



## FRANCHISE DISCLOSURE DOCUMENT

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**Fosters Freeze International, LLC**  
a Delaware limited liability company  
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Chino Hills, CA 91709  
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[www.fostersfreeze.com](http://www.fostersfreeze.com)

Fosters Freeze businesses offer soft serve confections and other food items in wholesome restaurant settings and in non-traditional locations (“Fosters Freeze Business(es)”). We offer franchises for single Fosters Freeze Businesses and for multi-unit franchises for the right to open multiple Fosters Freeze Businesses.

The total investment necessary to begin operation of a single Fosters Freeze franchised business in a stand-alone restaurant is between \$611,500 and \$1,009,000. This includes between \$57,500 and \$59,500 that must be paid to the franchisor or its affiliate(s). The total investment necessary to begin operation of two Fosters Freeze franchised businesses in stand-alone restaurants under a “Multi-3” franchise is between \$1,223,000 and \$2,018,000. This includes between \$115,000 and \$119,000 that must be paid to the franchisor or its affiliate(s). The total investment necessary to begin operation of three Fosters Freeze franchised businesses in stand-alone restaurants under a Multi-3 franchise is between \$1,777,000 and \$2,969,500. This includes between \$115,000 and \$121,000 that must be paid to the franchisor or its affiliate(s). The total investment necessary to begin operation of four Fosters Freeze franchised businesses in stand-alone restaurants under a “Multi-5” franchise is between \$2,391,000 and \$3,981,000. This includes between \$175,000 and \$183,000 that must be paid to the franchisor or its affiliate(s). The total investment necessary to begin operation of five Fosters Freeze franchised businesses in stand-alone restaurants under a Multi-5 franchise is between \$2,945,000 and \$4,932,500. This includes between \$175,000 and \$185,000 that must be paid to the franchisor or its affiliate(s).

The total investment necessary to begin operation of a single Fosters Freeze franchised business in a location serving only soft serve confections is between \$178,000 and \$331,500. This includes between \$57,500 and \$59,500 that must be paid to the franchisor or its affiliate(s). The total investment necessary to begin operation of two Fosters Freeze franchised businesses serving only soft serve confections under a Multi-3 franchise is between \$356,000 and \$663,000. This includes between \$115,000 and \$119,000 that must be paid to the franchisor or its affiliate(s). The total investment necessary to begin operation of three Fosters Freeze franchised businesses serving only soft serve confections under a Multi-3 franchise is between \$476,500 and \$937,000. This includes between \$115,000 and \$121,000 that must be paid to the franchisor or its affiliate(s). The total investment necessary to begin operation of four Fosters Freeze franchised businesses serving only soft serve confections under a Multi-5 franchise is between \$657,000 and \$1,271,000. This includes between \$175,000 and \$183,000 that must be paid to the franchisor or its affiliate(s). The total investment necessary to begin operation of five Fosters Freeze franchised businesses serving only soft serve confections under a Multi-5 franchise is between \$777,500 and \$1,545,000. This includes between \$175,000 and \$185,000 that must be paid to the franchisor or its affiliate(s).

The total investment necessary to begin operation of a single Fosters Freeze franchised business in a co-located premises serving food and soft serve confections is between \$329,250 and \$658,500. This

includes between \$52,500 and \$54,500 that must be paid to the franchisor or its affiliate(s). The total investment necessary to begin operation of two Fosters Freeze franchised businesses under a Multi-3 franchise in a co-located premises serving food and soft serve confections is between \$658,500 and \$1,317,000. This includes between \$105,000 and \$109,000 that must be paid to the franchisor or its affiliate(s). The total investment necessary to begin operation of three Fosters Freeze franchised businesses under a Multi-3 franchise in a co-located premises serving food and soft serve confections is between \$935,250 and \$1,923,000. This includes between \$105,000 and \$111,000 that must be paid to the franchisor or its affiliate(s). The total investment necessary to begin operation of four Fosters Freeze franchised businesses under a Multi-5 franchise in a co-located premises serving food and soft serve confections is between \$1,272,000 and \$2,589,000. This includes between \$165,000 and \$173,000 that must be paid to the franchisor or its affiliate(s). The total investment necessary to begin operation of five Fosters Freeze franchised businesses under a Multi-5 franchise in a co-located premises serving food and soft serve confections is between \$1,548,750 and \$3,195,000. This includes between \$165,000 and \$175,000 that must be paid to the franchisor or its affiliate(s).

This disclosure document summarizes certain provisions of your franchise agreement and other information in plain English. Read this disclosure document and all agreements carefully. You must receive this disclosure document at least 14 calendar days before you sign a binding agreement 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 Nealesh Daha at 14071 Peyton Drive, Suite 2697, Chino Hills, CA 91709, (909) 264-1550 or [Franchise@fostersfreeze.com](mailto:Franchise@fostersfreeze.com).

The terms of your contract will govern your franchise relationship. Do not 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 5, 2024**

## How to Use This Franchise Disclosure Document

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

QUESTION	WHERE TO FIND INFORMATION
<b>How much can I earn?</b>	Item 19 may give you information about outlet sales, costs, profits or losses. You should also try to obtain this information from others, like current and former franchisees. You can find their names and contact information in Item 20 or Exhibit D.
<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 Fosters Freeze 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 Fosters Freeze franchisee?</b>	Item 20 or Exhibit D 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 California. 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 California than in your own state.
2. **Spousal Liability.** Your spouse must sign a document that makes your spouse liable for all financial obligations even though your spouse has no ownership interest in the franchise. This guarantee will place both your and your spouse's marital and personal assets, perhaps including your house, at risk if your franchise fails.

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

**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 (6) months advance notice of franchisor's intent not to renew the franchise.
- (e) A provision that permits the franchisor to refuse to renew a franchise on terms generally available to other franchisees of the same class or type 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.**

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### EXHIBITS:

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

To simplify the language in this Franchise Disclosure Document, “FFI,” “we,” “us” and “our” means Fosters Freeze International, LLC, the franchisor. “You,” “your” and “Franchisee” means the person, and its owners if the Franchisee is a business entity, who buys the franchise from FFI.

**The Franchisor**

FFI is a Delaware limited liability company formed on March 12, 2015. We conduct business under our corporate name and Fosters Freeze. Our principal business address is 14071 Peyton Drive, Suite 2697, Chino Hills, CA 91709. We offer franchises (“Fosters Freeze Franchise(s)” or “Franchise(s)”) for Fosters Freeze Businesses and have done so since June 2015. We do not conduct business under any other name or in any other line of business and we do not offer franchises in any other line of business. We do not conduct, and have never conducted, a business of the type described in this Franchise Disclosure Document. We have no parent companies.

FFI acquired the Fosters Freeze trademarks and substantially all of the other assets of the Fosters Freeze system from Fosters Freeze, LLC (“FFL Predecessor”) on June 1, 2015. FFL Predecessor has been dissolved, but its last known principal business address is 8360 Red Oak Avenue, Suite 202, Rancho Cucamonga, California 91730. Our earlier predecessors began operating soft serve confections locations in 1946 and began offering licenses or franchises similar to the franchises granted under this Franchise Disclosure Document beginning in the late 1940s. FFL Predecessor began offering franchises similar to the franchises granted under this Franchise Disclosure Document on February 10, 2002. To our knowledge, FFL Predecessor did not offer franchises in any other line of business, and did not conduct a business of the type described in this Franchise Disclosure Document.

Our affiliate, U Swirl Franchising LLC (“USF”), is a Delaware limited liability company formed on April 11, 2023. USF has offered franchises under the following trademarks since May 1, 2023: -Swirl Frozen Yogurt, U-Swirl, Yogurtini, Aspen Leaf, CherryBerry, CherryBerry Self-Serve Yogurt Bar, Yogli Mogli, Let’s Yo! and The Fuzzy Peach Frozen Yogurt Bar (collectively, “USF Brands”). We have entered into a limited license agreement with USF that allows it to offer its franchisees the option to operate a co-branded business that operates both under a USF Brand trademark and the Fosters Freeze Marks (“Co-Branded USF Businesses”). Co-Branded USF Businesses offer frozen confections under the Fosters Freeze trademarks but do not offer any other Fosters Freeze menu items (such as hamburgers and hot sandwiches). USF does not provide any products or services to our franchisees and a Co-Branded USF Business is offered only under USF’s Franchise Disclosure Document. Other than the USF Brands and Co-Branded USF, none of our affiliates offer or have offered franchises in this or other lines of business.

Certain of our franchisees (53 of the existing franchisees) entered into franchises for Fosters Freeze Businesses under agreements with our predecessors that have terms and conditions that are materially different from those offered to you. Most of these franchisees (“Legacy Franchisees”) do not contribute to the same brand fund that you do and do not pay us the same royalty fee that you will pay to us.

Our agent for service of process in Delaware is Corporation Service Company, 251 Little Falls Drive, Wilmington, Delaware 19808. Our agents for service of process for other states are identified by state in 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

Fosters Freeze franchisees operate locations serving soft serve confections and may also serve soft drinks, hamburgers, hot sandwiches and other food items. Our operating system includes recognizable design, décor color scheme, recipes, uniform standards, specifications, rules and procedures of operation, techniques, philosophies, quality and uniformity of products and services offered and procedures for inventory and management control (“System”). We grant franchises to operate Fosters Freeze Businesses using the System and our trade names, trademarks, service marks, emblems, logos, slogans and copyrights (“Marks”) as authorized by us from an approved retail location (“Fosters Freeze Restaurant”).

Your Fosters Freeze Restaurant may be one of three types:

We offer Franchises for stand-alone Fosters Freeze Businesses in a location that exists only as a Fosters Freeze Restaurant and serves soft serve confections, soft drinks, hamburgers, hot sandwiches and other food items (a “Stand Alone Restaurant”). Stand Alone Restaurants usually offer dine-in, drive-thru and walk-up options. We don’t currently allow franchisees to provide catering and/or delivery services (“Delivery Services”), but we may permit it in the future. If you are granted the right to operate a Stand Alone Restaurant, and we are then-allowing franchisees to provide Delivery Services, you may also choose to provide Delivery Services in your territory and within any additional territory approved by us (as described in Item 12).

We offer Franchises for stand-alone Fosters Freeze Businesses in a location that exists only as a Fosters Freeze Restaurant and serves only certain soft serve confections (a “Confections Restaurant”). Confections Restaurants usually offer dine-in, drive-thru and walk-up options.

We offer Franchises for Fosters Freeze Businesses in a location that is located within another primary business like a convenience store or a gas station (a “Host Business”) and will serve a full service menu, but may have different required food items than a Stand Alone Restaurant (a “Co-Located Restaurant”).

You must sign our standard franchise agreement attached to this Franchise Disclosure Document as Exhibit C (“Franchise Agreement”). You may operate one Fosters Freeze Business for each Franchise Agreement you sign. If you are a Confections Restaurant franchisee, you must also sign a “Confections Restaurant Addendum,” and if you are a Co-Located Restaurant franchisee, you must also sign a “Co-Located Restaurant Addendum,” in the forms attached to this Franchise Disclosure Document in Exhibit G. If you have a Co-Located Restaurant, you will sign a lease with the Host Business.

We offer three different franchise packages depending on the number of Fosters Freeze Businesses you wish to purchase: a single Fosters Freeze Business, a “Multi-3,” which allows you to open up to three Fosters Freeze Businesses, and a “Multi-5,” which allows you to open up to five Fosters Freeze Businesses. If you purchase a Multi-3 or a Multi-5, you will sign the “Multi-Franchise Addendum” attached to this Franchise Disclosure Document in Exhibit G in addition to the Franchise Agreement. There is no development territory or development schedule to open additional Fosters Freeze Businesses. Prior to opening each additional Fosters Freeze Business under the Multi-Franchise Addendum, you must sign the then-current Fosters Freeze Franchise Agreement, which may differ from the current Franchise Agreement included with this Franchise Disclosure Document. If you purchase a Multi-3 or Multi-5 franchise, you may open all of the same type of Fosters Freeze Restaurant, or you may open one or more of the different Fosters Freeze Restaurants described in this Franchise Disclosure Document, as long as we are still offering that type of Fosters Freeze Restaurant.



The Multi-Franchise Addendum supplements the terms of the Franchise Agreement in relation to the opening of additional Fosters Freeze franchises. You are not granted any territorial rights or any other rights except those granted under the Franchise Agreements for the additional Fosters Freeze Businesses.

### Market and Competition

The primary market for the products and services offered by the Fosters Freeze Business is the general public. For most Fosters Freeze Restaurants, sales are seasonal, with peak sales in warmer months (March through September) and a slowdown in cooler months (October through February). Depending on the climate where you locate your Fosters Freeze Restaurant and the restaurant format that you operate, seasonality may be more of a factor in annual sales from the Fosters Freeze Business. This is especially true for Confections Restaurants which sell soft serve confections only. The restaurant market, as a whole, is well-developed and highly competitive and includes retail units, mobile food trucks, and kiosks selling various types of food. You may have to compete with numerous other independent and chain-affiliated restaurants, some of which may be franchised. Many restaurant franchise systems, in particular, have already established national and international brand recognition.

### Industry-Specific Laws

Many states and local jurisdictions have enacted laws, rules, regulations and ordinances which may apply to the operation of your Fosters Freeze Business, including those which: (a) establish general standards, specifications and requirements for the construction, design and maintenance of your Fosters Freeze Restaurant; (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; 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) govern the use of vending machines; (f) regulate the proper use, storage and disposal of waste, insecticides and other hazardous materials; (g) 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 (h) establish requirements concerning withholdings and employee reporting of taxes on tips. You must also obtain all necessary permits, licenses and approvals to operate your Fosters Freeze Business.

Many local or state jurisdictions require food service permits for those preparing, handling and serving food to the public. You and your employees may be required 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 Payment Card Industry Data Security Standard (“PCI”) requires that all companies that process, store, or transmit credit or debit card information maintain a secure environment. PCI applies to all organizations or merchants, regardless of size or number of transactions, that accepts, transmits or stores any cardholder data. Franchisees must also be sure to comply with applicable federal and state laws regulating the privacy and security of sensitive consumer and employee information.

You are responsible for investigating, understanding and complying with all applicable laws, rules, regulations, ordinances and requirements applicable to you and your Fosters Freeze Business. You should consult with a legal advisor about whether these and/or other requirements apply to your Fosters Freeze Business. Failure to comply with laws and regulations is a material breach of the Franchise Agreement.



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

President and Chief Executive Officer: Nealesh Dahya

Mr. Dahya has served as President and Chief Executive Officer of FFI in Chino Hills, California since its inception on March 12, 2015. Mr. Dahya has served as Vice President of Global Tek, a restaurant consulting firm, since January 2011 in Chino Hills, California.

Head of Global Business Development: Nimesh Dahya

Mr. Dahya has served as Head of Global Business Development of FFI in San Diego, California since its inception on March 12, 2015. Mr. Dahya has served as President of Global Tek, a restaurant consulting firm, since January 2011 in San Diego, California.

Chief Marketing Officer: Sanjay Patel

Mr. Patel has served as Chief Marketing Officer of FFI in Pomona, California since its inception on March 12, 2015. Mr. Patel has served as President of Alliant Event Services Inc., an audio visual rental company, since April 2003 in Pomona, California.

Advisor and Board Member: Urmesh Dahya

Mr. Dahya has served as an Advisor and Board Member of FFI in Austin, Texas since its inception on March 12, 2015. Mr. Dahya also serves as Managing Member of ATX Restaurant Partners LLC, a multi-unit franchisee of the Dickey's Barbecue Pit system, since September 2014 in Austin, Texas.

Advisor and Board Member: Kishan Patel

Mr. Patel has served as an Advisor and Board Member of FFI in Chino Hills, California since its inception on March 12, 2015. Mr. Patel has also served as President of Xkish & Associates Inc., a restaurant consulting firm since January 2010, and as Managing Member of American Pub LLC, a multi-unit franchisee of the TGI Friday's system since July 6, 2015, both in Chino Hills, California.

**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” when you sign the Franchise Agreement. We offer three different Franchise packages depending on the number of Fosters Freeze Businesses you wish to purchase:

Franchise Type	Number of Fosters Freeze Restaurants	Initial Franchise Fee
Single	1	\$45,000
Multi-3	Up to 3	\$90,000
Multi-5	Up to 5	\$150,000

A Multi-3 franchise grants you the right to open three Fosters Freeze Businesses and a Multi-5 franchise grants you the right to open five Fosters Freeze Businesses. There is no development territory or development schedule to open additional Fosters Freeze Businesses. To open additional Fosters Freeze Businesses under a Multi-3 or Multi-5 franchise, you will be required to sign the then-current Fosters Freeze Business franchise agreement (and the then-current Confections Restaurant Addendum for a Confections Restaurant or then-current Co-Located Restaurant Addendum for a Co-Located Restaurant), but you will not be required to pay an Initial Franchise Fee (all other fees will apply). If you purchase a Multi-3 or Multi-5 franchise, you may open all of the same type of Fosters Freeze Restaurant, or you may open one or more of the different Fosters Freeze Restaurants described in this Franchise Disclosure Document, as long as we are still offering franchises for that type of Fosters Freeze Business.

The Initial Franchise Fee is payment for our pre-opening assistance that we provide to allow you to open your Fosters Freeze Business and also offsets some of our franchisee recruitment expenses. The Initial Franchise Fee is uniformly calculated and is non-refundable. During our last fiscal year, ending December 31, 2022, we collected Initial Franchise Fees ranging between \$25,000 and \$45,000.

### *Restaurant Opening Assistance Fee*

In addition to the Initial Franchise Fee, you must pay us a “Restaurant Opening Assistance Fee” of \$12,500 for each Stand Alone Restaurant and Confections Restaurant and \$7,500 for each Co-Located Restaurant. The Restaurant Opening Assistance Fee offsets our costs in providing the opening assistance described below. If you purchase a Multi-3 or Multi-5 franchise, you will only be responsible for paying the Restaurant Opening Assistance Fee for your first two Fosters Freeze Restaurants. For a period of up to seven days before and immediately after the opening of your first two Fosters Freeze Restaurants, we or a designee will travel to your Fosters Freeze Restaurant and provide on-site support (“Opening Assistance”) to assist you in the opening and operation of your Fosters Freeze Business and establishment of the required procedures. If you are a Stand Alone Restaurant or a Confections Restaurant, we will send two to three trainers, depending on the size of your Restaurant. If you are a Co-Located Restaurant, we will send one trainer.

You will pay the Restaurant Opening Assistance Fee when you sign the Franchise Agreement. Restaurant Opening Assistance Fees are fully earned by us when paid, uniform for each type of Fosters Freeze Restaurant and are not refundable under any circumstances.



### *Architecture Fee*

If you use an architect that we have not approved, you will pay us an “Architecture Fee” of \$2,000 to cover our costs to assist your chosen architect with designs and plans and may cover other administrative expenses. This fee is due before you engage the services of your chosen architect and is uniform and non-refundable under any circumstances.

### **ITEM 6 OTHER FEES**

Type of Fee <sup>(1)</sup>	Amount	Due Date	Remarks
Royalty <sup>(2)</sup>	4% of Gross Sales for Stand Alone Restaurants and 8% of Gross Sales for Confections Restaurants and Co-Located Restaurants	Due on 10th day of the month for the prior month	The “ <u>Royalty</u> ” is based on “ <u>Gross Sales</u> ” during the previous month. Your Royalty 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.
Brand Fund Contribution	3% of your monthly Gross Sales	Same as Royalty	This contribution will be used for a system-wide “ <u>Brand Fund</u> ” for our use in promoting and building the Fosters Freeze brand. Stand Alone Restaurant franchisees are required to make Brand Fund contributions. Franchisees for Confections Restaurants and Co-Located Restaurants are not currently required to make Brand Fund contributions, but we reserve the right in the future to require Confections Restaurants and Co-Located Restaurants to make Brand Fund contributions of up to 3% of monthly Gross Sales.
Local Advertising Payment	The difference between the amount you spent on local advertising each month and your required local advertising expenditure (currently .5% of your Gross Sales)	Payable after receipt of invoice	If you fail to meet your required local advertising requirement on local advertising, you must pay the difference between the amount you spent and the required advertising expenditure, which will be contributed to the Brand Fund, if established, or us. We may increase the local advertising requirement to 1% of your Gross Sales upon 30 days prior written notice to you.



Type of Fee <sup>(1)</sup>	Amount	Due Date	Remarks
Local and Regional Advertising Cooperatives <sup>(3)</sup>	Established by cooperative members, between 1% and 3% of Gross Sales	Established by cooperative members	We currently do not have a cooperative but reserve the right to require one to be established in the future. Each Fosters Freeze Business we own that exists within the cooperative's area will contribute to the cooperative on the same basis as franchisees. We anticipate that each Fosters Freeze franchisee and each Fosters Freeze Business that we own will have one vote for each Fosters Freeze Restaurant operated in the designated market. Item 11 contains more information about advertising cooperatives.
Unauthorized Advertising Fee	\$500 per occurrence	On demand	This fee is payable to us, if you use unauthorized advertising in violation of the terms of the Franchise Agreement.
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 plus twenty percent (20%) of the premium for an administrative cost of obtaining the insurance.
Catastrophe Fee	4% of any insurance proceeds	As incurred	You will pay us four percent (4%) of any insurance proceeds due to business interruption as a result of your Fosters Freeze Business being closed a result of a casualty event or any other reason.
Additional Training or Assistance Fees	The then-current fee (currently \$350 per additional attendee per day for initial training and \$350 per attendee per day for additional training)	As incurred	We provide initial training at no charge for up to two people. We may charge you for training additional persons, newly-hired personnel, refresher training courses, advanced training courses, and additional or special assistance or training you need or request. You are responsible for any expenses incurred by you or your employees in connection with attending training, including transportation, lodging, meals, wages and other incidentals. If the training program is conducted at your Fosters Freeze Restaurant, then you must reimburse us for the expenses we or our representatives incur in providing the training.



Type of Fee <sup>(1)</sup>	Amount	Due Date	Remarks
Technology Fee <sup>(4)</sup>	The then-current fee (currently \$100 per month per location)	Same as Royalty	This fee covers certain technologies used in the operation of your Fosters Freeze Business. This fee may include fees paid to third-party vendors and it may be adjusted to reflect their price increases. You will also be responsible for any increase in fees that result from any upgrades, modifications or additional software.
Conference Fee	The then-current fee (currently estimated to be \$500 per person)	On demand	Payable to us to help defray the cost of your attendance at any annual conference that we choose to hold. This fee is due regardless of whether or not you attend our annual conference in any given year.
Supplier and Product Evaluation Fee	Costs of inspection (estimated to be approximately \$100 to \$500)	On demand	Payable if we inspect a new product, service or proposed supplier nominated by you.
Food Safety Audit	Cost of audit (estimated to be approximately \$2,500)	As incurred	If you fail a food safety audit, we will require you to undergo an additional food safety audit at your own expense within 45 days. You will pay the third-party auditor directly upon invoicing or must reimburse us if we are invoiced.
Replacement of Brand Standards Manual	\$500	On demand	Payable if your copy of the brand standards manual is lost, stolen, destroyed or significantly damaged.
Customer Issue Resolution	Varies; reasonable costs we incur for responding to a customer complaint, which will typically be between \$20 and \$100	On demand	Payable if a customer of your Fosters Freeze Business contacts us with a complaint and we provide a gift card, refund or other value to the customer as part of our addressing the issue.
Payment Service Fee	Up to 4% of total charge	As incurred	If payment is made to us or our affiliate by credit card for any fee required, we may charge a service charge of up to four percent (4%) of the total charge.
Late Payment Fee	\$100 per occurrence, plus the lesser of the daily equivalent of 10% per year simple interest or the highest rate allowed by law	As incurred	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.



Type of Fee <sup>(1)</sup>	Amount	Due Date	Remarks
Non-Sufficient Funds Fee	\$100 per occurrence, plus the lesser of the daily equivalent of 10% per year simple interest or the highest rate allowed by law	As incurred	Payable if any check or electronic payment is not successful due to insufficient funds, stop payment or any similar event.
Failure to Submit Required Report Fee	\$100 per occurrence and \$100 per week	Your bank account will be debited for failure to submit any requested report or financial statement when due	Payable if you fail to submit any required report or financial statement when due. Fines collected are paid to the Brand Fund, if established, or us. You will continue to incur this fee until you submit the required report.
Audit Expenses	Cost of audit and inspection, any understated amounts, and any related accounting, legal and travel expenses plus 10% interest on underpayment and a \$100 handling fee	On demand	You will be required to pay this if an audit reveals that you understated monthly Gross Sales by more than two percent (2%) or you fail to submit required reports.
Management Fee	\$500 per day, plus costs and expenses	As incurred	Payable if we choose to manage your Fosters Freeze Business in several situations, including if (1) you cease to perform your responsibilities (whether due to retirement, death, disability, or for any other reason) and you fail to find an adequate replacement Operating Principal (defined in Item 15) within 30 days; (2) you are in material breach of this Franchise Agreement; or (3) upon a crisis management event.
Professional Fees and Expenses	Will vary under circumstances	As incurred	You must reimburse us for any legal, accounting or other professional fees (“ <u>Professional Fees</u> ”) that we incur as a result of any breach or termination of your Franchise Agreement or as a result of your indemnity obligations. You must reimburse us if we are required to incur any expenses in enforcing our rights against you under the Franchise Agreement.



Type of Fee <sup>(1)</sup>	Amount	Due Date	Remarks
Indemnification	Will vary under circumstances	As incurred	You must indemnify and reimburse us for any expenses or losses, including Professional Fees, that we or our representatives incur related in any way to your Fosters Freeze Business or Franchise.
Renewal Fee	50% of the then-current Initial Franchise Fee, or \$22,500 if we are not then offering franchises for sale	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.
Relocation Fee	\$5,000	Upon submission of request to relocate	You must pay us this fee upon each request to relocate your Fosters Freeze Restaurant.
De-Identification	All amounts incurred by us related to de-identification	As incurred	Payable if we must de-identify your Fosters Freeze Franchise upon its termination, relocation or expiration.
Transfer Fee	35% of the then-current Initial Franchise Fee, or \$15,750 if we are not then offering franchises for sale	\$1,000 non-refundable deposit at time of transfer application submittal and the remaining balance of fee at time of the approved transfer	Payable in connection with the transfer of your Fosters Freeze Business, or a transfer of ownership of your legal entity or the Franchise Agreement (this does not apply to the transfer of an entity you control—see below).
Transfer to Entity	Our actual costs	On demand	If you are transferring the Franchise Agreement to an entity that you control, you will not be required to pay a transfer fee, but you must pay our actual costs.
Liquidated Damages <sup>(5)</sup>	Will vary under the circumstances	Within 15 days after termination of the Franchise Agreement	Due only if we terminate the Franchise Agreement before the end of the term because of your material breach, or you terminate the Franchise Agreement without legal cause.
Broker Fees	Our actual cost of the brokerage commissions, finder's fees or similar charges	As incurred	If you transfer your Fosters Freeze Business to a third party or purchaser, you must reimburse all of our actual costs for commissions, finder's fees and similar charges.



Notes:

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 or our affiliates via electronic funds transfer (“EFT”) or other similar means. You are required to complete the ACH authorization (in the form attached to this Franchise Disclosure Document in Exhibit G). 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. If you sign a Multi-Franchise Addendum to operate multiple Fosters Freeze Businesses, the fees indicated in the chart above are the fees charged and/or incurred for each Fosters Freeze Business. 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. **Royalty.** “Gross Sales” means the total of all revenues, income and consideration from the sale of all Fosters Freeze merchandise, products and services to your customers whether or not sold or performed at or from the Fosters Freeze Restaurant (including any Delivery Services), and whether received in cash, coupon, in services in kind, from barter or exchange, on credit (whether or not payment is received) or otherwise. Gross Sales includes all proceeds from any business interruption insurance. If you offer any services or if we permit you to have your Fosters Freeze Restaurant or location photographed or filmed, all receipts from these services are included in Gross Sales. You may deduct from Gross Sales for purposes of this computation (but only to the extent they have been included) the amount of all sales tax receipts or similar tax receipts which, by law, are chargeable to customers, if the taxes are separately stated when the customer is charged and if the taxes are paid to the appropriate taxing authority. You may also deduct from Gross Sales the amount of any documented refunds, chargebacks, credits, charged tips and allowances you give in good faith to your customers. All barter or exchange transactions in which you furnish products or services in exchange for products or services provided to you by a vendor, supplier or customer will, for the purpose of determining Gross Sales, be valued at the full retail value of the products or services so provided to you.
3. **Local and Regional Advertising Cooperatives.** If a local or regional advertising cooperative is established, contribution amounts will be established by the cooperative members, subject to our approval. We anticipate that each Fosters Freeze franchisee and each Fosters Freeze Franchise that we own will have one vote for each Fosters Freeze Franchise operated in the designated market. Each Fosters Freeze Franchise we own that exists within the cooperative’s area will contribute to the cooperative on the same basis as franchisees. No local or regional advertising cooperatives have been established as of the Issuance Date of this Franchise Disclosure Document.
4. **Technology Fee.** We will provide you with certain technical services in exchange for your monthly technology fee, which may change from time to time based on changes to the technical services we provide and/or our costs to provide these services. The current technology fee is \$100 per month beginning the month you begin operations. We reserve the right to license, sublicense, and create software and technology that Fosters Freeze 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. Currently we require that you utilize software provided by third-party suppliers. You are required to pay these suppliers for the use of the software.
5. **Liquidated Damages.** Liquidated damages are determined by multiplying the combined monthly average of Royalties and Brand Fund contributions (without regard to any fee waivers or other reductions) that are owed by you to us, beginning with the date you open your Fosters Freeze



Business through the date of early termination, multiplied by the lesser of: (i) 36; or (ii) the number of months remaining in the term of the Franchise Agreement, except that liquidated damages will not, under any circumstances, be less than \$30,000.

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

**YOUR ESTIMATED INITIAL INVESTMENT**

Stand Alone Restaurant

Type of Expenditure	Amount		Method of Payment	When Due	To Whom Payment is to be Paid
	Low	High			
Initial Franchise Fee <sup>(1)</sup>	\$45,000	\$45,000	Lump Sum	When You Sign the Franchise Agreement	Us
Restaurant Opening Assistance Fee <sup>(2)</sup>	\$12,500	\$12,500	Lump Sum	Upon Signing the Franchise Agreement	Us
Architecture Fee <sup>(2)</sup>	\$0	\$2,000	As incurred	Before Engaging Architect Services	Us
Design Fee <sup>(3)</sup>	\$15,000	\$30,000	As incurred	As incurred	Approved Vendor
Lease <sup>(4)</sup>	\$4,500	\$20,000	As incurred	As incurred	Landlord
Furniture, Fixtures, Equipment and Leasehold Improvements <sup>(5)</sup>	\$475,000	\$750,000	As incurred	As incurred	Approved Suppliers
Computer and Point-of-Sale Equipment	\$7,500	\$25,000	As incurred	Before opening	Approved Suppliers
Opening Inventory	\$6,000	\$20,000	As incurred	Before opening	Approved Suppliers
Security Deposits, Utility Deposits, Business Licenses and Pre-Paid Expenses <sup>(6)</sup>	\$10,000	\$50,000	As incurred	Before opening	Landlord, Third Parties and Governmental Agencies
Start-up Supplies <sup>(7)</sup>	\$1,000	\$2,500	As incurred	Before opening	Approved Suppliers
Training <sup>(8)</sup>	\$4,000	\$6,000	As incurred	As incurred	Third Parties
Grand Opening Program <sup>(9)</sup>	\$1,000	\$2,000	As incurred	As incurred	Approved Suppliers
Insurance <sup>(10)</sup>	\$2,000	\$4,000	As incurred	Before opening	Insurance Company
Miscellaneous Opening costs <sup>(11)</sup>	\$8,000	\$10,000	As incurred	As incurred	Approved Suppliers
Additional Funds – 3 Months <sup>(12)</sup>	\$20,000	\$30,000	As incurred	As incurred	Approved Suppliers, Employees, Third Parties
<b>TOTAL ESTIMATED INITIAL INVESTMENT<sup>(13)</sup></b>	<b>\$611,500</b>	<b>\$1,009,000</b>			



Type of Expenditure	Amount		Method of Payment	When Due	To Whom Payment is to be Paid
	Low	High			
Multi-3 Franchise					
Multi-3 Franchise					

### Confections Restaurant

Type of Expenditure	Amount		Method of Payment	When Due	To Whom Payment is to be Paid
	Low	High			
Initial Franchise Fee <sup>(1)</sup>	\$45,000	\$45,000	Lump Sum	When You Sign the Franchise Agreement	Us
Restaurant Opening Assistance Fee <sup>(2)</sup>	\$12,500	\$12,500	Lump Sum	Upon Signing the Franchise Agreement	Us
Architecture Fee <sup>(2)</sup>	\$0	\$2,000	As incurred	Before Engaging Architect Services	Us
Design Fee <sup>(3)</sup>	\$15,000	\$30,000	As incurred	As incurred	Approved Vendor
Lease <sup>(4)</sup>	\$2,500	\$8,500	As incurred	As incurred	Landlord
Furniture, Fixtures, Equipment and Leasehold Improvements <sup>(5)</sup>	\$60,000	\$125,000	As incurred	As incurred	Approved Suppliers
Computer and Point-of-Sale Equipment	\$7,500	\$25,000	As incurred	Before opening	Approved Suppliers
Opening Inventory	\$2,000	\$6,000	As incurred	Before opening	Approved Suppliers
Security Deposits, Utility Deposits, Business Licenses and Pre-Paid Expenses <sup>(6)</sup>	\$7,500	\$35,000	As incurred	Before opening	Landlord, Third Parties and Governmental Agencies
Start-up Supplies <sup>(7)</sup>	\$1,000	\$2,500	As incurred	Before opening	Approved Suppliers



Type of Expenditure	Amount		Method of Payment	When Due	To Whom Payment is to be Paid
	Low	High			
Training <sup>(8)</sup>	\$2,000	\$3,000	As incurred	As incurred	Third Parties
Grand Opening Program <sup>(9)</sup>	\$1,000	\$1,000	As incurred	As incurred	Third Parties
Insurance <sup>(10)</sup>	\$2,000	\$4,000	As incurred	Before opening	Insurance Company
Miscellaneous Opening costs <sup>(11)</sup>	\$5,000	\$7,000	As incurred	As incurred	Approved Suppliers
Additional Funds – 3 Months <sup>(12)</sup>	\$15,000	\$25,000	As incurred	As incurred	Approved Suppliers, Employees, Third Parties
<b>TOTAL ESTIMATED INITIAL INVESTMENT<sup>(13)</sup></b>	<b>\$178,000</b>	<b>\$331,500</b>			
Multi-3 Franchise	If you purchase a Multi-3 Franchise under the Multi-Franchise Addendum, you will incur all of the costs listed above for each Fosters Freeze Business you open except that the Initial Franchise Fee will total \$90,000 and allow you to open up to three Fosters Freeze Businesses. If you were to open two Fosters Freeze Businesses, using the same estimated initial expenses above, we estimate this total cost to range between \$356,000 and \$663,000. If you were to open three Fosters Freeze Businesses, using the same estimated initial expenses above, we estimate this total cost to range between \$476,500 and \$937,000. These costs may increase in the future depending on when you open the additional Fosters Freeze Businesses.				
Multi-5 Franchise	If you purchase a Multi-5 Franchise under the Multi-Franchise Addendum, you will incur all of the costs listed above for each Fosters Freeze Business you open except that the Initial Franchise Fee will total \$150,000 and allow you to open up to five Fosters Freeze Businesses. If you were to open four Fosters Freeze Businesses, using the same estimated initial expenses above, we estimate this total cost to range between \$657,000 and \$1,271,000. If you were to open five Fosters Freeze Businesses, using the same estimated initial expenses above, we estimate this total cost to range between \$777,500 and \$1,545,000. These costs may increase in the future depending on when you open the additional Fosters Freeze Businesses.				

### Co-Located Restaurant

Type of Expenditure	Amount		Method of Payment	When Due	To Whom Payment is to be Paid
	Low	High			
Initial Franchise Fee <sup>(1)</sup>	\$45,000	\$45,000	Lump Sum	When You Sign the Franchise Agreement	Us
Restaurant Opening Assistance Fee <sup>(2)</sup>	\$7,500	\$7,500	Lump Sum	Upon Signing the Franchise Agreement	Us
Architecture Fee <sup>(2)</sup>	\$0	\$2,000	As incurred	Before Engaging Architect Services	Us
Design Fee <sup>(3)</sup>	\$7,500	\$15,000	As incurred	As incurred	Approved Vendor
Lease <sup>(4)</sup>	\$1,250	\$7,500	As incurred	As incurred	Landlord



Type of Expenditure	Amount		Method of Payment	When Due	To Whom Payment is to be Paid
	Low	High			
Furniture, Fixtures, Equipment and Leasehold Improvements <sup>(5)</sup>	\$225,000	\$475,000	As incurred	As incurred	Approved Suppliers
Computer and Point-of-Sale Equipment	\$7,500	\$25,000	As incurred	Before opening	Approved Suppliers
Opening Inventory	\$3,500	\$10,000	As incurred	Before opening	Approved Suppliers
Security Deposits, Utility Deposits, Business Licenses and Pre-Paid Expenses <sup>(6)</sup>	\$3,000	\$25,000	As incurred	Before opening	Landlord, Third Parties and Governmental Agencies
Start-up Supplies <sup>(7)</sup>	\$1,000	\$2,500	As incurred	Before opening	Approved Suppliers
Training <sup>(8)</sup>	\$4,000	\$6,000	As incurred	As incurred	Third Parties
Grand Opening Program <sup>(9)</sup>	\$1,000	\$1,000	As incurred	As incurred	Third Parties
Insurance <sup>(10)</sup>	\$2,000	\$4,000	As incurred	Before opening	Insurance Company
Miscellaneous Opening costs <sup>(11)</sup>	\$6,000	\$8,000	As incurred	As incurred	Approved Suppliers
Additional Funds – 3 Months <sup>(12)</sup>	\$15,000	\$25,000	As incurred	As incurred	Approved Suppliers, Employees, Third Parties
<b>TOTAL ESTIMATED INITIAL INVESTMENT<sup>(13)</sup></b>	<b>\$329,250</b>	<b>\$658,500</b>			
Multi-3 Franchise	If you purchase a Multi-3 Franchise under the Multi-Franchise Addendum, you will incur all of the costs listed above for each Fosters Freeze Business you open except that the Initial Franchise Fee will total \$90,000 and allow you to open up to three Fosters Freeze Businesses. If you were to open two Fosters Freeze Businesses, using the same estimated initial expenses above, we estimate this total cost to range between \$658,500 and \$1,317,000. If you were to open three Fosters Freeze Businesses, using the same estimated initial expenses above, we estimate this total cost to range between \$935,250 and \$1,923,000. These costs may increase in the future depending on when you open the additional Fosters Freeze Businesses.				
Multi-5 Franchise	If you purchase a Multi-5 Franchise under the Multi-Franchise Addendum, you will incur all of the costs listed above for each Fosters Freeze Business you open except that the Initial Franchise Fee will total \$150,000 and allow you to open up to five Fosters Freeze Businesses. If you were to open four Fosters Freeze Businesses, using the same estimated initial expenses above, we estimate this total cost to range between \$1,272,000 and \$2,589,000. If you were to open five Fosters Freeze Businesses, using the same estimated initial expenses above, we estimate this total cost to range between \$1,548,750 and \$3,195,000. These costs may increase in the future depending on when you open the additional Fosters Freeze Businesses.				



