

## FRANCHISE DISCLOSURE DOCUMENT



**WE ARE CRACKIN' LLC**  
an Oregon limited liability company

363 High Street  
Eugene, OR 97401  
(503) 252-1485

[www.eatatelmers.com](http://www.eatatelmers.com)

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The franchise is the right to establish and operate a restaurant featuring breakfast and lunch food items, beverages and other products and services.

The total investment necessary to begin operation of an Elmer's Breakfast · Lunch · Dinner® Restaurant is estimated to be \$1,420,450 to \$4,295,425. This includes \$41,200 to \$43,800 that must be paid to franchisor or its affiliates. The total investment necessary to begin operation of an Egg N' Joe® Restaurant or an Elmer's Kitchen Breakfast · Brunch · Mimosas is estimated to be \$1,106,450 to \$3,209,800. This includes \$41,200 to \$43,800 that must be paid to franchisor or its affiliates. If we grant you area development rights, the total investment necessary to acquire these rights is estimated to be \$60,000 to \$180,000 (based on a standard 4 to 10 restaurant development deal, determined by multiplying \$20,000 by the total number of restaurants you agree to develop, less one), all of which must be paid to franchisor or its affiliates.

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

You may wish to receive your Disclosure Document in another format that is more convenient for you. To discuss the availability of disclosures in different formats, contact We Are Crackin' LLC at 363 High Street, Eugene, Oregon 97401, (503) 252-1485.

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

Buying a franchise is a complex investment. The information in this Disclosure Document can help you make up your mind. More information on franchising, such as "A Consumer's Guide to Buying a Franchise," which can help you understand how to use this Disclosure Document, is available from the Federal Trade Commission. You can contact the FTC at 1-877-FTC-HELP or by writing to the FTC at 600 Pennsylvania Avenue, NW, Washington, D.C. 20580. You can also visit the FTC's home page at [www.ftc.gov](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: March 26, 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 Exhibits E and F.
<b>How much will I need to invest?</b>	Items 5 and 6 list fees you will be paying to the franchisor or at the franchisor's direction. Item 7 lists the initial investment to open. Item 8 describes the suppliers you must use.
<b>Does the franchisor have the financial ability to provide support to my business?</b>	Item 21 or Exhibit G 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 Elmer's Breakfast · Lunch · Dinner® Restaurant, Egg N' Joe® Restaurant, or Elmer's Kitchen in my area?</b>	Item 12 and the "territory" provisions in the franchise agreement and area development 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 Elmer's Breakfast · Lunch · Dinner®, Egg N' Joe® Restaurant, or Elmer's Kitchen franchisee?</b>	Item 20 or Exhibits E and F list 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 area development agreement and franchise agreement requires you to resolve disputes with the franchisor by arbitration and/or litigation only in the state where our corporate headquarters are located (currently, Oregon). Out-of-state arbitration or litigation may force you to accept a less favorable settlement for disputes. It may also cost more to arbitrate or litigate with the franchisor in the state where our corporate headquarters are located than in your own state.
2. **Initial Investment.** The franchisee will be required to make an estimated initial investment ranging from \$1,106,450 to \$4,295,425. This amount exceeds the franchisor's members equity as of December 31, 2023, which is \$490,745.
3. **Supplier Control.** You must purchase all or nearly all of the inventory and supplies necessary to operate your business from franchisor, its affiliates, or from suppliers that franchisor designates at prices that the franchisor or they set. These prices may be higher than prices you could obtain elsewhere for the same or similar goods. This may reduce the anticipated profit of your franchised business.
4. **Unregistered Trademark.** The primary trademark (composite mark inclusive of word mark that is registered, but design mark that is not) that you will use in your business is not federally registered. If the franchisor's right to use this trademark in your area is challenged, you may have to identify your business and its products or services with a name that differs from that used by other franchisees or the franchisor. This change can be expensive and may reduce brand recognition of the products or services you offer.

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

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APPLICABLE STATE LAW MIGHT REQUIRE ADDITIONAL DISCLOSURES RELATED TO THE INFORMATION CONTAINED IN THIS DISCLOSURE DOCUMENT, AND MIGHT REQUIRE A RIDER TO THE FRANCHISE AGREEMENT. THESE ADDITIONAL DISCLOSURES AND RIDERS, IF ANY, APPEAR IN EXHIBIT K.

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

To simplify the language in this franchise disclosure document (this “Disclosure Document”), we use the terms “Franchisor” or “we” to refer to We Are Crackin’ LLC. When we refer to our affiliates, we will refer to them using the names outlined below. “You” means the person or entity that buys the franchise. If you are a corporation, partnership, limited liability company or other entity, certain provisions of the Franchise Agreement (defined below), Area Development Agreement (defined below) and related agreements will also apply to your owners.

**The Franchisor**

The Franchisor is We Are Crackin’ LLC. Our principal business address is 363 High Street, Eugene, Oregon 97401, (503) 252-1485. However, some support services may be conducted from 1111 Main Street, Suite 400, Vancouver, Washington 98660. We do business under our corporate name and as “Elmer’s Breakfast · Lunch · Dinner,” “Elmer’s,” “Elmer’s Kitchen,” and “Egg N’ Joe.” We do not conduct business under any other name. We are a limited liability company originally formed in the State of Oregon on December 29, 2016, and we began offering franchises of the type described in this Disclosure Document as of June 2018.

**Agents for Service of Process**

Our agent for service of process in our jurisdiction of organization (Oregon) is Elmer’s Restaurants, Inc., 363 High Street, Eugene, Oregon 97401. Please see Exhibit A to this Disclosure Document for a list of the names and addresses of our agents for service of process in certain other states.

**Our Parent, Predecessor and Affiliates**

Our parent is Elmer’s Restaurants, Inc. (“ERI”). ERI shares our principal business address. ERI has operated Elmer’s Restaurants since 1960 and as of December 31, 2023 operates eight Elmer’s Restaurants, three Egg N’ Joe Restaurants, and two Elmer’s Kitchens.

Our affiliate, Elmer’s Franchise Systems, Inc. (“EFS”), shares our principal business address. EFS previously offered franchises for Elmer’s Restaurants from August 1982 to December 2011. On December 31, 2017, EFS transferred substantially all of its operating assets related to the Elmer’s franchise system, including the franchise agreements, to us. As of December 31, 2017, we began acting as the franchisor for the Elmer’s franchise system.

Our affiliate, We Own Breakfast, LLC (“WOB”), shares our principal business address. WOB owns the Marks (defined below) and has licensed us to use and sublicense the use of the Marks.

We have no other parents, predecessors or affiliates offering franchises in any line of business or providing products or services to franchisees.

**Our Prior Experience**

ERI and EFS developed, and we will continue to develop and operate using, certain specified and distinct business formats, methods, procedures, signs, designs, layouts, standards, specifications and marks (the “Franchise System”) for the establishment, development and operation of restaurants featuring breakfast, lunch and dinner food items, beverages and other products and services under the Elmer’s Breakfast · Lunch · Dinner<sup>®</sup> trademark and related trademarks, service marks and trade names (“Elmer’s Restaurants”), restaurants featuring breakfast and brunch food items, mimosas, beverages and other products and services under the

Elmer's Kitchen Breakfast · Brunch · Mimosas™ trademark and related trademarks, service marks and trade names ("Elmer's Kitchens"), and restaurants featuring breakfast and lunch food items, beverages and other products and services under the Egg N' Joe® trademark and related trademarks, service marks and trade names ("Egg N' Joe Restaurants"; together with Elmer's Restaurants and Elmer's Kitchens referred to as the "Restaurants").

While we have not previously operated Restaurants such as the ones being franchised in this Disclosure Document, we may do so in the future. Other than as provided in this Disclosure Document, we do not engage in any other business activities or offer franchises for any other lines of business.

### **The Franchises We Offer**

We may elect to grant you a franchise for a single Elmer's Restaurant, Elmer's Kitchen, or Egg N' Joe Restaurant, but we will primarily offer the right to enter into an Area Development Agreement to acquire franchises for an agreed upon number of Restaurants within a specifically described geographic territory according to a development schedule (the "Area Development Agreement"). The form of Area Development Agreement you will sign is attached as Exhibit B to this Disclosure Document. Your obligation to acquire franchises may be satisfied by you or by an entity controlled by you or your owners that meets our then-applicable System Standards (as defined in Item 8) for franchise owners (an "Approved Affiliate").

To acquire a franchise, either you or an Approved Affiliate must enter into our then-current form of Franchise Agreement, which may differ from the form of franchise agreement attached to this Disclosure Document (the "Franchise Agreement"). Our current form of Franchise Agreement is attached as Exhibit C to this Disclosure Document. Each Restaurant that you or an Approved Affiliate develops and operates must be governed by a Franchise Agreement signed by you or the Approved Affiliate. We may choose not to enter into a Franchise Agreement with single unit operators.

If you are acquiring your franchise from an existing franchisee, in addition to signing a Franchise Agreement, you (and your owners) and the existing franchisee (and its owners) must also sign our then-current form of Consent to Transfer (the "Consent to Transfer"). Our current form of Consent to Transfer is attached as Exhibit D to this Disclosure Document.

### **Market Competition**

Your competition includes all restaurant concepts generally, and casual restaurants featuring breakfast food items. You will be competing both for customers and for locations. The market for food products and services Restaurants offer is highly competitive and quickly developing.

### **Regulations**

You should consider that certain aspects of the restaurant business are heavily regulated by federal, state and local laws, rules and ordinances. The U.S. Food and Drug Administration, the U.S. Department of Agriculture, and various state and local departments of health and other agencies have laws and regulations concerning the preparation of food, display of nutrition facts, and sanitary conditions of restaurant facilities. State and local agencies routinely conduct inspections for compliance with these requirements. Certain provisions of these laws impose limits on emissions resulting from commercial food preparation. Compensation of restaurant employees (including minimum wage and overtime requirements) is governed by both federal and state laws. You will need to understand and comply with these laws in operating the Restaurant.



You must also obtain a liquor license to sell wine and beer, and you may have liability imposed on you by Dram Shop Laws. You must also obtain a lottery license to sell lottery tickets, if required by state law. There may be other laws applicable to your business. We urge you to make further inquiries about these laws.

### **Financial Requirements**

You must maintain, and prove to us that you have, sufficient working capital reserves, as we determine to be necessary and appropriate to comply with your obligations under each Franchise Agreement. We may periodically designate the maximum amount of debt that we will allow franchisees to service. Further, under the Area Development Agreement, you must always maintain sufficient liquidity to meet your obligations under the Area Development Agreement. We reserve the right to review and revise these liquidity requirements from time to time, and you must comply with such minimum liquidity requirements that we reasonably impose. As of the date of this Disclosure Document, we have not established minimum levels of working capital reserves or minimum liquidity required. Rather, we evaluate a franchisee's or developer's net worth, overall business experience, and length of experience in our franchise system to determine whether they have sufficient working capital reserves or sufficient liquidity.

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

### **Gerald Scott: President and Manager**

Mr. Scott has served as our President since May 2020 and also as our Manager since our inception. Mr. Scott has also served as President and Chief Executive Officer of ERI since June 2010. Mr. Scott is based in Eugene, Oregon.

### **Michael Chamberlin: Manager**

Mr. Chamberlin has served as our Manager since our inception. Mr. Chamberlin has also served as Chief Financial Officer of ERI since March 2008. Mr. Chamberlin is based in Eugene, Oregon.

### **Jill Marie Ramos: Manager**

Ms. Ramos has served as our Manager since May 2018. Ms. Ramos has also served as Vice President of ERI since February 2017, Director of Brand Support of ERI from April 2016 to February 2017, and Director of Restaurant Support of ERI from June 2010 to April 2016. Ms. Ramos is based in Vancouver, Washington.

### **Others with Management Responsibility:**

### **Shelly Matteson: Director of Franchise Operations and Operations Manager (ERI)**

Ms. Matteson has served as the Director of Franchise Operations and the Operations Manager for Egg n' Joe Restaurants for ERI since June 2018. Previously, Ms. Matteson served as Regional Manager of Southern Oregon Elmer's, L.L.C. in Grants Pass, Oregon from January 2012 through June 2018. Ms. Matteson is based in Vancouver, Washington.

**Susan Herzog: Director of Human Resources (ERI)**

Ms. Herzog has served as Director of Human Resources of ERI since November 2015. Ms. Herzog is based in Vancouver, Washington.

**Julie Nichols: Controller (ERI)**

Ms. Nichols has served as Controller of ERI since June 2010. Ms. Nichols is based in Vancouver, Washington.

**Jeremy Towne: Regional Manager (ERI)**

Mr. Towne has served as Regional Manager of ERI since September 2015, and served as General Manager of ERI from May 2011 to September 2015. Mr. Towne is based in Vancouver, Washington.

**John C. Peralta: Head Chef (ERI)**

Mr. Peralta has served as Head Chef of ERI since January 1999. Mr. Peralta is based in Vancouver, Washington.

**Jeremey Kibbee: Director of Operations (ERI)**

Mr. Kibbee has served as Director of Operations of ERI since August 2019. Prior to that, Mr. Kibbee was employed by Danna Brothers Ltd. in Portland, Oregon, which entity operated four Elmer's Restaurants, from April 1990 to August 2019, most recently as its Director of Operations from November 2003 to August 2019. Mr. Kibbee is based in Vancouver, Washington.

**ITEM 3  
LITIGATION**

No litigation is required to be disclosed in this Item.

**ITEM 4  
BANKRUPTCY**

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

**ITEM 5  
INITIAL FEES**

**Development Fee**

If you enter into an Area Development Agreement, you will pay us a development fee ("Development Fee") at the time you execute the Area Development Agreement. The Development Fee will be an amount equal to \$20,000 multiplied by the number of Restaurants required to be opened, less one. Before signing an Area Development Agreement, you and we will agree on the area in which you will open the Restaurants (the "Development Area"), the number of Restaurants to be developed, and a development schedule. Typically, depending on the size of the agreed-upon Development Area, the development schedule will require the development of 4 to 10 Restaurants. That means that the typical Development Fee would range from \$60,000 to \$180,000. For each Franchise Agreement you must sign under the Area

Development Agreement, other than your first Franchise Agreement, we credit the balance of the Development Fee, in \$20,000 increments, toward the initial franchise fee that is due as Franchise Agreements are signed. We will fully earn the Development Fee when you pay it, and you must pay us the fee in one lump sum. This fee is uniform and non-refundable.

### **Initial Franchise Fee**

You will pay us an initial franchise fee when you sign the Franchise Agreement of \$40,000. If you sign an Area Development Agreement, you will sign the first Franchise Agreement and pay the \$40,000 initial franchise fee for that Franchise Agreement to us at the same time you sign the Area Development Agreement. You will pay the initial franchise fee for each subsequent franchise you acquire under an Area Development Agreement when you sign the applicable Franchise Agreement. For each Franchise Agreement you must sign under the Area Development Agreement, other than your first Franchise Agreement, we credit the balance of the Development Fee, in \$20,000 increments, toward the initial franchise fee that is due as Franchise Agreements are signed. We will fully earn the initial franchise fee due under each Franchise Agreement when you pay it, and you must pay us the initial franchise fee in one lump sum. These fees are non-refundable. If you are executing a Franchise Agreement for an existing Restaurant that you are buying from another franchisee, we will not charge an initial franchise fee provided that you or the seller of the Restaurant pay the transfer fee required under the seller's franchise agreement.

### **Inventory and Supplies**

You will be required to purchase certain inventory items, including business cards, gift cards, travel menus, balloons, and hours of operation signs, from the vendor we designate prior to opening your Restaurant. Payment for these items will be due in a lump sum when the order is placed. We or our affiliate will collect the amount due for such inventory items and supplies from you and pay such amount to the vendor. Depending on the amount of inventory and supplies you purchase, we expect that you will pay between \$1,200 and \$1,800 for required inventory and supplies prior to opening your Restaurant. This payment is uniform and not refundable under any circumstances.

### **Lease Addendum Review Fee**

It is your responsibility to obtain a fully executed lease addendum in connection with executing the lease for the Restaurant. Our current form of lease addendum is attached as Exhibit B to the Franchise Agreement. Our approval of the lease is subject to our receipt of the lease addendum without modification or negotiation, signed by you and the landlord. If you or the landlord request that we consider any modifications to the lease addendum, and we agree to do so, we may also require you to reimburse us all expenses that we incur (including attorneys' fees) in connection with the review. We estimate this review may cost up to \$2,000, depending on the extent of the changes to the lease addendum requested. This reimbursement is not 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	on or before Wednesday of each week by ACH	“Gross Sales” include all revenue derived from operating the Restaurant, including the commissions you receive from lottery games sold at your Restaurant, whether from cash, credit and debit card, barter exchange, trade credit, or other credit transactions, but (1) excludes sales, use, or service taxes and (2) is reduced by the amount of any documented refunds, credits and discounts up to 5% of the Gross Sales your Restaurant in good faith gives to customers and your employees. Gift certificate, gift card or similar program payments are included when the gift certificate, gift card, other instrument or applicable credit is redeemed. Gross Sales also include all insurance proceeds received for loss of business due to a casualty or similar event.
Brand Promotion Fund <sup>3</sup>	1% of Gross Sales with option to increase to 2%	on or before Wednesday of each week by ACH	Subject to an aggregate cap on all required marketing expenditures of 3% of Gross Sales (the “Marketing Cap”).
Local Marketing Expenditure	Up to 1% of Gross Sales		If the franchisee fails to spend at least 1% of Gross Sales on local advertising, they will contribute the difference between the amount required to spend and the amount spent to the Brand Promotion Fund. Subject to Marketing Cap.
Website Maintenance Fee	We do not currently charge this fee. We estimate that this fee will be \$20 per month if implemented.	Monthly	You must provide required information and updates. If you are in default of the Franchise Agreement, your website may be removed until defaults are cured.
Late Payment Fees	Interest at the rate specified by us from time to time, or the highest commercial contract interest rate the law allows, but in no event shall such rate exceed 18% per annum, plus \$100 service fee per late payment	As incurred	Interest owed only on past-due amounts. Service fee of \$100 per occurrence for all such overdue payments and \$100 per occurrence for all checks returned or ACH requests declined due to insufficient funds.

TYPE OF FEE <sup>1</sup>	AMOUNT	DUE DATE	REMARKS
Transfer Fee – Franchise Agreement	50% our then-current initial franchise fee	As incurred	Payable if we approve a transfer of your Restaurant. If we terminate our conditional consent to the transfer for certain reasons (for instance, if the transfer does not occur or the transferring parties fail to meet the conditions to our consent), and the transferring parties sign a general release, then we will refund 50% of the transfer fee.
Transfer Fee – Area Development Agreement	An amount equal to the greater of 3% of the purchase price or \$20,000. When you submit a request for our consent to transfer, you will pay \$2,500, which is non-refundable but will be credited against the transfer fee if the sale is successfully completed.	As incurred	Payable if we approve a transfer of your Area Development Agreement.
Renewal Fee	25% of our then-current initial franchise fee	Upon renewal	Payable if we approve you to acquire a successor franchise for your Restaurant.
Inspection and Audit	Costs of the inspection or audit, including the charges of attorneys and independent accountants and the travel expenses, room and board, and compensation of our employees.	Immediately on demand	You must reimburse our costs if we must re-inspect your Restaurant if an inspection identified failures of System Standards, and/or if a follow-up visit is necessary because we were prevented from properly inspecting the Restaurant, or if an audit was done because you failed to provide required reports or reveals a Royalty or Brand Promotion Fund contribution understatement exceeding 2% of the amount that you actually reported.
Interim Operations Fee	4% of Gross Sales	As incurred	Only if we assume interim operations of your Restaurant because of your abandonment of the Restaurant or your failure to comply with the Franchise Agreement. See Item 15.
Product or Supplier Testing	Our cost of testing and/or reviewing such product or supplier (estimated to be between \$0 to \$250)	As incurred	If you request approval of a new product or supplier.

TYPE OF FEE <sup>1</sup>	AMOUNT	DUE DATE	REMARKS
Additional Training	\$250 per person per day	As incurred	Initial training is provided for up to 4 people at no cost. However, if additional training is required or re-training is required, you must pay additional training fee. We may charge you for training newly-hired personnel; for refresher training courses; and for additional or special training you need or request. This fee is subject to change. See Item 11.
Additional Assistance	Our personnel's per diem charges (\$250 per person per day) and travel and living expenses	As incurred	We may charge you for additional assistance you need or request. This per diem fee is subject to change. See Item 11.
Annual Conference and Business Meeting	We do not currently charge this fee. We estimate that this fee will be \$600 if implemented	As incurred	Currently, we do not charge a conference registration fee. However, we reserve the right to charge you a fee for each additional person, other than you (or your Managing Owner) and the general manager of your Restaurant, who attends the annual conference and business meeting. We will charge the then-current registration fee for each additional attendee. You will be responsible for all your attendees' travel, lodging, meals and other out of pocket expenses incurred to attend the annual conference and business meeting.
Inventory	Actual costs and expenses of such inventory	As incurred	You are required to purchase certain inventory items from our designated vendor, including business cards, gift cards, travel menus, balloons and hours of operation signs. You may also purchase optional inventory items from such designated vendor including letterhead, envelopes, certificates, check presenter inserts, comment cards, gift card holders, birthday cards and thank you cards. The inventory items will be shipped to you directly from the designated vendor. We or our affiliate will pay the designated vendor and you will pay us or our affiliate for such inventory. We do not add a markup to the cost of such inventory items. The cost of such inventory items is determined by the designated vendor and subject to change by such vendor at any time.
Insurance	Our actual costs and expenses (estimated to be between \$7,500 to \$20,000)	As incurred	Only if you fail to obtain or maintain insurance, and we exercise our option to obtain or reinstate it for you. You must reimburse us for premiums, costs and expenses we incur to obtain the insurance, plus a reasonable fee for our time incurred in obtaining such insurance.
Indemnification	Will vary under circumstances	As incurred	You must reimburse us and our affiliates if any of us is held liable for claims related to your Restaurant's operations.

TYPE OF FEE <sup>1</sup>	AMOUNT	DUE DATE	REMARKS
Costs and Attorneys' Fees	Will vary under circumstances	As incurred	Payable only if you do not comply with the Franchise Agreement or Area Development Agreement, and we are the prevailing party in any relevant litigation or arbitration.
Non-Compliance Charge	Up to \$100 per failure to comply with the Franchise Agreement (at our discretion)	On demand, the day after non-compliance occurs	Only if you fail to comply with your obligations under the Franchise Agreement (for example, a failure to pay fees or submit reports when due). In addition to any other remedies we have under the Franchise Agreement as a result of the non-compliance.
Lost Revenue Damages	Will vary under circumstances	As incurred	Payable if we terminate the Franchise Agreement, or you terminate it without cause. An amount equal to the net present value of the Royalty fees and Brand Promotion Fund contributions that would have become due had the Franchise Agreement not been terminated, from the date of termination to the earlier of (i) five (5) years thereafter, or (ii) the scheduled expiration date of the Franchise Agreement. Calculated based on Gross Sales of the Restaurant for the 12 months preceding the termination, or if the Restaurant had not been in operation for at least 12 months, then based on the average monthly Gross Sales of all Restaurants of your designated brand concept during our fiscal year immediately preceding the termination.

## NOTES

1. Except as otherwise noted, all fees are imposed by and payable to us or our affiliates. All fees are non-refundable. These fees are uniformly imposed for franchisees signing the Franchise Agreement but may not be uniformly imposed on existing franchisees. Unless otherwise indicated, fees are due under the Franchise Agreement.
2. If you sign an Area Development Agreement, you or an Approved Affiliate will be required to sign our then-current form of Franchise Agreement as sites are approved for your Restaurants, but the royalty rate under each Franchise Agreement you or an Approved Affiliate signs during the original term of the Area Development Agreement will be the lower of either the royalty rate in effect when you sign the Area Development Agreement or the standard royalty rate we are charging when you sign the Franchise Agreement.
3. Initially, you will contribute 1% of Gross Sales to the Brand Promotion Fund. However, at any time and on notice to you, we may change the amount you must contribute to the Brand Promotion Fund, but we cannot require that you contribute more than 2% of your Restaurant's Gross Sales, and we cannot require you to contribute or spend an amount that would cause your aggregate expenditures on marketing to exceed your Marketing Cap.

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

**YOUR ESTIMATED INITIAL INVESTMENT**  
**(AREA DEVELOPMENT AGREEMENT)**

TYPE OF EXPENDITURE	AMOUNT	METHOD OF PAYMENT	WHEN DUE	TO WHOM PAYMENT IS MADE
Development Fee for Multiple Restaurants <sup>1</sup>	\$60,000 - \$180,000	Lump Sum	On Execution	Us
Additional Funds – 3 months	\$0			
<b>TOTAL ESTIMATED INITIAL INVESTMENT<sup>2</sup></b>	<b>\$60,000 - \$180,000</b>			

NOTES

1. Actual costs will depend on the number of Restaurants specified in the Development Schedule. Development Fee equals \$20,000 times the number of Restaurants (excluding the 1<sup>st</sup> one) that you agree to open. For example, if you agree to open four Restaurants, the Development Fee would be \$20,000 x 3, or \$60,000; if you agree to open ten Restaurants, the Development Fee would be \$20,000 x 9, or \$180,000. For each Franchise Agreement you must sign under the Area Development Agreement, other than your first Franchise Agreement, we credit the balance of the Development Fee, in \$20,000 increments, toward the initial franchise fee that is due as Franchise Agreements are signed. The Development Fee is non-refundable.

2. As described further in Item 1, for each Restaurant that you develop pursuant to the terms of an Area Development Agreement, you must execute an individual Franchise Agreement, and incur the costs associated with developing a Restaurant under the terms of that Franchise Agreement. The estimate provided above does not include an estimate of any costs incurred under the terms of any individual Franchise Agreement. We do not provide an estimate in this Disclosure Document of the investment or costs associated with developing a Restaurant at any future date, which may be impacted by a number of factors, including changes to our System Standards and the prevailing market rates for goods and services.

Neither we nor our affiliates offer financing directly or indirectly for any part of the initial investment. The availability and terms of financing depend on the availability of financing generally, your creditworthiness and collateral, and lending policies of financial institutions. The estimate does not include any finance charge, interest, or debt service obligation.



**YOUR ESTIMATED INITIAL INVESTMENT**  
**(FRANCHISE AGREEMENT – ELMER’S RESTAURANT)**

TYPE OF EXPENDITURE <sup>1</sup>	AMOUNT	METHOD OF PAYMENT	WHEN DUE	TO WHOM PAYMENT IS TO BE MADE
Initial Franchise Fee <sup>2</sup>	\$40,000	Lump Sum	On Execution	Us
Leasehold Improvements <sup>3</sup>	\$700,000 – \$2,200,000	As Arranged	As Invoiced	Landlord/Suppliers
Furniture, Fixtures and Equipment <sup>4</sup>	\$400,000 – \$1,200,000	As Arranged	As Invoiced	Suppliers
Signage <sup>5</sup>	\$35,000 – \$75,000	As Arranged	As Invoiced	Suppliers
Three Month’s Rent <sup>6</sup>	\$0 – \$75,625	As Arranged	As Incurred	Landlord
Security Deposit <sup>7</sup>	\$10,000 – \$40,000	Lump Sum	As incurred	Landlord
Lease Addendum Review Fee	\$0 – \$2,000	Lump Sum	As incurred	Us
Utility Deposits and Fees	\$1,000 – \$10,000	Lump Sum	As Incurred	Utility Providers
Branded Inventory and Supplies <sup>8</sup>	\$1,200 – \$1,800	Lump Sum	As invoiced	Us
Opening Inventory and Supplies <sup>9</sup>	\$45,000 – \$110,000	As Arranged	As Invoiced	Suppliers
Grand Opening Advertising <sup>10</sup>	\$2,000	As Arranged	As Invoiced	Suppliers
Training Expenses <sup>11</sup>	\$75,000 – \$200,000	As Arranged	As Invoiced	Suppliers and Employees
Miscellaneous Opening Costs <sup>12</sup>	\$9,000 – \$95,000	As Arranged	As Invoiced	Suppliers
Professional Fees	\$2,000 – \$15,000	As Arranged	As Invoiced	Supplier Professionals
Insurance Premiums – 3 Months <sup>13</sup>	\$10,000 – \$25,000	As Arranged	As Invoiced	Insurance Carrier
Liquor Licensing <sup>14</sup>	\$250 – \$4,000	As Arranged	As Invoiced or On Filing for License	Suppliers and Government Agency
Additional Funds - 3 months <sup>15</sup>	\$90,000 – \$200,000	As Arranged	As Incurred	Suppliers and Employees
<b>TOTAL ESTIMATED INITIAL INVESTMENT<sup>16</sup></b>	<b>\$1,420,450 – \$4,295,425</b>			

**YOUR ESTIMATED INITIAL INVESTMENT**  
**(FRANCHISE AGREEMENT – EGG N’ JOE RESTAURANT OR ELMER’S KITCHEN)**

TYPE OF EXPENDITURE <sup>1</sup>	AMOUNT	METHOD OF PAYMENT	WHEN DUE	TO WHOM PAYMENT IS TO BE MADE
Initial Fees <sup>2</sup>	\$40,000	Lump Sum	On Execution	Us
Leasehold Improvements <sup>3</sup>	\$500,000 – \$1,600,000	As Arranged	As Invoiced	Landlord/Suppliers
Furniture, Fixtures and Equipment <sup>4</sup>	\$275,000 – \$800,000	As Arranged	As Invoiced	Suppliers
Signage <sup>5</sup>	\$20,000 – \$45,000	As Arranged	As Invoiced	Suppliers
Three Month’s Rent <sup>6</sup>	\$24,500 - \$55,000	As Arranged	As Incurred	Landlord
Security Deposit <sup>7</sup>	\$20,000 – \$30,000	Lump Sum	As incurred	Landlord
Lease Addendum Review Fee	\$0 - \$2,000	Lump Sum	As incurred	Us
Utility Deposits and Fees	\$1,000 – \$15,000	As Arranged	As Incurred	Utility Providers
Branded Inventory and Supplies <sup>8</sup>	\$1,200 - \$1,800	Lump Sum	As invoiced	Us
Opening Inventory and Supplies <sup>9</sup>	\$39,000 – \$95,000	As Arranged	As Invoiced	Suppliers
Grand Opening Advertising <sup>10</sup>	\$2,000	As Arranged	As Invoiced	Suppliers
Training Expenses <sup>11</sup>	\$75,000 – \$200,000	As Arranged	As Invoiced	Suppliers and Employees
Miscellaneous Opening Costs <sup>12</sup>	\$9,000 – \$85,000	As Arranged	As Invoiced	Suppliers, State Agencies and Employees
Professional Fees	\$2,000 – \$15,000	As Arranged	As Invoiced	Supplier Professionals
Insurance Premiums – 3 Months <sup>13</sup>	\$7,500 – \$20,000	As Arranged	As Invoiced	Insurance Carrier
Liquor Licensing <sup>14</sup>	\$250 – \$4,000	As Arranged	As Invoiced or On Filing for License	Suppliers and Government Agency
Additional Funds - 3 months <sup>15</sup>	\$90,000 – \$200,000	As Arranged	As Incurred	Suppliers and Employees
<b>TOTAL ESTIMATED INITIAL INVESTMENT<sup>16</sup></b>	<b>\$1,106,450 – \$3,209,800</b>			

## NOTES

1. All fees payable to us or our affiliates are not refundable. Whether any of the other payments are refundable will depend on the arrangement between you and the supplier.
2. Our current initial franchise fee is \$40,000, payable when you sign a Franchise Agreement. For your 2<sup>nd</sup> and each subsequent Franchise Agreement signed pursuant to an Area Developer Agreement, \$20,000 of the Development Fee will be credited towards the Initial Franchise Fee for each Franchise Agreement you sign, up to the amount of the Development Fee, in the aggregate.
3. Our estimate for leasehold improvements does not include any tenant improvement allowance that may be granted by landlords towards leasehold improvements. Tenant improvement allowances are site specific and dependent upon several variables, including rent, occupancy levels and local market conditions, which are beyond our control. The cost for leasehold improvements can be impacted by a number of other factors, including size of the Restaurant. Other factors that might impact the cost of leasehold improvements are the condition of the Premises at the time you sign your Lease, and location of the Premises (leasehold improvements for Restaurants developed in urban areas tend to be more expensive).
4. The equipment includes the computer system. This estimate also includes freight, installation, and applicable state and local taxes.
5. The range for this item will be impacted by whether signage is permitted by the landlord and the municipality where the Restaurant is located.
6. The cost of acquiring or leasing a location for your Restaurant will vary significantly depending upon the market in which the proposed site is located. A suitable building for an Elmer's Restaurant will range in size from approximately 5,000 square feet to 5,500 square feet and will likely cost from \$25 to \$55 per square foot per year. The low end of the range for an Elmer's Restaurant assumes you own the building and land on which your Elmer's Restaurant is located and therefore will not be required to pay rent. A suitable building for an Egg N' Joe Restaurant or an Elmer's Kitchen will range in size from approximately 3,500 square feet to 4,000 square feet and will likely cost from \$28 to \$55 per square foot per year. Local market conditions, changes in the economy and inflation will all contribute to your real property costs. The location of the parcel of real property, its relationship to and the nature of any adjoining uses, and its accessibility will affect both its size and price. Lease agreements vary, but usually require the lessee to pay for maintenance, insurance, taxes and any other charges or expenses for the land and building and the operation of the Restaurant or they may require that you reimburse the landlord for its proportionate share of these payments (plus interest) made on your behalf. Some lease agreements will also require you to pay minimum monthly rent or percentage rent. You must get our approval of your proposed lease before signing it.
7. The security deposit may be refundable under the terms of the lease.
8. This covers the business cards, gift cards, travel menus, balloons, hours of operation signs, and other inventory items and supplies you will be required to purchase from the vendor we designate prior to opening your Restaurant. We will collect payment from you (without adding a markup) and pay it to the designated vendor.
9. Due to differences in local laws, prices, suppliers, geography, and commercial practices, you may elect to carry a larger inventory. Local costs will greatly affect this investment.
10. In addition to your contribution to the Brand Promotion Fund, you must spend a minimum of \$2,000 on a grand opening advertising program that we have approved (see Item 11).

11. This estimate includes the cost for payroll for management and staff training before the opening of your Restaurant (estimate of \$30,000 to \$70,000 for an Egg N' Joe Restaurant or an Elmer's Kitchen, and \$45,000 to \$90,000 for an Elmer's Restaurant). Your costs will vary substantially based on the salary you pay your employees, which will be impacted by local market conditions and prevailing wage rates in your geographic area, how long before opening you hire your managers, and whether this is your first Restaurant or your second or subsequent Restaurant. Our estimate also includes your costs (including, travel and lodging) to send four individuals to attend our initial training program (estimate of \$8,000 to \$78,600). Your costs will vary substantially based on the distance your attendees must travel to attend training and the type of accommodations you choose. Additionally, the estimate above includes an estimate of our costs, which you must reimburse, for sending a lead trainer and/or training team to your Restaurant to provide grand opening assistance. Currently, we estimate the cost of grand opening training to range from \$0 (for your first and second Restaurant, because such training is provided free of additional charge) to \$20,000 (which is the high-end of the estimate of \$2,500 to \$20,000 you will incur for your third or subsequent Restaurant, with the low end assuming we send only one trainer for ten days, whom lives locally and therefore has no lodging expenses and little to no travel expenses, and the high end assuming we send three trainers for ten days, whom do not live locally and therefore incur travel, lodging, meals and other expenses).

12. Typical pre-opening expenses include pre-opening training menus, related pre-opening marketing and personnel ads. You must obtain state and local licenses, including business licenses, vending machine licenses, and games licenses (liquor licenses are addressed separately in Note 14). You may have to post bonds in order to obtain certain governmental permits.

13. You must, at your own expense, keep in force insurance policies for each Restaurant. We reserve the right to change types and amounts of coverage. This estimate is based on our current requirements. See Item 8 for a description of our current requirements. Your lease agreement may require higher insurance limits than those stated above. You will likely have to prepay all or a portion of the first year's premiums for insurance. The estimate above assumes that you will prepay the annual insurance premiums for your first year of operations.

14. The cost to obtain a liquor license varies greatly depending on the licensing authority involved and the local liquor license resale market, if any. Generally, liquor-licensing systems fall into two categories: (a) quota-based systems, and (b) non-quota-based systems. In quota-based systems, the total number of licenses available in a municipality, county or other defined territory is set according to the number of people within the territory. For example, state law may limit the total number of licenses available to one per every two thousand persons. Once the licensing authority has issued the total number of licenses according to the population, the licensing agency will not issue any additional new licenses until a new census is taken that shows an increase in population or until an existing permit expires or is revoked. Most often in quota-based systems, parties seeking licenses will not wait for the next census or wait for a license to expire. Instead, they will purchase a license from an existing licensee. In such situations, the cost of obtaining a license can be substantially greater than the cost of obtaining a license directly from the licensing authority. The new licensee will not only pay fixed license fees to the state, but it will also pay the purchase price to the transferor plus fees for attorney's services and service providers. The licensing agency may or may not regulate the price. The price may simply be set by the market for licenses in a particular location, and that could inflate the price significantly. You should carefully review the system of liquor licensing in your state and review the expected range of costs, if your Restaurant is located in a quota state. In state systems that are not quota-based, the cost of obtaining a state license is usually limited to the fee prescribed by statute or administrative

regulation, plus fees for attorney's services and service providers. However, there may be additional costs imposed by a need to obtain a municipal and/or county liquor license, conditional use permit or other governmental approval. There are also federal tax permits required.

15. Our estimates of the amounts needed to cover your expenses for the start-up phase (3 months from the date the Restaurant opens for business) of your Restaurant include: replenishing your inventory, initial advertising and promotional expenditures, payroll for managers and other employees, uniforms, utilities, and other variable costs. These amounts do not include any estimates for debt service on loans that you obtain to finance your Restaurant.

16. Your actual costs will depend on factors such as: geography, the availability of sites; your Restaurant size and location; construction costs; your discretionary expenditures; the availability of leasing or financing arrangements; your credit rating; and other factors. The estimated initial investment figures shown above for constructing and opening a Restaurant are based primarily on the costs incurred by our affiliates in opening Elmer's Restaurants since 1960. Actual costs will vary depending on physical size and current condition of the premises. In addition, actual costs may substantially exceed these estimates in a major metropolitan market. To avoid excessive construction costs, we require that you pick contractors carefully by obtaining several competitive bids beforehand. These estimates do not include extensive exterior renovations.

Neither we nor our affiliates offer financing directly or indirectly for any part of the initial investment. The availability and terms of financing depend on the availability of financing generally, your creditworthiness and collateral, and lending policies of financial institutions. The estimate does not include any finance charge, interest, or debt service obligation.

## **ITEM 8**

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

#### **Standards and Specifications**

In order to maintain the quality and uniformity of all food products, menu items, ingredients, services, products, materials, forms, items, supplies, signs, promotional materials, fixtures, furnishings and equipment utilized in or by Restaurants, we may periodically issue certain mandatory standards, specifications, operating procedures and rules for Restaurants (the "System Standards"). You must strictly comply with all System Standards. In constructing and operating the Restaurant, you must use only those types of food items, condiments, construction and decorative materials, fixtures, equipment, furniture, signs, uniforms and linens, smallwares, cleaning supplies, marketing materials, and other products and services ("Operating Assets") that we have approved according to our System Standards for appearance, function and performance. We will not issue to you or to our approved suppliers (except as we deem necessary for purposes of production) the System Standards for proprietary Operating Assets. We will otherwise communicate our System Standards and the approved Operating Assets to you in the Operations Manuals (as defined in Item 11) and otherwise in writing.

#### **Approved or Designated Suppliers**

As part of our System Standards, we may require you to purchase all Operating Assets from vendors or suppliers approved by us in writing, or designated by us as the exclusive supplier of such Operating Asset. We require that you use one of our designated architects and a designated kitchen designer in connection with the development of the Restaurant. We will provide a list of approved and designated suppliers in the Operations Manuals or otherwise in writing.

Currently, we also require you to use our designated or approved vendors and distributors for coffee products, pancake mix and waffle mix. In some cases, we or our affiliates have negotiated system-wide agreements with the vendors for an agreed upon price per Restaurant. We also specify the vendor (though you may purchase such products from any distributor that carries such vendor's products) for the following products: soft drinks, juices, food products, ingredients, condiments, certain stationery and signage items. We or our affiliates may from time to time elect to pay such vendors directly and invoice you for the costs. You must also purchase all other Operating Assets from suppliers we have approved. We and our affiliates currently are not the approved or sole supplier of any goods or services. We may in the future designate ourselves or an affiliate as an approved supplier of any goods and any other services that are used in the development or operation of your Restaurant.

As of the date of this Disclosure Document, none of our officers owns an interest in any approved suppliers.

We estimate that 50% to 75% of your initial investment and 90% to 97% of your ongoing expenditures will be directed to purchase products and services that will be restricted by us in some manner. Except as disclosed above, we do not currently receive or derive revenue or other material consideration from vendors as a result of purchases or leases we require franchisees to make.

### **Alternative Products, Services and Suppliers**

If you propose to purchase any products or services that we have not approved, or from any supplier that we have not approved, you must first notify us in writing. You must also submit to us sufficient specifications, photographs, drawings and other information or samples for us to determine whether the proposed products or services comply with our System Standards, and/or the proposed supplier meets our approved supplier criteria. Approval is conditioned on you demonstrating that the alternate supplier (i) sells a product meeting our specifications and quality standards; (ii) can meet the quantity demands of our restaurants located within your trading area; and (iii) is in good standing in the business community regarding the reliability of its products, materials, or services. We will notify you of our approval or disapproval of all proposed products, services or suppliers in writing to you within a reasonable time, typically within 60 days after receipt of the information from you or from the proposed supplier. If we have not notified you in writing of our approval by the end of the 60 days, the request is deemed to be denied. We may charge you a fee (estimated to be up to \$250) for testing and evaluating suppliers or products and services. We may also impose limits on the number of suppliers, products and services that we are willing to review. We maintain a list of criteria for reviewing and approving products, services and suppliers; however, we do not issue these criteria to you and may deny approval of any supplier in our sole discretion. We may periodically re-inspect any approved products or services, or the facilities and products and services of any approved supplier and revoke our approval if such product, service or supplier does not continue to meet any of our criteria.

### **Insurance**

You must maintain in force at your sole expense insurance policies for each Restaurant as required under applicable law and in minimum types and amounts of coverage we periodically require. Currently, our requirements include property insurance (including contents at replacement cost value and loss of business income inclusive of one years' worth of net-operating income), crime insurance (including employee dishonesty) with a limit not less than \$100,000, liquor liability in the amount not less than \$1,000,000 per occurrence, employment practice liability insurance with a limit not less than \$1,000,000, cyber liability with coverage of not less than \$250,000 per occurrence, food borne illness in the amount not less than \$1,000,000 per occurrence,

auto liability coverage including owned, non-owned and hired vehicles for combined single limits of bodily injury and property damage of not less than \$1,000,000 per occurrence, and reputation restoration insurance. You also must maintain workers' compensation insurance for your employees in accordance with laws applicable in the state in which the Restaurant is operated.

We may periodically change the amounts of coverage required under these insurance policies or require different or additional insurance coverages (including reasonable excess liability insurance) at any time to reflect inflation, identification of new risks, changes in law or standards of liability, higher damage awards or other relevant changes in circumstances. You must provide us with a certificate of insurance naming us and our designated affiliates and our and their respective principals, officers, directors, managers, owners, employees, agents, representatives and independent contractors as additional insureds, using a form of endorsement that we have approved, and providing us with 30 days prior written notice of material changes to or cancellation or expiration of all policies. Your insurance policies must contain a waiver of subrogation in favor of the additional insureds and provide primary coverage with any insurance policies we and our affiliates maintain being non-contributory. You routinely must furnish us copies of your Certificate of Insurance or other evidence of your maintaining this insurance coverage and paying premiums.

### **Purchase Arrangements, Material Benefits and Revenue**

In some cases, we or our affiliates will negotiate purchase arrangements, including prices and terms, with designated and approved suppliers on behalf of Restaurants. Currently, we have negotiated purchase arrangements, including pricing terms, with our designated suppliers of certain stationery, signage, food, beverage, and other operating supplies. Additionally, you must purchase coffee and tea from our designated vendor; that vendor will provide coffee and tea brewing equipment and equipment maintenance services at no additional cost to you. You must also purchase soft-drink supplies from our designated vendor; that vendor will provide a soft-drink dispenser and up to three maintenance calls per year at no additional cost to you. Also, if you purchase waffle mix from a particular approved vendor, that vendor will provide you with the waffle irons and maintenance services at no additional charge to you.

We or our affiliates may derive revenue or other material consideration from direct purchases or leases by our franchisees. During fiscal year 2023, we did not derive any revenue from franchisee purchases. However, during fiscal year 2023 ERI received \$49,245.21 from franchisee purchases of certain inventory and supplies, all of which ERI paid to the vendor of such inventory and supplies.

We or our affiliates may also derive revenue or other material consideration from approved suppliers based on purchases made by us, our affiliates or our franchisees of the supplier's products or services (e.g. rebates). The basis for rebates and contributions paid to us or our affiliates will depend on the type of product or service supplied, but currently they include: a flat rate contribution of \$500 to \$20,000 from certain vendors; \$0.13 to \$4.55 per gallon on certain beverages; \$0.03 to \$0.04 per pound on certain food items; \$0.50 to \$3.00 per case on certain food items; \$0.03 per dozen eggs from a certain vendor; 1.5% of sales on certain dairy products; and \$0.50 to \$10.00 per case on certain paper and disposable items. Currently, all such rebates and contributions are directed to either the annual conference fund or the Brand Promotion Fund, though we may retain them in the future. During our 2023 fiscal year, we received \$90,951.06 from approved vendors based on purchases made by us, our affiliates and our franchisees, all of which we contributed to the Brand Promotion Fund. During our 2023 fiscal year, ERI received \$289,921.90, all of which it contributed to the annual conference fund to defray franchisees' costs to attend the annual conference. Unless provided in the agreement with the approved supplier,

neither we nor our affiliates are obligated to spend funds received from approved suppliers nor are we or they bound to spend such funds in any particular manner or for any particular purpose.

As of the date of this Disclosure Document, there are no purchasing or distribution cooperatives for any of the items described above.

Other than as described above, we do not provide any material benefits to franchisees based on their use of designated or approved suppliers.

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

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

OBLIGATION	SECTION IN AGREEMENTS	ITEM IN DISCLOSURE DOCUMENT
A. Site selection and acquisition/lease	Section 2.A and 2.B in Franchise Agreement Section 2.A in Area Development Agreement	Items 8 and 11
B. Pre-opening purchases/leases	Section 2.B, 2.C and 2.F in Franchise Agreement Section 2.A in Area Development Agreement	Items 5, 7, 8, and 11
C. Site development and other pre-opening requirements	Section 2.C, 2.D, 2.E and 2.G in Franchise Agreement Section 2.B, 2.C and 2.E in Area Development Agreement	Items 7, 8, and 11
D. Initial and ongoing training	Section 4.A and 4.B in Franchise Agreement Not applicable in Area Development Agreement	Item 11
E. Opening	Section 2.G in Franchise Agreement Section 2.C in Area Development Agreement	Item 11
F. Fees	Section 3 in Franchise Agreement Section 3 in Area Development Agreement	Items 5, 6 and 7
G. Compliance with System Standards / Operations Manuals	Section 4.C and 8.J in Franchise Agreement Not applicable in Area Development Agreement	Items 8, 11 and 14



OBLIGATION	SECTION IN AGREEMENTS	ITEM IN DISCLOSURE DOCUMENT
H. Trademarks and proprietary information	Section 5 and 6 in Franchise Agreement Section 4 in Area Development Agreement	Items 13 and 14
I. Restriction on products/services offered	Section 8.C and 8.E in Franchise Agreement Not applicable in Area Development Agreement	Items 8 and 16
J. Warranty and customer service requirements	Section 8.F in Franchise Agreement Not applicable in Area Development Agreement	Not applicable.
K. Territorial development and sales quotas	Not applicable in Franchise Agreement Section 2.C in Area Development Agreement	Item 12
L. Ongoing product/service purchases	Section 2.E in Franchise Agreement Not applicable in Franchise Agreement	Item 8
M. Maintenance, appearance and remodeling requirements	Section 8.A, 8.B and 8.F in Franchise Agreement Not applicable in Area Development Agreement	Item 11
N. Insurance	Section 8.G in Franchise Agreement Not applicable in Area Development Agreement	Item 7
O. Advertising	Section 9 in Franchise Agreement Not applicable in Area Development Agreement	Items 6, 8 and 11
P. Indemnification	Section 16.D in Franchise Agreement Section 8.B in Area Development Agreement	Item 6
Q. Owner's participation, management, and staffing	Section 8.D in Franchise Agreement Not applicable in Area Development Agreement	Items 11 and 15
R. Records/reports	Section 10 in Franchise Agreement Section 2.E in Area Development Agreement	Items 6 and 11

OBLIGATION	SECTION IN AGREEMENTS	ITEM IN DISCLOSURE DOCUMENT
S. Inspections/audits	Section 11 in Franchise Agreement Not applicable in Area Development Agreement	Items 6 and 11
T. Transfer	Section 12 in Franchise Agreement Section 6 in Area Development Agreement	Items 6 and 17
U. Renewal	Section 13 in Franchise Agreement Not applicable in Area Development Agreement	Item 17
V. Post-termination obligations	Section 15 in Franchise Agreement Section 7.B, 7.C and 7.D in Area Development Agreement	Item 17
W. Non-competition covenants	Section 15.D in Franchise Agreement Section 7.C in Area Development Agreement	Item 17
X. Dispute resolution	Section 17 in Franchise Agreement Section 9 in Area Development Agreement	Item 17

**ITEM 10**  
**FINANCING**

We do not offer direct or indirect financing. We do not guarantee your promissory notes, mortgages, leases or other obligations.

**ITEM 11**  
**FRANCHISOR’S ASSISTANCE, ADVERTISING, COMPUTER SYSTEMS, AND TRAINING**

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

**Our Pre-Opening Obligations**

Before you open the Restaurant, we or our affiliates will provide you the following assistance:

- 1) Under the Franchise Agreement:
  - a. Consultation on and approval of site (Franchise Agreement – Section 2.A)
  - b. Review and approval of the lease (Franchise Agreement – Section 2.B)

- c. Up to 6 weeks of initial training for 4 persons, which need not be you but must include one general manager, one kitchen manager and one assistant manager if your brand concept is an Elmer's Restaurant and one general manager, one kitchen manager and one supervisor if your brand concept is an Elmer's Kitchen or an Egg N' Joe Restaurant. (Franchise Agreement – Section 4.A)
  - d. When your Restaurant is ready to open for business, we will send a trainer or training team (the identity and composition of which will be in our discretion) to your Restaurant to assist with the grand opening of your Restaurant. We will determine the amount of required time and support necessary to have you prepared for your grand opening. If this is the first or second Restaurant opened by you or your Affiliates, we will provide the trainer or team without any additional training fee and at our expense for up to a total of one week before your Restaurant opens and up to one week after your Restaurant opens; provided, however, that if this is the second Restaurant opened by you or your Affiliates we will provide more limited opening assistance. Notwithstanding the foregoing, we reserve the right to charge you for extraordinary travel and living expenses incurred by such person(s) in connection with providing such opening assistance. In the event you need additional opening assistance (whether requested by you or mandated by us), or if this is not the first or second Restaurant opened by you or your Affiliates, you will pay all costs and expenses of such personnel, for as long as any such additional personnel assist at the Restaurant. The costs and expenses associated with this assistance include, but are not limited to, wages, salary, transportation, meals, lodging, and fringe benefits. (Franchise Agreement – Section 4.A)
  - e. Electronic access to our Operations Manuals (Franchise Agreement – Section 4.C)
  - f. Specifications for all required equipment (including computer system), furniture, fixtures, and signs and lists of approved suppliers or vendors. We do not deliver or install these items. (Franchise Agreement – Sections 2.E, 4.B and 8.E)
- 2) Under the Area Development Agreement:
- a. Consultation on and approval of sites (Area Development Agreement – Section 2.A)

### **Opening of Your Restaurant**

You must obtain and maintain a site acceptable to us for your Restaurant. If you have signed an Area Development Agreement, the site must be located in the Development Area that you and we have agreed on and described in the Area Development Agreement.

