

# FRANCHISE DISCLOSURE DOCUMENT



Potbelly Franchising, LLC  
an Illinois limited liability company  
111 North Canal Street, Suite 325  
Chicago, Illinois 60606  
(312) 951-0600  
franchise@potbelly.com  
www.potbelly.com

The franchise is to operate a Shop under the “POTBELLY SANDWICH SHOP<sup>®</sup>” trademark that sells sandwiches, soups, salads, shakes, desserts, and other food and beverage products.

The total investment necessary to begin operation of each Potbelly Shop franchise is \$594,950 to \$899,700 for a non-Drive Thru location and \$666,050 to \$955,200 for a Drive Thru location. This includes \$55,150 to \$83,000 that must be paid to the franchisor or affiliate. If you sign an area development agreement, you will also pay a development fee equal to \$40,000 (the total payable for the initial franchise fee for the first Shop) plus a \$20,000 deposit for each additional Shop.

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

You may wish to receive your disclosure document in another format that is more convenient for you. To discuss the availability of disclosures in different formats, contact Susan Cory at Potbelly Franchising, LLC, 111 North Canal Street, Suite 325, Chicago, Illinois 60606, (312) 334-5811, [susan.cory@potbelly.com](mailto:susan.cory@potbelly.com).

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

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

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

Issuance date of this Franchise Disclosure Document: May 18, 2023, as amended June 30, 2023

## STATE COVER PAGE

### How to Use This Franchise Disclosure Document

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

<b>QUESTION</b>	<b>WHERE TO FIND INFORMATION</b>
<b>How much can I earn?</b>	Item 19 may give you information about outlet sales, costs, profits or losses. You should also try to obtain this information from others, like current and former franchisees. You can find their names and contact information in Item 20 or Exhibit J-1 and Exhibit J-2.
<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 Potbelly Sandwich Shop® business in my area?</b>	Item 12 and the "territory" provisions in the franchise agreement describe whether the franchisor and other franchisees can compete with you.
<b>Does the franchisor have a troubled legal history?</b>	Items 3 and 4 tell you whether the franchisor or its management have been involved in material litigation or bankruptcy proceedings.
<b>What's it like to be a Potbelly Sandwich Shop® franchisee?</b>	Item 20 or Exhibits J-1 and J-2 list current and former franchisees. You can contact them to ask about their experiences.
<b>What else should I know?</b>	These questions are only a few things you should look for. Review all 23 Items and all Exhibits in this disclosure document to better understand this franchise opportunity. See the table of contents.

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

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

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

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

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

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

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

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

### **Some States Require Registration**

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

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

## Special Risks to Consider About *This Franchise*

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

**Out-of-State Dispute Resolution.** The franchise agreement and area development agreement require you to resolve disputes with the franchisor by arbitration and/or litigation only in the city and state where the franchisor has its principal business address (currently, Chicago, Illinois). Out-of-state mediation, arbitration, or litigation may force you to accept a less favorable settlement for disputes. It may also cost more to arbitrate or litigate with the franchisor in the city and state where the franchisor has its principal business address (currently, Chicago, Illinois) 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 PROVISIONS APPLY ONLY TO TRANSACTIONS GOVERNED  
BY THE MICHIGAN FRANCHISE INVESTMENT LAW**

The state of Michigan prohibits certain unfair provisions that are sometimes in franchise documents. If any of the following provisions are in these franchise documents, the provisions are void and cannot be enforced against you:

- (A) A prohibition on the right of a franchisee to join an association of franchisees.
- (B) A requirement that a franchisee assent to a release, assignment, novation, waiver, or estoppel which deprives a franchisee of rights and protections provided in this act. This shall not preclude a franchisee, after entering into a 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 subfranchisor.

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

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

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

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

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 endorsement by the attorney general.

Any questions regarding this notice should be directed to:

State of Michigan Consumer Protection Division  
Attn: Franchise  
670 G. Mennen Williams Building  
525 West Ottawa  
Lansing, Michigan 48909  
(517) 335-7567

Despite subparagraph (f) above, we intend to enforce fully the provisions of the arbitration section contained in our Franchise Agreement and Area Development Agreement. We believe that subparagraph (f) is unconstitutional and cannot preclude us from enforcing our arbitration section. If you acquire a franchise, you acknowledge that we will seek to enforce that section as written, and that the terms of the Franchise Agreement and Area Development Agreement will govern our relationship with you, including the specific requirements of the arbitration section.

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## EXHIBITS

- EXHIBIT A LIST OF STATE AGENCIES/AGENTS FOR SERVICE OF PROCESS
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- EXHIBIT K FORM OF GENERAL RELEASE
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APPLICABLE STATE LAW MIGHT REQUIRE ADDITIONAL DISCLOSURES RELATED TO THE INFORMATION CONTAINED IN THIS DISCLOSURE DOCUMENT. THESE ADDITIONAL DISCLOSURES, IF ANY, APPEAR IN EXHIBIT I.



## Item 1

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

The franchisor is Potbelly Franchising, LLC (“we,” “us,” or “our”). “You” means the entity to which we grant a franchise (and, if applicable, development rights). Because you will be a corporation, limited liability company, or other entity, your owners must sign our “Guaranty and Assumption of Obligations.” This means that all or some of our Franchise Agreement’s provisions (Exhibit B) also will apply to your owners.

We are an Illinois limited liability company formed in August 2009. Our principal business address is 111 North Canal Street, Suite 325, Chicago, Illinois 60606. We operate primarily under our limited liability company name and the “Potbelly Sandwich Shop<sup>®</sup>” trademark and no other name. We have no predecessors. If we have an agent in your state for service of process, we disclose that agent in Exhibit A.

We grant franchises for Shops operating under the “Potbelly Sandwich Shop<sup>®</sup>” name and other trademarks (the “Marks”). (In this disclosure document, we call the Shops in our system “Potbelly Shops”; we use the term “Shop” to describe the Potbelly Shop you will operate.) Potbelly Shops prepare and sell sandwiches, soups, salads, shakes, desserts, and other food and beverage products (collectively, “Products”). Products are prepared according to specific recipes, standards, and procedures and use high quality ingredients, including certain proprietary items (collectively, “Potbelly Trade Secret Products”) and other ingredients (not constituting Potbelly Trade Secret Products) that are branded and/or packaged exclusively for Potbelly Shops (collectively, “Potbelly Branded Products”). (Potbelly Branded Products also include non-food products that are branded and/or packaged exclusively for Potbelly Shops.)

We and our affiliate, Potbelly Sandwich Works, LLC (“PSW, LLC”), whose principal business address is the same as ours, have developed (and continue to develop and modify) policies and procedures, confidential information, intellectual property (including software and website), and a distinctive and comprehensive system for constructing, operating, identifying, and promoting Potbelly Shops. PSW, LLC owns the Marks, confidential information, and branded system and has licensed this intellectual property to us to use in the Potbelly Shop franchise program. You also will buy certain Shop operating assets and supplies from PSW, LLC. If you acquire a franchise, you must operate your Shop according to our and PSW, LLC’s business formats, methods, procedures, designs, layouts, standards, and specifications. Our and PSW, LLC’s immediate parent company is Potbelly Illinois, Inc. and ultimate parent company is Potbelly Corporation (a public company), both of whose principal business addresses are the same as ours. We have no other parent companies. Except for PSW, LLC, no affiliates are disclosable in this Item.

We also grant multi-unit development rights to qualified franchisees, who then may develop multiple Potbelly Shops within a defined area over a specific time period or according to a pre-determined development schedule (“**Developer**”). These franchisees may open and operate Potbelly Shops directly or through approved controlled affiliates. Our standard form of Area Development Agreement is attached as Exhibit C. The form of Area Development Agreement may differ from the form included in this disclosure document if you are signing an Area Development Agreement when you are purchasing existing company-owned Potbelly Shops. Franchisees signing our Area Development Agreement must sign our then-current form of Franchise

Agreement for each additional Potbelly Shop they develop. That form may differ from the form of Franchise Agreement included in this disclosure document.

We may offer for sale, and sell as franchises, company-owned Potbelly Shops in certain geographical areas. You must sign a Franchise Agreement for the Potbelly Shop(s) you purchase from us and we may also require you to sign an Area Development Agreement for the development of additional Potbelly Shops in the geographical area where the purchased Potbelly Shop(s) is located. You also must sign the form of Asset Purchase Agreement attached as Exhibit L to this disclosure document. If you acquire one or more existing company-owned Potbelly Shop from us, we may require you to remodel the Potbelly Shop(s) to our specifications under the timeline we require. Typically, if we determine that you must remodel the Shop, we will require that you do so within the time period we designate after you have signed the Franchise Agreement for the Shop.

We have offered Potbelly Shop franchises since September 2009 but never have operated a Potbelly Shop. PSW, LLC and other affiliates of ours have operated at least one Potbelly Shop since 1997. We have no other business activities and have not offered franchises in other lines of business. PSW, LLC has not offered franchises in any line of business.

As a company, our focus is on “Traffic Driven Profitability”, a strategy comprised of five pillars which represent the best attributes of the Potbelly brand. Our first pillar is “Craveable, Quality Food at a Great Value,” which relates to product enhancements, menu simplification and system efficiency improvements. “People Creating Good Vibes” is the second pillar, which focuses on our recruitment, training and management of our employees. The third pillar is “Customer Experiences that Drive Traffic Growth,” and it focuses on improving the customer experience. “Digitally Driven Awareness, Connection and Traffic” is the fourth pillar, which continues emphasis on customer experience, and drives our continued development of our Perks loyalty program and website and mobile application. Finally, our fifth pillar is “Franchise Focused Development,” which we expect will be the key to our growth into the future.

Your Shop will offer Products to the general public throughout the year and compete with other sandwich shops (franchised and non-franchised operating locally, regionally, and nationally), restaurants (both casual dining and “quick-serve-restaurant” concepts), convenience stores, and other foodservice businesses selling similar and dissimilar products. The market for our Products generally is well-developed and very competitive in most areas. Despite this competition, we believe that Potbelly Shops appeal to consumers because of our freshly-prepared and high quality products, competitive pricing, service quality, and eclectic atmosphere.

No regulations apply specifically to the industry in which Potbelly Shops operate. However, there are food safety and sanitation laws governing all foodservice operations that might impact restaurant operations more than others. You must comply with these laws and with laws that apply generally to all businesses. You should investigate these laws and regulations when evaluating your franchise acquisition.

**Item 2**  
**BUSINESS EXPERIENCE**

President and Chief Executive Officer: Robert D. Wright

Mr. Wright has been our, PSW, LLC's, and Potbelly Corporation's President and Chief Executive Officer in Chicago, Illinois since July 2020. From June 2019 to June 2020, while based in Columbus, Ohio, he was retired. Mr. Wright served as Executive Vice President and Chief Operations Officer for The Wendy's Company in Dublin, Ohio from December 2013 to May 2019.

Senior Vice President and Chief Financial Officer: Steven Cirulis

Mr. Cirulis has been our, PSW, LLC's, and Potbelly Corporation's Senior Vice President and Chief Financial Officer in Chicago, Illinois since April 2020. From July 2018 to March 2020, Mr. Cirulis served as the Founder and Chief Executive Officer of Intrepid Advisory LLC located in Winnetka, Illinois. From April 2017 to June 2018, he served as Senior Vice President, Strategy of Panera, LLC located in St. Louis, Missouri.

Senior Vice President and Chief Operating Officer: Adam Noyes

Mr. Noyes has been our, PSW, LLC's and Potbelly Corporation's Senior Vice President in Chicago, Illinois since August 2020 and was also appointed Chief Operating Officer in January 2023 after having served as Chief Operations Officer from August 2020 to December 2022. From December 2019 to August 2020, he was self-employed as an Executive Consultant in Clearwater, Florida. From January 2016 to December 2019, he served as Chief Administrative Officer and Executive Vice President of Checkers Drive-In Restaurants, Inc. located in Tampa, Florida after having served as Chief Restaurant Operations & Supply Chain Officer and Executive Vice President in Tampa, Florida from February 2011 to January 2016.

Senior Vice President, Chief Legal Officer, Chief Compliance Officer, General Counsel, and Secretary: Adiya Dixon

Ms. Dixon has been our, PSW, LLC's and Potbelly Corporation's Chief Legal Officer, General Counsel and Secretary in Chicago, Illinois since December 2020 and Chief Compliance Officer since March 2023. She has also been our Senior Vice President since November 2020 and served as Legal Counsel from November 2020 to December 2020, also in Chicago, Illinois. From July 2018 to November 2020, she served as President of Yubi Beauty, LLC in New Albany, Ohio. From October 2013 to July 2018, Ms. Dixon was employed by The Wendy's Company in Dublin Ohio serving as Director, International Counsel from July 2016 to July 2018 and Director, Corporate Counsel from October 2013 to July 2016.

Senior Vice President, Chief Information Officer: Jeffrey Douglas

Mr. Douglas has been our, PSW, LLC's, and Potbelly Corporation's Senior Vice President and Chief Information Officer in Chicago, Illinois since September 2019. From February 2016 to September 2019, he served as Senior Vice President of Information Technology for Levy Restaurants located in Chicago, Illinois.

Senior Vice President, Chief Marketing Officer: David Daniels

Mr. Daniels has been our, PSW, LLC's, and Potbelly Corporation's Senior Vice President and Chief Marketing Officer in Chicago, Illinois since August 2021. From October 2018 to August 2021, he was Senior Vice President, Marketing for The Food Hall Company located in Plano, Texas. From March 2018 to October 2018, he was a self-employed consultant located in McKinney, Texas. From May 2016 to March 2018, he was Vice President, Marketing for Yum! Brands, Inc./Pizza Hut, LLC located in Plano, Texas.

Senior Vice President, Franchising: Lynette McKee

Ms. McKee has been our, PSW, LLC's and Potbelly Corporation's Senior Vice President, Franchising in Chicago, Illinois since June 2023. From December 2012 to May 2023, she served as Owner, Chief Executive Officer and Managing Partner for McKeeCo Services, LLC in Heathrow, Florida. From July 2011 to November 2012, she was Executive Director of the Educational Foundation for the National Restaurant Association in Chicago, Illinois. From September 2009 to April 2011, she was Chief Development Officer for Checkers Drive-In Restaurants, Inc. in Tampa, Florida. From July 2005 to September 2009, she was Vice President of Franchising for Dunkin' Brands, Inc. in Boston, Massachusetts. From January 2004 to November 2004, she was Vice President of Franchising for Burger King Corporation in Miami, Florida.

Senior Vice President and Chief People Officer: Patrick J. Walsh

Mr. Walsh has been our, PSW, LLC's and Potbelly Corporation's Senior Vice President and Chief People Officer in Chicago, Illinois since April 2023. From March 2022 to April 2023, he served as HR Vice President for Oil Dri Corporation of America in Chicago, Illinois. From February 2016 to March 2022, he was employed by PepsiCo serving first as Senior Director of Human Resources in Oakbrook Terrace, Illinois from February 2016 to February 2020 and then as Senior Director of Human Resources in Chicago, Illinois from February 2020 to March 2022.

Chief Development Officer: Larry Strain

Mr. Strain has been our Chief Development Officer since May 2021 located in Marblehead, Massachusetts. Mr. Strain has also been the Founder and Principal Partner of Restaurant Development Experts, LLC located in Marblehead, Massachusetts since January 2018. From July 2018 to March 2020, Mr. Strain was Chief Development Officer for INQUE Holdings, LLC in Lowell, Massachusetts.

Vice President of Franchise Development: John Beckley

Mr. Beckley has been our and PSW, LLC's Vice President of Franchise Development in Chicago, Illinois since May 2022. Mr. Beckley joined PSW, LLC in July 2008 and held the following positions: Regional Vice President (April 2019 to July 2022); Vice President of Operations (January 2017 to April 2019); Market Manager (December 2012 to January 2017) and District Manager (July 2008 to December 2012).

Senior Director of Real Estate, Refranchising and Non-Traditional Development: Shawn Baxter

Mr. Baxter has been our and PSW, LLC's Senior Director of Real Estate, Refranchising and Non-Traditional Development in Chicago, Illinois since March 2023. From May 2022 to March 2023, he served as Director, Real Estate in Chicago, Illinois for us and PSW, LLC. Before joining Potbelly, Mr. Baxter held the position of Vice President of Real Estate Development from November 2019 to May 2022 for Buddy's Rendezvous Pizzeria, LLC in Farmington Hills, Michigan. From September 2018 to November 2019, he served as Director of Real Estate for Urban Plates, LLC in San Diego, California. From February 2018 to September 2018, he served as Vice President of Property and Real Estate Development for Wagamama USA, LLC in New York, New York.

Director, Assistant General Counsel (Development): Tricia Lee

Ms. Lee has been our and PSW, LLC's Director, Assistant General Counsel (Development) in Chicago, Illinois since June 2023. From May 2020 to June 2023, she was self-employed as an Attorney in Wallingford, Connecticut. From January 2018 to May 2020, Ms. Lee served as Associate General Counsel for Franchise World HQ LLC in Milford, Connecticut.

Director of Franchise Recruitment: Jacob Dunn

Mr. Dunn has been our and PSW's Director of Franchise Recruitment in Chicago, Illinois since March 2023. From September 2022 through February 2023, Mr. Dunn was pursuing employment opportunities in Atlanta, Georgia. From July 2021 to August 2022, he held the position of Director, Franchise Sales for Focus Brands in Atlanta, Georgia. From April 2020 to June 2021, he served as Associate Franchise Sales for Inspire Brands in Atlanta, Georgia. From March 2018 to April 2022, he was an Account Executive for Blackbaud, Inc. in Charleston, South Carolina.