Notes:

These estimated initial expenses are our best estimate of the costs you may incur in establishing and operating your Fosters Freeze Business. We do not offer direct or indirect financing for these items. All expenditures paid to us or our affiliates are uniform and non-refundable under any circumstances once paid. All expenses payable to third parties are non-refundable, except as you may arrange for utility deposits and other payments.

1. Initial Franchise Fee. See Item 5 for additional information about your Initial Franchise Fee. If you purchase a Multi-3 or a Multi-5 franchise, the only additional initial cost that you will incur over the purchase of a single Franchise will be the increase in Initial Franchise Fee until you open the additional Fosters Freeze Businesses. The Initial Franchise Fee for a Multi-3 franchise is \$90,000 and allows you to open up to three Fosters Freeze Businesses. The Initial Franchise Fee for a Multi-5 franchise is \$150,000 and allows you to open up to five Fosters Freeze Businesses. Once you open additional Fosters Freeze Businesses, you will incur the costs listed in this Item 7 (except for the Initial Franchise Fee) at the time you open the additional Fosters Freeze Businesses. These costs may increase in the future depending on when you open the additional Fosters Freeze Businesses.
2. Restaurant Opening Assistance Fee; Architecture Fee. See Item 5 for additional information about your Restaurant Opening Assistance Fee and Architecture Fee. If you purchase a Multi-3 or Multi-5 franchise, you will only be responsible for paying the Restaurant Opening Assistance Fee for your first two Fosters Freeze Restaurants.
3. Design Fee. This will be the cost for our selected vendor to create and design the interior layout of your Fosters Freeze Restaurant and where the chairs, tables, Little Fosters mascot, etc. should go.
4. Lease. Your actual rent payments may vary depending upon your location and your market's retail lease rates.

Stand Alone Restaurants will typically be 1,800 to 4,000 square feet in size, and have dine-in, walk-up and drive-thru options. Stand Alone Restaurants are typically located in a business district or near high schools.

Confections Restaurants will typically be 750 to 1,800 square feet in size, and have dine-in, walk-up and drive-thru options. Confections Restaurants are typically located near highways or tourist destinations.

Co-Located Restaurants will typically be 100 to 400 square feet in size and be located within a Host Business. You may or may not own or lease the Host Business.

If you purchase instead of lease the premises for your Fosters Freeze Restaurant, then the purchase price, down payment, interest rates and other financing terms will determine your monthly mortgage payments. This estimate does not include the cost for purchasing your premises.

5. Furniture, Fixtures and Equipment and Leasehold Improvements. This estimate involves the furniture, fixtures and equipment you will need to open a Fosters Freeze Business. Depending on which type of location you will be operating, this will include items such as chairs, tables, casework, refrigerators, freezers, grills, ranges, deep fryers, exhaust hoods, office equipment and other items. This estimate also includes decoration for your Fosters Freeze Restaurant and signage. This estimate includes setup expenses you will incur in building out your Fosters Freeze Restaurant,



including all costs required to set up the equipment. This estimate also includes the fees for your architect. This estimate does not include any construction allowances that may be offered by your landlord. Each of these costs will vary depending upon the condition and size of the premises for your Fosters Freeze Restaurant and local construction costs. These estimates assume that your location has been used previously as a restaurant. Otherwise, your expenses may exceed these estimates.

6. **Security Deposits, Utility Deposits, Business Licenses and Pre-paid Expenses.** This estimate includes the security deposits and utility deposits, licenses, and pre-paid expenses (including Sales Tax License Permits) you have to obtain or pay to operate a Fosters Freeze Business. These amounts vary depending on state, county, or other political subdivision in which the Fosters Freeze Business will be located.
7. **Start-up Supplies.** Start-up supplies include necessary supplies for your cash register, cleaning supplies and cleaning equipment.
8. **Training.** We provide training at a franchised Fosters Freeze Restaurant in California or Georgia, our training center in Salinas, California, our corporate offices in Chino Hills, California or at another location designated by us. You must pay for airfare, meals, transportation costs, lodging and incidental expenses for all initial training program attendees. Initial training is provided at no charge for up to two people, one of which must be an operating principal; provided both individuals attend the same initial training program. If additional initial training is required, or more people must be trained, an additional fee will be assessed. If you are purchasing a Confections Restaurant, we may decrease the length of your training program, because you won't be required to learn how to prepare non-confections items.
9. **Grand Opening Program.** You must spend at least \$1,000 on our required grand opening advertising campaign.
10. **Insurance.** You must obtain and maintain, at your own expense, the insurance coverage we require, and satisfy other insurance-related obligations. This estimate represents 25% of your annual cost of insurance. Please note that if you have had prior issues or claims from previous operations unrelated to the operation of a Fosters Freeze Business, your rates may be significantly higher than those estimated above.
11. **Miscellaneous Opening Costs.** This estimate includes uniforms, professional fees and other miscellaneous expenses that you are likely to incur when opening your business. We strongly recommend that you hire a lawyer, accountant or other professional to advise you on this Franchise offering and to assist you in setting up your Fosters Freeze Business. Rates for professionals can vary significantly based on area and expertise.
12. **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 Fosters Freeze Business. They include payroll, administrative, maintenance, utilities, rent, software license fees, working capital and other items. These figures do not include standard pre-opening expenses, Royalties, or advertising fees payable under the Franchise Agreement or debt service, and assume that none of your expenses are offset by any sales generated during the start-up phase. For purposes of this disclosure, we estimated the start-up phase to be three months from the date your Fosters Freeze Business opens for business. We relied on our franchising experience and that of our officers and our current requirements for Fosters Freeze Franchises in formulating these amounts. These figures are estimates, and we cannot guarantee that you will not have additional expenses starting your Fosters



Freeze Business. 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; the sales level reached during the start-up period; and the size of your Fosters Freeze Restaurant.

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

## **ITEM 8** **RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES**

You must operate your Fosters Freeze Restaurant according to our System and specifications. This includes purchasing or leasing all products, services, supplies, fixtures, equipment, inventory, computer hardware and software, and real estate related to establishing and operating the Fosters Freeze Franchise under our specifications, which may include purchasing these items from: (i) our designees; (ii) approved suppliers; and/or (iii) us or our affiliates. You must not deviate from these methods, standards and specifications without our prior written consent, or otherwise operate in any manner which reflects adversely on our Marks or the System. You must prepare architectural and construction drawings, designs, and site plans using architects approved by us, and if you don't choose to use the architects approved by us, you must also pay our Architecture Fee.

Our confidential operations manual (“Brand Standards Manual”) states our standards, specifications and guidelines for all products and services we require you to obtain in establishing and operating your Fosters Freeze Franchise and approved vendors for these products and services. We will notify you of new or modified standards, specifications and guidelines through periodic amendments or supplements to the Brand Standards Manual (which may be modified and updated) or through other written communication (including electronic communication such as email or through a system-wide intranet).

You must purchase, install, maintain in sufficient supply and only use fixtures, furnishings, equipment, signs and supplies that conform to the standards and specifications described in the Brand Standards Manual or otherwise in writing.

We may utilize proprietary food products and recipes and may continue to develop and own proprietary recipes. In order to protect our trade secrets and to monitor the manufacture, packaging, processing and sale of proprietary food products, we or our affiliates may: (i) manufacture, supply and sell proprietary food products to Fosters Freeze franchisees; and/or (ii) disclose the formula for methods and preparation of the proprietary food products to a limited number of suppliers, including one or more of our affiliates, who we authorize to manufacture these proprietary food products to our precise specifications and sell these products to Fosters Freeze franchisees. You must purchase the proprietary products we or our affiliates develop from time to time for proprietary recipes or formulas and purchase them only from us or a third party who we have licensed to prepare and sell the products. All non-proprietary ingredients, beverage products, cooking materials, containers, cartons, bags, menus, napkins, other paper and plastic products, utensils, uniforms and other supplies and materials used in your Fosters Freeze Business must strictly conform to our quality standards and reasonable specifications. Certain products such as paper supplies, uniforms, promotional items and other items bearing the trademarks must be purchased by you from certain suppliers approved by us who are authorized to manufacture these products bearing our trademarks.

Our soft serve mix is a propriety product. Franchisees must purchase the equipment, inventory and supplies used to prepare Fosters Freeze soft serve ice cream (including all foods, beverages and our soft



serve mix) solely from our designated supplier(s) and distributor(s) (the “Soft Serve Suppliers”). The Soft Serve Suppliers handles procurement, warehousing and distribution of all related equipment, inventory and supplies for the benefit of franchisees.

We have also entered into non-exclusive licensing agreements to allow designated suppliers the right to use the “Fosters Freeze” trademarks on paper supplies, uniforms and promotional items. Franchisees must also serve only Pepsi-Cola and Dr. Pepper fountain beverages.

We are not currently an approved supplier of any products or services provided to franchisees. We and our affiliates reserve the right to become approved suppliers of any proprietary food products and non-proprietary products. None of our officers own an interest in any supplier.

You must at all times maintain an inventory of approved food products, beverages, ingredients and other products in sufficient quantities and variety to realize the full potential of your Fosters Freeze Business. You must use the menus and menu boards that we designate and serve meals and products in the manner we designate.

You must use the computer hardware and software, including the point-of-sale system that we periodically designate to operate your Fosters Freeze Business. You must use our approved suppliers for certain technology business solutions that will support your business efficiencies, which may include phone systems, security systems, scheduling software, employee shift/task management software, music subscription, inventory solutions and any other solutions we may require from time to time in the Brand Standards Manual. You must obtain the insurance coverage required under the Franchise Agreement, as follows: (1) commercial general liability insurance with limits of at least \$1,000,000 per occurrence, at least \$2,000,000 aggregate, and a maximum deductible of \$5,000; (2) workers compensation insurance consistent with applicable law; and (3) hired and non-owned automobile coverage with a limit of at least \$1,000,000. The insurance company must be authorized to do business in the state where your Fosters Freeze Restaurant is located, and must be approved by us. It must also be rated “A” or better by A.M. Best & Company, Inc. We may periodically increase the amounts of coverage required under these insurance policies and/or require different or additional insurance coverage at any time. All insurance policies must name us and any affiliates we designate as additional named insured parties. Your policy must provide that the insurer will not cancel or materially alter the policies without giving us at least 30 days’ prior written notice.

We will provide you with a list of our designated and approved suppliers in our Brand Standards Manual. For all soft serve related products described above, you must use our Soft Serve Supplier. For all other items, 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 products and services that require supplier approval), you must notify us and submit to us the information, specifications and samples we 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 reserve the right to charge a fee to evaluate the proposed product, service or supplier. We apply the following general criteria in approving a proposed supplier: (1) ability to purchase the product in bulk; (2) quality of services; (3) production and delivery capability; (4) proximity to Fosters Freeze Franchises to ensure timely deliveries of the products or services; (5) the dependability of the supplier; and (6) other factors. The supplier may also be required to sign a supplier agreement with us or make payments or provide benefits to us based on the purchases from franchises. We may periodically re-inspect approved suppliers’ facilities and products, and we reserve the right to revoke our approval of any supplier, product or service that does not continue to meet our specifications. We will send written notice of any revocation of an approved supplier, product or service. We do not provide material benefits to you based solely on your use of designated or approved sources.



While we do not have any purchasing or distribution cooperatives in place at this time, we have entered into a distribution agreement with our Soft Serve Supplier. Our Soft Serve Supplier has agreed to make payments to us or extend other benefits to us (like sponsoring events at our franchisee convention) based on its transactions with our franchisees. This revenue is the only money that we collect from or on behalf of the Legacy Franchisees. Other vendors have also agreed to make payments to us or extend other benefits to us (like sponsoring events at our franchisee convention) based on their transactions with our franchisees (as a percentage of franchisee sales and/or flat fees). We may negotiate purchase arrangements with suppliers and distributors for the benefit of our franchisees, and we may receive rebates or volume discounts from our purchase of equipment and supplies that we resell to you.

We estimate that approximately 90% of purchases required to open your Fosters Freeze Business and 90% of purchases required to operate your Fosters Freeze Business will be from us or from other approved suppliers or under our specifications. We and our affiliates may receive rebates from some suppliers based on your purchase of products and services and we have no obligation to pass them on to our franchisees or use them in any particular manner.

During our last fiscal year ended December 31, 2023, we received \$315,318.29 from our Soft Serve Suppliers based on the gallons of mix purchased by the Legacy Franchisees. This sum represents 22.88% of our total revenue of \$1,377,867.93 for the most recent fiscal year ending December 31, 2023.

During our most recent fiscal year ending December 31, 2022, we also received payments of \$136,696.88 from suppliers, which we may use to offset the cost of our franchisee convention or for brand innovation. This sum represents 9.92% of our total revenue of \$1,377,867.93 for the most recent fiscal year ending December 31, 2023.

## **ITEM 9 FRANCHISEE'S OBLIGATIONS**

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

Obligation	Section in Franchise Agreement	Disclosure Document Item
a. Site selection and acquisition/lease	Section 7	Items 7 and 11
b. Pre-opening purchases/leases	Sections 7 and 15	Items 7, 8 and 11
c. Site development and other pre-opening requirements	Sections 7 and 15	Items 7 and 11
d. Initial and ongoing training	Section 5	Items 6, 7 and 11
e. Opening	Sections 5, 7 and 11	Items 6, 7, 9 and 11
f. Fees	Sections 5, 6, 7, 8, 11, 12, 13, 15, 16 and 19	Items 5, 6 and 7
g. Compliance with standards and policies/Brand Standards Manual	Sections 6, 11 and 12	Items 8, 11, 12, 14 and Exhibit F
h. Trademarks and proprietary information	Sections 12 and 17	Items 13 and 14
i. Restrictions on products/services offered	Section 12	Items 8 and 16
j. Warranty and customer service requirements	Section 12	Items 1 and 11
k. Territorial development and sales quotas	Section 3	Items 1, 11 and 12
l. Ongoing product/service purchases	Section 12	Items 8 and 16



Obligation	Section in Franchise Agreement	Disclosure Document Item
m. Maintenance, appearance and remodeling requirements	Section 12	Items 7, 8 and 11
n. Insurance	Section 15	Items 6, 7 and 8
o. Advertising	Section 11	Items 11, 13 and 14
p. Indemnification	Section 18	Not Applicable
q. Owner's participation/management and staffing	Section 8	Items 11, 15 and 17
r. Records and reports	Section 15	Item 11
s. Inspections and audits	Section 16	Items 6 and 11
t. Transfer	Section 19	Item 17
u. Renewal	Section 4	Item 17
v. Post-termination obligations	Sections 14 and 21	Item 17
w. Non-competition covenants	Section 14	Item 17 and Exhibit G-2
x. Dispute resolution	Section 22	Item 17

## **ITEM 10 FINANCING**

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

## **ITEM 11 FRANCHISOR'S ASSISTANCE, ADVERTISING, COMPUTER SYSTEM AND TRAINING**

**Except as listed below, FFI is not obligated to provide you with any assistance.**

### Pre-opening Obligations

Before you open your Fosters Freeze Business, we (or our designee) will provide the following assistance and services to you:

1. Provide an initial training program (See Franchise Agreement - Section 5.1). We will not provide general business or operations training to your employees or independent contractors. We may provide limited training on the System and brand standards to your key employees. You will be responsible for training your employees and independent contractors, including any training on the day-to-day operations of the Fosters Freeze Business. You will be responsible for hiring, training, directing, scheduling and supervising your employees and independent contractors in the day-to-day operations of the Fosters Freeze Business.
2. Loan you one copy of the Brand Standards Manual. The Brand Standards Manual contains approximately 444 pages. The table of contents for the Brand Standards Manual is attached to this Franchise Disclosure Document as Exhibit F (See Franchise Agreement - Section 6.1).
3. Provide you with advice in identifying a suitable location for your Fosters Freeze Restaurant, if you request assistance (See Franchise Agreement - Section 7).
4. In evaluating a proposed site, we consider such factors as general location and neighborhood, traffic patterns, parking, size, lease terms, income per capita, existence of competitors, and other physical characteristics. Before leasing or purchasing the site for your Fosters Freeze Restaurant, you must submit to us, in the form we specify, a description of the site, with other information and materials we may



reasonably require. We will have 30 days after we receive the information and materials to evaluate the proposed site. If we disapprove of the proposed site, you must select another site, subject to our consent (See Franchise Agreement – Section 7.1). You must purchase or lease the site for your Fosters Freeze Restaurant within 180 days after signing the Franchise Agreement (See Franchise Agreement – Section 7.2). We may terminate the Franchise Agreement if you and we cannot agree on an acceptable location for your Fosters Freeze Restaurant. We generally do not own the premises for the Fosters Freeze Restaurant and lease it to you.

5. Designate a territory, if you have purchased a Stand Alone Restaurant. We will designate the territory once you have chosen an acceptable location for Fosters Freeze Restaurant (See Franchise Agreement – Section 3.1).

6. Review your lease agreement for your Fosters Freeze Restaurant to ensure that its terms contain our required provisions and otherwise meet our minimum standards (See Franchise Agreement - Section 7.2).

7. We will provide a copy of our basic specifications for the design and layout of your Fosters Freeze Restaurant. You are responsible for the costs of preparing architectural, engineering and construction drawings and site plans, which you must submit to us for our review and approval before you begin construction of your Fosters Freeze Restaurant. You are responsible for the costs of construction and remodeling (See Franchise Agreement - Section 7.3).

8. Provide you with materials and consultation in connection with the grand opening marketing for your Fosters Freeze Business (See Franchise Agreement - Section 11.2.2).

9. Provide the Opening Assistance to you if you are opening your first Fosters Freeze Restaurant, or your second Fosters Freeze Restaurant (under a Multi-3 or Multi-5) (See Franchise Agreement – Section 5.3).

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

#### Schedule for Opening

The typical length of time between signing the Franchise Agreement or the payment of any fees and the opening of your Fosters Freeze Business can vary from 6 to 12 months. You are required to open your Fosters Freeze Business within 12 months. Some factors which may affect this timing are your ability to acquire a location through lease or purchase negotiations; your ability to secure any necessary financing; your ability to comply with local zoning and other ordinances; your ability to obtain any necessary permits and certifications; the timing of the delivery of equipment, tools and inventory; and the time to convert, renovate or build out your Fosters Freeze Business.

#### Continuing Obligations

During the operation of your Fosters Freeze Business, we (or our designee) will provide the following assistance and services to you:

1. Inform you of mandatory standards, specifications and procedures for the operation of your Fosters Freeze Business (See Franchise Agreement - Sections 7.3, 12.2, 12.6, 12.7, 12.8 and 17.1).



2. Upon reasonable request, provide advice about your Fosters Freeze Business's operation based on reports or inspections. Advice will be given during our regular business hours and via written materials, electronic media, telephone or other methods in our discretion (See Franchise Agreement - Section 6.3).

3. Provide you with advice and guidance on advertising and marketing (See Franchise Agreement - Sections 6.4 and 11.5).

4. Provide additional training to you for newly-hired personnel on the Fosters Freeze brand and System guidelines, refresher training courses and additional training or assistance that, in our discretion, you need or request. You may be required to pay additional fees for this training or assistance (See Franchise Agreement - Section 5).

5. Allow you to continue to use confidential materials, including the Brand Standards Manual and the Marks (See Franchise Agreement - Sections 6.1, 12.1, 12.2, 14.2 and 17).

### Optional Assistance

During the term of the Franchise Agreement, we (or our designee) 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. Make periodic visits to the Fosters Freeze Restaurant for the purpose of assisting in all aspects of the operation and management of the Fosters Freeze Business, prepare written reports concerning these visits outlining any suggested changes or improvements in the operation of the Fosters Freeze Business, and detailing any problems in the operations which become evident as a result of any visit. If provided at your request, you must reimburse our expenses and pay our then-current training charges.

3. Maintain and administer a Brand Fund. We may dissolve the Brand Fund upon written notice (See Franchise Agreement - Section 11.1).

4. Hold periodic national or regional conferences to discuss business and operational issues affecting Fosters Freeze franchisees.

### Advertising

#### *Brand Fund*

We have established a system-wide fund for marketing, developing and promoting the System, the Marks and Fosters Freeze Businesses ("Brand Fund"). You must contribute three percent (3%) of your Gross Sales for the Brand Fund ("Brand Fund Contribution"). Your contribution to the Brand Fund will be in addition to all other advertising requirements set out in this Item 11. Legacy Franchisees contribute to a separate and independent advertising fund (the "Legacy Fund"), and do not contribute to this Brand Fund. The Legacy Fund is kept in a separate account than the Brand Fund. We may incur expenses on behalf of both Legacy Franchisees and all other franchisees, and if so, we will allocate expenses equally to the Brand Fund and the Legacy Fund.



Franchisees for Confections Restaurants and Co-Located Restaurants are not currently required to make Brand Fund Contributions, but we reserve the right in the future to require Brand Fund Contributions of up to three percent (3%) of monthly Gross Sales from Confections Restaurants and Co-Located Restaurants also. Otherwise, each franchisee will be required to contribute to the Brand Fund, but certain franchisees may contribute on a different basis depending on when they signed their Franchise Agreement. Fosters Freeze Businesses owned by us will contribute to the Brand Fund on the same basis as franchisees. In past years, the Brand Fund was called the “FFLLC Advertising Fund.”

The Brand Fund will be administered by us, or our affiliate or designees, at our discretion, and we may use a professional advertising agency or media buyer to assist us. The Brand Fund will be in a separate bank account, commercial account or savings account.

We have complete discretion on how the Brand Fund will be utilized. 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; rebates to franchisees for local advertising or Restaurant updates and upgrades; the development of technology for the System; and any other purpose to promote the Fosters Freeze brand. We may use any media for disseminating Brand Fund advertisements, including direct mail, print ads, the Internet, radio, billboards and television. We may reimburse ourselves, our authorized representatives or our affiliates from the Brand Fund for administrative costs; independent audits; reasonable accounting, bookkeeping, reporting and legal expenses; taxes; and all other direct or indirect expenses associated with the programs funded by the Brand Fund. 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 Contributions for advertising that is principally a 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 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 that were 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 audited. We have an annual statement of the Brand Fund prepared and provide these statements to our franchisees upon request.

During our last fiscal year, ending December 31, 2022, the Brand Fund was spent as follows: 43% for production of advertisements and other promotional materials; 35% for media placement and the reimbursement of franchisees for their local placement of advertising; and 22% for administration.

#### *Local Advertising*

In addition to the Brand Fund Contributions, you must spend an average of one-half percent (.5%) of your Gross Sales on local advertising (“Local Advertising Requirement”). Upon thirty days’ prior written notice to you, we may increase the Local Advertising Requirement to one percent (1%) of your Gross Sales. We will measure your compliance with this requirement on a rolling six-month basis, meaning that as long as your average monthly expenditure on local advertising over the six-month period equals or exceeds the minimum monthly amount that we specify, you will be deemed in compliance even if your expenditure in any given month is less than the minimum monthly amount that we specify. If you fail to spend the Local Advertising Requirement, you will be required to pay the difference to us, or if established, the Brand Fund. 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 Fosters Freeze 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 Fosters Freeze Businesses, and you will not issue coupons or discounts of any type except as approved by us.

You may be required to participate in any local or regional advertising cooperatives for Fosters Freeze Franchises that are established. The area of each local and regional advertising cooperative will be defined by us, based on our assessment of the area. Franchisees in each cooperative will contribute an amount to the cooperative for each Fosters Freeze Business that the franchisee owns that exists within the cooperative's area. Each Fosters Freeze Business we own that exists within the cooperative's area will contribute to the cooperative on the same basis as franchisees. Members of the cooperative will be responsible for administering the cooperative, including determining the amount of contributions from each member. We may require that each cooperative operate with governing documents and prepare annual unaudited financial statements. We reserve the right to form, change, dissolve or merge any advertising cooperative formed in the future. If we elect to form such cooperatives, or if such cooperatives already exist near your territory, you will be required to participate in compliance with the provisions of the Brand Standards Manual, which we may periodically modify at our discretion.

You must order sales and marketing material from us or our designated suppliers. It is a material breach of the Franchise Agreement to use other marketing material without obtaining our prior written approval. If you desire to use your own advertising materials, including your own website, you must obtain our prior approval, which may be granted or denied in our sole discretion. 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 follow our approved standards. You may not use our logos, Marks and other name identification materials on items to be sold or services to be provided without our prior written approval. If you use unauthorized advertising materials, you must pay a fee of \$500 per occurrence to us.

### *Grand Opening Program*

You will spend a minimum of \$1,000 on approved grand opening marketing, advertising and promotion for your Fosters Freeze Business during the period commencing 30 days prior to the opening of your Fosters Freeze Business and ending 90 days after the date on which your Fosters Freeze Business opens for business. If requested by us, you will provide us with an accurate accounting (in the form prescribed by us) of your expenditures for grand opening marketing, advertising and promotion within 120 days after the opening of your Fosters Freeze Business. All expenditures for grand opening marketing, advertising and promotion will be in addition to your other marketing, advertising and promotion obligations under the Franchise Agreement.

### *System Website*

We have established a website for Fosters Freeze Businesses ("System Website"). We intend that any franchisee website will be accessed only through our System Website.

If you wish to advertise online, you must follow our online policy which is contained in our Brand Standards Manual. Our online policy may change as technology and the Internet changes. 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's assets to develop, maintain and update the System Website. We may update and modify the System Website from time to time. You must promptly notify us whenever any information on your listing changes or is not accurate. We have final approval rights of all information on the System Website. We may implement and periodically modify System Standards relating to the System Website.

We are only required to reference your Fosters Freeze Business on the System Website while you are in full compliance with your Franchise Agreement and all System standards.

#### *Advisory Council*

We currently do not have, but may form, an advisory council ("Council") to advise us on advertising policies. The Council would be governed by bylaws. Members of the Council would consist of both franchisees and corporate representatives. Members of the Council would be selected by way of a voting method specified in the Council's bylaws. The Council would serve in an advisory capacity only. We will have the power to form, change or dissolve the Council, in our sole discretion.

#### Computer System

You must use the computer hardware and software, including the point-of-sale system that we periodically designate to operate your Fosters Freeze Franchise (collectively, the "Computer System"). You must obtain the computer hardware, software licenses, point-of-sale system, maintenance and support services, and other related services from the suppliers we specify (which may be limited to us and/or our affiliates). You must also purchase and pay ongoing fees for any mobile applications and online and digital ordering and delivery services that we require from the suppliers we specify.

We estimate the cost of purchasing the Computer System will be between \$7,500 and \$25,000. The Computer System will manage the daily workflow of the Fosters Freeze Business, coordinate the customer ordering experience, track inventory, food costs, labor and other information. You must record all Gross Sales on the Computer System. You must store all data and information in the Computer System that we designate, and report data and information in the manner we specify. The Computer System will generate reports on the Gross Sales of your Fosters Freeze Business. You must also maintain a high-speed Internet connection at the Fosters Freeze Restaurant. In addition to offering and accepting Fosters Freeze gift cards and loyalty cards, you must accept all credit cards and debit cards that we determine. We are not required to provide you with any ongoing maintenance, repairs, upgrades, updates or support for the Computer System (Franchise Agreement - Section 12.6). You must arrange for 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. The cost of maintaining, updating, or upgrading the Computer System or its components will depend on your repair history, costs of computer maintenance services in your area, and technological advances. We estimate the annual cost will range between \$1,200 and \$2,500, but this could vary (as discussed above). We may revise our specifications for the Computer System periodically. You must upgrade or replace your Computer System at such time as specifications are revised. There is no limitation on the frequency and cost of this obligation.

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, music subscription, inventory solutions and any other solutions we may require from time to time in the Brand Standards Manual for your Fosters Freeze Business. We reserve the right to upgrade, modify and add new systems and software, 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 or software and for any increase in fees from third-party providers.

We (or our designee) have the right to independently access the electronic information and data relating to your Fosters Freeze Business and to collect and use your electronic information and data in any manner, including to promote the System and the sale of Franchises. This may include posting financial information of each franchisee on an intranet website. There is no contractual limitation on our right to receive or use information through our proprietary data management and intranet system. We may access the electronic information and data from your Computer System remotely, in your Fosters Freeze Restaurant or from other locations.

## Training

### *Initial Training*

You or your Operating Principal and any Designated Manager (defined in Item 15) or representative that we require must complete the initial training to our reasonable satisfaction, as determined by the specific program instructors, before you open your Fosters Freeze Business. We provide initial training at no cost for up to two people; provided that all persons attend the initial training simultaneously. You must pay a \$350 per day fee for training each additional person. Initial training classes are held whenever necessary to train new franchisees. You will not receive any compensation or reimbursement for services or expenses for participation in the initial training program. Initial training will be held in California and may be held at a franchised location or our corporate office. You are responsible for all your expenses to attend any training program, including lodging, transportation, food and similar expenses. We plan to provide the training listed in the table below.

## **TRAINING PROGRAM**

Subject	Hours of Classroom Training	Hours of On-The-Job Training	Location
Franchise Mgmt. (Cost Controls)	8	12	Franchised location, Salinas, CA, and/or our corporate offices (in Chino Hills, CA)
Accident Prevention / Food Handling	2	2	Franchised location, Salinas, CA, and/or our corporate offices (in Chino Hills, CA)
Fountain Products	8	12	Franchised location, Salinas, CA, and/or our corporate offices (in Chino Hills, CA)
Food Products	8	12	Franchised location, Salinas, CA, and/or our corporate offices (in Chino Hills, CA)
Cal-OSHA Requirements	2	1	Franchised location, Salinas, CA, and/or our corporate offices (in Chino Hills, CA)



Subject	Hours of Classroom Training	Hours of On-The-Job Training	Location
Employee Orientation	4	2	Franchised location, Salinas, CA, and/or our corporate offices (in Chino Hills, CA)
Preparation for Store Opening	4	6	Franchised location, Salinas, CA, and/or our corporate offices (in Chino Hills, CA)
Register Training	8	12	Franchised location, Salinas, CA, and/or our corporate offices (in Chino Hills, CA)
Customer Service	4	8	Franchised location, Salinas, CA, and/or our corporate offices (in Chino Hills, CA)
Salad Program	2	2	Franchised location, Salinas, CA, and/or our corporate offices (in Chino Hills, CA)
Breakfast Program	1	2	Franchised location, Salinas, CA, and/or our corporate offices (in Chino Hills, CA)
Equipment	16	16	Franchised location, Salinas, CA, and/or our corporate offices (in Chino Hills, CA)
Unit Accounting	2	4	Franchised location, Salinas, CA, and/or our corporate offices (in Chino Hills, CA)
Totals	69	91	

Notes:

1. We reserve the right to vary the length and content of the initial training program based upon the experience and skill level of the individual attending the initial training program and whether you are purchasing a Stand Alone Restaurant, Confections Restaurant or Co-Located Restaurant. If you are purchasing a Confections Restaurant, you won't be required to learn how to prepare and sell non-confections items, so we may decrease the length of your training program. We will use the Brand Standards Manual as the primary instruction materials during the initial training program.
2. Nealesh Dahya, our President and Chief Executive Officer, currently oversees our training program to which he brings more than 12 years of industry experience and over five years with the Franchisor. Bruce Abbott and Jared Abbott, Fosters Freeze franchisees, are also instructors. Mr. Bruce Abbott is a 2<sup>nd</sup> generation Fosters Freeze franchisee and brings over 478 years of experience opening and operating a Fosters Freeze Business, including opening and operating three ground-up facilities. Mr. Jared Abbott is a 3rd generation Fosters Freeze franchisee and brings over 18 years of experience opening and operating a Fosters Freeze Business. Mr. Bruce Abbott and Mr.



Jared Abbott currently own and operate five Fosters Freeze locations.

3. Other instructors will include experienced Fosters Freeze store managers and/or assistant managers with at least two years' experience as a Fosters Freeze manager.

### *Ongoing Training*

From time to time, we may require that you or your principal owner, designated managers and other employees attend system-wide refresher or additional training courses, including any annual conference. Some of these courses may be optional, while others may be required. If you appoint a new principal owner or transfer ownership, or if you hire a new designated manager, that person must attend and successfully complete our initial training program before assuming responsibility for the management of your Fosters Freeze Business. If we determine you are not operating in compliance with the Franchise Agreement or the Brand Standards Manual, we may require that you or your operating principal, designated manager and other employees attend remedial training that addresses your operational deficiencies. You may also request that we provide additional training (either at corporate headquarters or at your Fosters Freeze Restaurant). You must pay us \$350 per attendee per day for additional training, and you must pay for airfare, meals, transportation costs, lodging and incidental expenses for all of your training program attendees, and for our trainers (if we are at your Fosters Freeze Restaurant).

## **ITEM 12 TERRITORY**

### Franchise Agreement

#### *Fosters Freeze Restaurant*

You may operate your Fosters Freeze Business only at the approved location. The approved location for your Fosters Freeze Business will be listed in the Franchise Agreement. If you have not identified an approved location for your Fosters Freeze Business when you sign the Franchise Agreement, as is typically the case for Stand Alone Restaurants and Confections Restaurants, you and we will agree on the approved location in writing and amend the Franchise Agreement after you select and we approve the approved location. You are not guaranteed any specific approved location, and you may not be able to obtain your top choice as your approved location. You may not conduct your Fosters Freeze Business from any other location.

#### *Protected Area for Stand Alone Restaurants Only*

If you purchase a franchise for a Stand Alone Restaurant, you will receive a non-exclusive territory (“Protected Area”). Except as described below, so long as you are not in default under your Franchise Agreement, we will not establish or franchise others to establish another Stand Alone Restaurant within your Protected Area during the term of the Franchise Agreement. The Protected Area is determined based on the geographic area and populations properties within that area and other relevant demographic characteristics and will typically be a  $\frac{1}{2}$  mile radius around your Stand Alone Restaurant. We will not grant you this right if your Stand Alone Restaurant is located in a metropolitan area (areas in which the population during any 24-hour period exceeds 50,000 persons per square mile). In addition, we may not grant you this right if your Stand Alone Restaurant will be located in a non-traditional location such as an airport, hotel, convention center, sports arena or stadium, college campus, amusement park, military installation, enclosed mall, or within the premises of another business or a similar venue. If you renew your Franchise, your Protected Area may be modified depending on the then-current demographics of the Protected Area, and



on our then-current standards for territories. You will not receive an exclusive territory. You may face competition from other franchisees, from outlets that we own, or from other channels of distribution or competitive brands that we control. You may have a non-traditional Fosters Freeze Business (including a Co-Located Restaurant) or a Confections Restaurant within your Protected Area.

If you purchase a franchise for a Stand Alone Restaurant and we allow you to offer Delivery Services, you must provide the Delivery Services in compliance with our off site policies and procedures, and subject to all federal, state and local law and regulations. These policies may allow other Fosters Freeze Businesses to provide catering and delivery services in your Protected Area without compensating you. We may impose restrictions in the future that prevent you from providing catering and delivery services, or just from providing these services outside of your Protected Area. We don't currently allow Delivery Services, but we may allow for them in the future. Confections Restaurant franchisees and Co-Located Restaurant franchisees may not offer any Delivery Services.

If we allow Delivery Services, you must provide them in your Protected Area and in any additional approved areas that we may specify for you (if any, the "Mobile Protected Area"). We may or may not grant you a Mobile Protected Area (beyond your Protected Area), and if we do, the size of the Mobile Protected Area will be based on various factors, including population density, drive times and distance. There is no specific minimum or maximum Mobile Protected Area. We may at any time and for any or no reason change your Mobile Protected Area, including reducing its size or eliminating it. If we do, you must immediately change your mobile practices and begin providing the Stand Alone Restaurant services and products only within the newly-defined area. If you do not do so, we may immediately terminate your right to provide any Delivery Services anywhere. If we reduce the size of your Mobile Protected Area, there might be a reduction in your sales, but we will not be liable for the reduction.

If you do not elect to offer the Delivery Services, or do not provide the Delivery Services in compliance with our standards, we may and we may grant others using the Marks the option to offer Delivery Services in your Mobile Protected Area, and in your Protected Area.

Your Mobile Protected Area is not exclusive. We may change, expand or reduce your Mobile Protected Area. We may engage and/or grant others the right to engage in any activities we desire within the Mobile Protected Area without any restrictions at all (including allowing any such person to provide Delivery Services in the area). We will not be liable for any reduction in your sales due to these activities. You must follow our rules for Delivery Services and any minimum requirements we may establish, from time to time, for delivery providers. In particular, you may provide the Stand Alone Restaurant's services and products to customers only with your own employed service providers and not through third-party contractors, or delivery or catering services or systems.

