

## FRANCHISE DISCLOSURE DOCUMENT



OTB Acquisition, LLC  
A Delaware Limited Liability Company  
2201 West Royal Lane, Suite 170  
Irving, TX 75063  
Telephone: (972) 499-3000  
Email: [franchise@ontheborder.com](mailto:franchise@ontheborder.com)  
Website: [www.ontheborder.com](http://www.ontheborder.com)

OTB Acquisition LLC offers single unit and area development franchises for the operation of On The Border Mexican Grill & Cantina® restaurants (“On The Border Restaurants,” “OTB Restaurants,” or “Restaurants”). OTB Restaurants are full service, casual dining restaurants featuring Mexican and Tex-Mex food and a full-service bar.

The total investment necessary to begin operation of an OTB Restaurant is from \$2,862,500 to \$4,535,000, excluding land or lease costs and associated costs. The total investment necessary to convert an existing restaurant to an OTB Restaurant is from \$1,103,500 to \$3,275,000, excluding land or lease costs and associated costs. This includes \$90,000 to \$150,000 that must be paid to us or our affiliates. If you sign a Development Rights Agreement, you will also pay a development fee of \$15,000 per Restaurant.

This Franchise Disclosure Document (“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 fourteen (14) calendar days before you sign a binding agreement with, or make any payment to, franchisor or an affiliate in connection with the proposed franchise sale. **Note, however, that no government agency has verified the information contained in this document.**

You may wish to receive your Disclosure Document in another format that is more convenient to you. To discuss the availability of disclosures in different formats, contact Brian Shaughnessy at Attention: Franchise Sales, 2201 West Royal Lane, Suite 170, Irving, Texas 75063, [Franchise@ontheborder.com](mailto:Franchise@ontheborder.com) and (972) 499-3000.

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

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

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

Issuance Date: April 14, 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 E.
<b>How much will I need to invest?</b>	Items 5 and 6 list fees you will be paying to the franchisor or at the franchisor's direction. Item 7 lists the initial investment to open. Item 8 describes the suppliers you must use.
<b>Does the franchisor have the financial ability to provide support to my business?</b>	Item 21 or Exhibit G includes financial statements. Review these statements carefully.
<b>Is the franchise system stable, growing, or shrinking?</b>	Item 20 summarizes the recent history of the number of company-owned and franchised outlets.
<b>Will my business be the only On the Border Mexican Grill &amp; Cantina Restaurant business in my area?</b>	Item 12 and the "territory" provisions in the franchise agreement describe whether the franchisor and other franchisees can compete with you.
<b>Does the franchisor have a troubled legal history?</b>	Items 3 and 4 tell you whether the franchisor or its management have been involved in material litigation or bankruptcy proceedings.
<b>What's it like to be an On the Border Mexican Grill &amp; Cantina Restaurant franchisee?</b>	Item 20 or Exhibit E lists current and former franchisees. You can contact them to ask about their experiences.
<b>What else should I know?</b>	These questions are only a few things you should look for. Review all 23 Items and all Exhibits in this disclosure document to better understand this franchise opportunity. See the table of contents.

## What You Need to Know About Franchising *Generally*

**Continuing responsibility to pay fees.** You may have to pay royalties and other fees even if you are losing money.

**Business model can change.** The franchise agreement may allow the franchisor to change its manuals and business model without your consent. These changes may require you to make additional investments in your franchise business or may harm your franchise business.

**Supplier restrictions.** You may have to buy or lease items from the franchisor or a limited group of suppliers the franchisor designates. These items may be more expensive than similar items you could buy on your own.

**Operating restrictions.** The franchise agreement may prohibit you from operating a similar business during the term of the franchise. There are usually other restrictions. Some examples may include controlling your location, your access to customers, what you sell, how you market, and your hours of operation.

**Competition from franchisor.** Even if the franchise agreement grants you a territory, the franchisor may have the right to compete with you in your territory.

**Renewal.** Your franchise agreement may not permit you to renew. Even if it does, you may have to sign a new agreement with different terms and conditions in order to continue to operate your franchise business.

**When your franchise ends.** The franchise agreement may prohibit you from operating a similar business after your franchise ends even if you still have obligations to your landlord or other creditors.

### Some States Require Registration

Your state may have a franchise law, or other law, that requires franchisors to register before offering or selling franchises in the state. Registration does not mean that the state recommends the franchise or has verified the information in this document. To find out if your state has a registration requirement, or to contact your state, use the agency information in Exhibit L.

Your state also may have laws that require special disclosures or amendments be made to your franchise agreement. If so, you should check the State Specific Addenda. See the Table of Contents for the location of the State Specific Addenda.

## Special Risks to Consider About *This* Franchise

Certain states require that the following risk(s) be highlighted:

1. **Out-of-State Dispute Resolution.** The franchise agreement requires you to resolve disputes with the franchisor by mediation, arbitration, and/or litigation only in Texas. Out-of-state mediation, arbitration, or litigation may force you to accept a less favorable settlement for disputes. It may also cost more to mediate, arbitrate, or litigate with the franchisor in Texas than in your own state.

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

**(THE FOLLOWING APPLY TO TRANSACTIONS  
GOVERNED BY CALIFORNIA FRANCHISE LAW ONLY)**

- A. **THE CALIFORNIA FRANCHISE INVESTMENT LAW REQUIRES THAT A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE FRANCHISE BE DELIVERED TOGETHER WITH THE DISCLOSURE DOCUMENT.**
- B. Neither the franchisor, franchise broker nor any person in Item 2 of the Disclosure Document are subject to any currently effective order of any National Securities Association or National Securities Exchange, as defined in the Securities Exchange Act of 1934, 15 U.S.C.A. 78A et seq., suspending or expelling such person from membership in such association or exchange.
- C. The Franchise Agreement provides for termination upon bankruptcy. This provision may not be enforceable under Federal Bankruptcy Law. (11 U.S.C.A. Sec 101 et seq.).
- D. The Franchise Agreement contains a covenant not to compete which extends beyond the termination of the agreements. This provision may not be enforceable under California Law.
- E. The Franchise Agreement contains a liquidated damages clause. Under California Civil Code §1671, certain liquidated damages clauses are unenforceable.
- F. The Franchise Agreement requires application of the laws of the State of Texas. This provision may not be enforceable under California Law.
- G. The following shall be added to Item 19: “The earnings claims figure(s) does (do) not reflect the costs of sales, operating expenses, or other costs or expenses that must be deducted from the gross revenue or gross sales figures to obtain your net income or profit. You should conduct an independent investigation of the costs and expenses you will incur in operating your (franchised business). Franchisees or former franchisees, listed in the Disclosure Document, may be one source of this information.”
- H. Section 31125 of the California Corporations Code requires us to give you a disclosure document, in a form containing the information that the commissioner may by rule or order require, before a solicitation of a proposed material modification of an existing franchise.
- I. **YOU MUST SIGN A GENERAL RELEASE IF YOU RENEW OR TRANSFER YOUR FRANCHISE. CALIFORNIA CORPORATIONS CODE §31512 VOIDS A WAIVER OF YOUR RIGHTS UNDER THE FRANCHISE INVESTMENT LAW (CALIFORNIA CORPORATIONS CODE §§31000 THROUGH 31516).**
- J. **BUSINESS AND PROFESSIONS CODE §20010 VOIDS A WAIVER OF YOUR RIGHTS UNDER THE FRANCHISE RELATIONS ACT (BUSINESS AND PROFESSIONS CODE §§20000 THROUGH 20043).**

- K. California Business and Professions Code §§20000 through 20043 provide rights to the franchisee concerning termination or non-renewal of a franchise. If the Franchise Agreement contains a provision that is inconsistent with the law, the law will control.
- L. If the Franchisee resides in the State of California or the franchised business is located within the State of California, the venue for any dispute may be within the State of California. Business and Professions Code §20040.5 voids restricting a venue to a forum outside California with respect to any claim arising under or relating to a Franchise Agreement involving a franchise business operating in California.
- M. OUR WEBSITE HAS NOT BEEN REVIEWED OR APPROVED BY THE CALIFORNIA DEPARTMENT OF BUSINESS OVERSIGHT. ANY COMPLAINTS CONCERNING THE CONTENTS OUR WEBSITE MAY BE DIRECTED TO THE CALIFORNIA DEPARTMENT OF BUSINESS OVERSIGHT AT [www.dbo.ca.gov](http://www.dbo.ca.gov)
- N. It is a violation California law to restrict or inhibit your right to join a trade association or to prohibit the right of free association among franchisees for any lawful purposes.

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

The following is applicable to you if you are a Michigan resident or your franchise will be located in Michigan.

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

- (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 the Michigan Franchise Investment Act. This shall not preclude a franchisee, after entering into a franchise agreement, from settling any and all claims.
- (c) A provision that permits a franchisor to terminate a franchise prior to the expiration of its 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 a franchisor to refuse to permit a transfer of ownership of a franchise, except for good cause. This subdivision does not prevent a franchisor from exercising a

right of first refusal to purchase the franchise. Good cause shall include, but is not limited to:

- i. The failure of the proposed transferee to meet the franchisor's then current reasonable qualifications or standards.
  - ii. The fact that the proposed transferee is a competitor of the franchisor or sub-franchisor.
  - iii. The unwillingness of the proposed transferee to agree in writing to comply with all lawful obligations.
  - iv. The failure of the franchisee or proposed transferee to pay any sums owing to the franchisor or to cure any default in the franchise agreement existing at the time of the proposed transfer.
- (h) A provision that requires the franchisee to resell to the franchisor items that are not uniquely identified with the franchisor. This subdivision does not prohibit a provision that grants to a franchisor a right of first refusal to purchase the assets of a franchise on the same terms and conditions as a bona fide third-party willing and able to purchase those assets, nor does this subdivision prohibit a provision that grants the franchisor the right to acquire the assets of a franchise for the market or appraised value of such assets if the franchisee has breached the lawful provisions of the franchise agreement and has failed to cure the breach in the manner provided in subdivision (c).
- (i) A provision which permits the franchisor to directly or indirectly convey, assign, or otherwise transfer its obligations to fulfill contractual obligations to the franchisee unless provision has been made for providing the required contractual services. 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 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 ENFORCEMENT BY THE ATTORNEY GENERAL.**

Any questions regarding this notice should be directed to:

State of Michigan  
Department of Attorney General  
Attn: Franchise  
670 G. Mennen Williams Building  
525 West Ottawa Street  
P.O. Box 30755  
Lansing, Michigan 48909  
Telephone Number: (517) 335-7632



**(THE FOLLOWING APPLY TO TRANSACTIONS GOVERNED BY  
THE MINNESOTA FRANCHISE INVESTMENT LAW ONLY)**

THESE FRANCHISES HAVE BEEN REGISTERED UNDER THE MINNESOTA FRANCHISE ACT. REGISTRATION DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION OR ENDORSEMENT BY THE COMMISSIONER OF COMMERCE OF MINNESOTA OR A FINDING BY THE COMMISSIONER THAT THE INFORMATION PROVIDED HEREIN IS TRUE, COMPLETE AND NOT MISLEADING.

THE MINNESOTA FRANCHISE ACT MAKES IT UNLAWFUL TO OFFER OR SELL ANY FRANCHISE IN THIS STATE WHICH IS SUBJECT TO REGISTRATION WITHOUT FIRST PROVIDING TO THE PROSPECTIVE FRANCHISEE, AT LEAST 7 DAYS PRIOR TO THE EXECUTION BY THE PROSPECTIVE FRANCHISEE OF ANY BINDING FRANCHISE OR OTHER AGREEMENT, OR AT LEAST 7 DAYS PRIOR TO THE PAYMENT OF ANY CONSIDERATION BY THE FRANCHISEE, WHICHEVER OCCURS FIRST, A COPY OF THIS PUBLIC OFFERING STATEMENT, TOGETHER WITH A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE FRANCHISE. THIS PUBLIC OFFERING STATEMENT CONTAINS A SUMMARY ONLY OF CERTAIN MATERIAL PROVISIONS OF THE FRANCHISE AGREEMENT. THE CONTRACT OR OTHER AGREEMENT SHOULD BE REFERRED TO FOR AN UNDERSTANDING OF ALL RIGHTS AND OBLIGATIONS OF BOTH THE FRANCHISOR AND THE FRANCHISEE.

IF THIS DISCLOSURE DOCUMENT IS NOT DELIVERED ON TIME, OR IF IT CONTAINS A FALSE, INCOMPLETE, INACCURATE OR MISLEADING STATEMENT, A VIOLATION OF FEDERAL AND STATE LAW MAY HAVE OCCURRED AND SHOULD BE REPORTED TO THE FEDERAL TRADE COMMISSION, WASHINGTON, D.C. 20580 AND TO THE COMMISSIONER OF SECURITIES, DEPARTMENT OF COMMERCE, SECURITIES DIVISION, 85 7TH PLACE EAST, SUITE 500, ST. PAUL, MINNESOTA 55101, WHICH ADMINISTERS AND ENFORCES THE MINNESOTA FRANCHISE ACT.

1. Item 13 is amended by adding the following language: The Minnesota Department of Commerce requires that the Franchisor indemnify Minnesota franchisees against liability to third parties resulting from claims by third parties that the franchisee's use of the Franchisor's trademark infringes upon the trademark rights of the third-party. Franchisor will protect your right to use the trademarks, service marks, trade names, logotypes of other commercial symbols ("Marks") or indemnify you from any loss, costs or expenses arising out of any claim, suit or demand regarding the use of the Marks. Franchisor does not indemnify against the consequences of a franchisee's use of the Franchisor's trademark except in accordance with the requirements of the franchise, and, as a condition to indemnification, franchisee must provide notice to Franchisor of any such claim within ten (10) days and tender the defense of the claim to Franchisor. If Franchisor accepts the tender of defense, Franchisor has the right to manage the defense of the claim, including the right to compromise, settle or otherwise resolve the claim, and to determine whether to appeal a final determination of the claim.
2. Item 17 is amended by adding the following language:

- a. Minnesota Statutes, Section 80C.21 and Minnesota Rule 2860.4400(J) prohibit Franchisor from requiring litigation to be conducted outside Minnesota, requiring waiver of a 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 Franchise Agreement can abrogate or reduce any of the franchisee's rights as provided for in Minnesota Statutes, Chapter 80C, or the franchisee's rights to any procedure, forum or remedies provided for by the laws of the jurisdiction. If the Franchise Agreement and/or the Franchise Disclosure Document contains a provision that is inconsistent with the Minnesota Statutes or the Minnesota Rule, the provisions of the Franchise Agreement and/or the Franchise Disclosure Document shall be superseded by the Minnesota Rule's requirements and shall have no force or effect.
  - b. With respect to franchises governed by Minnesota law, Franchisor will comply with Minn. Stat. Sec. 80C.14, Subds. 3, 4, and 5 which require, except in certain specified cases, that a franchisee be given 90 days' written notice of termination (with 60 days to cure) and notice of Franchisor's intention not to renew 180 days before expiration of the franchise and that the franchisee be given sufficient opportunity to operate the franchise in order to enable the franchisee the opportunity to recover the fair market value of the franchise as a going concern. Franchisor's consent to the transfer will not be unreasonably withheld.
  - c. Minnesota law provides franchisees with certain termination rights. With respect to franchises governed by Minnesota law, Franchisor will comply with Minn. Stat. Sec. 80C.14, Subds. 3, 4, and 5 which require, except in certain specified cases, that a franchisee be given 90 days' written notice of termination (with 60 days to cure) and 180 days' notice for non-renewal of the Franchise Agreement. Franchisor's consent to the transfer of the franchise will not be unreasonably withheld.
3. The name and address of the Franchisor's agent in this State authorized to receive service of process is:

Minnesota Commissioner of Commerce  
Minnesota Department of Commerce  
85 7th Place East, Suite 500  
St. Paul, Minnesota 55101-2198

## DISCLOSURE REQUIRED BY NEBRASKA LAW.

The State of Nebraska has not reviewed and does not approve, recommend, endorse, or sponsor any seller-assisted marketing plan. The information contained in this disclosure has not been checked by the state. If you have any questions about this purchase, see an attorney or other financial advisor before you sign a contract or agreement.

## READ THIS CAREFULLY

The state of Ohio has not reviewed and does not approve, recommend, endorse, or sponsor this or any other business opportunity plan. If you have any questions about this plan, the information contained in this disclosure document should be reviewed with an attorney or financial advisor before you sign any agreement.

### DISCLOSURE REQUIRED BY OHIO LAW O.R.C. §1334.02:

OTB Acquisition LLC  
A Delaware Limited Liability Company  
2201 West Royal Lane, Suite 170, Irving, TX 75063  
Telephone: (972) 499-3000

OTB Acquisition LLC offers single unit and area development franchises for the operation of On The Border Mexican Grill & Cantina® restaurants (“On The Border Restaurants,” “OTB Restaurants,” or “Restaurants”). OTB Restaurants are full service, casual dining restaurants featuring Mexican and Tex-Mex food and a full-service bar.

For a list of our trademark, trade name, service mark, advertising, or other commercial symbol, under which a prospective purchaser will be operating, or which identifies the goods or services to be offered, sold, or distributed by us are listed in Item 13 of this Disclosure Document.

The total investment necessary to begin operation of an OTB Restaurant is from \$2,862,500 to \$4,535,000, excluding land or lease costs and associated costs. The total investment necessary to convert an existing restaurant to an OTB Restaurant is from \$1,103,500 to \$3,275,000, excluding land or lease costs and associated costs. This includes \$90,000 to \$150,000 that must be paid to us or our affiliates. If you sign a Development Rights Agreement, you will also pay a development fee of \$15,000 per Restaurant. Additional information regarding specific fees and costs are listed in Items 5,6,7 and 8 of this Disclosure Document. Items 5 and 6 list fees you will pay 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.

The conditions under which all or part of any initial payment is refundable or a promissory note is returnable, and if the initial payment is not refundable, is disclosed in Items 5,6,7 and 8.

The nature of the business opportunity plan offered by us is set forth in the attached Disclosure Document. Item 11 includes a full description of the services, training, and assistance to be provided by us.

We do not offer you any direct or indirect financing. We do not guarantee any notes, leases or other obligations, nor do we receive payment or other consideration for the placing of financing. We do not buy-back or provide a security arrangement for your initial payment. Additional information can be located in this Disclosure Document in Items 7 and 10.

The nature of the business opportunity plan offered by us is set forth in the attached Disclosure Document. Items 1 – 23 and attached exhibits, contain details of the business opportunity plan, goods and services, and information about the Seller.

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## **EXHIBITS**

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- B LEASE RIDER AND CONDITIONAL ASSIGNMENT OF LEASE
- C LIST OF AGENTS FOR SERVICE OF PROCESS
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- I FRANCHISE ACKNOWLEDGEMENT QUESTIONNAIRE
- J [INTENTIONALLY BLANK]
- K CONDITIONAL ASSIGNMENT OF CONTACT INFORMATION
- L LIST OF STATE REGULATORY AUTHORITIES
- M PERSONAL GUARANTY OF PRINCIPALS
- N MINIMUM INSURANCE REQUIREMENTS
- O SITE SELECTION FORM

- P CATERING SERVICES AGREEMENT
- Q PRE-AUTHORIZED BANK TRANSFER FORM
- R STATE EFFECTIVE DATES
- S RECEIPTS



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

To simplify the language, this Disclosure Document uses “OTB,” “we,” “us,” or “our” to mean OTB Acquisition LLC, the Franchisor.

“You,” “your,” or “Franchisee” means the individual, corporation, or other entity that buys the franchise. If you are an association, limited or general partnership, corporation, limited liability company, or any other entity, the provisions of our standard Franchise Agreement apply to all of your owners as a result of our requirement that your owners personally guaranty your obligations under the Franchise Agreement.

**The Franchisor**

We are a Delaware limited liability company formed on March 10, 2010. Our principal place of business is 2201 West Royal Lane, Suite 170, Irving, Texas 75063. Our telephone number is (972) 499-3000. Our web address is [www.ontheborder.com](http://www.ontheborder.com).

We conduct business under our company name, OTB Acquisition, LLC, and under the trademarks, trade names, and service marks “On The Border®,” “On The Border Mexican Café®,” “On The Border Mexican Grill & Cantina®,” among others, as well as OTB’s trade names, service marks, trademarks, logos, emblems and indicia of origin (collectively, the “Marks”).

**Predecessors, Parent, and Affiliates**

*Predecessors*

From July 1, 2010 until April 22, 2014, we were owned and controlled by Golden Gate Capital Opportunity Fund, LP (“Golden Gate”). We did not offer to sell franchises during Golden Gate’s ownership of OTB. Golden Gate is a limited partnership organized and existing in the Cayman Islands. Golden Gate’s principal place of business is One Embarcadero Center, 39th Floor, San Francisco, California 94111. Golden Gate’s telephone number is (415) 983-2700. Golden Gate’s web address is [www.goldengatecap.com](http://www.goldengatecap.com). Golden Gate is no longer affiliated with us. However, we made a good faith effort to obtain updates and information regarding Golden Gate for disclosure in this document.

On April 23, 2014, Golden Gate sold its ownership interest in us to Border Holdings LLC (“Border Holdings”). Border Holdings is a Delaware limited liability company. Border Holdings principal place of business is 2201 West Royal Lane, Suite 170, Irving, Texas 75063.

*Parents*

Our immediate parent is OTB Holding LLC, a Delaware limited liability company which maintains its principal place of business at 2201 West Royal Lane, Suite 170, Irving, Texas 75063. OTB Holding LLC’s parent is Border Holdings, a Delaware limited liability company, which also maintains its principal place of business at 2201 West Royal Lane, Suite 170, Irving, Texas 75063.

## *Affiliates*

We have no affiliates requiring disclosure in this Disclosure Document.

## **Our Registered Agent for Service of Process**

Our registered agents for service of process are listed in Exhibit C.

## **Prior Experience**

We, our predecessor, and our predecessor's predecessors began operating OTB Restaurants in 1994 and offered franchises for OTB Restaurants between 1996 and 2010. We stopped offering and selling franchises of OTB Restaurants in the United States between June 30, 2010 and September 1, 2020. Although we did not offer or sell franchises for OTB Restaurants in the United States during that period, we and our affiliates continuously operated OTB Restaurants during that period. We also actively served as the franchisor for existing franchised OTB Restaurants by, among other things, providing support and assistance to those franchised OTB Restaurants.

In addition to offering OTB Restaurant franchises, we also engage in licensing activities with third-party manufacturers and distributors under which those third-party manufacturers and distributors distribute a line of On The Border® salsas, chips, quesos, fresh meal kits, frozen meal kits, and alcohol drink mixers packaged under OTB's trademarks to retailers in the United States, Canada, Europe, and Asia.

As of the end of our last fiscal year on December 27, 2022, there were one hundred nineteen (119) On The Border restaurants ("OTB Restaurants") operating in the United States. We and our affiliates operated one hundred ten (110) company-owned OTB Restaurants. There were also nine (9) franchise locations operating in the United States as of December 27, 2022. In addition, fourteen (14) franchise locations operate in South Korea as of December 27, 2022.

Although we reserve the right to do so, except as described in this Item 1, we, our parents, and affiliates have not offered franchises in any line of business other than the On The Border franchises described in this Disclosure Document. However, we, our parents, or our affiliates may in the future develop or acquire other businesses, including other restaurant concepts, some of which may be sold as franchises. We expect that any such concept would operate under marks different from the Marks and that you will have no rights regarding those restaurants.

## **The Business We Offer**

We offer qualified persons the license to own, develop, and operate a single unit OTB Restaurant Franchise pursuant to the terms of our standard Franchise Agreement (the "Franchise Agreement"), a copy of which is attached to this Disclosure Document as Exhibit A.

OTB Restaurants are full service, casual dining restaurants that feature Mexican and Tex-Mex menu options and other products and beverages, including alcoholic beverages. We also offer

catering, delivery, and other off-premises services and may permit franchisees to offer catering, delivery, and other off-premises services. OTB Restaurants include free-standing and in-line restaurants located in metropolitan areas or surrounding suburbs. Proximity to office buildings, shopping malls, shopping centers, community hubs, and other high traffic areas is desirable. You must operate your OTB Restaurant(s) under the obligations outlined in the Franchise Agreement, including all applicable system operating standards and requirements (the “System”) outlined in the manuals and other materials and bulletins we provide to you from time to time (collectively, the “Manuals”).

OTB Restaurants and its System are identified by distinctive exterior and interior design, décor, color scheme, patios, and furnishings; special recipes and menu items; uniform standards, specifications and procedures for operations; quality and uniformity of products and services offered; procedures for inventory and management control; training and assistance; and advertising and promotional programs. OTB Restaurants operate under and use OTB’s Marks and other indicia of origin we authorize for use by OTB Restaurants.

We also offer qualified persons the opportunity to develop and operate a specific number of OTB Restaurants within a defined geographic territory (the “Development Area”) pursuant to a development schedule under the terms of an area development rights agreement (the “Development Rights Agreement”). If you sign a Development Rights Agreement, you will sign our then-current form Franchise Agreement for each OTB Restaurant developed and opened pursuant to your Development Rights Agreement which may differ from the form of Franchise Agreement attached to this Disclosure Document. If you sign a Development Rights Agreement, you will pay a development fee in addition to the initial franchise fee and continuing royalty and advertising contribution set forth in Item 6 for each OTB restaurant.

Unless indicated otherwise, all references to “you,” “your,” or “Franchisee” includes your status both as a Developer under a Development Rights Agreement and as a Franchisee under all related Franchise Agreements. Any reference in this Disclosure Document to your owners includes the owners of a Developer under a Development Rights Agreement and the owners of a Franchisee under all related Franchise Agreements.

### **Competition**

The market for restaurants is well established and highly competitive. You will compete with a variety of table-service concept restaurants serving alcoholic beverages in your area. The OTB Restaurant business is highly competitive based on price, service, restaurant location, and food quality, and is often affected by changes in consumer tastes, economic conditions, population, and traffic patterns. OTB Restaurants compete in each market with locally owned restaurants, including ghost kitchens and virtual brands, as well as with national and regional restaurant brands, some of which operate more restaurants and have longer operating histories than we do. You may encounter competition from OTB Restaurants operated by us, our affiliates, our franchisees, and our licensees. You may also encounter competition from authorized third-party licensees selling food and meal preparation kits and alcoholic beverages bearing our OTB Marks through direct-to-consumer sales in other channels of distribution, including home delivery, grocery stores, and shoppers’ clubs. Specifically, we licensed to third-party Utz Quality Foods, LLC (“UTZ”)

unlimited rights to display, use, and market the OTB Marks on consumer products for consumption at home. Please see Item 13 for additional details regarding UTZ's rights to use the OTB Marks and their products. We also licensed to third-party Vessel Operating Holdco LLC ("Reef Kitchens") the right to use the OTB Marks for the sale of OTB branded products and menu items from ghost kitchens, dark kitchens, cloud kitchens, execution kitchens, preparation kitchens, host kitchens, container kitchens, concession trailers and/or food trucks. Please see Item 13 for additional details regarding Reef Kitchen's right to use the OTB Marks and their products. There may also be active competition between us for management personnel as well as for attractive commercial real estate sites suitable for restaurants. The age group from 18 to 60 years old is the primary population age group attracted to OTB Restaurants and other similar restaurants.

### **Industry Specific Regulations**

OTB Restaurants, and the industry restaurants serving beer, wine, and liquor, are heavily regulated. You must comply with all applicable local, county, state and federal laws, regulations, ordinances, and zoning codes which apply to businesses generally, as well as to the OTB Restaurant and food service industry including health, sanitation, food handling, food preparation, waste disposal, smoking restrictions, anti-discrimination, employment, sexual harassment, personal data collection, retention, and destruction laws, cybersecurity laws, and advertising laws at your sole cost and expense. These include many laws, rules, and regulations applicable to businesses generally, such as the Americans with Disabilities Act, federal and state wage and hour laws, and the Occupation Safety and Health Act. You must also comply with regulations pertaining to consumer transactions and your acceptance of credit cards, such as the Payment Card Industry Data Security Standards as they may be revised and modified by the Payment Card Industry Security Standards Council (see [www.pcisecuritystandards.org](http://www.pcisecuritystandards.org)) and the Fair and Accurate Credit Transactions Act. In addition, OTB Restaurants are subject to the laws, rules, and regulations regarding the preparation, sale, and service of food, as well as the condition of the OTB Restaurant promulgated by governmental agencies, such as the U.S. Food and Drug Administration, the U.S. Department of Agriculture, and local health departments.

Certain states or local jurisdictions may also enact or impose laws, regulations, or rules directed toward owners and operators of restaurants and/or retail stores that operate within a system, or under a similar brand name, even if the other locations in the chain are not in the same jurisdiction or state. These laws, regulations, or rules may regulate minimum wages, employee benefits, and other labor or employment practices; menu labeling or food content; or other aspects of your business. For example, you must comply with federal, state, and local "menu labeling" laws and regulations. Under the current federal menu labeling laws, restaurants operating under the same brand name with twenty (20) or more outlets must provide to customers certain nutritional information regarding standard menu items. While we will provide certain guidance and instructions when our network of OTB Restaurants is required to disclose information, it is your sole responsibility to monitor and comply with all applicable laws and regulations.

You also must obtain and maintain all applicable real estate permits and licenses and operational licenses relating to the development, building, and operation of an OTB Restaurant in your area. Before opening or operating your OTB Restaurant, you must also obtain a beer, wine, and/or liquor license or similar license (a "Liquor License"). You will need to comply with all local and/or state

alcohol beverages licensing rules and regulations. The difficulty and cost of obtaining a Liquor License and the procedures for securing the license vary greatly from area to area. You are solely responsible for investigating the availability and cost of the appropriate Liquor License in your area, qualifying for and obtaining the necessary license(s), and maintaining compliance with applicable law. We recommend that you hire a lawyer who specializes in securing these licenses in your jurisdiction to assist with the process of obtaining a Liquor License. Your OTB Restaurant is also subject to “dram-shop” laws which may impose liability on sellers of alcohol for accidents or injuries caused by patrons of a restaurant, bar, or other seller of alcohol. You must understand and comply with these laws in operating your OTB Restaurant.

You should hire and consult a lawyer to identify and review the applicable local, county, state, and federal laws, rules, regulations that may affect the operation of your OTB Restaurant before you sign a Franchise Agreement. It is your, and only your, responsibility on a continuous basis to investigate and satisfy all local, county, state and federal laws, rules, and regulations as they vary from place to place and may change from time to time.

## **ITEM 2 BUSINESS EXPERIENCE**

### **Chief Executive Officer – Timothy E. Ward**

Mr. Ward began as OTB’s Chief Executive Officer on June 10, 2020. Previously, Mr. Ward served as the President for The Krystal Company, Dunwoody, GA, from October 2019 through June 2020. Before that, Mr. Ward was the Chief Operations Officer for Captain D’s, Nashville, TN, from November 2016 through October 2019.

### **Chief Financial Officer – Keith Davis**

Mr. Davis began as OTB’s Chief Financial Officer on May 23, 2022. Previously, Mr. Davis served as the Chief Financial Officer for Captain D’s, LLC of Nashville, Tennessee from March 2016 through May 2022.

### **Vice President of Marketing – Suzie Tsai**

Ms. Tsai began as OTB’s Senior Director of Marketing in October 2020 and became OTB’s Vice President of Marketing in July 2022. Prior to joining OTB, she was the Chief Marketing Officer for KidZania USA, LLC of Frisco, Texas from September 2018 until August 2020. Prior to that, she was at Brinker International, Inc. of Dallas, Texas in 2005, where she was the Senior Director of Marketing for Chili’s Grill & Bar for United States and Global regions until April 2018.

### **Vice President of Franchise - Brian Shaughnessy**

Mr. Shaughnessy began as OTB’s Vice President of Franchise in March 2022. Previously, Mr. Shaughnessy was OTB’s Director of Franchise Operations from January 2018 until March 2022. Before that, Mr. Shaughnessy served as OTB’s Director of New Restaurant Operations from March 2016 until January 2018.

### **Vice President of Facilities and Construction – Keith Wheaton**

Mr. Wheaton began as OTB's Vice President of Facilities and Construction on July 27, 2020. Previously, Mr. Wheaton served as Director of Construction for J. Alexander's Holdings, Inc., Nashville, TN, from November 2016 through July 2020.

### **Vice President of Information Technology – Khalid Essafi**

Mr. Essafi began as OTB's Vice President of Information Technology in January 2023. Previously, Mr. Essafi joined On The Border in September 2017, as a Senior Director of IT Infrastructure, and in October 2022 he became the Senior Director of IT (Infrastructure & Restaurant Support Systems). Before that, Mr. Essafi was the Manager of Network and Voice services for Associa Inc, Dallas, TX, between 2014 and 2017.

### **Director of Training & Development - Shelly Pierce**

Ms. Pierce began as OTB's Director of Training and Development and Operations Service Support in April 2019 and our Director of Training and Development in March 2018. Previously, Ms. Pierce served as OTB's Senior Manager of Training and Development from January 2015 until March 2018.

## **ITEM 3 LITIGATION**

There is no litigation required to be disclosed in this Item.

## **ITEM 4 BANKRUPTCY**

There is no bankruptcy information related to us, our parent, our predecessor, our affiliates, or general partner.

Certain individuals with management responsibility relating to the sale or operation of franchises offered by this document were principal officers of a company that filed a petition as a debtor and obtained a discharge of that company's debts under the Bankruptcy Code. Specifically, Timothy E. Ward was hired as senior management officials by The Krystal Company Inc. ("Krystal") to guide it through a voluntary Chapter 11 bankruptcy proceeding on January 19, 2020 in the Georgia Northern Bankruptcy Court, Case No.: 20-61065-pwb. Krystal's bankruptcy concluded on November 13, 2020 with a successful reorganization when Krystal's plan of reorganization was approved under Chapter 11 of the Bankruptcy Code.

Krystal's current name is The Krystal Company Inc. Its address and principal place of business is 1455 Lincoln Parkway E, Dunwoody, Georgia 30346. Krystal is not the franchisor of the franchises offered by this Disclosure Document. Krystal has no relationship to us other than Timothy E. Ward was an officer of Krystal at the time of its bankruptcy.

## **ITEM 5 INITIAL FEES**

### **Initial Franchise Fee**

You must pay us an initial franchise fee of \$40,000. The initial deposit of \$10,000 is due when you sign the Franchise Agreement and the remaining \$30,000 is due within thirty (30) days of the date you open your franchise. The initial franchise fee is non-refundable and fully earned when paid.

### **Development Fee**

As set forth in Item 1 above, we may grant a Development Rights Agreement. If we do, the terms are subject to negotiation. You must pay us an area development fee of \$15,000 for each OTB Restaurant you agree to open in accordance with the development schedule in the development area (the "Development Fee") unless we negotiate a different fee. The Development Fee is due and payable in a lump sum when you sign the Development Rights Agreement and is earned upon receipt and non-refundable. You must also pay an initial franchise fee for each OTB Restaurant you open in accordance with your Development Rights Agreement.

### **Initial Training Fee**

We will provide our initial training program to your Operator, General Manager, and up to four additional trainees at no cost to you. Training will occur at a certified training location in Dallas, Texas or as determined by Franchisor. You, however, are responsible for all costs and expenses incurred by your personnel attending the initial training program, including transportation, lodging, meals, and wages.

### **Opening Assistance Fee**

We provide you with such on-site pre-opening and opening assistance as OTB deems advisable subject to the availability of personnel, for a one-time flat fee of \$50,000. The number of certified training representatives and the length of time they are on-site is determined in our sole discretion and will vary based on a number of factors, such as the OTB Restaurant format, size of the restaurant, and how many OTB Restaurants you previously opened. This fee contributes to our reasonable expenses incurred in providing certified training representatives, such as costs of transportation, lodging, meals, salaries, and wages. We will assist your OTB Restaurant with initial inventory orders, POS and computer set-up, additional information regarding the Manuals, and similar operational items you will need to open your location. We will not assist you in the process of hiring and training your employees.

**ITEM 6  
OTHER FEES**

<b>Type of Fee</b>	<b>Amount<sup>1</sup></b>	<b>Due Date</b>	<b>Remarks</b>
Royalty Fee	4.0% of Gross Sales <sup>2</sup> .	Currently payable weekly before 10:00 a.m. Thursday for the preceding week <sup>3</sup> .	The Royalty Fee is paid to us and must be accompanied by a Weekly Financial Statement. If you do not provide us with a Weekly Financial Statement for any given reporting period, we may debit your account (i) in an amount based upon the information in your Point of Sales system, or (ii) such other amount reasonably estimated by us to approximate the Weekly Royalty Fee, Marketing Fund Fee, and other amount you owe to us. The royalty fee is non-refundable.
Marketing Fund Fee <sup>4</sup>	2.0% of Gross Sales or our then-current amount, not to exceed 4.0% of Gross Sales during the initial term of the Franchise Agreement <sup>2</sup> .	Currently payable weekly before 10:00 a.m. Thursday for the preceding week <sup>3</sup> .	The Marketing Fund Fee is paid to us. We use this fee to maintain, direct, administer, and prepare advertising, website, and promotional activities, including production and creative costs. We may unilaterally increase this fee, provided the fee will not be greater than 4.0% of Gross Sales during the initial term of the Franchise Agreement. The Marketing Fund Fee is non-refundable.

<b>Type of Fee</b>	<b>Amount<sup>1</sup></b>	<b>Due Date</b>	<b>Remarks</b>
Loyalty Program Fees	\$125 per month per location which is subject to change based upon third-party charges.	Upon receipt of invoice.	We currently require participation in a loyalty program. We reserve the right to modify the loyalty program, and Franchisee must participate in the program and pay all corresponding fees if implemented.
Grand Opening Advertising Expense	A minimum of \$10,000 or as required by the Franchise Agreement.	Before the opening of your OTB Restaurant.	Although we recommend more, you must spend at least \$10,000 on a marketing and promotional campaign related to the grand opening of your OTB Restaurant. This fee is payable to third parties and are generally non-refundable.



Supplemental Marketing Programs	Varies.	Upon receipt of invoice.	You may be required to pay for certain costs related to supplemental marketing programs, like limited time offers, gift cards, gift certificates, coupons, loyalty programs, customer relationship management, and other supplemental marketing programs that we require you to participate in.
Gift Cards	Approximately \$1,500 per year, per Restaurant.	Upon receipt of invoice.	Participation in this program is required. You must participate in and bear certain costs associated with our gift card program. Fiserv is our third-party gift card provider. Fiserv may bill you directly for certain items related to start-up, but generally Fiserv will bill us and we will bill you monthly. We reserve the right to approve or use other providers in the future.
Grand Opening Assistance	\$50,000.	Upon receipt of invoice.	Paid to us for the team of managers, trainers, and employees sent to your OTB Restaurant to assist in your grand opening.
Replacement and Supplemental Training	Our then-current training fee, plus costs of your personnel attending training.	Upon receipt of invoice.	We may charge a training fee if we train a replacement Operator or manager or if your personnel attend supplemental training.
Additional Opening Assistance	Our then-current fee.	Upon receipt of invoice.	We may charge a fee if you request, or if we require, additional personnel to provide opening assistance and training.

Type of Fee	Amount <sup>1</sup>	Due Date	Remarks
Supplier Facility Inspection	Varies (but it will be based on our labor costs and other expenses or fees incurred as part of the inspection).	Upon receipt of invoice.	If we have not previously approved a supplier, distributor, and/or item you wish to use, you or the supplier/distributor must apply to us for approval and pay the cost of the facility inspection. Multiple day inspections may be necessary for larger facilities.
Restaurant Inspection	Varies.	Upon receipt of invoice.	If you fail within 10 days to correct any deficiencies that we identify during our inspection, you must pay us a reasonable fee if we must assist in the correction of these deficiencies.

Technology Fee	Currently \$0, but we reserve the right to charge you a fee up to \$5,000 per year.	Upon receipt of invoice.	Fee is paid directly to us for OTB's website, extranet system, applications, and other technology platforms and developments created or maintained by OTB, as well as for any other technical or information technology support provided by OTB.
Computer Software and Technology Support and Upgrades	Varies. Between \$7,000 to \$12,000 per year.	Upon receipt of invoice.	We and our affiliates may charge you up-front and ongoing (e.g., weekly, monthly, or other) fees for proprietary software or technology licensed to you and related support services to the extent not covered by the Technology Fee; the fee may increase as costs increase or if new technologies are added.
Learning Management System	\$420 a year paid in 12 monthly installments of \$35	Monthly.	Fees for required access to on-line operations manual.
Catering Call Center	\$85 per month, plus per order fees ranging from \$4 to \$14 per order.	As incurred.	Call center fee is for those franchisees that participate in offering catering services.
Transfer	\$2,500 to \$25,000, depending on the transfer <sup>5</sup> .	Before transfer.	Transfer fee is uniformly imposed, payable to us, and is non-refundable and fully earned upon receipt. See Note 5.
Successor Franchise Fee	50% of our then-current initial franchise fee.	On signing renewal franchise agreement.	Successor franchise fee is uniformly imposed, you must satisfy certain requirements to be eligible for a successor franchise. Successor fee is payable to us and is non-refundable and fully earned upon receipt.

<b>Type of Fee</b>	<b>Amount<sup>1</sup></b>	<b>Due Date</b>	<b>Remarks</b>
Audit	Varies and includes the cost of audit and any charges for any independent accountant and/or vendor, attorneys' fees and costs, costs of employees and related travel, lodging, and out of pocket costs	As incurred	You must reimburse us if you fail to (i) provide us with required monthly reports; (ii) maintain books and records as required; (iii) accurately report all Gross Sales as required; and (iv) produce all books and records as required.
Interest	Lesser of 18% per annum or maximum amount permitted by applicable law.	Upon receipt of invoice.	Payable to us on all overdue amounts. Interest is non-refundable and uniformly imposed on all franchisees.
Late Fee	Actual cost incurred as described in the operations manual.	Upon delivery of delinquent payment.	Payable to us for each delinquent payment. Late fee is non-refundable and fully earned upon receipt. It is imposed on all franchisees.
Relocation Fee	All reasonable costs we incur, and a reasonable fee for our services, in connection with the relocation.	Upon receipt of Invoice.	If the lease for your OTB Restaurant expires or terminates through no fault of yours, or if the site is destroyed or otherwise rendered unsuitable, or if in our judgment there is a change in character of the location sufficiently detrimental to your business potential to warrant its relocation, we may grant you permission to relocate the OTB Restaurant to a location and site acceptable to us.
Indemnification	Will vary depending on loss.	On demand.	You must indemnify us for all losses and expenses we incur because of your actions.
Enforcement Costs	Will vary.	On demand.	In any situation in which we must enforce your obligations under the Agreements, you must pay our reasonable costs and expenses (including court costs, attorneys' fees, and discovery costs).
Income and Sales Taxes	We may collect from you the cost of all taxes arising from our licensing of intellectual property to you in the state where your OTB Restaurant is located, as well as any assessment on fees and any other income we receive from you.	Upon receipt of invoice.	Only imposed if state collects these taxes or assessments.

**Notes**

1. All fees and expenses in this Item 6 are payable to us or our affiliates, or are imposed by us or our affiliates in whole or in part for a third-party. All fees and expenses are nonrefundable

unless otherwise indicated. Unless we indicate otherwise, all fees and expenses are uniformly imposed by and payable to us. We require you to pay all fees and expenses to us by electronic funds transfer. Except as specifically stated above, these amounts are subject to increases based on changes in market conditions, our cost of providing services, and future policy changes. At the present time, there are no plans to increase payments which we control.

2. Unless we notify you in writing of a change, the Royalty Fee, Marketing Fund Fee, and other payments must be paid on or before 10:00 a.m. Thursday of each week based on your Restaurant's Gross Sales for the preceding calendar week (which currently runs from Wednesday to Tuesday) and must be submitted to us together with any required reports or statements. We reserve the right to change the due date and frequency of payment for all fees, including the Royalty Fee and Marketing Fund Fee.

If a state or local law in which the OTB Restaurant is located prohibits or restricts your ability to pay and our ability to collect the Royalty Fee, Marketing Fund Fee, or other amounts based on Gross Sales derived from the sale of alcoholic beverages at the OTB Restaurant, then you and we will negotiate the Royalty Fee, Marketing Fund Fee, and other provisions to provide the same basic economic effect to both you and us as otherwise provided in this Franchise Agreement, with a corresponding change to the definition of Gross Sales.

"Gross Sales" includes all revenue resulting from all sales which include the sale of food, beverages, goods, and merchandise or services in, from, occurring, or arising from the operation of all business from your OTB Restaurant's premises, including the operation of an OTB Restaurant. This includes the sale of all services, goods, and products, as well as all other income of every kind and nature related to the OTB Restaurant, including, on-premises sales, off-premises sales, catering sales, internet sales, and any other type of sale relating to the OTB Restaurant, whether or not such sales have been approved or authorized by us, and whether for cash, credit, gift, or barter and with no deductions or exclusions whatsoever (including for any third-party delivery services or processing fees); provided, however, that "Gross Sales" shall not include any of the following: (i) service personnel tips and (ii) any sales taxes or other taxes collected by you for transmittal to the appropriate taxing authority. We reserve the right to modify the definition of "Gross Sales" including those items exempted from the definition in our sole and absolute discretion.

3. A "week" shall be the seven (7) days from Wednesday through Tuesday for the immediately preceding week. For illustration purposes, the Royalty Fee and Marketing Fund Fee for the week of Wednesday, April 5, 2023 through Tuesday, April 11, 2023 is due and payable on or before 10:00 a.m. Thursday, April 20, 2023.

4. Our advertising program is discussed in Item 11. You must pay the Marketing Fund Fee and participate in the advertising programs we designate. We may change the required advertising program from time to time in our sole and absolute discretion. We may also change the due date

and frequency of payment for any of the Marketing Fund Fees charged. Under certain limited circumstances (e.g., for a significant multi-unit development plan, a large metropolitan area, non-traditional locations, such as airports or unique restaurant sites), we may modify the advertising fees for a specific franchisee in our sole discretion.

5. Except as otherwise agreed, you must pay us a transfer fee in connection with any transfer under the Franchise Agreement. We will not charge you a transfer fee if you are an individual or partnership and transfer your rights to a wholly owned corporation or other legal entity. If you are a legal entity and the transfer involves a minority percentage of ownership interests in you (original Control Group still maintains 51% ownership interest in you), then the transfer fee will be \$2,500. If the transferee is an existing OTB franchisee, then the transfer fee shall be \$5,000. For all other transfers, the transfer fee will be \$25,000.

**ITEM 7  
ESTIMATED INITIAL  
INVESTMENT**

**YOUR ESTIMATED INITIAL INVESTMENT<sup>1</sup>  
FULL SERVICE CONVENTIONAL CONSTRUCTION<sup>19</sup>**

Type of Expenditure	Amount		Method of Payment	When Due	To Whom Payment is to be made
Franchise Fee <sup>2</sup>	\$40,000		Two Payments	\$10,000 due upon signing franchise agreement; balance of \$30,000 due within thirty (30) days of opening the Restaurant	OTB
Real Estate <sup>3</sup>	Variable and TBD		As Arranged	At Closing or As Arranged	Lessor/Seller/Vendors
<b>Miscellaneous Development<sup>4</sup></b>	<b>Low</b>	<b>High</b>			
Legal & Closing Costs	\$10,000	\$30,000	As Arranged	As Arranged	Lawyers, Title Co., etc.
Environmental Reports	\$10,000	\$50,000	As Arranged	As Arranged	Municipalities, Government Agencies, etc.
Utilities	\$10,000	\$50,000	As Arranged	As Arranged	Municipalities, Government Agencies, etc.
Professional Fees	\$75,000	\$130,000	As Arranged	As Arranged	Architects, Engineers & Fixtures
<b>Total Misc. Development</b>	<b>\$105,000</b>	<b>\$260,000</b>			
<b>Site Development Costs and F.F. &amp; E.<sup>5</sup></b>	<b>Low</b>	<b>High</b>			
Site Development	\$250,000	\$500,000	As Arranged	As Arranged	Contractors

Building Construction <sup>6</sup>	\$1,500,000	\$2,500,000	As Arranged	As Arranged	Suppliers and/or contractors
Equipment, Fixtures & Furniture	\$500,000	\$820,000	As Arranged	As Incurred	Suppliers
Computer & Point of Sale System <sup>9</sup>	\$50,000	\$85,000	As Arranged	As Incurred	Suppliers
Signage <sup>10</sup>	\$50,000	\$100,000	As Arranged	As Incurred	Suppliers
Phone System <sup>11</sup>	\$1,000	\$5,000	As Arranged	As Incurred	Suppliers
<b>Total Site Development, Building and F.F. &amp;E</b>	<b>\$2,350,000</b>	<b>\$4,010,000</b>			
<b>Opening Costs</b>	<b>Low</b>	<b>High</b>			
Initial Training Expenses <sup>12</sup>	\$37,500	\$55,000	As Arranged	As Incurred	Transportation, Expenses, etc.
Opening Personnel <sup>13</sup>	\$50,000	\$50,000	Lump Sum	Due Upon Invoice	OTB
Initial Inventory	\$15,000	\$25,000	As Arranged	As Incurred	Suppliers
Initial Smallwares-Bar, Kitchen & Dining Room	\$45,000	\$60,000	As Arranged	As Incurred	Suppliers
Grand Opening Advertising <sup>14</sup>	\$10,000	\$15,000	As Arranged	As Incurred	Suppliers
Miscellaneous Opening Costs <sup>15</sup>	\$10,000	\$20,000	As Arranged	As Incurred	Utilities, etc.
Liquor License	Varies	Varies	As arranged	As Arranged	Government Agencies; your attorneys or other third party
<b>Total Opening Costs</b>	<b>\$207,500</b>	<b>\$265,000</b>			
<b>Total Estimated Investment Without Land or Additional Operating Funds<sup>16</sup></b>	<b>\$2,662,500</b>	<b>\$4,000,000</b>			
Additional Operating Funds– First 3 Months <sup>17</sup>	\$200,000	\$400,000	As Arranged	As Incurred	Employees, etc.
<b>TOTAL (Without Land)</b>	<b>\$2,862,500</b>	<b>\$4,535,000</b>			

**YOUR ESTIMATED INITIAL INVESTMENT  
CONVERSION CONSTRUCTION<sup>20</sup>**

Type of Expenditure	Amount		Method of Payment	When Due	To Whom Payment is to be made
Franchise Fee <sup>2</sup>	\$40,000		Two Payments	\$10,000 due upon signing franchise agreement; balance of \$30,000 due within thirty (30) days of opening the Restaurant	OTB
Land <sup>3</sup>	As Arranged	As Arranged	As Arranged	At Closing	Lessor/Seller
<b>Miscellaneous Development<sup>4</sup></b>	<b>Low</b>	<b>High</b>			
Legal & Closing Costs	\$5,000	\$20,000	As Arranged	As Arranged	Vendors, Lawyers, Title Co., etc.

Environmental Reports	\$5,000	\$20,000	As Arranged	As Arranged	Municipalities, Government Agencies, etc.
Utilities	\$5,000	\$15,000	As Arranged	As Arranged	Municipalities, Government Agencies, etc.
Professional Fees	\$50,000	\$130,000	As Arranged	As Arranged	Architects, Engineers & Permits
<b>Total Misc. Development</b>	<b>\$65,000</b>	<b>\$185,000</b>			
<b>Site Development Costs and F.F. &amp; E.<sup>5</sup></b>	<b>Low</b>	<b>High</b>			
Site Development	\$50,000	\$225,000	As Arranged	As Arranged	Contractors
Building Construction <sup>6,7</sup>	\$500,000	\$1,200,000	As Arranged	As Arranged	Suppliers and/or contractors
Equipment, Fixtures <sup>8</sup> & Furniture	\$250,000	\$820,000	As Arranged	As Incurred	Suppliers
Computer & Point of Sale Systems <sup>9</sup>	\$50,000	\$85,000	As Arranged	As Incurred	Suppliers
Signage <sup>10</sup>	\$30,000	\$90,000	As Arranged	As Incurred	Suppliers
Phone System <sup>11</sup>	\$1,000	\$5,000	As Arranged	As Incurred	Suppliers
<b>Total Site Selection, Development, Building, FF&amp;E</b>	<b>\$631,000</b>	<b>\$2,425,000</b>			
<b>Opening Costs</b>	<b>Low</b>	<b>High</b>			
Initial Manager Training Expenses <sup>12</sup>	\$37,500	\$55,000	As Arranged	As Incurred	Transportation, Expenses, etc.
Opening Personnel <sup>13</sup>	\$50,000	\$50,000	Lump Sum	Due Upon Invoice	OTB
Initial Inventory	\$15,000	\$25,000	As Arranged	As Incurred	Suppliers
Initial Smallwares- Bar, Kitchen & Dining Room	\$45,000	\$60,000	As Arranged	As Incurred	Suppliers
Liquor License	Varies	Varies	As arranged	As Arranged	Government Agencies; your attorneys or other third party
Grand Opening Advertising <sup>14</sup>	\$10,000	\$15,000	As Arranged	As Incurred	Suppliers
Miscellaneous Opening Costs <sup>15</sup>	\$10,000	\$20,000	As Arranged	As Incurred	Utilities, etc.
<b>Total Opening Costs</b>	<b>\$207,500</b>	<b>\$265,000</b>			
<b>Total Estimated Investment Without Land or Additional Operating Funds<sup>16</sup></b>	<b>\$903,500</b>	<b>\$2,875,000</b>			
Additional Operating Funds – First 3 Months <sup>17</sup>	\$200,000	\$400,000	As Arranged	As Incurred	Employees, etc.