Director of Non-Traditional Franchise Development: Jeff Rae

Mr. Rae has been our and PSW, LLC's Director of Non-Traditional Franchise Development in Chicago, Illinois since March 2023. From November 1999 to March 2023, he was employed by Pizza Hut LLC as a Channel Manager in Plano, Texas.

Franchise Business Consultant: Jolynn Nelson

Ms. Nelson has been our and PSW's Franchise Business Consultant in Chicago, Illinois since May 2022. From December 2018 to May 2022, she served as District Manager in Chicago, Illinois for PSW. From April 2016 to December 2018, she served as Senior Franchise Business Consultant in Richardson, Texas for Crest Foods Inc.

Franchise Business Consultant: Marco Jacoby

Mr. Jacoby has been our and PSW's Franchise Business Consultant in Chicago, Illinois since July 2022. From June 2016 to June 2022, he served as Field Training Manager in Dublin, Ohio for Wendy's International.

**Item 3**  
**LITIGATION**

No litigation is required to be disclosed in this Item.

**Item 4**  
**BANKRUPTCY**

No bankruptcy is required to be disclosed in this Item.

**Item 5**  
**INITIAL FEES**

You must pay us a \$40,000 initial franchise fee in full when you sign the Franchise Agreement. We use the initial franchise fee to cover, among other things, the costs of evaluating your proposed site, providing the initial training program, construction inspections, final drawing reviews, and helping you develop and open your Shop. Except as described below, the initial franchise fee is not refundable and is uniform as to all franchisees purchasing a franchise for a Potbelly Shop.

If you are signing a Franchise Agreement because you are purchasing an existing Potbelly Shop from us or our affiliate, then you must pay us a \$5,000 asset transfer fee on or before you close on the purchase of the Potbelly Shop's assets. This fee is fully earned by us as of the effective date of the Franchise Agreement. During our 2022 fiscal year, we did not receive any asset transfer fees from franchisees.

In certain limited circumstances, we or our affiliate may agree to sublease the premises of your Shop to you. If we agree to sublease the premises of the Shop to you, we may require you to pay us a refundable security deposit before you open or begin to operate the Shop. The amount of the security deposit will depend on the monthly rent payable for the premises (which varies significantly based on geographic location, size, local rental rates, businesses in the area, site profile, and other factors) and the location of the premises, which we estimate will be between \$1,900 and \$45,000. During our 2022 fiscal year, we did not receive any security deposits from franchisees.

We charge a development fee for you to obtain the right to open multiple Potbelly Shops in a pre-determined area in a specific amount of time under the Area Development Agreement. You must pay the development fee in a lump sum when you sign the Area Development Agreement. The development fee is non-refundable and fully earned by us as of the effective date of the Area Development Agreement. The development fee due when you sign the Area

Development Agreement equals \$40,000 (the initial franchise fee payable for the first Potbelly Shop) plus an additional \$20,000 for each additional Shop granted under the Area Development Agreement. You must pay our then current initial franchise fee for each Shop to be developed and the balance of the initial franchise fee (the then current initial franchise fee less the \$20,000 deposit) for each additional Shop (after the first) is due when you sign the Franchise Agreement for the Shop. We and you will determine the number of Shops you must develop and the dates by which you must develop them before signing the Area Development Agreement. During our 2022 fiscal year, we received development fees ranging from \$0 to \$160,000.

Initial franchise fees paid under Franchise Agreements are fully earned when paid and generally are not refundable. However, if you cannot secure and we do not accept your Shop's site within 180 days after you sign the Franchise Agreement, we and you have the right to terminate the Franchise Agreement. Upon termination, we will refund all but \$8,000 of the initial franchise fee if you sign our required form of release of claims. However, if you signed the Franchise Agreement under an Area Development Agreement we signed with you (or your affiliate) granting you the right to develop multiple Potbelly Shops and already paid us the full initial franchise fee due for the Shop, we will not refund any portion of that initial franchise fee if we terminate the Franchise Agreement because you fail to find an acceptable site for the Shop within the timeframe required under the Franchise Agreement or the Area Development Agreement.

No portion of the development fee is refundable under any circumstances. So, if you sign the Area Development Agreement, sign one or more Franchise Agreements, pay the development fee, and then cannot find sites for Potbelly Shops or choose not to move forward with the deal for another reason (in which case the Area Development Agreement and one or more Franchise Agreements are terminated), we may keep the entire development fee and need not return any money to you. After you pay us the \$20,000 balance of the initial franchise fee due when you sign a Franchise Agreement (for each Franchise Agreement not signed when you sign the Area Development Agreement), that \$20,000 is not refundable under any circumstances.

After our initial review of your proposed site for the Shop, a schematic test fit must be conducted to determine if our equipment and schematics will fit in the proposed site. We estimate the cost of such test fit to be \$1,500. If this is your first Shop, we will cover these expenses. However, if you conduct the schematic test fit and then fail to secure your Shop's site, then you must reimburse us for the full cost of the schematic test fit within 30 days after you fail to secure the site.

Before you sign the lease for the Shop, a site investigation report must be conducted on the proposed location for your Shop. We estimate the cost of such report to be \$7,500 for a non-drive thru location, but such cost could be as high as \$10,000 for a drive thru location. If this is your first Shop, we will cover the expenses for this report. However, if you do not secure the site for the Shop, then you must reimburse us for the cost of the site investigation report within 30 days after you fail to secure the site.

You must spend at least \$25,000 on a Shop market introduction program beginning before and continuing 6 months after your Shop opens. You must send us a written introductory marketing program, showing how you intend to spend this money, 90 days before your Shop opens. At our

request, you must pay us the program’s anticipated costs, which we then will spend for you. This payment is not refundable.

You currently must buy from PSW, LLC certain items you need to develop and begin operating your Shop, including interior menu boards and signage, interior custom lighting, millwork, artifacts, décor, and custom tabletops. These items are expected to cost a total of \$18,000 to \$33,000. These payments are not refundable. During 2022, franchisees were charged and/or paid between \$20 and \$48,989 for these items.

If you sign an Asset Purchase Agreement because you are purchasing an existing Potbelly Shop from us or our affiliate, you will pay the purchase price for the acquired assets at the time and in the manner specified in the Asset Purchase Agreement. The purchase price will vary based on a variety of factors, including the assets purchased, the location of the Shop, and other factors. The purchase price will be negotiated for each Shop that you purchase from us or our affiliates.

**Item 6**  
**OTHER FEES**

Column 1	Column 2	Column 3	Column 4
Type of fee <sup>1</sup>	Amount	Due Date	Remarks
Royalty	6% of Shop’s weekly Gross Sales <sup>2</sup>	Due each Wednesday on Gross Sales during week ending on preceding Sunday (each week currently runs from Monday through Sunday) <sup>3</sup>	“Gross Sales” means all your revenue from operating Shop (and includes your proceeds from business interruption insurance) but (i) excludes taxes collected from customers and paid to taxing authority, (ii) excludes your revenue from selling or issuing Potbelly gift, loyalty or rewards cards (but your revenue from selling Products to customers using those cards for payment is included in Gross Sales), and (iii) is reduced by any documented refunds and credits the Shop in good faith gives to customers (if those amounts originally were included in calculating Gross Sales).



Column 1	Column 2	Column 3	Column 4
Type of fee <sup>1</sup>	Amount	Due Date	Remarks
Brand Fund	Currently 3% of Shop's weekly Gross Sales <sup>4</sup>	Due each Wednesday on Gross Sales during week ending on preceding Sunday (each week currently runs from Monday through Sunday) <sup>3</sup>	We may, upon 90 days' prior notice to you, increase your Brand Fund contribution by up to an additional 1% of the Shop's Gross Sales (for a total of up to 4% of the Shop's Gross Sales) Your total required marketing expenditures, including your minimum local marketing spend of 1%, will not exceed 5% of the Shop's Gross Sales.
Successor Franchise	25% or 12.5% of our then-current initial franchise fee if your successor franchise is for 10 years or 5 years, respectively	When you acquire successor franchise after initial franchise term expires	
Transfer (Controlling Transfers)	20% or 50% of our then-current initial franchise fee depending on whether transferee is an existing Potbelly franchisee	½ due (and non-refundable) when you request transfer approval; balance due before transfer completed	Due if you transfer Franchise Agreement and Shop or your owners transfer controlling ownership interest in you or your owners.
Transfer (Non-Controlling Transfers)	\$500	When you request transfer approval	Due if your owners transfer non-controlling ownership interest in you or your owners.
Transfer (Convenience of Ownership)	\$500	When you request transfer approval	Due if you transfer Franchise Agreement and Shop to entity you or your owners control for convenience of ownership.

Column 1	Column 2	Column 3	Column 4
Type of fee <sup>1</sup>	Amount	Due Date	Remarks
Transfer Application Fee	Up to \$10,000	When you request transfer approval	Due from you or the transferee when you request a transfer of the Franchise Agreement and Shop.
Additional Training or “Re-Training”	Up to \$500 per day for each trainer we use to instruct you	When training begins	We provide initial training for up to 4 people at no additional charge at one of our designated company training Shops; we may charge you for training replacements if your original trainees cannot complete training, for training additional or newly-hired personnel, and for supplemental training programs.
Special Assistance	Up to \$500 per day plus out-of-pocket costs and expenses	As incurred	We may charge you for additional or special guidance, assistance, or training that we determine you need or that you request.
Product and Service Purchases	Varies depending on products and services you buy from us or our affiliates	As incurred	You will buy Potbelly Trade Secret Products, Potbelly Branded Products, and other products and services from us, our affiliates, designated and approved vendors whose items meet our standards and specifications and/or other suppliers to the industry. Prices depend on the supplier and item/service involved.
Computer Systems, Maintenance, and Support	Currently \$200-\$225 per month for non-Drive Thru locations; currently \$225-\$250 per month for Drive Thru locations	Monthly	This covers all technical support for Potbelly-approved software and hardware systems and up to 4 price change requests per year; additional fees may be charged as realized for special requests or system support; we may increase this charge if our costs increase.
System Website	Currently \$50 per month but you must pay our then-current fee which will vary under the circumstances	As incurred	The Brand Fund may pay for creating, developing, maintaining, and operating a System Website and/or related strategies; we may require you to pay a separate fee if (or to the extent) the Brand Fund does not cover these costs.

Column 1	Column 2	Column 3	Column 4
Type of fee <sup>1</sup>	Amount	Due Date	Remarks
Intranet	Currently \$20 per month	As incurred	The Brand Fund may pay for creating, developing, maintaining, and operating an Intranet; we may require you to pay a separate fee if (or to the extent) the Brand Fund does not cover these costs.
Digital Technology Fee	Currently, \$0.10 per transaction processed through our online ordering system	Due each Wednesday on Gross Sales during week ending on preceding Sunday (each week currently runs from Monday through Sunday)	This covers the costs of enhancements to our digital technology and maintenance. We may increase this fee upon notice to you.
Operating and People Systems Fee	Currently \$99 per shop per month	Monthly	This covers the cost of systems and tools to increase efficiency of labor management and Potbelly Shop operation. We may increase this fee upon notice to you.
Annual Convention	Up to \$1,000	When billed	We may charge this fee for you to attend our annual franchise convention (you also must pay your travel and living expenses); this fee is intended to help cover our convention costs.
Franchisee Advisory Council	Council Assessments	When levied	We have right to enforce payments, which may vary among councils; there currently are no councils.
Testing	Costs of Testing	When billed	This covers the costs of testing new products or inspecting new suppliers you propose; test costs depend on nature of products and supplier location.
Relocation	20% of our then-current initial franchise fee	As incurred	You must pay us a relocation fee if you move to a new site and we are involved in the process.

Column 1 Type of fee <sup>1</sup>	Column 2 Amount	Column 3 Due Date	Column 4 Remarks
Rent	Varies	Monthly	If we sublease the premises to you, you must pay rent directly to the landlord or to us, at our discretion. If you pay rent to us, we may charge an amount that is higher than the rent due under the underlying lease.
Sublease Administrative Fee	Up to 1% of the rent you pay use under the sublease	Monthly	If we sublease the premises to you, then we may charge you a sublease administrative fee. We may increase this fee upon notice to you.
Public Offering	At least \$10,000 plus out-of-pocket expenses	When billed	Due to review your offering materials if you seek to raise money through stock or similar offerings.
Operations Manual	\$500	When billed	Charge for replacement copy or access if your access to Operations Manual is lost or destroyed.

Contingent Fees (typically arise only upon your default)

Column 1 Type of fee <sup>1</sup>	Column 2 Amount	Column 3 Due Date	Column 4 Remarks
Audit	Cost of inspection or audit (amount of which depends on circumstances and extent of your non-compliance)	15 days after billing	Due if you do not give us reports, supporting records, or other required information or understate required Royalties or other amounts by more than 2%.
Late Fee	\$100	May be auto-debited from your account	Due for each late or dishonored payment.

Column 1 Type of fee <sup>1</sup>	Column 2 Amount	Column 3 Due Date	Column 4 Remarks
Interest	Lesser of 1.5% per month or highest commercial contract interest rate law allows	May be auto-debited from your account	Due on all overdue amounts more than 7 days late.
Non-Approved Shop Opening	\$5,000 for each day your Shop operates without our approval	May be auto-debited from your account	Due if you begin operating Shop before we give our approval.
Management Fee	Manager's then-current daily salary plus direct expenses	As incurred	Due when we (or a third party) manage Shop after Managing Owner's death or disability or after your default or abandonment.
Costs and Attorneys' Fees	Will vary under circumstances and depend on nature of your non-compliance	As incurred	Due when we incur costs and expenses to enforce Franchise Agreement against you, whether or not we begin formal legal proceeding.
Indemnification	Will vary under circumstances and depend on nature of third-party claim	As incurred	You must reimburse us if we are held liable for claims from your Shop's operation or incur costs to defend them (when we are not at fault).
Brand Damages	Will vary under circumstances	As incurred	Due only if you terminate the Franchise Agreement before it expires, in which case you must pay us for all damages, costs and expenses related to the early termination
Maintenance Cost Reimbursement	Out-of-pocket cost reimbursement and our then-current per-day fee	As incurred	You must reimburse our costs for correcting your Shop's sub-standard appearance or condition.

Column 1	Column 2	Column 3	Column 4
Type of fee <sup>1</sup>	Amount	Due Date	Remarks
Insurance Reimbursement	Out-of-pocket cost reimbursement	As incurred	You must reimburse us if we obtain required insurance for you if you fail to obtain or maintain required coverage (your failure is a Franchise Agreement default).
Customer Complaint Reimbursement	Out-of-pocket cost reimbursement	As incurred	You must reimburse us if we resolve a customer complaint because you do not do so.
Tax Reimbursement	Out-of-pocket cost reimbursement	As incurred	You must reimburse us for any taxes we must pay to a state taxing authority on account of either your operation or your payments to us (except for our income taxes).
De-identification Reimbursement	Out-of-pocket cost reimbursement	As incurred	You must reimburse our costs to de-brand the Shop after the franchise ends if you fail to do so as required.
Re-inspection Fee	Up to \$2,500	As incurred	Due for 2nd and each subsequent follow-up Shop inspection to confirm you have corrected operating deficiencies we have brought to your attention.
Non-Compliance Fee	\$250 per violation	Within 5 days	Due if you deviate from contractual requirement, including System Standard. This compensates us for administrative and management costs, not for our damages due to your default.
Administrative Fee	\$500 per day	As incurred	Upon the occurrence of any event giving rise to our right to terminate the Franchise Agreement, we may, in addition to our other rights, require you to pay us \$500 for each day the condition giving rise to our right to terminate continues to exist to help offset our increased administrative expenses associated with your failure to comply with the terms of the Franchise Agreement.

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- 1/ Except as noted above and except for products and services you must buy from unaffiliated suppliers, all fees are imposed and collected by and payable to us. Except as noted above, all fees currently are uniformly imposed. No fee is refundable.
  - 2/ Your weekly Royalty percentage is 6% of the Shop's Gross Sales. However, we reserve the right to charge a higher Royalty, to be negotiated with franchisees depending on the circumstances, for certain "captive venue" Shop locations like airports, university food courts, and the like (if we allow a franchisee to operate in such a location). We do not expect the Royalty to exceed 10% of the Shop's Gross Sales in that setting.
  - 3/ Before your Shop opens, you must sign and deliver documents we require authorizing us to debit your business checking or other bank account automatically for the Royalty, Brand Fund contributions, and other amounts due under the Franchise Agreement or in connection with the Shop's operation, including amounts due for your purchases of Potbelly Trade Secret Products, Potbelly Branded Products, other items, and services from us, our affiliates and/or unaffiliated vendors (the "Electronic Funds Transfer Account" or "EFTA"). We will debit your EFTA for these amounts on their due dates. We may require you to submit payment electronically (and to initiate the electronic payment process) before we prepare for shipment and send you Potbelly Trade Secret Products, Potbelly Branded Products, and other items you order. You must deposit funds into the EFTA to cover our withdrawals and to report your Gross Sales as we require. We may require payment other than by automatic debit, and you must comply with our payment instructions.

If you do not report the Shop's Gross Sales, we may debit your EFTA for 120% of the last Royalty and other amounts we debited (together with the late fee and interest). If the amounts we debit are less than the amounts you actually owe us, we will debit your EFTA for the balance on the day we specify. If the amounts we debit exceed the amounts you actually owe us, we will credit the excess against the amounts due the following week.

- 4/ Potbelly Shops must engage in, and prepare materials for, various marketing, advertising, customer relationship management, public relations, and brand building and protection activities and programs we deem appropriate to enhance the Potbelly brand (collectively, "Marketing"). You must pay us the Brand Fund contribution when you pay us the Royalty. You also have local Marketing obligations (including area brand cooperatives). Your required Local Marketing Spend will be a minimum of 1% of the Shop's Gross Sales to market and promote your Shop locally. Your total required Marketing contributions will not exceed 5% of the Shop's Gross Sales.

