

## FRANCHISE DISCLOSURE DOCUMENT



**E & G FRANCHISE SYSTEMS, INC.**

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(715) 833-1375

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E & G Franchise Systems, Inc. (the "Company") franchises Erbert & Gerbert's Sandwich Shop restaurants ("E & G Restaurants"), which feature gourmet sandwiches and specialty soups to be served on the premises and for pick-up by, or delivery to, the customer.

The total investment necessary to begin operation of an E & G Restaurant in a Traditional Location is from \$193,820 to \$460,270. This includes \$32,500 to \$35,000 that must be paid to the franchisor or its affiliates. The total investment necessary to begin operation of an E & G Restaurant in a Non-Traditional Location is from \$39,500 to \$196,750. This includes \$6,250 to \$10,750 that must be paid to the franchisor or affiliate. If you sign an Area Development Agreement, you will pay us a nonrefundable Territory Fee of \$10,000 times the number of E & G Restaurants you agree to develop. We will apply the \$10,000 payment against future Initial Franchise Fees for your E & G Restaurants that you develop under the Area Development Agreement.

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 Eric Wolfe at 800 Wisconsin St Mailbox 74, Bldg D2 Suite 315, Eau Claire, Wisconsin 54703, (715) 833-1375.

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

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

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

Issuance Date: April 24, 2023

## How to Use This Franchise Disclosure Document

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

QUESTION	WHERE TO FIND INFORMATION
<b>How much can I earn?</b>	Item 19 may give you information about outlet sales, costs, profits or losses. You should also try to obtain this information from others, like current and former franchisees. You can find their names and contact information in Item 20 or Exhibit B.
<b>How much will I need to invest?</b>	Items 5 and 6 list fees you will be paying to the franchisor or at the franchisor’s direction. Item 7 lists the initial investment to open. Item 8 describes the suppliers you must use.
<b>Does the franchisor have the financial ability to provide support to my business?</b>	Item 21 or Exhibit A 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 Erbert &amp; Gerbert’s Sandwich Shop business in my area?</b>	Item 12 and the “territory” provisions in the franchise agreement describe whether the franchisor and other franchisees can compete with you.
<b>Does the franchisor have a troubled legal history?</b>	Items 3 and 4 tell you whether the franchisor or its management have been involved in material litigation or bankruptcy proceedings.
<b>What’s it like to be an Erbert &amp; Gerbert’s Sandwich Shop franchisee?</b>	Item 20 or Exhibit B lists current and former franchisees. You can contact them to ask about their experiences.
<b>What else should I know?</b>	These questions are only a few things you should look for. Review all 23 Items and all Exhibits in this disclosure document to better understand this franchise opportunity. See the table of contents.

## What You Need To Know About Franchise *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 delegates. These items may be more expensive than similar items you could buy or 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 the 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 G.

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 Contacts for the location of the State Specific Addenda.

## Special Risks to Consider About *This Franchise*

Certain states require that the following risks be highlighted:

1. **Out-of-State Dispute Resolution.** The franchise agreement requires you to resolve disputes with the franchisor by mediation, arbitration, and/or litigation only in Wisconsin. Out-of-state mediation, arbitration, or litigation may force you to accept a less favorable settlement for disputes. It may also cost you more to mediate, arbitrate, or litigate with the franchisor in Wisconsin than in your own state.
2. **Spousal Liability.** The franchise owners must each sign personal guaranties making them jointly and severally liable for all obligations of the franchise. These guaranties place each franchise owner's personal assets at risk.

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.

**THE FOLLOWING PROVISIONS APPLY ONLY TO  
TRANSACTIONS GOVERNED BY  
THE MICHIGAN FRANCHISE INVESTMENT LAW**

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

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

reasonable qualifications or standards.

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

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

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

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

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

If the franchisor's most recent financial statements are unaudited and show a net worth of less than \$100,000, the franchisor shall, at the request of a franchisee, arrange for the escrow of initial investment and other funds paid by the franchisee or subfranchisor until the obligations to provide real estate, improvements, equipment, inventory, training, or other items included in the franchise offering are fulfilled. At the option of the franchisor, a surety bond may be provided in place of escrow.

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

**ANY QUESTIONS REGARDING THIS NOTICE SHOULD BE DIRECTED TO THE OFFICE OF THE ATTORNEY GENERAL, CONSUMER PROTECTION DIVISION, ATTN: FRANCHISE SECTION, G. MENNEN WILLIAMS BUILDING, 1ST FLOOR, LANSING, MICHIGAN 48933, (517) 373-7117.**

**E & G FRANCHISE SYSTEMS, INC.  
FRANCHISE DISCLOSURE DOCUMENT**

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## ITEM 1

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

#### Franchisor

E & G Franchise Systems, Inc. ("we," "us," "our," "ours," or the "Company") is a Wisconsin corporation incorporated under the name Erbert & Gerbert & Friends, Inc. in 1991. Our principal offices are at 800 Wisconsin St Mailbox 74, Bldg D2 Suite 315, Eau Claire, Wisconsin 54703. The Company changed its name to E & G Franchise Systems, Inc. in January 2002. "You" and "your" mean the person or entity who buys the franchise. If the franchise will be owned by a corporation, partnership or limited liability company, "you" and "your" also mean the owners of the corporation, partnership or limited liability company, and their spouses.

#### Our Background

We conducted a business of the type to be franchised by you beginning in 1988 and ending in 2009. Since 2009, various affiliates have conducted a business of the type to be franchised by you. Except for the E & G Bistro (described below in this Item 1), we have not offered franchises of any other type or line of business. Other than described below in this Item 1, none of our affiliates have offered franchises in any other line of business or provide products or services to our franchisees. We do not conduct any other business activities. We do not have any predecessors or parent.

#### Affiliates of Us Operating Businesses Similar to an E & G Restaurant

We have affiliates which own and operate E & G Restaurants. As of December 2018, there were 3 affiliates operating in Minnesota. All of these affiliates and their locations are listed on Exhibit B and are collectively referred to in this disclosure document as "EGSUBS". They all do business under the name "Erbert & Gerbert's Sandwich Shop", and each of their principal place of business is 800 Wisconsin St Mailbox 74, Bldg D2 Suite 315, Eau Claire, Wisconsin 54703. You will not conduct business directly with EGSUBS. EGSUBS does not and has never in the past sold franchises in any line of business.

#### Our Business

We offer franchises to operate Erbert & Gerbert's Sandwich Shop restaurants, which feature gourmet sandwiches and specialty soups to be sold and served on the premises, through drive-through, by pick-up or delivery under the Marks and System (each, an "E & G Restaurant"). "System" means, without limitation, proprietary recipes, systems for preparation of gourmet sandwiches and specialty soups, as well as any other related activity, methods for serving on the premises, and methods for delivery service; distinctive exterior and interior design, décor, layout and color scheme; exclusively designed signage, decorations, furnishings and materials; confidential operating procedures; methods and techniques for delivery service, inventory and cost controls, record keeping, accounting and reporting, personnel management, purchasing, sales promotion, marketing and advertising all of which may be changed, improved and further developed by the Company from time to time. "Marks" means such service marks, trademarks, trade dress and trade names, and all configurations and derivations, as may presently exist, or which may be modified, changed or acquired by us or our affiliates, in connection with the operation of a Franchised Business. Marks currently include "Erbert & Gerbert", "Erbert and Gerbert Sandwich Shop" and the design with two boys' faces (horizontal), the design with "Erbert and Gerbert's", and the "E and G" design. The restaurant business you will operate under the Marks and according to the System pursuant to the Franchise Agreement will be referred to as the "Franchised Business" or "your Franchised Business" or



“your E & G Restaurant”. You will do business under the fictitious or assumed name "Erbert and Gerbert's Sandwich Shop" or any other name that we decide to use in the future.

We offer two types of E & G Restaurant locations: a "Traditional Location" which is operated in strip centers, out-lots, end-caps and other locations that are not Non-Traditional Locations (as defined below); and "Non-Traditional Locations" which are operated in special sites where single-purpose restaurants are not an option, such as shopping mall food court, educational facilities, transportation facilities, sporting facilities and military bases. In our terminology, "shopping mall" includes an indoor or enclosed mall and an outdoor mall consisting of stores that are part of the same retail development arranged around open-air pedestrian walkways (but not a shopping center development where storefronts surround a common parking lot). A Non-Traditional Location operates under the Marks and generally follows the same System as a Traditional Location but has a modified menu offering and operating processes to account for site differences (such as a common kitchen with other businesses operating in the same non-traditional area).

We began offering E & G Restaurant franchises for Traditional Locations in 1992. Between 2011 and 2015, we offered under a separate disclosure document franchises to operate E & G Restaurant franchises for Non-Traditional Locations under the Mark "E & G Bistro" and "Erbert and Gerbert's Bistro". In 2016 we ceased offering these Non-Traditional Location franchises under the Bistro marks and under a separate disclosure document and instead began offering these franchises under the Marks and as part of a single disclosure document.

The market for quick service sandwich restaurants is well developed, very competitive and can be affected by many factors, including changes in local, regional or national economic conditions, changes in consumer tastes, and increases in the number of, and in particular, the location of competing restaurants. Your competitors are other restaurants, privately owned, locally owned, nationwide and franchises offering the same or similar products and services.

### Our Franchise Programs

This Disclosure Document describes our 3 franchise programs:

Single Unit Franchise Program in Traditional Locations. We grant individual franchises to own and operate an E & G Restaurant in a Traditional Location under the terms and conditions of a franchise agreement (the "Franchise Agreement (Traditional)") in the form attached as Exhibit D. We may offer existing franchisees the opportunity to add one or more of the following optional programs ("Optional Programs"): a grab and go station (the "To Go Unit") and a mobile unit (the "Mobile Unit"). If we agree to offer you an Optional Program, you will sign an Optional Program Addendum to the Franchise Agreement (Exhibit VI of the Franchise Agreement). If you participate in any Optional Program, then the term "Franchised Business" used in this disclosure document will include the business conducted at your To Go Unit and Mobile Unit.

Single Unit Franchise Program in Non-Traditional Locations. We grant individual franchises to own and operate an E & G Restaurant in a Non-Traditional Location under the terms and conditions of a franchise agreement (the "Franchise Agreement (Non-Traditional)") in the form attached as Exhibit E. We may offer existing franchisees the opportunity to add one or more Optional Programs. If we agree to offer you an Optional Program, you will sign an Optional Program Addendum to the Franchise Agreement (Exhibit III of the Franchise Agreement). If you participate in any Optional Program, then the term "Franchised Business" used in this disclosure document will include the business conducted at your To Go Unit and Mobile Unit.

In this disclosure document, the term "Franchise Agreement" refers to the Franchise Agreement (Traditional) and Franchise Agreement (Non-Traditional), as applicable. In no event will you be a franchisee until we have signed a Franchise Agreement with you.

Development Program. Under the Development Program, we assign a territory ("Development Area") within which you must open and operate a number of E & G Restaurants (each, a "Unit" and collectively, "Units") within a specified period of time ("Development Schedule"). We do not typically use the Development Program for Non-Traditional Locations. If you elect to participate in and are approved for this program, you will execute an Area Development Agreement (the "Area Development Agreement") in the form attached as Exhibit F, which will describe your Development Schedule. For each Unit, you must sign separate Franchise Agreements. You will sign a Franchise Agreement for your first Unit at the same time you sign Development Agreement.

### Regulations Specific to Restaurant Industry

The restaurant industry is heavily regulated. Many of the laws, rules and regulations that apply to businesses generally have particular applicability to your Franchised Business. You must comply, at your sole expense, with federal, state and local laws applicable to the operation and licensing of your Franchised Businesses, including obtaining all applicable health permits and/or inspections and approvals by municipal, county or state health departments that regulate food service operations. Your Franchised Business premises must also meet applicable municipal, county, state and federal building codes and handicap access codes. You should consider these laws and regulations when evaluating your purchase of the franchise. We have no responsibility in determining what laws, rules or regulations apply to your Franchised Business. You must determine this on your own and the laws, rules and regulations may vary by location, State, county, municipality, etc.

The U.S. Food and Drug Administration, the U.S. Department of Agriculture and state and local health departments administer and enforce regulations that govern food preparation and service and restaurant sanitary conditions. State and local agencies inspect restaurants to ensure that they comply with these laws and regulations. The Federal Clean Air Act and various state laws require certain state and local areas to meet national air quality standards limiting emissions of ozone, carbon monoxide and particles, including caps on emissions from commercial food preparation. Some state and local governments also regulate indoor air quality, including limiting the use of tobacco products in public places, such as restaurants.

## **ITEM 2**

### **BUSINESS EXPERIENCE**

#### Eric Wolfe: President, Chief Executive Officer and Chairman of the Board of Directors

Mr. Wolfe became the President, Chief Executive Officer and a member of the Board of Directors of the Company in November 2003. Since the dates listed, Mr. Wolfe has also been the President of the following affiliates: EGSUBS 7, Inc. (July 2021), EGSUBS 6, Inc. (October 2017), EGSUBS 3, Inc. (December 2015), EGSUBS 1, Inc. (September 2015).

#### Jean Kleven: Vice President of Finance

Since 2006, Ms. Kleven has been our Vice President of Finance. Since the dates listed, Ms. Kleven has also been a Director and Secretary for the following affiliates: EGSUBS 6, Inc. (October 2017), EGSUBS 3, Inc. (December 2015), and EGSUBS 1, Inc. (September 2015). Since August 1998, Ms. Kleven has also been the Secretary for the Company.

Tyler Scott Schwecke: Director of Operations

Mr. Schwecke has been our Director of Operations since January 2021. From October 2015 until December 2020, Mr. Schwecke was the Director of Operations for DKPM (a franchisee of Jimmy John's) in Las Vegas, NV.

Loren Viere: Treasurer and Member of the Board of Directors

Mr. Viere has been a member of the Board of Directors for the Company since November 2003. From November 2003 until October 2014, Mr. Viere was also the Treasurer for the Company. Mr. Viere has been the CEO of Kern DeWenter Viere, Ltd., an accounting firm located in St. Cloud, Minnesota, since 1997.

Allan Hickok: Member of the Board of Directors

Mr. Hickok has been a member of the Board of Directors for the Company since September 2017. Since September 2009, he has been a Senior Advisor for the Boston Consulting Group.

**ITEM 3**

**LITIGATION**

*Keepin' It Food, LLC v. E&G Franchise Systems, Inc. v. Keepin' it Food, LLC, Lindsey Gentry f/k/a Lindsey Duerst, and Martin Gentry*, Arbitration Reference No. 1825810 (Forum in Eau Claire, WI). Our franchisee, Keepin' It Food, LLC ("Claimant") filed for arbitration on January 17, 2019, and asserted claims that we intentionally misrepresented and/or negligently misrepresented information regarding the location of the franchise, cost of the buildout, cost of goods sold, and level of support. Claimant also asserted a claim for breach of contract which appears to complain of the same conduct alleged in its misrepresentation claims. Claimant alleges that it believes its damages are in excess of \$400,000, plus costs, disbursements and reasonable attorneys' fees. We filed a Response and Counterclaim on or about March 15, 2019, where we denied the allegations and asserted multiple affirmative defenses. Lindsey and Martin Gentry were included in the arbitration because they signed a personal guaranty of the obligations in the franchise agreement. In our counterclaim, we seek past due amounts under the franchise agreement for royalties which were previously due, plus interest at 18%, as well as royalties through the end of the term of the franchise agreement. In our Response and Counterclaim, we seek dismissal of the claim, compliance by the Gentrys of the obligations in the franchise agreement, attorneys' fees, costs and expenses as well as the relief described above in our counterclaim. On March 11, 2022, the parties amicably resolved their claims by entering into a written settlement agreement whereby all claims were dismissed, we paid Claimant \$50,000 and Claimant agreed to certain non-disparagement and confidentiality obligations.

*E & G Franchise Systems, Inc. v. The Janik Group, LLC and Aubrey Janik ("Defendants")*, United States District Court for the Western District of Wisconsin, Case No: 3:18-cv-00416-slc. On May 30, 2018, we filed the above lawsuit against a franchisee and its owner after we terminated Defendants' franchise agreement and Defendants continued to operate their E & G Restaurant under the Marks and System. Our lawsuit initially sought a declaratory judgment and injunction to force Defendants to cease operating their E & G Restaurant. After Defendant de-branded but continued operating a sandwich restaurant, we amended our lawsuit to add allegations related to violations of the post-termination non-competition obligations contained in the Franchise Agreement. In response, on June 28, 2018 Defendant filed counterclaims, alleging that we improperly terminated the franchise agreement, that we misrepresented or omitted material facts about the franchise, that we breached our implied duty of good faith and fair dealing, and that we failed to provide the products and support required by the franchise agreement. On March 5, 2019, after

Defendant ceased operating the competing restaurant, the parties entered into a settlement agreement, which provided for the dismissal of all claims in the lawsuit, our purchase of franchisee's development territory for \$77,500, Defendant agreeing to non-competition, non-disparagement and confidentiality obligations, and the general releases of all parties. The lawsuit was dismissed on March 14, 2019.

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

**ITEM 4**

**BANKRUPTCY**

No bankruptcy is required to be disclosed in this Item.

**ITEM 5**

**INITIAL FEES**

Traditional Location

You must pay us an Initial Franchise Fee of \$30,000 when you sign the Franchise Agreement. If you sign an Area Development Agreement, the Initial Franchise Fee for your first E & G Restaurant is \$30,000 and the Initial Franchise Fee for each additional E & G Restaurant is \$20,000, payable in full when you sign the Franchise Agreement for that E & G Restaurant. During 2022, we did not discount our Initial Franchise Fee for any franchisee.

We participate in the International Franchise Association's VetFran program. Under this program, a veteran of the U.S. Armed Services who has been honorably discharged and who has had at least one year of active service receives a reduction on the Initial Franchise Fee, as follows: the Initial Franchise Fee for your first E & G Restaurant is \$25,000, and if you sign an Area Development Agreement, the Initial Franchise Fee for each additional E & G Restaurant is \$17,000.

The Initial Franchise Fee is payable in lump sum, is fully earned by us when you sign the Franchise Agreement and is not refundable under any circumstances.

Non-Traditional Location

If you are opening a Non-Traditional Location, the Initial Franchise Fee is \$5,000. The Initial Franchise Fee is payable in lump sum, is fully earned by us when you sign the Franchise Agreement and is not refundable under any circumstances.

When you sign the Franchise Agreement, you also have to pay an Initial Advertising Fee of \$750 to us. We use this \$750 to pay for the cost of producing logo and brand materials, training, grand opening planning, public relations and necessary travel expenses related to the opening of your Franchised Business in a Non-Traditional Location. The Initial Advertising Fee is payable in lump sum, is fully earned by us when you sign the Franchise Agreement and is not refundable under any circumstances.

Development Program

You may enter into an Area Development Agreement to reserve a particular defined territory upon payment of a lump sum, nonrefundable Territory Fee of \$10,000 per Unit to be developed within the territory. The \$10,000 payment will be applied against future Initial Franchise Fees for these Units. The balance of the

Initial Franchise Fee for each Unit is due when you sign the Franchise Agreement for each Unit. The Territory Fee is fully earned when paid and is non-refundable under any circumstances.

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

<b>Type of Fee</b>	<b>Amount</b>	<b>Due Date</b>	<b>Remarks</b>
Royalty Fee (Note 1)	6% of Net Revenue  5% of Net Revenues for Non-Traditional Locations	Tuesday of each week for Traditional Locations  Within 30 days after the end of each month for Non-Traditional Locations	Payments may be required to be made via electronic funds transfer ("EFT") (except for Non-Traditional Locations, which are paid by check or wire transfer)
Advertising Fee (Note 1)	2% of Net Revenues for Traditional Locations  None for Non-Traditional Locations (other than the Initial Advertising Fee described in Item 5)	Tuesday of each week	Deposited in the Advertising Fund; payments may be required to be made via EFT
Taxes (Note 2)	Actual costs	Upon demand	Payable if certain taxes are levied or assessed on the fees you pay to us or our affiliates
Required Local Advertising (Note 3)	2.5% of Net Revenues for Traditional Locations  None for Non-Traditional Locations	Quarterly	For advertising in your local area
Technology Fee (Note 4)	\$100 per month	By the 1 <sup>st</sup> of each month	Payments shall be made via EFT

Type of Fee	Amount	Due Date	Remarks
Additional Training	Currently \$1,500 plus our expenses per person for Traditional Locations  Currently \$750 plus our expenses per person for Non-Traditional Locations	Before training	This fee applies only if we train an additional person(s) or if additional training is provided after the Initial Training.
Additional Assistance	Currently \$150 per day plus our expenses	Upon demand	This fee applies only if you request additional assistance at your Franchised Location
Renewal Fee	\$5,000 for Traditional Locations  \$2,500 for Non-Traditional Locations	At the time of the execution of the then current franchise agreement	Payable when you renew the franchise
Transfer Fee	\$5,000 plus the Additional Training Fee for each trainee of the transferee	Before transfer	Payable if you transfer the agreement to a third party
Convention / Regional Meeting Registration Fee	Currently \$175-\$200 per person	When registering for convention or regional meeting	You must also pay attendees' expenses
Product Purchases (Note 5)	Price List	Upon demand	Payment must include cost of goods, taxes, shipping and handling
Supplier Inspection Expenses	Our costs to inspect unapproved supplier's	Upon demand	Only if you want us to test a proposed supplier to become an approved supplier
Attorneys' Fees and costs*	Reasonable fees and costs	Upon demand	Includes attorneys' fees and other costs which we incur if we have to enforce or defend the Franchise Agreement or Area Development Agreement

Type of Fee	Amount	Due Date	Remarks
Interest Charges	The lesser of 18% per annum or the maximum legal rate allowable by applicable law	Upon demand	Applies to past due payments payable to us
Late Fee	Currently \$100, plus \$100 per week per delinquent plan, report and/or payment	Upon demand	Applies to past due plans, reports or payments payable to us; payment may be required to be made by EFT
Opening Authorization Fee	Up to \$1,000 plus our travel expenses	Upon demand	Applies if, upon our inspection of your Franchised Business prior to opening, you have not complied with all of our pre-opening requirements; payments may be required to be made by EFT
Re-Inspection Fee	Currently, \$250 per day plus all of our travel expenses	Upon demand	Applies if we conduct any follow-up inspection after you are given an action plan to correct deficiencies or a curable default notice; the fee is assessed for each day we are on-site at the Franchised Business to confirm non-compliance has been corrected; payments may be required to be made by EFT
Audit Costs	Amount incurred by us to conduct the audit	Upon demand	Applies if the audit reveals that the Royalty Fees and/or Advertising Fees have been underpaid by more than 2% any month or year or if you fail to provide us with reports as required
Indemnification*	Our costs and damages	Upon demand	You must defend and indemnify us from claims resulting from your activities or operations
Liquidated Damages (Note 6)	\$100 or \$1,000 per day	Upon demand	If you fail to comply with the mandatory terms of the Manual it is \$100 per day or if you offer for sale or sell unauthorized products or services it is \$1,000 per day
Dispute Resolution Fee*	\$25,000 plus attorneys' fees and expenses  None for Non-Traditional Locations	Upon demand	If you fail to comply with the dispute resolution requirements of the Franchise Agreement or Area Developer Agreement

Type of Fee	Amount	Due Date	Remarks
Optional Program Fee (Note 7)	None for a To Go Unit  \$15,000 for a Mobile Unit	Upon signing the Optional Program Addendum	If you wish to operate an Optional Program, you must sign an Optional Program Addendum found in Exhibit VI of the Traditional Franchise Agreement and Exhibit III of the Non-Traditional Franchise Agreement and pay us the Optional Program Fee.
Loyalty Program Fee (Note 8)	\$130 per month.	Upon demand or invoice	This is an amount paid to our third party supplier. This amount may go up in the future depending upon third-party pricing.

\*These fees are applicable to both the Franchise Agreement and Area Development Agreement. Otherwise, all fees listed above are applicable to both the Traditional Franchise Agreement and the Non-Traditional Location except as otherwise provided.

With the exception of the costs for Required Local Advertising, each fee is imposed by and payable to us. All fees are nonrefundable and are uniformly imposed. At our request, all fees must be paid by EFT and you will authorize us to initiate all EFT transactions.

1. "Net Revenues" means the total amount of all sales of products, services and merchandise sold from, through or in connection with the Franchised Business, whether for cash, on credit, barter or otherwise, exclusive of applicable sales, use or service taxes.

If you participate in any Optional Program, the sales from your To Go Unit or Mobile Unit will count as Net Revenues for the purpose of calculating your Royalty Fees and Advertising Fees. If you are operating Non-Traditional Location, you do not pay an Advertising Fee (other than the one-time Initial Advertising Fee described in Item 5).

For Traditional Locations, Royalty Fees and Advertising Fees will be paid on or before Tuesday of each week (unless a legal holiday falls on a Tuesday, in which case the payment will be made on the next day which is not a legal holiday). All payments due to us under the Franchise Agreement, including Royalty Fees, Advertising Fees, payments for marketing materials, interest or other charges will be made via electronic funds transfer ("EFT") or such other manner which we may designate from time to time. None of these fees are refundable. Any payment not received by us on or before the date they are due will be deemed overdue. You grant us the right to initiate all such EFT drafts when due. You will comply with the procedures specified in the Manual or as otherwise communicated for such EFT or other program and will perform the acts and sign the documents, including authorization forms that we, our bank and your bank may require to accomplish payment by EFT or the other method we designate, including authorizations for us to initiate debit entries and/or credit correction entries to a designated checking or savings account. In addition, you will pay all costs associated with utilizing an EFT payment program.

For Non-Traditional Locations, Royalty Fees are paid within 30 days after the end of each month by check or wire transfer.

**Note 2:** You agree to indemnify and/or reimburse us for all capital, gross receipts, sales and other taxes and assessments imposed by any applicable state or local governmental authority as a result of the conduct of your Franchised Business or the license of any of our intangible property to you (whether required to be paid by us, withheld by you or otherwise). Your obligation to indemnify or reimburse us or our affiliates



for these taxes does not extend to income-type taxes which a state or local government imposes on our income.

**Note 3:** Unless you are operating a Non-Traditional Location, you are required to spend 2.5% of Net Revenues each quarter in order to advertise your Franchised Business locally. If there are multiple E & G Restaurants within a market area, we may establish a Local Advertising Group and require you to participate in that group. Only franchisees who are not in full compliance with all agreements with us may serve as elected officials of any Local Advertising Group, however. We will establish the amount of contributions by each member of any Local Advertising Group we create (between 1% and 2% of Net Revenues). Any contributions by you to a Local Advertising Group will count towards your Required Local Advertising amounts. Outlets operating at Non-Traditional Locations are not required to spend money on local advertising.

**Note 4:** You are required to pay us a Technology Fee equal to \$100 per month due on the first day of the month after you open the Franchised Restaurant for business and by the first day of each month thereafter. We use the Technology Fee to support, update and revamp the website, emails, enhancement and development of the Computer System we require our franchisees to use, any mobile application and/or online ordering capabilities we may develop for use in the System and for other technology-related products or services that are or become part of the System. We reserve the right to increase the amount of the Technology Fee, but in no event, will we increase it more than once every 12 months. Notwithstanding the foregoing, we are not currently charging the Technology Fee but we reserve the right to do so in our sole discretion.

**Note 5:** We and our affiliate reserve the right to be suppliers of various products and services. In such event, the price and terms and conditions for these purchases are contained on the price list that we or our affiliates will supply to you from time to time ("Price List"). We reserve the right, for ourselves and our affiliates, to update the Price List and change the terms and conditions for these purchases at any time on 30 days' notice. All of the individuals who guarantee the Franchise Agreement must also guarantee all of your purchases of products and equipment from us or our affiliates. You must pay for all taxes, shipping and handling costs. If you fail to pay for any products or equipment when payment is due, we or our affiliates can require you to pay for future products and/or equipment on a C.O.D. basis or withhold shipment of products and/or equipment in addition to requiring you to pay late fees and interest.

**Note 6:** Uniformity of products and services offered by all E & G Restaurants is of utmost importance to us, our franchisees and the System. If you offer to sell or do sell products or services which are not authorized or are not prepared in accordance with our Manual, or if you fail to conform with any other mandatory standards set forth in the Manual, we will have the right to charge you for our damages caused by your non-compliance, which will be calculated at the rate of up to \$1,000 per day for each day unauthorized products or services are offered or sold, and at the rate of \$100 per day for each day you fail to comply with the mandatory provisions of the Manual. We have the right to collect these amounts in addition to any and all of our other rights for non-compliance provided for under the Franchise Agreement.

**Note 7:** If you are in full compliance with the Franchise Agreement and you and we desire to add an To Go Unit or Mobile Unit to your existing Franchised Business, you will agree to operate the Optional Program in full compliance with the terms and conditions set forth in the Franchise Agreement and the Optional Program Addendum which is attached to the Franchise Agreement as Exhibit VI. In order to operate your Optional Program, you must sign the Optional Program Addendum and pay us the Optional Program Fee. The Optional Program Fee for an To Go Unit is \$0. The Optional Program Fee for a Mobile Unit is \$15,000.

**Note 8:** You are required to participate in all loyalty programs and special promotions (except only where strictly prohibited by your lessor in connection with a Non-Traditional Location).

**ITEM 7**

**ESTIMATED INITIAL INVESTMENT**

**YOUR ESTIMATED INITIAL INVESTMENT**

**Single Outlet (Traditional Location)**

<b>Type of Expenditure (Note 1)</b>	<b>Amount</b>	<b>Method of Payment</b>	<b>When Due</b>	<b>To Whom Payment is to be Made</b>
Initial Franchise Fee (Note 2)	\$ 30,000	Lump Sum	At signing of Franchise Agreement	Company
Leasehold Improvements (Note 3)	\$ 50,000 - \$145,000	Lump Sum	Before Opening	Suppliers
Lease Payment and Security Deposit (Note 4)	\$ 4,000 – \$ 14,000	As Incurred	As Arranged	Landlord
Travel and Living Expenses for You and Your Manager During Training	\$ 1,500 – \$ 4,200	As Incurred	During Training	Employees, Airlines, Hotels and Restaurants
Insurance Premiums - 3 Months (Note 5)	\$ 2,000 – \$ 3,500	As Incurred	As Arranged	Insurance Companies
Opening Inventory of Supplies, Food and Beverages	\$ 3,000 – \$ 10,000	Supplier Terms	As Arranged	Suppliers
Uniforms, Small Wares, Office Supplies, Menus and Other Printed Materials	\$ 6,000 – \$ 8,000	Supplier Terms	As Arranged	Suppliers
Exterior Signage and Interior Décor	\$ 10,000 – \$ 18,000	Lump Sum	Before Opening	Suppliers
Furniture, Fixtures and Equipment	\$ 40,000 – \$ 150,000	Lump Sum	Before Opening	Suppliers
Computer Systems (Note 6)	\$ 8,820 – \$ 11,070	Supplier Terms	As Arranged	Suppliers
Professional Services	\$ 2,500 – \$ 5,000	As Incurred	As Arranged	Attorneys, Accountants and other Professionals

Type of Expenditure (Note 1)	Amount	Method of Payment	When Due	To Whom Payment is to be Made
Architectural/Design Services	\$ 8,500 – \$ 16,500	As Incurred	As Arranged	Designated Suppliers, Architects, Designers
Miscellaneous Licenses, Deposits and Permits	\$ 2,500 – \$ 5,000	As Incurred	Before Opening or Otherwise as Arranged	Landlord, Utilities, Government Agencies
Grand Opening Advertising and Promotion	\$ 10,000	As Incurred	As Incurred within 60 days of opening of your Franchised Business	Suppliers
Additional Funds - 3 Months (Note 7)	\$ 15,000 – \$ 30,000	As Incurred	As Incurred	Company, Employees, Suppliers and Utilities
Total Estimated Initial Investment (8)	\$193,820 - \$460,270			

The chart above describes the estimated initial investment for an E&G Restaurant in a Traditional Location, whether it is a single franchise under our Single Unit Franchise Program or a Franchised Business under our Development Program.

The foregoing expenses are merely estimates. You are encouraged to make an independent investigation and analysis of the potential expenses which may be incurred in order to start your Franchised Business. This does not include the cost of the real estate or constructing a building if you purchase the land.

Notes:

- For the estimated range of costs, we relied on our and our affiliate's experience in the restaurant business since 1988 and the experience of our franchisees since 1992. You should carefully review these figures with your business advisor before making any decision to purchase the Franchise.

Payments are not refundable unless otherwise noted. We do not offer, either directly or indirectly, financing to you for any items but we reserve the right to do so in the future. (See Item 10 of this disclosure document.) The availability of financing will depend upon various factors like the availability of financing generally, your credit worthiness, other security that you may have, and the requirements of lending institutions concerning the type of business to be operated by you.

Expenses will vary depending upon many factors, including the availability of labor in your mark and your specific market conditions. Your expenses may be different than the estimates indicated above.

- The Initial Franchise Fee is \$30,000, unless the Franchised Business is an E & G Restaurant developed under an Area Development Agreement, in which case the Initial Franchise Fee will be \$20,000 for all subsequent units other than the first unit. As described in Item 5, under our Development Program, when you sign the Area Development Agreement, you must pay us a Territory Fee equal to the number of Franchised Locations to be opened under the Area Development Agreement multiplied by \$10,000, and you will receive a \$10,000 credit against the Initial Franchise Fee owed when you sign the Franchise Agreement for each E & G Restaurant. Currently there is a promotional offer whereby the Initial Franchise Fee is only \$12,500. We reserve the right to discontinue offering this promotional offer at any time in which case the Initial Franchise Fee will once again be the amount described in this section.
- These figures represent the cost to lease and remodel an existing building in a partially finished condition. These figures do not include demolition costs or major structural building modifications. E & G Restaurants are typically located in a store front, shopping center or strip mall, however a small stand-alone unit with a drive thru may be possible. Typically, premises will have approximately 750 to 2000 square feet of floor space. The average size of a small standalone unit is 700 to 900 square feet and the average size of a standard Traditional Location will be 1,800 square feet. The high estimate of the Leasehold Improvements includes the cost to add a drive-thru service to your Franchised Business. These estimates will vary depending on location, local business economy, availability, accessibility, competition and general economic conditions. You may be able to negotiate into your lease an obligation of the landlord to contribute funds to be used for tenant improvements. It is customary for landlords to offer a tenant improvement allowance to help pay for leasehold improvements. It is important that you negotiate that in connection with any commercial real estate lease associated with your Franchised Business. We require you to retain a local (to your market) commercial real estate broker to help negotiate any commercial real estate lease associated with your Franchised Business. We also require that you receive and submit to us, for our review and approval and before your acceptance, no less than three written bids from qualified third-party contractors

E & G Restaurants are generally operated from leased premises. If you choose to purchase the land and building for your Franchised Business, your initial costs will be significantly higher than if you choose to lease and remodel the Franchised Location. The cost to purchase land on which to construct the building may vary widely depending upon the location of the land, the demand for the site, the zoning, the assessed value of the parcel, the attributes of the parcel and related area, such as parking availability, accessibility, traffic flow, and the general economic conditions.

- The monthly rental for your Franchised Location may include common area maintenance fees and real estate taxes. The amount indicated includes a one-month rental payment and the security deposit which is generally one month's rent. The terms of a lease may provide a build-out time period during which lease payments are not required, but some leases may require lease payments during construction.
- These amounts represent 3 months of premiums for the required insurance, including statutory workers' compensation deposits your state may require. The type of insurance you are required to maintain is described in Section IX.H. of the Franchise Agreement. The amount of workers' compensation deposits will vary depending on the state in which your Franchised Business is located.
- The cost for the computer systems may be higher if you choose to include optional features above our requirements. This estimate is based on the cost to purchase the hardware described in Item 11. Leasing options may be available. Included with this range is your first 3 months of the

software maintenance and support fees for the point of sale system and 3 months of fees for the online ordering and loyalty program systems. You must participate in our loyalty program. If you need to purchase a computer system, these costs will be additional to the ones listed in this estimate. Our Revel computer system which is specified for E & G Restaurants in Traditional Locations is available for you to purchase from an approved supplier at between \$5,000 and \$7,500 for a 4-terminal POS computer system, the software maintenance from Revel is estimated at between \$350 and \$400 per month, and the cost of the loyalty program system from Punchh is \$130 per month. You must also subscribe to the online ordering platform provided by our approved supplier, Zuppler. The cost for the Zuppler system is \$80 per month.

- This item estimates your expenses during the initial 3-month period of operating the Franchised Business (other than the items identified separately in this table). These expenses include estimated rent, payroll costs, benefits, the cost to have your utilities, additional inventory requirements, supplies, etc., but do not include Royalty Fees, Advertising Fees or an owners' draw or salary. These figures are estimates, and you may have additional expenses in order to start the business. Your costs will depend on factors similar to these: how closely you follow our methods and procedures; your management skill, experience and business acumen; local economic conditions; the local market for your products and services; the prevailing wage rate; competition; and sales level reached during the initial period.

These figures are estimates only, and it is possible that you may have additional or greater expenses during this period. Your costs will vary depending on the size of your Franchised Business, your geographic area, economic and market conditions, interest rates, competition, wage rates, sales levels attained, and other economic factors. Your financial condition and arrangements negotiated by and the business decisions made by you will also affect these costs. There can therefore be no assurance that the experience of a particular franchisee will correspond with the information presented above.

**Non-Traditional Location Outlet**

Type of Expenditure (1)	Amount	Method of Payment	When Due	To Whom Payment is to be Made
Initial Franchise Fee	\$5,000	Lump Sum	At signing of Franchise Agreement	Company
Initial Advertising Fee	\$750	Lump Sum	At signing of Franchise Agreement	Company
Leasehold Improvements (2)	\$0 - \$100,000	Lump Sum	Before Opening	Suppliers or Landlord
Travel and Living Expenses for your Key Operator During Training	\$1,000 - \$2,500	As Incurred	During Training	Employees, Airlines, Hotels and Restaurants
Opening Inventory of Supplies, Food and Beverages	\$1,000 - \$3,000	Supplier Terms	As Arranged	Suppliers
Uniforms, Small Wares, Office Supplies, Menus and Other Printed Materials	\$2,000 - \$4,000	Supplier Terms	As Arranged	Company and Suppliers

Type of Expenditure (1)	Amount	Method of Payment	When Due	To Whom Payment is to be Made
Signage	\$1,250 - \$5,000	Lump Sum	Before Opening	Company and Suppliers
Furniture, Fixtures and Equipment (3)	\$23,000 - \$55,000	Lump Sum	Before Opening	Suppliers
Insurance Premiums – 3 Months (4)	\$2,000 - \$3,500	As Incurred	As Arranged	Suppliers
Professional Services	\$2,500 - \$5,000	As Incurred	As Arranged	Attorneys, Accountants and other Professionals
Grand Opening Advertising and Promotion	\$0 - \$3,000	As Incurred	As Incurred within 60 days of opening of your Franchised Business	Suppliers
Additional Funds - Three Months (5)	\$1,000 - \$10,000	As Incurred	As Incurred	Company, Employees, Suppliers and Utilities
Total Estimated Initial Investment (6)	\$39,500 – \$196,750			

The foregoing expenses are merely estimates. You are encouraged to make an independent investigation and analysis of the potential expenses which may be incurred in order to start your Franchised Business.

Notes:

- For the estimated range of costs, we relied on our experience in the restaurant business since 1988 and the experience of our Non-Traditional Location franchisees since 2011. You should carefully review these figures with your business advisor before making any decision to purchase the Franchise.

Payments are not refundable unless otherwise noted. We do not offer, either directly or indirectly, financing to you for any items but we reserve the right to do so in the future. (See Item 10 of this document.) The availability of financing will depend upon various factors like the availability of financing generally, your credit worthiness, other security that you may have, and the requirements of lending institutions concerning the type of business to be operated by you.

- Non-Traditional Location outlets are not intended to operate as stand-alone operations; rather, they are intended to function within a larger facility with other restaurants (such as a school cafeteria, airport, stadium, convention center or employee cafeteria). In many instances, payment for space within these facilities will be based upon a negotiated percentage of sales, rather than on a set amount. In other instances (primarily involving contract feeders in employee cafeterias), there will be no real estate cost, as the franchisee is being paid a fee to provide a service. As a result, several costs that a stand-alone restaurant would normally pay for leasehold improvements and lease

payments during construction have not been included in these estimates. If your particular situation is different from these assumptions, you may need to include these or other additional costs in your analysis.

- These figures also assume that primary refrigeration, sanitation sinks, storage, seating and other restaurant or kitchen areas are already in existence. A Non-Traditional Location outlet requires approximately 250 to 600 square feet of floor space depending on what facilities are already in existence. These estimates will vary depending on location, availability, accessibility, competition and general economic conditions. You may be able to negotiate into your lease an obligation of the landlord to contribute funds to be used for tenant improvements. These figures assume no landlord contribution toward leasehold improvements.
- These amounts represent 3 months of premiums for the required insurance, including statutory workers' compensation deposits your state may require. The type of insurance you are required to maintain is described in Section IX.H. of the Franchise Agreement. The amount of workers' compensation deposits will vary depending on the state in which your Franchised Business is located. If the owner of the special site in which the Non-Traditional Location E & G Restaurant is operated requires a higher level of insurance, you may have additional costs.
- Non-Traditional Location outlets generally operate from within larger facilities where primary refrigeration, sanitation sinks, storage, seating and other restaurant or kitchen equipment are already in existence. Accordingly, we have excluded costs related to much of the furniture, fixtures and equipment that are normally required for a stand-alone restaurant. If your particular situation does not include or has fewer existing furniture, fixtures and equipment, or if it is not in good working condition, then your costs associated with this item may increase.
- This item estimates your expenses during the initial 3-month period of operating the Franchised Business (other than the items identified separately in this table). These expenses include estimated rent, payroll costs, benefits, additional inventory requirements, supplies, etc., but do not include Royalty Fees or an owners' draw. These figures are estimates, and you may have additional expenses in order to start the business. Your costs will depend on factors similar to these: how closely you follow our methods and procedures; your management skill, experience and business acumen; local economic conditions; the prevailing wage rate; competition; and sales level reached during the initial period.

Because your Franchised Business is most likely part of an already existing business, these figures do not include items such as security, utility and license deposits, permits insurance premiums, professional services, and architectural design services. If your situation is different, you may need to use additional funds to cover many of these.

In addition, we assume you already have a computer system in place for the facility capable of tracking the menu items and producing the reports necessary to give us accurate accountings of items and total sales as required by the Franchise Agreement. You may choose to participate in our loyalty program. If you need to purchase a computer system, these costs will be additional to the ones listed in this estimate. Our Revel computer system which is specified for E & G Restaurants in Traditional Locations is available for you to purchase from an approved supplier at between \$5,000 and \$7,500 for a 4-terminal POS computer system, the software maintenance from Revel is estimated at between \$350 and \$400 per month, and the cost of the loyalty program system from Punchh is \$130 per month. You must also subscribe to the online ordering platform provided by our approved supplier, Zuppler. The cost for the Zuppler system is \$80 per month.

- These figures are estimates only, and it is possible that you may have additional or greater expenses during this period. Your costs will vary depending on the size of your Franchised Business, economic and market conditions, local market conditions, the availability of labor, interest rates, competition, wage rates, sales levels attained, and other economic factors. Your financial condition and arrangements negotiated by and the business decisions made by you will also affect these costs. There can therefore be no assurance that the experience of a particular franchisee will correspond with the information presented above.



## **ITEM 8**

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

#### **Obligation to Purchase or Lease Products and Services only from Company or Affiliate**

The Company is a designated or approved supplier for certain products and services. These items currently include certain menu boards, wall murals, wall art, owner/operator plaques, inspiration plaques, literature holders, gift cards, loyalty cards and other miscellaneous items, and may in the future include other signs, merchandising items, menu items and equipment. During the last fiscal year ending December 31, 2021, the Company did not receive any revenues for items purchased from the Company by franchisees.

#### **Obligation to Purchase or Lease Products or Services only from Designated Suppliers**

In order to ensure that you adhere to the uniformity requirements and quality standards associated with all E & G Restaurants, you must purchase certain foods, beverages, products, computer systems, payment processor and services only from designated sources specified by us in writing. We will provide a written list of the designated suppliers for these foods, beverages, products and services. We will also notify you of any additions to or deletions from the list of designated suppliers. We may, from time-to-time withhold, condition and/or revoke our approval of particular items or suppliers in our reasonable discretion. We have imposed these requirements in order to assure quality and uniformity of the decor and products sold to customers. Approved suppliers will be designated in the Manual or some other writing delivered to you. We may modify the list of approved brands, products and suppliers, and will notify you, in writing, of any modification. You may pay more for products and services that are required to be purchased from required third-party suppliers than you could acquire similar items for from non-required third-parties. Consistency of products and services, however, is important to the System and important to building brand value through consistent consumer experiences with E & G Restaurants, generally.

If you want to purchase products or services subject to approved supplier requirements from a supplier who has not been previously approved by us, then you must, at your expense, send representative samples or specifications of that supplier's goods or services, and certain other information about the supplier's products and business, to us. We also can inspect the supplier's facilities. We may also require you to pay a reasonable fee based on the cost of the test or inspection made by us or by an independent testing laboratory designated by us. Within 45 days after receiving the necessary samples and information, we will notify you in writing as to whether the supplier's products or services comply with the uniformity requirements, quality standards and specifications established by us, and whether the supplier's business reputation, delivery performance, credit rating and other relevant information are satisfactory. The criteria for supplier approval are available to franchisees upon request.

#### **Obligation to Purchase or Lease Products or Services that Meet Standards and Specifications**

You must purchase or lease certain products and services which satisfy our standards and specifications. This requirement is necessary to ensure that you adhere to the uniformity requirements and quality standards associated with all E & G Restaurants. We will provide you with written standards and specifications for the layout of your Franchised Location, your equipment and signs, the required computer system, the decor of your Franchised Business, and certain foods, beverages and products. We have the right to determine our standards and specifications. We may modify our written standards and specifications and you must comply with any modifications. You will be responsible for ensuring that all products and services selected

by you will continue to conform to the standards and specifications established by us. Your insurance requirements are described in Section IX.H of the Franchise Agreement. The cost of coverage will vary depending on the insurance carrier's charges, terms of payment and your history. We may, from time to time, in our sole discretion, make such changes in minimum policy limits, coverage, and endorsements as we may determine. All insurance policies must name us as an additional insured party.

Otherwise, you do not have to purchase any goods or services from designated or approved suppliers or according to standards and specifications established by us, and we have not established any purchasing or distribution cooperatives, and do not provide any material benefits to you based upon your use of designated or approved sources.

Payments Received by Company or its Affiliates

We may receive rebates, volume discounts, allowances, commissions or promotional payments from certain designated and approved suppliers. In some cases, prices charged by suppliers to the affiliate-owned restaurant may be less than prices charged to Franchised Businesses based on volume, credits, administrative costs and other factors.

During the last fiscal year, we received the revenues and payments from certain designated and approved sources based upon franchisee purchases. These payments from approved and designated suppliers of the freezers, pickles, soda products, mayonnaise, soups, avocados, chips, turkey, cheese, salami, and cookie products, and for our annual franchisee convention were based upon a percentage of the purchases made or a flat amount per unit purchased. In the fiscal year ending December 31, 2022, we received rebates from some of our approved vendors ranging from .03% to 3.12% of the purchases made by franchisees. The rebates amounted to approximately 20.43% of our total revenue for calendar year ended December 31, 2022.

Other than set forth above, neither the Company nor any of its affiliates will derive revenue as a result of your purchases from designated or approved suppliers, distributors or manufacturers.

We estimate that all your purchases from designated or approved suppliers or distributors or in accordance with our standards and specifications will represent 30% to 70% of your total purchases to establish your Franchised Business, and 25% to 35% of your total annual purchases to operate your Franchised Business.