We and our affiliates have the right to operate, and to license others to operate: a) non-traditional locations (including Co-Located Restaurants and Co-Branded USF Businesses) and Confections Restaurants within your Protected Area, and b) any Fosters Freeze Businesses at any location outside the Protected Area, even if doing so will or might affect your operation of your Fosters Freeze Business. We retain all territory rights not expressly granted to you. These include:

1. to own, franchise or operate Fosters Freeze Businesses at any location outside of the Protected Area, regardless of the proximity to your Fosters Freeze Restaurant;

2. 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 Protected Area and Mobile Protected Area. This includes, but is not limited to, other channels of distribution such as television, catalog sales, wholesale to unrelated retail outlets or over the Internet. We exclusively reserve the Internet as a



channel of distribution for us, and you may not independently market on the Internet or conduct e-commerce;

3. to offer and sell food products, including frozen products and proprietary food products (including products or services similar to those which you will sell), under the Marks or any other marks, through non-traditional locations, including through grocery stores, convenience stores, hotel shops and kiosks, theatres, malls, airports, gas stations, college campuses, sports venues or retail locations within or outside of the Protected Area or any Mobile Protected Area, including those owned by us or our affiliates;

4. to use and license the use of other proprietary and non-proprietary marks or methods which are not the same as or confusingly similar to the Marks, whether in alternative channels of distribution or in the operation of a business offering a restaurant concept featuring soft serve confections, soft drinks, hamburgers, hot sandwiches and other food items and related products and services at any location, including within the Protected Area and any Mobile Protected Area, which may be similar to or different from the Fosters Freeze Business operated by you;

5. 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 with any business whether franchised or corporately owned, including a business that competes directly with your Fosters Freeze Business, whether located inside or outside the Protected Area or any Mobile Protected Area, provided that any businesses located inside your Protected Area will not operate under the Marks;

6. to offer and sell food products, including frozen products and proprietary food products (including products or services similar to those which you will sell) under the Marks or any other marks, through any other business which is located within another business, including within another restaurant or eating establishment, within or outside of the Protected Area or Mobile Protected Area, including those owned by us or our affiliates. This also includes the sale of products through co-branding or through white labeling;

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

We are not required to pay you if we exercise any of the rights specified above within your Protected Area or Mobile Protected Area. The continuation of the Protected Area is not dependent upon your achievement of a certain sales volume, market penetration or other contingency. We do not pay compensation for soliciting or accepting orders inside your Protected Area or Mobile Protected Area. You are not prohibited from directly marketing to or soliciting customers whose principal residence is outside of your Protected Area.

#### *No Protected Area for Co-Located Restaurants or Confections Restaurants*

If you purchase a franchise for a Co-Located Restaurant or Confections Restaurant, you will not receive any protected territory and your Fosters Freeze Business may be located within the Protected Area of another franchisee. You will not receive an exclusive territory. You may face competition from other franchisees, from outlets that we own, or from other channels of distribution or competitive brands that we control. We and our affiliates have the right to operate, and to license others to operate, Fosters Freeze Businesses at any location regardless of its proximity to your Co-Located Restaurant or Confections Restaurant, even if doing so will or might affect your operation of your Fosters Freeze Business.



We are not required to pay you if we exercise any of the rights specified above regardless of the proximity to your Co-Located Restaurant or Confections Restaurant. We do not pay compensation for soliciting or accepting orders regardless of the proximity to your Co-Located Restaurant or Confections Restaurant. You are not prohibited from directly marketing to or soliciting customers whose principal residence is not near your Co-Located Restaurant or Confections Restaurant.

*Relocation; Additional Franchise*

You may not relocate your Fosters Freeze Restaurant without our prior written approval. We may approve a request to relocate your Fosters Freeze Business in accordance with the provisions of the Franchise Agreement that provide for the relocation of your Fosters Freeze Business, and our then-current site selection policies and procedures.

You do not receive the right to acquire additional Fosters Freeze Franchises unless you purchase a Multi-3 or Multi-5 franchise. If you wish to purchase an additional Fosters Freeze Franchise, you must apply to us, and we may, at our discretion, offer an additional Fosters Freeze Franchise to you. We consider a variety of factors when determining whether to grant additional Fosters Freeze Franchises. Among the factors we consider, in addition to the then-current requirements for new Fosters Freeze franchisees, are whether or not the franchisee is in compliance with the requirements under their current Franchise Agreement.

**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 Marks. Your use of the Marks is limited to the operation of a Fosters Freeze Restaurant in accordance with the System. We own the following trademark registrations on the principal register of the United States Patent and Trademark Office (“USPTO”):

Trademark	Registration Number	Date of Registration	Register
 The logo is an oval containing the words "Fosters" at the top, "OLD FASHION" in the center, and "FREEZE" at the bottom, all within decorative scrollwork.	1,005,478	February 25, 1975	Principal
 A cartoon character of a small, round-headed person wearing a patterned skirt and a sash that says "LITTLE FOSTERS".	1,019,652	September 2, 1975	Principal
 The logo consists of the word "Fosters" in a stylized script font above the word "FREEZE" in a bold, sans-serif font.	1,873,946	January 17, 1995	Principal



Trademark	Registration Number	Date of Registration	Register
	1,875,341	January 24, 1995	Principal
	1,895,487	May 23, 1995	Principal
	1,916,656	September 5, 1995	Principal
THE BIG BOSS	2,232,525	March 16, 1999	Principal Register
	2,918,421	January 18, 2005	Principal
FOSTERS FREEZE	5,483,590	June 5, 2018	Principal
	5,829,323	August 6, 2019	Principal
	6,301,528	March 23, 2021	Principal
SUNSHINE & HAPPINESS	6,301,529	March 23, 2021	Principal

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.

We entered into a limited license agreement on August 30, 2023 that allows USF to license Co-Branded USF Businesses in the United States; however, this agreement does not limit our right to use or license the Marks anywhere other than the premises of the Co-Branded USF Business. No agreement significantly limits our right to use or license the Marks in any manner material to the Fosters Freeze Franchise. We do not know of any superior prior rights or infringing uses that could materially affect your use of the trademarks. You will be permitted to use the Marks which are specified for the type of Fosters Freeze Franchise you have purchased. You must follow our rules when using the Marks. You cannot use our name or Mark 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 Fosters Freeze Restaurant that you are an independently-owned and operated licensed franchisee of Fosters Freeze. You may not use the Marks in the sale of unauthorized products or services 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 Fosters Freeze Franchise, or any interest in the Fosters Freeze 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 we will exclusively 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 will take the action appropriate, but we are not required to take any action if we do not feel it is warranted. You must notify us within three business 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 30 days 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**

The information in the Brand Standards Manual is proprietary and is protected by copyright and other laws. The designs contained in the Marks, the layout of our advertising materials, the ingredients and formula of our products and recipes (including our soft serve confections), and any other writings and recordings in print or electronic form are also protected by copyright and other laws. Although we have not applied for copyright registration for the Brand Standards Manual, our advertising materials, the content and format of our products or any other writings and recordings, we claim common law and federal copyrights in these items. We grant you the right to use this proprietary and copyrighted information ("Copyrighted Works") for the operation of your Fosters Freeze Franchise, but such copyrights remain our sole property.



There are no effective determinations of the United States Copyright Office or any court regarding any Copyrighted Works of ours, nor are there any proceedings pending, nor are there any effective agreements between us and third parties pertaining to the Copyrighted Works that will or may significantly limit using our Copyrighted Works.

Our Brand Standards Manual, electronic information and communications, sales and promotional materials, the development and use of our System, standards, specifications, policies, procedures, information, concepts and systems on, knowledge of, and experience in the development, operation and franchising of Fosters Freeze Franchises, our training materials and techniques, information concerning product and service sales, operating results, financial performance and other financial data of Fosters Freeze Franchises and other related materials are proprietary and confidential (“Confidential Information”) and are our property to be used by you only as described in the Franchise Agreement and the Brand Standards Manual. Where appropriate, certain information has also been identified as trade secrets (“Trade Secrets”). You must maintain the confidentiality of our Confidential Information and Trade Secrets and adopt reasonable procedures to prevent unauthorized disclosure of our Trade Secrets and Confidential Information.

We will disclose parts of the Confidential Information and Trade Secrets to you as we deem necessary or advisable for you to develop your Fosters Freeze Franchise during training and in guidance and assistance furnished to you under the Franchise Agreement, and you may learn or obtain from us additional Confidential Information and Trade Secrets during the term of the Franchise Agreement. The Confidential Information and Trade Secrets are valuable assets of ours and are disclosed to you on the condition that you, and your owners if you are a business entity, and employees agree to maintain the information in confidence by entering into a confidentiality agreement we can enforce. Nothing in the Franchise Agreement will be construed to prohibit you from using the Confidential Information or Trade Secrets in the operation of other Fosters Freeze Franchises during the term of the Franchise Agreement.

You must notify us within three business days after you learn about another’s use of language, a visual image or a recording of any kind that you perceive to be identical or substantially similar to one of our Copyrighted Works or use of our Confidential Information or Trade Secrets, or if someone challenges your use of our Copyrighted Works, Confidential Information or Trade Secrets. We will take whatever action we deem appropriate, in our sole and absolute discretion, to protect our rights in and to the Copyrighted Works, Confidential Information or Trade Secrets, which may include payment of reasonable costs associated with the action. However, the Franchise Agreement does not require us to take affirmative action in response to any apparent infringement of, or challenge to, your use of any Copyrighted Works, Confidential Information or Trade Secrets or claim by any person of any rights in any Copyrighted Works, Confidential Information or Trade Secrets. You must not directly or indirectly contest our rights to our Copyrighted Works, Confidential Information or Trade Secrets. You may not communicate with anyone except us, our counsel or our designees regarding any infringement, challenge or claim. We will take action as we deem appropriate regarding any infringement, challenge or claim, and the sole right to control, exclusively, any litigation or other proceeding arising out of any infringement, challenge or claim under any Copyrighted Works, Confidential Information or Trade Secrets. You must sign any and all instruments and documents, give the assistance and do acts and things that may, in the opinion of our counsel, be necessary to protect and maintain our interests in any litigation or proceeding, or to protect and maintain our interests in the Copyrighted Works, Confidential Information or Trade Secrets.

No patents or patents pending are material to us at this time.



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

We require that you either directly operate your Fosters Freeze Business or designate a manager (“Designated Manager”) who has been approved by us. If you are an entity or a group of individuals, you must designate an “Operating Principal” acceptable to us who will be principally responsible for communicating with us about the Fosters Freeze Business. The Operating Principal must have the authority and responsibility for the day-to-day operations of your Fosters Freeze Business and must have at least ten percent (10%) equity interest. You or your Operating Principal and your Designated Manager, if any, must successfully complete our training program (See Item 11). We may require that the Designated Manager have an ownership interest in the legal entity of the Franchise owner. If you replace your Operating Principal or Designated Manager, the new Operating Principal or Designated Manager must satisfactorily complete our training program at your own expense.

Any Designated Manager and, if you are an entity, an 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 G. 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 G. If you are an entity, each direct and indirect owner (i.e., each person holding an ownership interest in you) must sign an owners agreement, the form of which is attached to the Franchise Agreement as Attachment D. We also require that the spouses of the Franchise owners sign the owners agreement.

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

You must sell or offer for sale only those products and services authorized by us, and which meet our standards and specifications. Authorized products and services differ based on the type of franchise you purchase (Stand Alone Restaurant, Confections Restaurant or Co-Located Restaurant), may differ among our franchisees, and may vary depending on the operating season and geographic location of your Fosters Freeze Restaurant or other factors. You must follow our policies, procedures, methods and techniques. You must sell or offer for sale all types of products and services specified by us. We may change or add to our required products and services, at our discretion, with prior notice to you. If we change or add to our required products and services, the changes or additions will remain in permanent effect, unless we specify otherwise. The amount you must pay for the changes or additions will depend upon the nature and type of changes or additions. There are no limitations on our rights to make changes to the required products and services offered by you. You must discontinue selling and offering for sale any products and services that we disapprove. We reserve the right to establish minimum and maximum resale prices for use with multi-area marketing programs and special price promotions.

If you are a Co-Located Restaurant, the Host Business may sell alcoholic beverages in sealed containers. Otherwise, you may not sell alcoholic or intoxicating beverages from your Fosters Freeze Restaurant or in connection with Fosters Freeze products. If you have a Co-Located Location, you will be prohibited from selling any products that compete with Fosters Freeze products from the Host Business.

You may not establish an account or participate in any social networking sites or blogs or mention or discuss the Fosters Freeze Franchise, us or any of our affiliates 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. Otherwise, we place no restrictions upon your ability to serve customers, provided you do so from the location of your Fosters Freeze Business in accordance with our policies.

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

**THE FRANCHISE RELATIONSHIP**

**This table lists certain important provisions of the Franchise Agreement and related agreements. You should read these provisions in the agreements attached to this Franchise Disclosure Document.**

Provision	Section in Franchise Agreement	Summary
a. Length of the franchise term	Section 4.1	Ten years.
b. Renewal or extension of the term	Section 4.1	If you are in good standing and you meet other requirements, you may add one successor term of ten years.
c. Requirements for franchisee to renew or extend	Section 4.2	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 Franchise after the initial term of your Franchise Agreement expires if you are in good standing and you meet other requirements. 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.
d. Termination by franchisee	Section 20.1	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 30 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”	Section 20.2	We can terminate upon certain violations of the Franchise Agreement by you.
g. Curable defaults	Section 20.3	You have 30 days to cure defaults listed in Section 20.3.
h. Non-curable defaults	Section 20.2	Non-curable defaults: the defaults listed in Section 20.2 of the Franchise Agreement.



Provision	Section in Franchise Agreement	Summary
i. Franchisee's obligations on termination/non-renewal	Sections 4.3, 20.5 and 21.1	Obligations include complete de-identification, payment of amounts due and return of confidential Brand Standards Manual, all Confidential Information, Trade Secrets and records.
j. Assignment of contract by franchisor	Section 19.1	No restriction on our right to assign.
k. "Transfer" by franchisee – defined	Attachment A	Includes any voluntary, involuntary, direct or indirect assignment, sale, gift, exchange, grant of a security interest or change of ownership in the Franchise Agreement, the Franchise or interest in the Franchise.
l. Franchisor approval of transfer by franchisee	Section 19.2	We have the right to approve all transfers.
m. Conditions for franchisor approval of transfer	Section 19.2	If you are in good standing and meet other requirements listed in Section 19.2, we may approve your transfer to a new owner.
n. Franchisor's right of first refusal to acquire franchisee's business	Section 19.5	We have 30 days to match any offer for your business.
o. Franchisor's option to purchase franchisee's business	Section 21.2	We may, but are not required to, purchase your Franchise, inventory or equipment at fair market value if your Franchise is terminated for any reason.
p. Death or disability of franchisee	Section 19.4	The agreement must be transferred or assigned to a qualified party within 180 days of death or disability or the Franchise Agreement may be terminated. Your estate or legal representative must apply to us for the right to transfer to the next of kin within 120 calendar days of your death or disability.
q. Non-competition covenants during the term of the Franchise	Section 14.3	You may not participate in a diverting business, have owning interest of more than 5%, inducing any customer to transfer their business to you or perform services for a competitive business anywhere. You may not interfere with our or our other franchisees' Fosters Freeze Franchises. All subject to applicable state law.



Provision	Section in Franchise Agreement	Summary
r. Non-competition covenants after the Franchise is terminated or expires	Section 14.4	Owners may not have an interest in, own, manage, operate, finance, control or participate in any competitive business within 2 miles of the Franchise or any Fosters Freeze Franchise for one year (1) year. If you or your Operating Principal engages in any activities prohibited by the Franchise Agreement during the restricted period (other than having an interest in a competitive business that is permitted under Section 14.4), then the restricted period applicable to you or the non-compliant Operating Principal shall be extended by the period of time during which you or the non-compliant Operating Principal, as applicable, engaged in the prohibited activities, subject to applicable state law.
s. Modification of agreement	Sections 4, 12.2 and 25.9	No modifications of the Franchise Agreement during the term unless agreed to in writing, but the Brand Standards Manual is subject to change at any time in our discretion. Modifications are permitted on renewal.
t. Integration/merger clause	Section 25.9	Only the terms of the Franchise Agreement and other related written agreements are binding (subject to applicable state 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	Section 22	Except for certain claims, all disputes must be mediated and arbitrated in the principal city closest to our principal place of business (currently Chino Hills, California), subject to applicable state law.
v. Choice of forum	Section 22	All disputes must be mediated, arbitrated, and if applicable, litigated in the principal city closest to our principal place of business (currently Chino Hills, California), subject to applicable state law.
w. Choice of law	Sections 22 and 25	The laws of the state where the franchisee's Fosters Freeze Restaurant is located apply, subject to applicable state law.

## **ITEM 18 PUBLIC FIGURES**

We do not use any public figure to promote our Franchise.

## **ITEM 19 FINANCIAL PERFORMANCE REPRESENTATIONS**

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



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

There were 63 Fosters Freeze Businesses as of December 31, 2023, which included 60 Stand Alone Restaurants, two locations which are similar to Confections Restaurant and one Co-Located Restaurant.

As of December 31, 2023, we had 63 franchised Fosters Freeze Businesses (including Legacy Franchises), which included 60 Stand Alone Restaurants, two Confections Restaurants, and one Co-Located Restaurant. The information in the tables below is a historical financial performance representation for the eight Stand Alone Restaurants and one Co-Located Restaurant that are not also Legacy Franchises and that had been in operation for at least one year as of December 31, 2023 (“Reporting Group”). This representation covers the 2017, 2018, 2019, 2020, 2021, 2022 and 2023 calendar years. We excluded one franchised Fosters Freeze Business that opened in 2022, two franchised Fosters Freeze Businesses that ceased operations in 2022 because those Businesses were not open during the entire period shown. We also excluded 53 Legacy Franchises that do not provide financial performance figures to us.

The financial information provided in this Item 19 is based on the information submitted by our franchisees. We have not audited these figures but have no reason to doubt their accuracy.

**Table 1A**  
**Average 2017-2023 Gross Sales for the Eight Stand Alone Restaurants with Drive-Thru Service**

Calendar Year	Average Gross Sales	Median Gross Sales	Maximum Gross Sales	Minimum Gross Sales	Number and % that Met/Exceeded Average
2017	\$678,754	\$716,593	\$1,075,703	\$290,891	5 / 63%
2018	\$760,233	\$773,599	\$1,153,291	\$325,666	5 / 63%
2019	\$870,723	\$875,442	\$1,240,723	\$360,547	4 / 50%
2020	\$1,109,715	\$1,173,371	\$1,715,023	\$451,737	5 / 63%
2021	\$1,256,247	\$1,325,816	\$1,840,721	\$512,443	5 / 63%
2022	\$1,151,967	\$1,202,309	\$1,569,129	\$442,140	5 / 63%
2023	\$1,284,063	\$1,264,717	\$2,145,809	\$427,475	4 / 44%

**Table 1B**  
**Gross Sales for the Co-Located Restaurant in the Reporting Group 2017-2023**

Calendar Year	Gross Sales
2017	\$657,325
2018	\$692,804
2019	\$758,818



2020	\$765,356
2021	\$863,901
2022	\$859,846
2023	\$1,069,023
<b>Calendar Year</b>	<b>Gross Sales</b>
2022	\$801,215
2023	

Notes:

1. For purposes of this Item 19, “Gross Sales” means the total of all revenues, income and consideration from the sale of all Fosters Freeze merchandise, products and services to customers whether or not sold or performed at or from the Fosters Freeze Restaurant (including through any Delivery Services), and whether received in cash, coupon, in services in kind, from barter or exchange, on credit (whether or not payment is received) or otherwise. Gross Sales does not include the amount of all sales tax receipts or similar tax receipts which, by law, are chargeable to customers, if the taxes are separately stated when the customer is charged and if the taxes are paid to the appropriate taxing authority. Gross Sales also excludes the amount of any documented refunds, chargebacks, credits, charged tips and allowances given in good faith to customers.
2. The financial performance representation figures in the tables above do not reflect the costs of sales, operating expenses, or other costs or expenses that must be deducted from the Gross Sales figures to obtain your net income or profit. You should conduct an independent investigation of the costs and expenses you will incur in operating your Fosters Freeze Business. Franchisees or former franchisees listed in this Franchise Disclosure Document may be one source of this information.

**Some outlets have sold this amount. Your individual results may differ. There is no assurance you'll sell as much.**

Written substantiation for the financial performance representation will be made available to the prospective franchisee upon reasonable request.

Other than the preceding financial information, we do not make any financial performance representations. We also do not authorize our employees or representatives to make any such representations either orally or in writing. If you are purchasing an existing outlet, however, we may provide you with the actual records of that outlet. If you receive any other financial performance information or projections of your future income, you should report it to the franchisor's management by contacting Nealesh Dahya at 14071 Peyton Drive, Suite 2697, Chino Hills, CA 91709, Franchise@fostersfreeze.com, 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

Outlet Type	Year	Outlets at the Start of the Year	Outlets at the End of the Year	Net Change
Franchised Outlets <sup>(1)</sup>	2021	65	64	-1
	2022	64	63	-1
	2023	63	61	-2
Company-Owned	2021	0	0	0
	2022	0	0	0
	2023	0	0	0
Total Outlets	2021	65	64	-1
	2022	64	63	-1
	2023	63	61	-2

<sup>(1)</sup> Item 20 includes Legacy Franchises.

Table No. 2

Transfers from Franchisees to New Owners (other than the Franchisor)  
For Years 2021 - 2023

State	Year	Number of Transfers
California	2021	3
	2022	2
	2023	2
Totals	2021	3
	2022	2
	2023	2



Table No. 3

Status of Franchised Outlets  
For Years 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
California	2021	65	0	0	0	0	1	64
	2022	64	1	0	0	0	2	63
	2023	63	0	0	0	0	2	61
Total	2021	65	0	0	0	0	1	64
	2022	64	1	0	0	0	2	63
	2023	63	0	0	0	0	2	61

Table No. 4

Status of Company-Owned Outlets  
For Years 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
Total Outlets	2021	0	0	0	0	0	0
	2022	0	0	0	0	0	0
	2023	0	0	0	0	0	0

Table No. 5

Projected Openings as of  
December 31, 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
Georgia	1	1	0
Total	1	1	0

There were 61 Fosters Freeze Businesses as of December 31, 2023, which included 58 Stand Alone Restaurants, two locations which are similar to Confections Restaurant and one Co-Located Restaurant. The names, addresses and telephone numbers of our current franchisees are attached to this Franchise Disclosure Document as Exhibit D. The name and last known address and telephone number of every current franchisee and every franchisee who has had a Fosters Freeze Franchise terminated, cancelled, not renewed or otherwise voluntarily or involuntarily ceased to do business under our franchise agreement



during the one-year period ending December 31, 2022, or who has not communicated with us within ten weeks of the Issuance Date of this Franchise Disclosure Document, is listed in Exhibit D. In some instances, current and former franchisees may sign provisions restricting their ability to speak openly about their experiences with the Fosters Freeze System. During the last three years, some franchisees have signed confidentiality provisions that would restrict their ability to speak openly about their experience with the Fosters Freeze Franchise System. You may wish to speak with current and former franchisees, but know that not all such franchisees can communicate with you. If you buy a Fosters Freeze 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 franchise organizations sponsored or endorsed by us and no independent franchisee organizations 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 for the fiscal years ending December 31, 2023, December 31, 2022, and December 31, 2021. Our fiscal year end is December 31.

## **ITEM 22 CONTRACTS**

Exhibit C	Franchise Agreement
Exhibit E	State Addenda and Agreement Riders
Exhibit G	Contracts for use with the Fosters Freeze Franchise
Exhibit H	Disclosure Questionnaire

## **ITEM 23 RECEIPT**

The last pages of this Franchise Disclosure Document, Exhibit J, are 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**

<p><b><u>CALIFORNIA</u></b></p> <p><u>State Administrator and Agent for Service of Process:</u> 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</p> <p><b><u>HAWAII</u></b></p> <p>Commissioner of Securities of the State of Hawaii 335 Merchant Street, Room 203 Honolulu, HI 96813 (808) 586-2722</p> <p><u>Agent for Service of Process:</u> 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</p> <p><b><u>ILLINOIS</u></b></p> <p>Illinois Attorney General Chief, Franchise Division 500 S. Second Street Springfield, IL 62706 (217) 782-4465</p> <p><b><u>INDIANA</u></b></p> <p>Secretary of State Securities Division Room E-018 302 W. Washington Street Indianapolis, IN 46204 (317) 232-6681</p> <p><b><u>MARYLAND</u></b></p> <p>Office of the Attorney General Securities Division 200 St. Paul Place Baltimore, MD 21202 (410) 576-6360</p>	<p><b><u>MARYLAND CONTINUED</u></b></p> <p><u>Agent for Service of Process:</u> Maryland Securities Commissioner 200 St. Paul Place Baltimore, MD 21202-2020</p> <p><b><u>MICHIGAN</u></b></p> <p>Michigan Department of Attorney General Consumer Protection Division 525 W. Ottawa Street Lansing, MI 48913 (517) 373-7117</p> <p><b><u>MINNESOTA</u></b></p> <p>Department of Commerce Commissioner of Commerce 85 Seventh Place East, Suite 280 St. Paul, MN 55101-3165 (651) 539-1600</p> <p><b><u>NEW YORK</u></b></p> <p><u>Administrator:</u> NYS Department of Law Investor Protection Bureau 28 Liberty Street, 21<sup>st</sup> Floor New York, NY 10005 (212) 416-8222</p> <p><u>Agent for Service of Process:</u> Secretary of State 99 Washington Avenue Albany, NY 12231</p> <p><b><u>NORTH DAKOTA</u></b></p> <p><u>Administrator:</u> North Dakota Securities Department 600 East Boulevard Avenue State Capitol, Fourteenth Floor, Dept. 414 Bismarck, ND 58505-0510 (701) 328-4712</p> <p><u>Agent for Service of Process:</u> Securities Commissioner 600 East Boulevard Avenue State Capitol, Fourteenth Floor, Dept. 414 Bismarck, ND 58505-0510</p>	<p><b><u>RHODE ISLAND</u></b></p> <p>Department of Business Regulation 1511 Pontiac Avenue, Bldg. 68-2 Cranston, RI 02920 (401) 462-9527</p> <p><b><u>SOUTH DAKOTA</u></b></p> <p>Division of Insurance Securities Regulation 124 South Euclid, Suite 104 Pierre, SD 57501 (605) 773-3563</p> <p><b><u>VIRGINIA</u></b></p> <p>State Corporation Commission Division of Securities and Retail Franchising 1300 E. Main Street, 9<sup>th</sup> Floor Richmond, VA 23219</p> <p><u>Agent for Service of Process:</u> Clerk of the State Corporation Commission 1300 E. Main Street, 1<sup>st</sup> Floor Richmond, VA 23219</p> <p><b><u>WASHINGTON</u></b></p> <p><u>State Administrator:</u> Department of Financial Institutions Securities Division P.O. Box 9033 Olympia, WA 98507 (360) 902-8760</p> <p><u>Agent for Service for Process:</u> Director of Department of Financial Institutions Securities Division 150 Israel Road SW Tumwater, WA 98501</p> <p><b><u>WISCONSIN</u></b></p> <p>Department of Financial Institutions Division of Securities 201 W. Washington Avenue Madison, WI 53703 (608) 266-3364</p>
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Rev. 012723



**EXHIBIT B**

**FINANCIAL STATEMENTS**



FOSTERS FREEZE INTERNATIONAL, LLC

Financial Statements For The Year Ended December 31, 2023

TOGETHER WITH INDEPENDENT ACCOUNTANT AUDIT REPORT



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Suite 120 - 189  
Naperville, IL 60565  
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omar@napercpa.com

## INDEPENDENT ACCOUNTANT AUDIT REPORT

To the Management of FOSTERS FREEZE INTERNATIONAL, LLC

### **Opinion**

We have audited the financial statements of FOSTERS FREEZE INTERNATIONAL, LLC (the "Company"), which comprise the Balance Sheet as of December 31, 2023, the related Profit & Loss Statement, the related Statement of Cashflows, the related Statement of Shareholders' Equity, and the related notes for the twelve-month period then ended. (collectively referred to as the "financial statements").

In our opinion, the accompanying financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2023, and the results of its operations and its cash flows for the twelve-month period ended December 31, 2023 in accordance with accounting principles generally accepted in the United States of America.

### **Basis for Opinion**

We conducted our audit in accordance with auditing standards generally accepted in the United States of America (GAAS). Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of the Company 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 financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free of material misstatement, whether due to fraud or error.

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

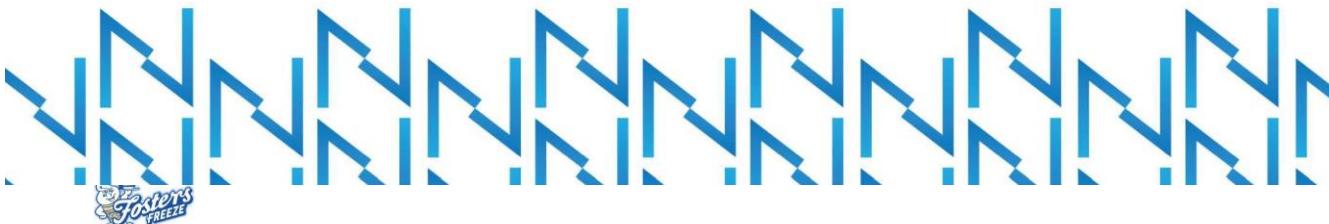
### **Auditor's Responsibilities for the Audit of the Financial Statements**

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

Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with GAAS, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.





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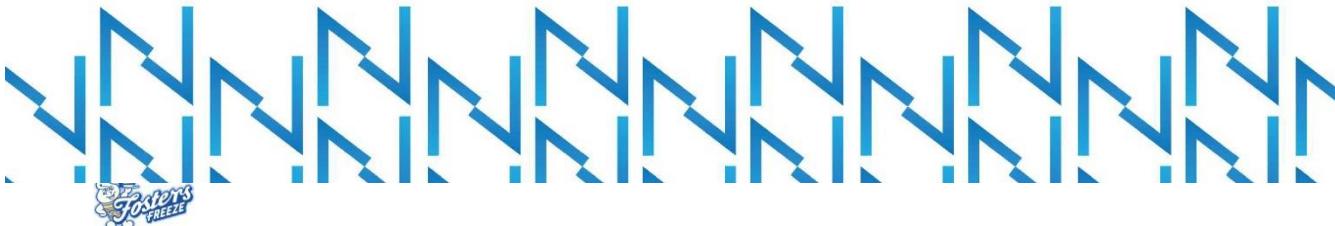
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the Company's ability to continue as a going concern for a reasonable period of time.

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

A handwritten signature in black ink that reads "Omar Alnuaimi, CPA".

Omar Alnuaimi, CPA

Naperville, IL  
March 26, 2024



**FOSTERS FREEZE INTERNATIONAL, LLC**  
**PROFIT & LOSS STATEMENT**  
**FOR THE YEAR ENDED DECEMBER 31, 2023**

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<b>Revenue</b>	
Franchise Royalty Revenue	\$ 777,076
Franchise Advertising Contributions	346,651
Vendor Convention Contributions	100,800
Other Revenue	153,341
<b>Cost of Sales</b>	<hr/>
<b>Gross Profit</b>	<hr/> <b>1,377,868</b>
 <b>Operating Expense</b>	
General & Admin Expenses	203,041
Franchise Advertising Expenses	193,114
Franchise Convention Expenses	<hr/> 106,382
Total Operating Expense	<hr/> 502,537
 <b>Net Income From Operations</b>	<b>875,331</b>
 <b>Other Income (Expense)</b>	
Interest Income	142,979
Other Income	154,690
Amortization Expense	<hr/> (21,250)
Total Other Income (Expense)	<hr/> 276,419
 <b>Net Income Before Provision for Income Tax</b>	<b>1,151,750</b>
 <b>Provision for Income Taxes</b>	 <hr/>
 <b>Net Income (Loss)</b>	<b><hr/>\$1,151,750</b>

*See Independent Accountant's Audit Report and accompanying notes, which are an integral part of these financial statements.*



**FOSTERS FREEZE INTERNATIONAL, LLC**  
**BALANCE SHEET**  
**DECEMBER 31, 2023**

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**ASSETS**

**CURRENT ASSETS**

Cash and Cash Equivalents	\$ 339,757
Royalties & Advertising Receivable	91,366
TOTAL CURRENT ASSETS	<u>431,123</u>

**NON-CURRENT ASSETS**

Note Receivable	1,500,000
Goodwill	1,313,229
Trademarks	300,000
Mix Formula	500,000
Franchise Agreement, net	42,499
Settlement Agreements, net	260,000
TOTAL NON-CURRENT ASSETS	<u>3,915,729</u>
	<b>TOTAL ASSETS</b>
	<b><u>4,346,852</u></b>

**LIABILITIES AND OWNER'S EQUITY**

**CURRENT LIABILITIES**

Accounts Payable	28,084
TOTAL CURRENT LIABILITIES	<u>28,084</u>

**NON-CURRENT LIABILITIES**

Deferred Revenue	124,354
TOTAL NON-CURRENT LIABILITIES	<u>124,354</u>
	<b>TOTAL LIABILITIES</b>

**152,438**

**OWNER'S EQUITY**

Retained Earnings	3,042,664
Net Income (Loss)	1,151,750
TOTAL SHAREHOLDERS' EQUITY	<u>4,194,413</u>

**\$4,346,852**

*See Independent Accountant's Audit Report and accompanying notes, which are an integral part of these financial statements.*



**FOSTERS FREEZE INTERNATIONAL, LLC**  
**STATEMENT OF CASHFLOWS**  
**FOR THE YEAR ENDED DECEMBER 31, 2023**

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**OPERATING ACTIVITIES**

Net Income	\$ 1,151,750
Non-Cash Adjustments	
Amortization Expense	21,250
Changes in Current Assets	(13,078)
Changes in Current Liabilities	5,833
Changes in Deferred Revenue	36,749
NET CASH PROVIDED (USED) BY OPERATING ACTIVITIES	<hr/> 1,202,504

**INVESTING ACTIVITIES**

Note Receivable	(350,000)
NET CASH PROVIDED (USED) BY INVESTING ACTIVITIES	<hr/> (350,000)

**FINANCING ACTIVITIES**

Owner's Contribution	(949,966)
NET CASH PROVIDED (USED) BY FINANCING ACTIVITIES	<hr/> (949,966)
NET INCREASE (DECREASE) IN CASH	(97,463)
CASH AT BEGINNING OF PERIOD	437,220
CASH & RESTRICTED CASH AT END OF PERIOD	<hr/> \$ 339,757

*See Independent Accountant's Audit Report and accompanying notes, which are an integral part of these financial statements.*



**FOSTERS FREEZE INTERNATIONAL, LLC**  
**STATEMENT OF SHAREHOLDERS' EQUITY**  
**DECEMBER 31, 2023**

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	<b>Opening Equity</b>	<b>Yearly</b>	<b>Total</b>
	<b>Balance</b>	<b>Changes</b>	
<b>Balance, December 31, 2022</b>	\$ 3,992,631	\$ -	\$ 3,992,631
Net Income For The Period Ended December 31, 2023	-	1,151,750	1,151,750
Equity Contributions (Distributions)	-	(949,966)	(949,966)
<b>Balance, December 31, 2023</b>	<b>\$ 3,992,631</b>	<b>\$ 201,784</b>	<b>\$4,194,413</b>

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*See Independent Accountant's Audit Report and accompanying notes, which are an integral part of these financial statements.*



FOSTERS FREEZE INTERNATIONAL, LLC  
NOTES TO FINANCIAL STATEMENTS  
For The Year Ended December 31, 2023

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**NOTE A – ORGANIZATION AND NATURE OF ACTIVITIES**

FOSTERS FREEZE INTERNATIONAL, LLC (the “Company”) was organized as a Delaware Limited Liability Company in March 2015 and owns exclusive rights and licenses to franchise Fosters Freeze locations. Fosters Freeze is a restaurant concept featuring soft-serve confections, soft drinks, hamburgers, hot sandwiches, and other food items. As the franchisor, the Company offers independent operators the opportunity to purchase a Fosters Freeze standard store, a Fosters Freeze C-store, or a fountain-only store.

**NOTE B – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

**Basis of Presentation**

The accompanying financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America (“US GAAP”). As a result, the Company records revenue when earned and expenses when incurred. The Company has adopted the calendar year as its basis of reporting.

**Use of Estimates**

The preparation of financial statements, in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, and the disclosures of contingent assets and liabilities and other items, as well as the reported revenues and expenses. Actual results could differ from those estimates.

**Cash and Cash Equivalents**

For purposes of the statements of cash flows, the Company considers all highly liquid investments with an initial maturity of three months or less to be cash equivalents. The Company maintains cash balances at a financial institution located in the United States of America. Accounts at this institution are secured by the Federal Deposit Insurance Corporation (FDIC). Although balances in these accounts may at times exceed the FDIC limits, management believes that the Company is not exposed to any significant credit risk with respect to its cash and cash equivalents nor has the Company experienced any related losses.

**Franchisee Receivables**

The Company’s franchisee receivables primarily result from initial franchise fees, royalty fees, brand development contributions and training fees charged to franchisees. Timing of revenue recognition may be different from the timing of invoicing to customers. The Company records an accounts receivable when revenue is recognized prior to invoicing, or unearned revenue when revenue is recognized after invoicing. The Company reports these receivables at net realizable value.



FOSTERS FREEZE INTERNATIONAL, LLC  
NOTES TO FINANCIAL STATEMENTS  
For The Year Ended December 31, 2023

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**NOTE B – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (cont.)**

Franchisee Receivables (cont.)

Management determines the allowance for doubtful accounts based on historical losses, current expectations, and economic conditions. On a continuing basis, management analyzes delinquent accounts receivable and, once these accounts receivable are determined to be uncollectible, they are written off through a charge against an existing allowance account. The allowance account is reviewed regularly and adjusted against earnings as appropriate. The Company determined that an allowance on outstanding franchisee receivables of \$0 was necessary as of December 31, 2023. Franchisee bad debt expense was \$0 for the year ended December 31, 2023. Franchisee amounts written off were \$0 for the year ended December 31, 2023.

Goodwill

The Company accounts for goodwill in accordance with guidance issued by the Financial Accounting Standards Board (FASB). Based upon the provisions of this guidance, the Company first assesses certain qualitative factors to determine whether it is more likely than not that the fair value of a reporting unit is less than its carrying amount as a basis for determining whether it is necessary to perform the two-step goodwill impairment test. If, after assessing the qualitative events and circumstances, the company determines that it is not more likely than not that the fair value of the reporting unit is less than its carrying amount, then performing the two-step impairment test is unnecessary and no impairment of goodwill exists.