We will approve or disapprove your proposed sites based on our then-current criteria, including factors such as business count, traffic count, accessibility, parking, visibility, competition and liquor license availability. When you have given us all the necessary information on the site you have selected, we generally will approve or disapprove the site within 30 days. You must secure possession of the site by signing a lease or other possession agreement, and we recommend that you retain an attorney to assist you with that process. You may not sign a lease without our approval.

If you do not locate and sign a lease or other possession agreement for an acceptable site within 180 days of signing the Franchise Agreement, we may terminate the Franchise Agreement. We typically do not own or lease the site where your Restaurant is located.

Unless you have signed an Area Development Agreement specifying a different opening deadline, you must open your Restaurant, by the earlier of (i) 18 months after you sign a lease for the premises of your Restaurant, or (ii) 24 months after the date of the Franchise Agreement. If you fail to open your Restaurant within this time, we may terminate the Franchise Agreement and retain the entire franchise fee. Factors that affect this time include obtaining a satisfactory site, financing arrangements, lease negotiations, local ordinances, liquor license, delivery and installation of equipment, and renovation of the premises. The typical length of time between signing the Franchise Agreement and opening the Restaurant is 12 to 24 months.

### **Our Obligations During the Operation of Your Restaurant**

During the operation of your Restaurant, we will:

- 1) Provide you our System Standards and other suggested standards, specifications and procedures for Restaurants (Franchise Agreement – Section 4.B)
- 2) Advise you of what purchasing is required and what authorized Operating Assets and other products and services are required (Franchise Agreement – Section 4.B)
- 3) Provide you assistance with advertising and marketing materials and programs and approve the same (See “Advertising and Promotion” below) (Franchise Agreement – Sections 4.B and 9)
- 4) Maintain a website for the promotion of Restaurants (Franchise Agreement – Section 9.D)
- 5) Provide you with a list of authorized vendors and suppliers for the products, goods, merchandise, supplies, signs, furniture, fixtures, equipment and services (Franchise Agreement – Section 8.E)
- 6) We may periodically set a maximum or minimum price that you may charge for products or services offered by your Restaurant (Franchise Agreement – Section 8.H)

### **Advertising and Promotion Programs:**

We reserve the right to modify the amount that you must contribute to a national brand promotion fund or that you must spend on your own local marketing.

#### **A. Brand Promotion Fund**

You must contribute to the brand promotion fund for Restaurants (the “Brand Promotion Fund”). Currently the amount of your contribution is 1% of your Gross Sales, payable in the same manner as the royalty.

Restaurants that we or our affiliates own in the United States contribute to the Brand Promotion Fund on no less than the same percentage basis as franchisees. During our 2023 fiscal year, the Brand Promotion Fund contributions were used as follows: 13% for media placement, 13% for administrative expenses, 0.25% for maintaining the website, 15% for sponsorships, 3.5% for social media and eMarketing, 17% was used for local Restaurant marketing, 0.25% was used for our gift card program, and 38% was retained for use in future years. During the 2023 fiscal year, no portion of the Brand Promotion Fund was either spent on production or used principally to solicit new franchisees.

We or our affiliates or other designees will direct all programs that are developed or presented by the Brand Promotion Fund, with sole control over the creative concepts, materials, and endorsements used and their geographic, market, and media placement and allocation. The Brand Promotion Fund may pay for preparing and producing video, audio, and written materials and electronic, virtual, or digital media; developing, implementing, and maintaining a Franchise System website and related strategies; administering regional and multi-regional marketing and advertising programs, including purchasing trade journal, direct mail, and other media advertising and using advertising, promotion, and marketing agencies and other advisors to provide assistance; administering online advertising and marketing campaigns (including search engine, social media, email, and display ad campaigns); developing and administering software, apps, and related integrations; implementing a loyalty program or other marketing programs designed to encourage the use of Restaurants; and supporting public relations, market research, and other advertising, promotion, and marketing activities. The Brand Promotion Fund will give you samples of advertising, marketing, and promotional formats and materials at no cost. We will sell you multiple copies of these materials at its direct cost of producing them, plus any related shipping, handling, and storage charges.

We will account for the Brand Promotion Fund separately from our other funds and not use the Brand Promotion Fund for any of our general operating expenses. However, we may use the Brand Promotion Fund to reimburse ourselves or our affiliates for the reasonable salaries and benefits of personnel who manage and administer the Brand Promotion Fund, the Brand Promotion Fund's other administrative costs, travel expenses of personnel while they are on Brand Promotion Fund business, meeting costs, overhead relating to Brand Promotion Fund business, and other expenses that we incur in activities reasonably related to administering or directing the Brand Promotion Fund and its programs, including conducting market research, public relations, preparing advertising, promotion, and marketing materials, and collecting and accounting for Brand Promotion Fund contributions.

The Brand Promotion Fund will not be our asset. We do not owe any fiduciary obligation to you for administering the Brand Promotion Fund or any other reason. We will hold all Brand Promotion Fund contributions for the benefit of the contributors. The Brand Promotion Fund may spend in any fiscal year more or less than the total Brand Promotion Fund contributions in that year, borrow from us or others (paying reasonable interest) to cover deficits, or invest any surplus for future use. If any Brand Promotion Fund contributions are not spent in any fiscal year, such funds will be retained by the Brand Promotion Fund for future use. We will use all interest earned on the Brand Promotion Fund contributions to pay costs before using the Brand Promotion Fund's other assets.

The Brand Promotion Fund is audited annually by an independent certified public accountant as part of the audit of our financial statements, which are attached to this disclosure document. We may incorporate the Brand Promotion Fund or operate it through a separate entity whenever we deem appropriate, and such entity may elect not to audit the Brand Promotion Fund.

We intend for the Brand Promotion Fund to promote recognition of the Marks, the Elmer's Breakfast · Lunch · Dinner, Elmer's Kitchen Breakfast · Brunch · Mimosas, and Egg N' Joe brands, and patronage of Restaurants generally. Although we will try to use the Brand Promotion Fund to develop advertising and marketing materials and programs, and to place advertising and marketing, that will benefit all Restaurants contributing to the Brand Promotion

Fund, we need not ensure that Brand Promotion Fund expenditures in or affecting any geographic area are proportionate or equivalent to Brand Promotion Fund contributions by Restaurants operating in that geographic area or that any Restaurant benefits directly or in proportion to its Brand Promotion Fund contribution from the development of advertising and marketing materials or the placement of advertising and marketing. We have the right, but no obligation, to use collection agents and institute legal proceedings to collect Brand Promotion Fund contributions at the Brand Promotion Fund's expense. We also may forgive, waive, settle, and compromise all claims by or against the Brand Promotion Fund. Except as provided in the Franchise Agreement, we assume no direct or indirect liability or obligation to you for collecting amounts due to, maintaining, directing, or administering the Brand Promotion Fund.

We reserve the right to separate the Brand Promotion Fund to maintain separate Brand Promotion Funds for Elmer's Restaurants, Elmer's Kitchens, and Egg N' Joe Restaurants, or any combination of the brands. We may at any time defer or reduce contributions of a Restaurant franchise owner and, upon 30 days' prior notice to you, reduce or suspend Brand Promotion Fund contributions and operations for one or more periods of any length and terminate (and, if terminated, reinstate) the Brand Promotion Fund. If we terminate the Brand Promotion Fund, we may either spend all unspent monies in accordance with our then-current marketing policies, until such amounts are exhausted, or distribute the funds in the Brand Promotion Fund to the contributing Restaurant owners on a pro rata basis. At the end of each fiscal year, all unspent amounts in the Brand Promotion Fund will carry-over to be used for the subsequent years.

#### **B. Cooperative Advertising**

We do not currently require cooperative advertising, though we reserve the right to require such advertising in the future.

#### **C. Other Advertising Obligations**

If other Restaurants are located within the directory's distribution area, we may require you to participate in a collective advertisement with those other Restaurants and to pay your share of that collective advertisement. We reserve the right to require that you spend, beginning after you complete your grand opening advertising obligations discussed below, up to 1% of your Gross Sales each calendar quarter to advertise and promote your Restaurant. Within 30 days after the end of each month, you must send to us, in the manner we prescribe, an accounting of your expenditures for local advertising and promotion during the preceding month. Your local advertising and promotion must follow our guidelines.

We reserve the right, at any time, to issue you a notice that the amounts required to be spent by you toward local marketing shall, instead, be paid to us or our designee. If we exercise this option, we or our designee will spend such amounts, in accordance with local Restaurant marketing guidelines and programs that we develop from time to time, to advertise and promote the Restaurant on your behalf. We may, in our discretion, contribute any of these amounts to the Brand Promotion Fund.

Your advertising, promotion, and marketing must be completely clear, factual, and not misleading and conform to both the highest standards of ethical advertising and marketing and the advertising and marketing policies that we prescribe from time to time. At least 14 days before you use them, you must send to us for approval samples of all advertising, promotional, and marketing materials which we have not prepared or previously approved. If you do not receive written disapproval within 10 days after we receive the materials, they are deemed to

be disapproved. Once we approve the materials, you are permitted to use them. However, we may, in our discretion, withdraw our approval if a regulatory or other issue arises that, in our opinion, makes such withdrawal in our or the Franchise System's best interest. You may not use any advertising, promotional, or marketing materials that we have not approved or have disapproved.

You may not engage in any promotional or similar activities, directly or indirectly, through or on the Internet, the World Wide Web, or any other similar proprietary or common carrier electronic delivery system unless approved by us.

#### **D. Grand Opening Advertising**

In addition to your other advertising obligations, you must spend at least \$2,000 for a grand opening marketing program for your Restaurant to take place on the dates we designate before and after your Restaurant opens. You must spend this amount in addition to all other amounts you must spend on advertising specified above, and the amount you spend on grand opening advertising will not count towards your local marketing expenditure for such year. You must use the media and materials we develop or approve in connection with the grand opening advertising program.

#### **E. Franchise Advisory Council**

We do not have a franchisee advisory council that advises us on advertising policies, though we reserve the right to establish such a council in the future.

### **Websites and other Online Presence**

We maintain corporate websites on the Internet, currently [www.eatatelmers.com](http://www.eatatelmers.com) and [www.eggnjoe.com](http://www.eggnjoe.com), and intend to maintain such websites to promote the Franchise System, and to advertise the services and products marketed by us and our franchisees and/or franchise opportunities (each a "Franchise System Website"). We may, but are not obligated to, provide you with a webpage on the applicable Franchise System Website. If we provide you with a webpage, we may require that you: (i) provide us the information and materials we request to develop, update, and modify your webpage; (ii) notify us whenever any information on the Franchise System Website regarding your Restaurant is not accurate; and (iii) pay our then current initial fee and monthly maintenance fee for the webpage. We will own all intellectual property and other rights in the Franchise System Website, including your webpage, and all information they contain (including the domain name or URL for your webpage, the log of "hits" by visitors, and any personal or business data that visitors supply). We may discontinue or modify any Franchise System Website, or consolidate a Franchise System Website with the website of any other designated brand concept, at any time we determine.

All advertising, marketing, and promotional materials that you develop for your Restaurant must contain notices of the Franchise System Website's domain name in the manner we designate. You may not develop, maintain, or authorize any other website that mentions or describes you, your Restaurant or displays any of the Marks. If we approve the use of any domain name, homepage, electronic address, social media account, user name, other online presence or presence on any electronic, virtual, or digital medium of any kind ("Online Presence") in the operation of your Restaurant, you will develop and maintain such Online Presence only in accordance with our then-current social media policy, which we may periodically modify, including guidelines for posting any messages or commentary on third-party websites. We will own the rights to each such Online Presence. At our request, you will grant us access to each such Online Presence, and take

whatever action (including signing an assignment or other documents) we request to evidence our ownership of such Online Presence, or to help us obtain exclusive rights in such Online Presence.

You must list and advertise your Restaurant in at least one recommended online or classified telephone directory distributed within the market area of your Restaurant (in the business classifications we prescribe from time to time) and use the form of classified telephone directory advertisement approved by us. You must not list or advertise your Restaurant on any internet search engines (for example, Google Local and CitySearch) or any internet consumer review websites (for example, Yelp and Urban Spoon) unless we expressly direct you to do so.

### **Computer Hardware and Software**

You must purchase a computer system approved by us from the designated vendor to ensure compliance with our System Standards. Currently, the approved computer system consists of software, POS terminals, a POS server, cash drawers, printers, a personal computer including Microsoft Office, a managed switch, kitchen video monitors, remote printers, magnetic swipe-card, pin or chip readers, DSL or other high speed connections, managed security services, firewall, office printer/scanner, related cabling and a maintenance contract.

Your computer system will enable you to collect information about customer orders, sales by hour/day/period and inventory, and will generate daily reports. We will have the ability to independently access your computer system. There are no contractual limitations on our and our affiliates' right to access this information and data.

You must purchase all of the above items from our approved vendor. Your cost to purchase the entire system will range between \$20,000 and 55,000 (see Item 7), depending on many factors. You will be responsible for paying for access to our approved suppliers of hosted software services for an annual amount of approximately \$250 per year. We currently estimate that the annual cost of maintenance, updating, upgrading of the Computer System as it presently exists will range from \$800 to \$5,000.

You must also maintain a functioning e-mail address and all specified points of high-speed Internet connection. You must make Wi-Fi available to your guests, free of charge to them. We may issue email addresses to you for use in connection with your Restaurant (currently, we will issue you one email address).

You must upgrade your hardware and software when we decide it to be necessary and at your own cost. We reserve our right to update System Standards, which includes computer hardware and software from time to time and there are no contractual limitations on these rights.

### **Operations Manuals**

We provide information about our System Standards and other guidance through manuals and bulletins, including the operations manuals (the "Operations Manuals"), which may include one or more separate manuals as well as other written materials. The current Operations Manual for Elmer's Restaurants is comprised of 178 pages and the current Operations Manual for Egg N' Joe Restaurants and Elmer's Kitchens is comprised of 176 pages. The table of contents to the current Operations Manual for each brand is attached as Exhibit H.

### **Training Program**

The initial training program involves approximately 6 weeks of training for general managers, kitchen managers, assistant managers and supervisors. Training will be conducted at our principal offices and at a designated training facility of our choice, or we may provide portions



of training virtually. We may change the location of the initial training program to another location we designate. We may lengthen, shorten or restructure the contents of this program. The on-site training at your Restaurant will not commence until all improvements have been completed, a certificate of occupancy has been issued, and the required liquor license has been applied for. We offer the training program on an as needed basis throughout the year.

No later than 30 days before you open your Restaurant, your Designated Managers must complete, to our satisfaction, initial training conducted by us on the material aspects of operating a Restaurant. Your “Designated Managers” shall include four people you have designated to assume primary responsibility for the supervision of your Restaurant, which need not be you (or your Managing Owner). If your designated brand concept is Elmer’s Breakfast · Lunch · Dinner, your Designated Managers must include one general manager, one kitchen manager and one assistant manager; if your designated brand concept is Elmer’s Kitchen or Egg N’ Joe, your Designated Managers must include one general manager, one kitchen manager and one supervisor. If we determine that the Designated Managers cannot complete initial training to our satisfaction, we may terminate this Agreement.

Training materials include management training program materials, team member training materials, online training modules, and the Operations Manuals. All Designated Managers must complete the program to our satisfaction. We will schedule the program based on the Designated Managers’ availability, availability of space in the program, training restaurant availability and the projected opening date for your Restaurant.

Although we provide initial training for no additional fee for your Designated Managers, you must pay for all travel and living expenses which all Designated Managers or other attendees of the training program incur and for your employee's wages and workers' compensation insurance while attending training.

The initial training program is designed to cover all phases of the operation of Elmer’s Restaurants, Elmer’s Restaurants, or Egg N’ Joe Restaurants. Any individual attending the training who has not signed the Franchise Agreement or the form of Guaranty and Assumption of Obligations attached to the Franchise Agreement must execute a confidentiality agreement in the form provided by us.

You may request additional training for the Designated Managers at the end of the initial training program, to be provided at our then current per diem charges, if you do not feel that the Designated Managers were sufficiently trained in the operation of a Restaurant. We and you will jointly determine the duration of this additional training. However, if the Designated Managers complete our initial training program to our satisfaction, and you have not expressly informed us in writing at the end of that program that you do not feel that your Designated Managers were sufficiently trained in the operation of a Restaurant, then you and they will be deemed to have been trained sufficiently to operate a Restaurant.

We may require you (or your Managing Owner), your Designated Managers and other previously trained and experienced employees to attend and complete various training courses to our satisfaction that we periodically designate, including courses and programs provided by third-parties, at times and locations that we designate, or virtually as we determine. Attendance at ongoing training courses will not be required for more than five full days during each calendar year. Besides attending these courses, you (or your Managing Owner) and your Designated Managers we so require must attend all of our annual conferences and mid-year business meeting of all Restaurant franchise owners at a location we designate. The annual conferences and business

meetings may be held virtually. Attendance will not be required at our annual conference and meeting for more than four days during each calendar year.

You will be solely responsible for the compensation, travel, lodging and living expenses you and your managers incur while attending our initial training program, any refresher training course, or any conference.

If you have a new Managing Owner or Designated Manager, the new Managing Owner or Designated Manager must complete our then current initial training program to our satisfaction. We may charge reasonable fees for training a new Managing Owner or Designated Manager. You also agree to pay all travel and living expenses which your Managing Owner or Designated Manager incurs during all training courses and programs.

As of the date of this Disclosure Document, we provide the following initial training:

### TRAINING PROGRAM

Subject	Hours of Classroom Training	Hours of On-The-Job Training	Location
Introduction and Orientation	3	1	Vancouver, WA or other location we designate
Dining Room Service	10	30	Vancouver, WA or other location we designate
Kitchen	10	70	Vancouver, WA or other location we designate
Administration	10	30	Vancouver, WA or other location we designate
Floor Operations	10	70	Vancouver, WA or other location we designate
<b>Total</b>	<b>43</b>	<b>201</b>	

The hours devoted to each subject are estimates and may vary based on how quickly trainees learn the material, their prior experience with the subject, and scheduling. On-the-job training includes cross training in all subject areas of the business.

You will be responsible for reimbursing us the costs and expenses incurred by the lead trainer, and any other trainers or training team we send to provide support for your third or subsequent Restaurant, including the costs of travel, lodging, meals and a per diem to cover the trainers' salary (estimated to be between \$2,500 to \$20,000). Our trainer(s) will determine the amount of required time and support necessary to have your staff prepared for your grand opening.

Susan Herzog and John Peralta will oversee the training program. Ms. Herzog has 22 years of experience with us, our parent and affiliates, and 22 years of experience in the subjects taught.

Mr. Peralta has 28 years of experience with us, our parent and affiliates, and over 36 years of experience in the subjects taught. Certain other employees of ours and of our affiliates may also participate in the training programs.

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

### **AREA DEVELOPMENT AGREEMENT**

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

The Area Development Agreement grants you the right to acquire franchises to develop, own and operate Restaurants within the designated Development Area that will be described in the Area Development Agreement. Your rights under the Area Development Agreement do not include the right to acquire franchises for Special Venue Restaurants unless we provide our separate prior written consent with respect to each such proposed Special Venue Restaurant. You must secure possession of an approved site, with a lease we have approved, for each Restaurant you are required to develop under the terms of your Area Development Agreement, and develop and open such Restaurant, each by the deadlines specified in the schedule to your Area Development Agreement. That schedule will be agreed on by you and us before you sign the Area Development Agreement. If you fail to comply with the designated schedule, we may terminate your Area Development Agreement, or we may elect to terminate or reduce your territorial protections in the Development Area. The site selection and lease approval process will be governed by the terms of your individual Franchise Agreement for each such Restaurant (see below).

The boundaries of the Development Area will be described by cities, zip codes, counties, states, or other boundaries when appropriate, or by an area encompassed within a circle having a radius of a specific length. We will determine in our discretion the Development Area we will offer to you before you sign the Area Development Agreement. We determine the size of the Development Area based on multiple factors, including demographics, traffic patterns, competition, your capacity to recruit and provide services in the Development Area, and site availability among other economic and market factors. The Development Area typically will include a minimum of 75,000 to 100,000 people per Restaurant you have agreed to develop. The Area Development Agreement expires on the earlier of (i) the required opening date specified on the Development Schedule for the last Restaurant you are required to develop under the Area Development Agreement; or (ii) the last day of the Development Period. When the Area Development Agreement expires or is terminated, the grant of Area Development rights, including the area protection conferred by the Area Development Agreement, terminates. Your right to use the Franchise System will be limited to those Restaurants operating under Franchise Agreements you (or an Approved Affiliate) may have entered into before the expiration or termination of the Area Development Agreement.

During the term of the Area Development Agreement, as long as you and your affiliates are in compliance with the Area Development Agreement and all Franchise Agreements, we will not (1) own and operate Restaurants in the Development Area (other than Restaurants already open and operating in the Development Area on the effective date of your Area Development Agreement), (2) grant or authorize the grant to any other person or entity of development rights for the Development Area, or (3) grant or authorize the grant to any other person or entity a

franchise for a Restaurant in the Development Area. However, we and our affiliates retain the right to (1) establish, operate and license others to establish and operate (including in the Development Area) Special Venue Restaurants offering similar or identical products and services as those offered by Restaurants, and which use the names “Elmer’s,” “Elmer’s Kitchen,” and “Egg N’ Joe”, the Marks (defined in Item 13 below), and the Franchise System and System Standards; (2) establish, operate and allow others to establish and operate, Restaurants using the Marks and the Franchise System, at any location outside the Development Area on such terms and conditions we deem appropriate; (3) establish, operate, and allow others to establish and operate, restaurants that may offer products and services which are identical or similar to products and services offered by Restaurants, under other trade names, trademarks, service marks and commercial symbols different from the Marks at any location (including in the Development Area); (4) establish, operate and allow others to establish and operate other businesses and distribution channels (including, but not limited to, the Internet and grocery stores), wherever located or operating and regardless of the nature or location of the customers with whom such other businesses and distribution channels do business, that operate under the Marks or any other trade names, trademarks, service marks or commercial symbols that are the same as or different from Restaurants, and that sell products or services that are identical or similar to, or competitive with, those that Restaurants customarily sell; (5) acquire the assets or ownership interests of one or more businesses including Competitive Businesses, and franchising, licensing or creating similar arrangements with respect to such businesses once acquired, wherever these businesses (or the franchisees or licensees of these businesses) are located or operating (including in the Development Area); (6) be acquired (whether through acquisition of assets, ownership interests or otherwise, regardless of the form of transaction), by any Competitive Business, even if such business operates, franchises or licenses such businesses in the Development Area; (7) operate or license others to operate a Restaurant that we or our designee acquires from a franchisee as a result of the exercise of our right of first refusal or right to purchase as provided in the Franchise Agreement; and (8) all other activities not expressly prohibited by the Area Development Agreement. “Competitive Business” means any restaurant, food service or other business (other than a Restaurant) (i) whose gross receipts from the sale of breakfast food or menu items represent, at any time, at least 10% of the business’ total gross receipts (excluding receipts from the sale of alcoholic beverages or lottery games), (ii) whose menu, concept, business model or method of operation is similar to that employed by restaurants operated, franchised or licensed by us or our affiliates, (iii) that offers or sells goods or services that are generally the same as or similar to the goods or services being offered by businesses owned, operated, franchised or licensed by us or our affiliates, or (iv) that grants franchises or licenses for the operation of any of the foregoing or provides services to the franchisor or licensor of any of the foregoing.

We are not required to pay you if we exercise any of the rights specified above inside or outside your Development Area.

You are not granted under the Area Development Agreement any options, rights of first refusal or similar rights to acquire additional development rights or to expand your Development Area.

## **FRANCHISE AGREEMENT**

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.

The Franchise Agreement grants you the right to operate a Restaurant at a single location that you select and we approve. If you have not signed an Area Development Agreement, you and we will agree on the location prior to signing the Franchise Agreement. If you have signed an Area Development Agreement, the location will be one that you select and we approve within the Development Area. If you are submitting a site to us for our approval under an Area Development Agreement, we will approve the site based on our then-current criteria prior to the time you sign a Franchise Agreement for that location (see Item 11). You must operate the Restaurant only at the approved location and may not relocate the Restaurant without first obtaining our written consent. You may not establish or operate another Restaurant unless you enter into a separate Franchise Agreement for that Restaurant.

You are allowed, subject to our approval, to promote your Restaurant anywhere and through any channel of distribution. But you may not sell products or services outside of your Restaurant (or through approved delivery programs), including through channels of distribution such as the Internet, catalog sales, telemarketing or other direct marketing, without our written consent.

Under the Franchise Agreement, we retain the right to (1) establish and operate, and allow others to establish and operate, Restaurants using the Marks and the Franchise System, at any location on such terms and conditions we deem appropriate; (2) establish, operate and license others to establish and operate, anywhere in the world other than the Premises, restaurants and other businesses (including Restaurants and businesses that offer products and services which are identical or similar to products and services offered by Restaurants) under any trade names, trademarks, service marks and commercial symbols, including the Marks; (3) establish, operate and allow others to establish and operate other businesses and distribution channels (including, the Internet and grocery stores), regardless of the nature or location of the customers with whom such other businesses and distribution channels do business, that operate under the Marks or any other trade names, trademarks, service marks or commercial symbols that are the same as or different from Restaurants, or that sell any of the specialized food and beverage products formulated and prepared by us or our Affiliates for use in Restaurants, or any other products and/or services that are identical or similar to, and/or competitive with, those that Restaurants customarily sell; (4) acquire the assets or ownership interests of one or more businesses, including Competitive Businesses, and franchising, licensing or creating similar arrangements with respect to such businesses once acquired, wherever these businesses (or the franchisees or licensees of these businesses) are located or operating; (5) be acquired (whether through acquisition of assets, ownership interests or otherwise, regardless of the form of transaction), by any other business, including a Competitive Business, even if such business operates, franchises and/or licenses such businesses near your Restaurant; and (6) all other activities not expressly prohibited by the Franchise Agreement. We are not required to pay you if we exercise any of these rights.




If we decide to own and operate a Restaurant, or offer a franchise to own and operate a Restaurant, at any location within a 1 mile radius of your Restaurant premises, and you are not in default of the Franchise Agreement, then you will have a right of first refusal to acquire a franchise to own and operate such Restaurant. The Franchise Agreement does not grant you any other options or rights to acquire additional franchises.

We do not operate or franchise, and currently have no plans to operate or franchise, a business under different trademarks selling goods or services similar to those offered at Restaurants.

**ITEM 13**  
**TRADEMARKS**


We grant you the non-exclusive right and obligation to use the trademarks under the Franchise Agreement. By “trademark” we mean trade names, trademarks, service marks and logos we authorize to identify Elmer’s Restaurants, Elmer’s Kitchens, and Egg N’ Joe Restaurants (the “Marks”). The Marks are owned by our affiliate, WOB, which, under the Amended and Restated Intellectual Property License Agreement, dated May 16, 2017 (the “License Agreement”), granted us a license to use and sublicense the use of the Marks. The License Agreement has a term of 99 years, and can be terminated on 30-days’ notice if we materially breach the License Agreement and fail to cure the breach, or cease to be an affiliate of WOB (resulting in the loss of our right to use and to sublicense the use of the Marks). Your rights to use the Marks under the Franchise Agreement will not be affected by the termination of our license.


The following table sets forth the status of registrations and applications with the U.S. Patent and Trademark Office (“PTO”) for federal registration of our principal trademarks. All Marks are registered on the Principal Register.

Mark	Registration Number	Registration Date
ELMER’S (Stylized) 	1,492,699	June 14, 1988
ELMER’S BREAKFAST LUNCH DINNER (Stylized) 	2,473,108	July 31, 2001
ELMER’S BREAKFAST LUNCH DINNER (Words Only)	2,479,353	August 21, 2001
NORTHWEST LODGE BLEND (Words Only)	3,752,840	February 23, 2010
NORTHWEST LODGE BLEND COFFEE (Design) 	3,752,841	February 23, 2010
THE OFFICIAL RESTAURANT OF GRANDPARENT’S DAY (Words Only)	4,331,554	May 7, 2013
EGG N’ JOE (Words Only)	4,933,904	April 5, 2016

Mark	Registration Number	Registration Date
EGG N' JOE BREAKFAST + LUNCH (Stylized)  	4,938,100	April 12, 2016
ELMER'S BREAKFAST LUNCH DINNER (Stylized)  	5,879,001	October 8, 2019
ELMER'S KITCHEN BREAKFAST BRUNCH MIMOSAS (Words Only)	7,063,673	May 23, 2023
ELMER'S KITCHEN BREAKFAST BRUNCH MIMOSAS (Stylized)  	7,123,006	July 25, 2023
ELMER'S KITCHEN BREAKFAST BRUNCH MIMOSAS (Stylized)  	7,123,104	July 25, 2023

WOB also has submitted applications to register the following Marks with the PTO:

Mark	Serial Number	Application Date
EGG N' JOE BREAKFAST BRUNCH MIMOSAS (Stylized)  	97/832,636	March 10, 2023

Mark	Serial Number	Application Date
EGG N' JOE BREAKFAST BRUNCH (Stylized) 	97/832,762	March 10, 2023

We do not have a federal registration for our Elmer's Kitchen or our Egg N' Joe Restaurant principal trademarks. Therefore, our trademarks do not have many legal benefits and rights as a federally registered trademark. If our right to use the trademarks is challenged, you may have to change to an alternative trademark, which may increase your expenses.

All required renewals and affidavits of use have been filed in a timely manner.

We may establish new Marks in the future and you must use and display these marks in accordance with our System Standards and bear all costs associated with changes to Marks or introduction of new Marks. You must follow our rules when you use these Marks. You must use the Marks as we require and may only use the Marks for the designated brand concept identified in the Franchise Agreement for a particular Restaurant. You may not use any of the Marks as part of your firm or corporate name or with modifying words, designs or symbols except with our consent which we may withhold in our absolute discretion. You may not use the Marks in the sale of unauthorized products or services or in any manner we do not authorize in writing. You may not use the Marks in any advertising for the transfer, sale or other disposition of the Restaurant or any interest in the franchise. You may not use any other mark, name, commercial symbol or logotype in connection with the operation of the Restaurant. You may not use any Mark as part of any Online Presence, except in accordance with our guidelines set forth in the Operations Manuals or otherwise in writing from time to time.

There is presently no effective determination of the PTO, the Trademark Trial and Appeal Board, the trademark administrator of any state, or any court, nor (except as noted below) any pending infringement, opposition or cancellation proceeding or any pending material litigation involving our principal trademarks, service marks, trade names, logo-types or other commercial symbols.

You must not contest, directly or indirectly, our ownership of the Marks, trade secrets, methods and procedures that are a part of the Franchise System. You must not register, seek to register or contest our sole right to register, use and license others to use the Marks, names, information and symbols.

Any goodwill associated with Marks, including any goodwill which might be deemed to have arisen through your activities, inures directly and exclusively to our and our affiliates' benefit.

There are no agreements currently in effect which significantly limit our rights to use or license the use of any trademarks, service marks, trade names, logo-types or other commercial symbols.



You must notify us immediately in writing of any apparent infringement of or challenge to your use of any Mark, or claim by any person of any rights in any Mark or any similar trade name, trademark or service mark of which you become aware. You may not communicate with any person other than us and our counsel regarding any infringement, challenge or claim. We have sole discretion to take any action we deem appropriate and we have the right to exclusively control any litigation, PTO proceeding or other administrative proceeding arising out of any infringement, challenge or claim or otherwise relating to any Mark. You must execute all documents, render assistance and do such things as we deem or our counsel deems advisable to protect and maintain our interests.

Under the Franchise Agreement, we agree to reimburse you for all damages for which you are held liable in any proceeding in which your use of any Mark in compliance with the Franchise Agreement is held to constitute trademark infringement, unfair competition or dilution, and for all reasonable costs you incur in the defense of any claim brought against you or in any proceeding in which you are named as a party, only if you have timely notified us of the claim or proceeding and have otherwise complied with the Franchise Agreement and only if you have given us the opportunity to defend the claim. If we defend the claim, we have no obligation to indemnify or reimburse you for any fees or disbursements to any attorney retained by you.

If it becomes advisable, in our opinion, at any time for us to require you to modify or discontinue use of any Mark, or to use one or more additional or substitute trademarks or service marks, you must comply, at your costs, within a reasonable time after notice by us.

We do not know of any superior rights or infringing uses that could materially affect your use of the Marks in this state or in any state where the Restaurant is to be located.

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

**PATENTS**

We do not own any patents that are material to the franchise. We have not filed any patent applications that are material to the franchise.

**COPYRIGHTS**

The following table sets forth the status of registrations with the U.S. Copyright Office for federal registration of our or our affiliates' copyrighted materials.

Copyrighted Material	Registration Number	Registration Date	Copyright Owner
2022 Elmer's Menu	TX 9-093-678	January 26, 2022	WOB
2022 Egg N' Joe Menu	TX 9-093-671	January 26, 2022	WOB
2022 Elmer's Kitchen Menu	TXu 2-305-875	January 26, 2022	WOB

The above copyrights are of perpetual duration. WOB has granted us a license to use and sublicense the use of these copyrights under the License Agreement.

We or our affiliates also claim copyright protection for the Operations Manuals and for any other written materials we develop to assist you in the development and operation of the Restaurant. There are no determinations of the U.S. Copyright Office (Library of Congress) or any court, nor are there any pending infringement, opposition or cancellation proceedings or material litigation, involving the copyrighted materials which are relevant to their use by our franchisees.

No agreements limit our right to use or license the use of our copyrighted materials. We are not obligated under any agreement to protect or defend our copyrights, although we intend to do so. We do not know of any infringing uses of or superior rights in our copyrighted materials.

### **CONFIDENTIAL INFORMATION**

We possess, develop and may continue to develop certain proprietary and confidential information, including trade secrets relating to the operation of Restaurants. This proprietary and confidential information includes: (1) site selection criteria; (2) training and operations materials and manuals, including recipes and the Operations Manuals; (3) the System Standards and other methods, formats, specifications, standards, systems, procedures, techniques, sales and marketing techniques, knowledge, and experience used in developing, promoting and operating Restaurants; (4) market research, promotional, marketing and advertising programs for Restaurants; (5) knowledge of specifications for, and suppliers of, Operating Assets and other products and supplies; (6) any computer software or similar technology which is proprietary to us, our affiliates, or the Franchise System, including digital passwords and identifications and any source code of, and data, reports, and other printed materials generated by, the software or similar technology; (7) knowledge of the operating results and financial performance of Restaurants, other than your Restaurant; and (8) customer data. You and your owners will not acquire any interest in the confidential information other than the right to use it in operating the Restaurant. You must adopt and implement all reasonable procedures we may periodically establish to prevent unauthorized access, use or disclosure of the Confidential Information, including by establishing reasonable security and access measures and restricting disclosure to key personnel. You must maintain the absolute confidentiality of the confidential information during and after the expiration or termination of the Franchise Agreement. You and your owners can divulge this confidential information only to individuals or entities specifically authorized by us in advance, or to your employees or contractors who must have access to it to operate the Restaurant, however, such individuals or entities must be under a duty of confidentiality no less restrictive than your obligations to us under the Franchise Agreement. We may require you to have your employees and contractors execute individual undertakings and shall have the right to regulate the form of and be a party to or third-party beneficiary under any such agreements. Neither you nor your owners are permitted to make unauthorized copies, record or otherwise reproduce the materials or information or make them available to any unauthorized person.

### **ITEM 15**

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

### **AREA DEVELOPMENT AGREEMENT**

If you are an entity, you must identify an individual with at least 25% ownership interest (whether direct or indirect) in you who will have the authority of a chief executive officer (the “Managing Owner”). We may require our approval of the Managing Owner. You (or the Managing Owner) must devote an amount of your (or the Managing Owner’s) business time and efforts to the operation, promotion and enhancement of the business under the Area Development Agreement which is reasonable given your undertakings in the Area Development Agreement and in light of the business that the Area Development Agreement contemplates. You (or the Managing Owner) must supervise the development and operations of Restaurants franchised under the Area Development Agreement.

If you are a legal entity, each of your owners must sign a guaranty of your obligations under the Area Development Agreement (the form is attached as an exhibit to the Area Development Agreement). Each person signing a guaranty assumes and agrees to discharge all of your obligations (i.e., the developer's) under the Area Development Agreement. If any owner is an individual, his or her spouse must consent in writing to that owner's execution of the guaranty. Each person signing the guaranty agrees to be bound to provisions of the Area Development Agreement applicable to such person.

## **FRANCHISE AGREEMENT**

If you are an entity, you must identify as your Managing Owner a natural person with at least 25% ownership interest and voting power in you and who will have the authority of a chief executive officer. We may require our approval of the Managing Owner. You (or your Managing Owner) are responsible for the management, direction and control of your Restaurant, subject to the terms and conditions of the Franchise Agreement. You (or your Managing Owner) must supervise the management and operation of the Restaurant and continuously exert best efforts to promote and enhance the Restaurant.

You (or your Managing Owner) may elect not to supervise your Restaurant on a full-time basis, provided that your Designated Managers have completed our then-current initial training program to supervise the operation of your Restaurant. The Designated Managers must assume responsibilities on a full-time basis and may not engage in any other business or other activity, directly or indirectly, that requires any significant management responsibility, time commitment, or otherwise may conflict with his or her obligations to operate and manage the Restaurant. Designated Managers are not required to have an ownership interest in you. We may require your Managing Owner and Designated Managers to personally undertake the same obligations with respect to confidentiality and non-competition that you are subject to under the Franchise Agreement.

In certain circumstances (such as if you abandon your Restaurant or your failure to comply with the Franchise Agreement) we have the right to enter the Premises and assume interim operations of your Restaurant (or to appoint a third party to assume its operations) for any period of time we deem appropriate but not to exceed 90-day increments, renewable for up to one year, in the aggregate. We will periodically discuss with you the results of operation of your Restaurant during the time that we operate it. If we (or a third party) assume the operations of your Restaurant, you must pay us (in addition to other amounts due under your Franchise Agreement) an amount equal to 4% of Gross Sales, plus our (or the third party's) direct out-of-pocket costs and expenses, for such period of interim operations.

If you are a legal entity, each of your owners must sign a guaranty of your obligations under the Franchise Agreement (the form is attached as an exhibit to the Franchise Agreement). Each person signing a guaranty assumes and agrees to discharge all of your obligations (i.e., the franchisee's) under that Franchise Agreement. If any owner is an individual, his or her spouse must consent in writing to that owner's execution of the guaranty. Each person signing the guaranty agrees to be bound to provisions of the Franchise Agreement applicable to such person.

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

You agree that you (1) will offer and sell from your Restaurant all of the products and services that we periodically specify; (2) will not offer or sell at your Restaurant, the Premises or any other location any products or services we have not authorized; and (3) will discontinue selling

and offering for sale any products or services that we at any time disapprove. You will not offer carryout or delivery services nor will you purchase services from any third-party delivery services or providers, unless expressly authorized by us in writing. We may provide temporary authorization and may revoke our authorization for you to provide carryout, delivery services, or utilize third-party delivery services or providers at any time. We have the right to change the authorized menu items and other goods or services that you may offer, and there is no limit to our right to make such changes.

We may periodically set a maximum or minimum price that you may charge for products and services offered by your Restaurant. If we impose such a maximum or minimum price for any product or service, you may charge any price for the product or service up to and including our designated maximum price or down to and including our designated minimum price. The designated maximum and minimum prices for the same product or service may, at our option, be the same. For any product or service for which we do not impose a maximum or minimum price, we may require you to comply with an advertising policy adopted by us which will prohibit you from advertising any price for a product or service that is different than our suggested retail price. Although you must comply with any advertising policy we adopt, you will not be prohibited from selling any product or service at a price above or below the suggested retail price unless we impose a maximum price or minimum price for such product or service.

## 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 Disclosure Document.**

PROVISION	SECTION IN AGREEMENT	SUMMARY
a. Length of the franchise term	Section 1.A in Franchise Agreement	Term of Franchise Agreement 15 years.
	Section 1.B in Area Development Agreement	The term runs from the Effective Date through the earlier of (1) the date on which the last Restaurant under the Development Schedule opens or (2) the last day of the last Development Period.
b. Renewal or extension of the term	Section 13.A in Franchise Agreement	Option for renewal for one additional 10 year term.
	Not applicable in Area Development Agreement	Not applicable in Area Development Agreement.

PROVISION	SECTION IN AGREEMENT	SUMMARY
c. Requirements for franchisee to renew or extend	<p>Section 13.A in Franchise Agreement</p> <p>Not applicable in Area Development Agreement</p>	<p>Franchisee must have substantially complied with the Franchise Agreement during its term; franchisee must be in full compliance with the Franchise Agreement and all System Standards on the date the successor term would commence; franchisee either maintains possession of and agrees to remodel the Restaurant or secures substitute premises approved by franchisor; franchisee must sign franchisor's then-current form of franchise agreement and ancillary documents, which may contain materially different terms and conditions than franchisee's original contract; franchisee agrees to sign general releases; franchisee must pay renewal fee; franchisee must provide franchisor written notice of intent to acquire a successor franchise.</p> <p>Not applicable in Area Development Agreement.</p>
d. Termination by franchisee	<p>Section 14.A in Franchise Agreement</p> <p>Not applicable in Area Development Agreement</p>	<p>Franchisee may terminate the Franchise Agreement if Franchisor fails to materially comply with the Franchise Agreement and does not correct the failure within 90 days of receiving written notice; or, if Franchisor cannot cure the failure within 90 days and fails to provide notice within 90 days of that inability, Franchisee may terminate after an additional 90 days.</p> <p>Franchisee does not have the right to terminate under Area Development Agreement (subject to applicable state law).</p>
e. Termination by franchisor without cause	<p>Not applicable in Franchise Agreement or Area Development Agreement.</p>	<p>Franchisor may not terminate without cause under the Franchise Agreement or Area Development Agreement.</p>
f. Termination by franchisor with cause	<p>Section 14.B in Franchise Agreement</p> <p>AND</p> <p>Section 7.A in Area Development Agreement</p>	<p>Only if Franchisee commits one of several violations.</p>





PROVISION	SECTION IN AGREEMENT	SUMMARY
j. Assignment of contract by franchisor	Section 12.A in Franchise Agreement  AND  Section 10.H in Area Development Agreement	Franchisor may assign without restriction.
k. "Transfer" by franchisee-definition	Section 12.B in Franchise Agreement  Section 6.A in Area Development Agreement	<p>Includes transfer, assignment, sale, gift, or other disposition as well as entering into any proposed mortgage, pledge, hypothecation, encumbrance or giving of a security interest in or which affects the Restaurant.</p> <p>Includes transferred, sold, assigned, donated or otherwise transferred, including as a result of death as well as a prohibition on entering into any proposed mortgage, pledge, hypothecation, encumbrance or giving of a security interest in or which affects the Development Rights.</p>
l. Franchisor's approval of transfer by franchisee	Section 12.B in Franchise Agreement  Section 6.A in Area Development Agreement	<p>Franchisor's prior written approval required, which shall not be unreasonably withheld. Prior notice to Franchisor required for transfers among current owners of ownership interests in Franchisee so long as Managing Owner and controlling interests are not changed.</p> <p>Franchisor's prior written consent required. Transfers as a result of death will not be unreasonably withheld so long as at least one of the Managing Owners of Franchisee continues to be Managing Owners. Franchisor may withhold consent to a Sale or grant of a Security Interest for any reason.</p>





PROVISION	SECTION IN AGREEMENT	SUMMARY
n. Franchisor's right of first refusal to acquire franchisee's Franchised Business	Section 12.G in Franchise Agreement  AND  Section 6.B in Area Development Agreement	Franchisee must obtain from buyer, and send to Franchisor, a true and complete copy of an executed written offer, which must include details of payment terms and sources of financing. Franchisor may, within 30 days and by written notice after receiving the offer, elect to purchase based on those terms.
o. Franchisor's option to purchase franchisee's business	Section 15.E in Franchise Agreement  Not applicable in Area Development Agreement	Franchisor has right to purchase Franchisee's Restaurant upon the occurrence of a Termination Event for fair market value.  Not applicable in Area Development Agreement.
p. Death or disability	Section 12.C in Franchise Agreement  AND  Section 6.A in Area Development Agreement	Franchisor's approval of transfer as a result of death or incapacity will not be unreasonably withheld as long as at least one of the Managing Owners continues to be the designated Managing Owner. If, as a result of the death or incapacity of the transferor, a transfer is proposed to be made to the transferor's spouse, and if we do not approve the transfer, the trustee or administrator of the transferor's estate will have 9 months after our refusal to consent to the transfer to the transferor's spouse within which to transfer the transferor's interests to another party whom we approve.
q. Non-competition covenants during the term of the franchise	Section 7.A in Franchise Agreement  AND  Section 5.A in Area Development Agreement	Franchisee may not have any involvement in a Competitive Business, perform services for a Competitive Business, divert potential business from a Competitive Business or duplicate the Franchisor's System Standards or Franchise System (subject to applicable state law).
r. Non-competition covenants after the franchise is terminated or expires	Section 15.D in Franchise Agreement  Section 7.C in Area Development Agreement	For 2 years, Franchisee may not have involvement with any Competitive Business within a 3-mile radius of the Premises and within a 3-mile radius of any other Restaurant (subject to applicable state law).  For 2 years, Franchisee may not have involvement in a Competitive Business within the Development Area and within a 5-mile radius of any Restaurant (subject to applicable state law).
s. Modification of the agreement	Section 17.L in Franchise Agreement  AND  Section 10.K in Area Development Agreement	May not be amended or modified except in a writing signed by parties.
t. Integration/ merger clause	Section 17.L in Franchise Agreement  AND  Section 10.K in Area Development Agreement	Only the terms of the Franchise Agreement and/or Area Development Agreement, including their exhibits, schedules and attachments (including System Standards in the Operations Manual, which we may periodically revise) are binding (subject to applicable state law). Any representations or promises outside of this Disclosure Document, the Franchise Agreement and/or Area Development Agreement may not be enforceable.

PROVISION	SECTION IN AGREEMENT	SUMMARY
u. Dispute resolution by arbitration or mediation	Section 17.G in Franchise Agreement AND Section 9.A in Area Development Agreement	All disputes must be arbitrated at a location in or within 50 miles of Franchisor's or, as applicable, its successor's or assigns' then current principal place of business (currently, Eugene, Oregon) (subject to applicable state law).
v. Choice of forum	Section 17.I in Franchise Agreement AND Section 9.B in Area Development Agreement	All actions must be commenced in federal or state court nearest to Franchisor's or, as applicable, its successor's or assigns' then current place of business (currently, Eugene, Oregon) (subject to applicable state law).
w. Choice of law	Section 17.H in Franchise Agreement AND Section 10.E in Area Development Agreement	Oregon law (subject to applicable state law).

Applicable state law might require additional disclosures related to the information contained in this Item 17. These additional disclosures, if any, appear in Exhibit K.

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

We do not use any public figure to promote the Franchise System.

## **ITEM 19** **FINANCIAL PERFORMANCE REPRESENTATIONS**

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

We do not make any representations about a franchisee's future financial performance or the past financial performance of company-owned or franchised outlets. We also do not authorize our employees or representatives to make any such representations either orally or in writing. If you are purchasing an existing outlet, however, we may provide you with the actual records of that outlet. If you receive any other financial performance information or projections of your future income, you should report it to the franchisor's management by contacting Jerry Scott, President and Manager, We Are Crackin' LLC, 363 High Street, Eugene, OR 97401, (503) 252-1485, the Federal Trade Commission, and the appropriate state regulatory agencies.

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

The following tables pertain to Elmer’s Restaurants:

**TABLE NO. 1**  
**SYSTEMWIDE ELMER’S RESTAURANTS SUMMARY FOR**  
**YEARS 2021 to 2023<sup>1</sup>**

<b>Outlet Type</b>	<b>Year</b>	<b>Elmer’s Restaurants at the Start of the Year</b>	<b>Elmer’s Restaurants at the End of the Year</b>	<b>Net Change</b>
Franchised	2021	14	14	0
	2022	14	12	-2
	2023	12	13	+1
Company Owned or Managed <sup>2,3</sup>	2021	12	11	-1
	2022	11	9	-2
	2023	9	8	-1
<b>Total Restaurants</b>	<b>2021</b>	<b>26</b>	<b>25</b>	<b>-1</b>
	<b>2022</b>	<b>25</b>	<b>21</b>	<b>-4</b>
	<b>2023</b>	<b>21</b>	<b>21</b>	<b>0</b>

1/ The numbers in this table are for the fiscal years ended January 2, 2022, January 1, 2023, and December 31, 2023.

2/ Company-owned includes affiliate-owned or managed.

3/ During each of the 2022 and 2023 fiscal years, one company-owned Elmer’s Restaurant was converted into an Elmer’s Kitchen.

**TABLE NO. 2**  
**TRANSFERS OF ELMER’S RESTAURANTS FROM FRANCHISEES TO**  
**NEW OWNERS (OTHER THAN FRANCHISOR OR AN AFFILIATE)**  
**FOR YEARS 2021 to 2023<sup>1</sup>**

<b>State</b>	<b>Year</b>	<b>Number of Transfers</b>
Oregon	2021	0
	2022	1
	2023	0
<b>Total</b>	<b>2021</b>	<b>0</b>
	<b>2022</b>	<b>1</b>
	<b>2023</b>	<b>0</b>

1/ The numbers in this table are for the fiscal years ended January 2, 2022, January 1, 2023, and December 31, 2023.

**TABLE NO. 3**

**STATUS OF FRANCHISED ELMER'S RESTAURANTS  
FOR YEARS 2021 to 2023<sup>1</sup>**

State	Year	Restaurants at Start of Year	Restaurants Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations-Other Reasons	Restaurants at End of Year
CA	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
ID	2021	2	0	0	0	0	0	2
	2022	2	0	0	0	0	0	2
	2023	2	0	0	0	0	0	2
OR	2021	10	0	0	0	0	0	10
	2022	10	0	0	0	0	1	9
	2023	9	1	0	0	0	0	10
WA	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	1	0
	2023	0	0	0	0	0	0	0
<b>Totals<sup>2</sup></b>	<b>2021</b>	<b>14</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>14</b>
	<b>2022</b>	<b>14</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>12</b>
	<b>2023</b>	<b>12</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>13</b>

1/ The numbers in this table are for the fiscal years ended January 2, 2022, January 1, 2023, and December 31, 2023.

**TABLE NO. 4**

**STATUS OF COMPANY-OWNED<sup>1</sup> ELMER'S RESTAURANTS  
FOR YEARS 2021 to 2023<sup>2</sup>**

State	Year	Affiliate-Owned Restaurants at Start of Year	Affiliate-Owned Restaurants Opened	Affiliate-Owned Restaurants Reacquired from Franchisee	Affiliate-Owned Restaurants Closed	Affiliate-Owned Restaurants Sold to Franchisee	Affiliate-Owned Restaurants at End of Year
ID	2021	1	0	0	0	0	1
	2022	1	0	0	0	0	1
	2023	1	0	0	1 <sup>3</sup>	0	0
OR	2021	8	0	0	1	0	7

State	Year	Affiliate-Owned Restaurants at Start of Year	Affiliate-Owned Restaurants Opened	Affiliate-Owned Restaurants Reacquired from Franchisee	Affiliate-Owned Restaurants Closed	Affiliate-Owned Restaurants Sold to Franchisee	Affiliate-Owned Restaurants at End of Year
	2022	7	0	0	1 <sup>3</sup>	0	6
	2023	6	0	0	0	0	6
WA	2021	3	0	0	0	0	3
	2022	3	0	0	1	0	2
	2023	2	0	0	0	0	2
<b>Totals</b>	<b>2021</b>	<b>12</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>11</b>
	<b>2022</b>	<b>11</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>9</b>
	<b>2023</b>	<b>9</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>8</b>

1/ Company-owned includes affiliate-owned or managed.

