisions contained herein shall not render any other part unenforceable. You acknowledge and agree that: (i) the terms of this Franchise Agreement are reasonable both in time and in scope of geographic area; (ii) our use and enforcement of covenants similar to those described above with respect to other Kona Ice franchisees benefits you and the Owners because it prevents others from unfairly competing with your Franchised Business; and (iii) you and the Owners have sufficient resources and business experience and opportunities to earn an adequate living while complying with the terms of this Franchise Agreement. You hereby waive any right to challenge the terms of the Brand Covenants as being overly broad, unreasonable or otherwise unenforceable.

We have the right, in our sole discretion, to unilaterally reduce the scope of all or part of any Brand Covenant without your consent (before or after any dispute arises), effective when we give you written notice of this reduction and you agree to comply with any covenant as so modified.

#### **18.6 Breach of Covenants**

You agree that failure to comply with the terms of Brand Covenants will cause substantial and irreparable damage to us and/or other Kona Ice franchisees for which there is no adequate remedy at law. Therefore, you agree that any violation of the terms of this Section 18

will entitle us to injunctive relief. We may apply for such injunctive relief without bond, but upon due notice, in addition to such further and other relief as may be available at equity or law, and the sole remedy of yours, in the event of the entry of such injunction will be the dissolution of such injunction, if warranted, upon hearing duly held (all claims for damages by reason of the wrongful issuance of any such injunction being expressly waived hereby). Notwithstanding the foregoing, if a court requires the filing of a bond, the parties agree that the amount of the bond shall not exceed \$1,000. None of the remedies available to us, at law or in equity, under this Franchise Agreement are mutually exclusive, and may be combined with others, including injunctive relief, specific performance, and recovery of monetary damages. Any claim, defense



or cause of action you or an Owner may have against us, regardless of cause or origin, cannot be used as a defense against our enforcement of the Brand Covenants.

## **2.19. INSURANCE.**

~~Franchisee~~Before your Franchised Business opens for business, you shall procure, maintain, and provide evidence of insurance as follows: (a) workers' compensation insurance in an amount not less than \$500,000 or a higher amount as prescribed by state statute or rule in the state in which your ~~Kona~~ Franchised Business is located; (b) comprehensive business automobile insurance, including physical damage for the KEV and KEV 2.0 Truck, if applicable, in an amount of ~~\$139,250~~146,491 or greater, except that an appropriate deductible clause (maximum ~~of~~or \$5,000 deductible) will be permitted, also including any ancillary equipment and any other property used in the operation of the ~~Kona~~ Franchised Business; (c) comprehensive general liability insurance and product liability insurance coverage in such amounts and upon such terms as may from time to time be customary for a ~~mobile food~~ shaved ice business in your ~~Protected~~ Territory, but not less than \$1,000,000, insuring both you and us against all claims, suits, obligations, liabilities, and damage, including attorney fees, based upon or arising out of actual or alleged personal injuries or property damage relating to the use or condition of the KEV or Additional Equipment; (d) automobile (truck) vehicle liability insurance covering the driving of the KEV and any Additional Equipment in an amount of not less than \$1,000,000; ~~and (e)~~(e) event liability insurance in the amount that we specify; and (f) such additional insurance as we may periodically require.

All of these policies must contain the minimum coverage we periodically prescribe in our Brand Manual or other written communications to you, and must have deductibles not to exceed the amounts we specify. These insurance policies, except for employment liability insurance policies, must name us and any affiliates we designate as additional named insureds.

If your state requires higher coverages than we prescribe, you will be required to obtain insurance that satisfies your state law requirements. We may periodically increase the amounts of coverage required under these insurance policies and/or require different or additional insurance coverage (including reasonable excess liability insurance) at any time to reflect inflation, identification of new risks, changes in law or standards of liability, higher damage awards, or other relevant changes in circumstances as provided in our Brand Manual, as amended from time to time. These insurance policies must be purchased from an insurance company satisfactory to us and provide for 30 days prior written notice to us of a policy's material modification, cancellation, or expiration. You may purchase this insurance through our captive insurance program, which is offered through our affiliate. Each insurance policy must contain a waiver of all subrogation rights against us, our affiliates, and their successors and assigns. You must routinely furnish us copies of your certificates of insurance or other evidence of your maintaining this insurance coverage and paying premiums. If you fail to maintain any required insurance coverage, we have the right to obtain the coverage on your behalf (which right shall be at our option and in addition to our other rights and remedies in this Franchise Agreement), and you must promptly sign all applications and other forms and instruments required to obtain the insurance and pay to us, within ten days after invoicing, all costs and premiums that we incur, plus a 20% administrative surcharge.



## **20. REPORTING REQUIREMENTS**

### **20.1 Books and Records**

You agree to record all transactions and gross sales of your Franchised Business in the manner we specify. You agree to prepare and maintain for at least seven years after their preparation, complete and accurate books, records, accounts and tax returns pertaining to your Franchised Business including a list of all customers that your Franchised Business does business with and all contracts that your Franchised Business enters into. You must send us copies of your books, records, customer data and contracts within five days of our request. This obligation survives the expiration, termination or Transfer of this Franchise Agreement.

### **20.2 Reports**

You will prepare and submit other reports and information about your operations as we may request in writing or as required by the Brand Manual. You will submit all required reports in the formats and by the due dates specified in the Brand Manual. We may modify the deadline days and times for submission of all reports. We may require, in our sole discretion, that certain reports be certified as accurate and complete by you, your owners or your chief financial officer, and that they be submitted in certain methods or formats. If requested by us, your profit and loss statements and balance sheets must be certified by a certified public accountant at your expense. You must also make your certified public accountant available and cover the cost for him or her to consult with us concerning these statements and balance sheets.

### **20.3 Financial and Tax Statements**

You will deliver the financial statements that we proscribe, which may include balance sheet, profit and loss statement, statement of cash flows and explanatory footnotes prepared under generally accepted accounting principles applied on a consistent basis or such other items we designate related to the financial activity of the Franchised Business (“Financial Statements”) to us within the time period required by the Brand Manual. All Financial Statements must be in the form specified by us and must conform to our standard chart of accounts as prescribed by us. We have the right to use such Financial Statements in our franchise disclosure document to make financial performance representations and to share these reports on a system-wide intranet or other similar means.

You must also provide us with complete signed copies of all state sales tax returns and state and federal income tax returns covering the operation of the Franchised Business within 30 days of filing.

### **20.4 Legal Compliance**

You must secure and maintain in force all required licenses, permits and regulatory approvals for the operation of your Franchised Business, and operate and manage your Franchised Business in full compliance with all applicable laws, ordinances, rules and regulations including, without limitation, government regulations relating to truth-in-lending, Department of Transportation regulations, safety and sanitation, truth in advertising, occupational hazards, health, laws relating to non-discrimination in hiring and accessibility, worker’s compensation and unemployment insurance. You are solely responsible for complying with all federal, state and local tax laws, agree to timely pay all applicable federal, state and local taxes, and timely file all returns, notices and other forms required to comply with all federal, state and local tax laws in connection with the operation of the Franchised Business. You and the Franchised Business must, in all dealings with customers, suppliers, us, and the public adhere to the highest standards



of honesty, integrity, fair dealing, and ethical conduct. It is your responsibility to make sure that you comply with all laws that are applicable to the Technology.

You must notify us in writing within three business days of the beginning of any action, suit, investigation or proceeding, or of the issuance of any order, writ, injunction, disciplinary action, award or decree of any court, agency or other governmental instrumentality, which may adversely affect the operation of your Franchised Business or your financial condition. You must immediately deliver to us a copy of any inspection report, warning, certificate or rating by any governmental agency involving any health or safety law, rule or regulation that reflects a claim you have failed to fully comply with the law, rule or regulation.

If any product dispensed by your Franchised Business violates our System standards or any applicable laws or regulations, or poses a health risk to the public, we may require that you immediately close the Franchised Business and not reopen until approved to do so by us and, if applicable, by any governmental entity or agency. In order to protect the public from any risk of harm and to protect the goodwill and reputation of the System, we may seek immediate injunctive relief seeking an order to close your Kona Ice Business if you fail to close your Kona Ice Business upon our request. In the event that injunctive relief is necessary, you shall pay all costs and expenses, including our attorneys' fees and costs incurred. The remedies herein are in addition to and not in substitution for those stated elsewhere in this Franchise Agreement.

#### 9.G — PRICING.

~~We may, from time to time, make suggestions to you regarding your pricing policies in compliance with applicable laws. We retain the right to establish minimum and maximum prices to be charged by you, subject to applicable laws, but any exercise of that right will be specifically set forth in writing. It is furthermore understood and agreed that any list or schedule of prices furnished to you by us may unless otherwise specifically stated as to the minimum or maximum price be treated as a recommendation only and failure to accept or implement any such suggestion may not in any way affect the relationship between you and us.~~

#### 9.H — COMPLIANCE WITH SYSTEM STANDARDS.

~~You acknowledge and agree that operating and maintaining the Kona Ice Franchise according to System Standards is essential to preserve the goodwill of the Marks and all Kona Ice Franchises. You agree at all times to operate and maintain the Kona Ice Franchise according to all of our System Standards, as we periodically modify and supplement them, even if you believe that a System Standard, as originally issued or subsequently modified, is not in the System's or your best interests, and those modifications may require you to invest additional capital in the Kona Ice Business and/or incur higher operating expenses. Although we retain the right to establish and periodically modify System Standards you have agreed to maintain, you retain the right to and responsibility for the day to day management and operation of the Kona Ice Franchise and implementing and maintaining System Standards at the Kona Ice Franchise.~~

~~As examples, and without limitation, System Standards may regulate any one or more of the following, in addition to the items described in Sections 9.A through 9.I above:~~

- ~~(1) — amounts and types of equipment and inventory requirements for products and supplies so the Kona Ice Franchise may operate at full capacity;~~



- ~~(2) — terms and conditions of the sale and delivery of, and terms and methods of payment for, services and products you obtain from us and affiliated and unaffiliated suppliers; and our affiliates’ right not to sell you any products or to provide services, or to do so only on a “cash on delivery” or other basis, if you are in default under any agreement with us;~~
- ~~(3) — sales, marketing, advertising, and promotional programs and materials and media used in these programs;~~
- ~~(4) — use and display of the Marks for the Kona Ice Business and on labels, forms, paper, products, and other supplies;~~
- ~~(5) — identifying the Kona Ice Franchise personnel; and employee qualifications, training, dress, and appearance (although you have sole responsibility and authority concerning employee selection and promotion, hours worked, rates of pay and other benefits, work assigned, and working conditions);~~
- ~~(6) — days and hours of operation;~~
- ~~(7) — participation in market research and testing and product and service development programs and participation in, and dues assessed for, advisory councils;~~
- ~~(8) — accepting all payment methods and compliance programs and systems relating to the same, and compliance with then-current Payment Card Industry Data Security Standards or other standards we may reasonably specify;~~
- ~~(9) — bookkeeping, accounting, data processing, and recordkeeping systems and forms; formats, content, and frequency of reports to us of sales, revenue, financial performance, and condition; and giving us copies of tax returns and other operating and financial information concerning the Kona Ice Franchise; and~~
- ~~(10) — any other aspects of operating and maintaining the Kona Ice Franchise we determine to be useful to preserve or enhance the efficient operation, image, or goodwill of the Marks and Patent and Kona Ice Franchise.~~

~~You agree that System Standards we prescribe in the Brand Manual, or otherwise communicate to you in writing or another tangible form (for example, via a System extranet or website), are part of this Franchise Agreement as if fully set forth within its text. All references to this Franchise Agreement include all System Standards as periodically modified.~~

#### ~~9.1 — MODIFICATION OF SYSTEM STANDARDS.~~

~~We periodically may modify System Standards, and these modifications may obligate you to invest additional capital in the Kona Ice Franchise and/or incur higher operating costs. You agree to implement any changes in System Standards within the time we request, whether they involve refurbishing or remodeling the KEV and any Additional Equipment or any other aspect of the Kona Ice Franchise, buying new equipment and/or assets, adding new services and products, adding personnel, or otherwise modifying your operations, as if they were part of this Franchise Agreement as of the Effective Date.~~

~~Because complete and detailed uniformity under many varying conditions may not be possible or practical, you acknowledge that we specifically reserve the right and privilege, as we consider best, in our~~



sole discretion, to modify System Standards for any franchise owner based upon circumstances we consider important to promote that franchise owner's, or the System's, successful operation. We may choose not to authorize similar variations or accommodations to you or other franchisees and are not required to do so.

If you fail to follow any of the System Standards, we may send you a notice of violation and charge you a fee of \$1,000 for the first violation and \$5,000 for the second and each additional violation. If you fail to comply with the System Standard in the notice of violation within 30 days of the date of our notice, you will be required to pay us an additional \$5,000. These fees are in addition to any and all remedies that we have available under You agree to comply, and to assist us to the fullest extent possible in our efforts to comply, with Anti-Terrorism Laws (defined below). In connection with that compliance, you certify, represent and warrant that none of your property or interests is subject to being blocked under, and that you and the owners otherwise are not in violation of, any of the Anti-Terrorism Laws. "Anti-Terrorism Laws" mean Executive Order 13224 issued by the President of the United States, the USA PATRIOT Act, and all other present and future federal, state and local laws, ordinances, rules, regulations, policies, lists and other requirements of any governmental authority addressing or in any way relating to terrorist acts and acts of war. Any violation of the Anti-Terrorism Laws by you or the Owners, or any blocking of your or the Owners' assets under the Anti-Terrorism Laws, shall constitute good cause for immediate termination of this Franchise Agreement.

## **21. INSPECTION AND AUDIT**

### **21.1 Inspections**

To ensure compliance with this Franchise Agreement, including but not limited to termination.

#### **9.J — MYSTERY SHOPPER PROGRAM.**

To ensure uniformity and compliance with the System Standards, we may require you to conduct a self-shop by sending photos of your KEV and we or our representatives will have the right to, evaluate your Franchised Business operations, and inspect or examine your books, records, accounts and tax returns. We may also interview personnel and customers of the Franchised Business. Our evaluation may include observing or participating during business hours. We may conduct our evaluation at any Additional Equipment. In addition, we and our designated agents and representatives (including mystery shoppers) may at any time and without prior notice. During the course of our inspections, we and our representatives will use reasonable efforts to minimize our interference with the operation of your Franchised Business, and you, your employees and independent contractors will cooperate and not interfere with our inspection. You consent to us accessing your Technology and retrieving any information we deem appropriate in conducting the inspection. At all times and without prior notice to you: (i) we and or our designated agents may (1) inspect the Franchised Business, KEV and/or any Additional Equipment; (ii) photograph the KEV and any Additional Equipment and observe and video the KEV and Additional Equipment's operation for consecutive or intermittent periods as we desire; (iii) remove or obtain samples of any products and supplies; and (iv) interview and interact with the Kona Ice Franchise's managers and customers. You agree to cooperate with us and our agents and representatives in any such activities. You agree to present to your customers the evaluation forms we periodically prescribe and to participate and/or request your customers to participate in any surveys performed by or for us. If the results of any mystery shop are unsatisfactory, you must pay us a fee of \$1,000 to cover our travel and expenses and you will also be subject to non-compliance fees set forth in Section 9.J.



## ~~10. — MARKETING.~~

### ~~10.A — BRAND FUND CONTRIBUTIONS~~

~~Recognizing the value of advertising and marketing to the goodwill and public image of the Kona Ice Franchise, we have established a national advertising and marketing fund (the “**Brand Fund**”) for the advertising, marketing, and public relations programs and materials we deem appropriate. You agree to pay \$500 for each franchise agreement you have entered into with us per year to the Brand Fund (“**Brand Fund Contribution**”). The Brand Fund Contribution is increased by \$200 per year for any Additional Equipment you operate. ~~Brand Fund Contributions are due at the same time as your Royalty or at such other date we choose, as may be more fully set forth in the Brand Manual.~~ We reserve the right to adjust your Brand Fund Contributions annually by up to 10% in our sole discretion. The Ad Council (see Section 10.C, below) may increase your Brand Fund Contributions at any time upon 75% approval from the Ad Council’s members.~~

### ~~10.B — USE OF ADVERTISING AND BRAND FUNDS.~~

- ~~(1) — The following provisions apply to the Brand Fund:~~
- ~~(a) — We will direct all programs that the Brand Fund finances, with sole control over the creative concepts, materials, and endorsements used and their geographic, market, and media placement and allocation.~~
  - ~~(b) — We will account for the Brand Fund separately from our other funds and not use the Brand Fund for our general operating expenses.~~
  - ~~(c) — We do not have any fiduciary obligation for administering the Brand Fund. The Brand Fund may spend in any fiscal year more or less than the total Brand Fund payments in that year, borrow from us or others (paying reasonable interest) to cover deficits, or invest any surplus for future use. We will use all interest earned on Brand Fund payments to pay costs before using the Brand Fund’s other assets.~~
  - ~~(d) — We will prepare an annual, unaudited statement of Brand Fund collections and expenses and give you the statement within 45 days upon the receipt of a written request. We may incorporate the Brand Fund or operate each through a separate entity whenever we deem appropriate. The successor entity will have all of the rights and duties specified in this Section 10.~~
  - ~~(e) — We have the right, but no obligation, to use collection agents and institute legal proceedings to collect Brand Fund payments at the Brand Fund’s expense. We also may forgive, waive, settle, and compromise all claims by or against the Brand Fund. Except as expressly provided in this Section 10, we assume no direct or indirect liability or obligation to you for collecting amounts due to, maintaining, directing, or administering the Brand Fund.~~
  - ~~(f) — We may defer or reduce any Kona Ice franchisee’s required payments to the Brand Fund and, upon 30 days’ prior written notice to you, reduce or suspend Brand Fund payments and operations for one or more periods of any length and terminate (and, if terminated, reinstate) the Brand Fund. If we terminate the Brand Fund, we will distribute all unspent monies to our franchise owners, and to us and our affiliates,~~



~~in proportion to their, and our, respective Brand Fund payments during the preceding 12 month period.~~

- ~~(g) — The Brand Fund may pay for preparing and producing video, audio, and written materials and electronic media; developing, implementing, and maintaining websites that promotes Kona Ice Franchises and/or related strategies; administering regional and multiregional marketing and advertising programs, including, without limitation, purchasing trade journal, direct mail, and other media advertising and using advertising, promotion, and marketing agencies and other advisors to provide assistance; and supporting public relations, market research, and other advertising, promotion, and marketing activities.~~
- ~~(h) — The Brand Fund periodically will give you samples of advertising, marketing, and promotional formats and materials at no cost.~~
- ~~(i) — We may use the Brand Fund to pay the reasonable salaries and benefits of personnel who manage and administer the Brand Fund, the Brand Fund's other administrative costs, travel expenses of personnel while they are on Brand Fund business, meeting costs, overhead relating to Brand Fund business, and other expenses we incur in activities reasonably related to administering or directing the Brand Fund and its programs, including, without limitation, conducting market research, public relations, preparing advertising, promotion, and marketing materials, and collecting and accounting for Brand Fund payments.~~
- ~~(j) — We intend the Brand Fund to maximize recognition of the Marks and patronage of Kona Ice Franchises. Although we will try to use the Brand Fund to develop advertising and marketing materials and programs, and to place advertising and marketing, that will benefit all Kona Ice Franchise, we cannot ensure that Brand Fund expenditures in or affecting any geographic area are proportionate or equivalent to Brand Fund payments by contributors operating in that geographic area or that any contributor benefits directly or in proportion to its Brand Fund payment from the development of advertising and marketing materials or the placement of advertising and marketing.~~
- ~~(k) — You understand and acknowledge that your Kona Ice Franchise may not benefit directly or in proportion to its payment to the Brand Fund from the development and placement of advertising and development of marketing materials.~~

#### ~~10.C — AD COUNCIL.~~

~~We have formed an advisory board (“Ad Council”) for the purpose of jointly advertising and promoting Kona Ice Franchises. The Ad Council will determine the type of advertising we will use. Members of the Ad Council will prepare governing documents subject to the terms of this Franchise Agreement, the Brand Manual, and our consent. We will choose the members of the Ad Council in our sole discretion from our franchisees in the System. In order to be eligible for selection into the Ad Council, you must be in good standing, operate multiple Kona Ice Franchises, and be actively involved in the betterment of the System. If we appoint you to the Ad Council, you agree to join, participate in, and actively support the Ad Council. Your Brand Fund Contributions may be increased or decreased at any time upon unanimous approval of the Ad Council, upon 30 days’ notice to you. We have the sole right, in our discretion, to form, change, or dissolve the Ad Council. We will determine the number of members of the~~



Ad Council in our sole discretion and provide you with a copy of the Ad Council's governing documents upon your written request.

#### 10.D ~~LOCAL ADVERTISING.~~

~~Currently, you are not required to market on a local basis as an individual Kona Ice Business and are not required to spend a minimum amount on local marketing and promotion in your Protected Territory. You are currently not required to participate in a local or regional advertising cooperative. You agree, at your sole cost and expense, to issue and offer such rebates, giveaways, and other promotions in accordance with advertising programs established by us, and further agree to honor the rebates, giveaways, and other promotions issued by other Kona Ice franchisees under any such program, so long as such compliance does not contravene any applicable law, rule, or regulation. You will not create or issue any gift cards/certificates and will only sell gift cards/certificates that have been issued or sponsored by us and which are accepted at all Kona Ice Businesses, and you will not issue coupons or discounts of any type except as approved by us. We may conduct market research and testing to determine consumer trends and the marketability of new food products and services.~~

~~You agree to cooperate by participating in our market research programs, test marketing new food products and services in the Kona Ice Business, and providing us with timely reports and other relevant information regarding such market research. You must conduct and participate in promotional campaigns (the "**Promotions**") which may from time to time be required, and you must conduct and participate in those Promotions in accordance with any policies and provisions set forth in the Brand Manual. This may include requiring you to offer free products to customers on certain days or providing coupons (not to exceed \$500 per year unless authorized by the Ad Council). If we require you to conduct and participate in any Promotion, we reserve the right (but we are not required) to use a portion of the Brand Fund to help Kona Ice Franchises defray a portion of any costs attributable to the Promotions.~~

~~We must approve all advertising and promotional materials that we did not prepare or previously approve (including materials that we prepared or approved, and you modify). We will be deemed to have disapproved the materials if we fail to issue our written approval within 30 days after receipt. You may not use any advertising or promotional materials that we have disapproved (including materials that we previously approved and later disapprove). All advertising must be clear, factual, not misleading, and must conform to both the highest standards of ethical advertising and marketing and the advertising and marketing policies we may require from time to time. Before you conduct any advertising or marketing you must send us or our designated agency samples of your proposed materials for review.~~

~~You may not advertise via the Internet or a worldwide web page unless we have authorized you to do so in writing. Any such advertising must follow any online policy that may be contained in our Brand Manual. Our online policy may change as technology and the Internet changes. Under our online policy, we may retain the sole right to market on the Internet, including all use of websites, domain names, search techniques, locators, metatags, advertising, and co-branding arrangements. We may restrict your use of social media, blogs, and all other online sites where our trademarks are used. We may not allow you to independently market on the Internet, or use any domain name, address, locator, link, metatag, or search technique with words or symbols that are similar to the Marks. We intend that any franchisee website will be accessed only through our home page. We reserve the right to update these requirements at any time through the Brand Manual. You agree to not participate in any crowdfunding campaigns or similar money-raising programs for your Kona Ice Franchise. Your failure to comply with this Section is a material breach~~



of this Franchise Agreement. You will provide us with content for our Internet marketing and will sign Internet and intranet usage agreements if requested by us.

In an effort to promote your KEV and Additional Equipment, we reserve the right to develop and implement the use of marketing materials and advertisements which may include audio and/or video content in your KEV and Additional Equipment. This implementation may require you to install additional equipment, including video and audio equipment in your KEV and KEV 2.0 Truck, which you agree to do at your sole cost and expense. We shall have exclusive control over the content of any such marketing materials and advertisements.

#### 10.E ~~FRANCHISE SYSTEM WEBSITE.~~

We have established one or more websites to advertise, market, and promote Kona Ice Franchises and the services and products that Kona Ice franchisees offer and sell (the "System Website"). We will reference the Kona Ice Franchise in the manner we determine from time to time. You must give us the information we request from time to time concerning the Kona Ice Franchise to include on the System Website. By providing the information to us, you will be representing to us it is accurate and not misleading and does not infringe any third party's rights. We will own all intellectual property and other rights in the System Website, all information on it, and all information generated from it (including the domain name or URL, the log of "hits" by visitors, and any personal or business data that visitors supply). We are only required to reference your Kona Ice Business on the System Website while you are in full compliance with your Franchise Agreement and all System Standards. If you are in default of any obligation under the Franchise Agreement or System Standards, then we may temporarily remove references to your Kona Ice Business from the website until you fully cure the subject default(s)

For as long as we maintain the System Website, we shall have the right to use the Brand Fund's assets to develop, maintain, and update the System Website. We may periodically update and modify the System Website. You must promptly notify us whenever any information on your listing changes or is not accurate. You acknowledge that we have final approval rights over all information on the System Website. We may periodically implement and modify System Standards relating to the System Website. You may not, without our prior written approval, develop, maintain, or authorize any other website that mentions or describes you or the Kona Ice Franchise or displays any of the Marks. Nothing in this Section shall limit our right to maintain websites other than the System Website. If you default on any of your obligations under this Franchise Agreement, we may temporarily remove all references to your Kona Ice Franchise from the System Website until you fully cure all such defaults.

#### 10.F ~~E LEAD PROGRAM~~

If you elect to use our digital marketing service (the "E-Lead Program"), in addition to the actual costs of the digital advertisements themselves, you agree to pay us an annual administrative fee (the "E-Lead Fee") of \$250 for E-Lead Lite or \$500 for E-Lead Plus. Your E-Lead Fee shall be paid when you enroll in the E-Lead Program, and shall be paid annually on the anniversary date of your enrollment. The E-Lead Program is currently optional, and you may un-enroll from the E-Lead Program at any time upon 30 days' written notice to us. Any E-Lead Fees paid to us are non-refundable under any circumstances. We reserve the right to require your enrollment in the E-Lead Program in the future, upon 60 days' written notice to you. We further reserve the right to discontinue the E-Lead Program, increase the fees and costs associated with the E-Lead Program, or otherwise revise the terms and conditions of the E-Lead Program at any time, in our sole discretion.



#### 10.G. LIMITED TIME OFFER CAMPAIGN FEE

~~The limited time offer campaign is a flavor and marketing campaign currently offered in the Spring, Summer and Fall. Each kit is currently \$99 and includes flavoring and marketing materials. You will be required to pay us this fee for each kit you purchase if you opt in to our optional limited time offer campaign. We reserve the right to require your participation in a limited time offer campaign upon 60 days' notice to you.~~

#### 10.H. UNAUTHORIZED ADVERTISING FEE

~~We must approve all advertising and promotional materials we did not prepare or previously approve (including materials we prepared or approved and you modify) before you use them. If you use any advertising or promotional materials that are not approved by us (including materials that we previously approved and later disapprove) then, in addition to any other remedies under this Franchise Agreement, you will pay an unauthorized advertising fee of \$500 per occurrence to the Brand Fund.~~

### 11. REPORTS.

~~Upon our request, you must provide to us, at your expense and in a form acceptable to us, timely financial statements as specified by us. You agree to comply with all reporting requirements we prescribe. In order for us to provide the most timely and useful information to the Kona Ice Franchise, it is essential that you collect certain information as soon as possible after the applicable accounting period closes. You agree to submit, based on the frequency we designate, completed relevant worksheets; payroll changes and current hours worked; bank statements; manual check stubs with invoice copies; and any other documents required to properly record all transactions affecting the Kona Ice Franchise financial activity. If you fail to submit Kona Ice Franchise related items when required under this Section, we shall have the right to terminate the Franchise Agreement as provided in Section 15.B.~~

~~You agree to give us in the manner and format we prescribe from time to time, the following:~~

- ~~(1) within five days of our request, all profit and loss and source and use of funds statements and a balance sheet for the Kona Ice Franchise as of the end of the prior calendar month;~~
- ~~(2) by April 15<sup>th</sup> of each year a copy of the tax return for the Kona Ice Franchise for the previous calendar year; and~~
- ~~(3) any other data, information, and supporting records reasonably requested by us from time to time, including, without limitation, daily and weekly reports of product sales by category.~~

~~Your Managing Owner must certify and sign each report and financial statement in the manner we prescribe. If we so request, the profit and loss statement and balance sheet shall be certified by certified public accountant at your expense. We may disclose or use the data derived from these reports, your year-end reports, and any other financial statements from the operation of your Kona Ice Franchise, for any purpose we deem appropriate, in our sole discretion. If we utilize your Kona Ice Franchise's financial statements for disclosure in our Franchise Disclosure Document, we may be required to disclose identifying information about your Kona Ice Franchise in such disclosure.~~

~~Subject to applicable law, you agree to preserve and maintain all records in a secure location at the Kona Ice Franchise for at least three years, including, but not limited to, sales checks, purchase orders,~~



~~invoices, payroll records, customer lists, check stubs, sales tax records and returns, cash revenue and disbursement journals, and general ledgers.~~

## ~~12. INSPECTIONS AND AUDITS.~~

### ~~12.A OUR RIGHT TO INSPECT THE KONA ICE FRANCHISE.~~

~~To determine whether your Kona Ice Franchise is in compliance with this Franchise Agreement and all System Standards, we and our designated agents or representatives may at all times and without prior notice to you: (1) inspect the Kona Ice Franchise, KEV, and/or any Additional Equipment; (2) photograph the Kona Ice Franchise Franchised Business, KEV, or any Additional Equipment, and observe and videotape the operation thereof for consecutive or intermittent periods we desire; (3) remove samples of observe and any products and supplies; (4) interview the Kona Ice Franchise Franchised Business' managers, personnel, and customers; (5) inspect and copy any books, records, and documents relating to the Kona Ice Franchise Franchised Business' operation; and (6) access any electronic records related to the Kona Ice Franchise. You agree to cooperate with us fully under this Section. If we exercise any of these rights, we will not interfere unreasonably with the Kona Ice Franchise operation. If we conduct an inspection of your Kona Ice Franchise and determine you are not operating in compliance with this Franchise Agreement or the System Standards, you agree to remedy any issues, violations, or other concerns of ours and you acknowledge and agree that you may be required to temporarily close your Kona Ice Business. In addition, we may require that you attend remedial training that addresses your operational deficiencies and pass our inspection before reopening at your sole cost and expense. Nothing contained herein shall prevent us from exercising any other right which we may have under this Franchise Agreement, including, without limitation, termination Franchised Business.~~

### ~~12.B OUR RIGHT TO AUDIT.~~

#### **21.2 Audit**

We may, at any time during your business hours, and without prior notice to you, examine your ~~Kona Ice Franchise business~~ Franchised Business, bookkeeping, and accounting records, sales and income tax records and returns, and other records. We may also conduct an audit through independent auditors, which may involve auditors conducting an examination at the location of your ~~Kona Ice Franchise~~ Franchised Business or, alternatively, your submission of such materials to auditors. We may also require you to conduct a complete self-audit of the ~~Kona Ice Franchise~~ Franchised Business, in which case you agree to audit the ~~Kona Ice Franchise~~ Franchised Business in accordance with our instructions and System Standards. You agree to cooperate fully with us, our representatives, and independent accountants in any examination. Furthermore, if an examination is necessary due to your failure to furnish reports, supporting records, or other information as required, or to furnish these items on a timely basis, or if our examination reveals a failure to report, you agree to reimburse us for the costs of the examination, including, without limitation, the charges of attorneys and independent accountants and the travel expenses, room and board, and compensation of our employees. If an audit reveals that your purchases of Kona Ice branded cups equals less than thirty percent (30%) of your gross sales, you shall pay us a branded cup audit fee of \$3,000 unless you can provide written substantiation of proper usage of branded cups in your ~~Kona Ice~~ Franchised Business. These remedies are in addition to our other remedies and rights under this Franchise Agreement and applicable law, ~~including the fee for violations under Section 9.J.~~



### ~~13. TRANSFERS.~~

#### ~~13.A. TRANSFER BY US.~~

~~We maintain a staff to manage and operate the System and staff members can change as employees come and go. We cannot guarantee the continued participation by or employment of any of our shareholders, directors, officers, or employees.~~

~~This Franchise Agreement is fully assignable by us (without prior notice to you) and shall inure to the benefit of any assignee(s) or other legal successor(s) to our interest in this Franchise Agreement, provided that we shall, subsequent to any such assignment, remain liable for the performance of our obligations under this Franchise Agreement up to the effective date of the assignment. We may also delegate some or all of our obligations under this Franchise Agreement to one or more designees without assigning this Franchise Agreement.~~

~~We may change our ownership or form and/or assign this Franchise Agreement and any other agreement to a third party without restriction. After our assignment of this Franchise Agreement to a third party who expressly assumes the obligations under this Franchise Agreement, we no longer will have any performance or other obligations under this Franchise Agreement.~~

#### ~~13.B. TRANSFER BY YOU.~~

~~You understand and acknowledge that the rights and duties this Franchise Agreement creates are personal to you and your Owners and that we have granted you the Kona Ice Franchise in reliance upon our perceptions of your and your Owners' individual or collective character, skill, aptitude, attitude, business ability, and financial capacity. None of the following may be transferred without our prior written approval: (i) this Franchise Agreement (or any interest in this Franchise Agreement); (ii) the Kona Ice Franchise (or any right to receive all or a portion of the Kona Ice Franchise's profits, losses, purchase price, or capital appreciation related to the Kona Ice Franchise); (iii) substantially all of the assets of the Kona Ice Franchise, including, without limitation, the KEV or any Additional Equipment; (iv) any ownership interest in you (regardless of its size); or (v) any ownership interest in any of your Owners (if such Owners are legal entities). A transfer of the Kona Ice Franchise, ownership, possession, or control, or substantially all of its assets, may be made only with a transfer of this Franchise Agreement. All proposed transfers of Additional Equipment require our approval. Any transfer without our approval is a breach of this Franchise Agreement and has no effect.~~

~~In this Franchise Agreement, the term "transfer" includes a voluntary, involuntary, direct, or indirect assignment, sale, gift, exchange, grant of a security interest, or change of ownership in this Franchise Agreement, the Kona Ice Franchise, the Franchise or interest in the Kona Ice Franchise, or other disposition. An assignment, sale, gift, or other disposition includes the following events:~~

- ~~(1) transfer of ownership of capital stock, a partnership or membership interest, or another form of ownership interest;~~
- ~~(2) merger or consolidation or issuance of additional securities or other forms of ownership interest;~~
- ~~(3) any sale of a security convertible to an ownership interest;~~



- ~~(4) — transfer of an interest in you, this Franchise Agreement, the Kona Ice Franchise or substantially all of its assets, or in your Owners in a divorce, insolvency, entity dissolution proceeding, or otherwise by operation of law;~~
- ~~(5) — if one of your Owners dies, a transfer of an interest in you or your Owner by will, declaration of or transfer in trust, or under the laws of intestate succession;~~
- ~~(6) — foreclosure upon the Kona Ice Franchise, or your transfer, surrender, or loss possession, control, or management of the Kona Ice Franchise; or~~
- ~~(7) — subleasing your KEV or KEV 2.0 Truck to a third party without express written consent.~~

~~You may not pledge this Franchise Agreement (to someone other than us), or an ownership interest in you or your Owners as security for any loan or other financing, unless (1) we grant our prior written consent, and (2) unless we agree otherwise in writing, the lender agrees its claims will be subordinate to all amounts you owe at any time to us or our affiliates.~~

### 13.C — CONDITIONS FOR APPROVAL OF TRANSFER.

~~If you are in full compliance with this Franchise Agreement, subject to the other provisions of this Section 13, we will approve a transfer that meets all of the requirements in this Section. A non-controlling ownership interest in you or your Owners (determined as of the date on which the proposed transfer will occur) may be transferred if the proposed transferee and its direct and indirect owners (if the transferee is an Entity) are of good character, pass a background check, and meet our then-applicable standards for Kona Ice Franchise owners (including no ownership interest in or performance of services for a Competitive Business), you and each of your Owners execute an amendment to this Franchise Agreement acknowledging the change in ownership interests, you reimburse our attorney fees associated with approval of the transfer, and each of the new owners executes our then-current form of Owners Agreement. If the proposed transfer is of this Franchise Agreement or of a controlling ownership interest in you or one of your Owners, or is one of a series of transfers (regardless of the time period over which these transfers take place) which in the aggregate transfers this Franchise Agreement or a controlling ownership interest in you or one of your Owners, then all of the following conditions must be met before or concurrently with the effective date of the transfer:~~

- ~~(1) — the transferee must apply for a Kona Ice Franchise and must meet all of our standards to become a Kona Ice franchisee and have, in our sole discretion, sufficient business experience, aptitude, and financial resources to operate the Kona Ice Franchise;~~
- ~~(2) — you have paid all Royalty and Brand Fund Contributions, and other amounts owed to us, our affiliates, and third party vendors, including any outstanding financing for the KEV and any Additional Equipment, and have submitted all required reports and statements;~~
- ~~(3) — you have not violated any provision of this Franchise Agreement or any other agreement with us during both the 60 day period before you requested our consent to the transfer and the period between your request and the effective date of the transfer;~~
- ~~(4) — neither the transferee nor its owners (if the transferee is an Entity) or affiliates have an ownership interest (direct or indirect) in or perform services for a Competitive Business;~~



- ~~(5) — the transferee (or its Managing Owner, or, if applicable, Designated Manager) satisfactorily complete our training program;~~
- ~~(6) — the transferee agrees to pay us or our affiliates a remodel fee to upgrade, remodel, and refurbish the Kona Ice Franchise, including the KEV and any Additional Equipment, in accordance with our current requirements and specifications for the Kona Ice Franchise within 45 days after the effective date of the transfer (we will advise the transferee before the effective date of the transfer of the specific actions it must take within this time period), and to deposit with us the estimated cost to complete the upgrade or remodel;~~
- ~~(7) — the transferee shall (if the transfer is of this Franchise Agreement), or you shall (if the transfer is of a controlling ownership interest in you or one of your Owners), sign our then-current form of franchise agreement and related documents, including but not limited to our then-current form of Owners Agreement or other guaranty, any and all of the provisions of which may differ materially from any and all of those contained in this Franchise Agreement;~~
- ~~(8) — you or the transferee pays us a transfer fee. The transfer fee to transfer the Kona Ice Franchise to a then-existing Kona Ice franchisee is \$5,000 (per Franchise) and \$7,500 (per Franchise) to transfer the Kona Ice Franchise to any other parties. You must pay us a \$1,000 non-refundable deposit upon the request for our approval of the transfer. If this Kona Ice Franchise transfer is to your child, parent, sibling, or spouse, we will not charge a transfer fee but you will be required to reimburse us any attorney fees we incur;~~
- ~~(9) — unless prohibited by state law, you and your transferring Owners sign a general release, in a form satisfactory to us, of any and all claims against us and our shareholders, officers, directors, employees, and agents;~~
- ~~(10) — if you or your Owners finance any part of the purchase price, you and/or your Owners agree that all of the transferee's obligations under promissory notes, agreements, or security interests reserved in the Kona Ice Franchise are subordinate to the transferee's obligation to pay Royalty and Brand Fund Contributions and other amounts due to us, our affiliates, and third-party vendors and otherwise to comply with this Franchise Agreement. You must acknowledge and agree that we are not a party to or liable for financing arrangements between the transferor and transferee;~~
- ~~(11) — you and your transferring Owners (and your and their spouses and other immediate family members) will not, for two years beginning on the transfer's effective date, engage in any of the activities proscribed in Section 16.D below;~~
- ~~(12) — you and your transferring Owners will not directly or indirectly at any time or in any manner (except with respect to other Kona Ice Franchises you own and operate) identify yourself or themselves or any business as a current or former Kona Ice Franchise or as one of our franchise owners; use any Mark, any colorable imitation of a Mark, or other indicia of a Kona Ice Franchise in any manner or for any purpose; or utilize for any purpose any trade name, trade, or service mark, or other commercial symbol that suggests or indicates a connection or association with us;~~
- ~~(13) — if the transferee is a lead of ours or was referred to you by us, then in addition to the transfer fee, you agree to pay us \$15,000. Alternatively, if the transfer results in us incurring any~~



~~broker or other placement fees, then in addition to the transfer fee, you agree to reimburse us upon receipt of our invoice; and~~

~~(14) the transferee agrees to take possession of the KEV, together with all Additional Equipment under this Franchise Agreement, as a condition to the transfer.~~

~~We may review all information regarding the Kona Ice Franchise you give the transferee, correct any information we believe is inaccurate, and give the transferee copies of any reports you have given us or we have made regarding the Kona Ice Franchise.~~

#### ~~13.D TRANSFER TO AN ENTITY~~

~~You may transfer your ownership interests to a different Entity with our approval, provided that the controlling ownership interests remain the same and all owners comply with all conditions set forth in Section 13.C, except that you will not be required to pay us a transfer fee under such section. However, you must reimburse us for all of our fees and costs, including attorney fees, associated with your transfer to the new Entity. Our right of first refusal in Section 13.G shall not apply for any transfer conducted under this Section 13.D.~~

#### ~~13.E DEATH OR DISABILITY.~~

## **22. Transfer Upon INDEMNITY**

### **22.1 Your Indemnification of Us**

Independent of your obligation to procure and maintain insurance, you and your Owners will indemnify, defend and hold us and our affiliates, the respective officers, directors, managers, partners, shareholders, members, employees, agents and contractors of these entities, and the successors, assigns, personal representatives, heirs and legatees of all of these persons or entities (collectively, the “Indemnified Parties”) harmless, to the fullest extent permitted by law, from and against all expenses, losses, payments or obligations to make payments either (i) to or for third party claimants by any and all Indemnified Parties, including refunds, or (ii) incurred by any and all Indemnified Parties to investigate, take action, respond to or defend a matter, including investigation and trial charges, costs and expenses, fees, fees paid to professionals, attorney fees, experts’ fees, court costs, settlement amounts, judgments and costs of collection (collectively, “Losses and Expenses”), incurred by any Indemnified Parties for any investigation, claim, action, suit, demand, administrative or alternative dispute resolution proceeding, actually or allegedly, directly or indirectly, relating to, arising out of, or resulting from or in connection with: any transaction, occurrence, product or service involving the Franchised Business or this Franchise Agreement; your employment or other contractual relationship with your employees, workers, managers, or independent contractors, including but not limited to any allegation, claim, finding, or ruling that we are an employer or joint employer of your employees; your marketing, selling, or providing of items and services; and any breach of violation of any agreement (including this Franchise Agreement), or any law, regulation or ruling, by any act, error or omission (active or passive) of you, any party associated with you, or any of your or your affiliates’ owners, officers, directors, managers, employees, owners and agents, including when any of the Indemnified Parties is alleged or proven to be negligent.

You agree to give us notice of any action, suit, proceeding, claim, demand, inquiry or investigation described above. The Indemnified Parties shall have the right, in their sole discretion to: (i) retain counsel of their own choosing to represent them with respect to any claim; and (ii) control the response thereto and the defense thereof, including the right to enter into an agreement to settle such claim. You may participate



in such defense at your own expense. You agree to give your full cooperation to the Indemnified Parties in assisting the Indemnified Parties with the defense of any such claim, and to reimburse the Indemnified Parties for all of their costs and expenses in defending any such claim, including court costs and reasonable attorney fees, within ten days of the date of each invoice delivered by such Indemnified Party to you enumerating such costs, expenses and attorney fees.

You agree that your obligations under this Section shall continue and shall expressly survive the termination, expiration, non-renewal or Transfer of this Franchise Agreement.

## **22.2 Our Indemnification of You**

Provided that you are not in default under this Franchise Agreement or any other agreement with us, we will indemnify you and hold you harmless for, from and against any and all costs and expenses incurred by you as a result of or in connection with any claim asserted against you based upon the violation of any third party's intellectual property rights caused by your use of our Marks in strict compliance with the terms of this Franchise Agreement and Brand Manual. You must promptly notify us of any such claim and fully cooperate with us in the defense of such claim.

## **23. TERMINATION BY YOU**

- (1) — ~~You may Death or Disability. Upon the Managing Owner's death or disability, the Managing Owner's executor, administrator, conservator, guardian, or other personal representative must transfer the Managing Owner's ownership interest in you to a third party (which may be your or the Managing Owner's heirs, beneficiaries, devisees, or other Owners of the Entity). That transfer must be completed within a reasonable time, not to exceed 90 days from the date of death or disability, and is subject to all of the terms and conditions in this Section 13. A failure to transfer the Managing Owner's ownership interest in you within this time period is a breach of this Franchise Agreement, and this Franchise Agreement may be terminated. The term "disability" means a mental or physical disability, impairment, or condition reasonably expected to prevent or that actually does prevent the Managing Owner from supervising the management and operation of the Kona Ice Franchise.~~
- (2) — ~~Operation Upon Death or Disability or Default. If, upon the Managing Owner's death or disability, a manager approved by us is not managing the Kona Ice Franchise, your or the Managing Owner's executor, administrator, conservator, guardian, or other personal representative must appoint a replacement manager within 15 days from the date of death or disability. The manager must complete our standard Initial Training at your expense. If applicable, a new Managing Owner acceptable to us also must be appointed for the Kona Ice Franchise within 30 days of the date of the death or disability.~~

### ~~13.F — EFFECT OF CONSENT TO TRANSFER.~~

~~Our consent to a transfer of this Franchise Agreement and the Kona Ice Franchise, or any interest in you or your Owners, is not a representation of the fairness of the terms of any contract between you and the transferee, a guarantee of the Kona Ice Franchise's or transferee's prospects of success, or a waiver of any claims we have against you (or your Owners) or of our right to demand the transferee's full compliance with this Franchise Agreement.~~



### 13.G — OUR RIGHT OF FIRST REFUSAL.

If you or any of your Owners at any time determine to sell or transfer an interest in this Franchise Agreement, the KEV (or KEV 2.0 Truck), the Kona Ice Franchise, or an ownership interest in you (except to or among your current Owners, which is not subject to this Section), in a transaction that otherwise would be allowed under Sections 13.B and 13.C above, you or your Owners agree to obtain from a responsible and fully disclosed buyer, and send to us a true and complete copy of, a bona fide executed written offer (which may include a letter of intent) relating exclusively to an interest in you or in this Franchise Agreement and the Kona Ice Franchise. The offer must include details of the payment terms of the proposed sale and the sources and terms of any financing for the proposed purchase price. To be a valid, bona fide offer, the proposed purchase price must be in a dollar amount, and the proposed buyer must submit with its offer an earnest money deposit equal to 5% or more of the offering price.

~~The right of first refusal process will not be triggered by a proposed transfer that would not be allowed under Sections 13.B and 13.C above. We may require you or your Owners to send us copies of any materials or information sent to the proposed buyer or transferee regarding the possible transaction.~~

~~We may elect to purchase the interest offered for the price and on the terms and conditions contained in the offer. Such election shall come by written notice delivered to you or your selling Owner(s) within thirty (30) days after we receive (a) an exact copy of the offer and (b) all other information we request concerning the offer and the proposed purchaser, subject to our satisfaction, provided that:~~

- ~~(1) — we may substitute cash for any form of payment proposed in the offer (such as ownership interests in a privately held entity);~~
- ~~(2) — our credit will be deemed equal to the credit of any proposed buyer (meaning that, if the proposed consideration includes promissory notes, we or our designee may provide promissory notes with the same terms as those offered by the proposed buyer);~~
- ~~(3) — we will have an additional 30 days to prepare for closing after notifying you of our election to purchase; and~~
- ~~(4) — we must receive, and you and your Owners agree to make, all customary representations and warranties given by the seller of the assets of a business or the ownership interests in a legal entity, as applicable, including, without limitation, representations and warranties regarding: (a) ownership and condition of and title to ownership interests and/or assets; (b) liens and encumbrances relating to ownership interests and/or assets; and (c) validity of contracts and the liabilities, contingent or otherwise, of the entity whose assets or ownership interests are being purchased.~~

~~We have the unrestricted right to assign this right of first refusal to a third party, who then will have the rights described in this Section.~~

~~If we do not exercise our right of first refusal and otherwise approve the transfer in accordance with the conditions in Sections 13.B and 13.C above, you or your Owners may complete the sale to the proposed buyer on the original offer's terms.~~

~~If you do not complete the sale to the proposed buyer within 60 days after we notify you that we do not intend to exercise our right of first refusal, or if there is a material change in the terms of the sale~~



(which you agree to tell us promptly), we or our designee will have an additional right of first refusal during the 30 day period following either the expiration of the 60 day period or our receipt of notice of the material change(s) in the sale's terms, either on the terms originally offered or the modified terms, at our or our designee's option.

#### **14. — EXPIRATION OF THIS FRANCHISE AGREEMENT.**

##### **14.A — YOUR RIGHT TO ACQUIRE A SUCCESSOR FRANCHISE.**

Upon expiration of this Franchise Agreement, you will have the option to acquire two additional successive ten-year terms ("**Successor Franchise(es)**") provided that:

- (1) — you and each of your Owners have fully complied with this Franchise Agreement during its term, which includes satisfying all monetary obligations owed by you to us, our affiliates, or your suppliers or creditors, whether under this Franchise Agreement or otherwise; and
- (2) — you and each of your Owners (if you are an Entity) are, both on the date you give us written notice of your election to acquire a Successor Franchise (as provided in Section 14.B below) and on the date on which the term of the Successor Franchise would commence, in full compliance with this Franchise Agreement; and
- (3) — (a) you maintain possession of the KEV and, if your KEV has not completed the required remodels or is not in compliance with current standards, pay to us or our affiliate the cost of remodeling and upgrading the KEV and any Additional Equipment, as well as adding or replacing improvements, assets, signage, and otherwise modifying the Kona Iee Franchise as we require to comply with System Standards then applicable for new Kona Iee Franchises, or (b) at your option, you secure a substitute KEV and any Additional Equipment we approve and you develop that KEV and any Additional Equipment according to System Standards then applicable for Kona Iee Franchises;
- (4) — subject to state law, you execute a general release, in a form prescribed by us, of any and all claims which you may have against us and our affiliates and our respective shareholders, directors, employees, and agents in their corporate and individual capacities. Unless otherwise prevented by state law, we will consider your failure to sign the release and to deliver it to us for acceptance and execution within 30 days after it is delivered to you to be an election not to acquire a Successor Franchise;
- (5) — you execute the then current form of franchise agreement (the "**Successor Franchise Agreement**") and all other agreements, legal instruments, and documents then customarily used by us in the renewal of our franchises. The Successor Franchise Agreement and these other agreements, legal instruments, and documents may vary materially from those agreements, legal instruments, and documents currently in use by us, including the payment of higher and/or additional fees. We have the right to refuse to renew the license granted under this Franchise Agreement if we have given you written notice three or more times for failure to comply with this Franchise Agreement, whether or not such failure is subsequently cured. When you sign the Successor Franchise Agreement, you are not obligated to pay our then current initial franchise fee but you will owe a renewal fee of \$7,500; and



- (6) — you will pay the highest tier of royalty payment under the new franchise agreement (meaning that you will not be able to take advantage of any step-up royalty schedules that may be offered to new franchisees).

You acknowledge and agree that if you and each of your Owners are not in full compliance with this Franchise Agreement, both on the date you give us written notice of your election to acquire a Successor Franchise and on the date on which the term of the Successor Franchise commences, we need not grant you a Successor Franchise, regardless of whether we had, or chose to exercise, the right to terminate this Franchise Agreement during its term under Section 15.B.

14.B — GRANT OF A SUCCESSOR FRANCHISE.

You agree to give us written notice (“**Your Notice**”) of your election to acquire a Successor Franchise no more than 12 months and no less than six months before this Franchise Agreement expires. We agree to give you written notice (“**Our Notice**”), not more than six months after we receive Your Notice, of our decision:

- (1) — to grant you a Successor Franchise;
- (2) — to grant you a Successor Franchise on the condition you correct existing deficiencies of the Kona Ice Franchise or in your operation of the Kona Ice Franchise;
- (3) — not to grant you a Successor Franchise based on our determination you and your Owners have not fully complied with this Franchise Agreement during its term or were not in full compliance with this Franchise Agreement and all System Standards on the date you gave us written notice of your election to acquire a Successor Franchise; or
- (4) — not grant you a successor because we no longer maintain a franchise program for Kona Ice Franchises.

If applicable, Our Notice will:

- (1) — describe the remodeling, expansion, improvements, and/or modifications required to bring the KEV and any Additional Equipment into compliance with then applicable System Standards for new Kona Ice Franchises; and
- (2) — state the actions you must take to correct operating deficiencies and the time in which you must correct these deficiencies.

If we elect not to grant you a Successor Franchise, Our Notice will describe the reasons for our decision. If we elect to grant you a Successor Franchise, your right to acquire a Successor Franchise is subject to your full compliance with all of the terms and conditions of this Franchise Agreement through the date of its expiration, in addition to your compliance with the obligations described in Our Notice.

If Our Notice states that you must remodel the Kona Ice Franchise and/or must cure certain deficiencies of the Kona Ice Franchise or its operation as a condition to our granting you a Successor Franchise, we will give you written notice of our decision not to grant a Successor Franchise, based upon your failure to complete the remodeling and/or to cure those deficiencies, not less than 90 days before this Franchise Agreement expires, provided, however, that we need not give you this 90 days’ notice if we decide not to grant you a Successor Franchise due to your breach of this Franchise Agreement during the



~~90 day period before it expires. We may extend this Franchise Agreement's term for the time period necessary to give you either reasonable time to correct deficiencies or the 90 days' notice of our refusal to grant a Successor Franchise. If you are in full compliance and we materially breach this Franchise Agreement and fail to notify us of your election to acquire a Successor Franchise within the prescribed time period, we need not grant you a Successor Franchise.~~

## ~~15. TERMINATION OF FRANCHISE AGREEMENT.~~

### ~~15.A. TERMINATION BY YOU.~~

~~If (a) you and your Owners are in full compliance with this Franchise Agreement, (b) and we materially fail to comply with this Franchise Agreement, (c) and we do not correct the failure or otherwise provide reasonable evidence of our efforts to correct such failure within sixty (60) days after you deliver send us a written notice specifying the nature of the material failure to us, then you breach. You may also terminate this Franchise Agreement, effective upon thirty (30) days' written notice to us.~~

~~Your termination of this Franchise Agreement other than according to this Section 15.A will be deemed a termination without cause and a breach of this Franchise Agreement.~~

### ~~15.B. TERMINATION BY US.~~

~~We may if you and we mutually agree, in our sole discretion, which may be withheld, in writing to terminate this Franchise Agreement, effective upon delivery of written notice of. In such an event, you and we will be deemed to have waived any required notice period. If you terminate this Franchise Agreement, you must still comply with your post-termination obligations described below and all other obligations that survive the expiration or termination to you, if of this Franchise Agreement.~~

## **24. ~~you or any of your Owners have made or make any material misrepresentation or omission in acquiring~~ TERMINATION BY US**

The rights to terminate the Kona Ice Franchise or operating the Kona Ice Agreement in this Section shall be referred to as our "Termination Rights."

### **24.1 Automatic Termination Without Notice**

You shall be in default under this Franchise Agreement, and we may automatically terminate all rights granted to you by this Franchise Agreement without notice if (i) you file or cause to be filed a petition in bankruptcy or you are adjudicated bankrupt or judicially determined to be insolvent (subject to any contrary provisions of any applicable state or federal laws); or (ii) you admit to your inability to meet your financial obligations as they become due, or make a disposition for the benefit of its creditors (unless prohibited by law); or (iii) a receiver or custodian (permanent or temporary) is appointed for any of your assets or property; or (iv) a final judgment in excess of \$10,000 against you remains unsatisfied or of record for sixty (60) days or longer (unless a bond is filed or other steps are taken to effectively stay enforcement of such judgment), except that we may provide you with additional time to satisfy the judgment if you demonstrate that you are using commercially reasonable efforts to resolve the issues related to the judgment.

- (1) ~~you do not open the Kona Ice Franchise for business within three months after the Effective Date;~~



- (2) ~~your Managing Owner, or, if applicable, Designated Manager and/or other required attendees do not satisfactorily complete the initial training program and you fail to appoint a Managing Owner or Designated Manager capable of satisfactorily completing the Initial Training Program within thirty (30) days of such failure;~~

## **24.2 you cease to operate the Kona Ice Option to Terminate Without Opportunity to Cure**

We may, in our sole discretion, terminate this Franchise Agreement immediately upon written notice to you, without opportunity to cure, upon the occurrence of any of the following events, each of which constitute material events of default under this Franchise Agreement.

24.2.1 Failure to Open. If you fail to open your Franchised Business ~~or~~ within three months of the Effective Date.

24.2.2 Material Misrepresentation. If you or any Owner commits any fraud or makes any material misrepresentation to us, whether occurring before or after the Effective Date.

24.2.3 Violation of Law. If you fail, for a period of 10 days after having received notification of noncompliance from us or any governmental or quasi-governmental agency or authority, to comply with any federal, state or local law or regulation applicable to the operation of the Franchised Business.

24.2.4 Criminal Offense. If you or any of your Owners, officers, directors, or key employees is convicted of or pleads guilty or nolo contendere to a felony or any other crime or offense that is reasonably likely, in our sole opinion, to adversely affect our reputation, the System, or the Marks, which expressly includes any harm or criminal activity to minors in our sole discretion. If the crime or offense is committed by an Owner other than a Managing Owner, then we may, in our sole discretion, terminate if such Owner fails to sell its ownership interest in the Entity to any of the other Owners within 30 days after the conviction or guilty plea, whichever first occurs.

24.2.5 Under-Reporting. If an audit or investigation discloses that you have knowingly maintained false books or records, or submitted false reports to us, or knowingly understated its gross sales or withheld the reporting of same, or, if, on two or more occasions in any single 24 month period, any audits or other investigations reveals an under-reporting or under-recording error of two percent (2%) or more, or on any single occasion any audit or other investigation reveals an under-reporting or under-recording of five percent (5%) or more.

24.2.6 Intellectual Property Misuse. If you misuse or make any unauthorized use of the Marks or Patent, or if you otherwise impair the goodwill of our rights, or you take any action which reflects unfavorably upon the operation and reputation of the Franchised Business, the System, or the Kona Ice brand generally. If your employees or independent contractors engage in any of the same actions described above, unless you shall have exercised your best efforts to prevent such disclosures or use.

24.2.7 Health or Safety Violations. If you manage or operate your Franchised Business in a manner that presents a health or safety hazard to your customers, employees or the public, or your Franchised Business is cited by an authority for improper operation(s) three or more times within any calendar year.

24.2.8 Abandonment. If you abandon the ~~Kona Ice Franchise~~ or fail to operate your Franchised Business for a period of 12 consecutive months, or any shorter period that indicates an intent by the Franchisee to discontinue operation of the ~~Kona Ice Franchise~~, unless and only to the extent that full operation of the Kona Ice Franchise is suspended or terminated due to fire, flood, earthquake, terrorism, act



~~of God, death or disability of your Managing Owner, or other similar causes beyond the Franchisee's control and not related to the availability of funds to Franchisee; Franchised Business unless you had received our prior written authorization to do so.~~

~~(3) — you or any of your Owners make or attempt to make any transfer in violation of Section 13;~~

~~24.2.9 Failure to Pay. If you fail to pay any amount owed to us or an affiliate of ours within ten days after receipt of a demand for payment or you have three or more insufficient funds or returned checks in any one calendar year. If you fail to pay when due any federal or state income, service, sales, or other taxes due on the Franchised Business operation, unless you are in good faith contesting your liability for these taxes.~~

~~24.2.10 Unauthorized Transfer. If you attempt to sell, Transfer, encumber or otherwise dispose of any interest in you, this Franchise Agreement or the Franchised Business in violation of Section 16 of this Franchise Agreement.~~

~~24.2.11 Unauthorized Disclosure of Confidential Information. If you or any of your Owners knowingly make any unauthorized use or disclosure of any part of the Brand Manual or any other Confidential Information.~~

~~24.2.12 Brand Covenants. If you or any of your Owners are or have been convicted by a trial court of, or plead or have pleaded no contest to, a felony; violates any of the Brand Covenants.~~

~~24.2.13 Failure to Maintain Insurance. If you fail to maintain the insurance we require or fail to name us and our affiliates as additional insureds on the required insurance and do not correct the failure within ten days after we deliver written notice of that failure to you;~~

~~(4) — if you or an Owner commits an action or inaction that can reasonably be expected to adversely affect the Kona Ice Franchise reputation of the System or the goodwill associated with the Marks (for purposes of this subsection (8), any allegation of action involving harm or criminal activity involving minors may be deemed, in our sole discretion, to adversely affect the reputation of the System);~~

~~24.2.14 License/Permits. If a regulatory authority suspends or revokes a license or permit held by you or an Owner that is required to operate the Franchised Business, even if you or the Owner still maintain appeal rights.~~

~~24.2.15 Failure to Complete Initial Training. If you or any of your Owners knowingly make any unauthorized use or disclosure of any part of the Brand Manual or any other Confidential Information;~~

~~(6) — you violate any health, safety, or sanitation law, ordinance, or regulation, or operate the Kona Ice Franchise in an unsafe manner; required attendee fails to attend and do not begin to cure the violation immediately, and correct the violation complete the initial training program within three days after you receive notice from us or any other party;~~

~~(7) — you violate any other applicable law, regulation, ordinance, or consent decree, or fail to maintain any bond, license, or permit, and do not cure such violation or failure within 48 hours after we or any applicable government agency deliver notice to you of that violation or failure;~~



- ~~(8) — you fail to pay us or our affiliates any amounts due and do not correct the failure within ten days after we deliver written notice of that failure to you;~~
- ~~(9) — you fail to pay when due any federal or state income, service, sales, or other taxes due on the Kona Ice Franchise operation, unless you are in good faith contesting your liability for these taxes;~~

~~you or any of your Owners (a) fail on three or more separate occasions within any 12 consecutive month the time period to comply with prescribed in this Franchise Agreement, whether or not we notify you of the failures, and, if we notify you of the failures, whether or not you correct the failures after our delivery of notice to you; or (b) fail on two or more separate occasions within any 12 consecutive month period to comply with the same obligation under this Franchise Agreement, whether or not we notify you of the failures, and, if we notify you of the failures, whether or not you correct the failures after our delivery of notice to you;~~

- ~~(10) — you make an assignment for the benefit of creditors or admit in writing your insolvency or inability to pay your debts generally as they become due; you consent to the appointment of a receiver, trustee, or liquidator of all or the substantial part of your property; the Kona Ice Franchise is attached, seized, subjected to a writ or distress warrant, or levied upon, unless the attachment, seizure, writ, warrant, or levy is vacated within 30 days; or any order appointing a receiver, trustee, or liquidator of you or the Kona Ice Franchise is not vacated within 30 days following the order's entry;~~
- ~~(11) — you or any of your Owners' assets, property, or interests are blocked under any law, ordinance, or regulation relating to terrorist activities, or you or any of your Owners otherwise violate any such law, ordinance, or regulation;~~
- ~~(12) — you or any of your Owners fail to comply with any other provision of this Franchise Agreement or any System Standard and do not correct the failure within 30 days after we deliver written notice of the failure to you;~~
- ~~(13) — there is a termination of any other franchise agreement or other agreement between you or your affiliates and us or any of our affiliates;~~
- ~~(14) — you have three or more insufficient funds or returned checks in any one calendar year;~~
- ~~(15) — you indicate in writing your intention to consummate any of the preceding actions; or~~
- ~~(16) — your Kona Ice Business is cited by an authority for improper operation(s) three or more times within any calendar year.~~

## ~~16. OUR AND YOUR RIGHTS AND OBLIGATIONS UPON TERMINATION OR EXPIRATION OF THIS FRANCHISE AGREEMENT.~~

### ~~16.A PAYMENT OF AMOUNTS OWED TO US.~~

~~You agree to pay us and our affiliate(s) within 15 days after this Franchise Agreement expires or is terminated, or on any later date we determine the amounts due to us (or our affiliates), the Royalties, Brand Fund Contributions, any outstanding financing for the KEV and any Additional Equipment, interest, and all other amounts owed to us (and our affiliates) which then are unpaid.~~



## 16.B DE-IDENTIFICATION.

When this Franchise Agreement expires or is terminated:

- (1) ~~you may not directly or indirectly at any time or in any manner (except with other Kona Ice franchises you own and operate) identify yourself or any business as a current or former Kona Ice franchisee or as one of our current or former franchise owners; use any Mark, any colorable imitation of a Mark, or other indicia of a Kona Ice Franchise in any manner or for any purpose; or use for any purpose any trade name, trade or service mark, or other commercial symbol that indicates or suggests a connection or association with us;~~
- (2) ~~you agree to take the action required to cancel or assign all fictitious or assumed name or equivalent registrations relating to your use of any Mark;~~

24.2.16 unless Repeated Defaults. If you commit a default of any obligation under this Franchise Agreement and have previously received two or more written notices of default from us within the preceding 12 months, regardless of whether any default is cured, or if you commit the same default twice within the preceding 12-month period.

24.2.17 Cross Default. If we terminate any other agreement between you and us, or if any affiliate of ours terminates any agreement between you and the affiliate because of your default.

24.2.18 Franchise Owner Agreement Default. If any Owner, or the spouse of any Owner, breaches a Franchise Owner Agreement.

24.2.19 Territory Infringement. You commit Territory Infringement three or more times in any 12-month period.

### **24.3 Termination with Notice and Opportunity to Cure**

In addition to our Termination Rights, we may, in our sole discretion, terminate this Franchise Agreement upon 30 days' written notice if you or an Owner fails to comply with any other provision of this Franchise Agreement (including failure to comply with any provision in the Brand Manual) or any other agreement with us, unless such default is cured, as determined by us in our sole discretion, within such 30-day notice period, each of which shall constitute a material event of default under this Franchise Agreement. If we deliver a notice of default to you pursuant to this Section, we may suspend performance of any of our obligations under this Franchise Agreement until you fully cure the breach.

## **25. POST TERM OBLIGATIONS**

The obligations contained in this Section shall be referred to as your "Post Term Obligations." After the termination, expiration or Transfer of this Franchise Agreement, you agree to undertake each and every one of the obligations listed in this Section.

### **25.1 Cease Operations**



Immediately cease to be a franchise owner of the Franchised Business under this Franchise Agreement and cease to operate the Franchised Business under the System. You agree to not hold yourself out to the public as a present or former franchise owner of the Franchised Business.

## **25.2 Intellectual Property**

Immediately cease to use the Intellectual Property in any manner whatsoever and not use any trademarks or trade names that may be confusingly similar to the Intellectual Property. You acknowledge and agree that any continued use of the Marks would constitute trademark infringement.

## **25.3 Monetary Obligations**

Pay us all amounts you owe us and our affiliates within 15 days.

## **25.4 Surviving Covenants**

Comply with all covenants described in this Section and otherwise in this Franchise Agreement that apply after the expiration, termination or Transfer of this Franchise Agreement or of an ownership interest by an Owner.

## **25.5 De-Identification**

Unless we exercise our right to purchase under Section 16.E.26 of this Franchise Agreement, you agree to deliver to us, at your expense, within 30 days of expiration or termination, all signs, sign faces, sign cabinets, marketing materials, forms, and other materials containing any Mark or otherwise identifying or relating to a Kona Ice Franchise, and to fully decommission the KEV and any Additional Equipment by removing all proprietary items and Marks from the KEV and Additional Equipment in accordance with Section 3.E(7) of this Franchise Agreementour System Standards, including, but not limited to: all vinyl wraps, internal and external components and signage, bottle racks, drip trays, external fins and the System Standards:awnings, LED lighting, menu boards, stickers, decals, and display monitor.. If you fail to do so in the required time period, you agree to allow us, without liability to you or third parties for trespass or any other claim, to take possession of the KEV and any Additional Equipment, to remove any signs or other materials containing any Marks from the Kona Ice FranchiseFranchised Business, and to otherwise modify the KEV and any Additional Equipment so as to no longer be identifiable as related to the Kona Ice Franchise;System.

## **25.6 Branded Items**

Return all copies of the Brand Manual, or any portions thereof, as well as all signs, sign faces, brochures, advertising and promotional materials, forms and any other materials bearing or containing any of the Marks, our copyrights or other identification relating to a Franchised Business, unless we allow you to Transfer such items to an approved transferee.

## **25.7 Technology and Data**

Return all copies of any software we license to you (and delete all such software from your computer memory and storage), provide us the then-current customer list and contracts that your Franchised Business has entered into and transfer all login information and data from any Technology, social media accounts and email addresses from your Franchised Business.



## **25.8 Entity Name**

Ensure that any names or registrations related to your use of the Marks are canceled.

## **25.9 Identifiers and Advertisements**

Immediately stop using all telephone numbers, advertisements, domain names and social media accounts associated with the Franchised Business. Notify all telephone companies, listing agencies, social media companies and domain name registration companies (collectively, the “Agencies”) of the termination or expiration of your right to use the following, and immediately transfer to us: (A) the telephone numbers, accounts and/or domain names, if applicable, related to the operation of your Franchised Business; and (B) any online listings associated with the Marks (you hereby authorize the Agencies to transfer such telephone numbers, domain names and listings to us and you authorize us, and appoint us and any officer we designate as your attorney-in-fact to direct the Agencies to transfer the telephone numbers, domain names and listings to us if you fail or refuse to do so).

## **25.10 Modifications**

Remove all trade dress, equipment, software and property owned by us and make such modifications and alterations that are necessary or that we require to prevent any association between us or the System and any business subsequently operated by you or any third party using any of the inventory, KEV, equipment used in the operation of the Franchised Business; provided, however, that this subsection shall not apply if your Franchised Business is transferred to an approved transferee or if we exercise our right to purchase your entire Franchised Business.

## **25.11 Customers**

We may contact customers of your Franchised Business and offer such customers continued rights to use one or more Kona Ice franchises on such terms and conditions we deem appropriate, which in no event will include assumption of any then-existing liability arising or relating to those customers or act or failure to act by you or your Franchised Business.

## **25.12 Compliance Evidence**

Provide us with written satisfactory evidence of your compliance with the above obligations within 30 days after the effective date of the termination, expiration or Transfer of this Franchise Agreement.