Area Cooperatives, if established (none currently exists), will include Potbelly Shops that we and our affiliates operate in the market area. We have the right to control these Area Cooperatives. Each Potbelly Shop in the Area Cooperative (including Potbelly Shops that we and our affiliates own and operate) will have 1 vote regarding the Area Cooperative's administration contributions, operation, and expenditures. The maximum contribution you may be required to make to the Area Cooperative will not exceed the then-currently designated Local Marketing Spend (currently, 1 % of Gross Sales).

**Item 7**  
**ESTIMATED INITIAL INVESTMENT**  
**YOUR ESTIMATED INITIAL INVESTMENT**  
**(Non-Drive Thru Location)**

Column 1 Type of expenditure	Column 2 Amount	Column 3 Method of payment	Column 4 When due	Column 5 To whom payment is to be made
Initial Franchise Fee (1)	\$40,000	Lump Sum	Upon signing Franchise Agreement and, if applicable, Area Development Agreement	Us
Schematic Test Fit(2)	\$0 - \$1,500	Lump Sum	30 days after you fail to secure the site for the Shop	Us
Site Investigation Report	\$0-7,500	Lump Sum	30 days after you fail to secure the site for the Shop	Us
Real Estate/Rent (3)	See Note 2	As Agreed	As Incurred	Landlord
Security Deposit (3)	See Note 2	As Agreed	As Incurred	Landlord
Construction / Leasehold Improvements (4)	\$250,000 - \$400,000	As Agreed	As Incurred	Outside Suppliers
Architect Fee (for your architect)	\$17,900 - \$28,000	As Agreed	As Incurred	Architect
Furniture, Fixtures, and Signage (5)	\$43,000 - \$95,000	As Agreed	As Incurred	Outside Suppliers and PSW, LLC
Equipment (including small-wares) (5)	\$100,000 - \$114,000	As Agreed	As Incurred	Outside Suppliers and PSW, LLC
Point-of-Sale and Computer Systems (6)	\$53,000 - \$63,000	As Agreed	As Incurred	Outside Suppliers
Opening Inventory	\$12,000 - \$18,000	As Agreed	As Incurred	Designated and Approved Suppliers



Column 1 Type of expenditure	Column 2 Amount	Column 3 Method of payment	Column 4 When due	Column 5 To whom payment is to be made
Market Introduction Program (7)	\$25,000	As Agreed	As Incurred	Marketing Sources (possibly us if you do not conduct program as required)
Insurance (12 months) (8)	\$11,000 - \$18,000	As Agreed	As Incurred	Insurance Company
Training Expenses (99)	\$15,000 - \$45,000	As Incurred	As Incurred	Third Parties
Professional Fees (10)	\$2,000 - \$5,000	As Agreed	As Incurred	Professional Advisors
Business Licenses and Permits	\$250 - \$1,700	As Incurred	As Incurred	Government Agencies
Office Equipment and Supplies	\$800 - \$3,000	As Incurred	As Incurred	Third Parties
Additional Funds – 3 months (11)	\$25,000 - \$35,000	As Incurred	As Incurred	Employees and Suppliers
Total Estimated Initial Investment (excluding real estate lease/acquisition costs) (12)	\$594,950 - \$899,700			

- Except for the security deposit and a portion of the initial franchise fee (if the Franchise Agreement was not signed under a Development Agreement), no expenditure in this table is refundable.

### **YOUR ESTIMATED INITIAL INVESTMENT**

#### **(Drive Thru Location)**

Column 1 Type of expenditure	Column 2 Amount	Column 3 Method of payment	Column 4 When due	Column 5 To whom payment is to be made
Initial Franchise Fee (1)	\$40,000	Lump Sum	Upon signing Franchise Agreement and, if applicable, Area Development Agreement	Us
Schematic Test Fit (2)	\$0 - \$1,500	Lump Sum	30 days after you fail to secure the site for the Shop	Us

Column 1 Type of expenditure	Column 2 Amount	Column 3 Method of payment	Column 4 When due	Column 5 To whom payment is to be made
Site Investigation Report	\$0-10,000	Lump Sum	30 days after you fail to secure the site for the Shop	Us
Real Estate/Rent (3)	See Note 2	As Agreed	As Incurred	Landlord
Security Deposit (3)	See Note 2	As Agreed	As Incurred	Landlord
Construction / Leasehold Improvements (4)	\$275,000 - \$425,000	As Agreed	As Incurred	Outside Suppliers
Architect Fee (for your architect)	\$22,000 - \$27,000	As Agreed	As Incurred	Architect
Furniture, Fixtures, and Signage (5)	\$65,000 - \$107,000	As Agreed	As Incurred	Outside Suppliers and PSW, LLC
Equipment (including small-wares) (5)	\$115,000 - \$126,000	As Agreed	As Incurred	Outside Suppliers and PSW, LLC
Point-of-Sale and Computer Systems (6)	\$58,000 - \$68,000	As Agreed	As Incurred	Outside Suppliers
Opening Inventory	\$12,000 - \$18,000	As Agreed	As Incurred	Designated and Approved Suppliers
Market Introduction Program (7)	\$25,000	As Agreed	As Incurred	Marketing Sources (possibly us if you do not conduct program as required)
Insurance (12 months) (8)	\$11,000 - \$18,000	As Agreed	As Incurred	Insurance Company
Training Expenses (9)	\$15,000 - \$45,000	As Incurred	As Incurred	Third Parties
Professional Fees (10)	\$2,000 - \$5,000	As Agreed	As Incurred	Professional Advisors
Business Licenses and Permits	\$250 - \$1,700	As Incurred	As Incurred	Government Agencies
Office Equipment and Supplies	\$800 - \$3,000	As Incurred	As Incurred	Third Parties
Additional Funds – 3 months (11)	\$25,000 - \$35,000	As Incurred	As Incurred	Employees and Suppliers

Column 1 Type of expenditure	Column 2 Amount	Column 3 Method of payment	Column 4 When due	Column 5 To whom payment is to be made
Total Estimated Initial Investment ( <u>excluding</u> real estate lease/acquisition costs) (12)	\$666,050 - \$955,200			

- Except for the security deposit and a portion of the initial franchise fee (if the Franchise Agreement was not signed under a Development Agreement), no expenditure in this table is refundable.

### Explanatory Notes

1. The initial franchise fee is \$40,000. No separate initial investment is required when you sign the Area Development Agreement. You need only pay the development fee, which equals the full \$40,000 initial franchise fee for the first Restaurant covered by the Franchise Agreement to which the Area Development Agreement is attached, plus a \$20,000 deposit for each additional Restaurant to be developed.

2. Currently, the Schematic Test Fit fee ranges from \$0 to \$1,500 but may vary based on the architect/engineering firms we approve for use and the cost for their services, including any additional charges that may be incurred.

3. A standard non-Drive Thru Potbelly Shop occupies approximately 2,000 to 2,400 square feet of leased space in a strip shopping center, enclosed shopping mall, lifestyle center, or similar location. The preferred trade area is a metropolitan market with a large working population or a densely-populated suburb. The site should be close to daytime traffic drivers (for example, dense urban office neighborhoods, suburban office parks or corporate campuses, and large entertainment, hospital, or transportation complexes). Rent depends on geographic location, size, local rental rates, businesses in the area, site profile, and other factors and could be considerably higher in large metropolitan areas. Your landlord likely will require you to pay a security deposit equal to one month's rent or more.

We anticipate that you will rent your Shop's site. However, if you choose to buy, rather than rent, real estate on which a building suitable for the Shop already is or could be constructed, real estate purchase costs depend on location, size, visibility, economic conditions, accessibility, competitive market conditions, and the type of ownership interest you are buying. We and our affiliates have no experience purchasing real estate for Potbelly Shops; this Item 7 therefore does not address that possibility.

Our experience with the Drive Thru format is limited. Of the total 384 affiliate-owned Shops open and operating as of December 31, 2022, only 57 were Drive Thru locations. Of the 46 franchised Shops open and operating as of December 31, 2022, 8 were Drive Thru locations. Drive Thru locations require larger premises, roughly 2,200 to 2,600 square feet of space in an out-lot,

with resulting additional construction, equipment, labor, and technology investments. The return on investment may be substantially different from that of non-Drive Thru locations. The Drive Thru format also can be more challenging and complex to operate because customers are accessing the Shop in an atypical fashion; the location requires separate order-taking and a separate final food delivery pattern.

4. You will improve a 2,000 to 2,400 square foot property, with a range of improvement costs between \$100 and \$146 per square foot. These numbers include the costs of general contractors and licensed tradesmen to install electrical and plumbing and do not take into account any landlord contribution. The amounts could differ if your Shop's construction design exceeds our criteria or if the costs of construction materials and labor used in a particular geographic region differ from the estimated cost range, especially if in a large metropolitan area. We assume that leased premises already will have the following pre-build-out attributes: permanent and/or non-support walls; base concrete floor; exposed ceiling; utilities; and HVAC system. Your investment could be substantially higher if you decide to lease space in an enclosed mall or similar high-rent facility. Financing the leasehold improvement costs also involves associated debt-service costs and fees, which may increase the amount you must pay. Leasehold improvement costs—including floor covering, wall treatment, counters, ceilings, painting, window coverings, electrical, carpentry, and similar work, and contractor's fees—depend on the site's condition, location, and size; the demand for the site among prospective lessees; local rental rates; businesses in the area; the site's previous use; the build-out required to conform the site for your Shop; geographic location (for example, the West Coast, the East Coast, or the Midwest); any construction or other allowances the landlord grants; and other factors. If you receive landlord allowances, the landlord might factor those amounts into your rent. If your landlord provides a tenant improvement allowance and you do not experience significant cost over-runs, delays, etc., your actual leasehold improvement costs might be at the lower end of the estimate. Although we expect new Shop development to fall within the indicated range, our experience with these costs could change significantly as we continue to expand into higher-cost markets. A larger space likely will cost more than the average above. If a drive-thru is the preferred format for a given trade area/site, build-out costs are likely to exceed the high end of the range (in part for the reasons disclosed in note 2 above). The estimated initial investment ranges disclosed in this Item 7 are for standard non-Drive Thru Potbelly Shops of a certain size, at certain types of locations, and having certain characteristics we consider to be fairly standard for Potbelly Shops. Your actual investment to develop your Shop could be incrementally or materially higher than the estimated initial investment ranges disclosed in this Item 7 if you choose to develop a larger Shop or a Shop that otherwise is atypical when compared with standard non-Drive Thru Potbelly Shops.

If you acquire an existing Potbelly Shop from us, we may require you to remodel the Potbelly Shop to our specifications and under the timeline that we prescribe. Typically, if we determine that you must remodel the Shop, we will require that you do so within the time period we designate after you have signed the Franchise Agreement for the Shop. Under these circumstances, your investment will depend on the extent of the remodeling that will be required to bring the Shop in compliance with our specifications and the amount of such remodeling costs and associated materials.

5. This includes signage, refrigerators, freezers, conveyor ovens, preparation tables, customer tables, chairs, booths, and other items listed in our Operations Manual or equipment and small-wares listings.

6. This estimate includes initial Payment Card Industry (PCI) Data Security Standard compliance costs.

7. This is the amount you must spend (depending on your market) for an initial marketing and advertising program beginning before and continuing 6 months after your Shop opens. We will help you develop the market introduction program. You must send us a written introductory marketing program showing how you intend to spend this money 90 days before your Shop opens.

8. You must obtain and maintain certain types and amounts of insurance coverage. Insurance costs depend on policy limits, types of policies, nature and value of physical assets, gross sales, number of employees, square footage, location, business contents, and other factors affecting risk exposure. The estimate contemplates insurance costs for 12 months. You should check with your insurance agent regarding any additional insurance you might wish to obtain above our stated minimums.

9. This estimates the cost for your Managing Owner (or Head of Operations, as applicable), General Manager, and Shop key-holding supervisory employees to attend our initial franchise training program. Although we do not charge tuition, you must pay all attendance costs, which depend on how many people attend training, their point of origin, method of travel, class of accommodations, and living expenses (food, transportation, etc.).

10. This estimates the costs of professional advisors (like an attorney and accountant) for the initial review and advice consistent with the start-up of a franchised business. We strongly recommend that you seek professional assistance when evaluating this franchise opportunity and our franchise documents. Your professional advisors also should review any lease, sublease or other contracts you sign for your Shop.

11. This estimates the funds needed to cover your initial expenses for the first 3 months of operation (besides the items identified separately in the table). It includes payroll costs but not any owner's draw or salary. However, this is only an estimate, and you might need additional working capital during the Shop's first 3 months of operation and for a longer time period after that. This 3-month period is not intended, and should not be interpreted, to identify a point at which your Shop will break even. We cannot guarantee when or if your Shop will break even. Your costs will depend on how much you follow our methods and procedures; your management skill, experience, and business acumen; local economic conditions; the prevailing wage rate; competition; and your Shop's sales during the initial period. We relied on our affiliates' approximately 23 years of experience developing and operating Potbelly Shops to compile this Additional Funds estimate.

12. You should review these figures carefully with a business advisor before deciding to acquire the franchise. We do not offer financing directly or indirectly for any part of the initial investment. The availability and terms of financing depend on many factors, including the

availability of financing generally, your creditworthiness and collateral, and lending policies of financial institutions from which you request a loan. We recommend that you use these categories and estimates as a guide for your own budget and investigate specific costs in your area.

If you purchase an existing Potbelly Shop from us or our affiliate, then the estimated initial investment (excluding the purchase price of the acquired assets) will be lower than the estimate provided in the tables above. The purchase price will vary based on a variety of factors, including the assets purchased, the location of the Shop, and other factors. You will still have costs related to any necessary permits, licenses, lease deposits, utilities, training and insurance. These costs will vary depending on the condition of the Restaurant(s) that you purchase.

## **Item 8**

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

You must operate your Shop according to our System Standards. System Standards may regulate, among other things, types, models, and brands of fixtures, furniture, furnishings, signs, vehicles (if we require or allow you to provide delivery and catering services from your Shop), and equipment (including required computer, point-of-sale, and other electronic information systems and all equipment components and software necessary for you to accept and process our gift, loyalty, and reward cards and participate in our gift card, customer loyalty, rewards, affinity, and similar programs) (collectively, “Operating Assets”); Potbelly Trade Secret Products, Potbelly Branded Products, and other food and beverage products and supplies; required and/or authorized Products, Potbelly Trade Secret Products, Potbelly Branded Products, and services; unauthorized and prohibited food and beverage products and services; inventory requirements; and designated and approved suppliers of Operating Assets, Potbelly Trade Secret Products, Potbelly Branded Products, third party delivery services, and other items and services. As described in more detail below, there are certain key products critical to our menu and brand that you must buy according to our exact specifications from specific vendors; other products for which the specification is important but which you may purchase from any source selling that product; and a final group of products where only the functional name or use is important and which you may purchase as stock or standard items from any vendors you choose.

In the case of Potbelly Trade Secret Products and Potbelly Branded Products, suppliers will be limited to us, our affiliates and/or other specified exclusive sources, meaning that you must buy those items during the franchise term only from us, our affiliates and/or the other specified exclusive sources at the prices we or they decide to charge. We restrict these items’ sources to protect trade secrets and other intellectual property rights, assure quality, assure a reliable supply of products meeting our standards, achieve better terms of purchase and delivery service, control usage of the Marks by third parties, and monitor the manufacture, packaging, processing, and sale of these items.

In the case of Operating Assets, services, and items other than Potbelly Trade Secret Products and Potbelly Branded Products, suppliers may at our option be limited to us, our affiliates and/or other specified exclusive sources, in which case you must (at our direction) buy those Operating Assets, other items, and services (including gift, loyalty, rewards, and affinity card processing services, quality assurance services, music network services, “mystery” and “secret” shopper services, and consumer satisfaction survey processes) during the franchise term only from

us, our affiliates and/or the other specified exclusive sources at the prices we or they decide to charge. We have the absolute right to limit the suppliers with whom you may deal.

We will identify all designated and approved suppliers in the Operations Manual or other written or electronic communications. PSW, LLC currently is the only supplier of certain interior menu boards and signage, interior custom lighting, artifacts and décor, and tabletops and bases. We and PSW, LLC are approved (but not the only) suppliers of certain computer support services and advertising, marketing, promotional, and customer relationship management materials. You currently must (unless we agree otherwise) use our approved, unaffiliated vendor of site selection location services (during the site selection process). You must maintain Payment Card Industry (PCI) compliance at all times by meeting all the requirements defined by the current Payment Card Industry Data Security Standard (PCI DSS). You also must send us, at a minimum, your annual Attestation of Compliance (AOC) demonstrating that you have completed all necessary action to be PCI compliant. You also currently must use an approved, unaffiliated vendor of PCI DSS services from our approved vendor list. We recommend that you use our preferred vendor for this service. You currently must buy certain meats, cheeses, bread, produce, ready-to-bake items, soups, sauces, canned/jarred items, condiments, dry foods, beverages, and packaging from unaffiliated designated sources. You also currently must use our designated, unaffiliated vendors of gift, loyalty, rewards, and affinity card processing services, mobile app services, quality assurance services, and music network services and, during the Shop's first year of operation, a designated, unaffiliated accounting service to ensure your compliant preparation of required reports and financial statements. (See discussion below regarding your architect and general contractor.) We and PSW, LLC are not designated or approved suppliers of any other items. Certain officers of ours indirectly own (through ownership interests in our ultimate public parent company, Potbelly Corporation) an interest in PSW, LLC, our affiliate, which is the designated or approved supplier of the items identified above. However, our officers currently do not own an interest in any unaffiliated suppliers.