2/ The numbers in this table are for the fiscal years ended January 2, 2022, January 1, 2023, and December 31, 2023.

3/ These company-owned Elmer's Restaurants were converted into Elmer's Kitchens.

**TABLE NO. 5**

**PROJECTED OPENINGS FOR ELMER'S RESTAURANTS  
AS OF DECEMBER 31, 2023 FOR 2024**

State	Franchise Agreements Signed But Restaurant Not Opened	Projected New Restaurants in the Next Fiscal Year	Projected New Company-Owned Restaurants in the Next Fiscal Year
<b>All States</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Totals</b>	<b>0</b>	<b>0</b>	<b>0</b>

The following tables pertain to Egg N' Joe Restaurants:

**TABLE NO. 1**  
**SYSTEMWIDE EGG N' JOE RESTAURANTS SUMMARY FOR**  
**YEARS 2021 to 2023<sup>1</sup>**

<b>Outlet Type</b>	<b>Year</b>	<b>Egg N' Joe Restaurants at the Start of the Year</b>	<b>Egg N' Joe Restaurants at the End of the Year</b>	<b>Net Change</b>
Franchised	2021	0	0	0
	2022	0	0	0
	2023	0	0	0
Company Owned or Managed <sup>2</sup>	2021	3	3	0
	2022	3	3	0
	2023	3	3	0
<b>Total Restaurants</b>	<b>2021</b>	<b>3</b>	<b>3</b>	<b>0</b>
	<b>2022</b>	<b>3</b>	<b>3</b>	<b>0</b>
	<b>2023</b>	<b>3</b>	<b>3</b>	<b>0</b>

1/ The numbers in this table are for the fiscal years ended January 2, 2022, January 1, 2023, and December 31, 2023.

2/ Company-owned includes affiliate-owned or managed.

**TABLE NO. 2**  
**TRANSFERS OF EGG N' JOE RESTAURANTS FROM FRANCHISEES TO**  
**NEW OWNERS (OTHER THAN FRANCHISOR OR AN AFFILIATE)**  
**FOR YEARS 2021 to 2023<sup>1</sup>**

<b>State</b>	<b>Year</b>	<b>Number of Transfers</b>
All States	2021	0
	2022	0
	2023	0
<b>Total</b>	<b>2021</b>	<b>0</b>
	<b>2022</b>	<b>0</b>
	<b>2023</b>	<b>0</b>

1/ The numbers in this table are for the fiscal years ended January 2, 2022, January 1, 2023, and December 31, 2023.

**TABLE NO. 3**

**STATUS OF FRANCHISED EGG N' JOE RESTAURANTS  
FOR YEARS 2021 to 2023<sup>1</sup>**

State	Year	Restaurants at Start of Year	Restaurants Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations-Other Reasons	Restaurants at End of Year
All States	2021	0	0	0	0	0	0	0
	2022	0	0	0	0	0	0	0
	2023	0	0	0	0	0	0	0
Totals	2021	0	0	0	0	0	0	0
	2022	0	0	0	0	0	0	0
	2023	0	0	0	0	0	0	0

1/ The numbers in this table are for the fiscal years ended January 2, 2022, January 1, 2023, and December 31, 2023.

**TABLE NO. 4  
STATUS OF COMPANY-OWNED<sup>1</sup> EGG N' JOE RESTAURANTS  
FOR YEARS 2020 to 2022<sup>2</sup>**

State	Year	Affiliate-Owned Restaurants at Start of Year	Affiliate-Owned Restaurants Opened	Affiliate-Owned Restaurants Reacquired from Franchisee	Affiliate-Owned Restaurants Closed	Affiliate-Owned Restaurants Sold to Franchisee	Affiliate-Owned Restaurants at End of Year
AZ	2021	3	0	0	0	0	3
	2022	3	0	0	0	0	3
	2023	3	0	0	0	0	3
Totals	2021	3	0	0	0	0	3
	2022	3	0	0	0	0	3
	2023	3	0	0	0	0	3

1/ Company-owned includes affiliate-owned or managed.

2/ The numbers in this table are for the fiscal years ended January 2, 2022, January 1, 2023, and December 31, 2023.



**TABLE NO. 5**

**PROJECTED OPENINGS FOR EGG N’ JOE RESTAURANTS  
AS OF DECEMBER 31, 2023 FOR 2024**

<b>State</b>	<b>Franchise Agreements Signed But Restaurant Not Opened</b>	<b>Projected New Restaurants in the Next Fiscal Year</b>	<b>Projected New Company-Owned Restaurants in the Next Fiscal Year</b>
All States	0	0	0
<b>Totals</b>	<b>0</b>	<b>0</b>	<b>0</b>

The following tables pertain to Elmer’s Kitchens:

**TABLE NO. 1  
SYSTEMWIDE ELMER’S KITCHENS SUMMARY FOR  
YEARS 2021 to 2023<sup>1</sup>**

<b>Outlet Type</b>	<b>Year</b>	<b>Elmer’s Kitchens at the Start of the Year</b>	<b>Elmer’s Kitchens at the End of the Year</b>	<b>Net Change</b>
Franchised	2021	0	0	0
	2022	0	0	0
	2023	0	0	0
Company Owned or Managed	2021	0	0	0
	2022	0	1	+1
	2023	1	2	+1
<b>Total Restaurants</b>	<b>2021</b>	<b>0</b>	<b>0</b>	<b>0</b>
	<b>2022</b>	<b>0</b>	<b>1</b>	<b>+1</b>
	<b>2023</b>	<b>1</b>	<b>2</b>	<b>+1</b>

1/ The numbers in this table are for the fiscal years ended January 2, 2022, January 1, 2023, and December 31, 2023.

**TABLE NO. 2**

**TRANSFERS OF ELMER’S KITCHENS FROM FRANCHISEES TO  
NEW OWNERS (OTHER THAN FRANCHISOR OR AN AFFILIATE)  
FOR YEARS 2021 to 2023<sup>1</sup>**

<b>State</b>	<b>Year</b>	<b>Number of Transfers</b>
All States	2021	0
	2022	0
	2023	0
<b>Total</b>	<b>2021</b>	<b>0</b>
	<b>2022</b>	<b>0</b>
	<b>2023</b>	<b>0</b>

1/ The numbers in this table are for the fiscal years ended January 2, 2022, January 1, 2023, and December 31, 2023.

**TABLE NO. 3**

**STATUS OF FRANCHISED ELMER’S KITCHENS  
FOR YEARS 2021 to 2023<sup>1</sup>**

<b>State</b>	<b>Year</b>	<b>Restaurants at Start of Year</b>	<b>Restaurants Opened</b>	<b>Terminations</b>	<b>Non- Renewals</b>	<b>Reacquired by Franchisor</b>	<b>Ceased Operations- Other Reasons</b>	<b>Restaurants at End of Year</b>
All States	2021	0	0	0	0	0	0	0
	2022	0	0	0	0	0	0	0
	2023	0	0	0	0	0	0	0
<b>Totals</b>	<b>2021</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	<b>2022</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	<b>2023</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

1/ The numbers in this table are for the fiscal years ended January 2, 2022, January 1, 2023, and December 31, 2023.

**TABLE NO. 4**  
**STATUS OF COMPANY-OWNED ELMER'S KITCHENS**  
**FOR YEARS 2021 to 2023<sup>1</sup>**

State	Year	Affiliate-Owned Restaurants at Start of Year	Affiliate-Owned Restaurants Opened	Affiliate-Owned Restaurants Reacquired from Franchisee	Affiliate-Owned Restaurants Closed	Affiliate-Owned Restaurants Sold to Franchisee	Affiliate-Owned Restaurants at End of Year
ID	2021	0	0	0	0	0	0
	2022	0	0	0	0	0	0
	2023	0	1	0	0	0	1
OR	2021	0	0	0	0	0	0
	2022	0	1	0	0	0	1
	2023	1	0	0	0	0	1
Totals	<b>2021</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	<b>2022</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>
	<b>2023</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2</b>

1/ The numbers in this table are for the fiscal years ended January 2, 2022, January 1, 2023, and December 31, 2023.

**TABLE NO. 5**  
**PROJECTED OPENINGS FOR ELMER'S KITCHEN RESTAURANTS**  
**AS OF DECEMBER 31, 2023 FOR 2024**

State	Franchise Agreements Signed But Restaurant Not Opened	Projected New Restaurants in the Next Fiscal Year	Projected New Company-Owned Restaurants in the Next Fiscal Year
All States	0	0	0
<b>Totals</b>	<b>0</b>	<b>0</b>	<b>0</b>

Exhibit E is a list of the names of all Franchisees and the addresses and telephone numbers of their Restaurants as of December 31, 2023. Exhibit F is a list of the names, cities and states and business telephone numbers (or, if unknown, the last known home telephone numbers) of every Franchisee who had an outlet terminated, cancelled, not renewed, or who otherwise voluntarily or involuntarily ceased to do business under a Franchise Agreement during our most recent fiscal year ending December 31, 2023, or who has not communicated with us within 10 weeks of the issuance date of this Disclosure Document.

If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system. There is no trademark-specific organization associated with the franchise system being offered.

During the last three fiscal years, franchisees have signed confidentiality clauses. In some instances, current and former franchisees sign provisions restricting their ability to speak only about their experience with us. You may wish to speak with current and former franchisees, but be aware that not all such franchisees will be able to communicate with you.

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

Attached as Exhibit G are our audited balance sheets as of December 31, 2023 and January 1, 2023, along with the related statements of operations and changes in member's equity and cash flows for the periods ended December 31, 2023, January 1, 2023, and January 2, 2022.

We operate on a 52/53 week year. The fiscal years ended December 31, 2023 and January 1, 2023 were 52-week periods; the fiscal year ended January 2, 2022, was a 53-week period.

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

The following contracts are attached as exhibits to this Disclosure Document:

- Exhibit B – Area Development Agreement
  - Exhibit A – Development Area and Development Schedule
  - Exhibit B – Owners and Managing Owner
  - Exhibit C – Guaranty and Assumption of Obligations
- Exhibit C – Franchise Agreement
  - Exhibit A – Identification of Premises; Listing of Ownership Interests
  - Exhibit B – Lease Addendum
  - Exhibit C – Collateral Assignment of Contact Identifiers and Online Presences
  - Exhibit D – Guaranty and Assumption of Obligations
- Exhibit D – Consent to Transfer
- Exhibit I – Representations and Acknowledgment Statement
- Exhibit J – Sample General Release
- Exhibit K – State Addenda and Agreement Riders

## **ITEM 23** **RECEIPTS**

Exhibit L contains detachable documents acknowledging your receipt of this Disclosure Document.

**EXHIBIT A**

**LIST OF STATE AGENCIES/  
AGENTS FOR SERVICE OF PROCESS**

**LIST OF STATE AGENCIES/AGENTS  
FOR SERVICE OF PROCESS**

Listed here are the names, addresses and telephone numbers of the state agencies having responsibility for franchising disclosure/registration laws. We may not be registered to sell franchises in any or all of these states.

**CALIFORNIA**

Department of Financial Protection and  
Innovation:

Toll Free: 1 (866) 275-2677

Ask.DFPI@dfpi.ca.gov

www.dfpi.ca.gov

***Los Angeles***

Suite 750

320 West 4<sup>th</sup> Street, Suite 750

Los Angeles, California 90013-2344

(213) 576-7500

***Sacramento***

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(916) 445-7205

***San Diego***

1455 Frazee Road, Suite 315

San Diego, California 92108

(619) 610-2093

***San Francisco***

One Sansome Street, Ste. 600

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(415) 972-8565

**HAWAII**

(state administrator)

Business Registration Division

Securities Compliance Branch

Department of Commerce and Consumer Affairs

P.O. Box 40

Honolulu, Hawaii 96810

(808) 586-2727

(agent for service of process)

Commissioner of Securities of the State of  
Hawaii

Department of Commerce and Consumer Affairs

Business Registration Division

335 Merchant Street, Room 205

Honolulu, Hawaii 96813

(808) 586-2744

**ILLINOIS**

Franchise Bureau

Office of the Attorney General

500 South Second Street

Springfield, Illinois 62701

(217) 782-4465

**INDIANA**

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Indiana Secretary of State

302 West Washington Street

Securities Division, E-111

Indianapolis, Indiana 46204

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(agent for service of process)

Indiana Secretary of State  
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Indianapolis, Indiana 46204  
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(state administrator)

Office of the Attorney General  
Securities Division  
200 St. Paul Place  
Baltimore, Maryland 21202-2021  
(410) 576-6300

(agent for service of process)

Maryland Securities Commissioner  
at the Office of the Attorney General  
Securities Division  
200 St. Paul Place  
Baltimore, Maryland 21202-2021  
(410) 576-6360

**MICHIGAN**

(state administrator)

Michigan Attorney General's Office  
Consumer Protection Division  
Attn: Franchise Section  
G. Mennen Williams Building, 1<sup>st</sup> Floor  
525 West Ottawa Street  
Lansing, Michigan 48909  
(517) 373-7622

(agent for service of process)

Michigan Department of Commerce,  
Corporations, Securities & Commercial  
Licensing Bureau  
P.O. Box 30018  
Lansing, Michigan 48909

**MINNESOTA**

(state administrator)

Minnesota Department of Commerce  
85 7th Place East, Suite 280  
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(651) 539-1600

(agent for service of process)

Commissioner of Commerce  
Minnesota Department of Commerce  
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St. Paul, Minnesota 55101  
(651) 539-1600

**NEW YORK**

(state administrator)

Office of the New York State Attorney General  
Investor Protection Bureau  
Franchise Section  
28 Liberty Street, 21<sup>st</sup> Floor  
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(212) 416-8236 Phone  
(212) 416-6042 Fax

(agent for service of process)

New York Secretary of State  
New York Department of State  
One Commerce Plaza  
99 Washington Avenue, 6<sup>th</sup> Floor  
Albany, New York 12231-0001  
(518) 473-2492

**NORTH DAKOTA**

(state administrator)

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

(agent for service of process)

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

**OREGON**

Department of Business Services Division  
of Financial Regulation  
350 Winter Street, NE, Room 410  
Salem, Oregon 97310-3881  
(503) 378-4387

Oregon Division of Financial Regulation  
P.O. Box 14480  
Salem, Oregon 97309-0405  
(503) 378-4387

**RHODE ISLAND**

Department of Business Regulation  
Division of Securities  
John O. Pastore Complex Building 69-2  
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Cranston, Rhode Island 02920  
(401) 462-9645

**SOUTH DAKOTA**

Division of Insurance  
Securities Regulation  
124 S. Euclid Avenue, Second Floor  
Pierre, South Dakota 57501  
(605) 773-3563

**VIRGINIA**

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

(agent for service of process)

Clerk, State Corporation Commission  
1300 East Main Street, 1<sup>st</sup> Floor  
Richmond, Virginia 23219  
(804) 371-9733

**WASHINGTON**

(state administrator)

Department of Financial Institutions  
Securities Division  
P.O. Box 41200  
Olympia, Washington 98504-1200  
(360) 902-8760

(agent for service of process)

Director  
Department of Financial Institutions  
Securities Division  
150 Israel Road, S.W.  
Tumwater, Washington 98501

**WISCONSIN**

(state administrator)

Securities and Franchise Registration  
Wisconsin Department of Financial Institutions  
4822 Madison Yards Way, North Tower  
Madison, Wisconsin 53705  
(608) 266-0448

(agent for service of process)

Office of the Secretary  
Wisconsin Department of Financial Institutions  
P.O. Box 8861  
Madison, Wisconsin 53708-8861  
(608) 261-9555



**EXHIBIT B**

**AREA DEVELOPMENT AGREEMENT**

**WE ARE CRACKIN' LLC**  
**AREA DEVELOPMENT AGREEMENT**

\_\_\_\_\_  
AREA DEVELOPER

\_\_\_\_\_  
DATE OF AGREEMENT

\_\_\_\_\_  
DEVELOPMENT AREA

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**EXHIBITS**

- EXHIBIT A - DEVELOPMENT AREA AND DEVELOPMENT SCHEDULE
- EXHIBIT B - OWNERS AND MANAGING OWNER
- EXHIBIT C - GUARANTY AND ASSUMPTION OF OBLIGATIONS

**WE ARE CRACKIN' LLC**  
**AREA DEVELOPMENT AGREEMENT**

**THIS AREA DEVELOPMENT AGREEMENT** (this “**Agreement**”) is made and entered between **WE ARE CRACKIN' LLC**, an Oregon limited liability company with its principal business address at 363 High Street, Eugene, Oregon 97401 (“**we**”), and \_\_\_\_\_, whose principal business address is \_\_\_\_\_ (“**you**”), as of the date signed by us and set forth below our signature on this Agreement (the “**Effective Date**”).

1. **PREAMBLES AND GRANT OF RIGHTS.**

A. **PREAMBLES.**

(1) We grant franchises (each a “**Franchise**”), to persons or entities who we determine meet our qualifications, for the development and operation of family restaurants featuring breakfast foods, other food products and beverages, and related products and services operating under either the name Elmer’s Breakfast · Lunch · Dinner<sup>®</sup>, Elmer’s Kitchen Breakfast · Brunch · Mimosas<sup>™</sup>, or Egg N’ Joe<sup>®</sup> (each a “**Restaurant**”). Each Franchise is granted solely pursuant to a written franchise agreement and related agreements signed by us and a franchisee (each a “**Franchise Agreement**”).

(2) We also grant rights, to persons or entities who we determine meet certain additional qualifications and who are willing to commit, to acquire multiple Franchises for the development and operation of Restaurants within a defined area (the “**Development Area**”) pursuant to an agreed upon schedule (the “**Development Schedule**”).

(3) You and, if you are an Entity (defined below), your owners have requested that we grant you such rights, and we are willing to do so in reliance on all of the information, representations, warranties and acknowledgements you and, if applicable, your owners have provided to us in support of your request, and subject to the terms and conditions set forth in this Agreement.

B. **GRANT OF RIGHTS; EXCLUSIVITY; TERM.**

We grant you the right, and you undertake the obligation, either yourself or through your approved Affiliates (defined below), to acquire Franchises to develop, own and operate Restaurants (the “**Development Rights**”). The Development Rights may be exercised for Elmer’s Breakfast · Lunch · Dinner<sup>®</sup> Restaurants, Elmer’s Kitchen Breakfast · Brunch · Mimosas<sup>™</sup> Restaurants, and Egg N’ Joe<sup>®</sup> Restaurants, must be exercised in strict compliance with the Development Schedule and may only be exercised during the Term (defined below) and for Restaurants to be developed and operated within the Development Area. The Development Rights do not include the right, and may not be exercised to acquire Franchises for, Special Venue Restaurants unless we provide our separate prior written consent with respect to each such proposed Special Venue Restaurant. A “**Special Venue Restaurant**” is (1) any kiosk, mobile facility or similar location or type of operation which, because of its inherent operational limitations, is required to offer a limited menu or have a materially different operating format as compared to a traditional Restaurant, (2) any location in which foodservice is or may be provided by a master concessionaire, (3) any location which is situated within or as part of a larger venue

or facility (other than a mall or shopping center) and, as a result, is likely to draw the predominance of its customers from those persons who are using or attending events in the larger venue or facility (for example, colleges/universities, convention centers, airports, hotels, sports facilities, theme parks, hospitals, transportation facilities, convenience stores, and other similar captive market locations), and (4) any distribution channel other than a Restaurant (including, but not limited to, the Internet, grocery stores, supermarkets, and mail order) through which products and services associated with or sold through Restaurants are or may be sold.

Except as described in Section 1.C below, and provided you and your Affiliates are in full compliance with this Agreement and all Franchise Agreements and other agreements with us (or any of our affiliates), we will not, during the Term, (1) own and operate Restaurants in the Development Area (other than Restaurants already open and operating in the Development Area on the Effective Date), (2) grant or authorize the grant to any other person or entity of Development Rights for the Development Area, or (3) grant or authorize the grant to any other person or entity a Franchise for a Restaurant in the Development Area. Notwithstanding the foregoing, nothing in this Section will prohibit us from exercising our option to purchase a Restaurant from another franchisee, whether in connection with a proposed sale or upon termination or expiration of their franchise agreement, even if such Restaurant is located within the Development Area.

An “**Affiliate**” is an Entity (defined below) in which you or your owners (i) own more than 51% of the issued and outstanding ownership interest and voting rights or (ii) have the right and power to control and determine the Entity’s management and policies.

The Development Rights may be exercised from the Effective Date and, unless sooner terminated as provided herein, continuing through the earlier of (1) the date on which the last Restaurant which is required to be opened in order to satisfy the Development Schedule opens for regular business or (2) the last day of the last Development Period (the “**Term**”).

### C. **RIGHTS WE RESERVE.**

The Development Rights are limited to the rights to acquire Franchises in accordance with this Agreement as described in Section 1.B. The rights to develop Restaurants and to use the Marks and any copyrights, inventions, and patents owned by us or our affiliates are granted only pursuant to individual Franchise Agreements, and you agree that the Development Rights do not include any such rights. You acknowledge that we grant rights only pursuant to the expressed provisions of written agreements and not in any other manner, including, without limitation, orally or by implication, innuendo, extension or extrapolation. Similarly, we and our affiliates are not precluded from engaging in any act or enterprise unless we specifically state that we will refrain from doing so. For example, we and our affiliate may do any of the following, without restriction:

(1) establish, operate and license others to establish and operate, anywhere in the world, including in the Development Area, Special Venue Restaurants using the names and marks Elmer’s Breakfast · Lunch · Dinner<sup>®</sup>, Elmer’s Kitchen Breakfast · Brunch · Mimosas<sup>™</sup>, or Egg N’ Joe<sup>®</sup> and any other marks that are licensed under Franchise Agreements (collectively, the “**Marks**”) and the system and system standards under which Restaurants are developed and operated (the “**Franchise System**”), offering products and services which are identical or similar to products and services offered by Restaurants;

(2) establish, operate and allow others to establish and operate Restaurants using the Marks and the Franchise System, at any location outside the Development Area on such terms and conditions we deem appropriate;

(3) establish, operate and allow others to establish and operate restaurants, that may offer products and services which are identical or similar to products and services offered by Restaurants, under trade names, trademarks, service marks and commercial symbols which are different from the Marks at any location (including in the Development Area);

(4) establish, operate and allow others to establish and operate other businesses and distribution channels (including, but not limited to, the Internet and grocery stores), wherever located or operating and regardless of the nature or location of the customers with whom such other businesses and distribution channels do business, that operate under the Marks or any other trade names, trademarks, service marks or commercial symbols that are the same as or different from Restaurants, and that sell products and/or services that are identical or similar to, and/or competitive with, those that Restaurants customarily sell;

(5) acquire the assets or ownership interests of one or more businesses, including Competitive Businesses (defined below), and franchising, licensing or creating similar arrangements with respect to such businesses once acquired, wherever these businesses (or the franchisees or licensees of these businesses) are located or operating (including in the Development Area);

(6) be acquired (whether through acquisition of assets or ownership interests, regardless of the form of transaction), by any other business, including a Competitive Business, even if such business operates, franchises and/or licenses such businesses in the Development Area; and

(7) operate or grant any third party the right to operate any Restaurant that we or our designees acquire as a result of the exercise of a right of first refusal or purchase right that we have under this Agreement or any Franchise Agreement.

D. **BEST EFFORTS/BUSINESS ENTITY.**

You must at all times faithfully, honestly and diligently perform your obligations and fully exploit the Development Rights during the Term and throughout the entire Development Area. You must perform all of your obligations under this Agreement, and you may not subcontract or delegate any of those obligations to any third parties. If you are at any time a corporation, a limited liability company, a general, limited, or limited liability partnership, or another form of business entity (collectively, an “**Entity**”), you agree and represent that:

(1) your organizational documents, operating agreement, or partnership agreement will recite that this Agreement restricts the issuance and transfer of any ownership interests in you, and all certificates and other documents representing ownership interests in you will bear a legend referring to this Agreement’s restrictions;

(2) Exhibit B to this Agreement lists all of your direct and indirect owners and their interests in you as of the Effective Date and that you and your owners will sign and deliver to us a revised Exhibit B to reflect any permitted changes in the information that Exhibit B now contains;

(3) such persons as we designate at any time during the Term, which may include each of your owners and their spouses, will execute an agreement, in the form set forth in Exhibit C to this Agreement, under which such persons undertake personally to be bound, jointly and severally, by all provisions of this Agreement and any ancillary agreements between you and us. We confirm that a spouse who signs Exhibit C solely in his or her capacity as a spouse (and not as an owner) is signing that agreement merely to acknowledge and consent to the execution of the guaranty by his or her spouse and to bind the assets of the marital estate as described therein and for no other purpose (including, without limitation, to bind the spouse's own separate property);

(4) the business that this Agreement contemplates and the Restaurants you and your Affiliates operate under Franchise Agreements, will be the only businesses you operate (although your owners may have other, non-competitive business interests);

(5) an individual whom we approve (the “**Managing Owner**”) must directly or indirectly own at least 25% of the ownership interests in you and must devote an amount of his or her business time and efforts to the operation, promotion and enhancement of the business under this Agreement which is reasonable given your undertakings in this Agreement and in light of the business that this Agreement contemplates. The Managing Owner's name is listed on Exhibit B. You must obtain our written consent prior to changing the designated Managing Owner; and

(6) the Managing Owner is authorized, on your behalf, to deal with us in respect of all matters whatsoever which may arise in respect of this Agreement; any decision made by the Managing Owner will be final and binding upon you, and we will be entitled to rely solely upon the decision of the Managing Owner in any such dealings without the necessity of any discussions with any other party named in this Agreement as you; and we will not be held liable for any actions taken by you, based upon any decision or actions of the Managing Owner.

**E. FINANCING; MAXIMUM BORROWING LIMITS; LIQUIDITY.**

We may from time to time designate the maximum amount of debt that Restaurants may service, and you will ensure that you and your Affiliates that execute Franchise Agreements pursuant to this Agreement will comply with such limits.

We have granted the Development Rights to you based, in part, on your representations to us, and our assessment of, your levels of liquidity as of the Effective Date. You will ensure that, throughout the Term, you will maintain sufficient liquidity to meet your obligations under this Agreement. We reserve the right to review these liquidity requirements from time to time, and you agree to comply with such minimum liquidity requirements that we reasonably impose. You agree to apply for and diligently pursue any government-issued, government-sponsored, or government-guaranteed grants, non-recourse loans, or bail-outs for which you qualify and that are



made available to small businesses as an economic stimulus, if necessary to comply with your obligations under this Agreement.

**F. EXTENSION OF TERM.**

If you and your affiliates have been in compliance with the Development Schedule and your (and your affiliates') other obligations under this Agreement and the Franchise Agreements throughout the Term (regardless of whether we exercised our right to issue a notice of default or termination), you may, at your option and subject to your compliance with the provisions of this Section 1.F, extend the Term for successive terms as follows:

(1) If you wish to exercise your option to extend the Term, you must provide us with written notice by the earlier of (i) 30 days following the opening of the Restaurant which causes you to achieve 80% of the openings required under the Development Schedule or (ii) the start of the second-to-last Development Period;

(2) Within 15 days following our receipt of your notice, we will advise whether and on what basis, if any, we believe that you have failed to qualify for an extension;

(3) By not later than the last day of the Term:

a. You and we must agree on a new development schedule for the extended term;

b. You and your owners must have executed a general release and non-disparagement agreement, in form satisfactory to us, of any and all claims against us and our affiliates, and our and their respective members, managers, officers, directors, employees and agents; and

c. You must have paid a new Development Fee for the extended term, calculated as described in our then-current area development program.

(4) All fees due under Franchise Agreements signed during the extended term will be as set forth in our area development program at the time of completion of the requirements for the extension as described above; and

(5) The length of the extension term will depend on the number of Restaurants that you and we agree will be opened during the extension term, with one Restaurant being required to open each 6-month period unless you and we agree otherwise in writing.

If you are not entitled to an extension of the Term or if you and we do not timely complete the requirements described in paragraph (3) above, the Term will expire as provided in Section 1.B above.

All of the foregoing provisions shall be applicable to each extended term and shall govern your right to each such extension.

2. **EXERCISE OF DEVELOPMENT RIGHTS.**

A. **PROPOSED SITES FOR RESTAURANTS.**

You agree to give us all information and materials we request to assess each Restaurant site that you propose as well as your and your proposed Affiliate's financial and operational ability to develop and operate each proposed Restaurant. We have the absolute right to disapprove any site or any Affiliate (a) that does not meet our criteria or (b) if you or your Affiliates are not then in compliance with any existing Franchise Agreements executed pursuant to this Agreement or operating your or their Restaurants in compliance with the System Standards (as defined in the Franchise Agreement). We agree to use our reasonable efforts to review and approve or disapprove the sites you propose within 30 days after we receive all requested information and materials. If we approve a proposed site and a Franchise Agreement has not yet been signed for such site, you or your approved Affiliate must sign a separate Franchise Agreement, as described in Section 2.B., within 15 days after we provide you with an execution copy of the Franchise Agreement, failing which, we may withdraw our approval.

B. **EXECUTION OF FRANCHISE AGREEMENTS.**

Simultaneously with signing this Agreement, you or an Affiliate we approve must sign and deliver to us a Franchise Agreement and related documents representing the first Franchise you are obligated to acquire under this Agreement. You or your approved Affiliate must thereafter open and operate a Restaurant according to the terms of that Franchise Agreement. Thereafter, for each additional Restaurant, prior to signing a lease or to otherwise securing possession of the site, you or an Affiliate we approve must sign our then-current form of Franchise Agreement and related documents, the terms of which, with the exceptions provided hereunder, may differ substantially from the terms contained in the Franchise Agreement in effect on the Effective Date, except that the Initial Franchise Fee will be \$40,000 for each subsequent Franchise Agreement.

Each Franchise Agreement will govern the development and operation of the Restaurant at the approved site identified therein.

C. **DEVELOPMENT SCHEDULE.**

Exhibit A to this Agreement sets forth the Development Area and the Development Schedule. Each period described in the Development Schedule is a "**Development Period.**" You or your approved Affiliates must deliver to us a fully executed lease (or otherwise secure possession of the site), and open and operate Restaurants in the Development Area pursuant to a corresponding Franchise Agreement, each as necessary to satisfy the requirements of each Development Period, but you shall not be required to open, in total, more than the cumulative number of Restaurants shown for the last Development Period. The Development Schedule is not our representation, express or implied, that the Development Area can support, or that there are or will be sufficient sites for, the number of Restaurants specified in the Development Schedule (in total or the number of Restaurants anticipated to be opened for each brand) or during any particular Development Period. We are relying on your representation that you have conducted your own independent investigation and have determined that you can satisfy the development obligations under each Development Period of the Development Schedule.

We will count a Restaurant toward the Development Schedule only if it actually is operating in the regular course within the Development Area and substantially complying with the terms of its Franchise Agreement as of the end of the Development Period. However, a Restaurant which is, with our approval or because of fire or other casualty, permanently closed during the last 90 days of a Development Period, after having been open and operating, will be counted toward the development obligations for the Development Period in which it closed, but not thereafter.

**D. FAILURE TO COMPLY WITH DEVELOPMENT SCHEDULE.**

Time is of the essence with respect to your agreement to comply with your obligations under Section 2.C. If you fail to comply with the Development Schedule as of the end of any Development Period, in addition to terminating this Agreement under Section 7 and asserting any other rights we have under this Agreement as a result of such failure, we may (but need not) elect to do either or both of the following:

- (1) terminate the territorial protection granted under Section 1.B; and
- (2) reduce the Development Area to a lesser area that we determine.

**E. RECORDS AND REPORTING.**

You agree to provide us with the following records and reports:

(1) within 60 days after the Effective Date, you must prepare and give us, a business plan covering your projected revenues, costs and operations under this Agreement. This business plan will include your detailed projections of costs for Restaurant development and detailed revenue projections for your activities under this Agreement and Restaurants. Within 60 days after the start of each calendar year during the Term, you must update the business plan to cover both actual results for the previous year and projections for the then current year. You acknowledge and agree that, while we may review and provide comments on the business plan and any updates you submit to us, regardless of whether we approve, disapprove, require revisions or provide other comments with respect to the business plan or any updated business plan, we take no responsibility for and make no guarantees or representations, expressed or implied, with respect to your ability to meet the business plan or to achieve the results set forth therein. You bear the entire responsibility for achievement of the business plan you develop;

(2) within 7 days after the end of each month during the Term, you must send us a report of your business activities during that month, including information about your efforts to find sites for Restaurants in the Development Area and the status of development and projected openings for each Restaurant under development in the Development Area;

(3) within 28 days after the end of each calendar quarter, you must provide us with a balance sheet and profit and loss statement for you and your Affiliates covering that quarter and the year-to-date; and

(4) within 60 days after the end of each calendar year, you must provide us, for you and your Affiliates covering the previous year, with an annual profit and loss statement, a sources and use of funds statement and a balance sheet.

Each of the foregoing shall be in the form and format that we reasonably specify, shall be delivered to us in the manner we specify, and shall be certified as correct by you or, if you are not a natural person, by your Managing Owner.

Further, at our request, you will provide financial information of your owners and guarantors sufficient to demonstrate such owners' and guarantors' ability to satisfy their financial obligations under the Agreement.

3. **FEES.**

A. **DEVELOPMENT FEE.**

In addition to paying the Initial Franchise Fee due under the first Franchise Agreement referenced in Section 2.B, you must pay us, on your execution of this Agreement and in consideration of the grant of the Development Rights, a development fee in an amount equal to (1) \$20,000 multiplied by (2) the number of Restaurants required to be opened pursuant to the Development Schedule, less one (the "**Development Fee**"). The Development Fee is fully earned by us when you and we sign this Agreement and is nonrefundable. We will apply the Development Fee as a credit against the initial franchise fee due under each Franchise Agreement (subsequent to the first Franchise Agreement) which you or your Affiliates execute pursuant to this Agreement, subject to a maximum credit under any Franchise Agreement of \$20,000 and a maximum credit for all such Franchise Agreements, in the aggregate, equal to the total Development Fee.

B. **METHOD OF PAYMENT.**

All amounts payable by you pursuant to this Agreement will, unless otherwise directed in writing by us, be paid by way of certified check or bank draft delivered to us at the address set out herein or at such other place as we designate in writing.

4. **CONFIDENTIAL INFORMATION/INNOVATIONS.**

A. **CONFIDENTIAL INFORMATION.**

In connection with your exercise of the Development Rights under this Agreement, you and your owners and personnel may from time to time be provided and/or have access to non-public information about the Franchise System and the development and operation of Restaurants (including Restaurants developed under this Agreement), some of which constitutes trade secrets under applicable law, regardless of whether it is marked confidential (the "**Proprietary Information**"), including without limitation the Franchise Agreements, this Agreement, the Franchise System, plans, specifications, financial or business data or projections, all documents, data, information, materials, reports, proposals, procedures, financial information, compensation information, job descriptions, employee biographies, proposed advertising, advertising and marketing plans, advertising strategies, marketing techniques, operations manuals, formulas, samples, improvements, models, drawings, programs, compilations, devices, methods, designs, techniques and specifications, inventions, know-how, processes, recipes, business plans, site selection criteria, customer information, purchasing techniques, supplier lists, supplier information, operations, our trade secrets, or any other forms of business information. The Proprietary Information: (i) shall be deemed proprietary and shall be held by you in strict confidence; (ii) shall not be disclosed or revealed or shared with any other person except to your employees or contractors who have a need to know such Proprietary Information for purposes of

this Agreement and who are under a duty of confidentiality no less restrictive than your obligations hereunder, or to individuals or entities specifically authorized by us in advance; and (iii) shall not be used except to the extent necessary to exercise the Development Rights or as permitted under Franchise Agreements, and then only in circumstances of confidence and in accordance with the obligations set forth in the Franchise Agreements. You agree to adopt and implement reasonable procedures to prevent unauthorized access, use or disclosure of Proprietary Information, including by establishing reasonable security and access measures and restricting its disclosure to key personnel.

All such Proprietary Information will at all times remain our sole property. You shall return to us or destroy, at our election, all Proprietary Information in your possession or control and permanently erase all electronic copies of such Proprietary Information promptly upon our request or upon the expiration or termination of this Agreement, whichever comes first. At our request, you will certify in writing signed by one of your officers that you have fully complied with the foregoing obligations. Proprietary Information does not include information, knowledge, or know-how, which is lawfully known to the public without violation of applicable law or an obligation to us or our affiliates.

#### **B. INNOVATIONS.**

As between the parties, you acknowledge and agree that we are the sole owner of all right, title, and interest in and to the Franchise System and any Proprietary Information. All improvements, developments, derivative works, enhancements, or modifications to the Franchise System and any Proprietary Information (collectively, “**Innovations**”) made or created by you, your employees or your contractors, whether developed separately or in conjunction with us, shall be owned solely by us. You represent, warrant, and covenant that your employees and contractors are bound by written agreements assigning all rights in and to any Innovations developed or created by them to you. To the extent that you, your employees or your contractors are deemed to have any interest in such Innovations, you hereby agree to assign, and do assign, all right, title and interest in and to such Innovations to us. To that end, you shall execute, verify, and deliver such documents (including, without limitation, assignments) and perform such other acts (including appearances as a witness) as we may reasonably request for use in applying for, obtaining, perfecting, evidencing, sustaining, and enforcing such ownership rights in and to the Innovations, and the assignment thereof. Your obligation to assist us with respect to such ownership rights shall continue beyond the expiration or termination of this Agreement. In the event we are unable for any reason, after reasonable effort, to secure your signature on any document needed in connection with the actions specified in this Section 4.B, you hereby irrevocably designate and appoint us and our duly authorized officers and agents as your agent and attorney in fact, which appointment is coupled with an interest and is irrevocable, to act for and on your behalf to execute, verify, and file any such documents and to do all other lawfully permitted acts to further the purposes of this Section 4.B with the same legal force and effect as if executed by you.

The obligations under Sections 4.A and 4.B shall survive any expiration or termination of the Agreement. In the event of your alleged or actual breach of any of the provisions of Section 4.A or 4.B, we shall be entitled to equitable relief, including in the form of injunctions and orders for specific performance, in addition to all other remedies available at law or equity.

5. **EXCLUSIVE RELATIONSHIP DURING TERM.**

A. **COVENANTS AGAINST COMPETITION.**

You acknowledge that we have granted you the Development Rights in consideration of and reliance upon your agreement to deal exclusively with us. You therefore agree that, during the Term, neither you, your Affiliates nor any of your or their direct or indirect owners or the immediate family members of any of the foregoing will:

(a) have any direct or indirect interest as an owner – whether of record or beneficially – in a Competitive Business (defined below), wherever located or operating, other than equity ownership of less than 5% of a Competitive Business whose stock or other forms of ownership interest are publicly traded on a recognized United States stock exchange;

(b) perform services as a director, officer, manager, employee, lessor, consultant, representative, or agent for a Competitive Business, wherever located or operating;

(c) divert or attempt to divert any actual or potential business, sites or customers of your business associated with this Agreement to a Competitive Business; or

(d) directly or indirectly, appropriate, use or duplicate the Franchise System or any portion thereof, in any business in which such person may have any interest of any kind (whether directly or indirectly) or in which such person is otherwise employed.

The term “**Competitive Business**” means any restaurant, food service or other business (other than a Restaurant) (i) whose gross receipts from the sale of breakfast food or menu items represent, at any time, at least 10% of the business’ total gross receipts (excluding receipts from the sale of alcoholic beverages or lottery games), (ii) whose menu, concept, business model or method of operation is similar to that employed by restaurant units operated, franchised or licensed by us or our affiliates, (iii) that offers or sells goods or services that are generally the same as or similar to the goods or services being offered by businesses owned, operated, franchised or licensed by us or our affiliates, or (iv) that grants franchises or licenses for the operation of any of the foregoing or provides services to the franchisor or licensor of any of the foregoing.

B. **NON-INTERFERENCE.**

You further agree that, during the Term, neither you nor any of your owners, your or your owners’ Affiliates, or the officers, directors, managers or immediate family members of any of the foregoing, will:

(a) interfere with the relationships we have from time to time with vendors, suppliers or consultants; or

(b) engage in any other activity which might injure the goodwill of the Marks and/or the Franchise System.

C. **COVENANTS FROM OTHERS.**

You agree to obtain similar covenants from the personnel we specify, including officers, directors, managers, and other employees attending our training program or having access to Proprietary Information. We have the right to regulate the form of agreement that you use and to be a third party beneficiary of that agreement with independent enforcement rights. You must require all employees performing managerial or supervisory functions and all employees receiving training from us to execute non-disclosure covenants similar to those set out in this Section 5, in the form supplied or approved by us. Contemporaneously with signing this Agreement, you must deliver to us, properly executed non-disclosure and non-competition covenants similar to those as set out in this Section 5, in the form supplied or approved by us, from all of your partners, directors, officers, owners and Affiliates and from all partners, directors, officers, members and shareholders of such Affiliates who, in each case, are not a party to this Agreement or who have not signed the Guaranty and Assumption of Obligations attached hereto as Exhibit C. In addition, you must cause each new Affiliate of yours and each new partner, director, officer, member and shareholder of yours and such Affiliates to deliver to us properly executed non-disclosure and non-competition covenants similar to those set out in this Section 5 immediately upon their becoming a shareholder, member or partner, or upon their appointment or election as a director or officer, of you or such Affiliate.

6. **TRANSFER.**

A. **SALE OR ENCUMBRANCE.**

You acknowledge that we have granted you the rights pursuant to this Agreement based upon, among other things, the character, background and other qualifications and abilities personal to you or, if applicable, your owners. Accordingly, you agree that this Agreement, ownership interests in you or, any interests in this Agreement, the Development Rights or all or any part of the business operated under this Agreement will not be sold, assigned, donated or otherwise transferred, including as a result of death (each a “**Sale**”), to any person or Entity (hereinafter referred to specifically in this Section 6 as the “**Recipient**”) without our prior written consent. You further agree that you will not enter into any proposed mortgage, pledge, hypothecation, encumbrance or giving of a security interest in or which affects the Development Rights and your other rights under this Agreement (a “**Security Interest**”) without our prior written consent. The Development Rights may not be transferred separate and apart from the entirety of this Agreement, and a proposed transfer of this Agreement may not be made separately from or independently of a transfer to the same Recipient of all of the Franchise Agreements (and the Restaurants operated pursuant thereto) executed pursuant to this Agreement.

If you intend to list your Restaurants or your rights under this Agreement for Sale with any broker or agent, you shall do so only after obtaining our written approval of the broker or agent and of the listing agreement. You may not use or authorize the use of any Mark in advertising any prospective Sale nor may you use or authorize the use of, and no third party shall on your behalf use, any written materials to advertise or promote the Sale without our prior written approval of such materials.

Our approval of a transfer of ownership interests in you as a result of the death or incapacity of the proposed transferor will not be unreasonably withheld or delayed so long as at least one of the Managing Owners designated on Exhibit A continues to be the designated Managing Owner.

If, as a result of the death or incapacity of the transferor, a transfer is proposed to be made to the transferor's spouse, and if we do not approve the transfer, the trustee or administrator of the transferor's estate will have nine months after our refusal to consent to the transfer to the transferor's spouse within which to transfer the transferor's interests to another party whom we approve in accordance with this Section 6.A.

We may withhold our consent to a Sale or grant of a Security Interest for any reason, and we will not be required to consider a proposed Sale or Security Interest unless you comply with the following requirements either at the time the request is made or, if applicable, by the completion of the Sale or grant of the Security Interest:

(1) with respect to any proposed Sale:

(a) you must submit an application in writing to us requesting our consent and providing us all information or documents that we request about the proposed Sale, Recipient and its owners to evaluate their ability to satisfy their respective obligations under our then-current form of area development agreement and any documents ancillary thereto, and each such person must have completed and satisfied all of our application and certification requirements, including the criteria that neither the Recipient nor its owners (if the Recipient is an Entity) or affiliates have an ownership interest (direct or indirect) in or perform services for a Competitive Business;

(b) prior to or concurrently with the transfer of this Agreement, you and your affiliates must transfer all Restaurants developed under this Agreement, as well as each Franchise Agreement that governs the Restaurants, in accordance with the transfer provision of each Franchise Agreement;

(c) you have provided us executed versions of any documents executed by you (or your owners) and Recipient (and its owners) to effect the Sale, and all other information we request about the Sale, and the Sale meets all of our requirements, including criteria for terms and conditions, closing date, purchase price, amount of debt and payment terms. If you or your owners offer the Recipient financing for any part of the purchase price, you and your owners hereby agree that all of Recipient's obligations under promissory notes, agreements, or security interests are subordinate to the Recipient's obligation to pay amounts due to us, our affiliates, and third party vendors and otherwise to comply with this Agreement (or any applicable area development agreement replacing this Agreement);

(d) you (and your owners) and the Recipient (and its owners) sign our then-current consent to transfer agreement ("**Consent to Transfer**"), in a form satisfactory to us, including: (i) a general release of any and all claims against us and our affiliates and our and their owners, officers, directors, employees, and agents, (ii) a covenant that you and your transferring owners (and your and their immediate family members) will not, for two years beginning on the Sale's effective date, engage in any of the activities proscribed in Section 7.C below, and (iii) covenants that you and your transferring owners satisfy all other post-termination obligations under this Agreement;



(e) all representations and warranties made in the Consent to Transfer by you, your owners, the Recipient or the Recipient's owners are true and correct as of the closing date of the Sale, and you (and your owners) and Recipient (and its owners) otherwise comply with all terms applicable to the Consent to Transfer, including terms applicable to the associated transfer of any Franchise Agreements or other agreements between you (and your affiliates) and us;

(f) you, your affiliates and your and their respective owners have not violated any provision of this Agreement, the Franchise Agreements, the Consent to Transfer or any other agreement with us or our affiliates during both the 60-day period before you requested our consent to the Sale and the period between your request and the effective date of the Sale;

(g) the Recipient and its owners have not violated any provision of the Consent to Transfer, any area development agreement it has signed to take over the Development Rights, or any other agreement with us or our affiliates during both the 60-day period before you requested our consent to the Sale and the period between your request and the effective date of the Sale;

(h) all persons required to complete training under the Recipient's area development agreement complete our training program to our satisfaction, and Recipient has paid all costs and expenses we incur to provide the training program to such persons;

(i) the Recipient, at our request, signs our then-current form of area development agreement and related documents, any and all of the provisions of which may differ materially from any and all of those contained in this Agreement;

(j) you pay the sum of \$2,500 by means of cash or certified check, which amount will be non-refundable, except that if the Sale is successfully completed, the entire amount will be applied by us against the amount payable by you pursuant to Section 6.A(1)(k) below, or such other amounts as may be owing by you to us pursuant to this Agreement;

(k) you must pay to us, an amount equal to the greater of (i) 3% of the purchase price to be paid and/or other consideration to be received from and/or debt to be assumed by the Recipient, or (ii) \$20,000, plus, in either case, applicable goods and services taxes thereon; and

(l) you provide us the evidence we reasonably request to show that appropriate measures have been taken to effect the transfer as it relates to the operation of the business granted to you under this Agreement, including, by transferring all necessary and appropriate business licenses, insurance policies, and material agreements, or obtaining new business licenses, insurance policies and material agreements.

(2) with respect to any proposed grant of a Security Interest:

(a) you must submit an application in writing to us, requesting our consent. Such application must set out the proposed business terms and any security to be

given by you, and must include a copy of any loan agreements, security agreements or other documents proposed to be executed by or on your behalf;

(b) the purpose of the giving of such security must be to obtain financing for use in the business operated hereunder; and

(c) you may not at the time of giving any security be in default of any of the terms and conditions of this Agreement.

**B. FIRST RIGHT OF REFUSAL.**

Notwithstanding anything contained in this Section 6, in the event you make or receive (and intend to accept) an offer of Sale, without in any way derogating from our right to grant or not grant our consent thereto, we will have the option, to be exercised by notice in writing delivered to you within 30 days of receipt of your application referred to in Section 6.A.(1)(a) hereof, to acquire the said rights and the business operated hereunder upon the same terms and conditions as set out in the said application except as provided hereinafter. If we exercise our option, we will complete the Sale upon the same terms and conditions as set out in the said application save and except that we will be entitled to deduct from the purchase price (i) the amount of any sales or other commissions (if any) which would have been payable by you had the Sale been completed with the Recipient and (ii) an amount equal to that amount to which we are entitled pursuant to Section 6.A.(1)(k) hereof, and save and except we will have the right to substitute cash for any other form of consideration specified in the offer accompanying the application and the right to pay in full, the entire amount of the purchase price at the time of closing. If we do not exercise our option, we may then, in our discretion, determine if we will consent to the proposed Sale to the Recipient; we will notify you of our decision within 30 days of receipt of said application. The sale, assignment, transfer, donation or other dealing must be completed within 60 days of the receipt by us of your original application, failing which, you must again make application to us in the manner set out in Section 6.A.(1) hereof, and in all such events the provisions of this Section 6.B. will apply anew, and such procedure will continue to be repeated so often as you desire to complete any Sale. If we do not notify you of our intention to consent within such 30-day period, we will be deemed not to have given our consent.

**C. PUBLIC OR PRIVATE OFFERINGS.**

You acknowledge that the publication or dissemination of written information used to raise or secure funds can reflect upon us and the Franchise System. Therefore, you acknowledge and agree that you may not engage in a public offering of securities without our prior written consent. If you desire to request that we consent to any such event, you must submit any written information intended to be used for that purpose to us before inclusion in any registration statement, prospectus or similar offering memorandum. Should we object to any reference to us or our affiliates or any of our business in the offering literature or prospectus, the literature or prospectus shall not be used until our objections are withdrawn or resolved.

7. **TERMINATION OF AGREEMENT.**

A. **EVENTS OF TERMINATION.**

Notwithstanding anything otherwise contained in this Agreement, we will have the right to terminate this Agreement at any time and without notice, upon the happening of any one or more of the following events:

(1) if default is made in the payment of any amount payable under this Agreement or any Franchise Agreement with us when and as same becomes due and payable, and such default continues for a period of 5 days after written notice;

(2) if (i) you have failed to make progress in the development of Restaurants to indicate, in our determination, that you will be able to satisfy your development obligations under this Agreement for the then-current Development Period, (ii) you otherwise cease or threaten to cease exercising the rights granted to you under this Agreement, (iii) you take or threaten to take any action to liquidate your assets, or (iv) you do not pay any debts or other amounts incurred by you in exercising the rights granted to you hereunder when such debts or amounts are due and payable;

(3) if you fail to comply with the Development Schedule;

(4) if you make or purport to make a general assignment for the benefit of creditors; or if you hereto institute any proceeding under any statute or otherwise relating to insolvency or bankruptcy, or should any proceeding under any such statute or otherwise be instituted against you; or if a custodian, receiver, manager or any other person with like powers is appointed to take charge of all or any part of the business granted hereunder or of the shares or documents of title owned by any of your owners; or if you commit or suffer any default under any contract of conditional sale, mortgage or other security instrument in respect of the business being operated hereunder or of the shares or documents of title owned by any of your owners; or if any of your goods, chattels or assets or of the business are seized or taken in execution or in attachment by a creditor, or if a writ of execution is issued against any of such goods, chattels, or assets; or if a judgment or judgments for the payment of money in amounts in excess of \$20,000, is rendered by any court of competent jurisdiction against you;

(5) if you fail to furnish reports, financial statements, tax returns or any other documentation required by the provisions of this Agreement and do not correct such failure within 10 days following notice;

(6) if you are an Entity, (i) if an order is made or a resolution passed or any proceedings taken towards your winding up or liquidation or dissolution or amalgamation; or (ii) if you lose your charter by expiration, forfeiture or otherwise;

(7) if you or any of your owners have made any material misrepresentation or omission in your or their application and the documents and other information provided to us to support your or their application to acquire the rights granted in this Agreement;

(8) if you or your owners engage in or attempt to engage in a transfer or the grant of a security interest without complying with the provisions contained in Section 6;

(9) if you (or any of your owners) are (a) convicted of or plead guilty or “no-contest” to a felony, (b) convicted of or plead guilty or “no contest” to any crime or other offense likely to adversely affect the reputation of Restaurants or the goodwill of the Marks, or (c) engage in any conduct which, in our opinion, adversely affects or, if you were to continue as an area developer under this Agreement, is likely to adversely affect the reputation of the business you conduct pursuant to this Agreement, the reputation and goodwill of Restaurants generally or the goodwill associated with the Marks;

(10) you (or any of your owners) (a) fail on three (3) or more separate occasions within any 12 consecutive month period to comply with this Agreement, whether or not we notify you of the failures, and, if we do notify you of the failures, whether or not you correct the failures after our delivery of notice to you, or (b) fail on two or more separate occasions within any six consecutive month period to comply with the same obligation under this Agreement, whether or not we notify you of the failures, and, if we do notify you of the failures, whether or not you correct the failures after our delivery of notice to you;

(11) if you or your Affiliates fail to comply with any provision of any Franchise Agreement or any other agreement with us or our affiliates and do not cure such failures within the applicable cure period, if any; or

(12) if you fail to observe, perform or comply with any other of the terms or conditions of this Agreement not listed in items (1) through (11) above, and such failure continues for a period of 7 days after written notice thereof has been given by us to you.