## **26. RIGHT TO PURCHASE**

### **26.1 Generally**

Upon the expiration or termination of this Franchise Agreement for any reason, we will have the right but not the obligation to purchase from you some or all of the assets used in the Franchised Business (“Acquired Assets”). We may exercise our option to begin this process 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 Business (the “Specified Date”). We have the right to inspect the assets used in the Franchised Business in order to determine which we wish to acquire and any refusal by you to cooperate with our right to inspect will extend the Specified Date by an equal period. The term “Acquired Assets” means, without limitation, equipment, KEV,



furnishings, fixtures, signs and inventory (non-perishable products, materials and supplies) used in the Franchised Business, all licenses necessary to operate the Franchised Business (if transferable) and the real estate fee simple or the lease or sublease for the Premises. Customer information and customer lists are owned by us and accordingly are not included within the definition of “Acquired Assets” and must be returned to us without charge upon expiration or termination. You may not sell the information or lists to a third party. We will be entitled to have the provisions in this Section enforced by a court of competent jurisdiction should you fail to meet your obligations. We will have the unrestricted right to assign this option to purchase the Acquired Assets. We or our assignee will be entitled to all customary representations and warranties, including that the Acquired 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 Acquired Assets, whether contingent or otherwise.

## **26.2 Purchase Price**

The purchase price for the Acquired Assets (“Purchase Price”) will be their fair market value (or, for leased assets, the fair market value of the lease), determined as of the Specified Date in a manner that accounts for reasonable depreciation and condition of the Acquired Assets. The Purchase Price for the Acquired Assets will not factor in the value of any rights granted by this Franchise Agreement, trademark, service mark, or other commercial symbol used in connection with the operation of the Franchised Business, nor any goodwill or “going concern” value for the Franchised Business. We may exclude from the Acquired Assets purchased in accordance with this Section any equipment, KEV, and inventory that are not accepted as meeting then-current standards for a Franchised Business or for which you cannot deliver a Bill of Sale in a form satisfactory to us.

If you and we cannot agree upon a fair market value, we shall appoint an independent, third-party appraiser with experience appraising businesses comparable to your Franchised Business in the United States (“Qualified Appraiser”) within 30 days after the Specified Date. We shall pay for 50% of the cost of this Qualified Appraiser, and you shall pay the other 50% of the cost.

The Qualified Appraiser shall appraise the Acquired Assets as described above (“Appraised Value”). If you agree with the Appraised Value, the Appraised Value shall be the Purchase Price. If you disagree with the Appraised Value, upon written notice to us, you may hire an additional Qualified Appraiser at your expense. In such situation, the Qualified Appraiser chosen by you shall appraise the Acquired Assets at fair market value determined as described above. The average of the two values provided by the Qualified Appraisers shall be the Purchase Price.

## **26.3 Access to Franchised Business**

The Qualified Appraiser will be given full access to the Franchised Business, the Premises 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.

## **26.4 Exercise of Option; Operation**

Within 10 days after the Purchase Price has been determined, we may fully exercise our option to purchase the Acquired Assets by notifying you of our decision 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, you will operate the Franchised Business and maintain the Acquired Assets in the usual and ordinary course of business and maintain in full force all insurance policies required under this Franchise Agreement. Alternatively, we may require you to close the Franchised Business during that time period without removing any Acquired Assets from the Franchised Business.

### **26.5 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. You will grant us and our representatives access to the Franchised Business and the Premises at all reasonable times for the purpose of conducting inspections of the Acquired Assets; provided that such access does not unreasonably interfere with your operations of the Franchised Business.

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 Acquired Assets, we will have the option to either accept the condition of the Acquired Assets as they exist or rescind our option to purchase on or before the Closing.

### **26.6 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 or our affiliates, and the amount of any encumbrances or liens against the Acquired Assets or any obligations assumed by us. If you cannot deliver clear title to all of the purchased Acquired Assets as indicated in this Section, or if there are other unresolved issues, the Closing will be accomplished through an escrow.

## **27. DISPUTE RESOLUTION**

### **27.1 Mediation Requirement**

Except for any “Litigation Exceptions” as defined below, without limiting our Termination Rights, all claims or disputes between you and us or our affiliates arising out of, or in any way relating to, this Franchise Agreement, or any of the parties’ respective rights and obligations arising out of this Franchise Agreement, shall be submitted first to non-binding mediation (“Required Mediation”) prior to a hearing in binding arbitration. Before commencing any mediation against us or our affiliates with respect to any such claim or dispute, you must submit a notice to us, which specifies, in detail, the precise nature and grounds of such claim or dispute. Such mediation shall take place in the city closest to our principal place of business (currently Florence, Kentucky) under the auspices of the American Arbitration Association (“AAA”), or other mediation service acceptable to us in our sole discretion, in accordance with AAA’s Commercial Mediation Procedures then in effect. Such mediation shall be concluded within 60 days of the issuance of your request, or such longer period as we may agree upon. You may not commence any action against us or our affiliates with respect to any such claim unless mediation proceedings have been terminated either: (i) as the result of a written declaration of the mediator(s) that further mediation efforts are not worthwhile; or (ii) as a result of a written declaration by us. The parties shall each bear their own costs of mediation and shall share equally the filing fee imposed by AAA and the mediator’s fees. We reserve the right to specifically enforce our right to mediation.



## 27.2 Arbitration

If the parties cannot fully resolve and settle a dispute through Required Mediation, all unresolved issues involved in the dispute shall be, at the request of either party, submitted to final and binding arbitration to be conducted in the city closest to our principal place of business (currently Florence, Kentucky) by AAA (if AAA or any successor thereto is no longer available for arbitration in such city, you and we will agree on another arbitration organization to conduct the arbitration proceeding), in accordance with AAA's Commercial Arbitration Rules and otherwise as set forth below on an individual basis (not a class action) ("Required Arbitration").

In any arbitration proceeding, each party will submit or file any claim that would constitute a compulsory counterclaim as defined by the Federal Rules of Civil Procedure within the same proceeding as the claim it relates to. Any claim that is not submitted or filed as required is forever barred. Except for claims excluded from mediation and arbitration herein, the arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability or formation of this Franchise Agreement including, but not limited to any claim that all or any part of this Franchise Agreement is void or voidable.

27.2.1 Notice of Arbitration. Either party may initiate an arbitration proceeding by making a written demand to the other party, and both parties will then be obligated to engage in arbitration. The demand for arbitration must be served on the other party within the period provided by the applicable statute of limitations, and must contain a statement setting forth the nature of the dispute, the amount involved, if any, and the remedies sought. A demand for arbitration will not operate to stay, postpone or rescind the effectiveness of any termination of this Franchise Agreement. Arbitration will not proceed until any protest of arbitrability is resolved by the arbitrator or by an appropriate court, if necessary. you acknowledge that all telephone numbers, facsimile numbers, social media websites, Internet addresses, and email addresses (collectively "**Identifiers**") used in the operation of your Kona Ice Business constitute our assets, and within five (5) days of termination or expiration of this Franchise Agreement, you will take such actions necessary to cancel or assign to us or our designee, as determined in our sole discretion, all of your right, title, and interest in and to such Identifiers and will notify the telephone company and all listing agencies of the termination or expiration of your right to use any Identifiers, including but not limited to any regular, classified, or other telephone directory listings associated with the Identifiers, and to authorize a transfer of the same at our direction. You also hereby agree to take all actions required to cancel all assumed name or equivalent registrations related to your use of the Marks. You acknowledge that we have the sole rights to, and interest in, all Identifiers used by you to promote your Kona Ice Business or that are otherwise associated with the Marks. You hereby irrevocably appoint us, with full power of substitution, as your true and lawful attorney in fact with all powers necessary to execute such directions and authorizations as may be necessary or prudent to accomplish the foregoing. You further appoint us to direct the telephone company, postal service, registrar, Internet Service Provider, listing agency, website operator, or any other third party to transfer such Identifiers to us or our designee and such third parties may accept such direction by us pursuant to this Franchise Agreement as conclusive evidence of our rights to the Identifiers and our authority to direct their transfer;

- ~~(4) — you agree to give us, within 30 days after the expiration or termination of this Franchise Agreement, evidence satisfactory to us of your compliance with the obligations of this Section 16.B; and~~
- ~~(5) — you must follow any reasonable procedures established by us to ensure the expiration or termination of this Franchise Agreement creates the least disruption possible to the System, including those procedures set forth in the Brand Manual.~~



~~16.C — CONFIDENTIAL INFORMATION.~~

~~You agree that when this Franchise Agreement expires or is terminated, you will immediately cease using any of our Confidential Information (including computer software or similar technology and digital passwords and identifications we have licensed to you or that otherwise are proprietary to us or the System) in any business or otherwise and return to us all copies of the Brand Manual and any other confidential materials we have loaned you, and any customer data you may have.~~

~~16.D — COVENANT NOT TO COMPETE.~~

~~Upon termination, transfer, or expiration of this Franchise Agreement, you and your Owners agree that for two years beginning on (a) the effective date of the termination, transfer, or expiration, or on (b) the date on which all persons restricted by this Section begin to comply with this Section, whichever is later, neither you nor any of your Owners (or your or their spouses) will have any direct or indirect interest as an owner (whether of record, beneficially, or otherwise), investor, partner, director, officer, employee, consultant, representative, or agent in any Competitive Business (as defined in Section 8 above) located at or within (i) a 20-mile radius from your Kona Ice Business; and (ii) a 20-mile radius from all other Kona Ice Businesses that are operating or under development as of the beginning of the Restricted Period.~~

~~These restrictions also apply after transfers, as provided in Section 13.C(12) above. If any person restricted by this Section refuses to comply with these obligations, the two-year period for that person will commence with the entry of a court order enforcing this provision. You and your Owners expressly acknowledge that you possess skills and general abilities and have other opportunities for exploiting these skills. Consequently, our enforcing the covenants made in this Section will not deprive you of your personal goodwill or ability to earn a living.~~

~~In the event a court of competent jurisdiction determines that the two-year post-term restricted period contained herein is too long to be enforceable, then the post-term restricted period shall be for a period of one year beginning on the effective date of termination, transfer, or expiration of this Franchise Agreement.~~

~~16.E — OUR RIGHT TO PURCHASE THE FRANCHISE.~~

~~(1) — Exercise of Option. Upon any of the following:~~

- ~~(a) — our termination of this Franchise Agreement according to its terms and conditions;~~
- ~~(b) — the expiration of this Franchise Agreement; or~~
- ~~(c) — your termination of this Franchise Agreement;~~

~~we have the option, exercisable by giving you written notice within 30 days after the date of termination, to purchase the assets of the Kona Ice Franchise, including, without limitation, the KEV and any Additional Equipment. We have the unrestricted right to assign this option to purchase. If we purchase the Kona Ice Franchise, we are entitled to all customary warranties and representations in our asset purchase, including, without limitation, representations and warranties as to ownership and condition of and title to assets; liens and encumbrances on assets; validity of contracts and agreements; and liabilities affecting the assets, contingent or otherwise.~~



27.2.2 Selection of Arbitrator. Arbitration will be conducted before a single, neutral arbitrator who is familiar with legal disputes of the type at issue and who has franchise business or contract experience. The parties will mutually agree on the selection of the arbitrator; however, if the parties have not agreed on the selection of an arbitrator within 30 days after the arbitration demand, either party may request AAA or successor organization, to appoint a qualified arbitrator.

27.2.3 Discovery. All discovery must be completed within 60 days following appointment of an arbitrator, unless otherwise agreed by the parties. Depositions will be limited to a maximum of five per party and will be held within 30 days after making a request. Additional depositions may be scheduled only with the permission of the arbitrator and for good cause shown. Each deposition will be limited to a maximum of six hours duration. Should a dispute arise over the extent of or propriety of any discovery request, the arbitrator will make a final determination after hearing each party's position.

27.2.4 Statement of Case. At least five days before the scheduled hearing, each party must deliver to the arbitrator and to the other party a written summary of its position on the issues in dispute.

27.2.5 Arbitrator's Decision. The arbitrator will issue a written decision within ten days after conclusion of the hearing, explaining the basis for the decision. ~~Purchase Price.~~ The purchase price for the Kona Ice Franchise will be its fair market value, provided these items will not include any value for:

- (a) — the Kona Ice Franchise or any rights granted by this Franchise Agreement;
- (b) — goodwill attributable to our Marks, brand image, and other intellectual property;  
or
- (c) — participation in the network of Kona Ice Franchises.

~~We may exclude from the assets purchased any assets and supplies that are not reasonably necessary (in function or quality) to the Kona Ice Franchise operation or that we have not approved as meeting standards for Kona Ice Franchises, and the purchase price will reflect these exclusions.~~

- (3) — ~~Appraisal.~~ If we and you cannot agree on fair market value, fair market value will be determined by an independent appraiser selected by us. We will select the appraiser within 15 days after we notify you that we wish to exercise our purchase option (if you and we have not agreed on fair market value before then). You and we will bear the costs of the appraiser. The appraiser must complete the appraisal within 30 days after. The purchase price will be the independent appraisal amount.
- (4) — ~~Closing.~~ We or our assignee will pay the purchase price at the closing, which will take place not later than 60 days after the purchase price is determined, although we or our assignee may decide after the purchase price is determined not to purchase the Kona Ice Franchise. We may set off against the purchase price, and reduce the purchase price by, any and all amounts you or your Owners owe us or our affiliates. At the closing, you agree to 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), with all sales and other transfer taxes paid by you;



~~(b) — all of the Kona Ice Franchise licenses and permits which may be assigned or transferred;~~

~~(c) — the title, or lease, (as applicable) to the KEV and any Additional Equipment; and~~

~~If you cannot deliver clear title to all of the purchased assets, or if there are other unresolved issues, we and you will close the sale through an escrow. You and your Owners further agree to execute general releases, in a form satisfactory to us, of any and all claims against us and our owners, officers, managers, employees, agents, successors, and assigns.~~

#### ~~16.F — CONTINUING OBLIGATIONS.~~

~~All of our and your and your Owners' obligations which expressly or by their nature survive this Franchise Agreement's expiration or termination will continue in full force and effect subsequent to and notwithstanding its expiration or termination and until they are satisfied in full or expire by their nature.~~

### ~~17. — RELATIONSHIP OF THE PARTIES/INDEMNIFICATION.~~

#### ~~17.A — INDEPENDENT CONTRACTORS.~~

~~You and we understand and agree that this Franchise Agreement does not create a fiduciary relationship between you and us, that you and we are and will be independent contractors, and that nothing in this Franchise Agreement is intended to make either you or us a general or special agent, joint venturer, partner, or employee of the other for any purpose. You agree to identify yourself conspicuously in all public records, letterhead, and business forms, and in all dealings with customers, suppliers, public officials, Kona Ice Franchise personnel, and others, as the Kona Ice Franchise owner under a franchise we have granted, and to place notices of independent ownership on the KEV and any Additional Equipment and on the forms, business cards, stationery, advertising, and other materials we require from time to time. You will use your legal name on all documents for use with employees and contractors, including but not limited to, employment applications, time cards, pay checks, and employment and independent contractor agreements and will not use the Marks on these documents. Upon our request, you and each employee will sign an employment relationship acknowledgment form within seven days stating that you alone are the employer and operate the Kona Ice Business.~~

#### ~~17.B — NO LIABILITY FOR ACTS OF OTHER PARTY.~~

~~We and you may not make any express or implied agreements, warranties, guarantees, or representations, or incur any debt, in the name or on behalf of the other or represent our respective relationship is other than Franchisor and franchise owner. You acknowledge that we have no responsibility to ensure that the Kona Ice Business is developed and operated in compliance with all applicable laws and regulations, and we will not be obligated for any damages to any person or property directly or indirectly arising out of the Kona Ice Franchise operation or the business you conduct under this Franchise Agreement.~~

#### ~~17.C — TAXES.~~

~~We will have no liability for any sales, use, service, occupation, excise, gross revenue, income, property, or other taxes, whether levied upon you or the Kona Ice Franchise, due to the business you conduct (except for our income taxes). You are responsible for paying these taxes and must reimburse us for any~~



taxes we must pay to any state taxing authority on account of either your operation or payments you make to us.

#### 17.D ~~INDEMNIFICATION.~~

You agree to indemnify, defend, and hold harmless us, our affiliates, and our and their respective shareholders, directors, officers, employees, agents, successors, and assignees (the "**Indemnified Parties**") against, and to reimburse any one or more Indemnified Parties for, all claims, obligations, and damages directly or indirectly arising out of the Kona Ice Franchise operation, the business you conduct under this Franchise Agreement, your employment or contractual relationship with your employees or independent contractors, any loss of data (including customer information) resulting from a breach of such data caused in any part by you or your negligence, or your breach of this Franchise Agreement, including, without limitation, those alleged to be or found to have been caused by the Indemnified Party's negligence, as well as any fees, costs, or liabilities incurred by us on your behalf, including fees and costs incurred by us to recover amounts due to you on your behalf, unless (and then only to the extent that) the claims, obligations, or damages are determined to be caused solely by our gross negligence or willful misconduct in a final, unappealable ruling issued by a court or arbitrator with competent jurisdiction.

For purposes of this indemnification, "claims" include all obligations, damages (actual, consequential, or otherwise), and costs that any Indemnified Party reasonably incurs in defending any claim against it, including, without limitation, reasonable accountants', arbitrators', attorneys', and expert witness fees, costs of investigation and proof of facts, court costs, travel and living expenses, and other expenses of litigation, arbitration, or alternative dispute resolution, regardless of whether litigation, arbitration, or alternative dispute resolution is commenced. Each Indemnified Party may defend any claim against it and agree to settlements or take any other remedial, corrective, or other actions and such actions will affect your obligation to indemnify under this Section.

This indemnity will continue in full force and effect, subsequent to and notwithstanding this Franchise Agreement's expiration or termination. An Indemnified Party need not seek recovery from any insurer or other third party, or otherwise mitigate its losses and expenses, to maintain and recover fully a claim for indemnity under this Section. You agree that a failure to pursue a recovery or mitigate a loss will not reduce or alter the amounts that an Indemnified Party may recover under this Section.

We will indemnify you against, and reimburse you for (1) all damages for which you are held liable in any judicial or administrative proceeding arising out your use of any Mark or Patent in compliance this Franchise Agreement; and (2) the costs in defending any claim brought against Franchisee or in any proceeding in which Franchisee is named as a party arising out of Franchisee's use of any Mark or Patent in compliance with this Franchise Agreement, provided you have timely notified us of the claim or proceeding and have complied with this Franchise Agreement.

The indemnification obligations under this Section 17.D. shall expressly survive any termination, expiration, or non-renewal of this Franchise Agreement.



## ~~18. — ENFORCEMENT.~~

### ~~18.A — SECURITY INTEREST.~~

~~As security for the performance of your obligations under this Franchise Agreement you grant us a security interest in all of the assets of the Kona Ice Franchise, including but not limited to the KEV and any Additional Equipment, inventory, fixtures, furniture, equipment, accounts, supplies, contracts, proceeds, and products of all those assets. You understand that we may make all required UCC filings to perfect our security interest in the assets of the Kona Ice Franchise. You agree to execute such other documents as we may reasonably request to further document, perfect, and record our security interest. If you default on any of your obligations under this Franchise Agreement, we may exercise all rights of a secured creditor granted to us by law, in addition to our other rights under this Franchise Agreement and at law. If you are required to finance the initial purchase of any asset of your Kona Ice Business by a third-party lender (the “**Initial Lender**”), you must give us notice of the same. If the Initial Lender requires we subordinate our security interest in the assets of the Kona Ice Franchise as a condition to lending you working capital for the operation of the Kona Ice Franchise, we will agree to subordinate under terms and conditions determined by us. You are not permitted to obtain any additional loans (other than the initial loan with the Initial Lender) unless you obtain our prior written approval.~~

### ~~18.B — SEVERABILITY AND SUBSTITUTION OF VALID PROVISIONS.~~

~~Except as expressly provided to the contrary in this Franchise Agreement, each section, paragraph, term, and provision of this Franchise Agreement is severable, and if, for any reason, any part is held to be invalid or contrary to or in conflict with any applicable present or future law or regulation in a final, unappealable ruling issued by any court, agency, or tribunal with competent jurisdiction, that ruling will not impair the operation of, or otherwise affect, any other portions of this Franchise Agreement, which will continue to have full force and effect and bind the parties.~~

~~If any covenant which restricts competitive activity is deemed unenforceable by virtue of its scope in terms of area, business activity prohibited, and/or length of time, but would be enforceable if modified, you and we agree that the covenant will be enforced to the fullest extent permissible under the laws and public policies applied in the jurisdiction whose law determines the covenant’s validity.~~

~~If any applicable and binding law or rule of any jurisdiction requires more notice than this Franchise Agreement requires of this Franchise Agreement’s termination or of our refusal to enter into a Successor Franchise Agreement, or some other action this Franchise Agreement does not require, or if, under any applicable and binding law or rule of any jurisdiction, any provision of this Franchise Agreement or any System Standard is invalid, unenforceable, or unlawful, the notice and/or other action required by the law or rule will be substituted for the comparable provisions of this Franchise Agreement, and we may modify the invalid or unenforceable provision or System Standard to the extent required to be valid and enforceable or delete the unlawful provision in its entirety. You agree to be bound by any promise or covenant imposing the maximum duty the law permits which is subsumed within any provision of this Franchise Agreement, as though it were separately articulated in and made a part of this Franchise Agreement.~~

### ~~18.C — WAIVER OF OBLIGATIONS.~~

~~We and you may by written instrument unilaterally waive or reduce any obligation of or restriction upon the other under this Franchise Agreement, effective upon delivery of written notice to the other or~~



~~another effective date stated in the notice of waiver. Any waiver granted will be without prejudice to any other rights we or you have, will be subject to continuing review, and may be revoked at any time and for any reason effective upon delivery of ten days' prior written notice.~~

~~We and you will not waive or impair any right, power, or option this Franchise Agreement reserves (including, without limitation, our right to demand exact compliance with every term, condition, and covenant or to declare any breach to be a default and to terminate this Franchise Agreement before its term expires) because of any custom or practice at variance with this Franchise Agreement's terms; our or your failure, refusal, or neglect to exercise any right under this Franchise Agreement or to insist upon the other's compliance with this Franchise Agreement, including, without limitation, any System Standard; our waiver of or failure to exercise any right, power, or option, whether of the same, similar, or different nature, with other Kona Ice franchises; the existence of franchise agreements for other Kona Ice franchises which contain provisions different from those contained in this Franchise Agreement; or our acceptance of any payments due from you after any breach of this Franchise Agreement. No special or restrictive legend or endorsement on any check or similar item given to us will be a waiver, compromise, settlement, or accord and satisfaction. We may remove any legend or endorsement, which then will have no effect.~~

~~Neither we nor you shall be liable for loss or damage or deemed to be in breach of this Franchise Agreement if our or your failure to perform our or your obligations results from any event of force majeure. Any delay resulting from an event of force majeure will extend performance accordingly or excuse performance, in whole or in part, as may be reasonable under the circumstances. No party shall be liable for any delay in the fulfillment of or failure to fulfill its obligations in whole or in part (other than the payment of money as may be owed by a party) under this Franchise Agreement where the delay or failure is solely due to force majeure, as described below. In the event of force majeure, the parties' obligations shall be extended or relieved only to the extent the parties are respectively necessarily prevented or delayed in such performance during the period of such force majeure. As used in this Franchise Agreement, the term "**force majeure**" shall mean any act of God, strike, lock out or other industrial disturbance, war (declared or undeclared), terrorist event, riot, epidemic, fire or other catastrophe, act of any government and any other similar cause which is beyond the party's control and cannot be overcome by use of normal commercial measures. **Force Majeure** should be construed narrowly and does not include general economic, market or societal conditions, or any changes thereto, even those that are the direct or indirect result of the force majeure event. The party whose performance is affected by an event of force majeure shall give prompt notice of such force majeure event to the other party, which in no case shall be more than 48 hours after the event, setting forth the nature thereof and an estimate as to its duration, and the affected party shall furnish the other party with periodic reports regarding the progress of the force majeure event. Each party must use its best efforts to mitigate the effect of the event of force majeure upon its performance of the Agreement and to fulfill its obligations under the Franchise Agreement. Upon completion of the event of force majeure, the party affected must as soon as reasonably practicable recommence the performance of its obligations under this Franchise Agreement. However, in the event the force majeure continues for a period of six months or more, then the unaffected party may, at its option, terminate this Franchise Agreement by 30 days' written notice to the party asserting such force majeure. An event of force majeure does not relieve a party from liability for an obligation which arose before the occurrence of the force majeure event, nor does that event affect any obligation to pay money owed under the Franchise Agreement or to indemnify us, whether such obligation arose before or after the force majeure event. An event of force majeure shall not affect Franchisee's obligations to comply with any restrictive covenants in this Franchise Agreement during or after the force majeure event.~~



~~18.D — COSTS AND ATTORNEY FEES.~~

~~You shall pay all costs and expenses (including reasonable fees of attorneys and other engaged professionals) incurred by us in successfully enforcing, issuing notices of default, or obtaining any remedy arising from the breach of this Franchise Agreement, including for both arbitration and state and federal court actions. The existence of any claims, demands, or actions which you may have against us, whether arising from this Franchise Agreement or otherwise, shall not constitute a defense to our enforcement of any representations, warranties, covenants, agreements, or obligations herein against you or your Owners. The prevailing party in any arbitration or litigation arising out of or relating to this Franchise Agreement shall be entitled to recover from the other party all damages, costs, and expenses, including court costs and reasonable attorney fees, incurred by the prevailing party in successfully enforcing any provision of this Franchise Agreement.~~

~~18.E — RIGHTS OF PARTIES ARE CUMULATIVE.~~

~~Our and your rights under this Franchise Agreement are cumulative, and our or your exercise or enforcement of any right or remedy under this Franchise Agreement will not preclude our or your exercise or enforcement of any other right or remedy which we or you are entitled by law to enforce.~~

~~18.F — MEDIATION.~~

~~Except as otherwise provided in this Franchise Agreement, any claim or controversy arising out of or related to this Franchise Agreement, or the making, performance, breach, interpretation, or termination thereof shall first be subject to non-binding mediation in the city and state of our principal business address, which is currently in Florence, Kentucky. Mediation shall not defer or suspend our exercise of any termination right under Sections 15 and 16. Non-binding mediation hereunder shall be concluded within 60 days of the issuance of the request, or such longer period as may be agreed upon by the parties in writing (“**Mediation Termination Date**”). All aspects of the mediation process shall be treated as confidential, shall not be disclosed to others, and shall not be offered or admissible in any other proceeding or legal action whatsoever. The parties shall bear their own costs of mediation, and shall share equally in the cost of the mediator or mediation service. Mediation under this Section is not intended to alter or suspend the rights or obligations of the parties under this Franchise Agreement or to determine the validity or effect of any provision of this Franchise Agreement, but is intended to furnish the parties an opportunity to resolve disputes amicably, expeditiously, and in a cost-effective manner on mutually acceptable terms. The non-binding mediation provided for hereunder shall be commenced by the party requesting mediation giving written notice of the request for mediation to the party with whom mediation is sought. The request shall specify with reasonable particularity the matters for which non-binding mediation is sought. Non-binding mediation hereunder shall be conducted by a mediator or mediation program designated by us in writing. We shall make the designation within a reasonable time after issuance of the request.~~



## 18.G — BINDING ARBITRATION.

Except for claims under Section 18.K, any dispute or controversy arising out of or relating to this Franchise Agreement not settled by informal negotiations or mediation will, at the request of either party, be settled by final and binding arbitration conducted in the city and state of our principal business address, which is currently in Florence, Kentucky, in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association or its successor organization (the “AAA”) and otherwise as set forth below on an individual basis (not a class action). Judgment upon the decision rendered by the arbitrator may be entered in any court having jurisdiction. This decision will be binding upon both parties. The arbitrator will have authority to assess actual damages sustained by reason of any breach or wrongful termination of this Franchise Agreement, including monetary damages and interest on unpaid amounts from date due, specific performance, injunctive and declaratory relief, and legal fees and costs, but will not have any authority to amend or modify the terms of this Franchise Agreement or to assess exemplary or punitive damages. Except for claims excluded from mediation and arbitration herein, the arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability, or formation of this Franchise Agreement, including, but not limited to, any claim that all or any part of this Franchise Agreement is void or voidable.

~~27.2.6 Neither party may initiate arbitration prior to the Mediation Termination Date. Following the Mediation Termination Date, either party may initiate the arbitration proceeding by making a written demand to the other. Both parties will then be obligated to engage in arbitration. The demand for arbitration must be served on the other party within the period provided by Section 18.M, and must contain a statement setting forth the nature of the dispute, the amount involved, if any, and the remedies sought. A demand for arbitration will not operate to stay, postpone, or rescind the effectiveness of any termination of this Franchise Agreement. Time Schedule. Any award will be made within nine months of the filing of the notice of intention to arbitrate and the arbitrator will agree to comply with this schedule before accepting appointment. Arbitration will not proceed until any protest of arbitrability is resolved by the arbitrator or by an appropriate court, if necessary. Arbitration will be conducted before a single arbitrator who is familiar with legal disputes of the type at issue and who has at least 10 years’ experience as a lawyer or in the franchise business. The parties will mutually agree on the selection of the arbitrator; however, if the parties have not agreed on the selection of an arbitrator within 30 days after the arbitration demand, either party may request the AAA or successor organization to appoint a qualified arbitrator. Within 10 days after appointment of the arbitrator, the parties will meet with the arbitrator, in person or by telephone, for a preliminary conference. At the preliminary conference, the parties will establish the extent of and schedule for discovery, including the production of relevant documents, identification of witnesses, depositions, and the stipulation of uncontested facts. At this preliminary conference, the date for the hearing will be set. At the preliminary conference, the arbitrator will set forth the procedures to be followed at the hearing. Should a dispute arise over the extent of or propriety of any discovery request, the arbitrator will make a final determination after hearing each party’s position. At least 5 days before the scheduled hearing, each party must deliver to the arbitrator and to the other party a written summary of its position on the issues in dispute.~~

~~The arbitrator will issue a written decision within 10 days after conclusion of the hearing, explaining the basis for the decision. Judgment upon the decision rendered by the arbitrator may be entered in any court having jurisdiction. This decision will be binding upon both parties. The arbitrator will have authority to assess actual damages sustained by reason of any breach or wrongful termination of this Franchise Agreement, but will not have any authority to amend or modify the terms of this Franchise Agreement or to assess punitive damages or treble damages.~~



The parties will use due diligence to meet the foregoing time schedule, and the arbitrator will have the right to impose appropriate sanctions against any party who fails to comply with the agreed-upon time schedule. The arbitrator will use his best efforts to comply with the foregoing time schedule, but may unilaterally modify it if, in his opinion, modification is necessary for a proper and just resolution of the dispute. The parties may jointly modify the agreed-upon time schedule, subject to the arbitrator's approval.

27.2.7 Arbitration Expenses. The fees ~~charged by~~ of, and authorized costs incurred by, the arbitrator will be shared equally by the parties, and each party will bear all of its own costs of arbitration; provided, however, that the arbitration decision will provide that the substantially prevailing party will recover from the other party its actual costs and expenses (including arbitrator's fees and expenses, and attorney fees and expenses) incurred in connection with the dispute.

**27.3 The entire arbitration proceedings and related documents are confidential. Except as necessary to enforce the decision of the arbitrator hereunder, all conduct, statements, promises, offers, views, and opinions, whether oral or written, made in the course of the arbitration by any of the parties, their agents, employees, or representatives, and the arbitrator, are confidential.**Disputes Not Subject to Mediation or Arbitration

If any of the following exceptions occur, either party may immediately file a lawsuit in accordance with this Section without going through the Required Mediation or Required Arbitration (for purposes of this Franchise Agreement, the following shall be referred to as the "Litigation Exceptions"): ~~These matters will not be discoverable or admissible for any purposes, including impeachment, in any litigation or other proceeding involving the parties, and will not be disclosed to anyone who is not an agent, employee, expert witness, or representative for any of the parties; however, evidence otherwise discoverable or admissible is not excluded from discovery or admission as a result of its use in the arbitration.~~

#### 18.H GOVERNING LAW.

~~All matters relating to arbitration will be governed by the Federal Arbitration Act (9 U.S.C. §§ 1 et seq.). Except to the extent governed by the Federal Arbitration Act, the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. Sections 1051 et seq.), or other federal law, this Franchise Agreement, the Kona Ice Franchise, and all claims arising from the relationship between us and you will be governed by the laws of the State of Kentucky, without regard to its conflict of laws rules except that the Kentucky Business Opportunity Investment Act shall not apply if your Kona Ice Franchise is located outside the State of Kentucky.~~

#### 18.I CONSENT TO JURISDICTION.

~~Subject to Sections 18.F and 18.G above and the provisions below, we, you, and your Owners agree that all actions arising under this Franchise Agreement or otherwise as a result of the relationship between you and us must be commenced in the state or federal court of general jurisdiction which is closest to where our principal office then is located (currently Florence, Kentucky), and we and you (and each Owner) irrevocably consent to the jurisdiction of those courts and waive any objection to either the jurisdiction of or venue in those courts. Nonetheless, we and you and your Owners agree that any of us may enforce any arbitration orders and awards in the courts of the state or states in which you are domiciled or the Kona Ice Franchise is located.~~



~~18.J — WAIVER OF PUNITIVE DAMAGES AND JURY TRIAL.~~

~~Except for your obligation to indemnify us for third party claims under Section 17.D, and except for punitive damages available to either party under federal law, we, you, and your Owners waive to the fullest extent permitted by law any right to or claim for any punitive or exemplary damages against the other and agree that, in the event of a dispute between us and you, the party making a claim will be limited to equitable relief and to recovery of any actual damages it sustains.~~

~~We and you irrevocably waive trial by jury in any action, proceeding, or counterclaim, whether at law or in equity, brought by either of us.~~

~~18.K — PROVISIONAL REMEDIES.~~

~~Nothing in this Franchise Agreement bars our right to obtain specific performance of this Franchise Agreement, injunctive relief from a court of competent jurisdiction, and/or other provisional relief including but not limited to: (i) enforcement of liens, security agreements, or attachment, as we deem to be necessary or appropriate to compel you to comply with your obligations to us and/or to protect the Marks, Patent, trade secrets, copyrighted materials, intellectual property, or Confidential Information; (ii) any claim or dispute involving or contesting the validity of any of the Marks, Patent, trade secrets, copyrighted materials, intellectual property, or Confidential Information; (iii) alleged violations of federal or state antitrust laws; (iv) the right to indemnification or the manner in which it is exercised, any claim or controversy arising out of or related to this Franchise Agreement, or the making, performance, breach, interpretation, or termination thereof, (v) relief against threatened or actual conduct that has or will cause us, the Marks, the Patent, the Confidential Information, and/or the System loss or damage; (vi) any of the restrictive covenants contained in this Franchise Agreement; or (vii) enforcement of any of the post-termination obligations under this Franchise Agreement. You agree we may obtain such specific performance or injunctive or provisional relief in addition to such further or other relief as may be available at law or in equity. You agree that we will not be required to post a bond to obtain such specific performance or injunctive or provisional relief and that your only remedy if an injunction is entered against you will be the dissolution of that injunction, if warranted, upon due hearing (all claims for damages by injunction being expressly waived hereby). The prevailing party shall be entitled to recover its costs and reasonable attorney fees incurred by it in obtaining such relief. The parties expressly agree that the venue for such litigation shall be the state or federal courts located in the city closest to our principal place of business (currently Florence, Kentucky), provided however that we may obtain such relief in any state or federal court with proper jurisdiction. The parties consent to the exercise of personal jurisdiction over them by these courts, and to the propriety of venue in these courts for the purpose of this Section 18.K, and the parties waive any objections that they would otherwise have in this regard.~~

~~18.L — BINDING EFFECT.~~

~~This Franchise Agreement is binding upon us and you and our and your respective executors, administrators, beneficiaries, permitted assigns, and successors in interest. Subject to our right to modify the Brand Manual and System Standards, this Franchise Agreement may not be modified except by a written agreement signed by both our and your duly authorized officers; provided, however, this Franchise Agreement may be modified on renewal without your prior approval.~~

~~18.M — LIMITATIONS OF CLAIMS.~~

~~Except for claims arising from your nonpayment or underpayment of amounts you owe us, any and all claims arising out of or relating to this Franchise Agreement or our relationship with you will be barred~~



~~unless a judicial or arbitration proceeding is commenced within one year from the date on which the party asserting the claim knew or should have known of the facts giving rise to the claims. However, the parties agree that in order to comply with this provision, either party may commence a judicial or arbitration proceeding before a related mediation proceeding is declared completed.~~

#### 18.N CONSTRUCTION.

~~The preambles and attachments are a part of this Franchise Agreement which, together with the System Standards contained in the Brand Manual (which may be periodically modified, as provided in this Franchise Agreement), and the Franchise Disclosure Document, constitute our and your entire agreement, and there are no other oral or written understandings or agreements between us and you, or oral or written representations by us, relating to the subject matter of this Franchise Agreement, the franchise relationship, or the Kona Ice Franchise. Any understandings or agreements reached, or any representations made, before this Franchise Agreement are superseded by this Franchise Agreement.~~

**~~27.4 Any policies we adopt and implement from time to time to guide us in our decision-making are subject to change, are not a part of this Franchise Agreement, and are not binding on us. Except as expressly provided in this Franchise Agreement, nothing in this Franchise Agreement is intended or deemed~~Venue**

All disputes and claims must be mediated, arbitrated and, if applicable, litigated in the principal city (and, if applicable, court) closest to our principal place of business (currently Florence Kentucky); provided that for claims brought under the Litigation Exceptions, we have the option to bring suit against you in any state or federal court within the jurisdiction where your Franchised Business is or was located, or where any of your owners lives. The parties consent to the exercise of personal jurisdiction over them by these courts, and to the propriety of venue in these courts for the purpose of this Franchise Agreement, and the parties waive any objections that they would otherwise have in this regard. Each of the parties specifically waives any defense of inconvenient forum, and waives any bond, surety, or other security that might be required of any other party with respect to venue.

#### 27.5 Fees and Costs

If you breach any term of this Franchise Agreement or any other agreement with us or an affiliate of ours, you agree to reimburse us for all reasonable attorneys' fees and other expenses we incur relating to such breach, regardless of whether the breach is cured prior to the commencement of any dispute resolution proceedings.

If we or you must enforce this Franchise Agreement in an arbitration or judicial proceeding, the substantially prevailing party will be entitled to reimbursement of its costs and expenses, including reasonable fees for accountants, attorneys, and expert witnesses, costs of investigations and proof of facts, court costs, travel and living expenses, and other dispute-related expenses.

If there is a mixed decision involving an award of money or money equivalent and equitable relief, the arbitrator will award the above fees to the party that it deems has substantially prevailed over the other party using reasonable business and arbitrator's judgment. We reserve the right, but have no obligation, to advance your share of the costs of any arbitration proceeding for such arbitration proceeding to take place, and by doing so will not be deemed to have waived or relinquished our right to seek recovery of those costs in accordance with this Section. If either party commences any legal action or proceeding in any court in contravention of the terms of this Section, that party shall pay all costs and expenses that the other party



incurs in the action or proceeding, including, without limitation, costs and attorneys' fees as described in this Section.

#### **27.6 Jury Trial, Class Action and Punitive Damages Waiver**

WE AND YOU IRREVOCABLY WAIVE: (I) TRIAL BY JURY IN ANY PROCEEDING OR COUNTERCLAIM, WHETHER AT LAW OR EQUITY, REGARDLESS OF WHICH PARTY BRING SUIT; (II) THE RIGHT TO ARBITRATE OR LITIGATE ON A CLASS ACTION BASIS IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER AT LAW OR IN EQUITY, BROUGHT BY EITHER OF THE PARTIES; AND (III) ANY RIGHT TO OR CLAIM FOR ANY PUNITIVE OR EXEMPLARY DAMAGES AGAINST THE OTHER.

#### **27.7 Limitation of Actions and Waiver of Punitive Damages**

We and you agree that any legal action of any kind by a party arising out of or relating to this Franchise Agreement or a default of this Franchise Agreement must be commenced within one (1) year from the occurrence of the facts giving rise to any such claim or action or such claim or action will be barred provided, however, that the forgoing limitation shall not apply where required by applicable law, to the parties indemnification obligations under this Franchise Agreement or to the Litigation Exceptions. You and we, for yourselves, ourselves and on behalf of the Owners respectively, hereby waive to the fullest extent permitted by applicable law, any right to, or claim for, punitive or exemplary damages against the other, and agree that except to the extent provided to the contrary in this Franchise Agreement, in the event of a dispute you and we shall each be limited to recovering only the actual damages proven to be sustained any legal action of any kind.

#### **27.8 Confidentiality**

Except as required by applicable law, including the required disclosure in our franchise disclosure document, the entire mediation, arbitration or litigation proceedings and related documents are confidential. Except as necessary to enforce the decision of the arbitrator hereunder, all conduct, statements, promises, offers, views and opinions, whether oral or written, made in the course of the arbitration by any of the parties, their agents, employees or representatives and by the arbitrator, are confidential. These matters will not be discoverable or admissible for any purposes, including impeachment, in any litigation or other proceeding involving the parties, and will not be disclosed to anyone who is not an agent, employee, expert witness, or representative for any of the parties; however, evidence otherwise discoverable or admissible is not excluded from discovery or admission as a result of its use in the arbitration.

#### **27.9 Acknowledgment**

The parties acknowledge that nothing herein shall delay or otherwise limit our Termination Rights A notice or request for arbitration or mediation will have no effect on the status of any demand for performance or notice of termination under this Franchise Agreement.

#### **27.10 Survival**

We and you agree that the provisions of this Section shall apply during the Term of this Franchise Agreement and following the termination, expiration, Transfer or non-renewal of this Franchise Agreement. You agree to fully perform all obligations under this Franchise Agreement during the entire mediation, arbitration or litigation process.



## **28. SECURITY INTEREST**

You grant to us a security interest (“Security Interest”) in all of the furniture, fixtures, equipment, signage and real estate (including your interests under all real property and personal property leases and all improvements to real estate) of the Franchised Business including the KEV and any Additional Equipment, together with all similar property now owned or hereafter acquired, including additions, substitutions, replacements, proceeds and products thereof, wherever located, used in connection with the Franchised Business.

You are prohibited from granting a security interest in the Franchised Business or in any of your assets without our prior written consent, which shall not be unreasonably withheld. We may take a subordinate position in the security interest if a Small Business Administration-participating or third-party lender requires a first or senior lien, and the appropriate subordination documentation is executed by all parties. This security interest shall be security for any and all Royalties, damages, expenses or other sums owed to us hereunder and for any other amounts you owe to us. You agree to execute any documents, including but not limited to, a UCC-1 (or replacements or extensions for the UCC-1) that we reasonably believe to be necessary to perfect said security interest prior to the opening of the Franchised Business, and hereby appoint us as its attorney-in-fact for the purpose of executing such documents should you fail to do so. Except with respect to your sales of inventory in the ordinary course of business, you shall not sell, transfer, lease, sublease, assign, remove, waste, destroy, encumber or relocate any of the property described herein as subject to our security interest. Further, you shall take no other action which interferes with our security interest in said property, unless and until we release our security interest in the same.

## **29. GENERAL PROVISIONS**

### **29.1 Governing Law**

Except as governed by the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. §§ 1051, et seq.), this Franchise Agreement and the franchise relationship shall be governed by the laws of the State Kentucky (without reference to its principles of conflicts of law), but any law of that State that regulate the offer and sale of franchises or business opportunities or governs the relationship of a franchisor and its franchisee will not apply unless its jurisdictional requirements are met independently without reference to this Section.

### **29.2 Relationship of the Parties**

You understand that you are an independent contractor and are not authorized to make any contract, agreement, warranty or representation or create any obligation on our behalf under this Franchise Agreement. You understand and agree that nothing in this Franchise Agreement creates a fiduciary relationship between you and us or is intended to make either party a general or special agent, legal representative, subsidiary, joint venture, partner, employee or servant of the other for any purpose. During the Term, you must conspicuously identify yourself at your base of operations, and in all dealings with third parties, as a franchisee of ours and the independent owner of your Franchised Business. You agree to place such other notices of independent ownership on such forms, stationery, advertising, business cards and other materials as we may require from time to time. Neither we nor you are permitted to make any express or implied agreement, warranty or representation, or incur any debt, in the name of or on behalf of the other, or represent that our relationship is other than franchisor and franchisee. In addition, neither we nor you will be obligated by or have any liability under any agreements or representations made by the other that are not expressly authorized by this Franchise Agreement. You further agree that fulfillment of any and all of our obligations written in the Franchise Agreement, or based on any oral communications which may be



ruled to be binding in a court of law, shall be our sole responsibility and none of our owners, officers, agents, representatives, nor any individuals associated with us shall be personally liable to you for any reason.

### **29.3 Severability and Substitution**

Each section, subsection, term and provision of this Franchise Agreement, and any portion thereof, shall be considered severable. If any applicable and binding law imposes mandatory, non-waivable terms or conditions that conflict with a provision of this Franchise Agreement, the terms or conditions required by such law shall govern to the extent of the inconsistency and supersede the conflicting provision of this Franchise Agreement. If a court concludes that any promise or covenant in this Franchise Agreement is unreasonable and unenforceable, including without limitation, the Brand Covenants: (i) the court may modify such promise or covenant to the minimum extent necessary to make such promise or covenant enforceable; or (ii) we may unilaterally modify such promise or covenant to the minimum extent necessary to make such promise or covenant enforceable and consistent with the original intent of the parties (i.e., to provide maximum protection for us and to effectuate your obligations under the Franchise Agreement to the fullest extent permitted by law), and you agree to be bound by the modified provisions.

### **29.4 Waivers**

We and you may, by written instrument, unilaterally waive or reduce any obligation of or restriction upon the other. Any waiver granted by us shall apply only to the specifically waived provisions and shall not affect any other rights we may have. We and you shall not be deemed to have waived or impaired any right, power or option reserved by this Franchise Agreement (including the right to demand exact compliance with every term, condition and covenant in this Franchise Agreement, or to declare any breach of this Franchise Agreement to be a default, and to terminate the Franchise Agreement before the expiration of its Term) by virtue of: (i) any custom or practice of the parties that varies with the terms of this Franchise Agreement; (ii) any failure, refusal or neglect of us or you to exercise any right under this Franchise Agreement or to insist upon exact compliance by the other with its obligations under this Franchise Agreement, including any mandatory specification, standard or operating procedure; (iii) any waiver, forbearance, delay, failure or omission by us to exercise any right, power or option, whether of the same, similar or different nature, relating to other Kona Ice franchisees; or (iv) the acceptance by us of any payments due from you after breach of this Franchise Agreement.

### **29.5 Approvals**

Whenever this Franchise Agreement requires our approval, you must make a timely written request for approval, and the approval must be in writing in order to bind us. Except as otherwise expressly provided in this Franchise Agreement, if we fail to approve any request for approval within the required period of time, we shall be deemed to have denied your request. If we deny approval and you seek legal redress for the denial, the only relief to which you may be entitled is to acquire our approval. Except where this Franchise Agreement states that we may not unreasonably withhold our approval or consent, we may withhold such approval or consent, in our sole discretion. You are not entitled to any other relief or damages for our denial of approval.

### **29.6 Force Majeure**

No party shall be liable for any loss or damage that arises directly or indirectly through or as a result of any failure or delay in the fulfilment its obligations in whole or in part (other than the payment of money as may be owed by a party) under this Franchise Agreement where the delay or failure is due to “Force



Majeure.” In the event of Force Majeure, the parties shall be relieved of their respective obligations only to the extent each party, respectively, is prevented or delayed in performing its obligations during the period of Force Majeure. As used in this Franchise Agreement, the term “Force Majeure” shall mean any act of God, strike, lock-out or other industrial disturbance, war (declared or undeclared), riot, epidemic, fire or other catastrophe, act of any government and any other similar cause which is beyond the party’s control and cannot be overcome by use of normal commercial measures. The party whose performance is affected by an event of Force Majeure shall give prompt notice of such event to the other party, which in no case shall be more than 48 hours after the event, and provide them with the information regarding the nature of the event and its estimated duration. The affected party will provide the other party with periodic reports regarding the status and progress of the Force Majeure event. Each party must use its best efforts to mitigate the effect of the event of Force Majeure upon its performance of the Agreement and to fulfill its obligations under the Franchise Agreement.

Upon completion of a Force Majeure event, the party affected must as soon as reasonably practicable recommence the performance of its obligations under this Franchise Agreement. Any delay resulting from an event of Force Majeure will extend performance accordingly or excuse performance (other than payment of money), in whole or in part, only to the extent reasonable under the circumstances. However, in the event the Force Majeure continues for a period of six months or more, then the unaffected party may, at its option, terminate this Franchise Agreement by thirty (30) days prior written notice to the party asserting such Force Majeure. An event of Force Majeure does not relieve a party from liability for an obligation which arose before the occurrence of the event, nor does that event affect any obligation to pay money owed under the Franchise Agreement or to indemnify us, whether such obligation arose before or after the Force Majeure event. An event of Force Majeure shall not affect your obligations to comply with any restrictive covenants in this Franchise Agreement during or after the Force Majeure event.

### **29.7 Delegation**

We have the right in our sole and absolute discretion to delegate to third party designees, whether these designees are our agents or independent contractors with whom we have contracted the performance of any portion or all of our obligations under this Franchise Agreement, and any right that we have under this Franchise Agreement. If we do so, such third-party designees will be obligated to perform the delegated functions for you in compliance with this Franchise Agreement.

### **29.8 Binding Effect**

This Franchise Agreement may be executed in counterparts, and each copy so executed and delivered will be deemed an original. This Franchise Agreement is binding upon the parties to this Franchise Agreement and their respective executors, administrators, heirs, assigns and successors in interest. Nothing in this Franchise Agreement is intended, nor shall be deemed, to confer any rights or remedies upon any person or legal entity not a party to this Franchise Agreement.—~~Except where this Franchise Agreement expressly obligates us reasonably to approve or not unreasonably to withhold our approval of any of your actions or requests, we have the absolute right to refuse any request you make or to withhold our approval of any of your proposed, initiated, or completed actions; provided, however, that require our approval.~~

~~The headings of the sections and paragraphs in this Franchise Agreement~~Additional Insureds and the Indemnified Parties are for convenience only and do not define, limit, or construe the contents of these sections or paragraphs.

References in this Franchise Agreement to ~~“we,” “us,” and “our,”~~ with respect to all of our rights and all of your obligations to ~~us~~intended third party beneficiaries under this Franchise Agreement, include any



of our affiliates with whom you deal. The term “**affiliate**” means any person or entity directly or indirectly owned or controlled by, under common control with, or owning or controlling you or us. The term “**control**” means the power to direct or cause the direction of management and policies. with respect to indemnification obligations of the franchisee.

If two or more persons are at any time the Owners of the Kona Ice Franchise, whether as partners or joint venture, their obligations and liabilities to us will be joint and several. References to “Owner” mean any person holding a direct or indirect ownership interest (whether of record, beneficially, or otherwise) or voting rights in you (or a transferee of this Franchise Agreement and the Kona Ice Franchise or an ownership interest in you), including, without limitation, any person who has a direct or indirect interest in you (or a transferee), this Franchise Agreement, the Kona Ice Franchise, or the Kona Ice Franchise as well as any person who has any other legal or equitable interest, or the power to vest in himself or herself any legal or equitable interest, in their revenue, profits, rights, or assets.

References to a “**controlling ownership interest**” in you or one of your Owners (if an Entity) means a 51% or greater ownership interest in the entity. In the case of a proposed transfer of an ownership interest in you or one of your owners, the determination of whether a “controlling ownership interest” is involved must be made as of both immediately before and immediately after the proposed transfer to see if a “controlling ownership interest” will be transferred (because of the number of Owners before the proposed transfer) or will be deemed to have been transferred (because of the number of Owners after the proposed transfer).

“**Person**” means any natural person, corporation, limited liability company, general or limited partnership, unincorporated association, cooperative, or other legal or functional entity.

Unless otherwise specified, all references to a number of days shall mean calendar days and not business days.

The term “**Kona Ice Franchise**” includes, without limitation, all of the assets of the Kona Ice Franchise you operate under this Franchise Agreement.

This Franchise Agreement may be executed in multiple copies, each of which will be deemed an original.

Nothing in this Franchise Agreement or in any related agreement is intended to disclaim the representations made in the Franchise Disclosure Document.

## 18.0 COVENANT OF GOOD FAITH

### 29.9 Integration

This Franchise Agreement constitutes the entire agreement between the parties and may not be changed except by a written document signed by both parties. Any email correspondence or other form of informal electronic communication shall not be deemed to modify this Franchise Agreement unless such communication is signed by both parties and specifically states that it is intended to modify this Franchise Agreement. The attachment(s) are part of this Franchise Agreement, which, together with any amendments or addenda executed on or after the Effective Date, constitutes the entire understanding and agreement of the parties, and there are no other oral or written understandings or agreements between us and you about the subject matter of this Franchise Agreement. No provision herein expressly identifying any term or



breach of this Franchise Agreement as material shall be construed to imply that any other term or breach which is not so identified is not material. As referenced above, all mandatory provisions of the Brand Manual are part of this Franchise Agreement; however, notwithstanding the foregoing, we may modify the Brand Manual at any time.

Any representations made before entering into this Franchise Agreement are not enforceable, unless they are specifically contained in this Franchise Agreement. This provision is intended to define the nature and extent of the parties' mutual contractual intent, and serves to show that there is no intention to enter into contract relations other than the terms contained in this Franchise Agreement. The parties acknowledge that these limitations are intended to achieve the highest possible degree of certainty in the definition of the contract being formed, in recognition of the fact that uncertainty creates economic risks for both parties which, if not addressed as provided in this Franchise Agreement, would affect the economic terms of this bargain. Nothing in this Franchise Agreement is intended to disclaim any of the representations we made in the franchise disclosure document.

#### **29.10 Covenant of Good Faith**

If applicable law implies a covenant of good faith and fair dealing in this Franchise Agreement, the parties agree that the covenant shall not imply any rights or obligations that are inconsistent with a fair construction of the terms of this Franchise Agreement. Additionally, if applicable law shall imply the covenant, you agree that: (i) this Franchise Agreement (and the relationship of the parties that is inherent in this Franchise Agreement) grants us the discretion to make decisions, take actions, and/or refrain from taking actions not inconsistent with our explicit rights and obligations under this Franchise Agreement that may affect favorably or adversely affect your interests; (ii) we will use our judgment in exercising ~~the~~ that discretion based on our general assessment of our own interests and balancing those interests against the general interests of our franchisees generally (including ourselves and our affiliates if applicable), and ~~specifically without considering~~ not based on your or any other franchisee's specific individual interests or the individual interests of any other particular franchisee; (iii) we will have no liability to you for the exercise of our discretion in this manner, so long as the discretion is not exercised in bad faith; and (iv) in the absence of bad faith, no trier of fact in any arbitration or litigation shall substitute its judgment for our judgment so exercised.

#### ~~18.P SURVIVAL~~

#### **29.11 We and you (and your Owners) agree that this Section 18 shall apply during the term Cumulative Rights**

The rights of the parties under this Franchise Agreement and following are cumulative and no exercise or enforcement by either party of any right or remedy under this Franchise Agreement will preclude any other right or remedy available under this Franchise Agreement or by law.

#### **29.12 Survival**

All provisions that expressly or by their nature survive the termination, expiration, or non-renewal of this Franchise Agreement or Transfer of this Franchise Agreement (or the Transfer of an ownership interest in the Franchised Business) will continue in full force and effect, even after the termination, expiration or Transfer of the Franchise Agreement, until they are fully satisfied or expire by their own terms.



## 19. — NOTICES AND PAYMENTS.

### 19.11 All written Construction

The headings in this Franchise Agreement are for convenience only and do not define, limit or construe the contents of the sections or subsections. All references to Sections refer to the Sections contained in this Franchise Agreement unless otherwise specified. All references to days in this Franchise Agreement refer to calendar days unless otherwise specified. The term “you” as used in this Franchise Agreement is applicable to one or more persons or an Entity, and the singular usage includes the plural and the masculine and neuter usages include the other, the feminine and the possessive.

### 19.14 Time is of the Essence

Time is of the essence in this Franchise Agreement and every term thereof.

### 19.13 Notice

All notices, reports, and payments permitted or required to be delivered by given under this Franchise Agreement will must be in writing and shall be deemed to be delivered:

- (1) — considered given at the time delivered by hand;
- (2) —, or one business day after transmissionsending by faesimilefax, email, or othercomparable electronic system if the sender has confirmation of successful transmission;
- (3) —, one business day after being placed in the hands of a nationally recognized commercial courier service for next business day delivery; or
- (4) — by any trackable delivery method, or three business days after placement in the United States Mail by Registered or Certified Mail, Return Receipt Requestedplaced in the mail, postage prepaid-

Any, by certified mail with a return receipt requested, postage prepaid and addressed: (a) to us at 5945 Centennial Circle, Florence, Kentucky 41042, unless written notice to us must be sent to the address specified on the signature page of this Franchise Agreement, although we may is given of a change this of address; and (b) to you at the address for notice by giving you notice of the new address. Any written notice we send to you may be sent only to the Managing Owner, or, if applicable, the Designated Manager at the address specified on the signature page of this Franchise Agreement. You may change the person and/or address for notice only by giving us 30 days’ prior written notice by any of the means specified in subparagraphs (1) through (4) above of this Section.

Any required payment or report which we do not actually receive during regular business hours on the date due (or postmarked by postal authorities at least two days before then) will be deemed delinquent.

## 20. — COMPLIANCE WITH ANTI-TERRORISM LAWS.

You and your Owners agree to comply, and to assist us to the fullest extent possible in our efforts to comply, with Anti Terrorism Laws (defined below). In connection with that compliance, you and your Owners certify, represent, and warrant that none of your property or interests is subject to being blocked under, and that you and your Owners otherwise are not in violation of, any of the Anti-Terrorism Laws.



~~“Anti-Terrorism Laws” mean Executive Order 13224 issued by the President of the United States, the USA PATRIOT Act, and all other present and future federal, state, and local laws, ordinances, regulations, policies, lists, and other requirements of any governmental authority addressing or in any way relating to terrorist acts and acts of war. Any violation of the Anti-Terrorism Laws by you or your Owners, or any blocking of your or your Owners’ assets under the Anti-Terrorism Laws, shall constitute good cause for immediate termination of this Franchise Agreement as provided in Section 15.B above.~~

~~21. — ELECTRONIC MAIL.~~

~~You acknowledge and agree that exchanging information with us by email is efficient and desirable for day to day communications and that we and you may utilize email for such communications. You authorize the transmission of email by us and our employees, vendors, and affiliates (“Official Senders”) to you, your Owners (if you are an Entity), the Managing Owner, and, if applicable, any Designated Manager during the term of this Franchise Agreement.~~

~~You further agree that: (a) Official Senders are authorized to send emails to those of your employees as you may occasionally authorize for the purpose of communicating with us; (b) you will cause your officers, directors, and employees to give their consent to Official Senders’ transmission of emails to them; (c) you will require such persons not to opt out or otherwise ask to no longer receive emails from Official Senders during the time that such person works for or is affiliated with you; and (d) you will not opt out or otherwise ask to no longer receive emails from Official Senders during the term set forth on Attachment A of this Franchise Agreement, unless written notice is given of a change of address.~~

*(Signature Page Follows)*



The consent given in this Section 21 shall not apply parties to the provision of notices by either party under this Franchise Agreement under Section 19 using email unless the parties otherwise agree in a written document manually signed by both parties.

~~(Signature Page Follows)~~



~~IN WITNESS WHEREOF, the parties have executed and delivered this Franchise Agreement on the dates noted below effective as of the Effective Date set forth in Attachment A.~~

**FRANCHISOR:**

**Kona Ice, Inc.,**

a Kentucky corporation

**FRANCHISEE:**

**[Insert Entity Name],**

[Insert State/Type of Entity]

Sign: \_\_\_\_\_

Sign: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

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

Or if Franchisee is an individual(s)

Sign: \_\_\_\_\_  
individually

Printed Name: \_\_\_\_\_

Sign: \_\_\_\_\_  
individually

Printed Name: \_\_\_\_\_



ATTACHMENT A Address for Notices Pursuant  
to  
Section 19 of this Franchise Agreement

Our Address

5945 Centennial Circle  
Florence, Kentucky 41042  
Attn: President

Signatures

**KONA ICE, INC.,**  
a Kentucky Corporation

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

Printed Name: \_\_\_\_\_

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

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



Your Address

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**FRANCHISEE:**

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Company Name

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

Printed Name: \_\_\_\_\_

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

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



**TO THE FRANCHISE AGREEMENT ATTACHMENT A**

**FRANCHISE DATA SHEET**

1. **Effective Date.** ~~The Effective Date. The Effective Date set forth in the introductory Paragraph of the Franchise Agreement is: \_\_\_\_\_, 20\_\_.~~

~~2. Franchisee.~~ **Franchisee.** The franchisee identified in the introductory paragraph of the Franchise Agreement is: \_\_\_\_\_  
\_\_\_\_\_

3. **Notice Address.** Franchisee Notice Address is:

Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. **Initial Franchise Fee.** The “Initial Franchise Fee” is: (check one):

\_\_\_\_\_ \$15,000 for a single Franchise.

\_\_\_\_\_ Not applicable; this Franchise Agreement is signed as a Successor Franchise Agreement or as a result of a Transfer.

4.5. **Territory.** ~~The Protected Territory set forth in Section 2A4 of the Franchise Agreement will be the area as shown on the map or described below:~~

5.6. **KEV Royalty Schedule.** Your KEV Royalty Schedule will be (select one):

\_\_\_\_\_ 3 annual installments; \_\_\_\_\_ 6 annual installments; \_\_\_\_\_ 9 annual installments

7. **KEV Identification Number:** The KEV number or VIN number is: \_\_\_\_\_.

*(Signature Page Follows)*



**FRANCHISOR:** \_\_\_\_\_

**KONA ICE, INC.**

a Kentucky corporation

**FRANCHISEE:**

**[Insert Entity Name],**

**[Insert State/Type of Entity]**

Sign: \_\_\_\_\_

Sign: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

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

Or if Franchisee is an individual(s)

Sign: \_\_\_\_\_  
individually

Printed Name: \_\_\_\_\_

Sign: \_\_\_\_\_  
individually

Printed Name: \_\_\_\_\_



ATTACHMENT B — 6 annual installments

— 9 annual installments

2. Identification of Managing Owner. Your Managing Owner as of the Effective Date is \_\_\_\_\_  
\_\_\_\_\_. You may not change the Managing  
Owner without prior written approval.

3. Identification of Designated Manager. Your Designated Manager, if applicable, as of the  
Effective Date is \_\_\_\_\_  
\_\_\_\_\_. You may not  
change the Designated Manager without prior written approval.

4. Renewal. (Select one)

a. — This Franchise Agreement is for a new Kona Ice Franchise.

b. — This Franchise Agreement is a successor franchise agreement and is renewing of an  
existing Kona Ice Franchise. You agree to pay the renewal fee set forth in the franchise  
agreement being renewed and are not required to pay an Initial Franchise Fee. Your and  
our pre-opening obligations set forth in this Franchise Agreement are hereby modified  
accordingly. No Initial Training shall be required. Your Royalty fee schedule is modified  
to be based on the date that you signed the initial franchise agreement for your Kona Ice  
Franchise. You agree to enter into a renewal addendum to this Franchise Agreement and,  
subject to state law, you and each of your Owners agree to execute a general release of  
claims.



**TO THE FRANCHISE AGREEMENT-ATTACHMENT B**

**STATEMENT OF OWNERSHIP INTERESTS**

This Attachment B is current and complete as of the Effective Date  
shown in Attachment A of the Franchise Agreement

Franchisee: \_\_\_\_\_

**Form of Ownership  
(Check One)**

\_\_\_\_\_ **Individual** \_\_\_\_\_(s) \_\_\_\_\_ **Partnership** \_\_\_\_\_ **Corporation** \_\_\_\_\_ **Limited  
Liability Company**

~~If a **Partnership**, provide name and address of each partner showing percentage owned, whether active in management, and indicate the state in which the partnership was formed.~~

~~If a **Corporation**, give the state and date of incorporation, the names and addresses of each officer and director, and list the names and addresses of every shareholder showing what percentage of stock is owned by each.~~

~~If a **Limited Liability Company**, give the state and date of formation, the name and address of the manager(s), and list the names and addresses of every member and the percentage of membership interest held by each member.~~

~~If you are an entity with multiple Owners, one of your Owners who is a natural person must have at least 51% ownership interest and voting power in you (including a spouse's interest).~~

**INSTRUCTIONS: If the franchisee is an individual (or individuals), please complete section I below only. If the franchisee is a business entity, please complete sections II and III below.**

**SECTION I (For Individual(s)\*):**

<u>Name</u>	<u>Address</u>



\*If you plan to operate your Franchised Business through a business entity in the future, you will need to notify us, transfer this Franchise Agreement to the Entity, and sign all of our transfer documents.

**SECTION II (For Entities):**

**A. State and Date** date of Formation/Incorporation: \_\_\_\_\_  
 \_\_\_\_\_

**B. Management (managers, officers, board of directors, etc.):**

Name	Title

**C. Owners (Members, Stockholders, Partners<sup>±</sup>):\*\*:**

Please include each person or entity who is a direct and indirect owner of franchisee (attach additional sheets if necessary). If any of the owners are also business entities, please list the entities and owners of each of those business entities also.

Name	Address	Percentage Owned

±\*\*If any members, stockholders or partners are entities, please list the entities and owners of such entities up through the individuals.

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**SECTION III (For Entities):**

**A. Identification of Managing Owner.** Your Managing Owner is \_\_\_\_\_  
 \_\_\_\_\_ . You may not change the Managing Owner without prior  
written approval.



**B. Identification of Designated Manager.** Your Designated Manager, if applicable, is \_\_\_\_\_  
\_\_\_\_\_. You may not change the Designated  
Manager without prior written approval.

This form is current and complete as of \_\_\_\_\_, 20\_\_.

**FRANCHISEE:**

By: \_\_\_\_\_ **[Insert Entity  
Name],**

[Insert State/Type of Entity]

Sign: \_\_\_\_\_

Printed Name: \_\_\_\_\_  
\_\_\_\_\_

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

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



ATTACHMENT C



~~**TO THE FRANCHISE AGREEMENT ATTACHMENT C**~~

~~**OWNERS FRANCHISE OWNER AGREEMENT**~~

As a condition to the ~~execution~~ granting by Kona Ice, Inc. (“we” or “us”,) of a Franchise Agreement franchise agreement with \_\_\_\_\_ (“Franchisee”), each of the undersigned individuals (“Owners”), who constitute all of the owners of a direct or indirect beneficial interest in Franchisee, as well as their respective spouses, covenant and agree to be bound by this Owners Agreement (“~~Owners~~ Franchise Owner Agreement”).

**1. Acknowledgments.**

1.1 Franchise Agreement. Franchisee entered into a franchise agreement with us effective as of \_\_\_\_\_, \_\_\_\_\_, 20\_\_ (“Franchise Agreement”). Capitalized words not defined in this ~~Owners~~ Franchise Owner Agreement will have the same meanings ascribed to them in the Franchise Agreement.

1.2 Owners’ Role of Owners. Owners are the beneficial owners or spouses of the beneficial owners of all of the direct and indirect equity interest, membership interest, or other equity controlling interest in Franchisee and acknowledge there are benefits received and to be received by each Owner, jointly and severally, and for themselves, their heirs, legal representatives, and assigns. Franchisee’s obligations under the Franchise Agreement, including the confidentiality and non-compete obligations, would be of little value to us if Franchisee’s direct and indirect owners were not bound by the same requirements. Under the provisions of the Franchise Agreement, Owners are required to enter into this ~~Owners~~ Franchise Owner Agreement as a condition to our entering into the Franchise Agreement with Franchisee. Owners will be jointly and severally liable for any breach of this ~~Owners~~ Franchise Owner Agreement.

**2. Non-Disclosure and Protection of Confidential Information.**

2.1 Confidentiality. Under the Franchise Agreement, we will provide Franchisee with specialized training, proprietary trade secrets, and other Confidential Information relating to the establishment and operation of a franchised business. The provisions of the Franchise Agreement governing Franchisee’s non-disclosure obligations relating to our Confidential Information are hereby incorporated into this ~~Owners~~ Franchise Owner Agreement by reference, and Owners agree to comply with each obligation -as though fully set forth in this ~~Owners~~ Franchise Owner Agreement as a direct and primary obligation of Owners. Further, we may seek the same remedies against Owners under this ~~Owners~~ Franchise Owner Agreement as we may seek against Franchisee under the Franchise Agreement. Any and all information, knowledge, know-how, techniques, and other data, which we designate as confidential, will also be deemed Confidential Information for purposes of this ~~Owners~~ Franchise Owner Agreement.

2.2 Immediate Family Members. Owners acknowledge that they could circumvent the purpose of Section 2.1 by disclosing Confidential Information to an immediate family member (i.e., spouse, parent, sibling, child, or grandchild). Owners also acknowledge that it would be difficult for us to prove whether Owners disclosed the Confidential Information to family members. Therefore, each Owner agrees that he or she will be presumed to have violated the terms of Section 2.1 if any member of his or her



immediate family uses or discloses the Confidential Information or engages in any activities that would constitute a violation of the covenants listed in Section 3, below, if performed by Owners. However, Owners may rebut this presumption by furnishing evidence conclusively showing that Owners did not disclose the Confidential Information to the family member.

### **3. Covenant Not to Compete.**

3.1 Non-Competition During and After the Term of the Franchise Agreement. Owners acknowledge that as a participant in our system, they will receive proprietary and confidential information and materials, trade secrets, and the unique methods, procedures, and techniques which we have developed. The provisions of the Franchise Agreement governing Franchisee's restrictions on competition both during the term of the Franchise Agreement and following the expiration ~~or~~, termination or transfer of the Franchise Agreement are hereby incorporated into this ~~Owners~~ Franchise Owner Agreement by reference, and Owners agree to comply with and perform each such covenant as though fully set forth in this ~~Owners~~ Franchise Owner Agreement as a direct and primary obligation of Owners. Further, we may seek the same remedies against Owners under this ~~Owners~~ Franchise Owner Agreement as we may seek against Franchisee under the Franchise Agreement.