## 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.**

	<b>Obligation</b>	<b>Section in Agreement</b>	<b>Disclosure Document Item</b>
a.	Site selection and acquisition/lease	Section III of Franchise Agreement	Items 6, 7 and 8
b.	Pre-opening purchases/ leases	Sections IX.A, D and XIV.A of Franchise Agreement	Items 6, 7 and 8
c.	Site development and other pre-opening requirements	Sections IX.A and III of Franchise Agreement	Items 6 and 7
d.	Initial and ongoing training	Section VIII of Franchise Agreement	Item 11
e.	Opening	Section IX.A of Franchise Agreement	Item 11
f.	Fees	Sections VI, IX.A and IX.I of Franchise Agreement; Article 3 of Area Development Agreement	Items 5, 6 and 7
g.	Compliance with standards and policies/ operating manual	Sections IX.D and XV of Franchise Agreement	Item 11
h.	Trademarks and proprietary information	Section X of Franchise Agreement	Items 13 and 14
i.	Restrictions on Products/services offered	Section IX.D of Franchise Agreement	Item 16
j.	Warranty and customer service requirements	Section IX.D of Franchise Agreement	Item 11
k.	Territorial development and sales quotas	Section II.B of Franchise Agreement; Article 4 of Area Development Agreement	Item 12
l.	Ongoing product/ services purchases	Section XIV of Franchise Agreement	Items 6, 7 and 8
m.	Maintenance, appearance and remodeling requirements	Sections IX.A and IX.L of Franchise Agreement	Item 11

	<b>Obligation</b>	<b>Section in Agreement</b>	<b>Disclosure Document Item</b>
n.	Insurance	Section IX.H of Franchise Agreement	Items 6 and 7
o.	Advertising	Section VII of Franchise Agreement	Items 6 and 11
p.	Indemnification	Section XVII of Franchise Agreement; Article 9.2 of Area Development Agreement	Item 6
q.	Owner's participation/management/staffing	Sections IX.E and IX.G of Franchise Agreement	Items 11 and 15
r.	Records and reports	Sections IX.J and IX.M of Franchise Agreement	Item 6
s.	Inspections and audits	Sections IX.A and IX.I of Franchise Agreement	Items 6 and 11
t.	Transfer	Section XVI of Franchise Agreement; Article 6 of Area Development Agreement	Item 17
u.	Renewal	Section V.C of Franchise Agreement; Article 2 of Area Development Agreement	Item 17
v.	Post-termination obligations	Sections XI, XII and XIII.C of Franchise Agreement; Article 8 of Area Development Agreement	Item 17
w.	Non-competition covenants	Section XII of Franchise Agreement	Item 17
x.	Dispute resolution	Section XVIII of Franchise Agreement; Article 10 of Area Development Agreement	Item 17

## **ITEM 10**

### **FINANCING**

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

## **ITEM 11**

### **FRANCHISOR'S ASSISTANCE, ADVERTISING, COMPUTER SYSTEMS, AND TRAINING ESTIMATED**

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

Before you open your Franchised Business, we will:

- (1) Designate your Assigned Territory (Franchise Agreement - Section II.B and Exhibit I.)
- (2) Approve or disapprove a site for your Franchised Business. We do not currently own sites for

leasing to franchisees (Franchise Agreement – Section III.A.) Our consent to a particular site is not to be regarded as an endorsement by us of any particular site, nor will it constitute a warranty by us as to the future success of the Franchised Business at that location. You are primarily responsible for investigating the site and having any leases or sale contract for the site negotiated, reviewed and approved by your commercial real estate agent and attorney.

We will provide you with our site selection criteria for an E & G Restaurant. The site must meet our criteria for demographic characteristics; traffic patterns; parking; character of neighborhood; competition from, proximity to, and nature of other businesses; foot traffic; daytime business population; size; appearance; and other physical and commercial characteristics. We will approve or disapprove a location you propose within 30 days after receiving your description of the site and all demographic information we require in order to evaluate the site. We will use reasonable efforts to help analyze your market area, to help determine site feasibility, and to assist in designating the location, although we will not conduct site selection activities for you.

For Traditional Locations, if you intend to lease a site, you will submit a copy of the proposed lease to us, within 30 days of our consent to the site. Within 10 days of execution of the lease, you shall provide us a copy of the executed lease. The lease must include substantially the terms in the Addendum to Lease which is Exhibit II of the Franchise Agreement. You must also sign a Collateral Assignment of Lease that is Exhibit III of the Franchise Agreement whereby you agree to assign your rights to the lease to us in the event of a termination or expiration of the term of the Franchise Agreement or a default under the lease.

For Traditional Locations, if you intend to own the site, you will furnish to us proof of ownership or an executed sale contract within 90 days after we consent to the site. You shall create a separate entity to own the site and then lease the site to you at its full rental value and on commercially reasonable terms for the term of the Franchise Agreement.

For Non-Traditional Locations, if you will operate the Franchised Business on real estate owned by a third party (such as a university or transportation authority), then within 10 days of signing the Franchise Agreement, you shall provide us a copy of the executed agreement between you and this third party which provides you the right to operate an E & G Restaurant at the Franchised Location.

(3) Provide guidelines for layout and design of and E & G Restaurant (Franchise Agreement – Section VIII.E.)

We will provide guidelines for the design and layout of an E & G Restaurant. Any guidelines will not include the requirements of any federal, state or local law, code or regulation, including those concerning the Americans with Disabilities Act or similar rules governing public accommodations for persons with disabilities, nor will any guidelines include the requirements of, or be used for, construction drawings or other documentation necessary to obtain permits or authorization to build a specific Store. You will construct the Store in accordance with specifications and plans prepared by you based upon our standards, subject to our right to consent. The cost of plans and specifications shall be borne by you. Our consent shall be limited to review of such plans to assess compliance with our design standards for E & G Restaurants, including such items as trade dress, presentation of trademarks, and the provision to the potential customer of certain products and services that are central to the functioning of the Franchised Business.

(4) Provide approved suppliers or specification for the products and services you need to design and equip your Franchised Business (Franchise Agreement – Section XIV.)

Certain furniture, fixtures, and branded products will be purchased from us or our affiliates. The remainder of products, supplies and the equipment and signs can be purchased from approved suppliers. We are not responsible for the delivery or installation of the equipment, signs or fixtures.

(5) Provide an initial training program for the operation of the Franchised Business to you and your designated manager or if you are operating a Non-Traditional Location, the training will be provided to your Key Operator (Franchise Agreement – Section VIII.A.)

(6) Loan you a copy of our confidential manual covering the development, operation and management of your Franchised Business (the "Manual") (Franchise Agreement – Section XV.)

The Manual, which may be in a format determined by us (i.e., in writing, on CD-Rom, via electronic media through a secure website, etc.) is confidential and remains our property. You will operate your Franchised Business in strict compliance with those operational systems, procedures, policies, methods, and requirements found in the Manual that are designated as mandatory and in any supplemental bulletins and notices, revisions, modifications, or amendments, all of which are a part of the Manual. We can change and update the Manual from time to time and you must complete with any changed or updated Manual. It is your responsibility to have the most current Manual and to be in compliance therewith.

You must treat the Manual, any other manuals or written materials provided by us or our affiliates for use in the operation of the Franchised Business, and the information contained in them, as confidential, and you must use all reasonable efforts to maintain this information as secret and confidential. You must not copy, duplicate, record or otherwise reproduce these materials, in whole or in part, or otherwise make them available to any unauthorized person. The Manual will remain our sole property and must be kept in a secure place within the Franchised Location. They must be returned to us upon termination or expiration of your Franchise Agreement.

We have the right to make additions to, deletions from, or revisions to the Manual that you have to comply with at your own cost. You must ensure that the Manual is kept current at all times. If there is any dispute as to the contents of the Manual, the terms of the master copies maintained by us, at our principal office, will be controlling. The table of contents of the Manual, including allocation of pages to each subject, is included as Exhibit C to this disclosure document. The Manual is currently over 320 pages in length.

#### Training Program for Traditional Location

We or our representatives or agents will provide the following training to you or the owner/operator of you if you are an entity. You or the owner/operator of you must complete the training to our satisfaction before you open your Franchised Business. If you currently operate an E&G Restaurant, the training program is not mandatory, but it will be offered if we determine it to be necessary. We have the right to waive, in our sole discretion, any portions of the training program which we believe will not be necessary to you based on your previous experience.

The initial training program will most likely take place either at a location in Minnesota or Wisconsin at our selection and for a period of up to 15 days. We do not charge for the initial training program for up to 2 people for a Traditional Location, but you are responsible for wages, travel, and living expenses for any of your attendees. For any additional employees, you will be required to pay a fee. We expect that training will be conducted after the Franchise Agreement has been signed. There currently are no fixed (i.e. monthly or bi-monthly) training schedules, but the training programs are given on an as-needed basis. Notwithstanding anything to the contrary contained herein: (a) we may provide any portion of any training virtually in our sole discretion; and (b) the exact amount of training we provide will be based upon, among other things, your and your manager's need for training which we will determined in our sole discretion..

We will, at our expense, also provide on-site, opening assistance, consisting of at least 1 person, for a period of no more than 5 days around the opening of your Franchised Business.

**TRAINING PROGRAM**

<b>Subject</b>	<b>Hours in Classroom</b>	<b>Hours on-the-job</b>	<b>Location</b>
Orientation; Training Resources; Operational Excellence; Tour & Observe; Approved Product, Beverage & Vendors; History; Vision/Mission/Values; Culture; Quiz & Homework	5	2	Rochester, MN, Eau Claire, WI or Certified Training Restaurant as designated by us
Opening Routine; Bread Troubleshooting; Sandwich Builds; POS; Catering Items; Quiz & Homework	3	7	Rochester, MN, Eau Claire, WI or Certified Training Restaurant as designated by us
The Brand; LSM Marketing; NSO Marketing; Street Smarts; Closing Shift; Homework	3	7	Rochester, MN, Eau Claire, WI or Certified Training Restaurant as designated by us
Lunch Circuit Training; Sampling; Intro to Shift Mgmt; Delivery as a Separate Business; Closing Circuit Training; Homework	3	7	Rochester, MN, Eau Claire, WI or Certified Training Restaurant as designated by us
Shiftlead Circuit Training; Sampling; Closing Shiftlead Circuit Training; Quiz & Homework	3	7	Rochester, MN, Eau Claire, WI or Certified Training Restaurant as designated by us
Opening Routine; Shiftlead Circuit Training; Sampling; COGS Categories; Homework	3	7	Rochester, MN, Eau Claire, WI or Certified Training Restaurant as designated by us
Inventory/Food Order; Opening Routine & Prep; Lunch Circuit Training; Enter Inventory & Analyze	3	7	Rochester, MN, Eau Claire, WI or Certified Training Restaurant as designated by us

<b>Subject</b>	<b>Hours in Classroom</b>	<b>Hours on-the-job</b>	<b>Location</b>
Opening Routine; Sampling; Shiftlead; Sampling; The Team; Homework	3	7	Rochester, MN, Eau Claire, WI or Certified Training Restaurant as designated by us
Controlling Labor Costs; Sampling; Role of the GM; Guest Relations; Team Handbook; Closing Shiftlead; Homework	3	7	Rochester, MN, Eau Claire, WI or Certified Training Restaurant as designated by us
Opening Routine; NSO Marketing; BOH POS; Scheduling; Sampling; Financial Requirements; Budgeting; Homework	3	7	Rochester, MN, Eau Claire, WI or Certified Training Restaurant as designated by us
Opening Routine; Pricing Strategy; Shiftlead; Sampling; COGS Review; Homework	3	7	Rochester, MN, Eau Claire, WI or Certified Training Restaurant as designated by us
Sampling; Setting Pars; Crisis Mgmt; Pricing Worksheet; Homework	0	10	Rochester, MN, Eau Claire, WI or Certified Training Restaurant as designated by us
Hours of Operation; Sampling; Delivery as a Revenue Center; NSO Hiring; Homework	0	10	Rochester, MN, Eau Claire, WI or Certified Training Restaurant as designated by us
Sampling; Compliance; Homework; P&L Analysis; Break-Even Workshop	0	10	Rochester, MN, Eau Claire, WI or Certified Training Restaurant as designated by us
Complete Projects; Scheduling; Ordering Non-Food Items; Homework	0	10	Rochester, MN, Eau Claire, WI or Certified Training Restaurant as designated by us
NSO Blueprint Review; Final Exam	0	6	Rochester, MN, Eau Claire, WI or Certified Training Restaurant as designated by us

The Manual is the primary training and instructional source. Our training program is supervised and conducted by Ms. Shannon Brady, Franchise Consultant. Ms. Brady has over 20 years of restaurant



training experience.

We may provide additional training throughout the term of the Franchise Agreement. Sometimes the training may be provided through national meetings or conventions. We may elect to charge a reasonable fee for any training or meeting provided after the opening of the Franchised Business. You must pay the compensation of the trainees as well as such trainees' travel, lodging and personal expenses. The location, duration and content of such refresher training programs or meeting has not yet been determined.

Training Program for Non-Traditional Location

We or our representatives or agents will provide the following training to your Key Operator. Your Key Operator must complete the training to our satisfaction before you open your Franchised Business. If your Key Operator currently operates an E&G Restaurant, the training program is not mandatory, but it will be offered if we determine it to be necessary. We have the right to waive, in our sole discretion, any portions of the training program which we believe will not be necessary to you based on your previous experience.

Subject to the other provisions hereof, the initial training program will most likely take place in Minneapolis, MN or certified training restaurant as designated by us for a period of up to 5 days. We do not charge for the initial training program for up to 1 person for a Non-Traditional Location, but you are responsible for wages, travel, and living expenses for any of your attendees. For any additional employees, you will be required to pay a fee. We expect that training will be conducted after the Franchise Agreement has been signed. There currently are no fixed (i.e. monthly or bi-monthly) training schedules, but the training programs are given on an as-needed basis.

We will, at our expense, also provide on-site, opening assistance, consisting of at least 1 person, for a period of up to 5 days prior to and around the opening of your Franchised Business, in an exact amount to be determined by us in our sole discretion.

**TRAINING PROGRAM**

<b>Subject</b>	<b>Hours in Classroom</b>	<b>Hours on-the-job</b>	<b>Location</b>
Orientation; Prep; Sandwich Builds	5	3	Minneapolis, MN or Certified Training Restaurant as designated by us
Sandwich Builds (continued); Systems; Prep	2	5	Minneapolis, MN or Certified Training Restaurant as designated by us
E&G Service; Systems; Sandwich Builds (continued); Prep	3	5	Minneapolis, MN or Certified Training Restaurant as designated by us
Training for Operational Excellence; Food & Packaging Ordering Procedures; E&G Fulfillment; Final Test	4	4	Minneapolis, MN or Certified Training Restaurant as designated by us

The Manual is the primary training and instructional source. Our training program is supervised and conducted by Ms. Shannon Brady, Franchise Consultant. Ms. Brady has over 20 years of restaurant training experience.

We may provide additional training throughout the term of the Franchise Agreement. Sometimes the training may be provided through national meetings or conventions. We may elect to charge a reasonable fee for any training or meeting provided after the opening of the Franchised Business. You must pay the compensation of the trainees as well as such trainees' travel, lodging and personal expenses. The location, duration and content of such refresher training programs or meeting has not yet been determined.

#### Time for Opening the Franchised Business.

We estimate that the typical length of time between signing of the Franchise Agreement and the opening of an E & G Restaurant is between 3 and 9 months. We estimate the typical length of time between signing the Franchise Agreement and the opening of a Non-Traditional Location is between 2 and 4 months. Factors affecting the length of time usually include obtaining a satisfactory site, zoning and governmental requirements, including obtaining all required licenses for the sale of food and beverages, financing arrangements, building improvements, and purchase and installation of equipment, fixtures and signs. The opening of the Franchised Business may be delayed only if such delay is caused by contingencies not within your control, such as acts of God, governmental restrictions, strikes or labor disputes. You are required to use your best efforts to cure any of these delays and any of these delays in opening shall only be for a period of days equal to the number of days during which the events actually prevent completion. You must notify us of any delay promptly. Before you are permitted to open, we must approve that your Franchised Business has been constructed in accordance with our standards and that all required personnel have completed initial training to our satisfaction. If you fail to open the Franchised Business within 1 year of signing the Franchise Agreement (6 months for a Non-Traditional outlet), including if you fail to locate a site for the Franchised Business that we approve, then we may terminate the Franchise Agreement.

You may open a Unit under an ADA only by signing a Franchise Agreement for that Unit. You will sign a Franchise Agreement for the first Unit at the same time you sign the ADA.

#### During the Operation of your Franchised Business, we will

- (1) Provide on-site opening assistance, consisting of at least 1 person, for a period of up to 5 days as described in greater detail later in this Item 11 (Franchise Agreement – Section VIII.C.)
- (2) Furnish you, at your request, with additional guidance and assistance. We reserve the right to charge a reasonable fee (Franchise Agreement – Section VIII.D.)
- (3) Continue to loan you one copy of the Manual (Franchise Agreement – Section XV.)
- (4) Sell you certain furniture, fixtures and branded products, directly or through an affiliate, or in the alternative provide you with another approved supplier for these products (Franchise Agreement – Section XIV.)

#### Advertising Fund

We have established and administer the Advertising Fund (the "Fund"). Unless you operate a Non-Traditional Location, you are required to pay 2% of Net Revenues as an Advertising Fee into the Fund. If

you are going to operate a Non-Traditional Location, you will pay us a one-time Advertising Fee of \$750 when you sign the Franchise Agreement which will be deposited into the Fund.

The Fund will be used to provide advertising, marketing and promotional activities we deem beneficial to the System. We agree to use the Advertising Fees received from you for the payment of costs associated with the creation, production, distribution, media placement, maintenance and upgrading of our website, and administration of local, state, regional or national advertising programs we may develop or have developed, and for any taxes incurred on these funds. The Fund is intended to maximize recognition of the Marks and the patronage of the E & G Restaurants generally. Although we will try to use the Fund to develop advertising and marketing materials and programs, and to place advertising and marketing, that will benefit all E & G Restaurants, we do not ensure that the Fund expenditures in or affecting any geographic area will be proportionate or equivalent to the Fund contributions by E & G Restaurants operating in that geographic area or that any particular E & G Restaurants will benefit directly or in proportion to your Advertising Fees. We have the right to determine the type of advertising and the media in which it will appear, as we feel is appropriate. We have the sole right to formulate and make policy decisions concerning every aspect of the advertising, consistent with applicable law. We do not have to spend the money in the Fund during any specific time period. Marketing and advertising may be handled by the outside advertising agency which we select.

If we do not use all of the funds deposited in the Fund in a particular fiscal year, the remaining funds will be carried over to the next fiscal year and be included in that year's advertising budget. We are entitled to reimbursement from the Fund to cover our administrative and overhead expenses associated with operating the Fund. We are not required to provide you with copies of the Fund's financial statements. We have a contractual obligation to hold all Fund contributions for the benefit of the contributors and to use the contributions only for the purposes described above. We have no fiduciary obligation to you for administering the Fund. If the Advertising Fund does not contain sufficient funds to make the expenditures determined by us, then we can loan funds to the Advertising Fund in an amount sufficient to cover the expenditures, and the loan (plus interest) will be repaid from future Advertising Fees. We can use our own funds, or borrow the necessary funds in the name of the Advertising Fund from one or more financial institutions.

All of the E & G Restaurants owned by us or our affiliates will be required to contribute the same percentage of Net Revenues to the Fund as our franchisees. We do not spend any funds from the Advertising Fund on advertising that is principally a solicitation for the sale of franchises, except that we will use portions of the Advertising Fees towards the costs of any website we may maintain, which website may contain information about our franchising programs. During our last fiscal year, 24.40% of the expenditures from the Advertising Fund were for Placement Costs, 14.02% for store support costs, 7.52% for Production costs and 54.06% for administrative costs.

#### Local Advertising Cooperative

We reserve the right to identify certain advertising markets that may benefit from the formation of a local or regional advertising cooperative. Any cooperative we establish is required to operate under governing documents designated by us. If you operate a Traditional Location franchise and your Franchised Location is or will be located in an area we have designated for an advertising cooperative, you will be required to join the cooperative. All members of a cooperative will be required to sign a Membership Agreement and pay monthly contributions to the cooperative at the rate set forth in the Membership Agreement. We have the right to establish the rate at which cooperative members must contribute in accordance with the Membership Agreement; provided the rate of contribution will not be greater than 2% of Net Revenues unless a vote of a majority of the members of the cooperative approve a higher percentage. This contribution is in addition to all other marketing and advertising costs, including the Advertising Fee but will offset the

amount of Local Required Advertising you must provide. The members and their elected officers are responsible for the operation of the advertising cooperative, but the funds may be collected and managed by us for the benefit of the cooperative's approved expenditures. We have the right to approve all advertising, marketing, and public relations activities of the advertising cooperative. We reserve the right to identify other advertising markets that may benefit from the formation of an advertising cooperative in the future, and we reserve the right to change, dissolve or merge any established cooperative. Upon request, we will provide you with a copy of any applicable governing document for a cooperative you are required to join. The unaudited financial statements of any cooperative of which you are a member will be made available to you at your reasonable request.

### Your Own Advertising

For Traditional Location franchises, each calendar quarter during the Term of this Agreement, you must spend a minimum of 2.5% of your quarterly Net Revenues for marketing and advertising your Franchised Business in your local market. For all franchises, we must consent to your use of any advertising and sale promotion materials before you use them. You must submit all of your marketing, advertising and sale promotion materials to us or our designee at least 20 days prior to use. You may only use materials that we have affirmatively approved. You will not advertise, or use in advertising or other form of promotion, the Marks without the appropriate copyright, trademark, and service mark symbols ("©", "®", "TM" or "SM") as we direct.

You must submit both an annual and quarterly written marketing plans to us. To the extent permitted by applicable law, we may set prices for the products or services you offer at your Franchised Business.

If you operate a Traditional Location, then on or before December 1 of each calendar year partially or wholly contained within the term of the Franchise Agreement, you will deliver to us, in a form we prescribe, a written plan of your marketing expenditures for the local advertising you intend to conduct during the following / upcoming calendar year. Within 20 days before the end of each calendar quarter partially or wholly contained within the term of the Franchise Agreement, you will deliver to us, in a form we prescribe, a written plan of your marketing expenditures for the local advertising you intend to conduct during the upcoming calendar quarter. In addition, within 20 days after the end of each calendar quarter partially or wholly contained within the term of the Franchise Agreement, you will deliver to us, in the form we prescribe, an accurate, written accounting of your local advertising expenditures made during the preceding calendar quarter.

You will not distribute individual advertising items (i.e., coupons, circular advertising, etc.) outside of your Assigned Territory or to advertise the sale of goods through a third-party delivery service unless it is compliance with the requirements in the Manual or upon our consent, unless you use a form of advertising that is not programmed to restrict delivery to the Assigned Territory, such as direct mail advertising by outside contractors based on zip code.

We may furnish you with marketing plans and materials, including, without limitation, newspaper ads, sales aids, and other promotional and marketing materials and/or kits, and you are required to pay a reasonable fee for such materials. Your purchase of marketing plans and materials from us shall not count toward your required expenditures for the Required Local Advertising. You also agree that we may require the purchase of certain products from time to time in conjunction with marketing and promotional events.

### Grand Opening

If you operate a Traditional Location, in addition to the other advertising requirements described above, you are required to present a grand opening plan to us or our designee. We or our designee will review the

plan to ensure it meets our minimum requirements for a grand opening advertising plan. Our review of the plan is not an endorsement of the plan or a warranty of its success. After our approval, you must execute the plan during the initial period after your Franchised Location opening. The plan must include the expenditure of at least \$10,000 for grand opening advertising and sales promotions. In addition to you executing the plan, we may provide, as part of the Manual or otherwise, a checklist of tasks and obligations you must complete as part of our 60-day grand opening marketing process ("60 Day Plan"). You will complete any and all such tasks and fulfill any all such obligations that we deem necessary in our sole and absolute discretion. Within 90 days after the opening of the Franchised Business, you must provide us proof of your execution of the approved grand opening plan, as well as proof of your compliance with your tasks and obligations under 60 Day Plan, and proof of your advertising and sales promotion expenditures in the form and with the detail, including copies of all grand opening advertising materials and receipts, as we request.

You are not responsible for any Grand Opening Advertising if you are operating a Non-Traditional Location or will be electing to participate in an Optional Program.

#### Internet and Other Electronic Advertising

We maintain an Internet website, [www.erbertandgerberts.com](http://www.erbertandgerberts.com), which we control. We may create other Internet websites in the future. We may provide contact information for the Franchised Business on our website(s) for so long as we determine. All of the information on these or any other pages of our website remains subject to our control and approval. Except as otherwise provided in the Manual or otherwise in writing, you may not maintain a presence on the Internet for your Franchised Business. Subject to our right to consent, you may be permitted to create a social media account from which to advertise your Franchised Business on the Internet (such as on Facebook or Twitter). Any such permission shall only be for such time as we permit and shall be on the terms and condition we specify from time to time in the Manual, which may restrict the content that you are permitted to post to the social media outlet. We have the right to require a modification of or cease granting you permission to develop, operate, or maintain any such social media outlet at any time and to require you to give us administrative control and/or log-in information for any such social media outlet you operate for the promotion of the Franchised Business. Any advertising on the Internet, delivered by facsimile, electronic mail or other electronic means shall be pre-approved by us and on terms specified by us.

#### Computer System.

#### **Traditional Location**

You must use the computer system we designate. The computer system used in the operation of the Franchised Business consists of four systems: (1) a back-office computer system ("Office System"); (2) an electronic cash register/point of sale system ("POS System"); (3) an online ordering platform ("Online Ordering System"); and (4) a loyalty/customer rewards platform ("Loyalty System"). Collectively the four systems will be referred to as the "Computer System." You must purchase the Computer System that we designate from a third-party designated or approved by us.

You must use the Computer System to produce sales reports, inventory control, and post sales tax, refunds, credits and allowances. You must maintain the Computer System in good working order at all times, and upgrade or update the Computer System during the term of the Franchise Agreement as we may require. It will be your responsibility to enter into contracts for the maintenance, support, upgrades and updates to the Computer System with approved supplier(s) of such services identified in the Manual (Franchise Agreement – Section IX.O). You must accept any credit cards, debit cards and other payment methods we determine, including near field communication payment services such as "Apple Pay".

For the Office System, you must have one or more PCs, LCD Monitors and high-speed internet connection.

The current approved POS System is from Revel. Revel is an integrated, cloud based point-of-sale cash register and information system, which utilizes iPad touch-screen technology, magnetic credit card stripe readers and Revel's proprietary software. We currently require you to purchase the Revel system software as well as hardware. A minimum of 4 POS terminals are required. You will also be required to contract with a credit card processor.

The current Online Ordering System is from Zuppler and consists of guest interfacing online ordering for pick-up and delivery through web-based and mobile platforms; it does not require the use of any additional hardware. Currently, Zuppler charges an initial setup fee of \$100 plus \$80 per month for access to their system.

The current Loyalty System is from Punchh and consists of a mobile application with a loyalty program that allows guests to earn point through purchases and redeem offers through campaigns, a restaurant location finder, and an interface into the Online Ordering System. The Loyalty System requires at least 1 scanner (including in the POS System hardware). Currently, Punchh charges \$130 per month for access to their system.

We have the right to change the approved Computer System and to require you to periodically purchase hardware and/or software upgrades for your Computer System. We estimate the cost of the Computer System to be between \$7,000 and \$9,500, plus approximately \$7,280 to \$8,280 per year for the ongoing software maintenance agreement and phone support agreements (including the charges for Zuppler and Punchh described above).

### **Non-Traditional Location**

If you operate a Non-Traditional Location, we assume that you already have a computer system in place for the facility capable of tracking the menu items and producing the reports necessary to give us accurate accountings of items and total sales as required by the Franchise Agreement. We will evaluate your system to verify that it is in good working order, capable of ringing up our menu items with the required item modifications, and capable of producing the necessary item reports and sales reports necessary to track sales and revenues. We may require that your system gets integrated with our systems, and if so you will be responsible to pay the cost for this integration. We will have the final decision on whether or not your existing computer system is adequate. If we determine that it is not adequate, you will need to purchase a Computer System that we designate from a third-party designated or approved by us.

The types of business information which will be collected by the Computer System will be sales reports by category, department, menu item, inventory, cashier, lunch, dinner and hour on a daily, weekly and monthly basis. We will have independent access to information or data in the Computer System and are permitted to use this information in any manner we deem appropriate. We have no contractual obligation to upgrade or update any hardware or software. We are not obligated to provide or assist you in obtaining the above item or services.

## **ITEM 12**

### **TERRITORY**

Under a Franchise Agreement, you will operate your Franchised Business from a specific location identified in the Franchise Agreement ("Franchised Location"). You may not conduct business at any site other than the Franchised Location unless we agree to allow you to participate in an Optional Program. A To Go Unit

will be operated from a specific location within your Assigned Territory and identified in the Optional Program Addendum. A Mobile Unit will be operated from a trailer or food truck within your Assigned Territory. You may not relocate the Franchised Business without our written consent which we will not unreasonably withhold. After you and we both agree on the Franchised Location, we will designate a geographic territory in the Franchise Agreement (the "Assigned Territory"). Your Assigned Territory will be tailored to your specific site's demographics (there is no minimum geographic territory). Typically, your Assigned Territory will be a 3 to 5-minute service radius around your Franchised Business, which may fluctuate in terms of mileage in rural versus densely populated areas. If you are in a rural area, your Assigned Territory may be larger and if you are in a densely populated area, such as in a downtown metropolitan area, your Assigned Territory may be smaller. If the Franchised Business is located in a Non-Traditional Location, the Assigned Territory will consist solely of the terminal, food court or building in which the Franchised Location is located. We will ultimately determine your Assigned Territory based upon our experience with the System and customer purchasing behavior.

So long as the Franchise Agreement is in force and you are not in default under it or any other agreement with us or any affiliate of ours, other than a Non-Traditional Location, we will not physically establish or permit others to physically establish an E & G Restaurant location within the Assigned Territory, nor will we, our affiliates, or our other franchisees be permitted to directly deliver (versus delivery through third-party delivery services) or directly cater within the Assigned Territory without your consent. A Non-Traditional Location is not considered part of a Assigned Territory. Notwithstanding anything to the contrary contained herein, delivery or catering conducted by third party contractors will be permitted on the terms described in the Manual or upon our written consent, and such third parties may deliver and cater products from another E & G Restaurant inside your Assigned Territory.

Under an Area Development Agreement, you are granted the right to develop and operate E & G Restaurants in a specified "Development Area", which may be one or more cities, counties or some other defined area. During the term of the Area Development Agreement and so long as you are in full compliance with the Area Development Agreement, other than Non-Traditional Locations, we will not establish or permit others to establish an E & G Restaurant in your Development Area. Until the termination, expiration or transfer of the Area Development Agreement, you retain your right of exclusivity as described herein as long as you comply with the Development Schedule. If you fail to meet any of your obligations under the Area Development Agreement, including timely and full compliance with the Development Schedule, or if you breach any Franchise Agreement with us, we may terminate your right to develop, open and operate new Units within the Development Area. However, the termination of the right to develop new Units your Development Area will not terminate any Assigned Territory rights granted under any Franchise Agreements that remain in effect between and that have been mutually signed by you and us. After the expiration or termination of your Area Development Agreement, we may own, operate, franchise or license others to operate E & G Restaurants anywhere, without restriction, including in your Development Area, except for any Assigned Territories under your Franchise Agreement(s) that remain in effect which will be treated as Assigned Territories as described above.

Except for your Assigned Territory rights and Development Area rights described above, we and our affiliates retain all other rights with respect to E & G Restaurants, the System, the Marks, the sale of similar or dissimilar products and services and any other activities we deem appropriate. These rights include (1) the right to own or operate, or license others to own or operate E & G Restaurants anywhere outside of the Assigned Territory and in Non-Traditional Locations within and outside of the Assigned Territory (unless your Assigned Territory is in a Non-Traditional Location); (2) the right to own or operate, or license others to own or operate any businesses or restaurant within the Assigned Territory and outside the Assigned Territory under trademarks or service marks different than the Marks; (3) the right to own or operate, or license others to own or operate any businesses or restaurant within the Assigned Territory and outside the Assigned Territory under systems that are different than the System; and (4) the right to offer any products

or services (including the products and services you offer at the Franchised Business) through other channels of distribution (such as grocery stores, the Internet and other non-restaurant outlets) from any location. Unless you operate a Mobile Unit within your Assigned Territory, we may also promote products bearing the Marks at special events, athletic contests, etc., through temporary locations and mobile units. We are not required to pay you if we exercise any of the rights specified above inside your Assigned Territory or Development Area.

No E & G Restaurant (whether operated by us, our affiliates or any franchisee) may distribute individual advertising items (i.e., coupons, circular advertising, etc.) inside of your Assigned Territory unless they use a form of advertising which is not programmed to restrict delivery to outside of the Assigned Territory, like direct mail advertising by outside contractors based on zip code or third-party internet-based delivery services. Likewise, you are not permitted to distribute individual advertising items in the Assigned Territory of any other E & G Restaurant unless you use a form of advertising which is not programmed to restrict delivery. You are prohibited from soliciting customers outside of your Assigned Territory through the Internet without our prior consent and on terms we specify. Except as described in this paragraph, we do not restrict you from soliciting business from outside the Assigned Territory.

So long as you are not entering into the Assigned Territory of another E & G Restaurant and you are following the delivery and catering guidelines set forth in the Manual, Traditional Location franchises may provide delivery and catering services inside and outside of their Assigned Territory. However, you have no territorial protection in any area outside of your Assigned Territory, and in the event any E & G Restaurant is established in an area outside of your Assigned Territory, you must cease providing direct delivery and direct catering services in that area. E & G Restaurant franchises in Non-Traditional Locations are not permitted to deliver or cater outside of their Assigned Territory. Except as described in this paragraph, we do not restrict you from providing delivery or catering services outside of your Assigned Territory.

We may consider granting you multiple franchises, but you have no right to acquire an additional franchise unless you enter into an Area Development Agreement with us. You must sign a separate Franchise Agreement for each franchise and each E & G Restaurant. You do not receive the right to operate an Optional Program either within or outside your Assigned Territory. You must sign a separate Optional Program Addendum to your Franchise Agreement for each Optional Program we approve you to operate. Under the Area Development Agreement, the continuation of the territorial protections which are listed above is dependent upon your compliance with the Development Schedule.

Without our express, prior, written consent, you must sell products only from the physical location of your E & G Restaurant, only excluding delivery services and catering. You may not, for example, sell at fairs, trade shows, pop-up stores, etc., whether within or outside of your Assigned Territory, without our prior, written consent.

Neither we nor our affiliates have owned, operated or franchised, and have no plans to own, operate or franchise, other businesses selling similar products or services under trademarks or service marks other than the Marks, although we and our affiliates have the right to do so. However, our owner has an ownership interest in Nutri Prep Foods, LLC which operates a business selling prepackaged fully cooked healthy meals.

We and our affiliates have the right to purchase, be purchased, merge, acquire, be acquired or affiliate with an existing competitive or non-competitive franchise network, chain or any other business regardless of the location of that chain's or business' facilities, and we, our affiliates or our successor will have the right to operate, franchise or license those businesses and/or facilities as "E & G Restaurants" operating under the Marks or any other marks following the purchase, merger, acquisition or affiliation, regardless of the





location of these facilities. These facilities may be within your Assigned Territory or near to your Assigned Territory or Franchised Location.

You will not receive an exclusive territory. As described above, you may face competition from other franchisees, from outlets that we own, or from other channels of distribution or competitive brands we control. Continuation of your franchise or your territorial protection is not dependent upon sales quotas, market penetration or opening additional locations; however, your territorial protection is dependent upon your compliance with the Franchise Agreement.

**ITEM 13**

**TRADEMARKS**

We grant you a nonexclusive right to use the Marks at the Franchised Location and in connection with an approved Optional Program. Our primary Marks that are pending applications or have been registered on the Principal Register of the United States Patent and Trademark Office (the "USPTO"):

Mark	Registration Date (Application Date)	Serial Number	Registration Number
ERBERT & GERBERT'S	August 24, 2004	78/291038	2,877,579
	July 1, 2008	77/142578	3,456,388
ERBERT AND GERBERT'S SANDWICH SHOP	June 6, 2011	85/023780	3,980,443
	February 4, 2014	85/945927	4,477,438
BOLD BETWEEN THE BREADS	March 5, 2019	88/000966	5,693,713
ERBERT AND GERBERT'S TO GO	To be filed		

We do not have a federal registration for “Erbert and Gerbert’s To Go”. Therefore, that trademark does not have as many legal benefits and rights as a federally registered trademark. If our right to use the trademark is challenged, you may have to change to an alternative trademark, which may increase your expenses.

All renewals and required affidavits of use have been filed as necessary to keep the federal registration of the Marks listed above in full force and effect.

We will grant you a nontransferable, non-sublicensable, non-exclusive license to use the Marks in connection with the Franchised Business. You must follow our rules when you use the Marks, including giving proper notices of trademark or service mark ownership and/or registration and obtaining assumed and fictitious name registration for your Franchised Business as required by law. You cannot use any name or mark as part of a corporate name or with modifying words, designs or symbols except for those which

we license to you. You may not use the Marks in connection with the sale of an unauthorized product or service, in a manner not authorized in writing by us, or as part of any domain name, homepage, electronic address or otherwise in connection with a website.

There are currently no effective material determinations of the Patent and Trademark Office, the Trademark Trial and Appeal Board, the trademark administrator of this state or any court, and no pending infringement, opposition or cancellation proceedings, and no pending material litigation involving the Marks. There are no agreements currently in effect which significantly limit our rights to use or license the use of the Marks in any manner material to the trademark.

You must notify us immediately of any apparent infringement or challenge to your use of any Mark, or any claim by any person of any rights in any Mark. We have the sole right to take such action as we deem appropriate and the right to exclusively control any litigation or administrative proceedings arising out of any infringement, challenge or claim. You must execute any and all instruments and documents, provide such assistance, and take any action that may be necessary or advisable to protect and maintain our and our affiliates' interest in any litigation or other proceeding or otherwise to protect and maintain our or our affiliates' interest in the Marks. The Franchise Agreement does not require us to participate in your defense and/or indemnify you for expenses or damages if you are a party to an administrative or judicial proceeding involving a Mark or if the proceeding is resolved unfavorably to you.

If we decide to modify or discontinue the use of the Marks and/or to use one or more additional or substitute names or marks, you must make the changes we require of you at your own expense and without claim against us. You will need to comply within a reasonable time of the request.

We do not actually know of either superior prior rights or infringing uses that could materially affect your use of the Marks in any state.

#### **ITEM 14**

#### **PATENT, COPYRIGHTS AND PROPRIETARY INFORMATION**

We own no special patents which pertain to the System. We or our affiliates have copyright rights in the Manual, sales material and brochures, and related items used in operating the franchise. We and our affiliates have not registered these copyrights with the United States Registrar of Copyrights, but need not do so at this time to protect them. You may use these items only as we specify while operating the Franchised Business.

There currently are no effective adverse determinations of the USPTO, the Copyright Office (Library of Congress), or any court regarding the copyrighted materials. No agreement limits our right to use or allow others to use the copyrighted materials. We do not actually know of any infringing uses of our copyrights that could materially affect your use of the copyrighted materials in any state.

We need not protect or defend copyrights, although we intend to do so if it is in the system's best interest.

Although neither we nor any of our affiliates have filed an application for a copyright registration for these materials, it has copyright rights and the information is proprietary. Item 11 describes limitations on the use of the Manual by you and your employees. You must also promptly tell us when you learn about unauthorized use of this proprietary information. We are not obligated to take any action but will respond to this information in a manner we think is appropriate.

The Franchise Agreement provides that you acknowledge that the System and the methods of operation licensed by us for the operation of an E & G Restaurant are proprietary, confidential trade secrets of us and our affiliates, and you agree to maintain the confidentiality of all materials and information lent or otherwise furnished to you by us at all times, including after the termination or expiration of the Franchise Agreement, for any reason. In addition, the Franchise Agreement provides that all ideas, concepts, techniques, or materials concerning improvements to the System, whether or not protectable intellectual property and whether created by or for you or your owners or employees, must be promptly disclosed to us and we will have the right to incorporate them into the System and license others to use the improved System at no cost to us or our licensees. In the event that these requirements are found to be invalid or unenforceable, the Franchise Agreement provides that you and your owners grant to us a worldwide, perpetual, non-exclusive and fully paid license to use and sublicense the use of such ideas, concepts, techniques, innovations, developments, improvements, suggestions or materials.

Further, under the Franchise Agreement, you agree that you shall not, during the term of the Franchise Agreement (other than to the extent necessary to operate the Franchised Business) or after its expiration transfer or termination, for any reason, communicate or divulge to any others, any information or knowledge concerning the System and any trade secrets except those already in the public domain. You also agree to exercise the highest degree of diligence and will make every effort to maintain the absolute confidentiality of all trade secrets and proprietary rights during and after the term of the Franchise Agreement.

#### **ITEM 15**

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

#### **Traditional Location**

Unless you operate a Non-Traditional Location franchisee, you must participate directly in the operation and management of the Franchised Business, which must at all times be under your direct supervision or the supervision of a manager who has successfully completed our Initial Training Program. Unless we otherwise approve, your manager must have at least a 5% beneficial interest in you or your Franchised Business. You will need to provide us with proof of this interest from time to time and upon our request.

If you sign the Franchise Agreement, you must agree that during the term of the Franchise Agreement, you will not participate in any restaurant business that is in any way similar to or competitive with the Franchised Business, and that for 2 years after the transfer, expiration or termination of the Franchise Agreement, you will not participate in any Competitive Business located within 10 miles of the Franchised Location or within 10 miles of any other E & G Restaurant, To Go Unit or Mobile Unit.

At our request, your officers, directors, shareholders, partners, members, owners, their respective spouses, and all managerial employees must sign a Non-Competition and Confidentiality Agreement in a form we approve. All owners of any entity franchisee and their spouses must also sign a Personal Guaranty in the form attached to the Franchise Agreement assuming and agreeing to discharge all of your obligations under your Franchise Agreement.

#### **Non-Traditional Location**

If you are a Non-Traditional Location franchisee, the Franchised Business must at all times be managed by a Key Operator who has completed our Initial Training Program to our satisfaction. Your Key Operator need not hold any equity interest in you.

If you sign the Franchise Agreement, you must agree that during the term of the Franchise Agreement, you will not operate a competitive business within the same premises as the Franchised Business. Your Key Operator must sign a confidentiality and non-competition agreement in a form we approve.

**ITEM 16**

**RESTRICTIONS ON WHAT THE FRANCHISEE MAY SELL**

We require you to offer and sell only those goods and services that we have approved. We have the right to change the types of required and/or authorized products and services and you will be notified by a bulletin or supplement to the Manual. You are prohibited from offering or selling any products or services not authorized or approved by us and from using the premises for your E & G Restaurant for any purpose other than the operation of an E & G Restaurant in compliance with the Franchise Agreement. In our discretion, we may approve or deny your request to eliminate some or add other menu items. We may, to the extent permitted by applicable law, set resale prices for the products or services you offer at the Franchised Business. You will be required to add such equipment and make such alterations, at your expense, as may be necessary to equip the Franchised Business for sale of such products as we may require as may change from time to time. You may need to make an additional investment to do so.

We may require you, if permitted by applicable law, to participate in a gift card or other customer loyalty programs in accordance with the provisions either set forth in the Manual or otherwise disclosed to you, all as may change from time to time. In order to participate, you may be required to purchase additional equipment and pay any fees applicable to the use of that equipment. If we establish a gift card or loyalty program, we have the right to determine how the amount of the gift cards or loyalty cards will be divided or otherwise accounted for between E & G Restaurants, and we reserve the right to retain the amount of any unredeemed gift cards. Currently, we deposit all unredeemed amounts into the Advertising Fund.

Other than as described in Item 12, you are not permitted to solicit business through the distribution of individual advertising items, such as coupons and circular advertising outside of your Assigned Territory, or to advertise the sale of goods through a third-party delivery service, without our consent.

Other than as described in this Item, we do not impose any restrictions or conditions that limit your access to customers.

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**ITEM 17**

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

**THE FRANCHISE RELATIONSHIP**

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

<b>Provision</b>	<b>Section in franchise or other agreement</b>	<b>Summary</b>
a. Length of franchise term	Section V in Franchise Agreement  Article 2 in Area Development Agreement	10 years (5 years for a Non-Traditional Location franchise)  Determined by development schedule
b. Renewal or extension of the term	Section V.C in Franchise Agreement	Two 10 year renewal terms (two 5 year terms for a Non-Traditional Location franchise)
c. Requirements for franchisee to renew or extend	Section V.C in Franchise Agreement	Give notice, sign then-current franchise agreement (which may contain materially different terms and conditions than your original Franchise Agreement), pay a renewal fee, be in compliance with Franchise Agreement, upgrade the premises of your Franchised Business and sign general release.
d. Termination by franchisee	Section XIII.B in Franchise Agreement	If you are in compliance and we are in material breach and fail to cure after notice. If you operate a Non-Traditional Location franchisee, you can also terminate if you lose the right to operate at the Non-Traditional Location or the owner of the Non-Traditional Location requires you to discontinue the Franchised Business.
e. Termination by franchisor without cause	Not applicable	

<b>Provision</b>	<b>Section in franchise or other agreement</b>	<b>Summary</b>
f. Termination by franchisor with cause	Section XIII.A in Franchise Agreement and Article 7 in Area Development Agreement	We can terminate if you are in default.
g. "Cause" defined – curable defaults	Section XIII.A in Franchise Agreement  Article 7 in Area Development Agreement	If you fail to satisfactorily complete training, fail to open within 1 year (6 months for a Non-Traditional Location), or generally if you breach the Franchise Agreement. You have 10 days to cure monetary defaults and defaults involving the sale of unauthorized products, and you have 30 days to cure all others except those listed in Section XIII.A.3.  Generally, a breach of the Area Development Agreement. You have 30 days to cure a default of the Development Schedule.
h. "Cause" defined – non-curable defaults	Section XIII.A.3 in Franchise Agreement and Article 7 in Area Development Agreement	Non-curable defaults include allegation or conviction of a felony, fraud affecting the System, abandonment of your Franchised Business, repeated defaults, bankruptcy and any violation of any non-compete, non-solicit or confidentiality obligation contained in any agreement with us.
i. Franchisee's obligations on termination/ non-renewal	Section XIII.C in Franchise Agreement	Obligations include removal of our identification at the Franchised Location, payment of all amounts due, return of Manual, maintain confidential information, comply with non-competition covenants, cease using Marks and System, assignment of lease and telephone numbers (except for a Non-Traditional Location) and return our other property.
j. Assignment of contract by franchisor	Section XVI.A in Franchise Agreement and Article 6.1 in Area Development Agreement	No restriction on our right to assign.

<b>Provision</b>	<b>Section in franchise or other agreement</b>	<b>Summary</b>
k. "Transfer" by franchisee – defined	Section XVI.B in Franchise Agreement and Articles 6.2 and 6.3 in Area Development Agreement	Includes transfer of Franchise Agreement, assets or ownership change.
l. Franchisor approval of transfer by franchisee	Section XVI.B in Franchise Agreement  Articles 6.2 and 6.3 in Area Development Agreement	We have the right to approve all transfers but will not unreasonably withhold our approval.  Except for assigning rights to a controlled entity, you have no right to transfer your rights to the Area Development Agreement
m. Conditions for franchisor approval of transfer	Section XVI.B in Franchise Agreement	New franchisee qualifies, transfer fee paid, purchase agreement approved, training arranged, release signed by you, Franchise Agreement signed by new franchisee; you comply with our right of first refusal; and you remain liable to non-competition and confidentiality provisions.
n. Franchisor's right of first refusal to acquire franchisee's business	Section XVI.D in Franchise Agreement	We can match any offer for your Franchised Business (not applicable to a Non-Traditional Location franchise).
o. Franchisor's option to purchase franchisee's business	Section XIII.D in Franchise Agreement	After termination or expiration, we can purchase your personal property at fair market value.
p. Death or disability of franchisee	Section XVI.C in Franchise Agreement	Franchise may be assigned by estate to an approved party (not applicable to a Non-Traditional Location franchise).
q. Non-competition covenants during term of franchise	Section XII in Franchise Agreement	No direct or indirect involvement in any Competitive Business except as duly licensed by us in any location.
r. Non-competition covenants after the franchise is terminated or expires	Section XII in Franchise Agreement	No direct or indirect involvement in any Competitive Business except as duly licensed by us for 2 years within 10 miles of your Franchised Location or within 10 miles of any E & G Restaurant, including after transfer (not applicable to a Non-Traditional Location franchise).

<b>Provision</b>	<b>Section in franchise or other agreement</b>	<b>Summary</b>
s. Modification of the agreement	Sections XV and XIX.C in Franchise Agreement and Article 11.11 in Area Development Agreement	No modification generally, unless change is in writing and signed by you and us, but Manual and System subject to change.
t. Integration / merger clause	Section XV and XIX.C in Franchise Agreement and Article 11.12 in Area Development Agreement	Only the terms of the Franchise Agreement and Area Development Agreement are binding (subject to state law). Any representations or promises outside of the disclosure document, Franchise Agreement and Area Development Agreement are not enforceable.
u. Dispute resolution by arbitration or mediation	Section XVIII in Franchise Agreement and Article 10 in Area Development Agreement	Except for certain claims, all disputes must be submitted to mediation and arbitration in Eau Claire, Wisconsin (subject to state law)
v. Choice of forum	Sections XVIII in Franchise Agreement and Article 11.6 in Area Development Agreement	Any mediation or arbitration must be in Eau Claire, Wisconsin unless parties agree to another location. Litigation must be in the Wisconsin state court having jurisdiction over Eau Claire, County, Wisconsin or the U.S. District Court for the Western District of Wisconsin (subject to state law)
w. Choice of law	Section XIX.F in Franchise Agreement and Article 11.6 in Area Development Agreement	Laws of state of Wisconsin (subject to state law)

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

We do not use any public figure to promote this franchise.

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

The FTC's Franchise Rule permits a franchisor to provide information about the actual or potential financial performance of its franchised and/or franchisor-owned outlets, if there is a reasonable basis for the information, and if the information is included in the disclosure document. Financial performance



information that differs from that 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.

Our financial performance representation consists of three parts. Part I presents the actual 2022 annual revenues of the 41 franchised outlets that were open for all 12 months during the 2022 calendar year. These 41 outlets represent approximately 63% of the 65 total franchised outlets that were open as of December 31, 2022. Franchised outlets that were not open for the entire 12 months of 2022 have been excluded from the representation as their partial year performance is not indicative of the performance we would reasonably expect to see over an entire calendar year. This performance representation is no indication of what a Non-Traditional Location outlet may experience. Part II presents the actual 2022 food costs of the 32 franchised outlets that were open for all 12 months during the 2022 calendar year and who delivered financial reports to us showing food costs. These 32 outlets represent approximately 49% of the 65 total franchised outlets that were open as of December 31, 2022. It is likely that your sales will differ from the information in this financial performance representation. Parts I and II of this financial performance representation is based on the reports submitted to us by our franchisees. This information has not been audited and may not be based on generally accepted accounting principles.