## **B. EFFECTS OF TERMINATION.**

(1) **Effects.** Upon the expiration or termination of this Agreement for any reason whatsoever, the following provisions apply:

(a) all of your rights under this Agreement, including without limitation, the Development Rights, will cease, and thereafter you must cease conducting the business granted hereunder or holding yourself out to the public as being a developer of Restaurants except as permitted under Franchise Agreements;

(b) you must deliver to us, all forms, documents, or information provided to you pursuant to this Agreement together with all copies thereof;

(c) you must cease use of all telephone numbers and listing services in any way connected with the business you currently operate hereunder, and subject to our direction, you must immediately cancel such numbers and listings or direct that same be transferred to us, at which time we will then have the exclusive right to use such numbers and listings and/or authorize others to use same; you hereby irrevocably appoint us as your lawful attorney to instruct the telephone company or

listing service to cancel or transfer all such numbers or listings to us or as we may direct; and

(d) without limiting any other rights or remedies to which we may be entitled, you must pay all amounts owing to us pursuant to this Agreement up to the date of termination.

C. **COVENANT NOT TO COMPETE.**

(1) **Non-Competition.** Upon termination or expiration of this Agreement, you and your owners agree that, for 2 years beginning on the effective date of termination or expiration or the date on which all persons restricted by this Section 7.C begin to comply with this Section 7.C, whichever is later, neither you nor your Affiliates, nor any of your or their owners (or your or their immediate family members) will have any direct or indirect interest as an owner (whether of record or beneficially), investor, partner, director, officer, employee, lessor, consultant, representative, or agent in any Competitive Business (as defined in Section 5 above) located or operating:

(a) within the Development Area; and

(b) within a 5-mile radius of any Restaurant in operation or under construction on the later of the effective date of the termination or expiration of this Agreement or the date on which all persons restricted by this Section 7.C begin to comply with this Section 7.C.

These restrictions also apply after transfers to the transferors, as provided further in the Consent to Transfer. If any person restricted by this Section 7.C refuses voluntarily to comply with these obligations, the 2-year period for that person will commence with the entry of a court order enforcing this provision. You expressly acknowledge that you, your Affiliates, your and their owners and the immediate family members of each possess skills and abilities of a general nature and have other opportunities for exploiting these skills. Consequently, our enforcing the covenants made in this Section 7.C will not deprive you or them of any personal goodwill or ability to earn a living.

(2) **Non-Interference.** You further agree that, for two years beginning on the effective date of termination or expiration, neither you nor any of your owners, your or your owners' Affiliates, or the officers, directors, managers or immediate family members of any of the foregoing, will:

(a) interfere or attempt to interfere with our or our affiliates' relationships with any vendors or consultants;

(b) divert or attempt to divert any actual or potential business, sites or customers of any Restaurants to a Competitive Business; or

(c) engage in any other activity which might injure the goodwill of the Marks and/or the Franchise System.

D. **SURVIVAL OF COVENANTS.**

Notwithstanding the expiration or termination of this Agreement for any reason whatsoever, or any Sale, all covenants and agreements to be performed or observed by you will survive any such termination, expiration or Sale.

8. **RELATIONSHIP OF THE PARTIES/INDEMNIFICATION.**

A. **INDEPENDENT CONTRACTORS.**

We and you hereby acknowledge and agree that each of us is an independent contractor, that neither of us is considered to be the agent, representative, master or servant, employer or employee of the other for any purpose whatsoever, and that neither of us has any authority to enter into any contract, to assume any obligations or to give any warranties or representations on behalf of the other. Nothing in this Agreement may be construed to create a relationship of partners, joint venturers, fiduciaries, agency, employment or any other similar relationship between us and you.

B. **INDEMNIFICATION.**

You agree to indemnify, defend, and hold harmless us, our affiliates, and our and their respective owners, managers, directors, officers, employees, agents, successors, and assignees (the “**Indemnified Parties**”) against, and to reimburse any one or more of the Indemnified Parties for, all claims, obligations, and damages directly or indirectly arising out of the operation of the business you conduct under this Agreement, or your breach of this Agreement, including, without limitation, those alleged to be caused by the Indemnified Party’s negligence, unless (and then only to the extent that) the claims, obligations, or damages are determined to be caused solely by the Indemnified Party’s intentional misconduct in a final, unappealable ruling issued by a court with competent jurisdiction. For purposes of this indemnification, “**claims**” include all obligations, damages (actual, consequential, or otherwise), and costs that any Indemnified Party reasonably incurs in defending any claim against it, including, without limitation, reasonable accountants’, arbitrators’, attorneys’, and expert witness fees, costs of investigation and proof of facts, court costs, travel and living expenses, and other expenses of litigation or alternative dispute resolution, regardless of whether litigation or alternative dispute resolution is commenced. Each Indemnified Party may, in its discretion and at your expense, control the defense of any claim against it (including choosing and retaining its own legal counsel), agree to settlements of claims against it, and take any other remedial, corrective, or other actions in response to such claims. This indemnity will continue in full force and effect subsequent to and notwithstanding this Agreement’s expiration or termination. An Indemnified Party need not seek recovery from any insurer or other third party, or otherwise mitigate its losses and expenses, in order to maintain and recover fully a claim against you under this subparagraph. You agree that a failure to pursue a recovery or mitigate a loss will not reduce or alter the amounts that an Indemnified Party may recover from you under this Section 8.B.

9. **ENFORCEMENT; ARBITRATION.**

A. **ARBITRATION**

We and you agree that all controversies, disputes, or claims between us or any of our affiliates, and our and their respective owners, officers, directors, managers, agents, and

employees, on the one hand, and you (and your owners, guarantors, Affiliates, and employees), on the other hand, arising out of or related to:

- (1) this Agreement or any other agreement between you (or any of your owners) and us (or any of our affiliates);
- (2) our relationship with you; or
- (3) the scope or validity of this Agreement or any other agreement between you (or any of your owners) and us (or any of our affiliates) or any provision of any of such agreements (including the validity and scope of the arbitration provision under this Section 9.A, which we and you acknowledge is to be determined by an arbitrator, not a court),

must be submitted for binding arbitration, on demand of either party, to the American Arbitration Association (“AAA”). The arbitration proceedings will be conducted by one arbitrator and, except as this Section otherwise provides, according to the AAA’s then-current Commercial Arbitration Rules. All proceedings will be conducted at a suitable location chosen by the arbitrator that is within 50 miles of our or, as applicable, our successor’s or assign’s then-current principal place of business (currently, Eugene, Oregon). All matters relating to arbitration will be governed by the Federal Arbitration Act (9 U.S.C. §§ 1 et seq.). The interim and final awards of the arbitrator shall be final and binding upon each party, and judgment upon the arbitrator’s awards may be entered in any court of competent jurisdiction.

The arbitrator has the right to award or include in his or her awards any relief which he or she deems proper, including, without limitation, money damages, pre- and post-award interest, interim costs and attorneys’ fees, specific performance, and injunctive relief, provided that the arbitrator may not declare any of the trademarks owned by us or our affiliates generic or otherwise invalid, or award any punitive or exemplary damages against any party to the arbitration proceeding (we and you hereby waiving to the fullest extent permitted by law, any such right to or claim for any punitive or exemplary damages against any party to the arbitration proceeding). In any arbitration brought pursuant to this arbitration provision, and in any action in which a party seeks to enforce compliance with this arbitration provision, the prevailing party shall be awarded its costs and expenses, including attorneys’ fees, incurred in connection therewith.

We and you agree to be bound by the provisions of any applicable contractual or statutory limitations provision, whichever expires earlier. We and you further agree that, in any arbitration proceeding, each party must submit or file any claim which would constitute a compulsory counterclaim (as defined by Rule 13 of the Federal Rules of Civil Procedure) within the same proceeding. Any claim which is not submitted or filed as required will be forever barred. The arbitrator may not consider any settlement discussions or offers that might have been made by either you or us.

We and you agree that arbitration will be conducted on an individual basis and that an arbitration proceeding between us and any of our affiliates, or our and their respective owners, officers, directors, managers, agents, representatives and employees, on the one hand, and you (or your owners, guarantors, affiliates, and employees), on the other hand, may not be: (i) conducted on a class-wide basis; (ii) commenced, conducted or consolidated with any other arbitration

proceeding; (iii) joined with any separate claim of an unaffiliated third-party; or (iv) brought on your behalf by any association or agent. Notwithstanding the foregoing, if any court or arbitrator determines that all or any part of the preceding sentence is unenforceable with respect to a dispute, controversy or claim that otherwise would be subject to arbitration under this Section, then all parties agree that this arbitration clause shall not apply to that dispute, controversy or claim and that such dispute, controversy or claim shall be resolved in a judicial proceeding in accordance with the dispute resolution provisions of this Agreement.

We and you agree that, in any arbitration arising as described in this Section, the arbitrator shall have full authority to manage any necessary exchange of information among the parties with a view to achieving an efficient and economical resolution of the dispute.

The provisions of this Section are intended to benefit and bind certain third-party non-signatories and will continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement.

Any provisions of this Agreement below that pertain to judicial proceedings shall be subject to the agreement to arbitrate contained in this Section.

**B. CONSENT TO JURISDICTION.**

Subject to the agreement to arbitrate (Section 9.A above) and the provisions below, you and your owners agree that all actions arising under this Agreement or any related agreements, or otherwise as a result of the relationship between you (and your owners, guarantors, affiliates, and employees) and us (or any of our affiliates, and our and their respective owners, officers, directors, agents, representatives, and employees) must be commenced in a federal or state court nearest to our or, as applicable, our successor's or assign's then current principal place of business (currently Eugene, Oregon), and you (and each owner) irrevocably submit to the jurisdiction of that court and waive any objection you (or the owner) might have to either the jurisdiction of or venue in that court.

**C. WAIVER OF PUNITIVE DAMAGES AND JURY TRIAL.**

Except for your obligation to indemnify us for third party claims under Section 8.B, we and you (and your owners) waive to the fullest extent permitted by law any right to or claim for any punitive or exemplary damages against the other and agree that, in the event of a dispute between us and you, the party making a claim will be limited to equitable relief and to recovery of any actual damages it sustains.

We and you irrevocably waive trial by jury in any action or proceeding brought by either party.

**D. INJUNCTIVE RELIEF.**

Nothing in this Agreement, including the provisions of Section 9.B, bars our right to obtain specific performance of the provisions of this Agreement and injunctive relief against any threatened or actual conduct that will cause us, the Marks or the Franchise System loss or damage, under customary equity rules, including applicable rules for obtaining restraining orders and temporary or preliminary injunctions. You agree that we may seek such relief from any court of



competent jurisdiction in addition to such further or other relief as may be available to us at law or in equity. You agree that we will not be required to post a bond to obtain injunctive relief and that your only remedy if an injunction is entered against you will be the dissolution of that injunction, if warranted, upon due hearing, and you hereby expressly waive any claim for damages caused by such injunction.

E. **LIMITATION OF CLAIMS; WAIVER OF CLASS ACTION.**

Except for claims arising from your non-payment or underpayment of amounts you owe to us pursuant to this Agreement, any and all claims arising out of or relating to this Agreement or our relationship with you will be barred unless a judicial or arbitration proceeding is commenced in accordance with this Agreement within one (1) year from the date on which the party asserting such claim knew or should have known of the facts giving rise to such claims. We and you agree that any proceeding will be conducted on an individual basis and that any proceeding between us and any of our affiliates, or our and their respective owners, officers, directors, managers, agents, representatives, and employees, on the one hand, and you (or your owners, guarantors, affiliates, and employees), on the other hand, may not be: (i) conducted on a class-wide basis, (ii) commenced, conducted or consolidated with any other proceeding, (iii) joined with any claim of an unaffiliated third-party, or (iv) brought on your behalf by any association or agent.

You and your owners agree that our and our affiliates' owners, directors, managers, officers, employees and agents shall not be personally liable nor named as a party in any action between us or our affiliates and you or your owners.

F. **ATTORNEYS' FEES AND COSTS.**

If either party initiates an arbitration, judicial or other proceeding, the party prevailing in such proceeding shall be entitled to recovery of its costs and expenses, including reasonable attorneys' fees.

10. **MISCELLANEOUS.**

A. **JOINT AND SEVERAL OBLIGATION.**

If either you or we are comprised of more than one individual or Entity, the obligations of each such individual and Entity will be joint and several.

B. **SEVERABILITY.**

If for any reason whatsoever, any term or condition of this Agreement is, to any extent declared to be invalid or unenforceable, all other terms and conditions of this Agreement, other than those as to which it is held invalid or unenforceable, will not be affected thereby and each term and condition of this Agreement will be separately valid and enforceable to the fullest extent permitted by law.

C. **NOTICE.**

All notices, consents, approvals, statements, documents or other communications required or permitted to be given hereunder must be in writing, and will be deemed to be delivered on the earlier of the date of actual delivery or one of the following:

- (a) at the time delivered by hand;
- (b) at the time delivered via computer transmission and, in the case of any amounts due, at the time we actually receive payment;
- (c) one business day after being placed in the hands of a nationally recognized commercial courier service for next business day delivery; or
- (d) three business days after placement in the United States Mail by Registered or Certified Mail, Return Receipt Requested, postage prepaid;

and must be addressed to the party to be notified at its most current principal business address of which the notifying party has notice. Any required payment or report which we do not actually receive during regular business hours on the date due (or postmarked by postal authorities at least two days before then) will be deemed delinquent. If any one of the said parties is comprised of more than one person or Entity, any notice, consent, approval, statement, document or other communication may be given by or to any one thereof, and it will have the same force and effect as if given by or to all thereof.

D. **HEADINGS.**

Headings preceding the text, sections and subsections hereof have been inserted solely for convenience of reference and will not be construed to affect the meaning, construction or effect of this Agreement.

E. **APPLICABLE LAW.**

This Agreement will be construed and interpreted under the laws of the State of Oregon, except to the extent governed by the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. Section 1051 et seq.), or other United States federal law, without regard to its conflicts of laws rules, except that any state law regulating the offer or sale of franchises or governing the relationship of a franchisor and its franchisee will not apply unless its jurisdictional requirements are met independently without reference to this Section.

F. **TIME OF ESSENCE.**

Time is of the essence of this Agreement and of each and every part hereof.

G. **WAIVER.**

The waiver by either you or us, of a breach of any term or condition contained in this Agreement will not be deemed to be a waiver of such term or condition or any subsequent breach of the same or any other term or condition herein contained unless such waiver is expressly set forth in writing. Our failure to exercise any right of ours to demand your exact compliance, nor

any custom or practice of you and us at variance with the terms and conditions of this Agreement will constitute a waiver of our right to demand exact compliance with the terms and conditions hereof. Our subsequent acceptance of any amount payable hereunder, will not be deemed to be a waiver of any preceding breach of any term or condition of this Agreement, other than the failure to pay the particular amount so accepted, regardless of our knowledge of such preceding breach at the time of acceptance of such amount.

The following provision applies if you or the franchise granted hereby are subject to the franchise registration or disclosure laws in California, Illinois, Indiana, North Dakota, Washington, or Wisconsin: 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.

H. **ASSIGNMENT BY US.**

In the event of a sale, transfer or assignment by us of our interest in this Agreement or any interest herein, to the extent that the purchaser or assignee assumes our covenants and obligations under this Agreement, we will thereupon and without further agreement, be freed and relieved of all liabilities with respect to such covenants and obligations. In no event will anything, including without limitation, anything contained in this Agreement, prevent us from selling, transferring or assigning any interest we may have in the Franchise System or the Marks or any part thereof. If, notwithstanding the foregoing, it is determined otherwise by a governmental authority, legislative act, court of competent jurisdiction or in any other manner whatsoever, upon completion of any such sale, transfer or assignment, we will be freed and relieved of all liability to you whatsoever and we will have no obligations to you under or pursuant to this Agreement.

I. **AGREEMENT EFFECTIVE.**

This Agreement shall not be effective until accepted by us as evidenced by dating and signing by an officer or other duly-authorized representative of ours. Notwithstanding that this Agreement shall not be effective until signed by us, we reserve the right to make the effective date of this Agreement the date on which you signed the Agreement.

J. **FURTHER ASSURANCES.**

You and we agree to execute and deliver such further and other agreements, assurances, undertakings, acknowledgements or documents, cause such meetings to be held, resolutions passed and by-laws enacted, exercise our vote and influence and do and perform and cause to be done and performed any further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement and every part hereof.

K. **ENTIRE AGREEMENT.**

This Agreement and all schedules attached hereto constitute the entire agreement of the parties hereto and all prior negotiations, commitments, representations, warranties, agreements and

undertakings made prior hereto are hereby merged. There are no other inducements, representations, warranties, agreements, undertakings, or promises, (oral or written) among you and us relating to the subject matter of this Agreement. No subsequent alteration, amendment, change or addition to this Agreement or any schedules will be binding upon the parties hereto unless reduced to writing and signed by us and you or our and your respective heirs, executors, administrators, successors or assigns. Nothing in this or in any related agreement, however, is intended to disclaim the representations we made in the franchise disclosure document that we furnished to you.

You agree that whenever this Agreement allows or requires us to take actions or make decisions, we may do so in our sole and unfettered discretion, even if you believe our action or decision is unreasonable, unless the Agreement expressly and specifically requires that we act reasonably or refrain from acting unreasonably in connection with the particular action or decision. The headings of the sections and paragraphs are for convenience only and do not define, limit, or construe the contents of these sections or paragraphs.

**L. LAWFUL ATTORNEY.**

Notwithstanding anything otherwise contained in this Agreement, if you do not execute and deliver any documents or other assurances so required of you pursuant to this Agreement and/or if we take over the management or operation of the business operated hereunder on your behalf for any reason, you hereby irrevocably appoint us as your lawful attorney with full power and authority, to execute and deliver in your name any such documents and assurances, and/or to manage or operate the business on your behalf, and/or to do all other acts and things, all in such discretion as we may desire, and you hereby agree to ratify and confirm all of our acts as your lawful attorney and to indemnify and save us harmless from all claims, liabilities, losses, or damages suffered in so doing. You also hereby appoint us as your attorney-in-fact to receive and inspect your confidential sales and other tax records and hereby authorize all tax authorities to provide such information to us for all tax periods during the term of this Agreement.

**M. BINDING AGREEMENT.**

This Agreement will inure to the benefit of and be binding upon us and our successors and assigns and will be binding upon you and your heirs, executors, administrators, successors and authorized assigns.

**N. COUNTERPARTS.**

This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Faxed, scanned or electronic signatures shall have the same effect and validity, and may be relied upon in the same manner, as original signatures.

**IN WITNESS WHEREOF**, the parties have executed and delivered this Agreement as of the Effective Date.

**WE ARE CRACKIN' LLC**

**AREA DEVELOPER:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
\*Date: \_\_\_\_\_  
\*(This is the Effective Date)

\_\_\_\_\_  
[Name]  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT A**

**DEVELOPMENT AREA AND DEVELOPMENT SCHEDULE**

1. The **Development Area** is comprised of: \_\_\_\_\_, as depicted on the map attached hereto. If the Development Area is identified by counties or other political subdivisions, political boundaries will be considered fixed as of the date of this Agreement and will not change, notwithstanding a political reorganization or change to the boundaries or regions.

2. The **Development Schedule**<sup>1</sup> is as follows:

<b><u>Development Period</u></b>	<b>Leases Executed During Development Period<sup>2</sup></b>	<b>Leases Executed by End of Development Period<sup>2</sup></b>	<b>Restaurants Opened During Development Period</b>	<b>Restaurants Operating by End of Development Period</b>
_____ to _____	_____	_____	_____	_____
_____ to _____	_____	_____	_____	_____
_____ to _____	_____	_____	_____	_____
_____ to _____	_____	_____	_____	_____
_____ to _____	_____	_____	_____	_____

<sup>1</sup> It is anticipated that of the Restaurants you are required to develop, \_\_\_ will be branded Elmer’s Breakfast · Lunch · Dinner®, \_\_\_ will be branded Elmer’s Kitchen Breakfast · Brunch · Mimosas™, and \_\_\_ will be branded Egg N’ Joe®.

<sup>2</sup> To satisfy this requirement, we must have received, by the end of the Development Period, a fully executed (by all parties) copy of the lease (together with all exhibits) that we have approved in accordance with the applicable Franchise Agreement.

**WE ARE CRACKIN’ LLC**

**AREA DEVELOPER:**

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

\_\_\_\_\_  
 [Name]  
 By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

**MAP OF DEVELOPMENT AREA**

**EXHIBIT B**

**OWNERS AND MANAGING OWNER**

1. **Business Form of Developer.**

(a) **Individual Proprietorship.** Your owner(s) (is) (are) as follows:

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

(b) **Corporation, Limited Liability Company or Partnership.** You were incorporated or formed on \_\_\_\_\_, 20\_\_, under the laws of the State of \_\_\_\_\_. You have not conducted business under any name other than your corporate, limited liability company, or partnership name unless indicated in the following:

\_\_\_\_\_.

2. **Owners.** The following identifies the owner that you have designated as, and that we approve to be, the Managing Owner and lists the full name of each person who is one of your owners and fully describes the nature of each owner's interest.

	<b><u>Owner's Name</u></b>	<b><u>Type and %-age of Interest</u></b>
Managing Owner:	_____	_____ %
Other Owners:	_____	_____ %
	_____	_____ %

**WE ARE CRACKIN' LLC**

**AREA DEVELOPER:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
[Name]  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_



## EXHIBIT C

### GUARANTY AND ASSUMPTION OF OBLIGATIONS

**THIS GUARANTY AND ASSUMPTION OF OBLIGATIONS** is given this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_, by the persons indicated below who have executed this Agreement.

In consideration of, and as an inducement to, the execution of that certain Area Development Agreement (as amended, modified, restated or supplemented from time to time, the “**Agreement**”) on this date by We Are Crackin’ LLC, an Oregon limited liability company (“**we,**” “**us,**” or “**our**”), each of the undersigned personally and unconditionally (a) guarantees to us and our successors and assigns, for the term of the Agreement (including extensions) and afterward as provided in the Agreement, that \_\_\_\_\_ (“**Developer**”) will punctually pay and perform each and every undertaking, agreement, and covenant set forth in the Agreement (including any amendments or modifications of the Agreement) and (b) agrees to be personally bound by, and personally liable for the breach of, each and every provision in the Agreement (including any amendments or modifications of the Agreement), both monetary obligations and obligations to take or refrain from taking specific actions or to engage or refrain from engaging in specific activities, including the non-competition, confidentiality, and transfer requirements.

Each of the undersigned consents and agrees that: (1) his or her direct and immediate liability under this Guaranty will be joint and several, both with Developer and among other guarantors; (2) he or she will render any payment or performance required under the Agreement upon demand if Developer fails or refuses punctually to do so; (3) this liability will not be contingent or conditioned upon our pursuit of any remedies against Developer or any other person; (4) this liability will not be diminished, relieved, or otherwise affected by any extension of time, credit, or other indulgence which we may from time to time grant to Developer or to any other person, including, without limitation, the acceptance of any partial payment or performance or the compromise or release of any claims (including the release of other guarantors), none of which will in any way modify or amend this Guaranty, which will be continuing and irrevocable during the term of the Agreement (including extensions), for so long as any performance is or might be owed under the Agreement by Developer or its owners, and for so long as we have any cause of action against Developer or its owners; (5) this Guaranty will continue in full force and effect for (and as to) any extension or modification of the Agreement and despite the transfer of any interest in the Agreement or Developer, and each of the undersigned waives notice of any and all renewals, extensions, modifications, amendments, or transfers; and (6) at our request, the undersigned shall present updated financial information to us as reasonably necessary to demonstrate his or her ability to satisfy the financial obligations of Developer under the Agreement.

Each of the undersigned waives: (i) all rights to payments and claims for reimbursement or subrogation which any of the undersigned may have against Developer arising as a result of the undersigned’s execution of and performance under this Guaranty; and (ii) acceptance and notice of acceptance by us of his or her undertakings under this Guaranty, notice of demand for payment of any indebtedness or non-performance of any obligations hereby guaranteed, protest and notice of default to any party with respect to the indebtedness or nonperformance of any obligations hereby guaranteed, and any other notices to which he or she may be entitled. Each of the

undersigned also agrees to provide us with updated periodic financial information, as we may request from time to time.

Each of the undersigned acknowledges and represents that he or she has had an opportunity to review the Agreement and agrees that the provisions of Article 9 (Enforcement; Arbitration) have been reviewed by the undersigned and are incorporated, by reference, into and shall govern this Guaranty and Assumption of Obligations and any disputes between the undersigned and us. Nonetheless, each of the undersigned agrees that we may also enforce this Guaranty and Assumption of Obligations and awards in the courts of the state or states in which he or she is domiciled. The Guarantors shall reimburse us for all costs and expenses we incur in connection with enforcing the terms of this Guaranty.

By signing below, the undersigned spouse of the Guarantor indicated below, acknowledges and consents to the guaranty given herein by his/her spouse. Such consent also serves to bind the assets of the marital estate to Guarantor's performance of this Guaranty. We confirm that a spouse who signs this Guaranty solely in his or her capacity as a spouse (and not as an owner) is signing that merely to acknowledge and consent to the execution of the Guaranty by his or her spouse and to bind the assets of the marital estate as described therein and for no other purpose (including, without limitation, to bind the spouse's own separate property).

Each Guarantor that is a business entity, retirement or investment account, or trust acknowledges and agrees that if Franchisee (or any of its affiliates) is delinquent in payment of any amounts guaranteed hereunder, that no dividends or distributions may be made by such Guarantor (or on such Guarantor's account) to its owners, accountholders or beneficiaries, for so long as such delinquency exists, subject to applicable law

*[Signature page to follow]*

**IN WITNESS WHEREOF**, each of the undersigned has affixed his or her signature on the same day and year as this Guaranty and Assumption of Obligations was executed.

GUARANTOR(S)	SPOUSE(S)
Name: _____ Sign: _____ Address: _____ _____ _____	Name: _____ Sign: _____ Address: _____ _____ _____
Name: _____ Sign: _____ Address: _____ _____ _____	Name: _____ Sign: _____ Address: _____ _____ _____

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

**WE ARE CRACKIN' LLC**  
**FRANCHISE AGREEMENT**

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

**Restaurant Number:** \_\_\_\_\_

**Restaurant Address:** \_\_\_\_\_

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## FRANCHISE AGREEMENT

**THIS FRANCHISE AGREEMENT** (this “**Agreement**”) is made and entered into as of \_\_\_\_\_ (the “**Effective Date**”) by and between **WE ARE CRACKIN’ LLC**, an Oregon limited liability company with its principal business address at 363 High Street, Eugene, Oregon 97401 (“**we**”), and \_\_\_\_\_, whose principal business address is \_\_\_\_\_ (“**you**”).

### RECITALS

A. We and our affiliates have developed (and may continue to develop and modify) a system for the operation of family restaurants featuring breakfast foods, other food products and beverages, and related products and services authorized by us from time to time known as Elmer’s Breakfast · Lunch · Dinner<sup>®</sup> Restaurants, Elmer’s Kitchen Breakfast · Brunch · Mimosas<sup>™</sup> Restaurants, and Egg N’ Joe<sup>®</sup> Restaurants (individually, a “**Restaurant**” and collectively, “**Restaurants**”). The franchise concept under which you will operate your Restaurant is defined in Section 1.A as the “**Designated Brand Concept**.” Restaurants must be developed and operated using certain specified and distinct business formats, methods, procedures, designs, layouts, standards and specifications all of which we may improve, further develop, or modify from time to time (the “**System Standards**”).

B. We and our affiliates use, promote, and license others to use and promote certain trademarks, service marks, and other commercial symbols in operating Restaurants, including the Elmer’s Breakfast · Lunch · Dinner<sup>®</sup>, Elmer’s Kitchen Breakfast · Brunch · Mimosas<sup>™</sup>, and Egg N’ Joe<sup>®</sup> marks, and may create, use, and license other trademarks, service marks, and commercial symbols to identify Restaurants and the products and services they offer (collectively, the “**Marks**”).

C. We grant to persons who we determine satisfactorily meet our qualifications, and who confirm their willingness to undertake the investment and effort, a franchise to own and operate a Restaurant offering the products and services we authorize and using our and our affiliates’ business formats, methods, procedures, signs, designs, layouts, standards, specifications, and Marks (the “**Franchise System**”).

D. You have applied for a franchise to own and operate a Restaurant and have provided us with certain information in support of your application. We are willing to grant you the franchise on the terms and conditions contained in this Agreement.

### AGREEMENT

**FOR AND IN CONSIDERATION** of the foregoing Recitals (which are incorporated herein), the covenants contained herein, and other valuable consideration, receipt and sufficiency of which are acknowledged, you and we agree as follows:

#### 1. Grant of Franchise; No Exclusivity; Reservation of Rights.

A. **Grant of Franchise.** You have applied for a franchise to own and operate a Restaurant at the specific location which has been or will be approved by us pursuant to Section 2 of this Agreement (the “**Premises**”) and identified on Exhibit A. If the Premises have not been approved when you sign this Agreement, you and we will revise Exhibit A to identify the Premises once approved. Subject to this Agreement’s terms, we grant you a franchise (the “**Franchise**”) to operate a Restaurant (your “**Restaurant**”) under the brand [ ] Elmer’s Breakfast · Lunch · Dinner<sup>®</sup>, [ ] Elmer’s Kitchen Breakfast ·

Brunch · Mimosas™, or [ ] Egg N' Joe® (the “**Designated Brand Concept**”) solely at the Premises, and to use the Franchise System and the System Standards in its operation, for a term beginning on the Effective Date and expiring 15 years from that date, unless sooner terminated under Section 14 (the “**Term**”).

You agree to, at all times, faithfully, honestly, and diligently perform your obligations under this Agreement and to use your best efforts to promote your Restaurant. You agree to use the Premises only for your Restaurant, and, once it opens for business, to continuously operate your Restaurant in accordance with this Agreement for the duration of this Agreement’s term. You agree not to conduct the business of your Restaurant at any location other than the Premises. You may not promote or sell any products or services, whether directly or indirectly, through or on the Internet, the World Wide Web, or any other similar proprietary or common carrier electronic delivery system.

**B. No Exclusivity and Reservation of Rights.** We do not grant any, and you have no, exclusive rights or territorial protection around your Restaurant. We grant rights only by expressed provisions of written agreements and not by implication, inference or innuendo. Subject to rights granted to you or your affiliate under Section 1.C of this Agreement, we (and our affiliates) retain the right at all times during and after the Term to engage in any and all activities that we (and they) deem appropriate and that have not been expressly granted to you in this Agreement, wherever and whenever we (and they) desire, and whether or not such activities compete with your Restaurant, including the right, anywhere in the world, to do any of the following:

(1) establish and operate, and allow others to establish and operate, Restaurants using the Marks and the Franchise System, at any location on such terms and conditions we deem appropriate;

(2) establish, operate and license others to establish and operate, anywhere in the world other than the Premises, restaurants and other businesses (including Restaurants and businesses that offer products and services which are identical or similar to products and services offered by Restaurants) under any trade names, trademarks, service marks and commercial symbols, including the Marks;

(3) establish, operate and allow others to establish and operate other businesses and distribution channels (including, the Internet and grocery stores), regardless of the nature or location of the customers with whom such other businesses and distribution channels do business, that operate under the Marks or any other trade names, trademarks, service marks or commercial symbols that are the same as or different from Restaurants, or that sell any of the specialized food and beverage products formulated and prepared by us or our Affiliates for use in Restaurants, or any other products and/or services that are identical or similar to, and/or competitive with, those that Restaurants customarily sell;

(4) acquire the assets or ownership interests of one or more businesses, including Competitive Businesses (defined below), and franchising, licensing or creating similar arrangements with respect to such businesses once acquired, wherever these businesses (or the franchisees or licensees of these businesses) are located or operating; and

(5) be acquired (whether through acquisition of assets or ownership interests, regardless of the form of transaction), by any other business, including a Competitive Business, even if such business operates, franchises and/or licenses such businesses near your Restaurant.

**C. Right of First Refusal.** Notwithstanding any provision in this Agreement to the contrary, if we should decide to own and operate a Restaurant under either Designated Brand Concept, whether

directly or through an affiliate, or offer a franchise to own and operate a Restaurant under either Designated Brand Concept, at any location within a 1 mile radius of the Premises, and you are not in default of this Agreement, you will have a right of first refusal to develop and operate such Restaurant under the same Designated Brand Concept which we intend to own and operate or grant a franchise. This right of first refusal will not apply:

- (a) if the location of the proposed Restaurant is being developed within the territory reserved to another franchisee pursuant to an area development agreement between us and such franchisee;
- (b) if the location of the proposed Restaurant is a multi-business or multi-concept venue, including, but not limited to, military bases, casinos, schools, colleges and universities, airports and other transportation terminals, roadway rest stops, amusement parks, and entertainment and sports venues;
- (c) to food and specialty retail outlets selling or proposing to sell any of the specialized food and beverage products formulated and prepared by us or our Affiliates; or
- (d) if the proposed Restaurant will offer a limited menu or otherwise simplified version of the Franchise System.

To exercise your right of first refusal under this Section, you must execute and deliver to us a notice in the form we prescribe within thirty (30) calendar days of receiving notice from us that we intend to develop such Restaurant or offer such a franchise.

We may, at our option, engage in all other activities not expressly prohibited by this Agreement.

**D. The Exercise of Our Judgment.** We have the right to operate, develop, and change the Franchise System in any manner that is not specifically prohibited by this Agreement. Whenever we have reserved in this Agreement a right to take or to withhold an action, to grant or decline to grant you a right to take or withhold an action, or to provide or withhold approval or consent, we may, except as otherwise specifically provided in this Agreement, make our decision or exercise our rights based on information readily available to us and on our judgment of what is in our or the Franchise System's best interests at the time our decision is made.

**E. Corporation, Limited Liability Company, or Partnership.** If you are at any time a corporation, limited liability company, or partnership (each, an "Entity"), you agree and represent that:

- (1) You will have the authority to execute, deliver, and perform your obligations under this Agreement and all related agreements and are duly organized or formed and are and will, throughout this Agreement's term, remain validly existing and in good standing under the laws of the state of your incorporation or formation;
- (2) Your organizational documents, operating agreement, or partnership agreement, as applicable, will recite that this Agreement restricts the issuance and transfer of any ownership interests in you, and all certificates and other documents representing ownership interests in you will bear a legend referring to this Agreement's restrictions;
- (3) Exhibit A to this Agreement completely and accurately describes all of your owners and their interests in you as of the Effective Date;

(4) Each of your direct and indirect owners during this Agreement's term and your and their spouses will execute a guaranty in the form we prescribe undertaking personally to be bound, jointly and severally, by all provisions of this Agreement and any ancillary agreements between you and us. Our current form of guaranty is attached herein as Exhibit C. We confirm that a spouse who signs Exhibit C solely in his or her capacity as a spouse (and not as an owner) is signing that agreement merely to acknowledge and consent to the execution of the guaranty by his or her spouse and to bind the assets of the marital estate as described therein and for no other purpose (including to bind the spouse's own separate property). Subject to our rights and your obligations under Section 12, you and your owners agree to sign and deliver to us revised Exhibits A to reflect any permitted changes in the information that Exhibit A now contains;

(5) You must identify on Exhibit A one of your owners who is a natural person with at least 25% ownership interest and voting power in you and who will have the authority of a chief executive officer (the "**Managing Owner**"). You agree to deliver to us a revised Exhibit A to accurately identify the Managing Owner should the identity of that person change during the term of this Agreement as permitted hereunder; and

(6) The Managing Owner is authorized, on your behalf, to deal with us in respect of all matters whatsoever which may arise in respect of this Agreement. Any decision made by the Managing Owner will be final and binding upon you, and we will be entitled to rely solely upon the decision of the Managing Owner in any such dealings without the necessity of any discussions with any other party named in this Agreement, and we will not be held liable for any actions taken by you, based upon any decision or actions of the Managing Owner.

## 2. **SITE SELECTION, LEASE OF PREMISES, AND DEVELOPMENT AND OPENING OF YOUR RESTAURANT.**

A. **Site Selection.** If you have not yet located a site for the Premises as of the Effective Date, then, you agree to purchase, or sign a lease for, a suitable site for your Restaurant within 180 days after the Effective Date. You agree to obtain our written approval of a proposed site for your Restaurant before signing any lease, sublease, or other document for the site. Our determination to approve or disapprove a site may be based on various criteria which may change from time to time in our discretion. You agree to send us information we require for the proposed site. You may operate your Restaurant only at the Premises.

Our acceptance of a proposed site indicates only that we believe that the site meets our then acceptable criteria which have been established for our own purposes. Applying criteria that have appeared effective with other sites and premises might not accurately reflect the potential for all sites and premises, and demographic or other factors included in or excluded from our criteria could change, even after our approval of the Premises or your development of the Restaurant, altering the potential of a site and premises. The uncertainty and instability of these criteria are beyond our control, and we are not responsible if a site and premises we recommend fail to meet your expectations. You acknowledge and agree that your acceptance of the Franchise and selection of the Premises are based on your own independent investigation of the site's suitability for the Premises.

B. **Lease of Premises.** We have the right to approve the terms of any lease or sublease for the Premises (the "**Lease**") before you sign it. Our approval may be conditioned on the landlord's agreement to include certain provisions we require, including collateral assignment of lease, pursuant to our then-current standard form of lease addendum (our current form is attached as Exhibit B hereto). It is your sole responsibility to obtain a fully-executed lease addendum in connection with executing your Lease. If you or the landlord request that we consider any modifications to the lease addendum, and we elect to do so, we

may also require you to reimburse us all expenses that we incur (including attorneys' fees) in connection with such review. We may also reject any request for modifications to the lease addendum for any reason.

You acknowledge and agree that any of our involvement in the lease review and approval of locations is for our sole benefit and the benefit of the Franchise System. If you do not agree with the lease provisions that we have approved or negotiated, you may elect not to sign the lease, but you would have to find another suitable site for the Premises. If you reject a site we approve because you do not agree with the lease provisions that we or our representatives have negotiated, we may permit another franchisee to enter into a lease for such site, whether on the terms you rejected or on other terms. You will then have to search for another suitable site. You must not enter into a lease or any other contract for the premises of your Restaurant without our prior written consent.

You are not a third-party beneficiary of any lease negotiation or review that we conduct. You agree that we do not guarantee that the terms, including rent, will represent the most favorable terms available in that market.

C. **Development of Your Restaurant.** You must use one of our designated architects and a designated kitchen designer in connection with the development of your Restaurant. You agree at your expense to do the following: (a) obtain and submit to us for approval detailed construction plans and specifications and space plans for your Restaurant that comply with any design specifications provided by us and all applicable ordinances, building codes, permit requirements, and lease requirements and restrictions; (b) obtain all required zoning changes, planning consents, building, utility, sign and business permits and licenses, liquor license and any other consents, permits and licenses necessary to lawfully open and operate your Restaurant; (c) construct all required improvements in compliance with construction plans and specifications approved by us; (d) decorate your Restaurant in compliance with plans and specifications approved by us; (e) purchase and install all required Operating Assets (as defined in Section 2.E); and (f) obtain all customary contractors' sworn statements and partial and final waivers of lien for construction, remodeling, decorating and installation services. You agree to use the vendor(s) we select, if any (which may include us or our affiliates), for design, engineering, construction management and purchasing services in connection with the development of your Restaurant.

D. **Financing; Maximum Borrowing Limits; Liquidity.** You acknowledge and agree that:

(1) you will, at all times, maintain sufficient working capital reserves as necessary and appropriate to comply with your obligations under this Agreement. On our request, you will provide us with evidence of working capital availability. We reserve the right, from time to time, to establish certain levels of working capital reserves, and you will comply with such requirements;

(2) we may from time to time designate the maximum amount of debt that Restaurants may service, and you will ensure that you will comply with such limits; and

(3) you will apply for and diligently pursue any government-issued, government-sponsored, or government-guaranteed grants, non-recourse loans, or bail-outs for which you qualify and that are made available to small businesses as an economic stimulus, if necessary to comply with your obligations under this Agreement.

E. **Operating Assets.** You agree to use in operating your Restaurant only those types of food items, condiments, construction and decorative materials, fixtures, equipment, furniture, signs, uniforms and linens, smallwares, cleaning supplies, marketing materials, and other products and services ("Operating Assets") we approve for Restaurants as meeting our specifications and standards for quality, design, appearance, function, and performance. You agree to place or display at the Premises (interior and exterior)

only the signs, emblems, lettering, logos, and display materials we approve from time to time. You agree to purchase or lease approved brands, types, or models of Operating Assets only from suppliers we designate or approve (which may include or be limited to us or our affiliates).

F. **Computer System.** You agree to obtain from the designated vendor and use specified integrated computer hardware and software, including an integrated computer-based point-of-sale system and non-cash payment systems (the “**Computer System**”). We may modify specifications for, and components of, the Computer System. You also agree to maintain a functioning e-mail address and all specified points of high-speed Internet connection. You agree to make Wi-Fi available to your Restaurant’s guests, free of charge to them. We may, in our discretion, issue email addresses to you for use in connection with your Restaurant. If we require you to use such an email address, you must do so according to our then-current System Standards. You acknowledge and agree that we will have unrestricted access to and sole ownership of all such email accounts, and all document, data, materials, and messages shared from or by such accounts; however, we have no obligation to monitor your email account. We may deactivate any such account or limit your or your users’ access to it at any time. Our modification of specifications for the Computer System, and other technological developments or events, might require you to purchase, lease, or license new or modified computer hardware or software and to obtain service and support for the Computer System. Although we cannot estimate the future costs of the Computer System or required service or support, and although these costs might not be fully amortizable over this Agreement’s remaining term, you agree to incur the costs of obtaining the computer hardware and software comprising the Computer System (or additions and modifications) and required service or support. We have no obligation to reimburse you for any Computer System costs. Within 60 days after we advise you of changes to the Computer System, you agree to implement such changes, and if necessary, procure any additional equipment, components, hardware, or software we designate. You must at all times during the term of this Agreement ensure that your Computer System, as modified, meets our System Standards and functions properly.

You agree that we or our affiliates may condition any license of proprietary software to you, or your use of technology that we or our affiliates develop or maintain, on your signing a software license agreement or similar document that we or our affiliates prescribe to regulate your use of, and our and your respective rights and responsibilities with respect to, the software or technology. We and our affiliates may charge you a monthly or other fee for any proprietary software or technology that we or our affiliates license to you and for other maintenance and support services that we or our affiliates provide during this Agreement’s term.

Although you agree to buy, use, and maintain the Computer System according to our standards and specifications, you will have sole and complete responsibility for: (1) the acquisition, operation, maintenance, and upgrading of the Computer System; (2) the manner in which your Computer System interfaces at our specified levels of connection speed with our and any third party’s computer system; and (3) any and all consequences if the Computer System is not properly operated, maintained, and upgraded.

G. **Business Opening.** You agree not to open your Restaurant until:

(1) we notify you in writing that we have completed any pre-opening inspections and testing of your Restaurant, as we determine necessary, and that your Restaurant meets our standards and specifications;

(2) you have obtained all applicable licenses and permits, including, without limitation, a liquor license;

(3) you have complied with all your development obligations specified in Section 2.C;

- (4) your Designated Managers (as defined in Section 4.A) complete training to our satisfaction;
- (5) you pay the initial franchise fee and other amounts then due to us; and
- (6) you give us certificates for all required insurance policies.

Subject to your compliance with these conditions, you agree to open your Restaurant for business within 18 months after you sign a lease for the Premises or by the two-year anniversary of the Effective Date, whichever occurs first.

### 3. **FEES.**

A. **Initial Fees.** You agree to pay us a nonrecurring and, except as specifically provided in this Agreement, nonrefundable initial franchise fee of \$40,000. If you are purchasing an existing Restaurant in connection with the execution of this Agreement, you are not required to pay the initial franchise fee, provided that you or the seller of the Restaurant pay the transfer fee required under the seller's franchise agreement. You acknowledge that the initial franchise fee is due, and fully earned by us, when you sign this Agreement and not refundable to you after it is paid.

B. **Royalty Fee.** You agree to pay us on or before Wednesday of each week, in the manner provided below (or as the Operations Manual otherwise prescribes), a weekly royalty fee (the "**Royalty**") equal to four percent (4%) of the Gross Sales derived during the preceding week (beginning on Monday and ending on Sunday).

C. **Definition of "Gross Sales".** As used in this Agreement, the term "**Gross Sales**" means all revenue that you derive from operating your Restaurant (whether or not in compliance with this Agreement), including the commissions received by you from the lottery games sold at your Restaurant, whether from cash, check, credit and debit card, barter exchange, trade credit, or other credit transactions, but (1) excluding all federal, state, or municipal sales, use, or service taxes collected from customers and paid to the appropriate taxing authority and (2) reduced by the amount of any documented refunds, credits and discounts up to 5% of the Gross Sales your Restaurant in good faith gives to customers and your employees. We include gift certificate, gift card or similar program payments in Gross Sales when the gift certificate, gift card, other instrument or applicable credit is redeemed. Gross Sales also include all insurance proceeds you receive for loss of business due to a casualty to or similar event at the Restaurant.

D. **Interest on Late Payments.** All amounts which you owe us for any reason will bear interest accruing as of their due date at the rate specified by us from time to time, or the highest commercial contract interest rate the law allows, but in no event shall such rate exceed 18% per annum. Interest shall accrue on all late payments regardless of whether we exercise our right to terminate this Agreement as allowed by this Agreement. We may charge you One Hundred Dollars (\$100) late payment fee for all such overdue payments. We will charge a service fee of One Hundred Dollars (\$100) per occurrence for checks returned to us due to insufficient funds or in the event there are insufficient funds in the business account you designate to cover our withdrawals. We may debit your bank account automatically for the service charge and interest. You acknowledge that this Section 3.D is not our agreement to accept any payments after they are due or our commitment to extend credit to, or otherwise finance your operation of, your Restaurant.

E. **Application of Payments.** Despite any designation you make, we may apply any of your payments to any of your past due indebtedness to us. We may set off any amounts you or your owners owe us or our affiliates against any amounts we or our affiliates owe you or your owners.

F. **Method of Payment.** You hereby authorize us to debit your checking, savings or other account automatically for the Royalty, Brand Promotion Fund (as defined in Section 9.B) contributions, and other amounts due to us or our affiliates (the “**EFT Authorization**”). You agree to sign and deliver to us any documents we require for such EFT Authorization. Such EFT Authorization shall remain in full force and effect during the term of this Agreement. We will debit the account you designate for these amounts on their due dates (or the subsequent business day if the due date is a national holiday or a weekend day). You agree to ensure that funds are available in your designated account to cover our withdrawals.

If you fail to report the Gross Sales, we may debit your account for one hundred ten percent (110%) of the average of the last three Royalty and Brand Promotion Fund contributions that we debited. If the amounts that we debit from your account are less than the amounts you actually owe us (once we have determined the true and correct Gross Sales), we will debit your account for the balance on the day we specify. If the amounts that we debit from your account are greater than the amounts you actually owe us, we will credit the excess against the amounts we otherwise would debit from your account during the following week.

We may require you to pay any amounts due under this Agreement by means other than automatic debit (*e.g.*, by check) whenever we deem appropriate, and you agree to comply with our payment instructions.

G. **Change in Law.** If a law is enacted during the term of this Agreement which prohibits or restricts in any way your ability to pay and our ability to collect Royalty or other amounts based on Gross Sales derived from the sale of alcoholic products or lottery games, then we reserve the right to modify your payment obligations to us under this Agreement and revise the applicable provisions hereunder in order to provide the same basic economic effect to both us and you as currently provided in this Agreement. In such event, you agree to execute the appropriate document(s) in the form we prescribe to give effect to or take account of such revisions. If we determine in good faith that the effect of any law enacted hereafter will be materially detrimental to our interests, we may terminate this Agreement by delivering written notice thereof to you.

H. **Non-Compliance Charge.** In addition to our other rights and remedies, we may charge you a non-compliance charge in an amount up to one hundred dollars (\$100) for each violation of any term of this Agreement, including failure to pay (or to have adequate amounts available for electronic transfer of) amounts you or your Affiliates owe us or our affiliates or failure to timely provide required reports and financial statements. We may change or eliminate this charge in our sole discretion. We will contribute any charges we collect under this Section to the Brand Promotion Fund (defined below).

#### 4. **TRAINING AND ASSISTANCE.**

A. **Training.** After you sign this Agreement and no later than 30 days before you open your Restaurant, your Designated Managers must complete, to our satisfaction, initial training conducted by us on the material aspects of operating a Restaurant. Your “**Designated Managers**” shall include four people you have designated to assume primary responsibility for the supervision of your Restaurant, which need not be you (or your Managing Owner). If your Designated Brand Concept is Elmer’s Breakfast · Lunch · Dinner<sup>®</sup> (“**Elmer’s**”), your Designated Managers must include one general manager, one kitchen manager and one assistant manager; and if your Designated Brand Concept is Elmer’s Kitchen Breakfast · Brunch · Mimosas<sup>™</sup> (“**Elmer’s Kitchen**”) or Egg N’ Joe<sup>®</sup>, your Designated Managers must include one general manager, one kitchen manager and one supervisor. We will provide six weeks of training for general managers and four weeks of training for kitchen managers, assistant managers and supervisors. Training will be conducted at our principal offices and at a designated training facility of our choice, or we may conduct portions of training virtually, as we determine in our discretion. Your Designated Managers must



complete initial training to our satisfaction prior to operating your Restaurant. In addition, all Designated Managers must obtain liquor control cards and ServeSafe certification at their own expense. If we determine that your Designated Managers cannot complete initial training to our satisfaction, we may terminate this Agreement.

Scheduling of the training is based on your Designated Managers' availability, training restaurant availability and the projected opening date for your Restaurant which is finally determined by us. We reserve the right to require up to two additional managers to complete initial training to our satisfaction. The Managing Owner is not required to complete training unless the Managing Owner will be part of the daily restaurant management team.

Although we provide initial training for no additional fee for your Designated Managers, you agree to pay our then-current training fee for the initial training of any additional managers. You further agree to pay for all travel and living expenses which your Designated Managers and your additional managers incur and for your employees' wages and workers' compensation insurance while attending training.

Your Designated Managers may request additional training at the end of the initial training program, to be provided at our then current per diem charges, if your Designated Managers do not feel sufficiently trained in the operation of a Restaurant. We and you will jointly determine the duration of this additional training. However, if your Designated Managers complete our initial training program to our satisfaction, and you have not expressly informed us in writing at the end of that program that your Designated Managers do not feel sufficiently trained in the operation of a Restaurant, then you will be deemed to have been trained sufficiently to operate a Restaurant.