We may require you to offer delivery and catering services from your Shop. If we require or allow you to offer delivery and/or catering services, you must comply with all System Standards for such activities, including making available the products identified as appropriate for delivery (and only those designated products), using only the delivery service provider(s) we specify in writing for your Shop, and limiting the delivery services to any delivery area we specify to you in writing. (See Item 12)

We and our affiliates may receive revenues from required purchases and leases of products and services by franchisees. Any purchases from us and our affiliates, whether required or voluntary, generally will be at prices exceeding our costs so that we can make a profit (plus applicable taxes and shipping charges) (specific pricing depends on the particular item/service involved). Payments also may be collected by approved suppliers or distribution centers on behalf of the system and paid to us. Our intention is to use revenues collected from franchisee and company-owned Potbelly Shop purchases of products and services to offset expenses we incur in administering system-wide programs such as people, guest and operations programs, promotional and price management tools, supply chain programs, brand protection (including quality assurance and food safety) programs and research and development. However, we may earn a profit from franchisees' required purchases and leases of products and services. Except as provided above,

there are no goods, services, supplies, fixtures, equipment, inventory, computer hardware and software, real estate, or comparable items related to establishing or operating the Shop that you currently must buy or lease from us (or an affiliate) or designated suppliers.

System Standards may cover terms and conditions of the sale and delivery of, and terms and methods of payment for, Potbelly Trade Secret Products, Potbelly Branded Products, and other items and services you obtain from us and affiliated and unaffiliated suppliers. This includes our and our affiliates' right to establish an electronic product ordering system and require your payment electronically before we prepare for shipment and send you Potbelly Trade Secret Products, Potbelly Branded Products, and other items you order. We and our affiliates have the right not to sell you any Potbelly Trade Secret Products, Potbelly Branded Products, or other items and not to provide you with services, or to do so only on a "cash-on-delivery" or other basis, if you are in default (but have not cured the default when required after written notice). You may not use any unapproved products as replacements.

To maintain the quality of the Products that Potbelly Shops sell and our system's reputation, we may condition your right to buy or lease Operating Assets, inventory and other items, and services (besides those described above that you may obtain only from us, our affiliates and/or other specified exclusive sources) on their meeting our minimum standards and specifications and/or being acquired from suppliers we approve. We will issue and modify standards and specifications based on our, our affiliates', and our franchisees' experience in operating Potbelly Shops. Standards and specifications may impose minimum requirements for production, performance, reputation, prices, quality, design, and appearance. Our Operations Manual or other communications will identify our standards and specifications for you and (where appropriate) suppliers or only for suppliers (in the latter case where, for example, we give our standards and/or specifications to a supplier under a confidentiality agreement). There might be situations where you can obtain items from any supplier who can satisfy our requirements and, therefore, would be an approved supplier.

If we institute any restrictive sourcing program (which we already have done for the items noted above and also may do for other items) and you want to buy any product brand, ingredient, supply, or service we have not yet approved as meeting our minimum standards and specifications or to buy from a supplier we have not yet approved or designated, you first must notify us and, if requested, send samples and other information we require to determine whether the item, service, or supplier meets our standards and specifications. We may charge you or the supplier a reasonable testing or inspection fee and will decide within 6 months. We periodically will establish procedures for your requests and may limit the number of approved items, services and/or suppliers as we think best. We need not, and have no intent to, approve any of your requests if we already have designated specific items, services and/or suppliers or otherwise have restricted the supply system. We believe it is best to have a limited number of suppliers.

Supplier approval might depend on product safety, quality and sanitation processes, delivery frequency and reliability, service standards, financial capability, customer relations, concentration of purchases with limited suppliers to obtain better prices and service and/or a supplier's willingness to pay us, our affiliates and/or our system to do business with our system. We and our affiliates have the right to receive payments from suppliers on account of their actual



or prospective dealings with us, our affiliates, you, and other franchisees and to use all amounts received without restriction for any purposes we and our affiliates deem appropriate (unless we and our affiliates agree otherwise with the supplier). Supplier approval might be temporary until we evaluate the supplier in more detail. We may inspect a proposed supplier's facilities during and after the approval process to make sure the supplier meets our standards and, as noted above, charge you or the supplier a reasonable inspection fee. If it does not, we may revoke our approval by notifying the supplier and you in writing.

Besides these purchases and leases, you must obtain and maintain at your own expense insurance coverage of the types and in the minimum amounts we require and any other insurance coverage that might be required by your state, city or municipality. Such insurance must be obtained from reputable insurers having an A.M. Best rating of A- VII or better, and the coverage terms must be as good as or better than what is commonly purchased by restaurant owners in your area. Although we might want more or different types of coverage in the future, required coverage currently includes commercial general liability insurance of \$1 million per occurrence and \$2 million in the aggregate, including \$300,000 in coverage for fire legal liability (if a leased premises). Coverage must be primary and non-contributory to any other coverage we have, provide waiver of subrogation and there should be at least \$1 million for personal and advertising injury; \$1 million in automobile liability covering all owned (if any), non-owned, and hired vehicles; umbrella liability insurance of at least \$2 million per occurrence; employment practices liability of at least \$500,000, including third-party liability and endorsement naming us as co-defendant; statutory workers' compensation insurance the law requires, including employer's liability for at least \$1 million; property insurance for the replacement cost of your leasehold improvements, equipment, and business personal property; business income and extra expense coverage for not less than 6 months of sales; employee dishonesty insurance of at least \$25,000 and any other insurance required by your lender or landlord; and cyber-security insurance of at least \$1 million limit and PCI Fines and Penalties sub-limit of \$500,000. The commercial general liability, auto liability, and umbrella liability insurance must name us and our affiliates as additional insured parties for claims arising from your Shop's operation. You must send us a certificate that provides evidence of your insurance before you begin operations or when you sign a lease or sublease and every year afterward at least 10 days before the renewal or anytime we so request. The certificate should show that your liability insurance company will give us at least 30 days' prior written notice of the coverage's cancellation. If you do not send us a certificate of insurance complying with our requirements, we have the right but no obligation to buy the coverage for you and charge you the premium and any administrative fee that might be due (for which you must reimburse us immediately).

Before you use them, you must send us or our designated agency for pre-approval samples of all advertising, promotional, and marketing materials we have not prepared or approved within the previous one year. If you do not receive written disapproval within 15 days after we or our designated agency receives the materials, they are deemed to be disapproved. You may not use any advertising, promotional, or marketing materials that we have not approved or have disapproved. You must stop using any previously-approved materials within 30 days after we notify you that they no longer may be used.

We must accept the Shop's proposed site in writing before you may sign any purchase agreement, lease, sublease, or other occupancy document for the site. We have the right to accept or reject the terms (including lease payments or purchase price) of any lease, sublease or purchase agreement for the site (the "Real Estate Agreement") before you sign it. You must send us for review and comment a copy of the proposed final form of Real Estate Agreement before you sign it. We also may request, and you must send us, for review and comment earlier drafts of the proposed Real Estate Agreement. You may not sign the Real Estate Agreement unless and until we have reviewed and accepted its final form and notified you in writing that you may sign it.

The Real Estate Agreement must contain the terms and provisions we reasonably require. If you lease the site, we may require that (i) the lease be collaterally assigned to us (with the lessor's prior written consent) by a lease rider and/or collateral assignment agreement in form and substance reasonably acceptable to us in order to secure your performance of every liability and obligation to us under our Franchise Agreement, and (ii) the lease contain the provisions we require for site leases for Potbelly Shops, including our right to the Shop's site if the franchise is terminated or you lose possession (see Exhibit E).

If we agree to sublease the premise of the Shop to you, you must pay the rent under the sublease to us or the landlord of the premises (at our option) along with the related occupancy costs which include property taxes, insurance, maintenance and structural repairs. If we require you to pay rent to us, we may charge an amount that is higher than the rent due under the underlying lease. We may derive revenue from this subleasing arrangement as described in Item 6.

You are responsible for constructing and developing the Shop. We will give you template plans and drawings ("Plans") for a Potbelly Shop's physical structure, exterior elements, and interior layout. The plans will include mandatory and suggested standards and specifications for, among other things, size, dimensions, design, image, decor, Operating Assets, and color scheme. However, the Plans might not reflect the requirements of any federal, state, or local law, code, or regulation, including those arising under the Americans with Disabilities Act ("ADA") or similar rules governing public accommodations for disabled persons. You must prepare, using our approved architectural and design services vendor, a site survey and all required construction plans and specifications to suit the site and make sure they comply with our requirements, the ADA and similar rules, other applicable ordinances, building codes, permit requirements, and lease requirements and restrictions. You must send us for review and acceptance your site survey and construction plans and specifications before you either submit them for permitting or begin constructing the Shop and all revised or "as built" plans and specifications during construction. Our review is only to ensure your compliance with our design and layout requirements.

You must identify for us your proposed general contractor before the Shop construction process begins. The general contractor must have sufficient experience (in our opinion) constructing similar types of commercial restaurant properties. We must accept your proposed general contractor in writing before you hire it for the Shop's construction. You may not hire any general contractor we reject. You are responsible for the performance of architects, contractors, and subcontractors you hire to construct, develop, and maintain the Shop and for ensuring that sufficient insurance coverage is in place during the construction process.

You must issue and honor/redeem gift certificates, coupons, and gift, loyalty, rewards, and affinity cards for Potbelly Shops and participate in, and comply with the requirements of, our gift card and other customer loyalty, affinity, rewards, and similar programs.

The Area Development Agreement does not require you to buy or lease from us (or our affiliates), our designees, or approved suppliers, or according to our specifications, any goods, services, supplies, fixtures, equipment, inventory, computer hardware and software, real estate, or comparable items. You must give us information and materials we request concerning each site at which you propose to operate a Shop so we can assess that site. You must use our designated unaffiliated vendor of site selection location services to help assess the suitability of each proposed Shop site.

Collectively, the purchases and leases described above are virtually 100% of your overall purchases and leases to establish and operate the Shop. The Potbelly System currently receives payments from certain beverage and food vendors based on volumes of fountain syrup, bottles/cans of soft drinks and water, chips, bread and some meats purchased for Potbelly Shops. The amounts paid depend on total System purchase volumes of each type but range from 0% to 10% or a fixed amount based on each case purchased. The amounts the Potbelly System received during 2022 took into account the total purchases made by franchisees during 2022. We and our affiliates otherwise currently do not receive any payments from suppliers on account of their actual or prospective dealings with you (although we have the right to do so, as noted above). During our 2022 fiscal year, we did not receive any revenue from selling or leasing products or services to our franchisees. However, one of our affiliates received a total of \$105,718.16 during 2022 from selling or leasing products and services to our franchisees. This information is taken from our affiliate's internal financial records.

There currently are no purchasing or distribution cooperatives. We and our affiliates currently negotiate purchase arrangements (including price terms) with suppliers of site selection location services; gift, loyalty, rewards, and affinity card processing services; quality assurance services; music network services; various food products and ingredients; and packaging. In doing so, we and our affiliates seek to promote affiliate-owned Potbelly Shops (for which our affiliates have negotiated these arrangements for many years), our interests as the franchisor, and the franchise system's overall interests (and not for any particular franchisee's benefit). We do not provide material benefits to you (for example, renewal or granting additional franchises) for purchasing particular products or services or using particular suppliers.

**Item 9**  
**FRANCHISEE’S OBLIGATIONS**

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

OBLIGATION	SECTION IN AGREEMENT	DISCLOSURE DOCUMENT ITEM
a. Site selection and acquisition/lease	2A of Franchise Agreement, Lease Rider/Collateral Assignment of Lease, and Exhibit A of Area Development Agreement	7, 8, 11, and 12
b. Pre-opening purchases/leases	2B, C, D, and E and 8A of Franchise Agreement and Lease Rider/Collateral Assignment of Lease; Not applicable to Area Development Agreement	5, 7, 8, and 11
c. Site development and other pre-opening requirements	2 of Franchise Agreement; Not applicable to Area Development Agreement	7, 8, and 11
d. Initial and ongoing training	1C(5) and 4A and B of Franchise Agreement; Not applicable to Area Development Agreement	6, 7, and 11
e. Opening	2F of Franchise Agreement; Not applicable to Area Development Agreement	11 and 17
f. Fees	2D, E, and F, 3, 4A and B, 8A(1), 8A(4), 8A(5), 8A(16), 8A(17), 8A(20), 8A (last paragraph), 9, 11, 12C(7), 12E(2), 12H, 13A, 14C, 16D, and 17C of Franchise Agreement and 5 and 3 of Area Development Agreement	5, 6, and 7
g. Compliance with standards and policies/operating manual	1A(4), 4B and C, and 8 of Franchise Agreement; 2 of Area Development Agreement	8 and 11
h. Trademarks and proprietary information	2E, 5, 6, and 9E and F of Franchise Agreement; 6.01 of Area Development Agreement	11, 13, and 14

OBLIGATION	SECTION IN AGREEMENT	DISCLOSURE DOCUMENT ITEM
i. Restrictions on products/services offered	1D and 8A of Franchise Agreement; Not applicable to Area Development Agreement	8, 11, 12, and 16
j. Warranty and customer service requirements	8A(16) of Franchise Agreement; Not applicable to Area Development Agreement	Not Applicable
k. Territorial development and sales quotas	2.04 of Area Development Agreement	12
l. On-going product/service purchases	2D and E and 8 of Franchise Agreement; Not applicable to Area Development Agreement	6 and 8
m. Maintenance, appearance, and remodeling requirements	8, 12C(11), and 13A of Franchise Agreement; Not applicable to Area Development Agreement	8, 11, and 17
n. Insurance	8A(20) of Franchise Agreement; Not applicable to Area Development Agreement	7 and 8
o. Advertising	9 of Franchise Agreement; Not applicable to Area Development Agreement	5, 6, 7, 8, and 11
p. Indemnification	16D of Franchise Agreement; 5.02 of Area Development Agreement	6
q. Owner's participation/management/staffing	1C(4) and (5), 4A, and 8A(12) of Franchise Agreement; Not applicable to Area Development Agreement	11 and 15
r. Records and reports	10 of Franchise Agreement; Not applicable to Area Development Agreement	Not Applicable
s. Inspections and audits	11 of Franchise Agreement; Not applicable to Area Development Agreement	6 and 11
t. Transfer	12 of Franchise Agreement and 7 of Area Development Agreement	17
u. Renewal	13 of Franchise Agreement; Not applicable to Area Development Agreement	17

OBLIGATION	SECTION IN AGREEMENT	DISCLOSURE DOCUMENT ITEM
v. Post-termination obligations	15 of Franchise Agreement; 9 of Area Development Agreement	17
w. Non-competition covenants	7, 12C(12), 12G, and 15D of Franchise Agreement and Principal's Agreement; 6.02 and 9.02 of Area Development Agreement	15 and 17
x. Dispute resolution	17F, G, H, I, and K of Franchise Agreement; Section 10 of Area Development Agreement	17
y. Compliance with Anti-Terrorism Laws	19 of Franchise Agreement; 10.18 of Area Development Agreement	17
z. Participation in gift card and customer loyalty, rewards, and affinity programs	8A(11) of Franchise Agreement; Not applicable to Area Development Agreement	8 and 11

**Item 10**  
**FINANCING**

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

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

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

Before you begin operating the Shop, we will:

1. Give you our site selection criteria for the Shop, covering demographic characteristics; traffic patterns; parking; character of neighborhood; competition from, proximity to, and nature of nearby businesses; other commercial characteristics; and size, appearance, and other physical characteristics. Unless we agree otherwise, you must use our approved vendor of site selection location services. We must accept the Shop's proposed site in writing before you may sign any purchase agreement, lease, sublease, or other occupancy document for the site. We will accept or reject your proposed site within 30 days after receiving the completed site report and other materials we request. While we may visit your area to see your proposed site(s), we will not conduct site selection activities for you. We will not unreasonably withhold acceptance of a site meeting our criteria. If we sign the Franchise Agreement even though you have not yet located the Shop's site, you must

secure a suitable site within 180 days after signing the Franchise Agreement. We may terminate the Franchise Agreement if you do not find a suitable site within the required timeframe. We will refund a portion of your initial franchise fee unless the Franchise Agreement was signed under an Area Development Agreement. (Franchise Agreement – Sections 2.A and 2.B)

2. Designate a specific number of Shops you may develop and open at acceptable locations within your development area (if you sign an Area Development Agreement). If we accept a proposed site, you must within the time period we specify sign a separate franchise agreement (and related documents) for that Potbelly Shop (on our then-current forms) and pay us the remaining portion of the initial franchise fee due. (This applies for Shops you commit to develop under the Area Development Agreement after the 1<sup>st</sup> Shop, as you will sign the Franchise Agreement for the 1<sup>st</sup> Shop when you sign the Area Development Agreement.) If you fail to do so, or cannot obtain lawful possession of the proposed site, we may withdraw our acceptance of the proposed site. If you do not find acceptable sites and therefore do not comply with the development schedule under the Area Development Agreement, we may terminate the Area Development Agreement (Area Development Agreement – Section 8.A). The development fee is not refundable. (Area Development Agreement – Section, 2, 4 and 6) We will accept the proposed locations of your additional Shops only if they meet our then-current standards for Shop sites.
3. Give you template plans and drawings for a Potbelly Shop’s physical structure, exterior elements, and interior layout, including mandatory and suggested standards and specifications for size, dimensions, design, image, decor, Operating Assets, and color scheme. (Franchise Agreement – Section 2.C.)
4. Identify the Operating Assets, Potbelly Trade Secret Products, Potbelly Branded Products, and other items you must use to construct, develop, and operate the Shop, the minimum standards and specifications you must satisfy, and the designated and approved suppliers from whom you must or may buy or lease items and services (which may be limited to and/or include us, our affiliates and/or other specified exclusive sources). (Franchise Agreement – Sections 2.C., 2.D., 2.E., and 8.A.)
5. Give you access during the franchise term to our Operations Manual (currently consisting of 1,250 total pages), the current table of contents of which is Exhibit F. (Franchise Agreement – Section 4.C.)
6. Support you in developing your Shop’s market introduction program, conducted at your own expense. (Franchise Agreement – Section 9.A.)
7. Train your Managing Owner (or Head of Operations, as applicable), your General Manager, and key-holding supervisory employees. (Franchise Agreement – Section 4.A.) We describe this training later in this Item.