<b>TOTAL (Without Land)</b>	<b>\$1,103,500</b>	<b>\$3,275,000</b>			
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**YOUR ESTIMATED INITIAL INVESTMENT**  
**RETAIL IN-LINE CONSTRUCTION**<sup>21</sup>

Type of Expenditure	Amount		Method of Payment	When Due	To Whom Payment is to be made
Franchise Fee <sup>2</sup>	\$40,000		Two Payments	\$10,000 due upon signing franchise agreement; balance of \$30,000 due within thirty (30) days of the opening of the Restaurant	OTB
Land <sup>3</sup>	As Arranged	As Arranged	As Arranged	At Closing	Lessor/Seller
<b>Miscellaneous Development<sup>4</sup></b>	<b>Low</b>	<b>High</b>			
Legal & Closing Costs	\$5,000	\$20,000	As Arranged	As Arranged	Vendors, Lawyers, Title Co., etc.
Environmental Reports	\$5,000	\$15,000	As Arranged	As Arranged	Municipalities, Government Agencies, etc.
Utilities	\$5,000	\$15,000	As Arranged	As Arranged	Municipalities, Government Agencies, etc.
Professional Fees	\$50,000	\$130,000	As Arranged	As Arranged	Architects, Engineers & Permits
<b>Total Misc. Development</b>	<b>\$65,000</b>	<b>\$180,000</b>			
<b>Site Development Costs and F.F. &amp; E.<sup>5</sup></b>	<b>Low</b>	<b>High</b>			
Site Development	\$10,000	\$50,000	As Arranged	As Arranged	Contractors
Building Construction	\$1,400,000	\$2,200,000	As Arranged	As Arranged	Suppliers and/or contractors
Equipment <sup>8</sup> & Furniture	\$400,000	\$820,000	As Arranged	As Incurred	Suppliers
Computer & Point of Sale Systems <sup>9</sup>	\$50,000	\$85,000	As Arranged	As Incurred	Suppliers
Signage <sup>10</sup>	\$15,000	\$50,000	As Arranged	As Incurred	Suppliers
Phone System <sup>11</sup>	\$1,000	\$5,000	As Arranged	As Incurred	Suppliers



<b>Total Site Selection, Development, Building, FF&amp;E</b>	<b>\$1,876,000</b>	<b>\$3,210,000</b>			
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<b>Opening Costs</b>	<b>Low</b>	<b>High</b>			
Initial Manager Training Expenses <sup>12</sup>	\$37,500	\$50,000	As Arranged	As Incurred	Transportation, Expenses, etc.
Opening Personnel <sup>13</sup>	\$50,000	\$50,000	As Arranged	As Incurred	Us
Initial Inventory	\$15,000	\$25,000	As Arranged	As Incurred	Suppliers
Initial Smallwares-Bar, Kitchen & Dining Room	\$45,000	\$60,000	As Arranged	As Incurred	Suppliers
Liquor License	Varies	Varies	As arranged	As Arranged	Government Agencies; your attorneys or other third party
Grand Opening Advertising <sup>14</sup>	\$10,000	\$15,000	As Arranged	As Incurred	Suppliers
Miscellaneous Opening Costs and Licenses <sup>15</sup>	\$15,000	\$20,000	As Arranged	As Incurred	Utilities, licensing agencies, etc.
<b>Total Opening Costs</b>	<b>\$212,500</b>	<b>\$260,000</b>			
<b>Total Estimated Investment Without Land or Additional Operating Funds<sup>16</sup></b>	<b>\$2,153,500</b>	<b>\$3,650,000</b>			
Additional Operating Funds – First 3 Months <sup>17</sup>	\$200,000	\$400,000	As Arranged	As Incurred	Employees, etc.
<b>TOTAL (Without Land)</b>	<b>\$2,353,500</b>	<b>\$4,050,000</b>			

**YOUR ESTIMATED INITIAL INVESTMENT  
DEVELOPMENT RIGHTS AGREEMENT**

<b>Type of Expenditure</b>	<b>Amount</b>	<b>Method of Payment</b>	<b>When due</b>	<b>To Whom Payment is to be made</b>
Development Fee <sup>2</sup>	\$15,000 per Restaurant	Lump Sum	Upon signing the Development Rights Agreement	OTB

**Notes**

**1. Estimated Initial Investment Fees.** These amounts are estimates. Except as noted, all fees listed in this Item 7 are based upon historical data of prior franchisees and research of current general market conditions. Given recent trends and increased cost of supplies, labor, materials, and real estate, the cost of your initial investment may substantially differ from the estimates listed in this Item. In addition, local market conditions, costs of construction, cost of labor, required use of unions, and other factors will greatly influence the actual amount of your initial investment. You should consult with a lawyer, accountant, architect, general contractor, real estate broker, and any other professional you deem reasonable to determine any adjustments in the initial investment cost

based on your locale.

**2. Development and Franchise Fees.** All fees payable to OTB are non-refundable. See Item 5 for details regarding the payment of the development and franchise fees. These fees are earned upon receipt and not refundable.

**3. Real Estate.** We cannot estimate your initial investment for purchasing or leasing real estate for your OTB Restaurant because those costs will vary depending upon various factors, including whether you purchase or lease the land and building for your OTB Restaurant, the size and location of the land and building, and the availability and cost of financing. In addition, zoning and permitting requirements may increase costs and/or the timing of acquisition, leasing, and build-out. The approximate size of the real property for an OTB Restaurant site is 43,560 to 76,230 square feet. The approximate size of the building for an OTB Restaurant is approximately 4,000 to 5,400 square feet. The OTB Restaurant Location will require sufficient size for adequate parking and should be accessible to vehicular traffic from a highway and/or commercial development. The OTB Restaurant Location must comply with all applicable laws including zoning and disability laws. The cost per square foot for purchasing or leasing commercial space varies considerably depending upon the location and market conditions affecting commercial property in the relevant area. You should consult a real estate broker and/or other professional in your area to assess the typical leasing or acquisition costs for your target market area.

**4. Miscellaneous Development.** Miscellaneous development costs include those pre-opening costs associated with your evaluation and decision to purchase a franchise, select a site for your OTB restaurant, and acquire or lease real property. Those costs include accounting, administrative, architectural, design, legal (including fees to assist you in reviewing, understanding, and evaluating this disclosure document, the Franchise Agreement, all related agreements), demographic studies, traffic studies, brokerage, and other miscellaneous professional fees you may incur. Your actual costs will vary due to market rates, location, the decisions you make, the degree upon which you hire and retain lawyers and other professionals, and the amount of investigation you do. Estimates for miscellaneous development costs do not include special requirements in real estate closing costs, including Phase II environmental assessments or mitigation, impact fees, or other fees as may be imposed by various governmental entities, or required by law.

**5. Site Development.** Site development costs represent usual and customary expenses, including rough grading costs, fine grading costs, storm costs, utility run costs, site preparation costs, paving costs, curb and gutter costs, and other site necessities and accessories. However, these vary significantly, based upon topography, soil conditions, availability of utilities to site, size of parcel, building size, and governmental zoning and building requirements.

**6. Building Construction for Full Service Conventional Construction.** This estimate is based on construction costs for a full service OTB Restaurant of approximately 4,000 to 5,400 square feet with 145 to 187 dining room seats using conventional construction. The construction cost will vary greatly depending upon size of building and location of site. You will need to hire a qualified and experienced licensed general contractor. Among other things, you will need to complete the building in accordance with all applicable laws, rules, and regulations, including local codes and ordinances which will vary. Your construction obligation will include items such as all masonry, foundation, slab, mechanical, electrical, plumbing, wiring, flooring, framing, drywall, painting, wall coverings, partitions, heating, ventilation, and air conditioning, lighting, storefront requirements, cabinetry, bathroom facilities, roof, required to comply with our brand standards and current image. The costs associated with construction vary greatly depending on several factors,

including location, availability of materials, labor, market, and local or special requirements. It is your legal obligation and responsibility to understand and pay these costs which are non-refundable.

**7. Conversion Construction.** You may convert another restaurant facility into an OTB Restaurant provided the facility meets our then-current brand image and construction standards. Due to variations in the types of buildings which may be converted and the condition of the existing building's infrastructure, a wide range of conversion/construction costs is given for improvement and remodeling costs to comply with our image requirements and specifications. Conversions must conform to our then-current standards for image. The construction costs to convert an existing building to an OTB Restaurant will vary depending upon the building's then-current condition, its size, and location. You will need to hire a qualified and experienced licensed general contractor. Among other things, you will need to complete the building in accordance with all applicable laws, rules, and regulations, including local codes and ordinances which will vary. Your construction obligation will include items such as all masonry, mechanical, electrical, plumbing, wiring, flooring, framing, drywall, painting, wall coverings, partitions, heating, ventilation, and air conditioning, lighting, storefront requirements, cabinetry, bathroom facilities, and potentially foundation, slab, and roofing required to comply with our brand standards and current image. The costs associated with construction vary greatly depending on several factors, including location, availability of materials, labor, market conditions, and local or special requirements. It is your legal obligation and responsibility to understand and pay these costs which are nonrefundable.

**8. Equipment.** The estimated costs for equipment include, among other things, kitchen equipment, such as ovens, fryers, refrigerators, specialty metal work, shelving, hood systems, Ansul fire protection systems; dining seating, including chairs, tables, booths, and bar seating; a décor package, etc. Restaurant size and building design may cause equipment and fixtures costs to vary significantly. The estimate given includes installation. For conversions of existing restaurants, the age and type of equipment and fixtures will also cause costs to vary.

**9. Computer and Point of Sale Systems.** The figure provided is the estimated cost to purchase a computerized point of sale system, including installation. This estimate does not include the initial Payment Card Industry ("PCI") Data Security Standards ("DSS") compliance costs or the cost of obtaining a license for the music required by us. This is because each credit card processor may have different certification requirements based on the amount of total transactions processed. Costs will vary based on restaurant design, number of terminals, and other factors. See Items 8 and 11 for more details.

**10. Signage.** Signage includes the exterior store front signs as well as interior signage package and branding elements. However, the specific location and/or shopping center where the OTB Restaurant will be located may have different requirements and regulations dictating the size, layout, and illumination of the exterior signage for the OTB Restaurant. You will be required to abide by these regulations, and as a result may experience higher or lower costs for your exterior signage. The sign package is furnished by approved suppliers capable of meeting our specifications. The estimate given does not include the cost of a high-rise highway sign, if applicable.

**11. Telephone.** You must install and maintain a multi-line phone system that has been approved by our IT Department.

**12. Initial Training Expenses.** The estimate given includes travel, living, and food expenses for your Operator, General Manager, and up to four additional trainees to complete our Basic Management Training program prior to your OTB Restaurant opening. The costs you incur for training will depend in part on the distance you and your employees must travel and the type of accommodations you choose. The figures do not include your employees' compensation.

**13. Opening Assistance.** For your first or second OTB Restaurant, we will send an opening team of managers, trainers, and employees to your OTB Restaurant to provide on-site supervision and assistance with the grand opening of your OTB Restaurant. In exchange, you pay us a flat fee of \$50,000. We use the \$50,000 to contribute to OTB's costs associated with sending an appropriate team of our personnel to your OTB Restaurant for a period of time before and after the opening date. OTB will use this amount toward the expenses we incur in providing the opening team, such as costs of transportation, lodging, meals, and wages.

**14. Grand Opening Advertising.** Although we recommend more, you must spend at least \$10,000 on marketing and advertising the grand opening of the OTB Restaurant prior to opening.

**15. Miscellaneous Opening Costs.** These costs include security deposits, utility deposits, business licenses, alcohol/liquor license, and other prepaid expenses. These costs will vary. For instance, you may also be required to pay prepaid rent and/or a security deposit in connection with leasing space for the operation of the OTB Restaurant. Landlords will vary in the amount they charge for a security deposit from \$0 to as much as six months' rent. You should consult a real estate broker and/or other professional in your area to assess the typical leasing terms, conditions, and costs for your target market area.

**16. Total Estimated Investment Without Land or Additional Operating Funds.** The estimate does not include financing fees, real estate, real estate closing costs, and special requirements, including Phase II environmental, as may be imposed by various governmental entities or required by applicable law. The estimate also does not include the additional operating funds discussed in Note 17. You should review these figures carefully with a business advisor before making any decision to purchase the franchise.

**17. Additional Operating Funds.** This estimate includes the working capital you will need to support ongoing expenses including payroll, utilities, inventory, insurance, employee recruitment, opening supplies, uniforms, and miscellaneous expenses prior to and after the opening of your OTB Restaurant to the extent that they are not covered by the sales revenue you expect. The estimate does not include Royalty Fees, Marketing Fund Fees, or other payments you will make to us. We estimate that the amount stated will be sufficient to cover on-going expenses for the start-up phase of the business, which we estimate to be three months. This is only an estimate, however, and there is no assurance that additional working capital will not be needed during the start-up phase or thereafter. The actual capital needed will vary substantially based on factors including, without limitation, how well you adhere to our methods and procedures, your management skill, experience and business acumen, the sales level reached during the initial period, local competition, the demand for our product, local economic conditions, real estate costs, food prices, and the prevailing wage rate. Also, your level of sales will impact your cash flow and the amount of working capital and additional funds that you may need during this start-up phase. It is not uncommon for new businesses to have negative cash flow at the beginning and for an

extended period of time.

Your credit history could impact the amount (and cost) of funds needed during the start-up phase. If you have no credit history, or a weak credit history, suppliers may give you less favorable lending and payment terms, which might increase the amount of funds you will need during this period. You will need to have staff on-hand before opening to prepare the OTB Restaurant for opening, for training and related purposes.

You should review these figures carefully with a lawyer, accountant, and business advisor before making any decision to purchase the franchise. You should take into account the cash outlays and losses that you may incur while you are trying to get established. Start-up costs may be extensive depending upon your circumstances and the local market costs, including real estate and labor costs.

**18. General.** It is important to understand that these are estimates and reflect the typical investment made by a prospective franchisee buying a new or existing OTB Restaurant. We estimate that you should expect to make an initial investment in at least the amount summarized in the above tables in connection with (1) the construction of a new full service OTB Restaurant or (2) the acquisition and conversion of an existing restaurant into an OTB Restaurant. The figures in the charts and the explanatory notes are only estimates and may not apply in the area you decide to open your OTB Restaurant. Your investment and expenditures may vary considerably from the estimates set forth above, depending on many factors including, without limitation, location, prevailing market conditions, geographical area, local prevailing wages, the size of your building and lot, and the capabilities of any particular management and service team. To the extent a location will experience special circumstances, such as a geographical area with high costs associated with land acquisition and development costs, the requirement to use union labor, additional architectural review and fees for an airport location, or unexpected construction costs, such as the discovery of and removal of hazardous materials, or excessive permitting and licensing issues, some of the costs will be higher than in the chart. Due to fluctuations in the cost to acquire or lease land as a result of location, availability of property and financing, no estimate on land cost is given. No part of your initial investment costs payable to us are refundable under any circumstance and are considered earned when received. We do not offer financing for any portion of your initial investment. You must open your OTB Restaurant within two (2) years of the effective date of your Franchise Agreement.

In the event financing is necessary, due to possible variations in availability of financing, your creditworthiness, prevailing market conditions, interest rates and terms and conditions, it is not possible to estimate the impact of financing costs and repayment schedules on a franchisee who finances all or a portion of the development costs. We require franchisees to have and maintain a substantial equity interest in the franchise business. These funds must be personal, unrestricted, and non-borrowed. You are encouraged to finance no more than 60% of the total cost of the project. This includes, but is not limited to, capitalized lease values for land, building, equipment, signs, and cash control systems. We do not offer financing in connection with your initial investment.

Unless expressed to the contrary, the estimates in this Item 7 are based upon the experience of our franchisees, to the extent reported to us, on our experience in opening and operating corporate-

owned traditional and retail in-line Restaurants, none of which have opened since 2017, and on our research of current construction trends.

**19. Full Service Conventional Construction.** Typical full service conventional construction of a free-standing OTB Restaurant requires approximately one (1.0) to two (2.0) acres of land and sufficient parking.

**20. Conversion Construction.** An existing facility may be purchased or leased if you can adequately modify it in accordance with OTB's then-current brand image and construction standards in OTB's sole and absolute discretion.

**21. Retail In-Line Construction.** You may also construct or build out an OTB Restaurant in a retail in-line or end-cap space. These estimates are based upon a 4,000 square foot facility.

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

### **General**

You must operate your OTB Restaurant in strict conformity with the methods, standards, and specifications set forth in our Franchise Agreement and the Manuals or otherwise in writing by us to ensure that the highest degree of quality and service is met and your OTB Restaurant operates in accordance with our brand standards and our then-current brand image.

At all times during the term of the Franchise Agreement, you must: (i) offer for sale only those products and provide only those services for which approved in writing; (ii) sell or offer for sale each of the products and services we require; (iii) not deviate from our standards and specifications, including the manner of preparing products and providing services, unless you first receive our prior written consent; and (iv) stop selling and offering for sale any products or services that we have later disapproved.

### **Required Purchases of Goods and Services**

You must purchase or lease those products, ingredients, supplies, equipment, materials, and other products used or offered for sale at your OTB Restaurant that meet our specifications in the Manuals and are approved in writing by us.

Goods or services you are required to purchase or lease include dough, batter, tortilla, beef, pork, poultry, butter, cheese, chips, cups, syrup for fountain beverages, vegetables, beans, sauces, and seasonings. You are also required to purchase other approved products and services either from approved suppliers or pursuant to approved standards and specifications, including advertising and marketing materials, restaurant equipment, furniture, fixtures, and trade dress. You are also required to participate in OTB's mandatory sanitation and food safety program.

*Advertising and Marketing Material*

All of your advertising, marketing, and promotional material must conform to our standards and requirements as specified in our Manuals. We must approve all advertising and promotional plans and materials before you use them if we have not prepared them or previously approved them during the twelve (12) months preceding the date of their proposed use. You must submit any unapproved plans and materials to us, and we will use reasonable efforts to approve or disapprove them within fourteen (14) days after we receive them. You must not use the plans or materials until we have approved them and must promptly discontinue using any advertising or promotional plans or materials if we notify you to do so.

*Point of Sale System, Computer System, Telephone and Electronic Communications*

You must purchase or lease, at your expense, all computer hardware and software, dedicated telephone and power lines, broadband connectivity, transmission lines, and all other computer related accessories and peripheral equipment that we may specify. Please see Item 11 for details regarding our Computer System, Telephone, and electronic communication requirements.

If you elect to conduct catering or delivery services from your OTB Restaurant(s) after obtaining our approval, you must not only satisfy and comply with our operating standards for catering and delivery, but also utilize our approved call center for catering services. Currently, the fee for access to the call center services is \$85 per month plus other incidental fees. The Catering call center charges a fee per each order processed through its center. The fees are as follows:

<b>Service</b>	<b>Standard Fee</b>
Online Orders	\$4.00 per order
Delivery/ Deluxe	\$7.00 per order
Full Service/ S&R	\$14.00 per order
<ul style="list-style-type: none"><li>• There is a \$10.00 minimum per month for the payment gateway (PNP).</li><li>• Patent fees are \$10 per location and \$0.10 per order.</li></ul>	

*Gift Cards*

You may only purchase and sell gift cards approved by us. As of the date of this Disclosure Document there is only one approved gift card processor. While not currently required, we may require you to sign a gift card participation agreement with the approved supplier or any other third-party supplier we designate in the future.

Our current gift card processor is Fiserv, an unaffiliated third-party supplier, however we may approve or use other providers in the future. Gift cards are required services and you must use our

approved supplier or a supplier that meets our standards, if allowed. Fiserv may bill you directly for certain items related to start-up, but generally they will bill us and we will bill you monthly. Our billing will include a reconciliation of certain costs and benefits association with program participation. We may negotiate different arrangements with different providers of these services. We will notify you of any change in approved suppliers or standards for these services.

### *Payment Processing*

You are required to accept debit cards, credit cards, stored value gift cards, and other non-cash payment systems specified by us to enable customers to purchase authorized products. You are required to obtain all necessary hardware and/or software used in connection with these non-cash payment systems. You also are required to comply with our standards for processing electronic payments and all other standards, laws, rules, and regulations applicable to electronic payments that may be published from time to time by payment card companies and applicable to electronic payments, including PCI-DSS and the Fair and Accurate Credit Transactions Act. All costs of complying with such electronic payment requirements are at your expense.

Our current credit card processor and gift card processor is Fiserv, an unaffiliated third-party supplier, however we may approve or use other providers in the future. Credit cards and gift cards are required services and you must use our approved supplier or a supplier that meets our standards, if allowed. We may negotiate different arrangements with different providers of these services. We will notify you in writing of any change in approved suppliers or suppliers for these services.

### **Fixtures, Equipment, Furniture & Signs**

You must construct and develop your OTB Restaurant in accordance with our specifications and standards. We will furnish you prototypical plans and specifications for your OTB Restaurant, including requirements for interior and exterior materials, décor, fixtures, equipment, furniture, and signs. You must submit construction plans and specifications to us for our approval before you begin construction of your OTB Restaurant, as well as any and all revised plans and specifications to us during the course of construction. You must ensure that the plans and specifications comply with the Americans With Disabilities Act and all other applicable federal, state, and local laws, ordinances, zoning, building code and permit requirements, and lease requirements and restrictions.

In developing, building, and operating your OTB Restaurant, you must purchase, lease, and install only the types of construction and decorating materials, fixtures, equipment, furniture, decor items, and signs that we require and approve as meeting our specifications and standards for quality, design, appearance, function, and performance. You must purchase these items from any supplier we designate or from any supplier who can satisfy our standards and specifications. We or one of our affiliates may be an approved supplier of one or more of these items. Unless we first give our written consent, you may not install or have installed on the OTB Restaurant premises any games, vending machines, or other items that we have not approved as meeting our standards and specifications. If we upgrade or update our furniture, fixtures, and equipment you may be required to do so as well.



### *Site Selection and Construction*

You must select a site for your OTB Restaurant. The site you select must satisfy our site selection guidelines. You must obtain our written consent for the site before you acquire it or enter into a lease. You are not required to purchase, lease, or sublease the OTB Restaurant premises from us or our affiliate.

### *Lease*

You may not sign a lease for the site you select and we approve until you provide us with a copy of the lease and allow us reasonable time to review the lease. You and your landlord must enter into a Lease Rider Agreement in the form attached as Exhibit B to this Disclosure Document.

### *Insurance*

You must obtain and maintain the insurance policies and coverages protecting you, us, and various related parties against any demand or claim for personal injury, death, property damage, or any loss, liability, or expense related to your operation of your OTB Restaurant, as well as the other insurance coverages we prescribe in the Manuals. A list of required insurances is attached as Exhibit N to this Disclosure Document.

Each insurance policy must be issued by an issuer we approve, with a rating of “A” or better in the most recent Key Rating Guide published by the A.M. Best Company (or another rating that we reasonably designate if A.M. Best Company no longer publishes the Key Rating Guide) and must be licensed to do business in the state in which your OTB Restaurant is located. All liability and property damage policies must name us as additional insureds and must provide that each policy cannot be cancelled unless we are given sixty (60) days’ prior written notice.

We may periodically increase required coverage limits or require additional or different coverage in our sole and absolute discretion to reflect, among other things, inflation, identification of new risks, changes in the law or standards of liability, higher damage awards and other relevant changes in circumstances. OTB maintains current insurance obligations in the Manual. You must deliver to us before opening your OTB Restaurant (and in the future maintain on file with us) valid and current certificates of insurance showing that all required insurance is in full force and effect. You must provide us with a copy of the insurance certificate before opening your OTB Restaurant and each year thereafter when renewed.

### **Approved Suppliers**

Neither we nor our affiliates are currently approved suppliers. Nor are we or our affiliates currently the only approved suppliers of goods and services we require you to purchase. None of our officers currently own an interest in any approved supplier.

In the future, however, we, an affiliate, or a third-party vendor or supplier may become the only approved supplier for certain products or services. We will provide you with lists of approved manufacturers, suppliers, and distributors (“Approved Suppliers List”) and approved food and

beverage items, ingredients, inventory, supplies, equipment, materials, and other products used or offered for sale at the OTB Restaurant (“Approved Supplies List”). The Approved Suppliers List may list particular suppliers from which you must purchase certain supplies, equipment, materials, fixtures, or other items for use in your OTB Restaurant, and/or may include specific items, brands or types of food, ingredients, products, supplies, or equipment. The Approved Supplies List specifies the suppliers and the products and services which we have approved for use in the System. We may revise the Approved Suppliers List or Approved Supplies List from time to time in our sole discretion. We will provide you with a copy of the Approved Suppliers List and Approved Supplies List in writing from time to time.

The Approved Supplies List may include specific brands or types of furnishings, equipment, or products that you may buy from any source provided that the items conform to the standards and specifications for the System.

### **Supplier Approval Procedure**

We will provide you with our criteria for approving suppliers. Currently, when considering whether to approve a possible supplier, we will consider (among other things) the following factors: whether the proposed supplier will provide the System a competitive advantage in the marketplace, whether the proposed supplier can demonstrate, to our reasonable satisfaction, the ability to meet our then-current standards and specifications; whether the supplier has adequate quality controls, capacity, and financial ability to supply the OTB system’s needs promptly and reliably, whether the proposed supplier can help reduce costs while improving or maintaining quality, supply, and service, and whether the supplier’s approval would enable the System, in our sole opinion, to take advantage of marketplace efficiencies or fill a need for quality or geographic coverage. You may not buy from any supplier that we have not yet approved in writing, and you must stop buying from any supplier who we approve but later disapprove. We have the right to designate only one manufacturer, distributor, reseller and/or vendor for any particular item. We, or our affiliates, may be a supplier of any product, and we, or our affiliates, may be the sole approved supplier of any product.

We will allow you to purchase products and other items from alternate suppliers that meet our criteria in accordance with our policies and procedures. Currently, if you want to buy any products or any other items from an unapproved supplier, you first must submit to us a written request asking for our approval to do so. You may not purchase from any proposed new supplier until we have reviewed and approved in writing the proposed new supplier, if we think the approval of the supplier is appropriate. Among other things, we will have the right to require that our representatives be permitted to inspect the proposed new supplier’s facilities, and that samples from that supplier be delivered either to us or to an independent laboratory that we designate for testing. Either you or the proposed new supplier must pay us a charge (which will not exceed the reasonable cost of the inspection and the actual cost of the tests). We also may require that the proposed new supplier comply with certain other requirements that we may deem appropriate, including for example payment of reasonable continuing inspection fees and administrative costs, or other payment to us by the supplier on account of their dealings with you or other franchisees, for use, without restriction (unless otherwise instructed by the supplier) and for services that we may render to our suppliers. We will notify you of our approval or disapproval in writing within

thirty (30) days following the completion of our review and evaluation, and we will include the product or supplier on the Approved Supplies List or Approved Suppliers List (defined below). We will notify you in writing if we revoke approval for any approved supplier.

### **Notice of Specifications and Standards**

We provide specifications and standards of approved products to our franchisees and approved suppliers in writing. We will notify you of changes to our specifications via our updates to the Manuals or otherwise in writing. We may modify our specifications upon request or for other reasons including, for example, a desire to optimize cost, efficiency, new product releases, a modification to the brand image or standards, to reflect new industry standards or regulations, or for food safety reasons.

### **Revenue and Consideration from Required Purchases and Leases**

In 2022, which was OTB's last fiscal year, OTB derived no revenue or other material consideration from required purchases or leases by our franchisees as a result of our franchisees' purchases of goods, products, and services from us or our affiliates.

We estimate the total amount of required purchases and leases by a franchisee from us relative to the total goods and services purchased by a franchisee in establishing and operating an OTB Restaurant is less than one percent (1%). However, we estimate that the total amount of required purchases and leases of all equipment, trade fixtures, décor items, restaurant supplies, signage, and other items you must purchase or lease from unaffiliated approved or designated suppliers or in accordance with our standards and specifications will represent approximately forty-five percent (45%) to sixty-five percent (65%) of your total purchases and leases to establish the franchised business, and fifteen percent (15%) to twenty-five (25%) of your total purchases and leases to operate the OTB Restaurant.

### **Designated Supplier Payments to Us**

We received marketing allowances, rebates, credits, monies, payments, or benefits ("Allowances") from suppliers based on purchases or leases by franchisees. In OTB's last fiscal year, which ended December 27, 2022, OTB received approximately \$14,000 in revenue from franchisee purchases of goods, products, and services from our designated suppliers, representing a negligible percentage (less than .01%) of our total revenue of \$ 263,425,187 for 2022.

We require you to assign to us or our designee all of your right, title, and interest in and to any and all Allowances, and you will authorize us or our designee to collect and retain any and all Allowances without restriction (unless otherwise instructed by the supplier). Our current policy is to utilize Allowances for purposes that we believe, in our sole discretion, may enhance the OTB Brand and/or public awareness of the brand. Our franchisees are responsible for negotiating their own discounts and rebates from our suppliers and distributors and may earn discounts and rebates from suppliers on a different basis than we do because of volume purchasing, servicing, timing, and several other purchasing factors.

### **No Purchasing or Distribution Cooperatives**

Currently, there is no purchasing or distribution cooperative on behalf of OTB Restaurants. However, we reserve the right to form one in the future.

### **Negotiations of Purchase Agreements with Suppliers**

Although we negotiate purchase arrangements for the benefit of our company-owned restaurants, we may, but are not required to, negotiate purchase arrangements that also benefit franchised units. Regardless, you are responsible for coordinating payment directly with our approved suppliers and distributors.

### **Franchisee Purchases of Particular Products or Services or Use of Particular Suppliers**

We consider many factors when we evaluate whether to renew or grant additional franchises to a particular franchisee, including whether or not the franchisee has complied with the sourcing requirements described herein.

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

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

<b>Obligation</b>	<b>Section in Franchise Agreement</b>	<b>Item in Disclosure Document</b>
a. Site selection and acquisition/lease	Articles IV.A and IV.B	Items 7 and 11
b. Pre-opening purchases/leases	Articles IV.D, V.B, V.L, and V.T	Items 5, 6, 7, 8, and 11
c. Site development and other pre-opening requirements	Articles III.E, IV.B, IV.C, IV.D, V.C, V.D, V.E, VII.C, and, VIII.G	Items 7, 8, and 11
d. Initial and ongoing training	Articles V.E and V.F	Items 5, 6, and 11
e. Opening	Article V.H	Items 7 and 11
f. Fees	Articles VI.B and VII	Items 5, 6, and 7
g. Compliance with standards and policies/manuals	Articles I.D, V, X, XIII, XIV.A, and XV	Items 8, 11, 14, and 16
h. Trademark and proprietary information	Articles IX and XV	Items 11, 13, 14, and 16
i. Restrictions on products/services offered	Articles I.D, I.E, III.D, V.A, V.K, and V.M	Items 8 and 16
j. Warranty and customer service requirements	Articles III.D, V.A, and V.U	Items 8 and 16
k. Territorial development and sales quotas	Articles I.A, I.B, and I.C	Item 12
l. Ongoing product/service purchases	Articles V.K, V.O, V.P, V.Q, and V.R	Items 6 and 8

m. Maintenance, appearance and remodeling requirements	Articles V.O, V.P, V.Q, and V.R	Items 8 and 11
n. Insurance	Article XI.B	Items 7 and 8 and Exhibit N
o. Advertising and promotions	Articles V.B, V.X, VII.C, VII.E, and VIII	Items 6, 7, 8, 11, and 13
p. Indemnification	Article XI.A	Not Applicable
q. Owner's participation/staffing/management	Articles III.A, III.B, V.C, V.D, and V.G	Items 11 and 15
r. Records and reports	Articles VII.L, and X	Item 6
s. Inspections and audits	Articles V.S, VI.E, and X.D	Items 6 and 11
t. Transfer	Articles XII.B, XII.C, XII.D, and XII.E	Items 6 and 17
u. Renewal	Article II.B	Item 17
v. Post-termination obligations	Article XIV	Item 17
w. Non-competition covenants	Article XV	Items 15 and 17
x. Dispute resolution	Article XVI	Item 17
y. Other (describe)	Articles V.I and V.J (obligation to comply with health, safety, and sanitation standards and participate in mandatory sanitation and food safety program)	Item 8

**ITEM 10  
FINANCING**

We do not offer you any direct or indirect financing. We do not guarantee any notes, leases, or other obligations, nor do we receive payment or other consideration for the placing of financing.

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

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

**Pre-Opening Obligations**

Before you open your OTB Restaurant, we will provide the following assistance to you:

*Site Assistance*

You are responsible for identifying and selecting a site for your OTB Restaurant that meets our site selection guidelines and must submit the proposed site to us to obtain our review. Generally, we do not own the premises of your OTB Restaurant or lease them to you. Instead, our franchisees generally own the site upon which their OTB Restaurant is located or lease it from a third-party. We provide you with information containing our written site selection guidelines and any other site selection counseling and assistance that we deem advisable. We do not select your site but do review your written request and will accept your request to develop a proposed site for your OTB

Restaurant. Our acceptance of your proposed site is not a representation as to the success or results which you will experience at that site or any other site. In locating a site you may want to consider and review the site's geographic location, the surrounding area, traffic patterns, population density, market penetration, proximity to other restaurants and OTB restaurants, including both franchised and company-owned locations, proximity to highways and shopping centers, retail areas, and other commercial activity, information regarding the typical consumer's average spending, the site's size, parking availability, ingress, egress, the physical characteristics of the site and building, if any, and/or the terms of acquisition and lease), and other demographic and criteria we deem relevant. We have no liability for accepting any proposed site, including the site of your OTB Restaurant. Because of the many variables involved, we make no representation as to the success or results which you will experience at a given site. OTB requires that you sign a Site Selection Form attached as Exhibit O to this Disclosure Document releasing OTB from any claims over its site selection and evaluation services. You must secure the OTB Restaurant Location through a lease or have closed on the purchase of the OTB Restaurant Location within one hundred twenty (120) days after signing the Site Selection Form. Any proposed lease must contain the terms set forth in our Lease Rider and Conditional Assignment of Lease, attached as Exhibit B to this Disclosure Document. (Franchise Agreement, Article IV.B.)

If you enter an Development Rights Agreement, we may also consider your then-current financial condition and your ability to develop the site and own and operate the proposed OTB Restaurant. You must execute the Franchise Agreement for each OTB Restaurant that you develop under the Development Rights Agreement at least ten (10) days prior to commencing construction, and you must otherwise comply with the requirements of the Development Rights Agreement.

#### *Site Plans*

You are responsible for confirming the site's premises to local ordinances and building codes. We do not assist you in doing so. Although you are also responsible for the construction, remodeling, and decorating of the site's premises, we will lend you a copy of our prototypical OTB Restaurant architectural plans and specifications. We will also review your site survey and the plans drawn up by your architect. (Franchise Agreement, Article IV.A.)

#### *Constructing, Remodeling, or Decorating the Premises*

You are responsible for the construction, remodeling, and decorating of the Premises. We do not offer support in doing so other than as set forth above. (Franchise Agreement, Article IV.C.)

#### *Hiring and Training Employees*

You are responsible for hiring and training your employees. We do not hire or train your employees. We do, however, provide a training program for your Operator, General Manager, and up to four additional trainees (Franchise Agreement, Article V.E and VI.A). For your first and second OTB Restaurant, we also will provide you with on-site pre-opening and opening supervision and assistance as we deem advisable for a period of 3 to 4 weeks, depending on the availability of personnel and your payment of the Grand Opening Training Fee. (Franchise Agreement, Article VI.B.) You will be responsible for paying the travel costs and living expenses

for your opening personnel, including all airfare costs, rental car costs, other travel costs, lodging costs, meals and food costs, and other similar costs. For additional details of this pre-opening assistance, see below in this Item 11 under the heading “Training.” We also provide you with access to our Manual. (Franchise Agreement, Article I.D.)

### *Equipment, Signage, Fixtures, Opening Inventory, and Supplies*

You are responsible for procuring the equipment, signage, fixtures, opening inventory, and supplies necessary to open your OTB Restaurant. We do provide you with a list of the necessary equipment, signage, fixtures, opening inventory, supplies, and products, as well as a list of approved suppliers. We do not directly provide, deliver, or install these items. (Franchise Agreement, Article IV.D.)

### **Typical Length of Time Before Opening Your OTB Restaurant**

We estimate the length of time between the earlier of the signing of the franchise agreement or the first payment of consideration for the franchise and the opening date of your business to be between twelve (12) and twenty-four (24) months depending on the type of facility operated. You must open your OTB Restaurant no later than twenty-four (24) months after you sign the Franchise Agreement. Some factors which affect the time to open each Restaurant are the ability to obtain a deed or lease, financing, building permits, zoning, compliance with local ordinances, weather conditions, shortages, or delayed installation of equipment, fixtures and signs and complete training. Failure to open each Restaurant by the date set forth in the Franchise Agreement may result in the termination of your Franchise Agreement and the loss of the initial franchise fee which is nonrefundable.

### **Post-Opening Assistance**

During the operation of your OTB Restaurant, we will:

1. Not provide you assistance or give advice relating to the hiring and training of your employees because that is your responsibility and legal obligation. (Franchise Agreement, Article V.D.)
2. Not resolve operating problems you encounter because that is your responsibility and legal obligation. We will however provide you with access to our operating Manuals. (Franchise Agreement, Article V.A.)
3. Although we are not obligated to provide any training beyond our initial training program regarding system standards, make other training programs regarding our system standards available to you in our discretion. (Franchise Agreement, Article V.F.)
4. In our sole discretion, provide you continuing advisory assistance through advice and written materials concerning techniques on complying with the system standards for the OTB Restaurant such as new developments and improvements in restaurant equipment, food products, packaging, and preparation. (Franchise Agreement, Article V.F, VI.C.)

5. Provide you with a list of necessary products and equipment, as well as a list of approved suppliers. (Franchise Agreement, Article I.D; I.E.)
6. Review and approve or disapprove all advertising and promotional materials that you propose to use. (Franchise Agreement, Article VIII.F.)
7. Require you to conduct local advertising and, in our discretion, establish, maintain, and administer a marketing program. (Franchise Agreement, Article VIII; VIII.D.)
8. Revise the contents of our Manuals in our discretion. (Franchise Agreement, Article I.D.)

### **Advertising**

We require you to participate in our Marketing Fund and to conduct local advertising.

#### *Marketing Fund*

Under the Franchise Agreement, we have the right to require our franchisees to participate in a Marketing Fund organized, governed, and operated in accordance with our written guidelines (“Marketing Guidelines”). We are responsible for maintaining and administering advertising programs in accordance with the Marketing Guidelines. No advertising or promotional plans or materials may be used under the Marketing Fund without our prior written consent.

Under the Marketing Fund you are required to pay us 2.0% of Gross Sales or our then-current amount, not to exceed 4.0% of Gross Sales, to be used by us for maintaining, administering, directing, and preparing advertising and promotional activities for the benefit of the System (the “Marketing Fund Fee”). Our company-owned and affiliate-owned OTB Restaurants also contribute to the Marketing Fund at the rate of 2.0% of Gross Sales. This fee will be used exclusively by us (or one of our affiliates) to administer and control the Marketing Fund and any and all costs incurred in the Marketing Fund including the cost of maintaining, administering, directing, conducting, creating, and/or otherwise preparing advertising, marketing, public relations and/or promotional programs and materials, and any other activities which we believe will enhance the image of the System. This includes, without limitation, to create, produce, and place advertising, in-store signs, in-store promotions, and commercial or online/digital advertising; to pay agency costs and commissions; to create and produce video, audio, and written advertisements; to administer multi-regional advertising programs, including direct mail and other media advertising; to employ advertising agencies and in-house staff assistance; to support public relations, market research, and other advertising and marketing activities; to conduct product and menu testing; to create, produce, and implement websites for us and/or our franchisees; and to develop and maintain application software designed to run on computers and similar devices, including tablets, smartphones and other mobile devices, as well as any evolutions or “next generations” of any such devices. The advertising may be disseminated in print, television, radio, or other digital media. The coverage may be local, regional and/or national. The Marketing Fund Fee will not be used for direct solicitation of franchisees. The Marketing Fund Fee does not include printing costs. You may incur additional costs printing certain materials with a third-party printer



of your choice.

We (or one of our affiliates) administer and control the Marketing Fund, which is used to create, produce, and place advertising, in-store signs, in-store promotions, and commercial or online/digital advertising; to pay agency costs and commissions; to create and produce video, audio, and written advertisements; to administer multi-regional advertising programs, including direct mail and other media advertising; to employ advertising agencies and in-house staff assistance; to support public relations, market research, and other advertising and marketing activities; to conduct product and menu testing; to create, produce, and implement websites for us and/or our franchisees; and to develop and maintain application software designed to run on computers and similar devices, including tablets, smartphones and other mobile devices, as well as any evolutions or “next generations” of any such devices. The advertising may be disseminated in print, television, radio, or other digital media. The coverage may be local, regional and/or national. The Marketing Fund will not be used for direct solicitation of franchisees.

We may be reimbursed from the Marketing Fund for administrative costs, salaries, and overhead expenses related to administering the Marketing Fund and its marketing programs, including conducting market research, preparing material, and collecting and accounting for Marketing Fund contributions. A portion of the Marketing Fund fee will be used for production (the “Production Fee”). We use the Production Fee to pay for the production of advertising and promotional materials. We have the authority to unilaterally increase the Production Fee. During 2021, our last fiscal year, 100% of the Production Fee was spent on the production of advertising and promotional materials. In any fiscal year, the Marketing Fund may spend more or less than the aggregate contribution of all Restaurants to the Marketing Fund in that year. Franchisor and/or its affiliates may periodically, and in our discretion, make additional investments into the Marketing Fund to supplement the efforts of that fund.

You may create your own advertising and promotional materials; however, all advertising and promotional materials must be approved in writing in advance, be created on permitted formats or platforms, be conducted in a dignified manner, and conform to our standards and requirements. You may not use any advertising or promotional plans or materials until you receive our written approval.

You must participate in any promotional campaigns, advertising, loyalty programs, and other programs periodically established or approved for OTB Restaurants, whether on a national, regional, or local basis. This includes accepting coupons and gift cards that we or our affiliates issue. While participation is mandatory, we may allow you to participate at different price points subject to our right to establish maximum and minimum pricing.

We may offer a regional promotion from time to time, in such instance, a franchisee may elect to opt in and participate in the regional efforts by contributing its pro rata share of the costs associated with the regional campaign.

#### *Other Advertising Requirements*

All advertising and promotion by you in any medium must be conducted in a dignified manner

and conform to our standards and requirements as stated in the Manuals or otherwise. You must obtain our approval for all advertising and promotional plans and materials that you desire to use before you use them if they have not been prepared or previously approved by us within one year. You must submit any unapproved plans and materials to us (by personal delivery or through the mail, return receipt requested), and we must approve or disapprove the plans and materials within fourteen (14) days from the date of receipt. You may not use any plans or materials until they have been approved by us and must promptly discontinue use of any advertising or promotional plans or materials upon receiving notice from us.

You must participate in supplemental marketing programs, like limited time offers, gift cards, gift certificates, coupons, loyalty programs, customer relationship management, and other supplemental marketing programs as we may periodically require. You may be responsible for certain costs associated with these supplemental marketing programs. For example, we currently offer a gift card program through Fiserv and you must participate in this gift card program and are responsible for all costs associated with your participation.

You are required to advertise, market, and promote your Restaurant on a local basis (“Local Advertising”) and spend no less than one percent (1%) of your Restaurant’s Gross Sales (the “Local Spend”) on Local Advertising initiatives as defined and set forth in the Manuals for the benefit of the Restaurant. You shall use the Local Spend on, and pay it to, local advertising and media sources to support your operation and Restaurant Location in the local market. Unless requested or required by OTB, your Local Spend will not be paid to OTB. You agree that OTB may, in its sole discretion, reduce or increase the minimum Local Spend upon thirty (30) days’ prior written notice to you, however, we may not increase the Local Spend to greater than two and a half percent (2.5%) of Gross Sales.

You are also required to conduct a grand opening advertising and promotional program for the Restaurant at the time and in the manner specified by us in the Manual (the “Grand Opening Marketing Program”). You shall either (i) spend at least ten thousand dollars (\$10,000) on a marketing and promotional campaign related to the grand opening of Franchisee’s Restaurant either before or within the first eight (8) weeks of the Restaurant’s grand opening date or (ii) pay ten thousand dollars (\$10,000) to us for the marketing and promotional campaign related to the grand opening of your Restaurant (“Grand Opening Advertising Contribution”). If you directly conduct the Grand Opening Marketing Program, you must submit a detail list of the expenditures to us within sixty (60) days of the Restaurant’s Grand Opening Date establishing its expenditure of the Grand Opening Advertising Contribution.

#### *No Advertising Council*

OTB does not maintain an advertising council of franchisees that advise the franchisor on advertising policies.

#### *Local or Regional Advertising Cooperative*

Currently, OTB does not require its franchisees to participate in a local or regional cooperative though it reserves the right to do so in the future.

### *Advertising Funds*

Currently, we use all of the Marketing Funds contributed to the advertising funds in any fiscal year in which they accrue, and we do not carry over the balance to the following fiscal year. We reserve the right to change this practice in the future. We may, upon written request, provide a summary of how we spend the Marketing Funds.

### *Advertising Funds and Franchise Sales*

We do not currently use any of the Marketing Funds to solicit franchise sales.

### **Electronic Cash Register and Computer Systems**

You must obtain and use the computer hardware and software, point-of-sale system, dedicated telephone and power lines, modems, printers, tablets, smart phones, and other computer-related accessories and peripheral equipment we periodically specify (the "Computer System"). The Computer System must permit 24 hours per day, 7 days per week electronic access and automated communication between you and us, including access to the Internet and Intranet. You must provide any assistance required to allow OTB remote or onsite access to your Computer System as needed. OTB has the right to retrieve any information from your Computer System we deem necessary or desirable at any time. There are no contractual limitations on our right to access this information. In view of the contemplated interconnection of computer systems and the necessity that those systems be compatible with each other, you must comply strictly with our standards and specifications for all items associated with your Computer System.

As described in Item 7, OTB estimates the computer and point-of-sale systems' cost to be \$50,000 to \$85,000. This estimate does not include the initial PCI-DSS compliance costs or the cost associated with your obtaining a license to play required music. This is because each credit card processor may have different certification requirements based on the amount of total transactions processed. These certification requirements may vary from processor to processor.

The third parties whose computer-related products you buy have no contractual right or obligation to provide ongoing maintenance, repairs, or updates unless you obtain a service contract or a warranty that covers the product. The Computer System generates and maintains sales, menu mix, and other financial information. You must upgrade the Computer System and/or obtain service and support as we require or when necessary because of technological developments, including complying with Payment Card Industry Data Security Standards. There are no contractual limitations on the frequency and cost of these obligations. We need not reimburse your costs.

We and our affiliates may condition any license to you of required or recommended proprietary software, and/or your use of technology developed or maintained by or for us (including the Intranet), on your signing a software license agreement or similar document, or otherwise agreeing to the terms (for example, by acknowledging your consent in a click-through license agreement), we and our affiliates require to regulate your use of the software or technology. We and our affiliates may charge you up-front and ongoing fees for any required or recommended proprietary

software or technology we or our affiliates license to you.

Despite your obligation to buy, use, and maintain the Computer System according to our standards and specifications, you have sole and complete responsibility for: (1) acquiring, operating, maintaining, and upgrading the Computer System; (2) the manner in which your Computer System interfaces with our and any third-party's computer system; (3) any and all consequences if the Computer System is not properly operated, maintained, and upgraded; and (4) independently determining what is required for you to comply (and then complying) at all times with the most-current version of the Payment Card Industry Data Security Standards, and with all laws governing the use, disclosure, and protection of Consumer Data (defined in Item 14) and the Computer System, and validating compliance with those standards and laws as periodically required.

We also require a multi-line phone system for your OTB Restaurant that is approved by our IT Department. You can expect to spend between \$1,000 and \$5,000 for the phone system and all required cabling. We also require a minimum of a broadband internet connection capability to ensure efficient system functionality. You are required to use a broadband connectivity/phone service provider approved by our IT Department.

#### *Maintenance and Upgrades*

We will require you to upgrade and update the Computer System, Software, and Additional Technology required at our sole discretion during the term of your Franchise Agreement. Some computer hardware and software vendors, and some prescribed installation and maintenance vendors may have a warranty on their products, and extended warranty and maintenance programs may be available. We estimate that the current annual cost of an optional and/or required maintenance/support contract, including upgrades/updates, may range from \$7,000 to \$12,000 per year, depending on numbers and types of equipment. Upgrade and maintenance costs are subject to change, without notice.

At this time, neither we, nor our affiliates, nor any third parties are required to provide ongoing maintenance, repairs, upgrades, or updates to your Computer System. You must carry out all maintenance at your sole expense. In the future, we anticipate providing technology support services to our franchisees. Our technology support services may include Help Desk services and menu maintenance, among other services. We expect to charge between \$3,500 to \$5,000 per year for our technology support services. If we implement technology support services, you may be required to use our services and pay the applicable fee.

#### *Customer Data*

You must afford us unimpeded and independent access to your Computer System in the manner, form, and at the times we may request. We will have the right at any time to access and retrieve data and information from your Computer System in any manner we deem necessary or desirable. To the extent that you collect information from customers and potential customers in connection with the OTB Restaurant ("Customer Data"), all Customer Data is deemed to be owned exclusively by us. You also must provide the Customer Data to us at any time that we request you to do so. You have the right to use Customer Data while the Franchise Agreement or a Successor Franchise

Agreement is in effect, but only in connection with operating the OTB Restaurant and only in accordance with the policies that we establish from time to time (which may include, without limitation, limitations or restrictions on the types of data that you may collect and/or use). You may not sell, transfer, or use Customer Data for any purpose other than operating the OTB Restaurant and marketing OTB products and services.

We have the right to specify from time to time in the Manuals or otherwise in writing the information, including Customer Data, that you must collect and maintain on the Computer System. You must provide us with the reports that we may reasonably request from the data so collected and maintained. You are required to maintain, protect, and safeguard the Customer Data you collect in the operation of your OTB Restaurant in compliance with all applicable law at your sole cost and expense. You must enter into the Computer System on a daily basis, or at other intervals that we may require, all information and materials that we may require in connection with your operation of the OTB Restaurant and display the information and materials in the manner we may prescribe, including, without limitation, to employees of the OTB Restaurants. All data pertaining to, derived from, or displayed at the OTB Restaurant (including, without limitation, data pertaining to or otherwise about Restaurant customers) is and will be our exclusive property. You will have a royalty-free non-exclusive license to use that data during the term of the Franchise Agreement. You must delete all Customer Data upon expiration or termination of your Franchise Agreement.

### *Websites*

We or our affiliates will maintain a Website, as defined herein, for the benefit of ourselves, our affiliates, and our franchisees. The term “Website” means one or more related documents, designs, pages, or other communications that can be accessed through electronic means, including but not limited to the Internet, World Wide Web, social networking sites (such as Facebook, Twitter, LinkedIn, etc.), blogs, vlogs, and other applications. You may not establish a Website or permit any other party to establish a Website that relates in any manner to your OTB Restaurant, or referring to the Marks, except as we designate or approve in advance in writing. We have the right, but not the obligation, to provide one or more references or webpage(s) to your OTB Restaurant, as we may periodically designate, within the Website. If we approve your written request to maintain and use a separate Website, then we reserve the right to require that you comply with the standards, specifications, conditions, and requirements relating to such Website that we may periodically prescribe in the Manuals or otherwise in writing. We may from time to time establish policies regarding social media as we determine appropriate for the System. Any use of social media using the Marks is considered advertising, and you must comply with our social media and advertising policies, including approval requirements. We may modify these policies as we determine appropriate, including as available technologies and advertising methods change.

### *Payment Processing*

You are required to accept debit cards, credit cards, stored value gift cards, or other non-cash payment systems specified by us to enable customers to purchase authorized products. You are required to obtain all necessary hardware and/or software used in connection with these non-cash payment systems. You also are required to comply with our standards for processing electronic

payments and all other standards, laws, rules, and regulations applicable to electronic payments that may be published from time to time by payment card companies and applicable to electronic payments, including the PCI-DSS and Fair and Accurate Credit Transactions Act. All costs of complying with such electronic payment requirements are at your expense.

Please see Item 8 for a description of the approved suppliers of payment and credit card processing services.

### **Operations Manual**

Our Operations Manual is fully digital on our learning management system (“LMS”), Lime Life. Lime Life is a web-based personal learning and training environment for the administration and reporting of OTB’s training and learning system. Currently, the annual cost of the LMS is \$420. The LMS requires minimum high-speed internet and hardware for operations. You are responsible for all costs associated with those requirements.

The Table of Contents for our Operations Manual is attached as Exhibit D to this Disclosure Document. The Operations Manual is provided only in electronic form and includes the following topics: menu items, preparation procedures, operations, and cooking procedures. Although we provide the portions of the manuals on catering to all franchisees, only franchisees we approve may participate in catering.

You must strictly comply with the business practices, policies, and procedures contained in the Operations Manual. We have the right to modify the Operations Manual and you must comply with those modifications, provided that no modification will alter your fundamental status and rights under the Franchise Agreement. You must acknowledge that the Operations Manual contains confidential business information and constitutes our trade secrets. You must not disclose or provide access to the contents of the Operations Manual to any persons except to your employees, nor may you reproduce the Operations Manual in whole or in part.

### **Training**

We will provide initial training for your Operator, General Manager, and up to four additional trainees at no cost to you except the expenses incurred by your personnel attending the initial training program, including transportation, lodging, meals, and wages. Training will occur at a location designated by us, typically at an OTB training restaurant in Dallas, Texas. If you sign a Development Rights Agreement, once you own or operate four or more Restaurants, we may require you to utilize one or more area directors to supervise the day-to-day operations of your OTB Restaurants, and we will train any area directors. All new managers hired by you and any Operator later appointed by you must attend and complete our initial training program to our satisfaction.

We may charge you a fee to train others. All required personnel must complete all required initial training programs to our satisfaction not less than 8 weeks before the opening of your OTB Restaurant.

Initial training programs are offered at various times during the year depending on the number of franchisees entering the system, the number of replacement personnel needing training, the number of new restaurants we open, and the timing of scheduled restaurant openings. The initial training program will generally last 6 weeks.

The subjects covered, approximate hours of classroom and on the job training, and other information about our initial training program are described below:

### TRAINING PROGRAM

<b>Subject</b>	<b>Hours of Classroom Training</b>	<b>Hours of On the Job Training</b>	<b>Location</b>
Heart of House (“HOH”) Operations Training – Core Menu preparation and recipe adherence; Station Line training; Kitchen Manager (“KM”) training; and operations systems review	Approximately 6 hours	6 weeks combined with FOH Operations Training	A company training restaurant that we designate, TBD
Front of House (“FOH”) Operations Training – Shift Manager training; Guest Service systems; Scheduling and forecasting; Bar training; Server Training; and Host/To-Go training	Approximately 10 hours	6 weeks combined with HOH Operations Training	A company training restaurant that we designate, TBD

The training materials for our initial training program consist of our Manuals and other materials maintained on our online learning management system, Lime Life. Currently, this online portal is maintained through Wisetail, though we may use a different platform in the future. Our online portal contains a variety of resources, including culinary recipes, and supplemental materials to support franchise operations.

Our training programs are conducted under the supervision of Brian Shaughnessy and Shelly Pierce.

Mr. Shaughnessy is our Director of Franchise Operations. Before January 2018, Mr. Shaughnessy served as our Director of New Restaurant Operations and our Project Manager of New Restaurant Openings.