When your Restaurant is ready to open for business, we will send a trainer or training team (the identity and composition of which will be in our discretion) to your Restaurant to assist with the grand opening of your Restaurant. We shall determine in our sole discretion the amount of required time and support necessary to have you prepared for your grand opening. If this is the first or second Restaurant opened by you or your Affiliates, we will provide the trainer or team without any additional training fee and at our expense for up to a total of one week before your Restaurant opens and up to one week after your Restaurant opens; provided, however, that if this is the second Restaurant opened by you or your Affiliates we will provide more limited opening assistance. Notwithstanding the foregoing, we reserve the right to charge you for extraordinary travel and living expenses incurred by such person(s) in connection with providing such opening assistance. In the event you need additional opening assistance (whether requested by you or mandated by us), or if this is not the first or second Restaurant opened by you or your Affiliates, you will pay all costs and expenses of such personnel, for as long as any such additional personnel assist at the Restaurant. The costs and expenses associated with this assistance include, but are not limited to, wages, salary, transportation, meals, lodging, and fringe benefits. Notwithstanding the foregoing, we will not be required to send any of our trainers or representatives to your Restaurant to provide training or assistance if, in our sole discretion, it is unsafe to do so. Such determination by us will not relieve you from your obligations under this Agreement (including, without limitation, to pay monies owed) and will not serve as a basis for your termination of this Agreement.

We may require you, your Managing Owner, and your Designated Managers to attend and complete to our satisfaction various training courses that we periodically choose to provide at the times and locations that we designate. We will not require attendance for more than five full business days during each calendar year. Besides attending these courses, your Managing Owner and Designated Managers agree to attend all of our conferences of all Restaurant franchise owners at a location we designate, or virtually, as we determine in our discretion. Attendance at the conferences will not be required for more than four days during any calendar year. We reserve the right to charge you our then current fee for each attendee (other

than you (or your Managing Owner) and the general manager) at the annual meeting. You also must pay for your attendees' costs to attend.

If you have a new Designated Manager during this Agreement's term, the new Designated Manager must complete to our satisfaction our then current initial training program. We may charge reasonable fees for training new Designated Managers. You also agree to pay all travel and living expenses, wages and insurance costs which any new Designated Manager incurs during all training courses and programs.

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

**B. General Guidance.** We may, in our discretion, advise you from time to time regarding the operation of your Restaurant, including based on your reports or our inspections, with respect to:

- (1) standards, specifications, and operating procedures and methods that Restaurants use;
- (2) purchasing required and authorized Operating Assets and other products and services;
- (3) information technology that Restaurants use;
- (4) advertising and marketing materials and programs; and
- (5) employee training.

We may also provide guidance via telephonic conversations or consultation at our offices. If you request, and we agree to provide, additional or special guidance, assistance, or training, we may charge you our then applicable fee, including our personnell's per diem charges and travel and living expenses.

**C. Operations Manual.** During the term of this Agreement we will provide you with access to our operations manual for the operation of Restaurants of your Designated Brand Concept (the "**Operations Manual**"), which may include one or more separate manuals as well as other written materials. The Operations Manual contains mandatory System Standards that we periodically prescribe for developing and operating Restaurants, information on suggested procedures, and your other obligations under this Agreement. We may modify the Operations Manual periodically to reflect changes in System Standards, including in the form of memoranda and newsletters. You agree to keep your copy of the Operations Manual current and in a secure location at your Restaurant. If there is a discrepancy between our copy of the Operations Manual and yours, our copy of the Operations Manual controls. You agree that the Operations Manual's contents are confidential, that you will keep it in a secure location which will not be accessible to persons who are not authorized to review it, and that you will not disclose the Operations Manual to any person other than your employees who need to know its contents. You may not at any time copy, duplicate, record, or reproduce any part of the Operations Manual. If your copy of the Operations Manual is lost, destroyed, or significantly damaged, you agree to obtain a replacement copy at our then applicable charge.

At our option, we may make some or all of the Operations Manual available through a restricted Website or extranet to which you will have access. If we do so, you agree to monitor and access the Website or extranet for any updates to the Operations Manual or System Standards. Any passwords or other digital identifications necessary to access the Operations Manual will be deemed to be part of Confidential

Information (as defined in Section 6). For purposes of this Agreement, “**Website**” means an interactive electronic document contained in a network of computers linked by communications software, including the internet and world wide web home pages.

D. **Delegation of Performance.** You agree that we have the right to delegate the performance of any portion or all of our obligations under this Agreement to third-party designees, whether these designees are our agents or independent contractors with whom we have contracted to perform these obligations.

## 5. **MARKS; COPYRIGHTS.**

A. **Ownership and Goodwill of Marks.** Your right to use the Marks and the Franchise System is derived only from this Agreement and limited to your operating your Restaurant according to this Agreement and all System Standards we prescribe during its term. Your unauthorized use of the Marks or the Franchise System is a breach of this Agreement and infringes our and our affiliates’ intellectual property rights. You acknowledge and agree that your use of the Marks, the Franchise System, and any goodwill established by that use are exclusively for our and our affiliates’ (as their interests may appear) benefit and that this Agreement does not confer any goodwill or other interests in the Marks or the Franchise System upon you (other than the right to operate your Restaurant under this Agreement). All provisions of this Agreement relating to the Marks apply to any additional proprietary trade and service marks we authorize you to use. You may not at any time during or after this Agreement’s term contest or assist any other person in contesting the validity of, or our rights to, the Marks.

B. **Limitations on Your Use of Marks.** You agree to use the Marks associated with your Designated Brand Concept as the sole identification of your Restaurant, except that you agree to identify yourself as its independent owner in the manner we prescribe. You may not use any Mark (1) as part of any corporate or legal business name, (2) with any prefix, suffix, or other modifying words, terms, designs, or symbols (other than logos we have licensed to you), (3) in selling any unauthorized services or products, (4) as part of any domain name, homepage, electronic address, or otherwise in connection with a Website (unless in connection with our approved Franchise System Website (as defined in Section 9.D)), (5) in any user name, screen name, domain name, homepage, electronic address, social media account, other online presence or presence on any electronic, virtual, or digital medium of any kind (“**Online Presence**”), or (6) in any other manner that we have not expressly authorized in writing. You may not use any Mark in advertising the transfer, sale, or other disposition of your Restaurant or an ownership interest in you without our prior written consent. You agree to display the Marks associated with your Designated Brand Concept prominently as we prescribe at your Restaurant and on forms, advertising, supplies, and other materials we designate. You agree to give the notices of trade and service mark registrations that we specify and to obtain any fictitious or assumed name registrations required under applicable law.

C. **Discontinuance of Use of Marks.** If it becomes advisable, in our opinion, at any time for us to require you to modify or discontinue using any Mark or to use one or more additional or substitute trademarks or service marks, you agree to comply with our directions within a reasonable time after receiving notice. We need not reimburse you for your direct expenses of changing the signs of your Restaurant, for any loss of revenue due to any modified or discontinued Mark, or for your expenses of promoting a modified or substitute trademark or service mark.

Our rights in this Section 5.D apply to any and all of the Marks (and any portion of any Mark) that we authorize you to use in this Agreement. We and our affiliates may exercise these rights at any time and for any reason, business or otherwise, that we and our affiliates think best. You acknowledge both our right to take this action and your obligation to comply with our directions.

D. **Copyrighted and Copyrightable Materials.** During the Term, we will authorize you to use certain copyrighted and copyrightable materials in connection with the operation of your Restaurant, including the Operations Manual, trade dress, menus, and other materials (collectively, the “**Copyrighted Materials**”). As between you and us, we or our affiliates own the Copyrighted Materials and all benefits inherent in such ownership. We and our affiliates may further create, acquire, or obtain licenses for certain copyrights in various works of authorship used in connection with the operation of your Restaurant, including all categories of works eligible for protection under the copyright laws of the United States, all of which will be deemed to be Copyrighted Materials under this Agreement. We intend that all works of authorship related to Restaurants and created in the future will be owned by us or our affiliates.

E. **Limitation on Your Use of Copyrighted Materials.** Your right to use the Copyrighted Materials is derived only from this Agreement and limited to your operating your Restaurant according to this Agreement and all System Standards we prescribe during its term. You will ensure that all Copyrighted Materials used hereunder bear an appropriate copyright notice under the Universal Copyright Convention or other copyright laws we prescribe specifying that we or, as appropriate, our affiliate is the owner of the copyright. You acknowledge that this Agreement does not confer upon you any interest in the Copyrighted Materials, other than the right to use them in the operation of your Restaurant in compliance with this Agreement. If we authorize you to prepare any adaptation, translation or work derived from the Copyrighted Materials, or if you prepare any Copyrighted Materials such as advertisements, posters or promotional materials, such adaptation, translation, derivative work or copyrighted material is our property, and you assign all your right, title and interest therein to us. You will execute all documents, in recordable form, as we determine are necessary to reflect such ownership. You will not use any such adaptations, translations, derivative works and copyrighted materials without our prior written approval.

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

G. **Indemnification for Use of Marks.** We agree to reimburse you for all damages and expenses that you incur in any trademark infringement proceeding disputing your authorized use of any Mark under this Agreement if you have timely notified us of, and comply with our directions in responding to, the proceeding. At our option, we and our affiliates may defend and control the defense of any proceeding arising from your use of any Mark under this Agreement.

H. **Non-Disparagement.** You agree not to (and to use your best efforts to cause your current and former owners, officers, directors, principals, agents, partners, employees, representatives, attorneys, spouses, heirs, affiliates, successors and assigns not to) disparage or otherwise speak or write negatively, directly or indirectly, of us, our affiliates, any of our or our affiliates’ directors, officers, employees, representatives or affiliates, current and former franchisees or developers of us or our affiliates, the Elmer’s, Elmer’s Kitchen, or Egg N’ Joe® brand, the Franchise System, any Restaurant, any business using the Marks, any other brand or service-marked or trademarked concept of us or our affiliates, or that would (i)

subject the Elmer's, Elmer's Kitchen, or Egg N' Joe® brand or such other brands to ridicule, scandal, reproach, scorn, or indignity, (ii) negatively impact the goodwill of us, the Elmer's, Elmer's Kitchen, or Egg N' Joe® brand or such other brands, or (iii) constitute an act of moral turpitude. The obligations of this Section 5.H shall survive any expiration or termination of this Agreement.

## 6. CONFIDENTIAL INFORMATION.

In connection with your development and operation of the Restaurant under this Agreement, you and your owners and personnel may from time to time be provided and/or have access to non-public information about the Franchise System and the operation of Restaurants (including your Restaurant), some of which constitutes trade secrets under applicable law, regardless of whether it is marked confidential (the “**Confidential Information**”), including:

- (1) site selection criteria;
- (2) training and operations materials and manuals, including recipes and the Operations Manual;
- (3) the System Standards and other methods, formats, specifications, standards, systems, procedures, techniques, sales and marketing techniques, knowledge, and experience used in developing, promoting and operating Restaurants;
- (4) market research, promotional, marketing and advertising programs for Restaurants;
- (5) knowledge of specifications for, and suppliers of, Operating Assets and other products and supplies;
- (6) any computer software or similar technology which is proprietary to us, our affiliates, or the Franchise System, including digital passwords and identifications and any source code of, and data, reports, and other printed materials generated by, the software or similar technology;
- (7) knowledge of the operating results and financial performance of Restaurants, other than your Restaurant; and
- (8) customer data.

Confidential Information does not include information, knowledge, or know-how, which is lawfully known to the public without violation of applicable law or an obligation to us or our affiliates. All Confidential Information (other than Restricted Data, as defined in Section 8K) furnished to you by us or on our behalf, whether orally or by means of written material (i) shall be deemed our confidential and proprietary information, (ii) shall be held by you in strict confidence, (iii) shall not be copied, disclosed or revealed to or shared with any other person except to your employees or contractors who have a need to know such Confidential Information for purposes of this Agreement and who are under a duty of confidentiality no less restrictive than your obligations hereunder, or to individuals or entities specifically authorized by us in advance, and (iv) shall not be used in connection with any other business or capacity. You will not acquire any interest in any of our Confidential Information other than the right to use it as we specify in operating your Restaurant during the Term. You further agree, during and after the Term, to:

(a) process, retain, use, collect, and disclose our Confidential Information strictly to the limited extent, and in such a manner, as necessary for the development and operation of your Restaurant in accordance with this Agreement, and not for any other purpose of any kind;

(b) process, retain, use, collect, and disclose our Confidential Information strictly in accordance with the privacy policies and System Standards we establish from time to time, and our and our representative's instructions; and

(c) adopt and implement administrative, physical and technical safeguards to prevent unauthorized access, use or disclosure of any of our Confidential Information, including by establishing reasonable security and access measures and restricting its disclosure to key personnel.

We reserve the right to require that any employee, agent or independent contractor that you hire execute a non-disclosure agreement to protect the Confidential Information. We reserve the right to regulate the form of non-disclosure agreement that you use and to be a third party beneficiary of those agreements with independent enforcement rights. You acknowledge that any form of non-disclosure agreement that we require you to use, provide to you, or regulate the terms of may or may not be enforceable in a particular jurisdiction. You agree that you are solely responsible for obtaining your own professional advice with respect to the adequacy of the terms and provisions of any confidentiality agreement that your employees, agents and independent contractors sign.

You acknowledge and agree that, as between us and you, we are the sole owner of all right, title, and interest in and to the Franchise System and any Confidential Information. All improvements, developments, derivative works, enhancements, or modifications to the Franchise System and any Confidential Information (collectively, "**Innovations**") made or created by you, your employees or your contractors, whether developed separately or in conjunction with us, shall be owned solely by us. You represent, warrant, and covenant that your employees and contractors are bound by written agreements assigning all rights in and to any Innovations developed or created by them to you. To the extent that you, your employees or your contractors are deemed to have any interest in such Innovations, you hereby agree to assign, and do assign, all right, title and interest in and to such Innovations to us. To that end, you shall execute, verify, and deliver such documents (including assignments) and perform such other acts (including appearances as a witness) as we may reasonably request for use in applying for, obtaining, perfecting, evidencing, sustaining, and enforcing such ownership rights in and to the Innovations, and the assignment thereof. Your obligation to assist us with respect to such ownership rights shall continue beyond the expiration or termination of this Agreement. In the event we are unable for any reason, after reasonable effort, to secure your signature on any document needed in connection with the actions specified in this Section 6, you hereby irrevocably designate and appoint us and our duly authorized officers and agents as your agent and attorney in fact, which appointment is coupled with an interest and is irrevocable, to act for and on your behalf to execute, verify, and file any such documents and to do all other lawfully permitted acts to further the purposes of this Section 6 with the same legal force and effect as if executed by you. The obligations of this Section 6 shall survive any expiration or termination of this Agreement.

## 7. **EXCLUSIVE RELATIONSHIP DURING TERM.**

### A. **Covenants Against Competition: Branded Business.**

(1) You acknowledge that we have granted you the Franchise in consideration of and reliance upon your agreement to deal exclusively with us. You therefore agree that, during this Agreement's term, neither you, any of your owners, nor any of your or your owners' immediate family members will:

(i) have any direct or indirect interest as an owner – whether of record or beneficially – in a Competitive Business (defined below), wherever located or operating (except that equity ownership of less than five percent (5%) of a Competitive Business whose stock or other forms of ownership interest are publicly traded on a recognized United States stock exchange will not be deemed to violate this subparagraph);

(ii) perform services as a director, officer, manager, employee, consultant, representative, lessor, or agent for a Competitive Business, wherever located or operating;

(iii) divert or attempt to divert any actual or potential business or customer of your Restaurant to a Competitive Business; or

(iv) directly or indirectly, appropriate, use or duplicate the Franchise System or System Standards, or any portion thereof, for use in any other business or endeavor.

(2) The term “**Competitive Business**” means any restaurant, food service or other business (other than a Restaurant) (i) whose gross receipts from the sale of breakfast food or menu items represent, at any time, at least 10% of the business’ total gross receipts (excluding receipts from the sale of alcoholic beverages or lottery games), (ii) whose menu, concept, business model or method of operation is similar to that employed by restaurant units operated, franchised or licensed by us or our affiliates, (iii) that offers or sells goods or services that are generally the same as or similar to the goods or services being offered by businesses owned, operated, franchised or licensed by us or our affiliates, or (iv) that grants franchises or licenses for the operation of any of the foregoing or provides services to the franchisor or licensor of any of the foregoing. You agree to obtain similar covenants from the personnel we specify, including officers, directors, managers, and other employees attending our training program or having access to Confidential Information. We have the right to regulate the form of agreement that you use and to be a third party beneficiary of that agreement with independent enforcement rights.

#### **B. Non-Interference.**

(1) You further agree that, during the Term, neither you nor any of your owners, your or your owners’ Affiliates, or the officers, directors, managers or immediate family members of any of the foregoing, will:

(i) interfere or attempt to interfere with our or our affiliates’ relationships with any vendors or consultants; or

(ii) engage in any other activity which might injure the goodwill of the Marks or the Franchise System.

### **8. BUSINESS OPERATIONS AND SYSTEM STANDARDS.**

**A. Condition and Appearance of Your Restaurant.** You agree that you will not use any part of the Premises for any purpose other than operating a Restaurant in compliance with this Agreement, and that you will place or display at the Premises (interior and exterior) only those signs, emblems, designs, artwork, lettering, logos and display and advertising materials that we approve from time to time. You further agree to maintain the condition and appearance of your Restaurant, its Operating Assets and the Premises in accordance with the System Standards and, consistent with the image of Restaurants, as an efficiently operated business offering high quality products and services and observing the highest standards of cleanliness and efficient, courteous service. Therefore, you agree to take, without limitation, the

following actions during the Term at your expense: (a) thorough cleaning, repainting and redecorating of the interior and exterior of the Premises at intervals that we may prescribe; (b) interior and exterior repair of the Premises as needed; and (c) repair or replacement, at our direction, of damaged, worn-out or obsolete Operating Assets at intervals that we may prescribe (or, if we do not prescribe an interval for replacing any Operating Asset, as that Operating Asset needs to be repaired or replaced).

In addition to the foregoing, you agree to renovate, refurbish, remodel, or replace, at your own expense, the real and personal property and equipment used in operating the Restaurant when reasonably required by us in order to comply with the image, standards of operation, and performance capability we establish from time to time. If we change our image or standards of operation, you must comply with such changes.

**B. Restaurant Classification.** You must operate and maintain the Restaurant in a manner which will ensure that the Restaurant will obtain the highest classification possible for restaurants of like kind from the governmental authorities that inspect restaurants in the area where the Restaurant is operated. If you are not able to obtain such classification, or if you fail to operate in accordance with the general standards of quality, maintenance, repairs, and sanitation required by us, then we may, at our option, place such trained personnel in the Restaurant as we deem necessary to train the managerial and operating personnel of the Restaurant until the Restaurant can obtain the highest classification or meet such general standards. Our personnel shall remain at the Restaurant until the required classification is obtained or until we, in our sole discretion, decide to remove them. You shall pay all costs associated with providing the personnel, including costs of transportation, meals, lodging, wages, or other compensation, including fringe benefits.

**C. Products and Services Your Restaurant Offers.** You agree that you (1) will offer and sell from your Restaurant all of the products and services that we periodically specify; (2) will not offer or sell at your Restaurant, the Premises or any other location any products or services we have not authorized; and (3) will discontinue selling and offering for sale any products or services that we at any time disapprove.

**D. Management of Your Restaurant.** You are solely responsible for the management, direction and control of your Restaurant. You (or your Managing Owner) must supervise the management and operation of your Restaurant and continuously exert best efforts to promote and enhance your Restaurant. The day to day operations of your Restaurant shall be managed by your Designated Managers. Your Designated Managers agree to work full-time at your Restaurant. During operational hours, at least one Designated Manager who has successfully completed the initial training program to our satisfaction must at all times be at the Restaurant. In the event that a Designated Manager ceases active employment at the Restaurant, you must notify us within 5 days of the cessation and enroll a qualified replacement in the initial training program within 30 days of the cessation.

**E. Approved Products, Services, and Suppliers.** If you propose to offer, conduct, or utilize any services, products, materials, forms, items, or supplies in connection with or for sale through your Restaurant that are not approved by us, you shall first notify us in writing requesting approval. We may withhold such approval for any reason at our sole discretion; however, in order to make such determination, we may require submission of specifications, information, or samples of such services, products, materials, forms, items, or supplies. We will advise you within a reasonable time whether such products, supplies, or services meet our System Standards. A charge not to exceed the actual cost of the review may be made by us and shall be paid by you. If, at any time (including after our initial approval), we determine that you fail to meet our System Standards in connection with the provision of any products or services, we may permanently or temporarily terminate your right to offer such products or services; provided that nothing contained herein shall be deemed a waiver of our right to terminate pursuant to Section 14 hereof.



We and our affiliates reserve the right to approve or designate, from time to time, manufacturers, vendors, distributors, suppliers, and producers (collectively referred to herein as “**vendors**”), terms, and distribution methods for any goods or services (which include, but are not limited to, services, insurance, products, equipment, supplies, and materials). You shall purchase all goods and services required for the operation of your Restaurant from such approved or designated vendors (which may be only one vendor for any given good or service, which may be us or an affiliate) under terms, in the manner, and from the source designated by us or any of our affiliates. You shall not offer carryout or delivery services nor shall you purchase services from any third-party delivery services or providers unless expressly authorized by us in writing; if we authorize you to offer carryout or delivery services or utilize third-party delivery services or providers, we may revoke our authorization at any time and for any reason and you must immediately cease offering and/or utilizing such services. If we or any of our affiliates designate such goods and services are to be purchased through approved or designated third party distributors, then you shall purchase such goods and services from such distributors pursuant to the terms and in the manner approved by us and our affiliates. We may, at our option, arrange with designated vendors to collect or have our affiliates collect fees and expenses associated with products and services they provide to you and, in turn, pay the vendor on your behalf for such products or services. If we elect to do so, you agree that we or our affiliates may autodebit your bank account for such amounts in the same manner and using the same authorization that you grant us with respect to payment of Royalty and other fees. We or any of our affiliates may be a supplier, distributor, or otherwise party to these transactions, and may derive revenue or profit from such transactions. We and any of our affiliates may use such revenue or profit without restriction.

In the event you desire to purchase equipment, products, services, supplies, or materials from vendors other than those previously approved by us and our affiliates, you shall, prior to purchasing any such equipment, products, services, supplies, or materials, give us a written request to change vendor. We will not be obligated to respond to your request, and any actions we take in response to your request will be at our discretion, including the assessment of a fee to compensate us for the time and resources we spend in evaluating the proposed supplier, product or service. We and our affiliates may, for any reason whatsoever at our or their sole discretion, elect to withhold or revoke approval of the vendor. We may reject your request for a new vendor without conducting any investigation if we and our affiliates already have designated an exclusive vendor for the equipment, products, services, supplies, or materials proposed to be offered by the new vendor as permitted in this Section.

You may only offer lottery games if permitted in the state where your Restaurant is located, and such games must be those offered by the state or licensed operators. You must comply with our lottery lounge operating standards, as periodically set forth in the Operations Manual or otherwise in writing.

**F. Compliance with Laws and Good Business Practices.** You must secure and maintain in force throughout this Agreement’s term all required licenses, permits and certificates relating to the operation of your Restaurant and operate your Restaurant in full compliance with all applicable laws, ordinances and regulations, including PCI compliance standards and all laws related to participation in lottery games. You agree to comply and assist us in our compliance efforts, as applicable, with any and all laws, regulations, Executive Orders or otherwise relating to anti-terrorist activities or conduct of transactions involving certain foreign parties, including the U.S. Patriot Act, Executive Order 13224, the U.S. Foreign Corrupt Practices Act, the Bank Secrecy Act, the International Money Laundering Abatement and Anti-terrorism Financing Act, the Export Administration Act, the Arms Export Control Act, the International Economic Emergency Powers Act, and related U.S. Treasury or other regulations. In connection with such compliance efforts, you agree not to enter into any prohibited transactions and to properly perform any currency reporting and other activities relating to your Restaurant as may be required by us or by law. You confirm that you, your owners, employees, agents, and representatives are not presently listed (nor has any such individual previously been listed) on the U.S. Treasury Department’s List of Specially Designated Nationals, the Annex to Executive Order 13224 (the Annex is currently available

at <http://www.treasury.gov>), or in any other governmental list which prohibits us or you from dealing with such individuals, and agree not to hire any person so listed or have any dealing with a person so listed. You are solely responsible for ascertaining what actions must be taken by you to comply with all such laws, orders or regulations, and specifically acknowledge and agree that your indemnification responsibilities as provided in Section 16.D pertain to your obligations hereunder. Notwithstanding the foregoing, unless any order issued by any federal, state or local authority requires closure of your Restaurant, you will not close your Restaurant unless you obtain our prior written consent.

Your Restaurant must in all dealings with its customers, suppliers, us and the public adhere to the highest standards of honesty, integrity, fair dealing and ethical conduct. You agree to refrain from any business or advertising practice which might injure our business or the goodwill associated with the Marks or other Restaurants. You agree to comply with our Franchise System Website privacy policy, as it may be amended periodically; you further agree to comply with any requests to return or delete customer personal information, whether requested by us or directly by the customer, as required by applicable data sharing and privacy laws. You must notify us in writing within three business days of: (1) the commencement of any action, suit or proceeding against you or relating to your Restaurant, or any audit, investigation, or similar proceeding with respect to pending or threatened actions, suits or proceedings against you or relating to your Restaurant; (2) the issuance of any order, writ, injunction, award or decree of any court, agency or other governmental instrumentality relating to your Restaurant; (3) any notice that you or your Restaurant may have violated any law, ordinance or regulation relating to your Restaurant; (4) receipt of any notice of complaint from the Better Business Bureau, any local, state or federal consumer affairs department or division, or any other government or independent third party involving a complaint from a client or potential client relating to your Restaurant; and (5) written complaints from any client or potential client. You must immediately provide to us copies of any documentation you receive of events in (1) through (5) above and resolve the matter in a prompt and reasonable manner in accordance with good business practices.

**G. Insurance.** During the term of this Agreement you must maintain in force at your sole expense property insurance (including contents at replacement cost value and loss of business income inclusive of one years' worth of net-operating income), crime insurance (including employee dishonesty), liquor liability, employment practice liability, cyber liability, food borne illness, auto liability coverage including owned, non-owned and hired vehicles, and reputation restoration insurance, all containing the minimum liability coverage we prescribe from time to time. You also must maintain workers' compensation insurance for your employees in accordance with laws applicable in the state in which the Restaurant is operated. We may periodically change the amounts of coverage required under these insurance policies or require different or additional insurance coverages (including reasonable excess liability insurance) at any time to reflect inflation, identification of new risks, changes in law or standards of liability, higher damage awards or other relevant changes in circumstances. All insurance policies for liability coverage must name us and any affiliates we designate as additional insureds, using a form of endorsement that we have approved, and providing us with 30 days' prior written notice of material changes to or cancellation or expiration of all policies. Your insurance policies must contain a waiver of subrogation in favor of the additional insureds and provide primary coverage with any insurance policies we and our affiliates maintain being non-contributory. You routinely must furnish us copies of your Certificate of Insurance or other evidence of your maintaining this insurance coverage and paying premiums. If you fail or refuse to obtain and maintain the insurance we specify, in addition to our other remedies, we may (but need not) obtain such insurance for you and your Restaurant on your behalf, in which event you shall cooperate with us and reimburse us for all premiums, costs and expenses we incur in obtaining and maintaining the insurance, plus a reasonable fee for our time incurred in obtaining such insurance.

Our requirements for minimum insurance coverage are not representations or warranties of any kind that such coverage is sufficient for your Restaurant's operations. Such requirements represent only the minimum coverage that we deem acceptable to protect our interests. It is your sole responsibility to

obtain insurance coverage for your Restaurant that you deem appropriate, based on your own independent investigation. We are not responsible if you sustain losses that exceed your insurance coverage under any circumstances.

Your obligation to maintain insurance coverage will not be limited in any respect by reason of insurance maintained by us or any other party. Additionally, no insurance coverage that you or any other party maintains will be deemed a substitute for your indemnification obligations to us or affiliates under Section 16.D.

H. **Pricing.** Unless prohibited by applicable law, we may periodically set a maximum or minimum price that you may charge for products and services offered by Restaurants. If we impose such a maximum or minimum price for any product or service, you may charge any price for the product or service up to and including our designated maximum price or down to and including our designated minimum price. The designated maximum and minimum prices for the same product or service may, at our option, be the same. For any product or service for which we do not impose a maximum or minimum price, we may require you to comply with an advertising policy adopted by us which will prohibit you from advertising any price for a product or service that is different than our suggested retail price. Although you must comply with any advertising policy we adopt, you will not be prohibited from selling any product or service at a price above or below the suggested retail price unless we impose a maximum price or minimum price for such product or service.

I. **Restaurant Telephone Numbers and Listings.** You will keep all telephone numbers for the Restaurant separate from telephone numbers you use in any other business operations and from your personal telephone numbers. You will use the telephone numbers for the Restaurant only for business authorized by this Agreement. You acknowledge and agree that, as between us and you, we have the sole rights to, and interest in, all telephone numbers, facsimile numbers, classified and online directory listings and any other type of contact information which you use in the operation or promotion of the Restaurant or that is associated with the Restaurant (“**Contact Identifiers**”) and Online Presences. Upon the expiration or termination of this Agreement, you agree to transfer, assign, or otherwise convey to us full control of all Contact Identifiers and Online Presences that you used to operate your Restaurant or that displays any of the Marks. Notwithstanding the foregoing, you agree that all liabilities and obligations arising from any such Contact Information or Online Presence prior to the date of the transfer, assignment or conveyance to us will remain your sole responsibility in all respects, and any costs we incur in connection therewith will be indemnifiable under Section 16.D. You hereby irrevocably appoint us, with full power of substitution, as your true and lawful attorney-in-fact, which appointment is coupled with an interest, to execute such directions and authorizations as may be necessary or prudent to accomplish the foregoing.

J. **Compliance with System Standards.** You acknowledge and agree that operating and maintaining your Restaurant according to System Standards are essential to preserve the goodwill of the Marks and the goodwill of all Restaurants. Therefore, compliance with all System Standards is mandatory, and you agree at all times to operate and maintain your Restaurant according to each and every System Standard, as we periodically modify and supplement them. Though we retain the right to establish and periodically modify System Standards which you have agreed to maintain in the operation of your Restaurant, you retain the right and sole responsibility for the day-to-day management and operation of your Restaurant and the implementation and maintenance of System Standards at your Restaurant. System Standards may regulate any aspect of the development, operation and maintenance of your Restaurant, including any one or more of the following:

- (1) the appearance and condition of your Restaurant;

- (2) operating procedures and platforms (including with respect to carryout, delivery, and catering programs we may approve from time to time, and if approved, for which we may withdraw approval at any time);
- (3) sales, marketing, advertising and promotional programs (including coupons and other price-related promotions) and materials and media used in these programs;
- (4) staffing levels for your Restaurant and employee qualifications, training, and uniforms (although you have sole responsibility and authority concerning employee selection and promotion, hours worked, rates of pay and other benefits, work assigned and working conditions);
- (5) use and display of the Marks;
- (6) days and hours of operation;
- (7) methods of payment and currencies that your Restaurant may or must accept from customers;
- (8) participation in market research and testing and product and service development programs;
- (9) participation in gift card and loyalty card programs;
- (10) menus and pricing;
- (11) bookkeeping, accounting, data processing and record keeping systems and forms; formats, content and frequency of reports to us of sales, revenue, and financial performance and condition; and giving us copies of tax returns and other operating and financial information concerning the Franchise (we will use reasonable efforts to keep such records confidential);
- (12) participation in quality assurance and customer satisfaction programs;
- (13) types, amounts, terms and conditions of insurance coverage required for your Restaurant, including criteria for your insurance carriers; and
- (14) any other aspects of operating and maintaining your Restaurant that we determine to be useful to preserve or enhance the efficient operation, image or goodwill of the Marks and Restaurants.

You agree that System Standards we periodically prescribe in the Operations Manual, or otherwise communicate to you in writing or another form, are part of this Agreement as if fully set forth within its text. All references to this Agreement include all System Standards as periodically modified. You acknowledge that our periodic modification of the System Standards (including changes and additions to restaurant equipment and hardware and software required for the Computer System), which may accommodate regional or local variations, may obligate you to invest additional capital in your Restaurant and incur higher operating costs.

**K. Information Security.** You may from time to time have access to information that can be used to identify an individual, including names, addresses, telephone numbers, e-mail addresses, employee identification numbers, signatures, passwords, financial information, credit card information, biometric or health data, government-issued identification numbers and credit report information

(“**Personal Information**”). You acknowledge and agree that all Personal Information (other than Restricted Data, defined below) is our Confidential Information and is subject to the protections in Section 6.

During and after the Term, you (and if you are conducting business as an Entity, each of your owners) agree to, and to cause your respective current and former employees, representatives, affiliates, successors and assigns to: (a) process, retain, use, collect, and disclose all Personal Information only in strict accordance with all applicable laws, regulations, orders, the guidance and codes issued by industry or regulatory agencies, and the privacy policies and terms and conditions of any applicable Online Presence; (b) assist us with meeting our compliance obligations under all applicable laws and regulations relating to Personal Information, including the guidance and codes of practice issued by industry or regulatory agencies; and (c) promptly notify us of any communication or request from any customer or other data subject to access, correct, delete, opt-out of, or limit activities relating to any Personal Information.

If you become aware of a suspected or actual breach of security or unauthorized access involving Personal Information, you will notify us immediately of the breach or unauthorized access, and specify the extent to which Personal Information was compromised or disclosed, and your plans to correct and prevent any further breach or unauthorized access. You will allow us, in our discretion, to participate in any response or corrective action. Further, you agree to follow all instructions we provide, if any, regarding curative actions and public statements relating to the breach. We reserve the right (but have no obligation) to conduct a data security and privacy audit of any of your Restaurant and your Computer Systems at any time, from time to time, to ensure that you are complying with our requirements. You must promptly notify us if you receive any complaint, notice, or communication, whether from a governmental agency, customer or other person, relating to any Personal Information, or your compliance with your obligations relating to Personal Information under this Agreement, and/or if you have any reason to believe you will not be able to satisfy any of your obligations relating to Personal Information under this Agreement.

Notwithstanding anything to the contrary in this Agreement or otherwise, you agree that we do not control or own any of the following Personal Information (collectively, the “**Restricted Data**”): (a) any Personal Information of the employees, officers, contractors, owners or other personnel of you, your affiliates, or your Restaurant; (b) such other Personal Information as we from time to time expressly designate as Restricted Data; and/or (c) any other Personal Information to which we do not have access. Regardless of any guidance we may provide generally and/or any specifications that we may establish for other Personal Information, you have sole and exclusivity responsibility for all Restricted Data, including establishing protections and safeguards for such Restricted Data; provided, that in each case you agree to comply with all applicable laws, regulations, orders, and the guidance and codes issued by industry or regulatory agencies applicable to such Restricted Data.

L. **Employees, Agents and Independent Contractors.** You acknowledge and agree that you are solely responsible for all decisions relating to employees, agents, and independent contractors that you may hire to assist in the operation of your Restaurant. You agree that any employee, agent or independent contractor that you hire will be your employee, agent or independent contractor, and not our employee, agent or independent contractor. You also agree that you are exclusively responsible for the terms and conditions of employment of your employees, including recruiting, hiring, firing, training, compensation, work hours and schedules, work assignments, safety and security, discipline, and supervision. You agree to manage the employment functions of your Restaurant in compliance with federal, state, and local employment laws.

## 9. MARKETING.

A. **Grand Opening Advertising.** You must spend at least \$2,000 for a grand opening marketing program for your Restaurant to take place on the dates we designate before and after your Restaurant opens. We reserve the right, in our discretion, to increase the required grand opening advertising required under this Section 9.A depending on factors such as whether your Restaurant is in an urban or rural market. You must spend this amount in addition to all other amounts you must spend on advertising specified in this Franchise Agreement. The amount you spend on grand opening advertising will not count towards your local marketing expenditure as described in Section 9.C, or the aggregate cap on annual contributions to any Brand Promotion Fund as described in Section 9.B. You agree to use the media, materials, programs and strategies we develop or approve in connection with the grand opening advertising program.

B. **Brand Promotion Fund.** You agree to contribute to the brand promotion fund for Restaurants (the “**Brand Promotion Fund**”). Your contribution will be in amounts we specify from time to time, and will be payable in the same manner as the Royalty. Currently, the required Brand Promotion Fund contribution is one percent (1%) of your Restaurant’s Gross Sales. However, we have the right, at any time and on notice to you, to increase the amount you must contribute to the Brand Promotion Fund, provided that in no event will we be entitled to require that the aggregate amount of the required Brand Promotion Fund contribution and the local marketing requirement pursuant to Section 9.C below exceed three percent (3%) of Gross Sales.

We or our affiliates or other designees will direct all programs that the Brand Promotion Fund finances, with sole control over the creative concepts, materials, and endorsements used and their geographic, market, and media placement and allocation. The Brand Promotion Fund may pay for preparing and producing video, audio, and written materials and electronic, virtual, or digital media; implementing a gift certificate program, a loyalty program or other marketing programs designed to encourage the use of Restaurants; developing, implementing, and maintaining a Franchise System Website and related strategies; administering local, regional, and multi-regional marketing and advertising programs, including purchasing trade journal, direct mail, and other media advertising and using advertising, promotion, and marketing agencies and other advisors to provide assistance; administering online advertising and marketing campaigns (including search engine, social media, email, and display ad campaigns); developing and administering software, apps, and related integrations; implementing a loyalty program or other marketing programs designed to encourage the use of Restaurants; and supporting public relations, market research, and other advertising, promotion, and marketing activities. The Brand Promotion Fund will give you a sample of advertising, marketing, and promotional formats and materials at no cost. We will sell you multiple copies of these materials at our direct cost of producing them, plus any related shipping, handling, and storage charges.

The Brand Promotion Fund will not be our asset. We will account for the Brand Promotion Fund separately from our other funds and will not use the Brand Promotion Fund for any of our general operating expenses. However, we may use the Brand Promotion Fund to reimburse us or our affiliates or designees for the reasonable salaries and benefits of personnel who manage and administer the Brand Promotion Fund, the Brand Promotion Fund’s other administrative costs, travel expenses of personnel while they are on Brand Promotion Fund business, meeting costs, overhead relating to Brand Promotion Fund business, and other expenses that we incur in activities reasonably related to administering or directing the Brand Promotion Fund and its programs, including conducting market research, public relations, preparing advertising, promotion, and marketing materials, and collecting and accounting for Brand Promotion Fund contributions.

We do not owe any fiduciary obligation to you for administering the Brand Promotion Fund or any other reason. We will hold all Brand Promotion Fund contributions for the benefit of the contributors and use contributions for the purposes described in this Section 9.B. The Brand Promotion Fund may spend in any fiscal year more or less than the total Brand Promotion Fund contributions in that year, borrow from us or others (paying reasonable interest) to cover deficits, or invest any surplus for future use. We may use all interest earned on the Brand Promotion Fund contributions to pay costs before using the Brand Promotion Fund's other assets. We will prepare an annual, unaudited statement of Brand Promotion Fund collections and expenses and give you a copy of the statement upon your written request to us. We may have the Brand Promotion Fund audited annually, at the Brand Promotion Fund's expense, by an independent certified public accountant. We may incorporate the Brand Promotion Fund or operate it through a separate entity whenever we deem appropriate. The successor entity will have all of the rights and duties specified in this Section 9.B.

We intend for the Brand Promotion Fund to promote recognition of the Marks, patronage of Restaurants contributing to the Brand Promotion Fund and each Designated Brand Concept generally. We need not ensure that Brand Promotion Fund expenditures in or affecting any geographic area are proportionate or equivalent to Brand Promotion Fund contributions by Restaurants operating in that geographic area or that any Restaurant benefits directly or in proportion to its Brand Promotion Fund contribution from the development of advertising and marketing materials or the placement of advertising and marketing. We have the right, but no obligation, to use collection agents and institute legal proceedings to collect Brand Promotion Fund contributions at the Brand Promotion Fund's expense. We also may forgive, waive, settle, and compromise all claims by or against the Brand Promotion Fund. Except as expressly provided in this Section 9.B, we assume no direct or indirect liability or obligation to you for collecting amounts due to, maintaining, directing, or administering the Brand Promotion Fund.

We reserve the right to separate the Brand Promotion Fund so that we maintain and administer a separate Brand Promotion Fund for each Designated Brand Concept, or any combination of Designated Brand Concepts. We may at any time defer or reduce contributions of a Restaurant franchise owner and, upon 30 days' prior notice to you, reduce or suspend Brand Promotion Fund contributions and operations for one or more periods of any length and terminate (and, if terminated, reinstate) the Brand Promotion Fund. If we terminate the Brand Promotion Fund, we will, at our option, either spend all unspent monies in accordance with this Section, until such amounts are exhausted, or distribute the funds in the Brand Promotion Fund to the contributing Restaurant owners on a pro rata basis.

C. **Local Marketing Expenditures.** In addition to your obligations under Section 9.A and Section 9.B above, you agree to spend money, as required in this Section 9.C, to promote your Restaurant. You agree to list and advertise your Restaurant on any Online Presence we require, as set forth in the Operations Manual or otherwise in writing and, at our direction, in at least one recommended classified telephone directory distributed within the market area of your Restaurant (in the business classifications we prescribe from time to time) and to use the form of classified telephone directory advertisement approved by us. Currently, we manage the listing of all Restaurants on major internet search engines and consumer review websites; therefore, you acknowledge and agree that you will not advertise your Restaurant on any internet search engines (for example, Google Local and CitySearch) or any internet consumer review websites (for example, Yelp, TripAdvisor or Urban Spoon) unless expressly directed by us to do so. If other Restaurants are located within the directory's distribution area, we may require you to participate in a collective advertisement with those other Restaurants and to pay your share of that collective advertisement. After you complete your grand opening advertising obligations in Section 9.A above, we require you to spend one percent (1%) of Gross Sales each calendar quarter to advertise and promote your Restaurant. If you fail to spend one percent (1%) of Gross Sales on local marketing efforts in any calendar quarter, you will contribute the difference between the amount you were required to spend and the actual amount you spent into the Brand Promotion Fund within 10 days after the end of each calendar quarter. Within 30 days

after the end of each calendar quarter, you agree to send us, in the manner we prescribe, an accounting of your expenditures for local advertising and promotion during the preceding calendar quarter. Your local advertising and promotion must follow our guidelines.

You agree that your advertising, promotion, and marketing will be completely clear, factual, and not misleading and conform to both the highest standards of ethical advertising and marketing and the advertising and marketing policies that we prescribe from time to time. At least 14 days before you intend to use them, you agree to send us for approval samples of all advertising, promotional, and marketing materials which we have not prepared or previously approved. If you do not receive written approval within 10 days after we receive the materials, they are deemed to be disapproved. Once we approve the materials, you are permitted to use them; provided, however, that we may, in our discretion, withdraw our approval at any time. You may not use any advertising, promotional, or marketing materials that we have not approved or have disapproved. You must discontinue the use of any advertising material, even if previously approved, within 5 days upon receipt of our request to do so.

We reserve the right, at any time, to issue you a notice that the amounts required to be spent by you under this Section 9.C shall, instead, be paid to us or our designee. If we exercise this option, we will then spend such amounts, in accordance with local Restaurant marketing guidelines and programs that we develop from time to time, to advertise and promote the Restaurant on your behalf. We may instead, in our discretion, contribute any such amounts to the Brand Promotion Fund. We may also elect, on one or more occasions and without prejudice to our rights to issue further notices, to temporarily or permanently cease conducting such marketing activities on your behalf and, instead, to require you to conduct such marketing activities yourself in accordance with this Section 9.C.

All advertising, marketing, and promotional materials that you develop for your Restaurant must contain notices of the Franchise System Website's domain name in the manner we designate. You may not develop, maintain, or authorize any other Website that mentions or describes you, your Restaurant or displays any of the Marks. If we approve the use of any Online Presence in the operation of your Restaurant, you will develop and maintain such Online Presence only in accordance with our then-current Online Presence policy, which we may periodically modify, including guidelines for posting any messages or commentary on third-party websites, or for maintaining privacy policies and terms of use. We will own the rights to each such Online Presence. At our request, you agree to grant us access to each such Online Presence, and to take whatever action (including signing an assignment or other documents) we request to evidence our ownership of such Online Presence, or to help us obtain exclusive rights in such Online Presence.

D. **Franchise System Website.** We have established Websites to advertise, market, and promote Restaurants, the products and services that they offer and sell, or the Restaurant franchise opportunity (each a "**Franchise System Website**"). We may, but are not obligated to, provide you with a webpage on a Franchise System Website that references your Restaurant. If we provide you with a webpage on such Franchise System Website, you must: (i) provide us the information and materials we request to develop, update, and modify your webpage; (ii) notify us whenever any information on your webpage is not accurate; and (iii) pay our then current initial fee and monthly maintenance fee for the webpage. We will own all intellectual property and other rights in the Franchise System Website, including your webpage, and all information they contain (including the domain name or URL for your webpage, the log of "hits" by visitors, and any personal or business data that visitors supply).

We will maintain the Franchise System Websites and may use the Brand Promotion Fund's assets to develop, maintain, and update the Franchise System Websites. We periodically may update and modify the Franchise System Websites (including your webpage). You acknowledge that we have final approval rights over all information on the Franchise System Websites (including your webpage). We may



implement and periodically modify System Standards relating to the Franchise System Websites. We may also discontinue any Franchise System Website, or consolidate such Franchise System Website with the website of any other Designated Brand Concept, at any time, in our sole discretion.

Even if we provide you a webpage on our Franchise System Website, we will only maintain such webpage while you are in full compliance with this Agreement and all System Standards we implement (including those relating to the Franchise System Website). If you are in default of any obligation under this Agreement or our System Standards, then we may, in addition to our other remedies, temporarily remove your webpage from the Franchise System Website until you fully cure the default. We will permanently remove your webpage from the Franchise System Website upon this Agreement's expiration or termination.

## 10. RECORDS, REPORTS, AND FINANCIAL STATEMENTS.

You agree to establish and maintain at your own expense a bookkeeping, accounting, and recordkeeping system conforming to the requirements and formats we prescribe from time to time. We may require you to use a Computer System to maintain certain sales data and other information. We may also require you to use a third party approved by us for accounting and bookkeeping services. You agree to give us in the manner and format that we prescribe from time to time:

(a) on or before the end of each accounting period specified by us from time to time (each an "**Accounting Period**"), a report on the Gross Sales of your Restaurant during the preceding Accounting Period;

(b) within 30 days after the end of each accounting month specified by us from time to time (each an "**Accounting Month**"), the operating statements, financial statements, statistical reports, purchase records, and other information we request regarding you and your Restaurant covering the previous Accounting Month and the fiscal year to date;

(c) within 90 days after the end of each fiscal year, annual profit and loss and source and use of funds statements and a balance sheet for your Restaurant as of the end of that calendar year, prepared in accordance with generally accepted accounting principles or, at our option, international accounting standards and principles. We reserve the right to require that you have these financial statements and the financial statements of any prior fiscal years audited by an independent accounting firm designated by us in writing;

(d) within 10 days after our request, exact copies of federal and state income tax returns, sales tax returns, and any other forms, records, books, and other information we periodically require relating to your Restaurant and the Franchise; and

(e) by January 15, April 15, July 15 and October 15 of each calendar year, reports on the status (including the outstanding balance, then-current payment amounts, and whether such loan is in good standing) of any loans outstanding as of the previous calendar quarter for which the Restaurant or any of the Restaurant's equipment is collateral. You must also deliver to us, within five days after your receipt, copies of any default notices you receive from any of such lenders. You agree that we or our affiliates may contact your banks, other lenders, and vendors to obtain information regarding the status of loans of the type described herein and your accounts (including payment histories and any defaults), and you hereby authorize your bank, other lenders, and vendors to provide such information to us and our affiliates.

You agree to verify and sign each report and financial statement in the manner we prescribe. We may disclose data derived from these reports. Moreover, we may, as often as we deem appropriate (including on a daily basis), access the Computer System and retrieve all information relating to the operation of your Restaurant. You agree to preserve and maintain all records in a secure location at your Restaurant for at least three years (including sales checks, purchase orders, invoices, payroll records, customer lists, check stubs, sales tax records and returns, cash receipts and disbursement journals, and general ledgers).

Further, at our request, you will provide current financial information for your owners and guarantors sufficient to demonstrate such owners' and guarantors' ability to satisfy their financial obligations under their individual guaranties.

## 11. **INSPECTIONS AND AUDITS.**

A. **Our Right to Inspect Your Restaurant.** To determine whether you and your Restaurant are complying with this Agreement and all System Standards, we and our designated agents or representatives, may at all times and without prior notice to you:

- (1) inspect your Restaurant;
- (2) photograph your Restaurant and observe and videotape the operation of your Restaurant for consecutive or intermittent periods we deem necessary;
- (3) remove samples of any products and supplies;
- (4) inspect your Computer System, including hardware, software, security, configurations, connectivity and data access, and other technology used in the operation of your Restaurant;
- (5) interview the personnel and customers of your Restaurant; and
- (6) inspect and copy any books, records, and documents relating to the operation of your Restaurant.

You agree to cooperate with us fully. If we exercise any of these rights, we will not interfere unreasonably with the operation of your Restaurant. You agree to present to your customers the evaluation forms that we periodically prescribe and to participate and request your customers to participate in any surveys performed by or for us. You agree to reimburse all of our costs (including supplier fees, travel expenses, room and board, and compensation of our employees) associated with any re-inspections or follow-up visits that we conduct after any inspection of your Restaurant identifies one or more failures of System Standards, and/or if any follow-up visit is necessary because we or our designated representatives were for any reason prevented from properly inspecting any or all of your Restaurant (including because you or your personnel refuse entry to the Premises).

B. **Our Right to Audit.** We and our designated agents or representatives may at any time during your business hours, and without prior notice to you, examine your Restaurant, bookkeeping, and accounting records for your Restaurant, and sales and income tax records and returns, and other records. You agree to cooperate fully with our representatives and independent accountants in any examination. If any examination discloses an understatement of the Gross Sales, you agree to pay us, within 15 days after receiving the examination report, the Royalty and Brand Promotion Fund contributions due on the amount of the understatement, plus our service charges and interest on the understated amounts from the date originally due until the date of payment. Furthermore, if an examination is necessary due to your failure to

furnish reports, supporting records, or other information as required, or failure to furnish these items on a timely basis, or if our examination reveals a Royalty or Brand Promotion Fund contribution understatement exceeding two percent (2%) of the amount that you actually reported to us for the period examined, you agree to reimburse us for the costs of the examination, including the charges of attorneys and independent accountants and the travel expenses, room and board, and compensation of our employees. These remedies are in addition to our other remedies and rights under this Agreement and applicable law.

## 12. **TRANSFER.**

A. **By Us.** You acknowledge that we maintain a staff to manage and operate the Franchise System and that staff members can change as employees come and go. You represent that you have not signed this Agreement in reliance on any particular manager, owner, director, officer, or employee remaining with us in any capacity. We may change our ownership or form or assign this Agreement and any other agreement to a third party without restriction.

B. **By You.** You acknowledge and agree that the rights and duties this Agreement creates are personal to you (or to your owners if you are an Entity) and that we have granted you the Franchise in reliance upon our perceptions of your (or your owners') individual or collective character, skill, aptitude, attitude, business ability, and financial capacity. Accordingly, neither this Agreement (or any interest in this Agreement), your Restaurant or substantially all of its assets, any direct or indirect ownership interest in you (regardless of its size), nor any ownership interest in any of your owners (if such owners are legal entities) may be transferred without our prior written approval, which consent will not be unreasonably withheld or delayed; provided, however, that transfers among your current owners of ownership interests in you will require prior notice to us but will not require our consent as long as the Managing Owner and the controlling interests (defined in Section 17.O below) in you are not changed as a result of such transfer. You further agree that you will not enter into any proposed mortgage, pledge, hypothecation, encumbrance or giving of a security interest in or which affects the Restaurant, this Agreement or your rights under this Agreement without our prior written consent.