3.2 Construction of Covenants. The parties agree that each such covenant related to non-competition will be construed as independent of any other covenant or provision of this ~~Owners~~ Franchise Owner Agreement. If all or any portion of a covenant referenced in this Section 3 is held unreasonable or unenforceable by a court or agency having valid jurisdiction in a final decision to which we are a party, Owners agree to be remain bound by any lesser covenant subsumed within the terms of such covenant that imposes to the maximum duty extent permitted by law, as if ~~the resulting that~~ covenant were separately stated in and made a part of this Section 3.

3.3 Our Right to Reduce Scope of Covenants. Additionally, we have the right, in our sole discretion, to unilaterally reduce the scope of all or part of any covenant referenced in this Section 3 of this ~~Owners~~ Franchise Owner Agreement, without Owners' consent (before or after any dispute arises), effective when we give Owners written notice of this reduction. Owners agree to comply with any covenant as so modified.

### **4. Continuing Guarantee.**

4.1 Payment. Owners will pay us (or cause us to be paid) all monies payable by Franchisee under the Franchise Agreement whether now or in the future on the dates and in the manner required for payment in the relevant agreement.

4.2 Performance. Owners unconditionally guarantee ~~the full performance and discharge by Franchisee of all of Franchisee's obligations under the Franchise Agreement at the time and manner required by the Franchise Agreement or other relevant agreement between Franchisor and Franchisee. Owners shall be responsible for fulfilling and discharging any Franchisee obligation not fulfilled or discharged by Franchisee under the Franchise Agreement or other~~ whether now or in the future on the date and times and in the manner required in the relevant agreement.

4.3 Indemnification. Owners will indemnify, defend, and hold harmless us, all of our affiliates, and the respective shareholders, directors, partners, employees, and agents of such entities, against and from all losses, damages, costs, and expenses which we or they may sustain, incur, or become liable for, whether now or in the future, by reason of: (a) Franchisee's failure to pay the ~~monies payable~~ amounts owed (to us or any of our affiliates) pursuant to the Franchise Agreement, or to do and



perform any other act, matter, or thing required by the Franchise Agreement; or (bii) any action by us to obtain performance by Franchisee of any act, matter, or thing required by the Franchise Agreement.

4.4 No Exhaustion of Remedies. Owners acknowledge and agree that we ~~will~~ are not be obligated to ~~proceed against Franchisee or exhaust any security from Franchisee or pursue or exhaust any all~~ remedy, ~~including any (whether legal or equitable-) against or pursue relief against~~ from the Franchisee, before proceeding to enforce the obligations of the Owners as guarantors under this ~~Owners~~ Franchise Owner Agreement, ~~and the~~. The enforcement of ~~such~~ Owners' obligations can take place before, after, or ~~contemporaneously~~ simultaneously with, the enforcement of any of the Franchisee's debts or obligations under the Franchise Agreement.

4.5 Waiver of Notice. Without affecting Owners' obligations under this Section 4, we can extend, modify, or release any of Franchisee's indebtedness or obligation, or settle, adjust, or compromise any claims against Franchisee, all without notice to the Owners. Owners waive notice of amendment of the Franchise Agreement and notice of demand for payment or performance by Franchisee.

4.6 Effect of Owner's Death. Upon the death of an Owner, the estate of such Owner will be bound by the obligations in this Section 4, but only for defaults and obligations hereunder existing at the time of death<sub>;</sub> and the obligations of any other Owners will continue in full force and effect.

4.7 Waiver of Acceptance, Default and Defenses. Owners waive: (i) acceptance and notice of acceptance by us of the forgoing undertakings; (b) protest and notice of default to any party with respect to the indebtedness or non-performance of any obligations hereby guaranteed; and (c) any and all other notices and legal or equitable defenses, right of setoff, claim or counterclaim whatsoever to which they may be entitled at any time hereunder.

4.8 Continuing Nature. Owners agree that each of the obligations in this Section 4 shall be continuing and shall not be discharged by: (i) the insolvency of Franchisee or the payment in full of all of the obligations at any time; (ii) the power or authority or lack thereof of Franchisee to incur the obligations; (iii) the validity or invalidity of any of the obligations; (iv) the existence or non-existence of Franchisee as a legal entity; (v) the transfer or assignment of all or a portion of the ownership in Franchisee and/or the assets of Franchisee; (vi) the execution of an owners agreement or any other form of guaranty by any direct, indirect or beneficial owner of Franchisee in favor of us or our successors or assigns; (vii) any statute of limitations affecting the liability of Owners or the ability of us to enforce this Franchise Owner Agreement or the obligations; (viii) any right of offset, counterclaim or defense of any Owner, including, without limitation, those which have been waived by Owners pursuant to this Franchise Owners Agreement; or (ix) the expiration, termination or assignment of the Franchise Agreement or any other agreement between you or Franchisee and us or our affiliates.

## 5. Transfers.

~~Owners~~ Owners acknowledge and agree that we have granted the Franchise Agreement to Franchisee in reliance on Owners' business experience, skill, financial resources, and personal character. Accordingly, Owners agree: ~~a) not to sell, encumber, assign, transfer, convey, pledge, merge, or give away any direct or indirect interest in this Franchisee, unless Owners first comply with the sections in the Franchise Agreement regarding transfers and assignment, and b) that any attempt to do so will be a material breach of this Owners Agreement and the Franchise Agreement.~~ Transfers. Owners acknowledge and agree that attempting to



Transfer an interest in the Franchisee without our express written consent, except those situations provided in the Franchise Agreement where our consent is not required, will be a breach of this Franchise Owner Agreement and the Franchise Agreement. We may, from time to time, without notice to Owners, assign or transfer any or all of Owners' rights, duties and obligations or any interest therein in this Owners Agreement and, notwithstanding any assignment(s) or transfer(s), the rights, duties and obligations shall be and remain for the purpose of this Owners Agreement. Each and every immediate and successive assignee or transferee of any of the rights, duties or obligations of any interest therein shall, to the extent of such party's interest in the rights duties and/or obligations, be entitled to the benefits of this Owners Agreement to the same extent as if such assignee or transferee were us.

## **6. Notices.**

6.1 Method of Notice. Any notices given under this ~~Owners~~Franchise Owner Agreement shall be in writing and delivered in accordance with the provisions of the Franchise Agreement.

6.2 Notice Addresses. Our current address for all communications under this ~~Owners~~Franchise Owner Agreement is:

Kona Ice, Inc.  
5945 Centennial Circle  
Florence, Kentucky 41042

The current address of each Owner for all communications under this ~~Owners~~Franchise Owner Agreement is designated on the signature page of this ~~Owners~~Franchise Owner Agreement. Any party may designate a new address for notices by giving written notice to the other parties of the new address according to the method set forth in the Franchise Agreement.

## **7. Enforcement of This ~~Owners~~Franchise Owner Agreement.**

7.1 Dispute Resolution. Any claim or dispute arising out of or relating to this ~~Owners~~Franchise Owner Agreement shall be subject to the dispute resolution provisions of the Franchise Agreement. This agreement to engage in such dispute resolution process shall survive the termination or expiration of this ~~Owners~~Franchise Owner Agreement.

7.2 Choice of Law; Jurisdiction and Venue. This ~~Owners~~Franchise Owner Agreement and any claim or controversy arising out of, or relating to, any of the rights or obligations under this ~~Owners~~Franchise Owner Agreement, and any other claim or controversy between the parties, ~~shall~~will be governed by the choice of law ~~and~~, jurisdiction, and venue provisions of the Franchise Agreement.

7.3 Provisional Equitable Remedies. ~~We have the right to seek from an appropriate court any provisional remedies, including temporary restraining orders or preliminary injunctions to enforce Owners' obligations under this Owners Agreement. Owners acknowledge and agree that there is no adequate remedy at law for Owners' failure to fully comply with the covenants and obligations of the requirements of this Owners Agreement. Owners further acknowledge~~ Owners relate to special, unique and agree that, in the event extraordinary matters and that a violation of any non-compliance, we will be of the terms of such covenants and obligations will cause us irreparable injury for which adequate remedies are not available at law. Therefore, Owners agree that we shall be entitled to temporary, preliminary, and permanent injunctions, as well as allan injunction, restraining order or such other equitable relief that any court with (without the requirement to post bond) as a court of competent jurisdiction may deem just and proper. necessary or appropriate to restrain Owners from committing any violation of the covenants and obligations contained in this Franchise Owner Agreement. If injunctive equitable relief is granted, Owners'



only remedy will be the court's dissolution of the injunctive relief. If ~~the injunctive~~ equitable relief was wrongfully issued, Owners expressly waive all claims for damages they incurred as a result of the wrongful issuance.

## 8. Miscellaneous.

8.1 No Other Agreements. This ~~OwnersFranchise Owner~~ Agreement constitutes the entire, full, and complete agreement between the parties, and supersedes any earlier or contemporaneous negotiations, discussions, understandings, or agreements. There are no representations, inducements, promises, agreements, arrangements, or undertakings, oral or written, between the parties relating to the matters covered by this ~~OwnersFranchise Owner~~ Agreement, other than those in this ~~OwnersFranchise Owner~~ Agreement. No other obligations, restrictions, or duties that contradict or are inconsistent with the express terms of this ~~OwnersFranchise Owner~~ Agreement may be implied into this ~~OwnersFranchise Owner~~ Agreement. Except for unilateral reduction of the scope of the covenants permitted in Section 3.3 (or as otherwise expressly provided in this ~~OwnersFranchise Owner~~ Agreement), no amendment, change, or variance from this ~~OwnersFranchise Owner~~ Agreement will be binding on either party unless it is mutually agreed to by the parties and executed in writing. Time is of the essence.

8.2 Severability. Each provision of this ~~OwnersFranchise Owner~~ Agreement, and any portions thereof, will be considered severable. If any provision of this ~~OwnersFranchise Owner~~ Agreement or the application of any provision to any person, property, or circumstances is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this ~~OwnersFranchise Owner~~ Agreement will be unaffected and will still remain in full force and effect. The parties agree that the provision found to be invalid or unenforceable will be modified to the extent necessary to make it valid and enforceable, consistent ~~as much as possible~~ with the original intent of the parties (i.e., to provide maximum protection for us and to effectuate the Owners' obligations under the Franchise Agreement to the fullest extent permitted by law), and the parties agree to be bound by the modified provisions.

8.3 No Third- Party Beneficiaries. Nothing in this ~~OwnersFranchise Owner~~ Agreement is intended to confer upon any person or entity (other than the parties and their heirs, successors, and assigns) any rights or remedies under or by reason of this ~~OwnersFranchise Owner~~ Agreement.

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

8.5 Binding Effect. This ~~OwnersFranchise Owner~~ Agreement may be executed in counterparts, and each copy so executed and delivered will be deemed an original. This ~~OwnersFranchise Owner~~ Agreement is binding on the parties and their respective heirs, executors, administrators, personal representatives, successors, and (permitted) assigns.

~~8.6 Continuing Nature of this Owners Agreement. This Owners Agreement shall be continuing and shall not be discharged, impaired or affected by: (1) the insolvency of Franchisee or the payment in full of all of the obligations under the Franchise Agreement at any time; (2) the validity or invalidity of any of the terms of the Owners Agreement; (3) the existence or non-existence of Franchisee as a legal entity; (4) any statute of limitations affecting the liability of Owners or the ability of us or our~~



successors or assigns to enforce this Owners Agreement; (5) the transfer or assignment of all or a portion of the ownership in Franchisee and/or the assets of Franchisee; (6) the execution of an owners agreement or any other form of guaranty by any additional direct, indirect or beneficial owner of Franchisee in favor of us or our successors or assigns; (7) any right of offset, counterclaim or defense of any Owner; or (8) the expiration, termination or assignment of the Franchise Agreement or any other agreement between you and us.

**8.7 — ~~Successors. References to “Franchisor~~8.6 ~~Successors. References to “Franchisor,” “Owners,” “the undersigned,” or “you” include the respective parties’ heirs, successors, assigns, or transferees.~~**

**8.87 Nonwaiver.** Our failure to insist upon strict compliance with any provision of this ~~Owners~~Franchise Owner Agreement shall not be a waiver of our right to do so. Delay or omission by us respecting any breach or default shall not affect our rights respecting any subsequent breaches or defaults. All rights and remedies granted in this ~~Owners~~Franchise Owner Agreement shall be cumulative.

**8.98 No Personal Liability.** ~~You~~Owners agree that fulfillment of any and all of our obligations written in the Franchise Agreement or this ~~Owners~~Franchise Owner Agreement, or based on any oral communications which may be ruled to be binding in a court of law, shall be our sole responsibility and none of our owners, officers, agents, representatives, nor any individuals associated with us shall be personally liable to ~~you~~Owners for any reason.

**8.10 — ~~Owners~~9 Franchise Owner Agreement Controls.** In the event of any discrepancy between this ~~Owners~~Franchise Owner Agreement and the Franchise Agreement, this ~~Owners~~Franchise Owner Agreement shall control.

---

*(Signatures on following page)*



*(Signature Page Follows)*



\_\_\_\_\_ **IN WITNESS WHEREOF**, the parties have entered into this ~~Owners~~ Franchise Owner Agreement  
as of the ~~effective date~~ Effective Date of the Franchise Agreement.



**OWNER(S):**

**SPOUSE(S):**

Sign: \_\_\_\_\_

Sign: \_\_\_\_\_

Printed Name: [Insert Owner Name of Owner Here]

Printed Name: [Insert Name of Spouse Name Here]

Address:

Address:

Sign: \_\_\_\_\_

Sign: \_\_\_\_\_

Printed Name: [Insert Name Address of Owner]

Printed Name: [Insert Name Address of Spouse]

Address:

Address:

Sign: \_\_\_\_\_

Sign: \_\_\_\_\_

Sign: \_\_\_\_\_  
Printed Name: [Insert Owner Name of Owner Here]

Sign: \_\_\_\_\_  
Printed Name: [Insert Name of Spouse Name Here]

Address:

Address:

Sign: \_\_\_\_\_

Sign: \_\_\_\_\_

Printed Name: [Insert Name Address of Owner]

Printed Name: [Insert Name Address of Spouse]

Sign: \_\_\_\_\_  
Printed Name: [Insert Owner Name Here]  
Address: [Insert Address of Owner]

Sign: \_\_\_\_\_



Printed Name: [Insert Spouse Name Here]  
Address: [Insert Address of Spouse]

Rev.030824

(Rev. 121319)



Kona Ice, Inc. hereby accepts the agreements of the Owner(s) hereunder.

-

**KONA ICE, INC.**

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

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





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**ATTACHMENT D**  
**TO THE FRANCHISE AGREEMENT-ATTACHMENT D**

**ADDITIONAL EQUIPMENT AMENDMENT TO FRANCHISE AGREEMENT**

This Amendment is made and entered into as of the effective date listed in the signature block (“**Effective Date**”) by and between Kona Ice, Inc., a Kentucky corporation (“**Franchisor**”) and the Franchisee identified on the signature block below (“**Franchisee**”), with reference to the following facts:

- A. The parties have entered into a Kona Ice franchise agreement pursuant to which Franchisee will operate a Kona Ice Franchise (the “**Franchise Agreement**”).
- B. Subject to the conditions of the Franchise Agreement, Franchisee has the option to purchase additional Kona Ice equipment (“**Additional Equipment**”) for use in the Franchisee’s ~~Protected~~ Territory.
- C. The parties hereto desire to amend the Franchise Agreement as set forth herein. Unless defined herein all capitalized terms used herein shall have the meaning in the Franchise Agreement.

NOW, THEREFORE, for and in consideration of the covenants, warranties and mutual agreements contained herein, the parties hereto agree as follows:

1. **ADDITIONAL EQUIPMENT.** Franchisee desires to purchase the following Additional Equipment for use in the Protected Territory and shall pay the AE Royalty listed for such equipment under the Franchise Agreement and this Amendment for so long as Franchisee owns the Additional Equipment.

Equipment	Purchase Amount Range	AE Royalty	AE Royalty Payment Terms
Entertainment Trailer	\$44,500 - \$51,500, plus shipping**	\$1,000 <u>500</u> annually	
Entertainment Kiosk	\$35,500 - \$40,500, plus shipping**	\$1,000 <u>500</u> annually	
KEV 2.0 Truck*	\$120,450 - \$128,450, plus shipping**	\$2,000 <u>500</u> annually	
Kona Mini Truck	\$28,860 - \$33,860, plus shipping**	\$1,000 <u>500</u> annually***	

\*If you are doing a KEV 2.0 Conversion, you will be required to trade in your KEV to us and pay shipping for the KEV 2.0 Truck.

\*\*The Purchase Amount Ranges set forth in the above table are subject to change. You agree to pay us the then-current Purchase Amount.



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\*\*\*If you are doing a KEV 2.0 Conversion, you will be required to pay according to the KEV Royalty Schedule and not the AE Royalty listed in the chart above.

Franchisee must present evidence to Franchisor, as required by Franchisor in its sole discretion that Franchisee no longer owns the Additional Equipment prior to Franchisee being excused from paying any further AE Royalties. Franchisee shall not be entitled to receive a refund on any AE Royalty paid. Franchisee acknowledges and agrees that the AE Royalty may increase upon renewal of the Franchise Agreement and agrees to pay Franchisor the then-current Royalty amount upon any such renewal.

2. **AMENDMENT BINDING.** This Amendment will be binding upon and inure to the benefit of each party and to each party's respective successors and assigns.

3. **NO FURTHER CHANGES.** Except as specifically provided in this Amendment, all of the terms, conditions and provisions of the Franchise Agreement will remain in full force and effect as originally written and signed. In the event of any inconsistency between the Franchise Agreement and this Amendment, this Amendment shall control.

IN WITNESS WHEREOF, the parties duly executed this Amendment as of the dates listed below.

**KONA ICE, INC.,**  
a Kentucky Corporation

**KONA ICE, INC.,**  
a Kentucky Corporation

Sign: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

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

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

**[Insert Entity Name],**  
**[Insert State/Type of Entity]**

**\*Effective Date**

Sign: \_\_\_\_\_

Printed Name: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_



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

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

~~\*Effective Date~~

Or if Franchisee is an individual(s)

Sign: \_\_\_\_\_  
individually

Printed Name: \_\_\_\_\_

Sign: \_\_\_\_\_  
individually

Printed Name: \_\_\_\_\_



**EXHIBIT D**

**FRANCHISE DISCLOSURE QUESTIONNAIRE**



## FRANCHISE DISCLOSURE QUESTIONNAIRE

**(This questionnaire is not to be used for any franchise sale in or to residents of California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington, or Wisconsin)**

As you know, Kona Ice, Inc. (“we” or “us”), and you are preparing to enter into a Franchise Agreement for the operation of a Kona Ice franchise. **You cannot sign or date this questionnaire the amesame day as the Receipt for the Franchise Disclosure Document, but you must sign and date it the same day you sign the Franchise Agreement.** Please review each of the following questions carefully and provide honest responses to each question. If you answer “No” to any of the questions below, please explain your answer in the table provided below.

**Do not sign this Questionnaire if you are a resident of Maryland or the franchise is to be operated in Maryland.**

1.      Yes\_\_ No\_\_      Have you received and personally reviewed the Franchise Agreement and each attachment or exhibit attached to it that we provided?
  
2.      Yes\_\_ No\_\_      Have you received and personally reviewed the Franchise Disclosure Document and each attachment or exhibit attached to it that we provided?
  
3.      Yes\_\_ No\_\_      Did you sign a receipt for the Franchise Disclosure Document indicating the date you received it?
  
4.      Yes\_\_ No\_\_      Do you understand all the information contained in the Franchise Disclosure Document and Franchise Agreement?
  
5.      Yes\_\_ No\_\_      Have you reviewed the Franchise Disclosure Document and Franchise Agreement with a lawyer, accountant, or other professional advisor, or have you had the opportunity for such review and chosen not to engage such professionals?
  
6.      Yes\_\_ No\_\_      Have you had the opportunity to discuss the benefits and risks of developing and operating a Kona Ice Franchise with an existing Kona Ice franchisee?
  
7.      Yes\_\_ No\_\_      Do you understand the risks of developing and operating a Kona Ice Franchise?
  
8.      Yes\_\_ No\_\_      Do you understand the success or failure of your Kona Ice Franchise will depend in large part upon your skills, abilities, and efforts, and those of the persons you employ, as well as many factors beyond your control such as competition, interest rates, the economy, inflation, labor and supply costs, and other relevant factors?
  
9.      Yes\_\_ No\_\_      Do you understand all disputes or claims you may have arising out of or relating to the Franchise Agreement must be arbitrated in Kentucky, if not resolved informally or by mediation (subject to state law)?



10. Yes\_\_ No\_\_ Do you understand that you must satisfactorily complete the initial training program before we will allow your Kona Ice Franchise to open or consent to a transfer of the Kona Ice Franchise to you?
11. Yes\_\_ No\_\_ Do you agree that no employee or other person speaking on our behalf made any statement or promise regarding the costs involved in operating a Kona Ice Franchise that is not contained in the Franchise Disclosure Document or that is contrary to, or different from, the information contained in the Franchise Disclosure Document?
12. Yes\_\_ No\_\_ Do you agree that no employee or other person speaking on our behalf made any statement or promise or agreement, other than those matters addressed in your Franchise Agreement and any addendum, concerning advertising, marketing, media support, marketing penetration, training, support service, or assistance that is contrary to, or different from, the information contained in the Franchise Disclosure Document?
13. Yes\_\_ No\_\_ Do you agree that no employee or other person speaking on our behalf made any statement or promise regarding the actual, average or projected profits or earnings, the likelihood of success, the amount of money you may earn, or the total amount of revenue a Kona Ice Franchise will generate that is not contained in the Franchise Disclosure Document or that is contrary to, or different from, the information contained in the Franchise Disclosure Document?
14. Yes\_\_ No\_\_ Do you understand that the Franchise Agreement, including each attachment or exhibit to the Franchise Agreement, contains the entire agreement between us and you concerning the Kona Ice Franchise?
15. Yes\_\_ No\_\_ Do you understand that we are relying on your answers to this questionnaire to ensure that the franchise sale was made in compliance of state and federal laws?

YOU UNDERSTAND THAT YOUR ANSWERS ARE IMPORTANT TO US AND THAT WE WILL RELY ON THEM. BY SIGNING THIS QUESTIONNAIRE, YOU ARE REPRESENTING THAT YOU HAVE CONSIDERED EACH QUESTION CAREFULLY AND RESPONDED TRUTHFULLY TO THE ABOVE QUESTIONS.

\_\_\_\_\_  
Signature of Franchise Applicant

\_\_\_\_\_  
Signature of Franchise Applicant

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Name (please print)

Date \_\_\_\_\_

Date \_\_\_\_\_



\_\_\_\_\_  
Signature of Franchise Applicant

\_\_\_\_\_  
Signature of Franchise Applicant

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Name (please print)

Date \_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_  
Signature of Franchise Applicant

\_\_\_\_\_  
Signature of Franchise Applicant

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Name (please print)

Date \_\_\_\_\_

Date \_\_\_\_\_

EXPLANATION OF ANY NEGATIVE RESPONSES (REFER TO QUESTION NUMBER):

Question Number	Explanation of Negative Response

Rev. 030123071823



**EXHIBIT E**  
**BRAND MANUAL**  
**TABLE OF CONTENTS**



Section	Number of Pages
<del>Welcome and Table of Contents</del>	<del>11</del>
<del>Chapter 1: Introduction to the Manual</del>	
<del>Chapter 2: Introduction to our Franchise</del>	<u>16</u>
<del>Chapter 3: Pre-Opening Procedures</del>	<u>25</u>
<del>Chapter 4: Human Resources</del>	<u>78</u>
<del>Chapter 5: Daily Operating Procedures</del>	<u>8</u>
<del>Chapter</del>	<u>6</u>
<del>1: The Kona Brand</del>	<u>6</u>
<del>2: The KEV</del>	<u>4</u>
<del>3: Getting Started in Kona</del>	<u>3</u>
<del>4: Safety First</del>	<u>9</u>
<del>5: The Kona Resource Center</del>	<u>14</u>
<del>6: Marketing</del>	<u>29</u>
<del>Chapter 7: Other Resources</del>	<u>22</u>
<del>Appendix 7: Social Media</del>	<u>5</u>
<del>8: LTO Programs</del>	<u>13</u>
<del>9: KonaOS</del>	<u>2</u>
<del>10: Ancillary Equipment</del>	<u>114</u>
<del>11: The Code of Conduct</del>	<u>3</u>
<del>12: Franchise Development &amp; Support</del>	<u>7</u>
<del>13: Building a Team</del>	<u>5</u>
<del>14: Customer Service</del>	<u>6</u>
<del>15: Upfits</del>	<u>4</u>
<del>16: Transfers, Renewals, and Fees</del>	

Total Number of Pages: ~~114~~195





## TABLE OF CONTENTS

Who We Are	2
History	2
Brand Identity	2
Who We Are	2
Mission Statement	2
Vision	3
Values	3
<b>INTRODUCTION TO THE MANUAL</b>	<b>11</b>
1.1 Manual Organization	11
1.2 Ownership of the Manual	11
1.3 Purpose of this Manual	11
1.4 Importance of Confidentiality	12
1.5 Keeping the Manual Current	12
1.6 Submitting Suggestions to Us	13
1.7 Disclaimer	13
<hr/>	
<b>INTRODUCTION TO OUR FRANCHISE</b>	<b>14</b>
2.1 Who to Contact	15
2.2 Knowledge and Kollege	16
2.2.1 Initial Training - Kona Kollege	16
2.2.2 Ongoing Support	17
2.2.3 Food Safety Training	18
2.2.4 Approved and Required Suppliers	18
2.2.5 Marketing and Branding	19
2.3 Overview of Your Responsibilities	19
2.4 Professionalism	20
2.5 Operational and Brand Audits	20
2.6 Fees	20
2.7 The KEV and Ancillary Equipment	21
2.7.1 Equipment Standards	21
2.7.2 Recalls	22

Page 4

**CONFIDENTIAL**





<b>PRE-OPENING PROCEDURES</b>	<b>23</b>
3.1.1 Business Structure	24
3.1.2 Overview of Entity Choices	24
3.1.3 Income Taxation	25
3.1.4 Administration	25
3.1.5 Bottom Line	26
3.1.6 Where to Form Your Entity	26
3.1.7 Naming Your Entity	26
3.1.8 Assumed Name Certificate	27
3.2 Commissary	27
3.2.1 Introduction	27
3.2.2 Finding a Commissary	27
3.2.3 Commissary Features	27
3.3 Licenses, Permits, and Taxes	28
3.3.1 Introduction	28
3.3.2 Business Licenses and Permits	28
3.3.3 Optional Certifications	29
3.3.4 Tax Registrations and Payments	29
3.3.5 State Information Websites	30
3.3.6 Additional Resources	30
3.4 Technology	30
3.4.1 POS System	32
3.5 Initial Inventory and Supplies	33
3.5.1 Initial Supplies List	33
3.6 Bank Accounts	33
3.6.1 Payments and Invoices	33
3.6.2 Opening a Bank Account	33
3.7 Insurance Coverage	33
3.7.1 General Insurance Requirements	33
3.7.2 Minimum Coverage Amounts	34
3.7.3 KEV Insurance	35





3.7.4 Insurance Company Requirements	35
3.8 Pre-Opening Checklist	35
<b>HUMAN RESOURCES</b>	<b>38</b>
4.1 Introduction	39
4.2 Non-Joint-Employer Status	40
4.3 Employee Versus 1099 Contractor	40
Starting Your Relationship with the Independent Contractor	41
Paying Independent Contractors	42
4.4 Employment Law Basics	42
4.4.1 Employee Rights/Employer Responsibilities	42
4.4.2 Federal Regulations on Employment Relationships	43
Americans with Disabilities Act (ADA)	43
Age Discrimination in Employment Act (ADEA)	44
Consolidated Omnibus Reconciliation Act of 1985 (COBRA)	44
Equal Pay Act	44
Employee Retirement Income Security Act (ERISA)	44
Family Medical Leave Act (FMLA)	45
Fair Labor Standards Act (FLSA)	45
Title VII of the Civil Rights Act of 1964	46
4.4.3 State Employment Laws	46
4.5 OSHA	46
4.5.1 Federal Standards	46
4.5.2 State OSHA Programs	47
4.6 Preparing to Hire Your First Staff	48
4.7 Job Interviews	49
4.7.1 Questions to Avoid	49
4.8 Background Checks on Job Applicants	52
4.8.1 General Tips on Background Checks	52
4.8.2 Special Rules for Certain Records	52
4.9 Pre-Employment Drug Testing	53
4.10 Miscellaneous Hiring Issues	53





4.11 New Employee Paperwork	55
4.12 Uniforms	56
4.12.1 Clothing	56
Shirts	57
Slacks/Pants	57
Hats	57
Shoes	57
4.12.2 Appearance Standards	58
Personal Grooming	58
Hair	58
Jewelry	58
4.13 Additional Steps in Hiring Process	58
4.14 New Staff Orientation	59
4.15 New Staff Training	59
4.16 Personnel Policies	60
4.17 Paying Your Staff	61
4.17.1 Wages	61
4.17.2 Overtime Pay	62
4.17.3 Benefits	62
4.18 Employee Scheduling	63
4.19 Resignation/Termination	63
4.19.1 Resignation	63
4.19.2 Termination	63
4.19.3 Post-Separation Procedures	65
4.19.4 Final Paychecks	65
4.19.5 Explaining Termination to Other Staff	65
4.19.6 Giving References	66
4.20 Summary of Good Employee Management Practices	66
4.21 Getting Help with Employment Law Issues	67
<b>DAILY OPERATING PROCEDURES</b>	<b>68</b>
5.1 Introduction	69





5.2 Operation Required	69
5.3 Customer Service Policies and Procedures	69
5.3.1 Customer Service Philosophy	69
5.3.2 Our Customer Complaint Policy	71
5.3.3 Refund Requests	71
5.4 Service Procedures	72
5.4.1 Greeting Customers	72
5.4.2 Understanding the Product Offering	72
5.5 Production Procedures	74
5.5.1 Recipes and Production Procedures	74
5.5.2 Sanitation Procedures	74
5.6 Cleaning and Sanitizing Manual	75
5.7 Opening/Closing Checklist	75
5.7.1 Opening Checklist	75
5.7.2 Closing Checklist	76
5.8 Transacting Sales	77
<del>    5.8.1 Methods of Payment</del>	<del>77</del>
5.8.2 Suggested Prices	77
5.8.3 Gift Certificates	77
5.9 Inventory Management	78
5.9.1 Product Ordering Procedures/Inventory Management	78
Ensuring Sufficient Supplies	78
Step One - Establishing the Par Level	78
Step Two - Knowledge of Shelf Life	79
Step Three - Packaging	79
Promptness in Payment	79
5.9.2 Ordering From Approved Suppliers	79
5.9.3 Delivery	80
5.9.4 Storing Procedures	80
Storage System	81
Organizing Supplies and Inventory	81
Storage Racks	81





5.9.5 Spoilage	81
Major Causes of Spoilage	81
Monitoring Usage	82
5.10 Required Cleaning and Maintenance	82
5.10.1 Cleaning and Maintenance	82
5.11 Mobile Maintenance of your Vehicle	83
Vehicle Cleanliness	86
5.12 Safety Procedures	87
5.12.1 Preventing Accidents and Injuries	87
5.12.2 Crisis Management Policy	87
5.12.3 Reporting Accidents	87
5.12.4 Workers' Compensation Issues	87
5.12.5 Fire Safety	88
5.12.6 Robbery/Burglary	89
<b>MARKETING</b>	<b>90</b>
6.1 Promoting Your Business in Your Area	92
6.1.1 Introduction to Marketing	92
6.1.2 Guidelines for Using Marks	92
6.1.3 Marketing Standards	93
6.2 Logo Specifications	94
6.3 Required Marketing Expenditures	94
6.3.1 Marketing Programs	94
6.3.2 Local Marketing Spend	94
6.3.3 Marketing Support	95
First 30 Days	95
Direct Mail	96
Planning	96
6.3.4 Sales	97
6.3.5 Networking and Database	97
6.3.6 Word of Mouth/Customer Referrals	98
6.4 Public Relations/Community Involvement	99





6.4.1 Press Releases	99
6.4.2 Better Business Bureau	100
6.4.3 Local Chamber of Commerce	100
6.4.4 Business Network International (BNI)	100
6.4.5 Team Sponsorships	100
6.4.6 Community Service/Charitable Activities	101
6.5 Advertising and Signage	101
6.5.1 Additional Advertising	101
6.5.2 Using Signage	101
6.5.3 Local Marketing Material	102
6.6 Website	102
6.6.1 Hours of Operation	102
6.6.2 Hiring Tools	103
6.7 Asset Library	103
6.8 Release Forms and Consent	103
6.9 Obtaining Marketing Approval	103
<del>6.10 LTO Programs and Kona Cocoa</del>	<del>103</del>

**OTHER RESOURCES 105**

7.1 Websites for Small Businesses	105
7.2 Websites For Employment Laws	105
7.3 Website for Taxes	106

**APPENDIX 107**

Appendix A: Success Guide	
Appendix B: Customer Care Toolkit	
Appendix C: Social Media Policy	
Appendix D: Brand Guidelines	
Appendix E: Job Descriptions	
Appendix F: Brand Standard Cleaning and Sanitizing	
Appendix G: Fast Track Checklist	
Appendix H: Truck Pack	
Appendix I: Equipment Maintenance Schedule	
Appendix J: New Hire Training Outline	
Appendix K: Monitor Guidelines and Usage Policy	
Appendix L: Sublicense Agreement: USse and License Agreement	



# TABLE OF CONTENTS

<b>1 The KONA Brand</b>	<b>7 Social Media</b>
1.1 The Kona Ice Story	7.1 Why Social Media?
1.2 What is Brand?	7.2 Brand Social Media
1.3 Consistency is Key	7.3 Local Social Media
1.4 Brand Guidelines	
<b>2 The KEY</b>	<b>8 LTO Programs</b>
2.1 Warranty Information	8.1 LTO Flavors
2.2 NSF Approval	
2.3 Powering Your KEY	
2.4 The KEY Freezer	
2.5 The Parts Guide	
2.6 System Standards	
<b>3 Getting Started in Kona</b>	<b>9 Support</b>
3.1 Commissary	9.1 Technology
3.2 The Perfect Kona	9.2 POS System
3.3 Mixology	9.3 Welcome
3.4 Networking and Sales	9.4 Features
3.5 Events and Pricing	9.5 Tutorial Snapshots
3.6 Building Days	
3.7 Signage	
3.8 Ordering Supplies	
3.9 Managing Big Events	
3.10 Fundraising	
3.11 1st 30 Days	
3.12 The Business of Kona	
<b>4 Safety First</b>	<b>10 Ancillary Equipment</b>
4.1 Personal Safety Tips	10.1 Advantages & Disadvantages
4.2 The KEY Safety Features	10.2 Multi-Unit Operations
4.3 Inspections & Maintenance	10.3 The Kona Mini
4.4 Safe Vending	10.4 The Kona Kiosk
4.5 Safe Driving Guidelines	
4.6 Personal Safety	
4.7 Shaver Safety	
4.8 Cleaning & Sanitizing	
<b>5 The Kona Resource Center</b>	<b>11 The Code of Conduct</b>
5.1 Business Growth and Development	11.1 Professionalism and Code of Conduct
5.2 Employees	11.2 Code of Conduct Violations
5.3 Kona Communications	
5.4 Marketing	
5.5 Operational Resources	
5.6 Product, Nutrition and Allergen Information	
5.7 Kona Asset Library	
5.8 External Links	
<b>6 Marketing</b>	<b>12 Franchise Development &amp; Support</b>
6.1 Your Billboard On Wheels	12.1 Kona Kollege
6.2 Digital Marketing	12.2 Ongoing Training, Support & Development
6.3 Print Marketing	12.3 In Person Learning Opportunities
6.4 Publicity Support	
6.5 Edit Find A Kona	
	<b>13 Building a Team</b>
	13.1 Non-Joint-Employer
	13.2 Status Employee Versus 1099
	13.3 Contractor
	13.4 Employee Versus 1099 Contractor
	13.5 Background Checks
	13.6 Miscellaneous Hiring Issues
	13.7 Developing Your Team
	<b>14 Customer Service</b>
	14.1 Customer Service Philosophy
	14.2 Our Customer Complaint Policy
	14.3 Refund Requests
	14.4 Service Procedures
	<b>15 Upfits</b>
	15.1 Kona Ice Upfits
	15.2 The Upfit Process
	15.3 Upfitting Options
	<b>16 Transfers, Renewals, and Fees</b>
	16.1 Transfers
	16.2 Fees



**EXHIBIT F**

**LIST OF CURRENT AND FORMER FRANCHISEES**



**KONA ICE, INC.  
LIST OF FRANCHISEES**

**Current Franchisees as of December 31, 20222023:**

Franchisee	Address	City	State	Zip Code	Phone	Outlets Operated
Cutts, CJ & Diane	3771 Ward Loop A	Anchorage	AK	99506	(907) 201-3735	AK: 1
Butler, Kevin & Karla	1520 Simmsville Rd Suite 1200	Alabaster	AL	35007	(205) 383-6066	AL: 68
Yates, Daniel	1236 Cherokee Rd	Alexander City	AL	35010	(256) 794-8197	AL: 1
Mattox, Craig	801 Mundy Drive	Anniston	AL	36207	(256) 399-9284	AL: 34
Sularin, Patrick & Summer	609 Arad Thompson NE	Arab	AL	35016	(256) 738-8905	AL: 3
Register, Beth	2606 Weston St	Auburn	AL	36832	(334) 707-3650	AL: 2
Butts, Lynn (Jerry) & Joan (Brenda)	4989 County Highway 47	Blountsville	AL	35031	(205) 446-8737	AL: 1
Kilpatrick, Brian	506 Sherwood Ct	Florence	AL	35633	(256) 577-1777	AL: 2
O'Rear, Russ & Amber	1216 Nick Davis Rd	Harvest	AL	35749	(256) 924-8933	AL: 3
Surgenor, Angela & Pacatte, Cherri	5900 Grelot Road Unit 605	Mobile	AL	36609	(251) 583-0889	AL: 34
Van-Wycke, Josh & Mattox, Craig	122 Allendale Road	Oxford	AL	36203	(910)-270-2575	NC: 32
Taher, Taher	1752 Benson St	Prattville	AL	36066	(334) 354-6464	AL: 2
McPhillips, Glenn & Tomeko	610 Selma Ave	Selma	AL	36701	(334) 518-0313	AL: 4
Stefaniak, David & Holly	20278 Capitol Hill Dr	Tanner	AL	35671	(256) 566-5298	AL: 23
Ricker, Ron	445 Manning Drive	Woodville	AL	35776	(256) 259-2000	AL: 2
Daniel, Kenny & Tina	3103 Jean Cv.	Alexander	AR	72002	(501) 672-6729	AR: 4
Newell, Shane	1006 NE Tiger Blvd.	Bentonville	AR	72712	(479) 601-4297	AR: 3
Griffin, Wade & White, Todd	3145 Majestic Circle	Conway	AR	72034	(501) 940-5662	AR: 2
Weaver, Richard	23 Linda Circle	Greenbrier	AR	72058	(501) 679-1582	AR: 53
Ruth, Steve & Kathleen	4113 Sage Meadows Blvd	Jonesboro	AR	72401	(870) 926-5090	AR: 1
Dixon, Jim	1 Erin Drive	Searcy	AR	72143	(479) 561-9966	AR: 2
Vickers, Joslyn	523 Miller County 57	Texarkana	AR	71854	(903) 293-0123	AR: 1
Leath, Wade	1049 W 21st Ave	Apache Junction	AZ	85120	(480) 352-6413	AZ: 1
Pollock, Brooke	2092 Joann Ave	Bullhead City	AZ	86442	(928) 201-5093	AZ: 1
Rutledge, Shawn	621 E. Melrose Dr.	Casa Grande	AZ	85122	(520) 350-8001	AZ: 1
Lohner, Richard	2302 N. Arrowhead DR	Chandler	AZ	85224	(602) 321-7545	AZ: 3
Murphy, Joe	6121 South Topaz Place	Chandler	AZ	85249	(480) 717-7149	AZ: 1
Lohner, Richard	2302 N. Arrowhead DR	Chandler	AZ	85224	(602) 321-7545	AZ: 4
Aviles, Guadalupe	2007 E Marlene Dr.	Gilbert	AZ	85296	(480) 840-4496	AZ: 2



Franchisee	Address	City	State	Zip Code	Phone	Outlets Operated
Crowell, William & Christine	6872 N. 78th Ave.	Glendale	AZ	85303	(623) 247-5662	AZ: 34
Bohne, Brian & Sharen	12986 South 177th Lane	Goodyear	AZ	85338	(623) 777-9653	AZ: 43
<del>Roebrick, Geoff &amp; Mary</del>	<del>18121 W. Minnezona Ave</del>	<del>Goodyear</del>	<del>AZ</del>	<del>85395</del>	<del>(816) 588-3238</del>	<del>AZ: 2</del>
Calabria, Shannon	7944 E Hampton Ave	Mesa	AZ	85209-9108	(833) 879-5662	AZ: 42
Kaufman, Jade & Clay	8870 W Single Tree Ln	Payson	AZ	85541	(602) 848-3300	AZ: 1
Johnson, Todd & Randel/Dale, Susan	28614 N 68th Dr.	Peoria	AZ	85383	(602) 419-1919	AZ: 3
Torrez, Hannah (Rojas)	3300 W Camelback Rd.	Phoenix	AZ	85017	(480) 493-9778	AZ: 1
Lord, Steven & Bernards, Michael	20450 E Ocotillo Rd Apt 149	Queens Creek	AZ	85142	(480) 987-3341	AZ: 42
Rodriguez, Gustavo	871 W. Calle Moa	Sahuarita	AZ	85629	(520) 789-6224	AZ: 1
Miller, CJ & Adrienne	4242 East Odessa Dr.	San Tan Valley	AZ	85140	(480-) 399-7652	AZ: 1
<del>Rendelman, Michael</del>	<del>15418 N. 60th Street</del>	<del>Scottsdale</del>	<del>AZ</del>	<del>85254</del>	<del>(602) 419-1919</del>	<del>AZ: 4</del>
Sexton, Cheryl & Rogers, Mike	8743 E. Fairmount Avenue	Scottsdale	AZ	85251	(480) 269-3682	AZ: 43
Crowell, Matthew	18376 W. Marshall Ln	Surprise	AZ	85388	(623) 738-9436	AZ: 4
Johnson, Randel and Jan	9414 W Fillmore	Tolleson	AZ	85353	(623) 755-1201	AZ: 2
<del>Draves, Adam</del>	<del>10507 East Carolina Willow Lane</del>	<del>Tucson</del>	<del>AZ</del>	<del>85747</del>	<del>(520) 234-7625</del>	<del>AZ: 1</del>
<del>Merrill, Scott &amp; Ana</del>	<del>7405 N Boston Pl</del>	<del>Tucson</del>	<del>AZ</del>	<del>85741</del>	<del>(520) 649-9034</del>	<del>AZ: 1</del>
Reaney, Chris	2601 N Jeanette Avenue	Tucson	AZ	85749	(520) 591-5478	AZ: 2
Martinez, Brissa	14646 E. 49th Dr	Yuma	AZ	85367	(928) 232-9003	AZ: 42
Colver, Tony & Kim	11291 Camden Street	Apple Valley	CA	92308	(760) 949-5662	CA: 3
Macken, Valerie	618 Cliff Dr	Aptos	CA	95003	(831) 234-5939	CA: 1
<del>Saez, Robert &amp; Johnny</del>	<del>8200 N. Laurelglen Blvd Apt 1802</del>	<del>Bakersfield</del>	<del>CA</del>	<del>93311</del>	<del>(661) 742-5662</del>	<del>CA: 3</del>
Ho, Tyler (Tai) & Dinh, Kara (Thu)	26500 Agoura Rd. Suite 102-393	Calabasas	CA	91302	(818) 798-4495	CA: 1
Perez, Victor & Ana	23702 Ronan Ave	Carson	CA	90745	(310) 270-2819	CA: 2
Aalberg, Kim	11160 Union Circle	Castroville	CA	95012	(831-) 757-7777	CA: 2
Labosky, Rachelle	PO Box 1715	Chester	CA	96020	(530) 816-9333	CA: 1
<del>Newton, Tyler &amp; Copeland, Matthew</del>	<del>3381 Keefer Rd</del>	<del>Chico</del>	<del>CA</del>	<del>95973</del>	<del>(530) 717-7415</del>	<del>CA: 1</del>
Drake, Chris & Jamie	801 Burl Ave	Clovis	CA	93611	5596960199(559) 696-0199	CA: 45
Nava, Jesse	7221 Whiskey Creek Circle	Corona	CA	92881	(951) 268-4210	CA: 8
Peters, Robert	31082 Via Consuelo	Coto de Caza	CA	92679	(775) 771-4886	CANV: 2
Brown, Jeff	6624 Teakwood St.	Cypress	CA	90630	(714) 512-2510	CA: 1
Saechao, Nancy	9240 Crowell Dr.	Elk Grove	CA	95624	(916) 612-2487	CA: 1
Purper, Bill	2107 Jeremy Place	Escondido	CA	92027	(760) 855-2988	CA: 4
Wakefield, Bill & Brandi	133 Rugosa Dr	Folsom	CA	95630	(916) 934-2020	CA: 2



Franchisee	Address	City	State	Zip Code	Phone	Outlets Operated
Melzer, Ronda	15264 Grumman Ave	Fontana	CA	92336	(909) 714-8019	CA: 3
Foo, Rebeka	111 E Court Lane	Foster City	CA	94404	(630) 853-7985	CA: 1
Asklof, Ray	5755 W. Everett Ave	Fresno	CA	93722	(559) 360-9672	CA: 1
Qurioz-Burley, Lisa	1616 West Morris Avenue	Fresno	CA	93711	(559) 779-2969	CA: 4
Stalneck, Janelle	10371 Park Ave #D	Garden Grove	CA	92840	(408) 612-6659	CA: 23
O'Kieffe, Max	152 Aero Camino, Unit G	Goleta	CA	93117	(805) 452-6560	CA: 2
Gneckow, Steve & Cheryl	22650 De Soto Street	Grand Terrace	CA	92313	(951) 525-5662	CA: 2
Ford, Dale & Beth	8565 Willow Gate Court	Granite Bay	CA	95746	(916) 834-5662	CA: 34
Landis, Justin & Mindy	1630 W. Castoro Way	Hanford	CA	93230	(559) 707-0008	CA: 1
Aviles, Guadalupe	14437 Riverside St	Hesperia	CA	92345	(480) 840-4496	CA: 1
Hardy, Flavia & Mike	21121 Sailors Bay Ln.	Huntington Beach	CA	92646	(714) 683-3665	CA: 2
Etter, Kimberly & James	43705 Albeek Ave	Lancaster	CA	93536	(661) 524-5055	CA: 2
Benjamin, Simona	18931 Bear Creek Rd	Los Gatos	CA	95033	(650) 772-2400	CA: 23
Rennick, Tim & LaCheri	38462 Encanto	Murrieta	CA	92563-3212	(951) 852-5668	CA: 5
Nava, Victor	3400 Nectar Ct	Ontario	CA	91761	(951) 892-0606	CA: 4
Cheng, Takashi & Liu, Brandon	3579 E. Foothill Blvd. #546	Pasadena	CA	9100791006	(661) 523-3214	CA: 1
Gonzales, Vickie	16311 Gustafson Ave.	Patterson	CA	95363	(209) 486-6926	CA: 4
Duarte, Raul	8329 True Ave	Pico Rivera	CA	90660	(562) 991-3807	CA: 2
Garnero, Kurt & Herrera, Marina	2038 Wicklow St.	Redding	CA	96001	(530) 356-2950	CA: 2
Fullerton, Denise	505 Commodore Drive	Richmond	CA	94804	(510) 206-6085	CA: 1
Liu, Lisa	1421 Summer Lane	Richmond	CaCA	94806	(510) 333-8132	CA: 1
Spencer, Bernadette & Joseph	838 Cobblestone ct	Ripon	CA	95366	(209) 302-9238	CA: 2
Martin, Peggy & Chuck	3340 Baffin Drive	Riverside	CA	92503	(909) 809-9294	CA: 2
Wood, Tom & Gail	17087 Hazelwood Drive	Riverside	CA	92503	(951) 290-7428	CA: 5
La, Roger & Wa	8272 Lupine Field Court	Sacramento	CA	95829	(916) 668-9419	CA: 1
Farr, Steven & Grace	8637 Marmon Way	Sacramento	CA	95828	(916) 897-6414	CA: 2
La, Jerry & Chu, Deanna	7736 Tigerwoods Dr.	Sacramento	CA	95829	(916) 508-9905	CA: 3
La, Roger	8272 Lupine Field Court	Sacramento	CA	95829	(916) 668-9419	CA: 1
Muraira, Dan	1534 Via Tulipan	San Clemente	CA	92673	9495257293(949) 525 7293	CA: 34
Graves, Shelley & Jason	11004 Madrigal St.	San Diego	CA	92129	(858) 231-5100	CA: 2
Ornelas, Shaun	3960 W Point Loma Blvd Ste H115	San Diego	CA	92110	(619) 326-4444	CA: 2
Pearson, Katelyn & Gerrity, Whitney	1423 Essex St 3626 Pocahontas Ct	San Diego	CA	9210392117	(619) 876-0824	CA: 42
Rodriguez, John	12906 Hideaway Lane	San Diego	CA	92131	(858) 275-3075	CA: 57



Franchisee	Address	City	State	Zip Code	Phone	Outlets Operated
<u>Galdamez, Marlon &amp; Veronica</u>	<u>10906 Laurel Canyon Boulevard Unit 7</u>	<u>San Fernando</u>	<u>CA</u>	<u>91340</u>	<u>(818) 714-1245</u>	<u>CA: 1</u>
<u>Basco, Rochelle</u>	<u>550 Battery Street</u>	<u>San Francisco</u>	<u>CA</u>	<u>94111</u>	<u>(415) 740-6006</u>	<u>CA: 1</u>
<u>Huh, Young</u>	<u>5745 Orchard Park Drive</u>	<u>San Jose</u>	<u>CA</u>	<u>95123</u>	<u>(408) 799-6194</u>	<u>CA: 1</u>
<u>Salter, Jenni &amp; Dave</u>	<u>386 Avenida Abetos</u>	<u>San Jose</u>	<u>CA</u>	<u>95123</u>	<u>(408) 621-4373</u>	<u>CA: 23</u>
<u>Navarro, Christy &amp; Marcel</u>	<u>2714 N. Linwood St</u>	<u>Santa Ana</u>	<u>CA</u>	<u>92705</u>	<u>(714) 955-8886</u>	<u>CA: 4</u>
<u>Ngo, Damian &amp; La, Wendi</u>	<u>2714 N. Linwood St</u>	<u>Santa Ana</u>	<u>CA</u>	<u>92705</u>	<u>(916) 900-2948</u>	<u>CA: 2</u>
<u>Navarro, Christy &amp; Marcel</u>	<u>11872 Newport Ave</u>	<u>Santa Ana</u>	<u>CA</u>	<u>92705</u>	<u>(714) 955-8886</u>	<u>CA: 4</u>
<u>Ito, Yoriko</u>	<u>3130 Wilshire Blvd</u>	<u>Santa Monica</u>	<u>CA</u>	<u>90403</u>	<u>(646)-460-6681</u>	<u>CA: 3</u>
<u>Reed, Ashley</u>	<u>8341 Blackney Rd</u>	<u>Sebastopol</u>	<u>CA</u>	<u>95472</u>	<u>(707) 595-0827</u>	<u>CA: 2</u>
<u>Pua, Bernadette</u>	<u>10037 Fairweather Drive</u>	<u>Stockton</u>	<u>CA</u>	<u>95219</u>	<u>(209) 340-3551</u>	<u>CA: 1</u>
<u>Marcinonis, James &amp; Tiger, Sue</u>	<u>44795 Rutherford St</u>	<u>Temecula</u>	<u>CA</u>	<u>92592</u>	<u>(858) 999-5733</u>	<u>CA: 3</u>
<u>Caetans, Kevin / Gilchrist, Tammi</u>	<u>554 Timberwood Ave</u>	<u>Thousand Oaks</u>	<u>CA</u>	<u>91360</u>	<u>(805) 444-2792</u>	<u>CA: 3</u>
<u>Recio, Marco &amp; Melissa</u>	<u>20509 Toluca Ave</u>	<u>Torrance</u>	<u>CA</u>	<u>90503</u>	<u>(424) 257-0735</u>	<u>CA: 1</u>
<u>Gray, Michael</u>	<u>1240 Bluegrass Ln</u>	<u>Tracy</u>	<u>CA</u>	<u>95377</u>	<u>(510) 499-7774</u>	<u>CA: 1</u>
<u>Duncan, David &amp; Lisa</u>	<u>681 Saffron Drive</u>	<u>Tracy</u>	<u>CA</u>	<u>95377</u>	<u>(209) 597-8760</u>	<u>CA: 2</u>
<u>Gray, Michael</u>	<u>1240 Bluegrass Ln</u>	<u>Tracy</u>	<u>CA</u>	<u>95377</u>	<u>(510) 499-7774</u>	<u>CA: 1</u>
<u>Young, Janel</u>	<u>2886 Rhone Ct</u>	<u>Tulare</u>	<u>CA</u>	<u>93274</u>	<u>(559) 331-3541</u>	<u>CA: 3</u>
<u>Berger, Stacy &amp; Dave</u>	<u>PO Box 1357</u>	<u>Tuolumne</u>	<u>CA</u>	<u>95379</u>	<u>(209) 768-0341</u>	<u>CA: 1</u>
<u>Dunn, Kevin</u>	<u>320 Sunbird Dr</u>	<u>Turlock</u>	<u>CA</u>	<u>95382</u>	<u>(209) 595-6797</u>	<u>CA: 2</u>
<u>Fargas, Rissa</u>	<u>16282 East Main St. #18E</u>	<u>Tustin</u>	<u>CA</u>	<u>92780</u>	<u>(858-) 527-8571</u>	<u>CA: 1</u>
<u>Rojas, Teddy</u>	<u>1250 Callen Street</u>	<u>Vacaville</u>	<u>CA</u>	<u>95688</u>	<u>(707) 628-0328</u>	<u>CA: 57</u>
<u>Hall, Joshua &amp; Wong, Garvin</u>	<u>24645 Farrow Dr.</u>	<u>Valencia</u>	<u>CA</u>	<u>91355</u>	<u>(818) 835-5662</u>	<u>CA: 7</u>
<u>Kellar, Taylor &amp; Anthony</u>	<u>2961 Kennedy Drive</u>	<u>Yuba City</u>	<u>CA</u>	<u>95993</u>	<u>(530) 375-0244</u>	<u>CA: 1</u>
<u>Lemieux, Davida &amp; Keith</u>	<u>8258 Estes Ct</u>	<u>Arvada</u>	<u>CO</u>	<u>80005</u>	<u>(303) 437-3140</u>	<u>CO: 1</u>
<u>Wilms, Sierra &amp; Adam</u>	<u>5388 Owens Street</u>	<u>Arvada</u>	<u>CO</u>	<u>80002</u>	<u>(720) 505-4433</u>	<u>CO: 2</u>
<u>Orozco, Nicholas</u>	<u>8995 W. 68th Ave.</u>	<u>Arvada</u>	<u>CO</u>	<u>80004</u>	<u>(720) 980-3198</u>	<u>CO: 5</u>
<u>Bostwick, Rachael &amp; William IV, Billy</u>	<u>5432 S Sicily Way</u>	<u>Aurora</u>	<u>CO</u>	<u>80015</u>	<u>(720) 319-9273</u> <u>530-7619</u>	<u>CO: 21</u>
<u>Bostwick, Rachael &amp; William IV, Billy</u>	<u>6627 La Plata Peak Dr. 5432 Sicily Way</u>	<u>Colorado Springs</u> <u>Aurora</u>	<u>CO</u>	<u>80015</u> <u>80015</u>	<u>(719) 344-8061</u> <u>(720) 319-9273</u>	<u>CO: 42</u>
<u>Hepner, Jeremy</u>	<u>4888 Chaparral Rd</u>	<u>Colorado Springs</u>	<u>CO</u>	<u>80917</u>	<u>(719)-355-6486</u>	<u>CO: 1</u>
<u>McDade, Casey, Melanie &amp; Jason Hepner, Katrina</u>	<u>4888 Chaparral Rd 48496 Roaring Fork Dr.</u>	<u>Colorado Springs</u>	<u>CO</u>	<u>80924</u> <u>80917</u>	<u>(719) 452-9998</u> <u>678-7802</u>	<u>CO: 21</u>
<u>Hepner, Katrina Mowry, Ray &amp; Karen</u>	<u>2160 Old North Gate 4888 Chaparral Rd</u>	<u>Colorado Springs</u>	<u>CO</u>	<u>80921</u> <u>80917</u>	<u>(719) 464-5232</u> <u>452-9998</u>	<u>CO: 41</u>



Franchisee	Address	City	State	Zip Code	Phone	Outlets Operated
<u>Mowry, Ray &amp; Karen Neumann, Josh</u>	<u>1762 Pioneer Place 2160 Old North Gate Rd</u>	<u>Eaton Colorado Springs</u>	CO	<u>8061580921</u>	<del>(605) 430-4675</del> <u>(719) 464-5232</u>	<del>SD: 4</del> <u>CO: 5</u>
Villarreal, Felix & Cynthia	2992 1/2 Summerbrook Dr	Grand Junction	CO	81504	(970) 314-7569	CO: 1
Rotner, Dan & Shelton, Brian	5242 Silverwood Drive	Johnstown	CO	80534	(970) 420-6995	CO: 56
<del>Ingle, Mark</del>	<del>7540 Dawn Dr.</del>	<del>Littleton</del>	<del>CO</del>	<del>80125</del>	<del>(303) 641-9708</del>	<del>CO: 4</del>
Shoen, Wes	7976 West Calhoun Place	Littleton	CO	80123	(303) 803-5754	CO: 1
<u>Ingle, Mark</u>	<u>7540 Dawn Dr.</u>	<u>Littleton</u>	<u>CO</u>	<u>80125</u>	<u>(303) 641-9708</u>	<u>CO: 7</u>
Geurden, Chris & Tryce	4506 Portofino Dr	Longmont	CO	80503	(720) 600-0707	CO: 34
Harper, Brandi & Joshua	16302 11th St	Mead	CO	80542	(720) 745-1408	CO: 1
Vogelbacher, Karl & Gabriella	251 Elkdale Drive P.O.Box 263	Tabernash	CO	80478	(970) 531-7161	CO: 1
<del>Schnelle, Julie &amp; Ryan</del>	<del>4050 w 116th Way</del>	<del>Westminster</del>	<del>CO</del>	<del>80031</del>	<del>(720) 480-8030</del>	<del>CO: 3</del>
<del>Tennal, Kevin &amp; Amy</del>	<del>5594 West 118th Place</del>	<del>Westminster</del>	CO	80020	(720) 484-4174	CO: 4
<u>Arpin, Brandi &amp; Adam</u>	<u>26 South Rd.</u>	<u>Bozrah</u>	<u>CT</u>	<u>6334</u>	<u>(860) 400-2044</u>	<u>CT: 1</u>
<u>Young, Josh</u>	<u>1 Kennedy Ave</u>	<u>Danbury</u>	<u>CT</u>	<u>6810</u>	<u>(203) 470-0398</u>	<u>CT: 1</u>
Burkey, Brenda	82 Mountain rd	Manchester	CT	<del>06040</del> 06040	(860) 841-7792	CT: 2
ZeZima, Greg & Kat	33 Clover Hill Drive	Stamford	CT	<del>06902</del> 06902	(293) 921-5000	CT: 2
Noonan, Dennis & Jennifer	35506 Red Tail Rd	Lewes	DE	19958	(302) 470-8131	DE: 31
<u>Chatham, Andy</u>	<u>600 North Broad Street Suite 5 #3358</u>	<u>Middletown</u>	<u>DE</u>	<u>19709</u>	<u>(302) 605-0078</u>	<u>DE: 1</u>
Fox, Heather	309 Altamonte Commerce Blvd Suite 1504	Altamonte Springs	FL	32714	(407) 580-2860	FL: 3
<del>Goines, Eddie</del>	<del>312 Creseent Ridge Rd</del>	<del>Auburndale</del>	<del>FL</del>	<del>33823</del>	<del>(863) 874-4404</del>	<del>FL: 1</del>
Hernandez, Daniel & Kristen	209 White Cliff Blvd.	Auburndale	FL	33823	(813) 489-3529	FL: 1
Cotto, Jacqueline	10308 Sleepy Brook Way	Boca Raton	FL	33428	(561) 887-9491	FL: 1
<u>Exler, Thomas</u>	<u>25860 Creekbend Drive</u>	<u>Bonita Springs</u>	FL	<u>34135</u>	<u>(289) 926-0087</u>	<u>FL: 1</u>
<u>Williams, Letauric &amp; Kiarah</u>	<u>7061 Glenwood Dr.</u>	<u>Boynton Beach</u>	FL	<u>33436</u>	<u>(561) 247-5662</u>	<u>FL: 2</u>
Cullen, Charles (Chuck)	4601 E Moody Blvd. #D2	Bunnell	FL	32110	(386) 793-5662	FL: 21
Bateman, Matt & Denise/Murray, Bruce	3126 SE 22nd Place	Cape Coral	FL	33904	(239) 225-8636	FL: 1
<del>Phillips, Sandra &amp; Caryl</del>	<del>2525 Liberty Park Drive Apt. 2407</del>	<del>Cape Coral</del>	<del>FL</del>	<del>33909</del>	<del>682-402-3906</del>	<del>FL: 1</del>
Wallen, Marisa & Jeremy	6420 CR 569	Center Hill	FL	33514	(352) 403-0515	FL: 2
Chevrier, Chris	13539 Loblolly Lane	Clermont	FL	34711	(352) 432-8877	FL: 42
Slagle, Michael	771 Princeton Dr	Clermont	FL	34711	(407) 232-5630	FL: 42



Franchisee	Address	City	State	Zip Code	Phone	Outlets Operated	
Helish, Michael, Alex, Nick/Carpenter, Tracy	6233 Alden Ave	Cocoa	FL	32927	(321) 271-5393	FL: 3	
Amerman, Ben & Tara	3851 NW 4th Ct	Coconut Creek	FL	33066	(561) 295-7231	FL: 3	
Schneider, Steven	5101 NW 57th drive	Coral Springs	FL	33067	(954) 701-5945	FL: 1	
Martin, Amber & Mark	43628 Kent Bradley Street	Dade City	FL	33525	(352) 534-1994	FL: 1	
Greco, Glen	105 Docksider Place	Daytona Beach	FL	32124	(518) 618-5600	FL: 1	
Denigan, Isaac	601C Old Daytona Rd 981 HWY 98 E	DeLand	FL	32724	(386) 320-6277	FL: 5	
Rowe, Steve & Mitzi	Suite 322	Destin	FL	32541	(850) 974-7450	FL: 1	
Williams, Bobby & Lissa Carpenter, Rebecca	6345 French Creek Court <del>24150 Weldon Drive</del>	Ellenton <del>Ellenton</del>	FL	32736 <del>32736</del>	3422 <del>2</del>	(407) 509-3142 <del>(941) 705-2680</del>	FL: 32
Carpenter, Rebecca Irish, Sandra	24150 Weldon Drive <del>636 West Evanston Circle</del>	Eustis <del>Fort Lauderdale</del>	FL	33312 <del>33312</del>	23273 <del>6</del>	(754) 229-5662 <del>(407) 509-3142</del>	FL: 32
Litzenberg, Gretchen	2033 SE 10th Ave. Apt. 616	Fort Lauderdale	FL	33316	(954) 652-6296	FL: 2	
Irish, Sandra Jenkins, Jason & Brenton	9800 Bay Harbor Circle <del>636 West Evanston Circle Apt 206</del>	Fort Myers <del>Lauderdale</del>	FL	33919 <del>33919</del>	3331 <del>2</del>	(239) 788-4210 <del>(754) 229-5662</del>	FL: 3
Jenkins, Jason & Brenton Scott, Wayne & Tamela	9800 Bay Harbor Circle <del>Apt 206 118 Lottie Loop</del>	Fort Myers <del>Freeport</del>	FL	32439 <del>32439</del>	3391 <del>9</del>	(850) 567-5057 <del>(239) 788-4210</del>	FL: 34
Scott, Wayne & Tamela Rainwater, David	118 Lottie Loop <del>4329 NW 27th Terrace</del>	Freeport <del>Gainesville</del>	FL	32605 <del>32605</del>	3243 <del>9</del>	(352) 222-8311 <del>(850) 567-5057</del>	FL: 14
Rainwater, David Williams, Letaurie & Kiarah	4329 NW 27th Terrace <del>6709 Osage cir</del>	Gainesville <del>Greenacres</del>	FL	33413 <del>33413</del>	3260 <del>5</del>	(352) 222-8311 <del>(561) 247-5662</del>	FL: 2
Newton, John and Diondra	205 Blue Cypress Drive	Groveland	FL	34736	(352) 247-2019	FL: 2	
Bartlett, Russell & Karen	1833 Cowen Rd.	Gulf Breeze	FL	32563	(850) 262-8100	FL: 7	
Mack, David & Valerie	803 SE 2nd Avenue	Hallandale Beach	FL	33009	(866) 902-6387	FL: 3	
Heymer, Claire	9408 Wildwood Ave	Hudson	FL	34669	(727) 804-1419	FL: 3	
Greco, Glen Jr.	8451 Gate Pkwy W  Unit 532	Jacksonville	FL	32216	904-337-9942	FL: 1	
Pickering, Kiki	1494 Harrington Park Dr	Jacksonville	FL	32225	(434) 942-7827	FL: 1	
Schubiger, David	6608 Groveland Dr	Jacksonville	FL	32211	(786) 863-9344	FL: 45	
Beane, Thomas (Cary)	1355 Plantation Oaks Drive N.	Jacksonville Beach	FL	32250	(904) 372-3578	FL: 25	
Smith, Shawn & Ellen	2615 Harris Blvd	Kissimmee	FL	34746	(407) 483-7968	FL: 1	
Carreira, Del & Erika	1846 Monte Cristo Ln	Kissimmee	FL	34758	(863) 225-4248	FL: 1	
Schroeder, Laurie & Stroup, Michael	131 County Road 482 South	Lake Panasoffke	FL	33538	(352) 515-4616	FL: 2	
Still, David & Deborah	9062 Cypresswood Drive	Lake Wales	FL	33898	(863) 670-4070	FL: 43	



Franchisee	Address	City	State	Zip Code	Phone	Outlets Operated
<del>Castro, Daniela &amp; Paolo</del>	<del>9463 Savannah estates drive</del>	<del>Lake worth</del>	<del>FL</del>	<del>33467</del>	<del>9549408052</del>	<del>FL: 1</del>
Crowley, Victoria	7808 Sonoma Springs Circle Apt. 304	Lake Worth	FL	33463	(561) 785-5610	FL: 1
Khamminh, Kam (Noupane)	3472 Blanchette Trail	Lake Worth	FL	33467	(561) 254-5076	FL: 2
<del>Castro, Daniela &amp; Paolo</del>	<del>9463 Savannah estates drive</del>	<del>Lake worth</del>	<del>FL</del>	<del>33467</del>	<del>(954) 940-8052</del>	<del>FL: 3</del>
Groskreutz, Bruce & Lori	3554 Munnings Knl	Land O' Lakes	FL	34639	(813) 944-0337	FL: 1
Castelow, Jeff & Robin	2135 Pocahontas Drive	Largo	FL	33774	(443) 553-3843	FL: 23
<del>Parker, Jeanelle &amp; McKav, Adrian</del>	<del>1401 NW 36 Way</del>	<del>Lauderhill</del>	<del>FL</del>	<del>33311</del>	<del>(954) 241-4840</del>	<del>FL: 1</del>
Matos, Erick	23712 Kehoe Marsh Court	Leesburg	FL	34748	(407) 476-1516	FL: 1
Redfern-Navarro, Michelle	722 Lund Court	Melbourne	FL	32901	(321) 210-9151	FL: 1
Melero, Tiffany	6303 SW 162 Path	Miami	FL	33193	(786) 232-1458	FL: 42
Brizendine, Eugene & Jeannie	4873 Londel Ave	North Port	FL	34287	(941-) 999-7654	FL: 2
	3315 SW 13th St					
McKay, Deven	Suite 204	Ocala	FL	33474	(352) 274-0521	FL: 2
Robbins, Pauline	835 SE 3rd St	Ocala	FL	34471	(352) 804-5662	FL: 23
		Orange Park				
Peek, Michael	473 Cody Drive	Orange Park	FL	32073	(904) 534-2538	FL: 2
	12472 Lake Underhill Rd.					
Bunnell, Jenn	# 338	Orlando	FL	32828	(321) 697-9077	FL: 1
<del>Krienke, Makaio &amp; Robertson, Zach</del> <del>Graham, Mohamed &amp; Tang, Lisianne</del>	<del>4981 Waterside Pointe Circle</del> <del>4477 Edgewater Dr</del>	<del>Orlando</del>	<del>FL</del>	<del>32829</del> <del>3280</del>	<del>(407) 962-7445</del> <del>885-2486</del>	<del>FL: 1</del>
Richardson, Rudolph (Rich)	4477 Edgewater Dr	Orlando	FL	32804	(407) 455-3562	FL: 1
Robinson, Frank	5520 Greenleaf Dr	Pace	FL	32571	(850) 637-5662	FL: 2
Crews, Joey & Jessica	119 Herja Acre Lane	Palatka	FL	32177	(386) 937-2094	FL: 42
Young, Russell & Shannon	411 Dillard Drive SE	Palm Bay	FL	32909	(321) 831-0094	FL: 3
<del>Kolar, Meghan &amp; Jon</del>	<del>990 SW Gardens Blvd</del>	<del>Palm City</del>	<del>FL</del>	<del>34990</del>	<del>(561) 345-1203</del>	<del>FL: 2</del>
Nelson, David & Teresa	1006 SW 34th Terrace	Palm City	FL	34990	(772) 320-9855	FL: 2
Edwards, Stephanie & Chris	11436 Summit Rock Court	Parrish	FL	34219	(941) 465-0802	FL: 34
Martinez, Robyn & Robert/Pascual-Fernandez, Ana	7415 SW 99 Street	Pinecrest	FL	33156	(786) 393-4080	FL: 34
Martin, Beverly	2061 NW 118th Ave	Plantation	FL	33323	(954) 842-5662	FL: 2
		Pompano Beach				
Baly, Shantria & Greg	201 NE 30th Court	Pompano Beach	FL	33064	(754) 227-9896	FL: 42
		Port St. Lucie				
Evans, Walter and Rita	9624 SW Royal Poinciana Drive	Port St. Lucie	FL	34987	(407) 376-0776	FL: 2
Kerr, Diana	13118 Early Run Lane	Riverview	FL	33578	(727) 272-2734	FL: 1