During your operation of the Shop, we will:

1. If this is your first Shop, send an “opening team” to the Shop for at least 5 days but potentially up to 12 days to assist with the grand opening process (typically starting before and continuing after opening) and to help train your supervisory employees on our philosophy and System Standards and not matters relating to labor relations and employment practices. (If this is your second or subsequent Shop, we need not provide our full opening team on-site assistance because you already will have experience operating a Potbelly Shop.) (Franchise Agreement – Section 4.A.(1))
2. Advise you regarding the Shop’s operation based on your reports or our evaluations and inspections. We also may guide you on standards, specifications, and operating procedures and methods that Potbelly Shops use; purchasing required and authorized Operating Assets, Potbelly Trade Secret Products, Potbelly Branded Products, and other items and arranging for their distribution to you; advertising and marketing materials and programs; supervisory employee training; and administrative, bookkeeping, accounting, and inventory control procedures. We may guide you in our Operations Manual, bulletins, or other written materials; by Electronic Media and Intranets; by telephone consultation; and/or at our office or the Shop. “Electronic Media” means the Internet, the World Wide Web, or any other similar proprietary or common carrier electronic delivery system, and materials (such as CD ROMs and USB data storage devices) facilitating the electronic communication of information. An “Intranet” means an internal network we design and administer for the Potbelly system through which the system’s members may communicate with each other and through which we circulate updates to the Operations Manual and other confidential information. (Franchise Agreement – Section 4.B.)
3. Give you, at your request (and our option) or if we deem necessary, additional or special guidance, assistance, and training (excluding training relating to labor relations and employment practices). (Franchise Agreement – Section 4.B.)
4. Continue to give you access to the Operations Manual, which may consist of and is defined to include audio, video, computer software, other electronic media and/or written and other tangible materials. The media and materials comprising the Operations Manual contain mandatory standards, specifications, operating procedures, and rules (“System Standards”) and information on your other obligations under the Franchise Agreement. We periodically may modify the substance of the Operations Manual to reflect changes in System Standards and your other operating requirements. (Franchise Agreement – Sections 4.C. and 8)
5. Issue and modify System Standards for Potbelly Shops. We periodically may modify System Standards, which may accommodate regional or local variations, and these modifications may require you to invest additional capital in the Shop and/or incur higher operating costs. (Franchise Agreement – Section 8)
6. Inspect the Shop and observe its operation to help you comply with the Franchise Agreement and all System Standards. (Franchise Agreement – Section 11.A.)
7. Let you use confidential information. (Franchise Agreement – Section 6)



8. Let you use the Marks. (Franchise Agreement – Section 5)
9. Periodically offer refresher training courses. (Franchise Agreement – Section 4.A.)
10. Maintain and administer a Brand Fund for marketing, advertising, customer relationship management (“CRM”), public relations, and brand building and protection activities and programs we deem appropriate to enhance the Potbelly brand (collectively, “Marketing”). (Franchise Agreement – Section 9.B.)
11. To the extent allowed by applicable law, we may regulate the minimum, maximum, and other prices for the Shop’s products, including restrictions on your use of coupons and other product price discounting practices. (Franchise Agreement – Section 8.A.)

### Brand Fund (the “Brand Fund”)

Recognizing the value of advertising and marketing to the goodwill and public image of Potbelly Shops, you must contribute to the Brand Fund the amounts that we periodically require. You currently must contribute to the Brand Fund 3% of the Shop’s weekly Gross Sales. We may, upon 90 days’ prior notice to you, increase your required Brand Fund contribution by up to an additional 1% of the Shop’s Gross Sales for a total of up to 4% of the Shop’s Gross Sales. (Your total required marketing expenditures, including the required minimum Local Marketing Spend and required Area Cooperative expenditures (described below) will not exceed a total of 5% of the Shop’s Gross Sales.) Potbelly Shops that we and our affiliates own are not contractually obligated to contribute to the Brand Fund. However, affiliate-owned Potbelly Shops currently intend to contribute to the Brand Fund on the same percentage basis as franchisees.

We direct all Marketing that the Brand Fund finances, with sole control over the creative concepts, graphics, materials, media, and endorsements used and their geographic, market, and media placement and allocation. We may designate a separate entity as we deem appropriate in our sole discretion to operate and administer the Brand Fund. Any such entity will have all of the rights and duties as described below. The Brand Fund may pay for creating, preparing, and producing marketing, advertising and public relations materials and concepts; developing, implementing, operating, and maintaining a System Website, an Intranet, and/or related strategies; and administering national, regional, multi-regional, and local Marketing, including purchasing advertising (including digital media/marketing), conducting research, using agencies and other advisors to provide assistance, and supporting public relations, market research, and other advertising, promotion, and marketing activities. We have the right to collect for deposit into the Brand Fund any advertising, marketing, or similar allowances paid to us by suppliers who deal with Potbelly Shops and with whom we have agreed that we will so deposit these allowances. (These payments are different from those which are not designated by suppliers to be used exclusively for advertising or similar purposes, and which we and our affiliates therefore may use for any purposes we and they deem appropriate. The Brand Fund may advertise locally, regionally, or elsewhere in printed materials, on radio or television, on the Internet, on billboards, and on transit media, whatever we think best. We and/or an outside regional advertising agency will produce all Marketing. During our 2021 fiscal year, 100% of Brand Fund expenditures were spent on production expenses.

We will account for the Brand Fund separately from our other monies (although we need not keep Brand Fund contributions in a separate bank account) and not use the Brand Fund for our general operating expenses. However, we may use the Brand Fund to pay for expenses we incur in activities reasonably related to directing the Brand Fund and its programs, including conducting market research, public relations, creating, preparing, and producing advertising, promotion, CRM, graphic design, and marketing materials, collecting and accounting for Brand Fund contributions, and taxes we must pay on Brand Fund contributions we receive; reasonable salaries and benefits of personnel who manage and administer the Brand Fund; a management fee for us (or an affiliate); the Brand Fund's other administrative costs; travel expenses of personnel while they are on Brand Fund business; meeting costs; overhead relating to Brand Fund business; and franchisee conferences.

The Brand Fund is not our asset. Although the Brand Fund is not a trust, we will hold all Brand Fund contributions for the contributors' benefit and use contributions only for the purposes described above. We have no fiduciary obligation to you for administering the Brand Fund or any other reason. The Brand Fund may spend in any fiscal year more or less than the total Brand Fund contributions in that year, borrow from us or PSW, LLC (paying reasonable interest) to cover deficits, pay back outstanding principal amounts borrowed in prior years from us or third parties, or invest any surplus for future use. If we spend less than the total of all Brand Fund contributions received during any fiscal year, we may accumulate the sums for use in later years. We will use interest earned on Brand Fund contributions to pay costs before using the Brand Fund's other assets. At the end of our fiscal year, we will determine whether there are unused Brand Fund contributions and, if so, either roll over those unused contributions for use during the following fiscal year or return those unused contributions to the Brand Fund's contributors in proportion to their respective contributions during the preceding fiscal year. We do not expect to use any of the Brand Fund specifically to develop materials and programs to solicit franchisees. However, media, materials, and programs, including the System Website, prepared using Brand Fund contributions may describe our franchise program, reference the availability of franchises and related information, and process franchise leads. We will prepare an annual, unaudited statement of Brand Fund collections and expenses and either give you a copy upon written request or post the statement on the Intranet. We may have the Brand Fund audited annually, at the Brand Fund's expense, by an independent certified public accountant we select. We may incorporate the Brand Fund or operate it through a separate entity when we think best. The successor entity will have all of the rights and duties described here.

The Brand Fund is to maximize recognition, and enhance system protection, of the Marks and increase patronage of Potbelly Shops. Although we will try to use the Brand Fund to develop Marketing materials and execute Marketing activities and programs benefiting all Potbelly Shops, we need not ensure that Brand Fund expenditures in or affecting any geographic area are proportionate or equivalent to Brand Fund contributions by Potbelly Shops operating in that geographic area or that any Potbelly Shop benefits directly or in proportion to its Brand Fund contributions from the development of Marketing materials or the execution of Marketing activities and programs. (In other words, the Brand Fund need not spend any specific amount in your market area.) We may use collection agents and institute legal proceedings at the Brand Fund's expense to collect Brand Fund contributions. We also may forgive, waive, settle, and compromise all claims by or against the Brand Fund. We assume no other direct or indirect liability

or obligation to you for collecting amounts due to, maintaining, directing, or administering the Brand Fund.

We may at any time defer or reduce a franchisee's Brand Fund contributions and, upon 30 days' prior written notice to you, reduce or suspend Brand Fund contributions and operations for one or more periods of any length and terminate (and, if terminated, reinstate) the Brand Fund. If we terminate the Brand Fund, we will at our option spend all remaining Brand Fund monies on permitted Marketing or distribute all unspent monies to Brand Fund contributors in proportion to their respective Brand Fund contributions during the preceding year.

### Your Local Marketing Obligations

Besides your Shop's Brand Fund contributions (see above) and market introduction program, you currently must spend a minimum of 1% of the Shop's Gross Sales each year of the franchise term to market and promote your Shop locally (the "Local Marketing Spend"). Your total required marketing expenditures will not exceed a total of 5% of the Shop's Gross Sales.

You must, by the deadlines we specify, present to us annually (or on the quarterly or other basis we specify) for our prior written approval your plan for use of the Local Marketing Spend in the upcoming year (or quarter or other timeframe). You may engage only in the Shop-level advertising, marketing, and promotion activities, and use only the materials and media, we pre-approve. If you use an advertising or media agency, you may use either any agency we use or another agency you select but that we pre-approve in writing after you send us the information we reasonably request about the agency. We may approve or disapprove that agency as we deem best. We may rescind our approval of the agency (1) immediately if we determine that it no longer meets our brand standards or brand approval requirements or (2) any time, and for any or no reason, upon 90 days' prior written notice to you.

You must send us, at the time and in the manner we require, an accounting of your actual expenses for Shop-level advertising, marketing, and promotion for the period we specify. We may designate during the franchise term which expenses will, or will not, count toward your Local Marketing Spend.

Your local Marketing must follow the pre-approved plan and our guidelines. All Marketing materials developed for your Shop must contain notices of the System Website's domain name in the manner we designate. Except as described below with the System Website, you may not develop, maintain, provide mutual links to, or authorize any website mentioning or describing you or the Shop or displaying any of the Marks. Your Marketing must be completely clear, factual, and not misleading and conform to both the highest standards of ethical Marketing and the Marketing policies we periodically require.

Before you use them, you must send us or our designated agency for pre-approval samples of all Marketing materials we have not prepared or approved within the previous one-year period. If you do not receive written approval within 15 days after we or our designated agency receives the materials, they are deemed to be disapproved. You may not use any Marketing materials that we have not approved or have disapproved and must stop using any materials we previously

approved within 30 days after we notify you that they no longer may be used. (Franchise Agreement – Section 9.C.)

### Area Brand Cooperatives

There currently are no local or regional brand cooperatives. However, if the general market area in which the Shop is located encompasses at least 3 Potbelly Shops (including Shops owned by us, our affiliates, and franchisees) and we believe that collaborative brand building activities among all franchisees (and us and our affiliates) in that area are appropriate to promote Potbelly Shops, you agree at our request to form a cooperative or collaborative brand building association (“Area Cooperative”) with other franchisees and us and/or our affiliates to advertise, market, and promote Potbelly Shops in that market area. We will control the Area Cooperative’s organization, formation, and governance, including preparation of bylaws. The Area Cooperative will begin operating on a date we specify. The Area Cooperative’s members will include all Potbelly Shops operating in that area. If an Area Cooperative has been established as of your Franchise Agreement’s effective date for the market area in which your Shop is located, you automatically become a member of that Area Cooperative when you sign your Franchise Agreement (although voting rights and contributions do not begin until your Shop opens and begins operation).

Each Area Cooperative will be organized and governed in a form and manner, and begin operating on a date, that we determine in advance. Each Area Cooperative’s purpose is, with our approval, to administer advertising programs and develop promotional materials for the area the Area Cooperative covers.

If there is an Area Cooperative, you must (a) join, participate in, sign the documents we require to become a member of and actively support the Area Cooperative in compliance with its governing documents (which you may review), and (b) contribute a specific percentage of your Shop’s Gross Sales to the Area Cooperative. The maximum Area Cooperative contribution during a fiscal period may not exceed the then-currently-designated Local Advertising Spend (currently, 1% of Gross Sales). That contribution will be credited toward your Local Advertising Spend (but not toward the Brand Fund contribution). If Potbelly Shops that we and our affiliates operate are members of the Area Cooperative, they will contribute a proportionate amount of their Gross Sales to the Area Cooperative’s expenses.

The Area Cooperative must, by the deadlines we specify, present to us annually (or on the quarterly or other basis we specify) for our prior written approval its plan for use of Area Cooperative contributions in the upcoming year (or quarter or other timeframe). The Area Cooperative must present a Marketing plan having the approval of at least 51% of the Potbelly Shops that are members of the Area Cooperative. After we have approved the plan, the Area Cooperative may propose for our prior written approval a change in the percentage of Gross Sales to be contributed by Potbelly Shops for the plan. If we approve that change (although we have no obligation to do so), the Area Cooperative may implement that change only if at least 70% of the Potbelly Shops that are members of the Area Cooperative vote for the change. (As noted above, your minimum required advertising/marketing expenditures will not exceed a total of 5% of the Shop’s Gross Sales. We may, upon 90 days’ prior notice to you, adjust the percentages among the various required expenditures throughout the franchise term.)

Each Potbelly Shop in the Area Cooperative has one vote regarding the Area Cooperative's administration, contributions, operation, and expenditures. If the Area Cooperative's members cannot agree on any aspect of the Area Cooperative's administration, contributions, operation, or spending and the disagreement continues for 20 days after written notice to us that a disagreement exists, we may resolve the matter. Our decision is final and binding on all Area Cooperative members. In any event, we may, whenever we deem best, control the Area Cooperative's operation, contributions, and expenditures.

You must send us and the Area Cooperative any reports we require. The Area Cooperative will operate only to advertise, market, and promote Potbelly Shops in the Area Cooperative's market area. The Area Cooperative and its members may not use any Marketing plans or materials without our prior written consent, and all activities must follow our guidelines. The Area Cooperative will prepare annual, unaudited financial statements that you may review. We may change, dissolve, or merge the Area Cooperative. (Franchise Agreement — Section 9.D.)

There currently are no franchisee advertising councils advising us on advertising policies. However, we have the power at any time to form, change, dissolve, or merge a franchisee advertising council.

### System Website

We have established a system website (1) to advertise, market, and promote Potbelly Shops and the Products (and/or the Potbelly Shop franchise opportunity), (2) through which to operate on-line product ordering and other fulfillment systems, and (3) for any other purposes we consider appropriate or necessary for Potbelly Shops, the Products or the Potbelly system ("System Website"). We will create a separate interior webpage (accessible only through the System Website which we control) which references your Shop. You must give us the information we request in order for us to create your interior webpage on the System Website. By giving us the information, you represent that the information is accurate and not misleading and does not infringe any other party's rights. We will own all intellectual property and other rights in the System Website, your interior webpage, and all information they contain (including the log of "hits" by visitors and any personal or business data that visitors supply).

We will control, and may use Brand Fund contributions to develop, maintain, operate, update, and market, the System Website, including your interior webpage. We will update the information on your interior webpage, if any, or add information we approve as frequently as we deem appropriate. You must notify us whenever any information on your interior webpage changes or is not accurate. You must pay our then-current fee for us to create an interior webpage for your Shop or as we otherwise require to maintain and operate the System Website's various features and functions (if, or to the extent, the Brand Fund does not pay for these costs). We have sole control over all information on the System Website, including your interior webpage.

We will maintain your interior webpage only while you are in substantial compliance with the Franchise Agreement and all System Standards. If you are in material default of any obligation, we may temporarily suspend your interior webpage until you fully cure the default. We will permanently terminate your interior webpage when the Franchise Agreement expires or is terminated.

All Marketing materials you develop for the Shop must contain notices of the System Website's domain name(s). You may not develop, maintain, link to, or authorize any other website mentioning or describing you or the Shop or displaying any of the Marks. (Franchise Agreement – Section 9.E.)

### Intranet

We may establish and maintain an Intranet and System Standards for the Intranet's use. These System Standards will address, among other things, (1) restrictions on using abusive, slanderous, or otherwise offensive language in electronic communications, (2) restrictions on communications among franchisees endorsing or encouraging breach of any franchisee's franchise agreement, (3) confidential treatment of materials we transmit via the Intranet, (4) password protocols and other security precautions, (5) grounds and procedures for our suspending or revoking a franchisee's access to the Intranet, and (6) a privacy policy governing our access to and use of electronic communications that franchisees post on the Intranet. As the Intranet's administrator, we have the right to access and view any communication posted on the Intranet.

After we notify you that the Intranet has become functional, you must buy and install all necessary additions to the computer system and establish and continually maintain electronic connection with the Intranet allowing us to send messages to and receive messages from you. You must contribute reasonable amounts on an annual, quarterly, monthly, or other basis toward the cost of maintaining and developing the Intranet. If you fail to pay when due any required amount, or fail to comply with any Intranet System Standard, we may temporarily suspend your access to any so-called chat room, bulletin board, list-serve, or similar feature the Intranet includes until you fully cure the breach. (Franchise Agreement – Section 9.F.)