However, if the Company concludes otherwise, then it is required to perform the first step of the two-step impairment test by calculating the fair value of the reporting unit and comparing the fair value with the carrying amount of the reporting unit. If the reporting unit's estimated fair value exceeds the reporting unit's carrying value, no impairment of goodwill exists. If the fair value of the reporting unit does not exceed the unit's carrying value, then the Company is required to perform the second step of the goodwill impairment test to measure the amount of the impairment loss, if any. Management has determined that no indicators of impairment exist as of December 31, 2023.

Long-lived Assets and Intangible Assets

Long-lived assets, which include definite-lived and indefinite-lived intangible assets are evaluated for impairment whenever events or changes in circumstances have indicated that an asset may not be recoverable. Long-lived assets evaluated for impairment are grouped with other assets to the lowest level for which identifiable cash flows are largely independent of the cash flows of other groups of assets and liabilities. If the sum of the projected undiscounted cash flows (excluding interest charges) is less than the carrying value of the assets, the assets will be written down to the estimated fair value, and a loss recognized in income from operations in the period in which the determination is made. Management has determined that no indicators of impairment of long-lived assets exist.

Franchise agreements are amortized using the straight-line method over each restaurant's remaining 20 year franchise life. Settlement agreements are written off to amortization expense when a restaurant closes. Amortization expense was \$21,250 for the year ended December 31, 2023.



FOSTERS FREEZE INTERNATIONAL, LLC  
NOTES TO FINANCIAL STATEMENTS  
For The Year Ended December 31, 2023

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**NOTE B – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (cont.)**

**Fair Value of Financial Instruments**

Financial Accounting Standards Board (“FASB”) guidance specifies a hierarchy of valuation techniques based on whether the inputs to those valuation techniques are observable or unobservable. Observable inputs reflect market data obtained from independent sources, while unobservable inputs reflect market assumptions. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1 measurement) and the lowest priority to unobservable inputs (Level 3 measurement). The three levels of the fair value hierarchy are as follows:

- Level 1 - Unadjusted quoted prices in active markets for identical assets or liabilities that the reporting entity has the ability to access at the measurement date. Level 1 primarily consists of financial instruments whose value is based on quoted market prices such as exchange-traded instruments and listed equities.
- Level 2 - Inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly or indirectly (e.g., quoted prices of similar assets or liabilities in active markets, or quoted prices for identical or similar assets or liabilities in markets that are not active).
- Level 3 - Unobservable inputs for the asset or liability. Financial instruments are considered Level 3 when their fair values are determined using pricing models, discounted cash flows or similar techniques and at least one significant model assumption or input is unobservable.

As of December 31, 2023, the carrying amounts of the Company’s financial assets and liabilities reported in the balance sheets approximate their fair value.

**Note Receivable**

In 2019, the Company initiated an unsecured note receivable for \$750,000. In 2020, the Company issued an additional unsecured note receivable for \$400,000 with the same terms and an additional issuance in 2023 for \$350,000 with the same terms. The notes require interest-only payments at 10% per annum and are expected to be repaid in full in 2024.

**Revenue Recognition**

Revenues are primarily derived from franchise fees (one-time and recurring monthly fees). In accordance with Accounting Standards Codification (ASC) Topic 606, Revenue will be recognized when persuasive evidence of an arrangement exists, delivery has occurred, or services have been rendered, the seller’s price to the buyer is fixed or determinable, and collectability is reasonably assured. The determination of whether fees are fixed or determinable and collection is reasonably assured involves the use of assumptions. Arrangement terms and customer information are evaluated to ensure that these criteria are met prior to the recognition of revenue.

Specifically for franchisors, The Financial Accounting Standards Board (FASB) has issued an Accounting Standards Update (ASU) to ASC 606, Franchisors—' Revenue from Contracts with Customers (Subtopic 952-606): Practical Expedient' in 2021 which provides a new practical expedient that permits private company franchisors to account for preopening services provided to a franchisee as distinct from the franchise license if the services are consistent with those included in a predefined list within the guidance. The Company has elected to adopt this new standard.



FOSTERS FREEZE INTERNATIONAL, LLC  
NOTES TO FINANCIAL STATEMENTS  
For The Year Ended December 31, 2023

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**NOTE B – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (cont.)**

**Unearned Revenue**

The Company's primarily performance obligation under the franchise agreement mainly includes granting certain rights to access the Company's intellectual property and a variety of activities relating to opening a franchise unit, including initial training and other such activities commonly referred to collectively as "pre-opening activities", which are recognized as a single performance obligation. The Company expects that certain pre-opening activities provided to the franchisee will not be brand specific and will provide the franchisee with relevant general business information that is separate and distinct from the operation of a company-branded franchise unit. The portion of pre-opening activities that will be provided that is not brand specific is expected to be distinct as it will provide a benefit to the franchisee and is expected not to be highly interrelated or interdependent to the access of the Company's intellectual property, and therefore will be accounted for as a separate distinct performance obligation. All other pre-opening activities are expected to be highly interrelated and interdependent to the access of the Company's intellectual property and therefore will be accounted for as a single performance obligation, which is satisfied by granting certain rights to access the Company's intellectual property over the term of each franchise agreement.

The Company estimates the stand-alone selling price of pre-opening activities using an adjusted market assessment approach. The Company will first allocate the initial franchise fees and the fixed consideration, under the franchise agreement to the standalone selling price of the training services that are not brand specific and the residual, if any, to the right to access the Company's intellectual property. Consideration allocated to pre-opening activities, which are not brand specific are recognized ratably as those services are rendered. Consideration allocated to pre-opening activities included under Accounting Standards Update (ASU) to ASC 606, Franchisors—"Revenue from Contracts with Customers (Subtopic 952-606): Practical Expedient" is recognized when the related services have been rendered.

The remaining franchisee fee not allocated to pre-opening activities are recorded as Unearned Revenue and will be recognized over the term of the franchise agreement.

**Income Taxes**

The Company, with the consent of its shareholders, intends to elect to be an S-Corporation (for tax purposes). In lieu of corporate income taxes, the shareholder(s) of an S-Corporation is taxed based on its proportionate share of The Company's taxable income. Therefore, no provision or liability for income taxes has been included in these financial statements.

**Commitments and Contingencies**

The Company may be subject to pending legal proceedings and regulatory actions in the ordinary course of business. The results of such proceedings cannot be predicted with certainty, but the Company does not anticipate that the final outcome, if any, arising out of any such matter will have a material adverse effect on its business, financial condition or results of operations. As of December 31, 2023, the Company has not reported any lawsuit or known plans of litigation by or against the Company.



FOSTERS FREEZE INTERNATIONAL, LLC  
NOTES TO FINANCIAL STATEMENTS  
For The Year Ended December 31, 2023

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**NOTE C – CONCENTRATIONS OF RISK**

Financial instruments that potentially subject the Company to credit risk consist of cash and cash equivalents. The Company places its cash and any cash equivalents with a limited number of high-quality financial institutions and do not exceed the amount of insurance provided on such deposits.

**NOTE D – SUBSEQUENT EVENTS**

Management has evaluated subsequent events through March 26, 2024, the date on which the financial statements were available to be issued. Management has determined that none of the events occurring after the date of the balance sheet through the date of Management's review substantially affect the amounts and disclosure of the accompanying financial statements.





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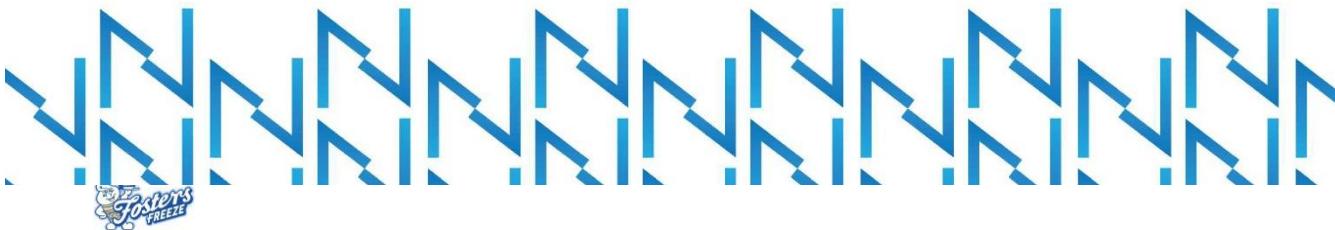
#### CONSENT

Omar Alnuaimi, CPA, consents to the use in the Franchise Disclosure Document issued by FOSTERS FREEZE INTERNATIONAL, LLC ("Franchisor") on March 27, 2024, as it may be amended, of my report dated March 26, 2024, relating to the Balance Sheet as of December 31, 2023, the related Profit & Loss Statement, the related Statement of Cashflows, and the related Statement of Shareholders Equity for the 12-month period then ended of Franchisor.

A handwritten signature in black ink that reads "Omar Alnuaimi, CPA".

Omar Alnuaimi, CPA

Naperville, IL  
March 27, 2024



**FOSTERS FREEZE INTERNATIONAL, LLC**

**FINANCIAL STATEMENTS**

**DECEMBER 31, 2022 and 2021**



FOSTERS FREEZE INTERNATIONAL, LLC

FINANCIAL STATEMENTS

DECEMBER 31, 2022 AND 2021

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# Wright Ford Young & Co.

*Certified Public Accountants and Consultants, Inc.*

## INDEPENDENT AUDITOR'S REPORT

To the Members of  
Fosters Freeze International, LLC

### **Opinion**

We have audited the financial statements of Fosters Freeze International, LLC (the Company), which comprise the balance sheets as of December 31, 2022 and 2021, and the related statements of income, members' equity, and cash flows for the years then ended, and the related notes to the financial statements.

In our opinion, the accompanying financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2022 and 2021, and the results of its operations and its 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 (GAAS). Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of the Company 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 these financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

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

### **Auditor's Responsibility for the Audit of the Financial Statements**

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



In performing an audit in accordance with GAAS, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the Company's ability to continue as a going concern for a reasonable period of time.

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

*Wright Ford Young & Co.*

WRIGHT FORD YOUNG & CO.  
Irvine, California  
March 10, 2023

FOSTERS FREEZE INTERNATIONAL, LLC

BALANCE SHEETS

DECEMBER 31, 2022 AND 2021

ASSETS

	<u>2022</u>	<u>2021</u>
<b>CURRENT ASSETS:</b>		
Cash	\$ 27,017	\$ 25,035
Restricted cash	410,203	351,649
Royalties and advertising fees receivable	<u>78,288</u>	<u>67,940</u>
 Total current assets	 <u>515,508</u>	 <u>444,624</u>
 <b>INTANGIBLE ASSETS:</b>		
Goodwill	1,313,229	1,313,229
Trademarks	300,000	300,000
Mix formula	500,000	500,000
Franchise agreements, net	53,750	65,000
Settlement agreements, net	<u>270,000</u>	<u>280,000</u>
 Total intangible assets	 <u>2,436,979</u>	 <u>2,458,229</u>
 <b>OTHER ASSETS:</b>		
Notes receivable	<u>1,150,000</u>	<u>1,150,000</u>
 Total other assets	 <u>1,150,000</u>	 <u>1,150,000</u>
	 <u>\$ 4,102,487</u>	 <u>\$ 4,052,853</u>

See accompanying independent auditor's report and notes to the financial statements.



FOSTERS FREEZE INTERNATIONAL, LLC

BALANCE SHEETS

DECEMBER 31, 2022 AND 2021

LIABILITIES AND MEMBERS' EQUITY

	<u>2022</u>	<u>2021</u>
<b>CURRENT LIABILITIES:</b>		
Accounts payable	<u>\$ 22,251</u>	<u>\$ 17,703</u>
Total current liabilities	<u>22,251</u>	<u>17,703</u>
<b>LONG-TERM LIABILITIES:</b>		
Deferred revenue	<u>87,605</u>	<u>18,855</u>
Total long-term liabilities	<u>87,605</u>	<u>18,855</u>
Total liabilities	<u>109,856</u>	<u>36,558</u>
<b>MEMBERS' EQUITY</b>	<u>3,992,631</u>	<u>4,016,295</u>
	<u><u>\$ 4,102,487</u></u>	<u><u>\$ 4,052,853</u></u>

See accompanying independent auditor's report and notes to the financial statements.

FOSTERS FREEZE INTERNATIONAL, LLC

STATEMENTS OF INCOME

FOR THE YEARS ENDED DECEMBER 31, 2022 AND 2021

	<u>2022</u>	<u>2021</u>
<b>REVENUES:</b>		
Franchise royalty revenue	\$ 748,944	\$ 787,897
Franchise advertising contributions	284,639	301,383
Vendor convention contributions	115,218	105,325
Other revenue	<u>182,487</u>	<u>197,852</u>
<b>Total revenue</b>	<b><u>1,331,288</u></b>	<b><u>1,392,457</u></b>
<b>OPERATING EXPENSES:</b>		
General and administrative expenses	28,142	81,420
Franchise advertising expenses	212,527	155,069
Franchise convention expenses	<u>110,396</u>	<u>103,068</u>
<b>Total operating expenses</b>	<b><u>351,065</u></b>	<b><u>339,557</u></b>
<b>INCOME FROM OPERATIONS</b>	<b><u>980,223</u></b>	<b><u>1,052,900</u></b>
<b>OTHER INCOME (EXPENSE):</b>		
Interest income	115,001	115,002
Interest expense	-	(1,600)
Amortization expense	(21,250)	(11,250)
Paycheck Protection Program note forgiveness	-	20,832
CA Covid-19 Relief grant	-	15,000
Other income, net	<u>52,262</u>	<u>38,680</u>
<b>Total other income, net</b>	<b><u>146,013</u></b>	<b><u>176,664</u></b>
<b>NET INCOME</b>	<b><u>\$ 1,126,236</u></b>	<b><u>\$ 1,229,564</u></b>

See accompanying independent auditor's report and notes to the financial statements.



FOSTERS FREEZE INTERNATIONAL, LLC

STATEMENTS OF MEMBERS' EQUITY

FOR THE YEARS ENDED DECEMBER 31, 2022 AND 2021

BALANCE, AS OF DECEMBER 31, 2020	\$ 4,061,731
Net income	1,229,564
Distributions to members	<u>(1,275,000)</u>
BALANCE, AS OF DECEMBER 31, 2021	4,016,295
Net income	1,126,236
Distributions to members	<u>(1,149,900)</u>
BALANCE, AS OF DECEMBER 31, 2022	<u>\$ 3,992,631</u>

See accompanying independent auditor's report and notes to the financial statements.



FOSTERS FREEZE INTERNATIONAL, LLC

STATEMENTS OF CASH FLOWS

FOR THE YEARS ENDED DECEMBER 31, 2022 AND 2021

	<u>2022</u>	<u>2021</u>
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Net income	\$ 1,126,236	\$ 1,229,564
Adjustments to reconcile net income to net cash provided by operating activities:		
Amortization expense	21,250	11,250
Changes in operating assets and liabilities:		
Royalties and advertising fees receivable	(10,348)	7,155
Prepaid expenses	-	10,415
Accounts payable	4,548	(21,986)
Distributions payable	-	(225,000)
Deferred revenue	<u>68,750</u>	<u>(1,249)</u>
Net cash provided by operating activities	<u>1,210,436</u>	<u>1,010,149</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>		
Payments received on due from related party	-	250,000
Net cash provided by investing activities	<u>-</u>	<u>250,000</u>
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>		
Payments on note payable	-	(354,330)
Member distributions	<u>(1,149,900)</u>	<u>(1,200,000)</u>
Net cash used in financing activities	<u>(1,149,900)</u>	<u>(1,554,330)</u>
<b>NET CHANGE IN CASH, CASH EQUIVALENTS AND RESTRICTED CASH</b>	<b>60,536</b>	<b>(294,181)</b>
CASH, CASH EQUIVALENTS AND RESTRICTED CASH, beginning of year	<u>376,684</u>	<u>670,865</u>
CASH, CASH EQUIVALENTS AND RESTRICTED CASH, end of year	<u>\$ 437,220</u>	<u>\$ 376,684</u>
<b>SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION:</b>		
Cash paid during the year for interest	<u>\$ -</u>	<u>\$ 2,781</u>
Cash paid during the year for gross receipts tax	<u>\$ 4,626</u>	<u>\$ 13,808</u>
<b>SUPPLEMENTAL DISCLOSURE OF NONCASH FINANCING ACTIVITY:</b>		
Repayment of notes receivable through member distributions	<u>\$ -</u>	<u>\$ 75,000</u>

See accompanying independent auditor's report and notes to the financial statements.



FOSTERS FREEZE INTERNATIONAL, LLC

NOTES TO THE FINANCIAL STATEMENTS

DECEMBER 31, 2022 AND 2021

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Company Background and Nature of Business

Fosters Freeze International, LLC (the Company) was organized as a Delaware Limited Liability Company on March 12, 2015 and owns exclusive rights and licenses to franchise Fosters Freeze locations. Fosters Freeze is a restaurant concept featuring soft serve confections, soft drinks, hamburgers, hot sandwiches and other food items.

As franchisor, the Company offers independent operators the opportunity to purchase a Fosters Freeze standard store, Fosters Freeze C-store or a fountain only store. At December 31, 2022 and 2021, the Company had franchisees operating 63 and 64 stores, respectively, throughout California. During the year ended December 31, 2022 one new store opened and 2 stores were closed. During the year ended December 31, 2021 no new stores were opened or closed.

Basis of Presentation

The accompanying financial statements have been prepared on the accrual basis of accounting in accordance with accounting principles generally accepted in the United States of America.

Use of Estimates

The preparation of the financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. Significant estimates made in preparing these financial statements include, but are not limited to estimating the fair value and/or impairment of intangible assets, including goodwill.

Revenue Recognition

The Company's primary source of revenue is from royalty income.

Royalty income from franchised stores is generally based on 4% and 8% of total gross sales for standard stores and C-stores, respectively, and is recognized as earned. Royalty income from stores that existed prior to 1978 is earned at a certain price per gallon of ice cream mix and is received monthly from the ice cream distributor.

FOSTERS FREEZE INTERNATIONAL, LLC

NOTES TO THE FINANCIAL STATEMENTS

DECEMBER 31, 2022 AND 2021

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES – (Continued)

Revenue Recognition – (Continued)

The Company may earn revenue on initial and renewing franchise agreements and development fees. Portions of the franchise and development fees may be collected in advance, are non-refundable and grant the right to develop franchise-operated restaurants in future periods in specific geographic areas. Franchise fees and development fees are deferred and recognized as revenue over the term of the related agreement for the respective restaurant. Renewal fees are deferred and recognized over the term of the renewal agreement. In the event a development agreement is terminated, the related development and franchise fees would be recognized as revenue.

During 2022, \$25,000 of deferred revenue was recognized for an initial franchise agreement for a new store that opened in December 2022. An additional \$45,000 was deferred for another initial franchise agreement for a new store expected to open in 2023. There were no development fees or renewal fees earned or deferred during the years ending December 31, 2022 and 2021. For the year ended December 31, 2022, the contract liability beginning and ending balances related to unearned franchise agreements were \$18,855 and \$87,605, respectively. For the year ended December 31, 2021, the contract liability beginning and ending balances related to unearned franchise agreements were \$20,104 and \$18,855, respectively.

The Company receives incentives from certain vendors. These incentives are recognized as earned and are recorded as vendor convention contributions on the statements of income.

Cash and Cash Equivalents

For purposes of the statements of cash flows, the Company considers all highly liquid investments with an initial maturity of three months or less to be cash equivalents. The Company maintains cash balances at a financial institution located in the United States of America. Accounts at this institution are secured by the Federal Deposit Insurance Corporation (FDIC). Although balances in these accounts may at times exceed the FDIC limits, management believes that the Company is not exposed to any significant credit risk with respect to its cash and cash equivalents nor has the Company experienced any related losses.

Restricted Cash

Restricted cash consists of funds designated for advertising and convention expenditures. Each month, as defined by the franchise agreements, franchisees remit a certain percentage of their monthly revenues to the Company for future marketing expenditures. The Company also receives rebates from food and service vendors for future convention expenditures. As of December 31, 2022 and 2021, restricted cash for future marketing and convention expenditures was \$410,203 and \$351,649, respectively.



FOSTERS FREEZE INTERNATIONAL, LLC

NOTES TO THE FINANCIAL STATEMENTS

DECEMBER 31, 2022 AND 2021

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES – (Continued)

Royalties and Advertising Fees Receivable

Royalty and advertising fees receivable represents royalty and advertising payments due from franchisees, based on the franchisees' December revenues. Balances are stated at the amount the Company collected in the subsequent month.

Goodwill

The Company accounts for goodwill in accordance with guidance issued by the Financial Accounting Standards Board (FASB). Based upon the provisions of this guidance, the Company first assesses certain qualitative factors to determine whether it is more likely than not that the fair value of a reporting unit is less than its carrying amount as a basis for determining whether it is necessary to perform the two-step goodwill impairment test. If, after assessing the qualitative events and circumstances, the Company determines that it is not more likely than not that the fair value of the reporting unit is less than its carrying amount, then performing the two-step impairment test is unnecessary and no impairment of goodwill exists.

However, if the Company concludes otherwise, then it is required to perform the first step of the two-step impairment test by calculating the fair value of the reporting unit and comparing the fair value with the carrying amount of the reporting unit. If the reporting unit's estimated fair value exceeds the reporting unit's carrying value, no impairment of goodwill exists. If the fair value of the reporting unit does not exceed the unit's carrying value, then the Company is required to perform the second step of the goodwill impairment test to measure the amount of the impairment loss, if any. Management has determined that no indicators of impairment exist as of December 31, 2022 and 2021.

Long-lived Assets and Intangible Assets

Long-lived assets, which include definite-lived and indefinite-lived intangible assets are evaluated for impairment whenever events or changes in circumstances have indicated that an asset may not be recoverable. Long-lived assets evaluated for impairment are grouped with other assets to the lowest level for which identifiable cash flows are largely independent of the cash flows of other groups of assets and liabilities. If the sum of the projected undiscounted cash flows (excluding interest charges) is less than the carrying value of the assets, the assets will be written down to the estimated fair value and a loss recognized in income from operations in the period in which the determination is made. Management has determined that no indicators of impairment of long-lived assets exist.

Franchise agreements are amortized using the straight-line method over each restaurant's remaining 20 year franchise life. Settlement agreements are written off to amortization expense when a restaurant closes. Amortization expense was \$21,250 for the years ended December 31, 2022 and 2021.

FOSTERS FREEZE INTERNATIONAL, LLC

NOTES TO THE FINANCIAL STATEMENTS

DECEMBER 31, 2022 AND 2021

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES – (Continued)

Long-lived Assets and Intangible Assets – (Continued)

The following is a summary of the other intangible assets and the related accumulated amortization:

	Cost	Accumulated Amortization	Net
<u>December 31, 2022</u>			
Indefinite-lived:			
Trademarks	\$ 300,000	\$ -	\$ 300,000
Mix formula	500,000	-	500,000
Settlement agreements	345,000	(75,000)	270,000
	1,145,000	(75,000)	1,070,000
Definite-lived:			
Franchise agreements	221,771	(168,021)	53,750
	<u>\$ 1,366,771</u>	<u>\$ (243,021)</u>	<u>\$ 1,123,750</u>
<u>December 31, 2021</u>			
Indefinite-lived:			
Trademarks	\$ 300,000	\$ -	\$ 300,000
Mix formula	500,000	-	500,000
Settlement agreements	345,000	(65,000)	280,000
	1,145,000	(65,000)	1,080,000
Definite-lived:			
Franchise agreements	221,771	(156,771)	65,000
	<u>\$ 1,366,771</u>	<u>\$ (221,771)</u>	<u>\$ 1,145,000</u>

As of December 31, 2022, estimated future amortization expense is as follows:

Year Ending December 31,	
2023	\$ 8,750
2024	7,917
2025	7,500
2026	7,500
2027	7,500
Thereafter	<u>14,583</u>
	<u>\$ 53,750</u>

Subsequent Events

The Company has evaluated subsequent events through the date of the independent auditor's report, which is the date the accompanying financial statements were available to be issued.



FOSTERS FREEZE INTERNATIONAL, LLC

NOTES TO THE FINANCIAL STATEMENTS

DECEMBER 31, 2022 AND 2021

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES – (Continued)

Income Taxes

The Company does not pay Federal or state income taxes on its taxable income. The Company, however, does pay a state minimum tax of \$800 plus additional graduated annual fees if the Company's gross receipts exceed \$250,000 with a maximum fee of \$11,790. The members are liable for individual Federal and state income taxes on their respective shares of the Company's taxable income. In addition, at December 31, 2022 and 2021, the Company had no accruals for potential losses related to uncertain income tax positions. The Company is subject to routine audits by taxing jurisdictions; however, there are currently no audits for any tax periods in progress.

The Company is subject to the Centralized Partnership Audit Regime (CPAR) under which the Company would be liable for any taxes, interest and penalties resulting from Internal Revenue Service examination adjustments made at the partnership level. The Company has elected out of CPAR such that any examination results would be applied at the member level instead of at the Company level.

Fair Value of Financial Instruments

The FASB provides the framework for measuring fair value. That framework provides a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (level 1 measurements) and lowest priority to unobservable inputs (level 3 measurements).

The three levels of the fair value hierarchy under this framework are described as follows:

Level 1 Inputs to the valuation methodology are unadjusted quoted prices for identical assets or liabilities in active markets that the Company has the ability to access.

Level 2 Inputs to the valuation methodology include:

- quoted prices for similar assets or liabilities in active markets;
- quoted prices for identical or similar assets or liabilities in inactive markets;
- inputs other than quoted prices that are observable for the asset or liability;
- inputs that are derived principally from or corroborated by observable market data by correlation or other means.

If the asset or liability has a specified (contractual) term, the level 2 input must be observable for substantially the full term of the asset or liability.

Level 3 Inputs to the valuation methodology are unobservable and significant to the fair value measurement.

FOSTERS FREEZE INTERNATIONAL, LLC

NOTES TO THE FINANCIAL STATEMENTS

DECEMBER 31, 2022 AND 2021

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES – (Continued)

Fair Value of Financial Instruments – (Continued)

The asset or liability's fair value measurement level within the fair value hierarchy is based on the lowest level of any input that is significant to the fair value measurement. Valuation techniques used need to maximize the use of observable inputs and minimize the use of unobservable inputs.

Accordingly, the Company believes the carrying value of cash, royalties and advertising fees receivable, notes receivable, accounts payable, and deferred revenues to be representative of their fair values based on their short-term nature. The fair value of the Company's goodwill, trademarks and mix formula represent each assets value at acquisition and are classified within level 3 of the fair value hierarchy.

Additional disclosures regarding Level 3 assets measured at fair value on a non-recurring basis as of December 31, 2022 and 2021 are as follows:

	Total	Level 1	Level 2	Level 3
Goodwill	\$ 1,313,229	\$ -	\$ -	\$ 1,313,229
Trademarks	300,000	-	-	300,000
Mix formula	500,000	-	-	500,000

There were no changes to the value of Level 3 assets and no transfers between levels 1, 2 and 3 during years ended December 31, 2022 and 2021.

2. NOTES RECEIVABLE

During 2019, the Company initiated an unsecured note receivable for \$750,000. In 2020, the Company issued an additional unsecured note receivable for \$400,000 with the same terms. The notes require interest only payments at 10% per annum and is expected to be repaid in full in 2024.

3. CONCENTRATIONS OF CREDIT RISK

As of December 31, 2022 and 2021, three franchisees accounted for approximately 34% and 35%, respectively, of royalties and advertising fees receivable.

FOSTERS FREEZE INTERNATIONAL, LLC

NOTES TO THE FINANCIAL STATEMENTS

DECEMBER 31, 2022 AND 2021

4. MEMBERS' EQUITY

Governance interests vary by member and define a members' voting rights. Net income, loss and capital distributions are allocated in accordance with the terms of the Limited Liability Operating Agreement, as amended. The liability of the members is limited to the capital contribution made to Fosters Freeze International, LLC, except as expressly provided by law or personally guaranteed by the member pursuant to a separate document.

5. PAYCHECK PROTECTION PROGRAM AND CA COVID-19 RELIEF GRANT

On February 3, 2021 the Company received a loan in the amount of \$20,832 under the Payroll Protection Program (PPP Loan). The PPP Loan and accrued interest were forgivable after the covered period, up to 24-weeks, as the borrower used the PPP Loan proceeds for eligible purposes, including payroll, benefits, rent, utilities, covered operations expenditures, covered property damage, covered supplier costs, covered worker protection expenditures and maintained its payroll levels. The Company received notice of forgiveness November 4, 2021. As a result, the Company has accounted for the PPP Loan as other income for the year ended December 31, 2021.

The CA Small Business COVID-19 Relief Grant Program provided grants from \$5,000 to \$25,000 to eligible small businesses and nonprofits impacted by COVID-19 and the related health and safety restrictions. The Company applied for and received \$15,000 during 2021. The grant is recorded as other income in the statements of income for the year ended December 31, 2021.

6. RECENTLY ISSUED ACCOUNTING PRONOUNCEMENTS

In January 2017, the FASB issued guidance to simplify how an entity is required to test goodwill for impairment by eliminating Step 2 from the goodwill impairment test. Step 2 measures a goodwill impairment loss by comparing the implied fair value of a reporting unit's goodwill with the carrying amount of that goodwill. The guidance will be effective for the Company for fiscal periods beginning after December 15, 2022. The Company does not expect this pronouncement to have a material effect on its financial statements.

Other accounting standards that have been issued or proposed by the FASB or other standards-setting bodies are not expected to have a material impact on the Company's financial position, results of operations or cash flows.

**EXHIBIT C**

**FRANCHISE AGREEMENT**

**EXHIBIT C**



**FOSTERS FREEZE**  
**FRANCHISE AGREEMENT**

**Franchise #:** \_\_\_\_\_

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

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

**Location:** \_\_\_\_\_



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### **ATTACHMENTS:**

- Attachment A Definitions
- Attachment B Franchise Data Sheet
- Attachment C Statement of Ownership
- Attachment D Owners Agreement



**FOSTERS      FREEZE**  
**FRANCHISE AGREEMENT**

THIS FRANCHISE AGREEMENT (“Franchise Agreement”) is made, entered into and effective as of the “Effective Date” set forth in Attachment B to this Franchise Agreement, by and between Fosters Freeze International, LLC, a Delaware limited liability company (“we,” “us,” or “our”), and the franchisee set forth in Attachment B to this Franchise Agreement (“you” or “your”).

This Franchise Agreement has been written in an informal style in order to make it more easily readable and to be sure that you become completely familiar with all of the important rights and obligations this Franchise Agreement covers before you sign it.

This Franchise Agreement includes several attachments, each of which are legally binding and are a part of the complete Franchise Agreement, including an Owners Agreement which is attached to this Franchise Agreement as Attachment D (“Owners Agreement”). Certain provisions in this Franchise Agreement will also apply to the Owners and their spouses. Each Owner and each Owner’s spouse is required to sign the Owners Agreement.

It is your responsibility to read through the entire Franchise Agreement. This Franchise Agreement creates legal obligations that you must follow. We recommend that you consult with a legal professional to ensure that you understand these obligations. If you have any questions, or if you do not understand a certain provision or section, please review it with us or your legal and financial advisors before you sign this Franchise Agreement.

**1.     DEFINITIONS.** 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. Some defined terms are in Attachment A of this Franchise Agreement.

**2.     GRANT OF FRANCHISE.** We hereby grant you a license to own and operate a Fosters Freeze franchised business (“Fosters Freeze Business” or “Fosters Freeze Businesses”) using our Intellectual Property. You will select on Attachment B the type of Fosters Freeze restaurant we have agreed to grant to you (each, a “Fosters Freeze Restaurant”). Your Fosters Freeze Restaurant will be one of the three types of restaurants:

**2.1     Stand-Alone Restaurants.** You may operate a stand-alone Fosters Freeze Restaurant in a location that exists only as a Fosters Freeze Restaurant and serves soft serve confections, soft drinks, hamburgers, hot sandwiches and other food items (a “Stand-Alone Restaurant”). Stand-Alone Restaurants usually offer dine-in, drive-thru and walk-up options. We don’t currently allow franchisees to provide catering and/or delivery services (“Delivery Services”), but we may permit it in the future. If you are granted the right to operate a Stand-Alone Restaurant, and we are then-allowing franchisees to provide Delivery Services, you may also choose to provide Delivery Services in your territory and within any additional territory approved by us.

**2.2     Confections Restaurants.** You may operate a stand-alone Fosters Freeze Restaurant in a location that exists only as a Fosters Freeze Restaurant and serves only certain soft serve confections (a “Confections Restaurant”). Confections Restaurants usually offer dine-in, drive-thru and walk-up options.



**2.3     Co-Located Restaurants.** You may operate a Fosters Freeze Restaurant in a location that is located within another primary business like a convenience store or a gas station (a “Host Business”) and will serve a full-service menu, but may have different required food items than a Stand-Alone Restaurant (a “Co-Located Restaurant”).

If you open a Confections Restaurant or Co-Located Restaurant, you will also enter into the addendum for the relevant Fosters Freeze Restaurant which is included on Exhibit G to the Franchise Disclosure Document. These menu items are subject to change and we do not represent that your Fosters Freeze Business will always be permitted or required to offer all of the menu items currently offered.

The license to operate a Fosters Freeze Franchise contained in this Franchise Agreement does not permit you, at or through any location, to: (i) operate any food trucks; (ii) except as described above for Stand-Alone Restaurant franchisees, offer catering or delivery services; (iii) sell any items offered by your Fosters Freeze Business outside of the Fosters Freeze Restaurant; or (iv) offer products for sale online, through the Internet, or at any Non-Traditional Location, without our express written consent or except as expressly permitted by the Brand Standards Manual (as defined in Article 6 below). We reserve all rights not expressly granted to you.

If you have not identified an approved location for your Fosters Freeze Business when you sign the Franchise Agreement, as is typically the case for Stand-Alone Restaurants and Confections Restaurants, you and we will agree on the approved location in writing and amend the Franchise Agreement after you select and we approve the approved location. You are not guaranteed any specific approved location, and you may not be able to obtain your top choice as your approved location. You may not conduct your Fosters Freeze Business from any other location.

### **3.     TERRITORIAL RIGHTS AND LIMITATIONS.**

**3.1     Protected Area for Stand-Alone Restaurants Only.** For Stand-Alone Restaurants only, we will grant you a non-exclusive territory consisting of the geographic area identified in Attachment B (“Protected Area”). By protected, we mean that for so long as you are not in default under your Franchise Agreement, we will not establish or franchise others to establish a Stand-Alone Restaurant that is physically located within your Protected Area. You may have a Non-Traditional Location (including a Co-Located Restaurant) or a Confections Restaurant within your Protected Area. We, and our affiliates, have the right to operate and to license others to operate: a Non-Traditional Location (including a Co-Located Restaurant), a Co-Branded Restaurant or a Confections Restaurant within your Protected Area, and a Fosters Freeze Business at any location outside the Protected Area, even if doing so will or might affect the operation of your Fosters Freeze Business.

If you are a Stand-Alone Restaurant franchisee, and you elect to offer the Delivery Services, you must provide the Delivery Services in compliance with our off-site policies and procedures, and subject to all federal, state and local law and regulations. These policies may allow other Fosters Freeze Businesses to provide catering and delivery services in your Protected Area without compensating you. We may impose restrictions in the future that prevent you from providing catering and delivery services outside of your Protected Area or just from providing these services. We don’t currently allow Delivery Services, but we may allow for them in the future. Confections Restaurant franchisees and Co-Located Restaurant franchisees may not offer any Delivery Services.

You may only provide Delivery Services in your Protected Area and in any additional approved areas that we may specify for you (if any, the “Mobile Protected Area”). We may or may not grant you a Mobile Protected Area (beyond your Protected Area), and if we do, the size of the Mobile Protected Area will be based on various factors, including population density, drive times and distance. There is no specific minimum or maximum Mobile Protected Area. We may at any time and for any or no reason change your



Mobile Protected Area, including reducing its size or eliminating it. If we do, you must immediately change your mobile practices and begin providing the Stand-Alone Restaurant services and products only within the newly defined area. If you do not do so, we may immediately terminate your right to provide any Delivery Services anywhere. If we reduce the size of your Mobile Protected Area, there might be a reduction in your sales, but we will not be liable for the reduction.

If you do not elect to offer the Delivery Services, or do not provide the Delivery Services in compliance with our standards, we may and we may grant others using the Marks the option to offer Delivery Services in your Mobile Protected Area, and in your Protected Area.

Your Mobile Protected Area is not exclusive. We may change, expand or reduce your Mobile Protected Area. We may engage and/or grant others the right to engage in any activities we desire within the Mobile Protected Area without any restrictions at all (including allowing any such person to provide Delivery Services in the area). We will not be liable for any reduction in your sales due to these activities. You must follow our rules for Delivery Services and any minimum requirements we may establish, from time to time, for delivery providers. In particular, you may provide the Stand-Alone Restaurant's services and products to customers only with your own employed service providers and not through third-party contractors, or delivery or catering services or systems.

We retain all territory rights not expressly granted to you. These include:

- i. to own, franchise or operate (or allow our affiliates or their successors to own, franchise, or operate) Fosters Freeze Businesses or Co-Branded Restaurants at any location outside of the Protected Area, regardless of the proximity to your Fosters Freeze Restaurant;
- 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 Protected Area and Mobile Protected Area. This includes, but is not limited to, other channels of distribution such as television, catalog sales, wholesale to unrelated retail outlets or over the Internet. We exclusively reserve the Internet as a channel of distribution for us, and you may not independently market on the Internet or conduct e-commerce;
- iii. to offer and sell food products, including frozen products and proprietary food products (including products or services similar to those which you will sell), under the Marks or any other marks, through Non-Traditional Locations (including Co-Located Restaurants) within or outside of the Protected Area or Mobile Protected Area, including those owned by us or our affiliates;
- iv. to use and license the use of other proprietary and non-proprietary marks or methods which are not the same as or confusingly similar to the Marks, whether in alternative channels of distribution or in the operation of a business offering a restaurant concept featuring soft serve confections, soft drinks, hamburgers, hot sandwiches and other food items and related products and services at any location, including within the Protected Area and Mobile Protected Area, which may be similar to or different from the Fosters Freeze Business operated by you;
- v. 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 with any business whether franchised or corporately owned, including a business that competes directly with your Fosters Freeze Business, whether located inside or outside the Protected Area or Mobile Protected Area, provided that any businesses located inside your Protected Area will not operate under the Marks;



vi. to offer and sell food products, including frozen products and proprietary food products (including services or products similar to the those which you will sell) under the Marks or any other marks, through any other business which is located within another business, including within another restaurant or eating establishment, within or outside of the Protected Area or Mobile Protected Area, including those owned by us or our affiliates. This also includes the sale of products through co-branding or through white labeling;

vii. to use and license the use of technology to non-franchisee locations inside and outside the Protected Area or Mobile Protected Area; and

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

We are not required to pay you if we exercise any of the rights specified above within your Protected Area or Mobile Protected Area. We do not pay compensation for soliciting or accepting orders inside your Protected Area or Mobile Protected Area. You are not prohibited from directly marketing to or soliciting customers whose principal residence is outside of your Protected Area.