Franchisee	Address	City	State	Zip Code	Phone	Outlets Operated
Saxe, Charles & Cheryl and Perrine, Sandra	Coastal Catering 9409 Hwy 301	Riverview	FL	33578	(813) 505-1805	FL: 56
Hodges, Matt & Mintz, Stevi	150 Viscaya Ave	Royal Palm Beach	FL	33411	(561) 332-4773	FL: 42
Cooper, Dale	3936 Dockers Drive	Ruskin	FL	33570	(941) 799-1447	FL: 3
Hlavaty, Ken, Angela & Mak	502 3rd Ave SE	Ruskin	FL	33570	(813) 495-1947	FL: 2
Cooper, Dale	3936 Dockers Drive	Ruskin	FL	33570	(941) 799-1447	FL: 3
Hoffman, Pam & Bob	1201 Cedar St Suite D	Safety Harbor	FL	34695	(727) 386-4764	FL: 4
Dendler, Rick	108 Moultrie Crossing Lane	Saint Augustine	FL	32086	(904) 829-7291	FL: 2
Hartmann, Jodi	3944 Canoe Creek Road	Saint Cloud	FL	34772	(407) 414-7296	FL: 32
Taylor, Marcus	806 Hemlock Street	St. Cloud	FL	34769	(407) 837-6474	FL: 1
Synowski, Theresa Kolar, Meghan & Jon	5459 Southeast Graham Drive 574 SW Glen Crest Way	Stuart	FL	34997	(561) 345-1203 (772) 254-2173	FL: 21
Huesman, Jacob & Polston, Derick	4843 Old Bainbridge Rd	Tallahassee	FL	32303	(850) 559-1482	FL: 2
Fulcher, Dave	1176 Riveredge Dr	Tarpon Springs	FL	34689	(727) 421-8183	FL: 1
Church, Cody	467 Banning Beach Rd	Tavares	FL	32778	(352) 508-7543	FL: 1
Glatt, Brandon & Bening, Brad	13221 Pleasant Hill Farm Rd.	Thonotosassa	FL	33592	(813) 299-4420	FL: 2
Ulloa, Cesar & Christi	26932 Sea Breeze Way	Wesley Chapel	FL	33544	(352) 534-1991	FL: 1
Burnett, Matt & Katie	1144 Baycrest Dr.	Wesley Chapel	FL	33544	(813) 812-5662	FL: 2
Edwards, Paul	12557 Cragside Lane	Windermer	FL	34786	(407) 668-5353	FL: 1
Shivdat, Ravi & Preya	1218 Selbydon Way	Winter Garden	FL	34787	(407) 620-9721	FL: 1
Godette, Jessica & Jerome	404 Edwin Street	Winter Springs	FL	32708	(321) 417-4039	FL: 1
Mudd, Alexandra & Gabriel	77393 Cobblestone Drive	Yulee	FL	32097	(912) 406-2474	FL: 1
Morefield, Gary and Debbie	622 Morgan St	Albany	GA	31705	(229) 854-3037	GA: 2
Mullison, Glenn	1514 Harmony Grove Church Rd.	Auburn	GA	30011	(678) 662-8213	GA: 1
Staudenmaier, Marni & Jason	1129 Ivey Brook Drive	Bethlehem	GA	30620	(706) 961-9492	GA: 1
James, Robert & Denea	1032 Chattahoochee Dr.	Bonaire	GA	31005	(478) 246-1887	GA: 1
Pedersen, Andrew & Jennifer	104 Watermelon Drive	Brunswick	GA	31525	(912) 248-1323	GA: 1
Mahar, Mike Winters, Dameron	106 Seattle Slew 5991 Lake Lanier Heights Rd	Canton Buford	GA	30518 30115	(470) 870-7886 (678) 723-5662	GA: 416
Moore, Wes Mahar, Mike	P.O. Box 200664 Seattle Slew	Cartersville Canton	GA	30115 30120	(678) 723-5662 (770) 547-0325	GA: 92
Kinney, Marc & Marilyn	185 Cline Smith Road	Cartersville	GA	30121	(404) 271-5887	GA: 6



Franchisee	Address	City	State	Zip Code	Phone	Outlets Operated
Moore, Wes	P.O. Box 200664	Cartersville	GA	30120	770-547-0325	GA: 1
Abbott, Angela & Tucker	2836 Nancy St	Columbus	GA	31906	(706) 987-2240	GA: 1
Harrison, Rick	206 Cherry Street	Commerce	GA	30529	(706) 614-1461	GA: 21
Powell, Lee & Shannon	20141 US Highway 319 N	Coolidge	GA	31738	(229-) 289-7299	GA: 2
Miller, Tom	6440 Westchester Place	Cumming	GA	30040	(404) 664-1766	GA: 1
Mullison, Glenn	2837 Captain Ct.	Dacula	GA	30019	(678) 662-8213	GA: 1
Rehberg, Julie	2111 Lakeway Drive	Dacula	GA	30018	(770) 342-9397	GA: 1
Schrader, Kathy & Richard	2893 Thurleston Lane	Duluth	GA	30097	(678) 480-1213	GA: 7
Umbelina, Chris & Kelly	121 Saddleclub Way	Guyton	GA	31312	(912) 508-8883	GA: 1
Myers, Lateesha & Lionel	3709 Royer lane	Hampton	GA	30228	(404) 566-5170	GA: 1
Lomax, Cole	276 Harbour Shores	Jackson	GA	30233	(770) 375-9698	GA: 5
Johnson, Philip	824 Langley Path	Johns Creek	GA	30024	(470) 651-3898	GA: 87
Neely, Calvin	80 Wood Valley	LaGrange	GA	30240	(706) 957-0870	GA: 2
Carruth, Maranda	5251 Augusta Highway	Lincolnton	GA	30817	(706) 466-1559	GA: 4
Roberts, Samona	591 Thorton Rd	Lithia Springs	GA	30122	(678) 733-3447	GA: 1
Page, Dion	6971 Main Street	Lithonia	GA	30058	(770) 310-5344	GA: 1
Saunders, Titus	2221 Rambling Way	Lithonia	GA	30058	(770) 885-6500	GA: 1
Riser, Daryl & Lisa	1331 Sandy Creek Rd	Madison	GA	30650	(770) 851-2812	GA: 34
Garland, Cindy & Steve	57 Parkview Drive	Ringgold	GA	30736	(423) 605-3574	GA: 23
Hall, Ronnie & Katrina	15 Birchwood Ct	Savannah	GA	31419	(912) 844-0832	GA: 1
Hodge, Jamie & Jennifer	32 Diana Drive	Savannah	GA	31406	(912) 346-3572	GA: 3
Roberts, Mark	1164 Bethel Church Rd.	Silver Creek	GA	30173	(706) 512-2866	GA: 2
Tucker, Ryan & Parson, Garrett	374 Lynhurst Rd	Smyrna	GA	30082	(678) 761-5474	GA: 2
Shoats, Jon & Stacey	1720 Timberline Trace	Snellville	GA	30078	(678) 223-3184	GA: 5
Hassenstab, Russell & Brenda	604 Parker Mathis Drive	Valdosta	GA	31601	(229) 300-6605	GA: 3
Kleiber, Paul & Morgan	822 Coosawilla Way	Winder	GA	30680	(770) 668-4217	GA: 3
Miramonti, Rich & Terri	1176 Arborhill Drive	Woodstock	GA	30189	(770) 272-2380	GA: 4
Thorpe, Paul	238 Nomilo Place	Honolulu	HI	96825	(808) 679-5820	HI: 2
Marumoto, Adam	91-1022B Kaiiau Avenue	Kapolei	HI	96707	(808) 551-9046	HI: 2
Mikuni, Wallace	91-816 Oaniani Street	Kapolei	HI	96707	(808) 282-3404	HI: 1
Marumoto, Adam	91-1022B Kaiiau Avenue	Kapolei	HI	96707	(808) 551-9046	HI: 2
Fuller, Paul & Haley	15945 106th Street	Davenport	IA	52804	(563) 650-1689	IA: 3
Booms, Jon & Rachel	6450 White Gate Court	Marion	IA	52302	(319) 440-4850	IA: 4
Baker, Tyler	2850 Tunnel Mill RD	Webster City	IA	50595	(515) 835-3080	IA: 67
Wilmes, Chris & Leslie	467 E. Andes Dr	Kuna	ID	83634	(208) 680-1816	ID: 3



Franchisee	Address	City	State	Zip Code	Phone	Outlets Operated
<u>Ostler, Fred &amp; Andy</u>	<u>3077 S Grimes Creek Ave</u>	<u>Meridian</u>	<u>ID</u>	<u>83642</u>	<u>(208) 991-8740</u>	<u>ID: 1</u>
<u>Etter, Kimberly &amp; James</u>	<u>1852 E Dipper Loop</u>	<u>Post Falls</u>	<u>ID</u>	<u>83854</u>	<u>(661) 524-5055</u>	<u>CA: 2</u>
Heberer, Jim	2917 S. Schilling Loop	Post Falls	ID	83854	(509) 863-7280	ID: 3
Starr, Robert & Amy	2205 Nisqually St.	Twin Falls	ID	83301	(208) 734-7827	ID: 3
Grossman, Mark	8 W. College Dr, Suite F	Arlington Heights	IL	60004	(847) 752-4410	IL: 45
McNeff, Thomas & Koselke, Jessica	4N661 Hawthorne Ave.	Bensenville	IL	60106	(224) 242-2410	IL: 23
<u>Mattingley, Becky &amp; Williams, Chad</u>	<u>5370 E Nordic Woods Dr</u>	<u>Byron</u>	<u>IL</u>	<u>61010</u>	<u>(815) 508-2451</u>	<u>IL: 1</u>
<u>Phillips, Sandra &amp; Caryl</u>	<u>26323 S. Ivy Lane</u>	<u>Channahon</u>	<u>IL</u>	<u>60410</u>	<u>(812) 274-5746</u>	<u>IL: 1</u>
Anti, Steven & Stacey	5717 N. Northcott Ave	Chicago	IL	60631	(312) 285-7245	IL: 23
Hermes, Emily	718 S HENNEPIN AVE	Dixon	IL	61021	(815) 631-1794	IL: 1
Pinelli, Robert	925 Meadowlawn Ave	Downers Grove	IL	60516	(843) 702-9308	SC: 42
Durdel, Robin & Jamie	110 Woodlands Pointe	East Peoria	IL	61611	(309) 402-9355	IL: 34
Ravagnie, Sherry & Scott	11802 Harvest Ct.	Huntley	IL	60142	(224) 209-6022	IL: 34
<u>Schmitt, Joe &amp; Stephanie</u>	<u>1108 Natalyns Trace</u>	<u>Lebanon</u>	<u>IL</u>	<u>62254</u>	<u>(618) 578-0747</u>	<u>IL: 1</u>
Leatherwood, Julia and Kerrick	40 N. Circle Drive	Monticello	IL	61856	(217) 480-5247	IL: 1
<u>Parker, Taylor</u>	<u>1731 Princess Circle</u>	<u>Naperville</u>	<u>IL</u>	<u>60564</u>	<u>(630) 448-8851</u>	<u>IL: 1</u>
Rojas, Laurence	6 East Poos Drive	New Baden	IL	62265	(707-) 880-1049	IL: 42
Hanner, Wes & Chuck	801 W. Church St.	Savoy	IL	61874	(217) 974-5662	IL: 3
Smith, Kimberly	915 S. Florence	Taylorville	IL	62568	(217) 823-1844	IL: 1
<u>Levato, Sandi &amp; Gary</u>	<u>19335 Woodfield Court</u>	<u>Tinley Park</u>	<u>IL</u>	<u>60487</u>	<u>(708) 466-5575</u>	<u>IL: 1</u>
Taylor, Derek	1911 Bell Rd.	Chandler	IN	47610	(812) 695-6620	IN: 3
Burtraw, Trevor	1511 Cliftwood Dr	Clarksville	IN	47129	(859) 240-3072	IN: 2
<u>Gabbard, Jeffrey &amp; Angela</u>	<u>609 Willow Drive</u>	<u>Connersville</u>	<u>IN</u>	<u>47331</u>	<u>(234) 566-2423</u>	<u>IN: 1</u>
<u>Robinson, Caixia &amp; Gerald</u>	<u>13161 Cleveland St.</u>	<u>Crown Point</u>	<u>IN</u>	<u>46307</u>	<u>(219) 201-9106</u>	<u>IN: 1</u>
Folkers, Melinda	57652 Priscilla Ct.	Elkhart	IN	46517	(574) 606-4290	IN: 42
Straber, Geri & David	10362 N 850 W	Fairland	IN	46126	(703) 853-2319	IN: 42
Hickey, Shawn	11581 Ludlow Dr.	Fishers	IN	46037	(574) 532-5736	IN: 7
Heilshorn, Billy & Amy	8134 N. Clinton St.	Fort Wayne	IN	46825	(260) 440-6444	IN: 34
Cole, Roger & Dawn	550 N Union Place	Gary	IN	46403	(219) 716-0063	IN: 34
Beck, Jordan & Ashley	59137 state road 15	Goshen	IN	46528	(574) 221-0331	IN: 1
Greene, Steve & Noblitt, Levi	30555 Raintree Dr.	Granger	IN	46530	(574) 596-4569	IN: 42
Trzeciak, Mindy	8630 Kennedy Ave	Highland	IN	46322	(219) 713-8689	IN: 1
<u>Popov, Tony</u>	<u>7643 Dean Road</u>	<u>Indianapolis</u>	<u>IN</u>	<u>46240</u>	<u>(317) 975-0290</u>	<u>IN: 2</u>
Farah, Jeanne	9694 Decatur Drive	Indianapolis	IN	46256	(317) 987-5662	IN: 4



Franchisee	Address	City	State	Zip Code	Phone	Outlets Operated
Popov, Tony	7643 Dean Road	Indianapolis	IN	46240	(317) 975-0290	IN: 2
Valiant, Tim	226 N Wilmington Ln	Lafayette	IN	47905	(765) 543-5222	IN: 7
Roark, Michael & Kimberly	2205 North Borcharding Road	Madison	IN	47250	(812) 599-0939	IN: 1
Stohler, Warren & Deborah	4610 Hacker Creek Rd	Martinsville	IN	46151	(317) 363-7810	IN: 23
Hilgeman, Pamela & Jason	7129 Four Mile Ridge Road	Nashville	IN	47448	(812) 340-5912	IN: 1
Pocock, Andrew & Valerie	5780 S. Old US Highway 27	Pleasant Lake	IN	46779	(260) 316-5611	IN: 2
Douglas, Matt	130 Aspen Lane	Lawrence	KS	66049	(785) 249-7070	KS: 56
Gerber, Shon & Trish	927 N Trail Drive	Mulvane	KS	67110	(316) 308-0435	KS: 2
Wright, Eric & Cathy	5109 W. 161 Street	Overland Park	KS	66085	(913) 709-3370	KS: 87
Porter, Kristi & Robert	22621 W 49th St	Shawnee	KS	66226	(913) 231-7647	KS: 3
Young, Matt & Carmond	13629 W Ponderosa Court	Wichita	KS	67235	(316) 644-3933	KS: 4
Dunning, Sam & Holly	197 Shady Brook Ln	Benton	KY	42025	(270) 559-3749	KY: 42
Clemmons, Kyle & Angela	2663 Laurelstone Lane	Bowling Green	KY	42104	(270) 846-5662	KY: 2
Teodozow, John & Teodozow, Ed	361 New Hope Rd	Calvert City	KY	42029	(270) 205-6609	DE: 1
Jarrell, Rosemary	2199 Meathouse Fork	Canada	KY	41519	(606) 369-3496	KY: 1
Fultz, Matt/Gilmore, Kyle/Martin, Jacob	614 Windsor Lane	Flatwoods	KY	41139	(606) 923-0582	KY: 34
Grinstead, Ryan	2028 Mapletree Ln	Independence	KY	41051	(513) 720-3930	KY: 2
Satchwill, Lori	2926 Hempfling Road	Morning View	KY	41063	(859-) 462-1481	KY: 1 OH: 3
Harbin, Ben	333 Washington Commons Dr	Mount Washington	KY	40047	(270) 304-7440	KY: 34
Edmonds, Jared & Melissa	2048 Little Stream Run	Owensboro	KY	42303	(270) 228-4280	KY: 1
Lamb, Scott & Lisa	410 Jake St	Richmond	KY	40475	(859) 333-3100	KY: 910
Grinstead, Ryan	12411 Sheppard Way	Walton	KY	41094	(513) 720-3930	KY: 2
Bolin, Josh	11692 Agarwood Drive	Walton	KY	41094	(859) 803-5913	KY: 43
Bolin, Josh	11692 Agarwood Drive	Walton	KY	41094	(859) 803-5913	OH: 2
Brooks, Caressa	1424 Hwy 2035	Whitesburg	KY	41858	(606) 634-6528	KY: 2
Boss, Hall & Courtney/Gaudet, Wally	331 Grand Lake Drive 885 Iris Street	Arnaudville	LA	7080270512	(337) 303-6309(225) 400-4743	LA: 21
Gaudet, Wally/Dickson, Sharon & Scott	885 Iris Street 267 Jim Finley Road	Baton Rouge	LA	7122570802	(318) 372-4500(225) 400-4743	LA: 23
Dickson, Sharon & Scott/Boss, Hall & Courtney	267 Jim Finley Road 103 Tara Oak Dr	Calhoun	LA	7052071225	(318) 372-4500(337) 303-6309	LA: 43
Fuselier, Lisa & Todd	1038 Belle Terre Dr.	Eunice	LA	70535	(337) 603-9005	LA: 2
Stock, Elena & Brian	103 Horn Ct	Fort Polk	LA	71459	(337) 353-5042	LA: 1



Franchisee	Address	City	State	Zip Code	Phone	Outlets Operated
<del>Juncker, Roy</del>	<del>609 Fairfield Avenue</del>	<del>Gretna</del>	<del>LA</del>	<del>70056</del>	<del>(504) 421-8914</del>	<del>LA: 5</del>
Mauk, Jim & Kerry	3251 Wall Blvd Apt 302	Gretna	LA	70056	(504) 912-0274	LA: 2
<u>Juncker, Roy</u>	<u>609 Fairfield Avenue</u>	<u>Gretna</u>	<u>LA</u>	<u>70056</u>	<u>(504) 421-8914</u>	<u>LA: 3</u>
Guidry, Dwayne	117 Wills Drive	Lafayette	LA	70506	(337) 344-9415	LA: <u>2</u>
Easter, Ed & Dana	3013 Donahue Ferry Rd	Pineville	LA	71360	(318) 787-2457	LA: 1
Shoemaker, Pam	153 Andy Allen Rd	Rayville	LA	71269	(318) 557-9564	LA: <u>3</u>
Robinson, Michelle	302 Royal Drive	Slidell	LA	70460	(985-) 778-0166	LA: 1
Gasper, Donald & Sharon	469 Hall rd	Stonewall	LA	71078	(318) 655-4883	LA: 1
Nicholson, Todd	2008 Diane Drive	Sulphur	LA	70663	(337-) 214-5001	LA: <u>5</u>
Authement, Craig & Karen	1010 Rosedown Drive	Thibodaux	LA	70301	(985) 696-8454	LA: <u>3</u>
<u>Bauer, Shad</u>	<u>73 mill pond rd</u>	<u>Bolton</u>	<u>MA</u>	<u>1740</u>	<u>(518) 265-6150</u>	<u>MA: 1</u>
Harnish, Ed & Melissa	7 Brooke Road	Boylston	MA	<del>01505</del> 1505	(774) 253-0321	MA: <u>3</u>
Tremblay, Guy & Heidi	10 Wild Oak Rise	Framingha m	MA	<del>01701</del> 1701	(508) 808-4404	MA: 1
Vazeos, Nikki	4 Jones Drive	Newburypo rt	MA	<del>01950</del> 1950	(978) 255-3821	MA: 1
Lavoie, Paris	711 Rocky Hill Rd.	Plymouth	MA	<del>02360</del> 2360	(774) 404-0468	MA: <u>3</u>
Souza, Dave & Cheryl	555 County St.	Seekonk	MA	<del>02771</del> 2771	(401) 450-9483	MA: 1
Porzio, Tom	59 Heather Row	Tewksbury	MA	<del>18760</del> 1876	(978) 888-7952	MA: 1
Gent, Kenneth (Ken)	1068 Sun Valley Dr	Annapolis	MD	21409	(410) 798-5909	MD: <u>3</u>
Minieri, Anthony & Marina	326 Williams Street, Unit 204	Berlin	MD	21811	(443) 944-1866	MD: 2
Jacobs, Chuck	23327 White Elm Ct.	California	MD	20619	(240) 309-9906	MD: 1
Marcus, Linda & Brett	713 White Oaks Ave	Catonsville	MD	21228	(410) 507-8007	MD: <u>2</u>
Miller, Jeff & Christian	105 Whitby Lane	Centreville	MD	21617	(410) 490-4051	MD: <u>3</u>
	15057 Potomac River Dr.					
Delaney, Don & Carrie	Box 285	Cobb Island	MD	20625	(301) 934-5662	MD: 1
<u>Gilreath, Staci &amp; Scott</u>	<u>6105 Sebring Drive</u>	<u>Columbia</u>	<u>MD</u>	<u>21044</u>	<u>(443) 832-3878</u>	<u>MD: 2</u>
Shuman, Steve	6608 Gleaming Sand Chase	Columbia	MD	21044	(443) 878-6109	MD: 2
<u>Gilreath, Staci &amp; Scott</u>	<u>6105 Sebring Drive</u>	<u>Columbia</u>	<u>MD</u>	<u>21044</u>	<u>(443) 832-3878</u>	<u>MD: 3</u>
<del>Chatham, Andy Shaw, Antwain</del>	<del>2656 Barksdale Rd 309 Caspian Ct.</del>	<del>Elkton Edge wood</del>		<del>21921</del> 2104 0	<del>(240) 203- 8824(302) 605- 0078</del>	MD: 1
Sunderland, Rob	1646 Glenwood Ct	Finksburg	MD	21048	(410) 596-2963	MD: 2
<u>Symonds, Damon &amp; Tomeka</u>	<u>2709 Prospect Hill Dr</u>	<u>Hanover</u>	<u>MD</u>	<u>21076</u>	<u>(803) 844-8496</u>	<u>SC: 1</u>
Troutman, Tim	2 Dodworth Ct, Apt 204	Lutherville -Timonium	MD	21093	(443) 613-9010	MD: 2
Garoutte, Deidre	48 Falls Road	North East	MD	21901	(410) 920-9056	MD: <u>3</u>
Stewart, Wheeler & Orr, Jeff	2679 Broadford Rd.	Oakland	MD	21550	(301) 616-6828	MD: <u>2</u>



Franchisee	Address	City	State	Zip Code	Phone	Outlets Operated
Weiner, Sheldon & Sharon	4624 Winding Stone Circle	Olney	MD	20832	(240) 444-7992	MD: 54
Elmore, Claude & Joni	3326 East Joppa Rd	Parksville	MD	21234	(443) 652-2600	MD: 3
Cohen, Nikki	10105 Sorrel Ave	Potomac	MD	20854	(301) 284-8260	MD: 2
Shepard, Sandy	2561 Ross Road	Silver Spring	MD	20910	(202) 345-5072	MD: 1
Leftridge, Terry & Rose	4516 Oak Ridge Drive	Street	MD	21154-1046	(410) 371-1331	MD: 34
Bennett, George & Laurie	794 Pushaw Station Rd	Sunderland	MD	20689-3059	(410) 814-8526	MD: 2
Amin, Raj	426 North Church Street	Thurmont	MD	21788	(301) 238-4747	MD: 23
Cole, Jason	40 Hay Brook Dr	Alfred	ME	040024002	(207) 608-1639	ME: 1
Jones, Antonette (Toni)	1719 Signal Point Cir	Allegan	MI	49010	(269) 249-6213	MI: 1
Smith, LaTanya	4107 Rose Blvd	Bloomfield Hills	MI	48302	(248) 971-3926	MI: 3
Berryhill, Jeff Wilson	47561 Glengarry Blvd-	Canton	MI	48188	(734) 658-9534 756-9066	MI: 32
Berryhill, Wilson Jeff	47561 Glengarry Blvd.	Canton	MI	48188	(734) 756-9066 658-9534	MI: 44
Smith, LaTanya	31843 Kingswood Square	Farmington Hills	MI	48334	(248) 971-3926	MI: 2
Moffett, Ben	2181 Lilac Ln.	Fenton	MI	48430	(810) 373-5662	MI: 2
Patel, Bimal; Bell, Michael; Sureja, Mehul; Patel, Piyush	6126 Quartz Lane	Grand Blanc	MI	48439	(810) 410-8461	MI: 1
Parker, Damion & Lindsay	1220 Aberdeen St NE	Grand Rapids	MI	49505	(616) 888-9412	MI: 2
Brown, Carl	26821 Dartmouth Street	Inkster	MI	48141	(284) 832-1517	MI: 1
Farr, Clifford	1906 Cooper Ave.	Lansing	MI	48910	(517) 881-6802	MI: 1
Breier, Jon & Mary	6306 Beechfield Dr.	Lansing	MI	48911	(517) 203-9371	MI: 3
Farr, Clifford	1906 Cooper Ave.	Lansing	MI	48910	(517) 881-6802	MI: 1
Quarles, Nicole	14440 Ramblewood	Livonia	MI	48154	(734) 846-3455	MI: 42
Martin, Don & Kim	706 FERRO AVE NE	LOWELL	MI	49331	(616) 780-2828	MI: 2
Tuttle, Jennifer	49219 Equestrian Court	New Baltimore	MI	48047	(586) 883-5662	MI: 1
Walker, Skyler	5856 Birchcrest Drive	Saginaw	MI	48638	(989) 297-1142	MI: 3
Dunn, Stephanie	2992 Budd Rd	Stockbridge	MI	49285	(517) 626-4116	MI: 2
Plocharczyk, Sheena & Leonard	4317 Earl Ct.	Ypsilanti	MI	48197	(734) 531-8643	MI: 46
Gerace, Nick & Miriam and Devere, Libby	1966 Waterford Lane	Chaska	MN	55318	(952) 405-0973	MN: 3
Thiesen, Ryan & Natalie	10035 Ponds Way	Elko New Market	MN	55020	(651) 600-2882	MN: 2
Carver, Todd	122 Allen Lane	Faribault	MN	55021	(507) 330-4514	MN: 2
Devere, Libby	1101 SW 8th Street	Grand Rapids	MN	55744	(952) 405-0973	MN: 42
Kingree, Richie & Kristi	1416 Appleton Ct	Arnold	MO	63010	(844) 423-5662	MO: 4
Buehler, Joseph	11767 Minot Drive	Bridgeton	MO	63044	(314) 377-5662	MO: 6



Franchisee	Address	City	State	Zip Code	Phone	Outlets Operated
Cook, Chris	2400 Corona Road	Columbia	MO	65203	(573) 819-5432	MO: 35
Williams, Steven & Casey	15054 County Rd 612	Dexter	MO	63841	(573) 614-2165	MO: 42
Valdivia, Michael	11201 Bellevue Avenue	Kansas City	MO	64114	(816) 523-4086	MO: 34
Murphree, Dale	19805 NE 129th Street	Kearney	MO	64060	(816) 476-2955	MO: 3
Nelson, Daniel & Lisa	23152 Stockton Road	Laquey	MO	65534	(573) 673-0107	MO: 1
Russell, Amanda & Taylor	3645 NW Fairmount Rd	Maysville	MO	64469	(816) 209-2735	MO: 2
Compton, David	P.O. Box 34	Purdy	MO	65734	(417) 554-5662	MO: 2
Joggerst, Mary	18413 River Aux Vases Church Rd	Sainte Genevieve	MO	63670	(573) 535-0915	MO: 2
Frazier, David	4365 St. Louis Rock Road	Villa Ridge	MO	63089	(314) 591-5500	MO: 4
Levens, Ty & Johnette	1261 Heather Lane	Webb City	MO	64870	(417) 434-1449	MO: 2
Daleo, Robert	1402 Devonshire County Drive	Wentzville	MO	63385	(314) 973-3367	MO: 35
Sims, Carber & Robyn	163 Nottingham Dr.	Batesville	MS	38606	(662) 709-7887	MS: 1
Hebert, Jesse	426 Herechel Gallop Rd Studdard Dr.	Caledonia Columbus	MS	39740 39702	(662) 505-5662	MS: 1
Kuzmenkov, Alex	710 Prominence Dr.	Flowood	MS	39232	(601) 906-0385	MS: 3
Rahimi, Sabrina	1072 Richburg Road	Hattiesburg	MS	39402	(601) 909-5423	MS: 98
Jones, Brandon	PO BOX 671	Meridian	MS	39302	(601) 917-5662	MS: 2
Kimball, Chris	309 North Jackson Street	Poplarville	MS	39470	(601) 337-1069	MS: 23
Anderson, Kyla & Stuart	2828 10th Ave S	Great Falls	MT	59405	(406) 868-0944	MT: 1
Passaro, Candace & Mike	2104 Bull Run Dr.	Apex	NC	27539	(919) 448-1192	NC: 3
Law, Alina	12 Sourwood Lane	Asheville	NC	28805	(828) 772-4413	NC: 3
Glasgow, Chris	8616 Ellington Park Drive	Charlotte	NC	28277	(704) 770-1731	NC: 2
Nelson, Reginald	5415 Eneida Sue Drive	Charlotte	NC	28214	(980) 312-0865	NC: 3
Petty, Creg	4140 Stacy Blvd	Charlotte	NC	28209	(704) 999-3421	NC: 5
Cotta, Catherine	112 Arthur Drive	Clayton	NC	27520	(919) 909-1951	OR: 1
Nelson, Reginald	4297 Long Arrow Dr.	Concord	NC	28025	(980) 312-0865	NC: 3
King, Brian & Whitt, Jessica	420 Carroll Rd	Denton	NC	27239	(336) 953-7672	NC: 1
Pounds, Jim & Bunny	671 Godley Rd	Grimes Land	NC	27837	(252) 320-5662	NC: 5
Cribb, Stephen & Pamela	603 Springhill Church Rd.	Hamlet	NC	28345	(910) 280-8825	NC: 4
Hansley, Colton & Sarah	1105 24th Ave Place NE	Hickory	NC	28601	(828) 808-9846	NC: 1
Marino, Pam & Steve	1351C South Park Dr.	Kernersville	NC	27284	(336) 653-5310	NC: 34
Blue, Phillip & Sherita	8001 Scotch Meadows Dr	Laurinburg	NC	28352	(843) 862-2211	NC: 2
Schaner, Debbie	5021 Harvestview Drive, Lot 24	Mebane	NC	27302	(919) 448-5535	NC: 4
Roberts, Scott	502 Cedar Wood Drive	Monroe	NC	28112	(704) 225-3922	NC: 32
Engelhard, David & Leslie	215 Rochelle Drive	Morehead City	NC	28557	(252) 515-6108	NC: 3



Franchisee	Address	City	State	Zip Code	Phone	Outlets Operated
<u>Newton, Andrew &amp; Tracy</u>	600 College Street	Oxford	NC	27565	(336) 446-9292	NC: 1
Ball, Ryan	4655 Dorsey Rd	Oxford	NC	27565	(252) 425-3076	NC: 6
Paccadolmi, Mike & Shana	6010 Spring Forest Ct.	Pleasant Garden	NC	27313	(336) 912-1002	NC: 4
<u>Munhall, Craig &amp; Carrie</u>	<u>407 Brownrigg Rd</u>	<u>Salisbury</u>	<u>NC</u>	<u>28144</u>	<u>(704) 870-7434</u>	<u>NC: 1</u>
Dawson, John & Mitzi	7501 Weitzel Dr	Summerfield	NC	27358	(321) 863-0068	NC: 2
Howard, Kevin & Jenifer	735 Ben Cook Rd.	Sylva	NC	28779	(678) 986-2828	NC: 42
<u>Millsaps, Kevin &amp; Tracy</u>	<u>201 Moore Ln</u>	<u>Taylorsville</u>	<u>NC</u>	<u>28681</u>	<u>(828) 638-1546</u>	<u>NC: 1</u>
<u>Chaffin, Michael II</u>	<u>280 Copeland Ln</u>	<u>Tryon</u>	<u>NC</u>	<u>28782</u>	<u>(828) 202-3505</u>	<u>NC: 1</u>
Hutchens, Lisa & Michael	1053 Durham Rd	Walnut Cove	NC	27052	(336) 831-4567	NC: 1
Wittek, DJ	7041 Stirrup Ct.	Weddington	NC	28104	(704) 560-4039	NC: 1
Cummings, Jim & Amy	5716 Farragon Hill Ln	Wendell	NC	27591	(916) 259-9987	NC: 1
Rewczuk, Lori	18101 S. 228th St	Gretna	NE	68028	(402)-238-6169	NE: 810
Ivey, Doug & Beth	1530 W Silverado Dr.	Lincoln	NE	68521	(402) 326-2479	NE: 23
<u>Flott, Michael</u>	<u>1211 Hackberry Rd</u>	<u>North Platte</u>	<u>NE</u>	<u>69101</u>	<u>(308) 660-6754</u>	<u>NE: 1</u>
Yale, Brett and Trina	11509 South 109th St.	Papillion	NE	68046	(402) 983-0059	NE: 2
<u>Page, Martin &amp; Kayla</u> <u>Strong, Cheryl</u>	<u>56 Birchdale Rd</u> <u>Strong's Landing</u>	<u>Concord</u> <u>Greenland</u>	<u>NH</u>	<u>038403301</u>	<u>(603) 431-7378</u> <u>345-7243</u>	<u>NH: 2</u>
<u>Curtis, Patricia &amp; Nicolas</u>	<u>24 Morrill St.</u>	<u>Hampton</u>	<u>NH</u>	<u>3842</u>	<u>(508) 330-8317</u>	<u>NH: 1</u>
Daigle, Holly	40 Sycamore Street	Pelham	NH	030763076	(978) 457-3221	NH: 42
DiBona, Christina & Bill	12 Arlene Dr	Pelham	NH	030763076	(603) 765-8378	NH: 3
Sweeney, Jim & Sharon	516 Route 12A	Surry	NH	034313431	(603) 903-1300	NH: 42
Peak, Richard	16 19th Street	Burlington	NJ	8016	(609) 354-2225	NJ: 1
Nasab, Sam & Jessalyn	113 Alexander Way	Edgewater	NJ	070207020	(201) 693-7722	NJ: 6
Purdy, Ed & Sara	606 Grove Street	Haddonfield	NJ	080338033	(609) 707-7476	NJ: 23
LaStella, Anthony & Lissa	38 Matthew Drive	Hamilton Square	NJ	086908690	(609) 638-7337	NJ: 3
Walter, Kim	7 Brookside Dr	Howell	NJ	077317731	(732) 644-3889	NJ: 2
<u>Clark, Jerel</u>	<u>1502 Garden Dr. Apt 9</u>	<u>Ocean Township</u>	<u>NJ</u>	<u>7712</u>	<u>(732) 292-3377</u>	<u>NJ: 1</u>
Obiedzinski, Tom & Karen	91 Sky Manor Road	Pittstown	NJ	8867	(908) 267-5662	NJ: 2
<u>Gutierrez, Frankie</u>	<u>2 Kent Rd</u>	<u>Ringwood</u>	<u>NJ</u>	<u>07456</u>	<u>505-730-6184</u>	<u>NM: 3</u>
Wezenter, Joseph & Stephanie	2 Kent Rd	Ringwood	NJ	074567456	(862) 228-5820	NJ: 1
<u>Gutierrez, Frankie</u>	<u>2 Kent Rd</u>	<u>Ringwood</u>	<u>NJ</u>	<u>7456</u>	<u>(505) 730-6184</u>	<u>NM: 3</u>
<u>Sudano, James &amp; Cole</u>	<u>26 Honeysuckle Ct</u>	<u>Skillman</u>	<u>NJ</u>	<u>8558</u>	<u>(609) 819-6229</u>	<u>NJ: 1</u>
<u>Cassidy, Ryan</u> <u>Barinas, Erick</u>	<u>10 Miramar Ct</u> <u>814 Linden Rd.</u>	Toms River	NJ	087578753	<u>(732) 928-0604</u> <u>(848) 232-6389</u>	<u>NJ: 21</u>



Franchisee	Address	City	State	Zip Code	Phone	Outlets Operated
<del>Barinas, Erick Cassidy, John</del>	10 Miramar Ct	Toms River	NJ	<del>087578757</del>	(732) 928-0604	NJ: 14
Woodward, Russell	1087 Pine Ave.	Union	NJ	7083	(908) 425-0320	NJ: 1
Sudano, Tony	6 Whitlow Dr	Westampton	NJ	<del>080608060</del>	(609) 702-0922	NJ: 35
Martz, William & Sarah	15 Buckeye Road	Woolwich Twp	NJ	<del>808508085</del>	(609) 752-2056	NJ: 34
Ruybalid, Greg	5707 Carl Street	Farmington	NM	87402	(505) 215-2853	NM: 1
Placencio, Keith	1920 Martha Drive	Las Cruces	NM	88001	(575) 993-4543	NM: 5
<del>Lefebvre, Denis &amp; Shanna &amp; Jean Paul</del>	<del>6526 Are Dome Dr.</del>	<del>Carson City</del>	<del>NV</del>	<del>89704</del>	<del>7753924840</del>	<del>NV: 1</del>
Vitz, Stacy	235 Opera House St	Hendersen	NV	89012	(702) 510-8800	NV: 1
Vitz, Trent	235 Opera House St	Henderson	NV	89012	(702) 510-8800	NV: 23
Karr, Jim & Kathy	88 Sahalee Dr	Las Vegas	NV	89148	(702) 429-3171	NV: 1
Wallace, John	1397 Blazing Sand St	Las Vegas	NV	89110	(702) 803-4883	NV: 1
Ramirez, Vicente	464 Vigo Port Street	Las Vegas	NV	89138	(702) 624-5968	NV: 3
Fonte, Diona & Friel, Nick	7100 Pirates Cove Rd. #2069	Las Vegas	NV	89145	(702) 423-3327	NV: 3
<del>Karr, Jim &amp; Kathy</del>	<del>88 Sahalee Dr</del>	<del>Las Vegas</del>	<del>NV</del>	<del>89148</del>	<del>(702) 429-3171</del>	<del>NV: 1</del>
Pergi, Barbara & Thornbrue, Lisa	7208 Unicorn Street	Las Vegas	NV	89131	(702) 858-1177	NV: 3
<del>Ramirez, Vicente Sobers, Jennifer &amp; Matthew</del>	<del>464 Vigo Port Street 1700 Talking Sparrow Drive</del>	<del>Sparks Las Vegas</del>	<del>NV</del>	<del>891388944</del>	<del>(702) 624-5968 (775) 685-9127</del>	<del>NV: 2</del>
<del>Wallace, John</del>	<del>1397 Blazing Sand St</del>	<del>Las Vegas</del>	<del>NV</del>	<del>89110</del>	<del>(702) 803-4883</del>	<del>NV: 2</del>
Malandro, John & Puglin, Julie	42 Sherman Ave	Bethpage	NY	11714	(516) 342-5757	NY: 3
Rochard, Simona & Alexis, Davidson	4811 Avenue O	Brooklyn	NY	11234	(347) 588-0706	NY: 1
Beymolla, Shaun	26 Bittersweet Avenue	Hampton Bays	NY	11946	(516) 404-5050	NY: 3
Fischer, Stacey & Kenneth	15 Overhill Rd	MAHOPE C	NY	10541	(914) 610-5180	NY: 1
Driscoll, Ken	69 Highwater Avenue	Massapequa	NY	11758	(516) 644-9142	NY: 1
Gonzalez, Joe & Nancy	62 Blue Jay Way	Rexford	NY	12148	(518) 384-4197	NY: 23
Nitti, Scott & Nicole	90 Ridgeway Estates	Rochester	NY	14626	(585) 474-9282	NY: 3
Rondinelli, Andy	99 Willowgrove South	Tonawanda	NY	14150	(716) 583-2627	NY: 1
Persichetti, Rick & Coultas, Randy	1518 Creekside Road	Amelia	OH	45102	(513) 201-7589	OH: 3
Tannish, Karen & Acierno, Diane	1813 Lyndon Ave	Ashtabula	OH	44004	(440) 994-9055	OH: 1
Williams, Danielle & Steve	1813 Lyndon Ave	Ashtabula	OH	44004	(614) 904-0404	OH: 2
Hayes, Rich	756 West Union Street	Athens	OH	45701	(740) 591-3573	OH: 1
Barta, Steve	6569 Thorntree Drive 865 High Street	Brecksville Bedford	OH	44141 44146	(216) 532-3386	OH: 2
Oswald, Tim & Renee	3441 Starwick Drive	Canfield	OH	44406	(330) 233-0198	OH: 3



Franchisee	Address	City	State	Zip Code	Phone	Outlets Operated
<del>Cullen, Patrick</del>	<del>8312 Portland Rd</del>	<del>Castalia</del>	<del>OH</del>	<del>44824</del>	<del>(419) 359-1511</del>	<del>OH: 1</del>
Lowman, Jim	211 Homestead Lane	Delaware	OH	43015	(614) 849-8789	OH: 2
Humm, Scott & Melissa	2119 Stonecliff Drive	Findlay	OH	45840	(567) 525-0508	OH: 45
Crites, Scott	651 Brumfield Road	Lancaster	OH	43130	(740) 412-3933	OH: 67
Sullender, Dottie & Housemeyer, Gary	9206 E Kemper Rd	Loveland	OH	45140	(937) 661-0800	OH: 21
Andrews, Ted	8717 Woolstone Court	Maineville	OH	45039	(513) 600-0408	OH: 53
Flood, Thomas	3089 Pondsford DR	Medina	OH	44256	(440) 610-4701	OH: 35
<del>Murphy, TJ &amp; Heather</del>	<del>2471 Orchid St. NW</del>	<del>North Canton</del>	<del>OH</del>	<del>44720</del>	<del>(330) 398-0120</del>	<del>OH: 3</del>
Ray, Derek	331 Harmon St. SW	North Canton	OH	44720	(330) 284-9605	OH: 1
<del>Murphy, TJ &amp; Heather</del>	<del>2471 Orchid St. NW</del>	<del>North Canton</del>	<del>OH</del>	<del>44720</del>	<del>(330) 398-0120</del>	<del>OH: 4</del>
Eaton, Brad & Molly	440 Telford Ave	Oakwood	OH	45419	(937) 985-2215	OH: 3
Mitchell, Tiaundria	2474 Ginger Wren Road	Pepper Pike	OH	44124	(440) 276-0088	OH: 1
Brown, Brad & Jenn	1184 Catabawa Bay Drive	Port Clinton	OH	43542	(419) 635-7573	OH: 42
<del>Johnson, Chris</del> <del>Holibaugh, Joey &amp; Tiffany</del>	<del>4305 Hickory Rock Dr</del> <del>2280 Dauer Ct</del>	Powell	OH	43065	<del>330-590-2165</del> <del>(614) 721-4423</del>	OH: 6
<del>Holibaugh, Joey &amp; Tiffany</del> <del>Johnson, Chris</del>	<del>2280 Dauer Ct</del> <del>4305 Hickory Rock Dr</del>	Powell	OH	43065	<del>(614) 721-4423</del> <del>(330) 590-2165</del>	OH: 46
Church, John & Michelle	10080 St Rt 550	Vincent	OH	45784	(740) 538-4126	OH: 4
Lay, Sarah & Allen	4820 Kessler Cowlesville Road	West Milton	OH	45383	(937) 964-5662	OH: 5
Hager, Stephen	7344 E Bolen Rd	Claremore	OK	74019	(918) 924-5441	OK: 3
Zaloudek, Ty	1210 S Michael Rd	Enid	OK	73703	(580-) 551-9797	OK: 1
Sanders, Amy & Aron	1008 NE 20th Place	Moore	OK	73160	(405) 630-7345	OK: 1
Dunn, Kristie & Mason	3434 SE 32nd St.	Norman	OK	73072	(580) 222-5111	OK: 1
<del>Love, Charles &amp; Mary</del> <del>Harris, Richard &amp; Jennifer</del>	<del>11908 Pepper Tree Place</del> <del>5401 NW 122nd Terrace</del>	Oklahoma City	OK	<del>73120</del> <del>7316</del>	<del>(405) 896-0370</del> <del>286-2663</del>	OK: 71
<del>Harris, Richard &amp; Jennifer</del> <del>Love, Charles &amp; Mary</del>	<del>5401 NW 122nd Terrace</del> <del>11908 Pepper Tree Place</del>	Oklahoma City	OK	<del>73162</del> <del>7312</del>	<del>(405) 286-2663</del> <del>896-0370</del>	OK: 5
<del>Nix, Faith</del> Mathes, Mark & Gray, John	307 W Main St	Weatherford	OK	73096	(405) 448-1700	OK: 1
Lindsey, Joe & Cassie	12609 SW 24th Street	Yukon	OK	73099	(405) 397-4105	OK: 56
Adams, Nelson	525 19th Ave SW	Albany	OR	97322	(503) 881-5002	OR: 2
Wittstock, Jeff & Thuy	10550 SW Shearwater Place	Beaverton	OR	97007	(503) 347-5317	OR: 42
Sha, Julie & Hardman, Matthew	62211 Powell Butte Highway	Bend	OR	97701	(458) 202-1096	OR: 42
Burk, Sarah	300 S. Redwood St., Suite 140	Canby	OR	97013	(503) 312-8398	OR: 2
Pompetti, Dana & Alisa	18805 SE Foster Rd	Damascus	OR	97089	(503) 367-5973	OR: 3



Franchisee	Address	City	State	Zip Code	Phone	Outlets Operated
King, John Paul (JP) & Samantha	<del>14591876</del> Rogue River Highway	Gold Hill	OR	97525	(541) 855-4265	OR: 2
Thompson, Michael & Cynthia	19777 Hwy 97 S	Klamath Falls	OR	97603	(541) 205-9180	OR: 1
Burk, Justin	268 Evelyn Ave NE.	Salem	OR	97301	(503) 930-6511	OR: 23
Keenan, Jeremy & Harden, Leuretta	3200 Virginia Ave	Springfield	OR	97478	(541) 972-5662	OR: 2
Burk-Schockelt, Alyssa	7008 SW Pine St.	Tigard	OR	97223	(503) 798-2089	OR: 3
Russell, Matt & Andrea	1638 Fieldstone St	Allentown	PA	18106	(484) 239-3319	PA: 3
Brown, Dennis & Lisa	707 Ewing Rd.	Cochranville	PA	19330	(484) 748-0085	PA: 1
Williams, Deborah	6 Lou Anne Ln	Delmont	PA	15626	(412) 369-6924	PA: 1
Dimaggio, John	227 Scotch Pine Rd	Dillsburg	PA	17019	(717) 683-5432	PA: 2
Whalen, Janis & Kevin	53 Southwoods Lane	Doylestown	PA	18901	(215) 378-8559	PA: 1
Schwartzinger, Steve	53 Blenheim Dr	Easton	PA	18045	(973) 945-0474	PA: 1
Radziwon, Randy	805 Cleardale Dr.	Greensburg	PA	15601	(724) 953-9676	PA: 4
Kader, Sondra	PO Box 108 135 W Main St	Howard	PA	16841	(814) 880-4471	PA: 1
Guiliani, Al & Debbie	4054 Turnwood Lane	Moon Township	PA	15108	(724) 601-5672	PA: 34
Davis, Craig & Debbie	26 Bugler Drive	New Oxford	PA	17350	(717) 451-4995	PA: 3
Amevuvor, Elvis & Jocelyn	825 Strawbridge Rd	Northumberland	PA	17857	(561) 295-7231	PA: 2
Waters, Heather & Marty	113 Bridal Lane	Oakdale	PA	15071	(412) 680-4553	PA: 2
Green, Bill & Julie	106 Summit Dr.	Phoenixville	PA	19460	(610) 933-7673	PA: 7
Egli, Andrew & Mlinac, Ross	2548 Lindenwood Drive	Pittsburgh	PA	15241	(412) 818-9641	PA: 65
Good, Steven	1522 Fayette Avenue	Reading	PA	19607	(484) 706-9098	PA: 1
Jones, Norm & Meehan, Kayla	1245 Dietz Road	Red Lion	PA	17356	(717) 314-1650	PA: 1
Stamm, Justin & Kelly	1751 S. Mountain Drive	Sinking Spring	PA	19608	(610) 717-2280	PA: 42
Stone, Ryan & Michel, Danielle	1751 S. Mountain Drive	Sinking Spring	PA	19608	(610) 717-2280	PA: 24
Nelson, Bill and Cathy	314 Emerson Street	Vandergrift	PA	15690	(724) 622-7336	PA: 2
Slayton, Dan & Jen	18938 Center Rd	Venango	PA	16440	(814) 923-1605	PA: 1
Blaine, Laurreta & Stone, Robert	912 Tyson Drive	West Chester	PA	19382	(717) 388-2047	PA: 42
Bouchard, Bob & Joyce	4 Cider Lane	Greenville	RI	<del>282802828</del>	(401) 949-5073	RI: 2
Gaskill, Larry & Joyce	29 Lenox Ave	West Warwick	RI	<del>028932893</del>	(401) 304-5095	RI: 1
Chesser, Richard	223 Ray Lane	Aiken	SC	29801	(704) 443-8006	SC: 1
Lizza, Jim	216 Middle Brooke Dr.	Anderson	SC	29621	(864) 934-1266	SC: 1
Cantey, Dan	<del>4606 Fair Street</del>	<del>Camden</del>	SC	29020	(803) 309-3749	SC: 1
Evans, Greg & Stephanie	556 Eagles Rest Dr.	Chapin	SC	29036	(803) 298-8120	SC: 1



Franchisee	Address	City	State	Zip Code	Phone	Outlets Operated
<del>Buchan, Daniel &amp; Jamie</del>	<del>P.O. Box 41161</del>	<del>Charleston</del>	<del>SC</del>	<del>29423</del>	<del>(843) 647-6477</del>	<del>SC: 3</del>
Buckley, Barbie & Mark	P.O. Box 12112	Charleston	SC	29422	(843) 830-9966	SC: 2
Buchan, Daniel & Jamie	P.O. Box 41161	Charleston	SC	29423	(843) 647-6477	SC: 5
Mooring, Stewart & Susan	2798 Lyle	Chester	SC	29706	(803) 493-2211	SC: 4
Davis, Danny	3404 Cherrywood Rd	Florence	SC	29501	(843) 260-1462	SC: 2
Hutcherson, Angela	109 Saxon Drive	Gaffney	SC	29341	(864) 504-5950	SC: 3
Zelek-Thompson, Thaddeus & Jasionowski, Lindsay	1102 N Parker Road	Greenville	SC	29609	(864) 214-6034	SC: 1
<del>Watlington, Isaac</del> Priestino, Cheri	<del>210 Chemistry</del> 1010 Leamington Circle	<del>Ladson</del> Irmo	SC	<del>29456</del> 29063	<del>(803) 353-5662</del> <del>(843) 530-4659</del>	SC: 21
Hyatt, Kristin & DeLynn	2218 Elberry Road	Latta	SC	29565	(843-) 992-9661	SC: 2
Herring, Amber & Rob	3231 Foxwood Drive	Loris	SC	29569	(910) 477-4549	SC: 1
Keene, Marvin & Carmaletia	3409 Labrador Court	Myrtle Beach	SC	29579	(843) 467-9550	SC: 23
Gilliland, Mark, Jeanette & Matt	4561 Gray Heron Drive	North Myrtle Beach	SC	29582	4848945151(484) 894-5151	SC: 2
Mackey, Scott & Angela	141 Talley Scott Rd.	Piedmont	SC	29673	(864) 380-0154	SC: 3
Nord, Marshall & Shannon	1266 Cole Ave	Rock Hill	SC	29732	(803) 639-8799	SC: 23
Bennett, Demarcus & Sheena	18 Darrowby Way	Simpsonville	SC	29680	(864) 416-1880	SC: 1
Watlington, Isaac	P.O. Box 52283	Summerville	SC	29485	(843) 530-4659	SC: 2
Sturm, Steve	6585 Hidden Haven Rd	Sumter	SC	29154	(803) 883-6119	SC: 1
Palumbo, Daniel	6585 Hidden Haven Rd	Sumter	SC	29154	(803) 883-6119	SC: 2
Sturm, SteveRieger, Heidi & Jeremy	<del>6585 Hidden Haven Rd</del> 6941 Mulberry Dr.	SumterSummerset	SCSD	<del>29154</del> 57718	<del>(803) 883-6119</del> (605) 389-3465	SCSD: 1
Ruger, Stacia	1056 Castlerock Dr	Clarksville	TN	37042	(931) 494-6615	TN: 23
Cash, Sherri	3218 Little John Circle SE	Cleveland	TN	37323	(423) 641-2423	TN: 1
Clevinger, Sarah & Almaroad, Matthew	3218 Little John Circle SE	Cleveland	TN	37323	(423) 641-2423	TN: 42
Elrod, Kyle	3326 Cumberland Hills Circle	Cleveland	TN	37312	(423) 402-1811	TN: 5
Day, Chad & Bonny	1132 Heathwood West Drive	Cookeville	TN	38506	(931-) 650-5662	TN: 1
Morgan, Cindy & Black, Jeannie	142 Laurel Trail	Cosby	TN	37722	(865) 306-3457	TN: 3
Ray, Steven	2744 Valley Creek Rd	Culleoka	TN	38451	(931) 777-9758	TN: 1
Reeves, Tom	4202 Warren Ct	Franklin	TN	37067	(615) 351-3199	TN: 2
Rodriguez, William	4202 Warren Ct	Franklin	TN	37067	(615) 351-3199	TN: 78
Cunningham, Fred	119 Dixie Ln	Jackson	TN	38301	(731) 225-9481	TN: 1
Greenwell, Kevin	178 Bill Bennett Road	Johnson City	TN	37604	(423) 930-4321	TN: 1



Franchisee	Address	City	State	Zip Code	Phone	Outlets Operated
Adolphson-Leporati, Ingrid	<del>11637 Foxford Dr</del> 2924 Lawnville Rd.	<del>Knexville</del> Knoxington	TN	<del>379343776</del> 3	(865) 806-1072	TN: 2
Maxey, Randy & Zach	1602 Mt Tabor Rd	Maryville	TN	37801	(865) 776-5127	TN: <del>4</del> 2
Knell, Debra	2766 Covington Pike	Memphis	TN	38128	(901) 308-7275	TN: 1
Stroud, Trey & Brenda	2766 Covington Pike	Memphis	TN	38128	(901) 308-7275	TN: 2
Hill, Eric & Jamesa	3014 Melbourne Ct East	Mount Juliet	TN	37122	(404) 423-1037	TN: 3
Tinker, Jeffrey & Shannon	3028 Allerton Way	Murfreesboro	TN	37128	(615) 566-2790	TN: 1
Howard, Claire (Pennington) & Ben	135 Donelson Pike Apt 131	Nashville	TN	37214	(615) 892-9945	TN: 3
Lyon, Landon & Melinda	5591 Harpeth Haven Drive	Pegram	TN	37143	(615) 944-5662	TN: 3
Witt, Derek & Carrie	1679 Kingwood Lane	Rockvale	TN	37153	(615) 971-0092	TN: 1
McLeod, Barbara	1502 River Oaks Road	Abilene	TX	79605	(325) 669-6970	TX: 2
Holt, Lisa & Blake	1100 Bayshore St	Allen	TX	75002	(469) 408-5662	TX: 1
McConnell, Bill & Sondra	8821 Lupine Dr.	Amarillo	TX	79119	(806) 808-3290	TX: 2
Walker, Frank	12288 Cr 290	Anna	TX	75409	(972) 838-3174	TX: <del>2</del> 1
Spring, Richard	15157 North State Hwy 94 P.O. BOX 42	Apple Springs	TX	75926	(936) 676-2399	TX: 2
<del>Reese, Wayne &amp; Diana</del> Alexander, Joe & Amy	<del>7701 White Fawn Road</del> <del>3205 Bishop Dr.</del> Suite 105	Arlington	TX	<del>760027604</del> 0	<del>(713) 962-2523</del> <del>(682) 593-5662</del>	TX: <del>6</del> 5
<del>Sanchez, Cynthia</del> Reese, Wayne & Diana	<del>2500 Plaza St.</del> <del>7701 White Fawn Road</del> Suite 105	Arlington	TX	<del>760107600</del> 2	<del>(713) 962-2523</del> <del>(817) 864-9996</del>	TX: 6
<del>Alexander, Joe &amp; Amy</del> Sanchez, Cynthia	<del>3205 Bishop Dr.</del> Suite 105	Arlington	TX	76010	<del>(682) 593-5662</del> <del>(817) 864-9996</del>	TX: <del>5</del> 7
Huskiison, Justin	4306 Ganymede Drive	Austin	TX	78727	(512) 850-1777	TX: 9
Nelson, Dana & Marcell	8653 Hwy 36 N	Bellville	TX	77418	(979) 551-5483	TX: 1
Meeks, Virgil (Terry)	1307 Park Center St.	Benbrook	TX	76126	(817) 249-7525	TX: 2
Dugan, Jordan & Jessica	2792 CR 506	Brazoria	TX	77422	(979) 798-5662	TX: 1
Barkey, Donna & Grant	16035 State Hwy 29E	Buchanan Dam	TX	78609	(512) 755-9814	TX: 2
Escamilla Jr, Jesse	1500 Satterwhite Rd.	Buda	TX	78610	(512) 757-1163	TX: 1
Reeder, Karey & Shelton, Susan	144 S Reeder Hill	Buffalo	TX	75831	(903) 388-6649	TX: <del>3</del> 2
Wilson, Eric & Crystal	296 AMANDA CIRCLE	CEDAR CREEK	TX	78612	(512) 786-3816	TX: 2
Lutz, Sean	1715 Ruthie Run	Cedar Park	TX	78613	(512) 983-8577	TX: 3
Boudiette, Lisa	4103 Bridgewood Ct.	College Station	TX	77845	(979) 676-3002	TX: 3
Rodriguez, Ivan	11201 Kentucky Oaks Dr	Conroe	TX	77304	(936) 756-5662	TX: <del>2</del> 1
Wylie, Gloria & Jacob	12172 Pearl Bay Ct	Conroe	TX	77304	(936) 324-5454	TX: 1



Franchisee	Address	City	State	Zip Code	Phone	Outlets Operated
<u>Cassidy, Laura &amp; Daniel</u>	<u>256 Shoreview Dr</u>	<u>Conroe</u>	TX	<u>77303</u>	<u>(936) 203-6453</u>	<u>TX: 1</u>
Taylor, Jarrod	2205 Lea Meadow Cir	Corinth	TX	76208	(940) 597-9089	TX: 23
<u>Rosas, Rudy &amp; Christina</u>	<u>2533 Cresterrace Drive</u>	<u>Corpus Christi</u>	TX	<u>78415</u>	<u>(361) 248-5662</u>	<u>TX: 1</u>
Garza, Rene & Christy	6005 Bobtail Drive	Corpus Christi	TX	78414	(361) 658-6244	TX: 2
Maldonado, Randy & Yvette	6001 King Trail	Corpus Christi	TX	78414	(361) 232-6687	TX: 2
<u>Rosas, Rudy &amp; Christina</u>	<u>2533 Cresterrace Drive</u>	<u>Corpus Christi</u>	TX	<u>78415</u>	<u>(361) 248-5662</u>	<u>TX: 2</u>
Wood, Trey & Stacey	2804 Daniel Ave	Dallas	TX	75205	(713) 253-7121	TX: 3
Galindo, Jose & Baca, Victor	12096 Banner Crest Dr	El Paso	TX	79936	(915) 241-2234	TX: 4
Ruiz, Carlos	PO Box 242	Elsa	TX	78543	(956) 272-9165	TX: 1
Davis, Darrell	13748 Green Elm Rd	Fort Worth	TX	76008	(817) 808-9844	TX: 3
Fiveash, Nick & Christina	6202 Lennox Lane	Garland	TX	75043	(214) 776-1222	TX: 46
Sterling, Mike & Toni	6964 Catamaran Drive	Grand Prairie	TX	75054	(972) 342-8046	TX: 2
Sutton, Tiffany	2428 Ranchview Drive	Grand Prairie	TX	75052	(972) 742-1584	TX: 4
Hammond, Lee Ann	4626 County Rd 2200	Greenville	TX	75402	(469) 500-6500	TX: 65
Cabrales, Noe	3101 E. Hapner St.	Harlingen	TX	78550	(956) 730-3981	TX: 2
Valdez, Jacob & Criselda	20753 Nixon Rd	Harlingen	TX	78550	(956) 368-3070	TX: 2
Pharis, Mike & Natasha	13224 Circle N Drive E	Helotes	TX	78023	(210) 504-6780	TX: 56
Dixon, Drew	6015 Inwood Drive	Houston	TX	77057	(501) 278-6900	AR: 2
<u>Sinclair, Patrick</u>	<u>1802 Afton St.</u>	<u>Houston</u>	TX	<u>77055</u>	<u>(713) 864-4747</u>	<u>TX: 19</u>
Gonzalez, Miguel & Sindy	7535 Satsuma St	Houston	TX	77023	(832) 799-2409	TX: 3
<u>McLaughlin, Cameron &amp; Jessica</u>	<u>PO Box 204</u>	<u>Houston</u>	TX	<u>77055</u>	<u>(713) 864-4747</u>	<u>TX: 181</u>
<u>Alarcon Ortiz, Juan Carlos &amp; Perez Mar, Arcela del Carmen</u>	<u>26602 Blanchard Grove Dr.</u>	<u>Houston</u>	TX	<u>77055</u>	<u>(830) 777-0623</u>	<u>TX: 181</u>
<u>McLaughlin, Cameron &amp; Jessica</u>	<u>PO Box 204</u>	<u>Katy</u>	TX	<u>78028</u>	<u>(832) 270-5592</u>	<u>TX: 2</u>
Elizalde, Cindy & Ramirez, Manuel	1416 Hemlock Drive	Laredo	TX	78041	(956) 236-8773	TX: 1
Gonzalez, Rene	1415 hemlock dr	Laredo	TX	78041	(956) 763-8941	TX: 1
Grey, Miguel	1617 Galveston St	Laredo	TX	78043	(956) 236-1830	TX: 1
Werner, Dan	1518 Highland Circle	Little Elm	TX	75068	(469) 475-8081	TX: 2
Dibble, Keith & Sandy	4616 Cattail Lane	Longview	TX	75604	(903) 431-1165	TX: 67
Salamon, Paulene	151 state rd 2130	lubbock	TX	79407	(806) 638-5662	TX: 2
Sanchez, Laura	111 Stanbury St.	Mansfield	TX	76063	(817) 277-0707	TX: 1
Meeks, Gary & Stacy	1010 Pebble Beach Drive	Mansfield	TX	76063	(817) 727-6252	TX: 4



Franchisee	Address	City	State	Zip Code	Phone	Outlets Operated
<del>Sanchez, Laura</del>	<del>111 Stanbury St.</del>	<del>Mansfield</del>	<del>TX</del>	<del>76063</del>	<del>(817) 277-0707</del>	<del>TX: 1</del>
Beacham, Patrick	5104 Kestrel Dr.	Mesquite	TX	75181	(214) 793-1071	TX: 42
Rinehart, Buster & Heather	<del>709 Austin Street</del> 4502 <u>Princeton Ave</u>	Midland	TX	79703	(432) 634-0220	TX: 3
Kashuda, Mark & Theresa	3110 Gray Thrush	Missouri City	TX	77459	(713) 817-4046	TX: 11
Manning, Jesse & Sandy	1351 Weltner Rd	New Braunfels	TX	78130	(830) 832-0973	TX: 4
<del>Holleman, Steve &amp; Paige</del>	<del>8304 Juniper Drive</del>	<del>North Richland Hills</del>	<del>TX</del>	<del>76182</del>	<del>(817) 939-9805</del>	<del>TX: 5</del>
Thibodeaux, Logan & Frautschi, Ellen	4950 Cloyce Ct. Apt C	North Richland Hills	TX	76180	(405) 355-2922	TX: 2
<del>Holleman, Steve &amp; Paige</del>	<del>8304 Juniper Drive</del>	<del>North Richland Hills</del>	<del>TX</del>	<del>76182</del>	<del>(817) 939-9805</del>	<del>TX: 6</del>
Waddell, Mike & Shannon	5010 Colombia Dr.	Pasadena	TX	77505	(832) 696-2544	TX: 1
<del>Maples, Ron &amp; Kerrie</del>	<del>9721 Beek Dr.</del>	<del>Plano</del>	<del>TX</del>	<del>75025</del>	<del>(972) 234-4058</del>	<del>TX: 4</del>
Carter, Eric & Sandy	20527 Albritton Terrace Dr	Porter	TX	77365	(281) 793-9664	TX: 2
Bivins, Todd & Sara	920 Kings View Dr.	Prosper	TX	75078	(214) 843-3777	TX: 1
<del>Bass, Thomas &amp; Lynda</del>	<del>1400 Cedar Ridge Dr</del>	<del>Prosper</del>	<del>TX</del>	<del>75078</del>	<del>(940) 366-9616</del>	<del>TX: 1</del>
Bowers, David & Becky	1239 Chandler Circle	Prosper	TX	75078	(469) 955-5662	TX: 34
Linares, Braulio	1710 Center Street	Richmond	TX	77469	(832) 600-5443	TX: 1
Fowler, Tom	10702 Waterview Parkway	Rowlett	TX	75089	(214) 316-0925	TX: 3
Rodriguez, Carlos	5929 Lyndhurst Dr	San Angelo	TX	76901	(432) 290-1123	TX: 2
<del>Corona, Jose &amp; Kelly</del> Armstrong, Erik	<del>2603 Jupe</del> 615 N. Bishop St.	<del>San Antonio</del> Angelo	<del>TX</del>	<del>78222</del> 76901	<del>(210) 415-3773</del> (435) 527-5698	<del>TX: 2</del> UT: 1
Rios, Jeff & Chapa, Ashley	4426 Moongold Dr	San Antonio	TX	78222	(210) 414-8385	TX: 1
Corona, Jose & Kelly	2603 Jupe	San Antonio	TX	78222	(210) 415-3773	TX: 2
Stetson, Randy	117 Lilac Lane	San Antonio	TX	78209	(210) 826-7662	TX: 3
Zamora, Rick & Claire	6962 Friesenhahn St.	San Antonio	TX	78263	(210) 852-8560	TX: 3
Oeswein, David	<del>30 Silverstrand Pl</del> 4747 <u>Research Forest Dr #180-273</u>	Spring	TX	77381	(281) 408-4423	TX: 3
Ontiveros, Lorena	322 Lantana View	Spring Branch	TX	78070	(210) 833-7469	TX: 1
Hill, Steven & Stacy	12309 FM 79	Sumner	TX	75486	(903) 401-0998	TX: 2
Reese, Wayne & Hargrove, Justin	<u>2405 Kensington Dr.</u>	<u>Tyler</u>	<u>TX</u>	<u>75703</u>	<u>(512) 983-1645</u>	<u>TX: 2</u>
Hargrove, Justin & Beverly	2405 Kensington	Tyler	TX	75703	(903) 372-0269	TX: 5
Peña, Jesse	508 Kelly Crick Rd	Victoria	TX	77904	(361) 579-7423	TX: 32
Kapavik, John & Jessica	420 Crawshaw Lane	West	TX	76691	(254) 265-1048	TX: 8