The actual average annual revenue numbers do not reflect the costs of goods sold, operating expenses or other costs or expenses that must be deducted from revenue to obtain net income or profit. You should conduct an independent investigation of the costs and expenses you may incur in operating your Franchised Business. Franchisees and former franchisees listed in this disclosure document may be one source of this information.

**PART I**  
**Annual Revenues<sup>‡</sup>**  
**January 1, 2022 – December 31, 2022**  
**Franchised Outlets Open All 12 Months**

	Number of Outlets	Range of Annual Revenue		Median Annual Revenue	Average Annual Revenue	Number At or Above Average vs Number Below Average	Percentage At or Above Average vs Percentage Below Average
		High	Low				
Top Tier	14	\$2,026,409	\$675,950	\$883,690	\$956,726	4/10	29%/71%
Mid Tier	14	\$672,463	\$499,890	\$578,325	\$573,645	7/7	50%/50%
Lower Tier	13	\$491,2919	\$232,483	\$395,768	\$388,998	7/6	54%/46%

<sup>‡</sup> Figures rounded to nearest dollar. Percentages rounded to the nearest one percent.

Part I Explanatory Notes

- 1) "Number of Outlets" refers to E&G Restaurants in the "Top Tier", "Mid-Tier" and "Lower Tier" dataset.
- 2) "Revenue High/Low" refers to the range of total revenue achieved by outlets in the dataset.

- 3) "Median Annual Revenue" refers to the total revenue amount that is in the center of all total revenue figures included in the dataset.
- 4) "Average Annual Revenue" refers to the average total revenue achieved by outlets in the dataset.
- 5) "Number At or Above Average" refers to the number of outlets in the dataset that had total revenue equal to or greater than the Average Annual Revenue.
- 6) "Percentage At or Above Average" refers to the percentage of outlets in the dataset that had total revenue equal to or greater than the Average Annual Revenue.
- 7) The actual annual average and median annual revenue numbers do not reflect the costs of sales, operating expenses or other costs or expenses that must be deducted from revenue to obtain net income or profit. You should conduct an independent investigation of the costs and expenses you may incur in operating your Franchised Business. Franchisees and former franchisees listed in this disclosure document may be one source of this information.

PART II  
Annual Food Cost & Average Costs  
January 1, 2022 – December 31, 2022  
Franchised Outlets Open All 12 Months

	Number of Outlets	Range of Annual Food Cost		Median Food Costs	Average Food Cost	Number At or Above Average vs Number Below Average	Percentage At or Above Average vs Percentage Below Average
		Low	High				
Top Tier	11	23.94%	28.97%	27.45%	27.26%	6/5	42%/58%
Mid Tier	10	29.07%	30.24%	29.59%	29.59%	5/5	27%/73%
Lower Tier	11	30.36%	36.26%	32.07%	32.67%	6/5	55%/45%

‡ Percentages rounded to the nearest hundredth of a percent.

Part II Explanatory Notes

- 1) "Number of Outlets" refers to E&G Restaurants in the "Top Tier", "Mid-Tier" and "Lower Tier" dataset.
- 2) "Range of Annual Food Cost High/Low" refers to the range of annual food cost as a percentage of revenue experienced by outlets in the dataset.
- 3) "Median Food Cost" refers to the food cost as a percentage of revenue figure that is in the center of all food cost as a percentage of revenue figures experienced by outlets included in the dataset.
- 4) "Average Food Cost" refers to the average food cost as a percentage of revenue experienced by outlets in the dataset.
- 5) "Number At or Above Average" refers to the number of outlets in the dataset that had food costs as a percentage of revenue equal to or greater than the Average Food Cost.
- 6) "Percentage Above / Below Average" refers to the percentage of outlets in the dataset that had average food costs as a percentage of revenue equal to or greater than the Average Annual Revenue.

7) The actual food cost as a percentage of revenue numbers do not reflect the total costs of sales, operating expenses or other costs or expenses that must be deducted from revenue to obtain net income or profit. The percentage figures are also impacted by the amount of revenue an outlet generated. You should conduct an independent investigation of the costs and expenses you may incur in operating your Franchised Business. Franchisees and former franchisees listed in this disclosure document may be one source of this information.

**Bases and Assumptions**

There are no material differences between the business conducted by these E & G Restaurants and the Franchised Business to be operated by you under the Franchise Agreement for a Traditional Unit, since Traditional Unit franchised outlets and your Traditional Unit Franchised Business will operate under the same System and Marks and with similar operating requirements.

You should also note that some of the outlets reported are located in concentrated geographic areas and thus collectively benefit from each other's presence through, among other reasons, community advertising, a greater market presence and better shipping rates – a factor that may not be present in other geographic areas. Revenues will vary from outlet to outlet due to various factors, including the demand for the goods and services offered by E & G Restaurants, the type and number of competitive businesses in the market, advertising efforts, management experience, location and other factors.

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

This information is provided as reference information only for your use with other information. The Company urges you to consult with your financial, business, tax, accounting and legal advisors about the information contained in this Item.

Written substantiation for this financial performance representation will be made available to you upon reasonable request.

Other than the preceding financial performance representation, we do not make any financial performance representations. We also do not authorize our employees or representatives to make any such representations, either orally or in writing. If you are purchasing an existing outlet, however, we may provide you with the actual records of that outlet. If you receive any other financial performance information or projections of your future income, you should disregard it and report it to our management by contacting Eric Wolfe at 800 Wisconsin St Mailbox 74, Bldg D2 Suite 315-, Eau Claire, Wisconsin 54703, (715) 833-1375, the Federal Trade Commission, and the appropriate state regulatory agencies.

**ITEM 20**

**OUTLETS AND FRANCHISE INFORMATION**

**TABLE NUMBER 1  
Systemwide Outlet Summary for Years 2020 To 2022**

<b>Outlet Type *</b>	<b>Year</b>	<b>Outlets at the Start of the Year</b>	<b>Outlets at the End of the Year</b>	<b>Net Change</b>
<b>Franchised</b>	2020	90	73	-17

<b>Outlet Type *</b>	<b>Year</b>	<b>Outlets at the Start of the Year</b>	<b>Outlets at the End of the Year</b>	<b>Net Change</b>
	2021	73	69	-4
	2022	69	65	-4
<b>Company-Owned**</b>	2020	2	3	+1
	2021	3	3	0
	2022	3	3	0
<b>Total Outlets**</b>	2020	92	76	-16
	2021	76	72	-4
	2022	72	68	-4

\* Outlets include both Traditional Locations and Non-Traditional Locations.

\*\*We do not have any company-owned outlets at this time. However, our affiliates own and operate E & G Restaurants.

**TABLE NUMBER 2**  
**Transfers of Outlets From Franchisee to New Owners (Other than the Franchisor)**  
**For Years 2020 To 2022**

<b>State</b>	<b>Year</b>	<b>Number of Transfers</b>
<b>Colorado</b>	2020	0
	2021	0
	2022	0
<b>Florida</b>	2020	0
	2021	0
	2022	0
<b>Illinois</b>	2020	0
	2021	0
	2022	0
<b>Indiana</b>	2020	0
	2021	0
	2022	0
<b>Iowa</b>	2020	0
	2021	0
	2022	0
<b>Michigan</b>	2020	0
	2021	0
	2022	0
<b>Minnesota</b>	2020	2
	2021	1
	2022	6
<b>Nebraska</b>	2020	0
	2021	0
	2022	0
<b>North Carolina</b>	2020	0

State	Year	Number of Transfers
	2021	0
	2022	0
North Dakota	2020	5
	2021	0
	2022	1
Ohio	2020	0
	2021	0
	2022	0
Oregon	2020	0
	2021	0
	2022	0
South Dakota	2020	0
	2021	0
	2022	2
Texas	2020	0
	2021	0
	2022	0
Wisconsin	2020	0
	2021	1
	2022	2
Total*	2020	2
	2021	2
	2022	11

**TABLE NUMBER 3**  
**Status of Franchised Outlets For Years 2020 To 2022**

State	Year	Outlets at the Start of the Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations / Other Reasons	Outlets at the End of the Year
Colorado	2020	2	0	1	0	0	0	1
	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	1	0
Florida	2020	3	0	0	0	0	0	3
	2021	3	0	0	0	0	3	0
	2022	0	0	0	0	0	0	0
Illinois	2020	1	0	0	0	0	1	0
	2021	0	0	0	0	0	0	0
	2022	0	0	0	0	0	0	0
Indiana	2020	5	0	0	0	0	1	4
	2021	4	0	0	0	0	1	4
	2022	4	0	0	3	0	0	1
Iowa	2020	3	0	1	1	0	0	1
	2021	1	0	0	0	0	0	1
	2022	1	1	0	0	0	0	2
Michigan	2020	2	1	0	0	0	0	2

State	Year	Outlets at the Start of the Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations / Other Reasons	Outlets at the End of the Year
	2021	2	0	0	0	0	0	2
	2022	2	0	0	0	0	0	2

State	Year	Outlets at the Start of the Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations / Other Reasons	Outlets at the End of the Year
<b>Minnesota</b>	2020	34	0	2	1	1	3	27
	2021	27	1	0	0	0	3	25
	2022	25	0	0	0	0	1	24
<b>Nebraska</b>	2020	2	0	0	0	0	0	2
	2021	2	0	0	0	0	0	2
	2022	2	0	0	0	0	0	2
<b>North Carolina</b>	2020	1	0	0	0	0	0	1
	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
<b>North Dakota</b>	2020	6	0	0	0	0	0	6
	2021	6	0	0	0	0	0	6
	2022	6	0	0	0	0	1	5
<b>Ohio</b>	2020	1	0	0	0	0	1	0
	2021	0	1	0	0	0	0	1
	2022	1	0	0	0	0	0	1
<b>Oregon</b>	2020	1	0	0	0	0	0	1
	2021	1	0	0	1	0	0	0
	2022	0	0	0	0	0	0	0
<b>South Dakota</b>	2020	4	0	0	0	0	1	3
	2021	3	0	0	0	0	0	3
	2022	3	0	0	0	0	1	2
<b>Texas</b>	2020	0	0	0	0	0	0	0
	2021	0	0	0	0	0	0	0
	2022	0	0	0	0	0	0	0
<b>Wisconsin</b>	2020	25	1	0	1	0	0	25
	2021	25	0	0	0	0	2	23
	2022	23	2	0	0	0	0	25
<b>TOTAL</b>	2020	90	1	4	6	1	7	73
	2021	73	2	0	1	0	5	69
	2022	69	3	0	3	0	4	65

**TABLE NUMBER 4**  
**Status of Company-Owned Outlets For Years 2020 To 2022\***

State	Year	Outlets at the Start of the Year	Outlets Opened	Outlets Reacquired From Franchisees	Outlets Closed	Outlets Sold to Franchisees	Outlets at the End of the Year
<b>Minnesota</b>	2020	2	0	1	0	0	3
	2021	3	0	2	1	1	3
	2022	3	0	0	0	0	3
<b>Wisconsin</b>	2020	0	0	0	0	0	0
	2021	0	0	0	0	0	0
	2022	0	0	0	0	0	0
<b>TOTAL</b>	2020	2	0	1	0	0	3
	2021	3	0	2	1	1	3
	2022	3	0	0	0	0	3

\* We do not have any company-owned outlets at this time. However, our affiliates own and operate E & G Restaurants.

**TABLE NUMBER 5**  
**Projected Openings as of December 31, 2022**

State	Franchise Agreements Signed But Outlet Not Opened	Projected New Franchised Outlets in the Next Fiscal Year	Projected New Company-Owned Outlets in the Current Fiscal Year
<b>Iowa</b>	0	1	0
<b>Minnesota</b>	1	3	1
<b>North Dakota</b>	1	1	0
<b>Wisconsin</b>	0	1	0
<b>TOTAL</b>	2	6	1

A list of all our franchisees, including whether they operate a Traditional Location or a Non-Traditional Location, their addresses and telephone numbers is attached as Exhibit B to this disclosure document.

Exhibit B lists the name and last known city, state and business telephone number (or, if unknown, home telephone number) of the only franchisee who has had an outlet transferred, terminated, canceled, not renewed, or otherwise voluntarily or involuntarily ceased to do business under the franchise agreement during the most recently completed fiscal year 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.

In some instances, current and former franchisees sign provisions restricting their ability to speak openly about their experience with the Erbert & Gerbert's<sup>®</sup> System. You may wish to speak with current and former franchisees, but be aware that not all such franchisees will be able to communicate with you.

We do not have any trademark-specific franchisee associations at this time.

**ITEM 21**

## **FINANCIAL STATEMENTS**

Our fiscal year end is December 31.

Attached as Exhibit A to this disclosure document are the audited financial statements for the Company as of December 31, 2020, 2021 and 2022.

### **ITEM 22**

#### **CONTRACTS**

The following are attached to this disclosure document:

Exhibit D – Franchise Agreement (Traditional)

Exhibit E – Franchise Agreement (Non-Traditional)

Exhibit F – Area Development Agreement

### **ITEM 23**

#### **RECEIPTS**

See Exhibit I.



**EXHIBIT A**  
**AUDITED FINANCIAL STATEMENTS**

**UNAUDITED FINANCIAL STATEMENTS**

**THESE FINANCIAL STATEMENTS ARE PREPARED WITHOUT AN AUDIT. PROSPECTIVE FRANCHISEES OR SELLERS OF FRANCHISES SHOULD BE ADVISED THAT NO CERTIFIED PUBLIC ACCOUNTANT HAS AUDITED THESE FIGURES OR EXPRESSED HIS/HER OPINION WITH REGARD TO THE CONTENT OR FORM.**

**None**

**EXHIBIT B****LIST OF FRANCHISEES****FRANCHISED OUTLETS OPEN FOR BUSINESS**

<b>FRANCHISEE NAME</b>	<b>ADDRESS</b>	<b>TELEPHONE</b>
<b>INDIANA</b>		
Compass Group USA, Inc.*	IUPUI 420 University Boulevard Indianapolis, IN 46202	(317) 409-6431
<b>IOWA</b>		
University of Iowa*	125 N. Madison Street Iowa City, IA 52242	(319) 335-3500
<b>MICHIGAN</b>		
Ferris State University*	1301 S. State Street Big Rapids, MI 49307	(231) 591-2000
Aramark Corporation*	Grand Valley State University 401 W. Fulton Street Grand Rapids, MI 49504	(616) 331-5000
<b>MINNESOTA</b>		
Dual-Tech & Associates, LLC Attn: Kurt Wallace	132 Bridge Avenue Albert Lea, MN 56007	(507) 473-2033
Three Rivers, LLC Attn: Chad & Aimee Wetzel	2371 7th Avenue Anoka, MN 55303	(763) 406-7600
LJC, Inc. Attn: Linda Coss	1500 Bemidji Avenue N. #100 Bemidji, MN 56601	(218) 444-9700
Clara's Sandwich Shop Attn: Clara Gunderson	9724 Lyndale Avenue S. Bloomington, MN 55420	(952) 283-2471
Kurtz's Twin Ports Subs, Inc. Attn: Alan Kurtz	1414 Hwy 33 Cloquet, MN 55720	(218) 879-7827
Kurtz's Twin Ports Subs, Inc. Attn: Alan Kurtz	4504 Grand Avenue Duluth, MN 55807	(218) 628-0600
Kurtz's Twin Ports Subs, Inc. Attn: Alan Kurtz	1350 W. Arrowhead Road Duluth, MN 55802	(218) 724-8100
Kurtz's Twin Ports Subs, Inc. Attn: Alan Kurtz	234 W. First Street Duluth, MN 55802	(218) 723-2330
Hailcon, Inc. Attn: James Willard	4130 9 <sup>th</sup> Avenue W. Hibbing, MN 55746	(218) 262-2727
Black Cat Investments, LLC Attn: June Hogenson	177714 Kenwood Trail Lakeville, MN 55044	(952) 892-0800
Black Cat Investments, LLC Attn: June Hogenson	1780 Madison Street, Suite 3 Mankato, MN 56001	(507) 385-1919
Three Rivers, LLC Attn: Chad and Aimee Wetzel	11350 Aquila Dr. N. Champlain, MN 55316	(763) 363-8400
Danica Concepts, LLC Attn: Manuel Carlos Pizano	1730 New Brighton Boulevard Minneapolis, MN 55413	(612) 605-6605

FRANCHISEE NAME	ADDRESS	TELEPHONE
Compass Group USA*	University of Minnesota – Twin Cities Coffman Memorial Union 300 Washington Avenue South Minneapolis, MN 55455	(612) 625-3725
Red River Subs, Inc. Attn: Todd Beedy	212 8th Street S Moorhead, MN 56560	(218) 287-7827
Black Cat Investments, LLC Attn: June Hogensen	1710 Commerce Drive North Mankato, MN 56003	(507) 625-2121
Coburns, Inc.	1001 7 <sup>th</sup> Street N. Sartell, MN 56377	(320) 253-5939
Compass Group USA* ¥	St. Cloud State University 651 First Avenue St. Cloud, MN 56301	(320) 308-0121
Francis T. Enterprises, Inc. Attn: Peter Schippers	4170 Division Street, Suite 135 St. Cloud, MN	(320) 240-1111
Danica Concepts, LLC Attn: Manual Carlos Pizano	2233 Energy Park Drive St. Paul, MN 55108	(651) 204-6400
Francis T. Enterprises, Inc. Attn: Peter Schippers	516 W. Germain St. St. Cloud, MN 56301	(320) 253-9963
Black Cat Investments, LLC Attn: June Hogensen	224 S. Minnesota Avenue St. Peter, MN 56082	(507) 386-0708
Hillesheim Companies, Inc. Attn: Nathan Hillesheim	105 W. 3rd Street Winona, MN 55987	(507) 474-3727
OHC, LLC Attn: Anna Holter	1301 1 <sup>st</sup> Street S. Willmar, MN 56201	(507) 474-3727
<b>NEBRASKA</b>		
Sodexo, Inc.*	Creighton University Skutt Student Center, Wareham Court 2400 Cass Street Omaha, NE 68178	(420) 280-3585
Compass Group*	Wayne State College 1111 Main Street Wayne, NE 68787	(800) 228-9972
<b>NORTH CAROLINA</b>		
Compass Group*	University of North Carolina – Charlotte 9201 University City Boulevard Charlotte, NC 28223	(704) 687-8622
<b>NORTH DAKOTA</b>		
Red River Subs, Inc Attn: Todd Beedy	931 South 9th Street Bismarck, ND 58504	(701) 223-7827
Red River Subs, Inc Attn: Todd Beedy	3402 13th Avenue South Fargo, ND 58103	(701) 478-5810
Red River Subs, Inc Attn: Todd Beedy	3060 25th Street South Fargo, ND 58103	(701) 478-7830
Red River Subs, Inc Attn: Todd Beedy	300 Broadway N. Fargo, ND 58102	(701) 478-7827
J&L Stangel, LLC Attn: Jerry Stangel	3000 32 <sup>nd</sup> Avenue South Grand Forks, ND 58201	(701) 757-3070

FRANCHISEE NAME	ADDRESS	TELEPHONE
<b>OHIO</b>		
Compass Group*	University of Toledo 2965 W. Centennial Dr. Toledo, OH 43606	(800) 586-5336
<b>OREGON</b>		
<b>SOUTH DAKOTA</b>		
Sodexo, Inc.*	South Dakota State University Larson Commons 1168 Student Center Lane Brookings, SD 57007	(605) 697-2550
Sodexo, Inc.*	University of South Dakota 414 East Clark Street Vermillion, SD 57069	(605) 658-6200
<b>WISCONSIN</b>		
ACT Progressive, LLC Attn: Gerald Treleven	355 N. Casaloma Drive Appleton, WI 54915	(920) 968-0503
DCT Progressive, LLC Attn: Gerald Treleven	218 E. College Avenue Appleton, WI 54911	(920) 730-8701
Switzer Investments, LLC Attn: Mike Switzer	1433 Commercial Boulevard Chippewa Falls, WI 54929	(715) 833-2450
Inspire Group LLC Attn: Jerry Lewin	337 Main Avenue De Pere, WI 54115	(920) 964-3727
Jomar Enterprises, Inc. Attn: Timothy & Kathleen Toczek	2308 E. Clairemont Avenue Eau Claire, WI 54701	(715) 552-1933
Sodexo, Inc.*	University of Wisconsin – Eau Claire Davies Center 127 Roosevelt Avenue Eau Claire, WI 54701	(715) 836-5261
BARJ, LLC Attn: Brigett Blise	2370 W. Mason Street Green Bay, WI 54303	(920) 857-9196
VL Subs, LLC Attn: Voua Lee	2235 Main Street Green Bay, WI 54302	(920) 770-5017
City Centre Subs, LLC Attn: Gerald Treleven	226 N. Washington Green Bay, WI 54301	(920) 435-7827
Switzer Investments, LLC Mike Switzer	2521 Hanley Road Hudson, WI 54016	(715) 531-1000
A'viands Food and Service Management*	UW Parkside 900 Wood Road Kenosha, WI 53144	(262) 595-2155
Compass Group*	UW La Crosse Union 1705 Badger Street La Crosse, WI 54601	(608) 785-6859
Western Technical College*	400 Seventh Street N La Crosse, WI 54602	(608) 785-9200
Switzer Investments, LLC Attn: Mike Switzer	1103 Broadway Street S Menomonie, WI 54751	(715) 578-9000
Switzer Investments, LLC Attn: Mike Switzer	405 Water Street Eau Claire, WI 54703	(715) 835-9995

FRANCHISEE NAME	ADDRESS	TELEPHONE
Sodexo, Inc.*	Marquette University Alumni Memorial Union 1442 W. Wisconsin Avenue Milwaukee, WI 53233	(414) 288-3287
Lehner Enterprises Attn: Joseph and Carrie Lehner	240 Wisconsin Street Oshkosh, WI 54901	(920) 231-2900
Sodexo, Inc.*	University of Wisconsin – River Falls 500 E. Wild Rose Avenue River Falls, WI 54022	(715) 425-3274
Lehner Enterprises Attn: Joseph and Carrie Lehner	812 Main Street Stevens Point, WI 54481	(715) 341-SUBS
Kurtz's Twin Ports Subs, Inc. Attn: Alan Kurtz	1325 Tower Avenue Suite 2 Superior, WI 54880	(715) 392-5305
Lehner Enterprises Attn: Joseph and Carrie Lehner	329 4th Street Wausau, WI 54403	(715) 848-8300
A'viands Food and Service Management*	University of Wisconsin – Whitewater Drumlin Dining Hall 400 N. Prairie Street Whitewater, WI 53190	(262) 472-2631
A'viands Food and Service Management*	University of Wisconsin – Whitewater Esker Hall 400 N. Prairie Street Whitewater, WI 53190	(262) 472-2631

\* Non-Traditional outlet

#### AFFILIATE-OWNED OUTLETS OPEN FOR BUSINESS

AFFILIATE NAME	ADDRESS	TELEPHONE
EGSUBS 1, Inc.	2848 41st Street NW Rochester, MN 55902	(507) 280-0060
EGSUBS 3, Inc.	334 Wabasha North St. Paul, MO 55102	(651) 298-1919
EGSUBS 7, Inc.	15050 Cedar Avenue Suite 106 Apple Valley, MN. 55124	(952) 432-1300

\* Non-Traditional outlet

#### FRANCHISEES WHO HAVE SIGNED A FRANCHISE AGREEMENT BUT OUTLET NOT OPENED

None.

#### FRANCHISEES WHICH LEFT THE SYSTEM

(The list of franchisees which have been terminated, cancelled, transferred not renewed or otherwise voluntarily or involuntarily ceased to do business under the franchise agreement during the most recently completed fiscal year or who has not communicated with us within 10 weeks of the Application Date.) If

you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system.

**Traditional Locations:**

NAME	CITY, STATE	TELEPHONE
Prost Hospitality, LLC*	Lakeville, MN	(612) 910-9467
Steindl Business Development*	St. Peter, MN	(507) 381-0413
Steindl Business Development*	North Mankato, MN	(507) 381-0413
Steindl Business Development*	Mankato, MN	(507) 381-0413
True North Sandwich, LLC*	Willmar, MN	(320) 905-9061
Red River Subs, Inc.*	Grand Forks, ND	(218) 287-7827
Cenergy, Inc.*	Chippewa Falls, WI	(715) 514-8887
JCT Subs, Inc.*	Green Bay, WI	(920) 435-7827
Randy & Vicki Rempher	Bismarck, ND	(701) 751-2239

\*This is a transfer. The outlet is still in operation.

**Non-Traditional Locations:**

NAME	CITY, STATE	TELEPHONE
A'viands Food and Service Management	Pueblo, CO	(719) 549-2725
Trustees of Indiana University	Bloomington, IN (3 locations)	(812) 855-9952
Tiffins, Inc.	Minneapolis, MN	(612) 659-6000
Aramark Corp*	Minneapolis, MN	(612) 625-3725
Aramark Corp*	Brookings, SD	(605) 697-2550
Aramark Corp*	Brookings, SD	(605) 697-2550
Aramark Corp*	Vermillion, SD	(605) 697-2550

\*This is a transfer. The outlet is still in operation.

**EXHIBIT C**  
**TABLE OF CONTENTS OF MANUAL**



**EXHIBIT D**  
**FRANCHISE AGREEMENT (TRADITIONAL)**

**E & G FRANCHISE SYSTEMS, INC.  
FRANCHISE AGREEMENT  
(TRADITIONAL)**

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**GUARANTY AND ASSUMPTION OF OBLIGATIONS**

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**E & G FRANCHISE SYSTEMS, INC.  
FRANCHISE AGREEMENT  
(TRADITIONAL)**

**THIS FRANCHISE AGREEMENT** (this "Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between E & G FRANCHISE SYSTEMS, INC., a Wisconsin corporation ("us", "our" or "we"), and \_\_\_\_\_, a \_\_\_\_\_ ("you" or "your").

**RECITALS**

1. We and our Affiliates have the rights to and have developed and refined the System;
2. We and/or our Affiliates own the Marks and have the right to license the Marks and the System in connection with the operation of an E & G Restaurant;
3. You recognize the benefits from being identified with and licensed by us and desire a franchise to establish and operate an E & G Restaurant using the Marks and System and we are willing to grant such a franchise on the terms and conditions in this Agreement.

NOW, THEREFORE, the parties agree as follows:

**I. DEFINITIONS**

For purposes of this Agreement, the following terms will have the meaning as defined below:

- A. "Affiliates" means individually or collectively, any and all entities controlling, controlled by, or under common ownership with the person being referenced.
- B. "Competitive Business" means any quick service restaurant that offers as a primary menu item or as a mix of menu items sandwiches or similar items. As used herein, "sandwiches" includes cold or hot sandwiches (with or without meat), "open faced" sandwiches, deli or "submarine style" sandwiches, paninis, wraps (whether wrapped in tortilla, lettuce or otherwise), pitas and melts.
- C. "E & G Restaurant" means the Franchised Business and any other restaurant operating under the System and Marks, whether owned by us or any Affiliate, or licensed or franchised by us or any Affiliate.
- D. "Franchised Business" will mean the franchised E & G Restaurant operated by you utilizing the System and the Marks at the Franchised Location pursuant to this Agreement and any To Go Unit or Mobile Unit operated in connection with an Optional Program Addendum attached to this Agreement.
- E. "Franchised Location" means the location of the E & G Restaurant that is the subject of this Agreement.
- F. "Manual" means our confidential Operations Manual and such other manuals as we have or may develop in the future, as amended from time to time by us in our sole discretion. The Manual will be in a format determined by us (i.e., in writing, on CD-ROM, via electronic media through a secure website, etc.) and includes all other supplemental bulletins, notices, revisions, modifications, or supplemental information, either in document or electronic form, concerning the System which are

delivered by us or otherwise communicated to you in writing. Also included are any passwords or other digital identifications necessary to access the Manual on a website or extranet. The Manual is confidential and remains our property.

G. "Marks" means such service marks, trademarks, trade dress, trade names, logos and commercial symbols, as may presently exist, or which may be modified, changed, or acquired by us or our Affiliates, in connection with the operation of the business contemplated by this Agreement. Currently, Marks include, but are not limited to, "Erbert & Gerbert's", "Erbert and Gerbert's Sandwich Shop", the design with two boys' faces (horizontal), the design with "Erbert and Gerbert's", and the "E and G" design.

H. "Net Revenues" means the total amount of all sales of products, services and merchandise sold from, through or in connection with the Franchised Business, whether for cash, on credit, barter or otherwise, exclusive of applicable sales, use or service taxes. Net Revenues includes sales made in connection with any catering events outside of your Franchised Location's premises, as well as all business interruption insurance payments made to you under any insurance policy.

I. "Non-Traditional Location" means a location that is a transportation facility, sporting facility, shopping mall food court, educational facility, catering/mobile unit, or military facility. For purposes of this definition, "shopping mall" includes an indoor or enclosed mall and an outdoor mall consisting of stores that are part of the same retail development arranged around open-air pedestrian walkways (but not a shopping center development where storefronts surround a common parking lot).

J. "Principal Owner" means you if you are a sole proprietor, the majority shareholder of you if you are a corporation, a partner owning a majority interest of you if you are a partnership, or a member or manager owning the majority interest of you if you are a limited liability company. In the event there are multiple owners with equal interest in you, then the individual signing this document on your behalf shall be the Principal Owner for purposes of this Agreement.

K. "System" means a developed method of operating a quick-serve restaurant specializing in gourmet sandwiches, specialty soups and related products to be sold and served on the premises, through drive-through, by pick-up or delivery under the Marks using certain procedures and methods, recipes, site evaluation criteria, layouts, accounting methods, advertising, sales and promotional techniques, personnel training, trade secrets, and any other matters relating to the operation and promotion of an E & G Restaurant as they may be changed, improved, modified and further developed by us or our Affiliates from time to time.

L. "Term" means, individually or collectively the Initial Term, the Renewal Term and any period of continuation of this Agreement.

M. "Transfer" means and includes any voluntary or involuntary, direct or indirect, assignment, sale, gift, conveyance, lease or other disposition of an interest in this Agreement, you or the Franchised Business, including: (a) transfer of any capital stock, partnership interest, limited liability company interest or other ownership interest; (b) merger, consolidation, reorganization, business combination or other issuance of additional stock or ownership interests; (c) transfer in bankruptcy or dissolution of marriage or otherwise by operation of law or by order of court; (d) transfer to a personal representative upon disability or transfer upon the death of a Principal Owner; (e) the grant or creation of any lien or encumbrance on any ownership interest or asset; (f) the grant of any option, call, warrant, conversion rights or rights to acquire any equity or voting interest; (g) assignment of contract rights; or (h) sale of assets (including the inventory, furniture, fixtures, equipment and other operating assets of the Franchised Business, other than in ordinary course of business).

N. "You" or "Your" also includes: (a) those persons and their spouses owning any interest in you if you are a corporation or a limited liability company; (b) all partners and their spouses owning any partnership interest in you if you are a partnership; (c) the individual and his or her spouse who owns you if you are a sole proprietorship; and (d) the guarantors of this Agreement. For purposes of determining ownership in you, the interests owned by a husband and wife will be considered one interest, and both husband and wife will be obligated hereunder, regardless of whether the interest is owned by just one spouse or both spouses.

## II. GRANT OF FRANCHISE

A. **Grant of License.** We grant to you and you accept from us, a non-exclusive right to use the System and Marks to open and operate one E & G Restaurant to be located at the Franchised Location listed in Exhibit I, attached to this Agreement during the Term of this Agreement. So long as you are not entering into the Assigned Territory of another E & G Restaurant, you may provide delivery and catering services outside of your Assigned Territory. If no Franchised Location is specified at the time you and we sign this Agreement, an appropriate location will be specified when it is determined, approved and accepted by us, and you and we agree to initial a completed Exhibit I describing that location. In order for you to operate an E & G Restaurant at an additional location, a separate Franchise Agreement must be signed and you will be required to pay us an additional Initial Franchise Fee. We may offer you the opportunity to add one or more of the following optional programs ("Optional Programs") to your Franchised Business: a grab and go station (the "To Go Unit") and/or a mobile unit (the "Mobile Unit"). If we offer you the right to participate in an Optional Program and you elect to participate in that Optional Program, then you will sign the Optional Program Addendum described on Exhibit VI attached to this Agreement and pay the applicable fees due thereunder. The Optional Programs will thereafter be included as part of the System and will be subject to the terms and conditions of this Agreement.

B. **Assigned Territory.** You are granted an "Assigned Territory", which shall be a geographic radius determined by us and around the Franchised Location. The Assigned Territory will be determined at the time the Franchised Location is agreed to by both you and us, and will be specified in Exhibit I, which you and we will initial. During the Term of this Agreement, so long as you are in full compliance with this Agreement, we and our Affiliates will not establish or grant a license or franchise to establish another E & G Restaurant within your Assigned Territory other than in a Non-Traditional Location, nor will we, our affiliates, or our other franchisees be permitted to directly deliver or cater within the Assigned Territory without your consent. A Non-Traditional Location is not considered part of the Assigned Territory. Notwithstanding the foregoing, delivery and catering conducted by third party contractors will be permitted on the terms described in the Manual or upon our consent, and such third parties may deliver and cater, inside your Assigned Territory, product from another E & G Restaurant. So long as you are not entering into the Assigned Territory of another E & G Restaurant or franchisee and you are following the delivery and catering guidelines set forth in the Manual, you may provide delivery and catering services inside and outside of your Assigned Territory. However, you have no territorial protection in any area outside of your Assigned Territory, and in the event any E & G Restaurant is established in an area outside of your Assigned Territory, you must cease providing direct delivery and direct catering services in any Assigned Territory assigned to it or its franchisee / operator. Without our express, prior, written consent, you must sell products only from the physical location of your E & G Restaurant, only excluding delivery services and catering. You may not, for example, sell at fairs, trade shows, pop-up stores, etc., whether within or outside of your Assigned Territory, without our prior, written consent.

C. **Retention of Rights.** We, on behalf of ourselves and our Affiliates, reserve all rights not specifically granted to you pursuant to this Agreement, all without compensation to you, including but not limited to the following:

1. We and our Affiliates may own or operate, or license or franchise others to own or operate, E & G Restaurants anywhere outside of the Assigned Territory and in Non-Traditional Locations within and outside of the Assigned Territory.

2. We and our Affiliates are allowed to own, open, franchise, operate, and/or manage any businesses or restaurants within the Assigned Territory or outside of the Assigned Territory under trademarks or service marks different than the Marks.

3. We and our Affiliates are allowed to own, open, franchise, operate, and/or manage any business or restaurant within the Assigned Territory or outside of the Assigned Territory under systems that are different than the System.

4. We and our Affiliates may develop, merchandise, sell and license others to sell products bearing the Marks through other channels of distribution such as grocery stores, the Internet, print catalogues, direct marketing media and any other outlets within the Assigned Territory or outside of the Assigned Territory, and we may promote products bearing the Marks at special events, athletic contests, etc., through temporary locations and mobile units.

5. We and our Affiliates have the right, now or in the future, to purchase, merge, acquire or affiliate with an existing competitive or non-competitive franchise network, chain or any other business regardless of the location of that chain's or business' facilities, and to operate, franchise or license those businesses and/or facilities as E & G Restaurants operating under the proprietary marks or any other Marks following our purchase, merger, acquisition or affiliation, regardless of the location of these facilities (which you acknowledge may be within your Assigned Territory or close to your Assigned Territory or your Franchised Location).

6. We and our Affiliates may sell ourselves, our assets, our proprietary marks, the Marks, our systems and/or the System to a third party; may go public; may engage in a private placement of some or all of our securities; may merge, acquire other corporations or entities, or be acquired by another corporation or entity; and/or may undertake a refinancing, recapitalization, leveraged buyout or other economic or financial restructuring. With regard to any of the above transfers, you expressly and specifically waive any claims, demands or damages arising from or related to the loss of our name, the Marks (or any variation thereof), the System and/or the loss of being identified as a franchisee under this Agreement. If we assign our rights in this Agreement, nothing will be deemed to require us to remain in the restaurant business or to offer or sell any products or services to you.

### III. **LOCATION AND LEASE**

A. **Site Selection.** You will select the proposed Franchised Location for the location of the Franchised Business and submit a completed site analysis package, including demographics and other material requested by us containing all information reasonably required by us to assess a proposed site. Within 30 days after receipt, we will advise you whether the proposed Franchised Location is acceptable. We are not responsible for and do not make any warranty regarding the suitability of the Franchised Location. Our consent to a Franchised Location means only that the Franchised Location meets our

minimum standards for an acceptable location of an E & G Restaurant. You are primarily responsible for investigating the Franchised Location and having any leases or sale contract for the Franchised Location reviewed and approved by your attorney.

**B. Site Acquisition.**

1. **Our Consent to Lease.** If you intend to lease the Franchised Location, within 30 days of us consenting to the Franchised Location you must submit a copy of the proposed lease to us for our consent. You must retain a local (to your market) commercial real estate broker to help negotiate any commercial real estate lease associated with your Franchised Location. We recommend that you also hire a lawyer to help you with the lease and that you, your broker and your lawyer negotiate a significant tenant improvement allowance with any landlord and in connection with that lease. Within 10 days of signing the lease, you must provide us with a copy of the executed lease. The term of the lease plus all renewal option periods together must equal or exceed the Term of this Agreement. Our consent to the lease means only that the lease meets our minimum standards and is not a warranty as to the appropriateness of the lease or any of its terms. Your lease for the Franchised Location must contain substantially the same terms as found on Exhibit II attached to this Agreement. In addition, you must execute a Collateral Assignment of Lease in the form found in Exhibit III, attached to this Agreement, whereby you agree to assign your rights in the lease to us in the event of a termination or expiration of the Term of this Agreement or a default under the lease. We strongly recommend that you hire a professional leasing agent to assist you in site location and lease negotiations.

2. **Proof of Ownership.** If you intend to own the Franchised Location, within 90 days of us consenting to the Franchised Location you must furnish to us proof of ownership or an executed sale contract for the Franchised Location. Your submission of proof of ownership or an executed sale contract will be deemed a warranty by you that the Franchised Location can be utilized for restaurant purposes according to the terms of this Agreement. You must create a separate entity to own the Franchised Location and then lease the Franchised Location to you at its full rental value and on commercially reasonable terms, including the requirements for a leased Franchised Location set forth in Section III.B.1. above.

C. **Relocation.** So long as you are not in default under this Agreement, you may relocate the Franchised Location within the Assigned Territory with our prior written consent. However, the Assigned Territory for the relocated Franchised Location may, at our discretion, be subject to renegotiation. Regardless of the reason for relocating, you agree to pay all costs and expenses of relocating the Franchised Location including the cost of a demographic study and our cost and expenses in reviewing the proposed relocation Franchised Location and any new lease or purchase contract related thereto.

**IV. INITIAL FRANCHISE FEE**

A. You must pay us an initial franchise fee ("Initial Franchise Fee") when you sign this Agreement. Except as provided in Sections IV.B and C below, the amount of the Initial Franchise Fee is \$30,000. The Initial Franchise Fee is fully earned when you sign this Agreement and is not refundable under any circumstances.

B. If this Agreement is for a Unit (other than the first Unit) developed under an Area Development Agreement, the Initial Franchise Fee is \$20,000. If you have signed an Area Development Agreement with us and paid us a Development Fee, then the portion of that Development Fee attributable to signing this Agreement and opening the Franchised Business will be applied to the Initial Franchise Fee.

C. If you or your Principal Owner are a U.S. military veteran who has been honorably discharged and who has had at least one year of active service, then the Initial Franchise Fee is \$25,000 unless this Agreement is for a Unit (other than the first Unit) developed under an Area Development Agreement, in which case the Initial Franchise Fee is \$17,000.

## V. **TERM**

A. **Term.** The initial term of this Agreement will begin on the date of this Agreement, and, unless it is terminated earlier according to the terms of this Agreement, will expire 10 years later ("Initial Term").

B. **Continuation.** If you continue to operate the Franchised Business with our express or implied consent following the expiration of the Term of this Agreement, the continuation will be deemed to be a month-to-month extension of this Agreement, unless otherwise set forth in writing. All provisions of this Agreement will apply while you continue to operate the Franchised Business. This Agreement will then be terminable by either party on 30 days written notice to the other party.

C. **Renewal.** If you are in full compliance with the terms of this Agreement, you will have the right to renew for an additional 2 terms of 10 years (each, a "Renewal Term"), provided you agree to execute the most current Franchise Agreement being utilized by us at the time you renew. The most current Franchise Agreement may contain significantly different terms than this Agreement. In any event, we may, in our discretion, refuse to renew this Agreement if you have been notified of defaults (even if subsequently cured) under this Agreement more than 2 times during the Term, even if you are not in default at the time of the renewal. You agree to give us not less than 180 nor more than 270 days' prior written notice of an election to renew this Agreement, prior to the end of the Initial Term. Your failure to give us this notice will be deemed an election not to renew this Agreement. You will also be required to pay us a renewal fee of \$5,000. Additionally, you must remodel the Franchised Location and upgrade the furniture, fixtures and equipment to meet our then current standards of decor in accordance with the provisions of the Manual and must execute a general release, to the extent permitted by applicable law, of any and all claims against us and our Affiliates, and our Affiliates' respective owners, officers, directors, employees, agents, successors and assigns arising under or from this Agreement and/or any related agreements between you and us or our Affiliates, or under any applicable law, rule or regulation.

## VI. **FEES**

A. **Royalty Fee.** During the Term of this Agreement, you will pay us a continuing weekly royalty fee ("Royalty Fee") of 6% of Net Revenues from the preceding week (Monday thru Sunday).

B. **Advertising Fee.** During the Term of this Agreement, you will pay us a continuing weekly advertising fee ("Advertising Fee") of 2% of Net Revenues from the preceding week (Monday thru Sunday) which we will deposit into an advertising and E & G advertising fund (the "Advertising Fund").

C. **Technology Fee.** During the Term of this Agreement, you will pay us a Technology Fee starting the first day of the month after you open the Franchised Restaurant for business and by the first day of each month thereafter. Currently the Technology Fee is \$100 per month. We reserve the right to increase the amount of the Technology Fee upon written notice to you, but in no event, will we increase it more than once every 12 months. The Technology Fee may be used by us to support, update and revamp any website or social media we own or use, create and enhance email systems, enhance and develop computer systems and software, develop, maintain and update mobile apps and for any other technology related to the System.



D. **Time and Manner of Payments.** Royalty Fees and Advertising Fees will be paid on or before Tuesday of each week (unless a legal holiday falls on a Tuesday, in which case the payment will be made on the next day which is not a legal holiday). All payments due to us under this Agreement, including Royalty Fees, Advertising Fees, late fees, Technology Fees, re-inspection fees, payments for marketing materials, interest or any other charges or amounts due pursuant to this Agreement will be made via electronic funds transfer ("EFT") or such other manner which we may designate from time to time. None of these fees are refundable. Any payment not received by us on or before the date they are due will be deemed overdue. You grant us the right to initiate all such EFT drafts when due. You will comply with the procedures specified in the Manual or as otherwise communicated for such EFT or other program and will perform the acts and sign the documents, including authorization forms that we, our bank and your bank may require to accomplish payment by EFT or the other method we designate, including authorizations for us to initiate debit entries and/or credit correction entries to a designated checking or savings account. In addition, you will pay all costs associated with utilizing an EFT payment program.

E. **Interest on Late Payments.** If any payment due under this Agreement is not paid when due, we have the right to charge interest on these overdue amounts equal to the lesser of 1 ½% per month or the maximum legal rate in the jurisdiction where the Franchised Location is located. This applies to all fees and amounts due to us, including Royalty Fees, Advertising Fees and Technology Fees, as well as the cost of the product purchases that are overdue. We will not, however, charge interest if the failure to timely pay results from our error in initiating any EFT draft. Our right to interest is in addition to any other remedies that we may have.

F. **No Right of Offset.** You agree to make prompt payment, without deduction or set-off, of all charges which are properly due, including the Royalty Fees, Advertising Fees and Technology Fees. You cannot withhold any payment to us or our Affiliates on the grounds of non-performance by us of any of our obligations hereunder.

G. **Under-Reporting.** If it is found that you under-reported Net Revenues, you will reimburse us for the amount of the Royalty Fees and Advertising Fees that would have been due had Net Revenues been reported accurately, plus interest on those amounts at the rate of the lesser of 1 ½% per month or the maximum legal rate in the jurisdiction where the Franchised Location is located. In addition, if the amount of Net Revenues reported for any calendar year is less than 98% of the actual Net Revenues for that period or if you fail to provide us with reports as required, you agree to reimburse us for all costs of the investigation or audit, including salaries, professional fees, travel, meals and lodging.

H. **Late Fee.** If you fail to send us a report or payment when due, we can charge you, to the extent permitted by law, a late fee of \$100 plus \$100 for each week your report remains undelivered or fee remains unpaid.

I. **Taxes.** You agree to indemnify and/or reimburse us and our Affiliates for all capital, gross receipts, sales, and other taxes and assessments imposed by any applicable state or local governmental authority as a result of the conduct of the Franchised Location's business or the license of any of our or our Affiliates' intangible property to you (whether required to be paid by us or our Affiliates, withheld by you or otherwise). Your obligation to indemnify or reimburse us or our Affiliates for these taxes does not extend to income-type taxes which a state or local government imposes on us or our Affiliates' income.

**VII. ADVERTISING**

**A. Advertising Fund.**

1. Advertising Fees will be deposited into the Advertising Fund. The Advertising Fund will be used to provide advertising and promotional activities we deem beneficial to the System. We agree to use the Advertising Fees received from you for the payment of costs associated with the creation, production, and distribution of advertising materials and maintaining and upgrading the websites we may develop or have developed, and for any taxes incurred on these funds. The Advertising Fund is intended to maximize recognition of the Marks and the patronage of the E & G Restaurants generally. Although we will try to use the Advertising Fund to develop advertising and marketing materials and programs that will benefit all E & G Restaurants, we do not ensure that the Advertising Fund expenditures in or affecting any geographic area will be proportionate or equivalent to the Advertising Fund contributions by E & G Restaurants operating in that geographic area or that any particular E & G Restaurant will benefit directly or in proportion to its Advertising Fund contributions. We have the right to determine the type of advertising and the media in which it will appear, as we feel is appropriate. We have the sole right to formulate and make policy decisions concerning every aspect of the advertising consistent with applicable law. We do not have to spend the advertising funds during any specific time period. Advertising may be handled by the outside advertising agency that we select.

2. If we do not use all of the funds deposited in the Advertising Fund in a particular fiscal year, the remaining funds will be carried over to the next fiscal year and be included in that year's advertising budget. We are entitled to reimbursement from the Advertising Fund to cover our administrative and overhead expenses associated with operating the Advertising Fund. The Advertising Fund is not our asset. The Advertising Fund is not a trust. We have a contractual obligation to hold all Advertising Fund contributions for the benefit of the contributors and to use the contributions only for the purposes described above. We have no fiduciary obligation to you for administering the Advertising Fund.

**B. Your Own Advertising.**

1. Each calendar quarter during the Term of this Agreement, you must spend a minimum of 2.5% of your quarterly Net Revenues for marketing and advertising your Franchised Business in your local market. We must consent to your use of any advertising and sale promotion materials before you use them. You must submit all of your marketing, advertising and sale promotion materials to us or our designee at least 20 days prior to use. You may only use materials that we have affirmatively approved. We have the right to request a marketing plan from you to confirm compliance with this section, and, to the extent permitted by applicable law, set prices for the products or services you offer at the Franchised Business. Your obligation under this paragraph will be reduced, however, by the amount you contribute to any local advertising group we establish pursuant to Section VII.E of this Agreement.

2. On or before December 1 of each calendar year partially or wholly contained within the Term of this Agreement, you will deliver to us, in a form we prescribe, a written plan of your marketing expenditures for the local advertising you intend to conduct during the following / upcoming calendar year. In addition, within 20 days after the end of each calendar quarter partially or wholly contained within the Term of this Agreement, you will deliver to us, in the form we prescribe, a written plan for your marketing expenditures for the local advertising you intend to conduct during the upcoming calendar quarter. In addition, within 20 days after the end of each calendar quarter partially or wholly contained within the Term of this Agreement you will deliver to us, in the form we prescribe, an accurate, written accounting of your local advertising expenditures made during the preceding calendar quarter.

3. You will not advertise, or use in advertising or other form of promotion, the Marks without the appropriate copyright, trademark, and service mark symbols ("©", "®", "TM" or "SM") as we direct.

4. You will not distribute individual advertising items (i.e., coupons, circular advertising, etc.) outside of your Assigned Territory, unless you use a form of advertising that is not programmed to restrict delivery to the Assigned Territory, such as direct mail advertising by outside contractors based on zip code or third-party internet-based delivery services except pursuant to the terms of the Manual or upon our consent.

5. We may furnish you with marketing plans and materials, including, without limitation, newspaper ads, sales aids, and other promotional and marketing materials and/or kits, and you are required to pay a reasonable fee for such materials. Your purchase of marketing plans and materials from us shall not count toward your required expenditures in Section VII.B.1 above. You also agree that we may require the purchase of certain products from time to time in conjunction with marketing and promotional events.