### Opening

We estimate that it typically will be 9 to 12 months after you sign the Franchise Agreement and pay the initial franchise fee before you begin operating the Shop. You must find an acceptable site within 180 days after you sign the Franchise Agreement. Once you have a site, the specific timetable for opening depends on the site's condition and the extent to which you must upgrade or remodel the site; the Shop's construction schedule; the delivery schedule for Operating Assets, Potbelly Trade Secret Products, Potbelly Branded Products, and other items and supplies; completing training; and complying with local laws and regulations. You may not begin operating the Shop until: (1) we notify you in writing that the Shop meets our standards and specifications; (2) required training is satisfactorily completed; (3) you pay the initial franchise fee and other amounts then due to us and key suppliers; (4) you obtain all required licenses and permits; and (5) you give us certificates for all required insurance policies. (Franchise Agreement – Section 2.F.) You must open the Shop for business within 360 days after you sign the Franchise Agreement. (Franchise Agreement – Section 2.F.) We may terminate the Franchise Agreement if you fail to do so. If you begin operating the Shop before we notify you that it meets our standards and specifications, you must pay us a Non-Approved Shop Opening fee for each day the Shop operates without our acceptance. If you sign an Area Development Agreement to develop multiple Potbelly Shops, the Rider's schedule will dictate when you must open the Shops.

## Computer System

You must obtain and use the computer-hardware and software we specify, including required computer, point-of-sale, and other electronic information systems, a high-speed Internet connection, and all equipment components and software necessary for you to accept and process Potbelly gift, loyalty, and rewards cards and participate in our gift card, customer loyalty, rewards, affinity, and similar programs. (Franchise Agreement – Section 2.D.) The computer system currently includes a back office computer, including a standard MS Office suite, 2-4 NCR touch-screen POS terminals (located on the front-of-house), 6 digital menu boards and all necessary peripherals required to network the terminals properly to the back-office computer. The back office computer will function as a server for the POS system. We estimate the computer and point-of-sale systems' cost to be \$53,000 to \$63,000 (\$58,000 to \$68,000 if your Shop is a Drive Thru location). This includes approximately \$300 to \$500 for initial Payment Card Industry (PCI) Data Security Standard compliance costs for the systems.

The third parties whose computer-related products you buy have no contractual right or obligation to provide ongoing maintenance, repairs, upgrades, or updates unless you obtain a service contract or a warranty covers the product. The cost of ongoing maintenance, repairs, upgrades, and updates for the current computer and point-of-sale systems is estimated to be \$5,500 per year. There are other information technology products we recommend (but do not require) that you obtain at an estimated monthly cost of \$1,000 to \$2,000. The computer system generates and maintains sales, menu mix, and labor data. You must upgrade the computer system, and/or obtain service and support, as we require and/or as necessary because of technological developments, including complying with PCI Data Security Standards by using a PCI testing service from our approved vendor list (at a monthly cost we estimate to range from \$50 to \$80). There are no contractual limitations on the frequency and cost of this obligation. We need not reimburse your costs. You may not use any unapproved computer software or security access codes. We have independent, unlimited access to the information the system generates, although we will not have any access to employee- or employment-related information for your Shop's employees.

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, on your signing the software license agreement or similar document, or otherwise agreeing to the terms (for example, by acknowledging your consent to and accepting the terms of a click-through or other shrink-wrapped 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 weekly, monthly, or other fees for any required or recommended proprietary software or technology licensed to you and for other maintenance, support, and access services provided during the franchise term.

Despite the fact that you must buy, use, and maintain the computer system according to our standards and specifications, you are responsible for (1) the acquisition, operation, maintenance, and upgrading of the computer system; (2) the manner in which your computer system interfaces with our and any third party's computer system; and (3) any and all consequences if the computer system is not properly operated, maintained, and upgraded. The computer system

permits 24 hours per day, 7 days per week electronic communications between you and us, including access to the Internet and our then-current System Website and Intranet.

## Training

Before you sign the Franchise Agreement, we will train your Managing Owner at a designated training facility of our choice (at our corporate headquarters in Chicago, Illinois, at one of our designated company training Shops and/or via an online webinar, as we determine). You must pay all travel and living expenses during this training. After you sign the Franchise Agreement, we will train your Managing Owner, Head of Operations (if your Managing Owner is not involved in the Shop's on-site, day-to-day operation), and General Manager (the person you designate as your most senior leader if your Managing Owner or Head of Operations, as applicable, is not involved in the Shop's on-site, day-to-day operation) and up to 2 key-holding supervisory employees (also called "shift leaders") at no additional charge. If you meet our preferred franchisee profile (a 2-person operating team), our training program is scheduled to be: (i) approximately 10 weeks for your Managing Owner (or Head of Operations, as applicable) (if you have a Head of Operations, your Managing Owner's training will be 4 days) and General Manager; and (ii) approximately 5 weeks for your 2 key-holding supervisory employees (although training may be longer or shorter depending on our opinion of the attendees' skills and experience). Training of your Managing Owner (or Head of Operations, as applicable), General Manager, and at least one key-holding supervisory employee must occur before your Shop opens. Training of the one additional key-holding supervisory employee may occur before or after your Shop opens (as we mutually agree). However, if his or her training occurs after your Shop opens, it must be started within 8 weeks after opening. Training focuses on our philosophy, System Standards, and the material aspects of operating a Potbelly Shop, excluding aspects relating to labor relations and employment practices. It is held at (i) a designated training facility of our choice at our corporate headquarters and/or an operating Potbelly Shop, or (ii) your Shop if we agree that training of the one additional key-holding supervisory employee will be after your Shop opens, or (iii) a combination of both locations (your Shop and our headquarters and an operating Potbelly Shop).

If this is your 2<sup>nd</sup> or subsequent Potbelly Shop, our training program (for the duration described above) is mandatory for your General Manager (because your Managing Owner or Head of Operations, as applicable, will not be involved in the Shop's on-site, day-to-day operation) and 2 key-holding supervisory employees. In that situation, your General Manager and the 2 key-holding supervisory employees must attend and satisfactorily complete the training program before the Shop opens. If you elect to train a 3<sup>rd</sup> key-holding supervisory employee, that training may occur before or after your Shop opens (as we mutually agree) but, if it is to occur after the Shop opens, must be started within 8 weeks after opening.

Required training attendees must complete to our satisfaction the full training program for their respective roles and pass applicable operations and proficiency tests. You must pay all travel and living expenses, wages, and workers' compensation insurance costs your attendees incur during training. You must substitute for your General Manager or key-holding supervisory employees if they are not qualified to hold their positions and pay our then-current fee to train their replacements. Our training program may include a "train the trainer" module so that your senior-level personnel can learn how to train your other employees. If we determine that your Managing



Owner (or Head of Operations, as applicable) cannot complete initial training to our satisfaction (and he or she, or a replacement, cannot complete a repeat training program to our satisfaction), we may terminate the Franchise Agreement. (Franchise Agreement – Section 4.A.) After the initial training, your Shop always must have on staff at least 3 fully trained, certified key-holding supervisory employees, including a Managing Owner (or Head of Operations, as applicable) or a General Manager (if your Managing Owner or Head of Operations, as applicable, is not involved in the Shop's on-site, day-to-day operation) so that the quality of the products and the Potbelly brand is maintained.

All Shop employees in customer contact positions must be able to speak, read, write, and understand the English language fluently so they can pass the portions of our training program (conducted in English) related to their positions and communicate clearly with customers and other third parties.

Training will occur after you sign the Franchise Agreement and while you are developing the Shop (and, if mutually agreed, after your Shop opens for an additional key-holding supervisory employee). Training must be completed for all required attendees (except for the additional key-holding supervisory employee) before you may begin operating the Shop. It will be scheduled 3 to 4 months before the Shop’s anticipated opening date so that it can be completed at least 8 weeks before the Shop opens for your Managing Owner (or Head of Operations, as applicable) and at least 3 weeks before the Shop opens for your General Manager and key-holding supervisory employees. We plan to be flexible in scheduling training to accommodate our personnel, you, and your personnel and will conduct training programs as necessary. There currently are no fixed training schedules. As of this disclosure document’s issuance date, we provide the following training:

**TRAINING PROGRAM**

Column 1	Column 2	Column 3	Column 4
Subject	Hours of Classroom Training	Hours of On-The-Job Training	Location
History/Philosophy of Potbelly Sandwich Shop	1.5	0	Support Center, Training Shop or Online*
Tour of Shop	0	2	Support Center, Training Shop or Online*
Design/Construction and Use of Manual	2	0	Support Center, Training Shop or Online*

Column 1  Subject	Column 2  Hours of Classroom Training	Column 3  Hours of On- The- Job Training	Column 4  Location
Pre-Opening Procedures	3	0	Support Center, Training Shop or Online*
Recommended Interviewing Process/Scheduling Systems	2	0	Support Center, Training Shop or Online*
Marketing & Promotion	2	0	Support Center, Training Shop or Online*
Franchise Reporting Requirements	2	0	Support Center, Training Shop or Online*
Accounting/Record- Keeping	1	0	Support Center, Training Shop or Online*
Information Technology	1.5	0	Training Shop*
Fronter Procedures	.5	7.5	Training Shop*
Prepping Procedures	.5	7.5	Training Shop*
Delivery Driver Procedures	.5	7.5	Training Shop*
Loading Procedures	1	11	Training Shop*
Inline Order Taking Procedures	.5	7.5	Training Shop*
Dressing Procedures	1	11	Training Shop*
Cashier Procedures	1	11	Training Shop*
Backline Procedures	1	11	Training Shop*

Column 1  Subject	Column 2  Hours of Classroom Training	Column 3  Hours of On-The-Job Training	Column 4  Location
Drive Thru Training (if applicable)	1	11	Training Shop*
Management During a Shift	10.5	280.5	Training Shop*
Inventory Management	1	7	Support Center/Training Shop*
Total Hours	33.5	374.5	

\*The Support Center currently is in Chicago, Illinois. The Training Shops currently are in Phoenix, Arizona; Chicago, Illinois; Minneapolis, Minnesota; Cincinnati, Ohio; Dallas, Texas; and Washington D.C.

We use manuals, workbooks, and other training aids during the training program. Kelly Wetzig, our Senior Manager of Training, has experience in all aspects of Shop operations and training given her tenure with the Potbelly brand and will supervise, or otherwise be involved in, franchisee training. Ms. Wetzig has worked in the Potbelly system for over 10 years.

We may require your Managing Owner (or Head of Operations, as applicable), General Manager, and other supervisory employees to attend and complete to our satisfaction up to 8 days of supplemental training each year at the times and locations we designate. We may charge reasonable registration or similar fees for these courses. Besides attending supplemental training, at least one of your representatives (whom we approve) must at our request attend an annual convention of all Potbelly Shop franchisees for up to 3 days at a location we designate.

If you choose to designate a new Managing Owner (or Head of Operations, as applicable) or General Manager or to hire new Shop key-holding supervisory employees, each must complete to our satisfaction, within the timeframe we specify, our then-current training program for his or her position. Your trained personnel may provide this training if we previously have certified them to do so. Otherwise, training must be completed at our designated training Shop. We may charge reasonable fees for this training. You must pay all travel and living expenses incurred during all training courses and programs. You must relieve any of your personnel, who we reasonably believe do not satisfy our minimum qualifications for the positions they hold, from performing their duties at the Shop, in which case you must hire replacement personnel and arrange for their training (typically within 30 days).

## **Item 12** **TERRITORY**

### **Franchise Agreement**

You will operate the Shop at a specific site that we first must accept. If you have not located the Shop's site as of the Franchise Agreement's effective date, you must obtain possession of a suitable site within 180 days afterward. In that case, we will identify in the Franchise Agreement a non-exclusive area within which we expect you to look for a suitable site. We may terminate the Franchise Agreement if you do not locate a site within this 180-day period. You may operate the Shop only at the site we accept and may not relocate without our approval. Whether or not we would allow relocation depends on then-current circumstances and what is in the Shop's and our system's best interests. If we allow you to relocate, you must de-brand and de-identify the Shop's original site as we require.

You will not receive an exclusive territory. You may face competition from other franchisees, from outlets that we own, or from other channels of distribution or competitive brands that we control. You also do not have any type of non-exclusive territory. We (and any affiliates we periodically have) retain the right during the franchise term to engage in any and all activities that we (and they) desire, at any time or place, whether or not those activities compete with your Shop. Our unlimited rights include the right to (1) construct, develop, and operate, and grant to others the right to construct, develop, and operate, Potbelly Shops anywhere we want and on any terms and conditions we deem appropriate, (2) offer and sell Products and other items identified by the Marks or any other trademarks to any customers, wherever located or operating, and through any distribution channels (including the Internet, grocery, specialty, and other retail stores, food trucks, and other points of distribution), wherever located or operating, (3) construct, develop, and operate, and grant to others the right to construct, develop, and operate, any types of stores or other foodservice businesses under any trademarks anywhere we want and on any terms and conditions we deem appropriate, (4) acquire the assets or ownership interests of one or more businesses providing products and services the same as or similar to those provided at Potbelly Shops, and franchising, licensing or creating similar arrangements with respect to these businesses once acquired, wherever these businesses (or the franchisees or licensees of these businesses) are located or operating, (5) be acquired (whether through acquisition of assets, ownership interests or otherwise, regardless of the form of transaction), by a business providing products and services similar to those provided at Potbelly Shops, or by another business, and (6) engage in all other activities the Franchise Agreement does not expressly prohibit. We need not compensate you if we engage in these activities. Continuation of your franchise does not depend on your achieving a certain sales volume, market penetration, or other contingency.

You have no options, rights of first refusal, or similar rights to acquire additional franchises. You may not conduct delivery or catering activities away from the Shop, or take customer orders "on-line," unless and until we require you to do so or notify you in writing that you may do so (although we have no obligation to allow these activities by a certain date or at all). If we require or allow these activities, you must comply with all of our System Standards, including using only the delivery service provider(s) we specify in writing for your Shop and limiting the delivery services to any delivery area we specify to you in writing. (See Item 8) Any delivery

area we specify is not exclusive and we may engage, and/or allow other franchisees and third parties to engage, in any activities we desire within the delivery area without any restrictions (including allowing other Potbelly Shop franchisees and delivery service providers to provide delivery services in the delivery area). Any delivery area we specify is nothing more than the geographic boundaries in which you may deliver those products approved for delivery from the Shop, and no other rights are granted to you.

Although we have the right to do so (as described above), we and our affiliates have not established other franchises or company-owned outlets or another distribution channel selling or leasing similar products or services under a different trademark. Except as provided above regarding delivery and catering activities, there are no restrictions on where you may solicit or accept orders for Products. However, you have no right to use other distribution channels (for example, the Internet, catalog sales, or telemarketing) to make sales away from the Shop's site.

### Area Development Agreement

You may (if you qualify) develop and operate additional Potbelly Shops within a specific area (the "Area") as identified in the Area Development Agreement. We and you will identify the Area in the Area Development Agreement before signing it. The Area typically is a city, cities, county, counties, or other political subdivisions. We base the Area's size primarily on the number of Potbelly Shops you agree to develop, demographics, and site availability. We and you will negotiate the number of Shops you must develop, and the dates by which you must develop them, to keep your development rights. We and you then will complete the schedule in the Area Development Agreement before signing it.

While the Area Development Agreement is in effect, we (and our affiliates) will not, except as described below with Non-Traditional Venues, establish and operate or grant to others the right to establish and operate other Potbelly Shops having their physical locations within the Area. There are no other restrictions on us (or our affiliates) within the Area. We will accept the proposed locations of your additional Shops only if they meet our then-current standards for Shop sites. Because of our rights at the Non-Traditional Venues described below, you will not receive an exclusive territory under the Area Development Agreement. You may face competition from other franchisees, from outlets that we own, or from other channels of distribution or competitive brands that we control.

You (and your approved affiliates) may not under any circumstances, unless we otherwise so approve, develop and operate Potbelly Shops at Non-Traditional Venues located in the Area. A "Non-Traditional Venue" means a hospital or medical center, airport, public or private school, university or college campus, airport terminal, train or bus station, convention center, exhibition hall, amusement park, fairground, sports arena, military base, state or national park, hotel, lodge, country club, social club, resort, casino, theater, or food truck. We (and our affiliates) reserve the exclusive rights with respect to all Non-Traditional Venues in the Area and may establish and operate, and franchise or license others to establish and operate, Potbelly Shops at Non-Traditional Venues located in the Area. Our, our affiliate's, or another franchisee's or licensee's development and operation of a Potbelly Shop at a Non-Traditional Venue in the Area does not reduce the number of Potbelly Shops you must develop in the Area in compliance with your development schedule.

Despite your development schedule under the Area Development Agreement, we may delay your development of additional Potbelly Shops within the Area for the time period we deem best if we believe, when you apply for that next Shop, that you (or your approved affiliate) are not yet operationally, managerially, or otherwise prepared, due to the particular amount of time that has elapsed since you (or your approved affiliate) developed and opened your most recent Potbelly Shop, to develop, open and/or operate the additional Shops in full compliance with our standards and specifications. We may delay additional development as long as the delay will not in our reasonable opinion cause you to breach your development obligations under the development schedule (unless we are willing to extend the schedule to account for the delay).

We may exercise all of the rights that we now reserve in the Franchise Agreement (as described above). After the Area Development Agreement expires or is terminated, regardless of the reason, we and our affiliates may engage, and allow others to engage, in any activities we desire within and outside the Area without any restrictions whatsoever, subject only to your (or any affiliate's) rights under franchise agreements with us then in effect.