A transfer of your Restaurant ownership, possession, or control, or substantially all of its assets, may be made only with a transfer of this Agreement. Any transfer, or attempt to transfer, without our approval is a breach of this Agreement and has no effect. In this Agreement, the term “**transfer**” includes a voluntary, involuntary, direct, or indirect assignment, sale, gift, or other disposition of any interest in:

- (1) this Agreement;
- (2) you;
- (3) your Restaurant or substantially all of its assets; or
- (4) your owners (if such owners are legal entities).

An assignment, sale, gift, or other disposition includes the following events:

- (a) transfer of ownership of capital stock, a partnership or membership interest, or another form of ownership interest, including by way of a public offering or pursuant to a private placement;
- (b) merger or consolidation or issuance of additional securities or other forms of ownership interest;

- (c) any sale of a security convertible to an ownership interest;
- (d) transfer of an interest in you, this Agreement, your Restaurant or substantially all of its assets, or your owners in a divorce, insolvency, or entity dissolution proceeding or otherwise by operation of law;
- (e) if you, one of your owners, or an owner of one of your owners dies, a transfer of an interest in you, this Agreement, your Restaurant or substantially all of its assets, or your owner by will, declaration of or transfer in trust, or under the laws of intestate succession; and
- (f) pledge of this Agreement (to someone other than us) or of an ownership interest in you or your owners as security, foreclosure upon your Restaurant, or your transfer, surrender, or loss of the possession, control, or management of your Restaurant.

If you intend to list your Restaurant for sale with any broker or agent, you shall do so only after obtaining our written approval of the broker or agent and of the listing agreement. You may not use or authorize the use of any Mark in advertising any prospective transfer or other disposition of your Restaurant or of any ownership in you without our prior written consent. You shall not use or authorize the use of, and no third party shall on your behalf use, any written materials to advertise or promote the transfer of your Restaurant or of any ownership interest in you without our prior written approval of such materials.

C. **Conditions for Approval of Transfer.** If you (and your owners) are in full compliance with this Agreement, then you may request our consent to a proposed transfer. We will give your request reasonable consideration but may condition our consent on compliance with certain requirements, including the following:

- (1) you have paid all Royalty and Brand Promotion Fund contributions, and other amounts owed to us, our affiliates, and third party vendors and have submitted all required reports and statements;
- (2) you have not violated any provision of this Agreement, the Lease, or any other agreement with us during both the 60-day period before you requested our consent to the transfer and the period between your request and the effective date of the transfer;
- (3) you provide us all information or documents we request about the proposed transfer, the transferee, and its owners;
- (4) neither the transferee nor its owners (if the transferee is an Entity) or affiliates have an ownership interest (direct or indirect) in or perform services for a Competitive Business;
- (5) the transferee (or its Designated Managers) completes our training program to our satisfaction;
- (6) your landlord allows you to transfer the Lease or sublease the Premises to the transferee;
- (7) the transferee agrees (if the transfer is of this Agreement) to upgrade, remodel, and refurbish your Restaurant in accordance with our current requirements and specifications for Restaurants within 120 days after the effective date of the transfer (we will advise the transferee before the effective date of the transfer of the specific actions that it must take within this time period);

(8) the transferee, at our request, signs our then current form of franchise agreement and related documents, any and all of the provisions of which may differ materially from any and all of those contained in this Agreement;

(9) you or the transferee pays us a transfer fee equal to 50% of our then-current initial franchise fee. However, no transfer fee is due if, upon a spouse's death, that spouse's interest in this Agreement and your Restaurant, or ownership in you, is transferred to the surviving spouse, provided that such transfer is subject to the terms and conditions of this Section 12;

(10) you (and your transferring owners) sign a general release, in a form satisfactory to us, of any and all claims against us and our affiliates and our and their owners, officers, directors, employees, and agents;

(11) we have approved the purchase price, amount of debt and payment terms, and, if you or your owners finance any part of the purchase price, you and your owners agree that all of the transferee's obligations under promissory notes, agreements, or security interests reserved in your Restaurant are subordinate to the transferee's obligation to pay Royalty, Brand Promotion Fund contributions, and other amounts due to us, our affiliates, and third party vendors and otherwise to comply with this Agreement;

(12) you and your transferring owners (and your and their immediate family members) will not, for two years beginning on the transfer's effective date, engage in any of the activities proscribed in Section 15.D. below; and

(13) you and your transferring owners will not directly or indirectly at any time or in any manner (except with respect to other Restaurants you own and operate) identify yourself or themselves or any business as a current or former Restaurant or as one of our franchise owners; use any Mark, any colorable imitation of a Mark, or other indicia of a Restaurant in any manner or for any purpose; or utilize for any purpose any trade name, trade or service mark, or other commercial symbol that suggests or indicates a connection or association with us.

We may review all information regarding your Restaurant that you give the transferee, correct any information that we believe is inaccurate, and give the transferee copies of any reports that you have given us or we have made regarding your Restaurant.

Our approval of a transfer of ownership interests in you as a result of the death or incapacity of the proposed transferor will not be unreasonably withheld or delayed so long as at least one of the Managing Owners designated on Exhibit A continues to be the designated Managing Owner. If, as a result of the death or incapacity of the transferor, a transfer is proposed to be made to the transferor's spouse, and if we do not approve the transfer, the trustee or administrator of the transferor's estate will have nine months after our refusal to consent to the transfer to the transferor's spouse within which to transfer the transferor's interests to another party whom we approve in accordance with this Section 12.C.

**D. Transfer to a Wholly-Owned Corporation or Limited Liability Company.** Notwithstanding Section 12.C above, if you are in full compliance with this Agreement, you may transfer this Agreement to a corporation or limited liability company which conducts no business other than your Restaurant and, if applicable, other Restaurants, in which you maintain management control, and of which you own and control one hundred percent (100%) of the economic interests, equity and voting power of all issued and outstanding ownership interests, provided that all of the assets of your Restaurant are owned, and the business of your Restaurant is conducted, only by that single corporation or limited liability company. Any such proposed transfer will be subject to the conditions described in Section 12.C, except

that we will not require payment of a transfer fee as described in Section 12.C.8, and our right of first refusal under Section 12.G will not apply; provided, that you reimburse us for any direct costs we incur in connection with documenting and processing such transfer, including reasonable legal fees. You (and your owners) agree to remain personally liable under this Agreement as if the transfer to the corporation or limited liability company did not occur.

E. **Effect of Consent to Transfer.** Our consent to a transfer of this Agreement and your Restaurant, or any interest in you or your owners, is not a representation of the fairness of the terms of any contract between you and the transferee, a guarantee of your Restaurant or transferee's prospects of success, or a waiver of any claims we have against you (or your owners) or of our right to demand full compliance by you and the transferee with this Agreement.

F. **Public or Private Offering.** Written information used to raise or secure funds can reflect upon us and the Franchise System. You agree to submit any written information intended to be used for that purpose to us before inclusion in any registration statement, prospectus or similar offering memorandum. Should we object to any reference to us or our affiliates or any of our business in the offering literature or prospectus, the literature or prospectus shall not be used until our objections are withdrawn. You may not engage in a public offering of securities without our prior written consent.

G. **Our Right of First Refusal.** If you (or any of your owners) at any time determine to sell or transfer for consideration an interest in this Agreement and your Restaurant, or a direct or indirect ownership interest in you (except to or among your current owners, which is not subject to this Section 12.G), in a transaction that would be allowed under Sections 12.B and 12.C above, you (or your owners) agree to obtain from a responsible and fully disclosed buyer, and send us, a true and complete copy of a bona fide, executed written offer (which may include a letter of intent) relating exclusively to an interest in you or in this Agreement and your Restaurant. The offer must include details of the payment terms of the proposed sale and the sources and terms of any financing for the proposed purchase price. To be a valid, bona fide offer, the proposed purchase price must be in a dollar amount, and the proposed buyer must submit with its offer an earnest money deposit equal to five percent (5%) or more of the offering price. The right of first refusal process will not be triggered by a proposed transfer that would not be allowed under Sections 12.B and 12.C above. We may require you (or your owners) to send us copies of any materials or information sent to the proposed buyer or transferee regarding the possible transaction.

We may, by written notice delivered to you or your selling owner(s) within 30 days after we receive both an exact copy of the offer and all other information we request, elect to purchase the interest offered for the price and on the terms and conditions contained in the offer, provided that:

- (1) we may substitute cash for any form of payment proposed in the offer (such as ownership interests in a privately-held entity);
- (2) our credit will be deemed equal to the credit of any proposed buyer (meaning that, if the proposed consideration includes promissory notes, we or our designee may provide promissory notes with the same terms as those offered by the proposed buyer);
- (3) we will have an additional 30 days to prepare for closing after notifying you of our election to purchase; and
- (4) we must receive, and you and your owners agree to make, all customary representations and warranties given by the seller of the assets of a business or the ownership interests in a legal entity, as applicable, including representations and warranties regarding:

- (a) ownership and condition of and title to ownership interests or assets;
- (b) liens and encumbrances relating to ownership interests or assets; and
- (c) validity of contracts and the liabilities, contingent or otherwise, of the entity whose assets or ownership interests are being purchased.

If we exercise our right of first refusal, you and your selling owner(s) (and your and their immediate family members) agree that, for two years beginning on the closing date, you and they will be bound by the non-competition covenant contained in Section 15.D. below. We have the unrestricted right to assign this right of first refusal to a third party, who then will have the rights described in this Section 12.G.

If we do not exercise our right of first refusal, you or your owners may complete the sale to the proposed buyer on the original offer's terms, but only if we approve the transfer in accordance with, and you (and your owners) and the transferee comply with the conditions in, Sections 12.B and 12.C above. This means that, even if we do not exercise our right of first refusal (whether or not it is properly triggered as provided above), if the proposed transfer would not be allowed under Sections 12.B and 12.C above, you (or your owners) may not move forward with the transfer at all.

If you do not complete the sale to the proposed buyer within 60 days after we notify you that we do not intend to exercise our right of first refusal, or if there is a material change in the terms of the sale (which you agree to tell us promptly), we or our designee will have an additional right of first refusal during the 30-day period following either the expiration of the 60-day period or our receipt of notice of the material change(s) in the sale's terms, either on the terms originally offered or the modified terms, at our or our designee's option.

### 13. **EXPIRATION OF THIS AGREEMENT.**

A. **Your Right to Acquire a Successor Franchise.** When this Agreement expires:

- (1) if you (and each of your owners) have substantially complied with this Agreement during its term; and
- (2) if you (and each of your owners) are, both on the date you give us written notice of your election to acquire a successor franchise (as provided in Section 13.B. below) and on the date on which the term of the successor franchise would commence, in full compliance with this Agreement and all System Standards; and
- (3) provided that (a) you maintain possession of and agree (regardless of cost) to remodel or expand your Restaurant, add or replace improvements and Operating Assets, and otherwise modify your Restaurant as we require to comply with System Standards then applicable for new Restaurants of your Designated Brand Concept, or (b) at your option, you secure a substitute premises that we approve and you develop those premises according to System Standards then applicable for Restaurants of your Designated Brand Concept,

then you may acquire a successor franchise to operate your Restaurant as a Restaurant for one additional 10 year term. You agree to sign the franchise agreement we then use to grant franchises for Restaurants (modified as necessary to reflect the fact that it is for a successor franchise), which may contain provisions that differ materially from any and all of those contained in this Agreement; provided that we will waive the initial franchise fee. However, you must pay a renewal fee in an amount equal to twenty-five percent (25%) of our then current initial franchise fee. If you (and each of your owners) are not, both on the date

you give us written notice of your election to acquire a successor franchise and on the date on which the term of the successor franchise commences, in full compliance with this Agreement and all System Standards, you acknowledge that we need not grant you a successor franchise, whether or not we had, or chose to exercise, the right to terminate this Agreement during its term under Section 14.B.

**B. Grant of a Successor Franchise.** You agree to give us written notice of your election to acquire a successor franchise no more than 270 days and no less than 180 days before this Agreement expires. We agree to give you written notice (“**Our Notice**”), not more than 90 days after we receive your notice, of our decision:

- (1) to grant you a successor franchise;
- (2) to grant you a successor franchise on the condition that you correct existing deficiencies of your Restaurant or in your operation of your Restaurant;
- (3) not to grant you a successor franchise based on our determination that you and your owners have not substantially complied with this Agreement during its term or were not in full compliance with this Agreement and all System Standards on the date you gave us written notice of your election to acquire a successor franchise; or
- (4) not to grant you a successor franchise because we are no longer granting franchises for Restaurants of your Designated Brand Concept.

If applicable, Our Notice will:

- (a) describe the remodeling, expansion, improvements, or modifications required to bring your Restaurant into compliance with then applicable System Standards for new Restaurants of your Designated Brand Concept; and
- (b) state the actions you must take to correct operating deficiencies and the time period in which you must correct these deficiencies.

If we elect not to grant you a successor franchise, Our Notice will describe the reasons for our decision. If we elect to grant you a successor franchise, your right to acquire a successor franchise is subject to your full compliance with all of the terms and conditions of this Agreement through the date of its expiration, in addition to your compliance with the obligations described in Our Notice.

**C. Agreements/Releases.** In order to acquire a successor franchise, you must satisfy all of the other conditions for a successor franchise and you and your owners agree to execute the form of franchise agreement and any ancillary agreements we then customarily use in granting franchises for Restaurants (modified as necessary to reflect the fact that it is for a successor franchise), which may contain provisions that differ materially from any and all of those contained in this Agreement. You and your owners further agree to sign general releases, in a form satisfactory to us, of any and all claims against us and our affiliates and our and their owners, officers, directors, employees, agents, successors, and assigns. We will consider your or your owners’ failure to sign these agreements and releases and to deliver them to us for acceptance and execution (together with the successor franchise fee) within 30 days after their delivery to you to be an election not to acquire a successor franchise.



14. **TERMINATION OF AGREEMENT.**

A. **By You.** If you and your owners are fully complying with this Agreement and we materially fail to comply with this Agreement and do not correct the failure within 90 days after you deliver written notice of the material failure to us or if we cannot correct the failure within 90 days and we fail to give you within 90 days after your notice reasonable evidence of our effort to correct the failure within a reasonable time, you may terminate this Agreement effective an additional 90 days after you deliver to us written notice of termination. Your termination of this Agreement other than according to this Section 14.A. will be deemed a termination without cause and a breach of this Agreement.

B. **By Us.** We may terminate this Agreement, effective upon delivery of written notice of termination to you, if:

- (1) you (or any of your owners) have made or make any material misrepresentation or omission in acquiring the Franchise or operating your Restaurant;
- (2) you do not locate, and sign a Lease or purchase document for, an acceptable site for the Premises within 180 days after the Effective Date;
- (3) you do not open your Restaurant for business within the deadline set forth in Section 2.G;
- (4) we determine that an insufficient number of your Designated Managers are capable or qualified to complete initial training to our satisfaction;
- (5) you abandon or fail actively to operate your Restaurant for three or more consecutive days, unless you close your Restaurant for a purpose we approve;
- (6) you (or any of your owners) are or have been convicted by a trial court of, or plead or have pleaded no contest or guilty to, a felony;
- (7) you fail to maintain the insurance we require and do not correct the failure within 10 days after we deliver written notice of that failure to you;
- (8) you (or any of your owners) engage in any conduct which, in our opinion, adversely affects the reputation of your Restaurant or the goodwill associated with the Marks;
- (9) you use the Marks in any way prohibited by Section 5.B, or otherwise misuse the Marks;
- (10) you (or any of your owners) make or attempt to make an unauthorized transfer (as described in Section 12.B);
- (11) you lose the right to occupy the Premises;
- (12) you (or any of your owners) knowingly make any unauthorized use or disclosure of any part of the Operations Manual or any other Confidential Information;
- (13) you violate any law, ordinance, rule or regulation of a governmental agency in connection with the operation of your Restaurant and fail to correct such violation within 72 hours after you receive notice from us or any other party;

(14) you fail to pay us or our affiliates any amounts due and do not correct the failure within 10 days after written notice of that failure has been delivered or fail to pay any third party obligations, including your landlord and third party vendors and suppliers, owed in connection with your ownership or operation of the Restaurant and do not correct such failure within any cure periods permitted by the person or Entity to whom such obligations are owed;

(15) you fail to pay when due any federal or state income, service, sales, use, employment or other taxes due on or in connection with the operation of your Restaurant, unless you are in good faith contesting your liability for these taxes;

(16) you understate your Gross Sales three times or more during this Agreement's term;

(17) you (or any of your owners) (a) fail on three or more separate occasions within any 12 consecutive month period to comply with this Agreement, whether or not we notify you of the failures, and, if we do notify you of the failures, whether or not you correct the failures after our delivery of notice to you; or (b) fail on two or more separate occasions within any six consecutive month period to comply with the same obligation under this Agreement, whether or not we notify you of the failures, and, if we do notify you of the failures, whether or not you correct the failures after our delivery of notice to you;

(18) you make an assignment for the benefit of creditors or admit in writing your insolvency or inability to pay your debts generally as they become due; you consent to the appointment of a receiver, trustee, or liquidator of all or the substantial part of your property; your Restaurant is attached, seized, subjected to a writ or distress warrant, or levied upon, unless the attachment, seizure, writ, warrant, or levy is vacated within 30 days; or any order appointing a receiver, trustee, or liquidator of you or your Restaurant is not vacated within 30 days following the order's entry;

(19) you (or any of your owners) file a petition in bankruptcy or a petition in bankruptcy is filed against you;

(20) you (or any of your owners) fail to comply with anti-terrorism laws, ordinances, regulations and Executive Orders;

(21) you create or allow to exist any condition in or at the Restaurant's Premises which we reasonably determine to present a health or safety concern for the Restaurant's customers or employees;

(22) you fail to pass quality assurance audits, and do not cure such failure within 15 days after we deliver written notice of failure to you;

(23) you (or any of your owners) fail to comply with any other provision of this Agreement or any System Standard, and do not correct the failure within 30 days after we deliver written notice of the failure to you;

(24) you or an Affiliate fails to comply with any other agreement with us or our affiliate and do not correct such failure within the applicable cure period, if any; or

(25) you (or any of your owners) fail to pay any third-party, including the lessor of your Premises, any amounts owed in connection with your Restaurant when due, and do not cure such failure within any applicable cure period granted by such third-party.

C. **Interim Operations.** We have the right (but not the obligation), under the circumstances described below, to enter the Premises and operate the Restaurant on an interim basis (or to appoint a third party to do so) for any period of time we deem appropriate but not to exceed 90-day increments, renewable for up to one year, in the aggregate. We will periodically discuss with you the results of operation of the Restaurant during the time that we operate it. If we (or a third party) assume interim operations of your Restaurant pursuant to this Section 14.C, you agree to pay us (in addition to the Royalty, Brand Promotion Fund contributions, and other amounts due under this Agreement) an amount equal to four percent (4%) of Gross Sales, plus our (or the third party's) direct out-of-pocket costs and expenses, for any period we deem appropriate. If we (or a third party) assume interim operations of your Restaurant, you must cooperate with us and our designees, continue to support the operations of the Restaurant, and comply with all of our instructions and System Standards, including making available any and all books, records, and accounts. You understand and acknowledge that during any such interim period, you are still the owner of the Restaurant and you continue to bear sole liability for any and all accounts payable, obligations, and/or contracts, including all obligations under the Lease and all obligations to your vendors and employees and contractors. You understand that we are not required to use your employees, vendors, or accounts to operate the Restaurant. You also agree that we may elect to cease such interim operations of the Restaurant at any time with notice to you.

We (or a third party) may elect to operate your Restaurant on an interim basis under the following circumstances:

- (1) if you abandon or fail to actively operate your Restaurant for three or more consecutive days, unless you close your Restaurant for a purpose we approve; or
- (2) if you fail to comply with any provision of this Agreement or any System Standard and do not cure the failure within the time period we specify in our notice to you.

If we exercise our rights under subparagraphs (1) or (2) above, that will not affect our right to terminate this Agreement under Section 14.B. above. Your indemnification obligations set forth under Section 16.D will continue to apply during any period that we or our designee operate your Restaurant on an interim basis

## 15. **OUR AND YOUR RIGHTS AND OBLIGATIONS UPON TERMINATION OR EXPIRATION OF THIS AGREEMENT.**

A. **Payment of Amounts Owed to Us.** You agree to pay us within 15 days after this Agreement expires or is terminated, or on any later date that we determine the amounts due to us, the Royalty, Brand Promotion Fund contributions, interest, and all other amounts owed to us (and our affiliates) which then are unpaid.

B. **Cessation of Operations; De-Identification.** When this Agreement expires or is terminated for any reason:

- (1) you must immediately close the Restaurant for business to customers and cease to directly or indirectly sell any products and services of any kind and in any manner from the Restaurant and/or using the Marks, unless we direct you otherwise in connection with our exercise of our option to purchase pursuant to Section 15.E;
- (2) you must cease all use, direct or indirect, of any Mark, any colorable imitation of a Mark, or other indicia of a Restaurant in any manner or for any purpose; and must not use for any

purpose any trade name, trade or service mark, or other commercial symbol that indicates or suggests a connection or association with us;

(3) you may not directly or indirectly at any time or in any manner identify yourself or any business as a current or former franchisee or Restaurant (except with other Restaurants you own and operate) and you agree to take the action required to cancel all fictitious or assumed name or equivalent registrations relating to your use of any Mark;

(4) you agree to deliver to us or destroy (as we require), at your expense, within 30 days all signs, sign-faces, sign-cabinets, menus, marketing materials, forms, and other materials containing any Mark or otherwise identifying or relating to a Restaurant, including copies of all Confidential Information, and allow us, without liability to you or third parties, to remove these items from your Restaurant;

(5) if we do not have or do not exercise an option to purchase your Restaurant under Section 15.E below, you agree promptly and at your own expense to make the alterations we specify in the Operations Manual (or otherwise in writing) to distinguish your Restaurant clearly from its former appearance and from other Restaurants in order to prevent public confusion and in order to comply with the non-competition provisions set forth in Section 15.D;

(6) you agree to immediately cease using and, at our discretion, either disable or instruct the registrar of any Contact Identifier or Online Presence to transfer exclusive control of and access to such Contact Identifier or Online Presence to us (or our designee), as we determine in our discretion;

(7) comply with all other System Standards we periodically establish (and all applicable laws) in connection with the closure and de-identification of your Restaurant, including as it relates to disposing of Personal Information, in any form, in your possession or the possession of any of your employees; and

(8) you agree to give us, within 30 days after the expiration or termination of this Agreement, evidence satisfactory to us of your compliance with these obligations.

C. **Confidential Information.** You agree that, when this Agreement expires or is terminated, you will immediately cease using any of our Confidential Information (including computer software or similar technology and digital passwords and identifications that we have licensed to you or that are proprietary to us or the Franchise System) in any business or otherwise and return to us all copies of the Operations Manual and any other confidential materials that we have loaned you.

D. **Covenants Not to Compete.**

(1) **Non-Competition.** Upon termination or expiration of this Agreement, you and your owners agree that, for two years beginning on the effective date of termination or expiration or the date on which all persons restricted by this Section 15.D begin to comply with this Section 15.D, whichever is later, neither you nor any of your owners (or their immediate family members) will have any direct or indirect interest as an owner (whether of record or beneficially), investor, partner, director, officer, employee, consultant, representative, lessor, or agent in any Competitive Business (as defined in Section 7 above) located or operating:

(i) within a 3-mile radius of the Premises; and

(ii) within a 3-mile radius of any other Restaurant in operation or under construction on the later of the effective date of the termination or expiration of this Agreement or the date on which all persons restricted by this Section 15.D begin to comply with this Section 15.D.

These restrictions also apply after transfers, as provided in Section 12.C(11) above. If any person restricted by this Section 15.D refuses voluntarily to comply with these obligations, the two year period for that person will commence with the entry of a court order enforcing this provision. You and your owners expressly acknowledge that you possess skills and abilities of a general nature and have other opportunities for exploiting these skills. Consequently, our enforcing the covenants made in this Section 15.D will not deprive you of your personal goodwill or ability to earn a living.

(2) **Non-Interference.** You further agree that, for two years beginning on the effective date of termination or expiration, neither you nor any of your owners, your or your owners' Affiliates, or the officers, directors, managers or immediate family members of any of the foregoing, will:

(i) interfere or attempt to interfere with our or our affiliates' relationships with any vendors or consultants;

(ii) divert or attempt to divert any actual or potential business, sites or customers of any Restaurants to a Competitive Business; or

(iii) engage in any other activity which might injure the goodwill of the Marks or the Franchise System.

E. **Our Right to Purchase Your Restaurant.**

(1) **Purchase Option.** In addition to any other rights to purchase we have under this Agreement, we have the right to purchase your Restaurant, as described in this Section 15.E (the "**Purchase Option**"), upon the occurrence of a "Termination Event." We have the unrestricted right to assign the Purchase Option in our discretion.

A "**Termination Event**" is either the expiration of this Agreement and any successor franchise granted pursuant to Section 13 (except for any expiration under the circumstances described in Section 13.B(4) hereof) or the termination of this Agreement by you without cause or by us as permitted under Section 14.B.

(2) **Purchase Price.** We may exercise the Purchase Option based on a Termination Event by giving you written notice of our election by not later than 30 days after the occurrence of the Termination Event (the "**Election Period**"). The purchase price for your Restaurant will be its fair market value, provided that the fair market value will not include any value for (i) the Franchise or any rights granted by this Agreement, or (ii) goodwill attributable to our Marks, brand image and other intellectual property. The closing (the "**Closing**") of the purchase will take place, as described in paragraph (4) below, on a date we select which is within 90 days after the purchase price is determined by us or, if you dispute the calculation of the purchase price, as determined pursuant to paragraph (3) below.

(3) **Disputes Regarding Purchase Price Calculation.** If you dispute the calculation of the purchase price, the purchase price will be determined by one independent accredited appraiser designated by us who will calculate the purchase price applying the criteria specified

above. We agree to select the appraiser within 15 days after we receive the financial and other information necessary to calculate the purchase price (if you and we have not agreed on the purchase price before then). You and we will share equally the appraiser's fees and expenses. The appraiser must complete its calculation within 30 days after its appointment. The purchase price will be the appraiser's determination of the value, applying the appropriate mechanism as described above.

(4) **Real Property.** If you or any of your affiliates, owns the Premises, you agree to (or cause your affiliate to) lease the Premises to us or our designated affiliate on terms and conditions that are commercially reasonable in light of the location and condition of the Premises and other relevant circumstances.

(5) **Closing, Operations.** During the Election Period and (if we elect to exercise the Purchase Option) through the Closing, we shall have the right to (i) assume (or to designate a third party to assume) operations of the Restaurant, or (ii) require you to close the Restaurant. In either case, you shall maintain in force all insurance policies and business licenses required pursuant to this Agreement through the Closing Date, unless we do not exercise the Purchase Option prior to the expiration of the Election Period. If we elect to assume operations (or to designate a third party to do so), you acknowledge and agree that any and all revenue of the Restaurant during such period will belong to us. Prior to closing, you agree to cooperate with us in conducting due diligence, including providing us with access to your business and financial records, relevant contracts and all other information relevant to the Restaurant. At the closing, we (or our assignee) will pay the purchase price in cash. You agree to execute and deliver to us (or our assignee):

(a) an asset purchase agreement and all related agreements, in form and substance acceptable to us and in which you provide all customary warranties and representations, including representations and warranties as to ownership and condition of and title to assets, liens and encumbrances on assets, validity of contracts and agreements, and liabilities affecting the assets, contingent or otherwise;

(b) a transfer of good and merchantable title to the assets purchased, free and clear of all liens and encumbrances (other than liens and security interests acceptable to us), with all sales and other transfer taxes paid by you;

(c) an assignment of all of the licenses and permits for your Restaurant which may be assigned or transferred;

(d) an assignment of the Lease;

(e) general releases, in form and substance satisfactory to us, of any and all claims you and your owners have against us and our shareholders, officers, directors, employees, agents, successors, and assigns; and

(f) an agreement, in form and substance satisfactory to us, voluntarily terminating this Agreement under which you and your owners agree to comply with all post-term obligations set forth in Sections 15.A through 15.D and Section 15.G and with all other obligations which, either expressly or by their nature, are intended to survive termination or expiration of this Agreement.

F. **Remedies.** If we terminate this Agreement because of your breach or if you terminate this Agreement without cause, you and we agree that it would be difficult, if not impossible, to determine the

amount of damages that we would suffer due to the loss or interruption of the revenue stream we otherwise would have derived from your continued payment of Royalties, and that the Brand Promotion Fund would have otherwise derived from your continued contributions, through the remainder of the term of this Agreement. Therefore, you and we agree that a reasonable estimate of such damages, less any cost savings we might have experienced (the “**Lost Revenue Damages**”), is an amount equal to the net present value of the Royalties and contributions to the Brand Promotion Fund that would have become due had this Agreement not been terminated, from the date of termination to the earlier of (i) five (5) years thereafter, or (ii) the scheduled expiration of the term of this Agreement. For the purposes of this Section, Lost Revenue Damages shall be calculated as follows: (1) the lesser of (a) 60 or (b) the number of calendar months left in the term, multiplied by (2) the aggregate of the Royalty fee and Brand Promotion Fund contribution percentages, multiplied by (3) the average monthly Gross Sales of your Restaurant during the 12 full calendar months immediately preceding the termination date; provided, that if as of the termination date, your Restaurant has not been operating for at least 12 months, the average monthly Gross Sales of all Restaurants operating under the Marks of your Designated Brand Concept during the entirety of our fiscal year immediately preceding the termination date.

You agree to pay us Lost Revenue Damages, as calculated in accordance with this Section, within fifteen (15) days after this Agreement expires or is terminated, or on any later date that we determine. You and we agree that the calculation described in this Section is a calculation only of the Lost Revenue Damages and that nothing herein shall preclude us or limit us from proving and recovering any other damages caused by your breach of the Agreement.

G. **Continuing Obligations.** All of our and your (and your owners’) obligations which expressly or by their nature survive this Agreement’s expiration or termination will continue in full force and effect subsequent to and notwithstanding its expiration or termination and until they are satisfied in full or by their nature expire.

## 16. **RELATIONSHIP OF THE PARTIES/INDEMNIFICATION.**

A. **Independent Contractors.** You and we acknowledge and agree that this Agreement does not create a fiduciary relationship between you and us, that you and we are and will be independent contractors, and that nothing in this Agreement is intended to make either you or us a general or special agent, joint venturer, partner, or employee of the other for any purpose. You agree to identify yourself conspicuously in all dealings with customers, suppliers, public officials, your personnel, and others as the owner of your Restaurant under a franchise we have granted and to place notices of independent ownership on the forms, business cards, stationery, advertising, and other materials we require from time to time.

You also acknowledge that you will have a contractual relationship only with us and may look only to us to perform under this Agreement.

B. **No Liability To Or for Acts of Other Party.** We and you may not make any express or implied agreements, warranties, guarantees, or representations, or incur any debt, in the name or on behalf of the other or represent that our respective relationship is other than franchisor and franchise owner. We will not be obligated for any damages to any person or property directly or indirectly arising out of the operation of your Restaurant or the business you conduct under this Agreement. We will have no liability for your obligations to pay any third parties, including any product vendors.

C. **Taxes.** We will have no liability for any sales, use, service, occupation, excise, gross receipts, income, property, or other taxes, whether levied upon you or your Restaurant, due to the business you conduct (except for our income taxes). You are responsible for paying these taxes promptly and must

reimburse us for any such taxes that we must pay to any state taxing authority on account of your operation or payments that you make to us.

D. **Indemnification.** You agree to indemnify, defend, and hold harmless us, our parents, subsidiaries and affiliates, and our and their respective owners, shareholders, directors, managers, officers, employees, agents, successors, and assignees (the “**Indemnified Parties**”) against, and to reimburse any one or more of the Indemnified Parties for, all claims, obligations, and damages directly or indirectly arising out of the operation of your Restaurant, the business you conduct under this Agreement, or your breach of this Agreement, including those alleged to be caused by the Indemnified Party’s negligence, unless (and then only to the extent that) the claims, obligations, or damages are determined to be caused solely by the Indemnified Party’s intentional misconduct in a final, unappealable ruling issued by a court with competent jurisdiction. For purposes of this indemnification, “claims” include all obligations, damages (actual, consequential, or otherwise), and costs that any Indemnified Party reasonably incurs in defending any claim against it, including reasonable accountants’, arbitrators’, attorneys’, and expert witness fees, costs of investigation and proof of facts, court costs, travel and living expenses, and other expenses of litigation or alternative dispute resolution, regardless of whether litigation or alternative dispute resolution is commenced. Each Indemnified Party may, at its discretion and at your expense, control the defense of any claim against it (including choosing and retaining its own legal counsel), agree to settlements of claims against it, and take any other remedial, corrective, or other actions in response to such claims. This indemnity will continue in full force and effect subsequent to and notwithstanding this Agreement’s expiration or termination. An Indemnified Party need not seek recovery from any insurer or other third party, or otherwise mitigate its losses and expenses, in order to maintain and recover fully a claim against you under this subparagraph. You agree that a failure to pursue a recovery or mitigate a loss will not reduce or alter the amounts that an Indemnified Party may recover from you under this subparagraph. The obligations of this Section 16.D shall survive any expiration or termination of this Agreement.

## 17. **ENFORCEMENT.**

A. **Security Interest.** As security for the performance of your obligations under this Agreement, including payments owed to us for purchase by you, you hereby collaterally assign to us the Lease and grant us a security interest in all of the Operating Assets and all other assets of your Restaurant, including but not limited to inventory, accounts, supplies, contracts, cash derived from the operation of your Restaurant and sale of other assets, and proceeds and products of all those assets. You agree to execute such other documents as we may reasonably request in order to further document, perfect and record our security interest. If you default in any of your obligations under this Agreement, we may exercise all rights of a secured creditor granted to us by law, in addition to our other rights under this Agreement and at law. If a third party lender requires that we subordinate our security interest in the assets of your Restaurant as a condition to lending you working capital for the construction or operation of your Restaurant, we will agree to subordinate pursuant to terms and conditions determined by us. This Agreement shall be deemed to be a Security Agreement and Financing Statement and may be filed for record as such in the records of any county and state that we deem appropriate to protect our interests.

B. **Severability and Substitution of Valid Provisions.** Except as expressly provided to the contrary in this Agreement, each section, paragraph, term, and provision of this Agreement is severable, and if, for any reason, any part is held to be invalid or contrary to or in conflict with any applicable present or future law or regulation in a final, unappealable ruling issued by any court, agency, or tribunal with competent jurisdiction, that ruling will not impair the operation of, or otherwise affect, any other portions of this Agreement, which will continue to have full force and effect and bind the parties.

If any covenant which restricts competitive activity is deemed unenforceable by virtue of its scope in terms of area, business activity prohibited, or length of time, but would be enforceable if modified, you



and we agree that the covenant will be enforced to the fullest extent permissible under the laws and public policies applied in the jurisdiction whose law determines the covenant's validity.

If any applicable and binding law or rule of any jurisdiction requires more notice than this Agreement requires of this Agreement's termination or of our refusal to enter into a successor franchise agreement, or some other action that this Agreement does not require, or if, under any applicable and binding law or rule of any jurisdiction, any provision of this Agreement or any System Standard is invalid, unenforceable, or unlawful, the notice or other action required by the law or rule will be substituted for the comparable provisions of this Agreement, and we may modify the invalid or unenforceable provision or System Standard to the extent required to be valid and enforceable or delete the unlawful provision in its entirety. You agree to be bound by any promise or covenant imposing the maximum duty the law permits which is subsumed within any provision of this Agreement, as though it were separately articulated in and made a part of this Agreement.

C. **Waiver of Obligations.** We and you may by written instrument unilaterally waive or reduce any obligation of or restriction upon the other under this Agreement, effective upon delivery of written notice to the other or another effective date stated in the notice of waiver. Any waiver granted will be without prejudice to any other rights we or you have, will be subject to continuing review, and may be revoked at any time and for any reason effective upon delivery of 10 days' prior written notice.

We and you will not waive or impair any right, power, or option this Agreement reserves (including our right to demand exact compliance with every term, condition, and covenant or to declare any breach to be a default and to terminate this Agreement before its term expires) because of any custom or practice at variance with this Agreement's terms; our or your failure, refusal, or neglect to exercise any right under this Agreement or to insist upon the other's compliance with this Agreement, including any System Standard; our waiver of or failure to exercise any right, power, or option, whether of the same, similar, or different nature, with other Restaurants; the existence of franchise agreements for other Restaurants which contain provisions different from those contained in this Agreement; or our acceptance of any payments due from you after any breach of this Agreement. No special or restrictive legend or endorsement on any check or similar item given to us will be a waiver, compromise, settlement, or accord and satisfaction. We are authorized to remove any legend or endorsement, which then will have no effect.

The following provision applies if you or the franchise granted hereby are subject to the franchise registration or disclosure laws in California, Illinois, Indiana, North Dakota, Washington, or Wisconsin: 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.

D. **Costs and Attorneys' Fees.** If either party initiates an arbitration, judicial or other proceeding, the prevailing party will be entitled to reasonable costs and expenses (including attorneys' fees incurred in connection with such judicial or other proceeding).

E. **You May Not Withhold Payments Due to Us.** You agree that you will not withhold payment of any amounts owed to us on the grounds of our alleged nonperformance of any of our obligations under this Agreement or for any other reason, and you specifically waive any right you may have at law or in equity to offset any funds you may owe us or to fail or refuse to perform any of your obligations under this Agreement.

F. **Rights of Parties are Cumulative.** Our and your rights under this Agreement are cumulative, and our or your exercise or enforcement of any right or remedy under this Agreement will not preclude our or your exercise or enforcement of any other right or remedy which we or you are entitled by law to enforce.

G. **Arbitration.** We and you agree that all controversies, disputes, or claims between us or any of our affiliates, and our and their respective owners, officers, directors, agents, representatives and employees, on the one hand, and you (and your owners, guarantors, Affiliates, and employees), on the other hand, arising out of or related to:

- (1) this Agreement or any other agreement between you (or your owners) and us (or our affiliates);
- (2) our relationship with you;
- (3) the scope or validity of this Agreement or any other agreement between you (or your owners) and us (or our affiliates) or any provision of any of such agreements (including the validity and scope of the arbitration obligation under this Section 17.G, which we and you acknowledge is to be determined by an arbitrator, not a court); or
- (4) any System Standard,

must be submitted for binding arbitration, on demand of either party, to the American Arbitration Association (“AAA”). The arbitration proceedings will be conducted by one arbitrator and, except as this Section otherwise provides, according to the AAA’s then-current Commercial Arbitration Rules. All proceedings will be conducted at a suitable location chosen by the arbitrator that is within 50 miles of our or, as applicable, our successor’s or assign’s then-current principal place of business (currently, Eugene, Oregon). All matters relating to arbitration will be governed by the Federal Arbitration Act (9 U.S.C. §§ 1 et seq.). The interim and final awards of the arbitrator shall be final and binding upon each party, and judgment upon the arbitrator’s awards may be entered in any court of competent jurisdiction.

The arbitrator has the right to award or include in his or her awards any relief which he or she deems proper, including, without limitation, money damages, pre- and post-award interest, interim costs and attorneys’ fees, specific performance, and injunctive relief, provided that the arbitrator may not declare any of the trademarks owned by us or our affiliates generic or otherwise invalid, or award any punitive or exemplary damages against any party to the arbitration proceeding (we and you hereby waiving to the fullest extent permitted by law, any such right to or claim for any punitive or exemplary damages against any party to the arbitration proceedings). In any arbitration brought pursuant to this arbitration provision, and in any action in which a party seeks to enforce compliance with this arbitration provision, the prevailing party shall be awarded its costs and expenses, including attorneys’ fees, incurred in connection therewith.

We and you agree to be bound by the provisions of any applicable contractual or statutory limitations provision, whichever expires earlier. We and you further agree that, in any arbitration proceeding, each party must submit or file any claim which would constitute a compulsory counterclaim (as defined by Rule 13 of the Federal Rules of Civil Procedure) within the same proceeding. Any claim which is not submitted or filed as required will be forever barred. The arbitrator may not consider any settlement discussions or offers that might have been made by either you or us.

We and you agree that arbitration will be conducted on an individual basis and that an arbitration proceeding between us and any of our affiliates, or our and their respective shareholders, owners, officers, directors, agents, representatives and employees, on the one hand, and you (or your owners, guarantors,

affiliates, and employees), on the other hand, may not be: (i) conducted on a class-wide basis; (ii) commenced, conducted or consolidated with any other arbitration proceeding; (iii) joined with any separate claim of an unaffiliated third-party; or (iv) brought on your behalf by any association or agent. Notwithstanding the foregoing, if any court or arbitrator determines that all or any part of the preceding sentence is unenforceable with respect to a dispute, controversy or claim that otherwise would be subject to arbitration under this Section, then all parties agree that this arbitration clause shall not apply to that dispute, controversy or claim and that such dispute, controversy or claim shall be resolved in a judicial proceeding in accordance with the dispute resolution provisions of this Agreement.

We and you agree that, in any arbitration arising as described in this Section, the arbitrator shall have full authority to manage any necessary exchange of information among the parties with a view to achieving an efficient and economical resolution of the dispute.

The provisions of this Section are intended to benefit and bind certain third-party non-signatories and will continue in full force and effect subsequent to and notwithstanding the expiration or termination of the Agreements.

Any provisions of this Agreement below that pertain to judicial proceedings shall be subject to the agreement to arbitrate contained in this Section.

H. **Governing Law.** Except to the extent governed by the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. Sections 1051 et seq.), or other United States federal law, this Agreement or any related agreements, the Franchise, and all claims arising from the relationship between us (or any of our affiliates, and our and their respective owners, officers, directors, agents, representatives, and employees) and you (and your respective owners, guarantors, affiliates, and employees), whether couched in tort or contract, will be governed by the laws of the State of Oregon, without regard to its conflict of laws rules, except that any state law regulating the offer or sale of franchises or governing the relationship of a franchisor and its franchisee will not apply unless its jurisdictional requirements are met independently without reference to this Section. If any of the provisions of this Agreement which relate to restrictions on you and your owners' competitive activities are found unenforceable under Oregon law, the enforceability of those provisions will be governed by the laws of the state in which your Restaurant is located.

I. **Consent to Jurisdiction.** Subject to the obligation to arbitrate under Section 17.G above and the provisions below, you and your owners agree that all actions arising under this Agreement or any related agreements, or otherwise as a result of the relationship between you (and your respective owners, guarantors, affiliates, and employees) and us (or any of our affiliates, and our and their respective owners, officers, directors, agents, representatives, and employees) must be commenced in the court nearest to our or, as applicable, our successor's or assign's then current principal place of business (currently Eugene, Oregon), and you (and each owner) irrevocably submit to the jurisdiction of that court and waive any objection you (or the owner) might have to either the jurisdiction of or venue in that court.

J. **Waiver of Punitive Damages, Jury Trial, and Class Action.** **EXCEPT FOR YOUR OBLIGATION TO INDEMNIFY US FOR THIRD PARTY CLAIMS UNDER SECTION 16.D, WE AND YOU (AND YOUR OWNERS) WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT TO OR CLAIM FOR ANY PUNITIVE OR EXEMPLARY DAMAGES AGAINST THE OTHER AND AGREE THAT, IN THE EVENT OF A DISPUTE BETWEEN US AND YOU, THE PARTY MAKING A CLAIM WILL BE LIMITED TO EQUITABLE RELIEF AND TO RECOVERY OF ANY ACTUAL DAMAGES IT SUSTAINS.**

**WE AND YOU IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT BY EITHER OF US.**

**WE AND YOU AGREE THAT ANY PROCEEDING WILL BE CONDUCTED ON AN INDIVIDUAL BASIS AND THAT ANY PROCEEDING BETWEEN US AND ANY OF OUR AFFILIATES, OR OUR AND THEIR RESPECTIVE OWNERS, OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES, ON THE ONE HAND, AND YOU (OR YOUR OWNERS, OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES), ON THE OTHER HAND, MAY NOT BE: (I) CONDUCTED ON A CLASS-WIDE BASIS, (II) COMMENCED, CONDUCTED OR CONSOLIDATED WITH ANY OTHER PROCEEDING, (III) JOINED WITH ANY CLAIM OF AN UNAFFILIATED THIRD-PARTY, OR (IV) BROUGHT ON YOUR BEHALF BY ANY ASSOCIATION OR AGENT.**

**K. Injunctive Relief.** Nothing in this Agreement, including the provisions of Section 17.G, bars our right to obtain specific performance of the provisions of this Agreement and injunctive relief against any threatened or actual conduct that will cause us, the Marks or the Franchise System loss or damage, under customary equity rules, including applicable rules for obtaining restraining orders and temporary or preliminary injunctions. You agree that we may seek such relief from any court of competent jurisdiction in addition to such further or other relief as may be available to us at law or in equity. You agree that we will not be required to post a bond to obtain injunctive relief and that your only remedy if an injunction is entered against you will be the dissolution of that injunction, if warranted, upon due hearing, and you hereby expressly waive any claim for damages caused by such injunction.

**L. Binding Effect.** This Agreement is binding upon us and you and our and your respective executors, administrators, heirs, beneficiaries, permitted assigns, and successors in interest. Subject to our right to modify the Operations Manual and System Standards, this Agreement may not be modified except by a written agreement signed by our and your duly-authorized officers.

**M. Limitations of Claims; No Implied Covenant.** You and your owners agree not to bring any claim asserting that any of the Marks are generic or otherwise invalid. Except with regard to your obligation to pay us and our affiliates Royalty payments, the Brand Promotion Fund contributions and other advertising fees, and other payments due from you pursuant to this Agreement, any claims between the parties must be commenced in accordance with this Agreement within one year from the date on which the party asserting the claim knew or should have known of the facts giving rise to the claim, or such claim shall be barred. The parties acknowledge that such time limit might be shorter than otherwise allowed by law. You and your owners agree that your and their sole recourse for claims arising between the parties shall be against us or our successors and assigns. You and your owners agree that our and our affiliates' members, managers, shareholders, directors, officers, employees, representatives and agents shall not be personally liable nor named as a party in any action between us or our affiliates and you or your owners.

No previous course of dealing shall be admissible to explain, modify, or contradict the terms of this Agreement. No implied covenant of good faith and fair dealing shall be used to alter the express terms of this Agreement.

**N. Agreement Effectiveness.** This Agreement shall not be effective until accepted by us as evidenced by dating and signing by an officer or other duly authorized representative of ours. Notwithstanding that this Agreement shall not be effective until signed by us, we reserve the right to make the effective date of this Agreement the date on which you signed the Agreement.

**O. Construction.** The preambles and exhibits are a part of this Agreement which, together with the System Standards contained in the Operations Manual (which may be periodically modified, as provided in Sections 4.C, 8.J, and 17.L above), constitutes our and your entire agreement, and there are no other oral or written understandings or agreements between us and you, or oral or written representations by us, relating to the subject matter of this Agreement, the franchise relationship, or your Restaurant (any

understandings or agreements reached, or any representations made, before this Agreement are superseded by this Agreement). Nothing in this or in any related agreement, however, is intended to disclaim the representations we made in the Franchise Disclosure Document that we furnished to you. Any policies that we adopt and implement from time to time to guide us in our decision-making are subject to change, are not a part of this Agreement, and are not binding on us. Except as provided in Section 16.D., nothing in this Agreement is intended or deemed to confer any rights or remedies upon any person or legal entity not a party to this Agreement.

You agree that whenever this Agreement allows or requires us to take actions or make decisions, we may do so in our sole and unfettered discretion, even if you believe our action or decision is unreasonable, unless the Agreement expressly and specifically requires that we act reasonably or refrain from acting unreasonably in connection with the particular action or decision. The headings of the sections and paragraphs are for convenience only and do not define, limit, or construe the contents of these sections or paragraphs.

References in this Agreement to “we,” “us,” and “our,” with respect to all of our rights and all of your obligations to us under this Agreement, include any of our affiliates with whom you deal. The term “**affiliate**” means any person or entity directly or indirectly owned or controlled by, under common control with, or owning or controlling you or us. “**Control**” means the power to direct or cause the direction of management and policies.

If two or more persons are at any time the owners of the Franchise and your Restaurant, whether as partners or joint venturers, their obligations and liabilities to us will be joint and several. References to “**owner**” mean any person holding a direct or indirect ownership interest (whether of record or beneficially) or voting rights in you (or a transferee of this Agreement and your Restaurant or an ownership interest in you), including any person who has a direct or indirect interest in you (or a transferee), this Agreement, the Franchise, or your Restaurant and any person who has any other legal or equitable interest, or the power to vest in himself or herself any legal or equitable interest, in their revenue, profits, rights, or assets. References to a “**controlling interest**” in you or one of your owners (if an Entity) means the percent of the voting shares or other voting rights that results from dividing one hundred percent (100%) of the ownership interests by the number of owners. In the case of a proposed transfer of an ownership interest in you or one of your owners, the determination of whether a “controlling interest” is involved must be made as of both immediately before and immediately after the proposed transfer to see if a “controlling interest” will be transferred (because of the number of owners before the proposed transfer) or will be deemed to have been transferred (because of the number of owners after the proposed transfer). “**Person**” means any natural person, corporation, limited liability company, general or limited partnership, unincorporated association, cooperative, or other legal or functional entity.

Unless otherwise specified, all references to a number of days shall mean calendar days and not business days. The term “**your Restaurant**” includes all of the assets of the Restaurant you operate under this Agreement, including its revenue and the Lease. “**Including**” means “including without limitation” and “including, but not limited to” unless otherwise noted. All amounts payable by you or your owners to us or our affiliates must be in United States dollars.

P. **Lawful Attorney.** Notwithstanding anything otherwise contained in this Agreement, if you do not execute and deliver any documents or other assurances so required of you pursuant to this Agreement or if we take over the management or operation of the business operated hereunder on your behalf for any reason, you hereby irrevocably appoint us as your lawful attorney with full power and authority, to execute and deliver in your name any such documents and assurances, and to manage or operate the business on your behalf, and to do all other acts and things, all in such discretion as we may desire, and you hereby agree to ratify and confirm all of our acts as your lawful attorney and to indemnify

and save us harmless from all claims, liabilities, losses, or damages suffered in so doing. You also hereby appoint us as your attorney-in-fact to receive and inspect your confidential sales and other tax records and hereby authorize all tax authorities to provide such information to us for all tax periods during the term of this Agreement.

#### 18. NOTICES AND PAYMENTS.

All written notices, reports, and payments permitted or required to be delivered by this Agreement or the Operations Manual will be deemed to be delivered on the earlier of the date of actual delivery or one of the following:

- (a) at the time delivered by hand;
- (b) at the time delivered via computer transmission and, in the case of the Royalty, Brand Promotion Fund contributions, and other amounts due, at the time we actually receive payment;
- (c) one business day after transmission by facsimile or other electronic system if the sender has confirmation of successful transmission;
- (d) one business day after being placed in the hands of a nationally recognized commercial courier service for next business day delivery; or
- (e) three business days after placement in the United States Mail by Registered or Certified Mail, Return Receipt Requested, postage prepaid.

Notices must be addressed to the party to be notified at its most current principal business address of which the notifying party has notice, or if to you, notice may be delivered to your Restaurant. Any required payment or report which we do not actually receive during regular business hours on the date due (or postmarked by postal authorities at least two days before then) will be deemed delinquent.

#### 19. ELECTRONIC MAIL.

You acknowledge and agree that exchanging information with us by e-mail is efficient and desirable for day-to-day communications and that we and you may utilize e-mail for such communications. You authorize the transmission of e-mail by us and our employees, vendors, and affiliates (“**Official Senders**”) to you during the term of this Agreement.