C. **Grand Opening.** In addition to the other advertising requirements described above, you are required to present a grand opening plan to us or our designee. We or our designee will review the plan to ensure it meets our minimum requirements for a grand opening advertising plan. Our review of the plan is not an endorsement of the plan or a warranty of its success. After our approval, you must execute the plan during the initial period after your Franchised Location opening. The plan must include the expenditure of at least \$10,000 for grand opening advertising and sales promotions. You may find it necessary to spend more than \$10,000 for grand opening advertising and sales promotions depending upon the characteristics of your market and the population and competition within it. In addition to you executing the plan, we may provide, as part of the Manual or otherwise, a checklist of tasks and obligations you must complete as part of our 60 day grand opening marketing process ("60 Day Plan"). You will complete any and all such tasks and fulfill any all such obligations that we deem necessary in our sole and absolute discretion. Within 60 days after the opening of the Franchised Business, you must provide us proof of your execution of the approved grand opening plan, as well as proof of your compliance with your tasks and obligations under 60 Day Plan, and proof of your advertising and sales promotion expenditures in the form and with the detail, including copies of all grand opening advertising materials and receipts, as we request.

D. **Internet and Other Electronic Advertising.** We maintain an Internet website, [www.erbertandgerberts.com](http://www.erbertandgerberts.com), which we control. We may create other Internet websites in the future. We may provide contact information for the Franchised Business on our website(s) for so long as we determine. All of the information on these or any other pages of our website remains subject to our control and approval. Except as otherwise provided in the Manual or otherwise in writing, you may not maintain a presence on the Internet for your Franchised Business. Subject to our right to consent, you may be permitted to create a social media account from which to advertise your Franchised Business on the Internet (such as on Facebook or Twitter). Any such permission shall only be for such time as we permit and shall be on the terms and condition we specify from time to time in the Manual, which may restrict the content that you are permitted to post to the social media outlet. We have the right to require a modification of or cease granting you permission to develop, operate, or maintain any such social media outlet at any time and to require you to give us administrative control and/or log-in information for any such social media outlet you operate for the promotion of the Franchised Business. Any advertising on the Internet, delivered by facsimile, electronic mail or other electronic means shall be pre-approved by us and on terms specified by us.

E. **Local Advertising Group.** We reserve the right to identify certain advertising markets that may benefit from the formation of a local or regional advertising group. Any local advertising group we establish is required to operate under governing documents designated by us and pursuant to rules which we may adopt, add to, delete and change from time to time in our sole discretion. Only franchisees who are in full compliance with all agreements with us may serve as elected officials of any local advertising group. If your Franchised Location is or will be located in an area we have designated for an advertising group, you will be required to join the group. All members of a group will be required to sign a membership agreement and pay monthly contributions to the group at the rate set forth in the membership agreement and other governing documents. We have the right to establish the rate at which group members must contribute in accordance with the membership agreements; provided the rate of contribution will not be greater than 2% of Net Revenues unless a vote of a majority of the members of the group approve a higher percentage. Except as provided in Section VII.B.1, above, this contribution is in addition to all other marketing and advertising costs, including the Advertising Fee. The members and their elected officers are responsible for the operation of the advertising group, but the funds may, at our election, be collected and managed by us for the benefit of the group's approved expenditures. We have the right to approve all advertising, marketing, and public relations activities of the advertising group. We reserve the right to identify other advertising markets that may benefit from the formation of an advertising group in the future, and we reserve the right to change, dissolve or merge any established group. Upon request, we will provide you with a copy of any applicable governing document for a group you are required to join. The unaudited financial statements of any group of which you are a member will be made available to you at your reasonable request.

## VIII. **OUR GENERAL DUTIES**

A. **Initial Training.** We will provide an initial training program for the operation of an E & G Restaurant using the System and Marks to the Principal Owner. In the event we permit the Principal Owner to not be involved in the day-to-day management of the Franchised Business, then you must designate a general manager, who must attend the initial training program. The initial training program is furnished after this Agreement is signed and prior to the opening of the Franchised Business. The training program will be furnished at such time and place as we may designate. There is no charge to attend our initial training program at the place we designate. You will pay all transportation, lodging, meals and other expenses incurred by you and your employees in attending this program. Your designated manager or Principal Owner must attend and satisfactorily complete the training program not later than 30 days prior to the opening of the Franchised Business. If these persons fail to complete and pass the initial training program to our satisfaction, we have the right to terminate this Agreement. Satisfactory completion of the training program is, however, no assurance of the success of the Franchised Business. If you currently operate an E & G Restaurant, the initial training program will not be mandatory or provided unless we deem it necessary. Notwithstanding anything to the contrary contained herein, any training may be provided to you virtually in our sole discretion.

B. **Subsequent Training.** We may offer training for your new employees who are not initially trained pursuant to this Agreement. If your designated manager(s) or Principal Owner no longer operates the Franchised Business, you must notify us promptly and we may require your replacement manager(s) or another Principal Owner to attend and satisfactorily complete training. We may also provide refresher programs to experienced employees or managers. We are permitted to charge a reasonable fee for any subsequent training we may offer or require. We reserve the right to designate certain training programs or meetings as mandatory and to treat your failure to have a representative attend as a material breach of this Agreement. You must pay our then-current daily training fee for any subsequent training as well as the compensation of the trainees as well as such trainees' travel, lodging and personal expenses during any subsequent training.

C. **Opening Assistance.** We will provide opening assistance at your Franchised Location consisting of at least 1 person for a minimum period of up to but no more than 5 consecutive days, the exact number of hours and days to be determined by us. If you currently operate an E & G Restaurant, the opening assistance will not be offered unless we deem it necessary. If we reasonably determine you need additional opening assistance, or if you request additional opening assistance, we will provide it even if you currently operate an E & G Restaurant; provided that we reserve the right to charge you a fee for such assistance and you must reimburse us for the travel, lodging and personal expenses incurred while providing such assistance. The exact amount of assistance will be determined by us based upon our evaluation of your need, all determined in our sole discretion.

D. **Continuing Advisory Assistance.** We will make available continuing advisory assistance in the operation of the Franchised Business, rendered in such manner and available from time to time, as we may deem appropriate. We reserve the right to charge a reasonable fee for this type of assistance. The exact amount of assistance will be determined by us based upon our evaluation of your need for same, all determined in our sole discretion.

E. **Layout and Design.** We will provide you with suggestions for layout and design of a typical E & G Restaurant. These suggestions will not include the requirements of any federal, state, or local law, code, or regulation, including those concerning the Americans with Disabilities Act or similar rules governing public accommodations for persons with disabilities, nor will such suggestions include the requirements of, or be used for, construction drawings or other documentation necessary to obtain permits or authorization to build the specific Franchised Location. Determination of and compliance with all such laws, codes and regulations is your sole responsibility.

F. **System Meetings.** You and your manager will attend each national and regional meeting or convention designated by us as mandatory. We have the right to determine the date, location, duration and content of all conventions, and you will pay, when registering for the meeting or convention, our then-current meeting or convention fee. You acknowledge it is also your responsibility to pay the salaries and benefits, unemployment compensation taxes, workers' compensation insurance, travel expenses and all other expenses related to the attendance at meetings and conventions by you and your employees.

**IX. YOUR GENERAL DUTIES**

A. **Franchised Location Opening and Construction.**

1. You agree to begin operation of the Franchised Business within 12 months after this Agreement is accepted by us. You must construct, improve, and equip your Franchised Location in accordance with the layout and design we provide to you, you must engage (at your expense) our approved supplier of architectural and design services, and you cannot open until you receive our written authorization that your Franchised Location meets our opening requirements which are listed in the Manual. You must pay for the cost of construction drawings and other documentation necessary to build, obtain permits or receive other necessary authorizations for constructing the Franchised Location. You must use a licensed contractor to construct all leasehold improvements / build-out associated with the Franchised Business. You must obtain no less than 3 written bids from licensed contractors for any leasehold improvements / build-out associated with the Franchised Business. You must submit these bids to us for our review prior to hiring any contractor to construct such leasehold improvements / buildout. You must submit all plans and other documents along with any revisions of them made during the construction process, to us for our consent prior to your use of them. Our review will be limited to reviewing these plans and documents to assess compliance with our design and layout specifications and standards for E & G

Restaurants, including items such as trade dress, presentation of trademarks, and the provision to the potential customer of certain products and services that are central to the functioning of the Franchised Business under the System. Our review is not designed to assess, nor does it assess, compliance with federal, state, or local laws and regulations, including the Americans with Disabilities Act, as compliance with such laws is your sole responsibility. If you do not receive our consent to your use of any plans or other documents submitted to us, such plans or documents shall be deemed rejected. Our approval of any bid, plan or document does not constitute our endorsement of the person or entity who prepared such bid, plan or document or of the bid, plan or document itself or themselves. You must do all your due diligence regarding each such person or entity at your own expense and risk.

2. In addition to no fewer than 3 written bids from licensed contractors which you will provide to us prior to hiring any contractor, you shall provide us with the following construction notices: (a) no fewer than 45 days prior to completion, the anticipated construction completion date and, (b) the date on which your actual construction is completed. Within a reasonable time after the construction of your Franchised Location is completed, we have the right, but not the obligation, to conduct a final inspection of the Franchised Location for purposes of reviewing its conformity with our layout and design requirements and the other pre-opening requirements listed in the Manual or otherwise provided by us. You cannot open the Franchised Location without first receiving our written authorization that the Franchised Location meets these requirements. In the event our inspection finds deficiencies in meeting these requirements, we may permit you to cure these deficiencies, in which case we have the right, but not the obligation, to conduct a subsequent inspection of the Franchised Location to determine whether you have corrected the deficiencies to our satisfaction. We have the right to charge you a fee of not more than \$1,000 plus the expenses we incur if we find deficiencies in your Franchised Location that will delay your opening. Notwithstanding the foregoing, except as provided below, you are still required to open your Franchised Location within 12 months after this Agreement is accepted by us.

3. The opening of the Franchised Location and Franchised Business is permitted to be delayed only if the delay is caused by events or occurrences not within your control, such as acts of God, governmental restrictions, strikes or labor disputes, the occurrence of which we are given notice within a reasonable period time. You will use your best efforts to cure any delay. Any permitted delay in opening will only be for a period of days equal to the number of days during which such event actually prevents opening.

B. **Use of Name and System**. You agree that during the Term of this Agreement, you will operate, advertise and promote the Franchised Business under the Marks without prefix or suffix and to adopt and use the Marks and System licensed hereunder solely in the manner prescribed by us. You agree to identify the Franchised Location with a sign in compliance with applicable local ordinances and approved by us.

C. **Compliance with Laws**. You agree to operate the Franchised Location and the Franchised Business in compliance with applicable laws and governmental regulations and in accordance with the operational standards we may establish from time to time. At all times you will comply with all federal, state, municipal and local laws, rules, regulations, ordinances and codes applicable and related to this Agreement, the Franchised Location, and all aspects of the conduct of Franchised Business. You must obtain all licenses and permits required by any applicable federal, state, municipal, and local law, rule, regulation, ordinance, and code to operate the Franchised Location as required by this Agreement. You must make timely filings of all tax returns and pay when due all taxes levied or assessed on, and related to this Agreement and the Franchised Location. At no time are we required to inform you of any federal, state, municipal or local law, rule, regulation, ordinance, code or tax. Within 3 days of your receipt of each health and/or food safety inspection report you receive from the governmental authority(ies) governing food safety

for your Franchised Location, you must forward a copy of this/these reports to us. Determination of what laws, rules or regulations apply to the Franchised Location and your ownership and operation of the Franchised Business is your sole responsibility. We have no responsibility in determining what laws, rules or regulations apply to your Franchised Location or Franchised Business.

**D. Standards of Operation.**

1. The Franchised Location must conform with the mandatory standards set forth in the Manual relating to signage, color scheme, appearance, hours of operation, cleanliness, sanitation, menus, methods of preparation, employee uniforms, type of equipment, décor, and types of payment methods accepted, all as designated by us. Unless we give you our prior consent, you must offer all menu items and other products and services required by us in the Manual or in any other written instruction we give to you. You will not conduct any business or sell any products or services other than those approved by us. In addition, you agree to at all times dispense and sell such food items which are prepared in accordance with our secret recipes and which meet our uniform standards of quality, quantity, appearance and taste. Uniformity of products and services offered by all E & G Restaurants is of utmost importance to us and the entire System. If you offer to sell or do sell products or services which are not authorized or are not prepared in accordance with the Manual, or if you fail to conform with any other mandatory standards set forth in the Manual, you agree that we will be damaged. These damages will be calculated at the rate of \$1,000 per day for each day you offer or sell unauthorized products or services, and at the rate of \$100 per day for each day you fail to comply with the mandatory design, color scheme, appearance, hours of operation, cleanliness, sanitation, menus, methods of preparation, employee uniforms, type of equipment and decor requirements as set forth in the Manual, and these damages will be in addition to any other rights and remedies we may have against you. We have the right to collect these amounts in addition to exercising any and all other rights we may have for non-compliance under this Agreement. You agree that a precise calculation of the full extent of the damages that we will incur from the offer or sale of unauthorized products and services are difficult to determine and all parties desire certainty in this matter and agree that the damages provided here are reasonable and constitute liquidated damages and not a penalty. Products and services we authorize may change from time to time in our sole discretion and you will be required to comply with any changes we make. You may need to make additional investment in order to comply with our product requirements.

2. You will not sell any product which is adulterated, contaminated, spoiled, unsafe or otherwise unfit for human consumption. You must keep the premises clean and provide prompt and courteous service to customers. We may, to the extent permitted by applicable law, set the prices for the products you offer at the Franchised Location. You agree to, and will take all steps as are necessary to, ensure that all of your employees treat each customer fairly and provide services in an honest, ethical and non-discriminatory manner. You must not advertise in a deceptive, misleading or unethical manner, and you agree to meet such minimum standards as we may establish from time to time in the Manual.

3. We require you, as permitted by applicable law, to participate in a gift card or other customer loyalty programs and in sales, price and loyalty and special promotions, all in accordance with the provisions set forth in the Manual or otherwise disclosed to you. In order to participate, you may be required to purchase additional equipment and pay any fees applicable to the use of that equipment. We have the right to determine how the amount of the gift cards or loyalty cards will be divided or otherwise accounted for, and we reserve the right to retain the amount of any unredeemed gift cards. You understand that state or federal law may impact how gift card or loyalty card revenues are divided and accounted. In order to implement and manage the gift card or loyalty program, we reserve the right to view, access, or request the reporting of details and information regarding the use of gift cards or loyalty cards in your Franchised Business, including without limitation, transaction details and gift card or loyalty reward

balance. You agree that such details and information may be used, with or without identifying information linking it to you or your Franchised Business, and in any manner we deem appropriate in our sole discretion, including without limitation for marketing and store analysis and comparison. You will have to pay any fees charged by our designated third-party suppliers (each a "Loyalty Program Fee") in connection with any customer loyalty program. The current charge is \$130 a month and is paid to third-parties. The Loyalty Program Fee is subject to change depending upon third-party pricing policies. Programs, promotions and specials may require you to make additional investment in equipment and products and may require you to sell product at controlled prices.

E. **Staffing.** You will maintain a competent, conscientious, and trained staff. You will be solely responsible for all employment decisions and functions of the Franchised Business including those related to hiring, firing, training, wage and hour requirements, record-keeping, supervision and discipline of employees. We are not the employer of any of your employees and you will indemnify, defend and hold us harmless for and against any claim, action, expense or cost related to any allegation or finding that we are a joint employer with you.

F. **Security and Safety Procedures.** You are solely responsible for taking necessary or appropriate security and safety measures to protect employees, customers, those engaging in business with you, those coming on the premises of the Franchised Location and the general public at large. We do not in any way share any of that responsibility.

G. **Actual Participation.** You recognize the importance of the Principal Owner's and/or designated manager's participation in the management of the Franchised Business and that the Principal Owner's and/or designated manager's agreement to participate in the management of the Franchised Location is a material inducement for us to enter into this Agreement. Therefore, you agree that either the Principal Owner or one or more designated managers who have satisfactorily completed our initial training program are required to use his or her best efforts and are personally responsible for the management of the Franchised Location on a day-to-day basis. Notwithstanding the foregoing, if you have a designated manager, he/she must satisfactorily complete our initial training program and any other training we require. In any event, the Principal Owner is required to carefully monitor and be responsible for the performance of anyone designated to manage the operation of the Franchised Business. Further, regardless of the use of a designated manager, the Principal Owner is always responsible for the overall operation and performance of the Franchised Business. Supervisory personnel, including your designated manager(s) are required to sign an agreement regarding confidentiality and covenants not to compete which will be set forth in the Manual. Unless we otherwise approve, your designated manager must have at least a 5% beneficial interest in you or the Franchised Business. You will need to provide us with proof of this interest from time to time and upon our request. If you (or if you and people or entities affiliated with you have 3 or more E & G Restaurants, you must also hire a district manager who, along with the Principal Owner, will oversee and manage the operations of all your E & G Restaurants.

H. **Insurance.** You will at all times maintain at your sole expense the minimum amounts and types of insurance: (i) a commercial comprehensive general liability insurance policy with coverage of at least \$1,000,000 per occurrence and \$2,000,000 aggregate coverage; (ii) automobile liability insurance with minimum coverage of \$1,000,000 per occurrence (including hired and non-owned vehicle coverage for your employees); (iii) "special perils" property insurance coverage, which will include fire and extended coverage, for the property and furniture, fixtures and equipment owned, leased or used by you at the Franchised Location [your property insurance policy (including fire and extended coverage) must have coverage limits equal to at least actual "replacement" cost]; (iv) business interruption insurance with coverage of at least \$300,000 per occurrence; (v) if you, or any of your owners, owns, either directly or indirectly, the building where the Franchised Location is located, then you will insure the building or the



business premises for and against special perils, loss and damages in an amount equal to at least actual "replacement" cost; (vi) workers' compensation insurance for your employees as required by applicable law; and (vii) umbrella liability insurance in the minimum amount of \$1,000,000.

We may, from time to time, in our sole discretion, make such changes in minimum policy limits, coverage, and endorsements as we may determine. You agree to comply with any of these changes, at your sole cost and expense. All general liability insurance policies will name us and our successors and assigns as additional insured and will provide that we must receive 30 days prior written notice of any termination, expiration, or cancellation of the insurance policy. Each year you must provide us with a certificate or other evidence of your compliance with our insurance requirements. If you fail to maintain such insurance, we may procure such insurance on your behalf and will be entitled to reimbursement from you of our costs to do so, in addition to any other rights and remedies we may have under this Agreement. However, we are not obligated to obtain such insurance on behalf of you. Regardless of the amounts set forth above, it will be your responsibility to maintain adequate insurance coverage at all times during the Term of this Agreement and after the expiration or termination of the Term of this Agreement. You recognize that the levels of insurance described above are merely a minimum requirement. You should determine if additional insurance is necessary through consultation with your advisors. Your failure to maintain coverage will not relieve you of any contractual responsibility or obligation or liability under this Agreement.

I. **Inspections.** You must permit our representatives or agents or the representatives or agents of our Affiliates to (i) enter the business premises with or without notice during regular business hours to inspect the Franchised Location and audit the Franchised Business operations, including all books and records; (ii) observe, photograph and videotape the operation of your Franchised Business for such consecutive or intermittent periods as we deem necessary; (iii) remove samples of any products, materials or supplies for testing and analysis; and (iv) interview personnel and customers of your Franchised Business. You also grant us permission to examine all records of any supplier from whom you have made purchases. You will keep on file and make available for our review the following documents and reports: weekly inventory sheets, deposit slips, bank statements and canceled checks, sales and purchase records, business tax returns and such other accounting records for such periods of time as is necessary to provide appropriate documentation in the event of an audit of your business by any governmental taxing authority having jurisdiction over you. Our right to approve certain matters, to inspect the Franchised Location and the Franchised Business operations and to enforce our rights, exists to protect our interest in the System and Marks for the benefit of us, our Affiliates and all E & G Restaurants, and to ensure compliance with this Agreement. Neither the retention nor the exercise of these rights is for the purpose of establishing any control, or the duty to take control, over those matters that are clearly reserved to you, nor will they be construed to do so. After any inspection of your Franchised Location, our representatives or agents or the representatives or agents of our Affiliates may prepare and deliver a written store inspection summary ("OER") to you, a manager, or an employee of your Franchised Business that is present during the inspection that identifies your failure to perform obligations under the Manual or this Agreement that must be cured under Section XIII.A.1. In the event you do not pass any inspection, we may issue a correction plan and re-inspect the Franchised Business. In the event any inspection determines deficiencies or other non-compliance with the requirements of this Agreement or the Manual, we may require you to undertake a plan to correct and cure such non-compliance, and we may charge you our then-current re-inspection fee and require you to reimburse us for all costs and expenses, including but not limited to travel expenses, incurred in conducting each re-inspection of the Franchised Business. The institution of such plan of correction is in addition to all other remedies we have under this Agreement. The obligations of this provision survive termination or expiration of the Term of this Agreement.

J. **Cooperation for Financial Performance Representations.** You will maintain your books and records in accordance with generally acceptable accounting principles, consistently applied. If

we at any time desire to utilize a financial performance representation or similar disclosure in connection with the sale of franchises, you agree to provide us, at no cost, such reasonable information as we may require in order to properly prepare such representation, and will permit us to utilize such information as we deem necessary.

K. **Innovations.** All ideas, concepts, techniques, innovations, developments, improvements, suggestions or materials concerning an E & G Restaurant, whether or not protectable intellectual property and whether created by or for you or your owners, affiliates, employees or representatives, must be promptly disclosed to us and will be deemed to be our sole and exclusive property, part of the System and works made-for-hire for us. To the extent any such item does not qualify as a "work made-for-hire" for us, you must assign, or must require your owners, affiliates, employees or representatives to assign, your or their ownership interest of such item to us. You agree to take, or direct your owners, affiliates, employees or representatives to take, whatever action required by us to document such assignment or to assist us in obtaining any and all intellectual property rights in such item. In the event that this provision is found to be invalid or unenforceable, you and your owners grant to us a worldwide, perpetual, non-exclusive and fully paid license to use and sublicense the use of such ideas, concepts, techniques, innovations, developments, improvements, suggestions or materials.

L. **Remodeling.** We may require you to make capital expenditures to remodel the Franchised Location to reflect our then current standards for E & G Restaurants. Compliance with these standards may be an ongoing obligation of yours, and may be a condition of our consenting to a renewal of this Agreement, or our consenting to a Transfer.

M. **Financial Reports.** You will maintain and preserve for at least 5 years from the dates of their preparation, full, complete, and accurate books, records and accounts in accordance with generally accepted accounting principles and in the form and manner prescribed by us from time to time. You will send us, within 60 days of the end of your fiscal year, a profit and loss statement, balance sheet, and cash flow analysis (together with footnotes) for the preceding fiscal year reflecting all year-end adjustments for the Franchised Business. You will also send us monthly and year-to-date profit and loss statements and balance sheets within 20 days after the end of each month following the opening of the Franchised Business, and, upon our request, you will send us exact copies of all yearly state and local sales, use and service tax returns and your yearly federal and state income tax returns for the Franchised Business. On Tuesday of each week you will send us a Net Revenues Report based on the preceding week (Monday to Sunday), together with such other data, information and supporting records requested by us. However, you will not be obligated to disclose confidential tax returns if such disclosure would violate applicable state law.

N. **Assignment by You.** You and your owners, members, managers, and other persons involved in the operation of your Franchised Business grant us an irrevocable, world-wide, royalty-free license to use your name, voice, contact information, photographs of you, your likeness or images of the Franchised Location, in any manner we deem appropriate in our sole discretion, including our or our Affiliates' use on any Internet domain or website we create or through any other Internet representation we deem appropriate for the System. This provision will survive the termination or expiration of the Term of this Agreement.

O. **Maintenance of the Franchised Location.** You must keep the exterior and interior of your Franchised Location and all fixtures, equipment, furnishing and signs of your Franchised Business in the highest degree of cleanliness, orderliness, sanitation and repair and in accordance with the Manual. You may not make any material alternations, additions, replacements or improvements to your Franchised Location without our prior written consent. You shall equip the Franchised Location with furniture, fixtures, signs and equipment including computer equipment and you will use the computer software as

required in the Manual which we may change or modify from time to time. You acknowledge and understand that in the future, and from time to time, you may be required to upgrade or purchase or lease new or different furniture, fixtures, equipment and signs. You acknowledge and agree that we have the right to independently access all information collected or compiled by you at any time without first notifying you. There are no contractual limitations on our right to access and use such information in any manner we deem appropriate.

**X. PROPRIETARY MARKS**

A. **Right to Use Marks.** You acknowledge that the Marks are our valid service and/or trademarks. You recognize that valuable goodwill is attached to the Marks, and that you will use the Marks only in the manner and to the extent specifically licensed by this Agreement. Any goodwill arising out of your use of the Marks inures to our benefit. You further acknowledge that the right to use the Marks and the grant contained in this Agreement is non-exclusive. Any unauthorized use of the Marks by you is a breach of this Agreement and an infringement of our rights. All provisions of this Agreement applicable to the Marks apply to any additional service marks, trademarks, trade dress, trade names, logos, commercial symbols and copyrights hereafter authorized for use by, and licensed to, you.

B. **Contest of Marks.** You will not directly or indirectly contest or aid in contesting the validity or ownership of the Marks, trade secrets, methods, procedures and advertising techniques which are part of the System, or contest our rights to register, use or license others to use the Marks or the System. You will not at any time (whether during or after the Term of this Agreement) directly or indirectly infringe on our rights to or in the Marks. You agree to promptly notify us of any claim, demand, or suit based upon or arising from any attempt by anyone else to use the Marks, or any colorable variation thereof. We will have the sole discretion to determine if we will defend the use of the Marks, and we are not obligated to defend the Marks. We have the right to control any administrative proceeding or litigation involving the Marks. You will execute any and all instruments and documents, render assistance and do such acts as may, in the opinion of our counsel, be necessary or advisable to protect our interests in any such litigation or proceedings, or to otherwise protect and maintain our interest in the Marks.

C. **Prohibition on Use of Name.** You will not use any of the Marks as part of your company name with any prefix, suffix, or other modifying words, terms, designs or symbols. You will, however, identify yourself as our franchisee, solely with the logos and marks licensed by us to you hereunder. You will not incur any obligations or indebtedness except in your name. Further, you will not use our name or Marks (or any marks or names confusingly similar to our name or Marks) as an Internet domain name or in the content of any world wide website.

D. **Change of Marks.** We will have the right to change the Marks to be used by you at any time and for any reason we deem appropriate. You will pay the costs associated with any change in the Marks we make, and you will make these changes promptly.

E. **Use of Marks on the Internet.** You shall not use the Marks (or any marks or names confusingly similar to the Marks, or any abbreviation, acronym or variation of the Marks) as an Internet domain name or in the content of any social media or other world wide web site. We and our Affiliates retain the sole right to advertise on the Internet and create a website using any of the Marks or any variation of the Marks. We and our Affiliates retain the sole right to determine the content on any website we create. We retain the right to pre-approve your use of linking and framing between your web pages and all other websites. You will, within 5 days after our request, dismantle any frames and links between your web pages and any other websites. You will comply with all policies and procedures that we may establish from time to time for use of the Marks and advertising on the Internet.

**XI. CONFIDENTIAL INFORMATION**

You acknowledge that the trade secrets, information, ideas, research, methods, manuals, sales and marketing procedures, systems, improvements and copyrighted materials, etc., including the Manual, owned or developed by or licensed to us, whether or not published, confidential or suitable for registration or copyright, and the goodwill associated with them, are and shall remain our sole and exclusive property. This information is provided or revealed to you in trust and confidence. You will not, during the Term of this Agreement, or after a Transfer, or termination or expiration of the Term of this Agreement, communicate or divulge to anyone, any such information or knowledge including ingredients, recipes, methods of preparation of food and beverage products, specifications, standards, methods, procedures, sales and marketing materials, knowledge of the System and experience in operating an E & G Restaurant and other information or material which we may designate as confidential ("Confidential Information"), nor will you disclose, use or divulge in whole or in part any Confidential Information, unless the information is generally known and in the public domain, and except to the extent necessary to operate the Franchised Location. You will ensure that each of your employees exercises the highest degree of diligence and makes every effort to maintain the absolute confidentiality of all trade secrets and proprietary rights during and after the Term of this Agreement.

**XII. NON-COMPETITION**

A. **Competing Business During the Term of this Agreement.** You acknowledge the uniqueness of the System and that we are making our knowledge, know-how and expertise available to you for the purpose of operating the Franchised Business strictly and solely within the Assigned Territory. You agree that it would be an unfair method of competition for you to use or duplicate or to allow others to use or duplicate any of the knowledge, know-how or expertise you receive from us or our Affiliates for any reason other than for the operation of the Franchised Business under this Agreement. You further recognize the importance of devoting substantial time and energy to the Franchised Business. Therefore, you warrant that during the Term of this Agreement, unless you have our prior written consent, neither you nor any of your owners will directly or indirectly perform any services for, engage in or acquire, be an employee of, have any financial, beneficial or equity interest in, or have any interest based on profits or revenues of any Competitive Business except as a duly licensed franchisee of us (except for a 5% or less beneficial interest in a reporting company registered under the Securities Act of 1933, as amended).

B. **Non-Competition After Term.** For 2 years after a Transfer, or the termination or expiration of the Term of this Agreement for any reason, or the entry of final order of a court of competent jurisdiction enforcing this covenant, whichever is later, neither you nor any of your owners will directly or indirectly perform any services for, engage in or acquire, be an employee of, have any financial interest in, loan money to, or have any interest based on profits or revenues of any Competitive Business (except for other outlets franchised from us to you or your owners, and except for a 5% or less beneficial interest in a reporting company registered under the Securities Act of 1933, as amended). The geographical scope of this restriction will cover the area (i) within a 10 mile radius of the Franchised Location, (ii) the area within a 10 mile radius of any E & G Restaurant that is established, being constructed or subject to an executed Franchise Agreement at the time this restriction begins to be enforced, or (iii) any other designated area or territory we have granted to any other person in any other agreement, including any Development Area under any Area Development Agreement.

C. **Reasonableness of Restrictions.** You and any guarantor of this Agreement acknowledge and confirm that the length of the term and geographical restrictions contained in Sections XI and XII are fair and reasonable and not the result of overreaching, duress or coercion of any kind. You acknowledge

and confirm that your and their full, uninhibited and faithful observance of each of the covenants contained in Sections XI and XII will not cause any undue hardship, financial or otherwise, and that enforcement of each of the covenants contained in this Sections XI and XII will not impair your or their ability to obtain employment commensurate with your or their respective abilities and on terms fully acceptable to you or them or otherwise to obtain income required for your or their comfortable support and, if such person is an individual, his or her family, and the satisfaction of the needs of his or her creditors.

D. **Enforcement.** You acknowledge that to disregard the provisions of Sections XI and XII would effectively foreclose us from selling other franchises and you could be unjustly enriched and unfairly derive benefit from the goodwill of and training you receive from us. Moreover, the E & G Restaurants could be severely disadvantaged if you compete against them using the Marks or other Confidential Information. We intend to restrict your activities under Sections XI and XII of this Agreement only to the extent necessary for the protection of our Affiliates' and our legitimate business interests and the legitimate business interests of the licensees and franchisees of us or our Affiliates. Each of the foregoing covenants will be construed as severable and independent and will be interpreted and applied consistent with the requirements of reasonableness and equity. In the event a court of competent jurisdiction will determine the business, time, or geographic limitations contained in this Agreement are illegal, invalid, or unenforceable, then, the court so holding will reduce the limitation necessary to render such restriction enforceable by the court. We will have the right to reduce the scope of any covenant contained in Sections XI and XII, without your consent, effective immediately upon receipt by you of our written notice; and you will comply with any reduced covenant. In addition to any other remedies available at law or equity, we will have the right to injunctive relief for your violation or threatened violation of any covenant described in Sections XI and XII. The terms of this non-compete are assignable by us and will inure to our benefit, as well as our successors and assigns. In the event of any assignment, sale, merger or change in our ownership or structure, the resulting entity will step into our place, without any additional consent of or notice to you, as if the term "us" was defined in this Agreement to include such entity.

**XIII. DEFAULT AND TERMINATION**

A. **Termination By Us.**

1. **30 Days' Opportunity to Cure.** We may, at our option, and without prejudice to any other rights or remedies provided for in this Agreement or at law or in equity, terminate the Term of this Agreement for "good cause". Without limitation as to other situations, "good cause" for termination also exists if you or any guarantor of this Agreement:

- (1) Do not substantially perform all of the lawful terms, conditions, and obligations of this Agreement, or the mandatory obligations under the Manual; or
- (2) Lose possession of the Franchised Location and fail to secure a suitable site for relocation which we consent to within 3 months of so losing possession; or
- (3) Default under the terms of the lease for the Franchised Location; or
- (4) Misrepresent Net Revenues in any report submitted to us; or
- (5) Lose any permit or license which is a prerequisite to the operation of the Franchised Business for a period of at least 5 days; or

- (6) Misuse the Marks or Confidential Information, or engage in conduct which, in our opinion, reflects unfavorably upon the operation, maintenance, goodwill and/or reputation of the System; or
- (7) Are adjudged bankrupt, become insolvent, or make a general assignment for the benefit of creditors (subject to paragraph XIII.A.3.(d) below); or
- (8) Are convicted of, plead guilty or no contest to, or commit or are alleged to commit any criminal misconduct which materially and adversely affects the operation, maintenance, reputation or goodwill of the Franchised Business or the System (subject to paragraph XIII.A.3.(a) below); or
- (9) Commit any other act which constitutes good cause under applicable state law or court decision; or
- (10) Fail to keep the Franchised Business open for a period of 3 consecutive days without justifiable cause; or
- (11) Fail to pay any lawful debt or tax when due; or
- (12) Surrender or transfer control of the Franchised Business (including entering into a management arrangement with any person who does not meet our standards, including satisfactorily completing our initial training program), or make an unauthorized direct or indirect Transfer.

Subject to applicable law and except as otherwise provided in this Agreement, we will give you at least 30 days' prior written notice of default (except that, if state law permits, we will have the right to terminate earlier if the "good cause" constitutes a default that is not curable). The notice will state the reason(s) for default and will provide that you have 30 days from the date of the notice to correct any claimed deficiency. If the default is corrected within this period, the notice will be void. If the default is not corrected within this period, we have the right to terminate the Term of this Agreement immediately. We have the right to assess our then-current re-inspection fee and to be reimbursed our expenses incurred in confirming whether or not you have cured the defaults identified.

2. **7 Days' Opportunity to Cure.** We may also terminate the Term of this Agreement for non-payment of sums due to us or our Affiliates or suppliers; your failure to open the Franchised Business for business 12 months after our acceptance of this Agreement; the sale of products in your Franchised Business that have not been approved by us; or your failure to immediately correct and cure a threat or danger to the public health or safety resulting from the construction, operation or maintenance of the Franchised Business. Subject to applicable law and except as otherwise provided in this Agreement, if termination is based on the foregoing, we will give you at least 7 days' prior written notice of default (except that, if state law requires a longer period, you will be granted the longer period, and except that if state law permits, we will have the right to terminate earlier if the claimed deficiency constitutes a default that is not curable). The notice will state the reason(s) for default and will provide you with at least 7 days from the date of the notice to correct any claimed deficiency. If the deficiency is corrected within this period of time, the notice will be void. If the deficiency is not corrected within this period of time, then we have the right to terminate the Term of this Agreement immediately. We have the right to assess our then-current re-inspection fee and to be reimbursed our expenses incurred in confirming whether or not you have cured the defaults identified.

3. **Without Opportunity to Cure.** Notwithstanding anything contained herein to the contrary, if state law permits, we will be permitted to terminate the Term of this Agreement immediately and without notice when the basis or grounds for termination is: (a) you are alleged to have committed or you are convicted of a felony or any other criminal misconduct that, in our opinion, adversely affects the operation, maintenance, reputation or goodwill of the Franchised Business or the System; (b) fraudulent activity that materially and adversely affects the operation, maintenance, reputation or goodwill of the Franchised Business or the System; (c) abandonment of the Franchised Business; (d) your bankruptcy or insolvency or that of your guarantors; (e) your or your guarantors' failure or refusal to comply with the lawful provisions of this Agreement (i.e., 2 or more times in any 24 month period) whether or not such failures or refusals are corrected after notice; (f) your making or having made any material misrepresentation or omission in the application for this franchise; (g) any violation of any non-competition, non-solicitation or confidentiality obligation contained in this Agreement; or (h) any other act or omission that permit termination without notice and/or an opportunity to cure under applicable state law.

B. **Termination by You.** You must notify us in writing of any failure of us to perform any of our obligations pursuant to this Agreement. You may terminate the Term of this Agreement only if we materially default in our performance of any terms and conditions in this Agreement, you give us written notice within 30 days of this material default, and we fail to cure this material default within 60 days of our receipt of your written notice of default.

C. **Consequences of Termination.** Upon a Transfer, or the termination or expiration of the Term of this Agreement for any reason whatsoever, all of your rights hereunder will terminate, and you will do each of the following:

1. You will cease to be our franchisee and cease to operate the Franchised Business under the System and Marks. You will not thereafter directly or indirectly represent to the public that the business at the Franchised Location is or was operated or in any way connected with the System or hold yourself out as a present or former franchisee of ours at or with respect to the Franchised Location.

2. You will immediately discontinue use of all Marks, signs, colors, structures, printed goods and forms of advertising indicative of our business, any E & G Restaurant or the System, return any Confidential Information or other copyrighted materials, including the Manual, to us, and complete any and all such additional tasks we have established or may establish from time to time as Franchised Business closing procedures. Unless we have approved a Transfer, you will remove to our satisfaction all items in your store that are a part of the E & G Restaurant trade dress, regardless of whether you continue to lease the location or operate a business therein, including without limitation, repainting all paintable surfaces with an alternative, neutral color. In the furtherance of your obligations in this paragraph, we may provide, as part of the Manual or otherwise, a checklist of Franchised Location closing procedures you must complete to de-identify your Franchised Location, furniture and other personal property in order to protect our Marks and our Confidential Information. You will complete any and all such tasks and fulfill any all such obligations that we deem necessary in our sole and absolute discretion to protect our Marks and Confidential Information, and we may require you provide us written or photographic proof of your compliance.

3. If we request, you will assign your telephone numbers, Internet domain address, white and yellow page telephone references and other advertising to us or any of our designees, including any other E & G Restaurant.

4. You will pay all amounts due to us, our Affiliates and suppliers.

5. You will cancel any assumed name registration or equivalent registration which contains the Marks or any derivation thereof and you will furnish us with evidence satisfactory to us of your compliance with this obligation within 5 days of a Transfer, or the termination or expiration of the Term of this Agreement.

6. Pursuant to the Collateral Assignment of Lease, upon our request, you will assign to us any interest that you may have in any lease or sublease for the Franchised Location. We may exercise the option at or within 30 days after either (i) the termination or expiration of the Term of this Agreement, or (ii) our receipt of notice by your landlord of its intent to terminate the lease or sublease for the Franchised Location. If we exercise this option, we will have the right and are hereby empowered to take possession of the Franchised Location demised by the lease or sublease and expel you from the Franchised Location, after which you will have no further right, title or interest in the lease or sublease. In the event that we do not exercise our option to acquire the lease or sublease for the Franchised Location, you will make such modifications or alterations to the Franchised Location immediately upon the termination or expiration of the Term of this Agreement, as we may deem necessary, to distinguish the appearance of the Franchised Location from that of other E & G Restaurants. In the event you will fail or refuse to comply with the requirements of this paragraph, we or our designees will have the right to enter upon the premises without being guilty of trespass or any other tort for the purposes of making or causing to be made the changes that may be required by this paragraph at your expense. You agree to pay us this expense upon demand.

7. You irrevocably appoint us or our nominee to be your attorney-in-fact coupled with an interest, and with power of substitution, to execute and to file for you any relevant document to transfer your telephone number or telephone listing. We have the right to file an original counterpart or a copy of this Agreement with the telephone company, landlord or any court, agency or person as written evidence of your appointment of us or our nominee to be your attorney-in-fact. A power of attorney is attached hereto as Exhibit IV.

8. You will comply with all post-term covenant obligations of this Agreement including the trade secrets, Confidential Information, non-competition and indemnification obligations.

Neither the Transfer, nor the termination or expiration of the Term of this Agreement will relieve you of any of your obligations to us or our Affiliates existing at the time of such Transfer, termination or expiration, nor will it terminate your obligations that, by their nature, survive a Transfer, or the termination or expiration of the Term of this Agreement. Furthermore, a Transfer, or the termination or expiration of the Term of this Agreement will be without prejudice to our rights against you; and in the event of a termination which is the result of your material breach or default under this Agreement, we will, in addition to our rights set forth above, also be entitled to all rights and remedies available at law or in equity.

**D. Our Right to Purchase Personal Property.** After the termination or expiration of the Term of this Agreement, but not upon an approved Transfer pursuant to Section XVI.B, we will have the right, but not the obligation, to purchase any or all of your equipment, inventory, supplies and other personal property used in connection with the operation of the Franchised Business. The purchase price will be at fair market value, less any liens, which will be established (if the parties are unable to agree) by an appraisal of an independent restaurant appraiser. Within 10 days after an appraisal is required or appropriate under any provision of this Agreement, we and you will by written notice to the other select our respective appraisers. All appraisers will be required to be reasonably qualified and have at least 3 years of experience in appraising restaurants. If either party fails to name an appraiser within the specified time, such party waives its right to select an appraiser and the appraiser selected by the other party will be solely responsible for conducting the appraisal process. Each appraiser will proceed to promptly determine the fair market value of the assets, taking into consideration any outstanding indebtedness, liabilities, liens and obligations



relating to the Franchised Business. No value will be ascribed to goodwill, going concern value or other intangibles. Each appraiser will deliver his appraisal to us and you within 60 days after the appraiser is appointed. If the difference between the 2 appraisals is not greater than 20% of the higher appraisal, then the 2 appraisals will be averaged and the average price will be used to determine the purchase price under this Agreement. If, however, the difference between the 2 appraisals is greater than or equal to 20%, then the 2 appraisers will appoint a third appraiser. If the 2 appraisers cannot agree upon a third appraiser, then either party may request an arbitrator (in accordance with the arbitration provisions of this Agreement) to appoint a third appraiser. The third appraiser will promptly proceed to appraise the assets on the same basis as set forth above. The appraisal by the first 2 appraisers that is closer in value to the appraisal by the third appraiser will be the fair market value of the assets and be binding on all the parties. Each party will pay the fees and expenses of the appraiser it selects. The fees and expenses of the third appraiser, if necessary, will be paid equally by the parties appointing the 2 appraisers; provided that if you fail to pay your share of the cost of the third appraiser, then we shall have the right to pay the appraiser on your behalf and reduce the purchase price to be paid for the assets by the amount of such unpaid cost. We will have 30 days after the determination of fair market value, to exercise our rights granted by this paragraph, and we will have an additional 30 days to pay for the property we desire to purchase. If we fail to exercise our rights within the time periods set forth above, you will be free to otherwise sell or dispose of the personal property used in connection with the operation of the Franchised Business, but only after the Marks have been removed from the personal property at your sole cost and expense.

E. **Our Operation of the Franchised Business.** In order to prevent any interruption of the Franchised Business which would cause harm to the business and/or the System, if you are unable to operate the Franchised Business for any reason whatsoever, you abandon or fail to actively operate the Franchised Business for any period or you fail to cure a breach within the applicable cure period (if any), you authorize us and our agents and Affiliates to operate the Franchised Business if we desire to do so, in our sole discretion, for so long as we deem necessary and practical. All income from the operation of the Franchised Business shall be kept in a separate account, and the expenses of the Franchised Business, including our reasonable compensation and expenses and our agents and Affiliates shall be charged to said account. We may charge you a reasonable management fee that we specify plus any out-of-pocket expenses incurred in connection with the management of the Franchised Business. We and our designees will have a duty only to use reasonable efforts upon assuming the Franchised Business' management and will not be liable for any debts, losses or obligations that the Franchised Business incurs, or to any creditors for any supplies or other products or services purchased for the Franchised Business in connection with such management. Nothing contained herein shall be construed to require us to operate the business in the case of your inability to operate same, and the rights set forth herein may be exercised in our sole and absolute discretion.

**XIV. SOURCES OF PRODUCTS**

A. **Purchasers from Approved Suppliers.**

1. You are required to purchase products, services, supplies, equipment, payment processor and materials required for the operation of the Franchised Business that meet our specifications, and you must purchase such items only from manufacturers, suppliers or distributors designated by us, or from other suppliers we approve who meet our specifications, including from us or our Affiliates. You may pay higher prices for some products and services that you could acquire substantially similar products or services from parties who are not manufactures or suppliers required by us. Consistency of products and services, however, is important to the System and building brand value through consistent consumer experiences with and among E & G Restaurants. Specification of a supplier may be conditioned on requirements relating to frequency of delivery, standards of services, including prompt attention to complaints, as well as payments, contributions, or other consideration to us, our Affiliates or the Advertising Fund, and may be

temporary, in each case in our reasonable discretion. We may, from time-to-time withhold, condition and/or revoke our approval of particular items or suppliers in our reasonable discretion. We or our Affiliates may receive rebates, commissions, and other benefits from suppliers in relation to items purchased by you and other franchisees. We have the right to condition or revoke your right to participate in any supplier programs if you are in default under this Agreement.

2. You may propose alternative products, services, supplies, equipment and materials for the operation of your Franchised Business, as well as alternative manufacturers, suppliers or distributors. However, we may require that samples of or from these proposed alternatives be delivered to us for testing prior to approval and use. Further, all proposed manufacturers, suppliers or distributors must agree to permit our agents or representatives to inspect their facilities regularly, both initially and from time to time as may reasonably be required by us to assure us of the proper production, processing, packaging, storing and transportation of the products, services, supplies or equipment and materials to be purchased by you. We have the right to require you to pay us a reasonable fee based on the cost of the test or inspection made by us or by an independent testing laboratory designated by us. We will advise you within 45 days of our approval or disapproval of any proposed alternate sources of products, services, supplies, suppliers, materials, and equipment. The foregoing will not be construed as an attempt to unreasonably limit the sources from which you may procure its products, services, supplies, and materials. Rather, it is our intention that such items conform to our strict standards and strict specifications as to consistent quality, uniformity, and reliability. Further, we will not be required to approve an inordinate number of alternative suppliers of a given item that in our reasonable judgment would prevent our effective supervision of suppliers. We may require your supplier to sign a confidentiality agreement.

B. **Required Purchases from Us or Our Affiliates.** With respect to items for which we or our Affiliates are designated as an approved supplier, you acknowledge that your agreement to purchase such items from us or our Affiliates is a material condition upon which this franchise is granted. If our Affiliates or we are unable to offer any of these items, we may designate an approved supplier or suppliers for these products.

1. **Availability.** Contingent upon the availability of products, we or our Affiliates will use our commercially reasonable efforts to supply such products to you within a reasonable time after the receipt of your orders therefore; provided that neither we nor our Affiliates warrant that: (i) it will be able to obtain all such products, or (ii) that the products will be obtained by the dates requested.

2. **Pricing.** We or our Affiliates shall establish and have exclusive control over the prices, discounts, specifications, and all other terms and conditions governing the sale of products to you. Pricing of products is subject to change at any time or from time to time in our or our Affiliates' sole discretion, effective upon 30 days prior notice to you. Generally, prices will change when the manufacturer's prices to us or our Affiliates change.

3. **Terms of Purchase.** All purchases from us or our Affiliates shall be personally guaranteed by the individuals who are required to guarantee this Agreement. The terms of payment shall be established by our Affiliates or us from time to time.

**XV. CONFIDENTIAL OPERATIONS MANUAL AND CHANGES**

A. We will lend you for the duration of the Term of this Agreement one copy of the Manual. You agree to comply with the mandatory requirements in the Manual and acknowledge your compliance is an essential part of your obligations under this Agreement. You will at all times be responsible for ensuring that your employees and all other persons under your control comply with the mandatory provisions of the

Manual in all respects. The Manual constitute a confidential trade secret of ours and will remain our property. The Manual cannot be photocopied, reproduced, or disseminated without our written consent. We may change, modify, delete from and add to the Manual from time to time in our discretion, and you agree that from time to time we may change, modify and add to the System. You expressly agree to comply with each modification, addition, or deletion of the System or Manual at your sole cost and expense which may be significant. You acknowledge that due to the changing nature of the restaurant business, as well as changing attitudes of customers and other factors, changes to the System or the Manual may be necessary and may involve your expenditure of substantial sums of money.

B. We agree to impose any of these changes in a reasonable, non-discriminatory manner among other, similarly situated franchisees. However, because complete and detailed uniformity under many varying conditions may not be possible or practical, we specifically reserve the right and privilege, in our sole discretion and as we may deem to be in the best interests of the System in any specific instance, to vary standards for any particular franchisee based upon the peculiarities of a particular territory, density of population, business potential, business practice or other condition important to the successful operation of a particular E & G Restaurant. We may grant variations from standard specifications and practices as we determine in our discretion, and we will have no obligation to grant you or any other franchisee like or similar variations and our failure to require a change from any particular franchisee will not affect your obligations under this paragraph.

C. You will at all times ensure that your copy of the Manual is kept current and up-to-date. In the event of any dispute as to the contents of the Manual, the terms of the master copy of the Manual maintained by us will be controlling and it is that master copy which you must comply with at all times.

**XVI. TRANSFERABILITY OF INTEREST**

A. **By Us.** We are free to assign all of our rights and obligations under this Agreement, and upon such assignment we will be relieved of all liability under this Agreement, and all rights and obligations will accrue to our successor or assignee.