Ms. Pierce is our Director of Training and Development and Operations Service Support. Before April 2019, Ms. Pierce served as our Director of Training from March 2018. Prior to that, Ms. Pierce was our Senior Manager of Training and Development from January 2015 until March

2018.

In addition to the initial training program described above, we will provide opening assistance, as described in Items 5, 7, and above in this Item 11, for which we will charge an opening assistance fee. The additional training that we will provide as part of opening assistance includes the following:

<b>Nature of Opening Assistance Provided:</b>	<b>Position:</b>
Franchise Director Training	Operator
Franchise Director Training	Operator
OTB MIT Program at CTR Restaurant	General Manager
OTB MIT Program at CTR Restaurant	Assistant Managers

Pre-opening assistance training will be conducted by persons who have worked for OTB Restaurants and have successfully completed our certified training course. All employees will complete our designated team member training process. One Operator may serve as the General Manager for up to two (2) Restaurant locations.

We also have the right to require you, your Operator, your General Manager, and other then-current managers at your OTB Restaurant to attend supplemental training courses at times and locations determined by us. You are responsible for all costs (including, without limitation, travel, lodging, and food costs for your personnel) associated with such supplemental training. We also have the right to charge a fee for supplemental training courses and training materials. We may invite you to attend our bi-annual company meeting, or any other events that we may elect to hold.

Any training provided by us to any of your employees will be limited to training or guiding the employees regarding the delivery of approved services to clients in a manner that reflects the customer and client service standards of the System. You are, and will remain, the sole employer of your employees during all training programs, and you are solely responsible for all employment decisions and actions related to your employees. You must ensure that your employees are trained in our systems and procedures and that our systems and procedures are utilized at your Restaurant.

## **ITEM 12 TERRITORY**

### **Franchise Agreement**

#### *Franchise Location*

The Franchise Agreement grants you the right to operate the OTB Restaurant only at the location you specify, and OTB accepts, which will exist within a protected area which is the lesser of (i) a maximum radius of two and one-half (2 ½) miles around the Restaurant or (ii) such smaller radius as determined by OTB in its sole absolute discretion based on, among other things, population density, demographics, and competitors within which OTB will not establish or franchise another OTB restaurant to open and operate (the “Protected Area”). OTB’s grant of the Protected Area does not imply or grant you the expectation or right to any other location or a delivery or catering



area or territory. The Franchise Agreement does not grant, and specifically excludes, any territorial rights which would govern and/or restrict where we or a third-party may sell, deliver, distribute, or license the right to a third-party to sell food, products, or goods bearing the OTB Marks through other outlets, platforms, or our catering sales program, licensing agreement, bulk orders, event catering, and delivery services. Likewise, airports, train stations, bus stations, highway rest plazas, travel plazas, stadiums, schools, colleges, university campuses, sports arenas, casinos, recreational theme parks, convention centers, kiosks, food courts, enclosed shopping malls and retail centers, Native American reservations, “big box” retail stores, venues in which food service is or may be provided by a master concessionaire or contract food service provider, virtual kitchens, ghost kitchens or cloud kitchens, host kitchens, and other locations within institutional, governmental, or public service operations (“Non-traditional Locations”) will not be included in the Protected Area even if they fall totally or partially inside the boundaries of your Protected Area. Non-traditional Locations are developed by us or a third-party without any participation by or payment to you. As a result, you will face competition from other franchisees, outlets we own, and from other channels of distribution.

### *Relocation*

You may not relocate the OTB Restaurant without first obtaining our written consent. If the lease for the OTB Restaurant expires or terminates through no fault of yours, or if the site is destroyed or otherwise rendered unsuitable, or if in our judgment there is a change in character of the OTB Restaurant Location that is sufficiently detrimental to your business potential to warrant relocation, we may grant permission for relocation of the OTB Restaurant to a location and site acceptable to us. In considering whether to approve a relocation of the OTB Restaurant, we will consider the following factors: a shift in trade area, prototype evolution, population density, spending patterns, traffic pattern, loss of supporting retailers, availability of a better location, locations of competitors and other existing OTB restaurants, strategic plans, and visibility of the location. If we permit you to relocate your OTB Restaurant, you will need to build out the OTB Restaurant consistent with our then-current standards for new Restaurants. Any relocation is at your sole cost and expense, and we have the right to charge you for any and all reasonable costs we incur, as well as a reasonable fee for our services, in connection with the relocation.

### *Franchisee Options, Rights of First Refusal, or Similar Rights to Acquire Additional Franchises*

The Franchise Agreement does not contain any provisions under which you might receive any options, rights of first refusal, or similar rights to acquire additional franchises. If you wish to obtain an additional location, you will be required to enter into a Development Rights Agreement and/or separate Franchise Agreement for the additional location.

You may conduct catering or delivery services from your OTB Restaurant(s) if you obtain our prior approval and satisfy and comply with our operating standards for catering and delivery. We will establish the boundaries for providing catering and delivery services. To participate in our catering program, you must execute the Catering Services Agreement attached to this Disclosure Document as Exhibit P, and any other agreements and documents we may require. If you choose not to offer products through the catering program, or if you are not authorized to offer products through the catering program, we or other franchisees may engage in the catering program, which

may compete with your OTB Restaurant. We may develop rules or policies regarding catering or delivery. Any rules or policies will be communicated to you (in writing or electronically) before they become effective.

### *No Exclusive Territory*

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

Instead, you will receive an area of limited protection, defined as the Protected Area, that excludes, among other things, Non-traditional Locations and the right to sell goods, products, and services bearing the OTB Marks in other channels of distribution. As a result, you will face competition from other franchisees, from outlets that we own, or from other channels of distribution or competitive brands that we control. Your Protected Area is contingent upon your strict compliance with the terms and conditions of your Franchise Agreement.

We and our affiliates retain all rights that are not expressly granted to you under the Franchise Agreement including, but not limited to, the following: (1) we and other franchisees or licensees may establish, develop, construct, open, and operate OTB Restaurants at any location (either directly or through a franchise, licensing, joint venture, or any other arrangement), notwithstanding the proximity to your OTB Restaurant, or the actual or threatened impact on sales at your OTB Restaurant, provided it is not within your Protected Area; (2) we may advertise or promote the System, including on the Internet, and fulfill customer orders at any time; (3) we and our affiliates may also offer and sell (or authorize any person or entity to offer and sell) products and services displaying the OTB Marks or other tradenames and trademarks (e.g., prepackaged food items, food bearing the OTB Marks, T-shirts, and other memorabilia) to the public through any distribution channel, including on the Internet, which may be similar to those offered by your OTB Restaurant; (4) we may authorize or engage one or more third-party retailers or licensees, or an affiliate of ours, to offer and sell products and services displaying the OTB Marks or other tradenames and trademarks to the public through any distribution channel, including on the Internet, which may be similar to those offered by your OTB Restaurant. For example, currently we are engaged in licensing with a third-party licensee who distributes a line of On The Border® salsas, chips, and quesos, fresh and frozen meal kits, and drink mixes packaged under the OTB Marks and distribute for sale to retailers in the United States; (5) we may develop and establish other tradenames, service marks, trademarks, logos, emblems, and indicia of origin which may be similar to, or different from, the OTB Marks (the “Other Marks”) and we may exclude the Other Marks from the OTB Marks. If we exclude the Other Marks from the OTB Marks (i) you have no rights to the Other Marks, and (ii) we (on our own behalf and on behalf of any other entity which we may acquire, or be acquired by, or otherwise are or become affiliated with) can establish, develop, construct, open, and operate restaurants, other food service operations, and other businesses under the Other Marks at any location (either directly or through a franchise, licensing, joint venture, or any other arrangement); and (6) we may conduct catering sales, and/or permit affiliates, licensees, and/or other franchisees to conduct catering sales within your Protected Area if you do not participate in the catering sales program. We are not required to pay you any compensation if we exercise any of the rights specified above.

Except as noted below, there are no geographical restrictions with respect to where you may advertise or solicit your OTB Restaurant. You may not use other channels of distribution, such as the Internet (or any other form of electronic commerce and/or electronic media) without our prior written consent.

#### *Other Channels of Distribution*

We specifically reserve the right for us, an affiliate, licensee, or other authorized third-party to use other channels of distribution, such as the internet, catalog sales, telemarketing, supermarkets, clubs, retail outlets, wholesalers, or other direct marketing to make sales within your Protected Area of products and services using the OTB Marks or the Other Marks. We will not compensate you for such sales.

#### *No Other Franchise Businesses*

As of the date of this Disclosure Document, neither we nor any affiliate operates, franchises, or has any current plans to operate or franchise any business selling the products and services authorized for sale at an OTB Restaurant under any other trademark or service mark.

#### **Development Rights Agreement**

If we offer and if you sign an Development Rights Agreement, it grants you an assigned geographic area within which you may establish an agreed upon number of OTB restaurants (“Development Area”). The size of the Development Area may range from a portion of a city or an unincorporated area to a single or multi-county area, or a single or multi-state area, and will be described in the Development Rights Agreement by county or state lines, a description of municipal boundaries, or a map. As with your Franchise Agreement, Non-Traditional Locations are not included within your Development Area even if they fall totally or partially inside the boundaries of the Development Area. If your OTB Restaurant will be in a Non-Traditional Location, we will grant you a modified Territory that includes a portion of your Captive Location. Like the Franchise Agreement, your Development Area does not grant, and specifically excludes, any territorial rights which would govern and/or restrict where we or a third-party may sell, deliver, distribute, or license the right to a third-party to sell food, products, or goods bearing the OTB Marks through other outlets, platforms, or our catering sales program. All other terms and conditions applicable to Franchise Agreements set forth above in this Item 13 also apply to your Development Area and any Development Rights Agreement.

We and our affiliates retain all rights that are not expressly granted to you under the Development Rights Agreement to the Franchise Agreement.

### **ITEM 13 TRADEMARKS**

The Franchise Agreement grants you the right to use the OTB Marks designated by us only in the manner we authorize and only for the operation of the OTB Restaurant at the location specified in the Franchise Agreement. You must operate the OTB Restaurant under the mark “On The Border

Mexican Grill & Cantina.” You must identify, however, your OTB Restaurant as an independently owned and operated OTB Restaurant.

We will license to you each of the following principal trademarks which are the primary trademarks, service marks, names, logos, and commercial symbols you will use to identify your franchised business. Each of the following principal trademarks are registered with the United States Patent and Trademark Office (“USPTO”).

<b>Description</b>	<b>Reg. No.</b>	<b>Filing Date</b>	<b>Reg. Date</b>	<b>Renewal Date</b>
Any Excuse to Fiesta	5,437,801	05-Sep-2017	03-Apr-2018	
Border Smart	3,362,356	30-Jan-2006	01-Jan-2008	20-Jan-2018
Border Style Mex	6,031,263	28-Aug-2019	07-Apr-2020	
Borderita	1,935,079	22-Aug-1994	14-Nov-1995	07-Feb-2015
Cinco Like You Mean It	5,354,801	15-May-2017	12-Dec-2017	
Club Cantina	4,417,407	27-Dec-2012	15-Oct-2013	
Endless Enchiladas	3,578,852	15-Jan-2008	24-Feb-2009	21-Feb-2019
Endless Tacos	4,517,609	16-Aug-2013	22-Apr-2014	
Fajita Grill (and Sawtooth design)	3,181,007	20-Mar-2006	05-Dec-2006	06-Feb-2017
Guacamole Live!	2,940,021	17-Mar-2004	12-Apr-2005	09-Feb-2015
Guactini	5,050,316	08-Oct-2014	27-Sep-2016	
Lime Life (and design)	5,580,675	09-Mar-2018	09-Oct-2018	
On the Border (App. #90626179)	Pending	06-Apr-2021	Pending	
ON THE BORDER (Design)	6,019,040	24-Oct-2019	24-Mar-2020	
On The Border (Typed Drawing)	1,271,174	15-Nov-1982	20-Mar-1984	17-Mar-2014
On The Border Mexican Café	1,954,702	01-Feb-1995	06-Feb-1996	15-Oct-2016
On The Border Mexican Café (1995 Design)	1,954,703	01-Feb-1995	06-Feb-1996	15-Oct-2016
On The Border Mexican Grill & Cantina (Design 2000)	2,878,246	19-Sep-2001	31-Aug-2004	27-Mar-2014
ON THE BORDER Mexican Grill & Cantina (Design)	4,687,934	19-Jun-2014	17-Feb-2015	
On The Border Mexican Grill & Cantina (Design, historical)	2,482,291	18-Aug-2000	28-Aug-2001	04-Feb-2022
On The Border Mexican Grill & Cantina (Word)	2,506,151	08-Aug-2000	13-Nov-2001	04-Feb-2022
OTB MELTDOWN	3,381,522	26-Jun-2007	12-Feb-2008	21-Apr-2017
OTB Original	1,958,891	14-Apr-1995	27-Feb-1996	02-Nov-2016
The Big Bordurrito	2,820,041	09-May-2003	02-Mar-2004	12-Mar-2014
The Ultimate Fajita	2,240,856	11-Jun-1998	20-Apr-1999	05-Feb-2019

All of these Marks are registered on the Principal Register of the USPTO. All affidavits of use and all renewals required to be filed to maintain the registrations of trademarks, service marks, trade names, logotypes, and commercial symbols have been timely filed.

### *Predecessor's Rights*

One of our predecessor's predecessors and a third-party, La Salsa, Inc. ("La Salsa"), entered into a Settlement Agreement dated May 14, 2004 (the "Settlement Agreement"), pursuant to which the parties agreed to the concurrent use of certain of their respective marks that featured a lime wedge design. Our predecessor's predecessor agreed to limit its use of the lime wedge design depicted in its marks to certain composite marks existing as of the date of the Settlement Agreement. Our predecessor's predecessor further agreed not to use or attempt to register a prominently featured or stand-alone lime wedge design element in connection with restaurant, bar, and/or catering services so long as La Salsa continues to use the lime wedge design elements depicted in its marks.

### *Disputes Regarding the Marks*

Except as noted above, there are no currently effective material determinations by the U.S. Patent and Trademark Office, the Trademark Trial and Appeal Board, the Trademark Administrator of any state or any court; or any pending infringement, opposition, or cancellation proceeding, or any pending material litigation, involving the Marks.

There are no agreements in effect which affect our rights to use or license the use of the Marks in any manner material to the franchise being offered except those listed under "Currently Effective Agreements" in the section that immediately follows. We are not aware of any superior prior rights or infringing uses that could materially affect your use of the Marks.

### *Currently Effective Agreements*

On December 14, 2020, we and Utz Quality Foods, LLC, a Delaware limited liability company ("Utz") entered into a license agreement to license Utz the exclusive right to use the OTB Marks for the manufacturing, distribution, and sale of chips, salsa, guacamole, queso, soups, dips, pre-packaged meals, meal kits (including fresh and frozen meal kits), beverage mixes, such as piña colada mix, sangria mix, and margarita mix, and other similar products for direct-to-consumer sales for consumers' at home consumption through alternate channels of distribution in North America, South America, Canada, Europe, and certain parts of Africa (the "Utz Licensing Agreement"). The term of the Utz Licensing Agreement is perpetual unless certain termination events occur. We reserve the right to extend, renew, or modify the Utz Licensing Agreement without any notice to our franchisees.

The Utz Licensing Agreement results in competition to our franchisees as the consumer products are sold nationally and internationally through alternate channels of distribution through the internet, convenient stores, groceries stores, wholesale club stores (SAM's, Costco, etc.) and other similar retail outlets, including outlets located in the Protected Area.

On December 17, 2020, we and JRW, Inc., a corporation of the Republic of Korea ("JRW") entered a license agreement licensing JRW the exclusive right to use the OTB Marks for the manufacturing, distribution, and sale of chips, salsa, guacamole, queso, soups, dips, pre-packaged meals, meal kits (including fresh and frozen meal kits), beverage mixes, such as piña colada mix, sangria mix, and margarita mix, and other similar products for direct-to-consumer sales for

consumers' at home consumption through alternate channels of distribution in the Republic of Korea, Malaysia, Singapore, Indonesia, Thailand, and Vietnam (the "JRW Licensing Agreement"). The term of the JRW Licensing Agreement is for three (3) years unless certain termination events occur. We reserve the right to extend, renew, or modify the JRW Licensing Agreement without any notice to our franchisees.

On October 21, 2021, we and Vessel Operating Holdco LLC ("Reef Kitchens") entered in a license agreement to license to Reef Kitchens the right to use the OTB Marks for the sale of OTB branded products and menu items from ghost kitchens, dark kitchens, cloud kitchens, execution kitchens, preparation kitchens, host kitchens, container kitchens, concession trailers and/or food trucks (each a "Kitchen") worldwide, excluding the Republic of Korea, Vietnam, Singapore, Malaysia, Indonesia, Thailand, India, and Hong Kong, at locations approved by us ("Reef Kitchens License Agreement"). The term of the Reef Kitchens License Agreement is for one (1) year and may be renewed for additional one (1) year terms, unless certain termination events occur. We reserve the right to extend, renew, or modify the Reef Kitchens License Agreement without any notice to our franchisees. The Reef Kitchens License Agreement may result in competition to our franchisees as OTB branded products and menu items are ordered via websites and mobile applications and delivered nationally and internationally through Kitchens. However, we and Reef Kitchens agreed that we will not open or franchise any new Restaurants within a five (5) mile radius of an operating Kitchen, and if we decide to do so, Reef Kitchens will close or relocate the Kitchen outside of the five (5) mile radius.

OTB also has agreements with third-party food delivery services, such as DoorDash and Uber Eats, which allow them to use the OTB Marks in conjunction with the services they provide.

#### *Franchisee's Permitted Use*

You are permitted and required to use the OTB Marks in accordance with applicable procedures set forth in the Manuals, the Franchise Agreement, and as may be directed by us from time to time. You acquire no right, title, or interest in and to the OTB Marks other than the right to use the OTB Marks in operating the OTB Restaurant in the manner prescribed and approved by us and in accordance with the terms of the Franchise Agreement. Any unauthorized use of the OTB Marks is an infringement of our rights. You must also follow our instructions for identifying yourself as a franchisee and for filing and maintaining the requisite trade name or fictitious name registrations. You may not use any of the OTB Marks as part of your corporate or other name. You must execute any documents we or our counsel determine are necessary to obtain protection for the OTB Marks or to maintain their continued validity and enforceability. Neither you nor your owners may take any action that would prejudice or interfere with the validity of our rights with respect to the OTB Marks and may not contest the validity of our interest in the OTB Marks or assist others to do so.

#### *Protecting Your Right to Use the Principal Trademarks*

We must protect your right to use the principal trademarks listed in this Item 13, as well as protect you against claims of infringement or unfair competition arising out of your use of the OTB Marks. In the event of any infringement of, or challenge to, your use of any of the OTB Marks, you must promptly notify us so that we can take such action as we deem appropriate to protect the OTB

Marks. The Franchise Agreement does not require us to take affirmative action when notified of these uses or claims. You and your owners agree that neither you nor they will communicate with any person other than us and our counsel concerning any action, claim or infringement. We will have sole discretion to take action, as we deem appropriate, and the right to exclusively control any litigation, USPTO action, or other proceeding involving any infringement, challenge or claims relating to the OTB Marks. We make no representation or warranty, express or implied, as to the exclusive use, ownership, validity, or enforceability of the OTB Marks.

We will indemnify and hold you harmless against any and all direct loss, claims, and damages incurred by you relating to your approved use of the OTB Marks in accordance with our instructions. This indemnification covers your reasonable attorneys' fees incurred by use of counsel satisfactory to us in the defense of any such infringement action initiated against you. We shall have the right, but not the obligation, to assume the defense of any such action. In such event, you are free to continue to participate in the defense of any such action through counsel of your own choosing but at your own expense.

The license of the OTB Marks granted in the Franchise Agreement is non-exclusive to you. We have and retain the right to, among other things: (1) grant other licenses for the OTB Marks in addition to those licenses already granted to existing franchisees; (2) license to third-parties and use the OTB Marks in selling products and services through alternate channels of distribution like supermarkets, wholesale clubs, the internet, ghost kitchens, cloud kitchens, food trucks, and other platforms, such as the Utz Licensing Agreement and Reef Kitchens Agreement; (3) develop and establish other systems using the same or similar OTB Marks or any other OTB Marks and grant licenses or franchises under those systems without providing you any rights; and (4) develop other marks that may be similar to the OTB Marks and exclude those similar marks from the OTB Marks, in which case you will have no right to use them.

If we determine it to be advisable to modify or discontinue use of any names or Marks and/or use one or more additional or substitute names or Marks, then you must comply with any such decisions at your own cost and expense.

#### *No Superior Prior Rights*

Other than the agreement described above with La Salsa, we know of no superior prior rights or infringing uses that could materially affect your use of the principal trademarks in the state where your franchised business will be located.

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

### **Patents and Copyrights**

We presently own no rights in or to any patents, patent applications, or copyright registrations which are material to the franchise. As of the date of this Disclosure Document, we do not have any pending patent applications that are material to the franchise. We have proprietary rights and copyright interests in certain materials which are made available for your use, including printed

materials such as the Manuals and other printed matter, artwork, and audiovisual material. You are entitled to use these materials during the term of the Franchise Agreement.

### **Confidential Manuals and Other Confidential Information**

We claim proprietary rights in other confidential information and trade secrets contained in our Manuals. Our confidential and trade secret information contains, in general terms, information, drawings, knowledge, know-how, and techniques used in or related to the operation of an OTB Restaurant, including best practices, recipes, and terms and conditions of supplier, vendor, and other contracts.

You and your owners must at all times treat the Manuals, and the information contained in those manuals, as confidential. You must not copy, duplicate, record or otherwise reproduce those materials or make them available to any unauthorized person. The Manuals are our sole property and must at all times be kept in a secure place on the OTB Restaurant premises. We may revise the contents of the Manuals, and you must comply with each new or changed standard. You must at all times ensure that the Manuals are kept current and up-to-date, and, if there is any dispute as to the contents of the Manuals, the terms of the master copy of the Manuals we maintain at our home office will be controlling.

In addition to our Manuals, you and your owners must protect our other confidential information. You and your owners may not, during the term of the Franchise Agreement or any other agreement between us, or after their termination or expiration, communicate, divulge, or use for the benefit of any other person or legal entity, any confidential information, drawings, knowledge, or know-how concerning the methods of development or operation of OTB Restaurants which may be communicated to you or them or of which you or they may learn in operating OTB Restaurants under the Agreements. You and your owners may divulge the confidential information to only those of your employees that must have access to it in order to develop or operate the OTB Restaurants. All information, drawings, knowledge, know-how, and techniques used in or related to the OTB Restaurant which we communicate in writing or otherwise to you, including, software licensed or provided by us, the Manuals, recipes, plans and specifications, marketing information and strategies, and site evaluation and selection techniques are confidential for purposes of the Agreements. There may be certain, limited circumstances where applicable law allows for the disclosure of certain trade secrets, as specified in the Manuals.

There is no infringing use known to us which would materially affect your use of such proprietary and/or copyrighted materials, including the Manuals.

You must promptly notify us when you learn about any unauthorized use of our proprietary information. We are not obligated to take any action, but we will respond to your notification of unauthorized use as we deem appropriate, including without limitation controlling any litigation and asserting defenses. You must also agree not to contest our interest in these or our other proprietary information. We will reimburse you for damages and reasonable costs you incur as a result of any action brought by a third-party concerning your use of our proprietary information.

If you or your owners fail to comply with the confidentiality requirements of the Franchise



Agreement or other agreements between us, it will cause us irreparable injury (in addition to any other remedies we have) and you and your owners must pay all our court costs and our reasonable attorneys' fees incurred in obtaining specific performance of, or an injunction against any violation of, the requirements of the agreements concerning confidentiality.

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

You are not obligated to personally participate in the direct operation of the franchised business, although we recommend you do so because of the nature of the business. Although the Franchise Agreement does not require a franchisee to personally participate in the direct operation of the franchised business, the Franchise Agreement requires you to hire and designate an operator responsible for the direct oversight of the day-to-day operation and management of the franchised business that does personally participate in the direct operation of the franchised business. We also require you to hire and retain not less than three managers for the restaurant or two managers and one shift supervisor.

Although not required, we recommend franchisees that are individuals maintain "on-premises" supervision. The only limit on who you can hire as an "on-premises" supervisor is one that (1) successfully completes our initial training program and (2) completes any additionally required and current training. If the franchisee is a business entity, the franchisee is not required to provide its "on-premises" supervisor with any amount of equity interest.

All franchisees are required to ensure its "on-premises" operators and managers comply with all required restrictions designed to protect our intellectual property, such as trade secret, proprietary, and confidential information, through reasonable confidentiality, non-disclosure, and non-compete agreements.

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

We impose restrictions and conditions on the goods and services you may offer and sell. Specifically, we require you to offer and sell at your Restaurant only those food and beverage products we have approved, as set forth in Item 8 of this FDD. No other items may be served without our prior written consent. You are not obligated to carry all our approved food and beverage products, but you need to obtain our prior written approval to remove certain products from your menus.

Products or groups of products sold or to be sold by you at your OTB Restaurant(s) may be added or eliminated by us from time to time. There are no limits or restrictions on our right to make changes to those goods and services you are required to sell.

The OTB Restaurant will be open to the general public and there are no limitations on the customers you may serve, subject to all applicable federal, state, and local governmental guidelines and ordinances including, without limitation, the Center for Disease Control and Prevention

guidelines. You may also provide goods and services through catering services. You may provide catering services from your OTB Restaurant if you obtain our prior approval and you satisfy our operating standards for catering (our approval will apply prospectively for all catering operations and your ability to provide catering services on a regular basis; you need not seek our approval of, and we do not approve or disapprove, individual catering jobs or engagements.) You may not conduct, engage in, subcontract to third-parties, or authorize or permit any person, entity or third-party to engage in, delivery operations at or from the OTB Restaurant except with our prior approval and in connection with catering.

As noted above in Item 12, you may not offer or sell products or services authorized under the Franchise Agreement through any other means, including without limitation through satellite locations, temporary locations, mail order, telephone, the Internet, or through any electronic media.

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

**THE FRANCHISE RELATIONSHIP**

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

Provision	Section in the franchise or other agreement	Summary
a. Length of the franchise term	Franchise Agreement, Article II.A	The term is 20 years.
b. Renewal or extension of the term	Franchise Agreement, Article II.B	If you are in material compliance, you may elect to renew the franchise for two 10-year terms in accordance with OTB's then-current successor agreement which may contain materially different terms than your franchise agreement.
c. Requirements for franchisee to renew or extend	Franchise Agreement, Article II.B	You must be in good standing, not owe any past due amount to OTB or its affiliates and suppliers, and elect to renew not less than 180 days but not more than 365 days before expiration of the original term; you must complete a renovation and remodel of your Restaurant Location at your sole cost and expense; you must have possessory interest in the restaurant premises for the entire renewal term; you must execute a general release of claims in favor of OTB; you must pay a renewal fee equal to one-half (1/2) of the then-current franchise fee; and otherwise comply with OTB's then-current qualification and training requirements.
d. Termination of franchisee	Not applicable	Not applicable.
e. Termination by	Not applicable	Not applicable.

franchisor without cause		
f. Termination by franchisor with cause	Franchise Agreement, Article XIII	We may terminate your franchise if you commit a default or if you fail to secure, obtain, and maintain a liquor license.
g. "Cause" defined – curable defaults	Franchise Agreement, Article XIII.B	You have 5 days to cure any failure to pay amounts due us and 30 days to cure any other default that is not considered an incurable default pursuant to Article XIII.A.
h. "Cause" defined – non-curable defaults	Franchise Agreement, Article XIII.A	You may not cure the following events of default: knowingly/intentionally submitting false information to OTB; engaging in conduct or practices that are fraudulent, unfair, unethical, or deceptive; you, your Owner's Representative, or restaurant managers are arrested, plead no contest to, or are convicted of a criminal offense that is harmful or likely to harm the reputation of OTB, the Franchisee, the System, the OTB Marks, or goodwill, or involves allegations or findings of dishonesty, fraud, or moral turpitude, or involves a reckless disregard for the emotional, mental, or physical well-being of OTB or your Restaurant's employees, customers, or public; you become insolvent, admit in writing you cannot pay your debts, make an assignment for the benefit of creditors, or are involved in bankruptcy proceedings, or if OTB reasonably believes these events occurred; you fail to timely cure any default of a loan, line of credit, credit facility, or other financing arrangement; you, your Restaurant, or the Restaurant's premises are subject to a levy, execution, or foreclosure not resolved in 30 days; you violate any health, safety, or sanitation law and do not cure within 3 days; a threat or danger to the public health or safety arises from the construction, operation, or physical condition of your Restaurant; you abandon or cease operating the business for more than 3 consecutive days, you lose the right of possession to the Restaurant or its premises, or you lose or forfeit the right to do business in the relevant jurisdiction; you fail to timely cure any default or breach of your lease or an agreement with any supplier; you fail to secure, obtain, and continuously maintain a liquor license; you fail to permit any audit or inspection as required; you fail 2 or more consecutive inspections of the Restaurant in any 12-month period; you submit any false

		books, records or report to us; you attempt to transfer ownership interest in violation of Article XII (see Item 17.k-o), you fail to comply with the restrictive covenants of Article 15 (see Item 17.q and 17.r), you infringe upon, replicate, or engage in improper use of our system, the OTB Marks or any component thereof; you violate the Franchise Agreement 3 times in any 12-month period; you fail to obtain OTB's consent 2 or more times in any 12-month period; you violate any one term of Franchise Agreement 3 times in any 5 year period; you, your Owner's Representative, or any affiliated or related individuals or entities fail to cure a default of any agreement with OTB; and OTB receives repeated customer complaints about the Restaurant.
i. Franchisee's obligations on termination/non-renewal	Franchise Agreement, Article XIV	You must immediately stop operating the Restaurant, using the System, displaying the OTB Marks, and representing yourself to the public as an OTB franchisee; you must remove all signage and OTB Marks from the restaurant and its premises within 5 days and take all action necessary to cancel all fictitious names and registrations using the OTB name and OTB Marks, as well as transfer all contact information and telephone numbers to OTB; you must otherwise disassociate yourself from OTB and the OTB Marks; you must pay all amounts due to OTB and return all copies of the Manuals and the business records relating to the Restaurant; you must comply with the restrictive covenants in Article XV (see Item 17.r); and you and your Owner's Representative must provide OTB with a general release of claims.
j. Assignment of contract by franchisor	Franchise Agreement, Article XII.A	We may transfer or assign the Franchise Agreement without restriction.
k. "Transfer" by franchisee - defined	Franchise Agreement Article XII.B	You cannot assign, convey, gift, hypothecate, pledge, mortgage, sell, transfer, or otherwise encumber any or all of your interest in the franchise, the Franchise Agreement, franchisee, the Restaurant, its premises, or substantially all of franchisee's assets.
l. Franchisor approval of transfer by franchisee	Franchise Agreement, Articles XII.B, XII.C, XII.D, and XII.E	We have the right to approve and condition all transfers in our sole and absolute discretion unless otherwise stated.

<p>m. Conditions for franchisor approval of transfer</p>	<p>Franchise Agreement, Article XII</p>	<p>You must provide us with at least 120 days' written notice of any proposed transfer; we have up to 90 days to approve transfer after receipt of all requested materials; you must pay all amounts then owed to us, our affiliates, and suppliers; you may not be in default of the franchise agreement; you and the proposed transferor must execute a general release in favor of OTB and its affiliated parties, agree to subordinate any debt relating to the transfer to OTB's claims, and the transferor must guaranty transferee's obligations for 5 years; you must pay the transfer fee; transferee must meet all of OTB's then-current requirements, standards, and qualifications, and attend training; and, if a transfer of a majority of ownership interest in Franchisee, bring the Restaurant and its premises to current image.</p>
<p>n. Franchisor's right of first refusal to acquire franchisee's business</p>	<p>Franchise Agreement, Article XII.F</p>	<p>All potential transfers of ownership interest are subject to our right of first refusal. We may match any offer for your business or its assets and we may reject terms and conditions unrelated to the operation of your franchise and match the remaining terms and conditions if such offer contains terms or conditions unrelated to your business.</p>
<p>o. Franchisor's option to purchase franchisee's business</p>	<p>Franchise Agreement, Article XII.G</p>	<p>Upon expiration or termination of your franchise, we have the right to purchase the assets of your franchise business, including the real estate if you own it, and/or require you to lease the realestate to us.</p>
<p>p. Death or disability of franchisee</p>	<p>Franchise Agreement, Article XII.C</p>	<p>Your executor, administrator, personal representative, or trustee of such person or entity shall transfer the interest at issue to a third-party that meets OTB's approval within a reasonable time, not to exceed twelve 12 months from the date of death, disability, or permanent incapacity, in accordance with the transfer provisions of Article XII.</p>
<p>q. Non-competition covenants during the term of the franchise</p>	<p>Franchise Agreement, Article XV.C</p>	<p>During the term of your franchise, you cannot directly or indirectly, for itself or through, on behalf of or in conjunction with any person, partner, business, entity, individual, or joint venturer own, develop, engage in, advise, assist, consult, invest in, franchise, make loans to, or have any direct, indirect, or beneficial interest in any business that operates at the Location or within 5 miles of the</p>

		Location or any OTB Restaurant, (i) quick service, fast-casual, and/or casual dining restaurants that are substantially engaged in the sale of Mexican cuisine if the gross sales of Mexican cuisine from the business is equal to or greater than 20% of all gross sales from the sale of all food (but not beverage) items from the business; or (ii) any restaurant under the following tradenames: Abuelo's, Baja Fresh, Blue Mesa, Cantina Laredo, Chevy's, Chi-Chi's, Chili's, Chipotle, Chuy's, Don Pablo's, El Chico, El Fenix, La Salsa, Mi Cocina, Moe's, Pappasito's, Rio Bravo, Rio Grande Cafe, Ted's Café Escondido, Tin Star, Jose Tejas, Border Café, and Uncle Julio's.
r. Non-competition covenants after the franchise is terminated or expires	Franchise Agreement, Article XV.C	For 2 years after the Franchise Agreement expires or terminates you cannot, directly or indirectly, for yourself or through, on behalf of, or in conjunction with any person, partner, business, entity, individual, or joint venturer own, develop, engage in, advise, assist, consult, invest in, franchise, make loans to, or have any direct, indirect, or beneficial interest in (1) any business that operates a quick service, fast-casual, and/or casual dining restaurants that are substantially engaged in the sale of Mexican cuisine if the gross sales of Mexican cuisine from the business is equal to or greater than 20% of all gross sales from the sale of all food (but not beverage) items from the business at the Location or within 5 miles of any OTB Restaurant or (ii) any restaurant under the following tradenames: Abuelo's, Baja Fresh, Blue Mesa, Cantina Laredo, Chevy's, Chi-Chi's, Chili's, Chipotle, Chuy's, Don Pablo's, El Chico, El Fenix, La Salsa, Mi Cocina, Moe's, Pappasito's, Rio Bravo, Rio Grande Cafe, Ted's Café Escondido, Tin Star, Jose Tejas, Border Café, and Uncle Julio's.
s. Modification of the agreement	Franchise Agreement, Article XIX.K	No modification unless in writing signed by both parties. OTB may modify the Manuals in its sole and absolute discretion.
t. Integration/merger clause	Franchise Agreement, Article XIX.J	The Franchise Agreement is the only agreement between the parties and all prior discussions, representations, or promises made to you are not enforceable unless contained in the Franchise Agreement or this Disclosure Document.
u. Dispute resolution by arbitration or mediation	Franchise Agreement, Article XVI.A	The parties agree to mediate before pursuing legal proceedings against each other unless the nature or origin of the dispute is an action for injunctive

		relief or specific performance arising from Franchisee’s use of the OTB Marks or OTB’s confidential information, a violation of the restrictive covenants set forth in Article XV, or an issue of public health.
v. Choice of forum	Franchise Agreement, Article XVI.B	Subject to state law, all litigation must occur in the federal or state courts where OTB maintains its principal place of business, which is currently Dallas County, Texas.
w. Choice of law	Franchise Agreement, Article XVI.B	Subject to state law, Texas law applies.

**Notes**

1. Some states have statutes and/or court decisions which may supersede the Franchise Agreement in your relationship with us, including the termination and renewal provisions of the agreements.
2. In addition to the provisions noted in the chart above, the Franchise Agreement contains a number of provisions that may affect your legal rights, including jury trial and class action waivers, punitive and/or exemplary damages waivers, and limitations on when claims may be raised. See Articles XIV.C and XVI of the Franchise Agreement (as amended by applicable state law). We recommend that you carefully review all of these provisions and contracts with a lawyer.
3. If a state law requires any modification to these provisions of the Franchise Agreement (or other provisions described in this Item 17) or requires additional terms, those modifications will be found in the disclosure addenda and contractual amendments appended to this Disclosure Document.
4. If any of the provisions in the Franchise Agreement, including those summarized above, are inconsistent with, or contrary to, applicable state law, the requirements of the applicable law or laws will be substituted for the inconsistent or contrary provisions in the agreements.

**ITEM 18  
PUBLIC FIGURES**

We currently do not use any public figure to promote the sale of our franchises.

**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.

Presented below are: (1) the Gross Sales and non-real estate related operating costs for all OTB Restaurants operated by OTB during 2020, 2021, and 2022; and (2) the Gross Sales for all domestic OTB Restaurants operated by franchisees during 2020, 2021, and 2022. The financial performance representations for OTB Restaurants operated by OTB are based upon actual sales and costs incurred by all operating outlets and exclude real estate costs as well as fees relating to the business' operation, including royalty obligations, advertising expenses, and third-party fees such as credit card and delivery fees.

“Gross Sales” includes all revenue resulting from all sales which include the sale of food, beverages, goods, and merchandise or services in, from, occurring, or arising from the operation of all business from an OTB Restaurant's premises, including the operation of an OTB Restaurant. This includes the sale of all services, goods, and products, as well as all other income of every kind and nature related to the OTB Restaurant, including, on-premises sales, off-premises sales, catering sales, internet sales, and any other type of sale relating to the OTB Restaurant, whether or not such sales have been approved or authorized by us, and whether for cash, credit, gift, or barter and with no deductions or exclusions whatsoever (including for any third-party delivery services or processing fees); provided, however, that Gross Sales shall not include any of the following: (i) service personnel tips; and (ii) any sales taxes or other taxes collected by you for transmittal to the appropriate taxing authority. We reserve the right to modify the definition of “Gross Sales” including those items exempted from the definition in our sole and absolute discretion.

The financial performance representations for OTB Restaurants operated by franchisees are based upon the Gross Sales reported to OTB. This financial performance representation was prepared without an audit. No certified public accountant conducted an audit of these financial performance representations or provided an opinion regarding their content or form.

Please read all of the information in this Item 19 carefully, and all of the notes following the charts, in conjunction with your review of the historical data. **A new franchisee's individual financial results will differ from the results stated in this Item 19. There is no assurance that you will do as well. If you rely upon our figures, you must accept the risk of not doing as well.** OTB will provide written substantiation for the financial performance representations set forth below upon reasonable request.

California residents and those operating their OTB Restaurant in California should review the State Specific Addenda for additional information about this Item 19.



## **A. OTB Owned and Operated Locations for Fiscal Years 2020 through 2022**

### **1. Fiscal Year 2020**

As of January 1, 2020, OTB owned and operated 123 locations. During its fiscal year for 2020, which spans January 1, 2020 through December 29, 2020, OTB closed seven OTB restaurants. OTB excluded the financial performance of those seven OTB Restaurants because they did not operate the entire time period. OTB excluded the financial performance of only one (1) other location because that location closed for over 250 days during the time period. The remaining 115 locations included represent restaurants operating for various lengths of time with an average operating history of 17.8 years in communities with disparate demographics and income levels across the United States.

The first table sets forth the annual gross sales for OTB's 115 restaurants operating for the entire 2020 fiscal year. The first table sets forth the highest level of Gross Sales achieved, as well as the lowest, among the 115 OTB owned and operated locations. It also sets forth the average Gross Sales achieved at the 115 OTB owned and operated locations in fiscal year 2020, as well as the number of restaurants meeting or exceeding the average Gross Sales achieved. It further sets forth the median Gross Sales achieved at the 115 OTB owned and operated locations in fiscal year 2020, as well as the number of restaurants meeting or exceeding the median Gross Sales achieved.

In the second table relating to the 115 OTB Restaurants OTB owned and operated for the entire fiscal year of 2020, we separated the 115 OTB Restaurants into three tiers based on average "Gross Sales" achieved during the calendar year. The first tier contains financial information for the 29 OTB Restaurants with the top twenty-five percent (25%) of Gross Sales achieved for the 2020 fiscal year. The OTB Restaurants in this tier have operated for an average of 17.0 years. The second tier contains financial information for the 57 OTB Restaurants achieving Gross Sales in the middle fifty percent (50%) of the 115 OTB Restaurants in fiscal year 2020. The OTB Restaurants in this tier have operated for an average of 18.6 years. The third tier contains financial information for the 30 OTB Restaurants with the lowest twenty-five percent (25%) of Gross Sales achieved for the 2020 fiscal year. The OTB Restaurants in this tier have operated for an average of 17.0 years.

The second table sets forth four categories of information. The first category of information sets forth the average, median, high, and low Gross Sales achieved the number of restaurants identified in the relevant tier. The second category of information sets forth the average, median, high, and low for the "Cost of Goods Sold" incurred for the number of restaurants identified in the relevant tier. "Cost of Goods Sold" reflects delivered food and beverage costs including liquor, beer, wines, and other bar costs, non-alcoholic beverages, meat, seafood, poultry, produce, dairy, bakery, and other foods such as sauces, desserts, shortening, salsa, rice, beans, and other miscellaneous foods, and any rebates received from our suppliers. Your cost may be different due to limited buying power and delivered cost fluctuations based on the geographic location of your restaurant and are susceptible to fluctuations in underlying cost of commodities. The third category of information sets forth the average, median, high, and low for the "Labor" costs incurred for the number of restaurants identified in the relevant tier. "Labor" reflects manager salaries, total hourly employee wages, bonus, payroll taxes, other employee benefits, and workers compensation. It does not include the cost of training our managers, including their salary while in training. Your cost

may differ based on minimum wage requirements depending upon the City or State in which your restaurant is located. Your costs may also differ due to the wages and level of benefits you provide, as well as your cost of statutory expenses such as workers compensation and unemployment taxes. The fourth and final category of information sets forth the average, median, high, and low for the “Other Operating Expenses” costs incurred for the number of restaurants identified in the relevant tier. “Other Operating Expenses” reflects general restaurant supplies such as paper products, uniforms, training material, to-go supplies, tablewares, menus, catering supplies, music, cleaning and chemical supplies, linens, kitchen and bar smallwares, plateware replacement, silverware replacement, glassware replacement, third-party fees such as delivery and commissions, banking and credit card processing fees, other third-party card fees, such as gift cards, catering costs, repair and maintenance of the restaurant building and grounds and equipment, maintenance agreements, point-of-sale licensing fees, general liability insurance, including alcohol and property insurance, as well as utilities, including telephone, internet service, electricity, trash removal, and security. You should expect your level of Gross Sales, as well as your specific Cost of Goods Sold, Labor, and Other Operating Expenses to differ from ours because, among other reasons, we have significant economies of scale and experience in operating these types of restaurants. We did not include occupancy costs in the following table because, among other reasons, of the variance in costs based upon geographic location, prevailing occupancy rates, and the different options and financial structures for possessory interests.

**2020 GROSS SALES FOR OTB OWNED AND OPERATED RESTAURANTS**

<b>Fiscal Year</b>  <b>2020</b>  <b>Gross Sales</b>	Total Restaurants	115
	High	\$3,551,496
	Low	\$790,502
	Average	\$1,816,538
	Number of Restaurants Meeting or Exceeding the Average	46 of 115 40.0%
	Median	\$1,679,640
	Number of Restaurants Meeting or Exceeding the Median	57 of 115 49.6%

**2020 FINANCIAL INFORMATION BY TIERS OF GROSS SALES ACHIEVED**

		2020 FY (January 1, 2020 through December 29, 2020)					
Gross Sales		Tier 1		Tier 2		Tier 3	
	Average	\$2,596,596		\$1,707,373		\$1,251,046	
Median	\$2,523,572		\$1,649,640		\$1,276,107		
High	\$3,551,496		\$2,055,077		\$1,440,937		
Low	\$2,075,963		\$1,452,932		\$790,502		
Cost of Goods Sold	Average	\$571,016	22.0%	\$377,401	22.1%	\$279,529	22.3%
	Median	\$551,014	21.8%	\$371,727	22.1%	\$286,406	22.4%
Labor	Average	\$755,432	29.1%	\$598,457	35.1%	\$490,789	39.2%
	Median	\$738,228	29.3%	\$594,504	35.4%	\$494,338	38.7%
Other Operating Expenses	Average	\$610,625	23.5%	\$489,714	28.7%	\$400,735	32.0%
	Median	\$594,306	23.6%	\$492,392	29.3%	\$398,990	31.3%

## 2. 2021 Fiscal Year

OTB owned and operated 113 locations that were open during OTB's entire fiscal year which spans December 30, 2020 through December 28, 2021. The 113 locations represent restaurants operating for various lengths of time with an average operating history of 19.4 years in communities with disparate demographics and income levels across the United States.

The first table sets forth the annual Gross Sales for OTB's 113 restaurants operating for the entire 2021 fiscal year. The first table sets forth the highest level of Gross Sales achieved, as well as the lowest, among the 113 OTB owned and operated locations. It also sets forth the average Gross Sales achieved at the 113 OTB owned and operated locations in fiscal year 2021, as well as the number of restaurants meeting or exceeding the average Gross Sales achieved. It further sets forth the median Gross Sales achieved at the 113 OTB owned and operated locations in fiscal year 2021, as well as the number of restaurants meeting or exceeding the median Gross Sales achieved.

In the second table relating to the 113 OTB Restaurants OTB owned and operated for the entire fiscal year of 2021, we separated the 113 OTB Restaurants into three tiers based on average Gross Sales achieved during that time period. The first tier contains financial information for the 28 OTB Restaurants with the top twenty-five percent (25%) of Gross Sales achieved for the 2021 fiscal year. The OTB Restaurants in this tier have operated for an average of 18.8 years. The second tier contains financial information for the 57 OTB Restaurants achieving Gross Sales in the middle fifty percent (50%) of the 113 OTB Restaurants in fiscal year 2021. The OTB Restaurants in this tier have operated for an average of 19.9 years. The third tier contains financial information for the 28 OTB Restaurants with the lowest twenty-five percent (25%) of Gross Sales achieved for the 2021 fiscal year. The OTB Restaurants in this tier have operated for an average of 19.4 years.

The second table sets forth four categories of information. The first category of information sets forth the average, median, high, and low Gross Sales achieved the number of restaurants identified in the relevant tier. The second category of information sets forth the average, median, high, and low for the "Cost of Goods Sold" incurred for the number of restaurants identified in the relevant tier. "Cost of Goods Sold" reflects delivered food and beverage costs including liquor, beer, wines, and other bar costs, non-alcoholic beverages, meat, seafood, poultry, produce, dairy, bakery, and other foods such as sauces, desserts, shortening, salsa, rice, beans, and other miscellaneous foods, and any rebates received from our suppliers. Your cost may be different due to limited buying power and delivered cost fluctuations based on the geographic location of your restaurant and are susceptible to fluctuations in underlying cost of commodities. The third category of information sets forth the average, median, high, and low for the "Labor" costs incurred for the number of restaurants identified in the relevant tier. "Labor" reflects manager salaries, total hourly employee wages, bonus, payroll taxes, other employee benefits, and workers compensation. It does not include the cost of training our managers, including their salary while in training. Your cost may differ based on minimum wage requirements depending upon the City or State in which your restaurant is located. Your costs may also differ due to the wages and level of benefits you provide, as well as your cost of statutory expenses such as workers compensation and unemployment taxes. The fourth and final category of information sets forth the average, median, high, and low for the "Other Operating Expenses" costs incurred for the number of restaurants identified in the relevant tier. "Other Operating Expenses" reflects general restaurant supplies such as paper products,

uniforms, training material, to-go supplies, tablewares, menus, catering supplies, music, cleaning and chemical supplies, linens, kitchen and bar smallwares, plateware replacement, silverware replacement, glassware replacement, third-party fees such as delivery and commissions, banking and credit card processing fees, other third-party card fees, such as gift cards, catering costs, repair and maintenance of the restaurant building and grounds and equipment, maintenance agreements, point-of-sale licensing fees, general liability insurance, including alcohol and property insurance, as well as utilities, including telephone, internet service, electricity, trash removal, and security. You should expect your level of Gross Sales, as well as your specific Cost of Goods Sold, Labor, and Other Operating Expenses to differ from ours because, among other reasons, we have significant economies of scale and experience in operating these types of restaurants. We did not include occupancy costs in the following table because, among other reasons, of the variance in costs based upon geographic location, prevailing occupancy rates, and the different options and financial structures for possessory interests.

### 2021 GROSS SALES FOR OTB OWNED AND OPERATED RESTAURANTS

<b>Fiscal Year</b>  <b>2021</b>  <b>Gross Sales</b>	Total Restaurants	113
	High	\$4,461,217
	Low	\$767,804
	Average	\$2,253,969
	Number of Restaurants Meeting or Exceeding the Average	45 of 113 39.8%
	Median	\$2,134,108
	Number of Restaurants Meeting or Exceeding the Median	57 of 113 50.4%

### 2021 FINANCIAL INFORMATION BY TIERS OF GROSS SALES ACHIEVED

		2021 FY (December 30, 2020 through December 28, 2021)					
		Tier 1		Tier 2		Tier 3	
<b>Gross Sales</b>	Average	\$3,259,864		\$2,138,390		\$1,483,359	
	Median	\$3,123,500		\$2,134,108		\$1,545,459	
	High	\$4,461,217		\$2,757,094		\$1,734,261	
	Low	\$2,766,246		\$1,753,063		\$767,804	
<b>Cost of Goods Sold</b>							
	Average	\$760,905	23.3%	\$497,938	23.3%	\$348,125	23.5%
	Median	\$737,993	23.6%	\$497,283	23.3%	\$344,946	22.3%
<b>Labor</b>							
	Average	\$645,180	19.8%	\$507,919	23.8%	\$420,044	28.3%

	Median	\$645,915	20.7%	\$482,192	22.6%	\$408,434	26.4%
<b>Other Operating</b>	Average	\$668,495	20.5%	\$530,236	24.8%	\$456,655	30.8%
	Median	\$658,814	21.1%	\$519,334	24.3%	\$464,158	30.0%
<b>Expenses</b>							

### 3. 2022 Fiscal Year

OTB owned and operated 108 locations that were open during OTB’s entire fiscal year which spans December 29, 2021 through December 27, 2022. The 108 locations represent restaurants operating for various lengths of time with an average operating history of 20.4 years in communities with disparate demographics and income levels across the United States.

The first table sets forth the annual Gross Sales for OTB’s 108 restaurants operating for the entire 2022 fiscal year. The first table sets forth the highest level of Gross Sales achieved, as well as the lowest, among the 113 OTB owned and operated locations. It also sets forth the average Gross Sales achieved at the 108 OTB owned and operated locations in fiscal year 2022, as well as the number of restaurants meeting or exceeding the average Gross Sales achieved. It further sets forth the median Gross Sales achieved at the 108 OTB owned and operated locations in fiscal year 2022, as well as the number of restaurants meeting or exceeding the median Gross Sales achieved.

In the second table relating to the 108 OTB Restaurants OTB owned and operated for the entire fiscal year of 2022, we separated the 108 OTB Restaurants into three tiers based on average Gross Sales achieved during that time period. The first tier contains financial information for the 27 OTB Restaurants with the top twenty-five percent (25%) of Gross Sales achieved for the 2022 fiscal year. The OTB Restaurants in this tier have operated for an average of 20.6 years. The second tier contains financial information for the 54 OTB Restaurants achieving Gross Sales in the middle fifty percent (50%) of the 108 OTB Restaurants in fiscal year 2021. The OTB Restaurants in this tier have operated for an average of 20.5 years. The third tier contains financial information for the 27 OTB Restaurants with the lowest twenty-five percent (25%) of Gross Sales achieved for the 2022 fiscal year. The OTB Restaurants in this tier have operated for an average of 20.1 years.

The second table sets forth four categories of information. The first category of information sets forth the average, median, high, and low Gross Sales achieved the number of restaurants identified in the relevant tier. The second category of information sets forth the average, median, high, and low for the “Cost of Goods Sold” incurred for the number of restaurants identified in the relevant tier. “Cost of Goods Sold” reflects delivered food and beverage costs including liquor, beer, wines, and other bar costs, non-alcoholic beverages, meat, seafood, poultry, produce, dairy, bakery, and other foods such as sauces, desserts, shortening, salsa, rice, beans, and other miscellaneous foods, and any rebates received from our suppliers. Your cost may be different due to limited buying power and delivered cost fluctuations based on the geographic location of your restaurant and are susceptible to fluctuations in underlying cost of commodities. The third category of information sets forth the average, median, high, and low for the “Labor” costs incurred for the number of restaurants identified in the relevant tier. “Labor” reflects manager salaries, total hourly employee wages, bonus, payroll taxes, other employee benefits, and workers compensation. It does not include the cost of training our managers, including their salary while in training. Your cost may differ based on minimum wage requirements depending upon the City or State in which your

restaurant is located. Your costs may also differ due to the wages and level of benefits you provide, as well as your cost of statutory expenses such as workers compensation and unemployment taxes. The fourth and final category of information sets forth the average, median, high, and low for the “Other Operating Expenses” costs incurred for the number of restaurants identified in the relevant tier. “Other Operating Expenses” reflects general restaurant supplies such as paper products, uniforms, training material, to-go supplies, tablewares, menus, catering supplies, music, cleaning and chemical supplies, linens, kitchen and bar smallwares, plateware replacement, silverware replacement, glassware replacement, third-party fees such as delivery and commissions, banking and credit card processing fees, other third-party card fees, such as gift cards, catering costs, repair and maintenance of the restaurant building and grounds and equipment, maintenance agreements, point-of-sale licensing fees, general liability insurance, including alcohol and property insurance, as well as utilities, including telephone, internet service, electricity, trash removal, and security. You should expect your level of Gross Sales, as well as your specific Cost of Goods Sold, Labor, and Other Operating Expenses to differ from ours because, among other reasons, we have significant economies of scale and experience in operating these types of restaurants. We did not include occupancy costs in the following table because, among other reasons, of the variance in costs based upon geographic location, prevailing occupancy rates, and the different options and financial structures for possessory interests.