You further agree that: (a) Official Senders are authorized to send e-mails to those of your employees as you may occasionally authorize for the purpose of communicating with us; (b) you will cause your officers, directors and employees to give their consent to Official Senders’ transmission of e-mails to them; (c) you will require such persons not to opt out or otherwise ask to no longer receive e-mails from Official Senders during the time that such person works for or is affiliated with you; and (d) you will not opt out or otherwise ask to no longer receive e-mails from Official Senders during the term of this Agreement.

This consent given in this Section 19 shall not apply to the provision of notice by either party under this Agreement pursuant to Section 18 unless we and you otherwise agree in a written document manually signed by both parties.

20. **COUNTERPARTS.**

This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Faxed, scanned or electronic signatures shall have the same effect and validity, and may be relied upon in the same manner, as original signatures.

*(Signature page to follow)*

**IN WITNESS WHEREOF**, the parties have executed and delivered this Agreement on the dates noted below, to be effective as of the Effective Date.

**WE ARE CRACKIN' LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
**[Franchise Owner Name]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_



**EXHIBIT A**  
**TO FRANCHISE AGREEMENT**  
**BETWEEN WE ARE CRACKIN' LLC**  
**AND \_\_\_\_\_**  
**DATED \_\_\_\_\_, 20\_\_**

**Effective Date: This Exhibit A is current and complete**  
**as of \_\_\_\_\_, 20\_\_**

**1. Form of Owner.**

(a) **Individual Proprietorship.** Your owner(s) (is) (are) as follows: \_\_\_\_\_

(b) **Corporation, Limited Liability Company, or Partnership.** You were incorporated or formed on \_\_\_\_\_, under the laws of the State of \_\_\_\_\_. You have not conducted business under any name other than your corporate, limited liability company, or partnership name unless indicated in the following: \_\_\_\_\_. Your federal tax identification number is \_\_\_\_\_. The following is a list of your directors, if applicable, and officers as of the effective date shown above:

<u>Name of Each Director/Officer</u>	<u>Position(s) Held</u>

2. **Owners.** The following identifies the owner that you have designated as, and that we approve to be, the Managing Owner and lists the full name of each person who is one of your owners (as defined in the Franchise Agreement), or an owner of one of your owners, and fully describes the nature of each owner's interest (attach additional pages if necessary).

	<u>Owner's Name</u>	<u>Type / Percentage of Interest</u>
<b>Managing Owner:</b>		%
Other Owners:		%
		%
		%

3. **Restaurant Premises:** \_\_\_\_\_

**WE ARE CRACKIN' LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
[Franchise Owner Name]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT B**  
**TO THE FRANCHISE AGREEMENT**

**WE ARE CRACKIN' LLC**  
**REQUIRED LEASE ADDENDUM**

TO LEASE AGREEMENT DATED \_\_\_\_\_  
BY AND BETWEEN

\_\_\_\_\_, AS "LANDLORD"  
AND

\_\_\_\_\_, AS "TENANT" FOR THE DEMISED  
PREMISES ("PREMISES") DESCRIBED THEREIN

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This Lease Addendum and the provisions hereof are hereby incorporated into the body of the lease to which this Lease Addendum is attached (the "Lease"), and the provisions hereof shall be cumulative of those set forth in the Lease, but to the extent of any conflict between any provisions of this Lease Addendum and the provisions of the Lease, this Lease Addendum shall govern and control.

1. Consent to Collateral Assignment to Franchisor; Disclaimer. Landlord acknowledges that Tenant intends to operate an [Elmer's Breakfast · Lunch · Dinner<sup>®</sup>] [Elmer's Kitchen Breakfast · Brunch · Mimosas<sup>™</sup>] [Egg N' Joe<sup>®</sup>] restaurant in the Premises, and that Tenant's rights to operate an [Elmer's Breakfast · Lunch · Dinner<sup>®</sup>] [Elmer's Kitchen Breakfast · Brunch · Mimosas<sup>™</sup>] [Egg N' Joe<sup>®</sup>] restaurant and to use the [Elmer's Breakfast · Lunch · Dinner<sup>®</sup>] [Elmer's Kitchen Breakfast · Brunch · Mimosas<sup>™</sup>] [Egg N' Joe<sup>®</sup>] name, trademarks and service marks (the "Marks") are solely pursuant to a franchise agreement ("Franchise Agreement") between Tenant and We Are Crackin' LLC ("Franchisor"). Tenant's operations at the Premises are independently owned and operated. Landlord acknowledges that Tenant alone is responsible for all obligations under the Lease unless and until Franchisor or another franchisee expressly, and in writing, assumes such obligations and takes actual possession of the Premises. Notwithstanding any provisions of this Lease to the contrary, Landlord hereby consents, without payment of a fee and without the need for further Landlord consent, to (i) the collateral assignment of Tenant's interest in this Lease to Franchisor to secure Tenant's obligations to Franchisor under the Franchise Agreement, and (ii) Franchisor's (or any entity owned or controlled by, or under common control with, Franchisor) succeeding to Tenant's interest in the Lease as a result of Franchisor's exercise of rights remedies under such collateral assignment or as a result of Franchisor's termination of, or exercise of rights or remedies granted in or under, any other agreement between Franchisor and Tenant, and (iii) Tenant's, Franchisor's or any other franchisee of Franchisor's assignment of the Lease to another franchisee of Franchisor with whom Franchisor has executed its then-standard franchise agreement. Landlord and Tenant agree and acknowledge that simultaneously with such assignment pursuant to the immediately preceding sentence, Franchisor shall be released from all liability under the Lease or otherwise accruing after the date of such assignment (in the event Franchisor is acting as the assignor under such assignment), but neither Tenant nor any other franchisee shall be afforded such release in the event Tenant/such franchisee is the assignor unless otherwise agreed by Landlord. Landlord further agrees that all unexercised renewal or extension rights shall not be terminated in the event of any assignment referenced herein, but shall inure to the benefit of the applicable assignee.

2. Use of Premises. Without limitation of uses permitted under the Lease, but in expansion thereof, Tenant shall have the right to use the Premises for purposes of operating a family restaurant featuring

breakfast foods, other food products and beverages, and related products and services periodically approved by Franchisor under the trade name [“Elmer’s Breakfast · Lunch · Dinner<sup>®</sup>”] [Elmer’s Kitchen Breakfast · Brunch · Mimosas<sup>™</sup>] [“Egg N’ Joe<sup>®</sup>”].

3. Adjoining Use. No operation currently exists, and Landlord shall not permit, directly or indirectly, a restaurant whose sale of breakfast foods for on-premises consumption, delivery, or carryout exceeds 10% of such restaurant’s total gross receipts, or any adult bookstore, or adult theater to be operated within five hundred (500) feet of the Premises in any building owned, leased, or controlled by Landlord.

4. Compliance of Premises With Applicable Law; Parking. Landlord represents and warrants that as of the date hereof the Premises are in compliance with all applicable law, including without limitation parking sufficient to comply with the use of the Premises as provided in paragraph 2 above. Tenant shall have the right to use parking spaces for its guests, invitees and employees in an amount at least sufficient to comply with applicable zoning and other laws. The use of the parking spaces is provided by Landlord to Tenant without additional charge.

5. Radius/Relocation. Any radius restrictions or relocation provisions found in the Lease are hereby deleted and of no further force or effect.

6. Remodeling, Décor, Signs and Marks. Landlord agrees that Tenant shall have the right to remodel, equip, paint, and decorate the interior of the Premises and to display the Marks, signs, and awnings on the interior and exterior of the Premises as Tenant is required to do pursuant to the Franchise Agreement and any successor Franchise Agreement under which Tenant may operate an [Elmer’s Breakfast · Lunch · Dinner<sup>®</sup>] [Elmer’s Kitchen Breakfast · Brunch · Mimosas<sup>™</sup>] [Egg N’ Joe<sup>®</sup>] restaurant in the Premises; provided, however, that Tenant shall make no structural changes to the Premises without Landlord’s consent.

7. Tenant’s Signage. Notwithstanding anything in the Lease contained to the contrary or in conflict, Landlord hereby grants and approves the following signage rights:

7.1. Landlord agrees to allow Tenant to use Franchisor’s standard sign and awning package to the maximum extent permitted by local governmental authorities.

7.2. Tenant shall be provided, at Tenant’s sole cost and expense, with a panel on any pylon/monument/directory sign for the development in which the Premises is located, and shall be permitted to install a standard sign thereon as approved by Franchisor, including without limitation Franchisor’s logo.

8. Notice and Cure Rights to Franchisor. Prior to exercising any remedies hereunder (except in the event of imminent danger to the Premises), Landlord shall give Franchisor written notice of any default by Tenant or expiration or termination of the Lease, and commencing upon receipt thereof by Franchisor, Franchisor shall have 15 additional days to the established cure period as is given to Tenant under the Lease for such default, provided that in no event shall Franchisor have a cure period of less than (i) 15 days after Franchisor’s receipt of such notice as to monetary defaults or (ii) 30 days after Franchisor’s receipt of such notice as to non-monetary defaults. Landlord agrees to accept cure tendered by Franchisor as if the same was tendered by Tenant, but Franchisor has no obligation to cure such default. The initial address for notices to Franchisor is as follows:

We Are Crackin' LLC  
Attention: Gerald Scott, President  
363 High Street  
Eugene, Oregon 97401

9. Non-disturbance from Mortgage Lenders. Notwithstanding anything contained in the Lease to the contrary or in conflict, it shall be a condition of the Lease being subordinated to any mortgage, deed of trust, deed to secure debt or similar encumbrance on the Premises that the holder of such encumbrance agree not to disturb Tenant's rights under this Lease or Tenant's possession of the Premises, so long as Tenant is not in default of its obligations hereunder beyond an applicable grace or cure period provided herein (as may be extended from time to time pursuant to paragraph 6 immediately above).

***CHECK THE FOLLOWING PARAGRAPH THAT APPLIES. CHECK ONLY ONE. IF NONE IS CHECKED, THEN CLAUSE a) BELOW WILL BE APPLICABLE, AND CLAUSE b) BELOW WILL BE DEEMED DELETED***

A)  Landlord represents and warrants that on the date hereof no mortgage, deed of trust, deed to secure debt or similar encumbrance encumbers the Premises.

B)  A mortgage, deed of trust or deed to secure debt currently encumbers the Premises. It is a condition precedent to Tenant's obligations under this Lease that the holder of such encumbrance enter into a written subordination and non-disturbance agreement with Tenant, in form acceptable to Franchisor.

10. Financing of Trade Fixtures by Franchisor and Security Interest. Any security interest and/or Landlord's lien in Tenant's trade fixtures, 'trade dress', equipment and other personal property in the Premises is hereby subordinated to any security interest and pledge granted to Franchisor in such items. The parties acknowledge that there may be certain personal property in the Premises which are not owned by Tenant, which property shall not be subject to any lien of Landlord. Upon request, Landlord shall grant the party who owns such property reasonable access to the Premises for the sole purpose of removing such property, provided such party repairs any damage caused by such removal and otherwise complies with Landlord's reasonable requirements with respect to such access.

11. Tenant Approvals. Notwithstanding anything in the Lease to the contrary, if Tenant is unable to obtain licenses, building permits, signage permits, variances, subdivision approvals, special use permits and other governmental approvals necessary to construct and operate an [Elmer's Breakfast · Lunch · Dinner<sup>®</sup>] [Elmer's Kitchen Breakfast · Brunch · Mimosas<sup>™</sup>] [Egg N' Joe<sup>®</sup>] restaurant (all of the foregoing licenses, permits and approvals are hereinafter referred to as the "Tenant Approvals") within 18 weeks after Landlord's approval of Tenant's Plans, Tenant may terminate this Lease by written notice to Landlord, effective as of the date of delivery of written notice to Landlord thereof and any remaining security deposit shall be returned to Tenant, and any rentals paid in advance shall be prorated accordingly.

12. Beer, Wine and Liquor License. Notwithstanding anything in the Lease to the contrary, unless Franchisor has waived, in writing, Tenant's obligation to serve alcoholic beverages in the restaurant, if a license for beer, wine and liquor sales at the Premises has not been unconditionally issued to Tenant within 120 days after Landlord's approval of Tenant's Plans, Tenant may terminate this Lease by written notice to Landlord, effective as of the date of delivery of written notice to Landlord thereof and any remaining security deposit shall be returned to Tenant, and any rentals paid in advance shall be prorated accordingly.

13. Third Party Beneficiary. Franchisor is a third-party beneficiary of this Lease Addendum. Therefore, Franchisor shall have all rights (but not the obligation) to enforce the terms of this Lease Addendum.

14. Franchisor Right to Enter. Landlord acknowledges that, under the Franchise Agreement, Franchisor or its appointee has the right to assume the management and operation of the Tenant's business, on Tenant's behalf, under certain circumstances (to-wit: Tenant's abandonment, Tenant's failure to timely cure its default of the Franchise Agreement, and while Franchisor evaluates its right to purchase the restaurant). Landlord agrees that Franchisor or its appointee may enter upon the Premises for purposes of assuming the management and operation of Tenant's restaurant as provided in the Franchise Agreement and, if it chooses to do so, it will do so in the name of the Tenant and without assuming any direct liability under the Lease. Further, upon the expiration or earlier termination of this Lease or the Franchise Agreement, Franchisor or its designee may enter upon the Premises for the purpose of removing all signs and other material bearing the [Elmer's Breakfast · Lunch · Dinner®] [Elmer's Kitchen Breakfast · Brunch · Mimosas™] [Egg N' Joe®] name or trademarks, service marks or other commercial symbols of Franchisor.

15. Amendments. Tenant and Landlord agree that the Lease may not be terminated, modified or amended without Franchisor's prior written consent, nor shall Landlord accept surrender of the Premises without Franchisor's prior written consent. Tenant agrees to promptly provide Franchisor with copies of all proposed modifications or amendments and true and correct copies of the signed modifications and amendments.

16. Copy of Lease. Landlord agrees to provide Franchisor with a copy of the fully-executed Lease within 10 days of its full execution by Landlord and Tenant to the address shown in paragraph 6 above.

17. Successors and Assigns. All of Franchisor's rights, privileges and interests under this Lease Addendum and the Lease shall inure to the benefit of Franchisor's successors and assigns. All provisions of this Lease Addendum applicable to Tenant and Landlord shall be binding upon any successor or assign of Tenant or Landlord under the Lease.

18. Counterparts. This Lease Addendum may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Faxed, scanned or electronic signatures shall have the same effect and validity, and may be relied upon in the same manner, as original signatures.

AGREED and executed and delivered under seal by the parties hereto as of the day and year of the Lease.

**LANDLORD:** \_\_\_\_\_

**TENANT:** \_\_\_\_\_

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

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

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

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

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

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

**EXHIBIT C**  
**TO THE FRANCHISE AGREEMENT**

**GUARANTY AND ASSUMPTION OF OBLIGATIONS**

**THIS GUARANTY AND ASSUMPTION OF OBLIGATIONS** is given this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_, by \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

In consideration of, and as an inducement to, the execution of that certain Franchise Agreement (as amended, modified, restated or supplemented from time to time, the “**Agreement**”) on this date by **WE ARE CRACKIN’ LLC** (“**we**”), each of the undersigned personally and unconditionally (a) guarantees to us and our successors and assigns, for the term of the Agreement and afterward as provided in the Agreement, that \_\_\_\_\_ (“**Franchise Owner**”) will punctually pay and perform each and every undertaking, agreement, and covenant set forth in the Agreement and (b) agrees to be personally bound by, and personally liable for the breach of, each and every provision in the Agreement, both monetary obligations and obligations to take or refrain from taking specific actions or to engage or refrain from engaging in specific activities, including the non-competition, confidentiality, and transfer requirements.

Each of the undersigned consents and agrees that: (1) his or her direct and immediate liability under this Guaranty will be joint and several, both with Franchise Owner and among other guarantors; (2) he or she will render any payment or performance required under the Agreement upon demand if Franchise Owner fails or refuses punctually to do so; (3) this liability will not be contingent or conditioned upon our pursuit of any remedies against Franchise Owner or any other person; (4) this liability will not be diminished, relieved, or otherwise affected by any extension of time, credit, or other indulgence which we may from time to time grant to Franchise Owner or to any other person, including, without limitation, the acceptance of any partial payment or performance or the compromise or release of any claims, none of which will in any way modify or amend this Guaranty, which will be continuing and irrevocable during the term of the Agreement; and (5) at our request, the undersigned shall present updated financial information to us as reasonably necessary to demonstrate his or her ability to satisfy the financial obligations of Franchise Owner under this Agreement.

Each of the undersigned waives: (i) all rights to payments and claims for reimbursement or subrogation which any of the undersigned may have against Franchise Owner arising as a result of the undersigned’s execution of and performance under this Guaranty; and (ii) acceptance and notice of acceptance by us of his or her undertakings under this Guaranty, notice of demand for payment of any indebtedness or non-performance of any obligations hereby guaranteed, protest and notice of default to any party with respect to the indebtedness or nonperformance of any obligations hereby guaranteed, and any other notices to which he or she may be entitled.

Each of the undersigned represents and warrants that, if no signature appears below for such undersigned’s spouse, such undersigned is either not married or, if married, is a resident of a state which does not require the consent of both spouses to encumber the assets of a marital estate.

The provisions contained in Section 17 (Enforcement) of the Agreement, including Section 17.G (Arbitration), Section 17.I (Consent to Jurisdiction) and Section 17.D (Costs and Attorneys’ Fees) of the Agreement are incorporated into this Guaranty by reference and shall govern this Guaranty and any disputes between the undersigned and us. The Guarantors shall reimburse us for all costs and expenses we incur in connection with enforcing the terms of this Guaranty.

By signing below, the undersigned spouse of the Guarantor indicated below (if the spouse is not himself/herself an owner of Franchise Owner), acknowledges and consents to the guaranty given herein by his/her spouse. Such consent also serves to bind the assets of the marital estate to Guarantor's performance of this Guaranty. We confirm that a spouse who signs this Guaranty solely in his or her capacity as a spouse (and not as an owner) is signing merely to acknowledge and consent to the execution of the Guaranty by his or her spouse and to bind the assets of the marital estate as described therein and for no other purpose (including, without limitation, to bind the spouse's own separate property).

Each Guarantor that is a business entity, retirement or investment account, or trust acknowledges and agrees that if Franchisee (or any of its affiliates) is delinquent in payment of any amounts guaranteed hereunder, that no dividends or distributions may be made by such Guarantor (or on such Guarantor's account) to its owners, accountholders or beneficiaries, for so long as such delinquency exists, subject to applicable law.

**IN WITNESS WHEREOF**, each of the undersigned has affixed his or her signature on the same day and year as the Agreement was executed.

**GUARANTORS:**

GUARANTOR(S)	SPOUSE(S)
<p><b>#1:</b></p> <p>Signature: _____</p> <p>Name: _____</p> <p>Address: _____</p> <p>_____</p> <p>Email: _____</p>	<p><b>#1:</b></p> <p>Signature: _____</p> <p>Name: _____</p> <p>Address: _____</p> <p>_____</p> <p>Email: _____</p>
<p><b>#2:</b></p> <p>Signature: _____</p> <p>Name: _____</p> <p>Address: _____</p> <p>_____</p> <p>Email: _____</p>	<p><b>#2:</b></p> <p>Signature: _____</p> <p>Name: _____</p> <p>Address: _____</p> <p>_____</p> <p>Email: _____</p>
<p><b>#3:</b></p> <p>Signature: _____</p> <p>Name: _____</p> <p>Address: _____</p> <p>_____</p> <p>Email: _____</p>	<p><b>#3:</b></p> <p>Signature: _____</p> <p>Name: _____</p> <p>Address: _____</p> <p>_____</p> <p>Email: _____</p>



**EXHIBIT D**

**AGREEMENT AND CONDITIONAL CONSENT TO TRANSFER**

## AGREEMENT AND CONDITIONAL CONSENT TO TRANSFER

### Location:

**THIS AGREEMENT AND CONDITIONAL CONSENT TO TRANSFER** (“**Consent**”) is made by and among **WE ARE CRACKIN’ LLC**, an Oregon limited liability company (“**Franchisor**”); \_\_\_\_\_ (“**Seller**”); \_\_\_\_\_ (“**Seller Guarantor**”); and \_\_\_\_\_ (“**Buyer**”), effective as of the Effective Date (defined below). All terms capitalized in this Consent and not otherwise defined herein shall have the meanings ascribed to them in the Seller Franchise Agreement (defined below) or the Buyer Franchise Agreement (defined below), as the case may be.

### Recitals

A. Seller is the franchisee under that certain franchise agreement dated \_\_\_\_\_, as it may have been subsequently amended (the “**Seller Franchise Agreement**”), governing the ownership and operation of the [Elmer’s Breakfast · Lunch · Dinner<sup>®</sup> Restaurant] [Elmer’s Kitchen Breakfast · Brunch · Mimosas<sup>™</sup> Restaurant] [Egg N’ Joe<sup>®</sup> Restaurant] located at \_\_\_\_\_ (the “**Restaurant**”).

B. Seller Guarantor personally guaranteed all of the obligations of Seller under the Seller Franchise Agreement.

C. Seller has notified Franchisor that it and Buyer have entered into a purchase and sale agreement dated \_\_\_\_\_ (the “**Purchase Agreement**”), pursuant to which Seller has agreed to sell, and Buyer has agreed to purchase, all of the rights, obligations and assets relating to the Restaurant (the “**Interests**”).

D. Buyer has also agreed to (1) assume the lease obligations for the Restaurant premises, and (2) enter into Franchisor’s current form of franchise agreement (the “**Buyer Franchise Agreement**”) (the transfer of Interests under the Purchase Agreement, the assumption by Buyer of the Restaurant’s lease obligations and the execution of the Buyer Franchise Agreement, collectively referred to as the “**Transfer**”).

E. Franchisor has agreed not to exercise its right of first refusal as set forth in the Seller Franchise Agreement and has agreed to approve the Transfer of the Restaurant in accordance with the terms, and subject to the conditions, set forth in this Consent.

### Agreement

**NOW, THEREFORE**, for and in consideration of the foregoing recitals, which are incorporated herein, the mutual covenants contained herein and other valuable consideration, receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. **Effective Date.** The “**Effective Date**” will be the date on which Franchisor signs this Consent acknowledging its consent to the proposed Transfer, which date shall be consistent with the effective date of the Buyer Franchise Agreement.

2. **Purchase Agreement.** Seller and Buyer represent and warrant that the form of Purchase Agreement provided to Franchisor is the final version of the Purchase Agreement and is the version which

has been, or will be, executed by them to effectuate the Transfer. The Purchase Agreement will not be amended, and the terms set forth in the Purchase Agreement will not be changed, except with the prior written consent of Franchisor.

3. **Conditional Consent; Release of Guaranty.** As of the Closing Date, the Seller Franchise Agreement will terminate and operation of the Restaurant will thereafter be governed by the Buyer Franchise Agreement. Upon termination of the Seller Franchise Agreement, neither Seller nor Seller Guarantor shall have any further rights or obligations thereunder, except that neither Seller nor Seller Guarantor shall be released from (i) any obligations to pay money owed to Franchisor under the Seller Franchise Agreement or the guaranty prior to the Closing Date or such other date as may be set forth herein; or (ii) the provisions of the Seller Franchise Agreement that, either expressly or by their nature, survive termination of the Seller Franchise Agreement (including, without limitation, provisions related to confidential information, post-termination restrictive covenants, indemnification, notice, governing law, jurisdiction and venue, and dispute resolution). Notwithstanding anything in this Consent to the contrary, the consent and release set forth herein are expressly contingent upon compliance with the following terms and conditions on or before the date of the closing of the Transfer (“**Closing Date**”):

- a. **Payment of Amounts Due.** Seller will pay all amounts due and owing from Seller (or an affiliate of Seller) to Franchisor through the Closing Date.
- b. **Transfer Fee.** Upon execution of this Consent by Seller and Buyer, a transfer fee in the amount of \$ \_\_\_\_\_ (“**Transfer Fee**”) shall be paid to Franchisor via cashier’s check or wire transfer. Except as described in Section 5 below, Seller and Buyer acknowledge and agree that Franchisor has earned the Transfer Fee upon receipt thereof and that the Transfer Fee is not refundable.
- c. **Training.** Buyer’s Designated Managers shall complete Initial Training (as defined and described in the Buyer Franchise Agreement) to Franchisor’s satisfaction prior to the Closing Date.
- d. **Right to Possession.** Buyer will provide satisfactory evidence to Franchisor that Buyer has the right to possession of the premises for the Restaurant by way of lease assignment and/or assumption or otherwise (with all required landlord consents), as more fully described in Section 6 below.
- e. **Restaurant Possession.** Prior to the Closing Date and changing possession and/or ownership of the Restaurant, Seller and Buyer shall obtain the written consent and authorization of Franchisor.
- f. **Seller Financing.** Regardless of any provision of the Purchase Agreement (or any other agreement) to the contrary, if Seller provides financing to Buyer for any portion of the purchase price for the Restaurant and such financing is secured by any assets of the Restaurant, Seller acknowledges and agrees that Seller does not and will not have any interests or rights, revisionary or otherwise, to operate the Restaurant after the Closing Date pursuant to the Seller Franchise Agreement or Buyer Franchise Agreement. Further, Seller agrees that all of the Buyer’s obligations under promissory notes, agreements, or security interests are subordinate to the Buyer’s obligation to pay Royalty, Brand Promotion Fund contributions, and other amounts due to Franchisor, its affiliates, and third party vendors, and otherwise to comply with the Buyer Franchise Agreement.

- g. **Restaurant Upgrades/Renovations.** Within sixty (60) days following the Closing Date, Buyer will complete the upgrades and renovations of the Restaurant, at Buyer's expense, as required to improve the condition and appearance of the Restaurant consistent with Franchisor's current System Standards and other Franchise System requirements.
- 4. **Waiver of Right of First Refusal.** Franchisor hereby waives its right of first refusal to purchase the Interests, as set forth in the Seller Franchise Agreement.
- 5. **Contingency.** This Consent and the Buyer Franchise Agreement may be terminated if:
  - a. The Transfer between Seller and Buyer is cancelled, or otherwise not approved by Franchisor;
  - b. Seller and/or Buyer fail to meet any of the conditions and/or requirements set forth in this Consent, the Seller Franchise Agreement, and/or the Buyer Franchise Agreement; or
  - c. Seller and Buyer fail to change possession and/or ownership of the Restaurant within ninety (90) days following receipt of Franchisor's written consent and authorization (as described in Section 3.e above).

In the event of such termination, Seller and Buyer will execute a termination and release agreement (in a form acceptable to Franchisor) pursuant to which Franchisor will refund fifty percent (50%) of the Transfer Fee, without interest.

6. **Assignment/Assumption of Premises Lease.** Seller and Buyer acknowledge that one of the requirements of Franchisor's consent is that the Restaurant premises lease be assigned to and/or otherwise assumed by the Buyer and that the lease for the Restaurant premises may require consent of and/or notice to the landlord with respect to such assignment and/or assumption. Provided (i) Buyer takes an assignment of the existing lease for the Restaurant; (ii) the terms of such lease are not amended; and (iii) the lease for the Restaurant includes the terms of Franchisor's required lease addendum, Franchisor waives the requirement for lease review and approval set forth in the Buyer Franchise Agreement. If (i) the lease terms are amended; (ii) the lease for the Restaurant does not include the terms of Franchisor's required lease addendum; or (iii) Buyer enters into a new lease for the Restaurant, all lease review and approval requirements set forth in the Buyer Franchise Agreement shall remain applicable. Buyer acknowledges and agrees that Franchisor has complied with and satisfied its obligations under the Buyer Franchise Agreement to provide site selection and development assistance. Buyer acknowledges and agrees that Franchisor's approval of the Restaurant location and waiver of the lease review requirement or approval of the lease terms do not constitute a recommendation, endorsement, or guarantee by Franchisor of the suitability of the Restaurant location or the lease, and Buyer acknowledges that it has taken all steps necessary to ascertain whether the Restaurant location and lease are acceptable to Buyer.

7. **Release of Franchisor.** Seller, Seller Guarantor and Buyer, and each of them on behalf of themselves and each of their respective current and former parents, affiliates, and subsidiaries, and each such foregoing person's or entity's respective current and former agents, spouses, heirs, principals, attorneys, owners, officers, directors, employees, representatives, predecessors, successors, and assigns (collectively, the "**Releasing Parties**"), do hereby absolutely and irrevocably release and discharge Franchisor and its current and former parents, subsidiaries, and affiliates, and each such foregoing person's or entity's respective current and former owners, officers, directors, employees, managers, agents, representatives, predecessors, successors, and assigns (the "**Franchisor Parties**"), of and from any and all claims, obligations, debts, proceedings, demands, causes of actions, rights to terminate and rescind,

liabilities, losses, damages, and rights of every kind and nature whatsoever (collectively, “**Claims**”), whether known or unknown, suspected or unsuspected, at law or in equity, which any of them has, had or may have had, from the beginning of time through the date they signed this Consent, including, without limitation, those arising out of or relating in any way to the Seller Franchise Agreement, the relationship created by the Seller Franchise Agreement, the development, ownership, or operation of the Restaurant, or the transactions described in this Consent. Seller, Seller Guarantor and Buyer, and each of them, on behalf of themselves and on behalf of the other Releasing Parties, further covenant not to sue any of the Franchisor Parties on any of the Claims released by this Section, and warrant and represent that they have not assigned or otherwise transferred any Claims released by this Section.

*(If the Restaurant is located in California or if Seller, Seller Guarantor, or Buyer (as applicable) is a resident of California, the following shall apply):*

**Section 1542 Acknowledgment.** Seller, Seller Guarantor, and Buyer recognize that he, she, or it may have some claim, demand, obligation, action, liability, defense, or damage against Franchisor or the Franchisor Parties of which Seller, Seller Guarantor, and Buyer are totally unaware and unsuspecting, which he, she, or it is giving up by executing this Consent. Nonetheless, it is the intention of Seller, Seller Guarantor, and Buyer in executing this Consent that this instrument, (i) be and is a general release which shall be effective as a bar to each and every claim, demand, obligation, action, liability, defense, or damage released by Seller, Seller Guarantor, and Buyer, and (ii) will deprive Seller, Seller Guarantor, and Buyer of each and every such claim, demand, obligation, action, liability, defense, or damage and prevent him, her, or it from asserting it against Franchisor or the Franchisor Parties. In furtherance of this intention, Seller, Seller Guarantor, and Buyer expressly waive any rights or benefits conferred by the provisions of Section 1542 of the California Civil Code, which provides as follows:

“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

Seller, Seller Guarantor, and Buyer acknowledge and represent that he, she, or it has consulted with legal counsel before executing this Consent and that Seller, Seller Guarantor, and Buyer understand its meaning, including the effect of Section 1542 of the California Civil Code, and expressly consent that this Consent shall be given full force and effect according to each and all of its express terms and provisions, including, without limitation, those relating to the release of unknown and unsuspected claims, demands, obligations, actions, liabilities, defenses or damages.

*(If the Restaurant is located in Washington or if Seller, Seller Guarantor, or Buyer (as applicable) is a resident of Washington, the following shall apply):*

Any general release provided for hereunder shall not apply with respect to claims arising under the Washington Franchise Investment Protection Act, RCW 19.100, and the rules adopted thereunder.

8. **Non-Disparagement.** In consideration of the accommodations provided to Seller, Seller Guarantor, and Buyer, and the concessions made by Franchisor and its affiliates under this Consent, Seller, Seller Guarantor, and Buyer agree not to, and to use their best efforts to cause their respective current and former owners, agents, principals, officers, directors, shareholders, members, partners, employees, representatives, attorneys, spouses, heirs, parent companies, predecessors, affiliates, subsidiaries, successors and assigns not to, disparage, impugn or otherwise speak or write negatively, directly or indirectly, of Franchisor or the Franchisor Parties, the Elmer’s Breakfast · Lunch · Dinner<sup>®</sup>, Elmer’s Kitchen Breakfast · Brunch · Mimosas<sup>™</sup>, or Egg N’ Joe<sup>®</sup> brands, the Elmer’s Breakfast · Lunch · Dinner<sup>®</sup>, Elmer’s

Kitchen Breakfast · Brunch · Mimosas™, or Egg N' Joe® franchise systems, or any other service-marked or trademarked concept of Franchisor or the Franchisor Parties, or take any other action which would subject the Elmer's Breakfast · Lunch · Dinner®, Elmer's Kitchen Breakfast · Brunch · Mimosas™, or Egg N' Joe® brands to ridicule, scandal, reproach, scorn, or indignity or which would negatively impact the goodwill of Franchisor, the Franchisor Parties, or the Elmer's Breakfast · Lunch · Dinner®, Elmer's Kitchen Breakfast · Brunch · Mimosas™, or Egg N' Joe® brands.

9. **Acknowledgment.** Buyer, Seller and Seller Guarantor acknowledge and agree that they have negotiated the Purchase Agreement without involvement by Franchisor, that Franchisor has not effected or arranged the Transfer, and that Franchisor's only involvement in the transaction has been for the purpose of exercising its right of consent to the Transfer in accordance with the Seller Franchise Agreement. Buyer, Seller and Seller Guarantor have assumed sole and full responsibility for making the final decision to purchase and sell the Interests and each has consulted, or has had the opportunity to consult but, of its own accord, elected not to consult, with its own legal and financial advisors. Buyer further understands that as part of analyzing the purchase of the Interests from Seller, it is Buyer's responsibility to meet with or otherwise gather necessary information from the appropriate parties which may or may not affect Buyer's purchase of the Interests from Seller. Buyer acknowledges and agrees that Buyer will have no right to operate the Restaurant, under the Buyer Franchise Agreement or otherwise, unless and until the Transfer is completed and Buyer has taken possession of the Restaurant.

10. **Additional Documents.** Buyer and Seller agree to execute such additional documents as may be necessary to complete the Transfer as contemplated by the Purchase Agreement, the Seller Franchise Agreement and the Buyer Franchise Agreement.

11. **Miscellaneous Provisions.**

- a. **Confidentiality.** Except as reasonably necessary to perform Seller's, Seller Guarantor's, or Buyer's obligations or exercise or enforce Seller's, Seller Guarantor's, or Buyer's rights under this Consent, neither Seller, Seller Guarantor, nor Buyer shall provide or disclose to any third party, or use, unless authorized in writing to do so by Franchisor or properly directed or ordered to do so by public authority or court of competent jurisdiction, any information or matter that constitutes or concerns the terms and conditions of this Consent or that regards any dealings or negotiations with Seller, Seller Guarantor, or Buyer related to this Consent.
- b. **Governing Law.** Any disputes arising under this Consent shall be subject to and resolved in accordance with the provisions of Section 17.G (Arbitration) and 17.I (Consent to Jurisdiction) of the Buyer Franchise Agreement, which provisions are incorporated herein as through copied in their entirety. This Consent will be construed and enforced in accordance with, and governed by, the laws of the State of Oregon, without regard to its conflicts of law rules.
- c. **Amendment.** This Consent may not be modified or amended or any term hereof waived or discharged except in a writing signed by the party against whom such amendment, modification, waiver or discharge is sought to be enforced.
- d. **Headings.** The headings of this Consent are for convenience and reference only and will not limit or otherwise affect the meaning hereof.

- e. Controlling Provisions. In the event of any conflict between the terms of this Consent and the terms of the Seller Franchise Agreement or the Buyer Franchise Agreement, the terms of this Consent shall control.
- f. Counterpart Signatures. This Consent may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Faxed, scanned or electronic signatures shall have the same effect and validity, and may be relied upon in the same manner, as original signatures.

*(Signature page follows)*

IN WITNESS WHEREOF, the parties hereto have caused this Consent to be made effective as of the Effective Date.

**FRANCHISOR:**  
**WE ARE CRACKIN' LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date\*: \_\_\_\_\_

*\* This is the Effective Date*

**BUYER:**  
**[BUYER]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**SELLER:**  
**[SELLER]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Forwarding Address: \_\_\_\_\_  
Forwarding Email: \_\_\_\_\_  
Telephone: \_\_\_\_\_

**SELLER GUARANTOR:**  
**[SELLER GUARANTOR]**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Date: \_\_\_\_\_

Forwarding Address: \_\_\_\_\_  
Forwarding Email: \_\_\_\_\_  
Telephone: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Date: \_\_\_\_\_

Forwarding Address: \_\_\_\_\_  
Forwarding Email: \_\_\_\_\_  
Telephone: \_\_\_\_\_



**EXHIBIT E**

**LIST OF FRANCHISEES**

**WE ARE CRACKIN' LLC  
FRANCHISEES AS OF DECEMBER 31, 2023**

<b><u>Franchisee</u></b>	<b><u>Address</u></b>	<b><u>City</u></b>	<b><u>State</u></b>	<b><u>Phone</u></b>
J & F Donnell, Inc.	1030 E Palm Canyon Drive	Palm Springs	California	760-327-8420
J & S Helmholtz, Inc.	290 W Appleway Avenue	Coeur D'Alene	Idaho	208-665-7149
E. Thomas LLC	851 S. 5th Avenue	Pocatello	Idaho	208-232-9114
Southern Oregon Elmer's, LLC	2801 Santiam Hwy	Albany	Oregon	541-928-4227
CJJC, Inc.	16087 SE 82nd Drive	Clackamas	Oregon	503-655-5656
LUPA, Inc.	1115 NE 9th Street	Corvallis	Oregon	541-757-6690
Southern Oregon Elmer's, LLC	1036 Valley River Way	Eugene	Oregon	541-357-5496
Southern Oregon Elmer's, LLC	175 Agness Avenue	Grants Pass	Oregon	541-474-0740
Copeland Family, Inc.	390 SW Adams Street	Hillsboro	Oregon	503-640-3091
Southern Oregon Elmer's, LLC	2000 Biddle Road	Medford	Oregon	541-772-2000
Southern Oregon Elmer's, LLC	68 E. Stewart Ave.	Medford	Oregon	541-955-9506
Southern Oregon Elmer's, LLC	1440 NW Mulholland	Roseburg	Oregon	541-673-0021
WMC, Inc.	3950 Market Street, NE	Salem	Oregon	503-363-3950

**FRANCHISEES WHO SIGNED BUT ARE NOT YET OPENED**

**AS OF DECEMBER 31, 2023**

**None.**

**EXHIBIT F**

**LIST OF FORMER FRANCHISEES AND FRANCHISEES WHO HAVE NOT  
COMMUNICATED WITH THE FRANCHISOR WITHIN TEN WEEKS OF THE  
ISSUANCE DATE**

**WE ARE CRACKIN' LLC**  
**LIST OF FORMER FRANCHISEES AS OF DECEMBER 31, 2023**

**None.**

**LIST OF FRANCHISEES WHO HAVE NOT COMMUNICATED WITH THE FRANCHISOR**  
**WITHIN TEN WEEKS OF THE ISSUANCE DATE**

**None.**

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

**EXHIBIT G**  
**FINANCIAL STATEMENTS**

**WE ARE CRACKIN' LLC**

**FINANCIAL STATEMENTS**

**For the Periods Ended December 31, 2023,  
January 1, 2023, and January 2, 2022**



WE ARE CRACKIN' LLC  
FINANCIAL STATEMENTS  
For the Periods Ended December 31, 2023, January 1, 2023, and January 2, 2022

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## INDEPENDENT AUDITOR'S REPORT

To the Member  
We Are Crackin' LLC  
Vancouver, Washington

### Opinion

We have audited the accompanying financial statements of We Are Crackin' LLC, which comprise the balance sheets as of December 31, 2023, January 1, 2023, and January 2, 2022, and the related statements of operations and changes in member's equity, and cash flows for the periods then ended, and the related notes to the financial statements.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of We Are Crackin' LLC as of December 31, 2023, January 1, 2023, and January 2, 2022, and the results of its operations and its cash flows for the periods then ended in accordance with accounting principles generally accepted in the United States of America.

### Basis for Opinion

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of We Are Crackin' LLC 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 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 We Are Crackin' LLC's ability to continue as a going concern within 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 from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with generally accepted auditing standards will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with generally accepted auditing standards, we:

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

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



Jones & Roth, P.C.  
Eugene, Oregon  
February 26, 2024

WE ARE CRACKIN' LLC  
BALANCE SHEETS  
December 31, 2023, January 1, 2023, and January 2, 2022

	2023	2022	2021
<b>Assets</b>			
<b>Current assets</b>			
Cash - franchise	\$ 541,803	\$ 201,230	\$ 933,661
Cash - advertising fund	456,265	348,300	139,726
Accounts receivable, net of allowance of \$730, \$5,000, and \$5,000	66,800	67,529	84,448
Due from parent company - contribution	-	100,000	-
Due from parent company	105,800	83,818	491,105
Total current assets	\$ 1,170,668	800,877	1,648,940
<b>Total assets</b>	<b>\$ 1,170,668</b>	<b>\$ 800,877</b>	<b>\$ 1,648,940</b>
<b>Liabilities and Member's Equity</b>			
<b>Current liabilities</b>			
Accounts payable	\$ 201,425	\$ 218,222	\$ 60,256
Unspent advertising funds	478,498	442,802	317,123
Total current liabilities	679,923	661,024	377,379
<b>Deferred income</b>	-	40,000	-
<b>Member's equity</b>	490,745	99,853	1,271,561
<b>Total liabilities and member's equity</b>	<b>\$ 1,170,668</b>	<b>\$ 800,877</b>	<b>\$ 1,648,940</b>

The accompanying notes are an integral part of these statements.

WE ARE CRACKIN' LLC  
 STATEMENTS OF OPERATIONS AND CHANGES IN MEMBER'S EQUITY  
 For the Periods Ended December 31, 2023, January 1, 2023, and January 2, 2022

	2023	2022	2021
<b>Revenues</b>			
Franchise revenues	\$ 1,548,183	\$ 1,397,123	\$ 1,243,808
Advertising revenues	781,688	831,785	672,658
Total revenues	2,329,871	2,228,908	1,916,466
<b>Expenses</b>			
Advertising expenses	782,754	832,020	672,682
General and administrative expenses	154,632	139,279	124,381
Total expenses	937,386	971,299	797,063
<b>Other income (expense)</b>			
Interest income	2,365	618	198
Corporate activity tax	(8,228)	(8,096)	(9,310)
Total other income (expense)	(5,863)	(7,478)	(9,112)
<b>Net income</b>	1,386,622	1,250,131	1,110,291
Member's equity, beginning of period	99,853	1,271,561	161,270
Implementation of ASU No. 2016-13	4,270	-	-
Distributions	(1,000,000)	(2,521,839)	-
Contributions from parent company	-	100,000	-
Member's equity, end of period	\$ 490,745	\$ 99,853	\$ 1,271,561

The accompanying notes are an integral part of these statements.

WE ARE CRACKIN' LLC  
STATEMENTS OF CASH FLOWS  
For the Periods Ended December 31, 2023, January 1, 2023, and January 2, 2022

	<u>2023</u>	<u>2022</u>	<u>2021</u>
<b>Cash flows from operating activities</b>			
Net income	\$ 1,386,622	\$ 1,250,131	\$ 1,110,291
(Increase) decrease in:			
Accounts receivable	4,999	16,919	(48,757)
Due from parent company - contribution	100,000	-	-
Due from parent company	(21,982)	407,287	(438,696)
Increase (decrease) in:			
Deferred income	(40,000)	40,000	-
Accounts payable	(16,797)	157,966	39,227
Unspent advertising funds	35,696	125,679	228,584
Net cash provided by operating activities	<u>1,448,538</u>	<u>1,997,982</u>	<u>890,649</u>
<b>Cash flows from financing activities</b>			
Parent company distributions	<u>(1,000,000)</u>	<u>(2,521,839)</u>	<u>-</u>
Net cash used by financing activities	<u>(1,000,000)</u>	<u>(2,521,839)</u>	<u>-</u>
<b>Net increase (decrease) in cash</b>	448,538	(523,857)	890,649
Cash, beginning of period	<u>549,530</u>	<u>1,073,387</u>	<u>182,738</u>
Cash, end of period	<u>\$ 998,068</u>	<u>\$ 549,530</u>	<u>\$ 1,073,387</u>

The accompanying notes are an integral part of these statements.

WE ARE CRACKIN' LLC  
NOTES TO FINANCIAL STATEMENTS

## 1. Summary of Significant Accounting Policies

### Organization

We Are Crackin' LLC (the Company) was organized on December 29, 2016 and is a wholly owned subsidiary of Elmer's Restaurants, Inc. (the Parent Company). Substantially all of the assets of the Company are pledged as collateral for certain debts of the Parent Company. The Company sells franchises that give franchisees the right to operate under the name of Elmer's Breakfast - Lunch – Dinner, Elmer's Kitchen, and Egg N' Joe at a specific restaurant or in a geographic region. In addition to selling franchises, the Company also performs marketing and advertising services to its franchisees pursuant to their franchise agreements.

These financial statements report the activities of the Company. Generally accepted accounting principles (GAAP) presume that consolidated financial statements are more meaningful than separate financial statements and that they are usually necessary for fair presentations when one of the companies in the group has a controlling financial interest in the other company. The Parent Company's consolidated financial statements have been prepared and those consolidated financial statements are the general-purpose financial statements for the consolidated entities.

### Recent Accounting Standards Adopted

On January 2, 2023, the Company adopted Accounting Standards Update (ASU) 2016-13, *Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*, and all related amendments (ASC 326), which replaced the incurred loss methodology for recognizing credit losses with an expected loss methodology that is referred to as the current expected credit loss (CECL) methodology. CECL requires an estimate of lifetime expected credit losses to be recognized for financial assets based on historical experience, current conditions, and reasonable and supportable forecasts, and for the financial assets to be presented at the net amount expected to be collected on the balance sheet. Financial assets held by the Company that are subject to ASC 326 are trade accounts receivable.

The Company adopted ASC 326 effective January 2, 2023, using the modified retrospective approach for all financial assets measured at amortized cost. Results for reporting periods beginning after January 2, 2023 are presented in accordance with ASC 326, while prior period amounts continue to be reported in accordance with the previously applicable accounting standards.

As a result of the adoption, the Company recorded a transition adjustment that included a decrease to the allowance for credit losses for trade accounts receivable of \$4,270, resulting in an allowance for credit losses of \$730, which is presented on the balance sheet as a reduction to the total amount of trade accounts receivable. In addition, the Company recorded an increase to beginning member's equity of \$4,270 as of January 2, 2023, which reflects the transition adjustments noted above and represents the cumulative effect of adopting ASC 326.

WE ARE CRACKIN' LLC  
NOTES TO FINANCIAL STATEMENTS

**1. Summary of Significant Accounting Policies**, continued

**Use of Estimates**

Preparation of the financial statements, in accordance with GAAP, requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, and disclosures of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses during the reporting period. Estimates and assumptions used in the financial statements include, but are not limited to, those used to determine the allowance for credit losses and carrying amounts of accounts receivable. The amounts ultimately realized from the affected assets will depend on, among other factors, general business conditions and could differ materially in the near-term from the carrying amounts reflected in the financial statements.

**Reporting Period**

The Company reports its annual financial information using a 52- or 53-week accounting period. The final day of each 52-week accounting period is the last Sunday of each calendar year, unless it is a 53-week period, in which case, it would be the first Sunday in January. The periods ended December 31, 2023 and January 1, 2023, were 52-week periods. The period ended January 2, 2022, was a 53-week period.

**Cash**

For the purpose of the statements of cash flows, the Company includes cash from franchise and advertising activities in interest-bearing accounts at a financial institution and are insured by the Federal Deposit Insurance Corporation up to \$250,000.

Cash received related to advertising activities is separately accounted for and set aside for the use of advertising expenditures on behalf of franchises, in accordance with franchise agreements.

**Accounts Receivable**

Accounts receivable, consisting primarily of amounts due from franchisees, are recorded as services are rendered and are charged off against the allowance for credit losses when they are determined by management to be uncollectible. The allowance for credit losses is estimated based on the Company's historical losses, current conditions, reasonable and supportable forecasts about the future and the financial stability of franchisees. Generally, the Company considers accounts receivable past due after 30 days. Management has determined that no trade accounts receivable are past due as of December 31, 2023. For trade accounts receivable, the Company has recorded an allowance of 1 percent of trade accounts receivable, or \$730, for the period ended December 31, 2023. For trade accounts receivable, the Company has recorded an allowance of \$5,000 for the periods ended January 1, 2023, and January 2, 2022.

As required to be disclosed by Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) 606, *Revenue from Contracts with Customers*, the opening balances of accounts receivable at January 2, 2023, January 3, 2022 and December 28, 2020, were \$67,529, \$84,448 and \$35,691, respectively.

WE ARE CRACKIN' LLC  
NOTES TO FINANCIAL STATEMENTS

**1. Summary of Significant Accounting Policies**, continued

**Franchise Operations and Advertising Fee Revenue**

Initial license fees from sales of franchise and area development agreements are recognized when the restaurant opens. Continuing franchise fees and advertising fees (based on a percentage of sales) are recognized as revenue each month based on the franchisees' monthly sales activity.

**Contract Liabilities**

Any advertising fees received, but not yet used for advertising and marketing per the underlying franchise agreement, are deferred and recorded as a liability for unspent advertising funds, until the point in which the Company incurs the related expense.

As required to be disclosed by Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) 606, *Revenue from Contracts with Customers*, the opening balances of contract liabilities at January 2, 2023, January 3, 2022 and December 28, 2020, were \$442,802, \$317,123 and \$88,540, respectively.

**Performance Obligations**

The Company has agreements with several restaurant operators throughout the Western United States. The terms of the agreements protect the territory for the operator and provide the restaurant operators standard building blueprints, recipes, formulas, methods of food preparation and provide collaborative regional marketing and advertising based on the operator's location. This obligation is fulfilled over the term of the franchise agreements which range from 15 to 25 years and the terms of the development agreements varies by agreement.

There was one franchise sale for the period ended January 1, 2023, for which deferred income was recognized in the amount of \$40,000. The income was recognized upon the completion of all performance obligations at restaurant opening, which occurred during the period ended December 31, 2023. There were no franchise sales for the periods ended December 31, 2023 and January 2, 2022.

**Variable Consideration**

Due to the variable nature of product usage, the Company does not estimate or accrue for these revenues. The Company receives variable consideration from supplier-based product purchases and usage of these products. Revenues are recognized at a point in time upon receipt of payment from the supplier.

**Allocation of Expenses**

The Company pays a management fee equal to 10 percent of revenue for support services provided by the Parent Company. For the periods ended December 31, 2023, January 1, 2023, and January 2, 2022, the management fee was \$154,632, \$139,279, and \$124,381, respectively, and is included in general administrative expenses.



WE ARE CRACKIN' LLC  
NOTES TO FINANCIAL STATEMENTS

**1. Summary of Significant Accounting Policies**, continued

**Advertising Expense**

Advertising costs are expensed as incurred.

**Income Taxes**

As a limited liability company, the Company is under the provisions of partnership taxation of the Internal Revenue Code. However, due to the Company having one sole member, it is considered a disregarded entity and does not pay partnership income taxes on its taxable income. Instead, the sole member is responsible for individual income taxes on the Company's taxable income and is included in their S-corporation tax filings. Therefore, no provision for income taxes has been included in the financial statements.

The Company has reviewed potential tax uncertainties in accordance with FASB ASC 740 and believes that there are no uncertainties that would have a material impact on the Company's results of operations or financial condition for the periods ended December 31, 2023, January 1, 2023, and January 2, 2022.

**Concentration of Credit Risk**

Financial instruments, which potentially subject the Company to concentrations of credit risk, consist principally of accounts receivable. Accounts receivable balances consist primarily of receivables from franchisees.