### **3.2 No Protected Area for Confections Restaurants and Co-Located Restaurants.**

If this Franchise Agreement is for the right to open and operate a Confections Restaurant or Co-Located Restaurant, you will not receive any protected territory and your Fosters Freeze Business may be located within the Protected Area of another franchisee. You will not receive an exclusive territory. We and our affiliates have the right to operate, and to license others to operate, Fosters Freeze Businesses at any location regardless of its proximity to your Confections Restaurant or Co-Located Restaurant, even if doing so will or might affect your operation of your Fosters Freeze Business. We are not required to pay you if we exercise any of the rights specified above regardless of the proximity to your Confections Restaurant or Co-Located Restaurant. We do not pay compensation for soliciting or accepting orders regardless of the proximity to your Non- Traditional Restaurant. You are not prohibited from directly marketing to or soliciting customers whose principal residence is not near your Confections Restaurant or Co-Located Restaurant.

**3.3 General.** We have no express obligation or implied duty to insulate or protect you from or against erosion in your revenues or market share as the result of your Fosters Freeze Business competing with other foodservice businesses, or in the ways and to the extent this Section provides or contemplates. You waive any right to assert any Claim against us based on the existence, actual or arguable, of any such obligation or duty. If you are a Stand-Alone Restaurant franchisee, and you renew your Franchise, your Protected Area may be modified depending on the then-current demographics of the Protected Area, and on our then-current standards for territories.

## **4. TERM AND RENEWAL.**

**4.1. Generally.** The term of this Franchise Agreement will begin on the Effective Date and continue for ten years (“Term”). If this Franchise Agreement is the initial franchise agreement for your Fosters Freeze Business, you may enter into a maximum of one successor franchise agreements (a “Successor Agreement”), as long as you meet the conditions for renewal specified below. The Successor Agreement shall be the current form of franchise agreement that we use in granting Fosters Freeze Franchises as of the expiration of the Term. The terms and conditions of the Successor Agreement may vary materially and substantially from the terms and conditions of this Franchise Agreement. Each successor term will be ten years. If you are signing this Franchise Agreement as a Successor Agreement, the references to “Term” shall mean the applicable renewal term of the Successor Agreement. Except as



provided in Section 4.3 below, you will have no further right to operate your Fosters Freeze Business following the expiration of the successor term unless we grant you another Franchise, 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, as well as your remaining renewal rights, if any.

**4.2. Renewal Requirements.** In order to enter into a Successor Agreement, you and each of your Owners (as applicable) must: (i) notify us in writing of your desire to enter into a Successor Agreement not less than 60 days nor more than 180 days before the expiration of the Term; (ii) 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 Agreement; (iii) sign the Successor Agreement and all ancillary documents that we require franchisees to sign (which may contain provisions, including royalties and advertising obligations, materially different from those contained herein); (iv) sign a General Release; (v) pay us a non-refundable renewal fee of 50% of the then-current initial franchise fee (or \$22,500 if we are not then offering franchises for sale) at the time you sign the Successor Agreement; (vi) at least 60 days but not more than 180 days before the expiration of the Term, you must upgrade and remodel your Fosters Freeze Restaurant in accordance with Section 12.8 to comply with our then-current standards and specifications; (vii) have the right under your lease to maintain possession of the premises where your Fosters Freeze Restaurant is located for the duration of the successor term; and (viii) take any additional actions that we reasonably require.

**4.3. Interim Term.** If you do not sign a Successor 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 with you then operating without a Franchise to do so and 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 the party’s 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 and restrictions 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 otherwise permitted by this Section 4.3, you have no right to continue to operate your Fosters Freeze Business following the expiration of the Term.

## **5. TRAINING AND CONFERENCES.**

**5.1. Initial Training Fees.** We will provide our initial training program at no charge for up to two people, one of whom must be you, or, if you are an Entity, your Operating Principal (as defined in Section 8.1), and your Designated Manager (if applicable, as defined in Section 8.1); provided that all persons attend the initial training program simultaneously. You must pay us our then-current training fee as specified in our Brand Standards Manual (as of the Effective Date, we charge \$350 per person per day of training in most cases) for: (i) each additional person that attends our initial training program before you open, and each additional person that attends after you open your Fosters Freeze Business (such as a new Operating Principal or Designated Manager); (ii) any person who must retake training after failing to successfully complete training on a prior attempt; (iii) any remedial training that we require under Section 5.6; (iv) each person to whom we provide additional training that you request; and (v) each person who attends any system-wide or additional training that we conduct. You, or if you are an Entity, your Operating Principal and your Designated Manager, if any, must attend and successfully complete our initial training program before you open your Fosters Freeze Business.

**5.2. Initial Training for New Owners/Designated Managers.** If you hire a new Designated Manager or appoint a new Operating Principal, the new Designated Manager or Operating



Principal, as applicable, must attend and successfully complete our then-current initial training program. You will be required to pay our then-current initial training fee.

**5.3. Opening Assistance.** For a period of up to seven days before and immediately after the opening of your Fosters Freeze Restaurant, we or a designee will travel to your Fosters Freeze Restaurant and provide on-site support (“Opening Assistance”) to assist you in the opening and operation of your Fosters Freeze Business and establishment of the required procedures. If you are a Stand-Alone Restaurant or a Confections Restaurant, we will send two to three trainers, depending on the size of your Fosters Freeze Restaurant. If you are a Co-Located Restaurant, we will send one trainer. If you are purchasing a Multi-3 or Multi-5 franchise (as defined in Section 13 below), we will only provide the Opening Assistance for your first and second Fosters Freeze Restaurants.

**5.4. Periodic Training.** We may offer periodic refresher or additional training courses for you or your Operating Principal, Designated Manager and other employees. Attendance at these training programs may be optional or mandatory. You may be required to pay a fee for this training as specified in our Brand Standards Manual.

**5.5. Additional Training upon Request.** Upon your written request, we may provide additional assistance or training to you at a mutually convenient time. We may charge you our then-current fee for such assistance or training.

**5.6. Remedial Training.** If we conduct an inspection of your Fosters Freeze Restaurant and determine that you are not operating in compliance with this Franchise Agreement and/or the Brand Standards Manual, we may, at our option, require that you, or if you are an Entity, your Operating Principal and Designated Manager and management personnel attend remedial training that is relevant to your operational deficiencies. You must pay us the then-current per day or per person on-site training fee and reimburse us for the expenses we or our representatives incur in providing any remedial training.

**5.7. Conferences.** We may hold periodic national or regional conferences to discuss various business issues and operational and general business concerns affecting Fosters Freeze franchisees. Attendance at these conferences is mandatory. You are responsible for paying our then-current conference fee, whether or not you attend the conference in any given year.

**5.8. Conference and Training Costs.** You are solely responsible for all expenses and costs that you, or if you are an Entity, your Operating Principal, Designated Manager (if any) and each of your trainees incur for all trainings and conferences under this Section 5, including wages, travel, lodging and living expenses. You also agree to reimburse us for all expenses and costs that we incur to travel to your Fosters Freeze Restaurant under this Section 5, including transportation, food, lodging and travel expenses; provided that for Opening Assistance, you will only be responsible for our transportation, food, lodging and travel expenses if you request that we provide additional support. All training fees and expense reimbursements must be paid to us within ten days after invoicing.

## **6. OTHER ASSISTANCE.**

**6.1. Brand Standards Manual.** We will provide you with access to a copy of our current Brand Standards Manual for the Term of this Franchise Agreement, and we will later provide you with all periodic modifications thereto and any other manual we may develop specifying the System standards (collectively, the “Brand Standards Manual”). If the copy of the Brand Standards Manual loaned to you is lost, stolen, destroyed or significantly damaged before you return it to us, you must pay us our then-current replacement fee. We reserve the right to provide the Brand Standards Manual electronically, such as by an intranet or password-protected website. You acknowledge that your compliance with the Brand Standards 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 the uniform quality of operation throughout the System. It is not designed to control the day-to-day operation of the Fosters Freeze Business.

**6.2. Site Selection.** We will provide you with advice and general specifications for identifying a suitable location for the Fosters Freeze Restaurant.

**6.3. General Guidance.** We will, upon reasonable request, provide advice or guidance regarding your Fosters Freeze Business's operation based on reports or inspections or discussions with you. Advice will be given during our regular business hours and via written materials, electronic media, telephone or other methods, in our discretion.

**6.4. Marketing Assistance.** As further described in Section 11, we will provide you with other marketing assistance.

**6.5. Website.** We will maintain a website for Fosters Freeze restaurants that will include the information about your Fosters Freeze Business that we deem appropriate. We may modify the content of and/or discontinue the website at any time in our sole discretion. We are only required to reference your Fosters Freeze Business on our website while you are in full compliance with this Franchise Agreement and all System Standards. If you wish to advertise online, you must follow our online policy, which is contained in our Brand Standards Manual and discussed in Section 11.2.5 below. We must approve all content on your webpage. We will own the website (including any webpages for your Fosters Freeze Business) and domain name at all times.

**6.6. Supplier Agreements.** We may, but are not required to, negotiate agreements with suppliers to obtain discounted prices for us and our franchisees. If we succeed in negotiating an agreement, we may arrange for you to be able to purchase the products directly from the supplier at the discounted prices that we negotiate (subject to any rebates the supplier pays to us). 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.

**6.7. Proprietary Products.** We may, but need not, create Fosters Freeze proprietary products for sale at your Fosters Freeze Restaurant. If we develop any of these products, you agree to maintain a reasonable inventory of these items at your Fosters Freeze Restaurant at all times.

## **7. ESTABLISHING YOUR FOSTERS FREEZE BUSINESS.**

**7.1. Site Selection.** Your Fosters Freeze Business may be operated either from a Stand-Alone Restaurant or a Confections Restaurant or Co-Located Restaurant. We must approve of the site for the Fosters Freeze Restaurant before you enter into a lease or a purchase contract. In evaluating a proposed site for the Fosters Freeze Restaurant, we consider such factors as general location, neighborhood and other physical characteristics. Before leasing or purchasing a commercial site for your Fosters Freeze Restaurant, you must submit to us, in the form we specify, a description of the site, with other information and materials we may reasonably require. We have the right to accept or reject all proposed sites in our commercially reasonable judgment. We will use our best efforts to accept or reject a proposed site within 30 days after we receive all of the requisite materials. Your site is deemed disapproved if we fail to issue our written approval within the 30-day period. If we disapprove of the proposed site, you must select another site, subject to our consent. You agree to purchase or lease the site for your Fosters Freeze Restaurant within 180 days after the Effective Date, and if you fail to do so, we may terminate this Franchise Agreement. The Fosters Freeze Restaurant must be located within the "General Description of Area" identified in Attachment B and must conform to our minimum site selection criteria. You must send us a complete site report (containing the demographic, commercial and other information, photographs and video tapes that we may reasonably require) for your proposed site. Our approval shall be evidenced by the execution of



Attachment B-1 by you and us with the “location” completed. You may only operate the Fosters Freeze Business at the location specified in Attachment B-1. You understand that our approval of a site does not constitute a representation or warranty of any kind, express or implied, of the suitability of the site for a Fosters Freeze Restaurant. Our approval of the site indicates only that we believe the site meets our minimum criteria.

**7.2. Lease.** If you lease the premises for your Fosters Freeze Restaurant, before doing so, you must also provide us with a proposed copy of the lease for the premises at least ten days before signing. We will only review the lease to determine that it is in compliance with the terms of this Franchise Agreement and will not review the lease for or provide you with any business, economic, legal or real estate analysis or advice. However, you are solely responsible for the terms of the lease and any no-objection letter we provide for the lease does not provide any representation or warranty of any kind, express or implied, concerning the terms of the lease or the viability or suitability of the site for the Fosters Freeze Restaurant. You will ensure your landlord either: (1) signs the Lease Addendum that is attached to the Franchise Disclosure Document in Exhibit G; or (2) incorporates the terms of the Lease Addendum into the lease for the Fosters Freeze Restaurant. If your landlord refuses, we have the right to disapprove of your lease, in which case you must find a new site for your Fosters Freeze Restaurant. You and the landlord must sign the lease and Lease Addendum within 180 days of the Effective Date. You must promptly send us a copy of your fully executed lease and any Lease Addendum for our records. Your landlord may require you and, if you are an entity, the owners and spouses to sign a personal guaranty.

**7.3. Construction.** We will provide you with specifications for the design and layout for a Fosters Freeze Restaurant, including our list of any approved architects. You must hire an architect in order to modify these plans to comply with all local ordinances, building codes, permits requirements, and lease requirements and restrictions applicable to the premises. If you don’t choose one of our approved architects, you’ll be required to pay us the Architect Fee (as described in Section 13.2) You must first review and accept the architect’s drafted floor plan and submit your floor plan to us for our review and acceptance. Once we accept your floor plan, the architect must develop your full construction drawings for the Fosters Freeze Restaurant. Upon your review and acceptance, you must submit your construction drawings to us for our final review and approval. Once we accept your floor plan and approve your construction drawings, drawings and specifications may not be changed or modified without our prior written approval. Once accepted by us, you must, at your sole expense, construct and equip the Fosters Freeze Restaurant to the specifications contained in the Brand Standards Manual and purchase (or lease) and install the equipment, fixtures, furnishings, signs and other items that we require. All exterior and interior signs of the Fosters Freeze Restaurant must comply with the specifications that we provide to you. We must approve the architects, contractors and other suppliers you use to construct your Fosters Freeze Restaurant. You agree to provide us with weekly status updates as to construction of the Fosters Freeze Restaurant. You acknowledge these requirements are necessary and reasonable to preserve the identity, reputation and goodwill we developed and the value of the Fosters Freeze System. We must approve the layout of your Fosters Freeze Restaurant prior to opening.

**7.4. Opening.** You must open your Fosters Freeze Business to the public within 12 months of the Effective Date. You may not open your Fosters Freeze Business before: (i) successful completion of the initial training program by you or your Operating Principal and your Designated Manager, if you have one; (ii) you purchase all required insurance; (iii) you obtain all required licenses, permits and other governmental approvals; and (iv) we provide our written approval of the construction, buildout and layout of your Fosters Freeze Restaurant. We may conduct a pre-opening inspection of your Fosters Freeze Restaurant and you agree to make any changes we require before opening. By virtue of opening your Fosters Freeze Business, you acknowledge that we have fulfilled all of our pre-opening obligations to you.



**7.5. Relocation.** You may not relocate your Stand-Alone Restaurant without our prior written approval. If we allow you to relocate within your Protected Area, you must: (i) comply with Sections 7.1 through Section 7.3 of this Franchise Agreement with respect to your new Fosters Freeze Restaurant (excluding the 12-month opening period); (ii) open your new Fosters Freeze Restaurant and resume operations within 30 days after closing your prior Fosters Freeze Restaurant; and (iii) pay us our relocation fee of \$5,000 at the time you make your request to relocate. You may not relocate your Fosters Freeze Restaurant outside of your Protected Area without our prior written approval, which we may withhold in our sole discretion. We may require that any Protected Area be modified as a condition to our approval of you relocating your Fosters Freeze Restaurant. Upon our approval of the relocation of your Fosters Freeze Restaurant, Attachment B-1 shall be updated with the new location, and the remainder of this Franchise Agreement shall remain in full force and effect.

**7.6. Catastrophes.** If your Fosters Freeze Restaurant is destroyed or damaged by fire or other casualty and the Term of this Franchise Agreement and the lease for your Fosters Freeze Restaurant has at least two years remaining, you will: (a) within 30 days after the date of such destruction or damage of your Fosters Freeze Restaurant, commence all repairs and reconstruction necessary to restore the Fosters Freeze Restaurant to its condition prior to such casualty; or (b) relocate the Fosters Freeze Restaurant pursuant to Section 7.5, and the Term shall be extended for the period from the date the Fosters Freeze Restaurant closed due to the destruction or damage until it reopens. You will reimburse us four percent (4%) of any insurance proceeds due to business interruption as a result of your Fosters Freeze Restaurant being closed as a result of a casualty event or any other reason.

## **8. MANAGEMENT AND STAFFING.**

**8.1. Owner Participation.** You acknowledge that a major requirement for the success of your Fosters Freeze Business is the active, continuing and substantial personal involvement and hands-on supervision by you or your Operating Principal, who must at all times be actively involved in the operation of the Fosters Freeze Business on a full-time basis and provide on-site management and supervision, unless we authorize you to delegate management functions to a Designated Manager. If you are not an individual, you must designate an Operating Principal (“Operating Principal”) acceptable to us who will be principally responsible for communicating with us about the Fosters Freeze Business. The Operating Principal must have the authority and responsibility for the day-to-day operations of your Fosters Freeze Business and must have at least ten percent (10%) equity in you.

**8.2. Designated Manager.** You may hire a manager to assume responsibility for the daily on-site management and supervision of your Fosters Freeze Business (“Designated Manager”), but only if: (i) we approve the Designated Manager in our commercially reasonable discretion; (ii) the Designated Manager successfully completes the initial training program; and (iii) you or your Operating Principal agree to assume responsibility for the on-site management and supervision of your Fosters Freeze Business if the Designated Manager is unable to perform his or her duties due to death, disability, termination of employment, or for any other reason, until such time that you obtain a suitable replacement Designated Manager.

**8.3. Employees.** You must determine appropriate staffing levels for your Fosters Freeze 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 Fosters Freeze 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. These employees and independent contractors will be employees of yours and not of 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 that 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. We also do not control the hiring or firing of your employees or independent contractors. 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 must also post a conspicuous notice for employees and independent contractors in the back-of-the-house area explaining your franchise relationship with us and that you (and not we) are the sole employer. We may prescribe the form and content of this notice. You agree that any direction you receive from us regarding employment 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.

**8.4. Assumption of Management; Step-In Rights.** In order to prevent any interruption of operations which would cause harm to Fosters Freeze Business, thereby depreciating the value thereof, we have the right, but not the obligation, to step-in and designate an individual or individuals of our choosing (“Interim Manager”) for so long as we deem necessary and practical to temporarily manage your Fosters Freeze Business: (i) if you fail to comply with any System standard or provision of this Franchise Agreement and do not cure the failure within the time period specified by the Franchise Agreement or us; (ii) if we determine in our sole judgment that the operation of your Fosters Freeze Business is in jeopardy; (iii) if we determine in our sole discretion that operational problems require that we operate your Fosters Freeze Business; (iv) if you abandon or fail to actively operate your Fosters Freeze Business; (v) upon your (or your Operating Principal, if an entity) or your Designated Manager’s absence, termination, illness, death, incapacity or disability; (vi) if we deem you (or your Operating Principal, if any entity) or your Designated Manager incapable of operating your Fosters Freeze Business; or (vii) upon a Crisis Management Event (“Step-in Rights”). If we exercise the Step-In Rights:

(a) you agree to pay us, in addition to all other amounts due under this Franchise Agreement, an amount equal to \$500 per day per representative that the Interim Manager manages your Fosters Freeze Business, plus the Interim Manager’s direct out-of-pocket costs and expenses;

(b) all monies from the operation of your Fosters Freeze Business during such period of operation by us shall be kept in a separate account, and the expenses of the Fosters Freeze Business, including compensation and direct out-of-pocket costs and expenses for the Interim Manager, shall be charged to said account;

(c) you acknowledge that the Interim Manager will have a duty to utilize only reasonable efforts and will not be liable to you or your owners for any debts, losses, or obligations your Fosters Freeze Business incurs, or to any of your creditors for any supplies, products, or other assets or services your Fosters Freeze Business purchases, while Interim Manager manages it;

(d) the Interim Manager will have no liability to you except to the extent directly caused by its gross negligence or willful misconduct. We will have no liability to you for the activities of an Interim Manager unless we are grossly negligent in appointing the Interim Manager, and you will



indemnify and hold us harmless for and against any of the Interim Manager's acts or omissions, as regards to the interests of you or third parties; and

(e) you agree to pay all of our reasonable attorney's fees, accountant's fees, and other professional fees and costs incurred as a consequence of our exercise of the Step-In Rights.

Nothing contained herein shall prevent us from exercising any other right which we may have under this Franchise Agreement, including, without limitation, termination.

**9. FRANCHISEE AS ENTITY.** If you are an Entity, you agree to undertake each obligation under this Section 9. You must provide us with a list of all of the Owners. You must execute a resolution of the Entity authorizing the execution of this Franchise Agreement and provide us with a copy of the Entity's organizational documents, and a current Certificate of Good Standing (or the functional equivalent thereof). You represent as of the Effective Date, and covenant during the Term (and any extensions thereof) to ensure that the Entity is duly formed and validly existing under the laws of the state of its formation or incorporation. You are, and will continue to be during the Term (and any extensions thereof), qualified and authorized to do business in the jurisdiction where the Fosters Freeze Restaurant is to be located and in each jurisdiction where it conducts business, maintains offices, owns real estate or where qualification is required by law. You agree to ensure that your organizational documents will at all times provide your business activities will be confined exclusively to the ownership and operation of the Fosters Freeze Business, unless otherwise consented to in writing by us. You agree that Attachment C to this Franchise Agreement completely and accurately describes all of the Owners and their interests in you as of the Effective Date. You and the Owners agree to sign and deliver to us revised versions of Attachment C periodically to reflect any permitted changes in the information that Attachment C now contains. You agree to, at all times, maintain a current schedule of the Owners of you and their ownership interests and to immediately provide us with a copy of the updated ownership schedule whenever there is any change of ownership to you. Notwithstanding the foregoing, you acknowledge that any changes in ownership are subject to our prior written approval as described in Section 19 below. You acknowledge that you and the Owners have no material liabilities, adverse claims, commitments or obligations of any nature as of the Effective Date, whether accrued, unliquidated, absolute, contingent or otherwise, except as disclosed to us in writing or set forth in any financial statements that have been provided to us. You will, at all times, maintain sufficient working capital to operate the Fosters Freeze Business and to fulfill its obligations under this Franchise Agreement, and will take steps to ensure availability of capital to fulfill your obligations to maintain and remodel the Fosters Freeze Restaurant premises in accordance with this Franchise Agreement. You agree not to use the name "Fosters Freeze" or any derivative thereof in the name of your Entity. You further acknowledge that the acknowledgements, representations, covenants and warranties contained in this Section are continuing obligations of you and the Owners and that any failure to comply with such representations, warranties and covenants will constitute a material breach of this Franchise Agreement.

**10. OWNERS AGREEMENT.** All Owners (whether direct or indirect) and their spouses must sign the Owners Agreement, attached as Attachment D to this Franchise Agreement, agreeing to be personally bound by all of this Franchise Agreement's terms. 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 requirements discussed in Section 19.2 below), you will require the new Owner (and the new Owner's spouse) to execute all documents required by us, including the Owners Agreement.



## 11. ADVERTISING & MARKETING.

### 11.1. Brand Fund.

**11.1.1. Administration.** We have established and maintain a system-wide fund (“Brand Fund”) for marketing, developing and promotion the System, the Marks and Fosters Freeze Businesses. The Brand Fund may be administered by us or our affiliate or designees, at our discretion. We may use the Brand Fund to pay for any of the following in our sole discretion: (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 and search engine optimization; (vii) development and implementation of quality control programs; (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) collecting and accounting for Brand Fund Contributions; (xii) preparing and distributing financial accountings of the Brand Fund; (xiii) conducting food audit programs and other reputation management functions; (xiv) rebates to franchisees for local advertising or Fosters Freeze Restaurant updates and upgrades; (xv) any other programs or activities that we deem necessary or appropriate to promote or improve the System or to promote the Fosters Freeze brand; and (xvi) 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, and we may lend money to the Brand Fund if there is a deficit. Any unused funds that were 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 with respect to our administration of the Brand Fund. The Brand Fund is not audited. We, or our representatives, prepare an annual statement of the Brand Fund. We will provide you with a copy of these statements upon your 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 that is principally a 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.

**11.1.2. Brand Fund Contribution.** On the same day your Royalty (defined below in Section 13.4) payment is due, you must contribute to the Brand Fund the amount that we specify in our Brand Standards Manual, currently three percent (3%) of your monthly Gross Sales (the “Brand Fund Contribution”). Stand-Alone Restaurant franchisees are currently required to make Brand Fund Contributions. Franchisees for Confections Restaurants and Co-Located Restaurants are not currently required to make Brand Fund Contributions, but we reserve the right in the future to require Confections Restaurants and Co-Located Restaurants to make Brand Fund Contributions of up to 3% of monthly Gross Sales.

**11.1.3. Brand Fund Termination.** 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. If we terminate the Brand Fund, we may either spend the remaining amounts or distribute all unused contributions to contributing then-current franchisees, and to us or our affiliates, in proportion to respective contributions during the preceding 24-month period.



## **11.2. Your Marketing Activities.**

### **11.2.1. Local Advertising Requirement.**

In addition to your required Brand Fund Contribution, you must spend one-half percent (0.5%) of Gross Sales on local advertising to promote your Fosters Freeze Business (“Local Advertising Requirement”). We will measure your compliance with this requirement on a rolling six-month basis, meaning that as long as your average monthly expenditure on local advertising over any six-month period equals or exceeds the minimum monthly amount that we specify, you will be deemed in compliance even if your expenditure in any given month is less than the minimum monthly amount that we specify. If you fail to spend the Local Advertising Requirement, you will be required to pay the difference to us, or if established, the Brand Fund. We must approve all local advertising in accordance with Section 11.2.4. You agree to participate at your own expense in all advertising, promotional and marketing programs that we require, including any advertising cooperative that we establish pursuant to Section 11.3. We may increase the Local Advertising Requirement to one percent (1%) of Gross Sales upon 30 days prior written notice to you.

### **11.2.2. Grand Opening Advertising Program.**

You will spend a minimum of \$1,000 on approved grand opening marketing, advertising and promotion for your Fosters Freeze Business (“Grand Opening Program”) during the period commencing 30 days prior to the opening of your Fosters Freeze Business and ending 90 days after the date on which your Fosters Freeze Business opens for business. We will consult with you in connection with your Grand Opening Program. You agree to provide us with an accounting (in the form prescribed by us) of your expenditures for grand opening marketing, advertising and promotion within 120 days after the opening of your Fosters Freeze Business upon our request. All expenditures for grand opening marketing, advertising and promotion will be in addition to your other marketing, advertising and promotion obligations under the Franchise Agreement.

### **11.2.3. Standards for Advertising.**

You must order sales and marketing material from us or our designated suppliers. All advertisements and promotions that 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. You must ensure that your advertisements and promotional materials do not infringe upon the intellectual property or legal rights of others.

### **11.2.4. Approval of Advertising.**

We must pre-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). If you use unauthorized advertising materials, you must pay a fee of \$500 per occurrence to us.

### **11.2.5. Internet and Websites.**

We may require that you utilize our designated supplier for social media marketing services. If you wish to utilize social media or advertise online, you must follow our online policy which is contained in our Brand Standards 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. We may restrict your use of social media. Subject to Section 3 above, 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. We intend that any franchisee website will be accessed only through our home page. At this time, we do not allow our franchisees to maintain their own websites (other than the localized webpage that we may provide) or market their Fosters Freeze Business on the Internet (other than through approved social media outlets). Accordingly, you may not maintain a separate website, conduct e-commerce, or otherwise maintain a presence or advertise on the Internet or any other public computer network in connection with



your Fosters Freeze Business without our express written permission, which we may revoke at any time, in our sole discretion.

**11.3. Advertising Cooperative.** We have the right, but not the obligation, to create one or more advertising cooperatives for the purpose of creating and/or purchasing advertising programs for the benefit of all franchisees operating within a particular region in which you may be required to participate. Members of the cooperative will be responsible for administering the cooperative, including determining the amount of contributions from each member. We may require that each cooperative operate with governing documents and prepare annual unaudited financial statements. We reserve the right to form, change, dissolve or merge any advertising cooperative formed in the future. Upon our request, you will be required to participate in compliance with the provisions of the Brand Standards Manual, which we may periodically modify at our discretion. We have the right to determine the composition of all geographic territories and market areas for each advertising cooperative. Franchisees in each cooperative will contribute an amount between 1% and 3% of Gross Sales to the cooperative for each Fosters Freeze Franchise that the franchisee owns that exists within any cooperative's geographic area. Each Fosters Freeze Franchise we own that exists within the cooperative's area will contribute to the cooperative on the same basis as franchisees.

**11.4. Advisory Council.** We also have the right to establish an advisory council ("Council") to advise us on advertising policies and to promote communications between us and all franchisees. If the Council is formed, it will be governed by bylaws that will specify that members of the Council would consist of both franchisees and corporate representatives and will specify the manner in which members are selected, subject to any changes to such bylaws or structure that we deem necessary in our sole discretion. The Council would serve in an advisory capacity only. We reserve the right to grant to the Council any operation or decision-making powers that we deem appropriate. We reserve the right to form, change, merge or dissolve the Council, in our sole discretion.

**11.5. Marketing Assistance from Us.** We may create and make available to you, advertising and other marketing materials for your purchase. We may use the Brand Fund to pay for the creation and distribution of these materials, in which case there will be no additional charge. 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.

**11.6. Other Franchisees.** You understand that other of our franchisees may operate under different forms of franchise agreements and that, consequently, our obligations and rights to our franchisees and the rights, privileges and obligations of various franchisees may differ materially in certain instances, particularly related to advertising obligations and royalties.

## **12. BRAND STANDARDS.**

**12.1. Generally.** You agree to operate your Fosters Freeze 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 Standards 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 set forth in the Brand Standards Manual or other written materials. The Brand Standards Manual will also include guidelines or recommendations in addition to required standards. In some instances, the required standards will include recommendations or guidelines to meet the required standards. You may follow the recommendations or guidelines or some other suitable alternative; provided you meet and comply with the



required standards. In other instances, no suitable alternative may exist. In order 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.

**12.2. Brand Standards Manual.** You agree to establish and operate your Fosters Freeze Business in accordance with the Brand Standards Manual. The Brand Standards Manual may contain, among other things: (i) a description of the authorized products and services that you may offer at your Fosters Freeze Business; (ii) mandatory and suggested specifications, operating procedures, and quality standards for goods, products, services, ingredients and menu items that you use or offer at your Fosters Freeze Business; (iii) policies and procedures that we prescribe from time to time for our franchisees; (iv) mandatory reporting and insurance requirements; (v) mandatory and suggested specifications for your Fosters Freeze Business; (vi) policies and procedures pertaining to any gift card program that we establish; and (vii) 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 Fosters Freeze Business and a list of any designated or approved suppliers for such items. The Brand Standards Manual is designed to establish and protect our brand standards and the uniformity and quality of the products and services offered by our franchisees. We can modify the Brand Standards Manual at any time, but such modifications will not alter your rights under this Franchise Agreement. The modifications will become binding immediately when we send you notice of the modification. All mandatory provisions contained in the Brand Standards Manual (whether they are included now or in the future) are binding on you. If your copy of the Brand Standards Manual is lost, stolen, destroyed or significantly damaged, you will be required to pay us \$500.

**12.3. Authorized Products and Services.** You agree to offer all products and services that we require from time to time for the type of Fosters Freeze Restaurant selected on Attachment B. You may not offer any other products or services at your Fosters Freeze Business without our prior written permission. You may not use your Fosters Freeze Restaurant or permit your Fosters Freeze Restaurant to be used for any purpose other than offering the products and services that we authorize. 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. Our addition, modification or deletion of one or more products or services shall not constitute a termination of the Franchise or this Franchise Agreement. You will not enter into any agreements with any third parties that can process orders for you on your behalf.

**12.4. Suppliers and Purchasing.** You agree to purchase or lease all products, supplies, equipment, services, and other items specified in the Brand Standards Manual. If required by the Brand Standards Manual, you agree to purchase certain products and services only from suppliers designated or approved by us (which may include, or be limited exclusively to, us or our affiliates). You agree to use the technology, ordering system or service provider designated by us and to pay all ordering or service fees associated with such orders assessed by our approved or designated suppliers. You acknowledge that our right to specify the suppliers that you may use and add or remove suppliers is necessary and desirable so that 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 Fosters Freeze 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 your benefit. If you want us to approve a supplier, product or service that you propose, you must send us a written notice specifying the supplier's name and qualifications or product information and provide any additional information that 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. We shall be deemed to have rejected your request if we fail to issue our approval within the 30-day period. You must reimburse



us for all costs and expenses that we incur in reviewing a proposed supplier within ten days after invoicing. We will not approve any alternative supplier for soft serve products or any related products or services.

**12.5. Equipment Maintenance and Changes.** You agree to maintain all of your equipment in good condition and promptly replace or repair any equipment that is damaged, worn out or obsolete. We may require that you add new equipment or change, upgrade or replace your equipment, which may require you to make additional investments. You acknowledge that our ability to require franchisees to make significant changes to their equipment is critical to our ability to administer and change the System, and you agree to comply with any such required change within the time period that we reasonably prescribe.

**12.6. Software and Technology.** You will, at your expense, purchase and maintain any point-of-sale system, cash register, computer hardware and software, communication equipment, communication services, Internet services (including the requirement to maintain a high-speed Internet connection), dedicated telephone and power lines, modems, printers, and other related accessories or peripheral equipment that we may specify for use in the Fosters Freeze Business. You will provide any assistance we require to connect your point-of-sale systems or computer systems with our computer system. We will have the right at any time to retrieve data and other information from your point-of-sale systems or computer systems as we, in our sole discretion, deem necessary or desirable. You shall ensure that we have access at all times to your point-of-sale systems, at your cost. You must provide us with any and all codes, passwords and information necessary to access your computer network. You must receive our prior approval before changing such codes, passwords and other necessary information. You will strictly comply with the policies and procedures specified in the Brand Standards Manual for all items associated with your point-of-sale systems, computer systems and communication equipment and services. You will keep the point-of-sale systems, computer systems and communication equipment in good maintenance and repair, and you will promptly install, at your expense, any additions, changes, modifications or substitutions to your point-of-sale systems, computer hardware, software, communication equipment, telephone and power lines, and other related accessories or peripheral equipment, as we may specify periodically. We may require that you license from us proprietary software for use in the Fosters Freeze Business, and, if so, you will sign the software license agreement we specify, and you will comply with all of its terms and conditions. You will utilize the point-of-sale systems, computer systems and communication equipment and services in connection with the Fosters Freeze Business pursuant to our policies and procedures as contained in the Brand Standards Manual. You are required to pay our then-current technology fee (“Technology Fee”) in accordance with the terms of Section 13.3 of this Franchise Agreement for the use of certain technologies used in the operation of your Fosters Freeze Business, such as email address, location website and intranet/extranet costs. You must also pay our then-current technology business solutions fees to approved suppliers for certain business solutions that will support your business efficiencies, including phone systems, security systems, scheduling software, employee shift/task management software, music subscription, inventory solution and any other solutions we may require from time to time in the Brand Standards Manual for your Fosters Freeze Business. We reserve the right to upgrade, modify and add new systems and software, 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 or software and for any increase in fees from third-party providers. You are required to purchase or license and use our then-current point-of-sale system and pay any applicable support fee for the point-of-sale license and support to our designated vendor. We reserve the right to: (i) license, sublicense or create software and technology that Fosters Freeze franchisees must pay for and use; (ii) require you to license or purchase certain business solutions and software that will support your business efficiencies, including security systems, phone systems, scheduling software, employee shift/task management software, back office financial software, music subscription, inventory solutions and other solutions; (iii) upgrade, modify and add new solutions, software and technologies; (iv) change or add approved suppliers of these services at any time, in our sole discretion; and (v) increase or



decrease the Technology Fee and other technology and licensing and expenses that you are required to pay under this Franchise Agreement upon 30 days' written notice to you. You acknowledge and agree that changes to technology are dynamic and not predictable within the Term of this Franchise Agreement. In order to provide for inevitable but unpredictable changes to technological needs and opportunities, you agree that we will have the right to establish, in writing, reasonable new standards for the implementation of technology in the System and you agree to comply with those reasonable new standards that we establish as if we periodically revised this Section for that purpose. There is no limitation on the frequency and cost of your obligation to maintain, update or upgrade your computer system or its components. It is your responsibility to make sure that you are in compliance with all laws that are applicable to the computer system, your point-of-sale system, or other technology used in the operation of your Fosters Freeze Business, including all data protection or security laws, as well as Payment Card Industry compliance.

**12.7. Maintenance.** You agree to maintain your Fosters Freeze Restaurant in good order and condition, reasonable wear and tear excepted, and make all necessary repairs, including replacements, renewals and alterations at your sole expense, to comply with our standards and specifications. Without limiting the generality of the foregoing, you agree to take the following actions at your sole expense: (i) thorough cleaning, repainting and redecorating of the interior and exterior of the Fosters Freeze Restaurant at the intervals we may prescribe (or at such earlier times that such actions are required or advisable); and (ii) interior and exterior repair of the Fosters Freeze Restaurant as needed. You agree to comply with any maintenance, cleaning or facility upkeep schedule that we prescribe from time to time.