#### 2022 GROSS SALES FOR OTB OWNED AND OPERATED RESTAURANTS

<b>Fiscal Year</b>  <b>2022</b>  <b>Gross Sales</b>	Total Restaurants	108
	High	\$5,108,551
	Low	\$1,073,892
	Average	\$2,511,516
	Number of Restaurants Meeting or Exceeding the Average	41 of 108 38.0%
	Median	\$2,357,820
Number of Restaurants Meeting or Exceeding the Median	54 of 108 50.0%	

#### 2022 FINANCIAL INFORMATION BY TIERS OF GROSS SALES ACHIEVED

2022 FY (December 29, 2021 through December 27, 2022)							
Gross Sales		Tier 1		Tier 2		Tier 3	
	Average	\$3,651,096		\$2,381,159		\$1,632,648	
	Median	\$3,587,379		\$2,357,820		\$1,744,644	
	High	\$5,108,551		\$2,994,444		\$1,970,680	
	Low	\$3,012,380		\$1,983,726		\$1,073,892	

<b>Cost of Goods Sold</b>	Average	\$817,768	22.4%	\$543,432	22.8%	\$374,864	23.0%
	Median	\$811,248	22.6%	\$534,346	22.7%	\$382,067	21.9%
<b>Labor</b>	Average	\$863,202	23.6%	\$653,182	27.4%	\$496,860	30.4%
	Median	\$829,179	23.1%	\$620,283	26.3%	\$471,416	27.0%
<b>Other Operating Expenses</b>	Average	\$641,164	17.6%	\$509,880	21.4%	\$420,888	25.8%
	Median	\$624,664	17.4%	\$510,924	21.7%	\$401,932	23.0%

## B. Franchisee Owned and Operated Locations for Fiscal Years 2020 through 2022

The below tables and information for domestic OTB Restaurants operated by franchisees during the years 2020 through 2022. Our management team prepared this financial performance representation based upon the sales reports provided to OTB by its franchisees. We only included information regarding Gross Sales because our franchisees do not currently report information regarding the costs and expenses relating to operating their franchise locations. We have not audited the information provided by the franchisees. In addition, this financial performance representation was prepared without an audit. No certified public accountant conducted an audit of these financial performance representations or provided an opinion regarding their content or form.

### 1. U.S. Franchisee Owned and Operated Locations

The following two table sets forth the Gross Sales for OTB’s franchisees reporting Gross Sales to OTB and operating conventional dine-in OTB Restaurants in the United States for the years 2020, 2021, and 2022. OTB excluded its international franchise and non-traditional locations from these two tables. As used in these tables, “Gross Sales” means the total amount of revenue collected or consideration received for the sales of all goods and services regardless of nature at or from the restaurant location less sales or equivalent taxes, discounts, coupons, and refunds. The table set forth the total number of franchise locations reporting Gross Sales achieved, as well as the highest and lowest Gross Sales reported by the reporting locations. It also sets forth the average Gross Sales reported, as well as the number of restaurants meeting or exceeding the average GrossSales reported, among those locations reporting. It further sets forth the median Gross Sales reported, as well as the number of restaurants meeting or exceeding the median Gross Sales reported, among those locations reporting.

<b>2020 Reported Gross Sales</b>	
Total Restaurants Reporting	5
Highest Gross Sales	\$2,096,216



Lowest Gross Sales	\$1,491,056
Average Gross Sales	\$1,822,180
Restaurants Meeting or Exceeding the Average	3 of 5 (60%)
Median Gross Sales	\$1,849,391
Restaurants Meeting or Exceeding the Median	3 of 5 (60%)

<b>2021 Reported Gross Sales</b>	
Total Restaurants Reporting	5
Highest Gross Sales	\$2,873,006
Lowest Gross Sales	\$2,101,931
Average Gross Sales	\$2,540,889
Restaurants Meeting or Exceeding the Average	3 of 5 60%
Median Gross Sales	\$2,652,512
Restaurants Meeting or Exceeding the Median	3 of 5 60%

<b>2022 Reported Gross Sales</b>	
Total Restaurants Reporting	6
Highest Gross Sales	\$3,684,168
Lowest Gross Sales	\$1,920,403
Average Gross Sales	\$2,161,033
Restaurants Meeting or Exceeding the Average	5 of 6 83%

Median Gross Sales	\$2,317,899
Restaurants Meeting or Exceeding the Median	4 of 6 66%

## 2. U.S. Non-Traditional Location Owned and Operated by Franchisee

The following table sets forth the “Gross Sales” for OTB’s non-traditional locations in the United States for the years 2020, 2021, and 2022. As used in this table, “Gross Sales” means the total amount of revenue collected or consideration received for the sales of all goods and services regardless of nature at or from the restaurant location less sales or equivalent taxes and discounts. The table set forth the actual Gross Sales reported for each year.

Reported Gross Sales	
2020 (1 location)	\$2,812,499
2021 (3 locations*)	\$7,632,020
* one location opened June 28, 2021, and another opened September 20, 2021	
2022 (3 locations)	\$12,823,754

### Notes

- OTB did not include the financial performance for the 14 franchised locations currently operating in South Korea in any of these financial performance representations.
- SOME OUTLETS HAVE EARNED THESE AMOUNTS. YOUR INDIVIDUAL RESULTS MAY DIFFER. THERE IS NO ASSURANCE THAT YOU WILL SELL AS MUCH. WE ARE NOT REPRESENTING THAT YOUR FRANCHISE WILL MEET OR EXCEED THE AVERAGE GROSS SALES IN THE ABOVE TABLES. IF YOU RELY UPON OUR FIGURES, YOU MUST ACCEPT THE RISK OF NOT DOING AS WELL. PLEASE CAREFULLY READ ALL OF THE INFORMATION IN THESE FINANCIAL PERFORMANCE REPRESENTATIONS AND THE NOTES IN CONJUNCTION WITH YOUR REVIEW OF THE HISTORICAL DATA.**
- You should conduct an independent investigation of the costs and expenses you will or may incur in operating your franchised OTB Restaurant. Franchisees or former franchisees listed in this disclosure document may be one source of this information. Franchised OTB Restaurants operate under the same System and with similar operating procedures and requirements as the company-owned OTB Restaurants above. However, a franchised OTB Restaurant will incur certain types of additional franchise-specific expenses (for example, royalty payments and other fees and costs noted above) that company-owned restaurants do not pay. We advise you to do your

own research with professionals of your choosing to determine whether the franchise may be profitable. You should consult with attorneys, accountants, and other professionals of your choosing before entering into a Franchise Agreement. You should use this information only as a reference to conduct your own analysis of the franchise opportunity. Among other things, you should construct your own pro forma cash flow statement, balance sheet, and statement of operations, and make your own financial projections regarding sales, revenues, costs, customer base, and business development for your OTB Restaurant before deciding to purchase an OTB franchise.

4. Actual results vary from franchisee to franchisee and location to location depending upon a number of factors. If you rely on our figures, you must accept the risk of not doing as well. We cannot estimate or predict the results that you may experience as a franchisee. Your results will be affected by factors such as prevailing economic or market area conditions, demographics, geographic location, prevailing real estate costs and wages, local laws relating to wages and benefits, interest rates, your capitalization level, the amount and terms of any financing that you may secure, the property values and lease rates, your business and management skills, staff strengths and weaknesses, and the cost and effectiveness of your marketing activities. These charts and the data presented should not be considered a representation or guarantee that you will or may achieve any level of revenue, sales, or profits, or that you will experience the same or similar expenses or costs in the operation of your OTB Restaurant.

5. 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 report it to the franchisor's management team by contacting Brian Shaughnessy, On the Border Director of Franchise, 2201 West Royal Lane, Suite 170, Irving, Texas 75063, (972) 499-3000, the Federal Trade Commission, and the appropriate state regulatory agencies.

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**ITEM 20  
OUTLETS AND FRANCHISEE INFORMATION**

**Table No. 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>
Franchised	2020	23	19	-4
	2021	19	25	+6
	2022	25	23	-2
Company-Owned	2020	123	117	-6
	2021	117	113	-4
	2022	113	110	-3
<b>Total Outlets</b>	2020	146	136	-10
	2021	136	138	+2
	2022	138	133	-5

**Table No. 2  
Transfers of Outlets From Franchisees to New Owners (Other than the Franchisor)  
For Years 2020 to 2022**

<b>State</b>	<b>Year</b>	<b>Number of Transfers</b>
<b>Total</b>	2020	0
	2021	0
	2022	0

*[Remainder of this page intentionally left blank]*

**Table No. 3  
Status of Franchised Outlets  
For Years 2020 to 2022**

<b>State</b>	<b>Year</b>	<b>Outlets at Start of Year</b>	<b>Outlets Opened</b>	<b>Terminations</b>	<b>Non-Renewals</b>	<b>Reacquired by Franchisor</b>	<b>Ceased Operations Other Reasons</b>	<b>Outlets at End of the Year</b>
Alaska	2020	0	0	0	0	0	0	0
	2021	0	0	0	0	0	0	0
	2022	0	1	0	0	0	0	1
California	2020	9	0	0	0	0	6	3
	2021	3	0	0	0	0	0	3
	2022	3	0	0	0	0	0	3
Florida	2020	1	0	0	0	0	0	1
	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
Maryland	2020	1	0	0	0	0	1	0
	2021	1	0	0	0	0	0	0
	2022	0	0	0	0	0	0	0
Nevada	2020	1	0	0	0	0	0	1
	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
South Dakota	2020	1	0	0	0	0	0	1
	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
Texas	2020	0	0	0	0	0	0	0
	2021	0	2	0	0	0	0	2
	2022	2	0	0	0	0	0	2
South Korea	2020	10	4	0	0	0	1	13
	2021	13	5	0	0	0	1	17
	2022	17	1	0	0	0	4	14
<b>Total</b>	2020	23	4	0	0	0	8	19
	2021	19	7	0	0	0	1	25
	2022	25	2	0	0	0	4	23

**Table No. 4**  
**Status of Company-Owned Outlets**  
**For Years 2019 to 2021**

<b>State</b>	<b>Year</b>	<b>Outlets at Start of Year</b>	<b>Outlets Opened</b>	<b>Outlets Reacquired from Franchisees</b>	<b>Outlets Closed</b>	<b>Outlets Sold to Franchisees</b>	<b>Outlets at End of the Year</b>
Arizona	2020	4	0	0	1	0	3
	2021	3	0	0	0	0	3
	2022	3	0	0	0	0	3
Arkansas	2020	5	0	0	0	0	5
	2021	5	0	0	0	0	5
	2022	5	0	0	0	0	5
Colorado	2020	7	0	0	0	0	7
	2021	7	0	0	0	0	7
	2022	7	0	0	1	0	6
Connecticut	2020	2	0	0	0	0	2
	2021	2	0	0	0	0	2
	2022	2	0	0	0	0	2
Florida	2020	4	0	0	2	0	2
	2021	2	0	0	1	0	1
	2022	1	0	0	0	0	1
Georgia	2020	5	0	0	0	0	5
	2022	5	0	0	1	0	4
	2021	5	0	0	1	0	4
Illinois	2020	4	0	0	1	0	3
	2021	3	0	0	0	0	3
	2022	3	0	0	0	0	3
Indiana	2020	3	0	0	0	0	3
	2021	3	0	0	0	0	3
	2022	3	0	0	0	0	3
Iowa	2020	1	0	0	0	0	1
	2021	1	0	0	0	0	1
	2022	1	0	0	0	0	1
Kansas	2020	5	0	0	1	0	4
	2021	4	0	0	0	0	4
	2022	4	0	0	0	0	4

<b>State</b>	<b>Year</b>	<b>Outlets at Start of Year</b>	<b>Outlets Opened</b>	<b>Outlets Reacquired from Franchisees</b>	<b>Outlets Closed</b>	<b>Outlets Sold to Franchisees</b>	<b>Outlets at End of the Year</b>
Maine	2020	0	0	0	0	0	0
	2021	0	0	0	0	0	0
	2022	0	0	0	0	0	0
Maryland	2020	3	0	0	1	0	2
	2021	2	0	0	0	0	2
	2022	2	0	0	0	0	2
Massachusetts	2020	2	0	0	0	0	2
	2021	2	0	0	0	0	2
	2022	2	0	0	0	0	2
Michigan	2020	7	0	0	0	0	7
	2021	7	0	0	0	0	7
	2022	7	0	0	0	0	7
Mississippi	2020	1	0	0	0	0	1
	2021	1	0	0	0	0	1
	2022	1	0	0	0	0	1
Missouri	2020	3	0	0	0	0	3
	2021	3	0	0	0	0	3
	2022	3	0	0	0	0	3
New Jersey	2020	5	0	0	0	0	5
	2021	5	0	0	0	0	5
	2022	5	1	0	1	0	5
New York	2020	2	0	0	0	0	2
	2021	2	0	0	0	0	2
	2022	2	0	0	0	0	2
North Carolina	2020	6	0	0	0	0	6
	2021	6	0	0	1	0	5
	2022	6	0	0	1	0	5
Ohio	2020	1	0	0	0	0	1
	2021	1	0	0	0	0	1
	2022	1	0	0	0	0	1
Oklahoma	2020	7	0	0	0	0	7
	2021	7	0	0	0	0	7
	2022	7	0	0	1	0	6
Pennsylvania	2020	4	0	0	0	0	4
	2021	4	0	0	0	0	4
	2022	4	0	0	0	0	4
Rhode Island	2020	1	0	0	0	0	1

State	Year	Outlets at Start of Year	Outlets Opened	Outlets Reacquired from Franchisees	Outlets Closed	Outlets Sold to Franchisees	Outlets at End of the Year
	2021	1	0	0	0	0	1
	2022	1	0	0	0	0	1
South Carolina	2020	1	0	0	0	0	1
	2021	1	0	0	0	0	1
	2022	1	0	0	0	0	1
Tennessee	2020	1	0	0	0	0	1
	2021	1	0	0	0	0	1
	2022	1	0	0	0	0	1
Texas	2020	36	0	0	0	0	36
	2021	36	0	0	1	0	35
	2022	35	1	0	1	0	35
Virginia	2020	3	0	0	0	0	3
	2021	3	0	0	0	0	3
	2022	3	0	0	1	0	2
<b>Total</b>	2020	123	0	0	6	0	117
	2021	117	0	0	4	0	113
	2022	113	2	0	5	0	110

**Table No. 5  
Projected Openings for 2023**

State	Franchised Agreements Signed But Outlet Not Opened	Projected New Franchised Outlets in 2023	Projected New Company-Owned Outlets in 2023
Colorado	1	1	0
Nebraska	1	1	0
	0	0	0
<b>Total</b>	2	2	0
State	Franchised Agreements Signed But Outlet Not Opened	Projected New Franchised Outlets in 2023	Projected New Company-Owned Outlets in 2023

**Notes to Tables 1 through 5:**

- States not listed had no activity during the relevant time frame.

**List of Current Franchisees**

The names addresses and telephone numbers of our franchisees as of the end of our most recent fiscal year ending December 27, 2022 are identified on Exhibit E-1 to this Disclosure Document.



### **List of Former Franchisees**

The names, addresses and telephone numbers of every franchisee who had an outlet terminated, canceled, not renewed, or otherwise voluntarily or involuntarily ceased to do business with us during our most recently completed fiscal year ending December 27, 2022, or who has not communicated with us within 10 weeks of the date of this Disclosure Document are identified on Exhibit E-2 to this Disclosure Document. If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system.

### **Confidentiality Clauses**

We have not signed any agreements with franchisees that contain confidentiality clauses that would restrict a franchisee's ability to speak openly about their experience operating an OTB Restaurant.

### **Trademark-Specific Franchisee Organizations**

We are not currently aware of any trademark-specific franchisee organizations associated with the franchise system which we have created, sponsored, or endorsed, or any independent franchisee organizations that have asked to be included in this Disclosure Document.

## **ITEM 21 FINANCIAL STATEMENTS**

Included as Exhibit G are OTB Aquisition LLC's audited, fiscal year-end financial statements for the twelve-month fiscal years ending December 29, 2020, December 28, 2021, and December 27, 2022.

## **ITEM 22 CONTRACTS**

The following agreements and other required exhibits are attached to this Disclosure Document in the pages immediately following:

- A. Franchise Agreement (with exhibits)
- B. Lease Rider and Conditional Assignment of Lease
- C. List of Agents for Service of Process
- D. Table of Contents for Operations Manual
- E-1 List of Franchisees
- E-2 List of Franchisees Who Left the System
- F-1 Sample General Release (Renewal)
- F-1A Sample General Release (California Renewal)

- F-2 Sample General Release (Termination)
- F-2A Sample General Release (California Termination)
- G. Consolidated Financial Statements
- H. State Specific Addenda and Amendments
- I. Franchise Acknowledgment Questionnaire
- J. [Intentionally Blank]
- K. Conditional Assignment of Contact Information
- L. List of State Regulatory Authorities
- M. Personal Guaranty of Principals
- N. Minimum Insurance Requirements
- O. Site Selection Form
- P. Catering Services Agreement
- Q. Pre-Authorized Bank Transfer Form
- R. State Effective Dates
- S. Receipts

**ITEM 23  
RECEIPTS**

Two copies of a Receipt for this Disclosure Document are attached as Exhibit S to this Disclosure Document. Please sign, date, and return one copy to us; retain the other copy for your files.

**[END DISCLOSURE DOCUMENT]**

**EXHIBIT A**

**ON THE BORDER MEXICAN GRILL & CANTINA®  
FRANCHISE AGREEMENT**



**ON THE BORDER MEXICAN GRILL & CANTINA  
FRANCHISE AGREEMENT**

---

Location Number

---

Franchisee Name

---

Date

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## ON THE BORDER MEXICAN GRILL & CANTINA® FRANCHISE AGREEMENT

**THIS FRANCHISE AGREEMENT** (the “Franchise Agreement”) is made and entered on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_ (the “Effective Date”) by and among OTB Acquisition LLC, a Delaware limited liability company, with its principal place of business at 2201 West Royal Lane, Suite 170, Irving, Texas 75063 (“OTB”) and \_\_\_\_\_, with its principal place of business at \_\_\_\_\_ (“Franchisee”).

### RECITALS

WHEREAS, OTB developed, owns, and operates a distinctive system for the development, establishment, and operation of a casual sit-down Mexican border-style restaurant which OTB may further improve or develop from time to time (the “System”) under the name “On the Border Mexican Grill & Cantina” and OTB’s current and future developed and associated copyrights, trade names, trademarks, service marks, logos, emblems, signs, slogans, and other indicia of origin (collectively, the “OTB Marks”); and

WHEREAS, Franchisee applied to OTB to purchase a franchise allowing Franchisee to own and operate a restaurant using the System and displaying OTB Marks (an “OTB Restaurant”), and OTB is willing to approve such application in reliance upon the information therein and subject to the terms and conditions of this Franchise Agreement.

NOW, THEREFORE, OTB and Franchisee (together, the “Parties”) agree as follows in consideration of the mutual terms and conditions set forth herein and other good and valuable consideration which the Parties acknowledge and agree creates a legally binding agreement.

### I. GRANT OF FRANCHISE

A. Grant of Franchise. Subject to the terms and conditions herein, OTB hereby grants to Franchisee the non-exclusive right and franchise to operate an OTB Restaurant pursuant to the terms and conditions of the System and under the OTB Mark (the “Restaurant”) at the location designated on Exhibit ‘A’ to this Franchise Agreement (the “Location”). Franchisee shall use the Location solely for the operation of the Restaurant and for no other purpose. Franchisee shall not relocate the Restaurant without OTB’s prior written consent, which it may grant or withhold in its sole discretion.

B. Protected Area. OTB agrees that it will not establish or approve another restaurant to operate as an OTB Restaurant within the lesser of a maximum of a two and one-half (2½) mile radius of the Restaurant or such smaller radius as determined by OTB in its sole and absolute discretion and set forth on Exhibit ‘A’ (the “Protected Area”) depending upon the relevant population density, demographics, competitors, and other factors. OTB’s grant of this franchise and Protected Area does not imply or grant Franchisee the expectation or right to any other location or a delivery or catering area or territory. Franchisee agrees that airports, train stations, bus stations, highway rest plazas, travel plazas, stadiums, schools, colleges, university campuses, sports arenas, casinos, recreational theme parks, convention centers, kiosks, food courts, enclosed shopping malls and retail centers, Native American reservations, “big box” retail stores, venues in which

food service is or may be provided by a master concessionaire or contract food service provider, virtual kitchens, ghost kitchens or cloud kitchens, host kitchens, and other locations within institutional, governmental, or public service operations (“Non-traditional Locations”) will not be included in the Protected Area even if such Non-traditional Locations fall totally or partially inside the boundaries of the Protected Area.

1. OTB will accept or reject Franchisee’s proposed Location in its sole and absolute discretion pursuant to the terms of this Agreement and OTB’s then-current site selection and acceptance criteria and procedures. Franchisee acknowledges and agrees OTB may use a variety of criteria and procedures to evaluate a proposed Location submitted by Franchisee.

2. If the Restaurant Location or Protected Area are unknown as of the Effective Date, the Parties shall prepare and execute an updated Exhibit ‘A’ with the street address, city, state, and zip code, as well as the Protected Area when the Location and/or Protected Area are determined.

3. Franchisee will not offer catering or delivery services from the Restaurant Location within or outside of the Protected Area, except as specified in the Operations Manual or otherwise approved by OTB in writing. In the event OTB permits Franchisee to offer catering or delivery services from the Restaurant Location, Franchisee must comply with OTB’s standards, policies, and requirements as set forth in the Manual (as defined below) or otherwise in writing by OTB. OTB reserves the right to withdraw its permission for Franchisee to offer catering or delivery services from the Restaurant Location in its sole and absolute discretion upon thirty (30) days’ prior written notice.

4. Unless Franchisee executes OTB’s Catering Services Agreement, Franchisee agrees that it shall not conduct catering operations from the Restaurant’s premises. If Franchisee elects to execute OTB’s Catering Services Agreement, Franchisee agrees that it shall purchase or subscribe and install any computer hardware or software required to participate in the OTB’s catering program in accordance with OTB’s Catering Services Agreement. Franchisee further agrees that OTB, its franchisees, affiliates, or licensees may provide catering services within Franchisee’s Protected Area if Franchisee does not enter OTB’s Catering Services Agreement.

C. Non-Exclusive Rights. Franchisee expressly acknowledges and agrees that its franchise is non-exclusive and OTB, OTB’s parents, subsidiaries, affiliates, franchisees, and licensees may compete with Franchisee for customers within and outside of the Protected Area. OTB, for itself and on behalf of any other entity it may acquire, be acquired by, or become affiliated with, retains all rights not expressly granted to Franchisee. As such, OTB reserves the right to, among other things, directly or indirectly:

1. License others to establish, develop, construct, open, and operate OTB Restaurants notwithstanding any such OTB Restaurant’s proximity to Franchisee’s Protected Area or the actual or threatened impact on the Restaurant’s sales;

2. Own and operate OTB Restaurants except in your Protected Area;

3. Use the OTB Marks within or outside your Protected Area to promote itself, its products, its franchisees, or others;

4. Sell and provide services authorized for sale by OTB (including products and services sold by Franchisee) using the Marks or other trade names, trademarks, service marks, logos, and commercial symbols through similar or dissimilar channels of distribution (such as the internet, telephone, mail order, catering, grocery stores, markets, convenience stores, wholesale clubs, applications, and other forms of electronic commerce) for sale within and outside of your Protected Area in our sole discretion;

5. Promote and advertise the System and fulfill catering orders within and outside your Protected Area;

6. License to third parties the right to offer and sell products and services displaying the OTB Marks or other tradenames and trademarks to the public through any distribution channel even though such products and services are similar to those offered by Franchisee whether within or outside of your Protected Area;

7. Develop and establish other tradenames, service marks, trademarks, logos, emblems, and indicia of origin which may be similar to, or different from, the OTB Marks (the "Other Marks") and OTB may exclude the Other Marks from the OTB Marks and, if so excluded, (i) Franchisee shall have no rights to the Other Marks, and (ii) Franchisor (on its behalf and on behalf of any other entity which it may acquire, or be acquired by, or otherwise is or becomes affiliated with) reserves the right to establish, develop, construct, open, and operate restaurants, other food service operations, and other businesses under the Other Marks at any location (either directly or through a franchise, licensing, joint venture, or any other arrangement) whether within or outside the Protected Area;

8. Conduct catering sales, and/or permit affiliates, licensees, and/or other franchisees to conduct catering sales to customers regardless of whether such sales are within your Protected Area; and

9. Establish franchises and/or franchisor-owned outlets selling similar products and providing similar services under names and symbols including the OTB Marks.

D. Uniform Standards of Operation; Operations Manual; and System. In order to protect the reputation and goodwill of OTB and the OTB Marks, Franchisee must operate the Restaurant and comply with OTB's System and its uniform standard of operation set forth in OTB's operations manual as periodically updated from time to time in OTB's sole and absolute discretion on its then-current learning management system or other platform, whether in printed or electronic form, as reasonably adopted by OTB (the "Manual"), including purchasing all ingredients, supplies, materials, and other products used or offered for sale at the Restaurant from approved or designated manufacturers, suppliers, distributors, resellers and vendors (collectively, "Suppliers"). The Manual shall set forth the information, advice, standards, specifications, requirements, operating procedures, instructions, and/or policies relating to the operation of an OTB Restaurant and the System. Franchisee agrees the Manual is a critical and essential obligation under this Agreement

and that Franchisee will comply with the terms of the Manual, as amended from time to time in OTB's sole and absolute discretion, at all times. Franchisee agrees that OTB may, at any time and from time to time, revise, amend, delete from, or add to the System and the material contained in the Manual, and Franchisee expressly agrees to comply, at its sole cost and expense, with all such revisions, amendments, deletions, and additions. Franchisee shall strictly comply with all standards, specifications, terms, and conditions set forth in the Manual from time to time. Franchisee acknowledges and agrees that the Manual and its contents are confidential and proprietary to OTB and are OTB's sole and exclusive proprietary information and property, as is any password or other digital identification necessary to access the Manual on any intranet or extranet website. Franchisee shall not use the Manual or any information therein for any purpose other than the operation of its OTB Restaurant. Franchisee disclaims any right to use the Manual or its content except as expressly provided by this Franchise Agreement.

E. Sale of Products and Services. Franchisee shall only offer and sell those products and services authorized by OTB in accordance with the procedures and specifications set forth in OTB's Manual to customers for consumption on the Restaurant's premises or for carry-out.

F. Independent Contractor Relationship. The Parties agree that this Franchise Agreement does not create a fiduciary or other special relationship between them. Franchisee is an independent contractor. Nothing in this Franchise Agreement is intended to make either party an agent, employee, joint venturer, or legal representative of the other party for any purpose. It is the Parties' intention that neither is nor shall be deemed to be a joint employer of the other for any reason. Franchisee shall indemnify and hold OTB harmless from any claim, loss, damage, or liability arising from or relating to any claim or finding of joint employer between Franchisee and OTB.

G. Taxes. Franchisee shall promptly pay when due all taxes and/or fees levied or assessed and all accounts and other indebtedness of every kind incurred by Franchisee in the operation of its business (collectively, "Taxes"). In the event of any bona fide dispute as to Franchisee's liability for Taxes, Franchisee may contest the validity or the amount of such Taxes in accordance with procedures of the taxing authority or applicable law; however, in no event shall Franchisee permit a tax sale or seizure by levy of execution or similar writ or warrant, or attachment by a creditor, to occur against this Franchise Agreement, the Restaurant, and/or the Location (or any improvements thereon). Franchisee shall notify OTB in writing within three (3) days of the commencement or adjudication of any administrative, legal, or other proceeding that relates to the payment or contest of Taxes or any other indebtedness which may adversely affect Franchisees' financial condition or operation of the Restaurant.

## II. TERM AND RENEWAL

A. Initial Term. The Franchise Agreement's term begins on the Effective Date and expires twenty (20) years from the date upon which the Restaurant opens for business to the public (the "Grand Opening Date") as determined in OTB's sole and absolute discretion (the "Initial Term") unless sooner terminated by written agreement of the Parties or in accordance with the terms of this Franchise Agreement (the "Expiration Date").

B. Option and Conditions of Renewal. Provided Franchisee is in material compliance with the terms and conditions of this Franchise Agreement at all times during the Initial Term, Franchisee may elect to renew the franchise for two (2) additional terms of ten (10) years each (each a "Successor Term") subject to the following terms and conditions:

1. Franchisee shall give OTB written notice of Franchisee's request to enter a Successor Agreement (the "Successor Notice") not less than one hundred eighty (180) days before the Expiration Date but not more than three hundred sixty-five (365) days before the Expiration Date;

2. Franchisee shall complete on or before the Expiration Date a complete renovation and remodel of the Restaurant Location, including the building, parking lot, signage, furniture, fixtures, equipment, décor, and image items, to comply with OTB's then-current Systems, brand, and image requirements at Franchisee's sole cost and expense;

3. Franchisee shall not be in default of the Franchise Agreement, any other agreement between the Parties, any agreement between Franchisee and OTB's related companies, affiliates, approved Suppliers, or owe any past due amount to OTB, its affiliates, or its approved Suppliers as of the date of the Successor Notice;

4. Franchisee shall provide satisfactory evidence of a possessory interest in the Location for the entirety of the Successor Term and execute a conditional assignment of its possessory interest in the Location upon default, expiration, or termination of the Successor Term;

5. Franchisee executes a full general release of all claims in a form required by OTB and a then-current Successor Agreement, which shall supersede this Franchise Agreement and shall contain terms that will materially differ from this Franchise Agreement, including higher fees, on or before the Expiration Date;

6. Franchisee pays one-half (1/2) of OTB's then-current franchise fee as a fee for the Successor Agreement on or before the Expiration Date; and

7. Franchisee complies with OTB's then-current qualification and training requirements.

### III. FRANCHISEE ORGANIZATION AND COMPLIANCE WITH LAWS

A. Your Organization; Owner's Representative. Franchisee agrees it is a legally organized, registered, and recognized business entity. Franchisee agrees to strictly comply with all of OTB's standards, policies, and procedures relating to Franchisee ownership as set forth from time to time in the Manual or as otherwise agreed in writing by OTB in OTB's sole and absolute discretion. Franchisee agrees that the equity owner identified on Exhibit 'B' is the person granted full authority to obligate and bind Franchisee in any and all communications and agreements with OTB, its affiliates, and approved Suppliers (the "Owner Representative"). Franchisee agrees, represents, and warrants that the Owner Representative is and shall be throughout the Initial Term and Successor Term (together, the "Term") vested and fully authorized to take or direct all acts or omissions as necessary to guarantee Franchisee's strict compliance with this and all other agreements relating to the operation of the Restaurant and between Franchisee and OTB, its affiliates, and approved Suppliers. Franchisee further represents and warrants that it will not, directly or indirectly, take any action to avoid, cancel, or terminate the Owner Representative's required authority without providing OTB prior written notice and receiving OTB's prior written consent, which OTB may grant or withhold in its sole and absolute discretion.

B. Disclosure of Ownership Interests. Franchisee shall identify by name, address, and telephone number each person or entity with a direct or indirect ownership interest in Franchisee on Exhibit 'B'. Franchisee agrees to provide OTB with copies of all formation and other corporate documents, including its list of owners, members, and shareholders, articles of incorporation, by-laws, partnership agreement, operating agreement, resolutions, or other governing documents of the Franchisee necessary to ensure compliance with this Article and this Franchise Agreement.

C. Privacy Laws. Franchisee shall comply with all laws, rules, and regulations relating to the privacy of consumer, employee, and transactional data and information, including Customer Data (collectively, "Privacy Laws") at Franchisee's sole cost and expense. Franchisee shall also comply with OTB's then-current standards, practices, and policies regarding Privacy Laws ("OTB's Privacy Law Policies"). Franchisee agrees to (i) provide OTB with written notice of any conflict between the Privacy Laws and OTB's Privacy Law Policies and (ii) immediately and fully cooperate with OTB and its counsel to ensure compliance with applicable Privacy Laws and OTB's Privacy Law Policies. Franchisee agrees not to publish, disseminate, implement, revise, or rescind a data privacy policy or a notice to the public of any breach or violation of any Privacy Laws without receiving OTB's prior written consent.

D. Compliance with Laws. Franchisee shall operate its business and the Restaurant in compliance with all federal, state, and local laws, rules, and regulations. Franchisee shall timely obtain any and all permits, certificates, or licenses necessary for the full and proper conduct of the Restaurant, including business licenses, certificates of occupancy, liquor licenses, fictitious name registrations, sales tax permits, and fire permits. Franchisee shall be solely responsible for any fines, costs, or penalties related to the foregoing matters. Franchisee shall in all dealings with OTB and its customers, suppliers, and the public adhere to the highest standards of honesty, integrity, fair dealing, and ethical conduct, and shall comply with all consumer protection and unfair competition laws and regulations. Franchisee agrees to refrain from any business or advertising

practice which may be injurious to OTB's business and the goodwill associated with the OTB Marks and other OTB Restaurants.

E. Liquor License. The Parties agree this Franchise Agreement is expressly conditioned upon Franchisee successfully securing and obtaining any and all required state, county, and/or local liquor licenses for the on-premises sale and consumption of alcoholic beverages, including beer, wine, and liquor, at the Restaurant (the "Liquor License") at its sole cost and expense on or before the Grand Opening Date and maintaining the Liquor License throughout the Term.

1. Franchisee shall comply with all applicable laws, rules, and regulations relating to the Liquor License and the sale, service, and consumption of alcoholic beverages.

2. Franchisee, Franchisee's Restaurant Managers, and Franchisee's employees shall attend, satisfactorily complete, and comply with all industry-sanctioned or approved alcoholic beverages serving classes and certifications, including any that are required under applicable insurance policies, laws, rules, or regulations.

3. Franchisee agrees to use its best efforts to secure, obtain, and maintain the Liquor License. Should Franchisee fail to secure, obtain, and maintain the Liquor License or should the Liquor License become suspended in excess of ten (10) days over a three hundred sixty-five (365) day period for any reason, OTB may terminate the Franchise Agreement upon ten (10) days' prior written notice to Franchisee.

#### **IV. RESTAURANT DEVELOPMENT AND CONSTRUCTION**

A. Site Selection and Acceptance. Franchisee will use Franchisee's best efforts to identify, select, and secure a Location for the Restaurant that meets OTB's then-current site acceptance standards within six (6) months of the Effective Date. Franchisee is solely responsible for the cost, expense, responsibility, due diligence, and liability for locating, obtaining, financing, developing, and completing construction of a site for the Restaurant that meets OTB's then-current site acceptance standards. Franchisee shall submit to OTB all information, documents, and material required by OTB in the form OTB specifies (the "Site Selection Package") for OTB's confirmation that the Location meets OTB's then-current site acceptance standards. Franchisee acknowledges and agrees that OTB's acceptance of a Location does not constitute, nor will such acceptance be deemed, an indication, judgment, representation, or warranty of the desirability or potential success of such Location. OTB shall provide Franchisee with its acceptance of the proposed Location within forty-five (45) days of its receipt of the completed Site Selection Package. Franchisee agrees OTB may accept or reject the proposed Location in its sole and absolute discretion. **OTB DOES NOT MAKE ANY REPRESENTATION OR WARRANTY AS TO THE SUCCESS OR RESULTS WHICH FRANCHISEE WILL EXPERIENCE AT THE LOCATION. FRANCHISEE ACCEPTS AND ASSUMES ALL RISK ASSOCIATED WITH ANY LOCATION REGARDLESS OF WHICH PARTY IDENTIFIES, LOCATES, OR SUGGESTS THE LOCATION.**

B. Property Control. Franchisee shall obtain and maintain continuous possessory interest to the premises for the Location either through ownership or a lease to the premises for the Location for not less than the Initial Term (the "Location Agreement") before opening the Restaurant and

for any Successor Term before the Expiration Date. Franchisee shall provide OTB with a copy of the Location Agreement without request before opening the Restaurant and Expiration Date, as well as upon written request. Franchisee agrees that any Location Agreement, including any lease, shall comply with OTB's then-current site acceptance policy, lease acceptance policy, and lease addendum and Franchisee shall execute OTB's then-current lease addendum with the Location's owner and OTB (the "Lease Addendum"). Franchisee guarantees that OTB shall have the right to receive an assignment of the possessory interest in the Location upon expiration or termination of the Franchise Agreement at OTB's election pursuant to the Lease Addendum. Franchisee may not assign, sublease, or transfer its possessory interest in the Location without OTB's prior written consent which it may grant, withhold, or condition in its sole and absolute discretion.

C. Development and Construction. Franchisee shall develop and construct the Restaurant in compliance with all applicable laws, rules, regulations, ordinances, and zoning requirements, as well as OTB's standards and requirements. Franchisee agrees that OTB shall prohibit Franchisee's use of the System and the OTB Marks if Franchisee fails to design, construct, equip, furnish, or operate the Restaurant in strict compliance with Franchisee's specifications and System notwithstanding the Parties' execution of this Franchise Agreement. Franchisee shall retain a certified architect and other professionals as necessary to ensure compliance with all applicable building codes, laws, ordinances, permit requirements, rules, regulations, and zoning requirements applicable to the development and construction of the Location at Franchisee's sole cost and expense.

D. Furniture, Fixtures, and Equipment. Franchisee shall purchase, use, and display only that furniture, fixture, and equipment, including all computer software and hardware, kitchen equipment, signage, emblems, lettering, logos, and display material that meets OTB's standards and/or is specified by OTB in the Manual.

## **V. RESTAURANT STAFFING AND OPERATIONS**

A. Business Operation. Franchisee shall operate the Restaurant in strict conformity with the System and the Manual (and such other methods, standards, and specifications as Franchisor may from time to time otherwise prescribe in writing), including providing the highest level of customer service. In the event of a supplement and/or modification to the System and/or the Manuals, Franchisee shall thereafter operate the Restaurant in accordance with (and otherwise comply with) the supplemented and/or modified System and/or Manual. Franchisee shall only use those brands, types of equipment, inventory, food, products, and supplies approved and designated by OTB or, if no such approval or designation applies, that meet or exceed OTB's standards and specifications. Franchisee acknowledges that every detail of the Restaurant and its operation is important to Franchisee, OTB, and other franchisees in order to develop and maintain uniform and high operating standards, to increase the demand for the services and products sold by all franchisees, and to protect OTB's reputation and goodwill. Franchisee shall maintain all of its trade accounts and tax obligations in current status and promptly resolve any disputes relating to same. Should Franchisee fail to do so, OTB may, but does not have the obligation to, pay any such amounts due, perform any obligations, or resolve such disputes on Franchisee's behalf and account and Franchisee shall repay or pay any amount incurred by OTB in such instance immediately upon



receipt of written notice from OTB. Franchisee shall only use the Location for operation of the Restaurant and shall not permit any other business to operate from the Location.

B. Telephone Numbers. Franchisee acknowledges and agrees that any and all telephone listings and numbers associated with the Restaurant (the “Telephone Numbers”) are service marks of OTB and are associated with and contribute to the goodwill of OTB and its System. Franchisee agrees, warrants, and represents that it will immediately and without request transfer and assign the Telephone Numbers to OTB upon expiration or termination of the Term or permanent closure of the Restaurant. Upon expiration or termination of the Term or permanent closure of the Restaurant, Franchisee agrees that it abandons, relinquishes, and disclaims any right, title, and interest to the Telephone Numbers. Franchisee agrees, warrants, and represents that OTB has the right and authority to request and effectuate the transfer of the Telephone Numbers to OTB or its designee with any telephone company or service provider supplying, supporting, or maintaining the Telephone Numbers (the “Telephone Provider”) regardless of any code or protection that is or has been requested or is in place for such Telephone Numbers. Franchisee further agrees that it shall immediately execute any documents requested or required by the Telephone Provider to effectuate such transfer of the Telephone Numbers and, if Franchisee fails to do so within one (1) business day, Franchisee hereby appoints OTB as its attorney-in-fact to do so. Upon transfer, Franchisee agrees that OTB may place any restrictions or protections on the Telephone Numbers it deems necessary to ensure OTB’s or its designees’ use, right, title, and interest to the Telephone Numbers.

C. Management. Franchisee shall designate: (i) one person that will devote his or her full time, best efforts, and constant personal attention to the day-to-day operation of the Restaurant (the “General Manager”); (ii) one person that is not the General Manager that will devote his or her full time, best efforts, and constant personal attention to the day-to-day operation of the Restaurant’s kitchen (the “Kitchen Manager”); (iii) an appropriate number of assistant managers but, in no event, less than two (2) assistant managers (the “Assistant Managers”); and (iv) one person that will devote his or her full time, best efforts, and attention to a shift as supervisor as defined in the Manual (the “Shift Supervisor”).

D. Staffing. Franchisee shall be the sole and exclusive employer of its employees with the sole right to hire, train, supervise, schedule, compensate, discipline, and discharge such employees and the sole right to establish wages, hours, benefits, employment policies, and other terms and conditions of employment for such employees all as determined by Franchisee in its sole discretion without consultation or approval by OTB and at Franchisee’s sole cost and expense. Franchisee shall conduct ongoing training programs at the Restaurant for its employees to ensure Franchisee’s employees’ understanding, knowledge, and implementation of the System and Manual at Franchisee’s sole cost and expense in order to ensure a competent and conscientious staff that provides the highest level of appearance, quality, cleanliness, and service. Franchisee shall comply with all applicable laws, rules, and regulations regarding labor and employment. Franchisee agrees that Franchisor is not the employer of Franchisee’s employees. Franchisee shall be solely responsible for the payment of all social security taxes and/or other applicable payroll-related, government-mandated contributions and/or taxes and Franchisee shall indemnify and hold OTB harmless from any claim, loss, damage, or liability for any such contributions and/or taxes.

E. Initial Training. Before Franchisee opens the Restaurant to the public, Franchisee’s General Manager, Kitchen Manager, and Assistant Managers, as well as up to two (2) other individuals

(collectively, the “Restaurant Managers”) shall attend and successfully complete, in OTB’s sole and absolute discretion, OTB’s initial training program (the “Initial Training”) at a location determined by OTB, in its sole and absolute discretion, not less than eight (8) weeks prior to the Grand Opening Date. Franchisee agrees that it is responsible to pay all costs, expenses, travel, lodging, food, beverage, and wages associated with the Restaurant Managers’ or other attendees’ attendance at the Initial Training.

F. Supplemental Training and Programs. Franchisee agrees, at OTB’s request, to attend or require its Restaurant Managers to attend supplemental training programs, conventions, advertising meetings, operations meetings, and sales meetings which OTB may offer from time to time (the “Supplemental Training”). Franchisee also agrees that Owner’s Representative and its General Manager shall attend other training programs, seminars, and conventions at locations determined by OTB to discuss relevant business trends and information relating to the restaurant business (the “Programs”). Franchisee agrees to pay all costs, expenses, travel, lodging, food, beverage, and wages associated with the Restaurant Managers’ attendance at the Supplemental Training and Programs.

G. Best Efforts. Franchisee, the Owner’s Representative, and the Restaurant Managers shall devote their full time and best efforts to the management and operation of the Restaurant.

H. Opening. The Grand Opening Date shall occur no more than two (2) years after the Effective Date.

I. Health and Safety.

1. Franchisee shall operate the Restaurant in accordance with (a) the highest health, safety, and sanitation standards under applicable law and (b) the highest health, safety, and sanitation standards as set forth in the Manual. Within three (3) days of receipt, Franchisee shall furnish to OTB a copy of any and all inspection reports, warnings, citations, certificates, and/or ratings which indicates Franchisee’s failure to meet or maintain the highest applicable health, safety, and/or sanitation standards (which shall mean any rating or grade of B+ or 89/100 or less) in the Restaurant’s operation.

2. Franchisee agrees that Franchisee shall (a) immediately close the Restaurant upon receipt of written notice from OTB or any governmental agency in the event of a public health, safety, and/or sanitation emergency relating to or arising from the Restaurant (a “Health Event”) and (b) not re-open the Restaurant until the Health Event is resolved to OTB and/or such governmental agency’s satisfaction and Franchisee receives written permission from such governmental agency and/or OTB to re-open.

J. Mandatory Sanitation and Food Safety Program. Franchisee shall participate in and comply with OTB’s mandatory sanitation and food safety program relating to OTB Restaurants and the Restaurant, including periodic inspections and evaluations, as set forth in the Manual at Franchisee’s sole cost and expense.

K. Approved Products, Goods, and Services. Franchisee shall only offer for sale and sell those products, goods, and services which are expressly designated and approved in the Manual unless Franchisee receives OTB's prior written consent, which OTB may grant or withhold in its sole and absolute discretion. Franchisee shall not offer for sale any product, good, or service from the Restaurant or the Location that is associated with or displays any trademark, service mark, logo, or other indicia of origin other than the OTB Marks.

L. Inventory. Franchisee shall initially supply and continuously maintain a sufficient supply to use and/or sell all such menu items, ingredients, products, goods, materials, and supplies as necessary to conform with OTB's standards and specifications, including those set forth in the Manual.

M. Approved Suppliers; Group Purchasing; Allowances.

1. Unless Franchisee obtains OTB's prior written consent, which OTB may grant or withhold in its sole and absolute discretion, Franchisee shall purchase all ingredients, supplies, materials, and other products used or offered for sale at the Restaurant solely from OTB or Suppliers approved in writing by OTB, and not thereafter disapproved. Franchisee acknowledges and agrees OTB may approve or disapprove of any Supplier in its sole and absolute discretion.

2. Franchisee may seek approval of an alternate supplier or vendor provided such supplier or vendor complies with OTB's standards and specifications for production, quality, price, and distribution, among other things, in accordance with OTB's then-current process, standards, and specifications as set forth in the Manual.

3. Franchisee agrees that OTB may establish one or more strategic alliances or preferred vendor programs to supply all or some OTB Restaurants with some or all ingredients, supplies, materials, and other products used or offered for sale at the Restaurant which may limit the number of approved Suppliers from whom Franchisee may purchase required ingredients, supplies, materials, and other products used or offered for sale at the Restaurant. Franchisee shall comply with all terms, conditions, and obligations of all contracts and arrangements with Suppliers or other third parties as part of OTB's System.

4. Franchisee agrees that OTB is entitled to pay, collect, and retain all manufacturing allowances, marketing allowances, rebates, credits, monies, payments, or benefits (collectively, the "Allowances") offered to Franchisee or to OTB by Suppliers based upon Franchisee's purchases of all ingredients, supplies, materials, and other products. Franchisee assigns to OTB or its designee all of Franchisee's right, title, and interest in and to any and all such Allowances and authorizes OTB or its designee to collect and retain such Allowances without restriction.

N. Hours of Operation. Unless OTB provides its prior written consent, Franchisee shall keep the Restaurant open for business at all times required in the Manual provided such hours do not conflict with state or local laws, rules, regulations, or ordinances.

O. Maintenance, Repair, and Remodel. Franchisee shall maintain the Restaurant in the highest degree of sanitation, repair, and condition according to OTB's standards and specifications set forth in the Manual and shall perform such periodic maintenance, repair, and replacement of the Restaurant, including its furniture, fixture, and equipment, at its sole cost and expense. Franchisee must constantly maintain and continuously operate the Restaurant and all furniture, fixtures, equipment, furnishings, floor coverings, interior and exterior signage, the building interior and exterior, interior and exterior lighting, landscaping, and parking lot surfaces in first-class condition and repair in accordance with the requirements of the System, and Franchisee will promptly and diligently perform all necessary maintenance, repairs, and replacements to the Restaurant Location as Franchisor may prescribe from time to time, including periodic interior and exterior painting, resurfacing of the parking lot, roof repairs, and replacement of obsolete or worn out signage, floor coverings, furnishings, equipment and décor.

P. Current Image. Franchisee shall make all improvements and alterations required to maintain the Restaurant Location in accordance with OTB's then-current image for all OTB Restaurants as set forth in the Manual from time to time at its sole cost and expense. Franchisee agrees that OTB may require in its sole and absolute discretion Franchisee to undertake such improvements, alterations, and/or remodeling to comply with OTB's then-current image as soon as the last day of the last calendar month of the fifth (5<sup>th</sup>) anniversary of the Grand Opening Date.

Q. Capital Improvements. Franchisee acknowledges and agrees that OTB may institute revisions, amendments, deletions from, or additions to the System and the material contained in the Manual that will result in Franchisee's obligation to invest additional capital in the Restaurant and/or incur higher operating costs (a "Capital Improvement"). In such instances where Capital Improvements result in an expenditure of more than fifty thousand dollars (\$50,000), OTB will provide Franchisee with up to ninety (90) days from the date of OTB's written notice of the Capital Improvement to comply with such Capital Improvement obligation. Capital Improvements are in addition to any cost and expense Franchisee shall incur to repair, replace, or remodel your furniture, fixtures, equipment, and Restaurant.

R. Mandatory Remodeling of Restaurant. On the eleventh (11th) anniversary of the Grand Opening Date, Franchisee must refresh the image of the Restaurant and Location to OTB's then current image at its sole cost and expense and as OTB may reasonably require (the "Refresh"). The Refresh shall include replacing obsolete computers, POS System, furniture, fixture, equipment, repainting, refinishing, or replacing surfaces (both interior and exterior), landscaping, and installation of new décor items.

S. Visitation and Inspection. Franchisee hereby grants OTB and its agents the right to enter the Restaurant and Location at any time for the purpose of conducting inspections for, among other things, determining compliance with the Franchise Agreement, System, and Manual and preserving the validity and integrity of the OTB Marks. Franchisee shall cooperate with OTB and its agents in such inspections by rendering any requested assistance. Franchisee shall correct any deficiencies noted by OTB or its agents within ten (10) days of receiving such notice. Franchisee also grants OTB and its agents the right and license to take and maintain photographs, videos, images, or other visual or audio documentation of the Location, Restaurant, and its operations.

T. Computer and POS Systems. Franchisee shall purchase, obtain, install, and maintain, at its sole cost and expense, all equipment and computer infrastructure, hardware, and software required by OTB from time to time and as set forth in the Manual, including a computer-based point of sale system or such other type of cash register system OTB requires as set forth in the Manual (the “POS System”). Franchisee shall not implement, use, or otherwise subscribe to any software system not approved by or prescribed by OTB. Franchisee shall dedicate a telecommunications line for the sole purpose of supporting the computer and/or point-of-sale system(s) required by OTB. OTB reserves the right to charge Franchisee for computer support and technology fees. Franchisee shall make such arrangements and follow such procedures as OTB may require, including the establishment and maintenance of internet, intranet or extranet access, or such other means of electronic communication, to permit OTB to access, retrieve, download, or upload electronically, digitally, by telecommunication, or other designated method any data or information input or maintained on Franchisee’s POS System or computer system, including Franchisee’s books and records and information concerning the Restaurant’s Gross Sales, and to permit OTB to upload and Franchisee to receive and download information from OTB without Franchisee’s prior consent. Franchisee agrees OTB shall have and be afforded access to such information at the times and in the manner that Franchisor may specify from time to time.

U. Customers; Customer Data. Franchisee expressly acknowledges and agrees that customers of OTB Restaurants and the goodwill associated with those customers belong to OTB. Franchisee agrees that all data and other information it collects from customers and potential customers (“Customer Data”) is deemed to be exclusively owned by OTB. Franchisee shall provide OTB with all Customer Data upon OTB’s request and as specified in the Manual. OTB hereby grants Franchisee a non-exclusive revocable license to use Customer Data in accordance with the terms and conditions set forth in the Manual for the sole purpose of operating and marketing the Restaurant, OTB Restaurants in general, and contributing to the goodwill associated with the OTB Marks. Franchisee agrees that it may not maintain, use, transfer, or sell Customer Data without OTB’s prior written consent.

V. Payments and Electronic Transactions. Franchisee must record all remuneration received from the operation of its Restaurant.

1. Franchisee shall maintain credit-card relationships with the credit and debit card issuers or sponsors, check, or credit verification services, financial-center services, and electronic-funds-transfer systems as required by OTB. Franchisee shall not use any such services or providers that are not approved by OTB.

2. Franchisee must comply with all credit card policies, including minimum purchase requirements for a customer’s use of a credit card as prescribed in the Manual. Franchisee shall comply with the Payment Card Industry Data Security Standards (“PCI DSS”) as they may be revised and modified by the Payment Card Industry Security Standards Council (see [www.pcisecuritystandards.org](http://www.pcisecuritystandards.org)), or such successor or replacement organization and/or in accordance with other standards as Franchisor may specify, and the Fair and Accurate Credit Transactions Act (“FACTA”). Franchisee shall also periodically upgrade its POS System and related software, at Franchisee’s expense, to maintain compliance with PCI DSS, FACTA, and all related laws and regulations.

W. Gift Card Program. Franchisee shall participate in and honor any gift card program operated by OTB and/or its affiliates and designees. Franchisee shall comply with OTB's gift card program and policies as set forth in the Manual. Franchisee agrees to pay all fees required by OTB and/or the third-party vendor of the gift card system. Franchisee shall account for and report all gift card sales and redemptions in the manner required by OTB.

X. Supplemental Marketing and Marketing Programs. Franchisee shall actively promote the Restaurant and OTB and use Franchisee's best efforts to cultivate, develop, and expand the Restaurant's business and goodwill associated with OTB in the Restaurant's community. Franchisee shall support those marketing programs established or required by OTB in OTB's sole and absolute discretion.

Y. Crisis Management. Franchisee shall provide OTB with notice of any potential or actual event or situation that could adversely affect the Restaurant or OTB's image, reputation, goodwill, profitability, or ability to operate (a "Crisis Situation"). Franchisee shall provide OTB with written notice of its retaining or otherwise hiring a third-party to perform crisis management or public relations services, including any notices to the public, regardless of whether a Crisis Situation exists. Franchisee shall provide OTB with the name and contact information for such third parties. Franchisee agrees to comply with OTB's then-current crisis communication policies and procedures in a Crisis Situation and to work in good faith with OTB to minimize any negative effect of the Crisis Situation to the Restaurant and OTB's image, reputation, goodwill, profitability, or ability to operate.

Z. Relocation. Franchisee shall request the opportunity to relocate its Restaurant from the Location if (i) the Location Agreement expires or terminates without any fault or cause by Franchisee, (ii) the Restaurant or Location is destroyed or otherwise rendered unsuitable, (iii) the Location is taken through eminent domain, or (iv) if the character of the Location and/or its surrounding area becomes unsuitable in OTB's sole and absolute discretion (a "Relocation Request"). OTB may approve, condition its approval, or deny a Relocation Request in its sole and absolute discretion. If OTB approves a Relocation Request, Franchisee agrees that it shall comply with all of OTB's then-current site selection standards and processes, construction, and development obligations and timelines with regard to a new location and shall bear all costs, expenses, liabilities, damages, and risks of loss associated with the Relocation Request, new site selection process, construction, development, and relocation, including all reasonable costs and expenses incurred by OTB, as well as OTB's then-current relocation fee.