B. **By You.** The rights and duties created by this Agreement are personal to you. We have granted this franchise in reliance upon our perception of the individual and collective character, skill, attitude, and business and marketing abilities of you and your owners. Therefore, there can be no Transfer without our prior written consent. Any such consent by us will not operate as consent to any future Transfer, and no future such Transfer will be valid without our prior written consent to that specific Transfer. Any attempted Transfer in violation of this paragraph is voidable at our option. If we elect not to exercise our right of first refusal pursuant to Section XVI.D below, we will not unreasonably withhold our consent to such a Transfer, provided that the following conditions are satisfied:

1. **Governmental Compliance.** The Transfer is conducted in compliance with applicable laws and regulations.

2. **Prior Compliance.** You have performed your obligations and duties under this Agreement and you are not in default under this Agreement, or any other agreement with us or our Affiliates.

3. **Payments.** You have paid all amounts owed to us and our Affiliates, and all other outstanding obligations relating to the Franchised Location are fully paid and satisfied.

4. **Release.** To the extent permitted by law, you, including all officers, directors and owners (as well as all guarantors under this Agreement) must execute a general release, in the form we approve, of any and all claims against us, our Affiliates, and our and their respective officers, directors, employees and agents.

5. **Requirements of Transferee.** The transferee meets the established standards for new franchisees, is of good moral character, has a good credit rating, and sufficient financial resources to operate the business and competent qualifications. The transferee must execute the most current Franchise Agreement for the state in which the Franchised Location is located, which agreement may include different terms and conditions than this Agreement. In addition, the transferee's owners (actual and beneficial) and their spouses must sign the Guaranty and Assumption of Obligations attached to that Franchise Agreement. Neither the transferee nor any of its owners or affiliates may operate, have an ownership interest in or perform services for a Competitive Business.

6. **Transfer Fee.** You pay us a transfer fee of \$5,000, which we will accept in lieu of the Initial Franchise Fee required in the then current form of Franchise Agreement for the state in which the Franchised Location is located.

7. **Assumption of Liabilities.** The transferee agrees to assume all liabilities and obligations from you and your operation of the Franchised Business, including the lease, and must comply with other reasonable requirements we may impose.

8. **Completion of Training.** The transferee and/or transferee's management team, including a Principal Owner and designated manager, must successfully complete the initial training program.

9. **Update and Remodel Franchised Location.** The transferee updates and remodels the Franchised Location to comply with our then current standards for new E & G Restaurants.

10. **Economically Reasonable Terms.** Although we will not be required to determine the value of business upon a Transfer, if in our reasonable judgment, the purchase price or other terms of sale are not economically feasible to the proposed transferee, we can withhold our consent to such Transfer. Our consent is not, however, to be construed as an implication or warranty that the terms of the sale are in fact economically feasible. We may, in good faith, notify you and the proposed transferee, stating the reasons that we have elected to withhold our approval of the proposed Transfer.

C. **Your Death or Incapacity.** You, by will or other written instrument, may appoint a designated heir to continue operation of the Franchised Business upon your death. The designated heir must meet the qualifications of Section XVI.B, including the requirement to meet our standards for new franchisees, execute the then-current form of Franchise Agreement used in the state in which the Franchised Location is located and the designated manager or new Principal Owner must have, or within 30 days of the date we receive notice of the designated heir's appointment will have, satisfactorily completed the initial training program; provided that no transfer fee will be charged on a Transfer pursuant to this paragraph. A Transfer to a designated heir, personal representative, or conservator, as applicable, in the event of your death or legal incapacity, will not give rise to our right of first refusal as described in Section XVI.D below.

D. **Right of First Refusal.** Notwithstanding the foregoing paragraphs (other than Section XVI.C), if you receive a bona fide, executed, written offer from a responsible, fully disclosed third party purchaser that would constitute a Transfer hereunder, you must submit a copy of the offer to us. You must also provide us with any other information we request to evaluate the offer. We have the right, exercisable

by delivering written notice to you within 30 days from the date of last delivery by you of the offer and any other documents we request, to engage in such Transfer with you for the price and on the terms and conditions contained in the offer (except that regardless of the terms of the offer we may substitute cash for any form of payment proposed in the offer, require you to include customary warranties and representations in the purchase agreement and structure the transaction as an "asset purchase" rather than a "stock purchase"). We will not be obligated to pay any "finder's" or broker's fees that are a part of the proposed sale and will not be obligated to comply with any part of the offer which directly or indirectly requires payment of any consideration other than a bona fide purchase price for the assets or interest proposed to be transferred (for example, we will not be obligated to pay any earn out or other share of the profits from our operation of the Franchised Business after the Transfer is completed). If we decline to exercise our right of first refusal, you will have 90 days after the earlier of our decline to exercise the right or the expiration of such right, to engage in such Transfer to the bona fide third party purchaser upon the terms and conditions described in the offer notice submitted to us, subject to compliance with Section XVI.B. In the event you fail to complete such Transfer to this third party on these terms within this 90 day period, you must again comply with this paragraph and give us the first right to engage in the Transfer prior to any sale. Our election to not exercise our right of first refusal as to any particular offer will not affect our right of first refusal as to any subsequent offer.

**XVII. INDEPENDENT CONTRACTOR/INDEMNIFICATION**

A. **Independent Contractor.** We and you are independent contractors, and no partnership, fiduciary, joint venture, or employment relationship exists between you and us. You will conspicuously identify yourself at the Franchised Location and in all dealings with the public as an independently owned business in the manner we may proscribe from time to time. Other than as expressly provided in this Agreement, we have no control over the terms and conditions of employment of your employees or agents or any of their activities. We have not authorized or empowered you to use the Marks except as provided by this Agreement and you must not employ any of the Marks in signing any contract, check, purchase agreement, negotiable instrument or legal obligation, application for any license or permit, or in a manner that may result in liability of us for any indebtedness or obligation of you. Except as set forth in Section XIII.E above, neither we nor you will make any agreements or representations in the name of or on behalf of the other that their relationship is other than franchisor and franchisee.

B. **Indemnification.** Under no circumstances will we be liable for any act, omission, debt, or other obligation of you. You will indemnify, defend and save harmless us and our employees, agents, officers, directors, parents, subsidiaries, affiliates, successors and assigns (each an "Indemnitee") from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, costs and expenses (including legal fees and expenses) of any kind and nature whatsoever, including damages or injuries suffered by any Indemnitee, which may be imposed on, incurred by or asserted against any Indemnitee in any way arising out of the acts or omissions of you or your employees, agents, officers, directors, parents, subsidiaries, affiliates, successors and assigns pursuant to or in connection with the operation of the Franchised Business regardless of whether the Indemnitees were negligent or that this negligence was a contributing factor in any Indemnitee's liability (to the extent permitted by applicable law).

**XVIII. DISPUTE RESOLUTION**

A. **Mediation.** Except as provided in Section XVIII.C below, before any party may bring an action in court for any controversy, dispute or claim between you and us arising from this Agreement or the franchise relationship set forth in this Agreement, the parties must first have a conference with each other to try to resolve the dispute. If this fails to bring about a resolution, the dispute will first be submitted to non-binding mediation (the "Mediation") in Eau Claire, Wisconsin, unless the parties mutually agree to

another location. The Mediation shall be conducted in accordance with then-current AAA mediation rules (the "AAA Mediation Rules") except to the extent the AAA Mediation Rules differ from the terms of this Agreement, in which event the terms of this Agreement shall be applied. Notwithstanding the foregoing, the mediation does not have to be conducted under the AAA. You and we will select the mediator. If the parties cannot agree on the selection of a mediator, the mediation shall be conducted through the AAA who will make the selection of mediator using their rules and guidelines. The cost of the Mediation, including the mediator's fee and expenses, shall be paid by you. All negotiations and mediation proceedings (including without limitation, discovery conducted therein, as well as all statements and settlement offers made by either party or the mediator in connection with the Mediation) shall be strictly confidential, shall be considered as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and state rules of evidence, and shall not be admissible or otherwise used in connection with any court or arbitration proceeding for any purpose. The mediator may not be called as a witness in any court or arbitration proceeding for any purpose. If the parties, after a good faith effort to settle the dispute using Mediation, are unable to reach settlement, you and we agree that the dispute will be resolved according to the Sections below. Failure to submit the dispute to Mediation prior to commencing any litigation or arbitration proceeding shall be grounds for dismissal of the litigation or arbitration proceedings.

**B. Arbitration.**

1. Any dispute which has not been resolved by mediation within ninety (90) days of the initiation of such mediation will, subject to Section XVIII.C below, submit the dispute to binding arbitration conducted in Eau Claire, Wisconsin (unless the parties mutually agree otherwise). The arbitration proceeding will be conducted in accordance with the then current commercial arbitration rules of the American Arbitration Association ("AAA Rules"), except to the extent the AAA Rules differ from the terms of this Agreement, in which event the terms of this Agreement will apply. Notwithstanding the foregoing, the arbitration does not have to be conducted under the AAA. The arbitrator must be mutually selected by the parties and must have at least 5 years of substantial experience in franchise law. Each party will be limited to 25 document requests, 15 interrogatories and 1 deposition unless otherwise agreed to between the parties. For purposes of this Section, if any dispute that names, involves or includes us, our respective affiliates, officers, directors, agents, brokers or employees, such persons or entities shall also be included in and made party to the arbitration proceeding to the extent such parties consent to proceeding forward in arbitration.

2. The arbitrator will have the right to award or include in his award any relief which he deems proper in the circumstances, including money damages (with interest on unpaid amounts from date due), specific performance, and attorneys' fees and costs; however, the arbitrator will not be allowed to award or include in his award any punitive, exemplary, or consequential damages, to which the parties waive any right. The arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve any dispute relating to the interpretation, applicability or enforceability of this Section, including but not limited to any claim that all or any part of this Section is void or voidable. The award and decision of the arbitrator will be conclusive and binding upon all parties, and judgment upon the award may be entered in any court of competent jurisdiction; however, the arbitrator may not under any circumstances: (1) stay the effectiveness of any pending termination of this Agreement; or (2) make any award which extends, modified or suspends any lawful term of this Agreement. Each party waives any right to contest the validity or enforceability of the award of an arbitrator under this Section except to the extent permitted by applicable law. The arbitrator must submit a reasoned award and this award must be consistent with the terms of this Agreement. If the arbitrator's award is not reasoned or not consistent with the terms of this Agreement, then notwithstanding the foregoing, we may appeal the arbitration award in Federal or State Court. An arbitration award or decision entered in any other case (whether or not we were

a party) will not be binding on us in any other dispute, will have no precedential value and cannot be used as evidence in any other proceeding.

3. The arbitrator will apply the provisions of any applicable statute of limitations. In connection with any arbitration proceeding, except as provided in Section XVIII.C, you and we will 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 as the claim to which it relates. Any of these compulsory claims which are not submitted or filed in the same proceeding in which they relate will be barred. This provision will continue in full force and effect subsequent to and notwithstanding the transfer of this Agreement, or the termination or expiration of the term of this Agreement. Except as provided in Section XVIII.B.1 above, the arbitration will be conducted on an individual, not a class-wide basis. None of the parties to the arbitration will be entitled to consolidation of the arbitration proceedings with the proceedings of any third party, nor will the arbitrator or any court be empowered to order a consolidation of proceedings with any third party.

C. **Exclusions.** Notwithstanding the foregoing, the obligation of this Section XVIII to mediate and arbitrate will not be binding on us with respect to claims relating to our trademarks, service marks, patents, or copyrights, including the Marks; claims relating to any lease or sublease of any real property between the parties or their affiliated entities; or requests by either party for temporary restraining orders, preliminary injunctions, permanent injunctions or other proceedings in a court of competent jurisdiction to obtain interim or permanent relief when deemed necessary by such court to preserve the *status quo* or prevent irreparable injury pending resolution by arbitration of the actual dispute between the parties, which may be brought by us in any State or Federal Court of competent jurisdiction. Both parties and each guarantor of this Agreement irrevocably submit to the jurisdiction of the United States District Court of Wisconsin and to the state courts in Eau Claire County, Wisconsin, and such parties and guarantors waive any objection to the application of Wisconsin law or to the jurisdiction or venue in these courts.

D. **Dispute Resolution Fee.** If you or your guarantors have not complied with the provisions in this Section XVIII, you shall reimburse us for all our expenses incurred in curing your breach (including, without limitation, our attorneys' fees and costs related to dismissing and responding to any improperly filed claim) and pay us a Dispute Resolution Fee of \$25,000 ("Dispute Resolution Fee"). You acknowledge and agree that we will be damaged by such breach. You agree that a precise calculation of the full extent of the damages that we will incur from the breach of the Dispute Resolution provisions of this Agreement are difficult to determine and all parties desire certainty in this matter and agree that the Dispute Resolution Fee provided herein is reasonable and constitute liquidated damages and not a penalty. We have the right to collect these amounts in addition to exercising any and all other rights we may have for non-compliance under this Agreement.

**XIX. MISCELLANEOUS PROVISIONS**

A. **Waiver.** Neither our waiver of a breach or default by you, our delay or failure to exercise any right upon your breach or default, nor our acceptance of any payment from you, will be deemed a waiver, nor will it impair our rights for other breaches or defaults of the same or a different kind. The description of any breach or default in any notice will not prevent our assertion of other defaults or breaches. We may waive any one or more of the requirements imposed under this Agreement for the benefit of any particular franchisee or any particular E & G Restaurant, but the waiver in favor of any other franchisee or E & G Restaurant will not prevent us from enforcing the requirements against you, all other franchisees and all other E & G Restaurants.

B. **Severability.** If any provision of this Agreement is considered to be invalid or inoperative for any reason, that part will be deemed modified to the extent necessary to make it valid and operative, or if it cannot be modified, then severed, and the remainder of this Agreement will continue in effect as if the Agreement had been signed with the invalid portion modified or eliminated.

C. **Entire Agreement.** You and we each acknowledge and warrant to each other that you and we each wish to have all terms of our business relationship defined in this Agreement. Neither you nor we wishes to enter into a business relationship with the other in which any terms or obligations are the subject of alleged oral statements or in which oral statements serve as the basis for creating rights or obligations different than or supplementary to the rights and obligations set forth herein. Accordingly, you and we agree that this Agreement, together with any other documents or agreements executed by the parties contemporaneously hereto, supersede and cancel any prior and/or contemporaneous discussions (whether described as representations, inducements, promises, agreements or any other term) between us or anyone acting on our behalf and you or anyone acting on your behalf, which might be taken to constitute agreements, representations, inducements, promises or understandings (or any equivalent to such terms) with respect to the relationship between the parties, and you and we each agree that we each have placed, and will place, no reliance on any such discussion; provided, however, that nothing in this or any related agreement is intended to disclaim the representations we made in the franchise disclosure document we furnished to you (the "FDD"). This Agreement, together with any other documents or agreements executed by the parties contemporaneously hereto or incorporated herein by reference, constitutes the entire agreement between the parties and contains all of the terms, conditions, rights and obligations of the parties with respect to any aspect of the relationship between the parties. No further franchise rights or offer of franchise rights have been promised to you and no such franchise rights or offer of franchise rights shall come into existence, except by means of a separate writing, executed by one of our officers or such other entity granting the franchise rights and specifically identified as a modification of this Agreement. No amendment to this Agreement is binding unless executed in writing by both parties.

D. **Notice.** All notices required under this Agreement will be in writing and will be given: (i) if hand delivered on the day of delivery; (ii) 3 business days after placement in the United States Mail by registered or certified mail, postage prepaid; (iii) the day after placement with a courier guaranteeing overnight delivery; or (iv) if sent by a facsimile transmission or electronic mail transmission on the day of receipt if delivered (as indicated by delivery confirmation of the sender) by 5:00 p.m. Eau Claire, Wisconsin time, or on the next following business day if delivered after 5:00 p.m. Eau Claire, Wisconsin time, in each case addressed to the address of your Franchised Location or to your address, facsimile number or electronic mail address listed under your name on the signature page of this Agreement (for notices sent to you) and to the address of our main office (for notices sent to us), or at such other address as either party will specify in a notice to the other party.

E. **Construction of Language.** The language of this Agreement will be construed according to its fair meaning and not strictly for or against either party. All words used in this Agreement refer to whatever number or gender the context requires.

F. **Governing Law.** You acknowledge that this Agreement was accepted in the State of Wisconsin. You acknowledge that you have and will continue to develop a substantial and continuing relationship with us at our principal offices in Wisconsin, where our decision-making authority is vested and franchise operations are conducted and supervised. Except to the extent that this Agreement or any particular dispute is governed by the U.S. Trademark Act of 1946 (Lanham Act, 115 U.S.C. 1051), this Agreement will be governed, to the extent permissible, by the laws of the State of Wisconsin without regard to principles of conflicts of law. If, however any provision of this Agreement would not be enforceable under the laws of Wisconsin, and if the Franchised Location is located outside of Wisconsin and the



provision would be enforceable under the laws of the state in which the Franchised Location is located, then the laws of the State of Wisconsin shall not apply and the provision in question (and only that provision) will be interpreted and construed under the laws of the state where the Franchised Location is located. Matters controlled by arbitration will be governed by the United States Arbitration Act (9 U.S.C. §1, et. seq.). If a state regulator requires an amendment to this Agreement, the amendment is attached to this Agreement. We will not, however, be precluded from contesting the validity, enforceability, or applicability or such regulator's required amendment in any action relating to this Agreement or to its rescission or termination.

G. **Effect.** This Agreement will be binding upon and inure to the benefit of the parties, their legal representatives, heirs, administrators, executors, their permitted successors and assigns.

H. **Remedies.** In addition to any other remedies in law or in equity to which it may be entitled, we will be entitled, without bond, to entry of injunctive relief and orders of specific performance enforcing the provisions of this Agreement in the event you actually or anticipatorily breach this Agreement. If we incur attorneys' fees or other expenses in seeking enforcement of this Agreement or defending any other claim you bring against us, including without limitation, a claim related to the offering of a franchise or the franchise relationship, you will be required to reimburse us for our reasonable costs and expenses (including attorneys' and expert witness fees). No right or remedy conferred upon us is intended to be exclusive, and every right or remedy granted in this Agreement will be cumulative and in addition to any other rights or remedies available under this Agreement or otherwise. For purposes of this Agreement, a termination will include a termination for any reason, expiration, cancellation, failure to renew, assignment or Transfer.

I. **No Warranty.** You acknowledge that no approvals, consents, waivers, conditions, or the like warrant your success of operating the Franchised Location or the Franchised Business or the appropriateness of the particular items or matters so approved.

J. **Receipt of the Franchise Disclosure Document.** You acknowledge receipt of our FDD along with this Agreement, at least 14 days before your execution of this Agreement or any payment by you to us. If any unilateral modifications have been made to this Agreement you acknowledge that you have had at least 7 days to review them.

K. **Joint and Several Liability.** If you are comprised of 2 or more persons, the obligations and liabilities to us of each of these persons will be joint and several.

L. **Time is of the Essence.** Time is of the essence of this Agreement.

M. **Survival.** Your obligations regarding Confidential Information, trade secrets, non-competition, indemnification, your accrued obligations to us (monetary or otherwise) and any other terms or conditions which by their nature will survive a Transfer or the termination or expiration of the Term of this Agreement.

N. **Limitation on Liens.** You will not grant a security interest, pledge, or place a lien upon your Interest in this Agreement or in the Franchised Location, Franchised Business or in the furniture, fixtures, or equipment used in the Franchised Business, except that you will be permitted to grant a security interest in such furniture, fixtures, and equipment to secure your obligation to the seller of, or lender of funds used for the purchase of, such furniture, fixtures, and equipment.

O. **Day-to-Day Control.** You have the sole right and responsibility for the manner and means by which the day-to-day operation of the Franchised Location and the Franchised Business is determined

and conducted and for achieving your business objectives. Subject to any approval, inspection, and enforcement rights reserved to us in this Agreement, this right and responsibility possessed by you includes the employment, supervision, setting the conditions of employment and discharge for your employees, daily maintenance, safety concerns and the achievement of conformity with the System.

P. **Right to Subcontract.** We will have the right to subcontract the performance of any of our obligations pursuant to this Agreement to any of our Affiliates or any other third party designee.

Q. **Payments to Us or Our Affiliates.** Neither we nor any of our Affiliates are required to accept payments after they are due or to extend credit or otherwise finance your operation of the Franchised Business. In addition to all other remedies available under this Agreement, at law or otherwise, if you are in default under this Agreement or if you have failed to pay us or our Affiliates amounts owed to us under this Agreement or any other agreement with us or our Affiliates, including payments for purchases, we and our Affiliates may require you to pay for all purchases in advance, on a C.O.D. basis by cashier's check or may refuse to make further sales to you.

R. **Execution and Electronic Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement. The counterparts of this Agreement and all related documents may be executed and delivered by facsimile or other electronic signature method by any of the parties to any other party and each will be deemed original signatures. Electronic copies of this document shall constitute and be deemed an original copy of this document for all purposes, provided that such electronic copies are fully executed, dated and identical in form to the original hard copy version of this document. The receiving party may rely on the receipt of such document so executed and delivered by facsimile or other electronic means as if the original had been received.

## **XX. YOUR WARRANTIES AND REPRESENTATIONS**

A. We have not and do not represent that you can expect to attain a specific level of sales, profits, or earnings. You and your guarantors have been advised to obtain independent professional and legal advice regarding this franchise. You and your guarantors acknowledge that you and they are entering into this Agreement, and all ancillary agreements executed contemporaneously with this Agreement, as a result of your and their own independent investigation of this franchise and not act in reliance on or as a result of any representations made by our owners, officers, directors, managers, employees, agents, representatives, attorneys, franchisees, brokers or other franchise sellers that are not contained in or are contrary to the terms set forth in this Agreement or any representation in the FDD. You and your guarantors understand that you and they may sustain losses as a result of the operation or the closing of the Franchised Business. You and your guarantors understand that the business venture contemplated by this Agreement involves a high degree of financial risk and depends to a large degree on your skills, abilities, initiative, and hard work.

B. You and your guarantors represent and warrant that the execution, delivery and performance of this Agreement by you and the Guarantee and Assumption of Obligations by the guarantors do not and will not violate, conflict with or result in the breach of any term, condition or provision of any contract or agreement, or require the consent of any other person or entity.

C. Under applicable U.S. Law, including without limitation Executive Order 13224, signed on September 23, 2001 (the "Order"), you are prohibited from engaging in any transaction with any person engaged in, or with a person aiding any person engaged in acts of terrorism as defined in the Order. Accordingly, you do not and hereafter will not engage in any terrorist activity. In addition, you are not

affiliated with and do not support any individual or entity engaged in, contemplating or supporting terrorist activity. You are not acquiring the rights granted under this Agreement with the intent to generate funds to channel to any individual or entity engaged in, contemplating, or supporting terrorist activity, or to otherwise support or further any terrorist activity.

D. You represent to us that all information set forth in any and all applications, financial statements and submissions to us are and will be true, complete and accurate in all respects, and you acknowledge that we are relying upon the truthfulness, completeness and accuracy of such information in both awarding and continuing the license granted to you by this Agreement.

## **XXI. CAVEAT**

**THE SUCCESS OF THE FRANCHISED LOCATION AND THE FRANCHISED BUSINESS IS SPECULATIVE AND DEPENDS, TO A LARGE EXTENT, UPON YOUR ABILITY AS AN INDEPENDENT BUSINESSPERSON, AS WELL AS OTHER FACTORS. WE DO NOT MAKE ANY REPRESENTATION OR WARRANTY AS TO THE POTENTIAL SUCCESS OF THE STORE AND NO ONE IS AUTHORIZED TO MAKE ANY SUCH REPRESENTATION OR WARRANTY ON OUR BEHALF. YOU FURTHER ACKNOWLEDGE THAT YOU HAVE READ AND COMPLETED THE QUESTIONNAIRE, A COPY OF WHICH IS ATTACHED TO THIS AGREEMENT AS EXHIBIT V.**

**YOU UNDERSTAND AND AGREE THAT WE HAVE NO OBLIGATION TO ACCEPT YOUR APPLICATION AND MAY REFUSE TO GRANT YOU A FRANCHISE FOR ANY REASON, OR NO REASON, WITHOUT DISCLOSING THE BASIS FOR OUR DECISION. YOU ACKNOWLEDGE THAT UNLESS AND UNTIL WE SIGN THIS AGREEMENT, THE FRANCHISE HAS NOT BEEN GRANTED, YOU ARE NOT A FRANCHISEE OF OURS, AND YOU MAY NOT RELY UPON BECOMING A FRANCHISEE OF OURS.**

## **XXII. NON-LIABILITY OF OUR AFFILIATES**

We are the only company obligated to you under this Agreement. You may not look to any Affiliate of ours, related companies, other business entities, or individuals for performance of this Agreement.

## **XXIII. LIMITATION OF LEGAL ACTIONS**

**A. IN NO EVENT WILL WE BE LIABLE TO YOU FOR PROSPECTIVE PROFITS OR SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES FOR ANY CONDUCT ARISING OUT OF THIS AGREEMENT OR OUR RELATIONSHIP WITH YOU.**

**B. THE PARTIES WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY EITHER OF THEM RELATING TO OR ARISING OUT OF THIS AGREEMENT OR THE RELATIONSHIP OF THE PARTIES.**

**C. ANY DISAGREEMENT BETWEEN YOU AND US (AND OUR AFFILIATES AND OWNERS) WILL BE CONSIDERED UNIQUE AS TO ITS FACTS AND MUST NOT BE BROUGHT AS A CLASS ACTION AND YOU WAIVE ANY RIGHT TO PROCEED AGAINST US (AND OUR AFFILIATES, STOCKHOLDERS, MEMBERS, MANAGERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS) BY WAY OF CLASS ACTION, OR BY WAY OF A MULTI-PLAINTIFF, CONSOLIDATED OR COLLECTIVE ACTION.**

**D. YOU WILL BE BARRED FROM BRINGING ANY AND ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR OUR RELATIONSHIP WITH YOU, UNLESS A JUDICIAL PROCEEDING IS COMMENCED WITHIN 1 YEAR FROM THE DATE ON WHICH YOU KNEW OR SHOULD HAVE KNOWN OF THE FACTS GIVING RISE TO THAT CLAIM.**

**E. OUR MAXIMUM AGGREGATE LIABILITY AND THE MAXIMUM AGGREGATE LIABILITY OF ANY OF OUR OFFICERS, OWNERS, DIRECTORS, MEMBERS, MANAGERS, EMPLOYEES, AFFILIATES, PARENTS OR SUBSIDIARIES RELATED TO ANY AND ALL CLAIMS RELATING TO OR ARISING FROM THIS AGREEMENT OR THE FRANCHISE RELATIONSHIP SET FORTH IN THIS AGREEMENT SHALL BE COLLECTIVELY LIMITED TO THE AMOUNT YOU PAID US WITHIN THE PRIOR 12 MONTHS IMMEDIATELY BEFORE WRITTEN NOTICE OF ANY PROPER CLAIM IS RECEIVED BY US.**

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first set forth above.

E & G FRANCHISE SYSTEMS, INC.

FRANCHISEE: \_\_\_\_\_  
[Company Name]

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

By: \_\_\_\_\_  
[Signature]

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

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

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

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

Address: Attn: President  
800 Wisconsin St Mailbox 74Bldg D2 Suite 315  
Eau Claire, WI 54703  
Electronic Mail: [ewolfe@egsubs.com](mailto:ewolfe@egsubs.com)

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Electronic Mail: \_\_\_\_\_

## GUARANTY AND ASSUMPTION OF OBLIGATIONS

In consideration of, and as an inducement to, the execution of the above Franchise Agreement (the "Agreement"), by E & G FRANCHISE SYSTEMS, INC. ("E&G") in favor of \_\_\_\_\_ ("FRANCHISEE"), each of the undersigned ("GUARANTORS") hereby personally and unconditionally guarantees to E&G, its Affiliates (as hereinafter defined), and their successors and assigns for the term of the Agreement and thereafter as provided in the Agreement, that FRANCHISEE will punctually pay and perform each and every undertaking, agreement and covenant set forth in the Agreement and agrees to be personally bound by, and personally liable for the breach of each and every provision in the Agreement. The GUARANTORS each agree to be personally and unconditionally bound by each and every undertaking, agreement and covenant set forth in the Agreement, including, the restrictive covenants and non-disclosure provisions contained in the Agreement, as well as the provisions in the Agreement relating to the Marks and Transfers to the same extent as and for the same period of time as FRANCHISEE is required to comply with and abide by such covenants and provisions. All of the foregoing obligations of the undersigned will survive any expiration or termination of the term of the Agreement or this Guaranty and Assumption of Obligations. The GUARANTORS further hereby personally and unconditionally guarantee all debts and obligations FRANCHISEE incur to E&G, its successors, assigns, affiliated entities, parent corporation, and subsidiaries ("Affiliates"), as the case may be, as a result of any obligations under the Agreement and as a result of purchases of products or services from E&G and its Affiliates. Each of the undersigned waives:

- (1) acceptance and notice of acceptance by E&G or Affiliates of the foregoing undertakings;
- (2) notice of demand for payment of any indebtedness or nonperformance of any obligations hereby guaranteed;
- (3) protest and notice of default to any party with respect to the indebtedness or nonperformance of any obligations hereby guaranteed;
- (4) any right he may have to require that an action be brought against FRANCHISEE or any other person as a condition of liability;
- (5) all rights to payments and claims for reimbursement or subrogation which any of the GUARANTORS may have against the FRANCHISEE arising as a result of the GUARANTORS' execution of and performance under this guaranty; and
- (6) any and all other notices and legal or equitable defenses to which he may be entitled.

Each of the undersigned consents and agrees that:

- (1) his or her direct and immediate liability under this guaranty will be joint and several;
- (2) he or she will render any payment or performance required under the Agreement upon demand if the FRANCHISEE fails or refuses punctually to do so;
- (3) such liability will not be contingent upon or conditioned upon pursuit by E&G or Affiliates of any remedies against the FRANCHISEE or any other person; and

(4) such liability will not be diminished, relieved or otherwise affected by any extension of time, credit or the indulgence which E&G or Affiliates may from time to time grant to the FRANCHISEE or to any other person, including, without limitation, the acceptance of any partial payment or performance or the compromise or release of any claims, none of which will in any way modify or amend this guaranty, which will be continuing and irrevocable during the term of the Agreement.

If E&G or any of the Affiliates are required to enforce this Guaranty and Assumption of Obligations in any judicial proceeding or appeal thereof, the GUARANTORS will reimburse E&G and Affiliates for its costs and expenses, including, but not limited to, reasonable accountants', attorneys', attorney assistants', and expert witness fees, costs of investigation and proof of facts, court costs, other litigation expenses and travel and living expenses, whether incurred prior to, in preparation for or in contemplation of the filing of any written demand, claim, action, hearing or proceeding to enforce this Guaranty and Assumption of Obligations.

The undersigned Guarantors hereby consents to the applicability of the venue and jurisdiction provision in the Agreement to this Guaranty and Assumption of Obligations.

IN WITNESS WHEREOF, each of the undersigned has hereunto affixed their signatures on the same day and year as the Agreement was executed.

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

Signature: \_\_\_\_\_

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

\_\_\_\_\_

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

Signature: \_\_\_\_\_

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

\_\_\_\_\_

**EXHIBIT I**

**FRANCHISED LOCATION AND ASSIGNED TERRITORY**

Your Franchised Business will be located at: \_\_\_\_\_  
(Street Address)

Your Assigned Territory will be: \_\_\_\_\_

**E & G Franchise Systems, Inc.:**

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

**Franchisee:**

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



## EXHIBIT II

### LEASE PROVISIONS

Any lease executed by you for the operation of the Franchised Location will contain the following provisions or an addendum to the lease as follows.

#### ADDENDUM TO LEASE

This lease addendum ("Addendum") entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between \_\_\_\_\_ ("FRANCHISEE") and \_\_\_\_\_ ("LANDLORD") for the premises located at \_\_\_\_\_ in the City of \_\_\_\_\_, State of \_\_\_\_\_;

WHEREAS, FRANCHISEE has executed a Franchise Agreement ("Franchise Agreement") with E & G FRANCHISE SYSTEMS, INC. ("E&G"), and as part of said Franchise Agreement, the lease ("Lease") for the location of the franchised E & G Restaurant ("Franchised Location") must contain certain provisions; and

WHEREAS, LANDLORD and FRANCHISEE agree that the terms contained herein will be applicable to the Lease, notwithstanding anything contained in the Lease to the contrary;

NOW, therefore, in consideration of the mutual promises contained herein and the execution of the Lease, which execution is made simultaneously with this Addendum, LANDLORD and FRANCHISEE hereby agree as follows:

1. LANDLORD agrees that FRANCHISEE will not otherwise assign the Lease or renew, amend or extend the term of the Lease without the prior written consent of E&G.
2. LANDLORD agrees to furnish E&G with copies of any and all letters and notices sent to FRANCHISEE pertaining to the Lease at the same time that such letters and notices are sent to FRANCHISEE. LANDLORD further agrees that, if it intends to terminate the Lease, the LANDLORD will give E&G 30 days advance written notice or such intent, specifying in such notice all defaults that are the cause of the proposed termination. E&G will have, after the expiration of the period during which FRANCHISEE may cure such default, an additional 15 days (or if there is no cure period), at least 15 days to cure, at its sole option, any such defaults. E&G, or an affiliate of E&G, will have the right, but not the obligation, upon giving written notice of its election to FRANCHISEE and LANDLORD, to cure the breach and succeed to FRANCHISEE'S rights under the Lease, and any renewals or extensions thereof.
3. Upon default, expiration, or termination of the Franchise Agreement or the Lease and upon notice to LANDLORD, E&G or its designee will have the option, without any obligation, to assume the FRANCHISEE'S obligations under the Lease, on the same terms and conditions available to the FRANCHISEE. Further, if FRANCHISEE or any other party with an interest in FRANCHISEE transfers to E&G or another party all of its or their interest in the Franchise Agreement, the FRANCHISEE, or the Franchised Location, the transferee will have the right to assume the Lease on the same terms and conditions as are contained in the Lease.
4. E&G will have the right to enter the premises to make any reasonable modification or reasonable alteration necessary to protect E&G's interest in its proprietary marks. LANDLORD agrees that in such event E&G will not be liable for trespass or any other crime or tort. Further, E&G or its designated agents

will be permitted to enter the leased premises for purposes of making inspections in accordance with the terms of the Franchise Agreement. Landlord agrees that upon default, expiration, or termination of the Franchise Agreement or the Lease and upon notice to Landlord, FRANCHISEE or E&G and its designee will have the option to remove or replace the necessary elements of the E&G trade dress, including without limitation the removal of wall tile, exterior signage, and the repainting of interior walls.

5. FRANCHISEE may assign to E&G all of its rights of further assignment at any time if the LANDLORD is given reasonable notice thereof. Such an assignment will be effective only if accepted in writing by E&G.

6. Upon request of E&G, the LANDLORD will provide E&G with copies of all reports, information, or data in LANDLORD'S possession with respect to sales made from the leased premises.

7. Copies of any and all notices pertaining to the Lease will also be sent to E&G at the following address, or at such other address as may be designated by E&G in writing: 800 Wisconsin St Mailbox 74, Bldg D2 Suite 315, Eau Claire, Wisconsin 54703, Attn: President.

8. LANDLORD agrees that FRANCHISEE will have the right to remodel, equip, paint and decorate the interior of the leased premises and to display the proprietary marks and signs on the interior and exterior of the leased premises as FRANCHISEE is reasonably required to do pursuant to the Franchise Agreement and any successor Franchise Agreement under which FRANCHISEE may operate a Franchised Location on the leased premises.

9. If requested by E&G, LANDLORD will provide E&G with whatever information LANDLORD has regarding FRANCHISEE's sales from its Franchised Location. LANDLORD acknowledges that the Franchise Agreement grants E&G the right of inspection of FRANCHISEE's leased premises, and LANDLORD agrees to cooperate with E&G's efforts to enforce its inspection rights.

10. E&G will be a third-party beneficiary of this Addendum and has the right independently of FRANCHISEE to enforce all of its rights hereunder.

11. To the extent of any conflict between the terms and conditions of this Addendum to Lease and the Lease, this Addendum will govern.

FRANCHISEE: \_\_\_\_\_  
[Company Name]

By: \_\_\_\_\_  
[Signature]

\_\_\_\_\_, \_\_\_\_\_  
[Print Name] [Title]

LANDLORD: \_\_\_\_\_  
[Company Name]

By: \_\_\_\_\_  
[Signature]

\_\_\_\_\_, \_\_\_\_\_  
[Print Name] [Title]

**EXHIBIT III**

**COLLATERAL ASSIGNMENT OF LEASE**

**FOR VALUE RECEIVED**, the undersigned, \_\_\_\_\_ a \_\_\_\_\_ ("Assignor"), hereby assigns, transfers and sets over unto E & G FRANCHISE SYSTEMS, INC., a Wisconsin corporation ("Assignee") all of Assignor's right, title and interest as tenant in, to and under that certain lease, a copy of which is attached hereto as Exhibit A (the "Lease"), respecting the premises commonly known as \_\_\_\_\_. This Assignment is for collateral purposes only and except as specified herein, Assignee shall have no liability or obligation of any kind whatsoever arising from or in connection with this Assignment or the Lease unless Assignee shall take possession of the premises demised by the Lease pursuant to the terms hereof and shall assume the obligations of Assignor thereunder.

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

Upon a default by Assignor under the Lease or a default or expiration under the Franchise Agreement by and between Assignor and Assignee for an E & G Restaurant (the "Franchise Agreement"), or in the event of a default by Assignor under any document or instrument securing said Franchise Agreement or under any other agreement between Assignor and Assignee or its affiliates, Assignee shall have the right and is hereby empowered to take possession of the premises demised by the Lease, expel Assignor therefrom, and, in such event, Assignor shall have no further right, title or interest in the Lease.

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

Assignee: E & G FRANCHISE SYSTEMS, INC.

Assignor: \_\_\_\_\_

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

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

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

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

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

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

## EXHIBIT IV

### IRREVOCABLE POWER OF ATTORNEY

That \_\_\_\_\_ ("FRANCHISEE") does hereby irrevocably constitute and appoint E & G FRANCHISE SYSTEMS, INC. ("E&G"), as FRANCHISEE'S true and lawful attorney-in-fact and agent for FRANCHISEE and in FRANCHISEE'S name, place and stead, to do or cause to be done all things and to sign, execute, acknowledge, certify, deliver, accept, record and file all such agreements, certificates, instruments and documents as, in the sole discretion of E&G, shall be necessary or advisable for the sole purpose of assigning to E&G all of FRANCHISEE'S right, title and interest in and to any and all telephone numbers used in connection with the E & G Restaurant operated by FRANCHISEE and all related Yellow Pages, White Pages and other business listings, including, the execution and delivery of any Transfer of Service Agreement and any other transfer documentation required by the applicable telephone service company providing telephone services to FRANCHISEE, and to do or cause to be done all things and to sign, execute, acknowledge, certify, deliver, accept, record, and file all such agreements, certificates, instruments and documents as, in the sole discretion of E&G, shall be necessary or advisable for the sole purpose of assigning to E&G all of FRANCHISEE'S right, title and interest in and to any Internet and website name pages, domain name listings, and registrations that contain the Marks, or any of them, in whole or in part, hereby granting unto E&G full power and authority to do and perform any and all acts and things which, in the sole discretion of E&G, are necessary or advisable to be done as fully to all intents and purposes as FRANCHISEE might or could itself do, and hereby ratifying and confirming all that E&G may lawfully do or cause to be done by virtue of this Power of Attorney and the powers herein granted.

During the term of this Power of Attorney and regardless of whether FRANCHISEE has designated any other person to act as its attorney-in-fact and agent, no person, firm or corporation dealing with E&G shall be required to ascertain the authority of E&G, nor be responsible in any way for the proper application of funds or property paid or delivered to E&G. Any person, firm or corporation dealing with E&G shall be fully protected in acting and relying upon a certificate of E&G that this Power of Attorney on the date of such certificate has not been revoked and is in full force and effect, and FRANCHISEE shall not take any action against any person, firm or corporation acting in reliance on such a certificate or a copy of this Power of Attorney. Any instrument or document executed on behalf of FRANCHISEE by E&G shall be deemed to include such a certificate on the part of E&G, whether or not expressed. This paragraph shall survive any termination of this Power of Attorney.

This Power of Attorney shall terminate 2 years following the expiration or termination of that certain Franchise Agreement dated of even date herewith by and between E&G and FRANCHISEE. Such termination, however, shall not affect the validity of any act or deed that E&G may have effected prior to such date pursuant to the powers herein granted.

This instrument is to be construed and interpreted as an irrevocable Power of Attorney coupled with an interest and such Power of Attorney shall not be affected by the subsequent disability or incapacity of the principal.

[SIGNATURE PAGE TO FOLLOW]



## EXHIBIT V

### FRANCHISEE DISCLOSURE QUESTIONNAIRE

As you know, E & G FRANCHISE SYSTEMS, INC. (the "Franchisor") and you are preparing to enter into a Franchise Agreement for the operation of an E & G Restaurant franchise. The purpose of this Questionnaire is to determine whether any statements of promises were made to you that the Franchisor has not authorized and that may be untrue, inaccurate, or misleading. Please review each of the following questions and provide honest and complete responses to each question.

1. Have you received and personally reviewed the Franchise Agreement and each exhibit and schedule attached to it? Yes \_\_\_ No \_\_\_
2. Have you received and personally reviewed the Franchisor's Franchise Disclosure Document (the "FDD") that Franchisor provided to you?  
Yes \_\_\_ No \_\_\_
3. Did you sign a receipt for the FDD indicating the date you received it?  
Yes \_\_\_ No \_\_\_
4. Date on which you signed and returned the receipt for the FDD.  
\_\_\_\_\_, 20\_\_  
(month, day)
5. Date on which you signed the Franchise Agreement.  
\_\_\_\_\_, 20\_\_  
(month, day)
6. Were you given the opportunity to discuss the benefits and risks of operating an E & G Restaurant franchise with an attorney, accountant, or other professional advisor, and do you understand those risks?  
Yes \_\_\_ No \_\_\_
7. Do you understand that the success or failure of your franchise will depend in large part upon your skills and abilities, competition from other businesses, interest rates, inflation, labor and supply costs, lease terms and other economic and business factors?  
Yes \_\_\_ No \_\_\_
8. Has any employee or other person speaking on behalf of the Franchisor made any statement or promise regarding the amount of money you may earn or that any of our Franchised Locations earn in operating the business other than what is discussed in Item 19 of the FDD?  
Yes \_\_\_ No \_\_\_
9. Has any employee or other person speaking on behalf of the Franchisor made any statement or promise concerning the likelihood of success that you should or might expect to achieve from operating the business?  
Yes \_\_\_ No \_\_\_

10. Has any employee or other person speaking on behalf of the Franchisor made any statement, promise or agreement concerning the advertising, marketing, training, support service or assistance that the Franchisor will furnish to you that is contrary to, or different from, the information contained in the FDD?

Yes \_\_\_ No \_\_\_

11. Do you understand that this franchise business may be impacted by other risks, including those outside your or our control such as local, national or global economic, political or social disruption, and that such disruptions, and any preventative, protective, or remedial actions that federal, state, and local governments may take in response to a disruption may result in a period of business disruption, reduced customer demand, and reduced operations?

Yes \_\_\_ No \_\_\_

\* \* \*

Please understand that your responses to these questions are important to us and that we will rely on them.

By signing this Questionnaire, you are representing that you have responded truthfully to the above questions. You are also representing that you have reviewed all of these questions and the answers with the other owners of your business and any of your representatives who had discussions with the Franchisor or any of its officers, agents, or employees. The responses from those people are also included by you above.

Dated on \_\_\_\_\_, 20\_\_.

FRANCHISE APPLICANT: \_\_\_\_\_

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

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

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

**EXHIBIT VI**  
**OPTIONAL PROGRAM ADDENDUM**  
**RELATING TO**  
**E & G FRANCHISE SYSTEMS, INC.**  
**FRANCHISE AGREEMENT**

This Addendum, entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_, by and between E & G Franchise Systems, Inc., a Wisconsin corporation, ("us", "our" or "we"), and \_\_\_\_\_, a \_\_\_\_\_ ("you" or "your"), amends and modifies the Franchise Agreement between us and you dated on the \_\_\_ day of \_\_\_\_\_, 20\_\_ ("Franchise Agreement"). Capitalized terms used but not defined herein have the meaning given them in the Franchise Agreement.

WHEREAS, you are operating an E & G Restaurant pursuant to the Franchise Agreement;

WHEREAS, in conjunction with its Franchised Business, you would like to operate the optional program selected below using the System and Marks (hereinafter referred to as the "Optional Program");

WHEREAS, we are willing to consent to your operating the Optional Program under the terms and conditions set forth herein;

NOW, THEREFORE, we and you agree as follows:

1. Grant of License. Subject to the terms and conditions herein, we hereby grant to you and you hereby accepts from us, a non-exclusive right to use the System and Marks to open and operate:

a grab and go cooler-based product delivery program (the "To Go Unit") at \_\_\_\_\_ under the terms and conditions set forth under the Franchise Agreement as amended herein.

a trailer or food truck product delivery program (the "Mobile Unit") within the Assigned Territory and under the terms and conditions set forth under the Franchise Agreement as amended herein.

This Optional Program will be operated in conjunction with your Franchised Business. Nothing herein shall be construed to expand the Assigned Territory as described in Exhibit I of the Franchise Agreement or to provide any additional territorial protection, except that so long as you are operating a Mobile Unit and are in compliance with the Franchise Agreement and this Addendum, we will not promote products bearing the Marks at special events, athletic contests, etc., through temporary locations and mobile units within your Assigned Territory.

2. Site Selection. The site of the To Go Unit (if applicable) is selected by you, subject to our consent. We will advise you whether the proposed location is acceptable. We are not responsible for and do not make any warranty regarding the suitability of the To Go Unit site, and our consent to an To Go Unit site means only that the location meets our minimum standards for an acceptable temporary location. You are primarily responsible for investigating the site and having any leases or sale contract for the site reviewed and approved by your attorney. You shall provide us a copy of the executed lease for the To Go Unit site within ten (10) days of execution of said lease. The term of the lease plus all renewal option periods shall together equal or exceed the Term of the Franchise Agreement. Our consent to the lease means only that the lease meets our minimum standards. Our consent to the lease is not a warranty as to the appropriateness of the lease or any of its terms.



3. Duration of the Grant. You shall commence operation of the Optional Program on the \_\_\_ day of \_\_\_\_\_, 20\_\_.

4. Optional Program Fee; Royalty Fees; Advertising Fee. In addition to other payments required pursuant to the Franchise Agreement and this Addendum, you shall pay us the Optional Program Fee of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) upon the execution of this Addendum. No portion of this Optional Program Fee is refundable. Sales from your To Go Unit or Mobile Unit will count as Net Revenues for the purpose of calculating your Royalty Fees and Advertising Fees.

5. Development of the Optional Program. You will construct and equip the To Go Unit or Mobile Unit in accordance with specifications prepared by you, subject to our right to consent to such specifications, layout and design and equipment. You are solely responsible for complying with the requirements of the Americans with Disabilities Act and other matters affecting or relating to the construction and design of the To Go Unit or Mobile Unit in all respects. Nothing contained herein or in the Manual shall be construed as or implied as imposing any obligation on us or our Affiliates in relation to the construction or design of the To Go Unit or Mobile Unit.

6. Equipment, Supplies and Insurance. The required equipment and supplies that you will need to obtain and maintain for the Optional Program will be set forth in the Manual loaned to you pursuant to the Franchise Agreement. Any additional insurance requirements specifically for the To Go Unit or Mobile Unit will be set forth in such Manual or otherwise in writing by us.

7. All other Terms in Effect. Except as modified by this Addendum, all of the terms of the Franchise Agreement and the Personal Guaranty shall remain in full force and effect, and such terms shall apply to the Optional Programs as if they were part of the Franchised Business described in the Franchise Agreement. The Guarantors hereby ratify and affirm their personal guarantees of the Franchise Agreement by signing this Addendum. This Addendum hereby forms a part of and is incorporated into the Franchise Agreement.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby have duly executed this Addendum.

**E & G FRANCHISE SYSTEMS, INC.**

**GUARANTORS**

By \_\_\_\_\_

\_\_\_\_\_

Its \_\_\_\_\_

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

**FRANCHISEE:** \_\_\_\_\_

\_\_\_\_\_

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

By \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT E**  
**FRANCHISE AGREEMENT (NON-TRADITIONAL)**

**E & G FRANCHISE SYSTEMS, INC.  
FRANCHISE AGREEMENT  
(NON-TRADITIONAL)**

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**E & G FRANCHISE SYSTEMS, INC.  
FRANCHISE AGREEMENT  
(NON-TRADITIONAL)**

**THIS FRANCHISE AGREEMENT** (this "Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between E & G FRANCHISE SYSTEMS, INC., a Wisconsin corporation ("us", "our" or "we"), and \_\_\_\_\_, a \_\_\_\_\_ ("you" or "your").

**RECITALS**

1. We and our Affiliates have the rights to and have developed and refined the System;
2. We and/or our Affiliates own the Marks and have the right to license the Marks and the System in connection with the operation of an E & G Restaurant;
3. You recognize the benefits from being identified with and licensed by us and desire a franchise to establish and operate an E & G Restaurant using the Marks and System and we are willing to grant such a franchise on the terms and conditions in this Agreement.