**12.8. Remodeling.** You agree to remodel and make all improvements and alterations to your Fosters Freeze Restaurant that we reasonably require from time to time to reflect our then-current image, appearance and facility specifications. There is no limitation on the cost of any remodeling that we may require. You will not install or permit to be installed on or about the Fosters Freeze Restaurant premises any furnishings, fixtures, equipment, signs, décor, ATM machines, vending machines, video games, juke boxes, public telephone or other type of vending machine, whether or not coin-operated, or the like that we have not previously approved. The revenues you receive from any approved machines shall be included in your Gross Sales. You may not remodel or significantly alter your Fosters Freeze Restaurant without our prior written approval, which will not be unreasonably withheld. However, we will not be required to approve any proposed remodeling or alteration if the same would not conform to our then-current standards, specifications or image requirements. You agree to complete any remodel of the Fosters Freeze Restaurant within nine months after receiving our written request specifying the requirements. Except for maintenance under Section 12.7, we will not require that you remodel the Fosters Freeze Restaurant more than once every seven years.

**12.9. Hours of Operation.** You must keep your Fosters Freeze Business open for the minimum hours and minimum days of operation as specified in the Brand Standards Manual, which may change over the Term. Your Fosters Freeze Business must be open every day of the year, other than federal holidays, unless otherwise agreed to by us. You must establish specific hours of operation and submit those hours to us for approval.

**12.10. Customer Complaints.** If you receive a customer complaint, you must follow the complaint resolution process that we specify to protect the goodwill associated with the Marks. You must reimburse us for the reasonable costs we incur for responding to a customer complaint, including the value of any gift card, refund or other value we provide to the customer as part of addressing the issue.

**12.11. Food Safety Audit.** At any time, we reserve the right to engage the services of one or more mystery shoppers or quality assurance inspection firms who will inspect your Fosters Freeze Restaurant for quality control purposes. These inspections may address a variety of issues, including, but



not limited to, customer service, food safety, sanitation, and inventory rotation. You agree to fully cooperate with any such inspection. If we implement such a program, you may be invoiced directly by the mystery shopper or quality assurance firm for the services rendered. 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. If you fail a food safety audit, we will require you to undergo an additional food safety audit at your own expense within 45 days.

**12.12. Compliance with Standards.** You acknowledge the importance of every one of our standards and operating procedures to the reputation and integrity of the System and the goodwill associated with the Marks.

**12.13. Methods of Payment 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, merchant service providers, loyalty and gift cards, and electronic fund transfer systems (together, “Credit Card Vendors”) that we may periodically designate as mandatory. The term Credit Card Vendors includes, among other things, companies that provide services for electronic payment, such as near field communication vendors (for example, Apple Pay and Google Wallet). You agree not to use any Credit Card Vendor for which we have not given you our prior written approval or as to which we have revoked our earlier approval. We have the right to 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 (see [www.pcisecuritystandards.org](http://www.pcisecuritystandards.org)), or any successor organization or standards that we may reasonably specify. Among other things, you agree to implement the enhancements, security requirements and other standards that the PCI Security Standards Council (or its successor) requires of a merchant that accepts payment by credit and/or debit cards.

**12.14. Crisis Management Event.** You agree to notify us immediately by telephone and email upon the occurrence of a Crisis Management Event. We may establish emergency procedures which may require you to temporarily close the Fosters Freeze Business to the public, in which case you agree that we will not be held liable to you for any losses or costs.

**12.15. Gift and Loyalty Cards.** You agree to participate in our gift and loyalty card programs, if any, and agree to make gift and loyalty cards available for purchase and redemption at your Fosters Freeze Restaurant.

**12.16. Privacy.** 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.

**12.17. Music & Vending.** You agree to only play the music selections and purchase the music equipment that has been approved by us in writing and in accordance with the Brand Standards Manual. Without our prior approval, you agree not to install any jukeboxes, vending machines, electronic games, ATM machines, newspaper racks, entertainment devices or gambling devices at the Fosters Freeze Restaurant and agree to not sell any tickets, subscriptions, chances, raffles or lottery tickets.

**12.18. Annual Conferences.** You, and such other persons employed or contracted by you as we may require, must attend the annual conferences, franchisee meetings, seminars and other gatherings or group sessions (collectively, “Conferences”) we hold. We have the right to determine the topics covered, duration, date and location of all Conferences. You will pay the then-current conference fee we establish for each person attending a Conference (“Conference Fee”) and will also pay the travel



expenses and all other expenses incurred by the persons attending the Conference on your behalf. The Conference Fee is payable to us to help defray the cost of attendance at any Conference and is payable regardless of whether or not you attend any given Conference.

### **13. FEES.**

**13.1. Initial Franchise Fee.** You agree to pay us an initial franchise fee (“Initial Franchise Fee”) in the amount specified in Attachment B, in one lump sum at the time 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.

You may, at the time you sign this Franchise Agreement, purchase the rights to open: (1) a single Franchise; (2) up to three Franchises (a “Multi-3”); or (3) up to five Franchises (a “Multi-5”). If you purchase a Multi-3 or Multi-5 franchise, you will sign the “Multi-Franchise Addendum” the form of which is attached to the Franchise Disclosure Document in Exhibit G. If this Franchise Agreement is for your first Fosters Freeze Business under the Multi-Franchise Addendum, your Initial Franchise Fee shall be \$90,000 for a Multi-3 franchise or \$150,000 for a Multi-5 franchise. To open additional Fosters Freeze Businesses under a Multi-3 or Multi-5 franchise, you will be required to sign our then-current franchise agreement, but you will not be required to pay an Initial Franchise Fee (all other fees will apply). If you purchase a Multi-3 or Multi-5 franchise, you may open all of the same type of Fosters Freeze Restaurant, or you may open one or more of the different Fosters Freeze Restaurants described in this Franchise Agreement, as long as we are still offering that type of Fosters Freeze Restaurant.

If this Franchise Agreement is the renewal of a prior franchise agreement with us for an existing Fosters Freeze Business, then no Initial Franchise Fee is due.

**13.2. Technology Fee; Restaurant Opening Assistance Fee; Architecture Fee.** You must pay us a monthly Technology Fee (currently \$100 per month per location). Your Technology Fee shall be due on the same day as your Royalty (defined below in Section 13.4) or such other date as we designate, and shall continue throughout the Term and any successor term under the Franchise Agreement. You will pay us the “Restaurant Opening Assistance Fee” when you sign this Franchise Agreement to offset our costs in providing you the Opening Assistance. If you have purchased a Multi-3 or Multi-5, you will only be responsible for paying the Restaurant Opening Assistance Fee for your first and second Fosters Freeze Restaurants. If you use an architect that we have not approved, you will pay us an “Architect Fee” of \$2,000 to cover our costs to assist your chosen architect with designs and plans and any other administrative expenses. If applicable, you will pay us the Architect Fee before you engage your architect.

**13.3. Royalty.** On the 10<sup>th</sup> day of each month (or such other date as we designate), you agree to pay us a royalty fee (“Royalty”) equal to: (1) four percent (4%) of Gross Sales during the previous month if this Franchise Agreement is for a Stand-Alone Restaurant; or (2) eight percent (8%) of Gross Sales during the previous month if this Franchise Agreement is for a Confections Restaurant or Co-Located Restaurant. This Royalty is an ongoing payment that allows you to use the Marks and Intellectual Property of the System.

**13.4. 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 as if fully set forth in this Section 13. You also agree to promptly pay us an amount equal to all taxes levied or assessed against us based upon products or services that you sell or based upon products or services that we furnish to you (other than income taxes that we pay based on amounts that you pay us under this Franchise Agreement).



**13.5. 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 \$100 per occurrence, plus the lesser of the daily equivalent of ten percent (10%) per year simple interest or the highest rate allowed by law. If no due date has been specified by us, then interest accrues from the original due date until payment is received in full.

**13.6. Method of Payment.** You must complete and send us an ACH Authorization Form allowing us to electronically debit a banking account that you designate (“Account”) for: (i) all fees payable to us pursuant to this Franchise Agreement (other than the Initial Franchise Fee); and (ii) any amounts that you owe to us or any of our affiliates for the purchase of products or services. We will debit your Account for these payments on or after the due date. Our current form of ACH Authorization Form is attached to the Franchise Disclosure Document in Exhibit G. You must sign and deliver to us any other documents that we or your bank may require authorizing us to debit your Account for these amounts. You must deposit into the Account all revenues that you generate from the operation of your Fosters Freeze Business. You must make sufficient funds available for withdrawal by electronic transfer before each due date. If any check or electronic payment is not successful due to insufficient funds, stop payment or any similar event, any excess amounts that you owe will be payable upon demand, together with a non-sufficient funds fee of \$100 per occurrence, plus the lesser of the daily equivalent of ten percent (10%) per year simple interest or the highest rate allowed by law, and any late charge imposed pursuant to Section 13.5. If 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 four percent (4%) of the total charge. We reserve the right to periodically specify (in the Brand Standards Manual or otherwise in writing) different required payment methods for any payment due to us or our affiliates.

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

**13.8. 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 will not be bound by any instructions for allocation you specify.

**13.9. 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 that you may owe to us against any amounts or liabilities that we may owe you under this Franchise Agreement or any other agreement, loan, transaction or relationship between the parties.

## **14. BRAND PROTECTION COVENANT.**

**14.1. Reason for Covenants.** You acknowledge that the Intellectual Property and the training and assistance that 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 seriously 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.



**14.2. Our Confidential Information.** You will use the Confidential Information only in the operation of the Fosters Freeze Business, and you will not disclose Confidential Information to others, except as expressly authorized by this Franchise Agreement. You will take all appropriate actions to preserve the confidentiality of all Confidential Information, including keeping the Brand Standards Manual in a secure location. Access to Confidential Information must be limited to only your employees or independent contractors who need the Confidential Information to perform their jobs and who are subject to your general policy on maintaining confidentiality as a condition of employment or who have first signed our System Protection Agreement or Confidentiality Agreement (the forms of which are attached to the Franchise Disclosure Document in Exhibit G). You will not copy or permit copying of Confidential Information. 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, for as long as we continue to use the information in confidence (even if edited or revised) plus three years. We will respond promptly and in good faith to any inquiry by you about continued protection of any Confidential Information.

All data that you collect, create, provide or otherwise develop (including, but not limited to, customer information) 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 hereby 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 Fosters Freeze Business. You agree to provide us with the information that we reasonably require with respect to 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.

Without limiting the generality of anything else contained herein, soft serve mix used in the preparation of the required and approved Fosters Freeze food products is unique. Its formula and the process of its manufacture constitute a trade secret. The right to purchase and use the soft serve mix is licensed to you pursuant to this Franchise Agreement, and such right is restricted to use in the franchise business at the Fosters Freeze Restaurant solely for the term of this Franchise Agreement.

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 court order.

**14.3. Competition during Term.** You and the Owners 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, 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); 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.

**14.4. Competition after Term.** During the Post-Term Restricted Period, you and the Owners agree not to engage in any Prohibited Activities. Notwithstanding the foregoing, you and the



Owners may have an interest in a Competitive Business during the Post-Term Restricted Period as long as the Competitive Business is not located within, and does not provide competitive products or services to, customers who are located within the Restricted Territory. If you or an Owner engages in a Prohibited Activity during the Post-Term Restricted Period (other than having an interest in a Competitive Business that is permitted under this Section), then the Post-Term Restricted Period applicable to you or the non-compliant Owner shall be extended by the period of time during which you or the non-compliant Owner, as applicable, engaged in the Prohibited Activity.

**14.5. Employees and Others Associated with You.** Any Designated Manager and, if you are an Entity, any officer that does not own equity in you must sign our System Protection Agreement, the form of which is attached to the Franchise Disclosure Document in Exhibit G. You must ensure that all of your employees, officers, directors, partners, members, independent contractors, and other persons associated with you or your Fosters Freeze Business who may have access to our Confidential Information, and who are not required to sign a System Protection Agreement, sign and send us a Confidentiality Agreement, the form of which is attached to the Franchise Disclosure Document in Exhibit G, before having access to our Confidential Information. You must use your best efforts to ensure that 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 reasonable expenses that we incur in enforcing a Confidentiality Agreement or System Protection Agreement, including reasonable attorney fees and court costs.

**14.6. Covenants Reasonable.** You and the Owners 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 Fosters Freeze franchisees benefits you and the Owners in that it prevents others from unfairly competing with your Fosters Freeze 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 and the Owners hereby waive any right to challenge the terms of this Section 14 as being overly broad, unreasonable or otherwise unenforceable.

**14.7. Breach of Covenants.** You and the Owners agree that failure to comply with the terms of this Section 14 will cause substantial and irreparable damage to us and/or other Fosters Freeze franchisees for which there is no adequate remedy at law. Therefore, you and the Owners agree that any violation of the terms of this Section 14 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). 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 Franchise Agreement are exclusive of any other, but may be combined with others under this Franchise 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 or an Owner may have against us, regardless of cause or origin, cannot be used as a defense against our enforcement of this Section 14.

**14.8. Ownership of Public Companies.** Notwithstanding the provisions of this Section 14, you and the Owners will have the right to own up to five percent (5%) of any publicly-held company or mutual fund that owns, operates, has an interest in, or controls any Competitive Business; provided that such company has a class of securities that is publicly traded on a national exchange or quotation system and is subject to the reporting requirements of the Securities Exchange Act of 1934, as amended.



## 15. YOUR OTHER RESPONSIBILITIES.

**15.1. Insurance.** Before your Fosters Freeze Business first opens for business, you will obtain insurance in the types and amounts specified herein. You will maintain all required insurance in force during the term of this Franchise Agreement, and you will obtain and maintain any additional or substituted insurance coverage, limits and amounts as we may periodically require. Your compliance with these insurance provisions does not relieve you of any liability under any indemnity provisions of this Franchise Agreement.

We currently require you to maintain the following insurance coverages: (1) commercial general liability insurance with limits of at least \$1,000,000 per occurrence, at least \$2,000,000 aggregate, and a maximum deductible of \$5,000; (2) workers compensation insurance consistent with applicable law; and (3) hired and non-owned automobile coverage with a limit of at least \$1,000,000. Our insurance requirements are subject to change during the term of this Franchise Agreement, and you agree to comply with each such change. You agree to provide us a copy of your Certificate of Insurance or other proof of coverage prior to opening, within ten days of any renewal of a policy, and at any other time on demand. You agree to obtain these insurance policies from insurance carriers that are rated "A" or better by A.M. Best & Company, Inc. and that are licensed and admitted in the state in which you operate your Fosters Freeze Business. All insurance policies (except for employment liability insurance policies) must be endorsed to: (i) name us (and our members, officers, directors and employees) as additional insureds; (ii) contain a waiver by the insurance carrier of all subrogation rights against us; and (iii) provide that we receive 30-days' prior written notice of the termination, expiration, cancellation or modification of the policy. If any of your policies fail to meet these criteria, then we may disapprove the policy and you must immediately find additional coverage with an alternative carrier satisfactory to us. Upon ten days' notice to you, we may increase the minimum protection requirement as of the renewal date of any policy and require different or additional types of insurance at any time, including excess liability (umbrella) insurance, to reflect inflation, identification of special risks, changes in law or standards or liability, higher damage awards, or other relevant changes in circumstances. 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 twenty percent (20%) administrative surcharge.

**15.2. Books and Records.** 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 Fosters Freeze Business. You must send us copies of your books and records within five days of our request.

**15.3. Reports.** You will prepare written periodic reports, in the forms that we require, containing the information we require about your operations during each reporting period. You will submit all required weekly reports by Wednesday each week for the preceding business week (Monday through Sunday). We may modify the deadline days and times for submission of all reports. You will submit all required semi-monthly reports to us within 7 days after the semi-monthly period to which they relate. You will submit all required monthly reports to us within 7 days after the month to which they relate, and all other reports within the time period required by the Brand Standards Manual. If you do not submit the monthly reports to us within five days of the request, we will debit your Account a late fee of \$100 per occurrence and \$100 per week until you submit the required report. These fees will be payable to the Brand Fund, if established, or to us. You will prepare and submit other reports and information about your operations as we may reasonably request in writing or as required by the Brand Standards Manual. We may require, at our option, that certain reports you are required to submit be certified as accurate and complete by you, your owners or your chief financial officer, and that certain reports be submitted using



the formats and communication media that we specify. If requested by us, your profit and loss statements and balance sheets must be certified by a certified public accountant at your expense, and you will cause your certified public accountant, if any, to consult with us concerning such statements and balance sheets at your cost.

**15.4. Financial and Tax Statements.** You will deliver monthly Financial Statements to us within 20 days of the end of each calendar month, which must be certified by you as complete and accurate. You must also prepare annual Financial Statements within 45 days of the end of your fiscal year. All Financial Statements must be in the form specified by us and must conform to our standard chart of accounts as prescribed by us. During the first year of operation, you must use an accepted accounting service to ensure your compliant preparation of required reports and financial statements. 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 Fosters Freeze Business within 30 days of filing. If you do not submit the Financial Statements or tax returns to us by the deadline, you will be required to pay a late fee of \$100 per occurrence and \$100 per week until you submit required Financial Statements or tax returns. These fees will be deposited into the Brand Fund, if established, or us.

**15.5. Legal Compliance.** 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 Fosters Freeze Business. You will indemnify us for any taxes that arise out of or result from your operation of the Fosters Freeze Business. If any franchise, sales or other tax which is based upon the revenues, receipts, sales, business activities or operation of the Fosters Freeze Business is imposed on us by any taxing authority, you will reimburse us for all such taxes paid by us within 15 days of receiving an invoice from us for such taxes. You must secure and maintain in force all required licenses, permits and regulatory approvals for the operation of your Fosters Freeze Business, and operate and manage your Fosters Freeze Business in full compliance with all applicable laws, ordinances, rules and regulations. 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 Fosters Freeze 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 your failure to fully comply with the law, rule or regulation.

You and the 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 the Owners 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.

**15.6. Photo/Video Release.** 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. If you receive a request to have your location or Fosters Freeze Restaurant photographed or filmed, you may not grant such request unless you first obtain our prior written consent to do so. Any amounts paid or owed to you for such photographs or films will be included in your Gross Sales.

**15.7. Alcoholic Beverages; Competing Products.** If you are a Co-Located Restaurant franchisee, the Host Business may sell alcoholic beverages in sealed containers. Otherwise, you may not sell alcoholic or intoxicating beverages from your Fosters Freeze Restaurant or in connection with Fosters Freeze products. If you have a Co-Located Location, you will be prohibited from selling any products that compete with Fosters Freeze products from the Host Business. Other than the approved Host Business, your Fosters Freeze Restaurant may not be used for any business other than described in this Franchise Agreement.

**15.8. Soft Serve Mix.** As described in more detail in the Brand Standards Manual, you shall only use soft serve mix which has been prepared according to our specification and is purchased from our approved supplier(s).

## **16. INSPECTION AND AUDIT.**

**16.1. Inspections.** To ensure compliance with this Franchise Agreement, we or our representatives will have the right to enter your Fosters Freeze Restaurant, evaluate your operations, and inspect or examine your books, records, accounts and tax returns. Our evaluation may include observing or participating during business hours. We may conduct our evaluation 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 Fosters Freeze Business, and you, your employees and independent contractors will cooperate and not interfere with our inspection. You consent to us accessing your computer system and retrieving any information that we deem appropriate in conducting the inspection. You agree to pay to us the reasonable costs we incur for conducting on-site inspections of your Fosters Freeze Restaurant if we determine that your operations have deviated from the System Standards or determine that you are in violation of this Franchise Agreement as a result of such inspection.

**16.2. Audit.** We have the right, at any time, to have an independent audit made of your books and financial records. You agree to fully cooperate with us and any third parties that we hire to conduct the audit. Any audit will be performed at our cost and expense unless the audit: (i) is necessitated by your failure to provide the information requested or to preserve records or file reports as required by this Franchise Agreement; or (ii) reveals an understatement of any amount due to us by at least two percent (2%) in any month, in which case you agree to reimburse us for the cost of the audit and inspection, including, without limitation, any amount that you owe us, together with any related expenses and late fees payable pursuant to Section 13.5 plus ten percent (10%) interest on the underpayment amount and a \$100 handling fee, and reasonable accounting and legal expenses and travel and lodging expenses that we or our representatives incur. The audit cost reimbursements will be due ten days after invoicing. We shall not be deemed to have waived our right to terminate this Franchise Agreement by accepting reimbursements of our audit costs.

## **17. INTELLECTUAL PROPERTY.**

**17.1. Ownership and Use of Intellectual Property.** You acknowledge that: (i) we are the sole and exclusive owner of the 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 Fosters Freeze Franchise during the Term pursuant to, and only in compliance with, this Franchise Agreement, the Brand Standards Manual, and all applicable standards, specifications and operating procedures that 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 Standards 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.

**17.2. Changes to Intellectual Property.** We have the right to modify the Intellectual Property at any time in our sole and absolute discretion, including by changing the Marks, the System, the 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 that you incur (including the loss of any goodwill associated with a Mark) because of any addition, modification, substitution or discontinuation of the Intellectual Property.

**17.3. Use of Marks.** You agree to use the Marks as the sole identification of your Fosters Freeze Business; provided, however, you must identify yourself as the independent owner of your Fosters Freeze Business in the manner that we prescribe. You may not use any Marks in any modified form or as part of any corporate or trade name or with any prefix, suffix or other modifying words, terms, designs or symbols (other than logos licensed to you by this Franchise Agreement). You agree to: (i) prominently display the Marks on or in connection with any media advertising, promotional materials, posters and displays, receipts, stationery and forms that we designate, and in the manner that we prescribe to give notice of trade and service mark registrations and 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.

**17.4. Use of Confidential Information.** We will disclose the Confidential Information to you in the initial training program, the Brand Standards Manual, and in other guidance furnished to you during the Term. You agree that you will not acquire any interest in the Confidential Information other than the right to utilize it in strict accordance with the terms of this Franchise Agreement in the development and operation of your Fosters Freeze Business. You acknowledge that the Confidential Information is proprietary and is disclosed to you solely for use in the development and operation of your Fosters Freeze Business during the Term.

**17.5. Improvements.** If you conceive of or develop any improvements or additions to the marketing, method of operation, or the products or services offered by a Fosters Freeze Business (collectively, “Improvements”), you agree to promptly and fully disclose the Improvements to us without disclosing the Improvements to others. You must obtain our approval prior to using any such Improvements. Any Improvement that we approve may be used by us and any third parties that we authorize to operate a Fosters Freeze Franchise, 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 that we or other franchisees develop that we authorize for general use in connection with the operation of a Fosters Freeze Business.

**17.6. Notification of Infringements and Claims.** 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. INDEMNITY.** You agree to indemnify the Indemnified Parties and hold them harmless for, from and against any and all Losses and Expenses incurred by any of them as a result of or in connection with any of the following: (i) the marketing, use or operation of your Fosters Freeze Business or any other use of the Fosters Freeze Business, including the preparation and sale of any product made in or sold from the Fosters Freeze Restaurant, or your performance and/or breach of any of your obligations under this Franchise Agreement; (ii) any Claim relating to taxes or penalties assessed by any governmental entity against us that are directly related to your failure to pay or perform functions required of you under this Franchise Agreement; (iii) any labor, employment or similar type of Claim pertaining to your employees, including claims alleging that we are a joint employer of your employees; (iv) any actions, investigations, rulings or proceedings conducted by any state or federal agency relating to your employees, including, without limitation, the United States Department of Labor, the Equal Employment Opportunity Commission, and the National Labor Relations Board; (v) your failure to pay the monies payable to any Indemnified Party pursuant to this Franchise Agreement, or to do and perform any other act, matter or thing required by this Franchise Agreement; or (vi) any action by an Indemnified Party to obtain performance by you of any act, matter or thing required by this Franchise Agreement. You and the Owners 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: (A) retain counsel of their own choosing to represent them with respect to any Claim; and (B) 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 and accounting fees, within ten days of the date of each invoice delivered by such Indemnified Party to you enumerating such costs, expenses and attorney and accounting fees.

## **19. TRANSFERS.**

**19.1. 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 persons without assigning this Franchise Agreement.

**19.2. By You.** You understand that the rights and duties created by this Franchise Agreement are personal to you and the Owners and that we have granted the Fosters Freeze Franchise in reliance upon the individual or collective character, skill, aptitude, attitude, business ability and financial capacity of you and the Owners. 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. We will not unreasonably withhold our approval of any proposed Transfer; provided that the following conditions are all satisfied:

- (i) you have provided us with written notice of the proposed Transfer at least 45 days prior to the transaction;
- (ii) the proposed transferee is, in our opinion, an individual of good moral character who has sufficient business experience, aptitude and financial resources to own and



operate a Fosters Freeze Business and otherwise meets all of our then-applicable standards for franchisees;

(iii) all of your monetary obligations to us 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);

(iv) all of the owners of the transferee 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);

(v) your landlord consents to your assignment of the lease to the transferee, or the transferee is diligently pursuing an approved substitute location within the Protected Area (if you are a Stand-Alone Restaurant franchisee) or reasonably near your Fosters Freeze Restaurant (if you are a franchisee for a Confections Restaurant);

(vi) the transferee and its owners, to the extent necessary, have obtained all licenses and permits required by applicable law in order to own and operate the Fosters Freeze Business;

(vii) the transferee and its owners sign our then-current form of franchise agreement and related documents, including, but limited to, our then-current form of Owners Agreement or other guaranty (unless we, in our sole discretion, instruct you to assign this Franchise Agreement to the transferee), except that: (a) the Term and successor term(s) shall be the Term and successor term(s) remaining under this Franchise Agreement; and (b) the transferee need not pay a separate initial franchise fee;

(viii) you must remodel your Fosters Freeze Restaurant in accordance with Section 12.8 to comply with our then-current standards and specifications, or you obtain a written commitment from the transferee to do so;

(ix) you or the transferee pays us a transfer fee equal to thirty-five percent (35%) of our then-current initial franchise fee, or \$15,750 if we are not then offering franchises for sale. You will pay the transfer fee as follows: (1) \$1,000 non-refundable deposit at the time of your transfer application request; and (2) the remaining balance shall be due at or before the time that you consummate the approved Transfer.

(x) you and the Owners sign a General Release for all claims arising before or contemporaneously with the Transfer;

(xi) you enter into an agreement with us to subordinate the transferee's obligations to you to the transferee's financial obligations owed to us pursuant to the Franchise Agreement;

(xii) we do not elect to exercise our right of first refusal described in Section 19.5;

(xiii) 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; and



(xiv) you must reimburse us for our costs that we incur as a result of the Transfer, including, but not limited to broker fees, commissions or other placement fees.

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.

**19.3. Transfer to an Entity.** If you are an individual or general partnership, you may transfer your ownership interests to an Entity provided that the Owner or Owners of the Entity are the same persons who signed this Franchise Agreement and comply with all conditions set forth in Section 19.2. Our right of first refusal in Section 19.5 will not apply for a Transfer conducted under this Section 19.3, and you must reimburse us for all of our fees and costs, including attorney fees, associated with your Transfer to the Entity, but you will not be responsible for the transfer fee described in Section 19.2 above.

**19.4. Death or Disability of an Owner.** Upon the death or disability of an Owner, the Owner's ownership interest in you or the Fosters Freeze Franchise, as applicable, must be assigned to another Owner or to a third party approved by us within 180 days of such Owner's death or disability, as the case may be. For purposes of this Section, an Owner 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 Fosters Freeze Business in the manner required by this Franchise Agreement and the Brand Standards 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 19.4) the person automatically will be considered disabled as of the date of refusal. Your estate or legal representative must apply to us for the right to Transfer to the next of kin within 120 calendar days after your or your Owner's death or disability. We may appoint an Interim Manager and charge you the applicable fee under Section 8.4 if the death or disability of any Owner or ownership interest in you or the Franchise has any impact on the Fosters Freeze Business.

**19.5. 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 Fosters Freeze Business. If we notify you that we intend to purchase the Fosters Freeze Business within such 30-day period, you or the Owner, as applicable, must sell the Fosters Freeze Business to us on the same terms as are contained in the offer that 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 that we request concerning the Fosters Freeze Business, and we will have the absolute right to terminate the obligation to purchase the Fosters Freeze 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 Section 19.2 (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.



## 20. TERMINATION.

**20.1. By You.** You may terminate this Franchise Agreement if you are in full compliance and we materially breach this Franchise Agreement and fail to cure the breach within 30 days after you send us a written notice specifying the nature of the breach. If you terminate this Franchise Agreement, you must still comply with your post-termination obligations described in Section 21 and all other obligations that survive the expiration or termination of this Franchise Agreement.

**20.2. Termination by Us without Cure Period.** We may, in our sole discretion, terminate this Franchise Agreement immediately upon written notice to you, without opportunity to cure, for any of the following reasons, all of which constitute material events of default under this Franchise Agreement:

- (i) if you or your Operating Principal fails to satisfactorily complete the initial training program and you fail to appoint someone within 30 days that can;
- (ii) if you fail to obtain our approval of your site within the time period required;
- (iii) if you fail to secure a fully executed lease and Lease Addendum within the time period required;
- (iv) if you fail to open your Fosters Freeze Business within the time period required;
- (v) if you become insolvent by reason of your inability to pay your debts as they become due or you file a voluntary petition in bankruptcy or any pleading seeking any reorganization, liquidation, dissolution, or composition or other settlement with creditors under any law, or are the subject of an involuntary bankruptcy (which may or may not be enforceable under the Bankruptcy Reform Act of 1978);
- (vi) if your Fosters Freeze Franchise, or a substantial portion of the assets associated with your Fosters Freeze Franchise, are: (a) seized, taken over or foreclosed by a government official in the exercise of his or her duties; or (b) seized, taken over or foreclosed by a creditor, lienholder or lessor; or (c) a final judgment against you remains unsatisfied for 30 days (unless a supersedes or other appeal bond has been filed); or (d) a levy of execution has been made upon the license granted by this Franchise Agreement or upon any property used in your Fosters Freeze Restaurant, and it is not discharged within five days of the levy;
- (vii) if you abandon or fail to operate your Fosters Freeze Business for three consecutive business days, unless the failure is due to an event of force majeure or another reason that we previously approved;
- (viii) if a regulatory authority suspends or revokes a license or permit held by you or an Owner that is required to operate the Fosters Freeze Business, even if you or the Owner still maintain appeal rights;
- (ix) if you or an Owner: (a) is convicted of or pleads no contest to a felony, a crime involving moral turpitude, or any crime which impairs the reputation of the System or the goodwill associated with the Marks; (b) is subject to any material administrative disciplinary action; or (c) fails to comply with any material federal, state or local law, rule or regulation applicable to your Fosters Freeze Business;



- (x) if you or an Owner commits an act that can reasonably be expected to adversely affect the reputation of the System or the goodwill associated with the Marks;
- (xi) if you manage or operate your Fosters Freeze Business in a manner that presents a health or safety hazard to your customers, employees or the public;
- (xii) if you or an Owner make any material misrepresentation to us, whether occurring before or after being granted the Fosters Freeze Franchise;
- (xiii) 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;
- (xiv) if you underreport any amount owed to us by at least two percent (2%), after having already committed a similar breach that had been cured;
- (xv) if you make an unauthorized Transfer;
- (xvi) if you make an unauthorized use of the Intellectual Property;
- (xvii) if you breach any of the brand protection covenants;
- (xviii) if any Owner, or the spouse of any Owner, breaches an Owners Agreement;
- (xix) 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;
- (xx) if the lease for your Fosters Freeze Restaurant is terminated due to your default;
- (xxi) if you are an Entity and you are dissolved;
- (xxii) if a final judgment against you in any amount we deem material (but in no event less than \$25,000) remains unsatisfied or of record for 30 days or longer (unless a supersedeas bond is filed); or
- (xxiii) 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.

**20.3. Additional Conditions of Termination.** In addition to our termination rights in Section 20.2, 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 Standards 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. If we deliver a notice of default to you pursuant to this Section 20.3, we may suspend performance of any of our obligations under this Franchise Agreement until you fully cure the breach.

**20.4. Mutual Agreement to Terminate.** If you and we mutually agree in writing to terminate this Franchise Agreement, you and we will be deemed to have waived any required notice period.

**20.5. Liquidated Damages.** Upon termination of this Franchise Agreement: (i) by us due to your material default of this Franchise Agreement; or (ii) following your purported termination



without cause, you agree to pay to us, within 15 days after the effective date of this Franchise Agreement's termination, in addition to the amounts owed hereunder, liquidated damages equal to the average monthly Royalties and Brand Fund Contribution you paid during the total months of operation preceding the effective date of termination multiplied by: (a) 36; or (b) the number of months remaining in this Franchise Agreement had it not been terminated, whichever is less, but in no case will such damages be less than \$30,000.

You and we acknowledge and agree that it would be impracticable to determine precisely the damages we would incur from this Franchise Agreement's termination and the loss of cash flow from Royalties due to, among other things, the complications of determining what costs, if any, we might have saved and how much the Royalties would have grown over what would have been this Franchise Agreement's remaining Term. You and we consider this liquidated damages provision to be a reasonable, good faith pre-estimate of those damages.

The liquidated damages provision only covers our damages from the loss of cash flow from the Royalties. It does not cover any other damages, including damages to our reputation with the public and landlords and damages arising from a violation of any provision of this Franchise Agreement other than the Royalty section. You and each of the Owners agree that the liquidated damages provision does not give us an adequate remedy at law for any default under, or for the enforcement of, any provision of this Franchise Agreement other than the Royalty section.

## 21. POST-TERM OBLIGATIONS.

**21.1. Obligations of You and the Owners.** After the termination, expiration or Transfer of this Franchise Agreement, you and the Owners agree to:

- (i) immediately cease to use the Intellectual Property;
- (ii) pay us all amounts that you owe us;
- (iii) comply with all covenants described in Section 14 that apply after the expiration, termination or Transfer of this Franchise Agreement or the disposal of an ownership interest by an Owner;
- (iv) return all copies of the Brand Standards 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, Copyrights or other identification relating to a Fosters Freeze Business, unless we allow you to Transfer such items to an approved transferee;
- (v) return all copies of any software we license to you (and delete all such software from your computer memory and storage);
- (vi) take such action as may be required to cancel all fictitious or assumed names or equivalent registrations relating to your use of any of the Marks;
- (vii) make such modifications and alterations to the premises 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 at the premises; provided, however, that this subsection shall not apply if your Fosters Freeze Franchise is transferred to an approved transferee or if we exercise our right to purchase your entire Fosters Freeze Business. If you fail to do so, you must pay us any expenses we incur to de-identify your Fosters Freeze Restaurant;



(viii) 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: (a) the telephone numbers, accounts and/or domain names, if applicable, related to the operation of your Fosters Freeze Business; and (b) any regular, classified or other telephone directory 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); and

(ix) provide us with 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.

## **21.2. Right to Purchase.**

**21.2.1. Generally.** Upon the termination or expiration of this Franchise Agreement, we shall have the right, but not the obligation, to purchase your Fosters Freeze Business and/or its assets at fair market value. If you and we are unable to agree upon a fair market value, the fair market value will be ascertained by an independent business appraiser according to the provisions of this Section 21.2 below. If we elect to exercise this option, the date of determination of the fair market value shall be the effective date of the termination or expiration of this Franchise Agreement (“Appraisal Date”) and, if we elect to make such purchase, we shall give you notice of our intent within 30 days following termination or expiration. We will notify you of the specific items that we wish to purchase (“Acquired Assets”). We may also require that you assign your lease to us at no additional charge.

**21.2.2. Selecting Qualified Appraiser.** You and we each shall agree on the appointment of an appraiser with experience appraising businesses comparable to your Fosters Freeze Business in the United States (“Qualified Appraiser”). This appointment of the appraiser shall be made within 30 days after the Appraisal Date by agreeing in writing. If within this 30-day period, the parties fail to agree on a Qualified Appraiser, then a Qualified Appraiser shall be appointed by the American Arbitration Association (acting through its office located closest to our corporate headquarters) as promptly as possible after that, upon application by either us or you.

**21.2.3. Information for Appraisal.** You must furnish to the Qualified Appraiser a copy of your current Financial Statements, as well as your Financial Statements for the prior three years (or the period of time that you have operated your Fosters Freeze Business, if less than three years), together with the work papers and other financial information or other documents or information that the Qualified Appraiser may request. The Qualified Appraiser shall take into account the other information and factors that they deem relevant, but the Qualified Appraiser shall be instructed that there shall be no consideration of goodwill or Intellectual Property in the determination of fair market value.

**21.2.4. Appraisal Process.** Within 60 days after the appointment the Qualified Appraiser, the Qualified Appraiser shall appraise the appraised assets at fair market value without taking into account any value for goodwill or Intellectual Property (the “Appraised Value”). The Qualified Appraiser shall issue a report and the Appraised Value shall be the value determined by the Qualified Appraiser. You and we shall equally bear the cost of the appraisal and the Qualified Appraiser.

**21.2.5. Closing.** Once the Appraised Value has been determined, we will have at least 60 days to prepare for the closing. We will be entitled to receive from you all customary



representations and warranties given by you as the seller of the Acquired Assets and you must transfer good and clean title to the Acquired Assets, subject to any exceptions agreed to by us. We may deduct from the Appraised Value all amounts owed to us and our affiliates under this Franchise Agreement, any promissory note, and any other agreement between you and us or between you and our affiliates.

## **22. DISPUTE RESOLUTION.**

**22.1. Mediation.** Without limiting our rights and remedies under Section 20 and except as set forth in Section 22.3 below, 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 prior to a hearing in binding arbitration. Such mediation shall take place in the city closest to our principal place of business (currently Chino Hills, CA) 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. 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. Prior to mediation, and before commencing any legal action 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.

**22.2. Binding Arbitration.** If the parties cannot fully resolve and settle a dispute through mediation as set forth in Section 22.1, 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 Chino Hills, CA) by AAA (if AAA or any successor thereto is no longer in existence at the time arbitration is commenced or 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). 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:

(i) **Notice of Arbitration.** Either party may initiate the 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.

(ii) **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.

(iii) 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.

(iv) 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.

(v) Arbitrator's Decision. The arbitrator will issue a written decision within ten 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, 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.

(vi) 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. 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.

(vii) Arbitration Expenses. The fees 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.

(viii) Confidentiality. Except as required by applicable law, including the required disclosure in our franchise disclosure document, 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 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.

(ix) **Acknowledgement.** The parties acknowledge that nothing herein shall delay or otherwise limit our rights and remedies under Section 20 of this Franchise Agreement. A notice or request for arbitration or mediation will not operate to stay, postpone, or rescind the effectiveness of any demand for performance or notice of termination under this Franchise Agreement.