**2. Related Party Transactions**

The following is a summary of related party transactions and balances:

	December 31, 2023	January 1, 2023	January 2, 2022
Advertising revenue from Parent Company	\$ 330,589	\$ 301,689	\$ 258,721
Management fee paid to Parent Company	154,632	139,279	124,381
Distributions paid to Parent Company	1,000,000	2,521,839	-
Payables to Parent Company	113,888	182,166	11,966
Receivables from Parent Company	105,800	83,818	491,105
Equity contribution receivable from Parent Company	-	100,000	-

For the periods ended December 31, 2023, January 1, 2023, and January 2, 2022, the Company received 48 percent, 48 percent, and 47 percent, respectively, of advertising revenue from restaurant locations owned by the Parent Company.

An equity contribution of \$100,000 was recorded as a receivable from the Parent Company for the period ended January 1, 2023. The Company pays quarterly distributions based on projected results.

WE ARE CRACKIN' LLC  
NOTES TO FINANCIAL STATEMENTS

**3. Commitments and Contingencies**

The Company's cash balances are held in financial institutions insured by the Federal Deposit Insurance Corporation up to \$250,000. The Company had uninsured deposits of \$779,892, \$308,662, and \$823,388 for the periods ended December 31, 2023, January 1, 2023, and January 2, 2022, respectively.

**4. Reclassification**

Certain prior year amounts have been reclassified to conform to current year presentation. Such reclassifications had no effect on previously stated member's equity or net income.

**5. Subsequent Events**

Management evaluates events and transitions that occur after the balance sheet date as potential subsequent events. Management has performed this evaluation through the date of the independent auditor's report.

As of the date of the independent auditor's report, Elmer's Restaurants, Inc., the parent company of the wholly owned subsidiary We Are Crackin' LLC, has signed a letter of intent to acquire six of the franchises of We Are Crackin' LLC in the fiscal year 2024. The Company currently recognizes franchise fee revenue and advertising fee revenue from these locations. These franchised locations accounted for approximately 40 percent of WAC revenue in 2023. In the event the acquisition occurs, the Company would only recognize advertising fee revenues, similar to how advertising fee revenue is currently recognized from restaurant locations owned by the Parent Company.

**EXHIBIT H**

**TABLE OF CONTENTS OF OPERATIONS MANUALS**

**EGG N' JOE® RESTAURANT AND ELMER'S KITCHEN**  
**TABLE OF CONTENTS OF OPERATIONS MANUAL**

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**ELMER'S BREAKFAST · LUNCH · DINNER® RESTAURANT**  
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**EXHIBIT I**

**REPRESENTATIONS AND ACKNOWLEDGEMENT STATEMENT**

**REPRESENTATIONS AND ACKNOWLEDGMENT STATEMENT**

**DO NOT SIGN THIS QUESTIONNAIRE IF YOU ARE LOCATED IN, YOUR FRANCHISED BUSINESS WILL BE LOCATED IN, OR THE FRANCHISE GRANTED IS SUBJECT TO THE FRANCHISE REGISTRATION OR DISCLOSURE LAWS IN: CALIFORNIA, ILLINOIS, INDIANA, NORTH DAKOTA, WASHINGTON, OR WISCONSIN.**

The purpose of this Statement is to demonstrate to We Are Crackin’ LLC (“Franchisor”) that the person(s) signing below (“I,” “me” or “my”), whether acting individually or on behalf of any legal entity established to acquire the franchise rights, (a) fully understands that the purchase of an Elmer’s Breakfast · Lunch · Dinner<sup>®</sup>, Elmer’s Kitchen Breakfast · Brunch · Mimosas<sup>™</sup>, or Egg N’ Joe<sup>®</sup> franchise is a significant long-term commitment, complete with its associated risks, and (b) is not relying on any statements, representations, promises or assurances that are not specifically set forth in Franchisor’s Franchise Disclosure Document and Exhibits (collectively, the “FDD”) in deciding to purchase the franchise.

In that regard, I represent to Franchisor and acknowledge that:

I understand that buying a franchise is not a guarantee of success. Purchasing or establishing any business is risky, and the success or failure of the franchise is subject to many variables such as my skills and abilities (and those of my partners, officers, employees), the time my associates and I devote to the business, competition, interest rates, the economy, inflation, operation costs, location, lease terms, the market place generally and other economic and business factors. I am aware of and am willing to undertake these business risks. I understand that the success or failure of my business will depend primarily upon my efforts and not those of Franchisor.	INITIAL:
I received a copy of the FDD, including the Franchise Agreement at least 14 calendar days before I executed the Franchise Agreement. I understand that all of my rights and responsibilities and those of Franchisor in connection with the franchise are set forth in these documents and only in these documents. I acknowledge that I have had the opportunity to personally and carefully review these documents and have, in fact, done so. I have been advised to have professionals (such as lawyers and accountants) review the documents for me and to have them help me understand these documents.	INITIAL:
Neither the Franchisor nor any of its officers, employees or agents (including any franchise broker) has made a statement, promise or assurance to me concerning any matter related to the franchise (including those regarding advertising, marketing, training, support service or assistance provided by Franchisor) that is contrary to, or different from, the information contained in the FDD.	INITIAL:
My decision to purchase the franchise has not been influenced by any oral representations, assurances, warranties, guarantees or promises whatsoever made by the Franchisor or any of its officers, employees or agents (including any franchise broker), including as to the likelihood of success of the franchise.	INITIAL:
I have made my own independent determination as to whether I have the capital necessary to fund the business and my living expenses, particularly during the start-up phase.	INITIAL:

PLEASE READ THE FOLLOWING QUESTION CAREFULLY. THEN SELECT YES OR NO AND PLACE YOUR INITIALS WHERE INDICATED.

INITIAL:

Have you received any information from the Franchisor or any of its officers, employees or agents (including any franchise broker) concerning actual, average, projected or forecasted sales, revenues, income, profits or earnings of the franchise business (including any statement, promise or assurance concerning the likelihood of success) other than information contained in the FDD?

Yes  No (Initial Here: \_\_\_\_)

If you selected "Yes," please describe the information you received on the lines below:

\_\_\_\_\_  
\_\_\_\_\_.

**Prohibited Parties Clause.** I acknowledge that Franchisor, its employees and its agents are subject to U.S. laws that prohibit or restrict (a) transactions with certain parties, and (b) the conduct of transactions involving certain foreign parties. These laws include, without limitation, U.S. Executive Order 13224, the U.S. Foreign Corrupt Practices Act, the Bank Secrecy Act, the International Money Laundering Abatement and Anti-terrorism Financing Act, the Export Administration Act, the Arms Export Control Act, the U.S. Patriot Act, and the International Economic Emergency Powers Act, and the regulations issued pursuant to these and other U.S. laws. As part of the express consideration for the purchase of the franchise, I represent that neither I nor any of my employees, agents, or representatives, nor any other person or entity associated with me, is now, or has been listed on:

1. the U.S. Treasury Department's List of Specially Designated Nationals;
2. the U.S. Commerce Department's Denied Persons List, Unverified List, Entity List, or General Orders;
3. the U.S. State Department's Debarred List or Nonproliferation Sanctions; or
4. the Annex to U.S. Executive Order 13224.

I warrant that neither I nor any of my employees, agents, or representatives, nor any other person or entity associated with me, is now, or has been: (i) a person or entity who assists, sponsors, or supports terrorists or acts of terrorism; or (ii) is owned or controlled by terrorists or sponsors of terrorism. I warrant that I am now, and have been, in compliance with U.S. anti-money laundering and counter-terrorism financing laws and regulations, and that any funds provided by me to Franchisor were legally obtained in compliance with these laws.

I further covenant that neither I nor any of my employees, agents, or representatives, nor any other person or entity associated with me, will, during the term of the Franchise Agreement become a person or entity described above or otherwise become a target of any anti-terrorism law.

**FRANCHISEE:**

Sign here if you are taking the franchise as an  
INDIVIDUAL(S)  
(Note: use these blocks if you are an individual or  
a partnership but the partnership is not a separate  
legal entity)

\_\_\_\_\_  
Signature  
Print Name: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Signature  
Print Name: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Signature  
Print Name: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Signature  
Print Name: \_\_\_\_\_  
Date: \_\_\_\_\_

Sign here if you are taking the franchise as a  
CORPORATION, LIMITED LIABILITY  
COMPANY OR PARTNERSHIP

\_\_\_\_\_  
Print Name of Legal Entity

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

Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT J**

**SAMPLE GENERAL RELEASE**

**WE ARE CRACKIN' LLC**

**GRANT OF FRANCHISOR CONSENT AND FRANCHISEE RELEASE**

**WE ARE CRACKIN' LLC** (“we,” “us,” or “our”) and the undersigned franchisee, \_\_\_\_\_

\_\_\_\_\_ (“you” or “your”), currently are parties to a certain Franchise Agreement (the “Franchise Agreement”) dated \_\_\_\_\_, 20\_\_\_\_. You have asked us to take the following action or to agree to the following request: [insert as appropriate for renewal or transfer situation] \_\_\_\_\_

\_\_\_\_\_. We have the right under the Franchise Agreement to obtain a general release from you (and, if applicable, your owners) as a condition of taking this action or agreeing to this request. Therefore, we are willing to take the action or agree to the request specified above if you (and, if applicable, your owners) give us the release and covenant not to sue provided below in this document. You (and, if applicable, your owners) are willing to give us the release and covenant not to sue provided below as partial consideration for our willingness to take the action or agree to the request described above.

Consistent with the previous introduction, you, on your own behalf and on behalf of your current and former parents, affiliates, and subsidiaries and each such foregoing person’s or entity’s respective current and former administrators, personal representatives, agents, assigns, owners, directors, managers, officers, principals, employees, successors, heirs, spouses, executors, and affiliated entities (collectively, the "Releasing Parties"), hereby forever release and discharge us and our current and former parents, subsidiaries, and affiliates, and each such foregoing person’s or entity’s respective current and former officers, directors, owners, principals, employees, agents, representatives, predecessors, successors, and assigns (collectively, the “WAC Parties”) of and from any and all claims, damages (known and unknown), demands, causes of action, suits, duties, liabilities, and agreements of any nature and kind (collectively, “Claims”) whether at law or in equity, which any of the Releasing Parties now has, had, or may have had, in any way arising out of or relating to any relationship or transaction with any of the WAC Parties, however characterized or described, from the beginning of time until the date of your signature below, including without limitation, any and all Claims in any way arising out of or related to the Franchise Agreement, the relationship created by the Franchise Agreement, or the development, ownership, or operation of any or all of the Restaurant(s). You, on your own behalf and on behalf of the other Releasing Parties, further covenant not to sue any of the WAC Parties on any of the Claims released by this paragraph and represent that you have not assigned any of the Claims released by this paragraph to any individual or entity who is not bound by this paragraph.

We also are entitled to a release and covenant not to sue from your owners. By his, her, or their separate signatures below, your owners likewise grant to us the release and covenant not to sue provided above.

IF THE FRANCHISE YOU OPERATE UNDER THE FRANCHISE AGREEMENT IS LOCATED IN CALIFORNIA OR IF YOU ARE A RESIDENT OF CALIFORNIA, THE FOLLOWING SHALL APPLY:

**SECTION 1542 ACKNOWLEDGMENT.** IT IS YOUR INTENTION, ON YOUR OWN BEHALF AND ON BEHALF OF THE RELEASING PARTIES, IN EXECUTING THIS RELEASE THAT THIS INSTRUMENT BE AND IS A GENERAL RELEASE WHICH SHALL BE EFFECTIVE AS A BAR TO EACH AND EVERY CLAIM, DEMAND, OR CAUSE OF ACTION RELEASED BY YOU OR THE RELEASING PARTIES. YOU RECOGNIZE THAT YOU OR THE RELEASING PARTIES MAY HAVE SOME CLAIM, DEMAND, OR CAUSE OF ACTION AGAINST THE WAC PARTIES OF WHICH YOU, HE, SHE, OR IT IS TOTALLY UNAWARE AND UNSUSPECTING, WHICH YOU, HE, SHE, OR IT IS GIVING UP BY EXECUTING THIS RELEASE. IT IS YOUR INTENTION, ON YOUR OWN BEHALF AND ON BEHALF OF THE RELEASING PARTIES, IN EXECUTING THIS INSTRUMENT THAT IT WILL DEPRIVE YOU, HIM, HER, OR IT OF EACH SUCH CLAIM, DEMAND, OR CAUSE OF ACTION AND PREVENT YOU, HIM, HER, OR IT FROM ASSERTING IT AGAINST THE WAC PARTIES. IN FURTHERANCE OF THIS INTENTION, YOU, ON YOUR OWN BEHALF AND ON BEHALF OF THE RELEASING PARTIES, EXPRESSLY WAIVE ANY RIGHTS OR BENEFITS CONFERRED BY THE PROVISIONS OF SECTION 1542 OF THE CALIFORNIA CIVIL CODE, WHICH PROVIDES AS FOLLOWS:

**“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”**

YOU ACKNOWLEDGE AND REPRESENT THAT YOU HAVE CONSULTED WITH LEGAL COUNSEL BEFORE EXECUTING THIS RELEASE AND THAT YOU UNDERSTAND ITS MEANING, INCLUDING THE EFFECT OF SECTION 1542 OF THE CALIFORNIA CIVIL CODE, AND EXPRESSLY CONSENT THAT THIS RELEASE SHALL BE GIVEN FULL FORCE AND EFFECT ACCORDING TO EACH AND ALL OF ITS EXPRESS TERMS AND PROVISIONS, INCLUDING, WITHOUT LIMITATION, THOSE RELATING TO THE RELEASE OF UNKNOWN AND UNSUSPECTED CLAIMS, DEMANDS, AND CAUSES OF ACTION.

If the Restaurant is located in Washington or if you are a resident of Washington, the following shall apply:

Any general release provided for hereunder shall not apply with respect to claims arising under the Washington Franchise Investment Protection Act, RCW 19.100, and the rules adopted thereunder.

[Signature Page Follows]



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

**WE ARE CRACKIN' LLC**

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

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

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

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

**FRANCHISEE**

\_\_\_\_\_

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

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

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

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

**FRANCHISEE OWNER**

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

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

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

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

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

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

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

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

**EXHIBIT K**

**STATE ADDENDA AND AGREEMENT RIDERS**

**ADDITIONAL DISCLOSURES FOR THE  
FRANCHISE DISCLOSURE DOCUMENT OF  
WE ARE CRACKIN' LLC**

The following are additional disclosures for the Franchise Disclosure Document of We Are Crackin' LLC required by various state franchise laws. Each provision of these additional disclosures will only apply to you if the applicable state franchise registration and disclosure law applies to you.

**FOR THE FOLLOWING STATES: CALIFORNIA, ILLINOIS, INDIANA, NORTH DAKOTA, WASHINGTON, OR WISCONSIN.**

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.

**CALIFORNIA**

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

2. SECTION 31125 OF THE FRANCHISE INVESTMENT LAW REQUIRES US TO GIVE YOU A FRANCHISE DISCLOSURE DOCUMENT APPROVED BY THE COMMISSIONER OF FINANCIAL PROTECTION & INNOVATION BEFORE WE ASK YOU TO CONSIDER A MATERIAL MODIFICATION OF YOUR FRANCHISE AGREEMENT.

3. OUR WEBSITES, [www.eatatelmers.com](http://www.eatatelmers.com), [www.eggjoe.com](http://www.eggjoe.com), and [www.elmerskitchen.com](http://www.elmerskitchen.com) HAVE NOT BEEN REVIEWED OR APPROVED BY THE CALIFORNIA DEPARTMENT OF FINANCIAL PROTECTION & INNOVATION. ANY COMPLAINTS CONCERNING THE CONTENT OF THE WEBSITES MAY BE DIRECTED TO THE CALIFORNIA DEPARTMENT OF FINANCIAL PROTECTION & INNOVATION AT [www.dfpi.ca.gov](http://www.dfpi.ca.gov).

4. No statement, questionnaire, or acknowledgement signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

5. The following is added at the end of Item 3:

Neither we, our parent, predecessor or affiliates nor any person in Item 2 of the Franchise Disclosure Document 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. Sections 78a et seq., suspending or expelling such persons from membership in that association or exchange.

6. The following statement is added to the remarks column of Item 6 for the row entitled **Late Payment Fees** and **Inspection and Audit Fee**:

The highest rate of interest allowed by California law is 10% annually.

7. The following paragraphs are added at the end of Item 17:

California Business and Professions Code Sections 20000 through 20043 provide rights to the franchisee and area developer concerning termination, transfer or nonrenewal of a franchise. If the Franchise Agreement or Area Development Agreement contain a provision that is inconsistent with the law, and the law applies, the law will control.

The Franchise Agreement and Area Development Agreement contain a covenant not to compete that extends beyond termination of the franchise. This provision might not be enforceable under California law.

The Franchise Agreement and Area Development Agreement provide for termination upon bankruptcy. This provision might not be enforceable under federal bankruptcy law (11 U.S.C.A. Sections 101 et seq.).

The Franchise Agreement and Area Development Agreement require application of the laws of the State of Oregon. This provision may not be enforceable under California law.

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

The Franchise Agreement and Area Development Agreement require binding arbitration. The arbitration will be conducted at a suitable location chosen by the arbitrator which is in or within a 50 mile radius of our or, as applicable, our successor's or assign's then-current principal place of business (currently, Eugene, Oregon) with the costs being borne as provided in the Franchise Agreement and Area Development Agreement. 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 and Area Development Agreement restricting venue to a forum outside the State of California.

The Franchise Agreement and Area Development Agreement require you to sign a general release of claims upon renewal or transfer of the Franchise Agreement or Area Development Agreement. California Corporations Code Section 31512 provides that any condition, stipulation or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of that law or any rule or order thereunder is void. Section 31512 might void a waiver of your rights under the Franchise Investment Law (California Corporations Code Section 31000 – 31516). Business and Professions Code Section 20010 might void a waiver of your rights under the Franchise Relations Act (Business and Professions Code Sections 20000 – 20043).

Section 31512.1 of the California Corporations Code requires that any provision of the Franchise Agreement, Disclosure Document, acknowledgement, questionnaire, or other writing, including any exhibit thereto, disclaiming or denying any of the following shall be deemed contrary to public policy and shall be void and unenforceable: (a) representations made by the franchisor or its personnel or agents to a prospective franchisee; (b) reliance by a franchisee on any representations made by the franchisor or its personnel or agents; (c) reliance by a franchisee on the franchise disclosure document, including any exhibit thereto; or (d) violations of any provision of this division.

8. The following paragraph is added to the end of Item 19:

The earnings claims figures do not reflect the costs of sales, operating expenses or other costs or expenses that must be deducted from gross revenue or 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 Elmer's Breakfast · Lunch · Dinner<sup>®</sup> Restaurant, Elmer's Kitchen Breakfast · Brunch · Mimosas<sup>™</sup> Restaurant, or Egg N' Joe<sup>®</sup> Restaurant. Franchisees or former franchisees listed in the Franchise Disclosure Document may be one source of this information.

## **ILLINOIS**

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

Except for the U.S. Federal Arbitration Act and other federal laws in the U.S., the laws of the State of Illinois apply.

3. The following paragraph is added to the end of Item 17:

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 the Act or any other law of Illinois is void.

## **NORTH DAKOTA**

1. The following is added to the "Remarks" column in the Item 6 chart for the row entitled **Lost Revenue Damages**:

Under North Dakota law, a requirement that you consent to liquidated damages or termination penalties in the event of termination of the Franchise Agreement is considered unenforceable.

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

However, any release required as a condition of renewal and/or assignment/transfer will not apply to the extent prohibited by the North Dakota Franchise Investment Law.

3. The following is added to the end of the "Summary" section of Item 17(r), entitled **Non-competition covenants after the franchise is terminated or expires**:

Covenants not to compete such as those mentioned above are generally considered unenforceable in the State of North Dakota; however, we and you will enforce the covenants to the maximum extent the law allows.

4. The following is added to the end of the "Summary" section of Item 17(u), entitled **Dispute resolution by arbitration or mediation**:

To the extent required by the North Dakota Franchise Investment Law (unless such requirement is preempted by the Federal Arbitration Act), arbitration will be at a site to which we and you mutually agree.

5. The following is added to the end of the "Summary" section of Item 17(v), entitled **Choice of forum**:

However, subject to your arbitration obligation, and to the extent required by North Dakota Franchise Investment Law, you may bring an action in North Dakota.

6. The "Summary" section of Item 17(w), entitled **Choice of law**, is deleted and replaced with the following:

Except as otherwise required by North Dakota law, the laws of the State of Oregon will apply.

## **WASHINGTON**

1. The following is added to the end of the Special Risks to Consider About This Franchise page:

The franchisor uses the services of franchise brokers to assist it in selling franchises. A franchise broker represents the franchisor and is paid a fee for referring prospects to the franchisor and/or selling the franchise. Do not rely only on the information provided by a franchise broker about a franchise. Do your own investigation by contacting the franchisor's current and former franchisees to ask them about their experience with the franchisor.

2. The following matter is added at the end of Item 3:

In re: Franchise No Poaching Provisions (We Are Crackin' LLC) (Case No. 19-2-26768-2 SEA; State of Washington, King County Superior Court). Beginning in January 2018, the Washington Attorney General launched a sweeping investigation into the use of non-solicitation and no-hire provisions in franchise agreements, with the stated goal of "eliminating no-poach clauses nationwide." The Washington Attorney General asserted that such no-poach provisions violated the Washington Consumer Protection Act. We elected, on October 11, 2019, to enter into an Assurance of Discontinuance ("AOD") to avoid the time and expense of a protracted court action. Other than as a mechanism for the court to approve and enter the AOD, no court proceeding was initiated. Under the terms of the AOD, we agreed to: notify all franchisees that we entered into the AOD, not include no-poach provisions in our future agreements, not enforce such provisions in our existing franchise agreements, exercise reasonable commercial efforts to amend all existing franchise agreements with entities in Washington to remove any no-poach provisions in their existing agreement, and remove those provisions from existing agreements as they came up for renewal or renegotiation. Under its express terms, the AOD is not to be construed as an admission of law, fact, liability, misconduct, or wrongdoing on our part

3. The following paragraph is added to the end of Items 5 and 7:

The State of Washington has imposed a financial condition under which the initial franchise fees due will be deferred until we have fulfilled our initial pre-opening obligations under the Franchise Agreement and you are open for business. Because we have material pre-opening obligations with respect to each franchised business you open under the Area Development Agreement, the State of Washington will

require that the franchise fees be released proportionally with respect to each franchised business.

4. The following paragraphs are added at the end of Item 17:

In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act (the “Act”), Chapter 19.100 RCW, will prevail.

RCW 19.100.180 may supersede the Franchise Agreement or Area Development Agreement in your relationship with us, including the areas of termination and renewal of your franchise. There may also be court decisions which may supersede the Franchise Agreement or Area Development Agreement in your relationship with us, 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 or Area Development Agreement, you may bring an action or proceeding arising out of or in connection with the sale of Franchises, or a violation of the Act, in Washington.

A release or waiver of rights executed by you shall not include rights under the Act or any rule or order thereunder except when executed pursuant to a negotiated settlement after the Franchise Agreement or Area Development 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, might not be enforceable.

Transfer fees are collectable to the extent that they reflect our 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, Area Development 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, Area Development Agreement or elsewhere are void and unenforceable in Washington.

The Franchise Disclosure Document does not waive any liability we may have under the Washington Franchise Investment Protection Act, RCW 19.100, and the rules adopted thereunder.

**THE FOLLOWING PAGES IN THIS EXHIBIT ARE  
STATE-SPECIFIC RIDERS TO THE  
AREA DEVELOPMENT AGREEMENT**

**RIDER TO THE  
AREA DEVELOPMENT AGREEMENT  
FOR USE IN ILLINOIS**

**THIS RIDER** is made and entered into by and between **WE ARE CRACKIN' LLC**, an Oregon limited liability company with its principal business address at 363 High Street, Eugene, Oregon 97401 (“**we**”), and \_\_\_\_\_, a(n) \_\_\_\_\_, whose principal business address is \_\_\_\_\_ (“**you**”).

1. **BACKGROUND.** We and you are parties to that certain Area Development Agreement dated \_\_\_\_\_, 20\_\_\_\_ (the “**Area Development Agreement**”). This Rider is annexed to and forms part of the Area Development Agreement. This Rider is being signed because (a) any of the offering or sales activity relating to the Area Development Agreement occurred in Illinois and the Elmer’s Breakfast · Lunch · Dinner® Restaurant, Elmer’s Kitchen Breakfast · Brunch · Mimosas™ Restaurant, or Egg N’ Joe® Restaurant that you will develop under the Area Development Agreement will be located in Illinois, and/or (b) you are domiciled in Illinois.

2. **CONSENT TO JURISDICTION.** Section 9.B of the Area Development Agreement is deleted in its entirety.

3. **APPLICABLE LAW.** Section 10.E of the Area Development Agreement is deleted and replaced with the following:

Except to the extent governed by the Federal Arbitration Act, the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. Sections 1051 et seq.), or other United States federal law, this Agreement, the franchise, and all claims arising from the relationship between us and you will be governed by the laws of the State of Illinois without regard to its conflict of laws rules.

4. **ILLINOIS FRANCHISE DISCLOSURE ACT.** The following language is added as Section 10.O. of the Area Development Agreement:

**ILLINOIS FRANCHISE DISCLOSURE ACT.** 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 the Act or any other law of Illinois is void.

*(Signature page follows)*

**IN WITNESS WHEREOF**, the parties have executed and delivered this Rider on the dates noted below, to be effective as of the Effective Date of the Area Development Agreement.

**WE ARE CRACKIN' LLC**

**AREA DEVELOPER:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
[Name]  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**RIDER TO THE  
AREA DEVELOPMENT AGREEMENT  
FOR USE IN NORTH DAKOTA**

**THIS RIDER** is made and entered into by and between **WE ARE CRACKIN' LLC**, an Oregon limited liability company with its principal business address at 363 High Street, Eugene, Oregon 97401 (“**we**”), and \_\_\_\_\_, a(n) \_\_\_\_\_, whose principal business address is \_\_\_\_\_ (“**you**”).

1. **BACKGROUND.** We and you are parties to that certain Area Development Agreement dated \_\_\_\_\_, 20\_\_\_\_ (the “**Area Development Agreement**”). This Rider is annexed to and forms part of the Area Development Agreement. This Rider is being signed because (a) you are a resident of North Dakota and the Elmer’s Breakfast · Lunch · Dinner® Restaurants, Elmer’s Kitchen Breakfast · Brunch · Mimosas™ Restaurant, or Egg N’ Joe® Restaurants that you will develop under the Area Development Agreement will be developed in North Dakota, and/or (b) any of the offering or sales activity relating to the Area Development Agreement occurred in North Dakota.

2. **RELEASES.** The following is added to the end of Sections 1.F(3)b. and 6.A(1)(d) of the Area Development Agreement:

Any release required as a condition of renewal and/or assignment/transfer will not apply to the extent prohibited by the North Dakota Franchise Investment Law.

3. **COVENANT NOT TO COMPETE.** The following is added to the end of Section 7.C(1) of the Area Development Agreement:

Covenants not to compete such as those mentioned above are generally considered unenforceable in the State of North Dakota; however, we will enforce the covenants to the maximum extent the law allows.

4. **ARBITRATION.** The first paragraph of Section 9.A of the Area Development Agreement is amended to read as follows:

A. **ARBITRATION.** We and you agree that all controversies, disputes, or claims between us or any of our affiliates, and our and their respective owners, officers, directors, managers, agents, and employees, on the one hand, and you (and your owners, guarantors, Affiliates, and employees), on the other hand, arising out of or related to:

- (1) this Agreement or any other agreement between you (or any of your owners) and us (or any of our affiliates);
- (2) our relationship with you; or

(3) the scope or validity of this Agreement or any other agreement between you (or any of your owners) and us (or any of our affiliates) or any provision of any such agreements (including the validity and scope of the arbitration provision under this Section, which we and you acknowledge is to be determined by an arbitrator, not a court),

must be submitted for binding arbitration, on demand of either party, to the American Arbitration Association (“AAA”). The arbitration proceedings will be conducted by one arbitrator and, except as this Section otherwise provides, according to the AAA’s then-current Commercial Arbitration Rules. All proceedings will be conducted at a suitable location chosen by the arbitrator that is within 50 miles of our or, as applicable, our successor’s or assign’s then-current principal place of business (currently, Eugene, Oregon); provided, however, that to the extent otherwise required by the North Dakota Franchise Investment Law (unless such a requirement is preempted by the Federal Arbitration Act), arbitration shall be held at a site to which we and you mutually agree. All matters relating to arbitration will be governed by the Federal Arbitration Act (9 U.S.C. §§ 1 et seq.). The interim and final awards of the arbitrator shall be final and binding upon each party, and judgment upon the arbitrator’s awards may be entered in any court of competent jurisdiction.

5. **CONSENT TO JURISDICTION.** The following language is added to the end of Section 9.B of the Area Development Agreement:

Notwithstanding the foregoing, to the extent required by the North Dakota Franchise Investment Law, and subject to your arbitration obligations, you may bring an action in North Dakota for claims arising under the North Dakota Franchise Investment Law.

6. **WAIVER OF PUNITIVE DAMAGES AND JURY TRIAL.** To the extent required by the North Dakota Franchise Investment Law, Section 9.C of the Area Development Agreement is deleted.

7. **LIMITATIONS OF CLAIMS; WAIVER OF CLASS ACTION.** The following is added to the end of Section 9.E of the Area Development Agreement:

The statutes of limitations under North Dakota law applies with respect to claims arising under the North Dakota Franchise Investment Law.

8. **APPLICABLE LAW.** Section 10.E of the Area Development Agreement is deleted and replaced with the following:

E. **APPLICABLE LAW.** All matters relating to arbitration will be governed by the United States Federal Arbitration Act (9 U.S.C. §§ 1 et seq.). Except to the extent governed by the Federal Arbitration Act, the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. sections 1051 et seq.), or other

United States federal law and except as otherwise required by North Dakota law, this Agreement, the franchise, and all claims arising from the relationship between us and you will be governed by the laws of the State of Oregon without regard to its conflict of laws rules, except that any state law regulating the offer or sale of franchises or governing the relationship of a franchisor and its franchisee will not apply unless its jurisdictional requirements are met independently without reference to this paragraph.

**IN WITNESS WHEREOF**, the parties have executed and delivered this Rider on the dates noted below, to be effective as of the Effective Date of the Area Development Agreement.

**WE ARE CRACKIN' LLC**

**AREA DEVELOPER:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
[Name]  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**RIDER TO THE  
AREA DEVELOPMENT AGREEMENT AND RELATED AGREEMENTS  
FOR USE IN WASHINGTON**

**THIS RIDER** is made and entered into by and between **WE ARE CRACKIN' LLC**, an Oregon limited liability company with its principal business address at 363 High Street, Eugene, Oregon 97401 (“**we**”), and \_\_\_\_\_, a(n) \_\_\_\_\_, whose principal business address is \_\_\_\_\_ (“**you**”).

1. **BACKGROUND.** We and you are parties to that certain Area Development Agreement dated \_\_\_\_\_, 20\_\_\_\_ (the “Area Development Agreement”). This Rider is annexed to and forms part of the Area Development Agreement. This Rider is being signed because (a) you are domiciled in Washington; and/or (b) the Elmer’s Breakfast · Lunch · Dinner® Restaurant, Elmer’s Kitchen Breakfast · Brunch · Mimosas™ Restaurant, or Egg N’ Joe® Restaurant that you will develop under the Area Development Agreement will be located or operated in Washington; and/or (c) you accepted the offer for the sale of the Elmer’s Breakfast · Lunch · Dinner® Restaurant, Elmer’s Kitchen Breakfast · Brunch · Mimosas™ Restaurant, or Egg N’ Joe® Restaurant franchise in Washington.

2. **DEVELOPMENT FEE.** The following paragraph is added to the end of Section 3.A of the Area Development Agreement:

Because we have material pre-opening obligations with respect to each franchised business you open under the Area Development Agreement, the State of Washington will require that the franchise fees be released proportionally with respect to each franchised business.

3. **WASHINGTON LAW.** The following paragraphs are added to the end of the Area Development Agreement:

The franchisor uses the services of franchise brokers to assist it in selling franchises. A franchise broker represents the franchisor and is paid a fee for referring prospects to the franchisor and/or selling the franchise. Do not rely only on the information provided by a franchise broker about a franchise. Do your own investigation by contacting the franchisor’s current and former franchisees to ask them about their experience with the franchisor.

In recognition of the requirements of the Washington Franchise Investment Protection Act (the “Act”) and the rules and regulations promulgated thereunder, the Area Development Agreement shall be modified as follows:

In the event of a conflict of laws, the provisions of the Act, Chapter 19.100 RCW will prevail.



RCW 19.100.180 may supersede this Agreement in your relationship with us, including the areas of termination and renewal of your franchise. There may also be court decisions which may supersede this Agreement in your relationship with us, 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 this Agreement, you may bring an action or proceeding arising out of or in connection with the sale of franchises, or a violation of the Act, in Washington.

A release or waiver of rights executed by you may not include rights under the Act or any rule or order thereunder except when executed pursuant to a negotiated settlement after this 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 our 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 this 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 this Agreement or elsewhere are void and unenforceable in Washington.

This Agreement does not waive any liability we may have under the Washington Franchise Investment Protection Act, RCW 19.100, and the rules adopted thereunder.

*(Signature page follows)*

**IN WITNESS WHEREOF**, the parties have executed and delivered this Rider on the dates noted below, to be effective as of the Effective Date of the Area Development Agreement.

**WE ARE CRACKIN' LLC**

**AREA DEVELOPER:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
[Name]  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**THE FOLLOWING PAGES IN THIS EXHIBIT ARE  
STATE-SPECIFIC RIDERS TO THE  
FRANCHISE AGREEMENT**

**RIDER TO THE  
FRANCHISE AGREEMENT  
FOR USE IN ILLINOIS**

**THIS RIDER** is made and entered into by and between **WE ARE CRACKIN' LLC**, an Oregon limited liability company with its principal business address at 363 High Street, Eugene, Oregon 97401 (“**we**”), and \_\_\_\_\_, a(n) \_\_\_\_\_, whose principal business address is \_\_\_\_\_ (“**you**”).

1. **BACKGROUND.** We and you are parties to that certain Franchise Agreement dated \_\_\_\_\_, 20\_\_\_\_ (the “**Franchise Agreement**”). This Rider is annexed to and forms part of the Franchise Agreement. This Rider is being signed because (a) any of the offering or sales activity relating to the Franchise Agreement occurred in Illinois and the Elmer’s Breakfast · Lunch · Dinner® Restaurant, Elmer’s Kitchen Breakfast · Brunch · Mimosas™ Restaurant, or Egg N’ Joe® Restaurant that you will operate under the Franchise Agreement will be located in Illinois, and/or (b) you are domiciled in Illinois.

2. **GOVERNING LAW.** Section 17.H. of the Franchise Agreement is deleted and replaced with the following:

Except to the extent governed by the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. §§ 1051 et seq.), the United States Arbitration Act (9 U.S.C. §§ 1 et seq.) or other federal law, this Agreement or any related agreements, the Franchise, and all claims arising from the relationship between us (or any of our affiliates, and our and their respective owners, officers, directors, agents, representatives, and employees) and you (and your respective owners, guarantors, affiliates, and employees) will be governed by the laws of the State of Illinois without regard to its conflict of laws rules.

3. **CONSENT TO JURISDICTION.** Section 17.I of the Franchise Agreement is deleted in its entirety.

4. **ILLINOIS FRANCHISE DISCLOSURE ACT.** The following language is added as Section 17.Q of the Franchise Agreement:

**Q. ILLINOIS FRANCHISE DISCLOSURE ACT.** 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 the Act or any other law of Illinois is void.

*(Signature page follows)*

**IN WITNESS WHEREOF**, the parties have executed and delivered this Rider on the dates noted below, to be effective as of the Effective Date of the Franchise Agreement.

**WE ARE CRACKIN' LLC**

**FRANCHISEE:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
**[Name]**  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**RIDER TO THE  
FRANCHISE AGREEMENT  
FOR USE IN NORTH DAKOTA**

**THIS RIDER** is made and entered into by and between **WE ARE CRACKIN' LLC**, an Oregon limited liability company with its principal business address at 363 High Street, Eugene, Oregon 97401 (“**we**”), and \_\_\_\_\_, a(n) \_\_\_\_\_, whose principal business address is \_\_\_\_\_ (“**you**”).

1. **BACKGROUND.** We and you are parties to that certain Franchise Agreement dated \_\_\_\_\_, 20\_\_\_\_ (the “**Franchise Agreement**”). This Rider is annexed to and forms part of the Franchise Agreement. This Rider is being signed because (a) you are a resident of North Dakota and the Elmer’s Breakfast · Lunch · Dinner<sup>®</sup> Restaurant, Elmer’s Kitchen Breakfast · Brunch · Mimosas<sup>™</sup> Restaurant, or Egg N’ Joe<sup>®</sup> Restaurant that you will operate under the Franchise Agreement will be located or operated in North Dakota; and/or (b) any of the offering or sales activity relating to the Franchise Agreement occurred in North Dakota.

2. **RELEASES.** The following is added to the end of Sections 12.C(9), 13.C and 15.E(5)(e) of the Franchise Agreement:

Any release required as a condition of renewal and/or assignment/transfer and/or sale will not apply to the extent prohibited by the North Dakota Franchise Investment Law.

3. **COVENANT NOT TO COMPETE.** The following is added to the end of Section 15.D(1) of the Franchise Agreement:

Covenants not to compete such as those mentioned above are generally considered unenforceable in the State of North Dakota; however, we will enforce the covenants to the maximum extent the law allows.

4. **REMEDIES.** The following language is added to the end of Section 15.F of the Franchise Agreement:

We and you acknowledge that certain parts of this provision might not be enforceable under the North Dakota Franchise Investment Law. However, we and you agree to enforce the provision to the extent the law allows.

5. **ARBITRATION.** The first paragraph of Section 17.G of the Franchise Agreement is deleted and replaced in its entirety with the following:

G. **ARBITRATION.** We and you agree that all controversies, disputes, or claims between us or any of our affiliates, and our and their respective owners, officers, directors, agents, representatives and employees, on the one hand,

and you (and your owners, guarantors, Affiliates, and employees), on the other hand, arising out of or related to:

- (1) this Agreement or any other agreement between you (or any of your owners) and us (or any of our affiliates);
- (2) our relationship with you;
- (3) the scope or validity of this Agreement or any other agreement between you (or any of your owners) and us (or any of our affiliates) or any provision of any such agreements (including the validity and scope of the arbitration provision under this Section, which we and you acknowledge is to be determined by an arbitrator, not a court); or
- (4) any System Standard,

must be submitted for binding arbitration, on demand of either party, to the American Arbitration Association (“AAA”). The arbitration proceedings will be conducted by one arbitrator and, except as this Section otherwise provides, according to the AAA’s then-current Commercial Arbitration Rules. All proceedings will be conducted at a suitable location chosen by the arbitrator that is within 50 miles of our or, as applicable, our successor’s or assign’s then-current principal place of business (currently, Eugene, Oregon); provided, however, that to the extent otherwise required by the North Dakota Franchise Investment Law (unless such a requirement is preempted by the Federal Arbitration Act), arbitration shall be held at a site to which we and you mutually agree. All matters relating to arbitration will be governed by the Federal Arbitration Act (9 U.S.C. §§ 1 et seq.). The interim and final awards of the arbitrator shall be final and binding upon each party, and judgment upon the arbitrator’s awards may be entered in any court of competent jurisdiction.

6. **GOVERNING LAW.** Section 17.H of the Franchise Agreement is deleted and replaced with the following:

H. **GOVERNING LAW.** All matters relating to arbitration will be governed by the United States Federal Arbitration Act (9 U.S.C. §§ 1 et seq.). Except to the extent governed by the Federal Arbitration Act, the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. sections 1051 et seq.), or other United States federal law and except as otherwise required by North Dakota law, this Agreement or any related agreements, the franchise, and all claims arising from the relationship between us (or any of our affiliates, and our and their respective owners, officers, directors, agents, representatives, and employees) and you (and your respective owners, guarantors, affiliates, and employees) will be governed by the laws of the State of Oregon without regard to its conflict of laws rules, except that any state law regulating the offer or sale of franchises or governing the

relationship of a franchisor and its franchisee will not apply unless its jurisdictional requirements are met independently without reference to this paragraph.

7. **CONSENT TO JURISDICTION.** The following is added to the end of Section 17.I of the Franchise Agreement:

Notwithstanding the foregoing, to the extent required by the North Dakota Franchise Investment Law, and subject to your arbitration obligations, you may bring an action in North Dakota for claims arising under the North Dakota Franchise Investment Law.

8. **WAIVER OF PUNITIVE DAMAGES, JURY TRIAL, AND CLASS ACTION.** To the extent required by the North Dakota Franchise Investment Law, the first two paragraphs of Section 17.J of the Franchise Agreement are deleted.

9. **LIMITATION OF CLAIMS.** The following is added to the end of Section 17.M of the Franchise Agreement:

The statutes of limitations under North Dakota law applies with respect to claims arising under the North Dakota Franchise Investment Law.

**IN WITNESS WHEREOF**, the parties have executed and delivered this Rider on the dates noted below, to be effective as of the Effective Date of the Franchise Agreement.

**WE ARE CRACKIN' LLC**

**FRANCHISEE:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
[Name]  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_



**RIDER TO THE  
FRANCHISE AGREEMENT AND RELATED AGREEMENTS  
FOR USE IN WASHINGTON**

**THIS RIDER** is made and entered into by and between **WE ARE CRACKIN' LLC**, an Oregon limited liability company with its principal business address at 363 High Street, Eugene, Oregon 97401 (“**we**”), and \_\_\_\_\_, a(n) \_\_\_\_\_, whose principal business address is \_\_\_\_\_ (“**you**”).

1. **BACKGROUND.** We and you are parties to that certain Franchise Agreement dated \_\_\_\_\_, 20\_\_\_\_ (the “Franchise Agreement”). This Rider is annexed to and forms part of the Franchise Agreement. This Rider is being signed because (a) you are domiciled in Washington; and/or (b) the Elmer’s Breakfast · Lunch · Dinner<sup>®</sup> Restaurant, Elmer’s Kitchen Breakfast · Brunch · Mimosas<sup>™</sup> Restaurant, or Egg N’ Joe<sup>®</sup> Restaurant that you will operate under the Franchise Agreement will be located or operated in Washington; and/or (c) you accepted the offer for the sale of the Elmer’s Breakfast · Lunch · Dinner<sup>®</sup> Restaurant, Elmer’s Kitchen Breakfast · Brunch · Mimosas<sup>™</sup> Restaurant, or Egg N’ Joe<sup>®</sup> Restaurant franchise in Washington.

2. **INITIAL FEES.** The following paragraph is added to the end of Sections 2.B and 3.A of the Franchise Agreement:

Pursuant to an order of the Director of the Department of Financial Institutions, we will defer collection of the initial franchise fee and other initial payments you owe us until we have completed all of our pre-opening obligations to you under this Agreement and you have begun operating your Restaurant.

3. **WASHINGTON LAW.** The following paragraphs are added to the end of the Franchise Agreement:

The franchisor uses the services of franchise brokers to assist it in selling franchises. A franchise broker represents the franchisor and is paid a fee for referring prospects to the franchisor and/or selling the franchise. Do not rely only on the information provided by a franchise broker about a franchise. Do your own investigation by contacting the franchisor’s current and former franchisees to ask them about their experience with the franchisor.

In recognition of the requirements of the Washington Franchise Investment Protection Act (the “Act”) and the rules and regulations promulgated thereunder, the Franchise Agreement shall be modified as follows:

In the event of a conflict of laws, the provisions of the Act, Chapter 19.100 RCW, will prevail.

RCW 19.100.180 may supersede this Agreement in your relationship with us, including the areas of termination and renewal of your franchise. There may also be court decisions which may supersede this Agreement in your relationship with us, including 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 this Agreement, you may bring an action or proceeding arising out of or in connection with the sale of franchises, or a violation of the Act, in Washington.

A release or waiver of rights executed by you shall not include rights under the Act or any rule or order thereunder, except when executed pursuant to a negotiated settlement after this 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 our 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 this 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 this Agreement or elsewhere are void and unenforceable in Washington.

This Agreement does not waive any liability we may have under the Washington Franchise Investment Protection Act, RCW 19.100, and the rules adopted thereunder.

**IN WITNESS WHEREOF**, the parties have executed and delivered this Rider on the dates noted below, to be effective as of the Effective Date of the Franchise Agreement.

**WE ARE CRACKIN' LLC**

**FRANCHISE OWNER:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
**[Name]**  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**THE FOLLOWING PAGES IN THIS EXHIBIT ARE  
A STATE-SPECIFIC RIDER TO THE  
AGREEMENT AND CONDITIONAL CONSENT TO TRANSFER**

**RIDER TO THE  
AGREEMENT AND CONDITIONAL CONSENT TO TRANSFER, AND RELATED  
AGREEMENTS FOR USE IN WASHINGTON**

**THIS RIDER** is made and entered into by and between **WE ARE CRACKIN' LLC**, an Oregon limited liability company (“**Franchisor**”), \_\_\_\_\_ (“**Seller**”), \_\_\_\_\_ (“**Seller Guarantor**”), and \_\_\_\_\_ (“**Buyer**”).

1. **BACKGROUND.** Franchisor and Buyer are parties to that certain Franchise Agreement dated \_\_\_\_\_, 20\_\_\_\_ (the “Buyer Franchise Agreement”) and the Franchisor, Buyer, Seller, and Seller Guarantor are parties to that certain Agreement and Conditional Consent to Transfer dated \_\_\_\_\_, 20\_\_\_\_ (the “Consent Agreement”). This Rider is annexed to and forms part of the Consent Agreement. This Rider is being signed because (a) Buyer is domiciled in Washington; and/or (b) the Elmer’s Breakfast · Lunch · Dinner<sup>®</sup> Restaurant, Elmer’s Kitchen Breakfast · Brunch · Mimosas<sup>™</sup> Restaurant, or Egg N’ Joe<sup>®</sup> Restaurant that Buyer will operate under the Buyer Franchise Agreement will be located or operated in Washington; and/or (c) Buyer accepted the offer for the sale of the Elmer’s Breakfast · Lunch · Dinner<sup>®</sup> Restaurant, Elmer’s Kitchen Breakfast · Brunch · Mimosas<sup>™</sup> Restaurant, or Egg N’ Joe<sup>®</sup> Restaurant franchise in Washington.

2. **ASSIGNMENT/ASSUMPTION OF PREMISES OF LEASE.** Section 6 of the Consent Agreement is deleted and replaced with the following:

Seller and Buyer acknowledge that one of the requirements of Franchisor’s consent is that the Restaurant premises lease be assigned to and/or otherwise assumed by the Buyer and that the lease for the Restaurant premises may require consent of and/or notice to the landlord with respect to such assignment and/or assumption. Provided (i) Buyer takes an assignment of the existing lease for the Restaurant; (ii) the terms of such lease are not amended; and (iii) the lease for the Restaurant includes the terms of Franchisor’s required lease addendum, Franchisor waives the requirement for lease review and approval set forth in the Buyer Franchise Agreement. If (i) the lease terms are amended; (ii) the lease for the Restaurant does not include the terms of Franchisor’s required lease addendum; or (iii) Buyer enters into a new lease for the Restaurant, all lease review and approval requirements set forth in the Buyer Franchise Agreement shall remain applicable. Buyer acknowledges and agrees that Franchisor has complied with and satisfied its obligations under the Buyer Franchise Agreement to provide site selection and development assistance. Buyer acknowledges that it has taken all steps necessary to ascertain whether the Restaurant location and lease are acceptable to Buyer.

**IN WITNESS WHEREOF**, the parties have executed and delivered this Rider on the dates noted below, to be effective as of the Effective Date of the Consent Agreement.

**WE ARE CRACKIN' LLC**

**BUYER:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
**[Name]**  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**SELLER:**

**SELLER GUARANTOR:**

\_\_\_\_\_  
**[Name]**  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Date: \_\_\_\_\_

## State Effective Dates

The following states have franchise laws that require that the Franchise Disclosure Document be registered or filed with the state, or be exempt from registration: California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington, and Wisconsin.

This document is effective and may be used in the following states, where the document is filed, registered or exempt from registration, as of the Effective Date stated below:

State	Effective Date
California	Pending
Illinois	Pending
Indiana	Pending
North Dakota	Pending
Washington	Pending
Wisconsin	March 26, 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 L**

**RECEIPTS**



**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 We Are Crackin' 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, We Are Crackin' LLC or an affiliate in connection with the proposed franchise sale, or sooner if required by applicable state law. Under Iowa law, we must give you this disclosure document at the earlier of our 1<sup>st</sup> personal meeting or 14 calendar days before you sign an agreement with, or make a payment to, us or an affiliate in connection with the proposed franchise sale.

If We Are Crackin' 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 franchisor is We Are Crackin' LLC, 363 High Street, Eugene, OR 97401; (503) 252-1485. The franchise seller for this offering is:

<input type="checkbox"/> Gerald Scott We Are Crackin' LLC 363 High Street Eugene, OR 97401 (503) 252-1485	<input type="checkbox"/> _____ We Are Crackin' LLC 363 High Street Eugene, OR 97401 (503) 252-1485	<input type="checkbox"/> Name of Franchise Seller: _____ Principal Business Address: _____ _____ Telephone No.: _____
---	--	--

Issuance Date: March 26, 2024.

See Exhibit A for We Are Crackin' LLC's registered agents authorized to receive service of process.

I have received a disclosure document dated March 26, 2024, that included the following Exhibits:

Exhibit A	State Administrators / Agents for Service of Process	Exhibit G	Financial Statements
Exhibit B	Area Development Agreement	Exhibit H	Table of Contents to Operations Manual
Exhibit C	Franchise Agreement	Exhibit I	Representations and Acknowledgment Statement
Exhibit D	Consent to Transfer	Exhibit J	Sample General Release
Exhibit E	List of Franchisees	Exhibit K	State Addenda and Agreement Riders
Exhibit F	List of Former Franchisees	Exhibit L	Receipts

Date	Signature	Printed Name
Date	Signature	Printed Name

Please sign this copy of the receipt, print the date on which you received this disclosure document, and return it, by mail or email, to We Are Crackin' LLC, 363 High Street, Eugene, Oregon 97401.

Phone: (503) 252-1485, Email: [jerry@erigroup.net](mailto:jerry@erigroup.net)

**RECEIPT  
(YOUR 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 We Are Crackin' 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, We Are Crackin' LLC or an affiliate in connection with the proposed franchise sale, or sooner if required by applicable state law. Under Iowa law, we must give you this disclosure document at the earlier of our 1<sup>st</sup> personal meeting or 14 calendar days before you sign an agreement with, or make a payment to, us or an affiliate in connection with the proposed franchise sale.

If We Are Crackin' 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 franchisor is We Are Crackin' LLC, 363 High Street, Eugene, OR 97401; (503) 252-1485. The franchise seller for this offering is:

<input type="checkbox"/> Gerald Scott We Are Crackin' LLC 363 High Street Eugene, OR 97401 (503) 252-1485	<input type="checkbox"/> _____ We Are Crackin' LLC 363 High Street Eugene, OR 97401 (503) 252-1485	<input type="checkbox"/> Name of Franchise Seller: _____ Principal Business Address: _____ _____ Telephone No.: _____
---	--	--

Issuance Date: March 26, 2024.

See Exhibit A for We Are Crackin' LLC's registered agents authorized to receive service of process.

I have received a disclosure document dated March 26, 2024, that included the following Exhibits:

Exhibit A	State Administrators / Agents for Service of Process	Exhibit G	Financial Statements
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Exhibit F	List of Former Franchisees	Exhibit L	Receipts

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Date	Signature	Printed Name
<hr style="border: none; border-top: 1px solid black;"/>	<hr style="border: none; border-top: 1px solid black;"/>	<hr style="border: none; border-top: 1px solid black;"/>
Date	Signature	Printed Name

PLEASE SIGN THIS COPY OF THE RECEIPT, PRINT THE DATE ON WHICH YOU RECEIVED THIS DISCLOSURE DOCUMENT AND KEEP IT FOR YOUR RECORDS.