NOW, THEREFORE, the parties agree as follows:

**I. DEFINITIONS**

For purposes of this Agreement, the following terms will have the meaning as defined below:

- A. "Affiliates" means individually or collectively, any and all entities controlling, controlled by, or under common ownership with the person being referenced.
- B. "Competitive Business" means any quick service restaurant that offers as a primary menu item or as a mix of menu items sandwiches or similar items. As used herein, "sandwiches" includes cold or hot sandwiches (with or without meat), deli or "submarine style" sandwiches, and wraps.
- C. "E & G Restaurant" means the Franchised Business and any other restaurant operating under the System and Marks, whether owned by us or any Affiliate, or licensed or franchised by us or any Affiliate.
- D. "Franchised Business" will mean the franchised E & G Restaurant operated by you utilizing the System and the Marks at the Franchised Location pursuant to this Agreement and any To Go Unit or Mobile Unit operated in connection with an Optional Program Addendum attached to this Agreement.
- E. "Franchised Location" means the location of the E & G Restaurant that is the subject of this Agreement.
- F. "Manual" means our confidential Operations Manual and such other manuals as we have or may develop in the future, as amended from time to time by us in our sole discretion. The Manual will be in a format determined by us (i.e., in writing, on CD-ROM, via electronic media through a secure website, etc.) and includes all other supplemental bulletins, notices, revisions, modifications, or supplemental information, either in document or electronic form, concerning the System which are delivered by us or otherwise communicated to you in writing. Also included are any passwords or other

digital identifications necessary to access the Manual on a website or extranet. The Manual is confidential and remains our property.

G. "Marks" means such service marks, trademarks, trade dress, trade names, logos and commercial symbols, as may presently exist, or which may be modified, changed, or acquired by us or our Affiliates, in connection with the operation of the business contemplated by this Agreement. Currently, Marks include, but are not limited to, "Erbert & Gerbert's", "Erbert and Gerbert's Sandwich Shop", the design with two boys' faces (horizontal), the design with "Erbert and Gerbert's", and the "E and G" design.

H. "Net Revenues" means the total amount of all sales of products, services and merchandise sold from, through or in connection with the Franchised Business, whether for cash, on credit, barter or otherwise, including sales made via your meal exchange program, exclusive of applicable sales, use or service taxes, and, in the case of sales made via your meal exchange program, less your verifiable food costs related to such sales. Net Revenues includes all business interruption insurance payments made to you under any insurance policy to the extent related to the Franchised Business.

I. "Principal Owner" means you if you are a sole proprietor, the majority shareholder of you if you are a corporation, a partner owning a majority interest of you if you are a partnership, or a member or manager owning the majority interest of you if you are a limited liability company. In the event there are multiple owners with equal interest in you, then the individual signing this document on your behalf shall be the Principal Owner for purposes of this Agreement.

J. "System" means a developed method of operating a quick-serve restaurant specializing in gourmet sandwiches, specialty soups and related products to be sold and served on the premises, through drive-through, by pick-up or delivery under the Marks using certain procedures and methods, recipes, site evaluation criteria, layouts, accounting methods, advertising, sales and promotional techniques, personnel training, trade secrets, and any other matters relating to the operation and promotion of an E & G Restaurant as they may be changed, improved, modified and further developed by us or our Affiliates from time to time.

K. "Term" means, individually or collectively the Initial Term, the Renewal Term and any period of continuation of this Agreement.

L. "Transfer" means and includes any voluntary or involuntary, direct or indirect, assignment, sale, gift, conveyance, lease or other disposition of an interest in this Agreement, you or the Franchised Business, including: (a) transfer of any capital stock, partnership interest, limited liability company interest or other ownership interest; (b) merger, consolidation, reorganization, business combination or other issuance of additional stock or ownership interests; (c) transfer in bankruptcy or dissolution of marriage or otherwise by operation of law or by order of court; (d) transfer to a personal representative upon disability or transfer upon the death of a Principal Owner; (e) the grant or creation of any lien or encumbrance on any ownership interest or asset; (f) the grant of any option, call, warrant, conversion rights or rights to acquire any equity or voting interest; (g) assignment of contract rights; or (h) sale of assets (including the inventory, furniture, fixtures, equipment and other operating assets of the Franchised Business, other than in ordinary course of business).

M. "You" or "Your" also includes: (a) those persons and their spouses owning any interest in you if you are a corporation or a limited liability company; (b) all partners and their spouses owning any partnership interest in you if you are a partnership; and (c) the individual and his or her spouse who owns you if you are a sole proprietorship. For purposes of determining ownership in you, the interests owned by

a husband and wife will be considered one interest, and both husband and wife will be obligated hereunder, regardless of whether the interest is owned by just one spouse or both spouses.

**II. GRANT OF FRANCHISE**

A. **Grant of License.** We grant to you and you accept from us, a non-exclusive right to use the System and Marks to open and operate one E & G Restaurant to be located at the Franchised Location listed in Exhibit I, attached to this Agreement during the Term of this Agreement. In order for you to operate an E & G Restaurant at an additional location, a separate Franchise Agreement must be signed and you will be required to pay us an additional Initial Franchise Fee. We may offer you the opportunity to add one or more of the following optional programs ("Optional Programs") to your Franchised Business: a grab and go station (the "To Go Unit") and/or a mobile unit (the "Mobile Unit"). If we offer you the right to participate in an Optional Program and you elect to participate in that Optional Program, then you will sign the Optional Program Addendum described on Exhibit III attached to this Agreement and pay the applicable fees due thereunder. The Optional Programs will thereafter be included as part of the System and will be subject to the terms and conditions of this Agreement. Except in connection with a Mobile Unit, you will not have the right to provide delivery or catering services outside of the Assigned Territory.

B. **Assigned Territory.** You are granted an "Assigned Territory", which shall consist solely of the terminal, food court or building in which the Franchised Location is located. The Assigned Territory will be determined at the time the Franchised Location is agreed to by both you and us, and will be specified in Exhibit I, which you and we will initial. During the Term of this Agreement, so long as you are in full compliance with this Agreement, we and our Affiliates will not establish or grant a license or franchise to establish another E & G Restaurant within your Assigned Territory. You are not permitted to directly deliver (i.e., delivery through or by any person or entity other than a third-party delivery service authorized by us) any product in any Assigned Territory of any other franchisee of ours or any Assigned Territory of another E & G Restaurant.

C. **Retention of Rights.** We, on behalf of ourselves and our Affiliates, reserve all rights not specifically granted to you pursuant to this Agreement, all without compensation to you, including but not limited to the following:

1. We and our Affiliates may own or operate, or license or franchise others to own or operate, E & G Restaurants anywhere outside of the Assigned Territory.
2. We and our Affiliates are allowed to own, open, franchise, operate, and/or manage any businesses or restaurants within the Assigned Territory or outside of the Assigned Territory under trademarks or service marks different than the Marks.
3. We and our Affiliates are allowed to own, open, franchise, operate, and/or manage any business or restaurant within the Assigned Territory or outside of the Assigned Territory under systems that are different than the System.
4. We and our Affiliates may develop, merchandise, sell and license others to sell products bearing the Marks through other channels of distribution such as grocery stores, the Internet, print catalogues, direct marketing media and any other outlets within the Assigned Territory or outside of the Assigned Territory, and we may promote products bearing the Marks at special events, athletic contests, etc., through temporary locations and mobile units.

5. We and our Affiliates have the right, now or in the future, to purchase, merge, acquire or affiliate with an existing competitive or non-competitive franchise network, chain or any other business regardless of the location of that chain's or business' facilities, and to operate, franchise or license those businesses and/or facilities as E & G Restaurants operating under the proprietary marks or any other Marks following our purchase, merger, acquisition or affiliation, regardless of the location of these facilities (which you acknowledge may be within your Assigned Territory or close to your Assigned Territory or your Franchised Location).

6. We and our Affiliates may sell ourselves, our assets, our proprietary marks, the Marks, our systems and/or the System to a third party; may go public; may engage in a private placement of some or all of our securities; may merge, acquire other corporations or entities, or be acquired by another corporation or entity; and/or may undertake a refinancing, recapitalization, leveraged buyout or other economic or financial restructuring. With regard to any of the above transfers, you expressly and specifically waive any claims, demands or damages arising from or related to the loss of our name, the Marks (or any variation thereof), the System and/or the loss of being identified as a franchisee under this Agreement. If we assign our rights in this Agreement, nothing will be deemed to require us to remain in the restaurant business or to offer or sell any products or services to you.

### **III. LOCATION AND LEASE**

A. **Site Selection.** You will select the proposed Franchised Location for the location of the Franchised Business and submit a completed site analysis package, including demographics and other material requested by us containing all information reasonably required by us to assess a proposed site. Within 30 days after receipt, we will advise you whether the proposed Franchised Location is acceptable. We are not responsible for and do not make any warranty regarding the suitability of the Franchised Location. Our consent to a Franchised Location means only that the Franchised Location meets our minimum standards for an acceptable location of an E & G Restaurant. You are primarily responsible for investigating the Franchised Location and having any leases or sale contract for the Franchised Location reviewed and approved by your attorney.

B. **Site Acquisition.** If your right to operate a restaurant at the Franchised Location is subject to rights granted to you by a third party, such as a university or transportation authority (the "Client"), such party shall be identified on Exhibit I and, within 10 days from the date of this Agreement, you shall deliver to us a fully executed copy of the agreement you have with the Client. In any event, you represent and warrant to us that you have the right to locate an E & G Restaurant within the Assigned Territory and at the Franchised Location and we are entitled to rely on that representation and warranty in entering into this Agreement.

C. **Relocation.** So long as you are not in default under this Agreement, you may relocate the Franchised Location within the Assigned Territory with our prior written consent. Regardless of the reason for relocating, you agree to pay all costs and expenses of relocating the Franchised Location including the cost of a demographic study and our cost and expenses in reviewing the proposed relocation Franchised Location and any new lease or purchase contract related thereto.

### **IV. INITIAL FRANCHISE FEE**

You must pay us an initial franchise fee ("Initial Franchise Fee") when you sign this Agreement. The amount of the Initial Franchise Fee is \$5,000. The Initial Franchise Fee is fully earned when you sign this Agreement and is not refundable under any circumstances.

## V. TERM

A. **Term.** The initial term of this Agreement will begin on the date of this Agreement, and, unless it is terminated earlier according to the terms of this Agreement, will expire 5 years later ("Initial Term").

B. **Continuation.** If you continue to operate the Franchised Business with our express or implied consent following the expiration of the Term of this Agreement, the continuation will be deemed to be a month-to-month extension of this Agreement, unless otherwise set forth in writing. All provisions of this Agreement will apply while you continue to operate the Franchised Business. This Agreement will then be terminable by either party on 30 days written notice to the other party.

C. **Renewal.** If you are in full compliance with the terms of this Agreement, you will have the right to renew for 2 additional terms of 5 years each (the "Renewal Term"), provided you agree to execute the most current Franchise Agreement being utilized by us at the time you renew. The most current Franchise Agreement may contain significantly different terms than this Agreement. In any event, we may, in our discretion, refuse to renew this Agreement if you have been notified of defaults (even if subsequently cured) under this Agreement more than 2 times during the Term, even if you are not in default at the time of the renewal. You agree to give us not less than 180 nor more than 270 days' prior written notice of an election to renew this Agreement, prior to the end of the Initial Term. Your failure to give us this notice will be deemed an election not to renew this Agreement. You will also be required to pay us a renewal fee of \$2,500. Additionally, you must remodel the Franchised Location and upgrade the furniture, fixtures and equipment to meet our then current standards of decor in accordance with the provisions of the Manual and must execute a general release, to the extent permitted by applicable law, of any and all claims against us and our Affiliates, and our Affiliates' respective owners, officers, directors, employees, agents, successors and assigns arising under or from this Agreement and/or any related agreements between you and us or our Affiliates, or under any applicable law, rule or regulation.

## VI. FEES

A. **Royalty Fee.** During the Term of this Agreement, you will pay us a continuing monthly royalty fee ("Royalty Fee") of 5% of Net Revenues from the preceding month.

B. **Advertising Fee.** You will pay us a one-time advertising fee of \$750 prior to opening your Franchised Location and Franchised Business, which we will use to pay for the cost of producing branded materials, training, grand opening planning, public relations and travel expenses related to the opening of your Franchised Business. This fee is not refundable under any circumstances.

C. **Time and Manner of Payments.** Royalty Fees will be paid by check or wire transfer of immediately available funds. We must receive your Royalty Fees within 30 days after the close of the month for which the Royalty Fee is due, together with a report detailing your Net Revenues for such month and the mix of products sold during such month. Any other amounts owed to us by you shall be paid within 10 days after we send you an invoice therefore. Such reports shall be prepared in the form we prescribe from time to time and must be submitted to us electronically.

D. **Interest on Late Payments.** If any payment due under this Agreement is not paid when due, we have the right to charge interest on these overdue amounts equal to the lesser of 1 ½% per month or the maximum legal rate in the jurisdiction where the Franchised Location is located. This applies to all fees and amounts due to us, including Royalty Fees and Advertising Fees, as well as the cost of the product purchases that are overdue. We will not, however, charge interest if the failure to timely pay results from



our error in initiating any EFT draft. Our right to interest is in addition to any other remedies that we may have.

E. **No Right of Offset.** You agree to make prompt payment, without deduction or set-off, of all charges which are properly due, including the Royalty Fees and Advertising Fees. You cannot withhold any payment to us or our Affiliates on the grounds of non-performance by us of any of our obligations hereunder.

F. **Under-Reporting.** If it is found that you under-reported Net Revenues, you will reimburse us for the amount of the Royalty Fees and Advertising Fees that would have been due had Net Revenues been reported accurately, plus interest on those amounts at the rate of the lesser of 1 ½% per month or the maximum legal rate in the jurisdiction where the Franchised Location is located. In addition, if the amount of Net Revenues reported for any calendar year is less than 98% of the actual Net Revenues for that period or if you fail to provide us with reports as required, you agree to reimburse us for all costs of the investigation or audit, including salaries, professional fees, travel, meals and lodging.

G. **Late Fee.** If you fail to send us a report or payment when due, we can charge you, to the extent permitted by law, a late fee of \$100 plus \$100 for each week your report remains undelivered or fee remains unpaid.

H. **Taxes.** You agree to indemnify and/or reimburse us and our Affiliates for all capital, gross receipts, sales, and other taxes and assessments imposed by any applicable state or local governmental authority as a result of the conduct of the Franchised Business or the license of any of our or our Affiliates' intangible property to you (whether required to be paid by us or our Affiliates, withheld by you or otherwise). Your obligation to indemnify or reimburse us or our Affiliates for these taxes does not extend to income-type taxes which a state or local government imposes on us or our Affiliates' income.

## VII. **ADVERTISING**

A. **Local Advertising.** You are encouraged, but not required, to spend additional monies for marketing and advertising your Franchised Business in your local market (e.g., within the campus, transportation facility or other area in which the Franchised Location is situated. We must consent to your use of any advertising and sale promotion materials before you use them. You must submit all of your marketing, advertising and sale promotion materials to us or our designee at least 20 days prior to use. You may only use materials that we have affirmatively approved. You will not advertise, or use in advertising or other form of promotion, the Marks without the appropriate copyright, trademark, and service mark symbols ("©", "®", "TM" or "SM") as we direct. You will not distribute individual advertising items (i.e., coupons, circular advertising, etc.) outside of your Assigned Territory, unless you use a form of advertising that is not programmed to restrict delivery to the Assigned Territory, such as direct mail advertising by outside contractors based on zip code. We may furnish you with marketing plans and materials, including, without limitation, newspaper ads, sales aids, and other promotional and marketing materials and/or kits, and you are required to pay a reasonable fee for such materials. You agree that we may require the purchase of certain products from time to time in conjunction with marketing and promotional events.

B. **Internet and Other Electronic Advertising.** We maintain an Internet website, [www.erbertandgerberts.com](http://www.erbertandgerberts.com), which we control. We may create other Internet websites in the future. We may provide contact information for the Franchised Business on our website(s) for so long as we determine. All of the information on these or any other pages of our website remains subject to our control and approval. Except as otherwise provided in the Manual or otherwise in writing, you may not maintain a presence on the Internet for your Franchised Business. Subject to our right to consent, you may be permitted

to create a social media account from which to advertise your Franchised Business on the Internet (such as on Facebook or Twitter). Any such permission shall only be for such time as we permit and shall be on the terms and condition we specify from time to time in the Manual, which may restrict the content that you are permitted to post to the social media outlet. We have the right to require a modification of or cease granting you permission to develop, operate, or maintain any such social media outlet at any time and to require you to give us administrative control and/or log-in information for any such social media outlet you operate for the promotion of the Franchised Business. Any advertising on the Internet, delivered by facsimile, electronic mail or other electronic means shall be pre-approved by us and on terms specified by us.

**VIII. OUR GENERAL DUTIES**

A. **Initial Training.** We will provide an initial training program for the operation of an E & G Restaurant using the System and Marks to the individuals you designate and we approve to be primarily responsible for the operation of the Franchised Business and who serve as your authorized representatives in matters concerning the Franchised Business (each, a "Key Operator"). At least one Key Operator you select and we approve must satisfactorily complete our initial training program prior to the opening of the Franchised Business. You must at all times employ at least one Key Operator who we approve and who has satisfactorily completed our training program. You will immediately notify us in writing of the loss of any Key Operator. At your request, we will train a second person during the same training session that we are training the Key Operator. You will pay us \$750 for this additional training. You may designate up to two Key Operators initially to receive the initial training program.

B. **Subsequent Training.** We may require any replacement Key Operator to attend and satisfactorily complete training. We may also provide refresher programs to experienced employees or managers. We are permitted to charge a reasonable fee for any subsequent training we may offer or require. We reserve the right to designate certain training programs or meetings as mandatory and to treat your failure to have a representative attend as a material breach of this Agreement. You must pay our then-current daily training fee for any subsequent training as well as the compensation of the trainees as well as such trainees' travel, lodging and personal expenses during any subsequent training.

C. **Opening Assistance.** We will provide opening assistance at your Franchised Location consisting of at least 1 person for a period of up to 5 days (which may or may not be consecutive), the exact number of hours and days to be determined by us. If you currently operate an E & G Restaurant, the opening assistance will not be offered unless we deem it necessary. If we reasonably determine you need additional opening assistance, or if you request additional opening assistance, we will provide it even if you currently operate an E & G Restaurant; provided that we reserve the right to charge you a reasonable fee for such assistance and you must reimburse us for the travel, lodging and personal expenses incurred while providing such assistance.

D. **Continuing Advisory Assistance.** We will make available continuing advisory assistance in the operation of the Franchised Business, rendered in such manner and available from time to time, as we may deem appropriate. We reserve the right to charge a reasonable fee for this type of assistance. The exact amount of assistance will be determined by us based upon our evaluation of your need for same, all determined in our sole discretion.

E. **Layout and Design.** We will provide you with suggestions for layout and design of a typical E & G Restaurant. These suggestions will not include the requirements of any federal, state, or local law, code, or regulation, including those concerning the Americans with Disabilities Act or similar rules governing public accommodations for persons with disabilities, nor will such suggestions include the

requirements of, or be used for, construction drawings or other documentation necessary to obtain permits or authorization to build the specific Franchised Location. Determination of and compliance with all such laws, codes and regulations is your sole responsibility.

## **IX. YOUR GENERAL DUTIES**

### **A. Franchised Location Opening and Construction.**

1. You agree to begin operation of the Franchised Business within 6 months after this Agreement is accepted by us. You must construct, improve, and equip your Franchised Location in accordance with the layout and design we provide to you, you must engage (at your expense) our approved supplier of architectural and design services, and you cannot open until you receive our written authorization that your Franchised Location meets our opening requirements which are listed in the Manual. You must pay for the cost of construction drawings and other documentation necessary to build, obtain permits or receive other necessary authorizations for constructing the Franchised Location. You must submit these plans and other documents, along with any revisions of them made during the construction process, to us for our consent prior to your use of them. Our review will be limited to reviewing these plans and documents to assess compliance with our design and layout specifications and standards for E & G Restaurants, including items such as trade dress, presentation of trademarks, and the provision to the potential customer of certain products and services that are central to the functioning of the Franchised Business under the System. Our review is not designed to assess, nor does it assess, compliance with federal, state, or local laws and regulations, including the Americans with Disabilities Act, as compliance with such laws is your sole responsibility. If you do not receive our consent to your use of any plans or other documents submitted to us, such plans or documents shall be deemed rejected. Notwithstanding the foregoing, we acknowledge that certain aspects of our layout and design may need to be modified to accommodate the existing layout and design of the Franchised Location, and we agree to reasonably consider your proposed alternatives to accommodate such existing design elements.

2. You shall provide us with the following construction notices: (a) no fewer than 45 days prior to completion, the anticipated construction completion date and, (b) the date on which your actual construction is completed. Within a reasonable time after the construction of your Franchised Location is completed, we have the right, but not the obligation, to conduct a final inspection of the Franchised Location for purposes of reviewing its conformity with our layout and design requirements and the other pre-opening requirements listed in the Manual or otherwise provided by us. You cannot open the Franchised Location or Franchised Business without first receiving our written authorization that the Franchised Location meets these requirements. In the event our inspection finds deficiencies in meeting these requirements, we may permit you to cure these deficiencies, in which case we have the right, but not the obligation, to conduct a subsequent inspection of the Franchised Location to determine whether you have corrected the deficiencies to our satisfaction. We have the right to charge you a fee of not more than \$1,000 plus the expenses we incur if we find deficiencies in your Franchised Location that will delay your opening. Notwithstanding the foregoing, except as provided below, you are still required to open your Franchised Location and Franchised Business within 6 months after this Agreement is accepted by us.

3. The opening of the Franchised Location and Franchised Business is permitted to be delayed only if the delay is caused by events or occurrences not within your control, such as acts of God, governmental restrictions, strikes or labor disputes, the occurrence of which we are given notice within a reasonable period time. You will use your best efforts to cure any delay. Any permitted delay in opening will only be for a period of days equal to the number of days during which such event actually prevents opening.

B. **Use of Name and System.** You agree that during the Term of this Agreement, you will operate, advertise and promote the Franchised Business under the Marks without prefix or suffix and to adopt and use the Marks and System licensed hereunder solely in the manner prescribed by us. You agree to identify the Franchised Location with a sign in compliance with applicable local ordinances and approved by us.

C. **Compliance with Laws.** You agree to operate the Franchised Location and the Franchised Business in compliance with applicable laws and governmental regulations and in accordance with the operational standards we may establish from time to time. At all times you will comply with all federal, state, municipal and local laws, rules, regulations, ordinances and codes applicable and related to this Agreement, the Franchised Location, and all aspects of the conduct of business at the Franchised Business. You must obtain all licenses and permits required by any applicable federal, state, municipal, and local law, rule, regulation, ordinance, and code to operate the Franchised Location and Franchised Business as required by this Agreement. You must make timely filings of all tax returns and pay when due all taxes levied or assessed on, and related to this Agreement and the Franchised Location. At no time are we required to inform you of any federal, state, municipal or local law, rule, regulation, ordinance, code or tax. Within 3 days of your receipt of each health and/or food safety inspection report you receive from the governmental authority(ies) governing food safety for your Franchised Location or Franchised Business, you must forward a copy of this/these reports to us. Determination of what laws, rules or regulations apply to the Franchised Location and your ownership and operation of the Franchised Business is your sole responsibility. We have no responsibility in determining what laws, rules or regulations apply to the Franchised Location or the Franchised Business.

D. **Standards of Operation.**

1. The Franchised Location and Franchised Business must conform with the mandatory standards set forth in the Manual relating to signage, color scheme, appearance, hours of operation, cleanliness, sanitation, menus, methods of preparation, employee uniforms, type of equipment, décor, and types of payment methods accepted, all as designated by us. Unless we give you our prior consent, you must offer all menu items and other products and services required by us in the Manual or in any other written instruction we give to you. You will not conduct any business or sell any products or services other than those approved by us. In addition, you agree to at all times dispense and sell such food items which are prepared in accordance with our secret recipes and which meet our uniform standards of quality, quantity, appearance and taste. Uniformity of products and services offered by all E & G Restaurants is of utmost importance to us and the entire System. If you offer to sell or do sell products or services which are not authorized or are not prepared in accordance with the Manual, or if you fail to conform with any other mandatory standards set forth in the Manual, you agree that we will be damaged. These damages will be calculated at the rate of \$1,000 per day for each day you offer or sell unauthorized products or services, and at the rate of \$100 per day for each day you fail to comply with the mandatory design, color scheme, appearance, hours of operation, cleanliness, sanitation, menus, methods of preparation, employee uniforms, type of equipment and decor requirements as set forth in the Manual, and these damages will be in addition to any other rights and remedies we may have against you. We have the right to collect these amounts in addition to exercising any and all other rights we may have for non-compliance under this Agreement. You agree that a precise calculation of the full extent of the damages that we will incur from the offer or sale of unauthorized products and services are difficult to determine and all parties desire certainty in this matter and agree that the damages provided here are reasonable and constitute liquidated damages and not a penalty. Notwithstanding anything herein to the contrary, you shall keep the Franchised Business open during the hours required by the Client. Further, you acknowledge that the menu offerings at your Franchised Business and certain operating procedures may also require modification to accommodate the Assigned Territory-specific characteristics like a shared kitchen facility with other businesses. All such

variations to the System must be approved by us in writing. Products and services we authorize may change from time to time in our sole discretion and you will be required to comply with any changes we make. You may need to make additional investment in order to comply with our product requirements.

2. You will not sell any product which is adulterated, contaminated, spoiled, unsafe or otherwise unfit for human consumption. You must keep the premises clean and provide prompt and courteous service to customers. We may, to the extent permitted by applicable law, set the prices for the products you offer at the Franchised Location. You agree to, and will take all steps as are necessary to, ensure that all of your employees treat each customer fairly and provide services in an honest, ethical and non-discriminatory manner. You must not advertise in a deceptive, misleading or unethical manner, and you agree to meet such minimum standards as we may establish from time to time in the Manual.

3. We may require you, as permitted by applicable law, to participate in a gift card or other customer loyalty programs and in sales, price and loyalty and special promotions, all in accordance with the provisions set forth in the Manual or otherwise disclosed to you. In order to participate, you may be required to purchase additional equipment and pay any fees applicable to the use of that equipment. We have the right to determine how the amount of the gift cards or loyalty cards will be divided or otherwise accounted for, and we reserve the right to retain the amount of any unredeemed gift cards. You understand that state or federal law may impact how gift card or loyalty card revenues are divided and accounted. In order to implement and manage the gift card or loyalty program, we reserve the right to view, access, or request the reporting of details and information regarding the use of gift cards or loyalty cards in your Franchised Business, including without limitation, transaction details and gift card or loyalty reward balance. You agree that such details and information may be used, with or without identifying information linking it to you or your Franchised Business, and in any manner we deem appropriate in our sole discretion, including without limitation for marketing and store analysis and comparison. You will have to pay any fees charged by our designated third-party suppliers (each, a “Loyalty Program Fee”) in connection with any customer loyalty program. The current charge is \$130 per month and is paid to third-parties. The Loyalty Program Fee is subject to change depending upon third-party pricing policies. Programs, promotions and specials may require you to make additional investment in equipment and products and may require you to sell product at controlled prices.

E. **Staffing.** You will maintain a competent, conscientious, and trained staff. You will be solely responsible for all employment decisions and functions of the Franchised Business including those related to hiring, firing, training, wage and hour requirements, record-keeping, supervision and discipline of employees. We are not the employer of any of your employees and you will indemnify, defend and hold us harmless for and against any claim, action, expense or cost related to any allegation or finding that we are a joint employer with you.

F. **Security and Safety Procedures.** You are solely responsible for taking necessary or appropriate security and safety measures to protect employees, customers, those engaging in business with you, those coming on the premises of the Franchised Location and the general public at large. We do not in any way share any of that responsibility.

G. **Computer System Integration.** Any point-of-sale computer system you use in connection with the Franchised Business must be capable of tracking all menu items and producing the reports necessary to give us accurate accountings of items and total sales as required by this Agreement or otherwise required by us from time to time. We have a right during the Term of this Agreement to evaluate your system to verify that it meets our minimum standards and capabilities. We may require that your system gets integrated with our systems, and if so you will be responsible to pay the cost for this integration. We will have the final decision on whether or not your computer system is adequate for use in connection with

the Franchised Business. If we determine that it is not adequate, you will need to purchase the computer system we designate from a third-party designated or approved by us.

H. **Insurance.** You will at all times maintain at your sole expense the minimum amounts and types of insurance (or such higher amounts required by the Client): (i) a commercial comprehensive general liability insurance policy with coverage of at least \$1,000,000 per occurrence and \$2,000,000 aggregate coverage; (ii) automobile liability insurance with minimum coverage of \$1,000,000 per occurrence (including hired and non-owned vehicle coverage for your employees); (iii) "special perils" property insurance coverage, which will include fire and extended coverage, for the property and furniture, fixtures and equipment owned, leased or used by you at the Franchised Location [your property insurance policy (including fire and extended coverage) must have coverage limits equal to at least actual "replacement" cost]; (iv) business interruption insurance with coverage of at least \$300,000 per occurrence; (v) if you, or any of your owners, owns, either directly or indirectly, the building where the Franchised Location is located, then you will insure the building or the business premises for and against special perils, loss and damages in an amount equal to at least actual "replacement" cost; (vi) workers' compensation insurance for your employees as required by applicable law; and (vii) umbrella liability insurance in the minimum amount of \$1,000,000.

We may, from time to time, in our sole discretion, make such changes in minimum policy limits, coverage, and endorsements as we may determine. You agree to comply with any of these changes, at your sole cost and expense. All general liability insurance policies will name us and our successors and assigns as additional insured and will provide that we must receive 30 days prior written notice of any termination, expiration, or cancellation of the insurance policy. Each year you must provide us with a certificate or other evidence of your compliance with our insurance requirements. If you fail to maintain such insurance, we may procure such insurance on your behalf and will be entitled to reimbursement from you of our costs to do so, in addition to any other rights and remedies we may have under this Agreement. However, we are not obligated to obtain such insurance on behalf of you. Regardless of the amounts set forth above, it will be your responsibility to maintain adequate insurance coverage at all times during the Term of this Agreement and after the expiration or termination of the Term of this Agreement. You recognize that the levels of insurance described above are merely a minimum requirement. You should determine if additional insurance is necessary through consultation with your advisors. Your failure to maintain coverage will not relieve you of any contractual responsibility or obligation or liability under this Agreement.

I. **Inspections.** You must permit our representatives or agents or the representatives or agents of our Affiliates to (i) enter the business premises with or without notice during regular business hours to inspect the Franchised Location and audit the Franchised Business operations, including all books and records; (ii) observe, photograph and videotape the operation of your Franchised Business for such consecutive or intermittent periods as we deem necessary; (iii) remove samples of any products, materials or supplies for testing and analysis; and (iv) interview personnel and customers of your Franchised Business. You also grant us permission to examine all records of any supplier from whom you have made purchases. You will keep on file and make available for our review the following documents and reports: weekly inventory sheets, deposit slips, bank statements and canceled checks, sales and purchase records, business tax returns and such other accounting records for such periods of time as is necessary to provide appropriate documentation in the event of an audit of your business by any governmental taxing authority having jurisdiction over you. Our right to approve certain matters, to inspect the Franchised Location and the Franchised Business operations and to enforce our rights, exists to protect our interest in the System and Marks for the benefit of us, our Affiliates and all E & G Restaurants, and to ensure compliance with this Agreement. Neither the retention nor the exercise of these rights is for the purpose of establishing any control, or the duty to take control, over those matters that are clearly reserved to you, nor will they be construed to do so. After any inspection of your Franchised Location, our representatives or agents or the

representatives or agents of our Affiliates may prepare and deliver a written store inspection summary ("OER") to you, a manager, or an employee of your Franchised Business that is present during the inspection that identifies your failure to perform obligations under the Manual or this Agreement that must be cured under Section XIII.A.1. In the event you do not pass any inspection, we may issue a correction plan and re-inspect the Franchised Business. In the event any inspection determines deficiencies or other non-compliance with the requirements of this Agreement or the Manual, we may require you to undertake a plan to correct and cure such non-compliance, and we may charge you our then-current re-inspection fee and require you to reimburse us for all costs and expenses, including but not limited to travel expenses, incurred in conducting each re-inspection of the Franchised Business. The institution of such plan of correction is in addition to all other remedies we have under this Agreement. The obligations of this provision survive termination or expiration of the Term of this Agreement.

J. **Cooperation for Financial Performance Representations.** You will maintain your books and records in accordance with generally acceptable accounting principles, consistently applied. If we at any time desire to utilize a financial performance representation or similar disclosure in connection with the sale of franchises, you agree to provide us, at no cost, such reasonable information as we may require in order to properly prepare such representation, and will permit us to utilize such information as we deem necessary.

K. **Innovations.** You hereby grant to us a worldwide, perpetual, non-exclusive and fully paid license to use and sublicense the use of all ideas, concepts, techniques, innovations, developments, improvements, suggestions or materials concerning an E & G Restaurant, whether or not protectable intellectual property and whether created by or for you or your owners, affiliates, employees or representatives.

L. **Remodeling.** We may require you to make capital expenditures to remodel the Franchised Location to reflect our then current standards for E & G Restaurants. Compliance with these standards may be an ongoing obligation of yours, and may be a condition of our consenting to a renewal of this Agreement, or our consenting to a Transfer.

M. **Financial Reports.** You will maintain and preserve for at least 5 years from the dates of their preparation, full, complete, and accurate books, records and accounts in accordance with generally accepted accounting principles and in the form and manner prescribed by us from time to time. You will send us, within 60 days of the end of your fiscal year, a profit and loss statement, balance sheet, and cash flow analysis (together with footnotes) for the preceding fiscal year reflecting all year-end adjustments for the Franchised Business. You will also send us monthly and year-to-date profit and loss statements and balance sheets within 20 days after the end of each month following the opening of the Franchised Business, and, upon our request, you will send us exact copies of all yearly state and local sales, use and service tax returns and your yearly federal and state income tax returns for the Franchised Business. On Tuesday of each week you will send us a Net Revenues Report based on the preceding week (Monday to Sunday), together with such other data, information and supporting records requested by us. However, you will not be obligated to disclose confidential tax returns if such disclosure would violate applicable state law.

N. **Assignment by You.** You and your owners, members, managers, and other persons involved in the operation of your Franchised Business grant us an irrevocable, world-wide, royalty-free license to use your name, voice, contact information, photographs of you, your likeness or images of the Franchised Location, in any manner we deem appropriate in our sole discretion, including our or our Affiliates' use on any Internet domain or website we create or through any other Internet representation we deem appropriate for the System. This provision will survive the termination or expiration of the Term of this Agreement.

O. **Maintenance of the Franchised Location.** You must keep the exterior and interior of your Franchised Location and all fixtures, equipment, furnishing and signs of your Franchised Business in the highest degree of cleanliness, orderliness, sanitation and repair and in accordance with the Manual. You may not make any material alternations, additions, replacements or improvements to your Franchised Location without our prior written consent. You shall equip the Franchised Location with furniture, fixtures, signs and equipment including computer equipment and you will use the computer software as required in the Manual, which we may change or modify from time to time. You acknowledge and understand that in the future, and from time to time, you may be required to upgrade or purchase or lease new or different furniture, fixtures, equipment and signs. You acknowledge and agree that we have the right to independently access all information collected or compiled by you at any time without first notifying you. There are no contractual limitations on our right to access and use such information in any manner we deem appropriate.

X. **PROPRIETARY MARKS**

A. **Right to Use Marks.** You acknowledge that the Marks are our valid service and/or trademarks. You recognize that valuable goodwill is attached to the Marks, and that you will use the Marks only in the manner and to the extent specifically licensed by this Agreement. Any goodwill arising out of your use of the Marks inures to our benefit. You further acknowledge that the right to use the Marks and the grant contained in this Agreement is non-exclusive. Any unauthorized use of the Marks by you is a breach of this Agreement and an infringement of our rights. All provisions of this Agreement applicable to the Marks apply to any additional service marks, trademarks, trade dress, trade names, logos, commercial symbols and copyrights hereafter authorized for use by, and licensed to, you.

B. **Contest of Marks.** You will not directly or indirectly contest or aid in contesting the validity or ownership of the Marks, trade secrets, methods, procedures and advertising techniques which are part of the System, or contest our rights to register, use or license others to use the Marks or the System. You will not at any time (whether during or after the Term of this Agreement) directly or indirectly infringe on our rights to or in the Marks. You agree to promptly notify us of any claim, demand, or suit based upon or arising from any attempt by anyone else to use the Marks, or any colorable variation thereof. We will have the sole discretion to determine if we will defend the use of the Marks, and we are not obligated to defend the Marks. We have the right to control any administrative proceeding or litigation involving the Marks. You will execute any and all instruments and documents, render assistance and do such acts as may, in the opinion of our counsel, be necessary or advisable to protect our interests in any such litigation or proceedings, or to otherwise protect and maintain our interest in the Marks.

C. **Prohibition on Use of Name.** You will not use any of the Marks as part of your company name with any prefix, suffix, or other modifying words, terms, designs or symbols. You will, however, identify yourself as our franchisee, solely with the logos and marks licensed by us to you hereunder. You will not incur any obligations or indebtedness except in your name. Further, you will not use our name or Marks (or any marks or names confusingly similar to our name or Marks) as an Internet domain name or in the content of any world wide website.

D. **Change of Marks.** We will have the right to change the Marks to be used by you at any time and for any reason we deem appropriate. You will pay the costs associated with any change in the Marks we make, and you will make these changes promptly.

E. **Use of Marks on the Internet.** You shall not use the Marks (or any marks or names confusingly similar to the Marks, or any abbreviation, acronym or variation of the Marks) as an Internet



domain name or in the content of any social media or other world wide web site. We and our Affiliates retain the sole right to advertise on the Internet and create a website using any of the Marks or any variation of the Marks. We and our Affiliates retain the sole right to determine the content on any website we create. We retain the right to pre-approve your use of linking and framing between your web pages and all other websites. You will, within 5 days after our request, dismantle any frames and links between your web pages and any other websites. You will comply with all policies and procedures that we may establish from time to time for use of the Marks and advertising on the Internet.

**XI. CONFIDENTIAL INFORMATION**

You acknowledge that the trade secrets, information, ideas, research, methods, manuals, sales and marketing procedures, systems, improvements and copyrighted materials, etc., including the Manual, owned or developed by or licensed to us, whether or not published, confidential or suitable for registration or copyright, and the goodwill associated with them, are and shall remain our sole and exclusive property. This information is provided or revealed to you in trust and confidence. You will not, during the Term of this Agreement, or after a Transfer, or termination or expiration of the Term of this Agreement, communicate or divulge to anyone, any such information or knowledge including ingredients, recipes, methods of preparation of food and beverage products, specifications, standards, methods, procedures, sales and marketing materials, knowledge of the System and experience in operating an E & G Restaurant and other information or material which we may designate as confidential ("Confidential Information"), nor will you disclose, use or divulge in whole or in part any Confidential Information, unless the information is generally known and in the public domain, and except to the extent necessary to operate the Franchised Location and Franchised Business. You will ensure that each of your employees exercises the highest degree of diligence and makes every effort to maintain the absolute confidentiality of all trade secrets and proprietary rights during and after the Term of this Agreement. In addition to all other requirements set forth in this Section XI, you agree to have all Key Operators execute a confidentiality and non-disclosure agreement in a form we approve. We shall have the right to independently enforce such agreements against your Key Operators. At our request, you shall promptly deliver copies of all signed confidentiality and non-disclosure agreements with your Key Operators.

**XII. NON-COMPETITION**

A. **Competing Business During the Term of this Agreement.** You acknowledge the uniqueness of the System and that we are making our knowledge, know-how and expertise available to you for the purpose of operating the Franchised Business strictly and solely within the Assigned Territory. You agree that it would be an unfair method of competition for you to use or duplicate or to allow others to use or duplicate any of the knowledge, know-how or expertise you receive from us or our Affiliates for any reason other than for the operation of the Franchised Business under this Agreement. You further recognize the importance of devoting substantial time and energy to the Franchised Business. Therefore, you warrant that during the Term of this Agreement, unless you have our prior written consent, neither you nor any of your owners will directly or indirectly perform any services for, engage in or acquire, be an employee of, have any financial, beneficial or equity interest in, or have any interest based on profits or revenues of any Competitive Business operated within the Assigned Territory except as a duly licensed franchisee of us (except for a 5% or less beneficial interest in a reporting company registered under the Securities Act of 1933, as amended).

B. **Reasonableness of Restrictions.** You acknowledge and confirm that the length of the term and geographical restrictions contained in Sections XI and XII are fair and reasonable and not the result of overreaching, duress or coercion of any kind. You acknowledge and confirm that your and their full, uninhibited and faithful observance of each of the covenants contained in Sections XI and XII will not

cause any undue hardship, financial or otherwise, and that enforcement of each of the covenants contained in this Sections XI and XII will not impair your or their ability to obtain employment commensurate with your or their respective abilities and on terms fully acceptable to you or them or otherwise to obtain income required for your or their comfortable support and, if such person is an individual, his or her family, and the satisfaction of the needs of his or her creditors.

C. **Enforcement.** You acknowledge that to disregard the provisions of Sections XI and XII would effectively foreclose us from selling other franchises and you could be unjustly enriched and unfairly derive benefit from the goodwill of and training you receive from us. Moreover, the E & G Restaurants could be severely disadvantaged if you compete against them using the Marks or other Confidential Information. We intend to restrict your activities under Sections XI and XII of this Agreement only to the extent necessary for the protection of our Affiliates' and our legitimate business interests and the legitimate business interests of the licensees and franchisees of us or our Affiliates. Each of the foregoing covenants will be construed as severable and independent and will be interpreted and applied consistent with the requirements of reasonableness and equity. In the event a court of competent jurisdiction will determine the business, time, or geographic limitations contained in this Agreement are illegal, invalid, or unenforceable, then, the court so holding will reduce the limitation necessary to render such restriction enforceable by the court. We will have the right to reduce the scope of any covenant contained in Sections XI and XII, without your consent, effective immediately upon receipt by you of our written notice; and you will comply with any reduced covenant. In addition to any other remedies available at law or equity, we will have the right to injunctive relief for your violation or threatened violation of any covenant described in Sections XI and XII. The terms of this non-compete are assignable by us and will inure to our benefit, as well as our successors and assigns. In the event of any assignment, sale, merger or change in our ownership or structure, the resulting entity will step into our place, without any additional consent of or notice to you, as if the term "us" was defined in this Agreement to include such entity.

**XIII. DEFAULT AND TERMINATION**

A. **Termination By Us.**

1. **30 Days' Opportunity to Cure.** We may, at our option, and without prejudice to any other rights or remedies provided for in this Agreement or at law or in equity, terminate the Term of this Agreement for "good cause". Without limitation as to other situations, "good cause" for termination also exists if you:

- (1) Do not substantially perform all of the lawful terms, conditions, and obligations of this Agreement, or the mandatory obligations under the Manual; or
- (2) Lose possession of the Franchised Location and fail to secure a suitable site for relocation which we consent to within 3 months of so losing possession; or
- (3) Default under the terms of the lease for the Franchised Location; or
- (4) Misrepresent Net Revenues in any report submitted to us; or
- (5) Lose any permit or license which is a prerequisite to the operation of the Franchised Business for a period of at least 5 days; or

- (6) Misuse the Marks or Confidential Information, or engage in conduct which, in our opinion, reflects unfavorably upon the operation, maintenance, goodwill and/or reputation of the System; or
- (7) Are adjudged bankrupt, become insolvent, or make a general assignment for the benefit of creditors (subject to paragraph XIII.A.3.(d) below); or
- (8) Are convicted of, plead guilty or no contest to, or commit or are alleged to commit any criminal misconduct which materially and adversely affects the operation, maintenance, reputation or goodwill of the Franchised Business or the System (subject to paragraph XIII.A.3.(a) below); or
- (9) Commit any other act which constitutes good cause under applicable state law or court decision; or
- (10) Fail to keep the Franchised Business open for a period of 3 consecutive days without justifiable cause; or
- (11) Fail to pay any lawful debt or tax when due; or
- (12) Surrender or transfer control of the Franchised Business (including entering into a management arrangement with any person who does not meet our standards, including satisfactorily completing our initial training program), or make an unauthorized direct or indirect Transfer.

Subject to applicable law and except as otherwise provided in this Agreement, we will give you at least 30 days' prior written notice of default (except that, if state law permits, we will have the right to terminate earlier if the "good cause" constitutes a default that is not curable). The notice will state the reason(s) for default and will provide that you have 30 days from the date of the notice to correct any claimed deficiency. If the default is corrected within this period, the notice will be void. If the default is not corrected within this period, we have the right to terminate the Term of this Agreement immediately. We have the right to assess our then-current re-inspection fee and to be reimbursed our expenses incurred in confirming whether or not you have cured the defaults identified.

2. **7 Days' Opportunity to Cure.** We may also terminate the Term of this Agreement for non-payment of sums due to us or our Affiliates or suppliers; your failure to open the Franchised Business for business 6 months after our acceptance of this Agreement; the sale of products in your Franchised Business that have not been approved by us; or your failure to immediately correct and cure a threat or danger to the public health or safety resulting from the construction, operation or maintenance of the Franchised Business. Subject to applicable law and except as otherwise provided in this Agreement, if termination is based on the foregoing, we will give you at least 7 days' prior written notice of default (except that, if state law requires a longer period, you will be granted the longer period, and except that if state law permits, we will have the right to terminate earlier if the claimed deficiency constitutes a default that is not curable). The notice will state the reason(s) for default and will provide you with at least 7 days from the date of the notice to correct any claimed deficiency. If the deficiency is corrected within this period of time, the notice will be void. If the deficiency is not corrected within this period of time, then we have the right to terminate the Term of this Agreement immediately. We have the right to assess our then-current re-inspection fee and to be reimbursed our expenses incurred in confirming whether or not you have cured the defaults identified.

3. **Without Opportunity to Cure.** Notwithstanding anything contained herein to the contrary, if state law permits, we will be permitted to terminate the Term of this Agreement immediately and without notice when the basis or grounds for termination is: (a) you are alleged to have committed or you are convicted of a felony or any other criminal misconduct that materially and adversely affects the operation, maintenance, reputation or goodwill of the Franchised Business or the System; (b) fraudulent activity that materially and adversely affects the operation, maintenance, reputation or goodwill of the Franchised Business or the System; (c) abandonment of the Franchised Business; (d) your bankruptcy or insolvency; (e) your failure or refusal to comply with the lawful provisions of this Agreement (i.e., 2 or more times in any 24 month period) whether or not such failures or refusals are corrected after notice; (f) your making or having made any material misrepresentation or omission in the application for this franchise; (g) any violation of any non-competition, non-solicitation or confidentiality obligation contained in this Agreement; or (h) any other act or omission that permit termination without notice and/or an opportunity to cure under applicable state law.

B. **Termination by You.** You must notify us in writing of any failure of us to perform any of our obligations pursuant to this Agreement. You may terminate the Term of this Agreement only if we materially default in our performance of any terms and conditions in this Agreement, you give us written notice within 30 days of this material default, and we fail to cure this material default within 60 days of our receipt of your written notice of default. In addition, you have the right to terminate the Term of this Agreement if the Client requires the discontinuance of the Franchised Business at the Franchised Location, or if you lose the right to operate the Franchised Business at the Franchised Location.

C. **Consequences of Termination.** Upon a Transfer, or the termination or expiration of the Term of this Agreement for any reason whatsoever, all of your rights hereunder will terminate, and you will do each of the following:

1. You will cease to be our franchisee and cease to operate the Franchised Business under the System and Marks. You will not thereafter directly or indirectly represent to the public that the business at the Franchised Location is or was operated or in any way connected with the System or hold yourself out as a present or former franchisee of ours at or with respect to the Franchised Location.

2. You will immediately discontinue use of all Marks, signs, colors, structures, printed goods and forms of advertising indicative of our business, any E & G Restaurant or the System, return any Confidential Information or other copyrighted materials, including the Manual, to us, and complete any and all such additional tasks we have established or may establish from time to time as Franchised Business closing procedures. Unless we have approved a Transfer, you will remove to our satisfaction all items in your store that are a part of the E & G Restaurant trade dress, regardless of whether you continue to lease the location or operate a business therein, including without limitation, repainting all paintable surfaces with an alternative, neutral color. In the furtherance of your obligations in this paragraph, we may provide, as part of the Manual or otherwise, a checklist of Franchised Location closing procedures you must complete to de-identify your Franchised Location, furniture and other personal property in order to protect our Marks and our Confidential Information. You will complete any and all such tasks and fulfill any all such obligations that we deem necessary in our sole and absolute discretion to protect our Marks and Confidential Information, and we may require you provide us written or photographic proof of your compliance.

3. If we request, you will assign your telephone numbers, Internet domain address, white and yellow page telephone references and other advertising to us or any of our designees, including any other E & G Restaurant.

4. You will pay all amounts due to us, our Affiliates and suppliers.

5. You will cancel any assumed name registration or equivalent registration which contains the Marks or any derivation thereof and you will furnish us with evidence satisfactory to us of your compliance with this obligation within 5 days of a Transfer, or the termination or expiration of the Term of this Agreement.