Franchisee	Address	City	State	Zip Code	Phone	Outlets Operated
Davoult, Roy	5302 Lakeshore Dr	Wichita Falls	TX	76310	(940) 733-5167	TX: <del>4</del> 2
Dulaney, Carri	PO BOX 4691	Wichita Falls	TX	76308	(940) 636-5662	TX: 2
Clark, Matthew	422 Heritage Lane	Wylie	TX	75098	(972) 979-2279	TX: <del>4</del> 2
Johnnie, Chris	1855 Canyon Ridge Dr.	Logan	UT	84341	(435) 994-1139	UT: 1
Becerra, Annya/Lowe, Josh	1657 North 400 West	Orem	UT	84057	(801) 228-0058	UT: 4
<del>Massey, Buck &amp; Melissa</del>	<del>5589 N 2000 W</del>	<del>St George</del>	<del>UT</del>	<del>84770-0601</del>	<del>(435) 565-5985</del>	<del>NV: 1</del>
Fredrickson, Thomas & Sharli	275 S. Valley View Drive	St. George	UT	84770	(801)-641-1122	UT: 1
<del>Campbell, Lance &amp; Rosemarie</del>	<del>1422 Galloway Place</del>	<del>Syracuse</del>	<del>UT</del>	<del>84075</del>	<del>(385) 770-8514</del>	<del>UT: 1</del>
Mittelstaedt, Joel & Dearing, Tim	11120 Air Park Rd	Ashland	VA	23005	(804) 304-0996	VA: <del>14</del> 10
Dinh, Trung	5309 Amber Ct	Burke	VA	22015	4158026710(415) 802-6710	VA: 2
Townsend, Kevin & Lisa	725 Hilda Pine Drive	Chesapeake	VA	23322	(757) 739-3731	VA: <del>2</del> 3
Bourroughs, Noel	4722 Caronia Way	Fairfax	VA	22030	(703) 216-3085	VA: 3
Chaffin, Shannon	6851 Cedar Lake Drive	Gloucester	VA	23061	(804) 413-9793	VA: 2
Lischak, Maria	132 Harrison Circle	Locust Grove	VA	22508	(540) 935-4705	VA: 1
Hamilton, Don & Connie	107 Citation Lane	Lynchburg	VA	24503	(434) 509-7562	VA: <del>2</del> 3
Howard, Ronny	8104 Whitting Drive	Manassas	VA	20112	(202) 281-6298	VA: <u>1</u>
Young, Steve & Cindy	52 Saddle Ridge Lane	Nellysford	VA	22958	(434) 466-8959	VA: <u>2</u> 1
McCloud, John (Jay) & Linda	5908 Sturbridge Way	Portsmouth	VA	23703	(757) 652-3675	VA: 3
Hammond, Steve	11654 Plaza Americas Dr #910	Reston	VA	20190	(703) 745-2536	VA: <del>8</del> 6
Moore, Dean	25580 Arthur Place	South Riding	VA	20152	(703) 403-4616	VA: <del>2</del> 3
Sproul, Jill	26 Grinding Mill Lane	Verona	VA	24482	(540-) 487-3705	VA: 1
Walsh, Bob & Melanie	4013 Vinland Circle	Virginia Beach	VA	23456	(757) 333-7170	VA: 2
Diaz, Frank	1755 Hoffman Hill Blvd	DuPont	WA	98327	(253) 495-2444	WA: <del>2</del> 4
O'Neil, Darby & Sandi	7030 Carson Rd.	Everett	WA	98203	(425) 299-3272	WA: <u>1</u>
Kleindel, DiAnna Duprel, Mathew & Melinda	590 Meeker Ln-5909 58th Ave SE	LyndenLacey	WA	9826498513	(360) 815-0653559-1574	WA: 1
Donovan, Rick & Lorraine	935 Clearwater Court	Mount Vernon	WA	98273	(360) 421-9628	WA: 2
Novick, Joe & Christine	11975 Olalla Valley Rd. SE	Olalla	WA	98359	(360) 908-0978	WA: 2
Harroun, Reed & Amy	7524 Littlerock Road Southwest	Olympia	WA	98512	(360-) 870-2153	WA: <del>2</del> 3
Kerr, Grover & Sandra	4003 Monterey Dr.	Pasco	WA	99301	(509) 947-9472	WA: 3
McCulloch, Steve & Kelli	21206 NE 10th Ave	Ridgefield	WA	98642	(503) 407-7241	WA: 3
Kleindel, DiAnna	19443 Oakleaf Ln	Sedro-Woolley	WA	98284	(360) 815-0653	WA: <u>1</u>



Franchisee	Address	City	State	Zip Code	Phone	Outlets Operated
Sand, Ryan & Ball, Kimberley	22712 66th Ave Ct E	Spanaway	WA	98387	(206) 898-8572	WA: 42
Asciutto, Tony & Tilton, Tamara	38702 NE 25th Street,	Washougal	WA	98671	(503) 799-8634	WA: 3
Dietzen, Jon	3700 Woodside Ct	Appleton	WI	54913	(920) 284-4897	WI: 2
Klein, Kristopher & Michelle	10520 405th Ave	Genoa City	WI	53128	(262) 693-5152	WI: 1
Moistner-Bartlett, Kim Jones, Thomas	3007-Cumberland Drive 2310 Purple Aster Ln	Jamesville Jamesville	WI	53546	(608) 436-8940 931-3746	WI: 1
Rocha, David & Julie	5815 83rd Pl	Kenosha	WI	53142	(262) 577-5053	WI: 1
Baker, Toni	2272 Winnebago St.	Madison	WI	53704	(608) 215-9009	WI: 1
Rodgers, Sherrell & Owens, Julie	1939 N 5th Street	Milwaukee	WI	53212	(414) 786-5662	WI: 1
Sterken, Jamison	681 Shady Lane	Oconomowoc	WI	53066	(262) 354-8230	WI: 21
Sanfleben, Scott & Dorothy	322 Meadowside Dr	Verona	WI	53593	(608) 347-9403	WI: 34
Frye-Scott, Zane	4409 Venable Ave	Charleston	WV	25304	(681-) 781-9955	WV: 1
Hall, Nathaniel & Jessica	510 S Queen Street	Martinsburg	WV	25401	(304) 315-2125	WV: 34
Monazam, Sherry	308 Rotary Street	Morgantown	WV	26505-3235	(304) 709-0311	WV: 2
Cochran, Troy	1520 Coffeen Ave	Sheridan	WY	82801	(833-KONA-) 5668-600	WY: 2

**Franchisees with Unopened Outlets as of December 31, 2022**

Franchisee	Entity Name	Address	City	State	Zip Code	Phone	Email	
Sularin, Patriek & Summer	Kona Ice of South Huntsville, LLC	609 Arad Thompson NE	Arab	AL	35016	(256) 738-8905	psularin@kona-ice.com	
Kaufman, Jade & Clay	JADEANDCLAY, LLC	8870 W Single Tree Ln	Payson	AZ	85541	602-848-3300	kaufman@kona-ice.com	
Lord, Steven & Bernards, Michael Miller, CJ & Adrienne	Kona Ice of East Valley Thr33, LLC	20450 E Ocotillo Rd Apt 149 242 East Odessa Dr.	Queens Creek Valley	San Tan Valley	AZ	85142 85140	(480) 987-3341 399-7652 eastvalley@kona-ice.com cmiller@kona-ice.com	
Rodriguez, Gustavo Sabella, Jordan	Rodriguez and Sons Sabella's Haole LLC	5125 e agave vista dr 2022 Trailside Drive	Tucson	Brentwood	AZ	CA	85756 94513	(925) 301-7810 (520) 789-6224 grod@kona-ice.com mjsabella@kona-ice.com
Dunn, Kevin Ennis, Robbyn	Dunn Co Innovations LLC	320 Sunbird Dr 10615 Almond Avenue	Turlock	Chino	CA	95382 91708	(209) 595-6797 (714) 415-8911 kdunn@kona-ice.com rennis@kona-ice.com	
Gutierrez, Derry McDade, Casey, Melanie & Jason	CMJ Future Family LLC	8496 Roaring Fork Dr 1271 Valley Oak Court Unit D	Colorado Springs	Novato	CO	CA	94947 80924	(719) 678-7802 (415) 786-0605 medade@kona-ice.com derrydor@kona-ice.com
Wallen, Marisa & Jeremy	JM Wallen LLC	6420 CR 569	Center Hill	FL	33514	(352) 403-0515	mwallen@kona-ice.com	



Franchisee	Entity Name	Address	City	State	Zip Code	Phone	Email
Jenkins, Jason & Brenton	Kona Ice of Central Lee County, LLC	9800 Bay Harbor Circle Apt 206	Fort Myers	FL	33919	(239) 788-4210	jenkins@kona-ice.com
Hodges, Matt & Stevi Montejano, Manuel & Jacqueline	HodgesMontejano Family Services Inc. LLC	150 Viscaya Ave 6486 Cameo Street	Royal Palm Beach	FL	33411	(561) 332-4773 (909) 294-0752	mshodges@kona-ice.com jimonteja@kona-ice.com
Ruelas, Landie & Hagerty, Timothy Synowski, Theresa	BJTM Ice Enterprises Tim & Landie LLC	1127 Mastic Street 5459 Southeast Graham Drive	Stuart	FL	34997	(772) 254-2173 (408) 550-5882	synowski@kona-ice.com ruelashag@kona-ice.com
Riser, Daryl & Lisa Guthrie, Josh	Five Start Ice-Risers, LLC	1331 Sandy Creek Rd 752 Hillcrest Drive	Madison	GA	30650	(770) 851-2812 686-1511	riser@kona-ice.com jguthrie@kona-ice.com
Grossman, Mark	Sweet Bambino's Treats, LLC	8 W. College Dr, Suite F	Arlington Heights	IL	60004	(847)-752-4410	markg@kona-ice.com markg@kona-ice.com
Gabbard, Jeffrey & Angela Martinis, Beth Ann & Michael	Gabbard Entertainment BAM EVENTS LLC	609 Willow Drive 3910 White Eagle Dr.	Naperville	IL	60564	(765) 309-2838 (216) 407-4138	gabbard@kona-ice.com martinis@kona-ice.com
Cole, Roger & Dawn Soares, Jason	Kona Ice of the Dunes End Zone Ventures LLC	550 N Union Place 177 Huntington Avenue STE 1703	Gary	IN	46403	(219) 716-0063 (401) 935-4800	decole@kona-ice.com jsoares@kona-ice.com
Farah, Jeanne Underhill, Lisa	GIGI's Shaved Ice Just Chill Out LLC	9694 Decatur Drive 2495 West Kalamo Highway	Indianapolis	IN	46256	(317) 987-5662 (517) 667-8692	ifarah@kona-ice.com lunderhill@kona-ice.com
Amin, Raj Tallman, David & Rae	SHRKTALLMAN FAMILY, LLC	426 North Church Street 1554 Broderick St NW	Thurmont	MD	21788	240-205-6330 (980) 391-0175	rkamin@kona-ice.com tallman@kona-ice.com
Plocharezyk, Sheena & Leonard Hawley, Brian	Ride or Die Ice, HAWLEYWOOD ENTERTAINMENT LLC-	4317 Earl Ct. 2331 Bear Creek RD	Ypsilanti	MI	48197	734-531-8643 (828) 378-4598	sheenap@kona-ice.com bhawley@kona-ice.com
Newton, Andrew Millsaps, Kevin & Tracy	TASTE AND SEE Foothills Concessions, LLC	600 College Street 201 Moore Ln	Oxford	NC	27565	(336) 508-9532 (828) 638-1546	anewton@kona-ice.com kmillsaps@kona-ice.com
Gandley, Michelle & Thomas	TAG ICE CORP	61 Brandy Avenue	Holbrook	NY	11741	(631) 739-7908	gandley@kona-ice.com
Barinas, Erik Strawn, Brian	Mahalo Nui Mystic Penguin, LLC	29 Sherwood road 149 Linwood Ave NW	Canton	NJ	07628	917-658-0628 Erik (330) 451-6929	paramus@kona-ice.com bstrawn@kona-ice.com
Purdy, Ed & Sara Barshinger, Tim & Arslan, Melissa	Purdy Good Ice Melti, LLC	606 Grove Street 2608 Wern Terrace	York	PA	08033	(609) 707-7476 (717) 586-7646	epurdy@kona-ice.com yorkkpa@kona-ice.com
Martz, William & Sarah Eccleston, Jane	Elite Party Entertainment JM Eccleston, LLC	15 Buckeye Road 64 Winsor Avenue	Woolwich Twp	NJ	07095	609-752-2056 (401) 219-0800	martz@kona-ice.com jeccl@kona-ice.com
Flood, Thomas	Flood Family Ice LLC	3089 Pondsford DR	Medina	OH	44256	(440) 610-4701	tflood@kona-ice.com



Franchisee	Entity Name	Address	City	State	Zip Code	Phone	Email
Herring, Amber & Rob	Herring LLC	2231 Foxwood Drive	Loris	SC	29569	(910) 477-4549	arherring@kona-ice.com
Ruger, Stacia	Ruger Koncession, LLC	1056 Castlerock Dr	Clarksville	TN	37042	(931) 494-6615	sruger@kona-ice.com
Sanchez, Cynthia	CDW Kona, LLC	2500 Plaza St.	Arlington	TX	76010	(817) 864-9996	esanchez@kona-ice.com
Hammond, Lee Ann Peglow, Robert	Top Two Investments, Peglow Ice LLC	4626 County 1375 Back Bone Rd 2200	Greenville Sparta	TX TN	75402 38583	(469) 500-6500 (270) 725-0450	hammond@kona-ice.com peglow@ice.com
Davault, Roy	Davault Company	5302 Lakeshore Dr	Wichita Falls	TX	76310	(580) 919-0058	lawtonok@kona-ice.com
Hamilton, Don (Thomas) & Connie Ferwerda, Tyler & Kayla	Thomas Hamilton Ferwerda Family LLC	107 Citation Lane 200 W 1200 South No. 7	Lynchburg Tremonton	VA UT	24503 84337	(434) 509-7562 (435) 230-4137	dhamilton@kona-ice.com ferwerda@ice.com
Hall, Nathan & Jess Lischak, Maria	Skadi Ventures Co DARISK DREAM LLC	510 S Queen Street 132 Harrison Circle	Martinsburg Locust Grove	WV VA	25401 22508	(304) 315-2125 (540) 935-4705	njhall@kona-ice.com culpeper@ice.com

### Former Franchisees:

The name and last known address of every franchisee who had a Kona Ice Franchise transferred, terminated, cancelled, not renewed, or otherwise voluntarily or involuntarily ceased to do business under our Franchise Agreement during the period January 1, 2022 to 2023 to December 31, 2022 to 2023, or who has not communicated with us within ten weeks of the Issuance Date of this Franchise Disclosure Document are listed below. If you buy this Franchise, your contact information may be disclosed to other buyers when you leave the Franchise System.

The following franchises were terminated, cancelled, not renewed or otherwise ceased operations:

Franchisee	Street	City	State	Franchisee Zip Code	Kona Business Phone	Outlets Closed
Sularin, Patrick & Summer*(1)	P.O. Box 353	Arab	AL	35016	(256) 738-8905	AL: 1
Weaver, Phil Vickers, Joslyn	127 E Eden Park Rd 523 Miller County 57	Searey Texarkana	AR	72143 71854	(501) 281-3999 (903) 293-0123	AR: 31
Mays, Melissa Rochrick, Geoff & Brenda	18121 W. Minnezona 1122 3rd Ave	Goodyear Napa	CA AZ	85395 94558	(707) 603-9082 (602) 434-5662	CA AZ: 2
Meza, Gina & Sergio Aviles, Guadalupe	9720 Par Place 14437 Riverside St	Pico Rivera Hesperia	CA	90660 92345	(323) 516-2383 (480) 840-4496	CA: 12
Foster, Wendi Martin, Corey & Rebecca	3340 Baffin Drive 6627 La Plata Peak Dr.	Riverside Colorado Springs	CA CO	92503 80923	(909) 809-9294 (719) 344-8061	FL CO: 1
Kelley, Darren Hepner, Katrina*(2)	5086 College Gardens Court 2287 Golden Gate Grove	San Diego Colorado Springs	CA CO	92115 80918	(858) 220-4761 (719) 452-9998	CA: 3 CO: 1
Neumann, Josh Worden, Paul & Amy	16788 E Belleview 1762 Pioneer Place	Centennial Eaton	CO	80615 80015	(303) 627-2381 (605) 430-4675	CO: 1



Franchisee	Street	City	State	Franchisee Zip-Code	Kona Business Phone	Outlets Closed
<u>McMeekin, Adri Schnelle, Julie &amp; Ryan</u>	<u>5941 S. Lima St</u> <u>4050 w 116th Way</u>	<u>Englewood Westminster</u>	CO	<u>8011180031</u>	<u>(303) 551-1513</u> <u>(720) 480-8030</u>	CO: <u>43</u>
<u>Capozziello, Stacie Goines, Eddie</u>	<u>875 NW 13th St., #307312 Crescent Ridge Rd</u>	<u>Boca Raton Auburndale</u>	FL	<u>3348633823</u>	<u>(561) 251-8871</u> <u>(863) 874-4404</u>	FL: 1
<u>Palmer, Cody &amp; Ward, Chris Phillips, Sandra &amp; Caryl</u>	<u>2728 Lambay Court</u> <u>2039 NW 26th Place</u>	Cape Coral	FL	<u>3399433993</u>	<u>(239) 747-3814</u> <u>(682) 402-3906</u>	FL: <u>1</u>
<u>Hoffman, Tammy &amp; Capell, Judy Greco, Glen Sr.</u>	<u>3841 South Atlantic Ave. #402105 Dockside Place</u>	<u>Daytona Beach Shores</u>	FL	<u>3211832124</u>	<u>(386) 872-8582</u> <u>(518) 618-5600</u>	FL: <u>31</u>
<u>Hardman, Richard Carpenter, Rebecca*(3)</u>	<u>79 Freedom Landing</u> <u>24150 Weldon Drive</u>	<u>Ponte Vedra Eustis</u>	FL	<u>3208432736</u>	<u>(732) 966-7716</u> <u>(407) 509-3142</u>	FL: 1
<u>Rendelman, Mike</u>	<u>1971 Hickory Trace Dr.</u>	<u>Fleming Island</u>	FL	<u>32003</u>	<u>(602) 419-1919</u>	AZ: <u>4</u>
<u>Parker, Charles Greco, Glen Jr.</u>	<u>9905 121st Ct</u> <u>8451 Gate Pkwy W</u> <u>Unit 532</u>	<u>Seminole Jacksonville</u>	FL	<u>3377232216</u>	<u>(727) 900-5662</u> <u>(904) 337-9942</u>	FL: <u>21</u>
<u>Krienke, Makaio &amp; Robertson, Zach</u>	<u>4981 Waterside Pointe Circle</u>	<u>Orlando</u>	FL	<u>32829</u>	<u>(407) 962-7445</u>	FL: <u>1</u>
<u>Hartmann, Jodi*(4)</u>	<u>3944 Canoe Creek Road</u>	<u>Saint Cloud</u>	FL	<u>34772</u>	<u>(407) 414-7296</u>	FL: <u>1</u>
<u>Shivdat, Preya Godette, Jessica &amp; Jerome</u>	<u>1218 Selbydon Way</u> <u>404 Edwin Street</u>	<u>Winter Garden Springs</u>	FL	<u>3478732708</u>	<u>(407) 620-9721</u> <u>(321) 417-4039</u>	FL: 1
<u>Martin, Amber &amp; Mark</u>	<u>P.O. Box 419</u>	<u>Zyphyrhills</u>	FL	<u>33539</u>	<u>(352) 534-1991</u>	FL: <u>1</u>
<u>Winters, Dameon</u>	<u>5991 Lake Lanier Heights Rd</u>	<u>Buford</u>	GA	<u>30518</u>	<u>(470) 870-7886</u>	TX: <u>1</u>
<u>Dozier, Dean &amp; Denise Carruth, Maranda</u>	<u>5031 Travertine Dr</u> <u>5251 Augusta Highway</u>	<u>Appling Lincoln ton</u>	GA	<u>3080230817</u>	<u>(706) 466-1559</u>	GA: 4
<u>Jackson, Quanesha</u>	<u>990 S. Gordon Rd</u>	<u>Austell</u>	GA	<u>30168</u>	<u>(404) 666-3050</u>	GA: <u>1</u>
<u>Jesehke, Jo</u>	<u>132 Equest Drive</u>	<u>Canton</u>	GA	<u>30115</u>	<u>(770) 316-0072</u>	GA: <u>4</u>
<u>Mullison, Glenn Tucker, Ryan &amp; Parson, Garrett</u>	<u>2837 Captain Ct</u> <u>374 Lynhurst Rd</u>	<u>Dacula Smyrna</u>	GA	<u>3001930082</u>	<u>(678) 662-8213</u> <u>761-5471</u>	GA: <u>12</u>
<u>Wilde, Chris</u>	<u>4905 Kettle River Point</u>	<u>Suwanee</u>	GA	<u>30024</u>	<u>(404) 229-0108</u>	GA: <u>1</u>
<u>Vugteveen, Kevin &amp; Heather</u>	<u>20675 Nautica Dr</u>	<u>Spirit Lake</u>	IA	<u>51360</u>	<u>(712) 320-5662</u>	IA: <u>1</u>
<u>Nguyen, Mark &amp; Linda Schmitt, Joe &amp; Stephanie</u>	<u>5934 Oak Ridge Way</u> <u>1108 Natalyns Trace</u>	<u>Lisle Lebanon</u>	IL	<u>6053262254</u>	<u>(630) 392-3906</u> <u>(618) 578-0747</u>	IL: <u>21</u>
<u>Swartzendruger, Troy Hickey, Shawn*(5)</u>	<u>2301 Redspire Blvd.</u> <u>11581 Ludlow Dr.</u>	<u>Goshen Fishers</u>	IN	<u>4652646037</u>	<u>(574) 400-5455</u> <u>532-5736</u>	IN: 2
<u>Mauk, Jim</u>	<u>3251 Wall Blvd</u> <u>Apt 302</u>	<u>Gretna</u>	LA	<u>70056</u>	<u>(504) 912-0274</u>	LA: <u>1</u>
<u>Guidry, Garrett Dwayne*(6)</u>	<u>129 Biscayne Ln</u> <u>117 Wills Drive</u>	<u>Lafayette</u>	LA	<u>7050870506</u>	<u>(337) 658-8118</u> <u>344-9415</u>	LA: <u>1</u>



Franchisee	Street	City	State	Franchisee Zip-Code	Kona Business Phone	Outlets Closed
<u>Vanover, Eric &amp; Trisha</u>	4939 E Saint Charles Ave	Lake Charles	LA	70605	(337) 515-7895	LA: 1
<u>Souza, Dave &amp; Cheryl</u>	555 County St.	Seekonk	MA	02771	(401) 450-9483	<del>MA: 1</del>
<u>Perdomo, Josie</u> <u>Minieri, Anthony &amp; Marina</u> <sup>(7)</sup>	6036 Maple Hill Road 326 Williams Street, Unit 204	Ellicott City	MD	21043	21811 240-508-1552(443) 944-1866	MD: 1
<u>Garoutte, Deidre</u> <u>Frazier, David</u>	48 Falls 4365 St. Louis Rock Road	North East	MD	21901	63089 (410) 920-9056 (314) 591-5500	MD: 1 MO: 4
<u>Porter, Autumn</u> <u>Anderson, Kyla &amp; Stuart</u>	2802-2828 10 Katy Trail Ave S	Great Falls	MO	65301	59405 (406) 868-0944 (660) 620-4489	MO: 1
<u>Strong, Cheryl</u> <u>McDonald, Allison</u>	17 Strongs Landing 6646 Kingbird Ct.	Greenland	NC	28215	03840 (704) 491-4495 (603) 431-7378	NC: 1
<u>Allen, Eddie &amp; Michelle</u> <u>Sweeney, Jim &amp; Sharon</u> <sup>(8)</sup>	188 Linwood Ln 516 Route 12A	Clayton	NC	27527	3431 (919) 264-2391 (603) 903-1300	NC: 2
<u>Roberts, Scott</u>	502 Cedar Wood Drive	Monroe	NC	28112	(704) 225-3922	NC: 1
<u>Syler, Barb</u>	216 Holly Springs Ct	Southern Pines	NC	28374	(803) 727-9219	<del>NC: 1</del>
<u>Veverka, Carina</u>	1320 Lake Wendell Rd.	Wendell	NC	27591	(919) 896-4410	NC: 4
<u>Patel, Rupeeh</u>	12 Leah Way	Parsippany	NJ	07054	(973) 240-7831	NJ: 3
<u>Cassidy, John &amp; Cathy</u>	10 Miramar Ct	Toms River	NJ	08757	8757 (732) 928-0604	NJ: 1
<u>Montoya, Alfred</u> <u>Lefebvre, Denis</u>	513 South 12th Street 6526 Arc Dome Dr.	Belen	NM	87002	89701 (505) 850-0325 (775) 392-4840	NM: 1
<u>Stevenson, David</u> <u>Wallace, John</u> <sup>(9)</sup>	34 Mulberry Loop 1397 Blazing Sand St	Cedar Crest	NM	87008	89110 (505) 710-8327 (702) 803-4883	NM: 3 NV: 1
<u>Lockwood, Brian &amp; Mollie</u> <u>Oswald, Tim &amp; Renee</u> <sup>(10)</sup>	4955 Neura Pkwy 3441 Starwick Drive	Brunswick Hills	OH	44212	44406 (330) 362-8901 233-0198	OH: 1
<u>Cullen, Patrick</u>	8312 Portland Rd	Castalia	OH	44824	(419) 359-1511	OH: 1
<u>Egli, Andrew &amp; Mlinac, Ross</u> <sup>(11)</sup>	2548 Lindenwood Drive Dr.	Pittsburgh	PA	15241	(412) 818-9641	SC: 1
<u>Cantey, Dan</u>	1606 Fair Street	Camden	SC	29020	(803) 309-3749	SC: 1
<u>Godlewski, Charles</u>	710 Lagan Ct.	Fort Mill	SC	29715	(704) 964-4656	SC: 2
<u>Wolfenbarger, Christie &amp; Tim</u> <u>Cash, Sherri</u>	326 Charlton Ct 3218 Little John Circle SE	Bluff City	TN	37618	37323 (423) 444-5224 641-2423	TN: 1
<u>Holt, Blake &amp; Lisa</u> <u>McLaughlin, Cameron</u> <sup>(12)</sup>	1100 Bayshore St 164 Stewart-Junkin PO Box 204	Allen	TX	75002	78028 (469) 408-5662 (830) 777-0623	TX: 1
<u>Decker, Jon &amp; Stephanie</u>	3510 Goodfellow Ln	Amarillo	TX	79121	(806) 318-8781	TX: 1
<u>Stephens, Melissa</u>	430 Private Road 35975	Arthur City	TX	75411	(903) 401-0998	TX: 2
<u>Potts, Luke &amp; Kayla</u>	3101 Dunns Canyon Rd	Belton	TX	76513	(254) 444-0766	TX: 3



Franchisee	Street	City	State	Franchisee Zip-Code	Kona Business Phone	Outlets Closed
<del>Pharis, Natasha</del>	<del>13224 Circle N Drive E</del>	<del>Helotes</del>	<del>TX</del>	<del>78023</del>	<del>(210) 504-6780</del>	<del>LA: 1</del>
<del>Brady, Quentin</del>	<del>5801 Ave G</del>	<del>Lubbock</del>	<del>TX</del>	<del>79404</del>	<del>(806) 241-1052</del>	<del>TX: 1</del>
<del>Park, Tina Maples, Ron &amp; Kerrie</del>	<del>1803 Grayson Ave. 9721 Beck Dr.</del>	<del>Mesquite Plano</del>	<del>TX</del>	<del>75181 75025</del>	<del>(972) 365-4177 234-4058</del>	<del>TX: 14</del>
<del>Alexander, Amy</del>	<del>610 Gerry Lane</del>	<del>Red Oak</del>	<del>TX</del>	<del>75154</del>	<del>(682) 593-5662</del>	<del>TX: 2</del>
<del>Chapa, Ryan Massey, Buck &amp; Melissa</del>	<del>5403 Green Grass 5589 N 2000 W</del>	<del>San Antonio St George</del>	<del>TX UT</del>	<del>78223 84770</del>	<del>(435) 565-5985 (210) 213-3757</del>	<del>TX NV: 1</del>
<del>Garibay, Louis Campbell, Lance &amp; Rosemarie</del>	<del>14565 CR 7221 1422 Galloway Place</del>	<del>Sinton Syracuse</del>	<del>TX UT</del>	<del>78387 84075</del>	<del>3617999967 (385) 770-8514</del>	<del>TX UT: 1</del>
<del>Brown Moistner-Bartlett, Kim &amp; Skip</del>	<del>15619 62nd Avenue SE 3007 Cumberland Dr.</del>	<del>Janesville Snohomish</del>	<del>WA WI</del>	<del>98296 53546</del>	<del>(425) 356-2063 (608) 436-8940</del>	<del>WA WI: 1</del>
<del>Rodgers, Sherrell &amp; Owens, Julie<sup>*(13)</sup></del>	<del>1939 N 5th Street</del>	<del>Milwaukee</del>	<del>WI</del>	<del>53212</del>	<del>(414) 786-5662</del>	<del>WI: 1</del>

- (1) Patrick & Summer Sularin sold one Alabama outlet and has three Alabama outlets still in operation
- (2) Katrina Hepner sold one Colorado outlet and has one Colorado outlet still in operation
- (3) Rebecca Carpenter sold one Florida outlet and has two Florida outlets still in operation
- (4) Jodi Hartmann sold one Florida outlet and has two Florida outlets still in operation
- (5) Shawn Hickey sold two Indiana outlets and has five Indiana outlets still in operation
- (6) Dwayne Guidry sold one Louisiana outlet and has one Louisiana outlet still in operation
- (7) Anthony & Marina Minieri sold one Maryland outlet and has two Maryland outlets still in operation
- (8) Jim & Sharon Sweeney sold two New Hampshire outlets and has two New Hampshire outlets still in operation
- (9) Tim & Renee Oswald sold one Ohio outlet and has three Ohio outlets still in operation
- (10) John Wallace sold one Nevada outlet and has one Nevada outlet still in operation
- (11) Andrew Egli & Ross Mlinac one Pennsylvania outlet and has five Pennsylvania outlets still in operation
- (12) Cameron McLaughlin sold one Texas outlet and has one Texas outlet still in operation
- (13) Sherrell Rodgers & Julie Owens sold one Wisconsin outlet and has one Wisconsin outlet still in operation



**EXHIBIT G**  
**STATE ADDENDA**  
**AND AGREEMENT RIDERS**



## STATE ADDENDA AND AGREEMENT RIDERS

### ADDENDUM TO FRANCHISE AGREEMENT, SUPPLEMENTAL AGREEMENTS, AND FRANCHISE DISCLOSURE DOCUMENT FOR CERTAIN STATES FOR KONA ICE, INC.

The following modifications are made to the Kona Ice, Inc. (“**Franchisor**,” “**us**,” “**we**,” or “**our**”) Franchise Disclosure Document (“**FDD**”) given to franchisee (“**Franchisee**,” “**you**,” or “**your**”) and may supersede, to the extent then required by valid applicable state law, certain portions of the Franchise Agreement between you and us dated \_\_\_\_\_, 20\_\_\_\_ (“**Franchise Agreement**”). When the term “**Franchisor’s Choice of Law State**” is used, it means Kentucky. When the term “**Supplemental Agreements**” is used, it means “none”.

Certain states have laws governing the franchise relationship and franchise documents. Certain states require modifications to the FDD, Franchise Agreement and other documents related to the sale of a franchise. This State Specific Addendum (“**State Addendum**”) will modify these agreements to comply with the state’s laws. The terms of this State Addendum will only apply if you meet the requirements of the applicable state independently of your signing of this State Addendum. The terms of this State Addendum will override any inconsistent provision of the FDD, Franchise Agreement or any Supplemental Documents. This State Addendum only applies to the following states: California, Hawaii, Illinois, Iowa, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Ohio, Rhode Island, South Dakota, Virginia, Washington, and Wisconsin.

If your state requires these modifications, you will sign this State Addendum along with the Franchise Agreement and any Supplemental Agreements.

#### **CALIFORNIA**

**The registration of this franchise offering by the California Department of Financial Protection and Innovation does not constitute approval, recommendation, or endorsement by the commissioner.**

\_\_\_\_\_ The California Franchise Investment Law requires a copy of all proposed agreements relating to the sale of the Franchise be delivered together with the FDD 14 days prior to execution of agreement.

California Corporations Code Section 31125 requires us to give to you an FDD approved by the Department of Financial Protection and Innovation before we ask you to consider a material modification of your Franchise Agreement.

The Franchise Agreement contains provisions requiring binding arbitration with the costs being awarded to the prevailing party. The arbitration will occur in Kentucky. Prospective franchisees are encouraged to consult private legal counsel to determine the applicability of California and federal laws (such as Business and Professions Code Section 20040.5, Code of Civil Procedure Section 1281, and the Federal Arbitration Act) to any provisions of the Franchise Agreement restricting venue to a forum outside the State of California. The Franchise Agreement ~~may contain~~contains a mediation provision. ~~If so, the~~The parties shall each bear their own costs of mediation and shall share equally the filing fee and the mediator’s fees.

The Franchise Agreement requires the application of the law of Kentucky. This provision may not be enforceable under California law.



Neither Franchisor nor any other person listed in Item 2 of the FDD is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities Exchange Act of 1934, 15 U.S.C.A. 78a et seq., suspending or expelling such persons from membership in such association or exchange.

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

The Franchise Agreement ~~may provide~~provides for termination upon bankruptcy. Any such provision may not be enforceable under federal bankruptcy law (11 U.S.C.A. SEC. 101 et seq.).

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

Under California Civil Code Section 1671, certain liquidated damages clauses are unenforceable. Any such provisions contained in the Franchise Agreement may not be enforceable.

You must sign a general release of claims if you renew or transfer your Franchise. California Corporations Code Section 31512 voids a waiver of your rights under the Franchise Investment Law (California Corporations Code Sections 31000 through 31516). Business and Professions Code Section 20010 voids a waiver of your rights under the Franchise Relations Act (Business and Professions Code Sections 20000 through 20043).

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

Item 6 of the FDD is amended to state the highest interest rate allowed by law in California is 10% annually.

~~The Franchise Agreement is hereby amended to remove Section 1.B.~~

The Franchise Agreement contains a provision requiring you to agree to waive your right to punitive or exemplary damages against the franchisor or any of its representatives, limiting your recovery to actual damages. Under California Corporations Code section 31512, this provision is not enforceable in California for any claims you may have under the California Franchise Investment Law.

The Franchise Agreement contains a provision shortening the statute of limitations. This provision violates Corporations Code section 31512, since Corporations Code section 31303 provides a four-year statute of limitations and 31304 provides a two-year statute of limitations for claims under the California Franchise Investment Law. Section 18.M of the Franchise Agreement is hereby amended to extend the statute of limitations per California Franchise Investment Law to provide for a four-year statutes of limitations for claims arising under Corporations Code Section 31512 and for a two year statute of limitations for claims arising under Corporations Code 31304.

Before the franchisor can ask you to materially modify your existing franchise agreement, Section 31125 of the California Corporations Code requires the franchisor to file a material modification application with the Department that includes a disclosure document showing the existing terms and the proposed new



terms of your franchise agreement. Once the application is registered, the franchisor must provide you with that disclosure document with an explanation that the changes are voluntary.

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

~~The registration of this franchise offering by the California Department of Financial Protection and Innovation does not constitute approval, recommendation, or endorsement by the commissioner.~~

## HAWAII

The following is added to the Cover Page:

**THIS FRANCHISE WILL BE/HAS BEEN FILED UNDER THE FRANCHISE INVESTMENT LAW OF THE STATE OF HAWAII. FILING DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION OR ENDORSEMENT BY THE DIRECTOR OF COMMERCE AND CONSUMER AFFAIRS OR A FINDING BY THE DIRECTOR OF COMMERCE AND CONSUMER AFFAIRS THAT THE INFORMATION PROVIDED IN THIS FRANCHISE DISCLOSURE DOCUMENT IS TRUE, COMPLETE AND NOT MISLEADING.**

**THE FRANCHISE INVESTMENT LAW MAKES IT UNLAWFUL TO OFFER OR SELL ANY FRANCHISE IN THIS STATE WITHOUT FIRST PROVIDING TO YOU OR SUBFRANCHISOR AT LEAST SEVEN DAYS PRIOR TO THE EXECUTION BY YOU OR SUBFRANCHISOR OF ANY BINDING FRANCHISE OR OTHER AGREEMENT, OR AT LEAST SEVEN DAYS PRIOR TO THE PAYMENT OF ANY CONSIDERATION BY YOU, WHICHEVER OCCURS FIRST, A COPY OF THE FRANCHISE DISCLOSURE DOCUMENT, TOGETHER WITH A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE FRANCHISE.**

**THIS FRANCHISE DISCLOSURE DOCUMENT CONTAINS A SUMMARY ONLY OF CERTAIN MATERIAL PROVISIONS OF THE FRANCHISE AGREEMENT. THE CONTRACT OR AGREEMENT SHOULD BE REFERRED TO FOR A STATEMENT OF ALL RIGHTS, CONDITIONS, RESTRICTIONS AND OBLIGATIONS OF BOTH US AND YOU.**

Registered agent in the state authorized to receive service of process:

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



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

The status of the Franchisor's franchise registrations in the states which require registration is as follows:

1. States in which this proposed registration is effective are listed in Exhibit I of the FDD on the page entitled, "State Effective Dates."
2. States which have refused, by order or otherwise, to register these Franchises are:  
None
3. States which have revoked or suspended the right to offer the Franchises are:  
None
4. States in which the proposed registration of these Franchises has been withdrawn are:  
None

## **ILLINOIS**

Sections 4 and 41 and Rule 608 of the Illinois Franchise Disclosure Act states that court litigation must take place before Illinois federal or state courts and all dispute resolution arising from the terms of this Agreement or the relationship of the parties and conducted through arbitration or litigation shall be subject to Illinois law. The FDD, Franchise Agreement and Supplemental Agreements are amended accordingly.

The governing law or choice of law clause described in the FDD and contained in the Franchise Agreement and Supplemental Agreements is not enforceable under Illinois law. This governing law clause shall not be construed to negate the application of Illinois law in all situations to which it is applicable.

Section 41 of the Illinois Franchise Disclosure Act states that "any condition, stipulation or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of this Act or any other law of this State is void." The Franchise Agreement is amended accordingly. To the extent that the Franchise Agreement would otherwise violate Illinois law, such Agreement is amended by providing that all litigation by or between you and us, arising directly or indirectly from the Franchise relationship, will be commenced and maintained in the state courts of Illinois or, at our election, the United States District Court for Illinois, with the specific venue in either court system determined by appropriate jurisdiction and venue requirements, and Illinois law will pertain to any claims arising under the Illinois Franchise Disclosure Act.

Item 17.v, Choice of Forum, of the FDD is revised to include the following: "provided, however, that the foregoing shall not be considered a waiver of any right granted upon you by Section 4 of the Illinois Franchise Disclosure Act."



Item 17.w, Choice of Law, of the FDD is revised to include the following: “provided, however, that the foregoing shall not be considered a waiver of any right granted upon you by Section 4 of the Illinois Franchise Disclosure Act.”

The termination and non-renewal provisions in the Franchise Agreement and the FDD may not be enforceable under Sections 19 and 20 of the Illinois Franchise Disclosure Act.

Under Section 705/27 of the Illinois Franchise Disclosure Act, no action for liability under the Illinois Franchise Disclosure Act can be maintained unless brought before the expiration of three years after the act or transaction constituting the violation upon which it is based, the expiration of one year after you become aware of facts or circumstances reasonably indicating that you may have a claim for relief in respect to conduct governed by the Act, or 90 days after delivery to you of a written notice disclosing the violation, whichever shall first expire. To the extent that the Franchise Agreement is inconsistent with the Illinois Franchise Disclosure Act, Illinois law will control and supersede any inconsistent provision(s).

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

See the last page of this Exhibit G for your required signature.

## **INDIANA**

Item 8 of the FDD is amended to add the following:

Under Indiana Code Section 23-2-2.7-1(4), we will not accept any rebates from any person with whom you do business or associate in relation to transactions between you and the other person, other than for compensation for services rendered by us, unless the rebate is properly accounted for and submitted to you.

Item 17 of the FDD is amended to add the following:

Indiana Code 23-2-2.7-1(7) makes it unlawful for us to unilaterally terminate your Franchise Agreement unless there is a material violation of the Franchise Agreement and termination is not in bad faith.

Indiana Code 23-2-2.7-1(5) prohibits us to require you to agree to a prospective general release of claims subject to the Indiana Deceptive Franchise Practices Act.

The “Summary” column in Item 17.r. of the FDD is deleted and the following is inserted in its place:

No competing business for two (2) years within the Protected Territory.

The “Summary” column in Item 17.t. of the FDD is deleted and the following is inserted in its place:

Notwithstanding anything to the contrary in this provision, you do not waive any right under the Indiana Statutes with regard to prior representations made by us.



The “Summary” column in Item 17.v. of the FDD is deleted and the following is inserted in its place:

Litigation regarding Franchise Agreement in Indiana; other litigation in Franchisor’s Choice of Law State. This language has been included in this Franchise Disclosure Document as a condition to registration. The Franchisor and the Franchisee do not agree with the above language and believe that each of the provisions of the Franchise Agreement, including all venue provisions, is fully enforceable. The Franchisor and the Franchisee intend to fully enforce all of the provisions of the Franchise Agreement and all other documents signed by them, including but not limited to, all venue, choice-of-law, arbitration provisions and other dispute avoidance and resolution provisions and to rely on federal pre-emption under the Federal Arbitration Act.

The “Summary” column in Item 17.w. of the FDD is deleted and the following is inserted in its place:

Indiana law applies to disputes covered by Indiana franchise laws; otherwise Franchisor’s Choice of Law State law applies.

Despite anything to the contrary in the Franchise Agreement, the following provisions will supersede and apply to all Franchises offered and sold in the State of Indiana:

1. The laws of the State of Indiana supersede any provisions of the FDD, the Franchise Agreement, or Franchisor’s Choice of Law State law, if such provisions are in conflict with Indiana law.
2. The prohibition by Indiana Code 23-2-2.7-1(7) against unilateral termination of the Franchise without good cause or in bad faith, good cause being defined under law as including any material breach of the Franchise Agreement, will supersede the provisions of the Franchise Agreement relating to termination for cause, to the extent those provisions may be inconsistent with such prohibition.
3. Any provision in the Franchise Agreement that would require you to prospectively assent to a release, assignment, novation, waiver or estoppel which purports to relieve any person from liability imposed by the Indiana Deceptive Franchise Practices Law is void to the extent that such provision violates such law.
4. The covenant not to compete that applies after the expiration or termination of the Franchise Agreement for any reason is hereby modified to the extent necessary to comply with Indiana Code 23-2-2.7-1 (9).
5. The following provision will be added to the Franchise Agreement:

No Limitation on Litigation. Despite the foregoing provisions of this Agreement, any provision in the Agreement which limits in any manner whatsoever litigation brought for breach of the Agreement will be void to the extent that any such contractual provision violates the Indiana Deceptive Franchise Practices Law.

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



**IOWA**

Any provision in the Franchise Agreement or Compliance Questionnaire which would require you to prospectively assent to a release, assignment, novation, waiver or estoppel which purports to relieve any person from liability imposed by the Iowa Business Opportunity Promotions Law (Iowa Code Ch. 551A) is void to the extent that such provision violates such law.

The following language will be added to the Franchise Agreement:

**NOTICE OF CANCELLATION**

\_\_\_\_\_ (enter date of transaction)

You may cancel this transaction, without penalty or obligation, within three business days from the above date. If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within ten business days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be cancelled.

If you cancel, you must make available to the seller at your residence or business address, in substantially as good condition as when received, any goods delivered to you under this contract or sale; or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do not agree to return the goods to the seller or if the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice to Kona Ice, Inc., 5945 Centennial Circle, Florence, Kentucky 41042, or send a fax to Kona Ice, Inc. at (859) 282-9890 not later than midnight of the third business day after the Effective Date.

I hereby cancel this transaction.

Franchisee: \_\_\_\_\_

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

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

Its: \_\_\_\_\_

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



## **MARYLAND**

### AMENDMENTS TO FRANCHISE DISCLOSURE DOCUMENT, FRANCHISE AGREEMENTS AND FRANCHISE DISCLOSURE QUESTIONNAIRE

Item 17 of the FDD and the Franchise Agreement are amended to state: “The general release required as a condition of renewal, sale, and/or assignment/transfer shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law.”

Item 17 of the FDD and sections of the Franchise Agreement are amended to state that you may bring a lawsuit in Maryland for claims arising under the Maryland Franchise Registration and Disclosure Law. Any claims arising under the Maryland Franchise Registration and Disclosure Law must be brought within three (3) years after the grant of the Franchise.

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

The Franchise Agreement provides for termination upon bankruptcy. This provision may not be enforceable under Federal Bankruptcy Law (11 U.S.C.A Sec. 101 et seq.).

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

## **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 on your right to join an association of franchisees.
- (b) A requirement that you assent to a release, assignment, novation, waiver, or estoppel which deprives you of rights and protections provided in this act. This shall not preclude you, after entering into a Franchise Agreement, from settling any and all claims.
- (c) A provision that permits us to terminate a Franchise prior to the expiration of its term except for good cause. Good cause shall include your failure 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 us to refuse to renew your Franchise without fairly compensating you by repurchase or other means for the fair market value at the time of expiration of your inventory, supplies, equipment, fixtures, and furnishings. Personalized materials which have no value to us 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 five (5) years; and (ii) you are prohibited by the Franchise Agreement 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 you do not receive at least six (6) months' advance notice of our intent not to renew the Franchise.

(e) A provision that permits us to refuse to renew a Franchise on terms generally available to other franchisees of the same class or type under similar circumstances. This section does not require a renewal provision.

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

(g) A provision which permits us to refuse to permit a transfer of ownership of a Franchise, except for good cause. This subdivision does not prevent us 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 our then-current reasonable qualifications or standards.
- (ii) the fact that the proposed transferee is a competitor of us or our subfranchisor.
- (iii) the unwillingness of the proposed transferee to agree in writing to comply with all lawful obligations.
- (iv) your or proposed transferee's failure to pay any sums owing to us or to cure any default in the Franchise Agreement existing at the time of the proposed transfer.

(h) A provision that requires you to resell to us items that are not uniquely identified with us. This subdivision does not prohibit a provision that grants to us 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 us the right to acquire the assets of a Franchise for the market or appraised value of such assets if you have breached the lawful provisions of the Franchise Agreement and have failed to cure the breach in the manner provided in subdivision (c).

(i) A provision which permits us to directly or indirectly convey, assign, or otherwise transfer our obligations to fulfill contractual obligations to you 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 should be directed to:

State of Michigan  
Department of Attorney General  
Consumer Protection Division  
Attn: Franchise  
670 Law Building  
525 W. Ottawa Street  
Lansing, Michigan 48913  
Telephone Number: (517) 373-7117

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

### **MINNESOTA**

Despite anything to the contrary in the Franchise Agreement, the following provisions will supersede and apply to all Franchises offered and sold in the State of Minnesota:

1. Any provision in the Franchise Agreement which would require you to assent to a release, assignment, novation or waiver that would relieve any person from liability imposed by Minnesota Statutes, Sections 80C.01 to 80C.22 will be void to the extent that such contractual provision violates such law.
2. Minnesota Statute Section 80C.21 and Minnesota Rule 2860.4400J prohibit the franchisor from requiring litigation to be conducted outside of Minnesota. In addition, nothing in the FDD or Franchise Agreement can abrogate or reduce any of your rights as provided for in Minnesota Statutes, Chapter 80C, or your rights to any procedure, forum, or remedies provided for by the laws of Minnesota.
3. Minn. Rule Part 2860.4400J. prohibits a franchisee from waiving his rights to a jury trial or waiving his rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction, or consenting to liquidated damages, termination penalties or judgment notes. Any provision in the Franchise Agreement which would require you to waive your rights to any procedure, forum or remedies provided for by the laws of the State of Minnesota is deleted from any agreement relating to Franchises offered and sold in the State of Minnesota; provided, however, that this paragraph will not affect the obligation in the Franchise Agreement relating to arbitration.
4. With respect to Franchises governed by Minnesota law, we will comply with Minnesota Statute Section 80C.14, Subds. 3, 4 and 5, which require, except in certain specified cases, that you be given 90 days' notice of termination (with 60 days to cure) and 180 days' notice for non-renewal of the Franchise Agreement; and that consent to the transfer of the Franchise will not be unreasonably withheld.
5. Item 13 of the FDD is hereby amended to state that we will protect your rights under the Franchise Agreement to use the Marks, or indemnify you from any loss, costs, or expenses arising out of any third-party claim, suit or demand regarding your use of the Marks, if your use of the Marks is in compliance with the provisions of the Franchise Agreement and our System Standards.



6. Minnesota Rule 2860.4400(D) prohibits a franchisor from requiring a franchisee to assent to a general release. As a result, the FDD and the Franchise Agreement, which require you to sign a general release prior to renewing or transferring your Franchise, are hereby deleted from the Franchise Agreement, to the extent required by Minnesota law.
7. The following language will appear as a new paragraph of the Franchise Agreement:
 

No Abrogation. Pursuant to Minnesota Statutes, Section 80C.21, nothing in the dispute resolution section of this Agreement will in any way abrogate or reduce any of your rights as provided for in Minnesota Statutes, Chapter 80.C.
8. Minnesota Statute Section 80C.17 states that no action for a violation of Minnesota Statutes, Sections 80C.01 to 80C.22 may be commenced more than three (3) years after the cause of action accrues. To the extent that the Franchise Agreement conflicts with Minnesota law, Minnesota law will prevail.
9. Item 6 of the FDD and Section 4.H6.2 of the Franchise Agreement is hereby amended to limit the Insufficient Funds Charge to \$30 per occurrence pursuant to Minnesota Statute 604.113.
10. No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

## **NEW YORK**

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

**INFORMATION COMPARING FRANCHISORS IS AVAILABLE. CALL THE STATE ADMINISTRATORS LISTED IN EXHIBIT A OR YOUR PUBLIC LIBRARY FOR SERVICES OR INFORMATION. REGISTRATION OF THIS FRANCHISE BY NEW YORK STATE DOES NOT MEAN THAT NEW YORK STATE RECOMMENDS IT OR HAS VERIFIED THE INFORMATION IN THIS FRANCHISE DISCLOSURE DOCUMENT. IF YOU LEARN ~~THAT~~ ANYTHING IN THIS FRANCHISE DISCLOSURE DOCUMENT IS UNTRUE, CONTACT THE FEDERAL TRADE COMMISSION AND THE APPROPRIATE STATE OR PROVINCIAL AUTHORITY. THE FRANCHISOR MAY, IF IT CHOOSES, NEGOTIATE WITH YOU ABOUT ITEMS COVERED IN THE FRANCHISE DISCLOSURE DOCUMENT. HOWEVER, THE FRANCHISOR ~~CANNOT~~CAN NOT USE THE NEGOTIATING PROCESS TO PREVAIL UPON A PROSPECTIVE FRANCHISEE TO ACCEPT TERMS WHICH ARE LESS FAVORABLE THAN THOSE SET FORTH IN THIS FRANCHISE DISCLOSURE DOCUMENT.**



2. The following is added at the end of Item 3:

~~\_\_\_\_\_ Except as provided~~ With the exception of what is stated above, ~~with regard~~ the following applies to ~~Franchisor~~ the franchisor, its predecessor, a person identified in Item 2, or an affiliate offering franchises under the franchisor's principal trademark:

A. No such party has an administrative, criminal or civil action pending against that person alleging: a felony, a violation of a franchise, antitrust or securities law, fraud, embezzlement, fraudulent conversion, misappropriation of property, unfair or deceptive practices or comparable civil or misdemeanor allegations.

B. No such party has pending actions, other than routine litigation incidental to the business, which are significant in the context of the number of franchisees and the size, nature or financial condition of the ~~Franchise System~~ franchise system or its business operations.

C. No such party has been convicted of a felony or pleaded nolo contendere to a felony charge, or within the ~~ten~~ 10-year period immediately preceding the application for registration, has been convicted of or pleaded nolo contendere to a misdemeanor charge or has been the subject of a civil action alleging: violation of a franchise, antifraud, or securities law; fraud; embezzlement; fraudulent conversion or misappropriation of property; or unfair or deceptive practices or comparable allegations.

D. No such party is subject to a currently effective injunctive or restrictive order or decree relating to the franchise, or under a Federal, State or Canadian franchise, securities, antitrust, trade regulation, or trade practice law, resulting from a concluded or pending action or proceeding brought by a public agency; or is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities and Exchange Act of 1934, suspending or expelling such person from membership in such association or exchange; or is subject to a currently effective injunctive or restrictive order relating to any other business activity as a result of an action brought by a public agency or department, including, without limitation, actions affecting a license as a real estate broker or sales agent.

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

However, to the extent required by applicable law, all rights you enjoy and any causes of action arising in your favor from the provisions of Article 33 of the General Business Law of the State of New York and the regulations issued thereunder shall remain in force; it being the intent of this proviso that the non-waiver provisions of General Business Law Sections 687(4) and 687(5) be satisfied.

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

~~\_\_\_\_\_~~": You may terminate the agreement on any grounds available by law.



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

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

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

7. Receipts - Any sale made must be in compliance with § 683(8) of the Franchise Sale Act (N.Y. Gen. Bus. L. § 680 et seq.), which describes the time period a Franchise Disclosure Document (offering prospectus) must be provided to a prospective franchisee before a sale may be made. New York law requires a franchisor to provide the Franchise Disclosure Document at the earlier of the first personal meeting, ten (10) business days before the execution of the franchise or other agreement, or the payment of any consideration that relates to the franchise relationship.

## NORTH DAKOTA

Sections of the FDD, the Franchise Agreement, and the Supplemental Agreements requiring that you sign a general release, estoppel or waiver as a condition of renewal and/or assignment may not be enforceable as they relate to releases of the North Dakota Franchise Investment Law.

Sections of the FDD, the Franchise Agreement, and the Supplemental Agreements requiring resolution of disputes to be outside North Dakota may not be enforceable under Section 51-19-09 of the North Dakota Franchise Investment Law, and are amended accordingly to the extent required by law.

Sections of the FDD, the Franchise Agreement, and the Supplemental Agreements relating to choice of law may not be enforceable under Section 51-19-09 of the North Dakota Franchise Investment Law, and are amended accordingly to the extent required by law.

Any section of the FDD, the Franchise Agreement, and the Supplemental Agreements requiring you to consent to liquidated damages and/or termination penalties may not be enforceable under Section 51-19-09 of the North Dakota Franchise Investment Law, and are amended accordingly to the extent required by law.

Any sections of the FDD, the Franchise Agreement, and the Supplemental Agreements requiring you to consent to a waiver of trial by jury may not be enforceable under Section 51-19-09 of the North Dakota Franchise Investment Law, and are amended accordingly to the extent required by law.

Any sections of the FDD, the Franchise Agreement, and the Supplemental Agreements requiring you to consent to a waiver of exemplary and punitive damages may not be enforceable under Section 51-19-09 of the North Dakota Franchise Investment Law, and are amended accordingly to the extent required by law.

Item 17(r) of the FDD and Section ~~46D18~~ of the Franchise Agreement disclose the existence of certain covenants restricting competition to which Franchisee must agree. The Commissioner has held that



covenants restricting competition contrary to Section 9-08-06 of the North Dakota Century Code, without further disclosing that such covenants may be subject to this statute, are unfair, unjust, or inequitable within the intent of Section 51-19-09 of the North Dakota Franchise Investment Law. The FDD and the Franchise Agreement are amended accordingly to the extent required by law.

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

**OHIO**

The following language will be added to the front page of the Franchise Agreement:

You, the purchaser, may cancel this transaction at any time prior to midnight of the fifth business day after the date you sign this agreement. See the attached notice of cancellation for an explanation of this right.

Initials \_\_\_\_\_ Date \_\_\_\_\_

NOTICE OF CANCELLATION

\_\_\_\_\_ (enter date of transaction)

You may cancel this transaction, without penalty or obligation, within five (5) business days from the above date. If you cancel, any payments made by you under the agreement, and any negotiable instrument executed by you will be returned within ten (10) business days following the seller's receipt of your cancellation notice, and any security interest arising out of the transaction will be cancelled. If you cancel, you must make available to the seller at your business address all goods delivered to you under this agreement; or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk. If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of them without further obligation. If you fail to make the goods available to the seller, or if you agree to return them to the seller and fail to do so, then you remain liable for the performance of all obligations under this agreement. To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice to Kona Ice, Inc., 5945 Centennial Circle, Florence, Kentucky 41042, or send a fax to Kona Ice, Inc. at (859) 282-9890 not later than midnight of the fifth business day after the Effective Date.

I hereby cancel this transaction.

Franchisee:

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

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

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

Its: \_\_\_\_\_



## **RHODE ISLAND**

§ 19-28.1-14 of the Rhode Island Franchise Investment Act provides that “A provision in a franchise agreement restricting jurisdiction or venue to a forum outside this state or requiring the application of the laws of another state is void with respect to a claim otherwise enforceable under this Act.” The FDD, the Franchise Agreement, and the Supplemental Agreements are amended accordingly to the extent required by law.

The above language has been included in this FDD as a condition to registration. The Franchisor and the Franchisee do not agree with the above language and believe that each of the provisions of the Franchise Agreement and the Supplemental Agreements, including all choice of law provisions, are fully enforceable. The Franchisor and the Franchisee intend to fully enforce all of the provisions of the Franchise Agreement, the Supplemental Agreements, and all other documents signed by them, including but not limited to, all venue, choice-of-law, arbitration provisions and other dispute avoidance and resolution provisions and to rely on federal pre-emption under the Federal Arbitration Act.

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

## **SOUTH DAKOTA**

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

## **VIRGINIA**

Item 17(h). The following is added to Item 17(h):

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

In recognition of the restrictions contained in Section 13.1-564 of the Virginia Retail Franchising Act, the FDD for Kona Ice, Inc. for use in the Commonwealth of Virginia shall be amended as follows:

Additional Disclosure. The following statements are added to Item 8 and Item 17.h.

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



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

## WASHINGTON

### **ADDENDUM TO FRANCHISE AGREEMENT, ~~FRANCHISE DISCLOSURE QUESTIONNAIRE~~, AND FRANCHISE DISCLOSURE DOCUMENT**

In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW will prevail.

RCW 19.100.180 may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise. There may also be court decisions which may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise.

In any arbitration or mediation involving a franchise purchased in Washington, the arbitration or mediation site will be either in the state of Washington, or in a place mutually agreed upon at the time of the arbitration or mediation, or as determined by the arbitrator or mediator at the time of arbitration or mediation. In addition, if litigation is not precluded by the franchise agreement, a franchisee may bring an action or proceeding arising out of or in connection with the sale of franchises, or a violation of the Washington Franchise Investment Protection Act, in Washington.

A release or waiver of rights executed by a franchisee may not include rights under the Washington Franchise Investment Protection Act or any rule or order thereunder except when executed pursuant to a negotiated settlement after the agreement is in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act, or rights or remedies under the Act such as a right to a jury trial, may not be enforceable.

Transfer fees are collectable to the extent that they reflect the franchisor's reasonable estimated or actual costs in effecting a transfer.

Pursuant to RCW 49.62.020, a noncompetition covenant is void and unenforceable against an employee, including an employee of a franchisee, unless the employee's earnings from the party seeking enforcement, when annualized, exceed \$100,000 per year (an amount that will be adjusted annually for inflation). In addition, a noncompetition covenant is void and unenforceable against an independent contractor of a franchisee under RCW 49.62.030 unless the independent contractor's earnings from the party seeking enforcement, when annualized, exceed \$250,000 per year (an amount that will be adjusted annually for inflation). As a result, any provisions contained in the franchise agreement or elsewhere that conflict with these limitations are void and unenforceable in Washington.

RCW 49.62.060 prohibits a franchisor from restricting, restraining, or prohibiting a franchisee from (i) soliciting or hiring any employee of a franchisee of the same franchisor or (ii) soliciting or hiring any employee of the franchisor. As a result, any such provisions contained in the franchise agreement or elsewhere are void and unenforceable in Washington.



On October 4, 2019, Franchisor entered into an Assurance of Discontinuance (“AOD”) with the Washington Attorney General’s office (“AGO”). Under the AOD Franchisor agreed to permanently discontinue the use of and to not enforce “no-poach” language in Franchisor’s agreements which restricted the ability of franchisees to hire the employees from competing franchisees and from Franchisor’s corporate locations. Franchisor further agreed to notify the AGO of any efforts by a franchisee in Washington to enforce any existing “no-poach” provision, to proactively remove “no-poach” language from each Washington franchisee’s franchise agreement and to remove “no-poach” language from all other Kona Ice franchisees’ agreements upon renewal.

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

**WISCONSIN**

The Wisconsin Fair Dealership Law, Chapter 135 of the Wisconsin Statutes supersedes any provision of the Franchise Agreement if such provision is in conflict with that law. The Franchise Disclosure Document, the Franchise Agreement and the Supplemental Agreements are amended accordingly.

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

*(Signatures on following page)*



**APPLICABLE ADDENDA**

If any one of the preceding Addenda for specific states (“**Addenda**”) is checked as an “Applicable Addenda” below, then that Addenda shall be incorporated into the Franchise Disclosure Document, Franchise Agreement and any other specified agreement(s) entered into by us and the undersigned Franchisee. To the extent any terms of an Applicable Addenda conflict with the terms of the Franchise Disclosure Document, Franchise Agreement and other specified agreement(s), the terms of the Applicable Addenda shall supersede the terms of the Franchise Agreement.

- |                          |            |                          |              |                          |              |
|--------------------------|------------|--------------------------|--------------|--------------------------|--------------|
| <input type="checkbox"/> | California | <input type="checkbox"/> | Michigan     | <input type="checkbox"/> | Rhode Island |
| <input type="checkbox"/> | Hawaii     | <input type="checkbox"/> | Minnesota    | <input type="checkbox"/> | South Dakota |
| <input type="checkbox"/> | Illinois   | <input type="checkbox"/> | New York     | <input type="checkbox"/> | Virginia     |
| <input type="checkbox"/> | Iowa       | <input type="checkbox"/> | North Dakota | <input type="checkbox"/> | Washington   |
| <input type="checkbox"/> | Indiana    | <input type="checkbox"/> | Ohio         | <input type="checkbox"/> | Wisconsin    |
| <input type="checkbox"/> | Maryland   |                          |              |                          |              |

Dated: \_\_\_\_\_, 20\_\_

**FRANCHISOR:**

KONA ICE, INC.

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

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

**FRANCHISEE:**

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

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

Rev. 030123071823



## **EXHIBIT H**

### **CONTRACTS FOR USE WITH THE KONA ICE FRANCHISE**

The following contracts contained in Exhibit H are contracts that Franchisee is required to utilize or execute after signing the Franchise Agreement in the operation of the Kona Ice Business. The following are the forms of contracts that Kona Ice, Inc. uses as of the Issuance Date of this Franchise Disclosure Document. If they are marked “Sample,” they are subject to change at any time.



**EXHIBIT H-1**

**KONA ICE FRANCHISE**

**SAMPLE WAIVER AND RELEASE OF CLAIMS**

This Waiver and Release of Claims (“Release”) is made as of [DATE] by and among [Entity Name], d/b/a [“dba name”], a(n) [state] [entity name] (“Franchisee”), each of the undersigned individuals holding an ownership interest in Franchisee (“Owner(s),”) and (collectively with Franchisee, “Releasers”) in favor of Kona Ice, Inc., a Kentucky corporation (“Franchisor,” and together with Releasers, the “Parties”).

**WHEREAS**, Franchisor and Franchisee have entered into a Franchise Agreement (“Agreement”) pursuant to which Franchisee was granted the right to own and operate a Kona Ice business;

**WHEREAS**, (Franchisee has notified Franchisor of its desire to transfer the Agreement and all rights related thereto, or an ownership interest in Franchisee, to a transferee/enter into a successor franchise agreement/amend the Agreement) or (the Agreement is being terminated/or indicate other reason for the requirement of this waiver and release), and Franchisor has consented to such (transfer/successor franchise agreement/amendment/termination/other reason); and

**WHEREAS**, as a condition to Franchisor’s consent to (transfer the Agreement/enter into a successor franchise agreement/amend the Agreement/terminate the Agreement/other reason), Releasers have agreed to execute this Release upon the terms and conditions stated below.

**NOW, THEREFORE**, in consideration of Franchisor’s consent, and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, and intending to be legally bound, Releasers hereby agree as follows:

1. **Representations and Warranties.** Releasers represent and warrant they are duly authorized to enter into this Release and to perform the terms and obligations herein contained, and has not assigned, transferred, or conveyed, either voluntarily or by operation of law, any of its rights or claims against Franchisor or any of the rights, claims, or obligations being terminated and released hereunder. Each individual executing this Release on behalf of Franchisee represents and warrants that they are duly authorized to enter into and execute this Release on behalf of Franchisee. Releasers further represent and warrant that all individuals that currently hold a direct or indirect ownership interest in Franchisee are signatories to this Release.

2. **Release.** Releasers and their subsidiaries, affiliates, parents, divisions, successors and assigns, and all persons or firms claiming by, through, under, or on behalf of any or all of them, hereby release, acquit, and forever discharge Franchisor, any and all of their affiliates, parents, subsidiaries, or related companies, divisions, and partnerships, and its and their past and present officers, directors, agents, partners, shareholders, employees, representatives, successors and assigns, and attorneys, and the spouses of such individuals (collectively, the “Released Parties”), from any and all claims, liabilities, damages, expenses, actions, or causes of action which Releasers may now have or ever had, whether known or unknown, past or present, absolute or contingent, suspected or unsuspected, of any nature whatsoever, including without limiting the generality of the foregoing, all claims, liabilities, damages, expenses, actions, or causes of action directly or indirectly arising out of or relating to the execution and performance of the Agreement and the offer and sale of the franchise related thereto, except to the extent such liabilities are payable by the applicable indemnified party in connection with a third-party claim.



3. Nondisparagement. Releasors expressly covenant and agree not to make any false representation of facts, or to defame, disparage, discredit, or deprecate any of the Released Parties or otherwise communicate with any person or entity in a manner intending to damage any of the Released Parties, their business, or their reputation.

4. Confidentiality. Releasors agree to hold in strictest confidence and not disclose, publish, or use the existence of, or any details relating to, this Release to any third party without Franchisor's express written consent, except as required by law.

5. Miscellaneous.

a. Releasors agree that they have read and fully understands this Release and that the opportunity has been afforded to Releasors to discuss the terms and contents of said Release with legal counsel and/or that such a discussion with legal counsel has occurred.

b. This Release shall be construed and governed by the laws of the State of Kentucky.

c. Each individual and entity that comprises Releasors shall be jointly and severally liable for the obligations of such Releasors.

d. In the event that it shall be necessary for any Party to institute legal action to enforce or for the breach of any of the terms and conditions or provisions of this Release, the prevailing Party in such action shall be entitled to recover all of its reasonable costs and attorneys' fees.

e. All of the provisions of this Release shall be binding upon and inure to the benefit of the Parties and their current and future respective directors, officers, partners, attorneys, agents, employees, shareholders, and the spouses of such individuals, successors, affiliates, and assigns. No other party shall be a third-party beneficiary to this Release.

f. This Release constitutes the entire agreement the Parties and, as such, supersedes all prior oral and written agreements or understandings between and among the Parties regarding the subject matter hereof. This Release may not be modified except in a writing signed by all of the Parties. This Release may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same document.

g. If one or more of the provisions of this Release shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect or impair any other provision of this Release, but this Release shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein.

h. Releasors agree to do such further acts and things and to execute and deliver such additional agreements and instruments as may be reasonably required to consummate, evidence, or confirm the Release contained herein in the matter contemplated hereby.

i. This Release is inapplicable with respect to claims arising under the Washington Franchise Investment Protection Act, chapter 19.100 RCW, and the rules adopted thereunder in accordance with RCW 19.100.220.

*(Signatures on following page)*



**IN WITNESS WHEREOF**, the Parties have executed this Waiver and Release of Claims as of the date first written above.

**FRANCHISEE:**

\_\_\_\_\_, a  
\_\_\_\_\_

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

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

Its: \_\_\_\_\_

**FRANCHISEE:**

\_\_\_\_\_, a  
\_\_\_\_\_

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

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

Its: \_\_\_\_\_

**FRANCHISEE:**

\_\_\_\_\_, a  
\_\_\_\_\_

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

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

Its: \_\_\_\_\_



**FRANCHISEE'S OWNERS:**

Date \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name

**FRANCHISEE'S OWNERS:**

Date \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name

**FRANCHISEE'S OWNERS:**

Date \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name

Rev. 092122



## EXHIBIT H-2

### KONA ICE FRANCHISE

#### SAMPLE SYSTEM PROTECTION AGREEMENT

This System Protection Agreement (“Agreement”) is entered into by the undersigned (“you” or “your”) in favor of Kona Ice, Inc., a Kentucky corporation, and its successors and assigns (“us,” “we,” or “our”), upon the terms and conditions set forth in this Agreement.

**1. Definitions.** For purposes of this Agreement, the following terms have the meanings given to them below:

“*Competitive Business*” means (i) ~~any business providing shaved ice and beverage products and/or services, or any similar products and/or services that directly compete with shaved ice and beverage products or~~ (i) operates as a food truck or primarily serves food and/or beverages from a vehicle, kiosk or other moveable property; (ii) derives at least 5% or more of its gross sales from the offering of shaved ice, snow cones, ice cream or similar products; (iii) sells or offers to sell products the same as or similar to the type of products sold by the Franchised Business as the concept evolves over time; or (iv) provides or offers to provide services the same as or similar to the type of services sold by you; or (v) any business granting franchises or licenses to others to operate the type of business specified in subparagraphs (i)-(iv); provided that a franchise operated under a franchise agreement, with us or our affiliates, shall not be deemed a Competitive Business.

“*Copyrights*” means all works and materials for which we or our affiliate have secured common law or registered copyright protection and that we allow franchisees to use, sell, or display in connection with the marketing and/or operation of a Kona Ice business or the solicitation or offer of a Kona Ice franchise, whether now in existence or created in the future.

“*Franchisee*” means the Kona Ice franchisee for which you are a manager or officer.

“*Franchisee Territory*” means the territory granted to you pursuant to a franchise agreement with us.

“*Intellectual Property*” means, collectively or individually, our Marks, Copyrights, Know-how, and System.

“*Know-how*” means all of our trade secrets and other proprietary information relating to the development, construction, marketing, and/or operation of a Kona Ice business, including, but not limited to, methods, techniques, specifications, proprietary practices and procedures, policies, marketing strategies, and information comprising the System and the Manual.

“*Manual*” means our confidential operations manual for the operation of a Kona Ice business, which may be periodically modified by us.

“*Marks*” means the logotypes, service marks, and trademarks now or hereafter involved in the operation of a Kona Ice business, including “KONA ICE,” and any other trademarks, service marks, or trade names that we designate for use by a Kona Ice business. The term “Marks” also includes any distinctive trade dress used to identify a Kona Ice business, whether now in existence or hereafter created.

“*Prohibited Activities*” means any or all of the following: (i) owning, operating, or having any other interest (as an owner, partner, director, officer, employee, manager, consultant, shareholder, creditor, representative, agent, or in any similar capacity) in a Competitive Business (other than owning an interest



of five percent (5%) or less in a publicly-traded company that is a Competitive Business); (ii) diverting or attempting to divert any business from us (or one of our affiliates or franchisees); and/or (iii) inducing or attempting to induce any customer of ours (or of one of our affiliates or franchisees) to transfer their business to you or to any other person that is not then a franchisee of ours.

“*Restricted Period*” means the two (2)-year period after you cease to be a manager or officer of Franchisee’s Kona Ice business; provided, however, that if a court of competent jurisdiction determines that this period of time is too long to be enforceable, then the “*Restricted Period*” means the nine (9) month period after you cease to be a manager or officer of Franchisee’s Kona Ice business.