## **VI. OTB'S OBLIGATIONS**

A. Training Program. OTB shall provide Franchisee and its Restaurant Managers with Initial Training at no cost. Franchisee agrees to pay OTB for tuition and training fees for any other individuals Franchisee requests attend OTB's Initial Training.

B. Grand Opening Training. OTB shall provide Franchisee with a grand opening team and training at the Location, including on-site pre-opening and opening supervision and assistance as OTB deems advisable and subject to the availability of personnel for OTB's then-current grand

opening assistance fee. Franchisee agrees that OTB will not assist Franchisee in the process of hiring and training your employees.

C. On-going Guidance. OTB may, but is not obligated to, provide Franchisee with advice and assistance in the operation of the Restaurant in compliance with the System and Manual in its sole and absolute discretion.

D. Requested Guidance. At Franchisee's request, OTB may furnish additional guidance and assistance provided Franchisee pays all fees and costs incurred by OTB and associated with such request, including travel, lodging, and per diem allowances.

E. Periodic Inspections. OTB shall conduct inspections of the Restaurant and evaluate the Restaurant's compliance with the System and Manual as it deems advisable in OTB's sole and absolute discretion.

F. Outsourcing. OTB may, in its sole discretion, elect to outsource and/or subcontract certain of its obligations set forth in this Franchise Agreement to subsidiaries, affiliates, contract employees, third-party vendors, and/or other third-party suppliers, provided (i) any such outsourcing and/or subcontracting shall not discharge OTB from its obligations under this Franchise Agreement, and (ii) any such outsourced or subcontracted obligations shall be performed in accordance with the terms of this Franchise Agreement.

## **VII. CONTRIBUTIONS, FEES, AND PAYMENTS**

A. Initial Franchise Fee. Franchisee shall pay OTB an initial franchisee fee of forty thousand dollars (\$40,000) (the "Initial Franchise Fee") with a payment of ten thousand dollars (\$10,000) due upon signing of the Franchise Agreement and the remaining thirty thousand dollars (\$30,000) due within thirty (30) days of the Grand Opening Date. The Initial Franchise Fee is fully earned when paid and is non-refundable.

B. Gross Sales. The term "Gross Sales" means all revenue resulting from all sales which include the sale of food, beverages, goods, and merchandise or services in, from, occurring, or arising from the operation of all business from your OTB Restaurant's premises, including the operation of an OTB Restaurant. This includes the sale of all services, goods, and products, as well as all other income of every kind and nature related to the OTB Restaurant, including, on-premises sales, off-premises sales, catering sales, internet sales, and any other type of sale relating to the OTB Restaurant, whether or not such sales have been approved or authorized by us, and whether for cash, credit, gift, or barter and with no deductions or exclusions whatsoever (including for any third-party delivery services or processing fees); provided, however, that "Gross Sales" shall not include any of the following: (i) service personnel tips and (ii) any sales taxes or other taxes collected by you for transmittal to the appropriate taxing authority. We reserve the right to modify the definition of "Gross Sales" including those items exempted from the definition in our sole and absolute discretion.

C. Grand Opening Advertising Contribution. Prior to the Grand Opening Date, Franchisee shall, at OTB's election, either (i) spend at least ten thousand dollars (\$10,000) on a marketing and

promotional campaign related to the grand opening of Franchisee's Restaurant either before or within the first eight (8) weeks of the Grand Opening Date or (ii) pay ten thousand dollars (\$10,000) to OTB for the marketing and promotional campaign related to the grand opening of Franchisee's Restaurant ("Grand Opening Advertising Contribution") either before or within the first eight (8) weeks of the Grand Opening Date. Franchisee acknowledges and agrees that this Grand Opening Advertising Contribution is in addition to any other amount due and owing for the marketing or advertising of the Restaurant.

D. Royalty. Franchisee shall pay OTB a continuing weekly royalty fee in the amount of four percent (4%) of the Restaurant's Gross Sales for the prior week ("Royalties") each week of the Term.

E. Marketing Fund Contribution. Franchisee shall pay OTB a continuing weekly marketing, advertising, and production fee and fund contribution in an amount equal to two percent (2%) of the Restaurant's Gross Sales for the prior week ("Marketing Fund Contribution") each week of the Term in addition to any and all other marketing or advertising directly conducted by Franchisee. OTB reserves the right and Franchisee agrees to permit OTB to change and increase the rate of Marketing Fund Contributions from two percent (2%) of the Restaurant's weekly Gross Sales to four percent (4%) of the Restaurant's weekly Gross Sales upon ninety (90) days' prior written notice in its sole and absolute discretion from time to time during the Term. OTB agrees that it shall not increase the rate of Marketing Fund Contributions more than one percent (1%) annually.

F. Learning Management System Fee. Franchisee agrees to pay OTB's then-current fee for accessing OTB's on-line learning management system and Manual.

G. Technology Fee. Franchisee agrees to pay OTB's then-current technology fee in connection with OTB's website, extranet system, applications, and other technology platforms and developments created or maintained by OTB. OTB may increase its technology fee upon thirty (30) days' written notice.

H. Loyalty Program Fee. OTB reserves the right and Franchisee agrees to permit OTB to institute a loyalty program fee upon ninety (90) days' prior written notice.

I. Payment of Fees. Payments for Royalties and Marketing Fund Contributions are due on the Tuesday following the prior concluded week, which runs from Sunday through Saturday. All other contributions, fees, payments, or other amounts due from Franchisee to OTB are due and payable upon demand or receipt of any billing statement or invoice issued by OTB.

J. Interest. Franchisee shall pay interest on any amount not timely paid to OTB equal to the lesser amount of eighteen percent (18%) per annum or the maximum rate permitted by law.

K. Late Fee. Any payment not received by OTB on or before the date which payment is due is late. Franchisee shall pay OTB a late fee equal to fifty dollars (\$50) plus the actual fees and costs incurred by OTB as a result of Franchisee's failure to timely make any payment.



L. Reporting of Gross Sales. Franchisee agrees to record all Gross Sales on the POS System, as well as allow OTB access to such POS System or other computer software and systems in the manner, increments, and times OTB determines, in its sole and absolute discretion. Franchisee shall also submit to OTB a weekly report of its Gross Sales for the prior weekly reporting period determined by OTB in its sole and absolute discretion within two (2) days of its conclusion.

M. Method of Payment. Franchisee shall make all payments to OTB by the method specified by OTB in its sole and absolute discretion. Franchisee agrees to execute all authorizations, consents, or documents necessary to effectuate this obligation, including OTB's then-current form of electronic funds transfer agreement. Franchisee shall provide OTB with not less than ten (10) business days' written notice before changing banking institutions or accounts and will execute all authorizations, consents, or documents required by OTB.

N. Application of Payments Received. OTB may apply any payment received from Franchisee in OTB's sole and absolute discretion without regard for any designation or instruction by Franchisee.

O. Offset. OTB may offset any amount owed to Franchisee against amounts Franchisee owes to OTB at the time of OTB's obligation to Franchisee or thereafter. Franchisee shall not withhold, retain, deduct, credit, and/or offset any amounts which may be owed or claimed owed by OTB to Franchisee or any of its affiliates or related entities against any amounts due from Franchisee to OTB.

## **VIII. MARKETING PROGRAM**

A. Program. Recognizing the value of advertising and the importance of the standardization of advertising, marketing, and public relations programs to the furtherance of the goodwill and public image of the System, Franchisee agrees to participate in the following advertising programs designated and required by OTB.

B. Marketing Fund. Franchisee agrees to pay OTB the Marketing Fund Contribution in addition to Royalties pursuant to Article VII.E above. All Marketing Fund Contributions collected by or for OTB will be deposited in one (1) or more separate accounts (referred to collectively as the "Fund"), all designated as "Marketing Fund." Franchisee agrees to pay any and all printing costs associated with the advertising, marketing, and promotion of its Restaurant Location and that such printing costs are not included in either the Marketing Fund Contribution or Production Fee (as defined below).

1. OTB will administer and control the Fund which may be used for: creation, production, and placement of advertising, in-store signs, in-store promotions, commercial or online and digital advertising; production and placement of media advertising, direct response literature, direct mailings, brochures, collateral advertising material, surveys of advertising effectiveness, other advertising or public relations expenditures relating to advertising OTB Restaurants' services and products; providing professional services, materials, and personnel to support the marketing function; conducting product and menu testing; creating, producing, and implementing Websites for OTB and/or its franchisees; and developing and maintaining

application software designed to run on computers and similar devices, including tablets, smartphones and other mobile devices, as well as any evolutions or “next generations” of any such devices. The Fund also covers fees for the creation and production associated with OTB’s database program. OTB reserves the right to add or delete from the above list at any time during the Term in its sole and absolute discretion. Franchisee agrees that OTB may update the list set forth in the Manual.

2. OTB may reimburse itself or its designated representatives for administrative costs, independent audits, reasonable accounting, bookkeeping, reporting, and legal expenses, taxes, and other reasonable direct and indirect expenses incurred by OTB or its representatives in connection with the programs funded by and the administration and operation of the Fund. The advertising may be disseminated in print, television, radio, digital, or other interactive media. OTB and its representatives will not be liable for any act or omission that is consistent with this Agreement and done in good faith.

3. OTB assumes no direct or indirect liability or obligation to Franchisee with respect to collecting amounts due to, or maintaining, directing, or administering the Marketing Fund.

4. OTB and its representatives may spend in any fiscal year more or less than the aggregate contribution of all OTB franchisees to the Fund in that year, and the Fund may borrow from OTB or others (including OTB’s affiliates) to cover deficits or invest any surplus for future use. All interest earned on monies contributed to the Fund will be used to pay advertising costs before other assets of the Fund are expended. OTB may cause the Fund to be incorporated or operated through a separate entity at such time as OTB deems appropriate, and such successor entity, if established, will have all rights and duties specified in this Article.

5. OTB and its representatives undertake no obligation to ensure that the Fund benefits each OTB Restaurant in proportion to its respective contributions. The Fund’s primary purpose is to support sales of the entire OTB System and to build brand identity. Franchisee agrees to participate in any promotion campaigns and advertising and other programs that the Fund periodically establishes, which may include Franchisee’s agreement to accept coupons issued by OTB or its affiliates.

6. The actual printing and manufacturing costs of physical items and shipping to the Restaurant is Franchisee’s responsibility at its sole cost and expense. This may include limited time offer (“LTO”) promotional and/or menu materials, and/or physical gift cards. Franchisee agrees to comply with the obligation and current list of items as set forth in the Manual.

7. OTB shall prepare an annual statement of the Fund’s operations and shall make it available to Franchisee upon Franchisee’s written request.

C. Production Fee. Franchisee acknowledges and agrees that Franchisee shall pay to OTB a continuing weekly fee for the purpose of maintaining, administering, directing, and preparing advertising, marketing, and promotional activities and creating, developing, and distributing advertising, marketing, and promotional materials and content for the Marketing Program and the benefit of the System and the goodwill associated with the OTB Marks (the “Production Fee”).

OTB may collect the Production Fee either from Franchisee's Marketing Fund Contribution paid to the Marketing Fund or directly from Franchisee in its sole and absolute discretion.

D. Local Advertising, Marketing, and Promotion. Franchisee acknowledges and recognizes the need to aggressively advertise, market, and promote Franchisee's Restaurant on a local basis ("Local Advertising"). Accordingly, OTB requires Franchisee to participate in Local Advertising whereby Franchisee shall spend and hereby agrees to spend no less than one percent (1%) of the Restaurant's Gross Sales (the "Local Spend") on Local Advertising initiatives as defined and set forth in the Manual for the benefit of the Restaurant. Franchisee shall use the Local Spend on, and pay it to, local advertising and media sources to support Franchisee's operation and Restaurant Location in the local market. Unless requested or required by OTB, Franchisee's Local Spend will not be paid to OTB. Franchisee agrees OTB may, in its sole discretion, reduce or increase the minimum Local Spend upon thirty (30) days' prior written notice to Franchisee, however, Franchisor may not increase the Local Spend to greater than two and a half percent (2.5%) of Gross Sales during the Term.

1. Franchisee may expend the Local Spend as and when Franchisee reasonably deems appropriate, so long as the Franchisee's expenditure schedule is first approved in writing by OTB in OTB's reasonable discretion.

2. Franchisee shall provide OTB with written statements and documentation, including all source documents, demonstrating Franchisee's compliance with its obligation to conduct Local Advertising and meet its Local Spend obligation within thirty (30) days' of OTB's written request.

3. Franchisee's failure to comply with its obligation to conduct Local Advertising and meet its Local Spend obligation is a material default of this Agreement. In such instance, OTB may require Franchisee to remit the required amount of Local Spend to OTB so that OTB may utilize the Local Spend to conduct Local Advertising for the benefit of the Restaurant. Franchisee agrees this right and remedy is in addition to any other right or remedy OTB may have as a result of Franchisee's failure to comply with its obligation to conduct Local Advertising and meet its Local Spend obligation.

E. Advertising Standards and Approval. Franchisee agrees to obtain OTB's prior written consent to any and all advertising, marketing, and/or promotional plans and material ("Advertising Plans and Material") used by Franchisee and that all such Advertising Plans and Material shall comply with OTB's specifications and standards as set forth in the Manual. Franchisee shall timely pay OTB for any and all Advertising Plans and Material created by OTB for Franchisee. All advertising and promotion by Franchisee in any medium shall be conducted in a dignified manner and shall conform to OTB's standards and brand guidelines as set forth in the Manual or otherwise in writing and updated from time to time. Franchisee shall use only Advertising Plans and Material approved in advance in writing by OTB or its designee. Any materials independently developed by Franchisee shall be submitted to OTB for OTB's written approval prior to use. OTB shall oversee all advertising programs and campaigns with sole discretion over the creative concepts, materials and media used in same and the placement and allocation thereof. These obligations shall apply in all respects to Franchisee's distribution and display of advertising, marketing, and/or

promotional materials in any medium (including, without limitation, print, radio, television, and the display or use by Franchisee of advertising and promotional materials and the OTB Marks on the internet).

F. Internet; Social Media; and Electronic Commerce. Franchisee shall not use the OTB Marks over the internet (or any other form of social media platforms or apps or website creation) without OTB's prior written consent. OTB will set up an informational page for the Restaurant Location and host it on OTB's main websites. Franchisee shall not develop, create, establish, and/or use any website; any social networking site such as Facebook, Twitter, LinkedIn, Pinterest, Instagram, Google Plus, blogs, vlogs, and other web and digital applications; or any other electronic media which uses, and/or creates any association with, the System and/or the OTB Marks (including any abbreviation, acronym, phonetic variation, or visual variation) without OTB's prior written consent.

1. All domain names using, and/or creating any association with, the System and/or the OTB Marks (including any abbreviation, acronym, phonetic variation, or visual variation) shall be registered in OTB's name. Franchisee shall not register any domain name in any class or category that uses or creates any association with the System and/or OTB Marks (including any abbreviation, acronym, phonetic variation, or visual variation) without Franchisor's prior written consent.

2. Franchisee agrees any use of the OTB Marks through the internet or other digital platform must (i) receive OTB's prior written approval and (ii) comply with all standards, specifications, terms, and conditions set forth in the Manual.

G. Grand Opening Marketing. At Franchisee's sole expense, Franchisee will conduct a grand opening advertising and promotional program for the Restaurant at the time and in the manner specified by OTB in the Manual. Prior to the Restaurant's opening, Franchisee shall spend or make the Grand Opening Marketing Contribution on a public relations, marketing and promotional campaign related to the grand opening of Franchisee's Restaurant. If Franchisee directly conducts the Grand Opening Marketing Program, Franchisee must submit a detailed list of the expenditures to OTB within sixty (60) days of the Restaurant's Grand Opening Date establishing its expenditure of the Grand Opening Advertising Contribution.

## **IX. OWNERSHIP AND USE OF THE OTB MARKS AND GOODWILL**

A. Ownership of OTB Marks and Goodwill. Franchisee acknowledges and agrees that OTB owns all right, title, and interest to any and all of its copyrights, the OTB Marks, and goodwill associated therewith. Franchisee disclaims any and all claims to ownership, whether direct, indirect, or beneficial, in all of OTB Marks and all goodwill associated therewith and agrees not to directly or indirectly contest the validity or OTB's ownership of the OTB Marks.

B. Use and Display of the OTB Marks. OTB hereby provides Franchisee with a limited license to use and display the OTB Marks subject to the terms and conditions herein and set forth in the Manual. Franchisee's limited license to use and display the OTB Marks is derived solely from this Franchise Agreement. Franchisee's right to use and display the OTB Marks is limited to the

conduct of business of the Restaurant and shall comply with this Franchise Agreement and Manual. Franchisee shall not use any of the OTB Marks or engage in acts or omissions which may, in OTB's sole and absolute discretion, be in bad taste or inconsistent with OTB's public image, otherwise tend to disparage, ridicule, or scorn upon OTB, the OTB Marks, or the goodwill associated therewith. Franchisee agrees that any goodwill established in the OTB Marks as a result of Franchisee's use and display of the OTB Marks does not confer any goodwill or other interest to Franchisee and, instead, inures to OTB's sole and exclusive benefit. Any unauthorized use or display of the OTB Marks by Franchisee shall constitute an infringement of OTB's rights. Upon the expiration or termination of this Franchise Agreement, Franchisee agrees to (i) immediately cease and desist from any further use or display of the OTB Marks or any colorable imitation thereof and (ii) not directly or indirectly identify Franchisee or its owners as a current or former OTB Restaurant.

C. Third-Party License. Franchisee acknowledges and understands that OTB is a party to a license agreement that permits an authorized third-party licensee to use and display the OTB Marks in the manufacturing, distribution, and sale of chips, salsa, guacamole, dips, queso, soups, food products, drink mixes, pre-packaged meals, meal kits, and other similar products directly to consumers through alternate channels of distribution, including, among others, internet, catalog sales, telemarketing, supermarkets, grocery stores, wholesale clubs, convenience stores, retail outlets, wholesalers, or other direct marketing efforts including within Franchisee's Protected Area and local marketing area.

D. Development, Modification, Substitution, or Discontinuance of the OTB Marks. Franchisee acknowledges and agrees that OTB will continue to develop, modify, substitute, and/or discontinue the OTB Marks. Franchisee agrees to comply with any such development, modification, substitution, and/or discontinuation in accordance with the time period reasonably required by OTB at Franchisee's sole cost and expense.

E. Notification of Infringement and Claims. Franchisee agrees to immediately notify OTB of any use or display of or any alleged claim to the OTB Marks, any colorable variation thereof, or any other mark confusingly similar thereto by any entity or person other than OTB, its franchisees, and its licensees (an "Infringement"). Franchisee agrees to execute any and all documents and render such assistance as OTB deems reasonably necessary to support any assertion or prosecution of any claim or defense made by OTB in any proceeding relating to such Infringement.

F. Indemnification of Franchisee. OTB will indemnify and hold Franchisee harmless against any and all direct loss, claims, and damages incurred by Franchisee relating to Franchisee's approved use of the OTB Marks in accordance with OTB's standards and specifications. OTB shall have the right, but not the obligation, to assume the defense of any such action. In the event OTB assumes such defense, Franchisee shall provide, at no charge, all necessary and reasonable assistance to OTB.

## **X. RECORD KEEPING, OTB ACCESS, REPORTS, AND AUDITS**

A. Books and Records. Franchisee shall maintain and preserve for not less than seven (7) years from the date of preparation, full, complete, and accurate books, records, accounts, and reports in

accordance with generally accepted accounting principles and in the form and manner prescribed by OTB in its Manual from time to time.

B. Computer System Access. Franchisee agrees to provide OTB with unimpeded and independent access to its computer system so that OTB may access, poll, or otherwise obtain all of Franchisee's point-of-sale and other computer related data, including all Gross Sales, regardless of where maintained, in the form, manner, and times OTB requests at Franchisee's sole cost and expense.

C. Reporting. Franchisee shall provide OTB with reports regarding Gross Sales, cost of goods sold, labor, rent, administrative expense, and other relevant financial and operational data related to the operation of the Restaurant at the time and in the form, manner, weekly increments, and times requested by OTB at Franchisee's sole cost and expense.

D. Audit. Upon OTB's written request, Franchisee shall promptly submit to OTB for review and auditing all books, records, accounts, forms, reports, bank account statements, source documents, sales tax forms, personal tax returns, and other documents or material requested by OTB (collectively, the "Audit Materials").

1. Franchisee shall provide OTB and its designated agents or representatives with access to examine, at OTB's expense, the Audit Materials, including all bank account statements for accounts in which Franchisee deposits funds received from the operation of the Restaurant. OTB may have an independent audit made of the Audit Materials.

2. Franchisee shall pay OTB upon demand all amounts due and owing plus late fees and interest as set forth in Article VII if any such inspection or audit reveals Franchisee understated the Restaurant's Gross Sales or any payments due and owing OTB or its affiliates (the "Understated Amounts Due"). Franchisee also agrees to reimburse OTB for the full cost of the audit or inspection if such audit or inspection reveals Franchisee Understated Amounts Due in an amount greater than two percent (2%) of any amount due. Franchisee agrees these remedies are in addition to any of OTB's other rights or remedies.

3. Franchisee shall cooperate with the audit timely and in good faith. Failure to do so is a material breach of this Franchise Agreement.

## **XI. INDEMNIFICATION AND INSURANCE**

A. Indemnification by Franchisee. Franchisee agrees to indemnify and hold OTB and all of its affiliated parties, including its indemnities, agents, owners, officers, directors, employees, parent companies, and affiliated companies (the "Indemnified Parties"), harmless against any cost, damage, expense, liability, or loss which any or all of them may suffer or incur which arise from or in connection with Franchisee's: (1) providing OTB with any false or misleading information, including in its franchise qualification and application package; (2) operation of its business; (3) breach of this Franchise Agreement; and (4) use of the OTB Marks in a manner which is inconsistent with the law or OTB's standards, specifications, policies, and procedures.

1. The Indemnified Parties shall provide Franchisee with written notice of its request for indemnification within thirty (30) days of OTB receiving written or actual notice of such claim or demand. Franchisee agrees that the Indemnified Parties' failure to provide such written notice shall not constitute a waiver of any rights of the Indemnified Party hereunder or at law.

2. Franchisee agrees that it shall directly pay all reasonable legal and accounting fees, costs of investigation, court costs, litigation expenses, expert witness fees, and travel and accommodation expenses incurred by the Indemnified Parties (the "Indemnification Costs") in advance of the incurrence of such Indemnification Costs. Failure or delay by the Indemnified Parties to demand payment of the Indemnification Costs shall not constitute a waiver of the Indemnified Parties' right to advancement. An Indemnified Parties' right to advancement shall be determined without the need for evidence and based solely on the pleadings. Any doubt regarding the entitlement to advancement shall be resolved in favor of advancement to the Indemnified Parties.

3. The Indemnified Parties may exercise exclusive control of the defense of any such claim or demand in such matter as they, in their sole and absolute discretion, deem advisable or appropriate. Franchisee agrees that it shall not make any admission or concession or in any way impair defenses to the claim or demand on it or the Indemnified Parties' behalf or offer to compromise any claim or demand without the Indemnified Parties' written consent, which the Indemnified Parties may grant or withhold in their sole and absolute discretion.

4. Franchisee agrees that the terms and conditions of this provision are not the Indemnified Party's exclusive remedy against Franchisee for such claim or demand and the Indemnified Party specifically reserves all rights and remedies they may otherwise have available to them at law or in equity.

5. Franchisee agrees that the Indemnified Parties are not required or obligated to seek recovery from third parties or otherwise mitigate their losses in order to maintain a claim against Franchisees. Franchisee agrees that OTB's failure to pursue such recovery or mitigate loss will in no way reduce the amounts recoverable from Franchisee by the Indemnified Parties.

B. Minimum Insurance Requirements. Franchisee agrees, at its sole cost and expense, to procure and maintain in good standing at all times during the Term all types and forms of insurance with the policy limits, provisions, and endorsements required and set forth in the Manual from time to time. Franchisee acknowledges and agrees it shall procure and maintain at least the following types of insurance coverage: builders' risk (if applicable); comprehensive general liability; business automobile liability; worker's compensation; all-risk perils, including fire and flood; alcoholic beverages and/or liquor liability; business interruption; employee dishonesty; cyber risk; and an umbrella coverage. Franchisee further agrees such policies shall be written by an insurance company or companies approved by OTB with a rating of at least "A+" in the most recent Key Rating Guide published by the A.M. Best Company (or another rating that Franchisor reasonably designates if A.M. Best Company no longer publishes the Key Rating Guide) and licensed to do business in the state in which the Restaurant is located. Franchisee agrees all policies

shall name the Indemnified Parties as additional insureds, provide primary coverage for all of the Indemnified Parties, and not be cancelled unless OTB is given sixty (60) days' prior written notice.

## **XII. TRANSFER; RIGHT OF FIRST REFUSAL; OPTION TO PURCHASE**

A. Transfer by OTB. OTB may assign or transfer any or all of its rights, title, and interest in this Franchise Agreement and/or any of its rights or obligations herein to any other person or legal entity without Franchisee's consent and all such rights, title, interest, and obligations shall inure to the benefit of any transferee or other legal successor to OTB.

B. Transfer by Franchisee. Franchisee acknowledges and agrees that OTB's grant to Franchisee herein and the rights and obligations set forth in this Franchise Agreement are personal to Franchisee and granted to Franchisee based on OTB's reliance upon the information set forth in Franchisee's application, as well as Franchisee's aptitude, attitude, business ability, character, financial capability, and reputation. Therefore, Franchisee shall not assign, convey, gift, hypothecate, pledge, mortgage, sell, transfer, or otherwise encumber (collectively, a "Transfer") any or all of Franchisee's interest in this franchise, the Franchise Agreement, Franchisee, the Restaurant, the Location, the Location Agreement, or substantially all of Franchisee's assets without (i) OTB's prior written consent, which OTB may grant, withhold, or condition in its sole and absolute discretion; (ii) strictly complying with the conditions set forth herein and OTB's then-current policies and procedures; and (iii) providing OTB with ninety (90) days to determine whether it will exercise its right of first refusal. Franchisee agrees any purported Transfer, by operation of law or otherwise, without OTB's prior written consent is null and void.

C. Conditions of Approval. In addition to receiving OTB's prior written consent, Franchisee must strictly comply with the following terms and conditions prior to any Transfer:

1. Franchisee shall provide OTB not less than one hundred twenty (120) days' prior written notice of any proposed Transfer by Franchisee, as well as all reasonably requested data, information, agreements (including any fully executed purchase and sale agreements), documents, and materials relating to the proposed Transfer and proposed transferee, including the identities and details of all anticipated direct or beneficial owners of the proposed transferee (the "Transfer Request Material");
2. Franchisee shall provide OTB with ninety (90) days after OTB's receipt of the completed Transfer Request Material and any additionally reasonably requested data, information, agreements, or documents by OTB (the "Complete Transfer Request Material") to determine whether it will exercise its right of first refusal as provided herein;
3. All amounts due and owing to OTB, its affiliates, and Suppliers by Franchisee shall be current, fully paid, and satisfied;
4. Franchisee shall not be in default of any term, condition, or provision of this Franchise Agreement;



5. Franchisee and the proposed transferee shall execute OTB's then-current forms of: (1) general release of any and all claims against OTB and its parent company, owner, officers, directors, and employees in their corporate and individual capacities, (2) subordination agreement subordinating any and all of Franchisee or the transferee's debts to or claims against the transferor to OTB; and (3) guaranty of all of transferee's obligations to OTB for a period of five (5) years;

6. Franchisee shall pay the Transfer fee set forth in Article XII.E below at the time of Transfer;

7. For Transfers of a minority ownership interest in Franchisee:

(a) The proposed transferee shall demonstrate to OTB's sole and absolute satisfaction that the proposed transferee meets or exceeds OTB's then-current requirements, standards, and qualifications for franchisee candidates and otherwise complies with OTB's then-current standards, specifications, policies, and procedures for franchisee candidates, including completing OTB's then-current franchise application;

(b) Transferee shall pay OTB's then-current fee for Initial Training and successfully complete Initial Training in OTB's sole and absolute discretion if transferee is going to assume the role of Owner's Representative or Restaurant Manager;

(c) Franchisee shall retain a majority ownership interest in Franchisee's business entity;

(d) Franchisee shall execute an agreement acknowledging and agreeing to remain bound by the terms and conditions of the Franchise Agreement; and

(e) Franchisee, transferor, and transferee execute a written assignment in a form satisfactory to OTB.

8. For Transfers of a majority ownership interest in Franchisee or Transfers of substantially all of Franchisee's assets:

(a) The proposed transferee shall demonstrate to OTB's sole and absolute satisfaction that the proposed transferee meets or exceeds OTB's then-current requirements, standards, and qualifications for franchisee candidates and otherwise complies with OTB's then-current standards, specifications, policies, and procedures for franchisee candidates, including completing OTB's then-current franchise application;

(b) Franchisee or transferee, as relevant, shall execute OTB's then-current form of franchise agreement, including any and all provisions that may materially differ from this Franchise Agreement;

(c) Transferee shall pay OTB's then-current fee for Initial Training and successfully complete Initial Training in OTB's sole and absolute discretion;

(d) Franchisee or transferee, as relevant, shall complete all repairs, maintenance, and remodeling required to conform the Restaurant and Location to OTB's then-current image, POS System, and other standards and specifications as set forth in the Manual;

(e) Transferee's business entity shall be newly organized and its organizational formation, ownership, and operational documents shall comply with OTB's then-current policies and procedures for franchisees and franchisee ownership, including executing any and all agreements, contracts, guarantees, or other documents required, and provide copies of all business formation, ownership, and operational documents to OTB;

(f) Transferee shall designate an Owner's Representative that shall comply with OTB's then-current policies and procedures for Owner's Representatives, including executing any and all agreements, contracts, guarantees, or other documents required; and

(g) Franchisee, transferor, and transferee, as relevant, shall execute a written assignment in a form satisfactory to OTB.

9. For Transfers of interest in the Location or Location Agreement:

(a) Franchisee or transferee, as relevant, shall maintain a possessory interest in the Location for the entire balance of the Term;

(b) Franchisee or transferee, as relevant, shall complete all repairs, maintenance, and remodeling required to conform the Restaurant and Location to OTB's then-current image, POS System, and other standards and specifications as set forth in the Manual;

(c) Franchisee or transferee, as relevant, shall execute and/or cause to be executed OTB's then-current Lease Addendum; and

(d) Franchisee, transferor, and transferee shall execute a written assignment in a form satisfactory to OTB if relevant.

10. For Transfers resulting from the death, disability, or permanent incapacity of any person with an ownership interest in Franchisee, the executor, administrator, personal representative, or trustee of such person or entity shall transfer the interest at issue to a third-party that meets OTB's approval within a reasonable time, not to exceed twelve (12) months from the date of death, disability, or permanent incapacity, in accordance with terms and conditions set forth herein.

D. Continuing Obligation. Franchisee acknowledges and agrees that OTB's consent to a Transfer shall not constitute a waiver of any claims OTB may have against the transferor nor shall it be deemed a waiver of OTB's right to demand strict compliance with any of the terms of this Franchise Agreement by the proposed transferee.

E. Transfer Fees. Franchisee agrees to pay a Transfer fee to OTB as follows: (i) two thousand five hundred dollars (\$2,500) if Franchisee Transfers a minority ownership interest in Franchisee; (ii) five thousand dollars (\$5,000) if the Transfer is to an existing OTB franchisee; and (iii) twenty-five thousand dollars (\$25,000) for all other Transfers.

F. Right of First Refusal. Franchisee agrees that all Transfers are subject to OTB's right of first refusal. If Franchisee or any of its direct or beneficial owners wish to (i) Transfer any or all of Franchisee's or any of its direct or beneficial owners' interest in this franchise, the Franchise Agreement, Franchisee, the Location, the Location Agreement, or substantially all of Franchisee's assets or (ii) receive a bona fide offer to Transfer any or all of Franchisee or any of its direct or beneficial owners' interest in this franchise, the Franchise Agreement, Franchisee, the Location, the Location Agreement, or substantially all of Franchisee's assets (together, an "Offer"), then Franchisee shall provide OTB with the Complete Transfer Request Material.

1. The Parties agree that an Offer may and does not include any property or rights not relating to any or all of Franchisee's or any of its direct or beneficial owners' interest in this franchise, the Franchise Agreement, Franchisee, the Location, the Location Agreement, or

substantially all of Franchisee's assets, and that OTB may reject and exclude any property or rights not related to any or all of Franchisee's or any of its direct or beneficial owners' interest in this franchise, the Franchise Agreement, Franchisee, the Location, the Location Agreement, or substantially all of Franchisee's assets in its sole and absolute discretion (the "Excluded Property"). Should an Offer contain Excluded Property, Franchisee shall resubmit the Offer with adjusted purchase and sale terms, including price, removing the Excluded Property and excluding any value for the Excluded Property.

2. OTB may exercise its right of first refusal for an Offer by providing Franchisee with written notice of its election to exercise its right of first refusal within ninety (90) days of its receipt of the Complete Transfer Request Material on substantially the same terms and conditions of the Offer provided:

- (a) OTB may substitute cash for any form of non-monetary compensation or payment plan set forth in the Offer with a discount to net present value for any deferred payments;
- (b) The final transaction documents between OTB and the transferor are modified as necessary to contain all customary representations and warranties given by a seller of the relevant right, title, and interest at issue;

3. If OTB does not exercise its right of first refusal for an Offer (a "Rejected Offer"), the final transaction contemplated by the Rejected Offer shall close within one hundred twenty (120) days after OTB received the Complete Transfer Request Material on the same terms and conditions set forth in the Rejected Offer. Should either (1) the terms of such Rejected Offer change or (2) the transaction contemplated by the Rejected Offer not close within one hundred twenty (120) days after OTB received the Complete Transfer Request Material, then Franchisee agrees to provide OTB with an additional right of first refusal during the thirty (30) day period immediately following (1) OTB's receipt of notice of a change to the Rejected Offer or (2) the expiration of the one hundred twenty (120) day period on the terms of the original Offer or the modified terms, at OTB's option.

4. OTB's decision to not exercise its right of first refusal under this Article XII.F shall not constitute a waiver of OTB's right to subsequently exercise its right of first refusal for any change in an Offer or any later proposed Transfer or Offer.

G. Option to Purchase. Upon expiration or termination of this Franchise Agreement, OTB has the right for a period of thirty (30) days after the date of such expiration or termination to provide Franchisee with written notice of OTB's election, in OTB's sole and absolute discretion, (the "Option Notice") to (i) purchase from Franchisee all or a part of the assets used in the operation of the Restaurant, including the land, building, and any and all furniture, fixtures, equipment, inventory, signage, or supplies, as determined (the "Restaurant Assets") and/or (ii) obtain an assignment of Franchisee's lease for the Location or directly lease the Location from Franchisee if Franchisee owns the Location (the "Option Lease"). In such instance, the Parties agree that the purchase price of the Restaurant Assets shall be their fair market value exclusive of any goodwill as agreed to by the Parties or, if unable to agree within ten (10) days of the Option Notice, an independent appraiser selected by both Parties within three (3) days who shall render an appraisal of the assets' fair market value exclusive of any goodwill which shall serve as the purchase price within ten (10) days. Likewise, the terms of any Option Lease between the Parties shall be on the

terms and conditions of OTB's then-current form of lease containing rent at a commercially available market rate for like-kind real estate as agreed to by the Parties or, if they are unable to agree within ten (10) days of the Option Notice, an independent appraiser selected by both Parties within three (3) days who shall determine the fair market rate for rent, which in no event, regardless of how determined, shall the rent exceed six percent (6%) of the Restaurant's annual Gross Sales for the prior twelve (12) month period. The Parties agree that the closing of the purchase of the Restaurant Assets and assignment of Franchisee's lease for the Location or entry into the Option Lease shall occur not more than sixty (60) days after OTB provides the Option Notice at which time OTB or its assignee shall pay the purchase price for the Restaurant's Assets in cash in exchange for Franchisee delivering to OTB or its assignee all right, title, and interest to the Restaurant Assets free and clear of all liens and encumbrances with sales and other transfer taxes paid by Franchisee and all permits and licenses associated with the Restaurant's operation assigned or transferred. The Parties agree that OTB or its assignee may set off against and reduce the agreed upon purchase price of the Restaurant Assets by any and all amounts then-owed by Franchisee to OTB. If OTB does not elect to purchase the Restaurant Assets or obtain an assignment of Franchisee's Lease for the Location or enters an Option Lease, then Franchisee may assign, transfer, sell, lease, or otherwise dispose of the Restaurant's Assets and Location Agreement (the "Post-Election Transaction(s)") provided that the Post-Election Transaction(s) contain an enforceable covenant from the purchaser(s) and enforceable by OTB as a known third-party beneficiary thereof that prohibits the use of the Location as a restaurant that is (1) quick service, fast-casual, and/or casual dining restaurants that are substantially engaged in the sale of Mexican cuisine if the gross sales of Mexican cuisine from the business is equal to or greater than twenty percent (20%) of all gross sales from the sale of all food (but not beverage) items from the business or (2) operating under the trade name Abuelo's, Baja Fresh, Blue Mesa, Cantina Laredo, Chevy's, Chi-Chi's, Chili's, Chipotle, Chuy's, Don Pablo's, El Chico, El Fenix, La Salsa, Mi Cocina, Moe's, Pappasito's, Rio Bravo, Rio Grande Cafe, Ted's Café Escondido, Tin Star, Jose Tejas, Border Café, or Uncle Julio's.

### **XIII. TERMINATION**

A. Automatic Termination. OTB may immediately terminate this Franchise Agreement upon written notice to Franchisee if:

1. Franchisee knowingly or intentionally submits false or misleading documents, information, statements, representations, or warranties to OTB;
2. Franchisee engages in or OTB reasonably believes Franchisee is engaged in any conduct or practice that is fraudulent, unfair, unethical, or deceptive and Franchisee fails to provide exculpatory evidence to OTB within the cure period OTB provides;
3. Franchisee, Owner's Representative, or the Restaurant's Managers are arrested, pleads no contest, or convicted of criminal offense, including any felony or misdemeanor that in OTB's sole and absolute discretion (a) is harmful or likely to adversely or unfavorably affect the reputation of Franchisee, OTB, the System, the OTB Marks, or the goodwill associated with OTB and the OTB Marks; (b) involves allegations or findings of dishonesty, fraud, or moral turpitude; or (c) involves a reckless disregard for the emotional, mental, or physical wellbeing of OTB or the Restaurant's representatives, customers, employees, or the public;

4. Franchisee becomes insolvent, admits in writing that it cannot pay its debts as they come due, makes an assignment for the benefit of creditors, is subject to a receivership or other custodian of assets, or files, or has filed against it, any petition in bankruptcy;

5. OTB, in its reasonable discretion, believes Franchisee is insolvent or is otherwise unable to pay OTB, its affiliates, Suppliers, or other third parties on a timely basis and Franchisee is unable to provide OTB reasonable evidence and assurance to the contrary in the period OTB provides;

6. Franchisee fails to timely cure any default of any loan, line of credit, credit facility, or other financing arrangement relating to the Restaurant or Location;

7. Franchisee, the Restaurant, or the Location are the subject of any levy, execution, or foreclosure, whether for lien, mortgage, judgment, or otherwise, that is not resolved or dismissed within thirty (30) days of filing;

8. Franchisee violates any health, safety, or sanitation law, ordinance, or regulation and does not immediately begin to cure the noncompliance within one (1) day of receiving notice of such violation and does not completely cure the violation within three (3) days;

9. A threat or danger to the public health or safety arises from the construction, operation, or physical condition of the Restaurant;

10. Franchisee (1) abandons or ceases to do business at the Location for more than three (3) consecutive days, (2) loses the right to possession of the Location or Restaurant, or (3) otherwise forfeits the right or license to do or transact business in the jurisdiction in which the Location exists (an "Abandonment Event") unless such Abandonment Event is the direct result of the exercise of eminent domain, a disaster through no fault of Franchisee, or a Force Majeure event provided Franchisee immediately and continuously uses its best efforts to relocate and/or reconstruct the Restaurant in accordance with all other obligations of this Franchise Agreement;

11. Franchisee fails to timely cure any default or breach of the Location Agreement or supply agreement, or Franchisee fails to timely pay any Supplier when due without timely curing such default in the time period allowed by the Supplier or the applicable agreement;

12. Franchisee fails to secure, obtain, and continuously maintain a Liquor License in accordance with Article III.E;

13. Franchisee fails to permit and comply with any audit or inspection in accordance with the terms of this Franchise Agreement;

14. Franchisee receives a failing score in two (2) or more consecutive inspections of the Restaurant in any twelve (12) month period;

15. Franchisee maintains or submits any false books, records, reports or otherwise fails to comply with Article X;
16. Franchisee attempts or purports to complete a Transfer in violation of Article XII or otherwise fails to comply with Article XII;
17. Franchisee fails to strictly comply with the terms, conditions, and obligations of Article XIII;
18. Franchisee fails to strictly comply with the terms, conditions, and obligations of Article XV;
19. Franchisee infringes upon, replicates, or otherwise engages in improper or unauthorized use of the System, the OTB Marks, or any component thereof;
20. Franchisee violates the terms and conditions of this Franchise Agreement three (3) times or more during any twelve (12) month period of the Term;
21. Franchisee fails to obtain OTB's prior written approval or consent as required two (2) or more times during any twelve (12) month period of the Term;
22. Franchisee violates a specific term or condition of this Franchise Agreement three (3) times during any five (5) year period of the Term;
23. Franchisee, Owner's Representative, and/or their affiliates or related individuals or any other entity that is owned or controlled by them fails to timely cure a default of any other agreement with OTB; or
24. OTB receives repeated customer complaints about the Restaurant.

B. Termination with Opportunity to Cure. OTB may terminate this Franchise Agreement by giving written notice of termination to Franchisee if Franchisee fails to cure a default within the period prescribed.

1. Franchisee fails to pay any amount due to OTB within five (5) days after receiving a written notice of default;
2. Franchisee fails to timely cure any other default or violation of any other term, condition, obligation, or provision of this Franchise Agreement within thirty (30) days after receiving a written notice of default.

C. Cross-Termination. Franchisee acknowledges and agrees that its compliance with this Franchise Agreement is critical to the Parties' relationship, OTB's business, the System, and the goodwill associated therewith. As a result, Franchisee agrees that OTB has the right to and may, in its sole discretion, terminate all other agreements between the Parties, including Franchisee's

sub-franchise agreements, area development agreements, and/or other franchise agreements upon termination of this Franchise Agreement pursuant to Article XIII.A or Article XIII.B.

D. Operation of Restaurant by OTB. In addition to OTB's right to terminate the Franchise Agreement, and not in lieu of such right or any other rights against Franchisee, in the event that: (1) OTB terminates this Franchise Agreement, (2) Franchisee shall not have timely cured a default under this Franchise Agreement, or (3) the Parties are negotiating and finalizing a purchase of the Restaurant, OTB may, at its option and in its sole and absolute discretion, provide Franchisee written notice of its election and enter upon the premises of the Restaurant Location and exercise complete authority with respect to the operation of said business until such time as OTB determines that Franchisee's default is cured and that there is compliance with the requirements of this Franchise Agreement or a purchase of the Restaurant Location is complete. Franchisee specifically agrees that one or more of OTB's designated representatives may take over, control, and operate said business, and that Franchisee shall pay OTB a service fee of not less than Three Hundred Dollars (\$300) per day per person plus all travel expenses, room and board and other compensation and expenses reasonably incurred by such representative(s) so long as it shall be necessary for the representative(s) to enforce compliance with this Franchise Agreement and operate the Restaurant. Franchisee further agrees that if OTB temporarily operates the Restaurant for Franchisee, Franchisee agrees to indemnify and hold harmless OTB and the remaining Indemnified Parties with respect to any and all acts and omissions which OTB may perform, or fail to perform, in operating the Restaurant and with regard to the interests of Franchisee or third parties.

#### **XIV. OBLIGATIONS UPON EXPIRATION OR TERMINATION**

A. Obligations Upon Expiration or Termination: Upon expiration or termination of this Franchise Agreement:

1. Franchisee shall immediately and permanently cease operations of the Restaurant and business franchised by this Franchise Agreement and, directly or indirectly, represents itself as a current or former OTB franchisee;
2. Franchisee shall immediately and permanently cease use of the System, as well as any and all use, display, advertising, marketing, and promotion of the OTB Marks and any trade names, trademarks, service marks, logos, emblems, signs, slogans, and other indicia of origin confusingly similar to or resulting in a colorable imitation of the OTB Marks;
3. If OTB does not exercise its rights set forth in Article XIV.B, Franchisee shall remove all exterior signage, emblems, slogans, or other indicia of origin bearing or displaying the OTB Marks and make such other alterations or modifications, including repainting, necessary to distinguish the Location from OTB Restaurants within five (5) business days of the date of expiration or termination at Franchisee's sole cost and expense and to allow OTB or its designees to enter and inspect the Restaurant and Location to confirm such alterations and modifications or make or cause them to be made at Franchisee's sole cost and expense;
4. Franchisee shall take any and all action necessary to (1) cancel any fictitious or assumed names or equivalent registrations which contain or reference the OTB Marks, the

name “On the Border”, the acronym “OTB”, and all other similar names and (2) notify all Telephone Providers of the expiration or termination and transfer or authorize transfer of the Telephone Numbers to OTB and pay all then-current amounts owed to the Telephone Providers;

5. Franchisee shall immediately take all actions reasonably required to disassociate Franchisee from OTB, including stopping and removing any and all of Franchisee’s development, creation, establishment, advertisement, registration, and/or use of any of the OTB Marks over the internet or any other form of electronic commerce and/or electronic media (including, without limitation, website(s), and domain names);

6. Franchisee shall immediately pay all amounts due and owing OTB, its affiliates, related companies, and Suppliers;

7. Franchisee shall immediately return to OTB the Manual and all copies thereof, as well as all other records, files, and materials relating to the operation of the Restaurant;

8. Franchisee shall immediately comply with all obligations set forth in Article XV;

9. Franchisee and the Owner’s Representative shall execute a general release of all claims against OTB and the remaining Indemnified Parties in OTB’s then-current form;

10. Franchisee shall not alter, destroy, deface, remove, or sell any of the assets associated with the Restaurant’s operation, including any and all furniture, fixtures, equipment, inventory, signage, and supplies, for a period of at least thirty (30) days after the date of expiration or termination so OTB may enter and inspect the Restaurant and Location and determine whether to exercise any of its rights under Article XII.F or XII.G.

B. Option to Purchase and Right to Possessory Interest. The Parties acknowledge and agree that the expiration or termination of this Franchise Agreement shall (i) trigger OTB’s option to purchase set forth in XII.G and (ii) cause an immediate termination of Franchisee’s right to possession of the Location in accordance with, among other things, the Lease Addendum.

C. Early Termination Damages. Franchisee acknowledges and agrees that OTB made a substantial investment in creation, development, evolution, and maintenance of the System and OTB Marks which creates value for the System and its franchisees, including Franchisee. In exchange for this investment and value, Franchisee acknowledges and agrees that its obligation to operate the Restaurant for the full Initial Term and, if granted, Successor Term is critical to OTB. As such, Franchisee agrees that, notwithstanding the Waiver of Damages contained in Article XVI.H, if Franchisee fails to operate the Restaurant for the full Initial Term and, if granted, Successor Term, or if OTB terminates this Franchise Agreement pursuant to XIII.A or XIII.B, then Franchisee shall pay to OTB damages equal to the amount of lost Royalties and Marketing Fund Contributions due pursuant to Article VII.D and VII.E for a period equal to the lesser of the balance of the Initial Term or, if granted, Successor Term or three (3) years after the date of termination (the “Early Termination Damages”). Franchisee agrees OTB may determine the amount of the Early Termination Damages by any method permitted by law or by: (1) calculating the average



weekly payments for Royalties and Marketing Fund Contributions for the twenty-four (24) week period preceding the date of termination (the “Average Weekly Payment”) and (2) multiplying the Average Weekly Payment by the lesser of one hundred fifty-six (156) or the number of weeks remaining in the Initial Term or Successor Term. Franchisee shall pay the Early Termination Damages upon receipt of demand from OTB. Early Termination Damages are in addition to any other damages or remedies available to OTB under this Agreement or applicable law.

## **XV. CONFIDENTIAL INFORMATION AND RESTRICTIVE COVENANTS**

A. Confidential Information. OTB possesses and will continue to acquire and develop certain data, information, knowledge, know-how, and best practices that are proprietary to OTB relating to the development, method, and operation of OTB Restaurants, including that data and information relating to the System or contained in the Manual such as training materials, site selection, development, and construction specifications and standards, specifications and standards for furniture, fixture, and equipment, recipes, preparation methods, serving techniques, pricing, discounts, supplier information and contract terms, operational standards, strategic plans, marketing plans and strategies, restaurant performance, restaurant operating results and financial performance, and system sales results (collectively, “Confidential Information”). Franchisee acknowledges and agrees that it or its employees may provide OTB with information or improvements to the System. Franchisee acknowledges and agrees that any information or improvements relating to the System by it or its employees are considered a part of the Confidential Information. Franchisee hereby agrees OTB shall be deemed to own such information or improvements into the System and may sub-license or franchise such information or improvements.

B. Restriction on Use of Confidential Information. In consideration of OTB’s disclosure of its Confidential Information to Franchisee, among other things, Franchisee agrees not to communicate, copy, disclose, disseminate, divulge, misappropriate, transfer, or use OTB’s Confidential Information other than in the operation of Franchisee’s Restaurant during the Term and for a period of three (3) years after the Term expires or terminates. Franchisee further agrees that it will comply with all of OTB’s policies and procedures relating to Confidential Information.

C. Non-Compete Obligation. In consideration of OTB’s disclosure of its Confidential Information, license of the OTB Marks and the goodwill associated therewith, as well as other good and valuable consideration, Franchisee agrees that it shall not, for the Term and for a period of two (2) years after this Franchise Agreement expires or is terminated (the “Restricted Period”), either directly or indirectly, for itself or through, on behalf of, or in conjunction with any person, partner, business, entity, individual, or joint venturer own, develop, engage in, advise, assist, consult, invest in, franchise, make loans to, or have any direct, indirect, or beneficial interest in (i) any business that operates a quick service, fast-casual, and/or casual dining restaurants that are substantially engaged in the sale of Mexican cuisine if the gross sales of Mexican cuisine from the business is equal to or greater than twenty percent (20%) of all gross sales from the sale of all food (but not beverage) items from the business at the Location or within five (5) miles of any OTB Restaurant or (ii) any restaurant under the following tradenames: Abuelo’s, Baja Fresh, Blue Mesa, Cantina Laredo, Chevy’s, Chi-Chi’s, Chili’s, Chipotle, Chuy’s, Don Pablo’s, El Chico, El Fenix,

La Salsa, Mi Cocina, Moe's, Pappasito's, Rio Bravo, Rio Grande Cafe, Ted's Café Escondido, Tin Star, Jose Tejas, Border Café, and Uncle Julio's.

D. Owner's Representative and Restaurant Managers. Franchisee agrees to restrict disclosure of the Confidential Information to those of Franchisee's Owner's Representatives, Restaurant Managers, or employees that are directly connected with the performance of work requiring knowledge thereof and shall disclose only so much of the Confidential Information as is required to enable them to carry out their assigned duties and Franchisee shall advise Franchisee employees or agents of the confidential nature of such information and the requirements of nondisclosure thereof. Franchisee further agrees, represents, and warrants that Franchisee's Owner's Representatives, Restaurant Managers, and employees who receive training from OTB or with access to OTB's Confidential Information will execute restrictive covenants containing restrictions protecting OTB's Confidential Information and other legitimate business interests substantially similar to those contained in Article XV in a form approved by OTB.

E. Reasonableness. Franchisee agrees the covenants in this Article XV are fair and reasonable and will not impose any undue hardship on Franchisee because, among other reasons, Franchisee and its owners possess considerable other skills, experience, and education which afford Franchisee and its owners the opportunity to derive comparable earnings from other endeavors while complying with these restrictions.

F. Breach of Restrictions. Franchisee agrees that its failure to strictly comply with the terms and conditions of this Article XV is a material breach of default permitting OTB the right to immediately terminate this Franchise Agreement as set forth in Article XIII that will cause OTB irreparable injury as a matter of law. Accordingly, Franchisee hereby consents to the entry of an injunction prohibiting any conduct by it in violation of the terms of the restrictive covenants set forth herein. Franchisee further agrees that it may be conclusively presumed that any violation of the terms of these restrictive covenants were accomplished by and through Franchisee's unlawful use of OTB's Confidential Information.

G. Reformation. Should one or more provisions contained in this Franchise Agreement be held to be invalid, illegal, overbroad, or otherwise unenforceable in any respect, whether in whole or in part, then the Parties agree it is their intention that (i) the offending provision be modified and/or reduced in scope and term so that it is enforceable to the maximum extent permitted by applicable law; (ii) such invalidity, illegality, overbreadth, or unenforceability does not affect any other provision of this Franchise Agreement; and (iii) the provision at issue and this Franchise Agreement shall be construed as if such invalid, illegal, overbroad, or unenforceable provision was never contained herein. The Parties further acknowledge and agree that this provision specifically authorizes and does not prohibit the modification of the restrictive covenants set forth in this Franchise Agreement so that they are enforceable to the maximum extent permitted by law, whether such modification occurs pre-suit or during a legal proceeding, including any hearing on a motion seeking or objecting to a temporary restraining order or preliminary injunction, or after.

## **XVI. DISPUTE RESOLUTION; JURY WAIVER; DAMAGES LIMITATION**

A. Mandatory Mediation. The Parties acknowledge and agree that they will participate in good-faith in a mediation proceeding conducted by a neutral mediator or mediation program agreed to by the Parties (or any mediator approved by the U.S. District Court of the Northern District of Texas or the federal jurisdiction of OTB's then-current principal place of business) if the Parties cannot agree within ten (10) days of the request for mediation, before either of the Parties pursues their claims, rights, and remedies in a legal proceeding regardless of the nature or origin of the dispute between the Parties unless the nature or origin of the dispute is an action for injunctive relief or specific performance arising from claims relating to Franchisee's use of the OTB Marks or Confidential Information, violation of the restrictive covenants set forth in Article XV, or involves an issue of public health and safety (the "Dispute"). The Parties agree to participate in the mediation within forty-five (45) days of receiving written notice of the other Parties' request for mediation under this provision. The Parties agree to participate in a mediation conference lasting at least four hours (the "Mediation") in good faith with the intention of resolving the Dispute. If the Dispute is not resolved within five (5) days of the conclusion of the Mediation, the Parties may pursue their claims, rights, and remedies relating to the Dispute in a legal proceeding. The Parties agree to each pay one-half of any fee associated with hiring a mediator and to bear their own legal fees and costs relating to the mediation.