**22.3. Disputes Not Subject to Mediation or Arbitration.** Notwithstanding the foregoing, the following will not be subject to mediation or arbitration under Sections 22.1 or 22.2, and you or we may immediately file a lawsuit in accordance with this Section 22.3 with respect to any of the following:

- (i) any action that involves an alleged breach of any restrictive covenant under Section 14;
- (ii) any action petitioning specific performance to enforce your use of the Marks or the System or to prevent unauthorized duplication of the Marks or the System;
- (iii) any action for equitable relief, including, without limitation, seeking preliminary or permanent injunctive relief, specific performance, or other relief in the nature of equity, including an action to enjoin an alleged violation or harm (or imminent risk of violation or harm) to any of our rights in the Intellectual Property, Copyrighted Works, Marks, the System, or in any of our specialized training, trade secrets, or other Confidential Information, brought at any time, including prior to or during the pendency of any mediation or arbitration proceedings under Sections 22.1 or 22.2; or
- (iv) any action seeking compliance with post-termination obligations set forth in Section 21;
- (v) any action we bring against you seeking enforcement of your payment obligations hereunder; or
- (vi) any action in ejectment or for possession of any interest in real or personal property.

**22.4. Venue.** All disputes and claims must be mediated, arbitrated and, if applicable, litigated in the principal city closest to our principal place of business (currently Chino Hills, CA); provided that we have the option to bring suit against any you in any state or federal court within the jurisdiction where your Fosters Freeze Business is or was located or where any of your owners lives for those claims brought in accordance with Section 22.3. 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 to the maintenance of any action or proceeding so brought and waives any bond, surety, or other security that might be required of any other party with respect thereto.

**22.5. Fees and Costs.** 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. In addition, 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 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 22.5. 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 expense that the other party incurs in the action or proceeding, including, without limitation, costs and attorneys' fees as described in this Section 22.5.

**22.6. JURY TRIAL & CLASS ACTION WAIVER.** WE AND YOU IRREVOCABLY WAIVE: (i) TRIAL BY JURY; AND (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.

**22.7. Survival.** We and you (and the Owners) agree that the provisions of this Section 22 shall apply during the term of this Franchise Agreement and following the termination, expiration or non-renewal of this Franchise Agreement. We and you agree to fully perform all obligations under this Franchise Agreement during the entire mediation, arbitration or litigation process.

## **23. SECURITY INTEREST.**

**23.1. Collateral.** You grant to us a security interest ("Security Interest") in all of the furniture, fixtures, equipment, signage and realty (including your interests under all real property and personal property leases) of the Fosters Freeze Business, together with all similar property now owned or hereafter acquired, additions, substitutions, replacements, proceeds and products thereof, wherever located, used in connection with the Fosters Freeze Business. All items in which a security interest is granted are referred to as the collateral ("Collateral").

**23.2. Indebtedness Secured.** The Security Interest is to secure payment of the following (the "Indebtedness"):

- (i) All amounts due under this Franchise Agreement or otherwise by you;
- (ii) All sums which we may, at our option, expend or advance for the maintenance, preservation and protection of the Collateral, including, without limitation, payment of rent, taxes, levies, assessments, insurance premiums, and discharge of liens, together with interest, or any other property given as security for payment of the Indebtedness;
- (iii) All expenses, including reasonable attorney fees, which we incur in connection with collecting any or all Indebtedness secured hereby or in enforcing or protecting our rights under the Security Interest and this Franchise Agreement; and
- (iv) All other present or future, direct or indirect, absolute or contingent, liabilities, obligations and indebtedness of you to us or third parties under this Franchise Agreement, however created, and specifically including all or part of any renewal or extension of



this Franchise Agreement, whether or not you execute any extension agreement or Successor Agreement.

Our security interest, as described herein, shall be subordinated to any financing related to your operation of the Fosters Freeze Business, including, but not limited to, a real property mortgage and equipment leases.

**23.3. Additional Documents.** You will, from time to time as required by us, join with us in executing any additional documents and one or more financing statements pursuant to the Uniform Commercial Code (and any assignments, extensions or modifications thereof) in form satisfactory to us.

**23.4. Possession of Collateral.** Upon default and termination of your rights under this Franchise Agreement, we shall have the immediate right to possession and use of the Collateral.

**23.5. Our Remedies in Event of Default.** You agree that, upon the occurrence of any default set forth above, the full amount remaining unpaid on the Indebtedness secured shall, at our option and without notice, become due and payable immediately, and we shall then have the rights, options, duties and remedies of a secured party under, and you shall have the rights and duties of a debtor under, the Uniform Commercial Code of California (or other applicable law), including, without limitation, our right to take possession of the Collateral and without legal process to enter any premises where the Collateral may be found. Any sale of the Collateral may be conducted by us in a commercially reasonable manner. Reasonable notification of the time and place of any sale shall be satisfied by mailing to you pursuant to the notice provisions set forth above.

**23.6. Special Filing as Financing Statement.** This Franchise Agreement shall be deemed a Security Agreement and a Financing Statement. This Franchise Agreement may be filed for record in the real estate records of each county in which the Collateral, or any part thereof, is situated and may also be filed as a Financing Statement in the counties or in the office of the Secretary of State, as appropriate, in respect of those items of Collateral of a kind or character defined in or subject to the applicable provisions of the Uniform Commercial Code as in effect in the appropriate jurisdiction.

**24. YOUR REPRESENTATIONS.** YOU HEREBY REPRESENT THAT: (i) YOU HAVE NOT RECEIVED OR RELIED UPON ANY WARRANTY OR GUARANTEE, EXPRESS OR IMPLIED, AS TO THE POTENTIAL VOLUME, PROFITS OR SUCCESS OF THE FOSTERS FREEZE BUSINESS CONTEMPLATED BY THIS FRANCHISE AGREEMENT, EXCEPT FOR ANY INFORMATION DISCLOSED IN THE FRANCHISE DISCLOSURE DOCUMENT; (ii) YOU HAVE NO KNOWLEDGE OF ANY REPRESENTATIONS BY US OR ANY OF OUR OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES OR REPRESENTATIVES ABOUT THE FOSTERS FREEZE BUSINESS CONTEMPLATED BY THIS FRANCHISE AGREEMENT THAT ARE CONTRARY TO THE TERMS OF THIS FRANCHISE AGREEMENT OR THE FRANCHISE DISCLOSURE DOCUMENT; (iii) YOU RECEIVED OUR FRANCHISE DISCLOSURE DOCUMENT AT LEAST FOURTEEN CALENDAR DAYS BEFORE YOU SIGNED A BINDING AGREEMENT OR PAID ANY MONEY TO US OR OUR AFFILIATES; (iv) 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; (v) 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 (vi) YOU HAVE CONDUCTED AN INDEPENDENT INVESTIGATION OF THE FOSTERS FREEZE BUSINESS CONTEMPLATED BY THIS FRANCHISE AGREEMENT AND RECOGNIZE THAT IT INVOLVES



BUSINESS RISKS, MAKING THE SUCCESS OF THE VENTURE LARGELY DEPENDENT UPON YOUR OWN BUSINESS ABILITIES, EFFORTS AND JUDGMENTS, AND THE ABILITIES, EFFORTS AND SERVICES OF YOU AND THOSE YOU EMPLOY.

## 25. GENERAL PROVISIONS.

**25.1. Governing Law.** Except as governed by the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. §§ 1051, et seq.) and as described in Section 23 above, this Franchise Agreement and the franchise relationship shall be governed by the laws of state where the Fosters Freeze Restaurant is located (without reference to its principles of conflicts of law), and any law of the State of California that regulates 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. Any issue regarding arbitration will be governed by the Federal Arbitration Act and the federal common law of arbitration.

**25.2. Relationship of the Parties.** You are an independent contractor. You will exercise full and complete control over, and have full responsibility for, all of your contracts, daily operations, labor relations, employment practices and policies, including the recruitment, selection, hiring, disciplining, firing, training, compensation, work rules and schedules of your employees and independent contractors. You will direct when, where or how the work is done in the operation of your Fosters Freeze Business. We do not insist on particular individuals performing certain work in the Fosters Freeze Business; you are free to assign work and roles to anyone you identify as competent and capable of performing such work. We will not assist you in hiring, supervising or paying any of your workers or such worker's assistants. You are responsible for determining the hours or days your employees and independent contractors work for your Fosters Freeze Business, including whether your employees and independent contractors work in full-time or part-time capacities. All employees or independent contractors hired by or working for you will be your employees or independent contractors alone and will not, for any purpose, be deemed our employees or subject to our control, most particularly 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 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. At all times, including in connection with all uses of any of the Marks, in connection with the operation of the Fosters Freeze Business, and in connection with all dealings with customers, suppliers, public officials, the general public and others, you will conspicuously indicate your status as an independent contractor, including in all contracts, advertising, publicity, promotional and other marketing materials, and on any signage and uniforms, and in the manner specified in the Brand Standards Manual or as we otherwise may require. You will not make any express or implied agreements, guarantees or representations, or incur any debt in our name or on our behalf. You will not represent that the relationship between you and us is anything other than a franchise relationship. We will not be obligated by or have any liability under any agreements or representations made by you, and we will not be obligated for any damages to any person or property directly or indirectly arising out of your operation of the Fosters Freeze Business.

**25.3. 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: (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.

**25.4. 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 be without prejudice to 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 before the expiration of its Term) by virtue of: (i) any custom or practice of the parties at variance 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 Fosters Freeze franchisees; or (iv) the acceptance by us of any payments due from you after breach of this Franchise Agreement.

**25.5. 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 disapproved 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.

**25.6. Force Majeure.** No party shall be liable for any loss or damage that arises directly or indirectly through or as a result of any delay in the fulfillment of or failure to fulfil 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 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), 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 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. 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 as may be 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.

If, as a result of an event of Force Majeure, you cease to operate the Fosters Freeze Restaurant or lose the right to possession of the Fosters Freeze Restaurant premises (for example, as a result of condemnation proceedings), you shall apply, within 30 days after the event of Force Majeure, for our approval to re-open, relocate and/or reconstruct the Fosters Freeze Restaurant. If relocation is necessary, we agree to use our reasonable efforts to assist you in locating an alternative site in the same general area where you can operate a Fosters Freeze Restaurant within the System for the balance of the Term of this Franchise Agreement. If we assist you, you shall reimburse us for our reasonable out-of-pocket expenses incurred as a result thereof. This provision shall not be construed to prevent you from receiving the full amount of any condemnation award of damages relating to the closing of the Fosters Freeze Restaurant; provided, however, that if we or our affiliate is the lessor of the Fosters Freeze Restaurant premises, you specifically waive and release any claim you may have for the value of any building, fixtures and other improvements on the premises, whether or not installed or paid for by you, and you agree to subordinate any claim you may have to our claim for such Improvements. Selection of an alternative location will be subject to the site approval procedures set forth in Section 7.1 of this Franchise Agreement. Once you have obtained our approval to relocate and/or reconstruct the Fosters Freeze Restaurant, you must diligently pursue relocation and/or reconstruction until the Fosters Freeze Restaurant is reopened for business.

**25.7. You May Not Withhold Payments.** You agree that you will not, on grounds of the alleged nonperformance by us of any of our obligations hereunder, withhold payment of any Royalty, Brand Fund Contribution, amounts due to us for purchases by you or any other amounts due to us.

**25.8. Binding Effect.** 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; provided, however, that the additional insureds listed in Section 15.1 and the Indemnified Parties are intended third-party beneficiaries under this Franchise Agreement with respect to Section 18.

**25.9. 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. As referenced above, all mandatory provisions of the Brand Standards Manual are part of this Franchise Agreement; however, notwithstanding the foregoing, we may modify the Brand Standards Manual at any time. Any representations not specifically contained in this Franchise Agreement made before entering into this Franchise Agreement do not survive after the signing of this Franchise Agreement. This provision is intended to define the nature and extent of the parties' mutual contractual intent, there being no mutual intent to enter into contract relations, whether by agreement or by implication, other than as set forth above. 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.



**25.10. 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 your interests; (ii) we will use our judgment in exercising the discretion based on our assessment of our own interests and balancing those interests against the interests of our franchisees generally (including ourselves and our affiliates, if applicable), and specifically without considering your 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.

**25.11. Rights of Parties are Cumulative.** The rights of the parties under this Franchise Agreement 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.

**25.12. Survival.** All provisions that expressly or by their nature survive the termination, expiration or Transfer of this Franchise Agreement (or the Transfer of an ownership interest in the Fosters Freeze Franchise) shall continue in full force and effect, subsequent to and notwithstanding its termination, expiration or Transfer, and until they are satisfied in full or by their nature expire, including, without limitation, Section 7, Section 13, Section 14, Section 18, Section 21, Section 22, Section 23 and Section 25.

**25.13. 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 and the feminine and the possessive.

**25.14. Time of Essence.** Time is of the essence in this Franchise Agreement and every term thereof.

**25.15. Counterparts.** This Franchise Agreement may be signed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same document.

**25.16. Notices.** All notices given under this Franchise Agreement must be in writing, delivered by hand, email (to the last email address provided by the recipient), or first-class mail, to the following addresses (which may be changed upon ten business days’ prior written notice):

You: As set forth on Attachment B

Us: Fosters Freeze International, LLC  
14071 Peyton Drive, Suite 2697  
Chino Hills, CA 91709



Notice shall be considered given at the time delivered by hand, or one business day after sending by fax, email or comparable electronic system, or three business days after placed in the mail, postage prepaid, by certified mail with a return receipt requested.

*(Signature Page Follows)*



The parties to this Franchise Agreement have executed this Franchise Agreement effective as of the Effective Date set forth in Attachment B.

**FRANCHISOR:**

**FOSTERS FREEZE INTERNATIONAL, LLC**  
a Delaware limited liability company

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

Printed Name: \_\_\_\_\_

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

**FRANCHISEE:**

**[FRANCHISEE ENTITY]**  
[a(n) Franchisee Entity State of  
Formation/Incorporation] [franchisee entity type]

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

Printed Name: \_\_\_\_\_

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



## **ATTACHMENT A TO THE FRANCHISE AGREEMENT**

### **DEFINITIONS**

**“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.

**“Claim” or “Claims”** means any and all claims, actions, demands, assessments, litigation or other form of regulatory or adjudicatory procedures, claims, demands, assessments, investigations or formal or informal inquiries.

**“Co-Branded Restaurant”** means a Co-Branded USF Business as defined in the Franchise Disclosure Document.

**“Competitive Business”** means any restaurant where at least twenty-five percent (25%) of the menu items (either individually or collectively) consist of soft serve confections, soft drinks, hamburgers, hot sandwiches and/or other food items.

**“Confidential Information”** means all of our trade secrets and other proprietary information relating to the development, construction, marketing and/or operation of a Fosters Freeze Business, including, but not limited to, methods, techniques, specifications, procedures, policies, marketing strategies and information comprising the System, the Brand Standards Manual, written directives and all drawings, equipment, recipes, computer and point-of-sale programs (and output from such programs), and any other information, know-how, techniques, material and data imparted or made available by us to you.

**“Confidentiality Agreement”** means our form of Confidentiality Agreement, the most current form of which is attached to the Franchise Disclosure Document in Exhibit G.

**“Copyrights”** means all works and materials for which we or our affiliate has secured common law or registered copyright protection and that we allow Fosters Freeze franchisees to use, sell or display in connection with the marketing and/or operation of a Fosters Freeze Business, whether now in existence or created in the future.

**“Crisis Management Event”** means any event that occurs at the Fosters Freeze Restaurant that has or may cause harm or injury to customers or employees, such as food contamination, food spoilage/poisoning, food tampering/sabotage, contagious diseases, natural disasters, terrorist acts, shootings or any other circumstance which may damage the System, Marks or image or reputation of the Fosters Freeze Business or us or our affiliates.

**“Entity”** means a corporation, partnership, limited liability company or other form of association.

**“Financial Statements”** means a balance sheet, profit and loss statement, statement of cash flows and explanatory footnotes prepared in accordance with generally accepted accounting principles applied on a consistent basis.

**“Franchise”** means the right granted to you by us to use the System and the Marks for the type of Fosters Franchise Restaurant which has been selected on Attachment B.

**“General Release”** means our current form of general release of all claims 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. A copy of our General Release is attached to the Franchise Disclosure Document in Exhibit G.

**“Gross Sales”** means the total of all revenues, income and consideration from the sale of all Fosters Freeze Business merchandise, products and services to your customers, whether or not sold or performed at or from the Fosters Freeze Business (including through any Delivery Services), and whether received in cash, coupon, in services in kind, from barter or exchange, on credit (whether or not payment is received) or otherwise. Gross Sales includes all proceeds from any business interruption insurance. If you offer any services or if we permit you to have your Fosters Freeze Restaurant or location photographed or filmed, all receipts from these services are included in Gross Sales. You may deduct from Gross Sales for purposes of this computation (but only to the extent they have been included) the amount of all sales tax receipts or similar tax receipts which, by law, are chargeable to customers, if the taxes are separately stated when the customer is charged and if the taxes are paid to the appropriate taxing authority. You may also deduct from Gross Sales the amount of any documented refunds, chargebacks, credits, charged tips and allowances you give in good faith to your customers. All barter or exchange transactions in which you furnish products or services in exchange for goods or services provided to you by a vendor, supplier or customer will, for the purpose of determining Gross Sales, be valued at the full retail value of the goods or services so provided to you.

**“Indemnified Party” or “Indemnified Parties”** means us and each of our past, present and future owners, members, officers, directors, employees and agents, as well as our parent companies, subsidiaries and affiliates, and each of their past, present and future owners, members, officers, directors, employees and agents.

**“Intellectual Property”** means, collectively or individually, our Marks, Copyrights, Confidential Information, System and Improvements.

**“Losses and Expenses”** means all compensatory, exemplary and punitive damages; fines and penalties; attorney fees; experts fees; court costs; costs associated with investigating and defending against Claims; settlement amounts; judgments; compensation for damages to our reputation and goodwill; and all other costs, damages, liabilities, fees and expenses associated with any of the foregoing losses and expenses or incurred by an Indemnified Party as a result of a Claim.

**“Marks”** means the logotypes, service marks and trademarks now or hereafter involved in the operation of a Fosters Freeze Business, including Fosters Freeze and any other trademarks, service marks or trade names that we designate for use in the Fosters Freeze Business that you have purchased.

**“Non-Traditional Location”** means a location other than a standard brick and mortar retail location such as (but not limited to) toll roads, train stations, amusement parks and all properties controlled by the amusement park, travel stations, hotels and motels, ships, ports, piers, casinos, stadiums, airports, theatres, big box retailers, building supply stores, warehouse club stores, colleges and universities, schools, hospitals, military and other governmental facilities, office or in-plant food service facilities, shopping mall food courts operated by a master concessionaire, grocery stores, outlet malls, supermarkets and convenience stores, and any site for which the lessor, owner or operator thereof shall have indicated its intent to prefer or limit the operation of its food service facilities to a master concessionaire or contract food service provider. Non-Traditional Locations include any Co-Located Restaurants.

**“Owner” or “Owners”** means any individual who owns a direct or indirect ownership interest in the Franchise or the Entity that is the franchisee under this Franchise Agreement. Owner includes both passive and active owners.



**“Post-Term Restricted Period”** means, with respect to you, a period of one year after the termination, expiration or Transfer of this Franchise Agreement. Post-Term Restricted Period means, with respect to an Owner, a period of one year after the earlier to occur of: (i) the termination, expiration or Transfer of this Franchise Agreement; or (ii) the Owner’s Transfer of his or her entire ownership interest in the Fosters Freeze Franchise or the Entity that is the franchisee, as applicable. If a court of competent jurisdiction determines that the one-year Post-Term Restricted period is too long to be enforceable with respect to you and/or an Owner, then the Post-Term Restricted Period means a period of 6 months after the termination, expiration or Transfer of this Franchise Agreement with respect to you and/or such Owner.

**“Restricted Territory”** means the geographic area within: (i) a two-mile radius from your Fosters Freeze Restaurant; and (ii) a two-mile radius from all other Fosters Freeze Restaurants that are operating or under construction as of the Effective Date and remain in operation or under construction during all or any part of the Post-Term 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 one-mile radius from your Fosters Freeze Restaurant and all other Fosters Freeze Restaurants that are operating or under construction as of the Effective Date.

**“System”** means our proprietary System for the operation of a Fosters Freeze business that provides soft serve confections only or along with soft drinks, hamburgers, hot sandwiches and other food items and other high-quality food and beverages, the distinctive characteristics of which include logo, trade secrets, concept, style, proprietary programs and products, confidential Brand Standards Manual and operating System.

**“System Protection Agreement”** means our form of system protection agreement, the most current form of which is attached to the Franchise Disclosure Document in Exhibit G.

**“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 (or any interest therein), the Fosters Freeze Business (or any portion thereof), or an ownership interest in an Entity that is the franchisee, 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).



## **ATTACHMENT B TO THE FRANCHISE AGREEMENT**

### **FRANCHISE DATA SHEET**

1. **Effective Date and Franchisee.** The Effective Date of the Franchise Agreement is: \_\_\_\_\_, 20\_\_\_\_\_.  
The franchisee identified in the introductory paragraph of the Franchise Agreement is: \_\_\_\_\_

2. **Type of Franchise.** Franchisee is purchasing the following Fosters Freeze Restaurant (check one):

Stand-Alone Restaurant

Confections Restaurant

Co-Located Restaurant

3. **Initial Franchise Fee.** The Initial Franchise Fee set forth in Section 13.1 is (check one):

\$45,000 - Franchisee is purchasing a single Franchise

\$90,000 - Franchisee is purchasing a Multi-3 franchise and this Franchise Agreement is for the first Fosters Freeze Restaurant under the Multi-Franchise Addendum to the Franchise Agreement

\$150,000 - Franchisee is purchasing a Multi-5 franchise and this Franchise Agreement is for the first Fosters Freeze Restaurant under the Multi-Franchise Addendum to the Franchise Agreement

Not applicable - this is the second or third Fosters Freeze Restaurant of a Multi-3 franchise, and Franchisee has previously signed a Multi-Franchise Addendum

Not applicable - this is the second, third, fourth, or fifth Fosters Freeze Restaurant of a Multi-5 franchise, and Franchisee has previously signed a Multi-Franchise Addendum.

4. **Restaurant Opening Assistance Fee.** The Restaurant Opening Assistance Fee set forth in Section 13.2 is (check one):

\$12,500 – Stand-Alone Restaurant or Confections Restaurant (Franchisee is purchasing a single Franchise; or Franchisee is purchasing a Multi-3 or Multi-5 franchise and this Franchise Agreement is for the first or second Fosters Freeze Restaurant under the Multi-Franchise Addendum)

\$7,500 – Co-Located Restaurant (Franchisee is purchasing a single Franchise; or Franchisee is purchasing a Multi-3 or Multi-5 franchise and this Franchise Agreement is for the first or second Fosters Freeze Restaurant under the Multi-Franchise Addendum)

Not applicable - this is the third Fosters Freeze Restaurant of a Multi-3 franchise, and Franchisee has previously signed a Multi-Franchise Addendum



Not applicable - this is the third, fourth, or fifth Fosters Freeze Restaurant of a Multi-5 franchise, and Franchisee has previously signed a Multi-Franchise Addendum.

5. **Notice Address.** Franchisee's address for notices as set forth in Section 25.16 of the Franchise Agreement shall be as follows:

Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. **Restaurant Location; Protected Area.** If a particular site for the Fosters Freeze Restaurant has been selected and approved at the time of the signing of this Franchise Agreement, it shall be entered in Attachment B-1 as the Fosters Freeze Restaurant location, and if it is a Stand-Alone Restaurant only, the Protected Area shall be as listed in Attachment B-1. If a particular site has not been selected and approved at the time of the signing of this Franchise Agreement, Section 6 of this Attachment B will describe the location in general terms below in the "General Description." The General Description does not confer any territory rights to you and is only used for a reference. We may sell other franchised locations in the area in the General Description. After we have approved a location for your Fosters Freeze Restaurant, we will complete the Fosters Freeze Restaurant location and if you are a Stand-Alone Restaurant only, a Protected Area also in Attachment B-1.

For Stand-Alone Restaurants only: As the Protected Area is dependent on the location of the Fosters Freeze Restaurant, we will present you with the Protected Area upon the identification of the site for the Fosters Freeze Restaurant. If you do not wish to accept the Protected Area, you may choose another site location and we will present you with another Protected Area based on the site selected.

**General Description of Area For Restaurant Location** (If your Fosters Freeze Restaurant's location is not specified above as of the signing of the Franchise Agreement):

\_\_\_\_\_.

**FRANCHISOR:**

**FOSTERS FREEZE INTERNATIONAL, LLC**  
a Delaware limited liability company

**FRANCHISEE:**

**[FRANCHISEE ENTITY]**  
[a(n) Franchisee Entity State of  
Formation/Incorporation] [franchisee entity type]

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

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

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

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



## **ATTACHMENT B-1 TO THE FRANCHISE AGREEMENT**

You have received approval for site location for the Fosters Freeze Restaurant that satisfies the demographics and location requirements minimally necessary for a Fosters Freeze Restaurant and that meets our minimum current standards and specifications for the buildout, interior design, layout, floor plan, signs, designs, color and décor of a Fosters Freeze Restaurant.

If you are a Stand-Alone Restaurant, we and you have mutually agreed upon a Protected Area based on the site for the Fosters Freeze Restaurant which is indicated below. You acknowledge that the Protected Area is in conformance with the territory guidelines stated in Item 12 of the Franchise Disclosure Document.

If you are a Confections Restaurant or Co-Located Restaurant, you acknowledge that you will not receive a Protected Territory.

### **Location for Fosters Freeze Restaurant:**

The location for your Fosters Freeze Restaurant as provided in Section 7.1 of the Franchise Agreement is:

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### **For Stand-Alone Restaurants Only-Protected Area:**

The Protected Area as provided in Section 3 of the Franchise Agreement is:

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#### **FRANCHISOR:**

**FOSTERS FREEZE INTERNATIONAL, LLC**  
a Delaware limited liability company

#### **FRANCHISEE:**

**[FRANCHISEE ENTITY]**  
[a(n) Franchisee Entity State of  
Formation/Incorporation] [franchisee entity type]

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

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

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

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

#### **FRANCHISOR:**

**FOSTERS FREEZE INTERNATIONAL, LLC**  
a Delaware limited liability company

#### **FRANCHISEE:**

**[FRANCHISEE ENTITY]**  
[a(n) Franchisee Entity State of  
Formation/Incorporation] [franchisee entity type]



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

Printed Name: \_\_\_\_\_

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

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

Printed Name: \_\_\_\_\_

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



## **ATTACHMENT C TO THE FRANCHISE AGREEMENT**

### **STATEMENT OF OWNERSHIP**

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

#### **Form of Ownership (Check One)**

**Individual**  **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.

State and Date of Formation/Incorporation: \_\_\_\_\_

#### **Management (managers, officers, board of directors, etc.):**

Name	Title

#### **Members, Stockholders, Partners\*:**

Name	Address	Percentage Owned

**\*If any members, stockholders or partners are entities, please list the owners of such entities up through the individuals.**



**Identification of Operating Principal.** Your Operating Principal as of the Effective Date is \_\_\_\_\_  
\_\_\_\_\_. You may not change the Operating Principal without prior written approval.

**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.

This form is current and complete as of \_\_\_\_\_, 20\_\_\_\_.

**FRANCHISEE:**

**[FRANCHISEE ENTITY]**  
[a(n) Franchisee Entity State of  
Formation/Incorporation] [franchisee entity  
type]

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

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

Printed Name: \_\_\_\_\_

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



## **ATTACHMENT D TO THE FRANCHISE AGREEMENT**

### **OWNERS AGREEMENT**

As a condition to the execution by Fosters Freeze International, LLC (“we” or “us”) of a 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 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 Agreement will have the same meanings ascribed to them in the Franchise Agreement.

1.2 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 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 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 Fosters Freeze Business. The provisions of the Franchise Agreement governing Franchisee’s non-disclosure obligations relating to our Confidential Information are hereby incorporated into this Owners Agreement by reference, and Owners agree to comply with each obligation as though fully set forth in this Owners Agreement as a direct and primary obligation of Owners. Further, we may seek the same remedies against Owners under this Owners 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 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 of the Franchise Agreement are hereby incorporated into this Owners Agreement by reference, and Owners agree to comply with and perform each such covenant as though fully set forth in this Owners Agreement as a direct and primary obligation of Owners. Further, we may seek the same remedies against Owners under this Owners 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 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 bound by any lesser covenant subsumed within the terms of such covenant that imposes the maximum duty permitted by law, as if the resulting covenant were separately stated in and made a part of this 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 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. Guarantee.**

4.1 Payment. Owners will pay us (or cause us to be paid) all monies payable by Franchisee under the Franchise Agreement on the dates and in the manner required for payment in the relevant agreement.

4.2 Performance. Owners unconditionally guarantee full performance and discharge by Franchisee of all of Franchisee's obligations under the Franchise Agreement 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 by reason of: (a) Franchisee's failure to pay the monies payable (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 (b) 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 not be obligated to proceed against Franchisee or exhaust any security from Franchisee or pursue or exhaust any remedy, including any legal or equitable relief against Franchisee, before proceeding to enforce the obligations of the Owners as guarantors under this Owners Agreement, and the enforcement of such obligations can take place before, after, or contemporaneously with, enforcement of any of 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; and the obligations of any other Owners will continue in full force and effect.

## 5. Transfers.

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.

## 6. Notices.

6.1 Method of Notice. Any notices given under this Owners 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 Agreement is:

Fosters Freeze International, LLC  
14071 Peyton Drive, Suite 2697  
Chino Hills, California 91709

The current address of each Owner for all communications under this Owners Agreement is designated on the signature page of this Owners 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 Agreement.

7.1 Dispute Resolution. Any claim or dispute arising out of or relating to this Owners 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 Agreement.

7.2 Choice of Law; Jurisdiction and Venue. This Owners Agreement and any claim or controversy arising out of, or relating to, any of the rights or obligations under this Owners Agreement, and any other claim or controversy between the parties, will be governed by the choice of law and jurisdiction and venue provisions of the Franchise Agreement.

7.3 Provisional 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 requirements of this Owners Agreement. Owners further acknowledge and agree that, in the event of any noncompliance, we will be entitled to temporary, preliminary, and permanent injunctions and all other equitable relief that any court with jurisdiction may



deem just and proper. If injunctive relief is granted, Owners' only remedy will be the court's dissolution of the injunctive relief. If the injunctive 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 Owners 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 Owners Agreement, other than those in this Owners Agreement. No other obligations, restrictions or duties that contradict or are inconsistent with the express terms of this Owners Agreement may be implied into this Owners Agreement. Except for unilateral reduction of the scope of the covenants permitted in Section 3.3 (or as otherwise expressly provided in this Owners Agreement), no amendment, change or variance from this Owners 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 Owners Agreement, and any portions thereof, will be considered severable. If any provision of this Owners 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 Owners 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), and the parties agree to be bound by the modified provisions.

8.3 **No Third-Party Beneficiaries.** Nothing in this Owners 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 Owners Agreement.

8.4 **Construction.** Any term defined in the Franchise Agreement which is not defined in this Owners Agreement will be ascribed the meaning given to it in the Franchise Agreement. The language of this Owners Agreement will be construed according to its fair meaning, and not strictly for or against either party. All words in this Owners 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 Owners Agreement may be executed in counterparts, and each copy so executed and delivered will be deemed an original. This Owners Agreement is binding on the parties and their respective heirs, executors, administrators, personal representatives, successors and (permitted) assigns.

8.6 **Successors.** References to "Franchisor" or "the undersigned," or "you" include the respective parties heirs, successors, assigns or transferees.

8.7 **Nonwaiver.** Our failure to insist upon strict compliance with any provision of this Owners 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 Agreement shall be cumulative.



8.8 No Personal Liability. You agree that fulfillment of any and all of our obligations written in the Franchise Agreement or this Owners 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.

8.9 Owners Agreement Controls. In the event of any discrepancy between this Owners Agreement and the Franchise Agreement, this Owners Agreement shall control.

*(Signature Page Follows)*



**IN WITNESS WHEREOF**, the parties have entered into this Owners Agreement as of the effective date of the Franchise Agreement.

**OWNERS:**

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[Insert Name and Address of Owner]

**SPOUSES:**

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[Insert Name and Address of Spouse]

Fosters Freeze International, LLC hereby accepts the agreements of the Owner(s) hereunder.

**FOSTERS FREEZE INTERNATIONAL, LLC**

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

Printed Name: \_\_\_\_\_

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

(Rev. 121319)



**EXHIBIT D**

**LIST OF CURRENT AND FORMER FRANCHISEES**



**Current Franchisees as of December 31, 2023:**

<b>Store Name</b>	<b>Legal Owner</b>	<b>Mailing address</b>	<b>Store Phone #</b>
ATWATER #179	Jason Pak	1401 Winton Way, Atwater CA 95301	209-358-2341
BARSTOW #167	Mike Lewis	1580 W Main St., Barstow CA 92311	760-256-8842
BELL GARDENS #134	Leo Kim	7540 S Eastern Ave., Bell Gardens CA 90201	562-927-1648
BERKELEY #124	Yon Ho Lee	1199 University Ave., Berkeley CA 94702	510-841-0953
BOULDER CREEK #200	Bin Wang and Ying Liu	110 Mountain Ave., Boulder Creek CA 95006	831-338-3022
BRAWLEY #146	Guadalupe Bonillas	130 N 5th St., Brawley CA 92227	760-344-7566
BURBANK #26	AOPN CORP	201 S Glenoaks Blvd., Burbank CA 91502	818-846-5906
CAMPBELL #247	Abbott's	1360 Camden Ave., Campbell CA 95008	408-412-8863
CARSON #171	Rick Leng	117 E Carson, Carson CA 90745	310-835-5050
CASTAIC #1069	Billy & Jean Hsu	31754 Castaic Road, Castaic CA 91384	661-257-0302
CERES #232	Charles and Norma Sammons	2373 E. Whitmore Ave., Ceres CA 95307	209-538-8620
CHIRIACO SUMMIT #2508	Joseph Chiriaco Inc	62450 Chiriaco Rd., Chiriaco Summit, CA 92201	760-227-3227 Ext 228
CLOVIS #49	Fawzi Muhrram	902 Clovis Ave., Clovis CA 93612	559-299-2820
CLOVIS #1064	BPB Foods Inc	2152 Shaw Ave., Clovis CA 92612	559-297-3450
DANVILLE #108	Sue Park	180 Hartz Ave., Danville CA 94526	925-837-3426
DINUBA #11	Sanad Almakaleh	598 E Tulare, Dinuba CA 93618	559-591-1625
FRESNO #69	Fawzi Muhrram	3858 E. Ventura Ave. Fresno CA 93702	559-266-4884
FRESNO #172	BPB Foods Inc	3377 N Cedar Dr., Fresno CA 93726	559-222-5384
FRESNO #1098	Fawzi Muhrram	4111 W Swift, Fresno CA 93726	559-271-9575
GLENDORA #105	Kennith Kim	418 W Foothill Blvd., Glendora CA 91740	626-335-9413
HOLLISTER #1117	Abbott's	441 Tres Pinos Road, Hollister CA 95023	831-636-8670
INGLEWOOD #84	Felicitas Vazquez	999 S La Brea Blvd., Inglewood CA 90301	310-673-2967
LEMOORE #1061	Loren Wright	71 E Hanford-Armona Rd. Lemoore CA 93245	559-924-4858
LIVERMOORE #216	Lac Dinh	1593 First Street, Livermoore CA 94550	925-447-1692
LODI #186	George & Barbara Biehl	315 N. Ham Lane, Lodi CA 95240	209-368-6398
LOMPOC #1062	Bob Bolusan	1120 E Ocean, Lompoc CA 93436	805-735-1321
LOS ANGELES #53	Ricardo & Maria Munguia	4967 Eagle Rock Blvd., Los Angeles CA 90041	323-256-2525
LOS ANGELES #81	Sang Hyun	2704 Whittier Blvd., Los Angeles CA 90023	323-262-8046
LOS ANGELES #107	Ricardo & Maria Munguia	2760 Fletcher Dr., Los Angeles CA 90039	323-663-2045



<b>Store Name</b>	<b>Legal Owner</b>	<b>Mailing address</b>	<b>Store Phone #</b>
LOS BANOS #213	Song Pak	906 Pacheco Blvd., Los Banos CA 93635	209-826-4195
LOWER LAKE #1225	Soon Son	9860 Highway 53, Lower Lake CA 95457	707-995-0685
LUCERNE #234	Ken & Rebecca Ornellas	6252 Highway 20, Lucerne CA 95458	707-274-4441
MANTECA #218	Bhupinder Singh	906 W Yosemite, Manteca CA 95336	209-823-5691
MILPITAS #196	Kim Ung	78 Serra Way, Milpitas CA 95025	408-262-4272
MORRO BAY #225	Costas & Keratso Rangoussis	801 Piney Way, Morro Bay CA 93442	805-772-8373
NAPA #45	Barbara Pang	1195 Imola Ave West, Napa CA 94559	707-224-4722
OROVILLE #1114	Garth Miller	970 Oro Dam Rd., Oroville CA 95966	530-534-0485
PINOLE #255	Ming Yeung	993 San Pablo Ave., Pinole CA 95464	510-724-8782
PORTERVILLE #32	Iyad Hamoud Ali Ammari	192 S Main Street, Porterville CA 93257	559-784-1231
REEDLEY #99	Sanad Almakaleh	1460 11th St., Reedley CA 93654	559-638-5150
ROSAMOND #19	Roger & Melanie Hensley	2080 Rosamond Blvd., Rosamond CA 93560	661-256-4436
SALINAS #166	Abbott's	815 S Main St., Salinas CA 93901	831-758-6950
SALINAS #1500	Abbott's	105 East Boronda Road, Salinas, CA 93906	831-273-1520
SAN DIEGO #264	George Stathorakis	5129 Waring Rd., San Diego CA 92120	619-583-4684
SAN FERNANDO #21	Nora E. Osorio Galvez	904 N MaClay Ave., San Fernando CA 91340	818-361-5800
SAN JOSE #104	Charles Brown	698 N 4th St., San Jose CA 95112	408-292-1505
SAN LEANDRO #240	Kwang Hee Won	2601 Alvarado St., San Leandro CA 94577	510-357-2094
SANGER #7	Shane Arnold & Minnie Medina	630 Academy Ave., Sanger CA 93657	559-875-8130
SANTA CRUZ #91	Abbott's	229 Laurel St., Santa Cruz CA 95062	831-426-2311
SANTA PAULA #73	Marvin & Linda Shaefer	907 E Harvard Dr., Santa Paula CA 93060	805-525-9129
SANTA ROSA #12	Sean Whang	855 Sebastopol Rd., Santa Rosa CA 95407	707-542-3212
SANTA ROSA #135	Jung Hee Oh	1400 4th St., Santa Rosa CA 95407	707-576-7028
SELMA #245	Sunita Sharma	1975 Grant Ave., Selma CA 93662	559-896-1291
SPRING VALLEY #189	Inye Suh	1069 Elkelton Blvd., Spring Valley CA 91977	619-463-2988
TORRANCE #23	Rick Leng	1624 Cravens Ave., Torrance CA 90501	310-328-1375
TRACY #233	Carlos & Jessica Avila	28 E Grant Line Rd., Tracy CA 95376	209-835-3299
VACAVILLE #193	Sukhwant Singh	653 Merchant Street, Vacaville CA 95688	707-448-1400
VENTURA #176	Rich McNair	4121 Telegraph Rd., Ventura CA 93003	805-642-1819



Store Name	Legal Owner	Mailing address	Store Phone #
VISALIA #6	BPB Foods Inc	1023 S Mooney Blvd., Visalia CA 93277	559-732-0189
WATSONVILLE #161	Abbott's	1487 Freedom Blvd., Watsonville CA 95076	831-724-9198
WILMINGTON #28	Paul Ket	603 W Pacific Coast Highway, Wilmington CA 90744	310-834-5067

**Franchisees with Unopened Outlets as of December 31, 2023:**

Franchisee	City	State	Telephone Number
Georgia Fosters LLC	Thomson	GA	TBD

**Former Franchisees:**

The name and last known address of every franchisee who had a Fosters Freeze Franchise transferred, terminated, cancelled, not renewed, or otherwise voluntarily or involuntarily ceased to do business under our Franchise Agreement during the period January 1, 2023 to December 31, 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.