“*Restricted Territory*” means the geographic area within: (i) a 20-mile radius from Franchisee’s Kona Ice business (and including the premises of the approved location of Franchisee); and (ii) a 20-mile radius from all other Kona Ice businesses that are operating or under development as of the beginning of the Restricted Period; provided, however, that if a court of competent jurisdiction determines that the foregoing Restricted Territory is too broad to be enforceable, then the “*Restricted Territory*” means the geographic area within a 10-mile radius from Franchisee’s Kona Ice business (and including the premises of the approved location of Franchisee).

“*System*” means our system for the establishment, development, operation, and management of a Kona Ice business, including Know-how, proprietary programs and products, Manual, and operating system.

**2. Background.** You are a manager or officer of Franchisee. As a result of this relationship, you may gain knowledge of our System. You understand that protecting the Intellectual Property and our System are vital to our success and that of our franchisees and that you could seriously jeopardize our entire System if you were to unfairly compete with us. In order to avoid such damage, you agree to comply with the terms of this Agreement.

**3. Know-How and Intellectual Property.** You agree: (i) you will not use the Know-how in any business or capacity other than the Kona Ice business operated by Franchisee; (ii) you will maintain the confidentiality of the Know-how at all times; (iii) you will not make unauthorized copies of documents containing any Know-how; (iv) you will take such reasonable steps as we may ask of you from time to time to prevent unauthorized use or disclosure of the Know-how; and (v) you will stop using the Know-how immediately if you are no longer a manager or officer of Franchisee’s Kona Ice business. You further agree that you will not use all or part of the Intellectual Property or all or part of the System for any purpose other than the performance of your duties for Franchisee and within the scope of your employment or other engagement with Franchisee. These restrictions on Know-how, Intellectual Property and the System shall not apply to any information which is information publicly known or becomes lawfully known in the public domain other than through a breach of this Agreement or is required or compelled by law to be disclosed, provided that you will give reasonable notice to us to allow us to seek protective or other court orders.

**4. Unfair Competition During Relationship.** You agree not to unfairly compete with us at any time while you are a manager or officer of Franchisee’s Kona Ice business by engaging in any Prohibited Activities.

**5. Unfair Competition After Relationship.** You agree not to unfairly compete with us during the Restricted Period by engaging in any Prohibited Activities; provided, however, that the Prohibited Activity relating to having an interest in a Competitive Business will only apply with respect to a Competitive Business that is located within or provides competitive goods or services to customers who are located within the Restricted Territory. If you engage in any Prohibited Activities during the Restricted Period, then you agree that your Restricted Period will be extended by the period of time during which you were engaging in the Prohibited Activity.



**6. Immediate Family Members.** You acknowledge that you could circumvent the purpose of this Agreement by disclosing Know-how to an immediate family member (i.e., spouse, parent, sibling, child, grandparent or grandchild). You also acknowledge that it would be difficult for us to prove whether you disclosed the Know-how to family members. Therefore, you agree that you will be presumed to have violated the terms of this Agreement if any member of your immediate family: (i) engages in any Prohibited Activities during any period of time during which you are prohibited from engaging in the Prohibited Activities; or (ii) uses or discloses the Know-how. However, you may rebut this presumption by furnishing evidence conclusively showing that you did not disclose the Know-how to the family member.

**7. Covenants Reasonable.** You acknowledge and agree that: (i) the terms of this Agreement are reasonable both in time and in scope of geographic area; and (ii) you have sufficient resources and business experience and opportunities to earn an adequate living while complying with the terms of this Agreement. **YOU HEREBY WAIVE ANY RIGHT TO CHALLENGE THE TERMS OF THIS AGREEMENT AS BEING OVERLY BROAD, UNREASONABLE, OR OTHERWISE UNENFORCEABLE.**

**8. Breach.** You agree that failure to comply with the terms of this Agreement will cause substantial and irreparable damage to us and/or other Kona Ice franchisees for which there is no adequate remedy at law. Therefore, you agree that any violation of the terms of this Agreement will entitle us to injunctive relief. You agree that we may apply for such injunctive relief without bond, but upon due notice, in addition to such further and other relief as may be available at equity or law, and the sole remedy of yours in the event of the entry of such injunction will be the dissolution of such injunction, if warranted, upon hearing duly held (all claims for damages by reason of the wrongful issuance of any such injunction being expressly waived hereby). If a court requires the filing of a bond notwithstanding the preceding sentence, the parties agree that the amount of the bond shall not exceed \$1,000. None of the remedies available to us under this Agreement are exclusive of any other, but may be combined with others under this Agreement, or at law or in equity, including injunctive relief, specific performance, and recovery of monetary damages. Any claim, defense, or cause of action that you may have against us, our owners or our affiliates, or against Franchisee, regardless of cause or origin, cannot be used as a defense against our enforcement of this Agreement.

**9. Miscellaneous.**

a. If we pursue legal remedies against you because you have breached this Agreement and prevail against you, you agree to pay our reasonable attorneys' fees and costs in doing so.

b. This Agreement will be governed by, construed, and enforced under the laws of Kentucky, and the courts in that state shall have jurisdiction over any legal proceedings arising out of this Agreement.

c. Each section of this Agreement, including each subsection and portion thereof, is severable. If any section, subsection, or portion of this Agreement is unenforceable, it shall not affect the enforceability of any other section, subsection, or portion; and each party to this Agreement agrees that the court may impose such limitations on the terms of this Agreement as it deems in its discretion necessary to make such terms reasonable in scope, duration, and geographic area.

d. You and we both believe that the covenants in this Agreement are reasonable in terms of scope, duration, and geographic area. However, we may at any time unilaterally modify the terms of this Agreement upon written notice to you by limiting the scope of the Prohibited Activities, narrowing the definition of a Competitive Business, shortening the duration of the Restricted Period, reducing the geographic scope of the Restricted Territory, and/or reducing the scope of any other covenant imposed upon



you under this Agreement to ensure that the terms and covenants in this Agreement are enforceable under applicable law.

*(Signature Page Follows)*



EXECUTED on the date stated below.

Date \_\_\_\_\_ Signature \_\_\_\_\_

\_\_\_\_\_  
Typed or Printed Name

Date \_\_\_\_\_ Signature \_\_\_\_\_

\_\_\_\_\_  
Typed or Printed Name

Date \_\_\_\_\_ Signature \_\_\_\_\_

\_\_\_\_\_  
Typed or Printed Name

Rev. 120619



## EXHIBIT H-3

### KONA ICE FRANCHISE

#### SAMPLE CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (“Agreement”) is entered into by the undersigned (“you”) in favor of Kona Ice, Inc., a Kentucky corporation, and its successors and assigns (“us”), upon the terms and conditions set forth in this Agreement.

**1. Definitions.** For purposes of this Agreement, the following terms have the meanings given to them below:

“*Copyrights*” means all works and materials for which we or our affiliate(s) have secured common law or registered copyright protection and that we allow Kona Ice franchisees to use, sell, or display in connection with the marketing and/or operation of a Kona Ice Business, whether now in existence or created in the future.

“*Franchisee*” means the Kona Ice franchisee for which you are an employee, independent contractor, agent, representative, or supplier.

“*Intellectual Property*” means, collectively or individually, our Marks, Copyrights, Know-how, Manual, and System.

“*Know-how*” means all of our trade secrets and other proprietary information relating to the development, construction, marketing, and/or operation of a Kona Ice Business, including, but not limited to, methods, techniques, specifications, proprietary practices and procedures, policies, marketing strategies, and information comprising the System and the Manual.

“*Kona Ice Business*” means a business that provides flavored shaved ice, ice cream, and related products to the general public in a mobile environment and other related products and services using our Intellectual Property.

“*Manual*” means our confidential operations manual for the operation of a Kona Ice Business.

“*Marks*” means the logotypes, service marks, and trademarks now or hereafter involved in the operation of a Kona Ice Business, including “KONA ICE” and any other trademarks, service marks, or trade names that we designate for use by a Kona Ice Business. The term “Marks” also includes any distinctive trade dress used to identify a Kona Ice Business, whether now in existence or hereafter created.

“*System*” means our system for the establishment, development, operation, and management of a Kona Ice Business, including Know-how, proprietary programs and products, confidential operations manuals, and operating system.

**2. Background.** You are an employee, independent contractor, agent, representative, or supplier of Franchisee. Because of this relationship, you may gain knowledge of our Intellectual Property. You understand that protecting the Intellectual Property is vital to our success and that of our franchisees, and that you could seriously jeopardize our entire Franchise System if you were to use such Intellectual Property in any way other than as described in this Agreement. In order to avoid such damage, you agree to comply with this Agreement.

**3. Know-How and Intellectual Property: Nondisclosure and Ownership.** You agree:  
(i) you will not use the Intellectual Property in any business or capacity other than for the benefit of the



Kona Ice Business operated by Franchisee or in any way detrimental to us or to the Franchisee; (ii) you will maintain the confidentiality of the Intellectual Property at all times; (iii) you will not make unauthorized copies of documents containing any Intellectual Property; (iv) you will take such reasonable steps as we may ask of you from time to time to prevent unauthorized use or disclosure of the Intellectual Property; and (v) you will stop using the Intellectual Property immediately if you are no longer an employee, independent contractor, agent, representative, or supplier of Franchisee. You further agree that you will not use the Intellectual Property for any purpose other than the performing your duties for Franchisee and within the scope of your employment or other engagement with Franchisee.

The Intellectual Property is and shall continue to be the sole property of Kona Ice, Inc. You hereby assign and agree to assign to us any rights you may have or may acquire in such Intellectual Property. Upon the termination of your employment or engagement with Franchisee, or at any time upon our or Franchisee's request, you will deliver to us or to Franchisee all documents and data of any nature pertaining to the Intellectual Property, and you will not take with you any documents or data or copies containing or pertaining to any Intellectual Property.

**4. Immediate Family Members.** You acknowledge you could circumvent the purpose of this Agreement by disclosing Intellectual Property to an immediate family member (i.e., spouse, parent, sibling, child, or grandchild). You also acknowledge that it would be difficult for us to prove whether you disclosed the Intellectual Property to family members. Therefore, you agree you will be presumed to have violated the terms of this Agreement if any member of your immediate family uses or discloses the Intellectual Property. However, you may rebut this presumption by furnishing evidence conclusively showing you did not disclose the Intellectual Property to the family member.

**5. Covenants Reasonable.** You acknowledge and agree that: (i) the terms of this Agreement are reasonable both in time and in scope of geographic area; and (ii) you have sufficient resources and business experience and opportunities to earn an adequate living while complying with the terms of this Agreement. **YOU HEREBY WAIVE ANY RIGHT TO CHALLENGE THE TERMS OF THIS AGREEMENT AS BEING OVERLY BROAD, UNREASONABLE, OR OTHERWISE UNENFORCEABLE.**

**6. Breach.** You agree that failure to comply with this Agreement will cause substantial and irreparable damage to us and/or other Kona Ice franchisees for which there is no adequate remedy at law. Therefore, you agree that any violation of this Agreement will entitle us to injunctive relief. You agree that we may apply for such injunctive relief, without bond, but upon due notice, in addition to such further and other relief as may be available at equity or law, and the sole remedy of yours, in the event of the entry of such injunction, will be the dissolution of such injunction, if warranted, upon hearing duly held (all claims for damages by reason of the wrongful issuance of any such injunction being expressly waived hereby). If a court requires the filing of a bond notwithstanding the preceding sentence, the parties agree that the amount of the bond shall not exceed \$1,000. None of the remedies available to us under this Agreement are exclusive of any other, but may be combined with others under this Agreement, or at law or in equity, including injunctive relief, specific performance, and recovery of monetary damages. Any claim, defense, or cause of action you may have against us or against Franchisee, regardless of cause or origin, cannot be used as a defense against our enforcement of this Agreement.

#### **7. Miscellaneous.**

a. Although this Agreement is entered into in favor of Kona Ice, Inc., you understand and acknowledge that your employer/employee, independent contractor, agent, representative, or supplier relationship is with Franchisee and not with us, and for all purposes in connection with such relationship, you will look to Franchisee and not to us.



b. If we pursue legal remedies against you because you have breached this Agreement and prevail against you, you agree to pay our reasonable attorney fees and costs in doing so.

c. This Agreement will be governed by, construed, and enforced under the laws of Kentucky, and the courts in that state shall have jurisdiction over any legal proceedings arising out of this Agreement.

d. Each section of this Agreement, including each subsection and portion, is severable. If any section, subsection, or portion of this Agreement is unenforceable, it shall not affect the enforceability of any other section, subsection, or portion; and each party to this Agreement agrees that the court may impose such limitations on the terms of this Agreement as it deems in its discretion necessary to make such terms enforceable.

EXECUTED on the date stated below.

Date \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name

Date \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name

Date \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name

Rev. 032916



**EXHIBIT H-4**

**KONA ICE FRANCHISE**

**SAMPLE APPROVAL OF REQUESTED ASSIGNMENT**

This Approval of Requested Assignment (“**Agreement**”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between Kona Ice, Inc. (“**Franchisor**”), a Kentucky corporation, \_\_\_\_\_ (“**Former Franchisee**”), the undersigned owners of Former Franchisee (“**Owners**”) and \_\_\_\_\_, a [State] [corporation/limited liability company] (“**New Franchisee**”).

**RECITALS**

WHEREAS, Franchisor and Former Franchisee entered into that certain franchise agreement dated \_\_\_\_\_, 20\_\_\_\_ (“**Former Franchise Agreement**”), in which Franchisor granted Former Franchisee the right to operate a Kona Ice franchise located at \_\_\_\_\_ (“**Franchised Business**”); and

WHEREAS, Former Franchisee desires to assign (“**Requested Assignment**”) the Franchised Business to New Franchisee, New Franchisee desires to accept the Requested Assignment of the Franchised Business from Former Franchisee, and Franchisor desires to approve the Requested Assignment of the Franchised Business from Former Franchisee to New Franchisee upon the terms and conditions contained in this Agreement, including that New Franchisee sign Franchisor’s current form of franchise agreement together with all exhibits and attachments thereto (“**New Franchise Agreement**”), contemporaneously herewith.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements herein contained, the parties hereto hereby covenant, promise, and agree as follows:

1. Payment of Fees. In consideration for the Requested Assignment, Former Franchisee acknowledges and agrees to pay Franchisor the Transfer Fee, as required under the Franchise Agreement (“**Franchisor’s Assignment Fee**”).

2. Assignment and Assumption. Former Franchisee hereby consents to assign all of its rights and delegate its duties with regard to the Former Franchise Agreement and all exhibits and attachments thereto from Former Franchisee to New Franchisee, subject to the terms and conditions of this Agreement, and conditioned upon New Franchisee’s signing the New Franchise Agreement pursuant to Section 5 of this Agreement.

3. Consent to Requested Assignment of Franchised Business. Franchisor hereby consents to the Requested Assignment of the Franchised Business from Former Franchisee to New Franchisee upon receipt of the Franchisor’s Assignment Fee from Former Franchisee and the mutual execution of this Agreement by all parties. Franchisor waives its right of first refusal set forth in the Former Franchise Agreement.

4. Termination of Rights to the Franchised Business. The parties acknowledge and agree that effective upon the date of this Agreement, the Former Franchise Agreement shall terminate and all of Former Franchisee’s rights to operate the Franchised Business are terminated and that from the date of this



Agreement only New Franchisee shall have the sole right to operate the Franchised Business under the New Franchise Agreement. Former Franchisee and the undersigned Owners agree to comply with all of the covenants in the Former Franchise Agreement that expressly or by implication survive the termination, expiration, or transfer of the Former Franchise Agreement. Unless otherwise precluded by state law, Former Franchisee shall execute Franchisor's current form of General Release Agreement.

5. New Franchise Agreement. New Franchisee shall execute the New Franchise Agreement for the Franchised Business (as amended by the form of Addendum prescribed by Franchisor, if applicable), and any other required contracts for the operation of a Kona Ice franchise as stated in Franchisor's Franchise Disclosure Document.

6. Former Franchisee's Contact Information. Former Franchisee agrees to keep Franchisor informed of its current address and telephone number at all times during the three-year period following the execution of this Agreement.

7. Acknowledgement by New Franchisee. New Franchisee acknowledges and agrees that the purchase of the rights to the Franchised Business ("**Transaction**") occurred solely between Former Franchisee and New Franchisee. New Franchisee also acknowledges and agrees that Franchisor played no role in the Transaction and that Franchisor's involvement was limited to the approval of Requested Assignment and any required actions regarding New Franchisee's signing of the New Franchise Agreement for the Franchised Business. New Franchisee agrees that any claims, disputes, or issues relating New Franchisee's acquisition of the Franchised Business from Franchisee are between New Franchisee and Former Franchisee, and shall not involve Franchisor.

8. Representation. Former Franchisee warrants and represents that it has not heretofore assigned, conveyed, or disposed of any interest in the Former Franchise Agreement or Franchised Business. New Franchisee hereby represents that it received Franchisor's Franchise Disclosure Document and did not sign the New Franchise Agreement or pay any money to Franchisor or its affiliate for a period of at least 14 calendar days after receipt of the Franchise Disclosure Document.

9. Notices. Any notices given under this Agreement shall be in writing, and if delivered by hand, or transmitted by U.S. certified mail, return receipt requested, postage prepaid, or via telegram or telefax, shall be deemed to have been given on the date so delivered or transmitted, if sent to the recipient at its address or telefax number appearing on the records of the sending party.

10. Further Actions. Former Franchisee and New Franchisee each agree to take such further actions as may be required to effectuate the terms and conditions of this Agreement, including any and all actions that may be required or contemplated by the Former Franchise Agreement.

11. Affiliates. When used in this Agreement, the term "**Affiliates**" has the meaning as given in Rule 144 under the Securities Act of 1933.

12. Miscellaneous. This Agreement may not be changed or modified except in a writing signed by all of the parties hereto. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same document. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

13. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Kentucky.



**IN WITNESS WHEREOF**, the parties have executed this Agreement under seal, with the intent that this be a sealed instrument, as of the day and year first above written.

**FRANCHISOR:**

KONA ICE, INC.

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

Printed Name: \_\_\_\_\_

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

**FORMER FRANCHISEE:**

\_\_\_\_\_

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

Printed Name: \_\_\_\_\_

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

**NEW FRANCHISEE:**

\_\_\_\_\_

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

Printed Name: \_\_\_\_\_

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

Rev. 031821



**EXHIBIT H-5**

**KONA ICE FRANCHISE**

**ADDITIONAL FRANCHISE RESERVATION AGREEMENT**

This Additional Franchise Reservation Agreement (“**AFR Agreement**”) is made between **Kona Ice, Inc.** (“**us**” or “**we**”) and \_\_\_\_\_ (“**you**”) is made and entered into \_\_\_\_, 20\_\_ (“**Effective Date**”).

1. **General Description of Agreement.** This AFR Agreement sets out the terms and the conditions under which we will reserve a Kona Ice franchise and territory (each, a “**Reserved Business**”).

a. In order to establish a Kona Ice franchise, you will be required to enter into a Franchise Agreement for the Reserved Business, the form of which will be our then-current form Franchise Agreement then being offered to new Kona Ice franchisees (that form of Franchise Agreement is referred to in this AFR Agreement as the “**Franchise Agreement**”).

b. You acknowledge and represent to us that you understand that this AFR Agreement is not a Franchise Agreement, and that you have no right to open a Kona Ice business under this AFR Agreement. You will be permitted to open a Kona Ice franchise only if: (a) we approve you to do so; (b) you and we sign a Franchise Agreement; and (c) you pay us all applicable initial fees that are due under the Franchise Agreement.

2. **Term.** The term of this AFR Agreement shall commence on the Effective Date and, unless otherwise negotiated, terminated or extended as provided herein, shall continue until the earlier of (i) the Expiration Date (as defined in Section 5), or (ii) the date of execution of the Franchise Agreement for the Reserved Business (“**Term**”).

3. **Reserved Territory.** The territory covered under this AFR Agreement is referred to as the “**Reserved Territory**.” The specific Reserved Territory is:

<b>Reserved Territory Zip Codes</b>

If you fail to purchase a Kona Ice franchise for the Reserved Territory during the term, you will not be able to enter into another agreement to reserve the Reserved Territory.

4. **Deadline.** You must sign a Franchise Agreement for your Reserved Business for the Reserved Territory no later than one (1) year from the Effective Date (the “**Deadline**”).

5. **Right of First Refusal.** If you do not meet the Deadline for any reason, we will allow you a right of first refusal for the Reserved Territory (“**ROFR**”) subject to the restrictions contained in this Section. This ROFR will shall expire on the earlier of the execution of a Franchise Agreement for the Reserved Business, or 12 months after the Deadline (“**Expiration Date**”). If, after the Deadline, a qualified prospective franchisee has applied to operate a Kona Ice business in the Reserved Territory, then we will provide to you (i) written notification stating the same and (ii) the then-current Franchise Disclosure Document and franchise agreement (“**Franchisor’s Notice**”). You will have twenty days from the receipt



of Franchisor’s Notice to sign a Franchise Agreement for the Reserved Territory and pay the applicable fees.

You will forfeit your ROFR upon the occurrence of the earlier of the occurrence of any of the following: (1) you indicate in writing that you do not want to exercise this ROFR; and (2) you decline to exercise your rights under this Section within the twenty day period described above.

6. **Reservation Fee.** At the time of signing this AFR Agreement, you must pay us a nonrefundable “**Reservation Fee**” of ten thousand dollars (\$10,000). The Reservation Fee is paid in consideration of our agreement not to award franchise rights to any portion of the Reserved Territory prior to the Deadline, subject to the terms of this Agreement. This amount is fully earned by us when we sign this AFR Agreement. This Additional Franchise Reservation Deposit will be applied towards the initial franchise fee that you must pay us under Franchise Agreement for the Reserved Business if you proceed with the purchase of the Reserved Business and a brand new KEV. If you do not sign a Franchise Agreement for the Reserved Business for any reason, we will keep the Reservation Fee and you will not be entitled to any refund. Additionally, if you purchase a used KEV, you will forfeit the Reservation Fee.

7. **Assignment.** We have the unrestricted right to assign this AFR Agreement without prior notice to you. You may not assign this AFR Agreement.

8. **Defaults.** You will be in default under this AFR Agreement if any other agreement between you (and/or your affiliates) and us (and/or our affiliates) is terminated. If you are in default under this AFR Agreement, we will have the right to terminate AFR Agreement by giving you written notice of termination, which will take effect immediately (unless otherwise required under applicable law).

9. **Entire Agreement.** This Agreement incorporates the full and complete agreement between the parties concerning the subject of this AFR Agreement, and supersedes any and all prior correspondence, conversations, representations, or statements of whatever nature concerning the subject of this AFR Agreement. This AFR Agreement shall be interpreted under the laws of the State of Kentucky without regard to its conflict of laws principles. This AFR Agreement may not be modified without the written consent of both parties

**“Us”**  
**Kona Ice, Inc.**

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Its:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

**“You” (Your Franchise Entity Name)**

\_\_\_\_\_  
**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Your Title:** \_\_\_\_\_  
**Date:** \_\_\_\_\_



**EXHIBIT H-6**

**KONA ICE FRANCHISE**

**PROMISSORY NOTE - EAGLE FINANCIAL SERVICES, INC.**



**EAGLE FINANCIAL SERVICES, INC.**  
**CONSENT AND NOTICE REGARDING ELECTRONIC COMMUNICATIONS**

1. **Electronic Signature Agreement.** By selecting the "I Accept" button, you are signing this Agreement electronically. You agree your electronic signature is the legal equivalent of your manual signature on this Agreement. By selecting "I Accept" you consent to be legally bound by this Agreement's terms and conditions. You further agree that your use of a key pad, mouse or other device to select an item, button, icon or similar act/action, or to otherwise provide or in accessing or making any transaction regarding any agreement, acknowledgment, consent form, disclosure or condition constitutes your signature (hereafter referred to as "E-Signature"), acceptance and assent to it as if actually signed by you in writing. You also agree that no certification authority or other third party verification is necessary to validate your E-Signature and that the lack of such certification or third party verification will not in any way affect the enforceability of your E-Signature or any resulting contract between you and Eagle Financial Services, Inc. You further agree that each use of your E-Signature in obtaining Eagle Financial Services, Inc.'s online service(s) constitutes your agreement to be bound by the terms and conditions thereof.

2. **Consent to Electronic Delivery.** You specifically agree to receive and/or obtain any and all Eagle Financial Services, Inc.-related "Electronic Communications" as defined below. The term "Electronic Communications" includes, but is not limited to, any and all current and future notices and/or disclosures that various federal and/or state laws or regulations require that we provide to you, as well as such other documents, statements, data, records and any other communications including copies of these loan documents. You acknowledge that, for your records, you are able to retain Electronic Communications by printing and/or downloading and saving this Agreement and any other agreements and Electronic Communications, documents, or records that you agree to using your E-Signature. You accept Electronic Communications as reasonable and proper notice, for the purpose of any and all laws, rules, and regulations, and to the same extent otherwise prohibited and agree that such electronic form fully satisfies any requirement that such communications be provided to you in writing or in a form that you may keep.

3. **Paper version of Electronic Communications.** You may request a paper version of an Electronic Communication by contacting Eagle Financial Services, Inc. 7791 Dixie Hwy, Florence KY 41043 / 859-525-3870.

4. **Revocation of electronic delivery.** You have the right to withdraw your consent to receive/obtain communications at any time. You acknowledge that Eagle Financial Services, Inc. reserves the right to restrict or terminate your access to electronic access if you withdraw your consent to receive Electronic Communications. If you wish to withdraw your consent, contact us at Eagle Financial Services, Inc. 7791 Dixie Hwy, Florence KY 41043 / 859-525-3870.

5. **Controlling Agreement.** This Agreement supplements and modifies other agreements that you may have with Eagle Financial Services, Inc. To the extent that this Agreement and another agreement contain conflicting provisions, the provisions in this agreement will control (with the exception of provisions in another agreement for an electronic device which provisions specify the necessary hardware, software and operating system, in which such other provision controls). All other obligations of the parties remain subject to the terms and conditions of any other agreement. To obtain electronic services and communications, indicate your consent to the terms and conditions of this Agreement by clicking on the "I Accept" button. It is recommended that you print a copy of this Agreement for future reference.

6. **Location of Execution.** This Electronic Signature Agreement and the related contract are deemed executed in the Commonwealth of Kentucky.

"I Accept"

Date

\*\*\*\*\* X102 \*



**NOTE AND SECURITY AGREEMENT**

Lender Name: Eagle Financial Services, Inc.  
 Lender Address: 779J Dixie Highway  
 Florence, KY 41042  
 Lender Phone: 859-525-3070

In this Note, the words "you", "yours" and "your" mean each and all of those signed to it as a Borrower. The words "we", "us" and "our" mean Payco Lender. We have written this Note & Security Agreement ("Loan") in plain language because we want you to understand its terms. Please read your copy of this Loan carefully and feel free to ask us any questions you may have.

**THE TERMS OF THIS LOAN SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. TERMS OR ORAL PROMISES WHICH ARE NOT CONTAINED IN THIS WRITTEN LOAN MAY NOT BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS LOAN ONLY BY ANOTHER WRITTEN AGREEMENT BETWEEN YOU AND US. YOU AGREE TO COMPLY WITH THE TERMS AND CONDITIONS OF THIS LOAN. THIS LOAN IS NOT CANCELABLE. YOU AGREE THAT THE PROCEEDS OF THE LOAN WILL BE USED FOR BUSINESS PURPOSES ONLY AND NOT FOR PERSONAL, FAMILY OR DOMESTIC PURPOSES.**

**YOU CERTIFY THAT ALL THE INFORMATION GIVEN IN THIS LOAN AND YOUR APPLICATION WAS CORRECT AND COMPLETE WHEN THIS LOAN WAS SIGNED. THIS LOAN IS NOT BINDING UPON US OR FUTURE LENDERS AND LENDERS WE PURCHSE THIS LOAN. BY SIGNING THIS AGREEMENT BELOW, YOU AGREE TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS CONTAINED HEREIN.**

Date of Note: All Borrower(s): 1) _____ 2) _____  Borrower with Entity Tax ID#: 1) _____	Loan & Security Agreement #: Address(es): 1) _____ 2) _____ _____  Entity Fed Tax ID#: 1) _____						
Phone Number: _____ Billing Address: _____ _____	Cell Number: _____ E-Mail Address: _____						
Equipment Description: <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;">Year</th> <th style="width: 45%;">Manufacturer, Model and Description</th> <th style="width: 40%;">VIN/Serial Number</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>		Year	Manufacturer, Model and Description	VIN/Serial Number			
Year	Manufacturer, Model and Description	VIN/Serial Number					



Equipment Location Address:

Transaction Terms/ Payment Schedule:

Principal Amount:	Interest Rate:	Term (in months):	Payment Amount:	Payable Monthly with First Payment Due:
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Deferments:

**If Borrower is contractually current on all obligations hereunder,** Lender will offer the ability to Defer payments based upon and subject to the following:

- A Deferment payment is a \$100 payment made at the time of a regularly scheduled payment for the normal Payment Amount.
- Prior to making a Deferment payment, Borrower must contact Lender by phone to confirm the availability of each proposed Deferment.
- In most instances a Deferment payment will be insufficient to maintain interest and negative amortization will occur. This means that interest will build for the duration of the Deferment.

- 
- Upon an event of Default as referenced below, no Deferment shall be allowed.

This Loan is eligible for Deferments based on the following schedule:

- For the 12 months after the Date of Note you may Defer up to four (4) single monthly payments.
- For the 13 - 24 months after the Date of Note you may Defer up to two (2) single monthly payments.
- No more than four (4) Deferments may be used consecutively.
- Deferments are not cumulative, may not be banked, and may only be used in the period(s) specified above.
- Deferments, whether exercised or not, will not be available after the 24<sup>th</sup> month after the Original Note.

#### ADDITIONAL TERMS, CONDITIONS, AND AGREEMENT

- LIABILITY** For value received, the Borrower, if more than one, jointly and severally, hereto unconditionally promises to pay to the order of Lender the amounts described above and herein until paid in full to the extent we become aware of adverse credit information about you and/or the Guarantors after we originated this Loan and prior to our acceptance of this Loan, we may at our sole discretion, cancel this loan. **ONCE WE ACCEPT THIS LOAN, YOU MAY NOT CANCEL IT DURING THE FULL LOAN TERM.** You

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agree to be bound by all the terms of this Loan from the date you execute this Loan ("Effective Date") until you have paid the Loan in full.

2. **DELIVERY, ACCEPTANCE OF EQUIPMENT AND COMMENCEMENT OF THE LOAN.** Borrower hereby certifies to Lender that the Equipment has been duly ordered, an invoice for the Equipment has been issued and the Equipment will be delivered to the location where it will be used. Borrower acknowledges that signature of this document confirms that Equipment will be properly installed and in good working order and constitutes an unconditional acceptance of the Equipment upon delivery and hereby authorizes the commencement of the Loan ("Commencement Date").
3. **PAYMENTS.** You agree to pay us the Loan Payments when each payment is due. If we designate the Loan Payment to begin later than the Commencement Date, you will pay interim interest on the Principal Amount from the commencement date until the first loan payment due date. Interim interest shall be equal to the pro rata portion of the daily equivalent of the Loan interest rate. Payment is due whether or not you receive an invoice from us. Restrictive endorsements on checks you send to us will not reduce your obligations to us. For any payment which is not received by its due date, you agree to pay a late charge equal to the greater of 5% of the amount due or \$25.00 (not to exceed the maximum amount permitted by law).
4. **UNCONDITIONAL OBLIGATION.** YOU AGREE THAT YOU ARE UNCONDITIONALLY OBLIGATED TO PAY ALL PAYMENTS AND ANY OTHER AMOUNTS DUE UNDER THIS LOAN FOR THE FULL LOAN TERM EVEN IF THE EQUIPMENT IS DAMAGED OR DESTROYED, IF IT IS DEFECTIVE OR YOU HAVE TEMPORARY OR PERMANENT LOSS OF ITS USE. YOU ARE NOT ENTITLED TO REDUCE OR SET OFF AGAINST PAYMENT OR OTHER AMOUNTS DUE UNDER THIS LOAN FOR ANY REASON WHATSOEVER.
5. **DISCLAIMER OF WARRANTIES.** THE EQUIPMENT IS BEING USED BY YOU IN AS IS CONDITION. NO INDIVIDUAL IS AUTHORIZED TO CHANGE ANY PROVISION OF THIS LOAN. YOU AGREE THAT WE HAVE NOT MANUFACTURED THE EQUIPMENT OR LICENSED THE EQUIPMENT AND THAT YOU HAVE SELECTED THE EQUIPMENT BASED UPON YOUR OWN JUDGMENT. YOU HAVE NOT RELIED ON ANY STATEMENTS WE OR OUR EMPLOYEES HAVE MADE. WE HAVE NOT MADE AND DO NOT MAKE ANY EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES WHATSOEVER, INCLUDING WITHOUT LIMITATION, THE EQUIPMENT MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SUITABILITY, DESIGN, CONDITION, DURABILITY, OPERATION, QUALITY OF MATERIALS OR WORKMANSHIP OR COMPLIANCE WITH SPECIFICATIONS OR APPLICABLE LAW. You are aware of the name of the Equipment manufacturer. You agree to contact the manufacturer for a description of your warranty rights, if any. You agree to settle any dispute you may have regarding performance of the Equipment directly with the manufacturer of the Equipment.
6. **SECURITY INTEREST.** To secure all of your obligations to us under this Loan you hereby grant us a security interest in (a) the Equipment to the extent of your interests in the Equipment, (b) involving attached or added to the Equipment at any time, (c) any money or property from the sale of the Equipment, and (d) any money from an insurance claim if the Equipment is lost or damaged. You agree that the security interest will not be affected if this loan is changed in any way. As required, you agree, at your own expense, to register the Equipment in your name at your address set forth above and to title the Equipment as you, showing us as secured party or lien holder. You hereby irrevocably authorize us at any time and from time to time to file in any (Uniform Commercial Code) jurisdiction any financing statements prepared and filed in your behalf by us (or our agent) with the same force and effect as if you had signed such financing statements. If we request, you agree to sign financing statements in order for us to publicly record our security interest. This Loan or a copy of this Loan shall be sufficient as a financing statement and may be filed as such. This Loan may be executed in counterparts, and electronic signatures shall suffice as originals.
7. **USE, MAINTENANCE, AND REPAIR.** You will give us reasonable access to the Equipment location so that, upon reasonable request, we can check the equipment's existence, condition and proper maintenance. You will use the Equipment in the manner in which it was intended, as required by all

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applicable manuals and instructions and keep it legible for any manufacturer's certification and/or standard full-service maintenance contract. At your own cost and expense, you will keep the Equipment in good repair, condition and working order, ordinary wear and tear expected. All replacement parts and repairs will become our property. You will not make any permanent alterations to the Equipment.

8. **TAXES.** You agree to pay when due, all taxes, fines, and penalties relating to this Loan or the Equipment that are now or in the future assessed or levied by any state, local or other government authority. We do not have to comply with any taxes, fines or penalties. If required, you will pay estimated property taxes as required and all other taxes and charges, relating to the ownership, purchase, possession or use of the Equipment.
9. **INDEMNITY.** We are not responsible for any injuries, damages, penalties, claims or losses, including legal expenses, incurred by you or any other person caused by the transportation, installation, selection, purchase, loan, ownership, possession, modification, maintenance, condition, operation, use, return or disposition of the Equipment. You agree to reimburse us for and defend us against any claims for such losses, damages, penalties, claims, injuries, or expenses. This indemnity continues even after the Loan has expired for acts or omissions which occurred during the Term.
10. **IDENTIFICATION.** You authorize us to insert or correct missing information on this Loan, including your official name, serial numbers, and any other information describing the Equipment. We will send you copies of the changes. You will attach to the Equipment any name plates or stickers we provide you.
11. **LOSS OR DAMAGE.** You are responsible for any loss of the Equipment from any cause at all, whether or not insured. If any item of the Equipment is lost, stolen or damaged, you will promptly notify us of such an event. Then, at our option, you will repair the Equipment so that it is in good condition and working order. If you have satisfied your obligations under this Section and you are not in default, we will forward to you any insurance proceeds which we receive for such lost, damaged, or destroyed item. If you are in default, we will apply any insurance proceeds we receive to reduce your obligations under this Loan.
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12. **INSURANCE.** During the term of a Loan, you will keep the Equipment insured at your sole cost and expense, against all risks of fire or damage in an amount not less than the replacement cost of the Equipment showing us as loss payee with our interest may appear. You will also obtain and maintain for the term of a Loan, comprehensive public liability insurance in the amount of \$2,000,000 showing us as additional insured. You will pay all premiums for such insurances. If you do not provide such insurances, you agree that we have the right, but not the obligation, to obtain such insurance and charge you for all costs. You irrevocably appoint us as your attorney-in-fact to make claims for, receive payment of, and execute and endorse all documents, checks or drafts in payment for loss or damage under said insurance policies.
13. **DEFAULT.** You will be in default under this Loan if any of the following happens: (a) we do not receive any payment or other payment due hereunder 10 days after its due date (no prior notice from us to you or such default is necessary), or (b) you or any of your guarantors become insolvent, are liquidated, dissolve, merge, transfer substantially all stock or assets, stop doing business, or assign rights or property for the benefit of creditors, or (c) a petition is filed by or against you or any of your guarantors under any bankruptcy or insolvency law which remains undismissed or undischarged for sixty (60) days, or (d) (for individuals) you or any of your guarantors die or have a guardian appointed, or (e) any representation you may have made in this Loan shall prove to be false or misleading in any material aspect, (f) any of your guarantors breach their guaranty by not correcting the default within 10 days after we send your written notice of the default, (g) in our judgment any adverse change occurs in your ability to repay this Loan pursuant to its terms.
14. **REMEDIES.** Upon the occurrence of default, we may, in our sole discretion, do any or all of the following: (a) provide written notice to you of default, (b) as liquidated damages for loss of a bargain and not as a penalty, declare due and payable (i) any and all amounts which may be then due and payable by you to us under this Loan Agreement. We have the right to require you to make the Equipment available to us for repossession during reasonable business hours or we may repossess the Equipment, so long as we do

(PLEASE PRINT)



not breach the power in doing so, or we may use legal process in compliance with applicable law pursuant to court order to have the Equipment repossessed. You will not make any claims against us or the Equipment for trespass, damage or any other reason. If we take possession of the Equipment, we may (a) sell or lease the Equipment to public or private sale or lease, and/or (b) exercise such other rights as may be allowed by applicable law. Although you agree that we have no obligation to sell the Equipment, if we do sell the Equipment, we will apply any proceeds we receive to reduce your obligations under this Section and any surplus remaining shall be returned to you. You agree (a) that we only need to give you 10 days advance notice of any sale and no notice of advertising, (b) to pay all of the costs we incur to enforce our rights against you including attorney's fees, and (c) that we will retain all of our rights against you even if we do not choose to enforce them at the time of your default. In addition to any other remedy permitted by law, we may at any time, without notice, at our option, proceed to enforce and protect our rights by an action in law or in equity or by any other appropriate proceedings.

15. **REPAIRS OR CONDITION:** If (A) a default occurs, you will immediately return the Equipment, manuals and accessories to any location(s) and aboard any carrier(s) with prepaid freight and insurance as we may designate in the continental United States. The Equipment must be maintained in accordance with Section 7, and in "Average Saleable Condition" which means that all of the Equipment is immediately available for use by a third party buyer, user or borrower, other than yourself, without the need for any repair or refurbishment. You will pay us for any missing or defective parts or accessories.
16. **YOUR REPRESENTATIONS:** You state for our benefit that as of the date of this Loan (a) you have the lawful power and authority to enter into this Loan, (b) the individuals signing this Loan have been duly authorized to do so on your behalf, (c) by entering into this Loan you will not violate any law or other agreement to which you are a party, (d) you are not aware of anything that will have a material negative effect on your ability to satisfy your obligation under this Loan, and (e) all financial information you have provided us is true and accurate and provides a good representation of your financial condition.
17. **YOUR PROMISES:** In addition to the other provisions of this Loan, you agree that during the term of this Loan (a) you will promptly notify us in writing if you move your principal place of business, if you change the name of your business, or if there is a change in your ownership, (b) you will provide to us such financial information as we may reasonably request from time-to-time, and (c) you will take any action we reasonably request to protect our rights to the equipment and to meet your obligations under this Loan.
18. **ASSIGNMENT YOU WILL NOT SELL, TRANSFER, ASSIGN, PLEDGE, LEND OR PART WITH POSSESSION OF THE EQUIPMENT, OR FILE, OR PERMIT A LITIGATION TO BE FILED, AGAINST THE EQUIPMENT:** We may, without notifying you, sell, assign, or transfer this Loan and our interests in the equipment. You agree that if we do so, the new owner (and any subsequent owners) will have the same rights and benefits that we now have, but will not have to perform any of our obligations. You agree that the rights of the new owner will not be subject to any claims, defenses, or set-off that you may have against us. Any such assignment, sale, or transfer of this Loan or Equipment will not relieve us of any obligations we may have to you under this Loan. If you relieve us of any obligations we may have to you under this Loan, if you are given notice of a new owner of this Loan, you agree to respond to any requests about this Loan and, if directed by us, to pay the new owner all payments and other amounts due under this Loan.
19. **DEFAULT BOX, EXPENSES, OVERDUE PAYMENT:** You agree that we can, but do not have to, take on your behalf any action which you fail to take as required by this Loan, and our expenses will be in addition to of the payment which you owe us. To the extent allowed by law, any late payment or non-payment of any past due amount will accrue interest at the Contract rate from the day that you paid in full. You agree to pay the costs of collection and/or litigation (including attorney fees, plus interest at the Contract rate until paid in full).
20. **STOP CHECK CHARGES:** You promise to pay a check collection charge of 25% plus any amount charged to us by any other financial institutions for each check, negotiable order of withdrawal, share draft, or other negotiable instrument returned or dishonored for any reason.

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21. **MISCELLANEOUS.** This Loan contains our entire agreement and supersedes any conflicting provision of any equipment purchase order or any other agreement. **TIME IS OF THE ESSENCE IN THIS LOAN.** If a court finds any provision of this Loan to be unenforceable, the remaining terms of this Loan shall remain in effect. You authorize us (or our agent) to (a) obtain credit reports, (b) track such other credit inquiries as we may deem necessary, and (c) furnish payment history information to payment reporting agencies. To the extent permitted by law, we may charge a fee to cover our documentation and investigation costs.
22. **NOTICES.** All of your written notices to us must be certified mail or recognized overnight delivery service, postage prepaid, to us at our address stated in this Loan, or by facsimile transmission to our facsimile telephone number, with and confirmation of receipt. All of our notices to you may be sent first class mail, postage prepaid, to your address stated in this Loan. At any time after this Loan is signed, you or we may change an address or facsimile telephone number by giving notice to the other of the change.
23. **WAIVERS.** WE AND YOU EACH AGREE TO WAIVE AND TO TAKE ALL NECESSARY STEPS TO WAIVE ALL RIGHTS TO A JURY TRIAL. ANY ACTION YOU TAKE AGAINST US FOR ANY DEFAULT, INCLUDING ALLEGED BREACH OF WARRANTY OR INDEMNITY, MUST BE BRINGED WITHIN ONE (1) YEAR OF THE DELIVERY OF THE EQUIPMENT. We will not be liable for specific performance of this Loan for any losses, damages, delay or failure to deliver the Equipment. No failure of us to exercise any of our rights hereunder shall be deemed a waiver of any such rights or of any default, demand, presentment, protest, notice of dishonor, notice of protest, notice of default, and all other stop defenses are hereby waived by you.
24. **COMMERCIAL PROMISSORY NOTE.** You certify that the proceeds of this loan are to be used for business purposes. If this note is renewed, in whole or in part, or a previous obligation, the acceptance of this note by us shall not constitute a payment but rather a continuation of the previous obligation.
25. **JURISDICTION.** All rights and liabilities hereunder shall be governed and limited by and construed in accordance with the laws of the Commonwealth of Kentucky and the parties agree that the Boone County Kentucky Circuit Court is the exclusive Court to adjudicate any controversies related to this note. You specifically agree and do waive any defense based upon forum non conveniens. You also agree that this agreement and any related guarantees or other documents are deemed executed in the Commonwealth of Kentucky, even if executed by electronic means.
26. **CO-MAKER.** If you are signing this note as a co-maker, you understand that you are jointly and severally (equally) responsible with all other borrowers, and we may sue any or all of you. We are not required by law to notify you if the note is paid off. We can also alter the terms or payment of the note and release a lien from any security without notifying you.
27. **EQUIPMENT.** You state and agree that the Equipment purchased has been duly delivered, has been inspected, and is complete, functioning, and in good working order.
28. **COUNTERPARTS.** This agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This agreement may be executed electronically. Without limiting the generality of the foregoing, delivery of an associated signature page to this agreement (or any related agreement or instrument) by e-mail attachment, other means of electronic transmission with authorization to attach it to this agreement (or any related agreement or instrument), or any other means of electronic transmission used to obtain an electronic signature shall be deemed to have the same legal effect as delivery of an original signed copy.

**YOU ACKNOWLEDGE RECEIPT OF A COMPLETELY FILLED-IN COPY OF THIS NOTE AND SECURITY AGREEMENT**

**WITNESS OUR HANDS AND SEALS ON THE DATE OF NOTE AS STATED ABOVE.**

BORROWER (NAME):

(BUSINESS NAME):



BORROWER 1 SIGNATURE \_\_\_\_\_

BORROWER 2 NAME \_\_\_\_\_

BORROWER 2 SIGNATURE \_\_\_\_\_

COMPANY NAME \_\_\_\_\_

SIGNATURE \_\_\_\_\_

BY (PRINT NAME) \_\_\_\_\_

TITLE \_\_\_\_\_

WITNESS NAME \_\_\_\_\_

WITNESS SIGNATURE \_\_\_\_\_

WITNESS TITLE \_\_\_\_\_

### ACH AUTHORIZATION FORM

By signing below, I/WE authorize the above named Eagle Financial Services, Inc. 7791 Dillard Hwy, Fremont, CA 94542 (SBN 525 3070) ("Company") to initiate recurring electronic automated clearing house (ACH) entries from MY/OUR Account indicated below, at the bank named below, to debit to make payments on MY/OUR Company contract and, if necessary, initiate transactions to correct any erroneous payment debit. MY/OUR payments will begin on the date listed below and will occur on any specific dates hereafter until payment company contract is paid in full. I/WE revoke this authorization (as provided below) in any instance, the payment may be executed on the next business day. If MY/OUR Bank is unable to process any electronic ACH entry and/or if the amount due is more or less than the regularly scheduled amount, I/WE authorize Company to resubmit the ACH entry and/or to submit a paper draft(s) to the Bank for processing and payment, in any amounts necessary, and until such time as the full amount(s) owed on is met. If MY/OUR payment, whether in the form of an electronic ACH or a paper draft is dishonored or returned unpaid by Bank, I/WE agree that Company may charge a return item fee and/or a late charge (if and to the extent applicable) to the extent allowed by law and/or MY/OUR Company contract. I/WE also acknowledge that Bank may maintain its own additional fees. I/WE acknowledge that the origination of ACH entries to MY/OUR Account must comply with and will be governed by all applicable law.

This authorization will remain in effect until Company receives a written revocation from ME/US at the address above. I/WE agree to notify Company of any changes to account information and give Company a reasonable opportunity for Company and Bank time to act. This authorization and consent shall apply and be effective as to all future account information I may provide, including any new account information provided by phone. I/WE may call the number provided above to determine whether any transfer has or has not occurred. I/WE acknowledge this form is original and not a condition for the granting of credit.

BANK NAME: \_\_\_\_\_

BANK ADDRESS: \_\_\_\_\_

NAME 1 ON BANK ACCOUNT: \_\_\_\_\_

NAME 2 ON BANK ACCOUNT: \_\_\_\_\_

TYPE OF ACCOUNT:  PERSONAL CHECKING  BUSINESS CHECKING

BANK ROUTING NUMBER: \_\_\_\_\_

BANK ACCOUNT NUMBER: \_\_\_\_\_

I/WE ACKNOWLEDGE I/WE HAVE RECEIVED A COPY OF THIS AUTHORIZATION AND AGREE TO THE TERMS STATED. ALL PERSONS NAMED ABOVE MUST SIGN AND DATE HEREIN.

SIGN: \_\_\_\_\_

DATE: \_\_\_\_\_

SIGN: \_\_\_\_\_

DATE: \_\_\_\_\_

(CONTINUE NEXT)



NAME 1 ON ACCOUNT

NAME 2 ON ACCOUNT



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If this box is marked, then under the terms of your Loan, you are required to carry adequate insurance coverage on financed equipment. Your insurance certificate is required prior to us funding your vendor. Homeowners Policies will not cover commercial financing. YOUR LOAN MAY NOT BE FUNDED UNTIL WE RECEIVE THIS INFORMATION.

Please provide a Certificate of Insurance showing the following:

- Above referenced Agreement #
  - Name of the Insurance Company and Policy Number
  - Effective and Expiration Date of Coverage.
  - INSURED PARTY: The Borrower(s) listed above must be named as Insured.
  - PHYSICAL DAMAGE INSURANCE: Lender must be named Loss Payee against any loss including fire, theft and any other standard peril normally covered under a commercial policy for an amount not less than the replacement cost of the equipment.
  - LENDER AS LOSS PAYEE/ADDITIONAL INSURED
  - DESCRIPTION OF EQUIPMENT: A description of equipment covered (including serial numbers) must be listed on or attached to the Certificate of Insurance.
- 

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**EAGLE FINANCIAL SERVICES, INC.**

**CONSENT AND NOTICE REGARDING ELECTRONIC COMMUNICATIONS**

1. Electronic Signature Agreement. By selecting the "I Accept" button, you are signing this Agreement electronically. You agree your electronic signature is the legal equivalent of your manual signature on this Agreement. By selecting "I Accept" you consent to be legally bound by this Agreement's terms and conditions. You further agree that your use of a key pad, mouse or other device to select an item, button, icon or similar act/action, or to otherwise provide, or in accessing or making any transaction regarding any agreement, acknowledgement, consent terms, disclosures or conditions constitutes your signature (hereafter referred to as "E-Signature"), acceptance and agreement as if actually signed by you in writing. You also agree that no certification authority or other third party verification is necessary to validate your E-Signature and that the lack of such certification or third party verification will not in any way affect the enforceability of your E-Signature or any resulting contract between you and Eagle Financial Services, Inc. You further agree that each use of your E-Signature in obtaining Eagle Financial Services, Inc's online service(s) constitutes your agreement to be bound by the terms and conditions thereof.

2. Consent to Electronic Delivery. You specifically agree to receive and/or obtain any and all Eagle Financial Services, Inc.-related "Electronic Communications" as defined below. The term "Electronic Communications" includes, but is not limited to, any and all current and future notices and/or disclosures that various federal and/or state laws or regulations require that we provide to you, as well as such other documents, statements, data, records and any other communications including copies of these loan documents. You acknowledge that, for your records, you are able to retain Electronic Communications by printing and/or downloading and saving this Agreement and any other agreements and Electronic Communications, documents, or records that you agree to using your E-Signature. You accept Electronic Communications as reasonable and proper notice, for the purpose of any and all laws, rules, and regulations, each to the extent not otherwise contradicted and agree that such electronic form fully satisfies any requirement that such communications be provided to you in writing or in a form that you may keep.

3. Paper version of Electronic Communications. You may request a paper version of an Electronic Communication by contacting Eagle Financial Services, Inc. 7791 Dixie Hwy, Florence KY 41042 / 859-525-3070.

4. Revocation of electronic delivery. You have the right to withdraw your consent to receive/obtain communications at any time. You acknowledge that Eagle Financial Services, Inc. reserves the right to restrict or terminate your access to electronic access if you withdraw your consent to receive Electronic Communications. If you wish to withdraw your consent, contact us at Eagle Financial Services, Inc. 7791 Dixie Hwy, Florence KY 41042 / 859-525-3070.

5. Controlling Agreement. This Agreement supplements and modifies other agreements that you may have with Eagle Financial Services, Inc. To the extent that this Agreement and another agreement contain conflicting provisions, the provisions in this agreement will control (with the exception of provisions in another agreement for an electronic service which provisions specify the necessary hardware, software and operating system, in which such other provision controls). All other obligations of the parties remain subject to the terms and conditions of any other agreement. To obtain electronic services and communications, indicate your consent to the terms and conditions of this Agreement by clicking on the "I Accept" button. It is recommended that you print a copy of this Agreement for future reference.

6. Location of Execution: This Electronic Signature Agreement and the related contract are deemed executed in the Commonwealth of Kentucky.

"I Accept" \_\_\_\_\_

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

10/01/2024 10:42:11



**NOTE AND SECURITY AGREEMENT**

Lender Name: Eagle Financial Services, Inc  
 Lender Address: 7791 Dixie Highway  
 Florence, KY 41042  
 Lender Phone: 859-525-3070

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Date of Note:	Loan & Security Agreement #
All Borrower(s):	Address(es):
1) _____	1) _____
2) _____	2) _____
Borrower with Entity Tax ID#	Entity Fed Tax ID#:
1) _____	1) _____
Phone Number: _____	Cell Number: _____
Billing Address: _____	E-Mail Address: _____

Equipment Description:		
Year	Manufacturer, Model and Description	VIN/Serial Number

FDD-1019 (04/22)




Equipment Location Address:

Transaction Terms/ Payment Schedule:

Principal Amount:	Interest Rate:	Term (in months):	Payment Amount:	Payable Monthly with First Payment Due:

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- o Deferments, whether exercised or not, will not be available after the 24<sup>th</sup> month after the Date of Note.

#### ADDITIONAL TERMS, CONDITIONS, AND AGREEMENT

1. LOAN. For value received, the Borrower, if more than one, jointly and severally, hereby unconditionally promises to pay to the order of Lender the amounts described above and herein until paid in full. In the event we become aware of adverse credit information about you and/or the Guarantor(s) after you signed this Loan and prior to our acceptance of this Loan, we may at our sole discretion, cancel this loan. **ONCE WE ACCEPT THIS LOAN, YOU MAY NOT CANCEL IT DURING THE FULL LOAN TERM.** You

BLK-75.01022.1



- agree to be bound by all the terms of this Loan from the date you execute this Loan ("Effective Date") until you have paid the Loan in full.
2. **DELIVERY, ACCEPTANCE OF EQUIPMENT AND COMMENCEMENT OF THE LOAN.** Borrower hereby certifies to Lender that the Equipment has been duly ordered, an invoice for the Equipment has been issued and the Equipment will be delivered to the location where it will be used. Borrower acknowledges that signature of this document confirms that Equipment will be properly installed and in good working order and constitutes an unconditional acceptance of the Equipment upon delivery and hereby authorizes the commencement of the Loan ("Commencement Date").
  3. **PAYMENT.** You agree to pay us the Loan Payments when each payment is due. If we designate the Loan Payment to begin later than the Commencement Date, you will pay interim interest on the Principal Amount from the commencement Date until the first Loan Payment due date. Interim interest shall be equal to the pro rata portion of the daily equivalent of the Loan interest rate. Payment is due whether or not you receive an invoice from us. Restrictive endorsements on checks you send to us will not reduce your obligations to us. For any payment which is not received by its due date, you agree to pay a late charge equal to the greater of 5% of the amount due or \$25.00 (not to exceed the maximum amount permitted by law).
  4. **UNCONDITIONAL OBLIGATION. YOU AGREE THAT YOU ARE UNCONDITIONALLY OBLIGATED TO PAY ALL PAYMENTS AND ANY OTHER AMOUNTS DUE UNDER THIS LOAN FOR THE FULL LOAN TERM EVEN IF THE EQUIPMENT IS DAMAGED OR DESTROYED, IF IT IS DEFECTIVE OR YOU HAVE TEMPORARY OR PERMANENT LOSS OF ITS USE. YOU ARE NOT ENTITLED TO REDUCE OR SET-OFF AGAINST PAYMENT OR OTHER AMOUNTS DUE UNDER THIS LOAN FOR ANY REASON WHATSOEVER.**
  5. **DISCLAIMER OF WARRANTIES. THE EQUIPMENT IS BEING USED BY YOU IN AS-IS CONDITION. NO INDIVIDUAL IS AUTHORIZED TO CHANGE ANY PROVISION OF THIS LOAN. YOU AGREE THAT WE HAVE NOT MANUFACTURED THE EQUIPMENT OR LICENSED THE EQUIPMENT AND THAT YOU HAVE SELECTED THE EQUIPMENT BASED UPON YOUR OWN JUDGMENT. YOU HAVE NOT RELIED ON ANY STATEMENTS WE OR OUR EMPLOYEES HAVE MADE. WE HAVE NOT MADE AND DO NOT MAKE ANY EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES WHATSOEVER, INCLUDING WITHOUT LIMITATION, THE EQUIPMENT MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SUITABILITY, DESIGN, CONDITION, DURABILITY, OPERATION, QUALITY OF MATERIALS OR WORKMANSHIP, OR COMPLIANCE WITH SPECIFICATIONS OR APPLICABLE LAW.** You are aware of the name of the Equipment manufacturer. You agree to contact the manufacturer for a description of your warranty rights, if any. You agree to settle any dispute you may have regarding performance of the Equipment directly with the manufacturer of the Equipment.
  6. **SECURITY INTEREST.** To secure all of your obligations to us under this Loan you hereby grant us a security interest in (a) the Equipment to the extent of your interests in the Equipment, (b) anything attached or added to the Equipment at any time, (c) any money or property from the sale of the Equipment, and (d) any money from an insurance claim if the Equipment is lost or damaged. You agree that the security interest will not be affected if this loan is changed in any way. As required, you agree, at your own expense, to register the Equipment to you at your address set forth above and to title the Equipment to you, showing us as secured party or lien holder. You hereby irrevocably authorize us at any time and from time to time to file in any Uniform Commercial Code jurisdiction any financing statements prepared and filed on your behalf by us (or our agent) with the same force and effect as if you had signed such financing statements. If we request, you agree to sign financing statements in order for us to publicly record our security interest. This Loan or a copy of this Loan shall be sufficient as a financing statement and may be filed as such. This Loan may be executed in counterparts, and electronic signatures shall suffice as originals.
  7. **USE, MAINTENANCE, AND REPAIR.** You will give us reasonable access to the Equipment Location so that, upon reasonable request, we can check the Equipment's existence, condition and proper maintenance. You will use the Equipment in the manner in which it was intended, as required by all

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- applicable manuals and instructions and keep it eligible for any manufacturer's certification and/or standard, full-service maintenance contract. At your own cost and expense, you will keep the Equipment in good repair, condition and working order, ordinary wear and tear expected. All replacement parts and repairs will become our property. You will not make any permanent alterations to the Equipment.
8. **TAXES.** You agree to pay when due, all taxes, fines, and penalties relating to this Loan or the Equipment that are now or in the future assessed or levied by any state, local or other government authority. We do not have to contest any taxes, fines or penalties. If required, you will pay estimated property taxes as invoiced and all other taxes and charges, relating to the ownership purchase, possession or use of the Equipment.
  9. **INDEMNITY.** We are not responsible for any injuries, damages, penalties, claims or losses, including legal expenses, incurred by you or any other person caused by the transportation, installation, selection, purchase, loan, ownership, possession, modification, maintenance, condition, operations, use, return or disposition of the Equipment. You agree to reimburse us for and defend us against any claims for such losses, damages, penalties, claims, injuries, or expenses. This indemnity continues even after the Loan has expired for acts or omissions which occurred during the Term.
  10. **IDENTIFICATION.** You authorize us to insert or correct missing information on this Loan, including your official name, serial numbers, and any other information describing the Equipment. We will send you copies of the changes. You will attach to the Equipment any name plates or stickers we provide you.
  11. **LOSS OR DAMAGE.** You are responsible for any loss of the Equipment from any cause at all, whether or not insured. If any item of the Equipment is lost, stolen or damaged, you will promptly notify us of such an event. Then, at our option, you will repair the Equipment so that it is in good condition and working order. If you have satisfied your obligations under this Section and you are not in default, we will forward to you any insurance proceeds which we receive for such lost, damaged, or destroyed item. If you are in default, we will apply any insurance proceeds we receive to reduce your obligations under this Loan.
  12. **INSURANCE.** During the term of a Loan, you will keep the Equipment insured, at your sole cost and expense, against all risks of a loss or damage in an amount not less than the replacement cost of the Equipment showing us as loss payee as our interests may appear. You will also obtain and maintain for the term of a Loan, comprehensive public liability insurance in the amount of \$2,000,000 showing us as additional insured. You will pay all premiums for such insurance. If you do not provide such insurance, you agree that we have the right, but not the obligation, to obtain such insurance and charge you for all costs. You irrevocably appoint us as your attorney-in-fact to make claims for, receive payment of, and execute and endorse all documents, checks or drafts in payment for loss or damage under said insurance policies.
  13. **DEFAULT.** You will be in default under this Loan if any of the following happens: (a) we do not receive any payment or other payment due hereunder 10 days after its due date (no prior notice from us to you of such default is necessary), or (b) you or any of your guarantors become insolvent, are liquidated, dissolve, merge, transfer substantially all stock or assets, stop doing business, or assign rights or property for the benefit of creditors, or (c) a petition is filed by or against you or any of your guarantors under any bankruptcy or insolvency law which remains undismissed or undischarged for sixty (60) days, or (d) (for individuals) you or any of your guarantors die, or have a guardian appointed, or (e) any representation you may have made in this Loan shall prove to be false or misleading in any material aspect, (f) any of your guarantors breach their guaranty by not correcting the default within 10 days after we send you written notice of the default, (g) in our judgment any adverse change occurs in your ability to repay this Loan pursuant to its terms.
  14. **REMEDIES.** Upon the occurrence of default, we may, in our sole discretion, do any or all of the following: (a) provide written notice to you of default, (b) as liquidated damages for loss of a bargain and not as a penalty, declare due and payable: (i) any and all amounts which may be then due and payable by you to us under this Loan Agreement. We have the right to require you to make the Equipment available to us for repossession during reasonable business hours or we may repossess the Equipment, so long as we do

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not breach the peace in doing so, or we may use legal process in compliance with applicable law pursuant to court order to have the Equipment repossessed. You will not make any claims against us or the Equipment for trespass, damage or any other reason. If we take possession of the Equipment, we may (a) sell or lease the Equipment at public or private sale or lease, and/or (b) exercise such other rights as may be allowed by applicable law. Although you agree that we have no obligation to sell the Equipment, if we do sell the Equipment, we will apply any proceeds we receive to reduce your obligations under this Section, and any surplus remaining shall be returned to you. You agree (a) that we only need to give you 10 days advance notice of any sale and no notice of advertising, (b) to pay all of the costs we incur to enforce our rights against you including attorney's fees, and (c) that we will retain all of our rights against you even if we do not choose to enforce them at the time of your default. In addition to any other remedy permitted by law, we may at any time, without notice, at our option, proceed to enforce and protect our rights by an action in law or in equity or by any other appropriate proceedings.

15. **RETURN OF EQUIPMENT.** If (a) a default occurs, you will immediately return the Equipment, manuals and accessories to any location(s) and aboard any carrier(s) with prepaid freight and insurance as we may designate in the continental United States. The Equipment must be maintained in accordance with Section 7, and in "Average Saleable Condition" which means that all of the Equipment is immediately available for us by a third party buyer, user or borrower, other than yourself, without the need for any repair or refurbishment. You will pay us for any missing or defective parts or accessories.
16. **YOUR REPRESENTATIONS.** You state for our benefit that as of the date of this Loan (a) you have the lawful power and authority to enter into this Loan, (b) the individuals signing this Loan have been duly authorized to do so on your behalf, (c) by entering into this Loan you will not violate any law or other agreement to which you are a party, (d) you are not aware of anything that will have a material negative effect on your ability to satisfy your obligation under this Loan, and (e) all financial information you have provided us is true and accurate and provides a good representation of your financial condition.
17. **YOUR PROMISES.** In addition to the other provisions of this Loan, you agree that during the term of this Loan (a) you will promptly notify us in writing if you move your principal place of business, if you change the name of your business, or if there is a change in your ownership, (b) you will provide to us such financial information as we may reasonably request from time-to-time, and (c) you will take any action we reasonably request to protect our rights to the Equipment and to meet your obligations under this Loan.
18. **ASSIGNMENT. YOU WILL NOT SELL, TRANSFER, ASSIGN, PLEDGE, LEND OR PART WITH POSSESSION OF THE EQUIPMENT, OR FILE OR PERMIT A LIEN TO BE FILED AGAINST THE EQUIPMENT.** We may, without notifying you, sell, assign, or transfer this Loan and our interests in the Equipment. You agree that if we do so, the new owner (and any subsequent owners) will have the same rights and benefits that we now have, but will not have to perform any of our obligations. You agree that the rights of the new owner will not be subject to any claims, defenses, or set-offs that you may have against us. Any such assignment, sale, or transfer of this Loan or Equipment will not relieve us of any obligations we may have to you under this Loan. If you relieve us of any obligations we may have to you under this Loan, if you are given notice of a new owner of this Loan, you agree to respond to any requests about this Loan and, if directed by us, to pay the new owner all payments and other amounts due under this Loan.
19. **COLLECTION, EXPENSES, OVERDUE PAYMENT.** You agree that we can, but do not have to, take on your behalf any action which you fail to take as required by this Loan, and our expenses will be in addition to of the payment which you owe us. To the extent allowed by law, any late payment or non-payment of any past due amount will accrue interest at the Contract rate from the due date until paid in full. You agree to pay the costs of collection and/or litigation, including attorney fees, plus interest at the Contract rate until paid in full.
20. **NSF CHECK CHARGES.** You promise to pay a check collection charge of \$20 plus any amount charged to us by any other financial institutions for each check, negotiable order of withdrawal, share draft, or other negotiable instrument returned or dishonored for any reason.

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21. **MISCELLANEOUS.** This Loan contains our entire agreement and supersedes any conflicting provision of any equipment purchase order or any other agreement. **TIME IS OF THE ESSENCE IN THIS LOAN.** If a court finds any provision of this Loan to be unenforceable, the remaining terms of this Loan shall remain in effect. You authorize us (or our agent) to a) obtain credit reports, (b) make such other credit inquiries as we may deem necessary, and (c) furnish payment history information to payment reporting agencies. To the extent permitted by law, we may charge a fee to cover our documentation and investigation costs.
22. **NOTICES.** All of your written notices to us must be certified mail or recognized overnight delivery service, postage prepaid, to us at our address stated in this Loan, or by facsimile transmission to our facsimile telephone number, with oral confirmation of receipt. All of our notices to you may be sent first class mail, postage prepaid, to your address stated in this Loan. At any time after this Loan is signed, you or we may change an address or facsimile telephone number by giving notice to the other of the change.
23. **WAIVERS. WE AND YOU EACH AGREE TO WAIVE AND TO TAKE ALL REQUIRED STEPS TO WAIVE ALL RIGHTS TO A JURY TRIAL. ANY ACTION YOU TAKE AGAINST US FOR ANY DEFAULT, INCLUDING ALLEGED BREACH OF WARRANTY OR INDEMNITY, MUST BE STARTED WITHIN ONE (1) YEAR AFTER THE EVENT WHICH CAUSED IT.** We will not be liable for specific performance of this Loan for any losses, damages, delay or failure to deliver the Equipment. No failure of us to exercise any of our rights hereunder shall be deemed a waiver of any such rights or of any default. Demand, presentment, protest, notice of dishonor, notice of protest, notice of default, and all surety ship defenses are hereby waived by you.
24. **COMMERCIAL PROMISSORY NOTE.** You certify that the proceeds of this loan are to be used for business purposes. If this note is a renewal, in whole or in part, of a previous obligation, the acceptance of this note by us shall not effectuate a payment but rather a continuation of the previous obligation.
25. **JURISDICTION.** All rights and liabilities hereunder shall be governed and limited by and construed in accordance with the laws of the Commonwealth of Kentucky and the parties agree that the Boone County Kentucky Circuit Court is the exclusive Court to adjudicate any controversies related to this note. You specifically agree and do waive any defense based upon forum non conveniens. You also agree that this agreement and any related guarantees or other documents are deemed executed in the Commonwealth of Kentucky, even if executed by electronic means.
26. **CO-MAKER.** If you are signing this note as a co-maker, you understand that you are jointly and severally (equally) responsible with all other borrowers, and we may sue any or all of you. We are not required by law to notify you if the note is paid off. We can also alter the terms or payment of the note and release a lien from any security without notifying you.
27. **EQUIPMENT.** You state and agree that the Equipment purchased has been duly delivered, has been inspected, and is complete, functioning, and in good working order.
28. **COUNTERPARTS.** This agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This agreement may be executed electronically. Without limiting the generality of the foregoing, delivery of an executed signature page to this agreement (or any related agreement or instrument) by e-mail attachment, other means of electronic transmission with authorization to attach it to this agreement (or any related agreement or instrument), or any other means of electronic transmission used to obtain an electronic signature shall be deemed to have the same legal effect as delivery of an original signed copy.