6. You will comply with all post-term covenant obligations of this Agreement including the trade secrets, Confidential Information and indemnification obligations.

Neither the Transfer, nor the termination or expiration of the Term of this Agreement will relieve you of any of your obligations to us or our Affiliates existing at the time of such Transfer, termination or expiration, nor will it terminate your obligations that, by their nature, survive a Transfer, or the termination or expiration of the Term of this Agreement. Furthermore, a Transfer, or the termination or expiration of the Term of this Agreement will be without prejudice to our rights against you; and in the event of a termination which is the result of your material breach or default under this Agreement, we will, in addition to our rights set forth above, also be entitled to all rights and remedies available at law or in equity.

**D. Our Right to Purchase Personal Property.** After the termination or expiration of the Term of this Agreement, but not upon an approved Transfer pursuant to Section XVI.B, we will have the right, but not the obligation, to purchase any or all of your equipment, inventory, supplies and other personal property used in connection with the operation of the Franchised Business. The purchase price will be at fair market value, less any liens, which will be established (if the parties are unable to agree) by an appraisal of an independent restaurant appraiser. Within 10 days after an appraisal is required or appropriate under any provision of this Agreement, we and you will by written notice to the other select our respective appraisers. All appraisers will be required to be reasonably qualified and have at least 3 years of experience in appraising restaurants. If either party fails to name an appraiser within the specified time, such party waives its right to select an appraiser and the appraiser selected by the other party will be solely responsible for conducting the appraisal process. Each appraiser will proceed to promptly determine the fair market value of the assets, taking into consideration any outstanding indebtedness, liabilities, liens and obligations relating to the Franchised Business. No value will be ascribed to goodwill, going concern value or other intangibles. Each appraiser will deliver his appraisal to us and you within 60 days after the appraiser is appointed. If the difference between the 2 appraisals is not greater than 20% of the higher appraisal, then the 2 appraisals will be averaged and the average price will be used to determine the purchase price under this Agreement. If, however, the difference between the 2 appraisals is greater than or equal to 20%, then the 2 appraisers will appoint a third appraiser. If the 2 appraisers cannot agree upon a third appraiser, then either party may request an arbitrator (in accordance with the arbitration provisions of this Agreement) to appoint a third appraiser. The third appraiser will promptly proceed to appraise the assets on the same basis as set forth above. The appraisal by the first 2 appraisers that is closer in value to the appraisal by the third appraiser will be the fair market value of the assets and be binding on all the parties. Each party will pay the fees and expenses of the appraiser it selects. The fees and expenses of the third appraiser, if necessary, will be paid equally by the parties appointing the 2 appraisers; provided that if you fail to pay your share of the cost of the third appraiser, then we shall have the right to pay the appraiser on your behalf and reduce the purchase price to be paid for the assets by the amount of such unpaid cost. We will have 30 days after the determination of fair market value, to exercise our rights granted by this paragraph, and we will have an additional 30 days to pay for the property we desire to purchase. If we fail to exercise our rights within the time periods set forth above, you will be free to otherwise sell or dispose of the personal property used in connection with the operation of the Franchised Business, but only after the Marks have been removed from the personal property at your sole cost and expense.

#### **XIV. SOURCES OF PRODUCTS**

##### **A. Purchasers from Approved Suppliers.**

1. You are required to purchase products, services, supplies, equipment, payment processor and materials required for the operation of the Franchised Business that meet our specifications, and you must purchase such items only from manufacturers, suppliers or distributors designated by us, or from other suppliers we approve who meet our specifications, including from us or our Affiliates. You may pay higher prices for some products and services that you could acquire substantially similar products or services from parties who are not manufacturers or suppliers required by us. Consistency of products and services, however, is important to the System and building brand value through consistent consumer experiences with and among E & G Restaurants. Specification of a supplier may be conditioned on requirements relating to frequency of delivery, standards of services, including prompt attention to complaints, as well as payments, contributions, or other consideration to us, our Affiliates or the Advertising Fund, and may be temporary, in each case in our reasonable discretion. We may, from time-to-time withhold, condition and/or revoke our approval of particular items or suppliers in our reasonable discretion. We or our Affiliates may receive rebates, commissions, and other benefits from suppliers in relation to items purchased by you and other franchisees. We have the right to condition or revoke your right to participate in any supplier programs if you are in default under this Agreement.

2. You may propose alternative products, services, supplies, equipment and materials for the operation of your Franchised Business, as well as alternative manufacturers, suppliers or distributors. However, we may require that samples of or from these proposed alternatives be delivered to us for testing prior to approval and use. Further, all proposed manufacturers, suppliers or distributors must agree to permit our agents or representatives to inspect their facilities regularly, both initially and from time to time as may reasonably be required by us to assure us of the proper production, processing, packaging, storing and transportation of the products, services, supplies or equipment and materials to be purchased by you. We have the right to require you to pay us a reasonable fee based on the cost of the test or inspection made by us or by an independent testing laboratory designated by us. We will advise you within 45 days of our approval or disapproval of any proposed alternate sources of products, services, supplies, suppliers, materials, and equipment. The foregoing will not be construed as an attempt to unreasonably limit the sources from which you may procure its products, services, supplies, and materials. Rather, it is our intention that such items conform to our strict standards and strict specifications as to consistent quality, uniformity, and reliability. Further, we will not be required to approve an inordinate number of alternative suppliers of a given item that in our reasonable judgment would prevent our effective supervision of suppliers. We may require your supplier to sign a confidentiality agreement.

**B. Required Purchases from Us or Our Affiliates.** With respect to items for which we or our Affiliates are designated as an approved supplier, you acknowledge that your agreement to purchase such items from us or our Affiliates is a material condition upon which this franchise is granted. If our Affiliates or we are unable to offer any of these items, we may designate an approved supplier or suppliers for these products.

1. **Availability.** Contingent upon the availability of products, we or our Affiliates will use our commercially reasonable efforts to supply such products to you within a reasonable time after the receipt of your orders therefore; provided that neither we nor our Affiliates warrant that: (i) it will be able to obtain all such products, or (ii) that the products will be obtained by the dates requested.

2. **Pricing.** We or our Affiliates shall establish and have exclusive control over the prices, discounts, specifications, and all other terms and conditions governing the sale of products to you. Pricing of products is subject to change at any time or from time to time in our or our Affiliates' sole discretion, effective upon 30 days prior notice to you. Generally, prices will change when the manufacturer's prices to us or our Affiliates change.

3. **Terms of Purchase.** All terms of purchases from us or our Affiliates shall be established by our Affiliates or us from time to time.

## **XV. CONFIDENTIAL OPERATIONS MANUAL AND CHANGES**

A. We will lend you for the duration of the Term of this Agreement one copy of the Manual. You agree to comply with the mandatory requirements in the Manual and acknowledge your compliance is an essential part of your obligations under this Agreement. You will at all times be responsible for ensuring that your employees and all other persons under your control comply with the mandatory provisions of the Manual in all respects. The Manual constitute a confidential trade secret of ours and will remain our property. The Manual cannot be photocopied, reproduced, or disseminated without our written consent. We may modify the Manual from time to time in our discretion, and you agree that from time to time we may reasonably change the System. You expressly agree to comply with each modification, addition, or deletion of the System or Manual at your sole cost and expense. You acknowledge that due to the changing nature of the restaurant business, as well as changing attitudes of customers and other factors, changes to the System or the Manual may be necessary and may involve your expenditure of substantial sums of money.

B. We agree to impose any of these changes in a reasonable, non-discriminatory manner among other, similarly situated franchisees. However, because complete and detailed uniformity under many varying conditions may not be possible or practical, we specifically reserve the right and privilege, in our sole discretion and as we may deem to be in the best interests of the System in any specific instance, to vary standards for any particular franchisee based upon the peculiarities of a particular territory, density of population, business potential, business practice or other condition important to the successful operation of a particular E & G Restaurant. We may grant variations from standard specifications and practices as we determine in our discretion, and we will have no obligation to grant you or any other franchisee like or similar variations and our failure to require a change from any particular franchisee will not affect your obligations under this paragraph.

C. You will at all times ensure that your copy of the Manual is kept current and up-to-date. In the event of any dispute as to the contents of the Manual, the terms of the master copy of the Manual maintained by us will be controlling.

## **XVI. TRANSFERABILITY OF INTEREST**

A. **By Us.** We are free to assign all of our rights and obligations under this Agreement, and upon such assignment we will be relieved of all liability under this Agreement, and all rights and obligations will accrue to our successor or assignee.

B. **By You.** The rights and duties created by this Agreement are personal to you. We have granted this franchise in reliance upon our perception of the individual and collective character, skill, attitude, and business and marketing abilities of you and your owners. Therefore, there can be no Transfer without our prior written consent. Any such consent by us will not operate as consent to any future Transfer, and no future such Transfer will be valid without our prior written consent to that specific Transfer. Any attempted Transfer in violation of this paragraph is voidable at our option. If we elect not to exercise our

right of first refusal pursuant to Section XVI.D below, we will not unreasonably withhold our consent to such a Transfer, provided that the following conditions are satisfied:

1. **Governmental Compliance.** The Transfer is conducted in compliance with applicable laws and regulations.
2. **Prior Compliance.** You have performed your obligations and duties under this Agreement and you are not in default under this Agreement, or any other agreement with us or our Affiliates.
3. **Payments.** You have paid all amounts owed to us and our Affiliates, and all other outstanding obligations relating to the Franchised Location and the Franchised Business are fully paid and satisfied.
4. **Release.** To the extent permitted by law, you, including all officers, directors and owners must execute a general release, in the form we approve, of any and all claims against us, our Affiliates, and our and their respective officers, directors, employees and agents.
5. **Requirements of Transferee.** The transferee meets the established standards for new franchisees, is of good moral character, has a good credit rating, and sufficient financial resources to operate the business and competent qualifications. The transferee must execute the most current Franchise Agreement for the state in which the Franchised Location is located, which agreement may include different terms and conditions than this Agreement. The transferee must not have any interest that violates any provision of the Franchise Agreement the transferee will be required to sign.
6. **Transfer Fee.** You pay us a transfer fee of \$5,000, which we will accept in lieu of the Initial Franchise Fee required in the then current form of Franchise Agreement for the state in which the Franchised Location is located.
7. **Assumption of Liabilities.** The transferee agrees to assume all liabilities and obligations from you and your operation of the Franchised Business, including the lease, and must comply with other reasonable requirements we may impose.
8. **Completion of Training.** The transferee and/or transferee's management team, including the person(s) designated to be the Key Operator(s), must successfully complete the initial training program.
9. **Update and Remodel Franchised Location.** The transferee updates and remodels the Franchised Location to comply with our then current standards for new E & G Restaurants.
10. **Economically Reasonable Terms.** Although we will not be required to determine the value of business upon a Transfer, if in our reasonable judgment, the purchase price or other terms of sale are not economically feasible to the proposed transferee, we can withhold our consent to such Transfer. Our consent is not, however, to be construed as an implication or warranty that the terms of the sale are in fact economically feasible. We may, in good faith, notify you and the proposed transferee, stating the reasons that we have elected to withhold our approval of the proposed Transfer.



## **XVII. INDEPENDENT CONTRACTOR/INDEMNIFICATION**

A. **Independent Contractor.** We and you are independent contractors, and no partnership, fiduciary, joint venture, or employment relationship exists between you and us. You will conspicuously identify yourself at the Franchised Location and in all dealings with the public as an independently owned business in the manner we may proscribe from time to time. Other than as expressly provided in this Agreement, we have no control over the terms and conditions of employment of your employees or agents or any of their activities. We have not authorized or empowered you to use the Marks except as provided by this Agreement and you must not employ any of the Marks in signing any contract, check, purchase agreement, negotiable instrument or legal obligation, application for any license or permit, or in a manner that may result in liability of us for any indebtedness or obligation of you. Except as set forth in Section XIII.E above, neither we nor you will make any agreements or representations in the name of or on behalf of the other that their relationship is other than franchisor and franchisee.

B. **Indemnification.** Under no circumstances will we be liable for any act, omission, debt, or other obligation of you. You will indemnify, defend and save harmless us and our employees, agents, officers, directors, parents, subsidiaries, affiliates, successors and assigns (each an "Indemnitee") from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, costs and expenses (including legal fees and expenses) of any kind and nature whatsoever, including damages or injuries suffered by any Indemnitee, which may be imposed on, incurred by or asserted against any Indemnitee in any way arising out of the acts or omissions of you or your employees, agents, officers, directors, parents, subsidiaries, affiliates, successors and assigns pursuant to or in connection with the operation of the Franchised Business regardless of whether the Indemnitees were negligent or that this negligence was a contributing factor in any Indemnitee's liability (to the extent permitted by applicable law).

## **XVIII. DISPUTE RESOLUTION**

A. **Mediation.** Except as provided in Section XVIII.C below, before any party may bring an action in court for any controversy, dispute or claim between you and us arising from this Agreement or the franchise relationship set forth in this Agreement, the parties must first have a conference with each other to try to resolve the dispute. If this fails to bring about a resolution, the dispute will first be submitted to non-binding mediation (the "Mediation") in Eau Claire, Wisconsin, unless the parties mutually agree to another location. The Mediation shall be conducted in accordance with then-current AAA mediation rules (the "AAA Mediation Rules") except to the extent the AAA Mediation Rules differ from the terms of this Agreement, in which event the terms of this Agreement shall be applied. Notwithstanding the foregoing, the mediation does not have to be conducted under the AAA. You and we will select the mediator. If the parties cannot agree on the selection of a mediator, the mediation shall be conducted through the AAA who will make the selection of mediator using their rules and guidelines. The cost of the Mediation, including the mediator's fee and expenses, shall be paid by you. All negotiations and mediation proceedings (including without limitation, discovery conducted therein, as well as all statements and settlement offers made by either party or the mediator in connection with the Mediation) shall be strictly confidential, shall be considered as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and state rules of evidence, and shall not be admissible or otherwise used in connection with any court or arbitration proceeding for any purpose. The mediator may not be called as a witness in any court or arbitration proceeding for any purpose. If the parties, after a good faith effort to settle the dispute using Mediation, are unable to reach settlement, you and we agree that the dispute will be resolved according to the Sections below. Failure to submit the dispute to Mediation prior to commencing any litigation or arbitration proceeding shall be grounds for dismissal of the litigation or arbitration proceedings.

**B. Arbitration.**

1. Any dispute which has not been resolved by mediation within ninety (90) days of the initiation of such mediation will, subject to Section XVIII.C below, submit the dispute to binding arbitration conducted in Eau Claire, Wisconsin (unless the parties mutually agree otherwise). The arbitration proceeding will be conducted in accordance with the then current commercial arbitration rules of the American Arbitration Association ("AAA Rules"), except to the extent the AAA Rules differ from the terms of this Agreement, in which event the terms of this Agreement will apply. Notwithstanding the foregoing, the arbitration does not have to be conducted under the AAA. The arbitrator must be mutually selected by the parties and must have at least 5 years of substantial experience in franchise law. Each party will be limited to 25 document requests, 15 interrogatories and 1 deposition unless otherwise agreed to between the parties. For purposes of this Section, if any dispute that names, involves or includes us, our respective affiliates, officers, directors, agents, brokers or employees, such persons or entities shall also be included in and made party to the arbitration proceeding to the extent such parties consent to proceeding forward in arbitration.

2. The arbitrator will have the right to award or include in his award any relief which he deems proper in the circumstances, including money damages (with interest on unpaid amounts from date due), specific performance, and attorneys' fees and costs; however, the arbitrator will not be allowed to award or include in his award any punitive, exemplary, or consequential damages, to which the parties waive any right. The arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve any dispute relating to the interpretation, applicability or enforceability of this Section, including but not limited to any claim that all or any part of this Section is void or voidable. The award and decision of the arbitrator will be conclusive and binding upon all parties, and judgment upon the award may be entered in any court of competent jurisdiction; however, the arbitrator may not under any circumstances: (1) stay the effectiveness of any pending termination of this Agreement; or (2) make any award which extends, modified or suspends any lawful term of this Agreement. Each party waives any right to contest the validity or enforceability of the award of an arbitrator under this Section except to the extent permitted by applicable law. The arbitrator must submit a reasoned award and this award must be consistent with the terms of this Agreement. If the arbitrator's award is not reasoned or not consistent with the terms of this Agreement, then notwithstanding the foregoing, we may appeal the arbitration award in Federal or State Court. An arbitration award or decision entered in any other case (whether or not we were a party) will not be binding on us in any other dispute, will have no precedential value and cannot be used as evidence in any other proceeding.

3. The arbitrator will apply the provisions of any applicable statute of limitations. In connection with any arbitration proceeding, except as provided in Section XVIII.C, you and we will 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 as the claim to which it relates. Any of these compulsory claims which are not submitted or filed in the same proceeding in which they relate will be barred. This provision will continue in full force and effect subsequent to and notwithstanding the transfer of this Agreement, or the termination or expiration of the term of this Agreement. Except as provided in Section XVIII.B.1 above, the arbitration will be conducted on an individual, not a class-wide basis. None of the parties to the arbitration will be entitled to consolidation of the arbitration proceedings with the proceedings of any third party, nor will the arbitrator or any court be empowered to order a consolidation of proceedings with any third party.

**C. Exclusions.** Notwithstanding the foregoing, the obligation of this Section XVIII to mediate and arbitrate will not be binding on us with respect to claims relating to our trademarks, service

marks, patents, or copyrights, including the Marks; claims relating to any lease or sublease of any real property between the parties or their affiliated entities; or requests by either party for temporary restraining orders, preliminary injunctions, permanent injunctions or other proceedings in a court of competent jurisdiction to obtain interim or permanent relief when deemed necessary by such court to preserve the *status quo* or prevent irreparable injury pending resolution by arbitration of the actual dispute between the parties, which may be brought by us in any State or Federal Court of competent jurisdiction. Both parties irrevocably submit to the jurisdiction of the United States District Court of Wisconsin and to the state courts in Eau Claire County, Wisconsin, and such parties waive any objection to the application of Wisconsin law or to the jurisdiction or venue in these courts.

## **XIX. MISCELLANEOUS PROVISIONS**

A. **Waiver**. Neither our waiver of a breach or default by you, our delay or failure to exercise any right upon your breach or default, nor our acceptance of any payment from you, will be deemed a waiver, nor will it impair our rights for other breaches or defaults of the same or a different kind. The description of any breach or default in any notice will not prevent our assertion of other defaults or breaches. We may waive any one or more of the requirements imposed under this Agreement for the benefit of any particular franchisee or any particular E & G Restaurant, but the waiver in favor of any other franchisee or E & G Restaurant will not prevent us from enforcing the requirements against you, all other franchisees and all other E & G Restaurants.

B. **Severability**. If any provision of this Agreement is considered to be invalid or inoperative for any reason, that part will be deemed modified to the extent necessary to make it valid and operative, or if it cannot be modified, then severed, and the remainder of this Agreement will continue in effect as if the Agreement had been signed with the invalid portion modified or eliminated.

C. **Entire Agreement**. You and we each acknowledge and warrant to each other that you and we each wish to have all terms of our business relationship defined in this Agreement. Neither you nor we wishes to enter into a business relationship with the other in which any terms or obligations are the subject of alleged oral statements or in which oral statements serve as the basis for creating rights or obligations different than or supplementary to the rights and obligations set forth herein. Accordingly, you and we agree that this Agreement, together with any other documents or agreements executed by the parties contemporaneously hereto, supersede and cancel any prior and/or contemporaneous discussions (whether described as representations, inducements, promises, agreements or any other term) between us or anyone acting on our behalf and you or anyone acting on your behalf, which might be taken to constitute agreements, representations, inducements, promises or understandings (or any equivalent to such terms) with respect to the relationship between the parties, and you and we each agree that we each have placed, and will place, no reliance on any such discussion; provided, however, that nothing in this or any related agreement is intended to disclaim the representations we made in the franchise disclosure document we furnished to you (the "FDD"). This Agreement, together with any other documents or agreements executed by the parties contemporaneously hereto or incorporated herein by reference, constitutes the entire agreement between the parties and contains all of the terms, conditions, rights and obligations of the parties with respect to any aspect of the relationship between the parties. No further franchise rights or offer of franchise rights have been promised to you and no such franchise rights or offer of franchise rights shall come into existence, except by means of a separate writing, executed by one of our officers or such other entity granting the franchise rights and specifically identified as a modification of this Agreement. No amendment to this Agreement is binding unless executed in writing by both parties.

D. **Notice**. All notices required under this Agreement will be in writing and will be given: (i) if hand delivered on the day of delivery; (ii) 3 business days after placement in the United States Mail by

registered or certified mail, postage prepaid; (iii) the day after placement with a courier guaranteeing overnight delivery; or (iv) if sent by a facsimile transmission or electronic mail transmission on the day of receipt if delivered (as indicated by delivery confirmation of the sender) by 5:00 p.m. Eau Claire, Wisconsin time, or on the next following business day if delivered after 5:00 p.m. Eau Claire, Wisconsin time, in each case addressed to the address of your Franchised Location or to your address, facsimile number or electronic mail address listed under your name on the signature page of this Agreement (for notices sent to you) and to the address of our main office (for notices sent to us), or at such other address as either party will specify in a notice to the other party.

E. **Construction of Language.** The language of this Agreement will be construed according to its fair meaning and not strictly for or against either party. All words used in this Agreement refer to whatever number or gender the context requires.

F. **Governing Law.** You acknowledge that this Agreement was accepted in the State of Wisconsin. You acknowledge that you have and will continue to develop a substantial and continuing relationship with us at our principal offices in Wisconsin, where our decision-making authority is vested and franchise operations are conducted and supervised. Except to the extent that this Agreement or any particular dispute is governed by the U.S. Trademark Act of 1946 (Lanham Act, 115 U.S.C. 1051), this Agreement will be governed, to the extent permissible, by the laws of the State of Wisconsin without regard to principles of conflicts of law. If, however any provision of this Agreement would not be enforceable under the laws of Wisconsin, and if the Franchised Location is located outside of Wisconsin and the provision would be enforceable under the laws of the state in which the Franchised Location is located, then the laws of the State of Wisconsin shall not apply and the provision in question (and only that provision) will be interpreted and construed under the laws of the state where the Franchised Location is located. Matters controlled by arbitration will be governed by the United States Arbitration Act (9 U.S.C. §1, et. seq.). If a state regulator requires an amendment to this Agreement, the amendment is attached to this Agreement. We will not, however, be precluded from contesting the validity, enforceability, or applicability or such regulator's required amendment in any action relating to this Agreement or to its rescission or termination.

G. **Effect.** This Agreement will be binding upon and inure to the benefit of the parties, their legal representatives, heirs, administrators, executors, their permitted successors and assigns.

H. **Remedies.** In addition to any other remedies in law or in equity to which it may be entitled, we will be entitled, without bond, to entry of injunctive relief and orders of specific performance enforcing the provisions of this Agreement in the event you actually or anticipatorily breach this Agreement. If we incur attorneys' fees or other expenses in seeking enforcement of this Agreement or defending any other claim you bring against us, including without limitation, a claim related to the offering of a franchise or the franchise relationship, you will be required to reimburse us for our reasonable costs and expenses (including attorneys' and expert witness fees). No right or remedy conferred upon us is intended to be exclusive, and every right or remedy granted in this Agreement will be cumulative and in addition to any other rights or remedies available under this Agreement or otherwise. For purposes of this Agreement, a termination will include a termination for any reason, expiration, cancellation, failure to renew, assignment or Transfer.

I. **No Warranty.** You acknowledge that no approvals, consents, waivers, conditions, or the like warrant your success of operating the Franchised Location and the Franchised Business or the appropriateness of the particular items or matters so approved.

J. **Receipt of the Franchise Disclosure Document.** You acknowledge receipt of our FDD along with this Agreement, at least 14 days before your execution of this Agreement or any payment by

you to us. If any unilateral modifications have been made to this Agreement you acknowledge that you have had at least 7 days to review them.

K. **Joint and Several Liability.** If you are comprised of 2 or more persons, the obligations and liabilities to us of each of these persons will be joint and several.

L. **Time is of the Essence.** Time is of the essence of this Agreement.

M. **Survival.** Your obligations regarding Confidential Information, trade secrets, non-competition, indemnification, your accrued obligations to us (monetary or otherwise) and any other terms or conditions which by their nature will survive a Transfer or the termination or expiration of the Term of this Agreement.

N. **Limitation on Liens.** You will not grant a security interest, pledge, or place a lien upon your Interest in this Agreement or in the Franchised Location, the Franchised Business or in the furniture, fixtures, or equipment used in the Franchised Business, except that you will be permitted to grant a security interest in such furniture, fixtures, and equipment to secure your obligation to the seller of, or lender of funds used for the purchase of, such furniture, fixtures, and equipment.

O. **Day-to-Day Control.** You have the sole right and responsibility for the manner and means by which the day-to-day operation of the Franchised Location and the Franchised Business is determined and conducted and for achieving your business objectives. Subject to any approval, inspection, and enforcement rights reserved to us in this Agreement, this right and responsibility possessed by you includes the employment, supervision, setting the conditions of employment and discharge for your employees, daily maintenance, safety concerns and the achievement of conformity with the System.

P. **Right to Subcontract.** We will have the right to subcontract the performance of any of our obligations pursuant to this Agreement to any of our Affiliates or any other third party designee.

Q. **Payments to Us or Our Affiliates.** Neither we nor any of our Affiliates are required to accept payments after they are due or to extend credit or otherwise finance your operation of the Franchised Business. In addition to all other remedies available under this Agreement, at law or otherwise, if you are in default under this Agreement or if you have failed to pay us or our Affiliates amounts owed to us under this Agreement or any other agreement with us or our Affiliates, including payments for purchases, we and our Affiliates may require you to pay for all purchases in advance, on a C.O.D. basis by cashier's check or may refuse to make further sales to you.

R. **Execution and Electronic Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement. The counterparts of this Agreement and all related documents may be executed and delivered by facsimile or other electronic signature method by any of the parties to any other party and each will be deemed original signatures. Electronic copies of this document shall constitute and be deemed an original copy of this document for all purposes, provided that such electronic copies are fully executed, dated and identical in form to the original hard copy version of this document. The receiving party may rely on the receipt of such document so executed and delivered by facsimile or other electronic means as if the original had been received.

**XX. YOUR WARRANTIES AND REPRESENTATIONS**

A. We have not and do not represent that you can expect to attain a specific level of sales, profits, or earnings. You have been advised to obtain independent professional and legal advice regarding this franchise. You acknowledge that you and they are entering into this Agreement, and all ancillary agreements executed contemporaneously with this Agreement, as a result of your own independent investigation of this franchise and not act in reliance on or as a result of any representations made by our owners, officers, directors, managers, employees, agents, representatives, attorneys, franchisees, brokers or other franchise sellers that are not contained in or are contrary to the terms set forth in this Agreement or any representation in the FDD. You understand that you may sustain losses as a result of the operation or the closing of the Franchised Business. You understand that the business venture contemplated by this Agreement involves a high degree of financial risk and depends to a large degree on your skills, abilities, initiative, and hard work.

B. You represent and warrant that the execution, delivery and performance of this Agreement by you does not and will not violate, conflict with or result in the breach of any term, condition or provision of any contract or agreement, or require the consent of any other person or entity.

C. Under applicable U.S. Law, including without limitation Executive Order 13224, signed on September 23, 2001 (the "Order"), you are prohibited from engaging in any transaction with any person engaged in, or with a person aiding any person engaged in acts of terrorism as defined in the Order. Accordingly, you do not and hereafter will not engage in any terrorist activity. In addition, you are not affiliated with and do not support any individual or entity engaged in, contemplating or supporting terrorist activity. You are not acquiring the rights granted under this Agreement with the intent to generate funds to channel to any individual or entity engaged in, contemplating, or supporting terrorist activity, or to otherwise support or further any terrorist activity.

D. You represent to us that all information set forth in any and all applications, financial statements and submissions to us are and will be true, complete and accurate in all respects, and you acknowledge that we are relying upon the truthfulness, completeness and accuracy of such information in both awarding and continuing the license granted to you by this Agreement.

**XXI. CAVEAT**

**THE SUCCESS OF THE FRANCHISED LOCATION AND THE FRANCHISED BUSINESS IS SPECULATIVE AND DEPENDS, TO A LARGE EXTENT, UPON YOUR ABILITY AS AN INDEPENDENT BUSINESS PERSON, AS WELL AS OTHER FACTORS. WE DO NOT MAKE ANY REPRESENTATION OR WARRANTY AS TO THE POTENTIAL SUCCESS OF THE STORE AND NO ONE IS AUTHORIZED TO MAKE ANY SUCH REPRESENTATION OR WARRANTY ON OUR BEHALF. YOU FURTHER ACKNOWLEDGE THAT YOU HAVE READ AND COMPLETED THE QUESTIONNAIRE, A COPY OF WHICH IS ATTACHED TO THIS AGREEMENT AS EXHIBIT II.**

**YOU UNDERSTAND AND AGREE THAT WE HAVE NO OBLIGATION TO ACCEPT YOUR APPLICATION AND MAY REFUSE TO GRANT YOU A FRANCHISE FOR ANY REASON, OR NO REASON, WITHOUT DISCLOSING THE BASIS FOR OUR DECISION. YOU ACKNOWLEDGE THAT UNLESS AND UNTIL WE SIGN THIS AGREEMENT, THE FRANCHISE HAS NOT BEEN GRANTED, YOU ARE NOT A FRANCHISEE OF OURS, AND YOU MAY NOT RELY UPON BECOMING A FRANCHISEE OF OURS.**

**XXII. NON-LIABILITY OF OUR AFFILIATES**

We are the only company obligated to you under this Agreement. You may not look to any Affiliate of ours, related companies, other business entities, or individuals for performance of this Agreement.

**XXIII. LIMITATION OF LEGAL ACTIONS**

**A. IN NO EVENT WILL WE BE LIABLE TO YOU FOR PROSPECTIVE PROFITS OR SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES FOR ANY CONDUCT ARISING OUT OF THIS AGREEMENT OR OUR RELATIONSHIP WITH YOU.**

**B. THE PARTIES WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY EITHER OF THEM RELATING TO OR ARISING OUT OF THIS AGREEMENT OR THE RELATIONSHIP OF THE PARTIES.**

**C. ANY DISAGREEMENT BETWEEN YOU AND US (AND OUR AFFILIATES AND OWNERS) WILL BE CONSIDERED UNIQUE AS TO ITS FACTS AND MUST NOT BE BROUGHT AS A CLASS ACTION AND YOU WAIVE ANY RIGHT TO PROCEED AGAINST US (AND OUR AFFILIATES, STOCKHOLDERS, MEMBERS, MANAGERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS) BY WAY OF CLASS ACTION, OR BY WAY OF A MULTI-PLAINTIFF, CONSOLIDATED OR COLLECTIVE ACTION.**

**D. YOU WILL BE BARRED FROM BRINGING ANY AND ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR OUR RELATIONSHIP WITH YOU, UNLESS A JUDICIAL PROCEEDING IS COMMENCED WITHIN 1 YEAR FROM THE DATE ON WHICH YOU KNEW OR SHOULD HAVE KNOWN OF THE FACTS GIVING RISE TO THAT CLAIM.**

**E. OUR MAXIMUM AGGREGATE LIABILITY AND THE MAXIMUM AGGREGATE LIABILITY OF ANY OF OUR OFFICERS, OWNERS, DIRECTORS, MEMBERS, MANAGERS, EMPLOYEES, AFFILIATES, PARENTS OR SUBSIDIARIES RELATED TO ANY AND ALL CLAIMS RELATING TO OR ARISING FROM THIS AGREEMENT OR THE FRANCHISE RELATIONSHIP SET FORTH IN THIS AGREEMENT SHALL BE COLLECTIVELY LIMITED TO THE AMOUNT YOU PAID US WITHIN THE PRIOR 12 MONTHS IMMEDIATELY BEFORE WRITTEN NOTICE OF ANY PROPER CLAIM IS RECEIVED BY US.**

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first set forth above.

E & G FRANCHISE SYSTEMS, INC.

FRANCHISEE: \_\_\_\_\_  
[Company Name]

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

By: \_\_\_\_\_  
[Signature]

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

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

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

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

Address: Attn: President  
800 Wisconsin St Mailbox 74 Bldg D2 Suite 315  
Eau Claire, WI 54703  
Electronic Mail: [ewolfe@egsubs.com](mailto:ewolfe@egsubs.com)

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Electronic Mail: \_\_\_\_\_





## EXHIBIT II

### FRANCHISEE DISCLOSURE QUESTIONNAIRE

As you know, E & G FRANCHISE SYSTEMS, INC. (the "Franchisor") and you are preparing to enter into a Franchise Agreement for the operation of an E & G Restaurant franchise. The purpose of this Questionnaire is to determine whether any statements of promises were made to you that the Franchisor has not authorized and that may be untrue, inaccurate, or misleading. Please review each of the following questions and provide honest and complete responses to each question.

12. Have you received and personally reviewed the Franchise Agreement and each exhibit and schedule attached to it? Yes \_\_\_ No \_\_\_
13. Have you received and personally reviewed the Franchisor's Franchise Disclosure Document (the "FDD") that Franchisor provided to you?  
Yes \_\_\_ No \_\_\_
14. Did you sign a receipt for the FDD indicating the date you received it?  
Yes \_\_\_ No \_\_\_
15. Date on which you signed and returned the receipt for the FDD.  
\_\_\_\_\_, 20\_\_  
(month, day)
16. Date on which you signed the Franchise Agreement.  
\_\_\_\_\_, 20\_\_  
(month, day)
17. Were you given the opportunity to discuss the benefits and risks of operating an E & G Restaurant franchise with an attorney, accountant, or other professional advisor, and do you understand those risks?  
Yes \_\_\_ No \_\_\_
18. Do you understand that the success or failure of your franchise will depend in large part upon your skills and abilities, competition from other businesses, interest rates, inflation, labor and supply costs, lease terms and other economic and business factors?  
Yes \_\_\_ No \_\_\_
19. Has any employee or other person speaking on behalf of the Franchisor made any statement or promise regarding the amount of money you may earn or that any of our Franchised Locations earn in operating the business other than what is discussed in Item 19 of the FDD?  
Yes \_\_\_ No \_\_\_
20. Has any employee or other person speaking on behalf of the Franchisor made any statement or promise concerning the likelihood of success that you should or might expect to achieve from operating the business?  
Yes \_\_\_ No \_\_\_

21. Has any employee or other person speaking on behalf of the Franchisor made any statement, promise or agreement concerning the advertising, marketing, training, support service or assistance that the Franchisor will furnish to you that is contrary to, or different from, the information contained in the FDD?

Yes \_\_\_ No \_\_\_

22. Do you understand that this franchise business may be impacted by other risks, including those outside your or our control such as local, national or global economic, political or social disruption and that such disruptions, and any preventative, protective, or remedial actions that federal, state, and local governments may take in response to a disruption may result in a period of business disruption, reduced customer demand, and reduced operations?

Yes \_\_\_ No \_\_\_

\* \* \*

Please understand that your responses to these questions are important to us and that we will rely on them.

By signing this Questionnaire, you are representing that you have responded truthfully to the above questions. You are also representing that you have reviewed all of these questions and the answers with the other owners of your business and any of your representatives who had discussions with the Franchisor or any of its officers, agents, or employees. The responses from those people are also included by you above.

Dated on \_\_\_\_\_, 20\_\_.

FRANCHISE APPLICANT: \_\_\_\_\_

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

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

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

**EXHIBIT III**  
**OPTIONAL PROGRAM ADDENDUM**  
**RELATING TO**  
**E & G FRANCHISE SYSTEMS, INC.**  
**NON-TRADITIONAL FRANCHISE AGREEMENT**

This Addendum, entered into this \_\_\_ day of \_\_\_\_\_, 20\_, by and between E & G Franchise Systems, Inc., a Wisconsin corporation, ("us", "our" or "we"), and \_\_\_\_\_, a \_\_\_\_\_ ("you" or "your"), amends and modifies the Franchise Agreement between us and you dated on the \_\_\_ day of \_\_\_\_\_, 20\_ ("Franchise Agreement"). Capitalized terms used but not defined herein have the meaning given them in the Franchise Agreement.

WHEREAS, you are operating an E & G Restaurant pursuant to the Franchise Agreement;

WHEREAS, in conjunction with its Franchised Business, you would like to operate the optional program selected below using the System and Marks (hereinafter referred to as the "Optional Program");

WHEREAS, we are willing to consent to your operating the Optional Program under the terms and conditions set forth herein;

NOW, THEREFORE, we and you agree as follows:

8. Grant of License. Subject to the terms and conditions herein, we hereby grant to you and you hereby accepts from us, a non-exclusive right to use the System and Marks to open and operate:

a grab and go cooler-based product delivery program (the "To Go Unit") at \_\_\_\_\_ under the terms and conditions set forth under the Franchise Agreement as amended herein.

a trailer or food truck product delivery program (the "Mobile Unit") within the Assigned Territory and under the terms and conditions set forth under the Franchise Agreement as amended herein.

This Optional Program will be operated in conjunction with your Franchised Business. Nothing herein shall be construed to expand the Assigned Territory as described in Exhibit I of the Franchise Agreement or to provide any additional territorial protection, except that so long as you are operating a Mobile Unit and are in compliance with the Franchise Agreement and this Addendum, we will not promote products bearing the Marks at special events, athletic contests, etc., through temporary locations and mobile units within your Assigned Territory.

9. Site Selection. The site of the To Go Unit (if applicable) is selected by you, subject to our consent. We will advise you whether the proposed location is acceptable. We are not responsible for and do not make any warranty regarding the suitability of the To Go Unit site, and our consent to an To Go Unit site means only that the location meets our minimum standards for an acceptable temporary location. You are primarily responsible for investigating the site and having any leases or sale contract for the site reviewed and approved by your attorney. You shall provide us a copy of the executed lease for the To Go Unit site within ten (10) days of execution of said lease. The term of the lease plus all renewal option periods shall together equal or exceed the Term of the Franchise Agreement. Our consent to the lease means only that the lease meets our minimum standards. Our consent to the lease is not a warranty as to the appropriateness of the lease or any of its terms.

10. Duration of the Grant. You shall commence operation of the Optional Program on the \_\_\_ day of \_\_\_\_\_, 20\_\_.

11. Optional Program Fee; Royalty Fees; Advertising Fee. In addition to other payments required pursuant to the Franchise Agreement and this Addendum, you shall pay us the Optional Program Fee of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) upon the execution of this Addendum. No portion of this Optional Program Fee is refundable. Sales from your To Go Unit or Mobile Unit will count as Net Revenues for the purpose of calculating your Royalty Fees.

12. Development of the Optional Program. You will construct and equip the To Go Unit or Mobile Unit in accordance with specifications prepared by you, subject to our right to consent to such specifications, layout and design and equipment. You are solely responsible for complying with the requirements of the Americans with Disabilities Act and other matters affecting or relating to the construction and design of the To Go Unit or Mobile Unit in all respects. Nothing contained herein or in the Manual shall be construed as or implied as imposing any obligation on us or our Affiliates in relation to the construction or design of the To Go Unit or Mobile Unit.

13. Equipment, Supplies and Insurance. The required equipment and supplies that you will need to obtain and maintain for the Optional Program will be set forth in the Manual loaned to you pursuant to the Franchise Agreement. Any additional insurance requirements specifically for the To Go Unit or Mobile Unit will be set forth in such Manual or otherwise in writing by us.

14. All other Terms in Effect. Except as modified by this Addendum, all of the terms of the Franchise Agreement shall remain in full force and effect, and such terms shall apply to the Optional Programs as if they were part of the Franchised Business described in the Franchise Agreement. This Addendum hereby forms a part of and is incorporated into the Franchise Agreement.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby have duly executed this Addendum.

**E & G FRANCHISE SYSTEMS, INC.**

By \_\_\_\_\_

Its \_\_\_\_\_

**FRANCHISEE:** \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

**EXHIBIT F**  
**AREA DEVELOPMENT AGREEMENT**

**AREA DEVELOPMENT AGREEMENT  
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**E & G FRANCHISE SYSTEMS, INC.  
AREA DEVELOPMENT AGREEMENT**

**THIS AREA DEVELOPMENT AGREEMENT** (this "Agreement") is made, entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between E & G Franchise Systems, Inc., a Wisconsin corporation, having its principal office at 800 Wisconsin St Mailbox 74, Bldg D2 Suite 315, Eau Claire, Wisconsin 54703 (the "Company") and \_\_\_\_\_, having principal offices at \_\_\_\_\_ the "Area Developer").

**RECITALS**

1. The Company licenses others the right to operate E & G Restaurants in accordance with the Marks and the System described below; and
2. The Developer desires to participate in the use of the System and Marks in connection with the operation of an E & G Restaurants under the terms and conditions set forth below;

NOW, THEREFORE, in consideration of the mutual promises and conditions contained herein, the parties agree as follows

**ARTICLE 1  
GRANT OF DEVELOPMENT RIGHTS; TERRITORY**

**1.1 Territory.**

The Company hereby grants to the Area Developer, for the term of this Agreement, the right to enter into Franchise Agreements with the Company for the development and operation of Franchised Businesses to be located within the "Territory" defined as the geographical area described and delineated on Exhibit A, excluding from such area, however, any existing or later developed Non-Traditional Locations. A "Non-Traditional Location" refers to a location that is a transportation facility, sporting facility, shopping mall food court, educational facility, catering/mobile unit, or military facility. For purposes of this definition, "shopping mall" includes an indoor or enclosed mall and an outdoor mall consisting of stores that are part of the same retail development arranged around open-air pedestrian walkways (but not a shopping center development where storefronts surround a common parking lot). The Area Developer acknowledges and agrees that all Non-Traditional Locations now existing or later developed are expressly excluded from the definition of the Territory in the Agreement.

**1.2 Protective Rights.**

The rights and privileges granted to the Area Developer in this Agreement are expressly limited to the Territory and are expressly subject to the terms and conditions of this Agreement. During the term of this Agreement, the Company will not own, operate or grant to any other person or entity a franchise to open or operate an E & G Restaurant within the Territory, other than an E & G Restaurant operated in a Non-Traditional Location. Notwithstanding the foregoing, the Company will have the absolute right to: (1) own or operate, or license others to own or operate E & G Bistros in any location; (2) the right to own or operate, or license others to own or operate any businesses in any Non-Traditional Location; (3) the right to operate or license others to operate E & G Restaurants in any location except within the Assigned Territory; and (4) the right to offer any products or services (including the products and services available for sale in an Erbert and Gerbert's business) through other channels of distribution (such as grocery stores, the Internet and other non-restaurant outlets) from any location. The Company may also promote products bearing the Marks at special events, athletic contests, etc., through temporary locations and mobile units. The Company and its affiliates have the right, now or in the future, to purchase, be



purchased, merge, acquire, be acquired or affiliate with an existing competitive or non-competitive franchise network, chain or any other business regardless of the location of that chain's or business' facilities, and the Company, its affiliates and/or its successor has the right to operate, franchise or license those businesses and/or facilities as "Erbert and Gerbert's Sandwich Shops" operating under the Marks or any other proprietary marks following such transaction, regardless of the location of these facilities (which the Area Developer acknowledge may be within its Territory or close to its Territory). The Company is not required to pay the Area Developer if its exercises any of the rights specified above.

The Company may sell any or all of its assets, the Marks or the System outright to a third party; may go public; may make a public offering of its capital stock; may engage in a private placement of some or all of its securities; may merge, acquire other corporations, or be acquired by another corporation; may undertake a refinancing, a recapitalization, leveraged buyout or other economic or financial restructuring; and the Area Developer expressly and specifically waives any claims, demands for losses or expenses arising from or related to any and all of the above sales, assignments and dispositions.

**1.3 Use of Marks.**

The Area Developer acknowledges that it is not granted any right to use the Marks under this Agreement. Any right to use the Marks will arise from the Franchise Agreement(s) signed by the Area Developer and the Company, and the Area Developer will only use the Marks pursuant to the terms of that (those) Franchise Agreement(s).

**1.4 Conditions.**

The Area Developer hereby undertakes the obligation to develop Franchised Businesses using the System in the Territory in strict compliance with the terms and conditions of this Agreement for the entire term of this Agreement. The rights and privileges granted to the Area Developer by the Company under this Agreement are applicable only in the Territory, are personal in nature, and may not be used elsewhere or in any other area by the Area Developer.

**1.5 Personal License.**

The Area Developer will not have the right to franchise, subfranchise, license or sublicense its rights under this Agreement. The Area Developer will not have the right to assign or transfer this Agreement or its rights under this Agreement, except as specifically provided for in this Agreement.

**ARTICLE 2  
TERM**

This Agreement will be in effect for a term ending \_\_\_\_\_ (\_\_\_\_) years after the date first set forth above, or on the date the Area Developer has completed development of the number of Franchised Businesses required under the Development Schedule set forth in Article 4.1, whichever is earlier. This Agreement will not be enforceable until it has been signed by both the Area Developer and the Company, and until this Agreement has been delivered to the Area Developer. At the end of the term of this Agreement, the Area Developer's exclusive development rights with respect to the Territory will automatically terminate, and the Area Developer will not have the right to renew or extend the term of this Agreement.

**ARTICLE 3  
FEES PAYABLE TO COMPANY**

**3.1 Territory Fee.**

On the date this Agreement is executed by the Area Developer, the Area Developer will pay the Company a nonrefundable fee equal to \$10,000 multiplied by the total number of Franchised Businesses that the

Area Developer is required to open and operate in the Territory pursuant to the Development Schedule set forth in Article 4.1 of this Agreement (the "Territory Fee"). The Territory Fee is payment to the Company for granting the Area Developer the territory rights, as set forth in this Agreement, to develop the Franchised Businesses in the Territory. In no event will the Development Fee be refunded to the Area Developer.

**3.2 Initial Franchise Fees.**

In addition to the Territory Fee, the Area Developer will pay the Company an Initial Franchise Fee for each Franchised Business that the Area Developer is required to open and operate in the Territory pursuant to the Development Schedule set forth in Article 4.1 of this Agreement. The Area Developer will pay Initial Franchise Fees to the Company according to the following schedule:

<b>Franchised Business Number</b>	<b>Amount of Initial Franchise Fee (Amount if VetFran Discount Applicable)</b>	<b>Amount of Territory Fee Applied to Initial Franchise Fee (Amount if VetFran Discount Applicable)</b>	<b>Amount of Initial Franchise Fee Due When Franchise Agreement Signed by Area Developer (Amount if VetFran Discount Applicable)</b>
1st	\$30,000 (\$25,000)	\$0	\$30,000 (\$25,000)
2nd and each additional	\$20,000 (\$17,000)	\$10,000 (\$10,000)	\$10,000 (7,000)

The Area Developer will pay the Company the Initial Franchise Fee set forth in this provision, even if the Initial Franchise Fee that is then charged to Area Developers by the Company is different from the Initial Franchise Fee specified herein.

**3.3 Payment of Initial Franchise Fees.**

The Area Developer will pay the Company the Initial Franchise Fee set forth in Article 3.2 of this Agreement on or before the date the Area Developer executes the Franchise Agreement for each Franchised Business required to be opened and operated in the Territory pursuant to this Agreement. The Franchise Agreement for the first Franchised Business in the Territory must be executed by the Area Developer on the date the Area Developer executes this Agreement. Thereafter, a Franchise Agreement must be executed by the Area Developer for each Franchised Business to be opened and operated by the Area Developer in the Territory on the date the site for the Franchised Location is selected by the Area Developer. The Area Developer will not purchase or lease the property for the proposed site for the Franchised Location until the Area Developer has followed the Company's procedures, techniques and requirements for site selection.

**3.4 Other Fees.**

During the term of each Franchise Agreement signed by the Area Developer pursuant to this Agreement, the Area Developer will pay all royalty, advertising and other fees and payments to the Company as specified in, and in accordance with the terms and conditions of, the Franchise Agreements for each Franchised Business.

**ARTICLE 4  
DEVELOPMENT SCHEDULE**

**4.1 Development Schedule.**

The Area Developer acknowledges and agrees that the following Development Schedule is material provision of this Agreement:

Franchised Business Number	Date by Which Franchise Agreement Must be Signed	Date by Which Franchised Business Must be Opened and Continuously Operating in Territory	Cumulative Number of Franchised Businesses Required to be Open and Continuously Operating in Territory as of Date in Preceding Column
1	Date of this Agreement		1

For purposes of determining compliance with the Development Schedule set forth in this Article, only the Franchised Businesses actually open and continuously operating in the Territory as of a given date will be counted toward the cumulative number of Franchised Businesses required to be open and continuously operating in the Territory.

**4.2 Reasonableness of Development Schedule.**

The Area Developer represents that it has conducted its own independent investigation and analysis of the prospects for the establishment of Franchised Businesses within the Territory, and approves of the Development Schedule as being reasonable and viable.

**4.3 Failure to Comply with Development Schedule.**

The Area Developer's failure to comply with the Development Schedule will constitute a material breach of this Agreement by the Area Developer. If the Area Developer at any time during the term of this Agreement is not in compliance with the Development Schedule (*i.e.*, does not have the required number of Franchised Businesses open and operating in the Territory as of the dates specified in Article 4.1), then the Company will have the right to terminate this Agreement immediately upon notice to the Area Developer. Termination of this Agreement as a result of the Area Developer's failure to meet the Development Schedule will not affect the individual Franchise Agreements for the Franchised Businesses opened and operated in the Territory pursuant to this Agreement which were signed by the parties prior to termination of this Agreement; however, upon termination of this Agreement, all rights to open and operate additional Franchised Businesses in the Territory and all other rights granted to the Area Developer under this Agreement will immediately revert to the Company, without affecting those obligations of the Area Developer that continue beyond the termination of this Agreement.