Franchisee	City	State	Telephone Number
Donna Flair	Twentynine Palms	CA	760-367-9303
Jim Scurlock	Oroville	CA	530-534-0485
Troubador Garments	Ceres	CA	209-538-8620



**EXHIBIT E**

**STATE ADDENDA  
AND AGREEMENT RIDERS**



## STATE ADDENDA AND AGREEMENT RIDERS

### ADDENDUM TO FRANCHISE AGREEMENT, SUPPLEMENTAL AGREEMENTS, AND FRANCHISE DISCLOSURE DOCUMENT FOR CERTAIN STATES FOR FOSTERS FREEZE INTERNATIONAL, LLC

The following modifications are made to the Fosters Freeze International, LLC (“**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 California. 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 California Franchise Investment Law requires a copy of all proposed agreements relating to the sale of the Franchise be delivered together with the FDD.

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, and if applicable, the Supplemental Agreements may contain, provisions requiring binding arbitration with the costs being awarded to the prevailing party. The arbitration will occur in the principal city closest to our principal place of business (currently Chino Hills, California). 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 or Supplemental Agreements restricting venue to a forum outside the State of California. The Franchise Agreement may contain a mediation provision. If so, 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 and Supplemental Agreements require the application of the laws of the State where the Franchisee’s Fosters Freeze Business is located. 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 or Supplemental Agreements contain a provision that is inconsistent with the California Franchise Investment Law, the California Franchise Investment Law will control.

The Franchise Agreement and Supplemental Agreements may provide 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, and if applicable, the Supplemental Agreements may contain, 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 or Supplemental Agreements 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.dfp.ca.gov](http://www.dfp.ca.gov).

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.

## **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

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

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.

## **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.

## **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 one year within the Protected Area.

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.

6. 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 Fosters Freeze International, LLC, 14071 Peyton Drive, Suite 2697, Chino Hills, CA 91709, 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 AND FRANCHISE AGREEMENTS**

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."

Representations in the Franchise Agreement 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.

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 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 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 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 years after the cause of action accrues. To the extent that the Franchise Agreement conflicts with Minnesota law, Minnesota law will prevail.
9. 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**



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

A. No such party has an administrative, criminal or civil action pending against that person alleging: a felony, a violation of a franchise, antitrust or securities law, fraud, embezzlement, fraudulent conversion, misappropriation of property, unfair or deceptive practices or comparable civil or misdemeanor allegations.

B. No such party has pending actions, other than routine litigation incidental to the business, which are significant in the context of the number of franchisees and the size, nature or financial condition of the Franchise System or its business operations.

C. No such party has been convicted of a felony or pleaded nolo contendere to a felony charge, or within the ten-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.

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.

## **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 14 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 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 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 Fosters Freeze International, LLC, 14071 Peyton Drive, Suite 2697, Chino Hills, CA 91709, 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 Fosters Freeze International, LLC 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 DOCUMENT AND RELATED AGREEMENTS**



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.

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:**

FOSTERS FREEZE INTERNATIONAL, LLC

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

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

### **FRANCHISEE:**

\_\_\_\_\_  
\_\_\_\_\_

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

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

Rev. 030123



**EXHIBIT F**

**FRANCHISE BRAND STANDARDS MANUAL**  
**TABLE OF CONTENTS**





# Operations manual

To make people happy by providing some of life's simple pleasures - nothing ritzy - just the regular everyday happiness that Californian sunshine and ice cream brings.

Fosters Freeze 14071 Peyton Drive # 2697 Chino Hills, CA 91709  
[www.fostersfreeze.com](http://www.fostersfreeze.com)



1. Employee Handbook – 26pgs
2. Orientation – 6pgs
3. Management Program and Cost Controls – 87pgs
4. Safety Program – 32pgs
5. Fountain Training – 28pgs
6. Cashier Training – 21pgs
7. Cook Station – 43pgs
8. Food & Fountain Products – 83pgs
9. Shift Supervisor – 12pgs
10. Twelve Week Opening Guide – 20pgs
11. Salad Program – 24pgs
12. Breakfast Program – 21pgs
13. Quality Assurance – 35pgs
14. Vendor List – 2pgs
15. Forms – 4pgs

**TOTAL PAGES: 444**

## **EXHIBIT G**

### **CONTRACTS FOR USE WITH THE FOSTERS FREEZE FRANCHISE**

The following contracts contained in Exhibit G are contracts that Franchisee is required to utilize or execute after signing the Franchise Agreement in the operation of the Fosters Freeze Business. The following are the forms of contracts that Fosters Freeze International, LLC 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 G-1**

### **FOSTERS FREEZE FRANCHISE**

### **SAMPLE GENERAL RELEASE AGREEMENT**

#### **WAIVER AND RELEASE OF CLAIMS**

This Waiver and Release of Claims (“Release”) is made as of \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_, a(n) \_\_\_\_\_ (“Franchisee”), and each individual holding an ownership interest in Franchisee (collectively with Franchisee, “Releasor”) in favor of Fosters Freeze International, LLC, a Delaware limited liability company (“Franchisor,” and together with Releasor, 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 Fosters Freeze 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), Releasor has 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, Releasor hereby agrees as follows:

1. **Representations and Warranties**. Releasor represents and warrants that it is 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 he/she is duly authorized to enter into and execute this Release on behalf of Franchisee. Releasor further represents and warrants that all individuals that currently hold a direct or indirect ownership interest in Franchisee are signatories to this Release.

2. **Release**. Releasor and its 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 its 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 Releasor may now have or has 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.** Releasor expressly covenants and agrees 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.** Releasor agrees 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. Releasor agrees that it has read and fully understands this Release and that the opportunity has been afforded to Releasor 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 where the Franchisee's Fosters Freeze restaurant is located.

c. Each individual and entity that comprises Releasor shall be jointly and severally liable for the obligations of Releasor.

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 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. Releasor agrees to do such further acts and things and to execute and deliver such additional agreements and instruments as any Released Party may reasonably require 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.



**IN WITNESS WHEREOF**, Releasor has executed this Release as of the date first written above.

**FRANCHISEE:**

\_\_\_\_\_, a

\_\_\_\_\_

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

Printed Name: \_\_\_\_\_

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

**FRANCHISEE'S OWNERS:**

Date \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name

Rev. 092122



## **EXHIBIT G-2**

### **FOSTERS FREEZE FRANCHISE**

### **SAMPLE SYSTEM PROTECTION AGREEMENT**

This System Protection Agreement (“Agreement”) is entered into by the undersigned (“you” or “your”) in favor of Fosters Freeze International, LLC, a Delaware limited liability company, 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 any restaurant where at least twenty-five percent (25%) of the menu items (either individually or collectively) consist of soft serve confections, soft drinks, hamburgers, hot sandwiches and/or other food items.

“*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 Fosters Freeze business or the solicitation or offer of a Fosters Freeze franchise, whether now in existence or created in the future.

“*Franchisee*” means the Fosters Freeze 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 Fosters Freeze 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 Fosters Freeze 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 Fosters Freeze business, including “FOSTERS FREEZE,” and any other trademarks, service marks, or trade names that we designate for use by a Fosters Freeze business. The term “*Marks*” also includes any distinctive trade dress used to identify a Fosters Freeze 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 one year-year period after you cease to be a manager or officer of Franchisee’s Fosters Freeze 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 6 months-year period after you cease to be a manager or officer of Franchisee’s Fosters Freeze business.

“*Restricted Territory*” means the geographic area within: (i) a 2 miles-mile radius from Franchisee’s Fosters Freeze business (and including the premises of the approved location of Franchisee); and (ii) a 2 miles-mile radius from all other Fosters Freeze businesses that are operating or under construction 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 1 mile-mile radius from Franchisee’s Fosters Freeze business (and including the premises of the approved location of Franchisee).

“*System*” means our system for the establishment, development, operation, and management of a Fosters Freeze 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 Fosters Freeze 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 Fosters Freeze 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 Fosters Freeze 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 Fosters Freeze 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 California, 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 on following page)*



EXECUTED on the date stated below.

Date \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name

Rev. 120619



## **EXHIBIT G-3**

### **FOSTERS FREEZE FRANCHISE**

### **SAMPLE CONFIDENTIALITY AGREEMENT**

This Confidentiality Agreement (“Agreement”) is entered into by the undersigned (“you”) in favor of Fosters Freeze International, LLC, a Delaware limited liability company, 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:

“*Fosters Freeze Business*” means a business that offers a restaurant concept featuring soft serve confections, soft drinks, hamburgers, hot sandwiches and other food items and other related products and services using our Intellectual Property.

“*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 Fosters Freeze franchisees to use, sell, or display in connection with the marketing and/or operation of a Fosters Freeze Business, whether now in existence or created in the future.

“*Franchisee*” means the Fosters Freeze 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 Fosters Freeze 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 Fosters Freeze Business.

“*Marks*” means the logotypes, service marks, and trademarks now or hereafter involved in the operation of a Fosters Freeze Business, including “FOSTERS FREEZE” and any other trademarks, service marks, or trade names that we designate for use by a Fosters Freeze Business. The term “*Marks*” also includes any distinctive trade dress used to identify a Fosters Freeze Business, whether now in existence or hereafter created.

“*System*” means our system for the establishment, development, operation, and management of a Fosters Freeze 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 Fosters Freeze 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 Fosters Freeze International, LLC. 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 Fosters Freeze 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 Fosters Freeze International, LLC, 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 California, 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

Rev. 032916



## **EXHIBIT G-4**

### **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 Email Address

#### **Bank Account Information:**

Bank Name	
Bank Mailing Address (street, city, state, zip)	<input type="checkbox"/> Checking <input type="checkbox"/> Savings (check one)
Bank Account No.	Bank Routing No. (9 digits)
Bank Mailing Address (city, state, zip)	Bank Phone No.

#### **Authorization:**

Franchisee hereby authorizes Fosters Freeze International, LLC (“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: \_\_\_\_\_

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**NOTE: FRANCHISEE MUST ATTACH A VOIDED CHECK RELATING TO THE BANK ACCOUNT.**



## **EXHIBIT G-5**

### **FOSTERS FREEZE FRANCHISE**

### **SAMPLE APPROVAL OF REQUESTED ASSIGNMENT**

This Approval of Requested Assignment (“**Agreement**”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, between Fosters Freeze International, LLC (“**Franchisor**”), a Delaware limited liability company, \_\_\_\_\_ (“**Former Franchisee**”), the undersigned owners of Former Franchisee (“**Owners**”) and \_\_\_\_\_, [a/an Formation 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 Fosters Freeze 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 Fosters Freeze 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 where the Franchised Business is located.



**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:**

**FOSTERS FREEZE INTERNATIONAL, LLC**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**FORMER FRANCHISEE:**

\_\_\_\_\_  
By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**NEW FRANCHISEE:**

\_\_\_\_\_  
By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Rev. 031821



## **EXHIBIT G-6**

### **FOSTERS FREEZE FRANCHISE**

#### **LEASE ADDENDUM**

This Addendum to Lease (“**Addendum**”), dated \_\_\_\_\_, 20\_\_\_\_, is entered into by and between \_\_\_\_\_ (“**Landlord**”), \_\_\_\_\_ (“**Tenant**”) and \_\_\_\_\_ (“**Franchisor**”), collectively referred to herein as the “**Parties**.”

A. Landlord and Tenant have entered into a certain Lease Agreement dated \_\_\_\_\_, 20\_\_\_\_, and pertaining to the premises located at \_\_\_\_\_ (“**Lease**”).

B. Landlord acknowledges that Tenant intends to operate a franchised business from the leased premises (“**Premises**”) pursuant to a Franchise Agreement (“**Franchise Agreement**”) with Franchisor under Franchisor’s trademarks and other names designated by Franchisor (herein referred to as “**Franchised Business**” or “**Franchise Business**”).

C. The parties now desire to supplement the terms of the Lease in accordance with the terms and conditions contained herein.

**NOW, THEREFORE**, it is hereby mutually covenanted and agreed among the Parties as follows:

1. **Use of the Premises.** During the term of the Franchise Agreement, the Premises shall be used only for the operation of the Franchised Business.

2. **Franchise System.** Landlord hereby consents to Tenant’s use of such proprietary marks, signs, interior and exterior décor items, color schemes and related components of the Franchised Business required by Franchisor. Tenant’s use of such items shall at all times be in compliance with all applicable laws, ordinances, rules and regulations of governmental authorities having jurisdiction over the Premises.

3. **Assignment.** Tenant shall have the right, without further consent from Landlord, to sublease or assign all of Tenant’s right, title, and interest in the Lease to an assignee of the Tenant or the Franchised Business (“**Franchise Assignee**”) at any time during the term of the Lease, including any extensions or renewals thereof. In addition, if Tenant fails to timely cure any default under either the Lease or the Franchise Agreement, Franchisor or a Franchise Assignee that Franchisor designates, will, at its option, have the right, but not the obligation, to take an assignment of Tenant’s interest under the Collateral Assignment of Lease or other form of assignment and assumption document reasonably acceptable to Landlord, provided such Franchise Assignee cures a default of the Lease no later than ten days following the end of Tenant’s cure period. No assignment shall be effective until: (i) a Franchise Assignee gives Landlord written notice of its acceptance of the assignment and assumption of the Lease; and (ii) Tenant or the Franchisee Assignee has cured all material defaults of the Lease for which it has received notice from Landlord. Nothing contained herein or in any other document shall create any obligation or liability of Franchisor, any Franchise Assignee, or guarantor thereof under the Lease unless and until the Lease is assigned to, and accepted in writing by a Franchise Assignee. In the event of any assignment or purported



assignment under this Addendum, Tenant shall remain liable under the terms of the Lease and the assignee or subtenant shall retain all of the Tenant's rights granted in the Lease including without limitation: (x) any grant of a protected territory or use exclusivity; and (y) the renewal or extension of the Lease term. With respect to any assignment proposed or consummated under this Addendum, Landlord hereby waives any rights it may have to: (A) recapture the Premises; (B) terminate the Lease; or (C) modify any terms or conditions of the Lease. If Franchisor accepts an assignment and assumes the Lease under this section, Franchisor shall have the right to further sublet or reassign the Lease to another Franchisee without Landlord's consent in which event Franchisor shall be released from any obligation or liability under the Lease. As used in this Addendum, "**Franchisee**" means: (i) Franchisor or Franchisor's parent, subsidiary, or affiliate; or (ii) any franchisee of Franchisor or of Franchisor's parent, subsidiary, or affiliate.

4. Default and Notice.

a. If Tenant defaults on or breaches the Lease and Landlord delivers a notice of default to Tenant, Landlord shall contemporaneously send a copy of such default notice to Franchisor. Franchisor shall have the right, but not the obligation, to cure the default during Tenant's cure period plus an additional ten (10) day period. Franchisor will notify Landlord whether it intends to cure the default prior to the end of Tenant's cure period.

b. All notices to Franchisor shall be sent by registered or certified mail, postage prepaid, to the following address:

Fosters Freeze International, LLC  
14071 Peyton Drive, Suite 2697  
Chino Hills, CA 91709

Franchisor may change its address for receiving notices by giving Landlord written notice of the new address. Landlord agrees that it will notify both Tenant and Franchisor of any change in Landlord's mailing address to which notices should be sent.

c. Tenant and Landlord agree not to terminate, or materially amend the Lease during the term of the Franchise Agreement or any renewal thereof without Franchisor's prior written consent. Any attempted termination, or material amendment shall be null and void and have no effect as to Franchisor's interests thereunder; and a clause to the effect shall be included in the Lease.

5. Termination or Expiration.

a. If Franchisor does not elect to take an assignment of the Tenant's interest, Landlord will allow Franchisor to enter the Premises, without being guilty of trespass and without incurring any liability to Landlord, to remove all signs, awnings, and all other items identifying the Premises as a Franchised Business and to make other modifications (such as repainting) as are reasonably necessary to protect the Franchisor's trademarks and franchise system and to distinguish the Premises from a Franchised Business provided that Franchisor repairs any damage caused to the Premises by exercise of its rights hereunder.

b. If any Franchisee purchases any assets of Tenant, Landlord shall permit such Franchisee to remove all the assets being purchased, and Landlord waives any lien rights that Landlord may have on such assets.



6. **Consideration; No Liability.**

a. Landlord acknowledges that the Franchise Agreement requires Tenant to receive Franchisor's approval of the Lease prior to Tenant executing the Lease and that this Addendum is a material requirement for Franchisor to approve the Lease. Landlord acknowledges Tenant would not lease the Premises without this Addendum. Landlord also hereby consents to the Collateral Assignment of Lease from Tenant to Franchisor as evidenced by Attachment 1.

b. Landlord further acknowledges that Tenant is not an agent or employee of Franchisor, and Tenant has no authority or power to act for, or to create any liability on behalf of, or to in any way bind Franchisor or any Franchise Assignee, and that Landlord has entered into this with full understanding that it creates no duties, obligations, or liabilities of or against any Franchise Assignee.

7. **Amendments.** No amendment or variation of this Addendum shall be valid unless made in writing and signed by the Parties hereto.

8. **Reaffirmation of Lease.** Except as amended or modified herein, all of the terms, conditions, and covenants of the Lease shall remain in full force and effect and are incorporated herein by reference and made a part of this Agreement as though copies herein in full.

**IN TESTIMONY WHEREOF**, witness the signatures of the Parties hereto as of the day, month, and year first written above.

**LANDLORD:**

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

Printed Name: \_\_\_\_\_

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

**TENANT:**

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

Printed Name: \_\_\_\_\_

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

**FRANCHISOR:**

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

Printed Name: \_\_\_\_\_

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

Rev. 112619



**EXHIBIT G-6 Attachment 1**

**ATTACHMENT 1 TO LEASE ADDENDUM**  
**COLLATERAL ASSIGNMENT OF LEASE**

FOR VALUE RECEIVED, as of the \_\_\_\_\_day of \_\_\_\_\_, 20\_\_\_\_ (“**Effective Date**”), the undersigned, \_\_\_\_\_ (“**Assignor**”) hereby assigns, transfers and sets over unto \_\_\_\_\_ (“**Assignee**”) all of Assignor’s right, title, and interest as tenant, in, to and under that certain lease, a copy of which is attached hereto as **Exhibit A (“Lease”)** with respect to the premises located at \_\_\_\_\_. This Collateral Assignment of Lease (“**Assignment**”) is for collateral purposes only and except as specified herein, Assignee shall have no liability or obligation of any kind whatsoever arising from or in connection with this Assignment unless Assignee expressly assume the obligations of Assignor thereunder.

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

Upon a default by Assignor under the Lease or under that certain franchise agreement for a franchise between Assignee and Assignor (“**Franchise Agreement**”), or in the event of a default by Assignor under any document or instrument securing the Franchise Agreement, Assignee shall have the right and is hereby empowered, in Assignee’s sole discretion, to: (i) cure Assignor’s default of the Lease; (ii) take possession of the premises demised by the Lease; (iii) expel Assignor from the premises, either temporarily or permanently; (iv) terminate Assignee’s rights, title, and interest in the Lease; and/or (v) assume the Lease. If Assignee expends sums to cure a default of the Lease, Assignor shall promptly reimburse Assignee for the cost incurred by Assignee in connection with such performance, together with interest thereon at the rate of two percent (2%) per month, or the highest rate allowed by law.

Assignor agrees it will not suffer or permit any surrender, termination, amendment, or modification of the Lease without the prior written consent of Assignee. Through the term of the Franchise Agreement and any renewals thereto, Assignor agrees that it shall elect and exercise all options to extend the term of or renew the Lease not less than 30 days before the last day that said option must be exercised, unless Assignee otherwise agrees in writing. Upon failure of Assignee to otherwise agree in writing, and upon failure of Assignor to so elect to extend or renew the Lease as stated herein, Assignor hereby irrevocably appoints Assignee as its true and lawful attorney-in-fact, which appointment is coupled with an interest to exercise the extension or renewal options in the name, place, and stead of Assignor for the sole purpose of effecting the extension or renewal.

*(Signatures on following page)*



**IN WITNESS WHEREOF**, Assignor and Assignee have signed this Collateral Assignment of Lease as of the Effective Date first above written.

**ASSIGNOR:**

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

Printed Name \_\_\_\_\_  
Its: \_\_\_\_\_

**ASSIGNEE:**

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

Printed Name \_\_\_\_\_  
Its: \_\_\_\_\_

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## **EXHIBIT G-7**

### **FOSTERS FREEZE FRANCHISE**

#### **MULTI-FRANCHISE ADDENDUM TO FRANCHISE AGREEMENT**

THIS ADDENDUM (the “Addendum”) is entered into and made effective as of the date set forth on the signature page hereof, by and between Fosters Freeze International, LLC (“Franchisor”) and the franchisee named on the signature page of this Addendum (“Franchisee”). This Addendum relates to that certain Fosters Freeze franchise agreement dated \_\_\_\_\_, 20\_\_ (“Franchise Agreement”), and supplements the terms of the Franchise Agreement in relation to the opening of additional Fosters Freeze franchises. All capitalized terms not otherwise defined in this Addendum shall have the meaning set forth in the Franchise Agreement.

1. Initial Franchise Fee. Franchisee has paid the initial franchise fee listed in Section 2 of this Addendum. The initial franchise fee is fully earned immediately upon receipt and non-refundable, regardless of whether Franchisee opens any additional Fosters Freeze franchises.
2. Amount. Franchisee has purchased the franchise listed in the chart below which allows Franchisee to open a certain number of additional Fosters Freeze franchises at a later date (“Additional Franchises”) without paying an additional initial franchise fee.

Type of Franchise	
“ <u>Multi-3</u> ” franchise (up to three Fosters Freeze franchises)	
Initial Franchise Fee Paid: \$90,000	
“ <u>Multi-5</u> ” franchise (up to five Fosters Freeze franchises)	
Initial Franchise Fee Paid: \$150,000	

3. Franchise Agreement. Franchisee shall exercise the rights under this Addendum only by entering into a separate franchise agreement with Franchisor for each Additional Franchise. Franchisee shall sign the current form of Fosters Freeze franchise agreement then being used by Franchisor for a Fosters Freeze franchise for each Additional Franchise. Franchisee acknowledges that the then-current form of Fosters Freeze franchise agreement may differ from the Franchise Agreement found in the current Franchise Disclosure Document, including that the then-current franchise fee may have different royalties and/or advertising fees. Franchisee will not be required to pay a separate initial franchise fee.

4. Limited Rights. This Addendum does not grant Franchisee the right to franchise, license, subfranchise, or sublicense others to operate Fosters Freeze Businesses. Only Franchisee (and/or Franchisee affiliated entities Franchisor approves) may develop, open, and operate Additional Franchises pursuant to this Addendum and Franchise Agreements. This Addendum only grants Franchisee the right to enter into Franchise Agreements to open Additional Franchises subject to the terms of the franchise agreement for such Additional Franchises. Franchisee is not granted any territorial rights or other rights except those granted under the any franchise agreement signed for the Additional Franchises. Except for the initial franchise fee, Franchisee shall be liable for all costs and expenses incurred in opening the Additional Franchises.



5. **Term.** This Addendum and Franchisee's right to open Additional Franchises shall terminate as of the date of termination or expiration of the Franchise Agreement or in the event that Franchisor is not then offering franchises for sale.

6. **No Further Changes.** Except as specifically provided in this Addendum, 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 provisions of the Franchise Agreement and this Addendum, the terms of this Addendum shall control.

IN WITNESS WHEREOF, the parties hereto have duly signed and delivered this Agreement on the day and year first written above.

**FRANCHISOR:**

**FOSTERS FREEZE INTERNATIONAL,  
LLC**  
a Delaware limited liability company

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

Printed Name: \_\_\_\_\_

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

**FRANCHISEE:**

**[FRANCHISEE ENTITY]**  
[a(n) Franchisee Entity State of  
Formation/Incorporation] [franchisee entity  
type]

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

Printed Name: \_\_\_\_\_

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



## **EXHIBIT G-8**

### **FOSTERS FREEZE FRANCHISE**

#### **CONFECTIONS RESTAURANT ADDENDUM TO FRANCHISE AGREEMENT**

THIS CONFECTIONS RESTAURANT ADDENDUM (the “Confections Addendum”) is entered into and made effective as of the date set forth on the signature page hereof, by and between Fosters Freeze International, LLC (“Franchisor”) and the franchisee named on the signature page of this Confections Addendum (“Franchisee”). This Confections Addendum relates to that certain Fosters Freeze franchise agreement dated \_\_\_\_\_, 20\_\_\_ (“Franchise Agreement”), and amends certain terms of the Franchise Agreement. All capitalized terms not otherwise defined in this Confections Addendum shall have the meaning set forth in the Franchise Agreement.

1. **Confections Restaurant**. Franchisee has elected to operate a Confections Restaurant. Franchisee and Franchisor are entering into this Confections Addendum to clarify the obligations under the Franchise Agreement related to opening and operating a Confections Restaurant. Franchisee agrees and acknowledges that: (a) it shall comply with all obligations required for a Confections Restaurant under this Confections Addendum, the Franchise Agreement, the Brand Standards Manual, and all other guidance given by Franchisor; (b) it shall only be permitted to use the Marks and other Intellectual Property permitted for franchisees of Confections Restaurants; and (c) the obligations and rights for Confections Restaurants may not be the same as for other franchisees.
2. **Obligations**. Without limiting the generality of anything contained in the Franchise Agreement, Franchisee agrees:
  - a. In connection with its Confections Restaurant, Franchisee shall offer only those products listed on the then-authorized menu for Confections Restaurants approved in writing by Franchisor. Franchisee understands that the then-authorized menu for Confections Restaurants will not include any food other than soft serve confections.
  - b. Franchisee shall not have any protected or exclusive territory or any rights to provide delivery or other catering services.
  - c. Franchisor may decrease the length of Franchisee’s training program, because Franchisee won’t be required to learn how to prepare non-confections items.
3. **Term**. This Confections Addendum shall terminate as of the date of termination or expiration of the Franchise Agreement.
4. **No Further Changes**. Except as specifically provided in this Confections Addendum, 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 provisions of the Franchise Agreement and this Confections Addendum, the terms of this Confections Addendum shall control.



IN WITNESS WHEREOF, the parties hereto have duly signed and delivered this Agreement on the day and year first written above.

**FRANCHISOR:**

**FOSTERS FREEZE INTERNATIONAL,  
LLC**  
a Delaware limited liability company

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

Printed Name: \_\_\_\_\_

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

**FRANCHISEE:**

**[FRANCHISEE ENTITY]**

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

Printed Name: \_\_\_\_\_

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



## **EXHIBIT G-9**

### **FOSTERS FREEZE FRANCHISE**

#### **CO-LOCATED RESTAURANT ADDENDUM TO FRANCHISE AGREEMENT**

THIS CO-LOCATED RESTAURANT ADDENDUM (the “Co-Located Addendum”) is entered into and made effective as of the date set forth on the signature page hereof, by and between Fosters Freeze International, LLC (“Franchisor”) and the franchisee named on the signature page of this Co-Located Addendum (“Franchisee”). This Co-Located Addendum relates to that certain Fosters Freeze franchise agreement dated \_\_\_\_\_, 20\_\_\_\_ (“Franchise Agreement”), and amends certain terms of the Franchise Agreement. All capitalized terms not otherwise defined in this Co-Located Addendum shall have the meaning set forth in the Franchise Agreement.

1. **Co-Located Restaurant**. Franchisee has elected to operate a Co-Located Restaurant. Franchisee and Franchisor are entering into this Co-Located Addendum to clarify the obligations under the Franchise Agreement related to opening and operating a Co-Located Restaurant. Franchisee agrees and acknowledges that: (a) it shall comply with all obligations required for a Co-Located Restaurant under this Co-Located Addendum, the Franchise Agreement, the Brand Standards Manual, and all other guidance given by Franchisor; (b) it shall only be permitted to use the Marks and other Intellectual Property permitted for franchisees of Co-Located Restaurants; and (c) the obligations and rights for Co-Located Restaurants may not be the same as for other franchisees.
2. **Obligations**. Franchisee agrees:
  - a. In connection with its Co-Located Restaurant, Franchisee shall offer only those products listed on the then-authorized menu for Co-Located Restaurants approved in writing by Franchisor. Franchisee understands that the then-authorized menu for Co-Located Restaurants will not be as extensive as those for Stand Alone Restaurants.
  - b. Without limiting the generality of anything contained in the Franchise Agreement, Franchisee shall not have any protected or exclusive territory or any rights to provide delivery or other catering services.
  - c. In connection with the Restaurant Opening Assistance that Franchisor provides if this is Franchisee’s first Franchise (or second Franchise, if Franchisee is a Multi-3 or Multi-5 franchisee), Franchisor will send only one trainer to the Co-Located Restaurant.
  - d. Franchisee’s Co-Located Restaurant will be fully contained within another primary business like a convenience store or a gas station (a “Host Business”). Franchisee will enter into a lease with the Host Business (the “Co-Located Lease”). Any reference to Franchisee’s “Co-Located Restaurant” in the Franchise Agreement shall mean only that designated area (as described in the Co-Located Lease) within the Host Business that Franchisee is permitted to use. Franchisee will only be permitted to exercise the rights under the Franchise Agreement in this designated area, and not within the remaining portion of the Host Business. Franchisor will be named as an additional insured on any insurance policy insuring the Host Business as required for any insurance under the Franchise Agreement.
  - e. In addition to the requirements of the Franchise Agreement, Franchisee shall



furnish Franchisor with any and all letters and notices that the Host Business receives which may relate to defaults with respect to the Host Business lease, license or other material agreement relating to the possession or business conducted at the Host Business, whether or not it is related to the Co-Located Restaurant specifically.

f. No food will be prepared, heated or cooked; and no Competing Products (defined below) will be sold anywhere in the Host Business (other than Franchisee preparing and selling the permitted Fosters Freeze products from the Co-Located Restaurant). The Co-Located Restaurant may not be used for any business or services other than a Fosters Freeze Co-Located Restaurant. Franchisee acknowledges that the preparation, heating or cooking of any food or the sale of Competing Products from anywhere in the Host Business may lead to a default under this Co-Located Addendum whether or not Franchisee is in possession of or otherwise controls the Host Business. **“Competing Products”** shall mean soft serve confections (including soft serve ice cream, frozen dairy products and frozen yogurt), hamburgers, French fries, or hot sandwiches.

g. The point of service equipment and software for the Co-Located Restaurant, including any cash register, shall be separate and independent from any other point of service equipment and software in the Host Business, and shall be devoted solely to recording the sale of Fosters Freeze products. All books and records of the Co-Located Restaurant shall be kept separate and independent from those of the Host Business.

h. In addition to the requirements of the Franchise Agreement, the Co-Located Lease shall contain the following assurances from the Host Business:

i. No other person or business, including any quick service restaurant, other than the Co-Located Restaurant, will be allowed to prepare, heat or cook food or sell Competing Products at or from the Host Business;

ii. Franchisor or its representatives may enter into the Host Business for the purposes of (a) making periodic inspections pursuant to the Franchise Agreement or (b) removing any items bearing the Marks upon termination of the Franchise Agreement as provided by of the Franchise Agreement;

iii. Unless otherwise approved by Franchisor in writing, the Host Business will be open for business during the days and hours that Franchisee's Co-Located Restaurant is required to be open pursuant to the Franchise Agreement;

iv. Franchisor will be named as an additional insured on any insurance policy insuring the Host Business as required for any insurance under the Franchise Agreement.

i. In addition to the conditions of transfer in the Franchise Agreement, Franchisee shall first obtain the prior written consent of the owner/operator of the Host Business.

j. In addition to the default and termination provisions of the Franchise Agreement, Franchisor shall have the right to terminate the Franchise Agreement upon:

i. With respect to any other business operated at the Host Business, there is a material change in: the type of such business or the quality of operation at or with respect to the Host Business; or in the lease or any franchise agreement or trademark license relating to the operation of any such other business is terminated; or



ii. Any sale of Competing Products (defined below) at or from the Host Business following 30 days' notice to Franchisee.

3. Term. This Co-Located Addendum shall terminate as of the date of termination or expiration of the Franchise Agreement.

4. No Further Changes. Except as specifically provided in this Co-Located Addendum, 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 provisions of the Franchise Agreement and this Co-Located Addendum, the terms of this Co-Located Addendum shall control.

IN WITNESS WHEREOF, the parties hereto have duly signed and delivered this Agreement on the day and year first written above.

**FRANCHISOR:**

**FOSTERS FREEZE INTERNATIONAL,  
LLC**  
a Delaware limited liability company

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

Printed Name: \_\_\_\_\_

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

**FRANCHISEE:**

**[FRANCHISEE ENTITY]**  
[a(n) Franchisee Entity State of  
Formation/Incorporation] [franchisee entity  
type]

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

Printed Name: \_\_\_\_\_

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



**EXHIBIT H**

**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, Fosters Freeze International, LLC (“we” or “us”), and you are preparing to enter into a Franchise Agreement for the operation of a Fosters Freeze franchise. **You cannot sign or date this questionnaire the same 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 Fosters Freeze Franchise with an existing Fosters Freeze franchisee?
7.      Yes  No  Do you understand the risks of developing and operating a Fosters Freeze Franchise?
8.      Yes  No  Do you understand the success or failure of your Fosters Freeze 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 California, 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 Fosters Freeze Franchise to open or consent to a transfer of the Fosters Freeze 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 Fosters Freeze 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 Fosters Freeze 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 Fosters Freeze 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.

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Signature of Franchise Applicant

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Name (please print)

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Date

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Signature of Franchise Applicant

---

Name (please print)

---

Date



**EXPLANATION OF ANY NEGATIVE RESPONSES (REFER TO QUESTION NUMBER):**

Question Number	Explanation of Negative Response

Rev. 030123



**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:

<b>State</b>	<b>Effective Date</b>
California	July 15, 2024

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 Fosters Freeze International, LLC 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, Fosters Freeze International, LLC must provide this disclosure document to you at your first personal meeting to discuss the franchise. Michigan requires Fosters Freeze International, LLC to give you this disclosure document at least ten 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 business days before the execution of the franchise or other agreement or the payment of any consideration that relates to the franchise relationship.

If Fosters Freeze International, LLC does not deliver this disclosure document on time or if it contains a false or misleading statement or a material omission, a violation of federal law and state law may have occurred and should be reported to the Federal Trade Commission, Washington, DC 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:  
Nealesh Dahya, 14071 Peyton Drive, Suite 2697, Chino Hills, CA 91709, (909) 264-1550  
Nimesh Dahya, 14071 Peyton Drive, Suite 2697, Chino Hills, CA 91709, (909) 264-1550  
Sanjay Patel, 14071 Peyton Drive, Suite 2697, Chino Hills, CA 91709, (909) 264-1550

Issuance Date: April 5, 2024

I received a disclosure document issued April 5, 2024 which included the following exhibits:

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

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Date	Signature	Printed Name
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Date	Signature	Printed Name	Rev. 012417
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**PLEASE RETAIN THIS COPY FOR YOUR RECORDS.**



## **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 Fosters Freeze International, LLC 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, Fosters Freeze International, LLC must provide this disclosure document to you at your first personal meeting to discuss the franchise. Michigan requires Fosters Freeze International, LLC to give you this disclosure document at least ten 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 business days before the execution of the franchise or other agreement or the payment of any consideration that relates to the franchise relationship.

If Fosters Freeze International, LLC does not deliver this disclosure document on time or if it contains a false or misleading statement or a material omission, a violation of federal 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:

Nealesh Dahya, 14071 Peyton Drive, Suite 2697, Chino Hills, CA 91709, (909) 264-1550

Nimesh Dahya, 14071 Peyton Drive, Suite 2697, Chino Hills, CA 91709, (909) 264-1550

Sanjay Patel, 14071 Peyton Drive, Suite 2697, Chino Hills, CA 91709, (909) 264-1550

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Exhibit I	State Effective Dates
Exhibit J	Receipt

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Date	Signature	Printed Name
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Date	Signature	Printed Name	Rev. 012417
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**Please sign this copy of the receipt, date your signature, and return it to Fosters Freeze International, LLC, 14071 Peyton Drive, Suite 2697, Chino Hills, CA 91709.**