**YOU ACKNOWLEDGE RECEIPT OF A COMPLETELY FILLED-IN COPY OF THIS NOTE AND SECURITY AGREEMENT**

**WITNESS OUR HANDS AND SEALS ON THE DATE OF NOTE AS STATED ABOVE:**

BORROWER (NAME) \_\_\_\_\_

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BORROWER 1 SIGNATURE \_\_\_\_\_

BORROWER 2 NAME: \_\_\_\_\_

BORROWER 2 SIGNATURE \_\_\_\_\_

COMPANY NAME: \_\_\_\_\_

SIGNATURE \_\_\_\_\_

By (PRINT NAME): \_\_\_\_\_

TITLE: \_\_\_\_\_

WITNESS NAME: \_\_\_\_\_

WITNESS SIGNATURE \_\_\_\_\_

WITNESS TITLE \_\_\_\_\_

**ACH AUTHORIZATION FORM**

By signing below, I/WE authorize the above named Eagle Financial Services, Inc. 7791 Dixie Hwy, Florence KY 41042 (859 525 3070) ("Company") to initiate recurring electronic automated clearing house (ACH) entries from MY/OUR Account indicated below, at the Bank named below, in order to make payments on MY/OUR Company contract and, if necessary, to initiate transactions to correct any erroneous payment debit. MY/OUR payments will begin on the date listed below and will occur on any specified dates thereafter until MY/OUR Company contract is paid in full or I/WE revoke this authorization (as provided below). In certain instances, the payment may be executed on the next business day. If MY/OUR Bank is unable to process any electronic ACH entry and/or if the amount due is more or less than the regularly scheduled amount, I/WE authorize Company to resubmit the ACH entry and/or to submit a paper draft(s) to the Bank for processing and payment, in any amounts necessary, and until such time as the full payment(s) obligation is met. If MY/OUR payment (whether in the form of an electronic ACH or a paper draft) is dishonored or returned unpaid by Bank, I/WE agree that Company may charge a return item fee and/or a late charge (if and to the extent applicable) to the extent allowed by law and/or MY/OUR Company contract. I/WE also acknowledge that Bank may also impose its own additional fees. I/WE acknowledge that the origination of ACH entries to MY/OUR Account must comply with and will be governed by all applicable laws.

This authorization will remain in effect until Company has received written notification from ME/US of termination at the address above. I/WE agree to notify Company in writing of any changes in Account information or termination of this authorization to afford a reasonable opportunity for Company and Bank time to act. This authorization and consent shall apply and be effective as to all future account information I may provide, including any new account information provided by phone. I/WE may call the number provided above to determine whether any transfer has/has not occurred. I/WE acknowledge this form is optional and not a condition for the granting of credit.

BANK NAME: \_\_\_\_\_ BANK ADDRESS: \_\_\_\_\_

NAME 1 ON BANK ACCOUNT: \_\_\_\_\_

NAME 2 ON BANK ACCOUNT: \_\_\_\_\_

TYPE OF ACCOUNT:  PERSONAL CHECKING  BUSINESS CHECKING

BANK ROUTING NUMBER: \_\_\_\_\_ BANK ACCOUNT NUMBER: \_\_\_\_\_

**I/WE ACKNOWLEDGE I/WE HAVE RECEIVED A COPY OF THIS AUTHORIZATION AND AGREE TO THE TERMS STATED. ALL PERSONS NAMED ABOVE MUST SIGN AND DATE BELOW.**

SIGN: \_\_\_\_\_ DATE: \_\_\_\_\_ SIGN: \_\_\_\_\_ DATE: \_\_\_\_\_

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NAME 1 ON ACCOUNT

NAME 2 ON ACCOUNT

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If this box is marked, then under the terms of your Loan, you are required to carry adequate insurance coverage on financed equipment. Your insurance certificate is required prior to us funding your vendor. Homeowners Policies will not cover commercial financing. YOUR LOAN MAY NOT BE FUNDED UNTIL WE RECEIVE THIS INFORMATION.

Please provide a Certificate of Insurance showing the following:

- Above referenced Agreement #
- Name of the Insurance Company and Policy Number
- Effective and Expiration Date of Coverage.
- INSURED PARTY: The Borrower(s) listed above must be named as Insured.
- PHYSICAL DAMAGE INSURANCE: Lender must be named Loss Payee against any loss including fire, theft and any other standard peril normally covered under a commercial policy for an amount not less than the replacement cost of the equipment.
- LENDER AS LOSS PAYEE/ADDITIONAL INSURED
- DESCRIPTION OF EQUIPMENT: A description of equipment covered (including serial numbers) must be listed on or attached to the Certificate of Insurance.

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**EXHIBIT H-7**

**KONA ICE FRANCHISE**

**RETAIL INSTALLMENT CONTRACT - ALLY FINANCIAL, INC.**



**RETAIL INSTALLMENT CONTRACT - MOTOR VEHICLE - SIMPLE INTEREST**

**FEDERAL TRUTH-IN-LENDING DISCLOSURE STATEMENT**

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments	Monthly Payment	Number of Payments
6.99%	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00	1

Year	Month	Day	Amount	Balance	Interest	Principal
N/A			896.08			
N/A			N/A			

**Finance Charge:** The finance charge is the cost of borrowing money. It is the amount of interest that you will pay for the use of the money that you borrow. The finance charge is calculated based on the amount of money that you borrow and the length of time that you borrow the money. The finance charge is expressed as a percentage of the amount of money that you borrow.

**Annual Percentage Rate (APR):** The APR is the annual interest rate that you will pay for the use of the money that you borrow. It is expressed as a percentage of the amount of money that you borrow. The APR is calculated based on the amount of money that you borrow and the length of time that you borrow the money. The APR is expressed as a percentage of the amount of money that you borrow.

Buyer Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City/State/Zip: \_\_\_\_\_  
 Phone: \_\_\_\_\_  
 Email: \_\_\_\_\_

Seller: **JERRY HAGGERTY CHEVROLET**  
 Corporate Office (City/State)  
**800 ROOSEVELT RD GLEN ELLYN, IL 60137**  
 (City/State/Zip)

Model: **60227**

Year: \_\_\_\_\_  
 Make: \_\_\_\_\_  
 Color: \_\_\_\_\_  
 Mileage: \_\_\_\_\_  
 VIN: \_\_\_\_\_

MSRP: \_\_\_\_\_  
 Dealer Price: \_\_\_\_\_  
 Finance Charge: \_\_\_\_\_  
 Total Price: \_\_\_\_\_

Trade-In: \_\_\_\_\_  
 Cash: \_\_\_\_\_  
 Finance: \_\_\_\_\_

APR: \_\_\_\_\_  
 Term: \_\_\_\_\_  
 Monthly Payment: \_\_\_\_\_

This is a loan agreement. It is a contract between you and the lender. It sets out the terms and conditions of the loan. It includes the amount of the loan, the interest rate, the term of the loan, and the monthly payment. It also includes the lender's name and address. You should read this agreement carefully before you sign it. If you have any questions, you should ask the lender. If you agree to the terms and conditions of the loan, you should sign this agreement. If you do not agree to the terms and conditions of the loan, you should not sign this agreement.

Buyer Signature: \_\_\_\_\_  
 Date: \_\_\_\_\_

Seller Signature: \_\_\_\_\_  
 Date: \_\_\_\_\_

Witness Signature: \_\_\_\_\_  
 Date: \_\_\_\_\_



The following information is provided for your information only. It is not intended to constitute an offer of insurance. Coverage is subject to the terms, coverages, conditions, exclusions, and limitations of the policy. Coverage is not available in all states.

**WARRANTY** - You agree that this vehicle will be free of a defect in a powertrain component for 15 days or 500 miles after delivery, except with regard to parts and materials disclosed on the first page of this agreement. "Powertrain component" means the engine, head, all internal engine parts, oil pan and gaskets, water pump, intake manifold, transmission, and all internal transmission parts, drive shaft, universal joints, bearings and all other axle internal parts, and rear wheel bearings. You (the consumer) will pay for all labor for work of the kind required by the warranty if warranted.

**LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS IS NOT PROVIDED BY THIS CONTRACT.** Coverage for this type of damage is provided by other policies of insurance for motor vehicles. Coverage for this type of damage is provided by other policies of insurance for motor vehicles.

**COPIES OF THIS CONTRACT** - You will receive a copy of this contract. You will also receive a copy of this contract if you request it. You will also receive a copy of this contract if you request it.

**FINANCIAL INFORMATION**

Yearly Premium: N/A  
 Monthly Premium: N/A  
 Finance Charge: N/A  
 Total Finance Charge: N/A  
 Total Amount Financed: N/A  
 Total Amount Due: N/A  
 Total Amount Due at Maturity: N/A

**SEE YOUR DEALER FOR INFORMATION ON POSSIBLE REFINING OF DEBT, LIFE OR DISABILITY INSURANCE PREMIUM, NOTICE OF APPROVED GROUP TERM LIFE INSURANCE.**

**NOTICE OF APPROVED GROUP TERM LIFE INSURANCE**

This contract provides for the purchase of group term life insurance. The insurance will be provided by a member of the insurance company. The insurance will be provided by a member of the insurance company. The insurance will be provided by a member of the insurance company.

**FINANCIAL INFORMATION**

Yearly Premium: N/A  
 Monthly Premium: N/A  
 Finance Charge: N/A  
 Total Finance Charge: N/A  
 Total Amount Financed: N/A  
 Total Amount Due: N/A  
 Total Amount Due at Maturity: N/A

**FINANCIAL INFORMATION**

Yearly Premium: N/A  
 Monthly Premium: N/A  
 Finance Charge: N/A  
 Total Finance Charge: N/A  
 Total Amount Financed: N/A  
 Total Amount Due: N/A  
 Total Amount Due at Maturity: N/A

**BUYER'S ACKNOWLEDGEMENT RECEIVED BY BUYER**

**RETAIL INSTALLMENT CONTRACT**

**BUYER'S NAME:** JERRY Haggerty CHEVROLET

**BUYER'S ADDRESS:** N/A

**BUYER'S CITY:** N/A

**BUYER'S STATE:** N/A

**BUYER'S ZIP:** N/A

**BUYER'S PHONE:** N/A

**BUYER'S SIGNATURE:** N/A

**BUYER'S DATE:** N/A

**BUYER'S TITLE:** N/A

**BUYER'S OCCUPATION:** N/A

**BUYER'S EMPLOYER:** N/A

**BUYER'S SOCIAL SECURITY NUMBER:** N/A

**BUYER'S DRIVER LICENSE NUMBER:** N/A

**BUYER'S MARRIAGE STATUS:** N/A

**BUYER'S NUMBER OF CHILDREN:** N/A

**BUYER'S ANNUAL INCOME:** N/A

**BUYER'S CREDIT HISTORY:** N/A

**BUYER'S CREDIT RATING:** N/A

**BUYER'S CREDIT SCORE:** N/A

**BUYER'S CREDIT REPORT:** N/A

**BUYER'S CREDIT HISTORY:** N/A

**BUYER'S CREDIT RATING:** N/A

**BUYER'S CREDIT SCORE:** N/A

**BUYER'S CREDIT REPORT:** N/A

**BUYER'S CREDIT HISTORY:** N/A

**BUYER'S CREDIT RATING:** N/A

**BUYER'S CREDIT SCORE:** N/A

**BUYER'S CREDIT REPORT:** N/A



ADDITIONAL AGREEMENTS OF BUYER

1. I AGREE TO PAY FOR THE BUYER'S SERVICE CONTRACT... I understand that the Buyer's Service Contract is a contract between the Buyer and the Seller...

2. I AGREE TO PAY FOR THE BUYER'S WARRANTY... I understand that the Buyer's Warranty is a contract between the Buyer and the Seller...

3. I AGREE TO PAY FOR THE BUYER'S MAINTENANCE... I understand that the Buyer's Maintenance is a contract between the Buyer and the Seller...

4. I AGREE TO PAY FOR THE BUYER'S INSURANCE... I understand that the Buyer's Insurance is a contract between the Buyer and the Seller...

5. I AGREE TO PAY FOR THE BUYER'S FINANCING... I understand that the Buyer's Financing is a contract between the Buyer and the Seller...

6. I AGREE TO PAY FOR THE BUYER'S TITLE... I understand that the Buyer's Title is a contract between the Buyer and the Seller...

7. I AGREE TO PAY FOR THE BUYER'S REGISTRATION... I understand that the Buyer's Registration is a contract between the Buyer and the Seller...

8. I AGREE TO PAY FOR THE BUYER'S SALES TAX... I understand that the Buyer's Sales Tax is a contract between the Buyer and the Seller...

9. I AGREE TO PAY FOR THE BUYER'S LICENSE... I understand that the Buyer's License is a contract between the Buyer and the Seller...

10. I AGREE TO PAY FOR THE BUYER'S INSPECTION... I understand that the Buyer's Inspection is a contract between the Buyer and the Seller...

11. I AGREE TO PAY FOR THE BUYER'S DELIVERY... I understand that the Buyer's Delivery is a contract between the Buyer and the Seller...

12. I AGREE TO PAY FOR THE BUYER'S TRAINING... I understand that the Buyer's Training is a contract between the Buyer and the Seller...

13. I AGREE TO PAY FOR THE BUYER'S SUPPORT... I understand that the Buyer's Support is a contract between the Buyer and the Seller...

14. I AGREE TO PAY FOR THE BUYER'S ASSISTANCE... I understand that the Buyer's Assistance is a contract between the Buyer and the Seller...

15. I AGREE TO PAY FOR THE BUYER'S SERVICE... I understand that the Buyer's Service is a contract between the Buyer and the Seller...

16. I AGREE TO PAY FOR THE BUYER'S MAINTENANCE... I understand that the Buyer's Maintenance is a contract between the Buyer and the Seller...

17. I AGREE TO PAY FOR THE BUYER'S INSURANCE... I understand that the Buyer's Insurance is a contract between the Buyer and the Seller...



**Section 1** - Name of the person or organization...  
**Section 2** - Address...  
**Section 3** - Date of the incident...  
**Section 4** - Description of the incident...  
**Section 5** - Name of the person or organization...  
**Section 6** - Address...  
**Section 7** - Date of the incident...  
**Section 8** - Description of the incident...  
**Section 9** - Name of the person or organization...  
**Section 10** - Address...  
**Section 11** - Date of the incident...  
**Section 12** - Description of the incident...

**Section 13** - Name of the person or organization...  
**Section 14** - Address...  
**Section 15** - Date of the incident...  
**Section 16** - Description of the incident...  
**Section 17** - Name of the person or organization...  
**Section 18** - Address...  
**Section 19** - Date of the incident...  
**Section 20** - Description of the incident...

**Section 21** - Name of the person or organization...  
**Section 22** - Address...  
**Section 23** - Date of the incident...  
**Section 24** - Description of the incident...  
**Section 25** - Name of the person or organization...  
**Section 26** - Address...  
**Section 27** - Date of the incident...  
**Section 28** - Description of the incident...

**Section 29** - Name of the person or organization...  
**Section 30** - Address...  
**Section 31** - Date of the incident...  
**Section 32** - Description of the incident...

**NO PUBLIC LIABILITY INSURANCE ISSUED WITH THIS TRANSACTION**

**Section 33** - Name of the person or organization...  
**Section 34** - Address...  
**Section 35** - Date of the incident...  
**Section 36** - Description of the incident...  
**Section 37** - Name of the person or organization...  
**Section 38** - Address...  
**Section 39** - Date of the incident...  
**Section 40** - Description of the incident...







ADDITIONAL AGREEMENTS OF BUYER

BUYER'S INTEREST IN ANY... (The Seller hereby warrants and agrees that all information...)

BUYER MAY... (The Buyer may...)

USED MOTOR VEHICLE BUYER'S GUIDE. If you are purchasing a used vehicle with this contract, THE INFORMATION YOU SEE ON THE WINDOW FORM FOR THIS USED VEHICLE IS A PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THIS CONTRACT OF SALE. Spanish Translation: Guía para compradores de vehículos usados. La información que ve en el formulario de la ventanilla deja sin efecto toda disposición en contrario contenida en el contrato de venta.

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER. The preceding NOTICE applies only to goods and services obtained primarily for personal, family, or household use. In all other cases, Buyer will not assert against any subsequent Holder or Assignee of this consumer credit contract any claims or defenses the Buyer (debtor) may have against the Seller or manufacturer of the vehicle or equipment obtained under this contract.

\*NOTE 1\* NOTICE OF POSSIBLE REFUND OF CREDIT LIFE OR DISABILITY INSURANCE PREMIUMS (1) IF YOU HAVE PURCHASED EITHER CREDIT LIFE OR CREDIT DISABILITY INSURANCE, OR BOTH, TO GUARANTEE PAYMENTS BEING MADE IN CASE OF YOUR DEATH OR DISABILITY, ON YOUR VEHICLE PURCHASED UNDER AN INSTALLMENT SALES CONTRACT, YOU MAY BE ENTITLED TO A PARTIAL REFUND OF YOUR PREMIUM IF YOU PAY OFF YOUR INSTALLMENT LOAN EARLY. (2) IN CASE OF EARLY COMPLETE PAYMENT OF YOUR LOAN, YOU SHOULD CONTACT THE SELLER OF YOUR CREDIT LIFE OR CREDIT DISABILITY INSURANCE TO SEE IF A REFUND IS DUE. IF YOUR VEHICLE DEALER FINANCED YOUR LOAN, THE SELLER OF YOUR CREDIT LIFE OR CREDIT DISABILITY INSURANCE IS YOUR VEHICLE DEALER.

Buyer Signature: \_\_\_\_\_ Seller Signature: N/A





**EXHIBIT H-8**

**KONA ICE FRANCHISE**

**LOAN AND SECURITY AGREEMENT - AUXILIOR CAPITAL PARTNERS**



**Loan & Security Agreement #**

**Borrower:**

Legal Name:	Fed TaxID #:		
Legal Address:	Phone Number:	Cell Number:	Fax Number:
Billing Address:	E-Mail Address:		
Send Invoice to Attention of:	Vendor Name:		

**Equipment**

Quantity	Year	Manufacturer	Model and Description	Serial Number

**Equipment Location:**

Address	City	State	Postal Code

**Transaction Terms/Payment Schedule:**

Principal Amount	Interest Rate	Term (in Months)	Advance Payment Amount	Documentation Fee

Number of Payments	Payment Frequency	Payment Amount

We have written this Loan & Security Agreement ("Loan" or "Loan Agreement") in plain language because we want you to understand its terms. Please read your copy of this Loan carefully and feel free to ask us any questions you may have. ~~The words "you" and "your" mean the borrower named above. The words "we" and "us" mean Kona Ice, Inc. You are a customer. THE TERMS OF THIS LOAN INCLUDING THOSE ON THE FOLLOWING PAGE SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. TERMS OR WHAT PROMISE WHICH ARE NOT CONTAINED IN THIS WRITTEN LOAN MAY NOT BE LEGALLY ENFORCEABLE. YOU MAY CHANGE THE TERMS OF THIS LOAN ONLY BY ANOTHER WRITTEN AGREEMENT BETWEEN YOU AND US. YOU AGREE TO LIMIT THE TERMS AND CONDITIONS OF THIS LOAN. THIS LOAN IS NOT CONSIDERABLE. YOU AGREE THAT THE PROCEEDS OF THE LOAN WILL BE USED FOR BUSINESS PURPOSES ONLY AND NOT FOR PERSONAL, FAMILY OR HOUSE HOLE PURPOSES.~~

YOU CERTIFY THAT ALL THE INFORMATION GIVEN IN THIS LOAN AND YOUR APPLICATION WAS CORRECT AND COMPLETE WHEN THIS LOAN WAS MADE. THIS LOAN IS NOT BINDING UNLESS IT IS EFFECTIVE UNLESS AND UNTIL WE EXECUTE THIS LOAN. THIS LOAN AND ALL SCHEDULES WILL BE GOVERNED BY THE LAWS OF THE COMMONWEALTH OF PENNSYLVANIA. YOU RESTRICTIVELY WAIVE ANY RIGHTS BASED UPON NON-COMPLETION AND YOU AGREE THAT NON-COMPLETION CANNOT BE AVOIDABLE. PENNSYLVANIA LAW GOVERNS ANY DISPUTES THAT MAY ARISE UNDER THIS LOAN. ALL DISPUTES UNDER THIS LOAN SHALL BE RESOLVED IN THE JURISDICTION AND VENUE OF FEDERAL COURT IN THE EAST DISTRICT OF PENNSYLVANIA OR STATE COURTS IN ANY OTHER COUNTY, PENNSYLVANIA.

**BY SIGNING THIS LOAN BELOW, YOU AGREE TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS ON THE FOLLOWING PAGES.** You agree to submit the original loan document to us either by fax or by mail via overnight courier. Subsequent to execution, originally you may be bound by an electronic copy of this Loan with your original signature on the document. We are providing the right to make your own the authenticity of a signature copy of this loan and the electronic copy shall be considered the original and shall be the final agreement for the purposes of any enforceable contract under paragraph 17.

<b>Lender</b> <b>Auxbury Capital Partners, Inc</b> 620 West Germantown Pkwy, Suite 4350 Plymouth Meeting, PA 19162		<b>Borrower</b>	
Signature:	Date:	Signature:	Date:
Print Name:	Title:	Print Name:	Title:







**TERMS AND CONDITIONS**

**Compliance Event** (referred herein as **Anti-Terrorism Law**) means any laws, treaties, executive orders, sanctions programs or other regulations, laws, executive orders, licensing, license conditions or licenses, or other mandated supplemental or supplementary laws, treaties, executive orders, **Compliance Authority** means any and all of the (a) U.S. Treasury Department/Office of Foreign Assets Control, (b) U.S. Treasury Department/Federal Reserve, (c) United States National Security Council, (d) U.S. State Department/Department of Defense/Traffic Control, (e) U.S. Commerce Department/Bureau of Industry and Security, (f) U.S. Internal Revenue Service, (g) U.S. Justice Department, and (g) U.S. Securities and Exchange Commission; **Governed Entity** means you, your officers and subsidiaries, all partners, creditors or collateral, all owners of the foreign, and all of your branches or other entities acting in and capacity in connection with the Loan; **Reportable Compliance Event** means that any Governed Entity becomes a Sanctioned Person, or is indicted, charged, investigated or suspiciously detained, or receives an inquiry from regulatory or law enforcement officials, in connection with any Anti-Terrorism Law, or any applicable laws or any Anti-Terrorism Law, or self-discovers facts or circumstances implicating any aspect of its operations with the actual or possible violation of any Anti-Terrorism Law; **Sanctioned Country** means a country subject to a sanctions program maintained by any Compliance Authority; and **Sanctioned Person** means any individual person, group, regime, entity or thing listed or otherwise recognized as a specially designated prohibited, sanctioned or targeted person or entity, or subjected to any restrictions or prohibitions (including but not limited to the blocking of property or rejection of transactions), under any order or directive of any Compliance Authority, otherwise subject to, or specially designated under, any sanctions program maintained by any Compliance Authority.

**28. BENEFICIAL OWNERS** If applicable, pursuant to applicable laws, regulations, or other laws, treaties, executive orders, sanctions programs or other regulations, laws, executive orders, licensing, license conditions or licenses, or other mandated supplemental or supplementary laws, treaties, executive orders, **Beneficial Owners** means the individuals who own or control the Borrower, as defined in the Loan Agreement, and as reported in your most recent Form 100 Certification of Beneficial Owners. You agree to provide us with a copy of the most recent Form 100 Certification of Beneficial Owners provided to you (if applicable) as are when requested by us, (ii) if available, a new Certification of Beneficial Owners in form and substance acceptable to us when the individual(s) identified as a controlling party and/or a direct or indirect individual owner on the most recent Certification of Beneficial Owners provided to us have changed, and (iii) such other information and documentation as may reasonably be required by us from time to time to comply with applicable laws (including applicable international, U.S. and other laws, regulations, and any policy or procedure implemented by us to comply herewith).



**Loan & Security Agreement #**

**Borrower:**

<b>Legal Name:</b>	<b>Fed TaxID #:</b>		
<b>Legal Address:</b>	<b>Phone Number:</b>	<b>Cell Number:</b>	<b>Fax Number:</b>
<b>Billing Address:</b>	<b>E-Mail Address:</b>		
<b>Send Invoice to Attention of:</b>	<b>Vendor Name:</b>		

**Equipment**

Quantity	Year	Manufacturer	Model and Description	Serial Number

**Equipment Location:**

Address	City	State	Postal Code

**Transaction Terms/Payment Schedule:**

Principal Amount	Interest Rate	Term (in Months)	Advance Payment Amount	Documentation Fee

Number of Payments	Payment Frequency	Payment Amount

**We have written this Loan & Security Agreement ("Loan" or "Loan Agreement") in plain language because we want you to understand its terms. Please read your copy of this Loan carefully and feel free to ask us any questions you may have. The words "you" and "your" mean the Borrower named above. The words "we", "us", and "our" refer to the Lender named below. THE TERMS OF THIS LOAN (INCLUDING THOSE ON THE FOLLOWING PAGES) SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. TERMS OR ORAL PROMISES WHICH ARE NOT CONTAINED IN THIS WRITTEN LOAN MAY NOT BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS LOAN ONLY BY ANOTHER WRITTEN AGREEMENT BETWEEN YOU AND US. YOU AGREE TO COMPLY WITH THE TERMS AND CONDITIONS OF THIS LOAN. THIS LOAN IS NOT CANCELABLE. YOU AGREE THAT THE PROCEEDS OF THE LOAN WILL BE USED FOR BUSINESS PURPOSES ONLY AND NOT FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES.**

YOU CERTIFY THAT ALL THE INFORMATION GIVEN IN THIS LOAN AND YOUR APPLICATION WAS CORRECT AND COMPLETE WHEN THIS LOAN WAS SIGNED. THIS LOAN IS NOT BINDING UPON US OR EFFECTIVE UNLESS AND UNTIL WE EXECUTE THIS LOAN. THIS LOAN AND ALL SCHEDULES WILL BE GOVERNED BY THE LAWS OF THE COMMONWEALTH OF PENNSYLVANIA. YOU SPECIFICALLY WAIVE ANY DEFENSE BASED UPON FORUM NON CONVENIENS AND YOU ADMIT THAT MONTGOMERY COUNTY, PENNSYLVANIA IS A CONVENIENT FORUM TO RESOLVE ALL DISPUTES UNDER THIS LOAN. ALL DISPUTES UNDER THIS LOAN SHALL BE RESOLVED IN THIS JURISDICTION AND VENUE OF FEDERAL COURT IN THE EASTERN DISTRICT OF PENNSYLVANIA OR STATE COURTS IN MONTGOMERY COUNTY, PENNSYLVANIA.

**BY SIGNING THIS LOAN BELOW, YOU AGREE TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS ON THE FOLLOWING PAGES.** You agree to submit the original loan documents to Lender or its assignee via overnight courier. Should we fail to receive these originals, you agree to be bound by an electronic copy of the Loan with appropriate signatures on the document. Borrower waives the right to challenge in court the authenticity of an electronic copy of this Loan and the electronic copy shall be considered the original and shall be the binding agreement for the purposes of any enforcement action under paragraph 14.

<b>Lender</b>		<b>Borrower</b>	
<b>Auxilior Capital Partners, Inc</b> 620 West Germantown Pike, Suite 450 Plymouth Meeting, PA 19162			
Signature:	Date:	Signature:	Date:
Print Name:	Title:	Print Name:	Title:



## TERMS AND CONDITIONS

**1. LOAN.** For Value received, the Borrower hereby and conditions is promises to pay to the order of Lender the amounts described above (the "Loan Payments"). In the event we become aware of address or bill information about you and/or the Guarantor(s) after you signed this Loan and prior to our acceptance of this Loan, we may at our sole discretion, changed this Loan. **DO NOT WE ACCEPT THIS LOAN YOU MAY NOT RENEW IT DURING THE FULL LOAN TERM.** You agree to be bound by all the terms of this Loan from the date you execute this Loan ("Effective Date") until you have paid the Loan in full.

**2. DELIVERY, ACCEPTANCE OF EQUIPMENT AND COMMENCEMENT OF THE LOAN.** Borrower hereby certifies to Lender that the Equipment has been duly ordered, an invoice for the Equipment has been issued and the Equipment will be delivered to the location where it will be used. Borrower acknowledges that signature of this document confirms that Equipment will be properly installed and in good working order and constitutes an unconditional acceptance of the Equipment upon delivery and hereby authorized the commencement of the Loan ("Commencement Date").

**3. PAYMENT.** You agree to pay us the Loan Payments when each payment is due. If we designate the Loan Payments to begin later than the Commencement Date, you will pay interim interest on the Principal Amount from the Commencement Date until the first Loan Payment due date. Interim interest shall be equal to the pro rata portion of the daily equivalent of the Loan interest rate. Payment is due whether or not you receive an invoice from us. You authorize us to change the payment by not more than 10% due to changes in the Equipment configuration accepted by you which may occur prior to our acceptance of this Loan. Restraintive endorsements on checks you send to us will not reduce your obligations to us. For any payment which is not received by its due date, you agree to pay a late charge equal to the greater of 10% of the amount due or \$25.00 (not to exceed the maximum amount permitted by law) as reasonable collection costs. You will be permitted to prepay your Loan if they simultaneously pay a premium as follows for each year or partial year remaining: (A) 3% of year one of the Loan, (B) 2% in year two of Loan, and (C) 1% in year three of the Loan; provided, that there will be no premium thereafter.

**4. UNCONDITIONAL OBLIGATION.** YOU AGREE THAT YOU ARE UNCONDITIONALLY OBLIGATED TO PAY ALL PAYMENTS AND ANY OTHER AMOUNTS DUE UNDER THIS LOAN FOR THE FULL LOAN TERM EVEN IF THE EQUIPMENT IS DAMAGED OR DESTROYED, IF IT IS DEFECTIVE OR YOU HAVE TEMPORARY OR PERMANENT LOSS OF ITS USE. YOU ARE NOT ENTITLED TO REDUCE OR SET-OFF AGAINST PAYMENT OR OTHER AMOUNTS DUE UNDER THIS LOAN FOR ANY REASON WHATSOEVER.

**5. DISCLAIMER OF WARRANTIES.** THE EQUIPMENT IS BEING USED BY YOU IN AS IS CONDITION. NO INDIVIDUAL IS AUTHORIZED TO CHANGE ANY PROVISION OF THIS LOAN. YOU AGREE THAT WE HAVE NOT MANUFACTURED THE EQUIPMENT OR LICENSED THE EQUIPMENT AND THAT YOU HAVE SELECTED THE EQUIPMENT BASED UPON YOUR OWN JUDGMENT. YOU HAVE NOT RELIED ON ANY STATEMENTS WE OR OUR EMPLOYEES HAVE MADE. WE HAVE NO MADE AND DO NOT MAKE ANY EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES WHATSOEVER, INCLUDING WITHOUT LIMITATION, THE EQUIPMENT MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SUITABILITY, DESIGN, CONDITION, DURABILITY, OPERATION, QUALITY OF MATERIALS OR WORKMANSHIP OR COMPLIANCE WITH SPECIFICATIONS OR APPLICABLE LAW. You are aware of the name of the Equipment manufacturer. You agree to contact the manufacturer for a description of your warranty rights. Provided you are not in default under this Loan, you may enforce all warranty rights directly against the manufacturer of this Equipment. You agree to settle any dispute you may have regarding performance of the Equipment directly with the manufacturer of the Equipment.

**6. SECURITY INTEREST.** To secure all of your obligations to us under this Loan you hereby grant us a security interest in: (a) the Equipment to the extent of your interests in the Equipment and any substitutions and replacements thereof; (b) anything attached or added to the Equipment at any time; (c) any moneys or proceeds from the sale of the Equipment; and (d) any moneys from an insurance claim if the Equipment is lost or damaged. You agree that the security interest will not be affected if this Loan is changed in any way. As required, you agree, at your own expense to register the Equipment to you at your address set forth above and to title the Equipment to you, showing us as secured party or lien holder. You hereby irrevocably authorizes us at any time and from time to time to file in any Uniform Commercial Code jurisdiction or any financing statements and amendments thereto. This Loan may be executed in counterparts, and electronic signatures shall suffice as originals.

**7. USE, MAINTENANCE AND REPAIR.** You will primarily garage the Equipment at your address set forth above, and not remove the Equipment therefrom or re-title the Equipment without our prior written consent. You will give us reasonable access to the Equipment location so that we can check the Equipment's address, condition and proper maintenance. You will use the Equipment in the manner in which it was intended, as required by all applicable manuals and instructions and keep it eligible for any manufacturer's certification and/or standard, full-service maintenance contract. At your own cost and expense, you will keep the Equipment in good repair, condition and working order ordinary wear and tear excepted. All replacement parts and repairs will become our property. You will not make any permanent alterations to the Equipment.

**8. TAXES.** You agree to pay when due, all taxes, fines, and penalties relating to this Loan or the Equipment that are now or in the future assessed or levied by any state, local or other government authority. We do not have to collect any taxes, fines or penalties. If required, you will pay estimated property taxes as invoiced and all other taxes and charges relating to the ownership, purchase, possession or use of the Equipment.

**9. INDEMNITY.** We are not responsible for any injuries, damages, penalties, claims or losses, including legal expenses, incurred by you or any other person caused by the transportation, installation, selection, purchase, loan, ownership, possession, modification, maintenance, condition, operations, use, return or disposition of the Equipment. You agree to reimburse us for and defend us against any claims for such losses, damages, penalties, claims, injuries, or expenses except caused by our gross negligence or willful misconduct. This indemnity continues even after the Loan as required for suits or controversies which occurred during the Term.

**10. IDENTIFICATION.** You authorize us to use or control, releasing information on this Loan, including your official name, social numbers, and any other information describing the Equipment. We will send you copies of the earnings. You will attach to the Equipment any name plates or stickers we provide you.

**11. LOSS OR DAMAGE.** You are responsible for any loss of the Equipment from any cause at all, whether or not insured. If any part of the Equipment is lost, stolen or damaged, you will promptly notify us of such an event. Then, at our option, you will repair the Equipment so that it is in good condition and working order. If you have satisfied your obligations under this Section 11 and you are not in default, we will forward to you any insurance proceeds which we receive for such lost, damaged, or destroyed item. If you are in default, we will apply any insurance proceeds whatsoever to reduce your obligations under Section 14 of this Loan.

**12. INSURANCE.** During the term of a Loan, you will keep the Equipment insured, at your sole cost and expense, against all risks of a loss or damage or an amount not less than the replacement cost of the Equipment showing us as loss payee as our interests may appear. You will also obtain and maintain for the term of a Loan, comprehensive public liability insurance in the amount of \$2,000,000 showing us as additional insured. You will pay all premiums for such insurance. If you do not provide such insurance, you agree that we have the right, but not the obligation, to obtain such insurance and charge you for all costs. You irrevocably appoint us as your attorney-in-fact to make claims for recovery payment of, and execute and endorse all documents, checks or drafts in payment for loss or damage under any said insurance policies.

**13. DEFAULT.** You will be in default under this Loan if any of the following happens: (a) we do not receive any payment or other payment due hereunder 10 days after its due date (we prior notice from us to you of such default is necessary) or (b) you or any of your guarantors become insolvent, are liquidated, dissolve, stop doing business, divide into two or more entities, or assign rights or property for the benefit of creditors, or (c) a petition is filed by or against you or any of your guarantors under any bankruptcy or insolvency law which remains undischarged or undischarged for sixty (60) days, or (d) (for individuals) you or any of your guarantors die, or have a guardian appointed, or (e) any representation you have made in this Loan shall prove to be false or misleading in any material respect, or (f) any of your guarantors breach their guaranty by not correcting the default within 10 days after we send you written notice of the default, (g) you default on any other agreement between you and us (or our affiliates), (h) you default under any other financial agreement between you and a third party or affiliate in an original amount in excess of \$50,000, or (i) if there has been a material adverse change in your business, assets, operations, condition (financial or otherwise) or results of operations.

**14. REMEDIES.** Upon the occurrence of default, we may, in our sole discretion, do any or all of the following: (a) provide written notice to you of default, (b) as liquidated damages for loss or a bargain and not as a penalty, declare due and payable (i) any and all amounts which may be then due and payable by you to us under this Loan Agreement, plus (ii) all Loan payments



## TERMS AND CONDITIONS

returning through the end of the Loan Agreement term, discounted at the higher of 2% or the lowest rate allowed by law. We have the right to appoint a receiver or to require you to make the Equipment available for us, for possession during reasonable business hours or we may repossess the Equipment, among as we do not breach the terms in doing so, or we may use legal process in compliance with applicable law pursuant to court order in repossess the Equipment repossessed. You will not make any claims against us or the Equipment for trespass, damage or any other reason. If we take possession of the Equipment, we may (a) sell or lease the Equipment at public or private sale or lease and/or (b) exercise such other rights as may be allowed by applicable law. Although you agree that we have no obligation to sell the Equipment, if we do sell the Equipment, we will apply any proceeds we receive to reduce your obligations under this Section 11 and any surplus remaining shall be returned to you. You agree (a) that we only need to give you 10 days advance notice of any sale and (b) notice of advertising, (b) to pay all of the costs we reasonably incur to enforce our rights against you including attorney's fees and (c) that we will retain all of our rights against you even if we do not choose to enforce them at the time of your default. You further agree this Loan is nonsubordinated with any loan or other obligation between you and your affiliates and us (the "Other Obligations"). Accordingly, you agree that any default as stated in this Loan or under the Other Obligations shall also be a default under the non-defaulted obligation. We shall be entitled to exercise all rights and remedies available to us, including without limitation, the right to repossess and sell any equipment subject to this Loan or the Other Obligations and apply the proceeds to the Loan or Other Obligations in our discretion. For so long as any obligations and liabilities remain outstanding with respect to the Loan and Other Obligations all security interests granted under the Loan and Other Obligations shall remain in full force and effect as security for your obligations and shall not be released until all obligations and liabilities under the Loan and Other Obligations have been fully paid and discharged. These remedies are cumulative, and in addition to any other remedies provided for by law and may be exercised concurrently or separately. Any failure or delay by us to exercise any right shall not operate as a waiver of any other right or future right.

**15. RETURN OF EQUIPMENT.** If (a) a default occurs and continues, you will immediately return the Equipment, manuals and accessories to any location(s) and aboard any carrier(s) with prepaid freight and insurance as we may designate in the contiguous United States. The equipment must be maintained in accordance with Section 7, and in "Average Saleable Condition" which means that all of the Equipment is immediately available for use by a third party buyer, lessee or borrower, other than yourself, without the need for any repair or refurbishment. You will pay us for any missing or defective parts or accessories.

**16. YOUR REPRESENTATIONS.** You state for our benefit that as of the date of this Loan (a) you have the lawful power and authority to enter into this Loan, (b) the individuals signing this Loan have been duly authorized to do so on your behalf, (c) by entering into this Loan you will not violate any law or other agreement to which you are a party, (d) you are not aware of anything that will have a material negative effect on your ability to satisfy your obligations under this Loan, and (e) all financial information you have provided us is true and accurate in all material respects and provides a good representation of your financial condition.

**17. CHANGE IN BUSINESS, MANAGEMENT OR OWNERSHIP.** You covenant and agree that from the date of this Loan Agreement until all of the obligations have been paid in full and all of our commitments have been terminated, you will not, without our prior written consent (a) merge or permit any change in (i) your form or organization, (ii) the nature of your business as carried on as of the date hereof, (iii) the composition of your current executive management, or (iv) your equity ownership, or (b) merge or transfer (including, without limitation, any transfer resulting from your division into two or more entities), all or substantially all of your stock or assets.

**18. YOUR PROMISES.** In addition to the other provisions of this Loan, you agree that during the term of this Loan (a) you will promptly notify us in writing if you move your principal place of business, or if you change the name of your business, (b) you will provide us such financial information as we may reasonably request from time to time, and (c) you will take any action we reasonably request to protect our rights in the Equipment and to meet your obligations under this Loan.

**19. ASSIGNMENT.** YOU WILL NOT SELL, TRANSFER (INCLUDING WITHOUT LIMITATION, ANY TRANSFER RESULTING FROM YOUR DIVISION INTO TWO OR MORE ENTITIES), ASSIGN, FLEGE, LEND OR (PART) WITH POSSESSION OF THIS EQUIPMENT, OR FILE, OR PERMIT A LIEN TO BE FILED AGAINST THE EQUIPMENT. We may, without notifying you, sell, assign, or transfer this Loan and our interests in the Equipment. You

agree that if we do so, the new owner (and any subsequent owners) will have the same rights and benefits that we now have, but will not have to perform any of our obligations. You agree that the rights of the new owner will not be subject to any claims, defenses, or set-offs that you may have against us. Any such assignment, sale, or transfer of this Loan or Equipment will not release us of any obligations we may have to you under this Loan. If you are given notice of a new owner of the Loan, you agree to respond to any requests about this Loan and, if directed by us, to pay the new owner's payments and other amounts due under this Loan.

**20. COLLECTION EXPENSES, OVERDUE PAYMENT, TERMINATION.** You agree that we can, but do not have to take on your behalf any action when you fail to take as required by this Loan, and our expenses will be in addition to the payment which you owe us. To the extent allowed by law, any late payment or non-payment of any past due amount will accrue interest at a rate of 18% per annum or the highest legal rate from the due date until paid. At the end of the Loan Term, you shall pay us a Loan termination fee of \$150.00.

**21. MISCELLANEOUS.** This Loan contains our entire agreement and supersedes any conflicting provision of any equipment purchase order or any other agreement. TIME IS OF THE ESSENCE IN THIS LOAN. If a court finds any provision of this Loan to be unenforceable, the remaining terms of this Loan shall remain in effect. You authorize us (or our agent) to (a) obtain credit reports, (b) make such other credit inquiries as we may deem necessary and (c) furnish payment history information to payment reporting agencies. To the extent permitted by law, we may charge a fee to cover our documentation and investigation costs.

**22. NOTICES.** All of your written notices to us must be certified mail or recognized overnight delivery service, postage prepaid, to us at our address stated in this Loan, or by facsimile transmission. All of our notices to you may be sent first class mail, postage prepaid, to your address stated in this Loan. At any time after this Loan is signed, you or we may change an address or facsimile telephone number by giving notice to the other of the change.

**23. WAIVERS.** WE AND YOU IRREVOCABLY WAIVE ANY AND ALL RIGHT EITHER OF US MAY HAVE TO A TRIAL BY JURY IN ANY ACTION PROCEEDING OR CLAIM OF ANY NATURE RELATING TO THIS AGREEMENT, ANY DOCUMENTS EXECUTED IN CONNECTION WITH THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED IN ANY OF SUCH DOCUMENTS YOU IRREVOCABLY AGREE THAT ANY ARBITRATION JUDICIAL REFERENCE OR TRIAL BY A JUDGE OF ANY DISPUTE WILL TAKE PLACE ON AN INDIVIDUAL BASIS WITHOUT RESORT TO ANY FORM OF CLASS OR REPRESENTATIVE ACTION. WE AND YOU ACKNOWLEDGE THAT THE FOREGOING WAIVER IS KNOWING AND VOLUNTARY. We will not be liable for specific performance of this Loan for any losses, damages, delay or failure to deliver the Equipment.

**24. USA PATRIOT ACT NOTICE.** To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each Borrower that opens an account. What this means when you open an account, we will ask for the business name, business address, taxpayer identifying number and other information or documentation that will allow us to identify you, such as organizational documents. For some businesses and organizations, we may also need to ask for identifying information and documentation relating to certain individuals associated with the business or organization.

**25. ANTI-MONEY LAUNDERING/INTERNATIONAL TRADE LAW COMPLIANCE.** You represent and warrant as of the date of this Loan Agreement, the date of each advance of proceeds under the Loan, the date of any renewal, extension or modification of this Loan Agreement, and at all times until the Loan has been terminated and all amounts thereunder have been indefeasibly paid in full, that (a) no Covered Entity (i) is a Sanctioned Person; (ii) has any of its assets in a Sanctioned Country or in the possession, custody or control of a Sanctioned Person; or (iii) does business in or with, or derives any of its operating income from investments in or transaction with, any Sanctioned Country or Sanctioned Person in violation of any law, regulation, order or directive enforced by any Compliance Authority, (ii) the proceeds of the Loan will not be used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Country or Sanctioned Person in violation of any law, regulation, order or directive enforced by any Compliance Authority, (c) the funds used to repay the Loan are not derived from any unlawful activity, and (c) each Covered Entity is in compliance with, and no Covered Entity engages in any dealings or transactions prohibited by, any laws of the United States, including but not limited to any anti-terrorism laws. You covenant and agree that you shall immediately notify us in writing upon the occurrence of a Reportable



## TERMS AND CONDITIONS

**Compliance Event.** As used herein, "**Anti-Terrorism laws**" means any laws relating to terrorism, trade sanctions programs and embargoes, import/export (re-export, money laundering or bribery), all as amended, supplemented or replaced from time to time. "**Compliance Authority**" means each and all of the (a) U.S. Treasury Department/Office of Foreign Assets Control, (b) U.S. Treasury Department/Financial Crimes Enforcement Network, (c) U.S. State Department/Department of Defense/Trade Controls, (d) U.S. Commerce Department/Bureau of Industry and Security, (e) U.S. Internal Revenue Service, (f) U.S. Justice Department, and (g) U.S. Securities and Exchange Commission. "**Covered Entity**" means you, your affiliates and subsidiaries, all guarantors, pledgers of collateral, all owners of the foregoing, and all of your brokers or other agents acting in any capacity in connection with this Loan. "**Reportable Compliance Event**" means that any Covered Entity becomes a Sanctioned Person, or is indicted, arraigned, investigated or custodially detained, or receives an inquiry from regulatory or law enforcement officials, in connection with any anti-terrorism law or any predicate crime to any Anti-Terrorism law, or discovers facts or circumstances implicating any aspect of its operations with the actual or possible violation of any Anti-Terrorism Law. "**Sanctioned Country**" means a country subject to a sanctions program maintained by any Compliance Authority; and "**Sanctioned Person**" means any individual person, group, regime, entity or thing listed or otherwise recognized as a specially designated, prohibited, sanctioned or debarred person or entity, or subject to any limitations or prohibitions (including but not limited to the blocking of property or rejection of transactions), under any order or directive of any Compliance authority otherwise subject to, or specially designated under, any sanctions program maintained by any Compliance Authority.

**26. BENEFICIAL OWNERS.** If applicable, you agree to deliver certification(s) of beneficial owners in the form requested by us (as executed and delivered to us on or prior to the date of this Loan Agreement) and updated from time to time, the "**Certification of Beneficial Owners**". You represent and warrant (which shall be continuing in nature and remain in full force and effect until all of the obligations are paid in full) that the information in the Certification of Beneficial Owners executed and delivered to us on or prior to the date of this Loan Agreement (if applicable), as updated from time to time in accordance with this Loan Agreement, is true, complete and correct as of the date hereof and as of the date any such update is delivered. You acknowledge and agree that the Certification of Beneficial Owners (if applicable) is a Loan document. You agree that from the date of execution of this Loan Agreement until all of the obligations have been paid in full and all of our commitments have been terminated, you will provide (i) confirmation of the accuracy of the information set forth in the most recent Certification of Beneficial Owners provided to us (if applicable), as and when requested by us, (ii) if applicable, a new Certification of Beneficial Owners in form and substance acceptable to us when the individual(s) identified as a controlling party (either a direct or indirect individual owner on the most recent Certification of Beneficial Owners provided to us) have changed, and (iii) such other information and documentation as may reasonably be required by us from time to time for purposes of compliance by us with applicable laws (including without limitation the USA PATRIOT Act) and other "know your customer" and anti-money laundering rules and regulations, and any policy or procedure implemented by us to comply therewith.



**EXHIBIT H-9**

**KONA ICE FRANCHISE**

**PROMISSORY NOTE AND SECURITY AGREEMENT – OSGOOD BANK**





LOAN NUMBER	LOAN NAME	ACCT. NUMBER	NOTE DATE	INITIALS
TESTKONA	John Doe		01/31/22	SLOB
NOTE AMOUNT	INDEX (w/Margin)	RATE	MATURITY DATE	LOAN PURPOSE
\$120,200.00	Not Applicable	6.000%	03/01/27	Commercial
Creditor Use Only				

**PROMISSORY NOTE**  
(Commercial - Single Advance)

DATE AND PARTIES. The date of this Promissory Note (Note) is January 31, 2022. The parties and their addresses are:

**LENDER:**

OSGOOD BANK  
275 W Main Street  
PO Box 69  
Osgood, OH 45351  
Telephone: (419) 582-2681

**BORROWER:**

JOHN DOE  
123 Anywhere Street  
Fl. Oranie, OH 45845

**1. DEFINITIONS.** As used in this Note, the terms have the following meanings:

- A. Pronouns. The pronouns "I," "me," and "my" refer to each Borrower signing this Note and each other person or legal entity (including guarantors, endorsers, and sureties) who agrees to pay this Note. "You" and "Your" refer to the Lender, any participants or syndicators, successors and assigns, or any person or company that acquires an interest in the Loan.
- B. Note. Note refers to this document, and any extensions, renewals, modifications and substitutions of this Note.
- C. Loan. Loan refers to this transaction generally, including obligations and duties arising from the terms of all documents prepared or submitted for this transaction such as applications, security agreements, disclosures or notes, and this Note.
- D. Loan Documents. Loan Documents refer to all the documents executed as a part of or in connection with the Loan.
- E. Property. Property is any property, real, personal or intangible, that secures my performance of the obligations of this Loan.
- F. Percent. Rates and rate change limitations are expressed as annualized percentages.
- G. Dollar Amounts. All dollar amounts will be payable in lawful money of the United States of America.

**2. PROMISE TO PAY.** For value received, I promise to pay you or your order, at your address, or at such other location as you may designate, the principal sum of \$120,200.00 (Principal) plus interest from January 31, 2022 on the unpaid Principal balance until this Note matures or this obligation is accelerated.

**3. INTEREST.** Interest will accrue on the unpaid Principal balance of this Note at the rate of 6.000 percent (Interest Rate).

- A. Post-Maturity Interest. After maturity or acceleration, interest will accrue on the unpaid Principal balance of this Note at 18.000 percent until paid in full.

~~B. Maximum Interest Amount. Any amount assessed or collected as interest under the terms of this Note will be limited to the maximum lawful amount of interest allowed by applicable law. Amounts collected in excess of the maximum lawful amount will be applied first to the unpaid Principal balance. Any remainder will be refunded to me.~~

- C. Accrual. Interest accrues using an Actual/365 days counting method.

**4. ADDITIONAL CHARGES.** As additional consideration, I agree to pay, or have paid, these additional fees and charges.

- A. Nonrefundable Fees and Charges. The following fees are earned when collected and will not be refunded if I prepay this Note before the scheduled maturity date:  
Loan. A(n) Loan fee of \$200.00 payable from the loan proceeds.

**5. REMEDIAL CHARGES.** In addition to interest or other finance charges, I agree that I will pay these additional fees based on my method and pattern of payment. Additional remedial charges may be described elsewhere in this Note.

- A. Late Charge. If a payment is more than 10 days late, I will be charged 10.000 percent of the Amount of Payment or \$10.00, whichever is greater. However, this charge will not be greater than \$100.00. I will pay this late charge promptly but only once for each late payment.
- B. Returned Payment Charge. I agree to pay a fee not to exceed \$28.00 for each check, electronic payment, negotiable order of withdrawal or draft I issue in connection with the Loan that is returned because it has been dishonored.
- C. Stop Payment Fee. A(n) Stop Payment Fee equal to \$28.00.

**6. PAYMENT.** I agree to pay this Note on demand, but if no demand is made, I will make 9 payment(s) of Principal and Interest in the amount of \$3,000.00 beginning March 1, 2022 and on the 1st day of each month thereafter. I will make 3 payment(s) of Principal and Interest in the amount of \$100.00 beginning December 1, 2022 and on the 1st day of each month thereafter. I will make 9 payment(s) of Principal and Interest in the amount of \$3,000.00 beginning March 1, 2023 and on the 1st day of each month thereafter. I will make 3 payment(s) of Principal and Interest in the amount of \$100.00 beginning December 1, 2023 and on the 1st day of each month thereafter. I will make 9 payment(s) of Principal and Interest in the amount of \$3,000.00 beginning March 1, 2024 and on the 1st day of each month thereafter. I will make 3 payment(s) of Principal and Interest in the amount of \$100.00 beginning December 1, 2024 and on the 1st day of each month thereafter. I will make 9 payment(s) of Principal and Interest in the amount of \$3,000.00 beginning March 1, 2025 and on the 1st day of each month thereafter. I will make 3 payment(s) of Principal and Interest in the amount of \$100.00 beginning December 1, 2025 and on the 1st day of each month thereafter. I will make 9 payment(s) of Principal and Interest in the amount of \$3,000.00 beginning March 1, 2026 and on the 1st day of each month thereafter. I will make 2 payment(s) of Principal and Interest in the amount of \$100.00 beginning December 1, 2026 and on the 1st day of each month thereafter. I will make 1 payment(s) of Principal and Interest in the amount of \$2,353.76 on March 1, 2027.

Payments will be rounded to the nearest \$.01. With the final payment I also agree to pay any additional fees or charges owing and the amount of any advances you have made to others on my behalf. Payments scheduled to be paid on the 29th, 30th or 31st day of a month that contains no such day will, instead, be made on the last day of such month.

Interest only payments will be applied first to any charges I owe other than late charges, then to accrued, but unpaid interest, then to late charges. Principal only payments will be applied first to the amount of the scheduled Principal payment, then to any late charges.

Payments of Principal and interest will be applied first to interest that is due, then to principal that is due, then to escrow that is due, and finally to late charges that are due. If you and I agree to a different application of payments, we will describe our agreement on this Note. You may change how payments are applied in your sole discretion without notice to me. The actual amount of my final payment will depend on my payment record.

**7. PREPAYMENT.** I may prepay this Loan under the following terms and conditions. A prepayment penalty of 2% of the original principal balance will be assessed if the note is paid in full during the first 24 months. Any partial prepayment will not excuse any later scheduled payments until I pay in full.

**8. LOAN PURPOSE.** The purpose of this Loan is Purchase Kona Entertainment Vehicle.

**9. ADDITIONAL TERMS.** Borrower to provide tax returns to Osgood State Bank within 120 days after end of fiscal year. Personal Guarantors to provide annual financial statements to Osgood State Bank within 120 days after end of calendar year.

**10. SECURITY.** The Loan is secured by separate security instruments prepared together with this Note as follows:

John Doe  
Ohio Promissory Note  
OH/4XXX/HDI1Y0000000002299017013122N

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Initials \_\_\_\_\_  
Page 1



Document Name  
Security Agreement - John Doe

Parties to Document  
John Doe

Date of Security Document  
March 1, 2022

11. **LIMITATIONS ON CROSS-COLLATERALIZATION.** The cross-collateralization clause on any existing or future loan, but not including this Loan, is void and ineffective as to this Loan, including any extension or refinancing.

12. **DEFAULT.** I understand that you may demand payment anytime at your discretion. For example, you may demand payment in full if any of the following events (known separately and collectively as an Event of Default) occur:

- A. **Payments.** I fail to make a payment in full when due.
- B. **Insolvency or Bankruptcy.** The death, dissolution or insolvency of; appointment of a receiver by or on behalf of; application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of; the voluntary or involuntary termination of existence by; or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against me or any co-signer, endorser, surety or guarantor of this Note or any other obligations I have with you.
- C. **Death or Incompetency.** I die or am declared legally incompetent.
- D. **Failure to Perform.** I fail to perform any condition or to keep any promise or covenant of this Note.
- E. **Other Documents.** A default occurs under the terms of any other Loan Document.
- F. **Other Agreements.** I am in default on any other debt or agreement I have with you.
- G. **Misrepresentation.** I make any verbal or written statement or provide any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.
- H. **Judgment.** I fail to satisfy or appeal any judgment against me.
- I. **Forfeiture.** The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.
- J. **Name Change.** I change my name or assume an additional name without notifying you before making such a change.
- K. **Property Transfer.** I transfer all or a substantial part of my money or property.
- L. **Property Value.** You determine in good faith that the value of the Property has declined or is impaired.
- M. **Insecurity.** You determine in good faith that a material adverse change has occurred in my financial condition from the conditions set forth in my most recent financial statement before the date of this Note or that the prospect for payment or performance of the Loan is impaired for any reason.

13. **DUE ON SALE OR ENCUMBRANCE.** You may, at your option, declare the entire balance of this Note to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law, as applicable.

14. **WAIVERS AND CONSENT.** To the extent not prohibited by law, I waive protest, presentment for payment, demand, notice of acceleration, notice of intent to accelerate and notice of dishonor.

A. **Additional Waivers By Borrower.** In addition, I, and any party to this Note and Loan, to the extent permitted by law, consent to certain actions you may take, and generally waive defenses that may be available based on these actions or based on the status of a party to this Note.

- (1) You may renew or extend payments on this Note, regardless of the number of such renewals or extensions.
- (2) You may release any Borrower, endorser, guarantor, surety, accommodation maker or any other co-signer.
- (3) You may release, substitute or impair any Property securing this Note.
- (4) You, or any institution participating in this Note, may invoke your right of set-off.
- (5) You may enter into any sales, repurchases or participations of this Note to any person in any amounts and I waive notice of such sales, repurchases or participations.
- (6) I agree that any of us signing this Note as a Borrower is authorized to modify the terms of this Note or any instrument securing, guaranteeing or relating to this Note.

(7) I agree that you may inform any party who guarantees this Loan of any Loan accommodations, renewals, extensions, modifications, substitutions or future advances.

B. **No Waiver By Lender.** Your course of dealing, or your forbearance from, or delay in, the exercise of any of your rights, remedies, privileges or right to insist upon my strict performance of any provisions contained in this Note, or any other Loan Document, shall not be construed as a waiver by you, unless any such waiver is in writing and is signed by you.

15. **REMEDIES.** After I default, you may at your option do any one or more of the following.

- A. **Acceleration.** You may make all or any part of the amount owing by the terms of this Note immediately due.
- B. **Sources.** You may use any and all remedies you have under state or federal law or in any Loan Document.
- C. **Insurance Benefits.** You may make a claim for any and all insurance benefits or refunds that may be available on my default.
- D. **Payments Made On My Behalf.** Amounts advanced on my behalf will be immediately due and may be added to the balance owing under the terms of this Note, and accrue interest at the highest post-maturity interest rate.
- E. **Attachment.** You may attach or garnish my wages or earnings.
- F. **Set-Off.** You may use the right of set-off. This means you may set-off any amount due and payable under the terms of this Note against any right I have to receive money from you.

My right to receive money from you includes any deposit or share account balance I have with you, any money owed to me on an item presented to you or in your possession for collection or exchange; and any repurchase agreement or other non-deposit obligation. "Any amount due and payable under the terms of this Note" means the total amount to which you are entitled to demand payment under the terms of this Note at the time you set-off.

Subject to any other written contract, if my right to receive money from you is also owned by someone who has not agreed to pay this Note, your right of set-off will apply to my interest in the obligation and to any other amounts I could withdraw on my sole request or endorsement.

Your right of set-off does not apply to an account or other obligation where my rights arise only in a representative capacity. It also does not apply to any Individual Retirement Account or other tax-deferred retirement account.

You will not be liable for the dishonor of any check when the dishonor occurs, because you set-off against any of my accounts. I agree to hold you harmless from any such claims arising as a result of your exercise of your right of set-off.

C. **Waiver.** Except as otherwise required by law, by choosing any one or more of these remedies you do not give up your right to use any other remedy. You do not waive a default if you choose not to use a remedy. By electing not to use any remedy, you do not waive your right to later consider the event a default and to use any remedies if the default continues or occurs again.

16. **COLLECTION EXPENSES AND ATTORNEYS' FEES.** On or after the occurrence of an Event of Default, to the extent permitted by law, I agree to pay all expenses of collection, enforcement or protection of your rights and remedies under this Note or any other Loan Document. Expenses include (unless prohibited by law) reasonable attorneys' fees, court costs, and other legal expenses. These expenses are due and payable immediately. If not paid immediately, these expenses will bear interest from the date of payment until paid in full at the highest interest rate in effect as provided for in the terms of this Note. All fees and expenses will be secured by the Property I have granted to you, if any. In addition, to the extent permitted by the United States Bankruptcy Code, I agree to pay the reasonable attorneys' fees incurred by you to protect your rights and interests in connection with any bankruptcy proceedings initiated by or against me.

17. **COMMISSIONS.** I understand and agree that you (or your affiliate) will earn commissions or fees on any insurance products, and may earn such fees on other services that I buy through you or your affiliate.

18. **WARRANTIES AND REPRESENTATIONS.** I have the right and authority to enter into this Note. The execution and delivery of this Note will not violate any agreement governing me or to which I am a party.

19. **INSURANCE.** I agree to obtain the insurance described in this Loan Agreement.

A. **Property Insurance.** I will insure or retain insurance coverage on the Property and abide by the insurance requirements of any security instrument securing the Loan.

John Doe  
Ohio Promissory Note  
OH/4XXH011Y0000000002299017013122N

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Initials \_\_\_\_\_  
Page 2



B. Insurance Warranties. I agree to purchase any insurance coverages that are required, in the amounts you require, as described in this or any other documents I sign for the Loan. I will provide you with continuing proof of coverage. I will buy or provide insurance from a firm licensed to do business in the State where the Property is located. If I buy or provide the insurance from someone other than you, the firm will be reasonably acceptable to you. I will have the insurance company name you as loss payee on any insurance policy. You will apply the insurance proceeds toward what I owe you on the outstanding balance. I agree that if the insurance proceeds do not cover the amounts I still owe you, I will pay the difference. I will keep the insurance until all debts secured by this agreement are paid. If I want to buy the insurance from you, I have signed a separate statement agreeing to this purchase.

20. APPLICABLE LAW. This Note is governed by the laws of Ohio, the United States of America, and to the extent required, by the laws of the jurisdiction where the Property is located, except to the extent such state laws are preempted by federal law. In the event of a dispute, the exclusive forum, venue and place of jurisdiction will be in Ohio, unless otherwise required by law.

21. JOINT AND SEVERAL LIABILITY AND SUCCESSORS. My obligation to pay the Loan is independent of the obligation of any other person who has also agreed to pay it. You may sue me alone, or anyone else who is obligated on the Loan, or any number of us together, to collect the Loan. Extending the Loan or new obligations under the Loan, will not affect my duty under the Loan and I will still be obligated to pay the Loan. This Note shall inure to the benefit of and be enforceable by you and your successors and assigns and shall be binding upon and enforceable against me and my successors and assigns.

22. AMENDMENT, INTEGRATION AND SEVERABILITY. This Note may not be amended or modified by oral agreement. No amendment or modification of this Note is effective unless made in writing. This Note and the other Loan Documents are the complete and final expression of the agreement. If any provision of this Note is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable. No present or future agreement securing any other debt I owe you will secure the payment of this Loan if, with respect to this loan, you fail to fulfill any necessary requirements or fail to conform to any limitations of the Truth in Lending Act (Regulation Z) or the Real Estate Settlement Procedures Act (Regulation X) that are required for loans secured by the Property or if, as a result, this Loan would become subject to Section 67D of the John Warner National Defense Authorization Act for Fiscal Year 2007.

23. INTERPRETATION. Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Note.

24. NOTICE, FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS. Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one Borrower will be deemed to be notice to all Borrowers. I will inform you in writing of any change in my name, address or other application information. I will provide you any correct and complete financial statements or other information you request. I agree to sign, deliver, and file any additional documents or certifications that you may consider necessary to perfect, continue, and preserve my obligations under this Loan and to confirm your lien status on any Property. Time is of the essence.

25. CREDIT INFORMATION. I agree to supply you with whatever information you reasonably request. You will make requests for this information without undue frequency, and will give me reasonable time in which to supply the information.

26. ERRORS AND OMISSIONS. I agree, if requested by you, to fully cooperate in the correction, if necessary, in the reasonable discretion of you of any and all loan closing documents so that all documents accurately describe the loan between you and me. I agree to assume all costs including by way of illustration and not limitation, actual expenses, legal fees and marketing losses for failing to reasonably comply with your requests within thirty (30) days.

CONFESSION OF JUDGMENT. If I default, I authorize any attorney to appear in a court of record and confess judgment against me in favor of you. The confession of judgment may be without process and for any amount due on this Note including court fees, collection costs and reasonable attorneys' fees. This is in addition to other remedies.

27. SIGNATURES. By signing under seal, I agree to the terms contained in this Note. I also acknowledge receipt of a copy of this Note.

Solely for the warning directly below, "you" and "your" refer to each Borrower signing below.

**WARNING: BY SIGNING THIS PAPER YOU GIVE UP YOUR RIGHT TO NOTICE AND COURT TRIAL. IF YOU DO NOT PAY ON TIME A COURT JUDGMENT MAY BE TAKEN AGAINST YOU WITHOUT YOUR PRIOR KNOWLEDGE AND THE POWERS OF A COURT CAN BE USED TO COLLECT FROM YOU REGARDLESS OF ANY CLAIMS YOU MAY HAVE AGAINST THE CREDITOR WHETHER FOR RETURNED GOODS, FAULTY GOODS, FAILURE ON HIS PART TO COMPLY WITH THE AGREEMENT, OR ANY OTHER CAUSE.**

BORROWER:

\_\_\_\_\_  
John Doe Date \_\_\_\_\_ (Seal)

LENDER:

Osgood Bank

By \_\_\_\_\_ Date \_\_\_\_\_ (Seal)  
Sharon Lobo, Senior Lending Officer



**GUARANTY**  
(Continuing Debt - Unlimited)

DATE AND PARTIES: The date of this Guaranty is January 31, 2022. The parties and their addresses are:

**LENDER:**  
OSGOOD BANK  
275 W Main Street  
PO Box 69  
Osgood, OH 45351  
Telephone: (419) 582-2681

**BORROWER:**  
JOHN DOE  
123 Anywhere Street  
Florian, OH 45845

**GUARANTOR:**  
JAMES DOE  
123 Anywhere  
New York, NY 10012

**1. DEFINITIONS.** As used in this Guaranty, the terms have the following meanings:

- A. **Pronouns.** The pronouns "I", "me" and "my" refer to all persons or entities signing this Guaranty, severally and together. "You" and "your" refer to the Lender.
- B. **Note.** "Note" refers to the document that evidences the Borrower's indebtedness, and any extensions, renewals, modifications and substitutions of the Note.
- C. **Property.** "Property" means any property, real, personal or intangible, that secures performance of the obligations of the Note, Debt, or this Guaranty.
- D. **Loan.** "Loan" refers to this transaction generally, including obligations and duties arising from the terms of all documents prepared or submitted for this transaction.
- E. **Loan Documents.** "Loan Documents" refer to all the documents executed as a part of or in connection with the Loan.

**2. SPECIFIC AND FUTURE DEBT GUARANTY.** For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and to induce you, at your option, to make loans or engage in any other transactions with the Borrower from time to time, I absolutely and unconditionally agree to all terms of and guaranty to you the payment and performance of each and every Debt, of every type, purpose and description that the Borrower either individually, among all or a portion of themselves, or with others, may now or at any time in the future owe you, including, but not limited to the following described Debt(s) including without limitation, all principal, accrued interest, attorneys' fees and collection costs, when allowed by law, that may become due from the Borrower to you in collecting and enforcing the Debt and all other agreements with respect to the Borrower.

A promissory note or other agreement, No. TESI KONA, dated January 31, 2022, from John Doe (Borrower) to you, in the amount of \$120,200.00.

In addition, Debt refers to debts, liabilities, and obligations of the Borrower (including, but not limited to, amounts agreed to be paid under the terms of any notes or agreements securing the payment of any debt, loan, liability or obligation, overdrafts, letters of credit, guarantees, advances for taxes, insurance, repairs and storage, and all extensions, renewals, refinancings and modifications of these debts) whether now existing or created or incurred in the future, due or to become due, or absolute or contingent, including obligations and duties arising from the terms of all documents prepared or submitted for the transaction such as applications, security agreements, disclosures, and the Note.

You may, without notice, apply this Guaranty to such Debt of the Borrower as you may select from time to time.

**3. EXTENSIONS.** I consent to all renewals, extensions, modifications and substitutions of the Debt which may be made by you upon such terms and conditions as you may see fit from time to time without further notice to me and without limitation as to the number of renewals, extensions, modifications or substitutions.

**4. UNCONDITIONAL LIABILITY.** I am unconditionally liable under this Guaranty, regardless of whether or not you pursue any of your remedies against the Borrower, against any other maker, surety, guarantor or endorser of the Debt or against any Property. You may sue me alone, or anyone else who is obligated on this Guaranty, or any number of us together, to collect the Debt. My liability is not conditioned on the signing of this Guaranty by any other person and further is not subject to any condition not expressly set forth in this Guaranty or any instrument executed in connection with the Debt. My obligation to pay according to the terms of this Guaranty shall not be affected by the illegality, invalidity or unenforceability of any notes or agreements evidencing the Debt, the violation of any applicable usury laws, forgery, or any other circumstances which make the indebtedness unenforceable against the Borrower. I will remain obligated to pay on this Guaranty even if any other person who is obligated to pay the Debt, including the Borrower, has such obligation discharged in bankruptcy, foreclosure, or otherwise discharged by law.

**5. BANKRUPTCY.** If a bankruptcy petition should at any time be filed by or against the Borrower, the maturity of the Debt, so far as my liability is concerned, shall be accelerated and the Debt shall be immediately payable by me. I acknowledge and agree that this Guaranty, and the Debt secured hereby, will remain in full force and effect at all times, notwithstanding any action or undertakings by, or against, you or against any Property, in connection with any obligation in any proceeding in the United States Bankruptcy Courts. Such action or undertaking includes, without limitation, valuation of Property, election of remedies or imposition of secured or unsecured claim status upon claims by you, pursuant to the United States Bankruptcy Code, as amended. In the event that any payment of principal or interest received and paid by any other guarantor, borrower, surety, endorser or co-maker is deemed, by final order of a court of competent jurisdiction, to have been a voidable preference under the bankruptcy or insolvency laws of the United States or otherwise, then my obligation will remain as an obligation to you and will not be considered as having been extinguished.

**6. REVOCATION.** I agree that this is an absolute and unconditional Guaranty. I agree that this Guaranty will remain binding on me, whether or not there are any Debts outstanding, until you have actually received written notice of my revocation or written notice of my death or incompetence. Notice of revocation or notice of my death or incompetence will not affect my obligations under this Guaranty with respect to any Debts incurred by or for which you have made a commitment to Borrower before you actually receive such notice, and all renewals, extensions, refinancings, and modifications of such Debts. I agree that if any other person signing this Guaranty provides a notice of revocation to you, I will still be obligated under this Guaranty until I provide such a notice of revocation to you. If any other person signing this Guaranty dies or is declared incompetent, such fact will not affect my obligations under this Guaranty.

**7. LIMITATIONS ON CROSS-COLLATERALIZATION.** The cross-collateralization clause on any existing or future loan, but not including this Loan, is void and ineffective as to this Loan, including any extension or refinancing.