You may not develop or operate Potbelly Shops outside the Area without our written consent. We may terminate the Area Development Agreement (but not franchise agreements with you or your affiliates) if you do not satisfy your development obligations under the Development Schedule. In addition, if any event gives rise to our right to terminate the Area Development Agreement, we may temporarily or permanently reduce the size of the Area, in which case the restrictions on us or our affiliates described above will not apply in any geographic area removed from the preceding territorial boundaries. Continuation of your territorial rights in the Area does not depend on your achieving a certain sales volume, market penetration, or other contingency. So long as you are in full compliance with the Area Development Agreement, then we may not alter your Area or your territorial rights under the Area Development Agreement without your consent.

**Item 13**  
**TRADEMARKS**

You may use certain Marks in operating the Shop. The principal Marks are:

MARK	REGISTRATION NUMBER	REGISTRATION DATE	AFFIDAVITS OF USE AND INCONTESTABILITY FILED?	REGISTRATION RENEWED?
“POTBELLY”	2,178,589	08/04/1998	Yes	Yes
“POTBELLY” (stylized)	2,332,173	03/21/2000	Yes	Yes
“POTBELLY SANDWICH SHOP”	4,154,485 3,887,721	06/05/2012 12/07/2010	Yes Yes	Yes Yes

MARK	REGISTRATION NUMBER	REGISTRATION DATE	AFFIDAVITS OF USE AND INCONTESTABILITY FILED?	REGISTRATION RENEWED?
“POTBELLY SANDWICH WORKS”	2,221,101	02/02/1999	Yes	Yes
“POTBELLY SANDWICH WORKS” and design	2,512,488	11/27/2001	Yes	Yes
“STOVE” design	2,994,705 2,951,797	09/13/2005 05/17/2005	Yes Yes	Yes Yes
“STOVE” design (2008)	3,687,136	09/22/2009	Yes	Yes
“YA GOTTA GET IT HOT”	2,504,378 2,558,469	11/06/2001 04/09/2002	Yes Yes	Yes Yes
“YA GOTTA GET IT HOT” and design	2,387,751	09/19/2000	Yes	Yes
“POTBELLY SANDWICH WORKS” and sign design	3,687,137	09/22/2009	Yes	Yes
“POTBELLY SANDWICH WORKS” and stove design (2008)	3,684,104	09/15/2009	Yes	Yes
“POTBELLY SANDWICH WORKS” and color stove design (2008)	3,684,103	09/15/2009	Yes	Yes
“GOOD VIBES. GREAT SANDWICHES”	3,887,582	12/07/2010	Yes	Yes

PSW, LLC, our affiliate, claims ownership of these Marks and has registered all Marks on the Principal Register of the United States Patent and Trademark Office (USPTO). PSW, LLC intends to file all required affidavits of use and renewal applications when due for the various Marks if the Marks still are important to the system.

PSW, LLC has licensed us to use and sublicense the Marks in our franchise program. The initial term of our license agreement with PSW, LLC, dated as of September 11, 2009, is 20 years with 3 successive renewal terms of 10 years each if we are not in default of our obligations. PSW, LLC generally may not terminate the license agreement unless we are in default and fail to cure the default within not less than 30 days. However, the license agreement automatically terminates if we transfer the agreement or any of our license rights without PSW, LLC's approval. If PSW, LLC's license to us expires or is terminated, your rights under the Franchise Agreement will not be affected. You will have the right to operate your Shop during the remaining franchise term, and any permitted successor franchise agreement term, if you comply for PSW, LLC's benefit with all of your obligations. No other agreement limits our right to use or sublicense the Marks.

You must follow our rules when you use the Marks, including giving proper notices of trademark registration and obtaining fictitious or assumed name registrations the law requires. You may not use any Mark in your corporate or legal business name; with modifying words, terms, designs, or symbols (except for those we license to you); in offering or selling any unauthorized services or products; or as part of any domain name, homepage, electronic address, or otherwise in connection with Electronic Media. ("Electronic Media" means the Internet, the World Wide Web, or any other similar proprietary or common carrier electronic delivery system, and materials (such as CD ROMs and USB data storage devices) facilitating the electronic communication of information.) If we discover your unauthorized use of the Marks, we may require you to destroy all offending items (with no reimbursement from us). To the extent you use any Mark in employment-related materials, you must include a clear disclaimer that you (and only you) are the employer of employees at the Shop and that we, as the franchisor of Potbelly Shops, are not their employer and do not engage in any employer-type activities for which only franchisees are responsible, such as employee selection, promotion, termination, hours worked, rates of pay, other benefits, work assigned, discipline, adjustment of grievances and complaints, and working conditions. You must obtain an acknowledgment (in the form we specify or approve) from all Shop employees that we are not their employer.

There are no currently effective material determinations of the USPTO, the Trademark Trial and Appeal Board, the trademark administrator of any state, or any court, and no pending infringement, opposition, or cancellation proceedings or material litigation, involving the Marks. We are aware that the "Potbelly" name might be used to some degree by similar or competitive businesses in different parts of the country. Because we do not have detailed information about all these uses, we cannot confirm if there are either superior prior rights or infringing uses that could materially affect your use of the "Potbelly" Mark in any state. We plan to investigate these uses if and when we decide to enter a market where we believe the name already might be used. We will take the action we deem best under the circumstances. If there are superior prior rights to the "Potbelly" name in a particular market, we may decide not to grant a Potbelly Shop franchise in that market. We do not actually know of either superior prior rights or infringing uses that could materially affect your use of the other principal Marks in any state.

You must notify us immediately of any apparent infringement or challenge to your use of any Mark or of any person's claim of any rights in any Mark or confusingly similar trademark. You may not communicate with any person other than us, PSW, LLC, and our attorneys, and your attorneys, regarding any infringement, challenge, or claim. We and PSW, LLC may take the action



we deem appropriate (including no action) and control exclusively any litigation, USPTO proceeding, or other proceeding concerning any Mark. You must help us protect and maintain our and PSW, LLC's interests in any litigation or USPTO or other proceeding. We will reimburse your costs for taking any requested action.

If it becomes advisable at any time for us and/or you to modify, discontinue using and/or replace any Mark and/or to use one or more additional, substitute, or replacement trade or service marks together with or instead of any previously designated Mark, you must comply with our directions within a reasonable time after we deliver notice. We and PSW, LLC need not reimburse your direct expenses for changing the Shop's signs, your lost revenue due to any modified or discontinued Mark, or your expenses in promoting a modified or substitute trademark or service mark.

We will reimburse you for all damages, claims, and expenses you incur or for which you are liable in any proceeding challenging your right to use any Mark under the Franchise Agreement if your use has been consistent with the Franchise Agreement, the Operations Manual, and our System Standards and you timely notify us of, and comply with our directions in responding to, the proceeding. At our option, we may defend and control the defense of any proceeding arising from your use of any Mark.

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

No patents or patent applications are material to the franchise. We and PSW, LLC claim copyrights in the Operations Manual (which contains our trade secrets and confidential information), Shop blueprints and other design features, advertising and marketing materials, menu boards, and similar items used in operating Potbelly Shops. We and PSW, LLC have not registered these copyrights with the United States Copyright Office but currently need not do so to protect them. You may use these items only as we specify while operating your Shop (and must stop using them if we so direct you).

There currently are no effective adverse determinations of the USPTO, the United States Copyright Office, or any court regarding our copyrighted materials. Our license with PSW, LLC also covers copyrighted materials and confidential information. No other agreement limits our right to use or allow others to use copyrighted materials. We do not actually know of any infringing uses of our copyrights that could materially affect your use of our copyrighted materials in any state.

We and PSW, LLC need not protect or defend copyrights, although we intend to do so if in the Potbelly system's best interests. We need not defend you, or participate in your defense, against claims arising from your use of our copyrights or indemnify you for expenses or damages you incur in a copyright proceeding. We and PSW, LLC have the right to control the prosecution or defense of any copyright proceeding, whether we learn of the matter from you or on our own.

Our Operations Manual and other materials contain our and PSW, LLC's confidential information (some of which constitutes trade secrets under applicable law). This information includes site selection criteria; training and operations materials, manuals, and software; methods,

formats, specifications, standards, systems, procedures, Product preparation techniques, sales and marketing techniques, knowledge, and experience used in developing and operating Potbelly Shops; marketing and advertising programs and materials for Potbelly Shops; knowledge of specifications for and suppliers of Operating Assets, Potbelly Trade Secret Products, Potbelly Branded Products, and other items and services; proprietary computer software or similar technology; knowledge of the operating results and financial performance of Potbelly Shops other than your Shop; customer communication and retention programs and data used or generated by those programs; and graphic designs and related intellectual property.

All ideas, concepts, techniques, or materials concerning a Potbelly Shop, whether or not protectable intellectual property and whether created by or for you or your owners or Shop employees, must be promptly disclosed to us and will be considered our and PSW, LLC's sole and exclusive property, part of the Potbelly system, and works made-for-hire for us and PSW, LLC. To the extent any item does not qualify as a "work made-for-hire," you assign ownership of and all related rights to that item to us and PSW, LLC and must take whatever action (including signing assignment or other documents) we request to show our and PSW, LLC's ownership or to help us and PSW, LLC obtain intellectual property rights in the item.

You may not use our confidential information in an unauthorized manner. You must take reasonable steps to prevent its improper disclosure to others and use non-disclosure agreements with those having access. We may review and pre-approve the forms of non-disclosure agreements you use and will be a third-party beneficiary of those agreements with independent enforcement rights. You must keep copies of these agreements and send them to us upon request. Our right to review and pre-approve non-disclosure agreements is solely to ensure that you adequately protect confidential information. Under no circumstances will we control the forms or terms of employment agreements you use with Shop employees or otherwise be responsible for your labor relations or employment practices.

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

You must at all times faithfully, honestly, and diligently perform your contractual obligations and use best efforts to promote the Shop. System Standards may regulate staffing the Shop as necessary to operate the Shop in compliance with our System Standards and employee dress and appearance. However, you have sole responsibility and authority for your labor relations and employment practices, including employee selection, promotion, termination, hours worked, rates of pay, other benefits, work assigned, discipline, adjustment of grievances and complaints, and working conditions. You must communicate clearly with Shop employees in your employment agreements, human resource manuals, written and electronic correspondence, paychecks, and other materials that you (and only you) are their employer and that we, as the franchisor of Potbelly Shops, and our affiliates are not their employer and do not engage in any employer-type activities (including those described above) for which only you are responsible. You must obtain an acknowledgment (in the form we specify or approve) from all Shop employees that we and our affiliates are not their employer. Shop employees are under your control at the Shop.

If you are a legal entity, you must appoint a shareholder, member or partner (as applicable) to be your “Managing Owner,” responsible for overseeing and supervising the Shop’s operation. If your Managing Owner will not be involved in the Shop’s on-site, day-to-day operation, you also must appoint an “Head of Operations,” an individual whom you hire to manage the Shop on an on-site, day-to-day basis (or, if you operate more than one Potbelly Shop, to oversee management and operation of all your Potbelly Shops), who reports to the Managing Owner, who is eligible to participate in a long-term incentive plan (*i.e.*, cash bonus or equity grant), and who completes the applicable training requirements. We must approve your proposed Head of Operations, who must sign our Principal’s Agreement (see below). You may replace any Head of Operations, although that person must give up his or her ownership interest in you, a replacement Head of Operations must complete training to our satisfaction, and you must identify and we first must approve any new or replacement Head of Operations. Your Shop always must have on staff at least 3 fully trained, certified key-holding supervisory employees, including a Managing Owner (or Head of Operations, as applicable) or a General Manager (if your Managing Owner or Head of Operations, as applicable, is not involved in the Shop's on-site, day-to-day operation), so that the quality of the Products and the Potbelly brand is maintained.

Your on-site key-holding supervisory employees (including a General Manager) need not have an equity interest in the Shop or you but must agree in writing to preserve confidential information to which they have access. We may regulate the form of agreement you use and be a third party beneficiary of that agreement with independent enforcement rights. Our right to review and pre-approve the agreement is solely to ensure that you adequately protect confidential information. Under no circumstances will we control the forms or terms of employment agreements you use with Shop employees or otherwise be responsible for your labor relations or employment practices.

You must disclose to us in writing the specific details of any investment in any other restaurant or food-related business or franchise held by you, any of your owners, or any of your or your owners’ spouses.

If you are a corporation, limited liability company, or partnership, your owners must personally guarantee your obligations under the Franchise Agreement and agree to be bound personally by every contractual provision, whether containing monetary or non-monetary obligations, including the covenant not to compete. This “Guaranty and Assumption of Obligations” is the last 2 pages of the Franchise Agreement. We also may require your Head of Operations, directors, and officers to agree to comply with certain non-monetary obligations in the Franchise Agreement by having them sign our Principal’s Agreement (Exhibit D).

## **Item 16**

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

You must offer and sell all Products and services we periodically require for Potbelly Shops. You may not offer or sell any unauthorized products or services. Our System Standards may regulate required and/or authorized Products, Potbelly Trade Secret Products, Potbelly Branded Products, and services; unauthorized and prohibited food and beverage products and services; and purchase, storage, preparation, handling, and packaging procedures and techniques, and inventory requirements, for Products, Potbelly Trade Secret Products, and Potbelly Branded

Products. We always have the right to approve or disapprove in advance all items and services your Shop uses and sells. We may add new Products and services and withdraw our approval of previously-authorized Products and services. We expect to limit the range of Products your Shop may sell during its start-up phase (the duration of which we may determine) until we believe that your Shop is capable of preparing and selling the complete Potbelly Product line in compliance with System Standards. There are no limits on our rights described in this paragraph. We may regulate your Product prices to the extent the law allows, including restricting your use of coupons and other Product price discounting practices. We also may require your participation in system-wide discount programs.

You may not engage in delivery or catering activities away from the Shop, or take customer orders on-line, unless and until we require you to do so or give you written permission to do so (although we have no obligation to allow these activities by a certain date or at all). If we require or allow these activities, you must comply with all related System Standards for such activities, including making available the products identified as appropriate for delivery (and only those designated products), using only the delivery service provider(s) we specify in writing for your Shop, and limiting the delivery services to any delivery area we specify to you in writing. There are no limits on the customers to whom your Shop may sell goods and services at its premises.

**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.**

<b>PROVISION</b>	<b>SECTION IN FRANCHISE OR OTHER AGREEMENT</b>	<b>SUMMARY</b>
a. Length of the franchise term	1.D. of Franchise Agreement and 2 and 2.01 and Exhibit A of Area Development Agreement	10 years (term of Area Development Agreement depends on development obligations)

PROVISION	SECTION IN FRANCHISE OR OTHER AGREEMENT	SUMMARY
b. Renewal or extension of the term	13 of Franchise Agreement; not applicable to Area Development Agreement	<p>If you have been and are in substantial compliance, you may acquire, at our option, 1 successor franchise for 10 years or potentially 2 successor franchises for 5 years each (the second 5-year term depends on your performance during the first 5 years), in both cases on our then-current terms</p> <p>No renewal or extension of Area Development Agreement</p>
c. Requirements for franchisee to renew or extend	13 of Franchise Agreement; not applicable to Area Development Agreement	<p>Give us timely notice; maintain possession of Shop site; remodel Shop according to our then-current standards (regardless of cost); correct operating and other deficiencies; pay us successor franchise fee; and sign new franchise agreement and other documents we use to grant franchises, including release (if state franchise law allows)</p> <p>Terms of new franchise agreement you sign for successor franchise may differ materially from any and all of those contained in Franchise Agreement attached to this disclosure document, including Royalty and Brand Fund contributions</p>
d. Termination by franchisee	14.A. of Franchise Agreement; not applicable to Area Development Agreement	If we materially breach Franchise Agreement and do not cure default after notice from you

PROVISION	SECTION IN FRANCHISE OR OTHER AGREEMENT	SUMMARY
e. Termination by franchisor without cause	Not Applicable	We may not terminate your franchise or development rights without cause
f. Termination by franchisor with cause	14.B. of Franchise Agreement and Sections 8.01, 8.02 and 8.04 of Area Development Agreement	We may terminate your franchise and development rights only if you or your owners commit certain violations
g. “Cause” defined — curable defaults	14.B. of Franchise Agreement; Section 8.02 of Area Development Agreement	<p>You have time that applicable law allows to secure required licenses and permits and to cure health, safety, or sanitation law violations; 10 days to cure monetary defaults to us and failure to maintain required insurance; 30 days to cure monetary defaults to Franchise System vendors, seizure of Shop, appointment of receiver or trustee, operational defaults, and other defaults not listed in (h) below; and 180 days to relocate to new site if you lose possession of Shop’s site (but not because of your lease default)</p> <p>30 days to cure certain breaches of the Area Development Agreement</p>
h. “Cause” defined — non-curable defaults	14.B. of Franchise Agreement and 8 of Area Development Agreement	Non-curable defaults include failure to secure Shop’s site within 180 days after Franchise Agreement’s effective date; failure to open Shop by required opening date; failure to complete training; Shop opens for business before we notify you in writing that Shop meets our standards and specifications; abandonment or failure to operate Shop actively; unapproved transfers or surrenders of control; material

PROVISION	SECTION IN FRANCHISE OR OTHER AGREEMENT	SUMMARY
		<p>misrepresentation or omission; conviction of a felony; dishonest, unethical, or immoral conduct that could materially, adversely affect Marks; unauthorized use or disclosure of Operations Manual or other confidential information; you make an unauthorized representation or warranty on our behalf; loss of right to occupy Shop site due to your lease default; failure to pay taxes; understating Gross Sales by certain minimum amounts; interfering with our right to inspect or observe the Shop; Shop fails 3 quality assurance audits during 12-month period; your Shop fails Annual Shop Review during 3 consecutive fiscal years or any 5 years (even if not consecutive) of the franchise term; repeated defaults (even if cured); assignment for benefit of creditors; violation of any anti-terrorism law; and we send notice of termination under another franchise agreement between you (or an affiliate) and us</p> <p>We may terminate Area Development Agreement for insolvency; failure to meet development schedule; unauthorized transfer; misrepresentations; conviction of a felony; unauthorized disclosure of confidential information; any default by you under a franchise agreement or any other agreement; adverse franchise legislation</p>