B. Forum Selection; Choice of Law. The Franchise Agreement takes effect only upon its acceptance and execution by OTB from its principal place of business in Dallas County, Texas. The Parties agree it is in their collective best interest to ensure that disputes regarding the interpretation, validity, and enforceability of this Franchise Agreement are resolved on a uniform basis.

1. The Parties agree, therefore, that: (i) the state or federal courts in the county or district in which OTB maintains its principal place of business at the time any legal proceeding is commenced (which is currently the U.S. District Court for the Northern District of Texas and Dallas County, Texas, respectively) shall be the sole and exclusive venue and proper forum in which to file and/or adjudicate any case or controversy arising, either directly or indirectly, under or in connection with this Franchise Agreement.

2. The Parties agree, therefore, that this Franchise Agreement and any dispute otherwise related to this Franchise Agreement or the Parties' relationship shall be interpreted, enforced, and constructed under, and according to, the laws of the State of Texas, without regard for any conflict of laws principles.

3. The Parties further agree that, in the event of litigation arising out of or in connection with this Agreement in these courts, they will not contest or challenge the choice of Texas law or the jurisdiction or venue of these courts.

C. Waiver of Jury Trial. FRANCHISOR AND FRANCHISEE IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION, CLAIM, PROCEEDING, OR COUNTERCLAIM, WHETHER AT LAW OR IN EQUITY, BROUGHT BY EITHER OF THEM AGAINST THE

OTHER, WHETHER OR NOT THERE ARE OTHER PARTIES IN SUCH ACTION, CLAIM, PROCEEDING, OR COUNTERCLAIM.

D. Non-Joinder of Parties. All actions, claims, or legal proceedings arising from or relating to this Franchise Agreement or the Parties' relationship shall be conducted on an individual basis and not as part of a consolidated, collective, common, or class action. Therefore, the Parties agree that no person or entity except OTB and Franchisee and any guarantors of the Franchise Agreement will have the right to join, become a party, litigate, or participate in any action, claim, or legal proceeding arising under or relating to this Franchise Agreement or the Parties' relationship. The Parties hereby specifically agree, then, that no person or entity other than OTB, Franchisee, and guarantors of the Franchise Agreement shall be involved, participate, or be named as a party to any action, claim, or legal proceeding.

E. Waiver of Bond. Franchisee agrees and consents to the entry of injunctive or other equitable relief without the requirement of OTB posting a bond in connection with the granting of such relief to OTB.

F. Cumulative Remedies. The rights and remedies provided in this Franchise Agreement are cumulative and neither of the Parties are prohibited from exercising any other right or remedy provided for under this Franchise Agreement or permitted in law or by equity.

G. Limitations of Actions. **EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE XVI.G, ANY AND ALL CLAIMS AND ACTIONS ARISING OUT OF OR RELATING TO THIS FRANCHISE AGREEMENT, THE RELATIONSHIP BETWEEN FRANCHISEE AND OTB, OR FRANCHISEE'S OPERATION OF THE RESTAURANT, INCLUDING ANY PROCEEDING, OR ANY CLAIM IN ANY PROCEEDING (INCLUDING ANY DEFENSES AND ANY CLAIMS OF OFFSET OR RECOUPMENT), MUST BE BROUGHT OR ASSERTED BEFORE THE EXPIRATION OF THE EARLIER OF (1) THE TIME PERIOD FOR BRINGING AN ACTION UNDER ANY APPLICABLE STATE OR FEDERAL STATUTE OF LIMITATIONS; (2) ONE (1) YEAR AFTER THE DATE UPON WHICH A PARTY DISCOVERED, OR SHOULD HAVE DISCOVERED, THE FACTS GIVING RISE TO AN ALLEGED CLAIM; OR (3) TWO (2) YEARS AFTER THE FIRST ACT OR OMISSION GIVING RISE TO AN ALLEGED CLAIM; OR IT IS EXPRESSLY ACKNOWLEDGED AND AGREED BY ALL PARTIES THAT SUCH CLAIMS OR ACTIONS SHALL BE IRREVOCABLY BARRED. NOTWITHSTANDING THE FOREGOING, OTB'S CLAIMS ARISING FROM OR RELATING TO THE ALLEGED OR ACTUAL UNDERREPORTING OF SALES AND THE PARTIES' CLAIMS FOR FAILURE TO PAY MONIES OWED AND/OR INDEMNIFICATION SHALL BE SUBJECT ONLY TO THE APPLICABLE STATE OR FEDERAL STATUTE OF LIMITATIONS AND NOT THE EARLIER LIMITATION SET FORTH HEREIN.**

H. Waiver of Damages. THE PARTIES AGREE THAT EACH OF THEM IS LIMITED TO THE RECOVERY OF ACTUAL DAMAGES SUSTAINED BY IT EXCEPT AS SET FORTH IN ARTICLE XIV.C. THEREFORE, THE PARTIES KNOWINGLY AND EXPRESSLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO OR CLAIM

OF PUNITIVE, MULTIPLE, CONSEQUENTIAL, OR EXEMPLARY DAMAGES AGAINST THE OTHER.

I. Prevailing Party Attorneys' Fees and Costs. In the event any of the Parties initiate a legal action or other proceeding to enforce or interpret the terms of this Franchise Agreement, the prevailing party in any such proceeding or legal action shall be entitled to an award of its reasonable attorney's fees and costs incurred in such legal action or proceeding in addition to any other relief to which the party may be entitled.

## **XVII. FRANCHISEE ACKNOWLEDGEMENTS**

A. Acknowledgement. FRANCHISEE ACKNOWLEDGES AND AGREES THAT IT HAS BEEN ADVISED THAT ITS SUCCESS IN OPERATING ITS RESTAURANT IS SPECULATIVE, INVOLVES SUBSTANTIAL RISK, AND WILL DEPEND ON MANY FACTORS, INCLUDING ITS INDEPENDENT BUSINESS ABILITY, EFFORT, ABILITY TO MEET THE CAPITAL REQUIREMENTS OF THE RESTAURANT, AND FRANCHISEE'S ABILITY TO SUCCESSFULLY IMPLEMENT THE SYSTEM.

B. No Assurances. FRANCHISEE REPRESENTS AND WARRANTS THAT NEITHER OTB NOR ANY PERSON OR ENTITY ACTING ON OTB'S BEHALF PROVIDED FRANCHISEE WITH ANY ASSURANCES, REPRESENTATIONS, OR WARRANTIES CONCERNING THE ACTUAL OR POTENTIAL SALES, COSTS, INCOME, PROFITS, OR PROBABLE SUCCESS OF THE RESTAURANT.

C. No Reliance. EXCEPT AS SET FORTH IN THE FRANCHISE DISCLOSURE DOCUMENT PROVIDED TO FRANCHISEE, FRANCHISEE HAS NOT RELIED ON ANY STATEMENT, REPRESENTATION, OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE POTENTIAL SUCCESS, ACTUAL OR POTENTIAL GROSS SALES, COSTS, INCOME, OR PROFITS OF THE BUSINESS VENTURE CONTEMPLATED HEREIN.

D. Investigation and Due Diligence. FRANCHISEE ACKNOWLEDGES AND AGREES THAT IT CONDUCTED A THOROUGH AND INDEPENDENT INVESTIGATION AND DUE DILIGENCE OF THIS FRANCHISE OPPORTUNITY.

E. No Contrary Statements. FRANCHISEE ACKNOWLEDGES AND AGREES THAT IT HAS NO KNOWLEDGE OF ANY STATEMENT, REPRESENTATION, OR WARRANTY MADE BY OTB OR ITS EMPLOYEES, REPRESENTATIVES, OR AGENTS OF ANY INFORMATION THAT IS CONTRARY TO THE TERMS CONTAINED HEREIN.

F. Variance of Terms and System Standards. Franchisee acknowledges and agrees that OTB may grant other franchisees different rights at different times pursuant to franchise agreements that may substantially differ from this Franchise Agreement or Franchisee's other franchise agreements. Franchisee further acknowledges and agrees that OTB reserves the right to vary the System and other standards, specifications, policies, and procedures in addition to the terms and conditions of franchise agreements in OTB's sole and absolute discretion.

G. Business Judgment. Franchisee acknowledges and agrees that OTB may operate and change the System and its business in any manner that is not expressly and specifically prohibited by this Franchise Agreement. Except as otherwise expressly provided in this Franchise Agreement, whenever OTB expressly reserved in this Franchise Agreement or is deemed to have a right and/or discretion to take or withhold an action, or to grant or decline to grant Franchisee a right to take or withhold an action, OTB may make such decision or exercise its right and/or discretion on the basis of OTB's business judgment of what is in OTB's best interests, including OTB's judgment of what is in the best interests of the System, the franchise network. The Parties intend that the exercise of OTB's right or discretion will not be subject to limitation or review. Franchisee agrees that OTB's decision is made or discretion exercised without regard to whether:

1. OTB could have made other reasonable alternative decisions or actions, or even arguably preferable alternative decisions or actions;
2. OTB's decision or the action taken promotes OTB's financial or other individual interest;
3. OTB's decision or the action it takes applies differently, disproportionately, or negatively to Franchisee and one or more other franchisees; or
4. OTB's decision or the exercise of its right or discretion is adverse to Franchisee's interests.

## **XVIII. FORCE MAJEURE**

A. Definition. "Force Majeure" means any act of God, acts of terrorism, eminent domain, acts of Federal, State, or local government, riot, embargos, fires not intentionally caused by the party, floods not intentionally caused by the party, strikes, or war.

B. Performance Delayed or Prevented by Force Majeure. If one of the Parties' performance of any term, condition, or obligation of this Franchise Agreement is delayed or prevented as a result of a Force Majeure event which cannot be overcome by reasonable commercial measures, then such party or the Parties shall not be responsible for any delay or failure in performance provided:

1. The party or Parties whose performance is affected shall provide the other party with prompt written notice (or electronic or telephone notice if written notice is not possible, but confirmed in writing at the first reasonable opportunity) of such Force Majeure event and an estimate of its duration, if known;
2. Any party failing to provide timely notice shall be liable for failure to give such notice to the extent of actual damages caused to the other party;
3. Any delay in performance resulting from any Force Majeure event will extend performance accordingly or excuse performance, in whole or in part, as may be reasonable, except that no such cause will excuse payments of amounts owed at the time of such occurrence or payment of the Royalties, Marketing Fund Contributions, and all other amounts due to OTB,

its affiliates, and Suppliers thereafter unless otherwise agreed in writing signed by all relevant parties.

## **XIX. MISCELLANEOUS**

A. Notices. All notices, demands, and other communications between the Parties shall be in writing and shall be delivered by Certified U.S. Mail, Postage Prepaid, Return Receipt Requested, nationally recognized overnight courier service, or hand delivery addressed to the party to whom such notice or other communication is to be given or made at such party's address as set forth above, or to such other address as such party may designate in writing to the other party from time to time. Notice shall be deemed delivered upon receipt of, or refusal to accept, delivery of one of the above-referenced methods.

B. Time is of the Essence. Time is of the essence in the Parties' performance of the terms, conditions, and obligations of this Franchise Agreement.

C. No Beneficiaries. Except as expressly set forth in this Franchise Agreement, nothing in this Franchise Agreement is intended, nor shall be deemed, to confer any rights or remedies upon any third-party other than the Parties and their respective successors and assigns.

D. Construction. All captions in this Franchise Agreement are for the Parties' convenience and are not intended, nor shall be deemed, to affect the meaning or construction of any term, condition, or obligation herein.

E. References. All references herein to definitions, gender, and number shall be construed to include such other gender and number, singular or plural, as the context may require.

F. Waiver. No delay, waiver, omission, or forbearance by OTB to exercise any right, option, duty, or power arising out of any breach or default by Franchisee under this Franchise Agreement shall constitute a waiver by OTB to enforce any such right, option, duty, or power as against Franchisee, or as to any subsequent breach or default. Subsequent acceptance by OTB of any payments due to it hereunder shall not be deemed to be a waiver by OTB of any preceding breach by Franchisee of any terms, provisions, covenants, or conditions of this Franchise Agreement.

G. Severability. Except as expressly provided to the contrary herein and to the extent such offending portion, section, part, term, and/or provision cannot be reformed in accordance with the terms and conditions of this Franchise Agreement, each portion, section, part, term, and/or provision of this Franchise Agreement shall be considered severable; and if, for any reason, any section, part, term, and/or provision herein is determined to be invalid and contrary to, or in conflict with, any existing or future law or regulation by a court or agency having valid jurisdiction, such shall not impair the operation of, or have any other effect upon, such other portions, sections, parts, terms, and/or provisions of this Franchise Agreement as may remain otherwise intelligible; and the latter shall continue to be given full force and effect and bind the parties hereto; and said invalid portions, sections, parts, terms and/or provisions shall be deemed not to be a part of this Franchise Agreement.

H. Professional Consultation. The Parties acknowledge and agree that they have had the opportunity to consult with legal counsel and financial advisors of their choosing before entering this Franchise Agreement. The Parties specifically acknowledge and agree that they are aware of and understand the business and legal risks associated with entering this Franchise Agreement, and that they, with knowledge of the risks, freely entered this Franchise Agreement.

I. Counterparts; Execution. The Parties acknowledge and agree they may execute this Franchise Agreement in any number of counterparts, each of which shall be deemed an original, constitute the same instrument, and have the same effect as if all Parties executed the same original document. This Franchise Agreement shall not become a binding obligation upon the Parties unless and until the same has been fully executed by OTB at its principal place of business.

J. Entire Agreement. This Franchise Agreement, the documents referred to herein, and the exhibits hereto, if any, constitute and are the entire, full, and complete agreement between OTB and Franchisee concerning the subject matter hereof, and supersede and cancel all prior discussions, inducements, representations, understandings, and agreements. No inducements, promises, representations, or agreements, oral or otherwise, made by the Parties that are not embodied herein or attached hereto shall be of any force or effect. Nothing in this Franchise Agreement will disclaim or require Franchisee to waive reliance on the content of the Franchise Disclosure Document OTB provided to Franchisee.

K. No Amendments. Except for those permitted to be made unilaterally by OTB hereunder, no amendment, change, modification, or variance from this Franchise Agreement shall be binding on either of the Parties unless mutually agreed to by the Parties and executed by their authorized officers or agents in writing. Franchisee acknowledges and agrees that OTB may amend, change, modify, or vary the Manual and its terms, conditions, and contents in OTB's sole and absolute discretion.

IN WITNESS WHEREOF, the Parties hereto have duly executed and delivered this Franchise Agreement on the date first set forth above.

**FRANCHISEE**

**OTB ACQUISITION LLC**

\_\_\_\_\_  
Name of Franchisee

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

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

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

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

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

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



**EXHIBIT 'A'**

**LOCATION ADDRESS**

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**DESCRIPTION OF PROTECTED AREA**

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**FRANCHISEE**

**OTB ACQUISITION LLC**

\_\_\_\_\_  
Name of Franchisee

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

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

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

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

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

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

**EXHIBIT 'B'**

OWNERS

Name

Ownership Percentage

OWNERS' REPRESENTATIVE

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

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

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

Phone Number: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

**EXHIBIT B**

**LEASE RIDER AND CONDITIONAL ASSIGNMENT OF LEASE**

**LEASE RIDER AND CONDITIONAL ASSIGNMENT OF LEASE**

This Conditional Assignment of Franchisee’s Lease (the “Assignment”) is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 202\_ (“Effective Date”) by and between \_\_\_\_\_ (“Landlord”), \_\_\_\_\_ (“Tenant”), and OTB Acquisition LLC (“OTB”) and their respective successors and assigns (Landlord, Tenant, and OTB may collectively be referred to as the “Parties”).

**RECITALS**

WHEREAS, Landlord leases or will lease certain premises to Tenant at \_\_\_\_\_ (“Premises”) pursuant to that certain lease agreement dated \_\_\_\_\_ and executed by Landlord and Tenant (“Lease”); and

WHEREAS, Tenant will operate a franchised On The Border Mexican Grill & Cantina® (“OTB Restaurant”) at such Premises pursuant to an On The Border Mexican Grill & Cantina® Franchise Agreement between Tenant and OTB (“Franchise Agreement”); and

WHEREAS, as an inducement to OTB to enter into the Franchise Agreement with Tenant and to consent to development of the Premises for such an OTB Restaurant, Tenant agreed to join with Landlord to provide OTB certain assurances with respect to the operation of an OTB Franchised Restaurant at the Premises and to provide OTB with certain rights in the event of a default under the Lease or the Franchise Agreement.

NOW, THEREFORE, in consideration of the above premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

**AGREEMENT**

1. The Parties acknowledge and agree that the recitals set forth above are true and correct and are hereby incorporated by this reference as if they were fully set forth herein. The Parties warrant and represent that they have the full power and authority to make, deliver, enter, and perform the terms and conditions of this Assignment and that the consent or approval of a third party is not required to enter and perform under this Assignment or, if such consent is required, that they will use their best efforts to gain such consent as is necessary.

2. Landlord and Tenant hereby expressly agree that for so long as the Franchise Agreement and the Lease are in effect, the Premises shall be used solely for the operation of an OTB Restaurant, unless prior written consent of OTB is obtained for any alternative use. The term of the Lease will not be less than twenty (20) years with two renewal options of ten (10) years each.

3. During the term of the Lease, it is agreed that: (a) Landlord shall not alter, change, or otherwise modify the Premises, but may make repairs and perform maintenance as permitted or required under the Lease; (b) Tenant shall be permitted to make such interior or exterior, non-

structural repairs, remodeling, improvements, and alterations to the Premises as may be required by OTB pursuant to the Franchise Agreement; and (c) Landlord shall not in any way restrict or limit Tenant's ability to operate the Premises as an OTB Restaurant.

4. Subject only to applicable law, Landlord expressly grants to Tenant the right to display the trade name, service mark, and/or trademark "On The Border Mexican Grill & Cantina®" and certain other trademarks, service marks, trade names, and symbols used in connection with the operation of a food service format and system developed by OTB, which display will be in accordance with the specifications required by OTB.

5. No act, failure to act, event, condition, nonpayment, or other occurrence ("Event") shall constitute a breach or default under the Lease so as to allow Landlord any right of acceleration of the obligations thereunder, or a termination, cancellation, or rescission of the Lease unless:

(a) Landlord provides OTB with a copy of: (i) any written notice of default or violation of the Lease ("Notice of Default"); (ii) purported termination of the Lease ("Termination Notice"); and (iii) any notice under the Lease it sends to Tenant. Said copy shall be provided to OTB at the same time and in the same manner that Landlord provides such notice to Tenant; and

(b) Landlord grants to OTB the opportunity, but not the obligation, in OTB's sole discretion, to cure any deficiency under the Lease (should Tenant fail to do so) within fifteen (15) business days after the expiration of the period within which Tenant had to cure any such deficiency; provided, however, if the Event is of such nature that it cannot reasonably be cured within such fifteen (15) day period, then, in that case such fifteen (15) day period shall be extended to a period of such length as is reasonably necessary to cure such Event, provided such period shall be extended only so long as Tenant and/or OTB diligently pursues the cure of such Event.

6. Landlord agrees to accept from OTB any payment or performance required under the Lease; however, nothing herein shall be construed as requiring OTB to make any payments or perform any obligations under the Lease.

7. As used herein, Notice of Default means written notice specifying the Event claimed and specifically describing, in each instance of a claimed Event, the particular cure Landlord requires. Such Notice of Default shall be mailed to OTB and its attorney at:

Franchise Department  
OTB Acquisition LLC  
2201 West Royal Lane, Suite 170  
Irving, TX 75063

with a copy to:

Chief Financial Officer  
OTB Acquisition LLC  
2201 West Royal Lane, Suite 170  
Irving, TX 75063

OTB shall have the right to designate any other address for such notices by giving notice thereof to Landlord and in such event all notices mailed after receipt of such designation shall be sent to such other address.

8. Landlord and Tenant agree that in the event (a) that Landlord claims that an Event has occurred and has not been cured within any applicable cure period allotted to Tenant under the Lease, or (b) an uncured default under the Franchise Agreement occurs, or (c) upon the termination or expiration of the Franchise Agreement then, in such event, at OTB's sole option:

(a) OTB shall have the right to immediate actual possession of the Premises, which such possession Tenant agrees to give peaceably, and which may be otherwise obtained by OTB by warrant, injunction, temporary restraining order, summary process or such other immediate legal, summary, or equitable proceeding or action as OTB may choose. Tenant hereby waives any right to a jury at any such proceeding or action and agrees to reimburse OTB for its reasonable attorneys' fees and court costs actually incurred. Tenant hereby agrees to execute whatever documents are reasonable and necessary to assign to OTB all of Tenant's leasehold interest in the Premises and its rights as tenant under the Lease; and

(b) Landlord, after receiving written notification from OTB of OTB's intention to assume Tenant's rights under the Lease, which notice shall be sent to Landlord within thirty (30) days after receipt by OTB of a Notice of Default or the Tenant's rights under its Franchise Agreement have expired or been terminated, shall accept OTB as substitute tenant under the Lease, which Lease shall remain in full force and effect except as provided herein, and Landlord shall turn actual, immediate possession of the Premises over to OTB. However, OTB's option to become the substitute tenant may be exercised only if OTB or an affiliate or successor agrees to assume the obligations of the Tenant under the Lease for such period of time commencing with the date OTB or its affiliate or successor is given actual possession of the Premises and continuing thereafter. Notwithstanding anything in the Lease or this Assignment to the contrary, OTB (a) shall not be obligated to cure Tenant's defaults existing prior to the date actual possession of the Premises is given to OTB or its affiliate or successor, and (b) at any time prior to the first (1st) anniversary of the date OTB takes actual possession of the Premises, OTB shall have the right, but not the obligation, to terminate the Lease and be released from all further liability thereunder. Provided however, nothing herein is intended to relieve Tenant of its liability to Landlord for any and all rent and other obligations under the Lease.

9. Landlord agrees that OTB or its successor or assign may sublet the Premises or assign the Lease without the prior written consent of the Landlord provided OTB remains liable for any obligations it has assumed pursuant to Paragraph 8 above. However, any such subletting or assignment for any use other than an OTB Restaurant shall require the prior written consent of Landlord, which consent shall not be unreasonably withheld.

OTB may sublet the Premises or assign the Lease without retaining any liability for any obligations it has assumed pursuant to Paragraph 8 above, provided it has obtained the prior written consent of Landlord to such transfer, which consent shall not be unreasonably withheld. The Landlord's consent to any transfer shall be deemed automatically given if Landlord's written

consent (or denial of such consent) is not received within fifteen (15) days after OTB's written request for same has been sent.

10. Tenant agrees that any default under the Lease shall constitute a default under the Franchise Agreement. The Parties hereto agree that any uncured default by Tenant under the Franchise Agreement shall give OTB the right and option, but not the obligation, to become a substitute tenant under the Lease as provided in Paragraph 8 above.

11. Upon termination of the Lease or of the Franchise Agreement, Tenant shall remove all identifying signs and trademarks from the Premises. If Tenant fails to do so within five (5) calendar days of its last day of active business or of the termination of this Lease or the Franchise Agreement, whichever is sooner, OTB may remove such signs and marks itself and Landlord agrees to provide access to the Premises to facilitate such removal.

12. Tenant irrevocably appoints OTB as its agent and attorney-in-fact for the purposes of: (a) directing Landlord to effectuate the Lease assignment to OTB; and (b) signing any and all documents and taking such actions on Tenant's behalf as Landlord may reasonably require to effectuate the Lease assignment or the Premises' abandonment, including completing and signing any of Landlord's form assignment agreement. The power of attorney conferred upon OTB pursuant to this provision is a power coupled with an interest and cannot be revoked, modified, or altered without OTB's written consent.

13. Tenant agrees to indemnify and hold OTB and all of its affiliated parties, including its indemnities, agents, officers, directors, employees, parent companies, and affiliated companies (the "Indemnified Parties") harmless against any cost, damage, expense, liability, or loss which any or all of them may suffer or incur which arise from or in connection with Tenant's use of the Premises or breach of any agreement, contract, or understanding with the Landlord, or resulting from Tenant's nonpayment of any debt or obligation to the Landlord.

14. Tenant and Landlord understand that OTB is entering into or has entered into the Franchise Agreement with Tenant for an OTB Restaurant at the Premises in reliance on the agreements of Tenant and Landlord as herein contained and that OTB, in this instance, would not have otherwise entered into such Franchise Agreement. In the event of any conflict between the terms of the Lease between Landlord and Tenant and the terms of this Assignment, the terms of this Assignment shall control.

15. Nothing in this Assignment shall affect any term or condition in the Franchise Agreement.

16. The Parties agree that the Lease and this Assignment may not be modified or amended in any manner without the prior written consent of all Parties hereto.

17. Landlord shall not be liable or obligated to OTB except (a) as provided in this Assignment, or (b) in the Lease, if and when OTB exercises its option to become substitute tenant under the Lease.

**IN WITNESS WHEREOF**, the Parties hereto have duly executed and delivered this Assignment as of the Effective Date.

**LANDLORD:**

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

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

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

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

**TENANT:**

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

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

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

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

**OTB Acquisition LLC**

A Delaware Limited Liability Company

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

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

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

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



**EXHIBIT C**

**LIST OF AGENTS FOR SERVICE OF PROCESS**

## LIST OF AGENTS FOR SERVICE OF PROCESS

### ALABAMA

#### Registered Agent

CT Corporation System  
2 North Jackson Street, Suite 605  
Montgomery, Alabama 36104

### ALASKA

#### Registered Agent

CT Corporation System  
9630 Glacier Highway #202  
Juneau, Alaska 99801

### ARIZONA

#### Registered Agent

CT Corporation System  
3800 N Central Avenue, Suite 460  
Phoenix, Arizona 85012

### ARKANSAS

#### Registered Agent

CT Corporation System  
124 West Capitol Avenue, Suite 1900  
Little Rock, Arkansas 72201

### CALIFORNIA

#### Registered Agent

CT Corporation System  
818 West Seventh Street, Suite 930  
Los Angeles, California 90017

### COLORADO

#### Registered Agent

CT Corporation System  
7700 E. Arapahoe Road, Suite 220  
Centennial, Colorado 75063

### CONNECTICUT

#### Registered Agent

CT Corporation System  
67 Burnside Avenue  
East Hartford, Connecticut 06108

### DELAWARE

#### Registered Agent

CT Corporation System  
1209 Orange Street  
Wilmington, Delaware 19801

### FLORIDA

#### Registered Agent

CT Corporation System  
1200 South Pine Island Road  
Plantation, Florida 33324

### GEORGIA

#### Registered Agent

CT Corporation System  
289 S. Culver Street  
St. Lawrenceville, Georgia 30046-4805

### HAWAII

Commissioner of Securities  
Department of Commerce & Consumer Affairs  
Business Registration Division  
335 Merchant Street, Room 203  
Honolulu, Hawaii 96813  
Phone: 808-586-2722

### IDAHO

#### Registered Agent

CT Corporation System  
921 South Orchard Street, Suite G  
Boise, Idaho 83705

### ILLINOIS

#### Registered Agent

CT Corporation System  
208 South LaSalle Street, Suite 814  
Chicago, Illinois 60604

### INDIANA

#### Registered Agent

CT Corporation System  
334 North Senate Avenue  
Indianapolis, Indiana 46204

**IOWA**Registered Agent

CT Corporation System  
400 East Court Avenue  
Des Moines, Iowa 50309

**KENTUCKY**Registered Agent

CT Corporation System  
306 West Main Street, Suite 512  
Frankfort, Kentucky 40601

**MAINE**Registered Agent

CT Corporation System  
128 State Street, #3  
Augusta, Maine 04330

**MASSACHUSETTS**Registered Agent

CT Corporation System  
155 Federal Street, Suite 700  
Boston, Massachusetts 02110

**MINNESOTA**Registered Agent

CT Corporation System  
1010 Dale Street North  
Saint Paul, Minnesota 55117

**MISSOURI**Registered Agent

CT Corporation System  
120 South Central Avenue  
Clayton, Missouri 63105

**NEBRASKA**Registered Agent

CT Corporation System  
5601 South 59th Street, Suite C  
Lincoln, Nebraska 68516

**KANSAS**

[OTB Acquisition of Kansas LLC]

Registered Agent

Registered Agent of Kansas, LTD  
10851 Mastin Blvd., Suite 1000  
Overland Park, Kansas 66210

**LOUISIANA**Registered Agent

CT Corporation System  
3867 Plaza Tower Drive  
Baton Rouge, Louisiana 70816

**MARYLAND**Registered Agent

CT Corporation System  
2405 York Road, Suite 201  
Lutherville Timonium, Maryland  
21093-2264

**MICHIGAN**Registered Agent

CT Corporation System  
40600 Ann Arbor Road East, Suite 201  
Plymouth, Michigan 48170

**MISSISSIPPI**Registered Agent

CT Corporation System  
645 Lakewood East Drive, Suite 101  
Flowood, Mississippi 39232

**MONTANA**Registered Agent

CT Corporation System  
3011 American Way  
Missoula, Montana 59808

**NEVADA**Registered Agent

CT Corporation System  
701 S. Carson Street, Suite 200  
Carson City, Nevada 89701

**NEW HAMPSHIRE**Registered Agent

CT Corporation System  
2 1/2 Beacon Street  
Concord, New Hampshire 03301

**NEW MEXICO**Registered Agent

CT Corporation System  
206 South Coronado Avenue  
Española, New Mexico 87532

**NORTH CAROLINA**Registered Agent

CT Corporation System  
150 Fayetteville Street  
Raleigh, North Carolina 27601

**OHIO**Registered Agent

CT Corporation System  
4400 Easton Commons Way, Suite 125  
Columbus, Ohio 43219

**OREGON**Registered Agent

CT Corporation System  
780 Commercial Street SE, Suite 100  
Salem, Oregon 97301

**RHODE ISLAND**Registered Agent

CT Corporation System  
450 Veterans Memorial Parkway, Suite 7A  
East Providence, Rhode Island 02914

**SOUTH DAKOTA**Registered Agent

CT Corporation System  
319 South Coteau Street  
Pierre, South Dakota 57501-3187

**NEW JERSEY**Registered Agent

CT Corporation System  
820 Bear Tavern Road  
West Trenton, New Jersey 08628

**NEW YORK**Registered Agent

CT Corporation System  
28 Liberty Street  
New York, New York 10005

**NORTH DAKOTA**Registered Agent

CT Corporation System  
120 West Sweet Avenue  
Bismarck, North Dakota 58504

**OKLAHOMA**Registered Agent

CT Corporation System  
1833 South Morgan Road  
Oklahoma City, Oklahoma 73128

**PENNSYLVANIA**Registered Agent

CT Corporation System  
600 North Second Street, Suite 401  
Harrisburg, Pennsylvania 17101

**SOUTH CAROLINA**Registered Agent

CT Corporation System  
2 Office Park Ct., Suite 103  
Columbia, South Carolina 29223

**TENNESSEE**Registered Agent

CT Corporation System  
300 Montvue Road  
Knoxville, Tennessee 37919

**TEXAS**

Registered Agent

CT Corporation System 1999 Bryan Street, Suite 900  
Dallas, Texas 75201

**VERMONT**

Registered Agent

CT Corporation System 17 G W Tatro Drive  
Jeffersonville, Vermont 05464

**WASHINGTON**

Registered Agent

CT Corporation System  
711 Capitol Way South, Suite 204  
Olympia, Washington 98501

**WISCONSIN**

Registered Agent

CT Corporation System  
301 South Bedford Street Suite 1  
Madison, Wisconsin 53703

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**EXHIBIT E-1**

**LIST OF FRANCHISEES**

**LIST OF FRANCHISEES  
As of December 27, 2022**

**CALIFORNIA**

Eastvale/Mira Loma

12269 Limonite Avenue  
Eastvale, California 91752  
951-727-0047  
SYNCA (Metro Border)

Escondido

298 E. Via Rancho Parkway  
Escondido, California 92025  
760-233-9777  
Dos Gringos LLC

Mira Mesa

10789 Westview Parkway  
San Diego, California 92126  
858-530-1130  
Dos Gringos LLC

**FLORIDA**

Orlando International Airport

9333 Airport Boulevard  
Orlando, Florida 32827  
407-832-3929  
HMS Host

**NEVADA**

Ann Road

5630 Centennial Center Blvd  
Las Vegas, Nevada 89149  
702-658-6682  
SYNCA (Metro Border)

**SOUTH DAKOTA**

Rapid City

1331 E. North Street  
Rapid City, South Dakota 57701  
605-791-5791  
Sodak Mex 1 Inc.

## **TEXAS**

### South Padre Island

7010 Padre Boulevard  
South Padre Island, Texas 78597  
Best Austin Hospitality, Inc.

### McAllen

800 Convention Center Blvd  
McAllen, Texas 78501  
Confusion, LLC  
956-213-2400

## **ALASKA**

1148 N Muldoon RD, Pad M  
Anchorage, AK 99505  
Firetap Tikahtnu, LLC 1-  
907-332-2337

**EXHIBIT E-2**

**LIST OF FRANCHISEES WHO LEFT THE SYSTEM**

## **LIST OF FRANCHISEES WHO LEFT THE SYSTEM**

Listed below are the names, addresses and telephone numbers of Franchisees who had a Franchise Agreement terminated, canceled, not renewed or who otherwise voluntarily or involuntarily ceased to do business under a Franchise Agreement during our most recently completed fiscal year, or who have not communicated with us within ten (10) weeks of the date of this Disclosure Document.

**None**

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

**EXHIBIT F-1**

**SAMPLE GENERAL RELEASE (RENEWAL)**



**RELEASE OF CLAIMS**

**THIS IS A CURRENT RELEASE FORM THAT GENERALLY  
WILL BE USED WITH OR INCORPORATED INTO A SEPARATE AGREEMENT.  
THIS FORM IS SUBJECT TO CHANGE OVER TIME.**

For and in consideration of the agreements and covenants described below, OTB Acquisition LLC (“Franchisor”) and \_\_\_\_\_ (“Franchisee”) enter into this Release of Claims (“Release”).

**RECITALS**

WHEREAS, Franchisor and Franchisee entered into an On The Border Mexican Grill & Cantina® Franchise Agreement dated \_\_\_\_\_ (the “Agreement”), where Franchisee was granted a license to own and operate a franchised restaurant located at [INSERT ADDRESS] (the “Restaurant”).

WHEREAS, the Franchisor and Franchisee (collectively, the “Parties”) wish to renew and modify the franchise relationship created by the Agreement (the “Renewal”).

WHEREAS, [NOTE: Describe any additional facts relating to the release.]

NOW THEREFORE, in consideration of the mutual promises contained herein and the grant of a Renewal of the existing Agreement, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

**RELEASE**

**1. Acknowledgments, Warranties and Representations.**

(a) The Parties acknowledge and agree that the recitals above are true and correct and are hereby incorporated by reference as if they were fully set forth herein.

(b) The Parties acknowledge and agree that all terms, conditions, and obligations of the Agreement are extended and renewed effective as of the date this Release is signed by all the Parties through the date a new Franchise Agreement is executed by the Parties, subject to the terms and conditions of this Release.

**[Paragraphs 2-3] Reserved to detail additional terms/conditions of the Release.**

**4. Release.** For good and valuable consideration received from or on behalf of OTB Acquisition LLC, the receipt of which is hereby acknowledged, Franchisee, on behalf of itself and its parent, subsidiaries, successors, assigns, and affiliates and their respective past and present officers, directors, shareholders, owners, agents and employees, in their corporate and individual capacities, (collectively, “Franchisee Releasers”), freely and without any influence forever remise, release, acquit, and covenant not to sue OTB Acquisition LLC and its parent, subsidiaries and affiliates; and their respective past and present officers, directors, shareholders, owners, agents and

employees, in their corporate and individual capacities (collectively “OTB Releasees”), with respect to any and all claims, demands, debts, dues, sums of money, accounts, damages, judgements, liabilities and causes of action of whatever kind or nature, known or unknown, vested or contingent, suspected or unsuspected (collectively, “Claims”) which any Franchisee Releasor now owns or holds or may at any time have owned or held, including, without limitation, claims arising under federal, state and local laws, rules and ordinances (but excluding claims related to applicable state franchise registration or disclosure laws, to the extent such laws prohibit the release of such claims), claims for contribution, indemnity and/or subrogation and claims arising out of, or relating to, any agreement between any Franchisee Releasor and any OTB Releasee (including real estate contracts), the sale of franchises to any Franchisee Releasor, the development and operation of all restaurants operated by any Franchisee Releasor that are franchised by any OTB Releasee, and the performance by any OTB Releasee of its obligations under any agreement between any OTB Releasee and any Franchisee Releasor (including real estate contracts). Franchisee, on behalf of the Franchisee Releasors, agrees that fair consideration has been given by OTB for this Release and Franchisee fully understands that this is a negotiated, complete, and final release of all Claims.

**5. Confidentiality.** The Parties agree that this Release and the terms and conditions set forth herein are strictly confidential and shall not be voluntarily disclosed to any third party other than the respective owners, members, officers, directors, employees, attorneys, accountants, and/or tax professionals. Notwithstanding the foregoing, the Parties may disclose the terms of this Release: (1) to a court or governmental body having jurisdiction to require, and actually requiring, such disclosure including OTB’s potential obligation to disclose matters pursuant to the Federal Trade Commission Franchise Rule and accompanying guidelines as contained in 16 C.F.R. Parts 436 and 437; or (2) in any action or proceeding to enforce the Franchise Agreement or this Release.

**6. Miscellaneous Provisions.**

- (a) Time is of the essence of each provision hereof.
- (b) This Release is binding upon the Parties, their officers, directors, successors, and assigns.
- (c) If any provision of this Release is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Release will remain in full force and effect.
- (d) This Release shall not relieve any party from liability under any applicable state franchise law where such law prohibits the release of such claims.
- (e) No party to this Release has relied upon any oral statement or agreement in making the decision to execute it. Franchisee represents and warrants that it had the opportunity to review this Release with professionals of its choosing, including with its attorney, and is aware of the financial and legal risks associated with entering into this Release, including releasing OTB from any and all known and unknown claims arising from Parties’ relationship, and that Franchisee is entering this Release freely and with knowledge and acceptance of such risks.
- (f) The Parties may execute this Release in any number of actual or telecopied

counterparts and by the different Parties on separate counterparts, each of which when so executed and delivered to OTB in Dallas, Texas shall be an original.

(g) Parties acknowledge and agree that this Release is deemed entered into in Dallas, Texas and is governed by Texas law.

(h) The foregoing constitutes the entire agreement between the Parties with regard to the matters stated herein and there are no other oral or written agreements between Parties which are contrary to this Release. There are no contemporaneous oral promises, representations, or agreements not set forth herein inducing entry into this Release and all prior negotiations, discussions, statements, and representations are merged herein. This Release may only be modified by a written modification signed by each party. Reliance by any party on any prior oral communications accordingly is unwarranted.

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

**FRANCHISOR: OTB Acquisition LLC**

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

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

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

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

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

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

**EXHIBIT F-1A**

**SAMPLE GENERAL RELEASE (CALIFORNIA RENEWAL)**

**RELEASE OF CLAIMS  
IN CALIFORNIA**

**THIS IS A CURRENT RELEASE FORM THAT GENERALLY  
WILL BE USED WITH OR INCORPORATED INTO A SEPARATE AGREEMENT.  
THIS FORM IS SUBJECT TO CHANGE OVER TIME.**

For and in consideration of the agreements and covenants described below, OTB Acquisition LLC (“Franchisor”) and \_\_\_\_\_ (“Franchisee”) enter into this Release of Claims (“Release”).

**RECITALS**

WHEREAS, Franchisor and Franchisee entered into an On The Border Mexican Grill & Cantina® Franchise Agreement dated \_\_\_\_\_(the “Agreement”), where Franchisee was granted a license to own and operate a franchised restaurant located at [INSERT ADDRESS] (the “Restaurant”).

WHEREAS, the Franchisor and Franchisee (collectively, the “Parties”) wish to renew and modify the franchise relationship created by the Agreement (the “Renewal”).

WHEREAS, [NOTE: Describe any additional facts relating to the release.]

NOW THEREFORE, in consideration of the mutual promises contained herein and the grant of a Renewal of the existing Agreement, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

**RELEASE**

**1. Acknowledgments, Warranties and Representations.**

(a) The Parties acknowledge and agree that the recitals above are true and correct and are hereby incorporated by reference as if they were fully set forth herein.

(b) The Parties acknowledge and agree that all terms, conditions, and obligations of the Agreement are extended and renewed effective as of the date this Release is signed by all the Parties through the date a new Franchise Agreement is executed by the Parties, subject to the terms and conditions of this Release.

**[Paragraphs 2-3] Reserved to detail additional terms/conditions of the Release.**

**4. Release.**

(a) California Civil Code Section 1542 reads as follows: “A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

(b) For good and valuable consideration received from or on behalf of OTB Acquisition LLC, the receipt of which is hereby acknowledged, Franchisee, on behalf of itself and its parent, subsidiaries, successors, assigns, and affiliates and their respective past and present officers, directors, shareholders, owners, agents and employees, in their corporate and individual capacities, (collectively, "Franchisee Releasors"), freely and without any influence forever remise, release, acquit, and covenant not to sue OTB Acquisition LLC and its parent, subsidiaries and affiliates; and their respective past and present officers, directors, shareholders, owners, agents and employees, in their corporate and individual capacities (collectively "OTB Releasees"), with respect to any and all claims, demands, debts, dues, sums of money, accounts, damages, judgements, liabilities and causes of action of whatever kind or nature, known or unknown, vested or contingent, suspected or unsuspected (collectively, "Claims") which any Franchisee Releasor now owns or holds or may at any time have owned or held, including, without limitation, claims arising under federal, state and local laws, rules and ordinances (but excluding claims related to applicable state franchise registration or disclosure laws, to the extent such laws prohibit the release of such claims), claims for contribution, indemnity and/or subrogation and claims arising out of, or relating to, any agreement between any Franchisee Releasor and any OTB Releasee (including real estate contracts), the sale of franchises to any Franchisee Releasor, the development and operation of all restaurants operated by any Franchisee Releasor that are franchised by any OTB Releasee, and the performance by any OTB Releasee of its obligations under any agreement between any OTB Releasee and any Franchisee Releasor (including real estate contracts). Franchisee, on behalf of the Franchisee Releasors, agrees that fair consideration has been given by OTB for this Release and Franchisee fully understands that this is a negotiated, complete, and final release of all Claims.

(c) This general and complete Release covers both claims Franchisee knows and those that Franchisee may not know about that exist in its favor at the time of executing this Release. Franchisee understands and for valuable consideration hereby expressly waives all of the rights and benefits of Section 1542 of the California Civil Code, set forth fully above.

**5. Confidentiality.** The Parties agree that this Release and the terms and conditions set forth herein are strictly confidential and shall not be voluntarily disclosed to any third party other than the respective owners, members, officers, directors, employees, attorneys, accountants, and/or tax professionals. Notwithstanding the foregoing, the Parties may disclose the terms of this Release: (1) to a court or governmental body having jurisdiction to require, and actually requiring, such disclosure including OTB's potential obligation to disclose matters pursuant to the Federal Trade Commission Franchise Rule and accompanying guidelines as contained in 16 C.F.R. Parts 436 and 437; or (2) in any action or proceeding to enforce the Franchise Agreement or this Release.

**6. Miscellaneous Provisions.**

- (a) Time is of the essence of each provision hereof.
- (b) This Release is binding upon the Parties, their officers, directors, successors, and assigns.
- (c) If any provision of this Release is held invalid or unenforceable by any court of

competent jurisdiction, the other provisions of this Release will remain in full force and effect.

(d) This Release shall not relieve any party from liability under any applicable state franchise law where such law prohibits the release of such claims.

(e) No party to this Release has relied upon any oral statement or agreement in making the decision to execute it. Franchisee represents and warrants that it had the opportunity to review this Release with professionals of its choosing, including with its attorney, and is aware of the financial and legal risks associated with entering into this Release, including releasing OTB from any and all known and unknown claims arising from Parties' relationship, and that Franchisee is entering this Release freely and with knowledge and acceptance of such risks.

(f) The Parties may execute this Release in any number of actual or telecopied counterparts and by the different Parties on separate counterparts, each of which when so executed and delivered to OTB in Dallas, Texas shall be an original.

(g) Parties acknowledge and agree that this Release is deemed entered into in Dallas, Texas and is governed by Texas law.

(h) The foregoing constitutes the entire agreement between the Parties with regard to the matters stated herein and there are no other oral or written agreements between Parties which are contrary to this Release. There are no contemporaneous oral promises, representations, or agreements not set forth herein inducing entry into this Release and all prior negotiations, discussions, statements, and representations are merged herein. This Release may only be modified by a written modification signed by each party. Reliance by any party on any prior oral communications accordingly is unwarranted.

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

**FRANCHISOR: OTB Acquisition LLC**

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

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

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

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

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

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

**EXHIBIT F-2**

**SAMPLE GENERAL RELEASE (TERMINATION)**



**RELEASE OF CLAIMS**

**THIS IS A CURRENT RELEASE FORM THAT GENERALLY  
WILL BE USED WITH OR INCORPORATED INTO A SEPARATE AGREEMENT.  
THIS FORM IS SUBJECT TO CHANGE OVER TIME.**

For and in consideration of the agreements and covenants described below, OTB Acquisition LLC (“Franchisor”) and \_\_\_\_\_ (“Franchisee”) enter into this Release of Claims (“Release”).

**RECITALS**

WHEREAS, Franchisor and Franchisee entered into an On The Border Mexican Grill & Cantina® Franchise Agreement dated \_\_\_\_\_ (the “Agreement”), where Franchisee was granted a license to own and operate a franchised restaurant located at [INSERT ADDRESS] (the “Restaurant”).

WHEREAS, the Franchisor and Franchisee (collectively, the “Parties”) wish to terminate the franchise relationship created by the Agreement (the “Termination”).

WHEREAS, [NOTE: Describe any additional facts relating to the release.]

NOW THEREFORE, in consideration of the mutual promises contained herein and the grant of the Termination of the existing Agreement, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

**RELEASE**

**1. Acknowledgments, Warranties and Representations.**

(a) The Parties acknowledge and agree that the recitals above are true and correct and are hereby incorporated by reference as if they were fully set forth herein.

(b) The Parties acknowledge and agree that all terms, conditions, and obligations of the Agreement are of no further force and effect except for the post-termination indemnification and confidentiality obligations and any other obligations which by their terms survive the Agreement.

**[Paragraphs 2-3] Reserved to detail additional terms/conditions of the Release.**

**4. Release.** For good and valuable consideration received from or on behalf of OTB Acquisition, LLC, the receipt of which is hereby acknowledged, Franchisee, on behalf of itself and its parent, subsidiaries, successors, assigns, and affiliates and their respective past and present officers, directors, shareholders, owners, agents and employees, in their corporate and individual capacities, (collectively, “Franchisee Releasers”), freely and without any influence forever remise, release, acquit, and covenant not to sue OTB Acquisition LLC and its parent, subsidiaries and affiliates; and their respective past and present officers, directors, shareholders, owners, agents and employees, in their corporate and individual capacities (collectively “OTB Releasees”), with

respect to any and all claims, demands, debts, dues, sums of money, accounts, damages, judgements, liabilities and causes of action of whatever kind or nature, known or unknown, vested or contingent, suspected or unsuspected (collectively, "Claims") which any Franchisee Releasor now owns or holds or may at any time have owned or held, including, without limitation, claims arising under federal, state and local laws, rules and ordinances (but excluding claims related to applicable state franchise registration or disclosure laws, to the extent such laws prohibit the release of such claims), claims for contribution, indemnity and/or subrogation and claims arising out of, or relating to, any agreement between any Franchisee Releasor and any OTB Releasee (including real estate contracts), the sale of franchises to any Franchisee Releasor, the development and operation of all restaurants operated by any Franchisee Releasor that are franchised by any OTB Releasee, and the performance by any OTB Releasee of its obligations under any agreement between any OTB Releasee and any Franchisee Releasor (including real estate contracts). Franchisee, on behalf of the Franchisee Releasors, agrees that fair consideration has been given by OTB for this Release and Franchisee fully understands that this is a negotiated, complete, and final release of all Claims.

**5. Confidentiality.** The Parties agree that this Release and the terms and conditions set forth herein are strictly confidential and shall not be voluntarily disclosed to any third party other than the respective owners, members, officers, directors, employees, attorneys, accountants, and/or tax professionals. Notwithstanding the foregoing, the Parties may disclose the terms of this Release: (1) to a court or governmental body having jurisdiction to require, and actually requiring, such disclosure including OTB's potential obligation to disclose matters pursuant to the Federal Trade Commission Franchise Rule and accompanying guidelines as contained in 16 C.F.R. Parts 436 and 437; or (2) in any action or proceeding to enforce the Franchise Agreement or this Release.

**6. Miscellaneous Provisions.**

- (a) Time is of the essence of each provision hereof.
- (b) This Release is binding upon the Parties, their officers, directors, successors, and assigns.
- (c) If any provision of this Release is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Release will remain in full force and effect.
- (d) This Release shall not relieve any party from liability under any applicable state franchise law where such law prohibits the release of such claims.
- (e) No party to this Release has relied upon any oral statement or agreement in making the decision to execute it. Franchisee represents and warrants that it had the opportunity to review this Release with professionals of its choosing, including with its attorney, and is aware of the financial and legal risks associated with entering into this Release, including releasing OTB from any and all known and unknown claims arising from Parties' relationship, and that Franchisee is entering this Release freely and with knowledge and acceptance of such risks.
- (f) The Parties may execute this Release in any number of actual or telecopied counterparts and by the different Parties on separate counterparts, each of which when so executed

and delivered to OTB in Dallas, Texas shall be an original.

(g) Parties acknowledge and agree that this Release is deemed entered into in Dallas, Texas and is governed by Texas law.

(h) The foregoing constitutes the entire agreement between the Parties with regard to the matters stated herein and there are no other oral or written agreements between Parties which are contrary to this Release. There are no contemporaneous oral promises, representations, or agreements not set forth herein inducing entry into this Release and all prior negotiations, discussions, statements, and representations are merged herein. This Release may only be modified by a written modification signed by each party. Reliance by any party on any prior oral communications accordingly is unwarranted.

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

**FRANCHISOR: OTB Acquisition LLC**

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

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

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

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

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

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

**EXHIBIT E-2A**

**SAMPLE GENERAL RELEASE (CALIFORNIA TERMINATION)**

**RELEASE OF CLAIMS  
IN CALIFORNIA**

**THIS IS A CURRENT RELEASE FORM THAT GENERALLY  
WILL BE USED WITH OR INCORPORATED INTO A SEPARATE AGREEMENT.  
THIS FORM IS SUBJECT TO CHANGE OVER TIME.**

For and in consideration of the agreements and covenants described below, OTB Acquisition LLC (“Franchisor”) and \_\_\_\_\_ (“Franchisee”) enter into this Release of Claims (“Release”).

**RECITALS**

WHEREAS, Franchisor and Franchisee entered into an On The Border Mexican Grill & Cantina® Franchise Agreement dated \_\_\_\_\_(the “Agreement”), where Franchisee was granted a license to own and operate a franchised restaurant located at [INSERT ADDRESS] (the “Restaurant”).

WHEREAS, the Franchisor and Franchisee (collectively, the “Parties”) wish to terminate the franchise relationship created by the Agreement (the “Termination”).

WHEREAS, [NOTE: Describe any additional facts relating to the release.]

NOW THEREFORE, in consideration of the mutual promises contained herein and the grant of the Termination of the existing Agreement, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

**RELEASE**

**1. Acknowledgments, Warranties and Representations.**

(a) The Parties acknowledge and agree that the recitals above are true and correct and are hereby incorporated by reference as if they were fully set forth herein.

(b) The Parties acknowledge and agree that all terms, conditions, and obligations of the Agreement are of no further force and effect except for the post-termination indemnification and confidentiality obligations and any other obligations which by their terms survive the Agreement.

**[Paragraphs 2-3] Reserved to detail additional terms/conditions of the Release.**

**4. Release.**

(a) California Civil Code Section 1542 reads as follows: “A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

(b) For good and valuable consideration received from or on behalf of OTB Acquisition LLC, the receipt of which is hereby acknowledged, Franchisee, on behalf of itself and its parent, subsidiaries, successors, assigns, and affiliates and their respective past and present officers, directors, shareholders, owners, agents and employees, in their corporate and individual capacities, (collectively, "Franchisee Releasors"), freely and without any influence forever remise, release, acquit, and covenant not to sue OTB Acquisition LLC and its parent, subsidiaries and affiliates; and their respective past and present officers, directors, shareholders, owners, agents and employees, in their corporate and individual capacities (collectively "OTB Releasees"), with respect to any and all claims, demands, debts, dues, sums of money, accounts, damages, judgements, liabilities and causes of action of whatever kind or nature, known or unknown, vested or contingent, suspected or unsuspected (collectively, "Claims") which any Franchisee Releasor now owns or holds or may at any time have owned or held, including, without limitation, claims arising under federal, state and local laws, rules and ordinances (but excluding claims related to applicable state franchise registration or disclosure laws, to the extent such laws prohibit the release of such claims), claims for contribution, indemnity and/or subrogation and claims arising out of, or relating to, any agreement between any Franchisee Releasor and any OTB Releasee (including real estate contracts), the sale of franchises to any Franchisee Releasor, the development and operation of all restaurants operated by any Franchisee Releasor that are franchised by any OTB Releasee, and the performance by any OTB Releasee of its obligations under any agreement between any OTB Releasee and any Franchisee Releasor (including real estate contracts). Franchisee, on behalf of the Franchisee Releasors, agrees that fair consideration has been given by OTB for this Release and Franchisee fully understands that this is a negotiated, complete, and final release of all Claims.

(c) This general and complete Release covers both claims Franchisee knows and those that Franchisee may not know about that exist in its favor at the time of executing this Release. Franchisee understands and for valuable consideration hereby expressly waives all of the rights and benefits of Section 1542 of the California Civil Code, set forth fully above.