**ARTICLE 5  
OTHER OBLIGATIONS OF AREA DEVELOPER**

**5.1 Compliance with Applicable Laws.**

The Area Developer will, at its expense, comply with all applicable federal, state, city, local and municipal laws, ordinances, rules and regulations pertaining to the operation of the Franchised Businesses in the Territory. The Area Developer will, at its expense, be absolutely and exclusively responsible for determining the licenses and permits required by law for the Franchised Businesses, for qualifying for, and obtaining and maintaining, all such licenses and permits, and for compliance with all applicable laws

by its employees, agents and independent contractors.

**5.2 Modifications to Franchise Agreement.**

The Area Developer acknowledges that the terms, conditions and economics of the Franchise Agreement may be modified from time to time by the Company and that reasonable modifications and amendments to the Franchise Agreement will not alter the Area Developer's obligations under this Agreement.

**5.3 Interests of Operating Company.**

The Area Developer's operating company will be dedicated solely to the development and operation of the Area Developer's Franchised Businesses in the Territory and will not hold any interest in, operate, or manage any other business of any kind without the prior written approval of the Company.

**ARTICLE 6**  
**TRANSFER**

**6.1 Assignment by Company.**

(a) The Company will have the right to assign this Agreement, and all of its rights and privileges under this Agreement to any person or entity provided that the assignee expressly assumes and agrees to perform the Company's obligations under this Agreement.

(b) Nothing contained in this Agreement will require the Company to remain in the business franchised in this Agreement or any Franchise Agreement or to offer the services franchised under this Agreement or any Franchise Agreement, whether or not bearing the Marks, to the Area Developer, in the event that the Company exercises its rights under this Agreement to assign this Agreement, and the Area Developer expressly and specifically waives any claims, demands or Losses and Expenses arising from or related to the loss of association with or identification of the Company as the Company under this Agreement.

**6.2 Transfer to a Wholly Owned Entity.**

Notwithstanding Article 6.3, if Area Developer is an individual in full compliance with this Agreement, the Area Developer may transfer this Agreement to an entity which conducts no business other than the development and operation of Franchised Businesses, in which Area Developer maintain management control and of which the Area Developer owns and controls 100% of the equity and voting power of all issued and outstanding capital stock, membership interest or other equity interest, and further provided that all assets of such business are owned by a single entity. Transfers of shares, membership interests or such other equity interest in such entity will be subject to the provisions of Article 6.3. Notwithstanding anything to the contrary herein, the Area Developer agrees to remain personally liable under this Agreement as if the transfer to such corporation or limited liability company had not occurred.

**6.3 Sale, Transfer or Assignment by Area Developer.**

Neither the Area Developer nor its Owners are not permitted to transfer, directly or indirectly, any or all of your interest in this Agreement or any ownership interest in the Area Developer without the Company's prior written consent, which may be granted or denied in the Company's sole and absolute discretion.

**ARTICLE 7**  
**DEFAULT; TERMINATION**

Upon written notice to the Area Developer, the Company may terminate this Agreement for cause, but without providing an opportunity to cure, in the event of any material breach of this Agreement by the Area Developer. Material breach, as used in this Article 7, will include, among other things, the following:

- 7.1 Any attempt by the Area Developer to sell, assign, transfer or encumber, in whole or in part, any or all rights and obligations under this Agreement without the written consent required by this Agreement;
- 7.2 The Area Developer fails to develop each of the Franchised Businesses within the Development Schedule set forth in this Agreement if not cured within 30 days after written notice;
- 7.3 The Area Developer's bankruptcy, insolvency or general assignment for the benefit of creditors;
- 7.4 Any material breach by the Area Developer or its affiliate of any Franchise Agreement between the Area Developer or its affiliates and the Company which is not cured within the applicable cure period in that Franchise Agreement; or
- 7.5 The Area Developer or its Owners commit or are alleged to have committed, are convicted of, or plead guilty or no contest to, any felony, any crime of moral turpitude or fraud, which we believe may adversely affect the System or goodwill associated with the Marks.

**ARTICLE 8**  
**OBLIGATIONS UPON TERMINATION OR EXPIRATION**

**8.1 Obligations upon Termination or Expiration; Reversion of Rights.**

Upon termination or expiration of this Agreement for any reason, all rights to open and operate additional Franchised Businesses in the Territory and all other rights granted to the Area Developer pursuant to this Agreement will automatically revert to the Company, and the Company will have the right to develop the Territory or to contract with other area developer(s) for the future development of the Territory. In addition, the Area Developer will comply with all other applicable provisions of this Agreement, including those provisions with obligations that continue beyond the termination of this Agreement.

**8.2 Franchise Agreements Not Affected.**

The Area Developer will continue to operate the Franchised Businesses owned by the Area Developer in the Territory pursuant to the terms of the applicable Franchise Agreements signed by the Area Developer and the Company prior to the termination of this Agreement, and the rights and obligations of the Area Developer and the Company with respect to the Franchised Businesses in the Territory will be governed by the terms of this Agreement and the applicable Franchise Agreements.

**8.3 Continuation of Obligations.**

The indemnities and covenants of Area Developer contained in this Agreement will continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement.

**ARTICLE 9**  
**RELATIONSHIP OF PARTIES; INDEMNIFICATION**

**9.1 Relationship of Parties.**

This Agreement does not create a fiduciary relationship between the parties. The Area Developer understands and agrees that the Area Developer is and will be an independent contractor. Nothing in this Agreement is intended to make either party a general or special agent, joint venturer, partner or employee of the other for any purpose. The Area Developer will conspicuously identify itself and the Franchised Business, at the Franchised Location and in all dealings with the public, as an independently owned business. Except as otherwise expressly authorized in this Agreement, neither the Company nor the Area Developer will make any agreements or representations in the name of or on behalf of the other that their relationship is other than franchisor and franchisee.

**9.2 Indemnification.**

To the fullest extent permitted by law, the Area Developer agrees, at its sole cost and expense, to indemnify, defend and hold harmless, and to reimburse on demand the Company, its affiliates, and its and their respective directors, officers, owners, employees, agents, partners, attorneys, licensees, successors and assigns (the "Indemnitees") for and against any and all damages, losses, liabilities, bodily injury, property damage, obligations, penalties, fines, claims, litigation, demands, defenses, judgments, suit proceedings, administrative orders, consent agreements, costs, disbursements or expenses of any kind or any nature whatsoever, including without limitation, reasonable attorneys' and expert fees and disbursements arising out of or related to (i) the acts or omissions of the Area Developer or its employees, agents, officers, directors, parents, subsidiaries, affiliates, successors and assigns ("Indemnitors") or anyone whose acts they may be liable relative to the Franchised Business; (ii) any breach by the Indemnitors of any term or provision of this Agreement; and (iii) the cost, including, but not limited to reasonable attorney's fees, of enforcing this indemnification provision. The obligations of Indemnitors are joint and several.

This indemnification shall not be construed to indemnify an Indemnitee to the extent such indemnification is prohibited by law, including, an indemnification of any Indemnitee from its own negligence, if prohibited by law. To the extent indemnification of any party hereunder would be prohibited by law, this provision will not apply to such party, but will continue to be effective as to all other parties with respect to whom indemnification is not prohibited by applicable law.

**ARTICLE 10**  
**DISPUTE RESOLUTION**

**10.1 Mediation.**

Except as provided in Section 10.3 below, before any party may bring an action in court for any controversy, dispute or claim between the Area Developer and the Company arising from this Agreement or the franchise relationship set forth in this Agreement, the parties must first have a conference with each other to try to resolve the dispute. If this fails to bring about a resolution, the dispute will first be submitted to non-binding mediation (the "Mediation") in Eau Claire, Wisconsin, unless the parties mutually agree to another location. The Mediation shall be conducted in accordance with then-current AAA mediation rules (the "AAA Mediation Rules") except to the extent the AAA Mediation Rules differ from the terms of this Agreement, in which event the terms of this Agreement shall be applied. Notwithstanding the foregoing, the mediation does not have to be conducted under the AAA. The Area Developer and the Company will select the mediator. If the parties cannot agree on the selection of a mediator, the mediation shall be conducted through the AAA who will make the selection of mediator

using their rules and guidelines. The cost of the Mediation, including the mediator's fee and expenses, shall be paid by the Area Developer. All negotiations and mediation proceedings (including without limitation, discovery conducted therein, as well as all statements and settlement offers made by either party or the mediator in connection with the Mediation) shall be strictly confidential, shall be considered as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and state rules of evidence, and shall not be admissible or otherwise used in connection with any court or arbitration proceeding for any purpose. The mediator may not be called as a witness in any court or arbitration proceeding for any purpose. If the parties, after a good faith effort to settle the dispute using Mediation, are unable to reach settlement, the Area Developer and the Company agree that the dispute will be resolved according to the Sections below. Failure to submit the dispute to Mediation prior to commencing any litigation or arbitration proceeding shall be grounds for dismissal of the litigation or arbitration proceedings.

## **10.2 Arbitration.**

(a) Any dispute which has not been resolved by mediation within ninety (90) days of the initiation of such mediation will, subject to Section 10.3 below, submit the dispute to binding arbitration conducted in Eau Claire, Wisconsin (unless the parties mutually agree otherwise). The arbitration proceeding will be conducted in accordance with the then current commercial arbitration rules of the American Arbitration Association ("AAA Rules"), except to the extent the AAA Rules differ from the terms of this Agreement, in which event the terms of this Agreement will apply. Notwithstanding the foregoing, the arbitration does not have to be conducted under the AAA. The arbitrator must be mutually selected by the parties and must have at least 5 years of substantial experience in franchise law. Each party will be limited to 25 document requests, 15 interrogatories and 1 deposition unless otherwise agreed to between the parties. For purposes of this Section, if any dispute that names, involves or includes the Company, its respective affiliates, officers, directors, agents, brokers or employees, such persons or entities shall also be included in and made party to the arbitration proceeding to the extent such parties consent to proceeding forward in arbitration.

(b) The arbitrator will have the right to award or include in his award any relief which he deems proper in the circumstances, including money damages (with interest on unpaid amounts from date due), specific performance, and attorneys' fees and costs; however, the arbitrator will not be allowed to award or include in his award any punitive, exemplary, or consequential damages, to which the parties waive any right. The arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve any dispute relating to the interpretation, applicability or enforceability of this Section, including but not limited to any claim that all or any part of this Section is void or voidable. The award and decision of the arbitrator will be conclusive and binding upon all parties, and judgment upon the award may be entered in any court of competent jurisdiction; however, the arbitrator may not under any circumstances: (1) stay the effectiveness of any pending termination of this Agreement; or (2) make any award which extends, modified or suspends any lawful term of this Agreement. Each party waives any right to contest the validity or enforceability of the award of an arbitrator under this Section except to the extent permitted by applicable law. The arbitrator must submit a reasoned award and this award must be consistent with the terms of this Agreement. If the arbitrator's award is not reasoned or not consistent with the terms of this Agreement, then notwithstanding the foregoing, the Company may appeal the arbitration award in Federal or State Court. An arbitration award or decision entered in any other case (whether or not the Company was a party) will not be binding on the Company in any other dispute, will have no precedential value and cannot be used as evidence in any other proceeding.

(c) The arbitrator will apply the provisions of any applicable statute of limitations. In connection with any arbitration proceeding, except as provided in Section 10.3, the Area Developer and the Company will 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 as the claim to which it relates.

Any of these compulsory claims which are not submitted or filed in the same proceeding in which they relate will be barred. This provision will continue in full force and effect subsequent to and notwithstanding the transfer of this Agreement, or the termination or expiration of the term of this Agreement. Except as provided in Section 10.2(a) above, the arbitration will be conducted on an individual, not a class-wide basis. None of the parties to the arbitration will be entitled to consolidation of the arbitration proceedings with the proceedings of any third party, nor will the arbitrator or any court be empowered to order a consolidation of proceedings with any third party.

**10.3 Exclusions.**

Notwithstanding the foregoing, the obligation of this Article 10 to mediate and arbitrate will not be binding on the Company with respect to claims relating to the Company's trademarks, service marks, patents, or copyrights, including the Marks; claims relating to any lease or sublease of any real property between the parties or their affiliated entities; or requests by either party for temporary restraining orders, preliminary injunctions, permanent injunctions or other proceedings in a court of competent jurisdiction to obtain interim or permanent relief when deemed necessary by such court to preserve the *status quo* or prevent irreparable injury pending resolution by arbitration of the actual dispute between the parties, which may be brought by us in any State or Federal Court of competent jurisdiction. Both parties and of this Agreement irrevocably submit to the jurisdiction of the United States District Court of Wisconsin and to the state courts in Eau Claire County, Wisconsin, and such parties waive any objection to the application of Wisconsin law or to the jurisdiction or venue in these courts.

**10.4 Dispute Resolution Fee.**

If the Area Developer has not complied with the provisions in this Article 10, the Area Developer shall reimburse the Company for all the expenses incurred by the Company in curing Area Developer's breach (including, without limitation, its attorneys' fees and costs related to dismissing and responding to any improperly filed claim) and pay the Company a Dispute Resolution Fee of \$25,000 ("Dispute Resolution Fee"). The Area Developer acknowledges and agrees that the Company will be damaged by such breach. The Area Developer agrees that a precise calculation of the full extent of the damages that the Company will incur from the breach of the Dispute Resolution provisions of this Agreement are difficult to determine and all parties desire certainty in this matter and agree that the Dispute Resolution Fee provided herein is reasonable and constitute liquidated damages and not a penalty. The Company has the right to collect these amounts in addition to exercising any and all other rights it may have for non-compliance under this Agreement.

**ARTICLE 11  
MISCELLANEOUS**

**11.1 Injunctive Relief.**

In the event of any breach or threatened breach of this Agreement by the Area Developer, Company shall immediately be entitled to injunctive relief, in addition to any other remedies available to it, (including a temporary restraining order, preliminary injunction and specific performance) without showing or proving any actual damage sustained and shall not thereby be deemed to have elected its only remedy to the exclusion of others.

**11.2 Severability.**

All provisions of this Agreement are severable and this Agreement will be interpreted and enforced as if all completely invalid and unenforceable provisions were not contained herein and partially valid and enforceable provisions will be enforced to the extent valid and enforceable. If any applicable and binding law or rule of any jurisdiction requires a greater prior notice of the termination than is required herein or the taking of some other action not required hereunder or if under any applicable and binding law or rule of any jurisdiction, any provision of this Agreement or any specification, standard or operating procedure prescribed by the Company is invalid or unenforceable, the prior notice or other action required by the



law or rule will be substituted for the notice requirements hereof, or such invalid or unenforceable provision, specification, standard or operating procedure will be modified to the extent required to be valid and enforceable. The modifications to this Agreement will be effective only in such jurisdictions and will be enforced as originally made and entered into in all other jurisdictions.

### **11.3 No Third Party Rights.**

Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement is intended, nor will it be deemed to confer upon any person or entity other than the Company or the Area Developer and their respective successors and assigns as may be contemplated by this Agreement, any rights or remedies under or by reason of this Agreement.

### **11.4 Captions; Construction of Language.**

All captions in this Agreement are intended solely for the convenience of the parties, and will not be deemed to affect the meaning or construction of any provision of this Agreement. The language of this Agreement will be construed according to its fair meaning and not strictly for or against either party. All words used in this Agreement refer to whatever number or gender the context requires.

### **11.5 Counterparts.**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement. The counterparts of this Agreement and all related documents may be executed and delivered by facsimile or other electronic signature method by any of the parties to any other party and each will be deemed original signatures. Electronic copies of this document shall constitute and be deemed an original copy of this document for all purposes, provided that such electronic copies are fully executed, dated and identical in form to the original hard copy version of this document. The receiving party may rely on the receipt of such document so executed and delivered by facsimile or other electronic means as if the original had been received.

### **11.6 Governing Law.**

The Area Developer acknowledges that this Agreement was accepted in the State of Wisconsin. The Area Developer acknowledges that it has and will continue to develop a substantial and continuing relationship with the Company at our principal offices in Wisconsin, where the Company's decision-making authority is vested and franchise operations are conducted and supervised. Except to the extent that this Agreement or any particular dispute is governed by the U.S. Trademark Act of 1946 (Lanham Act, 115 U.S.C. 1051), this Agreement will be governed, to the extent permissible, by the laws of the State of Wisconsin without regard to principles of conflicts of law. If, however, any provision of this Agreement would not be enforceable under the laws of Wisconsin, and if the Area Developer's business is located outside of Wisconsin and the provision would be enforceable under the laws of the state in which the Area Developer's business is located, then the provision in questions (and only that provision) will be interpreted and construed under the laws of the state where the Area Developer's business is located. Matters controlled by arbitration will be governed by the United States Arbitration Act (9 U.S.C. §1, et. seq.). If a state regulator requires an amendment to this Agreement, the amendment is attached to this Agreement. The Company will not, however, be precluded from contesting the validity, enforceability, or applicability or such regulator's required amendment in any action relating to this Agreement or to its rescission or termination.

### **11.7 Waiver.**

The Company and the Area Developer may, by written instrument, unilaterally waive any obligation or restriction upon the other under this Agreement. Except as provided herein, no acceptance by the Company of any payment by the Area Developer and no failure, refusal or neglect of the Company or the Area Developer to exercise any right under this Agreement or to insist upon full compliance by the other

with its obligations under this Agreement including, without limitation, any mandatory specification, standard or operating procedure, will constitute a waiver of any provision of this Agreement.

**11.8 Payments.**

The Area Developer will not, on the grounds of alleged non-performance by the Company of any of its obligations under this Agreement, withhold payment of any payments due the Company.

**11.9 Attorneys' Fees.**

In the event the Company retains legal counsel and/or institutes a suit, action or proceeding to enforce or defend any term or provision of this Agreement, the Company will be entitled to recover from the Area Developer reasonable attorneys' fees, in addition to costs or disbursements provided by law.

**11.10 Notices.**

All notices required by this Agreement or applicable law will be in writing, will be made by or sent by prepaid United States mail addressed to the Company or the Area Developer at their respective principal offices first set forth above, or at such other address as the Company or the Area Developer may designate in writing, will be mailed by registered or certified mail if not hand-delivered by personal service or a recognized overnight courier service, and will be effective on the sooner of the delivery date, the day after placement with a courier guaranteeing overnight delivery, or 3 days after depositing with the United States Mail, postage prepaid.

**11.11 Binding Effect.**

This Agreement is binding upon the parties and their respective executors, administrators, heirs, assigns and successors in interest, and will not be modified except by written agreement signed by both the Area Developer and the Company, except that the Company will have the right to change the Operations Manual from time to time and to make such other changes, additions and modifications as set forth in this Agreement.

**11.12 Complete Agreement.**

Area Developer and the Company each acknowledge and warrant to each other that each of them wishes to have all terms of the business relationship defined in this Agreement. Neither Area Developer nor the Company wishes to enter into a business relationship with the other in which any terms or obligations are the subject of alleged oral statements or in which oral statements serve as the basis for creating rights or obligations different than or supplementary to the rights and obligations set forth herein. Accordingly, Area Developer and the Company agree that this Agreement, together with any other documents or agreements executed by the parties contemporaneously hereto, supersede and cancel any prior and/or contemporaneous discussions (whether described as representations, inducements, promises, agreements or any other term) between us or anyone acting on the Company's behalf and Area Developer or anyone acting on Area Developer's behalf, which might be taken to constitute agreements, representations, inducements, promises or understandings (or any equivalent to such terms) with respect to the relationship between the parties, and Area Developer and the Company each agree that each of them have placed, and will place, no reliance on any such discussion; provided, however, that nothing in this or any related agreement is intended to disclaim the representations we made in the Erbert and Gerbert's Sandwich Shop® Franchise Disclosure Document ("FDD") furnished to Area Developer. This Agreement, together with any other documents or agreements executed by the parties contemporaneously hereto or incorporated herein by reference, constitutes the entire agreement between the parties and contains all of the terms, conditions, rights and obligations of the parties with respect to any aspect of the relationship between the parties. No further franchise rights or offer of franchise rights have been promised to Area Developer and no such franchise rights or offer of franchise rights shall come into existence, except by means of a separate writing, executed by one of the Company's officers or such other entity granting the franchise rights and specifically identified as a modification of this Agreement. No

amendment to this Agreement is binding unless executed in writing by both parties.

**11.13 Submission of Agreement.**

The submission of this Agreement does not constitute an offer and this Agreement will become effective only upon its execution by the Company and the Area Developer. The date of execution by the Company will be considered the date of execution of this Agreement. This Agreement will not be binding on the Company unless and until it has been accepted and signed by an authorized officer of the Company.

**11.14 Joint and Several Liability.**

If the Area Developer is comprised of 2 or more persons, the obligations and liabilities owed to the Company under this Agreement will be joint and several.

**11.15 Receipt of Disclosure Document.**

The Area Developer acknowledges receipt of the Company's franchise disclosure document along with this Agreement, at least 14 days before the Area Developer's execution of this Agreement or any payment by it to the Company. If any unilateral modifications have been made to this Agreement, the Area Developer acknowledges that it has had at least 7 days to review them.

**11.16 Disclaimer.**

The Company disclaims any warranty or representation as to the potential success of the Area Developer's business operations under this Agreement.

**11.17 Limitation of Legal Actions**

(a) **IN NO EVENT WILL THE COMPANY BE LIABLE TO THE AREA DEVELOPER FOR PROSPECTIVE PROFITS OR SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES FOR ANY CONDUCT ARISING OUT OF THIS AGREEMENT OR THE COMPANY'S RELATIONSHIP WITH THE AREA DEVELOPER.**

(b) **THE PARTIES WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY EITHER OF THEM RELATING TO OR ARISING OUT OF THIS AGREEMENT OR THE RELATIONSHIP OF THE PARTIES.**

(c) **ANY DISAGREEMENT BETWEEN THE AREA DEVELOPER AND THE COMPANY (AND THE PARTIES' AFFILIATES AND OWNERS) WILL BE CONSIDERED UNIQUE AS TO ITS FACTS AND MUST NOT BE BROUGHT AS A CLASS ACTION AND THE AREA DEVELOPER WAIVES ANY RIGHT TO PROCEED AGAINST THE COMPANY (AND THE COMPANY'S AFFILIATES, STOCKHOLDERS, MEMBERS, MANAGERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS) BY WAY OF CLASS ACTION, OR BY WAY OF A MULTI-PLAINTIFF, CONSOLIDATED OR COLLECTIVE ACTION.**

(d) **THE AREA DEVELOPER WILL BE BARRED FROM BRINGING ANY AND ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ITS RELATIONSHIP WITH THE COMPANY, UNLESS A JUDICIAL PROCEEDING IS COMMENCED WITHIN 1 YEAR FROM THE DATE ON WHICH YOU KNEW OR SHOULD HAVE KNOWN OF THE FACTS GIVING RISE TO THAT CLAIM.**

(e) **THE COMPANY'S MAXIMUM AGGREGATE LIABILITY AND THE MAXIMUM AGGREGATE LIABILITY OF ANY OF THE COMPANY'S OFFICERS, OWNERS, DIRECTORS, MEMBERS, MANAGERS, EMPLOYEES, AFFILIATES, PARENTS OR**

**SUBSIDIARIES RELATED TO ANY AND ALL CLAIMS RELATING TO OR ARISING FROM THIS AGREEMENT OR THE FRANCHISE RELATIONSHIP SET FORTH IN THIS AGREEMENT SHALL BE COLLECTIVELY LIMITED TO THE AMOUNT THE AREA DEVELOPER PAID THE COMPANY WITHIN THE PRIOR 12 MONTHS IMMEDIATELY BEFORE WRITTEN NOTICE OF ANY PROPER CLAIM IS RECEIVED BY THE COMPANY.**

**10.5 Representations and Acknowledgments / Caveat.**

THE COMPANY HAS NOT AND DOES NOT REPRESENT THAT THE AREA DEVELOPER CAN EXPECT TO ATTAIN A SPECIFIC LEVEL OF SALES, PROFITS, OR EARNINGS. THE AREA DEVELOPER AND ITS OWNERS ACKNOWLEDGE THAT AREA DEVELOPER IS ENTERING INTO THIS AGREEMENT, AND ALL ANCILLARY AGREEMENTS EXECUTED CONTEMPORANEOUSLY WITH THIS AGREEMENT, AS A RESULT OF ITS AND THEIR OWN INDEPENDENT INVESTIGATION OF THIS FRANCHISE AND NOT ACT IN RELIANCE ON OR AS A RESULT OF ANY REPRESENTATIONS MADE BY THE COMPANY'S OWNERS, OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AGENTS, REPRESENTATIVES, ATTORNEYS, FRANCHISEES, BROKERS OR OTHER FRANCHISE SELLERS THAT ARE NOT CONTAINED IN OR ARE CONTRARY TO THE TERMS SET FORTH IN THIS AGREEMENT OR ANY REPRESENTATION IN THE FDD. AREA DEVELOPER AND ITS OWNERS UNDERSTAND THAT THEY MAY SUSTAIN LOSSES AS A RESULT OF THE DEVELOPMENT OF FRANCHISED BUSINESSES. AREA DEVELOPER AND ITS OWNERS UNDERSTAND THAT THE BUSINESS VENTURE CONTEMPLATED BY THIS AGREEMENT INVOLVES A HIGH DEGREE OF FINANCIAL RISK AND DEPENDS TO A LARGE DEGREE ON THE AREA DEVELOPER'S SKILLS, ABILITIES, INITIATIVE, AND HARD WORK. THIS AGREEMENT IS EFFECTIVE ONLY ONCE THE AREA DEVELOPER AND THE COMPANY BOTH SIGN THE AGREEMENT.

THE AREA DEVELOPER REPRESENTS TO THE COMPANY THAT ITS SIGNATURE ON AND PERFORMANCE OF THIS AGREEMENT DOES NOT VIOLATE OR CONSTITUTE A BREACH OF THE TERMS OF ANY OTHER AGREEMENT OR COMMITMENT TO WHICH IT, ITS OWNERS OR ANY OF ITS OR THEIR AFFILIATES ARE A PARTY.

UNDER APPLICABLE U.S. LAW, INCLUDING WITHOUT LIMITATION EXECUTIVE ORDER 13224, SIGNED ON SEPTEMBER 23, 2001 (THE "ORDER"), THE COMPANY IS PROHIBITED FROM ENGAGING IN ANY TRANSACTION WITH ANY PERSON ENGAGED IN, OR WITH A PERSON AIDING ANY PERSON ENGAGED IN, ACTS OF TERRORISM AS DEFINED IN THE ORDER. ACCORDINGLY, THE AREA DEVELOPER DOES NOT, AND HEREAFTER WILL NOT, ENGAGE IN ANY TERRORIST ACTIVITY. IN ADDITION, THE AREA DEVELOPER IS NOT AFFILIATED WITH AND DOES NOT SUPPORT ANY INDIVIDUAL OR ENTITY ENGAGED IN, CONTEMPLATING, OR SUPPORTING TERRORIST ACTIVITY. FINALLY, THE AREA DEVELOPER IS NOT ACQUIRING THE RIGHTS GRANTED UNDER THIS AGREEMENT WITH THE INTENT TO GENERATE FUNDS TO CHANNEL TO ANY INDIVIDUAL OR ENTITY ENGAGED IN, CONTEMPLATING, OR SUPPORTING TERRORIST ACTIVITY, OR TO OTHERWISE SUPPORT OR FURTHER ANY TERRORIST ACTIVITY.

NO PERSON HAS THE AUTHORITY TO BIND OR OBLIGATE THE COMPANY EXCEPT AN AUTHORIZED OFFICER OF THE COMPANY BY A WRITTEN DOCUMENT. NO REPRESENTATIONS AS TO PROJECTIONS, FINANCIAL PERFORMANCE, POTENTIAL SUCCESS, FUTURE PROFITS, PROMISES, GUARANTEES OR WARRANTIES OF ANY KIND ARE AUTHORIZED TO BE MADE BY THE COMPANY OR ITS AFFILIATES OR REPRESENTATIVES OTHER THAN THOSE CONTAINED WITHIN ITEM 19 OF THE COMPANY'S FRANCHISE DISCLOSURE DOCUMENT.

THE AREA DEVELOPER ACKNOWLEDGES THAT IT HAS RECEIVED, READ AND UNDERSTAND THIS AGREEMENT AND ITS ATTACHMENTS; THAT THE AREA DEVELOPER HAS HAD AN OPPORTUNITY TO ASK THE COMPANY ALL QUESTIONS RELATING TO THIS AGREEMENT AND THE SYSTEM; AND THAT THE COMPANY HAS ANSWERED ALL SUCH QUESTIONS TO THE SATISFACTION OF THE AREA DEVELOPER.

**ARTICLE 12**  
**DEFINITIONS**

For purposes of this Agreement, the following words will have the following definitions:

**12.1 Area Developer.**

"Area Developer" as used in this Agreement will include each person or entity executing this Agreement as the Area Developer, including the Owners of the Area Developer. If the Area Developer is a married couple, both husband and wife will execute this Agreement and both husband and wife will be jointly and severally liable for all obligations and duties of the Developer under this Agreement as if each spouse were the sole Area Developer in this Agreement. If more than one person or entity executes this Agreement as the Area Developer, each person or entity executing this Agreement will be jointly and severally liable for all obligations and duties of the Area Developer under this Agreement.

**12.2 Franchise Agreement.**

"Franchise Agreement" will mean the Company's then-current standard franchise agreement.

**12.3 Terms Defined in Franchise Agreement.**

Capitalized terms used but not defined in this Agreement will, if defined in the Franchise Agreement, have the meanings ascribed to such terms in the Franchise Agreement.

*[Remainder of page left blank]*

IN WITNESS WHEREOF, the Company and the Area Developer have respectively signed this Agreement effective as of the day and year first above written.

**E & G FRANCHISE SYSTEMS, INC.**

By \_\_\_\_\_

Its \_\_\_\_\_

**AREA DEVELOPER**

\_\_\_\_\_

Legal Name

By \_\_\_\_\_

Its \_\_\_\_\_

And

By \_\_\_\_\_

Its \_\_\_\_\_

**EXHIBIT A**  
**TO**  
**AREA DEVELOPMENT AGREEMENT**

**DESCRIPTION OF TERRITORY:**

"COMPANY"

By \_\_\_\_\_  
Its \_\_\_\_\_

"AREA DEVELOPER"

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

## EXHIBIT G

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

NOTE: SOME STATES REQUIRE THAT THE FRANCHISE BE REGISTERED WITH A STATE AGENCY. WE DO NOT OFFER OR SELL FRANCHISES IN ANY OF THOSE STATES UNLESS WE ARE REGISTERED, AND THE LISTING OF A STATE BELOW DOES NOT MEAN THAT WE ARE SO REGISTERED.

#### **California**

Department of Business Oversight  
One Sansome Street, Suite 600  
San Francisco, CA 94104  
(415) 557-3787  
(866) 275-2677

#### **Florida**

Department of Agriculture and  
Consumer Services  
Division of Consumer Services  
227 N. Bronough Street  
City Centre Building, 7<sup>th</sup> Fl  
Tallahassee, FL 32301  
(904) 922-2770

#### **Hawaii**

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

#### **Illinois**

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

#### **Indiana**

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

#### **Maryland**

Office of Attorney General  
Maryland Division of Securities  
200 St. Paul Place

Baltimore, MD 21202-2020  
(410) 576-6360

#### **Michigan**

Attorney General  
Consumer Protection Division  
525 W. Ottawa Street  
G. Mennen Williams Bldg. 1<sup>st</sup> Fl  
Lansing, MI 48913  
(517) 373-7117

#### **Minnesota**

Department of Commerce  
Registration and Licensing  
85 7<sup>th</sup> Place East, Suite 500  
St. Paul, MN 55101  
(612) 296-6328

#### **Nebraska**

Department of Banking & Finance  
1526 K Street, Suite 300  
Lincoln, NE 68508  
(402) 471-3445

#### **New York**

NYS Department of Law  
Investor Protection Bureau  
28 Liberty Street, 21st Floor  
New York, NY 10005  
(212) 416-8236

#### **North Dakota**

North Dakota Securities  
Department  
600 East Boulevard, State Capitol,  
5th Floor, Dept. 414  
Bismarck, ND 58505-0510  
(701) 328-4712

#### **Oregon**

Depart. of Ins. and Finance  
Corporate Securities Section  
Labor and Industries Building

Salem, OR 97310  
(503) 378-4387

#### **Rhode Island**

Dept. of Business Regulation  
Division of Securities  
233 Richmond Street, Suite 232  
Providence, RI 02903  
(401) 222-3048

#### **South Dakota**

Dept. of Insurance  
Securities Regulation  
124 S Euclid, Suite 104  
Pierre, SD 57501  
(605) 773-3563

#### **Texas**

Secretary of State  
Statutory Document Section  
P.O. Box 13563  
Austin, TX 78711  
(512) 475-1769

#### **Virginia**

State Corporation Commission  
Division of Securities and  
Retail Franchising  
1300 E. Main Street, 9<sup>th</sup> Floor  
Richmond, VA 23219  
(804) 371-9672

#### **Washington**

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



**Wisconsin**

Department of Financial  
Institutions Div. of Securities  
345 W. Washington Ave., 4<sup>th</sup> FL  
Madison, WI 53703  
(608) 261-9555

## Agents for Service of Process

### **California**

Commissioner of Business Oversight  
California Dept. of Business Oversight  
320 West 4<sup>th</sup> Street, Suite 750  
Los Angeles, California 90013-2344  
(213) 576-7505  
(866) 275-2677

### **Hawaii**

Commissioner of Securities  
Business Registration Division  
335 Merchant Street, Room 203  
Honolulu, HI 96813  
(808) 586-2722

### **Illinois**

Illinois Attorney General  
500 South Second Street  
Springfield, Illinois 62706  
(217) 782-1090

### **Indiana**

Indiana Secretary of State  
201 State House  
200 West Washington Street  
Indianapolis, Indiana 46204  
(317) 232-6531

### **Maryland**

Maryland Securities Commissioner  
200 St. Paul Place  
Baltimore, Maryland 21202-2020  
(410) 576-6360

### **Michigan**

Department of Commerce,  
Corporations and Securities Bureau  
6546 Mercantile Way  
Lansing, Michigan 48910  
(517) 334-6212

### **Minnesota**

Commissioner of Commerce  
Department of Commerce  
85 7<sup>th</sup> Place East, Suite 500  
St. Paul, Minnesota 55101  
(612) 296-4026

### **New York**

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  
(518) 473-2492

### **North Dakota**

North Dakota Securities Department  
600 East Boulevard, State Capitol  
5th Floor, Dept. 414  
Bismarck, ND 58505-0510  
(701) 328-4712

### **Oregon**

Director of Oregon  
Department of Insurance and Finance  
700 Summer Street, N.E., Suite 120  
Salem, Oregon 97310  
(503) 378-4387

### **Rhode Island**

Director of Rhode Island  
Department of Business Regulation  
233 Richmond Street, Suite 232  
Providence, Rhode Island 02903-4232  
(401) 222-3048

### **South Dakota**

Director of South Dakota Division of Insurance  
124 S Euclid, Suite 104  
Pierre, South Dakota 57501  
(605) 773-3563

### **Virginia**

Clerk of the State Corporation Commission  
1300 East Main Street, 1st Floor  
Richmond, Virginia 23219  
(804) 371-9672

### **Washington**

Director of Department of Financial Institutions  
Securities Division  
150 Israel Road SW  
Tumwater, Washington 98501  
(360) 902-8760

### **Wisconsin**

Wisconsin Commissioner of Securities  
345 W. Washington Ave., 4th Floor  
Madison, Wisconsin 53703  
(608) 261-9555

**EXHIBIT H**  
**STATE SPECIFIC ADDENDA**

STATE LAW ADDENDUM – ILLINOIS

Notwithstanding anything contained in the foregoing Franchise Agreement, Area Development Agreement (“ADA”) and Franchise Disclosure Document ("FDD") to the contrary, the following provisions of the Illinois Franchise Disclosure Act ("Act") shall apply to any franchise located in the State of Illinois, which shall control to the extent of any inconsistency:

Illinois law governs the Franchise Agreement and the ADA.

In conformance with Section 4 of the Illinois Franchise Disclosure Act, any provision in a franchise agreement or ADA that designates jurisdiction and venue in a forum outside of the State of Illinois is void. However, a franchise agreement or ADA may provide for arbitration to take place outside of Illinois.

Your rights upon Termination and Non-Renewal are set forth in sections 19 and 20 of the Illinois Franchise Disclosure Act.

In conformance with section 41 of the Illinois Franchise Disclosure Act, any condition, stipulation or provision purporting to bind any person acquiring any franchise to waive compliance with the Illinois Franchise Disclosure Act or any other law of Illinois is void.

E & G FRANCHISE SYSTEMS, INC.

DEVELOPER

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

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

Its: \_\_\_\_\_

Its: \_\_\_\_\_

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

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

STATE LAW ADDENDUM - INDIANA

This Addendum shall pertain to franchises sold in the State of Indiana and shall be for the purpose of complying with Indiana statutes and regulations. Notwithstanding anything which may be contained in the body of the Franchise Agreement, Area Development Agreement and Franchise Disclosure Document ("FDD") to the contrary, each shall be amended as follows:

In recognition of the requirements of the Indiana Deceptive Franchise Practices Act, Indiana Code 23-2-2.7, the parties agree as follows:

1. The release that you must sign as a condition to renewal or transfer shall not apply to claims arising under the Indiana Deceptive Franchise Practices Law, Indiana Code 23-2-2.7.

2. The Indiana Franchise Law (Indiana Code 23 2 2.5 and 23 2 2.7) will control where applicable.

Other Provisions Unaffected: All other terms and provisions contained in the Franchise Agreement, Area Development Agreement and FDD shall remain in full force and effect, except to the extent specifically modified herein.

E & G FRANCHISE SYSTEMS, INC.

DEVELOPER

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

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

Its: \_\_\_\_\_

Its: \_\_\_\_\_

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

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

STATE LAW ADDENDUM - MINNESOTA

Notwithstanding anything contained in the Franchise Agreement, Area Development Agreement and Franchise Disclosure Document ("FDD") to the contrary, the following provisions of the Minnesota Franchise Act shall apply to any franchise or franchisee located in the State of Minnesota, which shall control to the extent of any inconsistency:

1. Section X.B of the Franchise Agreement and Item 13 of the FDD: We agree to protect you against claims of infringement or unfair competition with respect to your authorized use of the Marks when, in the opinion of counsel to us, your rights granted therein warrant protection.
2. Section XIX.F of the Franchise Agreement, Article 11.6 in the Area Development Agreement, the State Cover Sheet and Item 17v and 17w of the FDD are modified to provide the following: Minn. Stat. §§80C.21 and Minn. Rule 2860.4400J prohibit us from requiring litigation to be conducted outside Minnesota. In addition, nothing in the FDD or Franchise Agreement can abrogate or reduce any of your rights as provided for in Minnesota Statutes, Chapter 80C, or your rights to any procedure, forum or remedies provided for by the law of Minnesota.
3. Section XIX.F of the Franchise Agreement, Article 7 in the Area Development Agreement and Item 17 of the FDD are hereby modified to provide the following: With respect to franchises governed by Minnesota law, we will comply with Minn. Stat. Sect 80C.14, subs. 3, 4 and 5 which require, except in certain specified cases, that you will be given 90 days notice of termination (with 60 days to cure) and 180 days notice for non-renewal of the Franchise Agreement.
4. Sections V.C and XVI.B.4 of the Franchise Agreement and 17.b and 17.m of the FDD are hereby modified as follows: Any release executed in connection herewith will not apply to any claims that may arise under the Minnesota Franchise Act.
5. Sections XIX.F and XXIII.B of the Franchise Agreement, Articles 11.6 and 11.14 of the Area Development Agreement and 17b, 17.v and 17.w of the FDD are hereby modified to the extent required by the follows:

"Minnesota Statutes, Section 80C.21 and Minnesota Rule 2860.4400 (J) prohibit the franchisor from requiring litigation to be conducted outside Minnesota, requiring waiver of jury trial, or requiring the franchisee to consent to liquidated damages, termination penalties or judgment notes. In addition, nothing in the Franchise Disclosure document or agreement(s) can abrogate or reduce any of franchisee's rights as provided for in Minnesota Statutes, Chapter 80C, or franchisee's rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction."

6. Section XXIII.D of the Franchise Agreement is hereby modified as follows: The limitation of claims is 3 years instead of 1 year pursuant to the Minnesota Statutes, Section 80C.17, Subd.5.
7. Other Provisions Unaffected: All other terms and provisions contained in the Franchise Agreement, Area Development Agreement and FDD shall remain in full force and effect, except to the extent specifically modified herein.

E & G FRANCHISE SYSTEMS, INC.

DEVELOPER

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

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

Its: \_\_\_\_\_

Its: \_\_\_\_\_

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

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

STATE LAW ADDENDUM - NORTH DAKOTA

The following modifies and supersedes the Franchise Disclosure Document ("FDD"), Franchise Agreement and the Area Development Agreement ("ADA") with respect to franchises offered for sale or sold in the State of North Dakota, as followings:

1. Item 17 (c): The requirement that the franchisee sign a release upon renewal of the Franchise Agreement (Section V.C), is unenforceable to the extent that it conflicts with North Dakota law.
2. Item 17(r): The covenant not to compete found in the Franchise Agreement (Section XII) is generally considered unenforceable to the extent that the covenant conflicts with North Dakota law.
3. Item 17(v): The provisions in the Franchise Agreement (Section XIX.F) or ADA (Article 11.6) that require franchisee to consent to litigation being conducted in a forum other than the State of North Dakota are unenforceable to the extent that these provisions conflict with North Dakota law.
4. The provisions concerning waiver of trial by jury in the Franchise Agreement (Section XXIII.B) and Area Development Agreement (Article 11.14) are unenforceable to the extent that these provisions conflict with North Dakota law.
5. The provisions in the Franchise Agreement (Section XXIII.D) that require franchisees to consent to a limitation of claims are unenforceable to the extent that they conflict with North Dakota law. The statute of limitations under North Dakota law will then apply.
6. Item 17(w): The provisions in the Franchise Agreement (Section XIX.F) or ADA (Article 11.6) that require these agreement be governed by a state's law, other than the State of North Dakota, are unenforceable to the extent that these provisions conflict with the North Dakota law. The North Dakota Law will then apply.
7. All other terms and provisions contained in the Franchise Agreement, ADA and FDD shall remain in full force and effect, except to the extent specifically modified herein.

E & G FRANCHISE SYSTEMS, INC.

DEVELOPER

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

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

Its: \_\_\_\_\_

Its: \_\_\_\_\_

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

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

STATE LAW ADDENDUM - WASHINGTON

Notwithstanding anything contained in the foregoing Franchise Agreement, Area Development Agreement ("ADA") and Franchise Disclosure Document ("FDD") to the contrary, the following provisions of the Washington Franchise Investment Protection Act shall apply to any franchise or franchisee located in the State of Washington, which shall control to the extent of any inconsistency:

The State of Washington has a statute, RCW 19.100.180, which may supersede the Franchise Agreement and ADA in your relationship with FRANCHISOR, including the areas of termination and renewal of your franchise. There may also be court decisions which may supersede the Franchise Agreement and ADA in your relationship with FRANCHISOR, including the areas of termination and renewal of your franchise.

In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW shall prevail.

A release or waiver of rights executed by a franchisee shall not include rights under the Washington Franchise Investment Protection Act except when executed pursuant to a negotiated settlement after the Franchise Agreement or ADA, as applicable, 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 Washington Franchise Investment Protection Act, right or remedies under such Act, such as a right to jury trial, may not be enforceable.

Transfer fees are collectable to the extent that they reflect FRANCHISOR'S reasonable estimated or actual costs in effecting a transfer.

In any arbitration involving a franchise purchased in Washington, the arbitration site shall be either in the state of Washington, or in a place mutually agreed upon at the time of the arbitration, or as determined by the arbitrator.

All other terms and provisions contained in the Franchise Agreement, Area Development Agreement and FDD shall remain in full force and effect, except to the extent specifically modified herein.

E & G FRANCHISE SYSTEMS, INC.

DEVELOPER

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

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

Its: \_\_\_\_\_

Its: \_\_\_\_\_

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

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



STATE LAW ADDENDUM - WISCONSIN

The Securities Commissioner of the State of Wisconsin requires that certain provisions contained in franchise documents be amended to be consistent with Wisconsin Fair Dealership Law, Wisconsin Statutes, Chapter following, such provisions are hereby amended:

1. The Wisconsin Fair Dealership Law, among other things, grants franchisees the right, in most circumstances, to 90 days' prior written notice of termination or non-renewal and 60 days within which to remedy any claimed deficiencies. If the Franchise Agreement or Area Development Agreement ("ADA") contains a provision that is inconsistent with these provisions of the Wisconsin Fair Dealership Law, the provisions of the Franchise Agreement or ADA shall be superseded by the Law's requirements and shall have no force or effect.
2. If the Franchise Agreement or ADA requires that it be governed by a state's law, other than the State of Wisconsin, to the extent that any provision of the Franchise Agreement or ADA conflicts with the Wisconsin Fair Dealership Law such provision shall be superseded by the law's requirements.

Each provision of this State Law Addenda shall be effective only to the extent that the jurisdictional requirements of the Wisconsin law applicable to the provision are met independent of this State Law Addenda. This State Law Addenda shall have no force or effect if such jurisdictional requirements are not met.

As to any state law described in this State Law Addenda that declares void or unenforceable any provision contained in the Franchise Agreement or ADA, the franchisor reserves the right to challenge the enforceability of the state law by, among other things, bringing an appropriate legal action or by raising the claim in a legal action or arbitration that you have initiated.

E & G FRANCHISE SYSTEMS, INC.

DEVELOPER

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

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

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

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

### **State Effective Dates**

The following states require that the Franchise Disclosure Document be registered or filed with the state, or be exempt from registration: California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington and Wisconsin.

This document is effective and may be used in the following states, where the document is filed, registered, or exempt from registration as of the Effective Date stated below:

<b>State</b>	<b>Effective Date</b>
Illinois	April 27, 2022
Indiana	May 26, 2022
Michigan	May 19, 2022
Minnesota	June 3, 2022
North Dakota	May 25, 2022
South Dakota	May 28, 2022
Wisconsin	April 26, 2022

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 I

### Receipt

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 E & G Franchise Systems, Inc. offers you a franchise, it must provide this disclosure document to you 14 calendar days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale. Under Iowa law, if applicable, E & G Franchise Systems, Inc. must provide this disclosure document to you at the earlier of your 1<sup>st</sup> personal meeting to discuss the franchise or 14 days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale. Under Michigan law, if applicable, E & G Franchise Systems, Inc. must provide this disclosure document to you at least 10 business days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale. Under New York law, if applicable, E & G Franchise Systems, Inc. must provide this disclosure document to you at the earliest of your 1<sup>st</sup> personal meeting to discuss the franchise or 10 business days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale.

If E & G Franchise Systems, Inc. does not deliver this disclosure document on time or if it contains a false or misleading statement, or a material omission, a violation of federal law and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580 and the appropriate state agency identified on Exhibit G.

The name, principal business address and telephone number of each franchise seller offering the franchise: \_\_\_\_\_.

Issuance Date: April 24, 2023

I have received a disclosure document dated April 24, 2023, that included the following Exhibits:

- |    |                                       |    |  |
|----|---------------------------------------|----|--|
| A. | Financial Statements                  | F. | Area Development Agreement                           |
| B. | List of Franchisees                   | G. | List of State Agencies/Agents for Service of Process |
| C. | Table of Contents to Manual           | H. | State Specific Addenda                               |
| D. | Franchise Agreement (Traditional)     | I. | Receipts   |
| E. | Franchise Agreement (Non-Traditional) |    |  |

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

(Do not leave blank)

\_\_\_\_\_  
Signature of Prospective Franchisee

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

Your copy

Please keep this copy of the Receipt for your records.

## Receipt

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 E & G Franchise Systems, Inc. offers you a franchise, it must provide this disclosure document to you 14 calendar days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale. Under Iowa law, if applicable, E & G Franchise Systems, Inc. must provide this disclosure document to you at the earlier of your 1<sup>st</sup> personal meeting to discuss the franchise or 14 days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale. Under Michigan law, if applicable, E & G Franchise Systems, Inc. must provide this disclosure document to you at least 10 business days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale. Under New York law, if applicable, E & G Franchise Systems, Inc. must provide this disclosure document to you at the earliest of your 1<sup>st</sup> personal meeting to discuss the franchise or 10 business days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale.

If E & G Franchise Systems, Inc. does not deliver this disclosure document on time or if it contains a false or misleading statement, or a material omission, a violation of federal law and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580 and the appropriate state agency identified on Exhibit G.

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| E. | Franchise Agreement (Non-Traditional) |    |  |

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

(Do not leave blank)

\_\_\_\_\_

Signature of Prospective Franchisee

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

Copy for E & G Franchise Systems, Inc.

Please return this copy of the Receipt to Eric Wolfe by mail to 800 Wisconsin St Mailbox 74, Bldg D2 Suite 315, Eau Claire, Wisconsin 54703, by email to [ewolfe@egsubs.com](mailto:ewolfe@egsubs.com) or by fax to (715) 833-8523.