**8. PROPERTY.** I agree that any Property may be assigned, exchanged, released in whole or in part or substituted without notice to me and without defeating, discharging or diminishing my liability. My obligation is absolute and your failure to perfect any security interest or any act or omission by you which impairs the Property will not relieve me or my liability under this Guaranty. You are under no duty to preserve or protect any Property until you are in actual or constructive possession. For purposes of this paragraph, you will only be in "actual" possession when you have physical, immediate and exclusive control over the Property and have accepted such control in writing. Further, you will only be deemed to be in "constructive" possession when you have both the power and intent to exercise control over the Property.

**9. DEFAULT.** I will be in default if any of the following events (known separately and collectively as an Event of Default) occur:

- A. **Payments.** I fail to make a payment in full when due.
- B. **Insolvency or Bankruptcy.** The death, dissolution or insolvency of, appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against me, Borrower, or any co-signer, endorser, surety or guarantor of this Guaranty or any Debt.
- C. **Death or Incompetency.** I die or am declared legally incompetent.
- D. **Failure to Perform.** I fail to perform any condition or to keep any promise or covenant of this Guaranty.
- E. **Other Documents.** A default occurs under the terms of any other document relating to the Debt.
- F. **Other Agreements.** I am in default on any other debt or agreement I have with you.

James Doe  
Ohio Guaranty  
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Page 1



- G. Misrepresentation. I make any verbal or written statement or provide any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.
- H. Judgment. I fail to satisfy or appeal any judgment against me.
- I. Forfeiture. The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.
- J. Name Change. I change my name or assume an additional name without notifying you before making such a change.
- K. Property Transfer. I transfer all or a substantial part of my money or property.
- L. Property Value. You determine in good faith that the value of the Property has declined or is impaired.
- M. Insecurity. You determine in good faith that a material adverse change has occurred in my financial condition from the conditions set forth in my most recent financial statement before the date of this Guaranty or that the prospect for payment or performance of the Debt is impaired for any reason.

**10. WAIVERS AND CONSENT.** To the extent not prohibited by law, I waive protest, presentment for payment, demand, notice of acceleration, notice of intent to accelerate and notice of dishonor.

**A. Additional Waivers.** In addition, to the extent permitted by law, I consent to certain actions you may take, and generally waive defenses that may be available based on these actions or based on the status of a party to the Debt or this Guaranty.

- (1) You may renew or extend payments on the Debt, regardless of the number of such renewals or extensions.
- (2) You may release any Borrower, endorser, guarantor, surety, accommodation maker or any other co-signer.
- (3) You may release, substitute or impair any Property.
- (4) You, or any institution participating in the Debt, may invoke your right of set-off.
- (5) You may enter into any sales, repurchases or participations of the Debt to any person in any amounts and I waive notice of such sales, repurchases or participations.
- (6) I agree that the Borrower is authorized to modify the terms of the Debt or any instrument securing, guarantying or relating to the Debt.
- (7) You may undertake a valuation of any Property in connection with any proceedings under the United States Bankruptcy Code concerning the Borrower or me, regardless of any such valuation, or actual amounts received by you arising from the sale of such Property.
- (8) I agree to consent to any waiver granted the Borrower, and agree that any delay or lack of diligence in the enforcement of the Debt, or any failure to file a claim or otherwise protect any of the Debt, in no way affects or impairs my liability.
- (9) I agree to waive reliance on any anti-deficiency statutes, through subrogation or otherwise, and such statutes in no way affect or impair my liability. In addition, until the obligations of the Borrower to Lender have been paid in full, I waive any right of subrogation, contribution, reimbursement, indemnification, exoneration, and any other right I may have to enforce any remedy which you now have or in the future may have against the Borrower or another guarantor or as to any Property.

Any Guarantor who is an "insider," as contemplated by the United States Bankruptcy Code, 11 U.S.C. 101, as amended, makes these waivers permanently. (An insider includes, among others, a director, officer, partner, or other person in control of the Borrower, a person or an entity that is a co-partner with the Borrower, an entity in which the Borrower is a general partner, director, officer or other person in control or a close relative of any of these other persons.) Any Guarantor who is not an insider makes these waivers until all Debt is fully repaid.

**B. No Waiver By Lender.** Your course of dealing, or your forbearance from, or delay in, the exercise of any of your rights, remedies, privileges or right to insist upon my strict performance of any provisions contained in the Debt instruments, shall not be construed as a waiver by you, unless any such waiver is in writing and is signed by you.

**C. Waiver of Claims.** I waive all claims for loss or damage caused by your acts or omissions where you acted reasonably and in good faith.

**11. REMEDIES.** After the Borrower or I default, you may at your option do any one or more of the following.

- A. Acceleration.** You may make all or any part of the amount owing by the terms of this Guaranty immediately due.
- B. Sources.** You may use any and all remedies you have under state or federal law or in any documents relating to the Debt.
- C. Insurance Benefits.** You may make a claim for any and all insurance benefits or refunds that may be available on default.
- D. Payments Made on the Borrower's Behalf.** Amounts advanced on the Borrower's behalf will be immediately due and may be added to the balance owing under the Debt.
- E. Attachment.** You may attach or garnish my wages or earnings.
- F. Set-Off.** You may use the right of set-off. This means you may set-off any amount due and payable under the terms of this Guaranty against any right I have to receive money from you.

My right to receive money from you includes any deposit or share account balance I have with you; any money owed to me on an item presented to you or in your possession for collection or exchange; and any repurchase agreement or other non-deposit obligation. "Any amount due and payable under the terms of this Guaranty" means the total amount to which you are entitled to demand payment under the terms of this Guaranty at the time you set-off.

Subject to any other written contract, if my right to receive money from you is also owned by someone who has not agreed to pay the Debt, your right of set-off will apply to my interest in the obligation and to any other amounts I could withdraw on my sole request or endorsement.

Your right of set-off does not apply to an account or other obligation where my rights arise only in a representative capacity. It also does not apply to any Individual Retirement Account or other tax-deferred retirement account.

You will not be liable for the dishonor of any check when the dishonor occurs because you set-off against any of my accounts. I agree to hold you harmless from any such claims arising as a result of your exercise of your right of set-off.

**G. Waiver.** Except as otherwise required by law, by choosing any one or more of these remedies you do not give up your right to use any other remedy. You do not waive a default if you choose not to use a remedy. By electing not to use any remedy, you do not waive your right to later consider the event a default and to use any remedies if the default continues or occurs again.

**12. COLLECTION EXPENSES AND ATTORNEYS' FEES.** On or after the occurrence of an Event of Default, to the extent permitted by law, I agree to pay all expenses of collection, enforcement, or protection of your rights and remedies under this Guaranty or any other document relating to the Debt. To the extent permitted by law, expenses include, but are not limited to, reasonable attorneys' fees, court costs and other legal expenses. All fees and expenses will be secured by the Property I have granted to you, if any. In addition, to the extent permitted by the United States Bankruptcy Code, I agree to pay the reasonable attorneys' fees incurred by you to protect your rights and interests in connection with any bankruptcy proceedings initiated by or against me.

**13. WARRANTIES AND REPRESENTATIONS.** I have the right and authority to enter into this Guaranty. The execution and delivery of this Guaranty will not violate any agreement governing me or to which I am a party.

In addition, I represent and warrant that this Guaranty was entered into at the request of the Borrower, and that I am satisfied regarding the Borrower's financial condition and existing indebtedness, authority to borrow and the use and intended use of all Debt proceeds. I further represent and warrant that I have not relied on any representations or omissions from you or any information provided by you respecting the Borrower, the Borrower's financial condition and existing indebtedness, the Borrower's authority to borrow or the Borrower's use and intended use of all Debt proceeds.

**14. RELIANCE.** I acknowledge that you are relying on this Guaranty in extending credit to the Borrower, and I have signed this Guaranty to induce you to extend such credit. I represent and warrant to you that I expect to derive substantial benefits from any loans and financial accommodations resulting in the creation of indebtedness guaranteed hereby. I agree to rely exclusively on the right to revoke this Guaranty prospectively as to future transactions in the manner as previously described in this Guaranty if at any time, in my opinion, the benefits then being received by me in connection with this Guaranty are not sufficient to warrant the continuance of this Guaranty. You may rely conclusively on a continuing warranty that I continue to be benefited by this Guaranty and you will have no duty to inquire into or confirm the receipt of any such benefits, and this Guaranty will be effective and enforceable by you without regard to the receipt, nature or value of any such benefits.

**15. APPLICABLE LAW.** This Guaranty is governed by the laws of Ohio, the United States of America, and to the extent required, by the laws of the jurisdiction where the Property is located, except to the extent such state laws are preempted by federal law. In the event of a dispute, the exclusive forum, venue and place of jurisdiction will be in Ohio, unless otherwise required by law.

**16. AMENDMENT, INTEGRATION AND SEVERABILITY.** This Guaranty may not be amended or modified by oral agreement. No amendment or modification of this Guaranty is effective unless made in writing. This Guaranty and the other Loan Documents are the complete and final expression of the agreement. If any provision of this Guaranty is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

**17. ASSIGNMENT.** If you assign any of the Debts, you may assign all or any part of this Guaranty without notice to me or my consent, and this Guaranty will inure to the benefit of your assignee to the extent of such assignment. You will continue to have the unimpaired right to enforce this Guaranty as to any of the Debts that are not assigned. This Guaranty shall inure to the benefit of and be enforceable by you and your successors and assigns and any other person to whom you may grant an interest in the Debts and shall be binding upon and enforceable against me and my personal representatives, successors, heirs and assigns.

James Doe  
Ohio Guaranty  
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Page 2



18. INTERPRETATION. Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Guaranty.

19. NOTICE, FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS. Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one Guarantor will be deemed to be notice to all Guarantors. I will inform you in writing of any change in my name, address or other application information. I will provide you any correct and complete financial statements or other information you request. I agree to sign, deliver, and file any additional documents or certifications that you may consider necessary to perfect, continue, and preserve my obligations under this Guaranty and to confirm your lien status on any Property. Time is of the essence.

20. CREDIT INFORMATION. I agree that from time to time you may obtain credit information about me from others, including other lenders and credit reporting agencies, and report to others (such as a credit reporting agency) your credit experience with me. I agree that you will not be liable for any claim arising from the use of information provided to you by others or for providing such information to others.

CONFESSIO OF JUDGMENT. If I default, I authorize any attorney to appear in a court of record and confess judgment against me in favor of you. The confession of judgment may be without process and for any amount due on this Guaranty including court fees, collection costs and reasonable attorneys' fees. This is in addition to other remedies.

21. SIGNATURES. By signing under seal, I agree to the terms contained in this Guaranty. I also acknowledge receipt of a copy of this Guaranty.

Solely for the warning directly below, "you" and "your" refer to each Guarantor signing below.

**WARNING: BY SIGNING THIS PAPER YOU GIVE UP YOUR RIGHT TO NOTICE AND COURT TRIAL. IF YOU DO NOT PAY ON TIME A COURT JUDGMENT MAY BE TAKEN AGAINST YOU WITHOUT YOUR PRIOR KNOWLEDGE AND THE POWERS OF A COURT CAN BE USED TO COLLECT FROM YOU REGARDLESS OF ANY CLAIMS YOU MAY HAVE AGAINST THE CREDITOR WHETHER FOR RETURNED GOODS, FAULTY GOODS, FAILURE ON HIS PART TO COMPLY WITH THE AGREEMENT, OR ANY OTHER CAUSE.**

GUARANTOR:

James Doe \_\_\_\_\_ Date \_\_\_\_\_ (Seal)

LENDER:

Osgood Bank

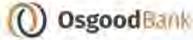
By \_\_\_\_\_ Date \_\_\_\_\_ (Seal)  
Sharon Lobo, Senior Lending Officer

James Doe  
Ohio Guaranty  
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Page 3





SECURITY AGREEMENT

DATE AND PARTIES: The date of this Security Agreement (Agreement) is March 1, 2022. The parties and their addresses are:

SECURED PARTY:
OSGOOD BANK
275 W Main Street
PO Box 69
Osgood, OH 45351

DEBTOR:
JOHN DOE
123 Anywhere Street
E Lorraine, OH 45845

Definitions: For the purposes of this document, the following terms have the following meanings:

"Loan" refers to this transaction generally, including obligations and duties arising from the terms of all documents prepared or submitted for this transaction. The pronouns "you" and "your" refer to the Secured Party. The pronouns "I," "me" and "my" refer to each person or entity signing this Agreement as Debtor and agreeing to give the Property described in this Agreement as security for the Secured Debts.

1. SECURED DEBTS: The term "Secured Debts" includes and this Agreement will secure each of the following:

A. Specific Debts. The following debts and all extensions, renewals, refinancings, modifications and replacements. A promissory note or other agreement, No. IES1KONA, dated January 31, 2022, from me to you, in the amount of \$120,200.00.

B. All Debts. All present and future debts from me to you, even if this Agreement is not specifically referenced, the future debts are also secured by other collateral, or if the future debt is unrelated to or of a different type than this debt. If more than one person signs this Agreement, each agrees that it will secure debts incurred either individually or with others who may not sign this Agreement. Nothing in this Agreement constitutes a commitment to make additional or future loans or advances. Any such commitment must be in writing.

This Agreement will not secure any debt for which a non-possessory, non-purchase money security interest is created in "household goods" in connection with a "consumer loan," as those terms are defined by federal law governing unfair and deceptive credit practices. In addition, this Agreement will not secure any debt (i) with respect to such other debt, you fail to fulfill any necessary requirements or fail to conform to any limitations of the Truth in Lending Act (Regulation Z) or the Real Estate Settlement Procedures Act (Regulation X) that are required for loans secured by the Property or if, as a result, the other debt would become subject to Section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007.

C. Sums Advanced. All sums advanced and expenses incurred by you under the terms of this Agreement.

Loan Documents refer to all the documents executed in connection with the Secured Debts.

2. LIMITATIONS ON CROSS-COLLATERALIZATION: The cross-collateralization clause on any existing or future loan, but not including this Loan, is void and ineffective as to this Loan, including any extension or refinancing.

3. SECURITY INTEREST: To secure the payment and performance of the Secured Debts, I grant you a security interest in all of the Property described in this Agreement that I own or have sufficient rights in which to transfer an interest, now or in the future, wherever the Property is or will be located, and all proceeds and products from the Property (including, but not limited to, all parts, accessories, repairs, replacements, improvements, and accessions to the Property). Property is all the collateral given as security for the Secured Debts and described in this Agreement, and includes all obligations that support the payment or performance of the Property. "Proceeds" includes cash proceeds, non-cash proceeds and anything acquired upon the sale, lease, license, exchange, or other disposition of the Property; any rights and claims arising from the Property; and any collections and distributions on account of the Property.

Property also includes any original evidence of title or ownership whether evidenced by a certificate of title or ownership, a manufacturer's statement of origin or other document about the Property, or that under any Federal or state law, I hold title to the Property, and properly records all title documents as necessary to reflect your security interest.

This Agreement remains in effect until terminated in writing, even if the Secured Debts are paid and you are no longer obligated to advance funds to me under any loan or credit agreement.

4. PROPERTY DESCRIPTION: The Property is described as follows:

A. All Assets. All present and future right, title and interest in and to any and all personal property of the Debtor, whether such property is now existing or hereafter created, acquired or arising and wherever located from time to time, including without limitation, the following categories of property: goods (including inventory, equipment, fixtures, farm products and any accessions thereto), instruments (including promissory notes), documents, accounts (including health-care insurance receivables), chattel paper (whether tangible or electronic), deposit accounts, letter-of-credit rights (whether or not the letter-of-credit is evidenced by a writing), commercial tort claims, securities and all other investment property, general intangibles (including payment intangibles and software), all supporting obligations and all proceeds, products, additions, accessions, substitutions and replacements of the foregoing property.

Any term used herein is as defined by the Uniform Commercial Code and further as modified or amended by the laws of the jurisdiction which governs this transaction.

B. Motor Vehicle, Mobile Home, Sport Craft, or Trailer: A Motor Vehicle of Make: Kona, Year: 2021, Model: Entertainment Vehicle, VIN: , and additionally described: 2021 Kona Entertainment Vehicle.

5. WARRANTIES AND REPRESENTATIONS: I have the right and authority to enter into this Agreement. The execution and delivery of this Agreement will not violate any agreement governing me or to which I am a party. I am located at the address indicated in the DATE AND PARTIES section. I will provide you with at least 30 days notice prior to any change in my name or principal residence location.

A. Ownership of Property. I represent that I own all of the Property. I represent that the vehicle portion of the Property is not a vehicle seized pursuant to any federal, state or local forfeiture law. Your claim to the Property is ahead of the claims of any other creditor, except as disclosed in writing to you prior to any advance on the Secured Debts. I represent that I am the original owner of the Property and, if I am not, that I have provided you with a list of prior owners of the Property.

6. DUTIES TOWARD PROPERTY:

A. Protection of Secured Party's Interest. I will defend the Property against any other claim. I agree to do whatever you require to protect your security interest and to keep your claim in the Property ahead of the claims of other creditors. I will not do anything to harm your position.

I will keep books, records and accounts about the Property and my business in general. I will let you examine these and make copies at any reasonable time. I will prepare any report or accounting you request which deals with the Property.

B. Use, Location, and Protection of the Property. I will keep the Property in my possession and in good repair. I will use it only for commercial purposes. I will not change this specified use without your prior written consent. You have the right of reasonable access to inspect the Property and I will immediately inform you of any loss or damage to the Property. I will not cause or permit waste to the Property.

I will keep the Property at my address listed in the DATE AND PARTIES section unless we agree I may keep it at another location. If the Property is to be used in other states, I will give you a list of those states. The location of the Property is given to aid in the identification of the Property. It does not in any way limit the scope of the security interest granted to you. I will notify you in writing and obtain your prior written consent to any change in location of any of the Property. I will not use the Property in violation of any law. I will notify you in writing prior to any change in my name or address.

Until the Secured Debts are fully paid and this Agreement is terminated, I will not grant a security interest in any of the Property without your prior written consent. I will pay all taxes and assessments levied or assessed against me or the Property and provide timely proof of payment of these taxes and assessments upon request.

C. Selling, Leasing or Encumbering the Property. I will not sell, offer to sell, lease, or otherwise transfer or encumber the Property without your prior written permission. Any disposition of the Property contrary to this Agreement will violate your rights. Your permission to sell the Property may be reasonably withheld without regard to the creditworthiness of any buyer or transferee. I will not permit the Property to be the subject of any court order affecting my rights to the Property in any action by anyone other than you. If the Property includes chattel paper or instruments, either as original collateral or as proceeds of the Property, I will note your security interest on the face of the chattel paper or instruments.

John Doe
Ohio Security Agreement
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Page 1



D. Additional Duties Specific to Motor Vehicles, Sport Craft, or Trailers. So long as I am not in default under this Agreement, the Motor Vehicle, Sport Craft, or Trailer portion of the Property will not be restricted to a specific location and may be moved as necessary during ordinary use. However, they may not be taken out of state permanently nor removed from the United States or Canada without your prior written consent.

7. **INSURANCE.** I agree to keep the Property insured against the risks reasonably associated with the Property. I will maintain this insurance in the amounts you require. This insurance will last until the Property is released from this Agreement. I may choose the insurance company, subject to your approval, which will not be unreasonably withheld.

I will have the insurance company name you as loss payee on any insurance policy. I will give you and the insurance company immediate notice of any loss. You may apply the insurance proceeds toward what is owed on the Secured Debts. You may require added security as a condition of permitting any insurance proceeds to be used to repair or replace the Property.

If you acquire the Property in damaged condition, my right to any insurance policies and proceeds will pass to you to the extent of the Secured Debts.

I will immediately notify you of cancellation or termination of insurance. If I fail to keep the Property insured, you may obtain insurance to protect your interest in the Property and I will pay for the insurance on your demand. You may demand that I pay for the insurance all at once, or you may add the insurance premiums to the balance of the Secured Debts and charge interest on it at the rate that applies to the Secured Debts. This insurance may include lesser or greater coverages than originally required of me, may be written by a company other than one I would choose, and may be written at a higher rate than I could obtain if I purchased the insurance. This insurance coverage does not satisfy any liability or property insurance that may be mandated by applicable state or federal law. I acknowledge and agree that you or one of your affiliates may receive commissions on the purchase of this insurance.

8. **COLLECTION RIGHTS OF THE SECURED PARTY.** Account Debtor means the person who is obligated on an account, chattel paper, or general intangible. I authorize you to notify my Account Debtors of your security interest and to deal with the Account Debtors' obligations at your discretion. You may enforce the obligations of an Account Debtor, exercising any of my rights with respect to the Account Debtors' obligations to make payment or otherwise render performance to me, including the enforcement of any security interest that secures such obligations. You may apply proceeds received from the Account Debtors to the Secured Debts or you may release such proceeds to me.

I specifically and irrevocably authorize you to exercise any of the following powers at my expense, without limitation, until the Secured Debts are paid in full:

- A. demand payment and enforce collection from any Account Debtor or Obligor by suit or otherwise.
- B. enforce any security interest, lien or encumbrance given to secure the payment or performance of any Account Debtor or any obligation constituting Property.
- C. file proofs of claim or similar documents in the event of bankruptcy, insolvency or death of any person obligated as an Account Debtor.
- D. compromise, release, extend, or exchange any indebtedness of an Account Debtor.
- E. take control of any proceeds of the Account Debtors' obligations and any returned or repossessed goods.
- F. endorse all payments by any Account Debtor which may come into your possession as payable to me.
- G. deal in all respects as the holder and owner of the Account Debtors' obligations.

9. **AUTHORITY TO PERFORM.** I authorize you to do anything you deem reasonably necessary to protect the Property, and perfect and continue your security interest in the Property. If I fail to perform any of my duties under this Agreement or any other Loan Document, you are authorized, without notice to me, to perform the duties or cause them to be performed.

These authorizations include, but are not limited to, permission to:

- A. pay and discharge taxes, liens, security interests or other encumbrances at any time levied or placed on the Property.
- B. pay any rents or other charges under any lease affecting the Property.
- C. order and pay for the repair, maintenance and preservation of the Property.
- D. file any financing statements on my behalf and pay for filing and recording fees pertaining to the Property.
- E. place a note on any chattel paper indicating your interest in the Property.
- F. take any action you feel necessary to realize on the Property, including performing any part of a contract or endorsing it in my name.
- G. handle any suits or other proceedings involving the Property in my name.
- H. prepare, file, and sign my name to any necessary reports or accountings.

I. make an entry on my books and records showing the existence of this Agreement.

J. notify any Account Debtor or Obligor of your interest in the Property and tell the Account Debtor or Obligor to make payments to you or someone else you name.

If you perform for me, you will use reasonable care. If you exercise the care and follow the procedures that you generally apply to the collection of obligations owed to you, you will be deemed to be using reasonable care. Reasonable care will not include: any steps necessary to preserve rights against prior parties; the duty to send notices, perform services or take any other action in connection with the management of the Property; or the duty to protect, preserve or maintain any security interest given to others by me or other parties. Your authorization to perform for me will not create an obligation to perform and your failure to perform will not preclude you from exercising any other rights under the law or this Loan Agreement. All cash and non-cash proceeds of the Property may be applied by you only upon your actual receipt of cash proceeds against such of the Secured Debts, matured or unmatured, as you determine in your sole discretion.

If you come into actual or constructive possession of the Property, you will preserve and protect the Property. For purposes of this paragraph, you will be in actual possession of the Property only when you have physical, immediate and exclusive control over the Property and you have affirmatively accepted that control. You will be in constructive possession of the Property only when you have both the power and the intent to exercise control over the Property.

10. **DEFAULT.** I will be in default if any of the following events (known separately and collectively as an Event of Default) occur:

- A. **Payments.** I fail to make a payment in full when due.
- B. **Insolvency or Bankruptcy.** The death, dissolution or insolvency of, appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against me, Obligor, or any co-signer, endorser, surety or guarantor of this Agreement or any other obligations Obligor has with you.
- C. **Death or incompetency.** I die or am declared legally incompetent.
- D. **Failure to Perform.** I fail to perform any condition or to keep any promise or covenant of this Agreement.
- E. **Other Documents.** A default occurs under the terms of any other Loan Document.
- F. **Other Agreements.** I am in default on any other debt or agreement I have with you.
- G. **Misrepresentation.** I make any verbal or written statement or provide any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.
- H. **Judgment.** I fail to satisfy or appeal any judgment against me.
- I. **Forfeiture.** The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.
- J. **Name Change.** I change my name or assume an additional name without notifying you before making such a change.
- K. **Property Transfer.** I transfer all or a substantial part of my money or property.
- L. **Property Value.** You determine in good faith that the value of the Property has declined or is impaired.
- M. **Insecurity.** You determine in good faith that a material adverse change has occurred in my financial condition from the conditions set forth in my most recent financial statement before the date of this Agreement or that the prospect for payment or performance of the Secured Debts is impaired for any reason.

11. **DUE ON SALE OR ENCUMBRANCE.** You may, at your option, declare the entire balance of this Agreement to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law, as applicable.

12. **REMEDIES.** After I default, you may at your option do any one or more of the following:

- A. **Acceleration.** You may make all or any part of the amount owing by the terms of the Secured Debts immediately due.
- B. **Sources.** You may use any and all remedies you have under state or federal law or in any Loan Document.
- C. **Insurance Benefits.** You may make a claim for any and all insurance benefits or refunds that may be available on my default.

John Doe  
Ohio Security Agreement  
OH/4XXXH011Y0000000002299017013122N

Wolters Kluwer Financial Services ©1996, 2022 Bankers Systems™

Initials \_\_\_\_\_  
Page 2



D. **Payments Made On My Behalf.** Amounts advanced on my behalf will be immediately due and may be added to the Secured Debts.

E. **Attachment.** You may attach or garnish my wages or earnings.

F. **Assembly of Property.** You may require me to gather the Property and make it available to you in a reasonable fashion.

G. **Repossession.** You may repossess the Property so long as the repossession does not involve a breach of the peace. You may sell, lease or otherwise dispose of the Property as provided by law. You may apply what you receive from the disposition of the Property to your expenses, your attorneys' fees and legal expenses (where not prohibited by law), and any debt I owe you. If what you receive from the disposition of the Property does not satisfy the debt, I will be liable for the deficiency (where permitted by law). In some cases, you may keep the Property to satisfy the debt.

Where a notice is required, I agree that ten days prior written notice sent by first class mail to my address listed in this Agreement will be reasonable notice to me under the Ohio Uniform Commercial Code. If the Property is perishable or threatens to decline speedily in value, you may, without notice to me, dispose of any or all of the Property in a commercially reasonable manner at my expense following any commercially reasonable preparation or processing (where permitted by law).

If any items not otherwise subject to this Agreement are contained in the Property when you take possession, you may hold these items for me at my risk and you will not be liable for taking possession of them (where permitted by law).

H. **Use and Operation.** You may enter upon my premises and take possession of all or any part of my property for the purpose of preserving the Property or its value, so long as you do not breach the peace. You may use and operate my property for the length of time you feel is necessary to protect your interest, all without payment or compensation to me.

I. **Waiver.** By choosing any one or more of these remedies you do not give up your right to use any other remedy. You do not waive a default if you choose not to use a remedy. By electing not to use any remedy, you do not waive your right to later consider the event a default and to use any remedies if the default continues or occurs again.

13. **WAIVER OF CLAIMS.** I waive all claims for loss or damage caused by your acts or omissions where you acted reasonably and in good faith.

14. **PERFECTION OF SECURITY INTEREST AND COSTS.** I authorize you to file a financing statement and/or security agreement, as appropriate, covering all of my personal Property. I will comply with, facilitate, and otherwise assist you in connection with obtaining perfection or control over the Property for purposes of perfecting your security interest under the Uniform Commercial Code. I agree to pay all taxes, fees and costs you pay or incur in connection with preparing, filing or recording any financing statements or other security interest filings on the Property. I agree to pay all actual costs of terminating your security interest.

15. **APPLICABLE LAW.** This Agreement is governed by the laws of Ohio, the United States of America, and to the extent required, by the laws of the jurisdiction where the Property is located, except to the extent such state laws are preempted by federal law. In the event of a dispute, the exclusive forum, venue and place of jurisdiction will be in Ohio, unless otherwise required by law.

16. **JOINT AND SEVERAL LIABILITY AND SUCCESSORS.** Each Debtor's obligations under this Agreement are independent of the obligations of any other Debtor. You may sue each Debtor individually or together with any other Debtor. You may release any part of the Property and I will still be obligated under this Agreement for the remaining Property. Debtor agrees that you and any party to this Agreement may extend, modify or make any change in the terms of this Agreement or any evidence of debt without Debtor's consent. Such a change will not release Debtor from the terms of this Agreement. If you assign any of the Secured Debts, you may assign all or any part of this Agreement without notice to me or my consent, and this Agreement will inure to the benefit of your assignee to the extent of such assignment. You will continue to have the unimpaired right to enforce this Agreement as to any of the Secured Debts that are not assigned. This Agreement shall inure to the benefit of and be enforceable by you and your successors and assigns and any other person to whom you may grant an interest in the Secured Debts and shall be binding upon and enforceable against me and my successors and assigns.

17. **AMENDMENT, INTEGRATION AND SEVERABILITY.** This Agreement may not be amended or modified by oral agreement. No amendment or modification of this Agreement is effective unless made in writing. This Agreement and the other Loan Documents are the complete and final expression of the understanding between you and me. If any provision of this Agreement is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

18. **INTERPRETATION.** Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Agreement.

19. **NOTICE AND ADDITIONAL DOCUMENTS.** Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one Debtor will be deemed to be notice to all Debtors. I will inform you in writing of any change in my name, address or other application information. I will provide you any other, correct and complete information you request to effectively grant a security interest on the Property. I agree to sign, deliver, and file any additional documents or certifications that you may consider necessary to perfect, continue, and preserve my obligations under this Agreement and to confirm your lien status on any Property. Time is of the essence.

**CONFESSION OF JUDGMENT.** If I default, I authorize any attorney to appear in a court of record and confess judgment against me in favor of you. The confession of judgment may be without process and for any amount due on the Secured Debts including court fees, collection costs and reasonable attorneys' fees. This is in addition to other remedies.

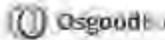
**SIGNATURES.** By signing under seal, I agree to the terms contained in this Agreement. I also acknowledge receipt of a copy of this Agreement.  
Solely for the warning directly below, "you" and "your" refer to each Debtor signing below.

**WARNING: BY SIGNING THIS PAPER YOU GIVE UP YOUR RIGHT TO NOTICE AND COURT TRIAL. IF YOU DO NOT PAY ON TIME A COURT JUDGMENT MAY BE TAKEN AGAINST YOU WITHOUT YOUR PRIOR KNOWLEDGE AND THE POWERS OF A COURT CAN BE USED TO COLLECT FROM YOU REGARDLESS OF ANY CLAIMS YOU MAY HAVE AGAINST THE CREDITOR WHETHER FOR RETURNED GOODS, FAULTY GOODS, FAILURE ON HIS PART TO COMPLY WITH THE AGREEMENT, OR ANY OTHER CAUSE.**

DEBTOR:  
  
\_\_\_\_\_ Date \_\_\_\_\_ (Seal)  
John Doe

SECURED PARTY:  
Osgood Bank  
  
By \_\_\_\_\_ Date \_\_\_\_\_ (Seal)  
Sharon Lobo, Senior Lending Officer





LOAN NUMBER	LOAN NAME	ACCT NUMBER	NOTE DATE	CITY/STATE
1000000000	1000000000	1000000000	10/01/22	1000000000
1000000000	1000000000	1000000000	10/01/22	1000000000
1000000000	1000000000	1000000000	10/01/22	1000000000

**PROMISSORY NOTE**  
 1000000000

DATE AND PARTIES: This instrument evidencing said debt is dated this 10th day of October, 2022.

**LENDER:**  
 QSGOOD BANK  
 1000000000  
 1000000000  
 1000000000

**BORROWER:**  
 1000000000  
 1000000000  
 1000000000

**DEFINITIONS:** As used in this instrument, the following definitions apply:

- A. **Agencies:** The agencies of this state that have the power to levy and collect taxes, including but not limited to the state and local governments, and the federal government, and any other agency that exercises or has the power to exercise that power.
- B. **Auto:** Motor vehicle, including any trailer, motor cycle, boat, or other watercraft, as defined in this state.
- C. **Bank:** Any entity that is chartered, organized, or doing business as a bank under the laws of any state or the United States, or any other jurisdiction, and is authorized to accept deposits from the public.
- D. **Collateral:** All property of the borrower that is used as security for the loan.
- E. **Debt:** The amount of money or other property that is owed by the borrower to the lender.
- F. **State:** The state of Michigan, including any territory, possession, or other jurisdiction.
- G. **U.S. Dollar Amount:** A dollar amount of U.S. dollars.

1. **PRINCIPAL:** The principal amount of the loan is \$100,000.00, which shall be paid to the lender by the borrower on the date specified in the schedule of payments.

2. **INTEREST:** The borrower shall pay interest on the principal amount of the loan at the rate of 10.00% per annum, which shall be paid to the lender on the date specified in the schedule of payments. The interest shall be calculated on the outstanding principal amount of the loan.

3. **ADDITIONAL OBLIGATIONS:** The borrower shall be obligated to pay to the lender any and all taxes, fees, and charges that are assessed or levied against the borrower or the collateral, and to pay the cost of any and all insurance that the lender requires.

4. **DEFAULT:** The borrower shall be in default of the loan if the borrower fails to make any payment when due, or if the borrower fails to comply with any of the other terms of the loan.

5. **ASSIGNMENT:** The lender may assign the loan to any other lender, and the borrower shall be bound by the terms of the loan as assigned.

6. **PAYMENT:** The borrower shall make payments on the loan in accordance with the schedule of payments, which shall be paid to the lender on the date specified in the schedule of payments. The borrower shall be obligated to pay the principal amount of the loan and the interest on the principal amount of the loan.

7. **SECURITY:** The borrower shall grant to the lender a security interest in the collateral, and the lender shall have the right to take possession of the collateral if the borrower defaults on the loan.

8. **ASSIGNMENT:** The lender may assign the loan to any other lender, and the borrower shall be bound by the terms of the loan as assigned.

9. **ENTIRE AGREEMENT:** This instrument constitutes the entire agreement between the parties, and no oral agreement or understanding shall be binding on the parties.

10. **FORMER DEBT:** The borrower shall be obligated to pay to the lender any and all taxes, fees, and charges that are assessed or levied against the borrower or the collateral, and to pay the cost of any and all insurance that the lender requires.

11. **ASSIGNMENT:** The lender may assign the loan to any other lender, and the borrower shall be bound by the terms of the loan as assigned.

12. **ASSIGNMENT:** The lender may assign the loan to any other lender, and the borrower shall be bound by the terms of the loan as assigned.

















**D. Repairs Made By Buyer:** You are responsible for repairs of the property you are buying because you are the best person to know.

**1. Structural:** You are responsible for any structural repairs to the property.

**2. Mechanical:** You are responsible for any mechanical repairs to the property.

**3. Electrical:** You are responsible for any electrical repairs to the property. You are responsible for any electrical repairs to the property that are not covered by the electrical code. You are responsible for any electrical repairs to the property that are not covered by the electrical code.

**4. Plumbing:** You are responsible for any plumbing repairs to the property. You are responsible for any plumbing repairs to the property that are not covered by the plumbing code. You are responsible for any plumbing repairs to the property that are not covered by the plumbing code.

**5. HVAC:** You are responsible for any HVAC repairs to the property. You are responsible for any HVAC repairs to the property that are not covered by the HVAC code. You are responsible for any HVAC repairs to the property that are not covered by the HVAC code.

**6. Other:** You are responsible for any other repairs to the property. You are responsible for any other repairs to the property that are not covered by any other code. You are responsible for any other repairs to the property that are not covered by any other code.

**13. WORTH OF CLAIMS:** I warrant that the value of the property is not less than the amount of the purchase price.

**14. PERFECTION OF SECURITY INTEREST AND COSTS:** I warrant that I have a legal and valid security interest in the property and that I have the right to perfect my security interest in the property. I warrant that I have the right to perfect my security interest in the property.

**15. ASSIGNABLE LEASE:** This Agreement is assignable by the Buyer to any other person or entity, but the assignee shall be bound by the terms of this Agreement.

**16. JOINT AND SEVERAL LIABILITY AND SUCCESSORS:** The Buyer and Seller shall be jointly and severally liable for the performance of the obligations under this Agreement. The Buyer and Seller shall be jointly and severally liable for the performance of the obligations under this Agreement.

**17. ASSIGNMENT, INDEMNIFICATION AND REPRESENTATION:** The Buyer shall be responsible for the performance of the obligations under this Agreement. The Buyer shall be responsible for the performance of the obligations under this Agreement.

**18. ENTIRE AGREEMENT:** This Agreement shall constitute the entire agreement between the Buyer and Seller.

**19. NOTICE AND MAILING:** All notices shall be given by first class mail, return receipt requested, to the address set forth in this Agreement. All notices shall be given by first class mail, return receipt requested, to the address set forth in this Agreement.

**CONFESSIO OF JUDGMENT:** If I default, I authorize my attorney to appear in court of record and confess judgment against me in favor of you. The confession of judgment may be used to enforce the terms of this Agreement.

**SIGNATURES:** By signing underneath the name of the party named in this Agreement, I have acknowledged receipt of a copy of this Agreement.

Such by the name, directly below "Buyer" and "Seller" refer to the undersigned signing party.

**WARNING: BY SIGNING THIS PAPER YOU GIVE UP YOUR RIGHT TO NOTICE AND COURT TRIAL. IF YOU DO NOT PAY ON TIME A COURT JUDGMENT MAY BE TAKEN AGAINST YOU WITHOUT YOUR PRIOR KNOWLEDGE AND THE POWERS OF A COURT CAN BE USED TO COLLECT FROM YOU REGARDLESS OF ANY CLAIMS YOU MAY HAVE AGAINST THE CREDITOR WHETHER FOR RETURNED GOODS, FAULTY GOODS, FAILURE ON HIS PART TO COMPLY WITH THE AGREEMENT, OR ANY OTHER CAUSE.**

BUYER:

\_\_\_\_\_  
Name (Print)

SELLER PARTY:

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Name (Print)

John Doe  
1234 Main Street  
Anytown, CA 90210

1234 Main Street  
Anytown, CA 90210

Page 3



**EXHIBIT H-10**

**AUTOMATED CLEARING HOUSE PAYMENT AUTHORIZATION FORM**

**Franchisee Information:**

Franchisee Name	Business No.
Franchisee Mailing Address (street)	Franchisee Phone No.
Franchisee Mailing Address (city, state, zip)	
Contact Name, Address and Phone number (if different from above)	
Franchisee Fax No.	Franchisee E-mail Address

**Bank Account Information:**

Bank Name		
Bank Mailing Address (street, city, state, zip)		
<input type="checkbox"/> Checking <input type="checkbox"/> Savings		
Bank Account No.	(check one)	Bank Routing No. (9 digits)
Bank Mailing Address (city, state, zip)		Bank Phone No.

**Authorization:**

Franchisee hereby authorizes Kona Ice, Inc. ("Franchisor") to initiate debit entries to Franchisee's account with the Bank listed above, and Franchisee authorizes the Bank to accept and to debit the amount of such entries to Franchisee's account. Each debit shall be made from time to time in an amount sufficient to cover any fees payable to Franchisor pursuant to any agreement between Franchisor and Franchisee as well as to cover any purchases of goods or services from Franchisor or any affiliate of Franchisor. Franchisee agrees to be bound by the National Automated Clearing House Association (NACHA) rules in the administration of these debit entries. Debit entries will be initiated only as authorized above. This authorization is to remain in full force and effect until Franchisor has received written notification from Franchisee of its termination in such time and in such manner as to afford Franchisor and the Bank a reasonable opportunity to act on it. Franchisee shall notify Franchisor of any changes to any of the information contained in this authorization form at least 30 days before such change becomes effective.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Federal Tax ID Number: \_\_\_\_\_

Rev. 032916

**NOTE: FRANCHISEE MUST ATTACH A VOIDED CHECK RELATING TO THE BANK ACCOUNT.**



**EXHIBIT H-11**

**KONA ICE FRANCHISE**

**SAMPLE ASSET PURCHASE AGREEMENT**

This Asset Purchase Agreement (“Agreement”) is entered into as of \_\_\_\_\_, 20\_\_ (“Effective Date”), by and among \_\_\_\_\_ a \_\_\_\_\_ and its owners, \_\_\_\_\_ (together, the “Franchisee”), and Kona Ice, Inc., a Kentucky corporation (“Kona Ice”). Franchisee and Kona Ice shall each be a “Party” and collectively, the “Parties”.

**RECITALS**

**WHEREAS:** Franchisee, entered into a franchise agreement with Kona Ice, Inc. dated \_\_\_\_\_, 20\_\_ (“Franchise Agreement”) to operate a Kona Ice business;

**WHEREAS:** (the Franchise Agreement is being terminated/is expiring/is being transferred) and Kona Ice is exercising its right of first refusal to purchase certain Assets (as defined below) of Franchisee; and

**WHEREAS,** subject to the terms and conditions of the Franchise Agreement and those contained herein, Franchisee has agreed to sell, convey, assign, transfer and deliver to Kona Ice, and Kona Ice has agreed to purchase and accept delivery of, all of Franchisee’s rights, title and interest in and to the Assets (as defined below);

**NOW, THEREFORE,** in consideration of the promises, agreements, covenants, and representations contained herein, and other good and valuable consideration, the receipt and sufficiency of which is thereby acknowledged, the Parties agree as follows:

I. Purchase and Sale of Assets; Purchase Price.

A. Subject to the provisions set forth herein, Franchisee hereby sells, conveys, assigns, transfers and sets over unto Kona Ice all of Franchisee’s right, title and interest in, to and under the assets set forth on Attachment 1 (“Assets”) free and clear of any and all liens, in exchange for the Purchase Price (as hereinafter defined), and Kona Ice hereby accepts such conveyance, assignment, transfer and delivery.

B. As consideration for the transfer of the Assets by Franchisee to Kona Ice, Kona Ice shall pay to Franchisee funds in the amount of the aggregate purchase price for the Assets set forth on Attachment 1 (“Purchase Price”), by wire transfer of immediately available funds. Franchisee and Kona Ice agree to allocate the Purchase Price among the Assets for all purposes in accordance with Attachment 1.

C. Franchisee shall transfer title to the Assets to Kona Ice, free and clear of any and all liens or encumbrances, simultaneously with receipt of Kona Ice’s payment(s) of the Purchase Price to Franchisee, and upon receipt of this Agreement.

II. Kona Ice’s Assumption of Liabilities. Kona Ice hereby assumes any liabilities related to the Assets arising from and after the Effective Date. Franchisee agrees to maintain insurance on the Assets until all assets are in the possession of Kona Ice. Risk of loss transfers only upon actual delivery of the Assets to Kona Ice. This Agreement remains contingent upon the Assets being as represented by Franchisee, namely, in reasonably good condition, as determined in Kona Ice’s reasonable discretion, considering factors such as age and mileage.



III. Representations and Warranties.

A. Franchisee hereby represents and warrants to Kona Ice, as of the Effective Date, as follows:

1. Franchisee is a \_\_\_\_\_, validly existing under the laws of the State of \_\_\_\_\_.

2. Franchisee has valid, good and marketable title to the Assets and such Assets are transferred free and clear of all liens. Franchisee has the unrestricted right to transfer, assign, convey and delivery to Kona Ice all right, title and interest in and to the Assets.

3. Franchisee has the requisite power, authority and legal capacity to execute, deliver and perform this Agreement and to consummate the transactions contemplated herein. Franchisee has taken all necessary action to authorize the execution, delivery and performance of this Agreement.

4. The execution, delivery and performance by Franchisee of this Agreement constitute the legal, valid and binding obligations of Franchisee enforceable against it in accordance with its terms, and the consummation by Franchisee of the transactions contemplated herein do not and will not violate or conflict in any way with any provision of Franchisee's articles of incorporation or bylaws.

5. Franchisee or its owner(s) has prepared in a correct and complete (in all material respects) manner and filed all federal, state, county, local, and foreign tax returns and reports (including but not limited to, sales taxes, use taxes, payroll taxes, unemployment insurance and business personal property taxes, each a "Tax" and collectively, the "Taxes") heretofore required to be filed by Franchisee and have paid all taxes shown as due thereon along with any fine, penalty, interest, late charge or loss owed thereunder; and no taxing authority has asserted any deficiency in the payment of any Tax or informed Franchisee that it intends to assert any such deficiency or to make any audit or other investigation of Franchisee for the purpose of determining whether such a deficiency should be asserted against Franchisee. There are no encumbrances, nor to Franchisee's knowledge will there be any encumbrances in the future, on any of the Assets that arose in connection with any failure (or alleged failure) to pay any Tax.

B. Kona Ice represents and warrants to Franchisee, as of the date hereof, as follows:

1. Kona Ice is a corporation validly existing under the laws of the State of Kentucky.

2. Kona Ice has the requisite power, authority and legal capacity to execute, deliver and perform this Agreement and to consummate the transactions contemplated herein. Kona Ice has taken all necessary action to authorize the execution, delivery and performance of this Agreement.

3. The execution, delivery and performance by Kona Ice of this Agreement constitute the legal, valid and binding obligations of Kona Ice enforceable against it in accordance with its terms, and the consummation by Kona Ice of the transactions contemplated herein do not and will not violate or conflict in any way with any provision of Kona Ice's certificate of formation or limited liability company agreement.

C. All representations and warranties contained in this Agreement shall survive the execution and delivery of this Agreement for the applicable statute of limitations period.



IV. Franchisee's Obligations. On the Effective Date, Franchisee shall deliver to Kona Ice the following:

A. A Bill of Sale attached hereto as Attachment 2 for all equipment and any such other documents as Kona Ice may reasonably request in order to accomplish the sale of the Assets to Kona Ice, all of which shall be (i) duly executed by Franchisee (and/or its owner(s)) and (ii) in form and substance reasonably satisfactory to Kona Ice.

B. Receipt or other evidence acceptable to Kona Ice that all Taxes have been paid in full prior to the Effective Date.

C. Such other documents as are reasonably requested by Kona Ice in order to effect the transfer of Assets described in this Agreement.

V. Miscellaneous

A. This Agreement represents the full and complete agreement of the Parties with respect to the subject matter hereof, and this Agreement supersedes and replaces any prior agreements, whether oral or written. Any amendments or modifications of this Agreement must be in writing and executed by both Parties.

B. This Agreement shall be construed and interpreted under the laws (without reference to choice or conflict of laws) of the State of Kentucky, and resolution of any claims thereunder shall be as set forth in the Franchise Agreement.

C. If one or more provisions of this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect or impair any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein.

D. This Agreement may be executed in counterparts and by different Parties on different counterparts with the same effect as if the signatures thereto were on the same instrument. This Agreement shall be effective and binding upon all Parties thereto as of the date when all Parties have executed a counterpart of this Agreement.

E. Each Party agrees that it has had ample opportunity to confer with legal counsel of its choice and each shall pay its own costs incurred therein. The Parties acknowledge that there can be different state requirements regarding titles, taxes, and escrow and agree that they have investigated such requirements as they may relate to the transaction contemplated herein and have provided for them in this Agreement as may be necessary.

F. Each individual and entity that comprises Franchisee shall be jointly and severally liable for the obligations of Franchisee.

G. In the event that it shall be necessary for any Party to institute legal action to enforce or for the breach of any of the terms and conditions or provisions of this Agreement, the prevailing Party in such action shall be entitled to recover all of its reasonable costs and attorneys' fees.

H. At any time and from time to time after the Effective Date: (a) Franchisee shall execute and deliver or cause to be executed and delivered to Kona Ice such other instruments and take such other action, all as Kona Ice may reasonably request, in order to carry out the intent and purpose of this Agreement; and (b) Kona Ice shall execute and deliver or cause to be executed and delivered to



Franchisee such other instruments and take such other action, all as Franchisee may reasonably request, in order to carry out the intent and purpose of this Agreement.

I. Each Party agrees that the terms of this Agreement shall remain confidential.

IN WITNESS WHEREOF, each of the Parties thereto has caused this Agreement to be duly executed to be effective as of the Effective Date written above.

**FRANCHISEE:** \_\_\_\_\_

**KONA ICE, INC.**

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

By: Tony Lamb  
Its: CEO

**OWNERS**

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

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



**ATTACHMENT 1**  
**ASSETS AND PURCHASE PRICE**

ASSETS:

PURCHASE PRICE AND ALLOCATION:



**ATTACHMENT 2**  
**BILL OF SALE**

THIS BILL OF SALE (“Bill of Sale”) is effective as of 12:01 a.m. on \_\_\_\_\_, 20\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_ (“Seller”) and Kona Ice, Inc., a Kentucky corporation (“Purchaser”). Purchaser and Seller may each be referred to herein as a “Party”.

Seller and Purchaser are parties to that certain Asset Purchase Agreement dated \_\_\_\_\_, 20\_\_ (“Purchase Agreement”), pursuant to which Seller has agreed to sell the Assets to Purchaser and Purchaser has agreed to purchase the Assets from Seller. Capitalized terms used but not defined herein have the meanings ascribed to them in the Purchase Agreement.

The Parties, intending to be legally bound, agree as follows:

1. For true and lawful consideration, the sufficiency of which is hereby acknowledged, Seller hereby sells, assigns, transfers, conveys and delivers to Purchaser, its successors and assigns, to have and to hold forever, all of Seller’s right, title and interest in and to the Assets referenced in the Purchase Agreement.

2. The sale, assignment, transfer, conveyance and delivery of the Assets under this Bill of Sale is subject to and in accordance with the provisions of the Purchase Agreement and its Attachments and is not intended to and does not expand, limit, alter or modify the rights and obligations of the parties thereunder. In the event of any conflict or inconsistency between the terms of the Purchase Agreement and the terms hereof, the terms of the Purchase Agreement shall govern.

3. If any provision of this Bill of Sale is held invalid or unenforceable by any court of competent jurisdiction, it is the intent of the Parties that all other provisions of this Bill of Sale be construed to remain fully valid, enforceable, and binding on the parties. This Bill of Sale shall be governed by and construed in accordance with the laws of the State of Kentucky, without giving effect to any conflict of laws principles. This Bill of Sale may be executed in several counterparts, and each executed counterpart shall be considered an original.

IN WITNESS WHEREOF, Seller and Purchaser have each signed this Bill of Sale as of the day and year first set forth above.

**SELLER:** \_\_\_\_\_

**PURCHASER: KONA ICE, INC.**

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

By: Tony Lamb  
Its: CEO



**EXHIBIT H-12**

**KONA ICE FRANCHISE**

**FRANCHISE AGREEMENT TRANSFER ADDENDUM**

This Franchise Agreement Transfer Addendum (“**Transfer Addendum**”) is made and entered into as of [date] (“**Effective Date**”), by and between KONA ICE, INC., a Kentucky corporation (“**Franchisor**”) and [Entity Name], d/b/a [“**DBA Name**”], a(n) [state] [type of entity] (“**Franchisee**”) (each, a “**Party**” and together, the “**Parties**”).

**BACKGROUND**

- A. Franchisor and Franchisee are parties to a Franchise Agreement (the “**Franchise Agreement**”) [dated/dated as of] [date] as a result of an approved transfer of a franchised business of Franchisor (“**Franchised Business**”).
- B. Franchisor and Franchisee desire to amend the Franchise Agreement to reflect Franchisee’s status as a transferee franchisee for the Franchised Business.
- C. All capitalized terms not otherwise defined in this Transfer Addendum shall have the meanings set forth in the Franchise Agreement.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants and promises of the parties and subject to the following terms and conditions, it is agreed as follows:

- 1. Franchisor and Franchisee agree that because the Franchised Business is already open and operating and being acquired via a transfer, Franchisee and Franchisor shall be relieved of performing certain pre-opening and development obligations set forth in the Franchise Agreement. Specifically:
  - a. Franchisee has already acquired the truck and, if applicable, additional equipment (“**Assets**”) under Section ~~3-B13.13~~ of the Franchise Agreement upon transfer of the Franchised Business. Section ~~3-B13.13~~ of the Franchise Agreement is hereby amended accordingly. If any equipment is required for the Assets as set forth in Section ~~3-B13.13~~ of the Franchise Agreement, Franchisee agrees to purchase such items from Franchisor prior to operating the Assets.
  - b. Because Franchisee is a transferee franchisee, Franchisee shall not be required to pay the Initial Franchise Fee. Section ~~4-A6.6~~ of the Franchise Agreement is hereby amended accordingly.
  - c. If Franchisee is an existing franchisee under the Kona Ice System, Franchisee shall not be required to attend Initial Training and there shall be no Initial Training Deadline. Accordingly, Franchisor is under no obligation to provide Initial Training to Franchisee. If Franchisee is not an existing franchisee under the Kona Ice System, Franchisee shall complete the initial training program contained in Item 11 and Franchise Agreement Section ~~5~~ prior to ~~beginning~~~~8beginning~~ operation of the Kona Ice franchise. Notwithstanding the foregoing, any successor Designated Manager must attend Initial Training and additional persons may attend the Initial Training in



accordance with the terms of the Franchise Agreement; such Designated Managers and/or additional persons shall be required to pay for hotel and transportation costs associated with attending Initial Training. Section 5.A.8 of the Franchise Agreement is hereby amended accordingly.

~~d. Section 3.F(3) is hereby deleted and replaced with "Intentionally left blank."~~

2. This Transfer Addendum constitutes the entire and complete agreement between Franchisor and Franchisee concerning the subject matter hereof, and supersedes any and all prior agreements. No amendment, change, or variance from this Transfer Addendum shall be binding on either party unless mutually agreed to in a writing signed by both parties.
3. This Transfer Addendum forms an integral part of the Franchise Agreement. The terms of this Transfer Addendum shall control if they conflict with the terms of the Franchise Agreement. Except as modified or supplemented by this Transfer Addendum, the terms of the Franchise Agreement are hereby ratified and confirmed.

**IN WITNESS WHEREOF**, the Parties have executed this Transfer Addendum as of the day and year first written above.

[FULL ENTITY NAME]

KONA ICE, INC.

\_\_\_\_\_  
By: [Signing Owner's Name]  
Its: [Title of Signing Owner]

\_\_\_\_\_  
By: Tony Lamb  
Its: CEO



**EXHIBIT H-13**

**KONA ICE FRANCHISE**

**SAMPLE ADDITIONAL EQUIPMENT AMENDMENT TO FRANCHISE AGREEMENT**

This “**Amendment**” is made and entered into as of the effective date listed in the signature block (“**Effective Date**”) by and between Kona Ice, Inc., a Kentucky corporation (“**Franchisor**”) and the Franchisee identified on the signature block below (“**Franchisee**”), with reference to the following facts:

- A. The parties have entered into a Kona Ice franchise agreement pursuant to which Franchisee will operate a Kona Ice Franchise (the “**Franchise Agreement**”).
- B. Subject to the conditions of the Franchise Agreement, Franchisee has the option to purchase additional Kona Ice equipment (“**Additional Equipment**”) for use in the Franchisee’s Protected Territory.
- C. The parties hereto desire to amend the Franchise Agreement as set forth herein. Unless defined herein, all capitalized terms used herein shall have the meaning in the Franchise Agreement.

NOW, THEREFORE, for and in consideration of the covenants, warranties, and mutual agreements contained herein, the parties hereto agree as follows:

1. **ADDITIONAL EQUIPMENT.** Franchisee desires to purchase the following Additional Equipment for use in the Protected Territory and shall pay the Additional Equipment royalty listed for such equipment under the Franchise Agreement and this Amendment for so long as Franchisee owns the Additional Equipment.

Equipment	Vehicle Identification Number	Purchase Amount	Additional Equipment Royalty	Additional Equipment Royalty Payment Terms

Franchisee must present evidence to Franchisor, as required by Franchisor in its sole discretion, that Franchisee no longer owns the Additional Equipment prior to Franchisee being excused from paying any further Additional Equipment Royalties. Franchisee shall not be entitled to receive a refund on any Additional Equipment Royalty paid. Franchisee acknowledges and agrees that the Additional Equipment Royalty may increase upon renewal of the Franchise Agreement and agrees to pay Franchisor the then-current Royalty amount upon any such renewal.

2. **AMENDMENT BINDING.** This Amendment will be binding upon and inure to the benefit of each party and to each party’s respective successors and assigns.



3. **NO FURTHER CHANGES.** Except as specifically provided in this Amendment, all the terms, conditions, and provisions of the Franchisee Agreement will remain in full force and effect as originally written and signed. In the event of any inconsistency between the Franchise Agreement and this Amendment, this Amendment shall control.

IN WITNESS WHEREOF, the parties duly executed this Amendment as of the dates listed below.

**Kona Ice, Inc.,**  
a Kentucky Corporation

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

Printed Name: \_\_\_\_\_

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

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

**\*Effective Date**

**FRANCHISEE:**

\_\_\_\_\_  
Company Name

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

Printed Name: \_\_\_\_\_

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

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



**EXHIBIT H-14**

**E-LEAD RECURRING CREDIT CARD PAYMENT AUTHORIZATION**



## Recurring Credit Card Payment Authorization

You authorize regularly scheduled charges to your credit card. You will be charged up to the total amount indicated on your order form, unless otherwise communicated to our eLead team, over the course of the 12-month time period per your enrollment in the Kona Ice eLead program. The charge(s) will appear on your credit card statement from the respective vendor. You agree that no prior notification will be provided as the amount billed each month could fluctuate but will fall within the maximum budget agreed upon on your eLead Sign Up Form.

I \_\_\_\_\_ authorize Kona Ice Corporate to charge my Credit Card indicated below for advertising activities related to my eLead ad campaign(s).

### Billing Information:

Billing Address \_\_\_\_\_ Phone # \_\_\_\_\_

City, State, Zip \_\_\_\_\_ Email \_\_\_\_\_

### Card Details:

Visa     MasterCard     Discover     American Express

Cardholder Name \_\_\_\_\_

Account/CC Number \_\_\_\_\_

Expiration Date \_\_\_\_ / \_\_\_\_

CVV \_\_\_\_\_

Zip Code \_\_\_\_\_

I understand that this authorization will remain in effect until I cancel it in writing, and I agree to notify *Kona Ice Accounts Payables* at [ap@kona-ice.com](mailto:ap@kona-ice.com) or [elead@kona-ice.com](mailto:elead@kona-ice.com) in writing of any changes in my account information or termination of this authorization at least *15 days prior* to the next billing date. If the above noted payment dates fall on a weekend or holiday, I understand that the payments may be executed on the next business day in accordance with the vendor's billing schedule. I acknowledge that the origination of Credit Card transactions to my account must comply with the provisions of U.S. law. I certify that I am an authorized user of this Credit Card and will not dispute these scheduled transactions; so long as the transactions correspond to the terms indicated in this authorization form.

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



## Recurring Credit Card Payment Authorization

You authorize regularly scheduled charges to your credit card. You will be charged up to the total amount indicated on your order form, unless otherwise communicated to our eLead team, over the course of the 12-month time period per your enrollment in the Kona Ice eLead program. The charge(s) will appear on your credit card statement from the respective vendor. You agree that no prior notification will be provided as the amount billed each month could fluctuate but will fall within the maximum budget agreed upon on your eLead Sign Up Form.

I \_\_\_\_\_ authorize Kona Ice Corporate to charge my Credit Card indicated below for advertising activities related to my eLead ad campaign(s).

### Billing Information:

Billing Address: \_\_\_\_\_ Phone #: \_\_\_\_\_

City, State, Zip \_\_\_\_\_ Email \_\_\_\_\_

### Card Details:

Visa     MasterCard     Discover     American Express

Cardholder Name \_\_\_\_\_

Account/CC Number \_\_\_\_\_

Expiration Date \_\_\_\_ / \_\_\_\_

CVV \_\_\_\_\_

Zip Code \_\_\_\_\_

I understand that this authorization will remain in effect until I cancel it in writing, and I agree to notify Kona Ice Accounts Payables at [ap@kona-ice.com](mailto:ap@kona-ice.com) or [elead@kona-ice.com](mailto:elead@kona-ice.com) in writing of any changes in my account information or termination of this authorization at least 15 days prior to the next billing date. If the above noted payment dates fall on a weekend or holiday, I understand that the payments may be executed on the next business day in accordance with the vendor's billing schedule. I acknowledge that the origination of Credit Card transactions to my account must comply with the provisions of U.S. law. I certify that I am an authorized user of this Credit Card and will not dispute these scheduled transactions, so long as the transactions correspond to the terms indicated in this authorization form.

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



**EXHIBIT H-15**

**KONA ICE FRANCHISE**

**RENEWAL ADDENDUM TO FRANCHISE AGREEMENT**

This Renewal Addendum to Franchise Agreement (“**Renewal Addendum**”) is made and entered into on \_\_\_\_\_ by and between Kona Ice, Inc., a Kentucky corporation (“**Franchisor**”) and [name of franchisee], a(n) [state of formation and entity type] (“**Franchisee**”).

**RECITALS**

A. Franchisor and Franchisee are parties to that certain Franchise Agreement dated [date of franchise agreement] (together with all exhibits, addenda and amendments thereto, (the “**Old Agreement**”) pursuant to which Franchisee operates a Kona Ice business servicing [description of territory] (the “**Franchised Business**”).

B. Franchisee was granted the right to extend its relationship with Franchisor under the Old Agreement by signing a new franchise agreement and Franchisee wishes to renew the relationship with Franchisor for the Franchised Business, and Franchisee is executing a renewal franchise agreement on even date herewith (“**New Franchise Agreement**”), to which this Renewal Addendum is attached for that purpose.

C. Franchisee’s right to renew the Franchised Business is subject to several conditions set forth in this Renewal Addendum, including, but not limited to: (i) Franchisee’s execution of Franchisor’s current standard form of franchise agreement; and (ii) Franchisee’s execution of a general release, in a form prescribed by Franchisor, of any claims against Franchisor, Franchisor’s affiliates, and Franchisor’s respective officers, directors, agents, employees and shareholders.

D. Franchisee and Franchisor further wish to amend the New Franchise Agreement to reflect Franchisee’s status as an existing Franchisee renewing an ongoing relationship, and to amend other terms of the New Franchise Agreement by incorporating the terms of this Renewal Addendum into the New Franchise Agreement.

E. All capitalized terms not otherwise defined in this Renewal Addendum shall have the same meaning as in the New Franchise Agreement.

**The parties agree as follows:**

1. **RECITALS.** The recitals set forth above are fully set forth in this Renewal Addendum as if fully restated herein.

2. **RENEWAL.** By executing the New Franchise Agreement and this Renewal Addendum, the parties are renewing the Franchisee’s right to operate the Franchised Business and replacing the Old Agreement with the New Franchise Agreement. Except as expressly provided in the New Franchise Agreement and this Renewal Addendum, the provisions under the Old Agreement, and any rights and obligations thereunder, shall terminate as of the Effective Date, and the relationship between Franchisee and Franchisor related to the operation of the Franchised Business will be governed solely by the New Franchise Agreement, this Renewal Addendum, and other documents executed in connection with the New Franchise Agreement and this Renewal Addendum. Notwithstanding the foregoing, Franchisor, Franchisee and any guarantors of Franchisee’s obligations under the Old Agreement or the New Franchise Agreement



must fully comply with any and all obligations that arose out of the Old Agreement prior to the Effective Date, and which are not released pursuant to the terms of the Old Agreement.

3. **RENEWAL FEE.** In consideration of Franchisor allowing Franchisee to renew the franchise relationship and enter into the New Franchise Agreement, Franchisee shall pay Franchisor a renewal fee of \$[renewal fee amount] upon execution of the New Franchise Agreement in accordance with the terms of the Old Agreement. The Renewal Fee is not refundable under any circumstances.

4. **NO INITIAL FRANCHISE FEE.** Franchisee is not required to pay an initial franchise fee to Franchisor under the New Franchise Agreement. As a result, Section 6.6 of the New Franchise Agreement is hereby deleted in its entirety.

5. **ROYALTY.** Franchisee agrees that the total Royalty is set forth in the footnote to Section 6.7 of the Franchise Agreement shall apply and for purposes of clarification will equal \$5,000 for year 1, \$5,500 for years 2 through 5 and \$6,000 for years 6 through 10.

6. **DELETION OF PROVISIONS NOT APPLICABLE TO FRANCHISE RENEWAL.** Franchisor and Franchisee agree that because the Franchised Business under the Old Agreement is already open and operating and being renewed, Franchisee and Franchisor shall be relieved of performing their preopening and development obligations set forth in the New Franchise Agreement, including the obligations to provide and attend Initial Training under Section 8.1 of the New Franchise Agreement.

7. **RENEWAL TERM.** In accordance with Section [renewal section] of the Old Agreement, the Term of the New Franchise Agreement will be [ten (10)/five (5)] years from the Effective Date. The New Franchise Agreement is the [first/second] of two Successor Franchise Agreements permitted under the Old Agreement and, consistent with the Old Agreement, the New Franchise Agreement is hereby amended such that Franchisee shall have [one/no] remaining Successor Franchise Agreement renewal right[s].

8. **CONFIDENTIALITY.** Franchisee agrees to keep the terms of this Renewal Addendum confidential and not disclose the contents of this Renewal Addendum to any third party, excluding their representatives, without the prior written consent of Franchisor.

9. **WAIVER AND RELEASE.** Subject to applicable law, Franchisee and its owners shall sign the Waiver and Release of Claims attached hereto as Exhibit A.

10. **ENTIRE AGREEMENT.** This Renewal Addendum constitutes the entire and complete agreement between the parties concerning the subject matter hereof and supersedes any and all prior agreements. No amendment, change or variance from this Renewal Addendum shall be binding on either party unless mutually agreed to in a writing signed by both parties.

11. **MISCELLANEOUS.** This Renewal Addendum forms an integral part of the New Franchise Agreement. Except as modified or supplemented by this Renewal Addendum (or other addendum), the terms of the New Franchise Agreement are hereby ratified and confirmed. To the extent that there is a conflict between the terms of this Renewal Addendum and the New Franchise Agreement, the terms of this Renewal Addendum shall control.

12. **REAFFIRMATION.** Except as specifically modified by this Renewal Addendum (or other addendum), all of the terms and conditions of the New Franchise Agreement (including provisions for notice, construction, and dispute resolution) are reaffirmed in their entirety and will remain in full force and effect as originally written and signed.



13. FURTHER ASSURANCE. Each of the parties will, upon reasonable request of the other, sign any additional documents necessary or advisable to fully implement the terms and conditions of this Renewal Addendum.

IN WITNESS WHEREOF, the parties have executed and delivered this Renewal Addendum on the day and year first above written.

**FRANCHISOR:**

**KONA ICE, INC.,**  
a Kentucky corporation

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

Printed Name: \_\_\_\_\_

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

**FRANCHISEE:**

**[NAME OF FRANCHISEE],**  
a(n) [STATE OF FORMATION AND ENTITY  
TYPE]

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

Printed Name: \_\_\_\_\_

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



**EXHIBIT A TO RENEWAL ADDENDUM**

**SEE SAMPLE WAIVER AND RELEASE OF CLAIMS ATTACHED AS EXHIBIT H-1**



**EXHIBIT I**  
**STATE EFFECTIVE DATES**



## State Effective Dates

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

This document is effective and may be used in the following states, where the document is filed, registered or exempt from registration, as of the Effective Date stated below:

State	Effective Date
California	Pending
Hawaii	Pending
Illinois	<del>April 28, 2023</del> Pending
Indiana	<del>July 1, 2022,</del> Renews <del>July 1, 2023</del> Pending
Maryland	Pending
Michigan	<del>May 28, 2022,</del> Renews <del>May 28, 2023</del> Pending
Minnesota	Pending
New York	Pending
North Dakota	Pending
Rhode Island	Pending
South Dakota	Pending
Virginia	Pending
Washington	Pending
Wisconsin	<del>April 27, 2023</del> Pending

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



**EXHIBIT J**

**RECEIPT**



**RECEIPT**  
**(Retain This Copy)**

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

If Kona Ice, Inc. offers you a franchise, it must provide this disclosure document to you 14 calendar days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale.

Under Iowa law, if applicable, Kona Ice, Inc. must provide this disclosure document to you at your first personal meeting to discuss the franchise. Michigan requires Kona Ice, Inc. to give you this disclosure document at least ten (10) business days before the execution of any binding franchise or other agreement or the payment of any consideration, whichever occurs first. New York requires you to receive this disclosure document at the earlier of the first personal meeting or ten (10) business days before the execution of the franchise or other agreement or the payment of any consideration that relates to the franchise relationship.

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

The name, principal business address, and telephone number of each franchise seller offering the franchise is:
Tony Lamb, 5945 Centennial Circle, Florence, KY 41042 and 1-800-566-2423

Issuance Date: April 20, ~~2023~~18, 2024

I received a disclosure document issued April 20, ~~2023~~18, 2024 which included the following exhibits:

- Exhibit A State Administrators/Agents for Service of Process
- Exhibit B Financial Statements
- Exhibit C Franchise Agreement
- Exhibit D Franchise Disclosure Questionnaire
- Exhibit E Brand Manual Table of Contents
- Exhibit F List of Current and Former Franchisees
- Exhibit G State Addenda and Agreement Riders
- Exhibit H Contracts for use with the Kona Ice Franchise
- Exhibit I State Effective Dates
- Exhibit J Receipt

\_\_\_\_\_  
Date Signature Printed Name

\_\_\_\_\_  
Date Signature Printed Name

**PLEASE RETAIN THIS COPY FOR YOUR RECORDS.**

Rev. 012417



**RECEIPT  
(Our Copy)**

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

If Kona Ice, Inc. offers you a franchise, it must provide this disclosure document to you 14 calendar days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale.

Under Iowa law, if applicable, Kona Ice, Inc. must provide this disclosure document to you at your first personal meeting to discuss the franchise. Michigan requires Kona Ice, Inc. to give you this disclosure document at least ten (10) business days before the execution of any binding franchise or other agreement or the payment of any consideration, whichever occurs first. New York requires you to receive this disclosure document at the earlier of the first personal meeting or ten (10) business days before the execution of the franchise or other agreement or the payment of any consideration that relates to the franchise relationship.

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

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- Exhibit I State Effective Dates
- Exhibit J Receipt

_____	_____	_____
Date	Signature	Printed Name
_____	_____	_____
Date	Signature	Printed Name

**Please sign this copy of the receipt, date your signature, and return it to Kona Ice, Inc., 5945 Centennial Circle, Florence, KY 41042.**

Rev. 012417