**5. Confidentiality.** The Parties agree that this Release and the terms and conditions set forth herein are strictly confidential and shall not be voluntarily disclosed to any third party other than the respective owners, members, officers, directors, employees, attorneys, accountants, and/or tax professionals. Notwithstanding the foregoing, the Parties may disclose the terms of this Release: (1) to a court or governmental body having jurisdiction to require, and actually requiring, such disclosure including OTB's potential obligation to disclose matters pursuant to the Federal Trade Commission Franchise Rule and accompanying guidelines as contained in 16 C.F.R. Parts 436 and 437; or (2) in any action or proceeding to enforce the Franchise Agreement or this Release.

**6. Miscellaneous Provisions.**

(a) Time is of the essence of each provision hereof.

(b) This Release is binding upon the Parties, their officers, directors, successors, and assigns.

(c) If any provision of this Release is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Release will remain in full force and effect.

(d) This Release shall not relieve any party from liability under any applicable state franchise law where such law prohibits the release of such claims.

(e) No party to this Release has relied upon any oral statement or agreement in making the decision to execute it. Franchisee represents and warrants that it had the opportunity to review this Release with professionals of its choosing, including with its attorney, and is aware of the financial and legal risks associated with entering into this Release, including releasing OTB from any and all known and unknown claims arising from Parties' relationship, and that Franchisee is entering this Release freely and with knowledge and acceptance of such risks.

(f) The Parties may execute this Release in any number of actual or telecopied counterparts and by the different Parties on separate counterparts, each of which when so executed and delivered to OTB in Dallas, Texas shall be an original.

(g) Parties acknowledge and agree that this Release is deemed entered into in Dallas, Texas and is governed by Texas law.

(h) The foregoing constitutes the entire agreement between the Parties with regard to the matters stated herein and there are no other oral or written agreements between Parties which are contrary to this Release. There are no contemporaneous oral promises, representations, or agreements not set forth herein inducing entry into this Release and all prior negotiations, discussions, statements, and representations are merged herein. This Release may only be modified by a written modification signed by each party. Reliance by any party on any prior oral communications accordingly is unwarranted.

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

**FRANCHISOR: OTB Acquisition LLC**

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

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

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

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

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

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

**EXHIBIT G**

**CONSOLIDATED FINANCIAL STATEMENTS**



# Consolidated Financial Statements and Report of Independent Certified Public Accountants

## **OTB Acquisition LLC and Subsidiaries**

December 27, 2022, December 28, 2021 and December  
29, 2020 and

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**GRANT THORNTON LLP**

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**REPORT OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS**

Board of Directors OTB Acquisition LLC

**Opinion**

We have audited the consolidated financial statements of OTB Acquisition LLC (a Delaware limited liability company) and subsidiaries (the "Company"), which comprise the consolidated balance sheets as of December 27, 2022, December 28, 2021, and December 29, 2020, and the related consolidated statements of operations, members' equity, and cash flows for the years then ended, and the related notes to the financial statements.

In our opinion, the accompanying consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 27, 2022, December 28, 2021, and December 29, 2020, and the results of its operations and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

**Basis for opinion**

We conducted our audits of the consolidated financial statements in accordance with auditing standards generally accepted in the United States of America (US GAAS). Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of the Company and to meet our other ethical responsibilities in accordance with the relevant ethical requirements relating to our audits. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

**Emphasis of matter**

As discussed in Note 2 to the financial statements, the Company has adopted new accounting guidance in 2022, related to the adoption of ASC 842 - Leases. Our opinion is not modified with respect to this matter.

**Responsibilities of management for the financial statements**

Management is responsible for the preparation and fair presentation of the consolidated financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

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

**Auditor's responsibilities for the audit of the financial statements**

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

In performing an audit in accordance with US GAAS, we:

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

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

*Grant Thornton LLP*

Dallas, Texas April 12, 2023

OTB Acquisition LLC and Subsidiaries CONSOLIDATED BALANCE SHEETS

December 27, 2022, December 28, 2021 and December 29, 2020

	<u>2022</u>	<u>2021</u>	<u>2020</u>
<b>ASSETS</b>			
<b>Current assets</b>			
Cash and cash equivalents	\$ 6,770,826	\$ 13,729,957	\$ 20,036,563
Restricted cash	-	1,910,000	1,410,000
Accounts receivable	2,393,586	2,453,087	1,748,623
Inventory	2,571,230	2,295,692	1,916,357
Prepaid expenses and other	<u>784,980</u>	<u>1,604,487</u>	<u>1,717,680</u>
Total current assets	12,520,622	21,993,223	26,829,223
<b>Property and equipment, net</b>			
Less: accumulated depreciation and amortization	<u>(76,973,626)</u>	<u>(72,908,562)</u>	<u>(65,007,462)</u>
Property and equipment, net	38,762,873	41,317,939	48,366,550
<b>Other assets</b>			
Right of use asset	157,285,219	-	-
Goodwill	45,914,751	45,914,751	45,914,751
Intangible assets, net	29,611,762	34,415,793	35,417,263
Other	<u>1,054,713</u>	<u>849,518</u>	<u>825,054</u>
Total other assets	<u>233,866,445</u>	<u>81,180,062</u>	<u>82,157,068</u>
Total assets	<u>\$ 285,149,940</u>	<u>\$ 144,491,224</u>	<u>\$ 157,352,841</u>
<b>LIABILITIES AND MEMBERS' EQUITY</b>			
<b>Current liabilities</b>			
Accounts payable	\$ 7,681,090	\$ 8,108,968	\$ 6,711,073
Accrued and other liabilities	11,717,365	14,063,604	19,847,097
Current lease obligations	<u>12,111,086</u>	-	-
Total current liabilities	<u>31,509,541</u>	<u>22,172,572</u>	<u>26,558,170</u>
PPP Proceeds	-	-	10,000,000
Long-term lease obligations	167,210,230	-	-
Other long-term liabilities	<u>5,585,988</u>	<u>31,402,258</u>	<u>34,466,629</u>
Total liabilities	204,305,759	53,574,830	71,024,799
<b>Members' equity</b>			
	<u>80,844,181</u>	<u>90,916,394</u>	<u>86,328,042</u>
Total liabilities and members' equity	<u>\$ 285,149,940</u>	<u>\$ 144,491,224</u>	<u>\$ 157,352,841</u>

The accompanying notes are an integral part of these consolidated financial

OTB Acquisition LLC and Subsidiaries

**CONSOLIDATED STATEMENTS OF OPERATIONS**

Years ended December 27, 2022, December 28, 2021 and December 29, 2020

	2022	2021	2020
<b>Revenues</b>			
Food and beverage	\$ 263,425,186	\$ 256,980,298	\$ 210,954,872
Royalty	<u>2,020,179</u>	<u>1,624,668</u>	<u>10,003,074</u>
Total revenues	265,445,365	258,604,966	220,957,946
<b>Operating costs and expenses</b>			
Cost of sales	67,519,829	59,999,711	46,759,218
Cost of labor	81,866,623	79,322,762	69,386,356
Restaurant expenses	59,589,238	55,622,486	48,921,270
Marketing expenses	5,125,912	5,698,265	4,232,136
Occupancy expenses	26,885,689	26,548,116	29,740,606
Pre-opening expenses	1,158,647	238,015	14,119
Closure expenses, net	3,628,597	1,079,330	4,365,434
General and administrative	14,549,346	16,597,142	16,249,118
Depreciation and amortization	8,896,741	10,572,449	11,872,068
Impairment of assets	3,438,086	599,213	310,266
Advisory and board fees	2,661,865	2,754,901	2,805,807
Transition costs	767,577	1,172,294	1,996,277
Other loss	<u>102,904</u>	<u>542,994</u>	<u>-</u>
Total operating costs and expenses	<u>276,191,054</u>	<u>260,747,678</u>	<u>236,652,675</u>
Operating loss	(10,745,689)	(2,142,712)	(15,694,729)
Interest expense	-	-	- 4,040,728
Loss on debt extinguishment	-	-	- 2,002,462
PPP loan forgiveness	-	(10,000,000)	-
Gain on sale of trademark	-	-	- (35,682,152)
Other income, net	<u>(319,329)</u>	<u>(54,000)</u>	<u>(141,682)</u>
(Loss) income before taxes	(10,426,360)	7,911,288	14,085,915
Franchise and sales tax expense	<u>76,321</u>	<u>355,257</u>	<u>445,186</u>
<b>NET (LOSS) INCOME</b>	<u>\$ (10,502,681)</u>	<u>\$ 7,556,031</u>	<u>\$ 13,640,729</u>

The accompanying notes are an integral part of these consolidated financial

OTB Acquisition LLC and Subsidiaries

**CONSOLIDATED STATEMENTS OF MEMBERS' EQUITY**

**Years ended December 27, 2022, December 28, 2021 and December 29, 2020**

	<b>Total</b>
<b>Balances at December 31, 2019</b>	\$ 72,851,896
Distribution	(18,058)
Unit-based compensation expense	(146,525)
Net income for the year ended December 29, 2020	13,640,729
 <b>Balances at December 29, 2020</b>	 86,328,042
Due from parent	324,979
Unit-based compensation	234,435
Distribution	(3,391,035)
Option redemptions	(136,058)
Net income for the year ended December 28, 2021	7,556,031
 <b>Balances at December 28, 2021</b>	 90,916,394
Due from parent	342,555
Unit-based compensation	87,913
Net income for the year ended December 27, 2022	(10,502,681)
 <b>Balances at December 27, 2022</b>	 \$ 80,844,181

The accompanying notes are an integral part of these consolidated financial

OTB Acquisition LLC and Subsidiaries CONSOLIDATED STATEMENTS OF CASH FLOWS

Years ended December 27, 2022, December 28, 2021 and December 29, 2020

	2022	2021	2020
<b>Cash flows from operating activities:</b>			
Net (loss) income	\$ (10,502,681)	\$ 7,556,031	\$ 13,640,729
Adjustments to reconcile net (loss) income to net cash provided by operating activities:			
Depreciation and amortization	8,896,741	10,572,449	11,872,068
Gain on sale of licensing trademark	-	-	(35,682,152)
Loss on disposal of assets	1,510,699	783,924	263,180
Loss on impairment of assets	3,438,086	599,213	310,266
Effective change in tax paying entity	342,555	324,979	(3,792,684)
Noncash rent (benefit) expense	(1,802,725)	(1,448,373)	1,423,340
Loss on termination of lease obligation, net	(366,704)	282,055	-
Gain on unfavorable lease obligation	-	-	(267,517)
Noncash compensation expense (reversal)	87,913	234,435	(146,525)
Loss on debt extinguishment	-	-	-2,002,462
PPP loan forgiveness	-	(10,000,000)	-
Changes in assets and liabilities:			
Accounts receivable	59,501	(704,464)	2,274,977
Inventory	(275,538)	(379,335)	225,559
Prepaid expenses and other	801,000	93,846	2,939,194
Other assets	28,190	(24,465)	(334,281)
Accounts payable	(313,694)	1,418,141	284,309
Accrued liabilities	(2,346,240)	(5,783,491)	3,988,933
Other long-term liabilities	2,438,882	(1,038,886)	1,491,712
Net cash provided by operating activities	<u>1,995,985</u>	<u>2,486,059</u>	<u>493,570</u>
<b>Cash flows from investing activities:</b>			
Proceeds from sale of property and equipment	-	33,816	718
Payments for property and equipment	(10,631,733)	(4,799,388)	(3,881,205)
Proceeds from sale of licensing trademark	-	-	78,783,035
Net cash (used in) provided by investing activities	<u>(10,631,733)</u>	<u>(4,765,572)</u>	<u>74,902,548</u>
<b>Cash flows from financing activities:</b>			
Repayment term loan	-	-	(66,000,000)
Proceeds from PPP Loan	-	-	10,000,000
Distributions	-	(3,391,035)	(18,058)
Option redemptions	-	(136,058)	-
Debt issuance costs	(233,383)	-	-
Net cash used in financing activities	<u>(233,383)</u>	<u>(3,527,093)</u>	<u>(56,018,058)</u>
<b>NET (DECREASE) INCREASE IN CASH, CASH EQUIVALENTS AND RESTRICTED CASH</b>	<u>(8,869,131)</u>	<u>(5,806,606)</u>	<u>19,378,060</u>
<b>Cash, cash equivalents and restricted cash, beginning of year</b>	<u>15,639,957</u>	<u>21,446,563</u>	<u>2,068,503</u>
<b>Cash, cash equivalents and restricted cash, end of year</b>	<u>\$ 6,770,826</u>	<u>\$ 15,639,957</u>	<u>\$ 21,446,563</u>
<b>Supplemental cash flow information:</b>			
Interest paid	\$ -	\$ -	\$ 4,331,865
Income taxes (refunded) paid, net	(127,046)	404,207	205,938
<b>Noncash transaction:</b>			
Adoption of ASC 842	\$ (22,126,454)	\$ -	\$ -

The accompanying notes are an integral part of these consolidated financial



## OTB Acquisition LLC and Subsidiaries

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

December 27, 2022, December 28, 2021 and December 29, 2020

#### NOTE 1 - DESCRIPTION OF BUSINESS

##### *Nature of Operations*

OTB Acquisition LLC ("Company") is principally engaged in the ownership, operation and franchising of On The Border restaurants. As of December 27, 2022, December 28, 2021 and December 29, 2020, the Company operated 110, 113 and 117 company-owned restaurants in the United States and franchised 22, 26 and 19 restaurants located in the United States, and South Korea. The use of the terms "OTB," "we," "us" and "our" throughout these notes to consolidated financial statements refer to the Company.

##### *Basis of Presentation*

The Company is a wholly owned subsidiary of OTB Holding LLC ("Parent"), which is ultimately owned by Border Partners LP ("Partners"). The consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries. All intercompany accounts and transactions have been recorded in Due to (from) OTB Holding LLC.

#### NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

##### *Use of Estimates and Assumptions*

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

##### *Financial Instruments*

The Company considers all highly liquid investments with original maturities of three months or less to be cash equivalents.

The Company's financial instruments consist of cash equivalents, accounts receivables, accounts payable, certain accrued liabilities, and at times debt. The carrying amounts of financial instruments other than debt instruments are representative of their fair values due to their short maturities. The carrying amount reported for the Company's debt approximates fair value because interest rates are variable and there has been no change in the Company's credit quality from the date of issuance.

In the normal course of business, the Company maintains bank balances in excess of federally insured limits. The Company has not experienced any losses in such accounts and believes it is not exposed to any significant credit risk to cash.

##### *Cash and Cash Equivalents and Restricted Cash*

The Company considers all highly liquid investments with original maturities of three months or less to be cash equivalents. The Company maintains all of its cash balances in non-interest bearing bank accounts.

The Company holds its cash and cash equivalents with high credit quality institutions. At times, cash on deposit with any one bank may be in excess of the federally insured limits. Amounts receivable from credit card companies are also considered cash equivalents because they are both short term and highly liquid in nature and are typically converted to cash within three days. Credit card receivables included in cash and cash equivalents were approximately \$1.3 million, \$1.1 million and \$0.8 million for the years ended December 27, 2022, December 28, 2021 and December 29, 2020, respectively. Restricted cash relates to

## OTB Acquisition LLC and Subsidiaries

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS -

December 27, 2022, December 28, 2021 and December 29, 2020

collateral for a letter of credit with a bank and was \$0 at December 27, 2022, \$1.9 million at December 28, 2021 and \$1.4 million at December 29, 2020.

#### ***Accounts Receivable***

Accounts receivable, net of the allowance for doubtful accounts, represents their estimated net realizable value. Provisions for doubtful accounts are recorded based on management's judgment regarding the ability to collect as well as the age of the receivables. Accounts receivable are written off when they are deemed uncollectible.

#### ***Inventories***

Inventories, which consist of food, beverages and supplies, are stated at the lower of cost on a first-in, first- out basis or market.

#### ***Property and Equipment***

Property and equipment is recorded at cost. Buildings and leasehold improvements are depreciated using the straight-line method over the lesser of the life of the lease, including renewal options that are reasonably assured of being exercised, or the estimated useful lives of the assets, which range from 5 to 20 years. Furniture, fixtures and other equipment are depreciated using the straight-line method over the estimated useful lives of the assets, which range from 3 to 10 years. Routine repair and maintenance costs are expensed when incurred. Major replacements and improvements are capitalized.

We review the carrying amount of property and equipment annually for impairment, on a restaurant-by- restaurant basis, whenever events or changes in circumstances indicate that the carrying amount may not be recoverable. We assess the recoverability of property and equipment by comparing the sum of future cash flows, undiscounted and without interest, expected to result from the use and eventual disposition of the assets to their carrying amount. If factors indicate that the carrying amount is not recoverable, we may recognize an impairment loss equal to the amount by which the carrying amount exceeds the estimated future operating cash flows, which approximates its fair value. See Note 10.

#### ***Goodwill***

Goodwill is the excess of the purchase price paid over the fair value of identifiable net assets acquired. Goodwill is tested, at a minimum annually, for impairment or whenever events or circumstances change and indicate goodwill may be impaired, such as an adverse change in the business climate. The evaluation of impairment involves comparing the current fair value of the reporting units to their carrying value, including goodwill. If the estimated fair value exceeds the carrying value, no goodwill impairment is recorded. For the years ended December 27, 2022, December 28, 2021 and December 29, 2020, the Company did not recognize any goodwill impairment charges.

#### ***Intangible Assets***

Indefinite-lived intangible assets are not amortized but tested for impairment annually or more frequently if circumstances indicate potential impairment, through a comparison of fair value to its carrying amount. The indefinite-lived intangible assets include the value assigned to acquire the On the Border trade names and trademarks and liquor licenses.

## OTB Acquisition LLC and Subsidiaries

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS -

December 27, 2022, December 28, 2021 and December 29, 2020

Definite-lived intangible assets include the value of acquired favorable leases for 2020 and 2021, and franchise agreements, which are included in intangibles in the consolidated balance sheets. The franchise agreement rights are being amortized over their remaining useful life of approximately 22 years. Favorable and unfavorable leases were amortized on a straight-line basis over the remaining lease term of each leased property ranging from 1 to 19 years and were recorded as rent expense within restaurant expenses. Starting 2022 these were rolled into the right-of-use asset and are amortized on a straight-line basis. We review definite-lived intangible assets for impairment annually or whenever events or changes in circumstances indicate that the carrying amount may not be recoverable. We assess the recoverability of definite-lived intangibles by comparing the projected cash flows, undiscounted and without interest, expected to result from the use and eventual disposition of the assets to their carrying amount. If factors indicate the carrying amount is not recoverable, we recognize an impairment loss equal to the amount by which the carrying amount exceeds the estimated future operating cash flows, which approximates its fair value. See Note 9.

#### ***Insurance Reserves***

The Company is self-insured for certain losses related to workers' compensation claims, property losses, general liability matters and company sponsored employee health insurance programs. The Company estimates the accrued liabilities for all self-insurance programs at the end of each reporting period. Accrued liabilities include the estimated incurred but unreported costs to settle unpaid claims. To limit exposure to losses, the Company maintains stop-loss coverage through third-party insurers. The deductibles range from approximately \$100,000 to \$175,000 per occurrence.

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

*Company sales* - Revenues from the sale of food items by company-owned restaurants are recognized as Company sales when a customer purchases the food, which is when our obligation to perform is satisfied.

*Continuing royalties* - This consists of royalties that are based on a percentage of net sales of franchised restaurants and recorded as income when earned.

*Retail licensing trademark revenue* - Ongoing royalty fees that are based on a percentage of licensed retail product sales and are recognized as revenue upon the sale of the product to retail outlets.

*Gift card revenue* - This consists of gift card sales to customers in our stores, which do not expire and do not incur a service fee on unused balances. Gift card sales are recorded as deferred revenue when sold and are recognized as revenue when the gift card is redeemed by the customer.

*Franchise fees* - These are initial fees received from a franchisee to establish a new franchise and are recorded as deferred revenue and recognized as income over the life of the agreement. Under accounting policies pertaining to revenue recognition prior to the adoption of Topic 606 ("Legacy Revenue GAAP"), revenue related to initial fees was recognized upon store opening and renewal and transfer fees were recognized when the related agreement became effective. Upon the adoption of Topic 606, we have determined that the services we provide in exchange for these upfront franchise fees, which primarily relate to preopening support, are highly interrelated with the franchise right and are not individually distinct from the ongoing services we provide to our franchisees. As a result, upon the adoption of Topic 606, upfront franchise fees are recognized as revenue over the term of each respective franchise. Revenues for these upfront franchise fees are recognized on a straight-line basis, which is consistent with the franchisee's right to use and benefit from the intellectual property.

**OTB Acquisition LLC and Subsidiaries**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS -**

**December 27, 2022, December 28, 2021 and December 29, 2020**

The following table disaggregates revenue by concept. We believe this disaggregation best reflects the extent to which the nature, amount, timing and uncertainty of our revenues and cash flows are impacted by economic factors.

	2022	2021	2020
Company sales	\$ 263,425,187	\$ 256,980,298	\$ 210,954,872
Continuing royalties	1,957,362	1,466,342	1,230,925
Retail licensing trademark revenue	-	-	8,675,059
Franchise fees	62,816	158,326	97,090
Total	\$ 265,445,365	\$ 258,604,966	\$ 220,957,946

**Contract Liabilities**

Our contract liabilities are comprised of unamortized franchise fees received from franchisees. The Company records franchise fee contract liabilities when cash payments are received (or unconditional rights to receive cash) in advance of fulfilling its performance obligations. The balance of franchise fee contract liabilities at December 27, 2022, December 28, 2021 and December 29, 2020 were \$0.9 million, \$0.9 million and \$0.8 million, respectively.

**Leases**

The Company adopted ASU 2016-02, Leases (Topic 842) as of December 29, 2021. After the adoption of this standard, the Company determines if an arrangement contains a lease at inception based on whether there is an identified asset and whether the Company controls the use of the identified asset throughout the period of use. The Company classifies leases as either financing or operating. The Company does not have any finance leases at adoption. Right-of-use ("ROU") assets are recognized at the lease commencement date and represent the Company's right to use an underlying asset for the lease term and lease liabilities represent the Company's obligation to make lease payments arising from the lease. Lease liabilities are recognized at the lease commencement date based on the present value of future lease payments over the remaining lease term. Present value of lease payments are discounted based the incremental borrowing rate.

The Company's operating lease ROU assets are measured based on the corresponding operating lease liability adjusted for (i) payments made to the lessor at or before the commencement date, (ii) initial direct costs incurred and (iii) lease incentives under the lease. Options to renew or terminate the lease are recognized as part of our ROU assets and lease liabilities when it is reasonably certain the options will be exercised. ROU assets are also assessed for impairments consistent with the long-lived asset guidance.

The Company does not allocate consideration between lease and non-lease components, such as operating costs, as the Company has elected to not separate lease and non-lease components for any leases within its existing classes of assets. Operating lease expense for fixed lease payments is recognized on a straight-line basis over the lease term. Variable lease payments for usage-based fees are not included in the measurement of the ROU assets or lease liabilities and are expensed as incurred.

Operating leases are presented separately as operating lease ROU assets and operating lease liabilities in the accompanying consolidated balance sheets. Upon adoption of ASC 842, the Company recorded an initial right-of-use asset of \$167 million and an initial operating lease liability of \$189 million. For the year ended December 27, 2022 the right-of-use asset balance was \$157 million and the operating lease liability balance was \$179 million. The adoption of ASC 842 had no significant impact on the Company's profit and loss.

## OTB Acquisition LLC and Subsidiaries

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS -

December 27, 2022, December 28, 2021 and December 29, 2020

Prior to the adoption of ASC 842, the Company recognized rent expense on a straight-line basis over the term of the lease. The difference between cash rent payments and the recognition of rent expense was recorded as a deferred rent liability on the consolidated balance sheets.

#### **Advertising Costs**

Advertising production costs are expensed in the period when the advertising first takes place. Other advertising costs are expensed as incurred. Advertising costs were approximately \$5.1 million, \$5.7 million and \$4.2 million for the years ended December 27, 2022, December 28, 2021 and December 29, 2020, respectively.

#### **Preopening Costs**

Preopening costs incurred in connection with the opening of new restaurant locations are expensed as incurred. Costs related to preopening were \$1.2 million for the year ended December 27, 2022, \$238,000 for the year ended December 28, 2021 and \$14,000 for the year ended December 29, 2020.

#### **Debt Issuance Costs and Debt Discount Fees**

Costs incurred to obtain financing are capitalized and amortized to interest expense over the terms of the related debt agreement. In 2022 the Company entered into a new \$15 million revolving line of credit with CrossFirst Bank and incurred \$233,383 of debt issuance costs.

On December 14, 2020, all the then outstanding debt was repaid and a \$2 million loss on debt extinguishment was recognized that included all unamortized debt issuance cost and fees.

#### **Unit-Based Compensation**

The Company grants to certain employees options to purchase membership interests in Parent. The Company expenses unit-based compensation, in the consolidated financial statements over the period that services are required to be provided in exchange for the award ("requisite service period" or "vesting period"). Unit-based compensation is recognized only for awards that vest and the periodic accrual of compensation cost is based on the estimated number of awards expected to vest. Parent records the liability for vested options at fair value and redemption of options are accounted for as a distribution to Parent. No distributions were made in 2022, 2021 or 2020.

#### **Sales Taxes**

Sales taxes collected from guests are excluded from revenues. The obligation is included in accrued liabilities until the taxes are remitted to the appropriate taxing authorities.

#### **Income Taxes**

The Company is organized as limited liability company. The taxable income of which is included in the federal income tax returns filed by the members. The Company is treated as a flow-through entity for income tax purposes. As a result, the net taxable income of the Company and any related tax credits, for federal income tax purposes, are deemed to pass to the members and are included in their tax returns even though such net taxable income or tax credits may not have actually been distributed. Accordingly, no tax provision has been made in the financial statements of the Company since the income tax is an obligation of the members.

**OTB Acquisition LLC and Subsidiaries**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS -**

**December 27, 2022, December 28, 2021 and December 29, 2020**

FASB ASC Topic 740, *Income Taxes*, requires the evaluation of tax positions taken or expected to be taken in the course of preparing the Company's tax returns and disallows the recognition of tax positions not deemed to meet a more-likely-than-not threshold of being sustained by the applicable tax authority.

The Company's management does not believe the Company has any tax positions taken within the consolidated financial statements that would not meet this threshold.

**NOTE 3 - PROPERTY AND EQUIPMENT**

Property and equipment consisted of the following:

	<u>2022</u>	<u>2021</u>	<u>2020</u>
Leasehold improvements	\$ 70,664,012	\$ 72,403,444	\$ 73,165,742
Furniture, fixtures and other equipment	45,072,487	41,070,598	40,205,098
Construction in process	-	752,459	3,172
	<u>115,736,499</u>	<u>114,226,501</u>	<u>113,374,012</u>
Less: accumulated depreciation	<u>(76,973,626)</u>	<u>(72,908,562)</u>	<u>(65,007,462)</u>
Property and equipment, net	<u>\$ 38,762,873</u>	<u>\$ 41,317,939</u>	<u>\$ 48,366,550</u>

The Company incurred approximately \$8.7 million, \$10.4 million and \$11.7 million of depreciation expense for the years ended December 27, 2022, December 28, 2021 and December 29, 2020, respectively.

**NOTE 4 - INTANGIBLE ASSETS**

Intangible assets consisted of the following:

	<u>2022</u>	<u>2021</u>	<u>2020</u>
Franchise agreements	\$ 4,376,590	\$ 4,376,590	\$ 4,376,590
Less: accumulated amortization	<u>(1,391,810)</u>	<u>(1,230,156)</u>	<u>(1,068,502)</u>
	2,984,780	3,146,434	3,308,088
Favorable leases	-	10,390,237	10,530,680
Less: accumulated amortization	<u>-</u>	<u>(5,747,860)</u>	<u>(5,048,487)</u>
	-	4,642,377	5,482,193
Trade names and trademarks	21,583,182	21,583,182	21,583,182
Liquor licenses	<u>5,043,800</u>	<u>5,043,800</u>	<u>5,043,800</u>
Intangible assets, net	<u>\$ 29,611,762</u>	<u>\$ 34,415,793</u>	<u>\$ 35,417,263</u>

Amortization of franchise agreements is included in depreciation and amortization. The Company amortized approximately \$0.2 million for the years ended December 27, 2022, December 28, 2021 and December 29, 2020.

Amortization expense of favorable leases is included in restaurant expenses for 2020 and 2021. The Company amortized approximately \$0.8 million for the years ended December 28, 2021 and December 29, 2020. Amortization of unfavorable leases is included as a reduction of amortization expense within occupancy expenses. Amortization of unfavorable leases totaled approximately \$1.1 million and \$1.1 million for the years ended December 28, 2021 and December 29, 2020, respectively. In 2022 favorable and unfavorable leases were rolled into the ROU assets in conjunction with the adoption of Topic 842.

On December 14, 2020, the Company finalized the sale of their retail licensing trademark to Truco Holdings LLC for \$78.8 million in cash. The carrying value of the trademark at the time of the sale was \$43.1 million and the Company recorded a gain of \$35.7 million.

The estimated amortization expense for the Company's amortizable intangible assets is as follows:

<u>Fiscal Years</u>	
2023	\$ 164,762
2024	161,654
2025	161,654
2026	161,654
2027	161,654
Thereafter	<u>2,173,402</u>
Total	<u>\$ 2,984,780</u>

#### NOTE 5 - ACCRUED AND OTHER LIABILITIES

Accrued and other liabilities consisted of the following:

	<u>2022</u>	<u>2021</u>	<u>2020</u>
Wages	\$ 1,342,544	\$ 1,367,606	\$ 1,253,504
Bonus	574,636	1,000,607	1,412,887
Payroll taxes	1,347,675	1,355,348	1,008,683
Property taxes	3,246,245	3,476,028	3,570,619
Sales tax	1,333,894	1,213,712	997,257
Self-Insurance and employee contributions	1,330,211	2,679,358	3,516,360
Vacation	100,961	100,961	453,941
Gift cards	1,557,310	1,546,517	1,438,858
Deferred beverage rebate	(90,020)	46,432	57,300
Deferred incentives	82,143	133,333	167,857
Taxes	(471,124)	(255,616)	3,766,782
Advisory fees	73,812	72,994	36,863
Other	1,289,078	1,143,720	924,990
Deferred rent	-	182,604	1,241,196
Total accrued and other liabilities	<u>\$ 11,717,365</u>	<u>\$ 14,063,604</u>	<u>\$ 19,847,097</u>

## NOTE 6 - OTHER LONG-TERM LIABILITIES

Other long-term liabilities consisted of the following:

	2022	2021	2020
Straight-line rent liability	\$ -	\$ 13,193,313	\$ 13,643,588
Lease abandonment	4,571,014	4,745,688	5,638,605
Sublease deposits	56,250	56,250	-
Long-term insurance	947,878	-	-
Deferred gain, sale and leaseback	-	3,842,804	4,189,362
Unfavorable leases, net of accumulated amortization	10,846	6,645,130	7,740,203
Landlord contributions, net of accumulated amortization	-	2,919,073	3,254,871
	<u>\$ 5,585,988</u>	<u>\$ 31,402,258</u>	<u>\$ 34,466,629</u>

In 2020 and 2021 amortization expense of landlord contributions were included as a reduction of rent expense within restaurant expenses. Amortization of landlord contributions totaled approximately \$0.3 million for the year ended December 28, 2021 and \$0.4 million for the year ended December 29, 2020.

## NOTE 7 - DEBT

	2022	2021	2020
Long-term debt	\$ -	\$ -	\$ 10,000,000
Less current portion	-	-	-
Debt discount	-	-	-
Debt issuance cost	-	-	-
	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 10,000,000</u>

The Company entered into a new credit agreement, pledging as collateral substantially all assets, with CrossFirst Bank in September 2022 for a revolving credit facility of \$15 million. The revolving credit facility bears interest at either SOFR plus an applicable margin or at prime plus an applicable margin as defined in the credit agreement. The revolver is anticipated to be used to fund working capital and to fund new locations in the future. The revolving credit facility matures on September 9, 2027. As of December 27, 2022 the Company had no balances outstanding.

### **Debt Extinguishment**

On December 14, 2020, the Company repaid all outstanding debt and accrued interest as part of the sale of its retail licensing trademark. Unamortized debt discount and debt issuance cost was written off as part of the transaction.



### **PPP Loan**

On March 29, 2020, Congress passed, and the President signed the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”). One principal portion of the CARES Act established the Payroll Protection Program (“PPP”), under which the United States Small Business Administration (“SBA”) was empowered to approve loans by insured financial institutions for up to \$10 million. These PPP loans are forgivable to the extent the recipients incur qualified expenses. The CARES Act and the PPP loan documentation authorizes the SBA to conduct an audit of a PPP loan and requires a borrower to provide all requested documentation supporting the Loan application and any application for loan forgiveness, all of which need to be retained for six years. If the SBA subsequently determines that the borrower was ineligible for the PPP loan, the borrower must immediately repay the loan to the creditor.

In April 2020, the Company received a \$10 million PPP loan. The Company elected to account for the loan as long-term debt under guidance of ASC 470 - *Debt*. A PPP loan is forgiven only after the SBA has paid the lender the amount of the PPP loan the SBA has determined is eligible for forgiveness. During the year ended December 29, 2020, the Company incurred qualified expenses and was fully forgiven in June of 2021.

## **NOTE 8 - COMMITMENTS AND CONTINGENCIES**

### **Operating Leases**

The Company leases restaurant facilities, office space and certain equipment under operating leases having terms expiring at various dates through fiscal 2042. The restaurant leases have various renewal clauses at the Company's option and, in some cases, have provisions for contingent rent based upon a percentage of sales in excess of specified levels, as defined in the leases.

The following table summarizes the lease cost and other information for fiscal 2022:

	<u>2022</u>
Operating lease costs	\$ 21,071,799
Short-term lease costs	<u>113,828</u>
Total lease expense	<u>\$ 21,185,627</u>
Supplemental cash flow information Cash paid for operating leases	\$ 21,071,799
Weighted average remaining lease term (years)	
Operating leases	13.28
Weighted average discount rate	
Operating leases	5.98%

Future undiscounted lease payments for the Company's operating lease liabilities are as follows as of December 27, 2022:

2023	\$ 22,386,210
2024	22,104,751
2025	21,620,994
2026	20,750,887
2027	19,941,474
<u>Thereafter</u>	<u>157,044,607</u>
Total future lease payments	263,848,923
<u>Less: imputed interest</u>	<u>(84,527,607)</u>
Present value of lease liabilities	179,321,316
<u>Less: current portion</u>	<u>(12,111,086)</u>
Non-current portion	<u>\$ 167,210,230</u>

Rent expense for the years ended December 27, 2022, December 28, 2021 and December 29, 2020, was approximately \$21.2 million, \$21.4 million and \$25 million, respectively. This amount is included in occupancy expenses in the consolidated statements of operations.

As of December 28, 2021, prior to the adoption of ASC 842, the Company's future minimum lease payments on operating leases were as follows:

2022	\$ 22,204,986
2023	21,524,257
2024	21,063,115
2025	19,719,099
2026	18,148,558
Thereafter	<u>159,336,030</u>
	<u>\$ 261,996,045</u>

### ***Sale-Leasebacks***

As of December 28, 2021 and December 29, 2020, the Company had deferred gains related to sale- leasebacks of approximately \$3.8 million and \$4.2 million, respectively, which are included in other long- term liabilities in the accompanying consolidated balance sheets. During conversion to the ASC 842 lease standard, deferred gains related to sale-leasebacks were rolled into the ROU Asset and are now amortized with the ROU Asset.

### ***Legal Proceedings***

From time to time, the Company is involved in various inquiries, investigations, claims, lawsuits, and other legal proceedings that are incidental to the conduct of our business. These matters typically involve claims from customers, employees or other third parties involved in operational issues common to the retail, restaurant and entertainment industries. Such matters typically represent actions with respect to contracts, intellectual property, taxation, employment, employee benefits, personal injuries and other matters. A

number of such claims may exist at any given time and there are currently a number of claims and legal proceedings pending against us.

In the opinion of our management, after consultation with legal counsel, the amount of ultimate liability with respect to claims or proceedings currently pending against us is not expected to have a material adverse effect on our financial condition, results of operations or cash flows.

#### **NOTE 9 - IMPAIRMENTS**

Impairment consisted of the following:

	<u>2022</u>	<u>2021</u>	<u>2020</u>
Restaurant impairment charges	\$ 3,438,086	\$ 599,213	\$ 310,266
Total impairment	<u>\$ 3,438,086</u>	<u>\$ 599,213</u>	<u>\$ 310,266</u>

We recorded impairment charges for the excess of the carrying amount of property, equipment, favorable lease commitments, and franchise rights over the fair value, related to underperforming restaurants that are continuing to operate. Additionally, we recorded impairment of liquor licenses for the excess of the carrying amount of certain transferable liquor licenses over their fair value.

#### **NOTE 10 - EMPLOYEE BENEFIT PLAN**

The Company sponsors a qualified defined contribution retirement plan covering all employees who have attained the age of 21 and have completed twelve months of service. The plan allows eligible employees to contribute, subject to Internal Revenue Service limitations on total annual contributions, up to 90% of their base compensation and 100% of their eligible bonuses, as defined in the plan, to various investment funds. The Company provides a matching contribution at a rate of 100% of the first 3% an employee contributes and 50% of the next 2% the employee contributes with immediate vesting. The Company contributed approximately \$0.5 million, \$0.5 million and \$0.4 million for the years ended December 27, 2022, December 28, 2021 and December 29, 2020.

#### **NOTE 11 - MEMBERS' EQUITY**

Members' equity is comprised of capital contributed by members of Partners. No member of Partners is obligated personally for any debt, obligation or liability of the Company or of any other member.

#### **NOTE 12 - UNIT-BASED COMPENSATION**

Certain members of the Company's management and non-employee board of directors were awarded options to purchase Class B membership interests in Partners in accordance with the Amended and Restated Limited Partnership Agreement of Border Partners LP (the "Partnership Agreement"). Typically, units fully vest after recipients have worked for or otherwise been associated with OTB Acquisition LLC and its subsidiaries subsequent to the grant date in a full-time capacity for a period of three to four years.

The Company recognizes compensation costs associated with the Class B units based on their fair market value on the date of grant. All unvested units outstanding as of December 30, 2018 were either cancelled or forfeited and the Company issued new Class B units during the year ended December 29, 2020.

Any unvested incentive units are forfeited upon termination. Vested incentive units are subject to repurchase at the discretion of the Company, as specified in the option agreement. Upon the occurrence of a "Liquidity Event," as defined in the option agreement, all unvested options become fully vested.

The weighted-average strike price of the incentive units granted is \$10,574 per unit for the year ended December 27, 2022.

The incentive units vest on an annual basis as stated in the option agreement and are exercisable at a price between \$9,861 and \$12,192 per unit. The Company recognized approximately \$.09 million, \$0.2 million and \$(0.1) million in equity compensation expense to employees for the years ended December 27, 2022, December 28, 2021 and December 29, 2020, respectively.

In May 2021, the Company created an unfunded bonus plan exempt from ERISA and an unfunded bonus plan for purposes of the Code ("the Sale Bonus Plan"). The Sale Bonus Plan provides certain key employees and a non-employee board member an opportunity to receive additional compensation in connection with a Change in Control prior to May 2026 above a baseline value to incentivize them to maximize the net consideration of the Company. The Sale Bonus Plan payments may be paid at the closing of the Change in Control or if not practicable at the closing, then will be paid as soon as practicable within 70 days of the Change in Control.

#### **NOTE 13 - RELATED PARTY TRANSACTIONS**

Argonne Capital Group, a related entity, provides the Company with business, general administration and financial advice. Individuals are also compensated for their services as board members. In consideration of these services, the Company incurred fees of approximately \$2.7 million, \$2.8 million and \$2.8 million for the years ended December 27, 2022, December 28, 2021 and December 29, 2020, respectively.

#### **NOTE 14 - SUBSEQUENT EVENTS**

The Company has evaluated subsequent events through April 12, 2023, the date the financial statements were available to be issued.

The Company is not aware of any subsequent events which would require recognition or disclosure in the consolidated financial statements.



**EXHIBIT H**

**STATE SPECIFIC ADDENDA AND AMENDMENTS**

**ADDENDUM TO THE OTB ACQUISITION LLC DISCLOSURE DOCUMENT AND  
FRANCHISE AGREEMENT REQUIRED BY THE STATE OF CALIFORNIA**

Notwithstanding anything to the contrary set forth in the Disclosure Document or the Franchise Agreement, the following provisions shall supersede and apply to all franchises offered and sold in the State of California:

THESE FRANCHISES HAVE BEEN REGISTERED UNDER THE FRANCHISE INVESTMENT LAW OF THE STATE OF CALIFORNIA. SUCH REGISTRATION DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION OR ENDORSEMENT BY THE COMMISSIONER OF BUSINESS OVERSIGHT NOR A FINDING BY THE COMMISSIONER THAT THE INFORMATION PROVIDED HEREIN IS TRUE, COMPLETE AND NOT MISLEADING.

SECTION 31125 OF THE CALIFORNIA CORPORATIONS CODE REQUIRES US TO GIVE YOU A DISCLOSURE DOCUMENT APPROVED BY THE COMMISSIONER BEFORE WE ASK YOU TO CONSIDER A MATERIAL MODIFICATION OF YOUR FRANCHISE AGREEMENT. THE CALIFORNIA FRANCHISE INVESTMENT LAW REQUIRES THAT A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE FRANCHISE RESTAURANT BE DELIVERED TOGETHER WITH THE FRANCHISE DISCLOSURE DOCUMENT.

Item 3. Shall be amended to include the following “Neither Franchisor nor any person identified in Item 2 of the Franchise Disclosure Document is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities Exchange Act of 1934, 15 U.S.C.A 78a et. seq., suspending or expelling the persons from membership in that association or exchange.”

YOU MUST SIGN A GENERAL RELEASE OF CLAIMS IF YOU TRANSFER YOUR FRANCHISE. CALIFORNIA CORPORATIONS CODE §31512 VOIDS A WAIVER BY THE PERSON ACQUIRING A FRANCHISE OF CERTAIN RIGHTS UNDER THE FRANCHISE INVESTMENT LAW (CALIFORNIA CORPORATIONS CODE §§31000 THROUGH 31516). BUSINESS AND PROFESSIONS CODE §20010 VOIDS A WAIVER OF CERTAIN RIGHTS UNDER THE FRANCHISE RELATIONS ACT (BUSINESS AND PROFESSIONS CODE §§20000 THROUGH 20043).

Item 17 shall be amended to include the following:

1. California Business and Professions Code Sections 20000 through 20043 provides rights to the franchisee concerning termination and non-renewal of a franchise. If the Franchise Agreement contains a provision that is inconsistent with the law, the law will control.

2. The Franchise Agreement provides for termination upon bankruptcy. This provision may not be enforceable under federal bankruptcy law (11 U.S.C.A. Sec. 101 et. seq.).

3. The Franchise Agreement contains a covenant not to compete that extends beyond the termination of the franchise relationship; this provision may not be enforceable under California law.

4. The Franchise Agreement contains a liquidated damages clause. Under California Civil Code Section 1671, certain liquidated damages clauses are unenforceable.

5. The Franchise Agreement requires application of the laws of the State of Texas. This provision may not be enforceable under California law.

**Franchisee**

**OTB Acquisition LLC**

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**ADDENDUM TO THE OTB ACQUISITION LLC DISCLOSURE DOCUMENT AND  
FRANCHISE AGREEMENT REQUIRED BY THE STATE OF HAWAII**

Notwithstanding anything to the contrary set forth in the Disclosure Document or the Franchise Agreement, the following provisions shall supersede and apply to all franchises offered and sold in the State of Hawaii:

**These franchises will be filed under the Franchise Investment Law of the State of Hawaii. Filing does not constitute approval, recommendation, or endorsement by the Director of Commerce and Consumer Affairs or a finding by the Director of Commerce and Consumer Affairs that the information provided herein is true, complete, and not misleading.**

**The Franchise Investment Law makes it unlawful to offer or sell any franchise in this state without first providing to the prospective franchisee, or sub-franchisor, at least seven days prior to the execution by the prospective franchisee of any binding franchise or other agreement, or at least seven days prior to the payment of any consideration by the franchisee, or sub-franchisor, whichever, occurs first, a copy of the Disclosure Document, together with a copy of all proposed agreements relating to the sale of the franchise.**

**The Disclosure Document contains a summary of only certain material provisions of the Franchise Agreement. The contract or agreement should be referred to for a statement of rights, conditions, restrictions, and obligations of both the franchisor and the franchisee.**

**A Federal Trade Commission rule makes it unlawful to offer or sell any franchise without (1) providing this Disclosure Document to the prospective Franchisee or related agreement; or (2) fourteen (14) calendar days before any payment. The prospective franchisee must also receive a Franchise Agreement containing all material terms at least seven calendar days prior to signing of the Franchise Agreement.**

**If this Disclosure Document is not delivered on time, or if it contains a false, incomplete, inaccurate, or misleading statement, a violation of federal and state law may have occurred and should be reported to the Federal Trade Commission, Washington D.C. 20580 and to Hawaii Department of Commerce and Consumer Affairs which administers and enforces the Hawaii Franchise Disclosure Act.**

**Registered agent in the state authorized to receive service of process:**

Department of Commerce and Consumer Affairs  
Business Registration Division  
Commissioner of Securities  
Securities Compliance Branch  
335 Merchant Street, Room 203  
Honolulu, Hawaii 96813

**The following paragraph is added to Item 17:**

1. Section 482E-6(3) of the Hawaii Revised Statutes provides that upon termination or refusal to renew the Franchise Agreement, OTB Acquisition LLC is obligated to compensate you for the fair market value, at the time of the termination or expiration of the Franchise Agreement, of your inventory, supplies, equipment and furnishings purchased from OTB Acquisition LLC or a supplier designated by OTB Acquisition LLC; provided that personalized materials which have no value to us need not be compensated for. If we refuse to renew a Franchise Agreement for the purpose of converting your business to one owned and operated by OTB Acquisition, LLC in addition to the remedies provided above, we shall compensate you for the loss of goodwill. OTB Acquisition LLC may deduct from such compensation reasonable costs incurred in removing, transporting, and disposing of your inventory, supplies, equipment, and furnishings pursuant to this requirement, and may offset from such compensation any monies due to OTB Acquisition LLC.

2. The following list reflects the status of franchise registration of the Franchisor in the states which require registration:

- a. The states in which this proposed registration is effective: None.
- b. The states in which this proposed registration is or will be shortly filed: California, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington, Wisconsin.
- c. The states, if any, which have refused, by order or otherwise, to register these franchises: None.
- d. The states, if any, which have revoked or suspended the right to offer these franchises: None.
- e. The states, if any, in which the proposed registration of these franchisees has been withdrawn by the Franchisor: None.

3. Section 482E-3(a) of the Hawaii Franchise Investment Law requires the Franchisor to give you a copy of the Franchise Disclosure Document at least seven (7) calendar days prior to signing the franchise agreement. The Receipt is amended to reflect a seven (7) calendar-day waiting period.

**Franchisee**

**OTB Acquisition LLC**

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**ADDENDUM TO THE OTB ACQUISITION LLC DISCLOSURE DOCUMENT AND  
FRANCHISE AGREEMENT REQUIRED BY THE STATE OF ILLINOIS**

Notwithstanding anything to the contrary set forth in the Disclosure Document or the Franchise Agreement, the following provisions shall supersede and apply to all franchises offered and sold in the State of Illinois:

1. Items 17.f and 17.i are supplemented with the following language:

The conditions under which your Franchise Agreement may be terminated and your rights upon non-renewal may be affected by Illinois Law, 815 ILCS 705/19 and 705/20.

2. Items 17.f, 17.g, 17.t, 17.v, and 17.w are supplemented with the following language:

This summary applies to both the Franchise Agreement and the Area Development Agreement.

3. The Summary in Item 17.v is deleted and replaced by the following Summary:

Litigation in Illinois.

4. The Summary in Item 17.w is deleted and replaced by the following Summary:

Illinois law applies.

5. Section 41 of the Illinois Franchise Disclosure Act states that “any condition, stipulation, or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of this Act is void.”

**Franchisee**

**OTB Acquisition LLC**

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**ADDENDUM TO THE OTB ACQUISITION LLC DISCLOSURE DOCUMENT AND  
FRANCHISE AGREEMENT REQUIRED BY THE STATE OF INDIANA**

Notwithstanding anything to the contrary set forth in the Disclosure Document or the Franchise Agreement, the following provisions shall supersede and apply to all franchises offered and sold in the State of Indiana:

1. Item 17.c may be modified by Indiana Code § 23-2-2.7.
2. The Summary in Item 17(r) is deleted and replaced with the following Summary:

For one year after the termination of your Franchise Agreement, you may not establish a similar type of business within your exclusive territory.

3. Item 17.t is supplemented with the following language:

However, you do not waive any rights under the Indiana Statutes with regard to prior representations made by OTB Acquisition LLC in the Disclosure Document.

4. Items 17.v and 17.w are supplemented with the following language:

Except that under Indiana law, you may have the right to bring an action in Indiana and have Indiana law apply.

5. The Indiana Deceptive Franchise Practices Act, IC 23-2-2.7-1 (10) prohibits the limitation of litigation brought for breach of a Franchise Agreement including any limitation on the forum chosen. Any provision in the Franchise Agreement, specifying a forum contrary to Indiana law, shall not apply to any claims brought under the Indiana Deceptive Franchise Practices Act and/or the Indiana Franchise Act, Ind. Code ANN.§§ 1-51 (1994).

6. The Indiana Deceptive Franchise Practices Act, IC 23-2-2.7-1 (10) prohibits the limitation of litigation brought for breach of a Franchise Agreement. Any provision in the Franchise Agreement requiring the application of another state's law shall not apply to any claims brought under the Indiana Deceptive Franchise Practices Act and/or the Indiana Franchise Act, Ind. Code ANN.§§ 1- 51 (1994).

7. Indiana Code § 23-2-2.5-9 (2) requires a franchisor to give you a copy of the Franchise Disclosure Document at the earlier of: (i) 10 days prior to signing the franchise agreement; or (ii) 10 days prior to franchisor's receipt of any consideration. The Receipt is amended to reflect the 10 day waiting period.

**Franchisee**

**OTB Acquisition LLC**

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**ADDENDUM TO THE OTB ACQUISITION LLC DISCLOSURE DOCUMENT AND  
FRANCHISE AGREEMENT REQUIRED BY THE STATE OF MARYLAND**

Notwithstanding anything to the contrary set forth in the Disclosure Document or the Franchise Agreement, the following provisions shall supersede and apply to all franchises offered and sold in the State of Maryland:

Pursuant to the Maryland Franchise Registration and Disclosure Law, COMAR 02.02.08.16L, Item 17 of the Franchise Disclosure Document and Sections II, XII, XIV of the Franchise Agreement, are amended to include the following “any general release required as a condition of sale and/or assignment/transfer shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law.”

Section II (Term and Renewal) of the Franchise Agreement is amended to include “Pursuant to COMAR 02.02.0216L, the general release required as a condition of renewal shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law.”

Item 17 of the Franchise Disclosure Document is amended to add the following “The provision in the Franchise Agreement that provides for termination upon bankruptcy of the franchisee may not be enforceable under federal bankruptcy law (11 U.S.C Section 1010, et. seq.).”

If you are a resident of Maryland or your Restaurant will be in Maryland, You will not pay your initial franchise fee or any other money to OTB until your business is open and we have completed all of our material pre-opening obligations to you. Item 5 of the Franchise Disclosure Document and Section VII of the Franchise Agreement are amended accordingly.

Please review Item 11 for our pre-opening obligations. You must have your bank verify that you have sufficient capital and/or funds available at the time we sign a Franchise Agreement. The only condition on your obligation to pay the Franchise Fee is that OTB must complete all of our material pre-opening obligations to you.

Item 17 of the Franchise Disclosure Document and Section XVI of the Franchise Agreement are amended to include the following “any claims arising under the Maryland Franchise Registration and Disclosure Law must be brought within 3 years after the grant of the franchise.”

Section XVI of the Franchise Agreement is amended to provide as follows “Any lawsuit permitted under this Article shall be brought in the federal or state courts located in the State of Maryland.” Item 17 is hereby amended to incorporate this provision in the “summary” column of Section V.

The Franchise Agreement and Franchise Disclosure Document shall be deemed amended so that no release, assignment, novation, waiver, or estoppel is required if it would violate the Maryland Franchise Registration and Disclosure Law. Nothing in the franchise agreement, including any acknowledgments or representations, shall be deemed a release or waiver of any right or obligation under the Maryland Franchise Registration and Disclosure Law.

**Franchisee**

**OTB Acquisition LLC**

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**ADDENDUM TO THE OTB ACQUISITION LLC DISCLOSURE DOCUMENT AND  
FRANCHISE AGREEMENT REQUIRED BY THE STATE OF MINNESOTA**

Notwithstanding anything to the contrary set forth in the Disclosure Document or the Franchise Agreement, the following provisions shall supersede and apply to all franchises offered and sold in the State of Minnesota:

Minnesota Statute 80C.21 and Minnesota Rule 2860.4400(J) prohibit the Franchiser from requiring litigation to be conducted outside Minnesota, requiring waiver of a 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 (1) any of the Franchisee's rights as provided for in Minnesota Statute 80C or (2) Franchisee's rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction.

With respect to franchises governed by Minnesota law, the Franchiser will comply with Minnesota Statute 80C.14 Subd. 3-5, which requires (except in certain specified cases) that a Franchisee be given 90 days' notice of termination (with 60 days to cure) and 180 days' notice for non-renewal of the Franchise Agreement and that consent to the transfer of the franchise will not be unreasonably withheld.

Minnesota considers it unfair to not protect the Franchisee's right to use the trademarks. Refer to Minnesota Statute 80C.12 Subd. 1(G). The Franchiser will protect the Franchisee's rights to use the trademarks, service marks, trade names, logotypes, or other commercial symbols or indemnify the Franchisee from any loss, costs, or expenses arising out of any claim, suit, or demand regarding the use of the name.

Minnesota Rules 2860.4400(D) prohibits a Franchisor from requiring a Franchisee to assent to a general release, assignment, novation, or waiver that would relieve any person from liability imposed by Minnesota Statutes, Sections 80C.01 to 80C.22, provided that the foregoing shall not bar the voluntary settlement of disputes.

IN WITNESS WHEREOF, the Parties have executed this Amendment to the Franchise Agreement on the same day that the Franchise Agreement was executed.

**Franchisee**

**OTB Acquisition LLC**

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**ADDENDUM TO THE OTB ACQUISITION LLC DISCLOSURE DOCUMENT AND  
FRANCHISE AGREEMENT REQUIRED BY THE STATE OF NEW YORK**

Notwithstanding anything to the contrary set forth in the Disclosure Document or the Franchise Agreement, the following provisions shall supersede and apply to all franchises offered and sold in the State of New York:

1. The following information is added to the cover page of the Franchise Disclosure Document:

**INFORMATION COMPARING FRANCHISORS IS AVAILABLE. CALL THE STATE ADMINISTRATORS LISTED IN EXHIBIT L OR YOUR PUBLIC LIBRARY FOR SERVICES OR INFORMATION. REGISTRATION OF THIS FRANCHISE BY NEW YORK STATE DOES NOT MEAN THAT NEW YORK STATE RECOMMENDS IT OR HAS VERIFIED THE INFORMATION IN THIS FRANCHISE DISCLOSURE DOCUMENT. IF YOU LEARN THAT ANYTHING IN THIS FRANCHISE DISCLOSURE DOCUMENT IS UNTRUE, CONTACT THE FEDERAL TRADE COMMISSION AND THE APPROPRIATE STATE OR PROVINCIAL AUTHORITY. THE FRANCHISOR MAY, IF IT CHOOSES, NEGOTIATE WITH YOU ABOUT ITEMS COVERED IN THE FRANCHISE DISCLOSURE DOCUMENT. HOWEVER, THE FRANCHISOR CANNOT USE THE NEGOTIATING PROCESS TO PREVAIL UPON A PROSPECTIVE FRANCHISEE TO ACCEPT TERMS WHICH ARE LESS FAVORABLE THAN THOSE SET FORTH IN THIS FRANCHISE DISCLOSURE DOCUMENT.**

2. The following is to be added at the end of Item 3:

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

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

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

C. No such party has been convicted of a felony or pleaded nolo contendere to a felony charge or, within the 10-year period immediately preceding the application for registration, has been convicted of or pleaded nolo contendere to a misdemeanor charge or has been the subject of a civil action alleging: violation of a franchise, antifraud, or securities law; fraud; embezzlement; fraudulent conversion or misappropriation of property; or unfair or deceptive practices or comparable allegations.

D. No such party is subject to a currently effective injunctive or restrictive order or decree

relating to the franchise, or under a Federal, State, or Canadian franchise, securities, antitrust, trade regulation or trade practice law, resulting from a concluded or pending action or proceeding brought by a public agency; or is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities and Exchange Act of 1934, suspending or expelling such person from membership in such association or exchange; or is subject to a currently effective injunctive or restrictive order relating to any other business activity as a result of an action brought by a public agency or department, including, without limitation, actions affecting a license as a real estate broker or sales agent.

3. The following is added to the end of the “Summary” sections of Item 17(c), titled **“Requirements for franchisee to renew or extend,”** and Item 17(m), entitled **“Conditions for franchisor approval of transfer”**:

However, to the extent required by applicable law, all rights you enjoy and any causes of action arising in your favor from the provisions of Article 33 of the General Business Law of the State of New York and the regulations issued thereunder shall remain in force; it being the intent of this proviso that the non-waiver provisions of General Business Law Sections 687(4) and 687(5) be satisfied.

4. The following language replaces the “Summary” section of Item 17(d), titled **“Termination by franchisee”**:

You may terminate the agreement on any grounds available by law.

5. The following is added to the end of the “Summary” sections of Item 17(v), titled **“Choice of forum”**, and Item 17(w), titled **“Choice of law”**:

The foregoing choice of law should not be considered a waiver of any right conferred upon the franchisor or upon the franchisee by Article 33 of the General Business Law of the State of New York.

**Franchisee**

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**OTB Acquisition LLC**

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## **ADDENDUM TO THE OTB ACQUISITION LLC DISCLOSURE DOCUMENT AND FRANCHISE AGREEMENT REQUIRED BY THE STATE OF NORTH DAKOTA**

Notwithstanding anything to the contrary set forth in the Disclosure Document or the Franchise Agreement, the following provisions shall supersede and apply to all franchises offered and sold in the State of North Dakota:

THE SECURITIES COMMISSIONER OF THE STATE OF NORTH DAKOTA HAS HELD THE FOLLOWING TO BE UNFAIR, UNJUST, OR INEQUITABLE TO NORTH DAKOTA FRANCHISEES, PURSUANT TO SECTION 51-19-09 (I) OF N.D.C.C.:

1. Restrictive Covenants: Franchise disclosure documents that disclose the existence of covenants restricting competition contrary to NDCC Section 9-08-06, without further disclosing that such covenants will be subject to the statute.
2. Situs of Arbitration Proceedings: Franchise agreements providing that the parties must agree to the arbitration of disputes at a location that is remote from the site of the franchisee's business.
3. Restrictions on Forum: Requiring North Dakota franchisees to consent to the jurisdiction of courts outside of North Dakota.
4. Liquidated Damages and Termination Penalties: Requiring North Dakota franchisees to consent to liquidated damages or termination penalties.
5. Applicable Laws: Franchise agreements that specify that they are to be governed by the laws of a state other than North Dakota.
6. Waiver of Trial by Jury: Requiring North Dakota Franchises to consent to the waiver of a trial by jury.
7. Waiver of Exemplary & Punitive Damages: Requiring North Dakota Franchisees to consent to a waiver of exemplary and punitive damage.
8. General Release: Franchise agreements that require the franchisee to sign a general release upon renewal of the franchise agreement.
9. Limitation of Claims: Franchise agreements that require the franchisee to consent to a limitation of claims. The statute of limitations under North Dakota law applies.
10. Enforcement of Agreement: Franchise agreements that require the franchisee to pay all costs and expenses incurred by the franchisor in enforcing the agreement. The prevailing party in any enforcement action is entitled to recover all costs and expenses including attorney's fees.

For North Dakota Franchisees, Item 17 of Disclosure Document and the Franchise Agreement are amended in accordance with the requirements of the North Dakota Century Code as set forth in this Addendum.

**Franchisee**

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**OTB Acquisition LLC**

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**ADDENDUM TO THE OTB ACQUISITION LLC DISCLOSURE DOCUMENT AND  
FRANCHISE AGREEMENT REQUIRED BY THE STATE OF RHODE ISLAND**

Notwithstanding anything to the contrary set forth in the Disclosure Document or the Franchise Agreement, the following provisions shall supersede and apply to all franchises offered and sold in the State of Rhode Island:

The following language is added to the end of the “Summary” sections of Item 17(v) of the Franchise Disclosure Document, entitled “Choice of forum,” and Item 17(w) of the Franchise Disclosure Document, entitled “Choice of law”:

Section 19-28.1-14 of the Rhode Island Franchise Investment Act provides that “A provision in a franchise agreement restricting jurisdiction or venue to a forum outside this state or requiring the application of the laws of another state is void with respect to a claim otherwise enforceable under this Act.”

**Franchisee**

**OTB Acquisition LLC**

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**ADDENDUM TO THE OTB ACQUISITION LLC DISCLOSURE DOCUMENT AND  
FRANCHISE AGREEMENT REQUIRED BY THE STATE OF VIRGINIA**

Notwithstanding anything to the contrary set forth in the Disclosure Document or the Franchise Agreement, the following provisions shall supersede and apply to all franchises offered and sold in the State of Virginia:

The following language is added to the end of the “Summary” section of Item 17(e) of the Disclosure Document, entitled “Termination by franchisor without cause”:

Pursuant to Section 13.1-564 of the Virginia Retail Franchising Act, it is unlawful for a franchisor to cancel a franchise without reasonable cause. If any ground for default or termination stated in the Franchise Agreement does not constitute “reasonable cause,” as that term may be defined in the Virginia Retail Franchising Act or the laws of Virginia, that provision may not be enforceable.

**Franchisee**

**OTB Acquisition LLC**

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## **ADDENDUM TO THE OTB ACQUISITION LLC DISCLOSURE DOCUMENT AND FRANCHISE AGREEMENT REQUIRED BY THE STATE OF WASHINGTON**

Notwithstanding anything to the contrary set forth in the Disclosure Document or the Franchise Agreement, the following provisions shall supersede and apply to all franchises offered and sold in the State of Washington:

In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW will prevail.

RCW 19.100.180 may supersede the Franchise Agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise. There may also be court decisions which may supersede the Franchise Agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise.

In any arbitration or mediation involving a franchise purchased in Washington, the arbitration or mediation site will be either in the state of Washington, or in a place mutually agreed upon at the time of the arbitration or mediation, or as determined by the arbitrator or mediator at the time of arbitration or mediation. In addition, if litigation is not precluded by the Franchise Agreement, a franchisee may bring an action or proceeding arising out of or in connection with the sale of franchises, or a violation of the Washington Franchise Investment Protection Act, in Washington.

A release or waiver of rights executed by a franchisee may not include rights under the Washington Franchise Investment Protection Act or any rule or order thereunder except when executed pursuant to a negotiated settlement after the agreement is in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act, or rights or remedies under the Act such as a right to a jury trial, may not be enforceable.

Transfer fees are collectable to the extent that they reflect the franchisor's reasonable estimated or actual costs in effecting a transfer.

Pursuant to RCW 49.62.020, a noncompetition covenant is void and unenforceable against an employee, including an employee of a franchisee, unless the employee's earnings from the party seeking enforcement, when annualized, exceed \$100,000 per year (an amount that will be adjusted annually for inflation). In addition, a noncompetition covenant is void and unenforceable against an independent contractor of a franchisee under RCW 49.62.030 unless the independent contractor's earnings from the party seeking enforcement, when annualized, exceed \$250,000 per year (an amount that will be adjusted annually for inflation). As a result, any provisions contained in the Franchise Agreement or elsewhere that conflict with these limitations are void and unenforceable in Washington.

RCW 49.62.060 prohibits a franchisor from restricting, restraining, or prohibiting a franchisee from (i) soliciting or hiring any employee of a franchisee of the same franchisor or (ii)

soliciting or hiring any employee of the franchisor. As a result, any such provisions contained in the Franchise Agreement or elsewhere are void and unenforceable in Washington.

The undersigned does hereby acknowledge receipt of this addendum.

**Franchisee**

**OTB Acquisition LLC**

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**EXHIBIT I**

**FRANCHISE ACKNOWLEDGMENT QUESTIONNAIRE**

**FRANCHISE ACKNOWLEDGEMENT QUESTIONNAIRE**

As you know, OTB Acquisition LLC (the “**Franchisor**”) and you are preparing to enter into a Franchise Agreement for the establishment and operation of a franchised On The Border Mexican Grill & Cantina® (the “**Restaurant**”). The purpose of this Questionnaire is to determine whether any statements or 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 statements carefully and provide honest and complete responses to each question and write your initials in the space provided next to each question.

1. The following dates and information are true and correct:

a. \_\_\_\_\_, The date of my first face-to-face meeting with any  
202\_ Initials \_\_\_\_\_ person to discuss the possible purchase of a  
franchise for an On The Border Restaurant  
business.

b. \_\_\_\_\_, The date on which I received the Franchisor’s  
202\_ Initials \_\_\_\_\_ Franchise Disclosure Document (“FDD”).

c. \_\_\_\_\_, The date when I received a fully completed copy  
202\_ Initials \_\_\_\_\_ (other than signatures) of the Franchise Agreement  
and Addenda (if any), Area Development  
Agreement, and all other documents I later signed.

d. \_\_\_\_\_, The date on which I signed the Franchise  
202\_ Initials \_\_\_\_\_ Agreement.

2. Have you received and personally reviewed the Franchise Agreement, Area Development Agreement, and each Addendum, exhibit, schedule, and related agreement attached to them?

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

3. Do you understand all of the information contained in the Franchise Agreement, Area Development Agreement, each Addendum, exhibit, schedule, and related agreement provided to you?

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

If no, what parts of the Franchise Agreement, Area Development Agreement, Addendum, exhibit, schedule, and/or related agreement do you not understand? (Attach additional pages, as needed.)

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



4. Do you understand that the Franchise Agreement and Development Agreement contain a number of provisions that may affect your legal rights, including required mediation, designated locations or states for any judicial proceedings, a waiver of a jury trial, a waiver of punitive or exemplary damages, limitations on when claims may be filed, and other waivers and limitations?

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

5. Have you received and personally reviewed the FDD that was provided to you?

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

6. Did you sign a receipt for the FDD indicating the date you received it?

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

7. Do you understand all of the information contained in the FDD and any state-specific Addendum to the FDD?

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

If No, what parts of the FDD and/or Addendum do you not understand? (Attach additional pages, as needed.)

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8. Do you understand that no agreement or addendum is effective until it is also signed and dated by the Franchisor?

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

9. Do you understand that there are no promises, representations (other than in the franchise disclosure document), agreements, "side deals," or other arrangements, written or oral, that are not in the Franchise Agreement?

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

10. Have you discussed with an attorney, accountant, or other professional advisor the benefits and risks of establishing and operating a Restaurant as a franchised business?

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

(a) If No, do you wish to have more time to do so?

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

(b) Do you understand the risks of establishing and operating a Restaurant as a franchised business?

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

11. Do you understand that the success or failure of your franchised Restaurant will depend in large part upon your skills, abilities and efforts, competition from other businesses, interest rates, inflation, labor and supply costs, governmental regulations, lease terms and other economic and business factors?
- Yes\_\_\_\_\_ No\_\_\_\_\_
12. Has anyone speaking on the Franchisor's behalf made any statement or promise to you concerning the revenues, profits, or operating costs of an "On The Border" Restaurant operated by the Franchisor or its franchisees that is different from the information contained in the FDD?
- Yes\_\_\_\_\_ No\_\_\_\_\_
13. Has anyone speaking on the Franchisor's behalf made any statement or promise to you about the amount of money you may earn in operating the Restaurant that is different from the information contained in the FDD?
- Yes\_\_\_\_\_ No\_\_\_\_\_
14. Has anyone speaking on the Franchisor's behalf made any statement or promise concerning the total amount of revenue your Restaurant will or may generate that is different from the information contained in the FDD?
- Yes\_\_\_\_\_ No\_\_\_\_\_
15. Has anyone speaking on the Franchisor's behalf made any statement or promise regarding the costs you may incur in operating your Restaurant that is different from the information contained in the FDD?
- Yes\_\_\_\_\_ No\_\_\_\_\_
16. Has anyone speaking on the Franchisor's behalf made any statement or promise concerning the likelihood of success that you should or might expect to achieve from operating a Restaurant as a franchised business?
- Yes\_\_\_\_\_ No\_\_\_\_\_
17. Has anyone speaking on the Franchisor's behalf made any statement or promise, or made an agreement with you, concerning how much service and assistance the Franchisor will provide to you (for example, concerning advertising, marketing, training, and support) that is different from the information contained in the FDD?
- Yes\_\_\_\_\_ No\_\_\_\_\_
18. Do you understand that if the Franchisor provides site selection assistance, guidance, or recommendations, that any recommendations, suggestions, or approvals of a proposed site are not a warranty, guarantee or representation that the site will achieve any level or amount of sales, revenue, or profit as an On The Border Restaurant location?
- Yes\_\_\_\_\_ No\_\_\_\_\_

19. Have you entered into any binding agreement with the Franchisor concerning the purchase of this franchise before today?

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

20. Do you acknowledge and represent to us that (a) you or the entity that you form to be a franchisee will be the employer of all of your employees and will have sole discretion and authority to hire, fire, discipline, compensate and schedule working hours for, all of your employees; and (b) we and our affiliates will have no control, or right to control, any of the employment actions or decisions in your business? We recommend that you retain employment law counsel to advise you with your employment issues and questions.

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

21. Have you paid any money to the Franchisor concerning the purchase of this franchise before today?

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

22. Do you understand that the territorial rights you have been granted are subject to limitations and exceptions?

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

23. Do you understand that the Franchise Agreement and Area Development Agreement contain the entire agreement between you and the Franchisor concerning the franchise and development rights for the Restaurant, meaning that any prior oral or written statements not set out in the Franchise Agreement and Area Development Agreement will not be binding?

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

24. If you have answered “Yes” to any of questions 10–17, please provide a full explanation of each “yes” answer in the following blank lines. (Attach additional pages, as needed, and refer to them below.) If you have answered “no” to each of questions 10–17, then please leave the following lines blank.

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25. I signed the Franchise Agreement, Area Development Agreement, and Addenda (if any) on \_\_\_\_\_, 202\_\_, and acknowledge that no Agreement or Addendum is effective until signed and dated by the Franchisor.

26. During my negotiations and evaluations leading up to my decision to buy an On The Border franchise, I communicated with the following individuals from On The Border or its affiliates, or independent brokers:

	<u>Name</u>	<u>Address</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____

[Insert additional names and addresses below if needed]

**YOU UNDERSTAND THAT YOUR ANSWERS ARE IMPORTANT TO US AND THAT WE WILL RELY ON THEM. BY SIGNING THIS QUESTIONNAIRE, YOU ARE REPRESENTING THAT YOU HAVE CONSIDERED EACH QUESTION CAREFULLY AND RESPONDED TRUTHFULLY TO THE ABOVE QUESTIONS.**

For Franchise Applicant(s) in Maryland

All representations requiring franchise applicants to consent to a release, estoppel, or waiver of liability are not intended to, nor shall they act as, a release, estoppel, or waiver of any liability incurred under the Maryland Franchise Registration and Disclosure Law.

FRANCHISE APPLICANT

\_\_\_\_\_  
Signed

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

\_\_\_\_\_  
Date

**EXHIBIT J**

**[INTENTIONALLY BLANK]**



**EXHIBIT K**

**CONDITIONAL ASSIGNMENT OF CONTACT INFORMATION**

## **CONDITIONAL ASSIGNMENT OF FRANCHISEE'S CONTACT INFORMATION**

This Conditional Assignment of Franchisee's Contact Information (the "Assignment") between OTB Acquisition LLC, a Delaware limited liability company, having its principal place of business at 2201 West Royal Lane, Suite 170, Irving, Texas 75063 ("OTB") and [INSERT FRANCHISEE NAME], a [entity type] ("Franchisee") with its principal place of business at [INSERT ADDRESS] is hereby effective as of [INSERT FRANCHISE DATE].

### **RECITALS**

WHEREAS, OTB is engaged in the business of promoting, selling, and operating the establishment of restaurants under the tradename "On The Border Mexican Grill & Cantina®" using OTB proprietary methods, policies, procedures, systems, specifications, and standards, as amended from time to time in OTB's sole and absolute discretion, including those set forth in the OTB Operating Manual (the "System");

WHEREAS, Franchisee wishes to purchase the rights to operate an On The Border Mexican Grill & Cantina® franchise pursuant to the terms and conditions of a written franchise agreement entered by and between OTB and Franchisee on [INSERT DATE] (the "Franchise Agreement") for the location at [INSERT LOCATION] (the "Restaurant");

WHEREAS, Franchisee acknowledges and agrees that an important component of the Restaurant is the uniform and continuous operation of all Restaurants with minimal to no interruption, including the business and goodwill associated with the Restaurant;

WHEREAS, Franchisee acknowledges and agrees that OTB's control of all directory listings, telephone numbers, internet and web site addresses, and mail delivery addresses ("Contact Information") of OTB franchises, including at the Restaurant, is integral to OTB's ability to protect the OTB franchise system, its goodwill, and its uniform and continuous operation, including the goodwill associated with the Restaurant;

WHEREAS, Franchisee acknowledges and agrees that the goodwill associated with the System, Franchisee's business and the Contact Information belongs to OTB;

WHEREAS, Franchisee acknowledges and agrees that OTB's ability to accept the assignment of Franchisee's Contact Information upon the abandonment, expiration, or termination of the Franchise Agreement is an important and integral component of OTB's ability to protect the OTB franchise system, its goodwill, and its uniform and continuous operation, including the goodwill associated with the Restaurant; and

WHEREAS, Franchisee acknowledges and agrees that OTB would not agree to enter the Franchise Agreement but for the representations, warranties, and agreements contained in this Assignment.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions contained herein, OTB and Franchisee (together, the "Parties") agree as follows:



## **ASSIGNMENT**

### **1. Representations and Warranties:**

(a) The Parties acknowledge and agree that the recitals set forth above are true and correct and are hereby incorporated by this reference as if they were fully set forth herein.

(b) The Parties warrant and represent that they have the full power and authority to make, deliver, enter, and perform the terms and conditions of this Assignment and that the consent or approval of a third party is not required to enter and perform this Agreement or, if such consent is required, that they will use their best efforts to gain such consent as is necessary.

(c) Franchisee represents and warrants that it shall only obtain and maintain the Contact Information in its own name, and that during the term of the Franchise Agreement Franchisee shall be the sole and exclusive registered user or owner with all Contact Information for service providers (the "Service Providers").

(d) Franchisee represents and warrants that it shall provide this Assignment to all Service Providers and shall not enter any agreement or contract with any Service Provider that contains any term or condition that are either contrary to the terms and conditions of this Assignment or will not effectuate this Assignment or its intent.

**2. Conditional Assignment:** For valuable consideration, including OTB's agreement to enter the Franchise Agreement, the receipt of which is hereby acknowledged, Franchisee assigns and transfers to OTB the right, title, and interest to accept, in OTB's sole and absolute discretion, all of Franchisee's right, title and interest in each and all of the following associated with or used by Franchisee in the operation of its OTB franchise or the Restaurant: (a) telephone numbers; (b) regular, classified or other telephone directory listings; (c) post office box addresses, mail box addresses, postal drop addresses or the like regardless of whether they are sold, leased, issued, granted or assigned to Franchisee by any private or governmental entity; (d) email address; (e) website; and (f) social media accounts.

The Parties agree that this Assignment is for collateral purposes only, and OTB has no liability or obligation of any kind arising from this Assignment unless OTB provides written notice of OTB's intent to acquire and/or accept assignment of the Contact Information, or any portion thereof, ("Notice of Assignment") to: (a) the Franchisee and (b) the relevant Service Providers. The Parties agree that OTB shall have sixty (60) days after Franchisee's abandonment of the franchise or Restaurant or the date of the Franchise Agreement's expiration or termination, whichever is later, to forward its Notice of Assignment (the "Election Period"). OTB's failure to timely forward a Notice of Assignment shall serve as OTB's rejection of the assignment of Franchisee's Contact Information.

**3. Assignment of Contact Information:** Franchisee agrees that it shall, within five (5) business days after the delivery or attempted delivery of OTB's Notice of Assignment (the "Transfer Date"), take all reasonably requested or required actions to assign, transfer, or confirm ownership of its Contact Information to OTB. Franchisee hereby authorizes and licenses OTB to file, forward, and transfer this Assignment with the Service Providers to secure OTB's rights in the Contact Information.

The Parties agree that Franchisee is solely and wholly liable and responsible for any and all charges, costs, fees, late fees, or other amounts due and owing relating to the Service Providers for use, maintenance, registration, or other service provided relating to the Contact Information on or before the Transfer Date; as well as all charges, costs, fees, or other amounts associated with the transfer of the

Contact Information. Franchisee agrees that it will have no further right, title, or interest in the Contact Information as of the Transfer Date.

4. **Termination of Contact Information:** Franchisee agrees to cancel and/or terminate all agreements for the right, title, and interest in the Contact Information within five (5) businessdays of the expiration of the Election Period or its receipt of OTB's written rejection of its right to assignment of the Contact Information (the "Termination Date").

5. **Termination of Ownership Rights:** Franchisee acknowledges and agrees that it shall have no further right, title, or interest to use, maintain, or access the Contact Information after the Termination Date or Transfer Date and that OTB shall have the sole and exclusive right to the Contact Information after the Termination Date or Transfer Date.

6. **Limited and Specific Power of Attorney:** Franchisee irrevocably appoints OTB as its agent and attorney-in-fact for the purposes of: (a) directing any Service Provider to effectuate the Contact Information's assignment to OTB; (b) signing any and all documents and taking such actions on Franchisee's behalf as Service Providers may require to effectuate the Contact Information's assignment, including completing, and signing any of Service Providers' form assignment agreement; and (c) canceling, revoking, or terminating any forwarding or similar instructions Franchisee has issued to the Service Providers. The power of attorney conferred upon OTB pursuant to this provision is a power coupled with an interest and cannot be revoked, modified, or altered without OTB's consent.

7. **Indemnification:** Franchisee agrees to indemnify and hold OTB and all of its affiliated parties, including its indemnities, agents, officers, directors, employees, parent companies, and affiliated companies (the "Indemnified Parties"), harmless against any cost, damage, expense, liability, or loss which any or all of them may suffer or incur which arise from or in connection with Franchisee's breach of this Assignment, the use of the Contact Information, or breach of any agreement, contract, or understanding with any Service Providers, or resulting from Franchisee's nonpayment of any debt or obligation to any Service Providers.

8. **Binding Effect:** This Assignment is binding upon and inures to the benefit of the Parties and their respective successors-in interest, heirs, and successors and assigns. This Assignment will govern and control over any conflicting provision in any agreement or contract which Franchisee may have with the Service Provider.

9. **Definitions:** Terms not otherwise defined in this Assignment will have the same meanings as defined in the Franchise Agreement.

10. **Severability:** If any provision(s) of this Assignment or any part of any provision of this Assignment is found to be invalid by a court of competent jurisdiction, such ruling shall not affect the validity of any other provision(s) or part(s) of this Assignment. Should any provision of this Assignment be determined invalid by a court of competent jurisdiction, the Parties hereto request the Court to strike that provision only, leaving the remainder of this guaranty in effect.

11. **Conflicting Agreements:** Franchisee agrees that in the instance of any contrary or conflicting provision contained in any agreement or contract with any Service Provider that this Assignment will govern and control.

12. **Prevailing Party is Entitled to Attorneys' Fees:** If any party to this Assignment institutes any action or proceeding against the other party relating to the provisions of any part of this Assignment, the non-prevailing party in such action or proceeding shall pay to or otherwise reimburse the prevailing party for the reasonable expenses, attorney's fees, and all costs and disbursements incurred therein by the prevailing party, including any such fees, costs, or disbursements incurred on any appeal from such action or proceeding. This provision is separate and shall survive the termination of this Assignment.

13. **Governing Law, Venue, and Forum Selection:** This Assignment is governed by Texas law, without regard to its choice of law provisions. The Parties acknowledge and agree that venue shall be proper if brought within such state and in the judicial district in which Franchisor has its principal place of business at the time the action is commenced. This shall be the venue and exclusive proper forum in which to adjudicate any case or controversy arising, either directly or indirectly, under or in connection with this Assignment. The Parties further agree that, in the event of litigation arising out of or in connection with this Assignment in these courts, they will not contest or challenge the jurisdiction or venue of these courts.

14. **Time is of the Essence:** Time is strictly of the essence in the performance of this Assignment.

**ASSIGNOR:**

**ASSIGNEE**

\_\_\_\_\_  
[INSERT FRANCHISEE]

\_\_\_\_\_  
OTB Acquisition LLC

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

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

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

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

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

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

**EXHIBIT L**

**LIST OF STATE REGULATORY AUTHORITIES**

## LIST OF STATE REGULATORY AUTHORITIES

### CALIFORNIA

(State Agency)

Commissioner of Financial Protection and  
Innovation

Department of Financial Protection and Innovation

320 West 4th Street, Suite 750

Los Angeles, California 90013

Tel: (213) 576-7505

Tel: (866) 275-2677

One Sansome Street

Suite 600

San Francisco, California 94104

Tel: (415) 972-8559

(Agent for Service of Process)

Commissioner of Business Oversight

320 W. 4<sup>th</sup> Street, Suite 750

Los Angeles, California 90013

Tel: (850) 245-1000

Fax: (850) 245-1001

### CONNECTICUT

(State Agency)

Connecticut Department of Banking

Securities and Business Investments Division

260 Constitution Plaza

Hartford, Connecticut 06103-1800

Tel: (860) 240-8230

### FLORIDA

(State Agency)

Department of Agriculture & Consumer Services

Division of Consumer Services

P.O. Box 6700

Tallahassee, Florida 32314

Tel: (850) 488-2221

**EXHIBIT M**

**PERSONAL GUARANTY OF PRINCIPALS**

## **PERSONAL GUARANTY OF PRINCIPALS**

IN CONSIDERATION of, and as inducement to, OTB Acquisition LLC, a Delaware limited liability company, located at 2201 West Royal Lane, Suite 170, Irving, Texas 75063 (“OTB”) entering into a Franchise Agreement dated [insert date] (the “Franchise Agreement”) by and among [insert franchisee] (“Franchisee”), and for other good and valuable consideration, each of the undersigned and any other parties who sign counterparts of this Personal Guaranty, (the “Undersigned,”) unconditionally guarantees to OTB: (1) the timely payment and satisfaction of each and every claim, demand, default, liability, indebtedness, right, or cause of action of every nature against said Franchisee, including expenses, damages, and attorney’s fees, now or hereafter existing, due, or which becomes due, or held by OTB, its subsidiaries, affiliates or divisions, together with any accrued interest; and (2) the timely performance of, and strict compliance with, each term, covenant, and obligation of the Franchisee set forth in the Franchise Agreement including any amendments or modifications thereto whenever made.

1. **Franchise Documents.** The Undersigned specifically acknowledges that OTB is permitting the Undersigned to enter into this Personal Guaranty instead of individually executing the Franchise Agreement and other agreements related to the Parties’ franchise relationship (collectively, the “Franchise Documents”) as a matter of convenience to the Undersigned. The Undersigned specifically acknowledges and agrees to be directly, jointly, and severally liable and bound by each and every term, condition, obligation, and provision of the Franchise Documents as if those provisions were fully set forth herein. The Undersigned acknowledges and agrees that this is a continuing guaranty that will apply to the Franchise Documents and any subsequent, extensions, renewals, amendments, addenda, or modifications thereto. The Undersigned acknowledges and agrees OTB may alter or modify the Franchise Documents. The Undersigned consents to any and all modifications or amendments of the Franchise Documents without requiring notice to the Undersigned or the Undersigned’s consent.

2. **Obligations of the Undersigned.** Upon default by Franchisee or notice from OTB, the Undersigned agrees to immediately make each payment and perform each obligation required of Franchisee under the Franchise Documents without requiring OTB to first proceed against the Franchisee by exercising, pursuing, or enforcing any right or remedy OTB has against Franchisee. Without limiting the foregoing, the Undersigned hereby agrees that if Franchisee does not or is not able to pay or perform its obligations under the Franchise Documents for any reason (including without limitation the failure of the validity or the enforceability thereof, whether by reason of waiver or otherwise, or because of the liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or similar proceedings affecting the status, existence, assets, or obligations of Franchisee, or the limitation of damages for the breach, or the disaffirmance of any of the Indebtedness or any future Indebtedness or Obligations of Franchisee to OTB, or any other circumstance that might otherwise constitute a legal or equitable discharge or defense or otherwise impair OTB’s ability to enforce the same), the Undersigned will pay or cause to be paid any amounts for such performance, it being the intention that the Undersigned pay or perform as a primary obligation directly to OTB which Franchisee fails to faithfully and properly pay or perform when due. The Undersigned hereby covenants that this Personal Guaranty will not be

discharged except by complete payment and performance of the Indebtedness or obligations contained herein.

3. **Consent to OTB's Right to Modify.** Without affecting the obligations of the Undersigned under this Guaranty OTB may, without notice to the Undersigned: (a) exchange, release, sell (by foreclosure or otherwise), consent to the transfer of, apply or otherwise deal with any Collateral for repayment of the Indebtedness at OTB's election; (b) refinance, extend, renew, or accelerate the Indebtedness or obligations in whole or in part and as often as OTB so chooses; (c) waive, fail to enforce, surrender, impair, modify or exchange any of its rights under any instruments evidencing, relating to, or securing the Indebtedness or obligations; (d) settle, release (by operation of law or otherwise), compound, compromise, collect or liquidate, in any manner, any of the Indebtedness or obligations; or (e) obtain and perfect, or maintain the perfection of, priority of any security interest or lien on the Collateral securing the Indebtedness.

4. **Waiver by Undersigned.** The Undersigned waives all demands and notices of every kind with respect to this Guaranty and the Franchise Documents, as allowed by law, including, without limitation, notice of: the amendment or modification of this Guaranty or the Franchise Agreement, the demand for payment or performance by Franchisee, any default by Franchisee or any guarantor, and any release of any guarantor or other security for this Franchise Agreement or the obligations of Franchisee.

5. **Cumulative Remedies.** OTB may pursue its rights against the Undersigned without first exhausting its remedies against Franchisee and without joining any other guarantor hereto. No delay on the part of OTB in the exercise of any right or remedy shall operate as a waiver of such right or remedy, and no single or partial exercise by OTB of any right or remedy shall preclude the further exercise of such right or remedy. All of OTB's rights and remedies hereunder are cumulative and not alternative.

6. **Death of a Guarantor.** Upon receipt by OTB of notice of the death of an individual guarantor, the estate of such guarantor will be bound by this Guaranty but only for defaults and obligations hereunder existing at the time of death, and the obligations of the other guarantors hereunder will continue in full force and effect.

7. **Definitions of "Indebtedness"; "Collateral."** The term "Indebtedness" as used herein shall mean: all obligations of Franchisee to OTB, whether now or hereafter due or arising, and whether direct or indirect or contingent or liquidated; all costs of collection, including reasonable attorneys' fees; all other amounts which Franchisee is obligated to pay OTB under any instruments evidencing, relating to or securing the Indebtedness or any part thereof, and including any documentary stamp tax, interest, and penalties determined to be due in connection therewith. The term "Indebtedness" shall also include any amounts advanced by OTB pursuant to requests for advances, made on behalf of Franchisee or under the terms of any security agreement, even if, at the time of such advance, Franchisee has been dissolved, liquidated or its existence terminated, by operation of law or otherwise. The term "Collateral" shall mean any real or personal property securing the Indebtedness and shall include a grant to OTB by Franchisee of a lien on and a security interest in any deposits, funds, accounts, or securities in the possession of or on deposit with OTB, which shall secure the payment and performance of this Personal Guaranty. OTB may at any time,



without demand or notice, appropriate and set off against such deposits, funds, or accounts and apply the same to the obligations of the Undersigned hereunder.

8. **Severability.** Each provision of this Personal Guaranty is intended to be severable. Any term or provision hereof declared to be contrary to, prohibited by, or invalid under applicable laws or regulations shall be inapplicable and deemed omitted, but shall not invalidate the remaining terms and provisions hereof. Should any provision of this Agreement be determined invalid by a court of competent jurisdiction, the parties hereto request the Court to strike that provision only, leaving the remainder of this guaranty in effect.

9. **Assignability.** OTB may freely and fully assign and transfer this Personal Guaranty without notice or consent of the Undersigned, and this Personal Guaranty may be relied upon and enforced by OTB and any of its successors and/or assigns.

10. **Governing Law.** The laws of the State of Texas shall control the construction, interpretation, and enforcement of this Personal Guaranty and all matters related to this Personal Guaranty.

11. **Waiver of Trial by Jury.** BY EXECUTING THIS PERSONAL GUARANTY, THE UNDERSIGNED KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES HIS/HER RIGHTS, AND ANY RIGHTS HIS/HER HEIRS, ASSIGNS, SUCCESSORS OR PERSONAL REPRESENTATIVES MAY HAVE, TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR SUIT, WHETHER ARISING IN CONTRACT, TORT, OR OTHERWISE, AND WHETHER ASSERTED BY WAY OF COMPLAINT, ANSWER, CROSS CLAIM, COUNTERCLAIM, AFFIRMATIVE DEFENSE, OR OTHERWISE, BASED ON OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS PERSONAL GUARANTY OR ANY OTHER INSTRUMENT, DOCUMENT, OR AGREEMENT TO BE EXECUTED IN CONNECTION HERewith, OR WITH THE INDEBTEDNESS OR THE RENEWAL, MODIFICATION, OR EXTENSION OF ANY OF THE FOREGOING. THIS PROVISION IS A MATERIAL INDUCEMENT FOR OTB ENTERING INTO THE FRANCHISE DOCUMENTS AND THIS PERSONAL GUARANTY, AND NO WAIVER OR LIMITATION OF OTB'S RIGHTS HEREUNDER SHALL BE EFFECTIVE UNLESS BY WRITTEN AGREEMENT SIGNED BY OTB.

The Undersigned acknowledges that the above paragraph has been expressly bargained for by OTB as part of the transaction with Franchisee and that, but for the Undersigned's agreement hereto, OTB would not have entered into the Franchise Documents.

12. **Complete Agreement.** This instrument sets forth the entire agreement between OTB and the Undersigned with respect to the subject matter contained herein and no verbal or written agreement, understanding, or custom affects the terms thereof.

*[Signature Page to Follow]*

IN WITNESS WHEREOF, the Undersigned has executed this Guaranty to be effective as of the date below.

GUARANTOR(S)

Signed: \_\_\_\_\_

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

Date \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Signed: \_\_\_\_\_

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

Date \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Signed: \_\_\_\_\_

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

Date \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

**EXHIBIT N**

**MINIMUM INSURANCE REQUIREMENTS**

**MINIMUM INSURANCE REQUIREMENTS FOR  
ON THE BORDER MEXICAN GRILL & CANTINA RESTAURANTS®**

As an On the Border Mexican Grill & Cantina Restaurant® Franchisee you are responsible for obtaining the following minimum insurance coverage:

<b>Type of Insurance</b>	<b>Minimum Requirements</b>	<b>Notes</b>
All Risk Property Insurance	\$2,000,000	Covers direct physical loss or damage to real and personal property for all-risk perils, including flood and earthquake.
General Liability	\$2,000,000 / per occurrence	Covers injuries to other people and damage to their property.
Statutory Worker's Compensation Insurance and Employer's liability insurance	\$1,000,000	Other disability benefits type insurance may be required by statute or rule of the state in which the Franchised Restaurant is located.
Alcoholic Beverage and/or Liquor Liability	\$2,000,000/ per occurrence or as may be required as a condition of maintaining your state and/or local beverage license(s).	
Commercial Umbrella Coverage	\$5,000,000 total liability per location	Total of all primary underlying coverage.
Business Automobile Liability Coverage	\$1,000,000/ per occurrence	Including single bodily injury and property damage coverage for all owned, non-owned, and hired vehicles.
Products Liability Coverage	\$2,000,000	This policy shall be considered primary.
Business Interruption Insurance	Equivalent to 12 months of operating revenue.	Covers losses and expected expenses, including fees paid to us, for up to 12 months of Franchised Restaurant closure.
Employee Dishonesty Insurance	\$25,000	Covers losses and damages caused by employee dishonesty.
All Risk Cyber Security Insurance	\$5,000,000	For the entity operating the Franchised Restaurant. Coverage must be adequate for Franchisee's business size and type.
Any other insurance coverage required by federal, state, or municipal law.		

You must name “**OTB Acquisition LLC, its parents, subsidiaries, affiliates and assigns**” as an additional insured under your policy. You must include OTB’s full address (2201 West Royal Lane, Suite 170, Irving, Texas 75063). The entire verbiage must be listed under “Certificate Holder.”

If we receive a Notice to Cancel on a policy and no reinstatement is received, then our file will indicate the policy has been cancelled. Therefore, it is essential that OTB receive a reinstatement certificate or a new certificate of insurance.

You are required to send a copy of the insurance certificate prior to opening and annually when renewed. Please remit a copy of the insurance (COI) and renewal to [brian.shaughnessy@ontheborder.com](mailto:brian.shaughnessy@ontheborder.com).

Franchisee shall carry any and all insurance coverages commonly known to be industry standard and as recommended by Franchisee’s counsel or other professional, but not less than the recommended amount.

You must obtain and maintain the insurance policies and coverages protecting you, us, and various related parties against any demand or claim for personal injury, death, property damage, or any loss, liability, or expense related to your operation of your OTB Restaurant, as well as the other insurance coverages we prescribe in the Manuals.

Each insurance policy must be issued by an issuer we approve, with a rating of “A+” or better in the most recent *Key Rating Guide* published by the A.M. Best Company (or another rating that we reasonably designate if A.M. Best Company no longer publishes the Key Rating Guide) and must be licensed to do business in the state in which your OTB Restaurant is located. All liability and property damage policies must name us as additional insureds and must provide that each policy cannot be cancelled unless we are given sixty (60) days’ prior written notice.

We may periodically increase required coverage limits or require additional or different coverage to reflect inflation, identification of new risks, changes in the law or standards of liability, higher damage awards, and other relevant changes in circumstances. You must deliver to us (and in the future maintain on file with us) valid and current certificates of insurance showing that all required insurance is in full force and effect.

**THIS SUMMARY, AND ANY ATTACHMENTS HERETO, DOES NOT SERVE AS LEGAL ADVICE. YOU SHOULD CONSULT YOUR INSURANCE AGENT AND YOUR INDEPENDENT LEGAL COUNSEL TO DETERMINE WHAT, IF ANY, ADDITIONAL COVERAGE IS MOST SUITABLE FOR YOUR INDIVIDUAL BUSINESS NEEDS. THE REQUIREMENTS REFERRED TO IN THIS SUMMARY ARE THE MINIMUM STANDARDS REQUIRED UNDER YOUR FRANCHISE AGREEMENT.**

If you have any questions, please contact our Director of Franchise Operations, Brian Shaughnessy (972) 499-3000.

**EXHIBIT O**

**SITE SELECTION FORM**

**FRANCHISE SITE SELECTION FORM**

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

Building Type: \_\_\_\_\_

Street: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

**SUBMISSION AND RELEASE BY FRANCHISEE**

The undersigned Franchisee hereby submits for acceptance the above location for an On The Border Mexican Grill & Cantina® (“OTB Restaurant”), as set forth in the Franchise Agreement to which this is to be appended, subject to Franchisee’s actual site acquisition and obtaining all governmental approvals and permits necessary to construct a restaurant at such location.

The undersigned Franchisee further acknowledges and agrees as follows:

1. Acceptance and consent to development of the site in a Franchise Agreement by OTB Acquisition LLC (“OTB”) is not complete until Franchisee has been notified in writing of same. Any expenses or liabilities incurred by Franchisee prior to formal acceptance or rejection of a site shall be at the risk, and are the sole responsibility, of Franchisee.

2. Franchisee submission of this site location is not a result of any sales representations, estimates, or predictions made by OTB representatives.

3. Although the OTB real estate department personnel have considerable experience in locating restaurant sites, neither their assistance nor OTB’s consent to development of the site is a guaranty, representation, or warranty as to the success or results Franchisee will experience at the site.

4. **Franchisee hereby assumes all risk of business success or failure of the site.** Franchisee further agrees that OTB and its real estate department personnel have satisfactorily fulfilled their obligations under the Franchise Agreement in connection with the site selection and evaluation.

5. Franchisee recognizes that OTB assumes no liability and makes no representation or warranty as to the treatment by Franchisee of a restaurant building or its acquisition cost for financial statement or tax purposes including, without limitation, the classification of the building for depreciation purposes, the availability of accelerated depreciation, or any other tax benefit or deduction under the Internal Revenue Code.

6. In consideration of OTB's consent to development, assistance in selecting and/or evaluating the site, and agreeing to provide advice with respect to restaurant construction-related matters, or in consideration of OTB's agreeing to lease or sell the site to Franchisee, Franchisee does hereby release and forever discharge OTB and its past and present parents, subsidiaries, and affiliates, and their respective past and present officers, employees, agents, successors and assigns, from any and all claims, causes of action, damages and demands of any type whatsoever which Franchisee now has, or hereafter may have, for or by reason of any advice, assistance, consent or the like relating to site selection, site evaluation, or any other matter described herein.

7. Franchisee specifically acknowledges that they have not received any oral or written information or representations related to the potential success, sales potential, economic viability, etc. of this location or any related locations or markets from OTB or any of its representatives. Franchisee is submitting this location for acceptance by OTB based on its personal business judgment and not in reliance upon any representations by OTB or its representatives.

**FRANCHISEE:**

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

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

\_\_\_\_\_  
(Print Name)

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

**To be completed by OTB Acquisition LLC:**

The above proposed site location is:

   **Accepted**, subject to the Franchise Agreement and this Submission and Release by Franchisee. Please provide to OTB the anticipated start of construction date within ten (10) days after acceptance of the final plans and specifications of OTB's Construction and Design Department.

   **Rejected**.

**OTB ACQUISITION LLC**

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

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

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



**EXHIBIT P**

**CATERING SERVICES AGREEMENT**

## CATERING SERVICES AGREEMENT

This Catering Services Agreement (“Agreement”) is made and entered on this \_\_\_ day of \_\_\_\_\_, 202\_\_ (the “Effective Date”) by and between OTB Acquisition LLC, a Delaware limited liability company, with its principal place of business at 2201 West Royal Lane, Suite 170, Irving, Texas 75063 (“OTB”) and \_\_\_\_\_, with its principal place of business at \_\_\_\_\_ (“Franchisee”).

### RECITALS

WHEREAS, OTB and Franchisee (the “Parties”) executed that certain Franchise Agreement dated [INSERT DATE] authorizing Franchisee to operate an On the Border Mexican Grill & Cantina Restaurant® (the “Restaurant”) at [INSERT LOCATION/ADDRESS] pursuant to the terms set forth therein (the “Franchise Agreement”);

WHEREAS, OTB has developed, manages, and controls a national catering program with various restaurants fulfilling catering orders the (“Catering Program”);

WHEREAS, Franchisee has requested approval to offer catering services from its Restaurant; and

WHEREAS, OTB has agreed to authorize Franchisee’s participation in the Catering Program, subject to the terms and conditions contained in this Agreement.

NOW THEREFORE, OTB and Franchisee (together, the “Parties”) agree as follows in consideration of the mutual terms and conditions set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged:

1. **Catering Services.** Under the Catering Program, qualified Restaurants that meet OTB’s standards and criteria will be selected by OTB to provide catering services to OTB customers requiring catering services. At OTB’s option, all services provided by Franchisee under the Catering Program will be centrally processed and billed through OTB. In the event Franchisee is not current with payment of all weekly royalty fees, advertising contributions, and any other monies due to OTB, OTB will apply all or a portion of the payment for services rendered under the Catering Program to Franchisee’s past due accounts. Franchisee shall also comply with all standards and obligations required of franchisees participating in the Catering Program. OTB reserves the right, in its sole discretion, to modify the territories in which Franchisee may provide catering services.

2. **Software.** Franchisee must purchase any additional software that OTB may require. Currently, Franchisor requires its franchisees to utilize MonkeySoft Solutions, Inc. (“MonkeyMedia”) software to administer the Catering Program. Franchisee is required to sign a software license agreement with MonkeyMedia, as well as a sublicense agreement with OTB. Franchisee must pay a monthly software fee (currently, \$85 per month per restaurant) to use MonkeyMedia’s catering software. Franchisee must upgrade this software or install different software at OTB’s request. Franchisee agrees to pay the then-current fees associated with the use of Monkey Media software and for participating in the Catering Program. Additional charges per type of order may apply.

3. **Call Center.** To facilitate the Catering Program, OTB maintains a centralized call center to processing catering orders. Franchisee agrees to contribute to the cost of operating and maintaining

the call center. After receiving an order, OTB will determine, in its sole and absolute discretion, which

participating Restaurant will fulfill the order.

4. **Menu.** OTB reserves the right to add or remove items from the catering menu and Franchisee agrees to begin offering or discontinue from offering those items modified by OTB. OTB in its sole and absolute discretion will determine the price for each item on the catering menu.

5. **Taxes.** Franchisee agrees to charge all applicable local, state, and federal taxes for each of the following subcategories: (i) Food and beverage; (ii) delivery fees; (iii) set up fee; (iv) rental fee; and (v) gratuity and additional gratuity as may be applicable to the order.

6. **Term.** This Agreement shall commence on the Effective Date, as set forth above, and shall continue through the term of the Franchise Agreement unless otherwise terminated.

7. **Compliance With Franchise Agreement.** Franchisee shall at all times comply with all terms and conditions of the Franchise Agreement during the Term of this Agreement.

8. **Indemnification.** Franchisee agrees to indemnify and hold OTB and all of its affiliated parties, including its indemnities, agents, officers, directors, employees, parent companies, and affiliated companies (the "Indemnified Parties"), harmless against any cost, damage, expense, liability, or loss which any or all of them may suffer or incur which arise from or in connection with Franchisee's breach of this Agreement, or as a result of Franchisee's participation in the Catering Program.

9. **Binding Effect.** This Agreement is binding upon and inures to the benefit of the Parties and their respective successors-in interest, heirs, and successors and assigns.

10. **Definitions:** Terms not otherwise defined in this Agreement will have the same meanings as defined in the Franchise Agreement.

11. **Severability.** If any provision(s) of this Agreement or any part of any provision of this Agreement is found to be invalid by a court of competent jurisdiction, such ruling shall not affect the validity of any other provision(s) or part(s) of this Agreement. Should any provision of this Agreement be determined invalid by a court of competent jurisdiction, the parties hereto request the Court to strike that provision only, leaving the remainder of this guaranty in effect.

12. **Governing Law, Venue, and Forum Selection.** This Agreement is governed by Texas law, without regard to its choice of law provisions. The Parties acknowledge and agree that venue shall be proper if brought within such state and in the judicial district in which Franchisor has its principal place of business at the time the action is commenced. This shall be the venue and exclusive proper forum in which to adjudicate any case or controversy arising, either directly or indirectly, under or in connection with this Agreement. The Parties further agree that, in the event of litigation arising out of or in connection with this Agreement in these courts, they will not contest or challenge the jurisdiction or venue of these courts.

13. **Time is of the Essence.** Time is strictly of the essence in the performance of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below.

**FRANCHISEE:**

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

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

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

**OTB ACQUISITION LLC**

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

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

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

**EXHIBIT Q**

**PRE-AUTHORIZED BANK TRANSFER FORM**

PRE-AUTHORIZED BANK TRANSFER  
(DIRECT DEBITS)

Name of Person or Legal Entity: \_\_\_\_\_

ID Number: \_\_\_\_\_

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

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

The, undersigned depositor (“Depositor”) hereby authorizes OTB Acquisition, LLC (“COMPANY”) to initiate debit entries and/or credit correction entries to the undersigned’s checking and/or savings account(s) indicated below and the depository designated below (“Depository”) and to debit such account pursuant to COMPANY’S instructions for any and all amounts due to COMPANY. The Depositor understands that all amounts debited from the account below will be credited to COMPANY’S account. IN LIEU OF COMPLETING THE INFORMATION REQUIRED ON THE FOLLOWING FOUR LINES, FRANCHISEE MAY ATTACH A CANCELLED OR VOIDED CHECK HERETO.

\_\_\_\_\_  
Depository

\_\_\_\_\_  
Branch

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip Code

\_\_\_\_\_  
Telephone Number of Bank

\_\_\_\_\_  
Contact Person at Bank

\_\_\_\_\_  
Bank Transit/ABA Number

\_\_\_\_\_  
Account Number

*[Remainder of page intentionally left blank]*

**EXHIBIT R**

**STATE EFFECTIVE DATES**



### State Effective Dates

The following states have franchise laws that require that the Franchise Disclosure Document be registered or filed with the state, or be exempt from registration: California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington, and Wisconsin.

This Franchise Disclosure Document is effective and may be used in the following states, where the document is filed, registered or exempt from registration, as of the Effective Date stated below:

STATE	EFFECTIVE DATE
California	
Hawaii	
Illinois	
Indiana	
Maryland	
Michigan	
Minnesota	
New York	
North Dakota	
Rhode Island	
South Dakota	
Virginia	
Washington	
Wisconsin	

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 S**

**RECEIPTS**

**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 OTB Acquisition LLC (“OTB”) offers you a franchise, OTB must provide this Disclosure Document to you 14 calendar-days before you sign a binding agreement with, or make a payment to, OTB or our affiliate in connection with the proposed franchise sale. Iowa and New York require that OTB gives you this Disclosure Document at the earlier of the first personal meeting or 10 business days (or 14 calendar days in Iowa) before the execution of the franchise or other agreement or the payment of any consideration that relates to the franchise relationship. Michigan requires that OTB gives you this Disclosure Document at least 10 business days before the execution of any binding franchise or other agreement or the payment of any consideration, whichever occurs first.

If OTB 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 those state administrators listed on Exhibit L.

**Franchise Seller**

The franchisor is OTB Acquisition LLC located at 2201 West Royal Lane, Suite 170, Irving, Texas 75063. Its telephone number is (972) 499-3000.

The franchise sellers involved in offering and selling the franchise to you are Brian Shaughnessy, Irving, Texas, (972) 499-3000 and the following individuals listed below (with address and telephone number) or will be provided to you separately before you sign a franchise agreement:\_\_\_\_\_.

**Issuance Date:** April 14,

**2023 Registered Agent**

OTB authorizes the respective state agencies identified on Exhibit C to receive service of process for us in the particular state.

I have received a Disclosure Document dated April 14, 2023 that included the following Exhibits:

- |  |   |
|--|---|
| (A) Franchise Agreement (with exhibits)                | (H) State Specific Addenda and Amendments         |
| (B) Lease Rider and Conditional Assignment of Lease    | (I) Franchisee Acknowledgment Questionnaire       |
| (C) List of Agents for Service of Process              | (J) [INTENTIONALLY BLANK]                         |
| (D) Table of Contents for the Operations Manual        | (K) Conditional Assignment of Contact Information |
| (E-1) List of Franchisees                              | (L) List of State Regulatory Authorities          |
| (E-2) List of Franchisees Who Have Left the System     | (M) Personal Guaranty of Principals               |
| (F-1) Sample General Release (Renewal)                 | (N) Minimum Insurance Requirements                |
| (F-1A) Sample General Release (California Renewal)     | (O) Site Selection Form                           |
| (F-2) Sample General Release (Termination)             | (P) Catering Services Agreement                   |
| (F-2A) Sample General Release (California Termination) | (Q) Pre-Authorized Bank Transfer Form             |
| (G) Consolidated Financial Statements                  | (R) Receipts                                      |

Date: \_\_\_\_\_  
(Do not leave blank)

\_\_\_\_\_  
Signature of Prospective Franchisee

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

Date: \_\_\_\_\_  
(Do not leave blank)

\_\_\_\_\_  
Signature of Prospective Franchisee

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

**Receipt**

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| (G) Consolidated Financial Statements                  | (R) Receipts                                      |

Date: \_\_\_\_\_  
(Do not leave blank)

\_\_\_\_\_  
Signature of Prospective Franchisee

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

Date: \_\_\_\_\_  
(Do not leave blank)

\_\_\_\_\_  
Signature of Prospective Franchisee

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