PROVISION	SECTION IN FRANCHISE OR OTHER AGREEMENT	SUMMARY
i. Franchisee’s obligations on termination/non-renewal	14.C. and 15 of Franchise Agreement; Section 9 of Area Development Agreement	<p>Obligations include paying outstanding amounts; complete de-identification and de-branding, including returning or disposing of certain branded items and altering Shop’s appearance and configuration; discontinuing use of websites or social media associated with the Shop; assigning telephone and other numbers and email addresses to us (including under a Conditional Assignment of Telephone Number(s)); and returning confidential information (also see (o) and (r) below); we may control de-identification process if you do not voluntarily take required action; we may assume Shop’s management while deciding whether to purchase Shop’s assets</p> <p>On termination of the Area Development Agreement, you must comply with the covenant not to compete</p>
j. Assignment of contract by franchisor	12.A. of Franchise Agreement and 7.01 of Area Development Agreement	No restriction on our right to assign; we may assign without your approval
k. “Transfer” by franchisee — defined	12.B. of Franchise Agreement; 7 of Area Development Agreement	<p>Includes transfer of Franchise Agreement, sale of Shop’s assets, and transfer of ownership interest in you or entity that controls you</p> <p>Developer has no right to assign agreement or interests in itself to third parties, but may assign to a wholly-owned affiliate</p>



PROVISION	SECTION IN FRANCHISE OR OTHER AGREEMENT	SUMMARY
l. Franchisor approval of transfer by franchisee	12.C. of Franchise Agreement and 7.02 and 7.03 of Area Development Agreement	No transfer without our prior written consent  No right to transfer development rights except to wholly-owned affiliate of developer. We will not unreasonably withhold approval of transfer
m. Conditions for franchisor approval of transfer	12.C. of Franchise Agreement; 7.02 and 7.03 of Area Development Agreement	New franchisee qualifies, completes franchise application; you pay us, our affiliates, and third-party vendors all amounts due and submit all required reports; no material defaults during 60-day period before transfer request or during period between request and transfer's proposed effective date; new franchisee (and its owners and affiliates) are not in a competitive business; training completed; lease transferred or sublet; any applicable agency, host, or authority with jurisdiction approves the transfer; you or transferee signs our then-current franchise agreement and other documents (any and all terms of which may differ materially from Franchise Agreement) for term equal to Franchise Agreement's unexpired term; you correct existing Shop deficiencies of which we notify you; transferee agrees to upgrade and remodel Shop within specified timeframe after transfer; transfer fee paid; we approve material terms; you subordinate amounts due to you; you de-identify; and you sign

PROVISION	SECTION IN FRANCHISE OR OTHER AGREEMENT	SUMMARY
		<p>release (if state franchise law allows) (also see (r) below)</p> <p>No transfers allowed except to wholly-owned affiliate where conditions include entity paperwork and documentation of interests and signing joinder of liability</p>
n. Franchisor’s right of first refusal to acquire franchisee’s business	12.G. of Franchise Agreement; not applicable to Area Development Agreement	We may match any offer for Shop or ownership interest in you or entity that controls you
o. Franchisor’s option to purchase franchisee’s business	15.E. of Franchise Agreement; not applicable to Area Development Agreement	We may buy Shop’s assets at fair market value, and/or receive assignment or sublease of Shop’s site, after Franchise Agreement is terminated or expires (without renewal)
p. Death or disability of franchisee	12.E. of Franchise Agreement; not applicable to Area Development Agreement	Assignment of Managing Owner’s interest in you to approved party within 9 months after death or disability; we may manage Shop if qualified management not in place
q. Non-competition covenants during the term of the franchise	7 of Franchise Agreement; Section 6.02 of Area Development Agreement	No diverting business and no ownership interest in, or performing services for, competitive business anywhere (“competitive business” means (i) any fast-casual restaurant that derives more than 20% of its revenue from the sale of (a) baked, oven-style, conveyor oven-style, or un-baked “sub-style” sandwiches, submarine, hoagie, Italian beef, or hero-type sandwiches, pita sandwiches, flatbread sandwiches, or cheese-steak sandwiches or (b) smoothies, milkshakes, ice cream, and other

PROVISION	SECTION IN FRANCHISE OR OTHER AGREEMENT	SUMMARY
		<p>frozen confection items or (ii) any business granting franchises or licenses to others to operate the type of business specified in clause (i) (other than a Potbelly Shop operated under a franchise agreement with us). Competitive Business for purposes of the Franchise Agreement and Area Development Agreement will include Blimpie, Corner Bakery Café, Fiehouse Subs, Jersey Mike's, Jimmy John's, McAlister's Deli, Panera Bread, Quizno's, Schlotzky's, Subway, Tropical Smoothie Café and Which Wich.)</p> <p>No involvement in any competing business regardless of its location; no diverting business; no injury to goodwill of Marks or System</p>
<p>r. Non-competition covenants after the franchise is terminated or expires</p>	<p>15.D. of Franchise Agreement; Section 9.02 of Area Development Agreement</p>	<p>No direct or indirect ownership interest in, or performing services for, competing business for 2 years at Shop's site, within 7 miles of Shop's site, within 5 miles of another Potbelly Shop in operation or under construction on day you signed Franchise Agreement, or within 5 miles of another Potbelly Shop in operation or under construction on date Franchise Agreement expires or is terminated (same restrictions apply after transfer)</p> <p>For a period of 2 years after termination or expiration, you are prohibited from directly or indirectly owning a legal or</p>

PROVISION	SECTION IN FRANCHISE OR OTHER AGREEMENT	SUMMARY
		beneficial interest in, or rendering services or giving advice to: (a) any Competitive Business operating within the Development Area; (b) any Competitive Business operating within a radius of 5 miles of any Potbelly Shop (whether franchised or affiliate or company-owned), whether in operation or under construction on the effective date of termination or expiration; or (c) any entity which grants franchises, licenses or other interests to others to operate any Competitive Business
s. Modification of the agreement	17.J. of Franchise Agreement; 10.12 of Area Development Agreement	No modifications generally except by written agreement signed by both parties, but we may change Operations Manual and System Standards
t. Integration/merger clause	17.L. of Franchise Agreement; 10.12 of Area Development Agreement	Only the Franchise Agreement's and Area Development Agreement's terms are binding (subject to state law). Any representations or promises outside of the disclosure document and Franchise Agreement may not be enforceable
u. Dispute resolution by arbitration or mediation	17.F. of Franchise Agreement; 10.06 and of Area Development Agreement	We and you generally must arbitrate all disputes at location near our principal business address at the time the arbitration demand is filed (it currently is in Chicago, Illinois)
v. Choice of forum	17.H. of Franchise Agreement; 10.08 of Area Development Agreement	Subject to arbitration obligation, litigation generally must be in courts located closest to where we have our principal business address at the time the action is commenced (it currently is in

PROVISION	SECTION IN FRANCHISE OR OTHER AGREEMENT	SUMMARY
		Chicago, Illinois) (subject to applicable state law)
w. Choice of law	17.G. of Franchise Agreement; 10.09 of Area Development Agreement	Except for federal law, Illinois law governs (subject to applicable state law)

**Item 18**  
**PUBLIC FIGURES**

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

**Item 19**  
**FINANCIAL PERFORMANCE REPRESENTATIONS**

The FTC’s Franchise Rule permits a franchisor to 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.

The historical financial performance representation appearing below provides (1) the actual average and median weekly Gross Sales during a specific timeframe for our franchised Potbelly Shops, and (2) the actual average and median annual Gross Sales, operating expenses, and profits during a specific timeframe for certain Potbelly Shops owned and operated by our affiliates.

All of the Potbelly Shops whose information is included in the averages and medians are substantially similar to one another in terms of products and services offered. They also are substantially similar to the Potbelly Shops we expect franchisees to operate under Franchise Agreements with us except that, during their start-up phase (which may vary among franchisees based on their management and operational skill), franchised Potbelly Shops will not sell the full range of sandwich sizes currently offered and sold by the more mature affiliate-owned Potbelly Shops reflected in this financial performance representation and will not offer delivery services. Each Potbelly Shop’s actual performance will be affected by numerous factors, including amount of time in business; Potbelly Shop size; lease terms; financing costs; taxes; attractiveness of location at which it operates; labor costs; supply costs; local and regional economic and regulatory conditions; population density; your management skills and business acumen; competition; your ability to promote and market the Potbelly Shop; recognition in the market; how hard you and your principals work; and the degree you adhere to our methods and procedures.

Our franchise program for Potbelly Shops is structured to provide to franchisees, in our capacity as franchisor, some of the services that our affiliates provide to the affiliate-owned Potbelly Shops identified below. However, we do not provide certain services to franchisees that the business owner normally provides, such as financing, accounting, legal, personnel, and management services. The availability, cost, and quality of these services to a franchisee likely will affect operations.

**Some Potbelly Shops have earned this amount. Your individual results may differ. There is no assurance that you will earn as much.**

Written substantiation of all financial performance information presented in this financial performance representation will be made available to you upon reasonable request. This financial performance representation was prepared without an audit. Prospective franchisees or sellers of franchises should be advised that no certified public accountant has audited these figures or expressed his/her opinion with regard to their contents or form.

As of the end of December 2022, we had 45 franchised Potbelly Shops open. Of the 45 franchised Potbelly Shops, 44 were open for the 12-period timeframe (12 full periods) beginning with fiscal Period 1 in 2022 (beginning on December 27, 2021) through fiscal Period 12 in 2022 (ending on December 25, 2022). The 1 Potbelly Shop that was not open for the 12-period timeframe opened during 2022.

This financial performance representation excludes the results of the 1 Potbelly Shop that was not open for the 12-period timeframe in 2022. Financial information from 4 franchised Potbelly Shops operated at airport locations during the 12-period timeframe in 2022 also are excluded because, given the airport setting, their results sometimes are atypical compared with non-airport location results.

The 2022 average weekly Gross Sales for the 40 franchised Potbelly Shops included in this financial performance representation was \$17,887. 18 of the 40 Potbelly Shops (45%) exceeded the average weekly Gross Sales of \$17,887. Median weekly Gross Sales for these 40 franchised Potbelly Shops during the 12-period timeframe in 2022 was \$17,582. The highest weekly Gross Sales for any of these 40 franchised Potbelly Shops during the 12-period timeframe in 2022 was \$35,065. The lowest weekly Gross Sales for any of these 40 franchised Potbelly Shops during the 12-period timeframe in 2022 was \$6,908.

The franchisee performance above does not reflect the costs of sales, operating expenses, or other costs or expenses that you must deduct from the Gross Sales figures to obtain your net income or profit. You should conduct an independent investigation of the costs and expenses you will incur in operating your Shop. Franchisees or former franchisees, listed in the Franchise Disclosure Document, may be one source of this information.

The following table shows Gross Sales for the 40 franchised Potbelly Shops operated during the 12-period timeframe in 2022 divided by performance:

Performance Ranking	# of Shops	2022 Gross Sales
High (75+%)	10	\$1,331,558
Q3 (50-75%)	10	\$970,915
Q2 (25-50%)	10	\$864,938
Low (25-%)	10	\$553,119

Of the 10 Shops in the 75+% performance group, 4 (40%) exceeded the 2022 average Gross Sales of \$1,331,558. Median 2022 Gross Sales for these 10 franchised Potbelly Shops during the 12-period timeframe in 2022 was \$1,281,730. The highest Gross Sales for any of these 10 franchised Potbelly Shops during the 12-period timeframe in 2022 was \$1,823,381. The lowest Gross Sales for any of these 10 franchised Potbelly Shops during the 12-period timeframe in 2022 was \$1,111,768.

Of the 10 Shops in the 50-75% performance group, 5 (50%) exceeded the 2022 average Gross Sales of \$970,915. Median 2022 Gross Sales for these 10 franchised Potbelly Shops during the 12-period timeframe in 2022 was \$968,463. The highest Gross Sales for any of these 10 franchised Potbelly Shops during the 12-period timeframe in 2022 was \$1,033,730. The lowest Gross Sales for any of these 10 franchised Potbelly Shops during the 12-period timeframe in 2022 was \$915,065.

Of the 10 Shops in the 25-50% performance group, 5 (50%) exceeded the 2022 average Gross Sales of \$864,938. Median 2022 Gross Sales for these 10 franchised Potbelly Shops during the 12-period timeframe in 2022 was \$867,117. The highest Gross Sales for any of these 10 franchised Potbelly Shops during the 12-period timeframe in 2022 was \$913,446. The lowest Gross Sales for any of these 10 franchised Potbelly Shops during the 12-period timeframe in 2022 was \$815,972.

Of the 10 Shops in the 25-% performance group, 5 (50%) exceeded the 2022 average Gross Sales of \$553,119. Median weekly Gross Sales for these 10 franchised Potbelly Shops during the 12-period timeframe in 2022 was \$568,312. The highest Gross Sales for any of these 10 franchised Potbelly Shops during the 12-period timeframe in 2022 was \$748,550. The lowest Gross Sales for any of these 10 franchised Potbelly Shops during the 12-period timeframe in 2022 was \$359,216.

The remaining financial information appearing in this financial performance representation is based on actual affiliate-owned Potbelly Shop profit and loss information. The information included covers the 12-period timeframe (12 full periods) beginning with fiscal Period 1 in 2022 (beginning on December 27, 2021) through fiscal Period 12 in 2022 (ending on December 25, 2022). The information covers only affiliate-owned Potbelly Shop locations that were open for at least 15 fiscal periods (months) as of the end of the 12-period timeframe. The financial information

from Potbelly Shops operated at airport locations is excluded because, given the airport setting, their results sometimes are atypical compared with non-airport location results.

As of the end of December 2022, there were 384 affiliate-owned Potbelly Shops. Of these 384 affiliate-owned Potbelly Shops, there are 373 Potbelly Shops considered to be comparable Potbelly Shops after the exclusion of 4 Potbelly Shops that were temporarily closed for a portion of 12-period timeframe in 2022, and 7 Potbelly Shops operating at airport locations for the entire 12 periods ending on December 25, 2022.

To provide a representative economic performance of affiliate-owned Potbelly Shops for the 12-period timeframe in 2022, our affiliates have created a single profit and loss statement showing the average and median sales, average and median operating expenses, and average and median profits for all of the 373 affiliate owned Potbelly Shops operated during the 12-period timeframe in 2022. The Potbelly Shops for which a sample average and median profit and loss statement has been prepared are located in various geographic markets and in a mix of Central Business Districts (CBD), urban, suburban, and campus areas with varying demographics. We have also included a profit and loss statement showing the average and median sales, average and median operating expenses, and average and median profits for all of the 7 affiliate owned Potbelly Shops operated during the 12-period timeframe in 2022 at airport locations.

373	Potbelly Shop Count 2022	
Gross Sales <sup>i</sup>	\$1,205,394	
Net Sales <sup>ii</sup>	\$1,153,186	95.7%
Total Cost of Sales <sup>iii</sup>	\$332,212	27.6%
Gross Profit <sup>iv</sup>	\$820,974	
Total Labor <sup>v</sup>	\$346,186	28.7%
Other Operating Expenses <sup>vi</sup>	\$174,918	14.5%
Occupancy Expenses <sup>vii</sup>	\$134,096	11.1%
Shop Profit <sup>viii</sup>	\$165,774	13.8%
<sup>ix</sup> Marketing Expense (at 3%)	\$34,596++	
<sup>x</sup> Franchise Royalties	\$69,191	

i. Gross Sales, for purposes of the chart, are defined as all food sales where cash or credit is collected for the sale; they do not reflect the net amount resulting from the value of all “sales discounts.” Sales discounts are made up of essentially 3 categories: discounts given to Potbelly Shop employees, marketing give-aways, and manager complimentaries. “Gross Sales,” reduced by the value of the sales discounts and reflecting actual cash or credit received, results in “Net Sales.” (“Gross Sales,” for purposes of the chart, is defined as Net Sales with all discounts added in.) When referencing the franchised Potbelly Shops’ average and median weekly Gross Sales, “Gross Sales” is net of sales discounts and therefore is equivalent to “Net Sales.”



ii. Of the 373 Potbelly Shops included in the 2022 sample, 167 Potbelly Shops (45%) exceeded the sample's average Net Sales of \$1,153,186 during the 12-period timeframe in 2022 was. Median Net Sales during the 12-period timeframe in 2022 was \$1,106,207. The highest Net Sales for any of these 373 Potbelly Shops during the 12-period timeframe in 2022 was \$2,759,801. The lowest Net Sales for any of these 373 Potbelly Shops during the 12-period timeframe in 2022 was \$360,578.

iii. Of the 373 Potbelly Shops included in the 2022 sample, 170 Potbelly Shops (46%) exceeded the sample's average Total Cost of Sales of \$332,212 during the 12-period timeframe in 2022. Median Total Cost of Sales during the 12-period timeframe in 2022 was \$319,098.

Total Cost of Sales is defined as actual food costs purchased within the period, netted with change of inventory. Also included are packaging costs (*i.e.*, wax paper, bags, bowls, plastic utensils, etc.), supplier rebates, freight, and other distribution costs.

iv. Of the 373 Potbelly Shops included in the 2022 sample, 168 Potbelly Shops (45%) exceeded the sample's average Gross Profit of \$820,974 during the 12-period timeframe in 2022. Median Gross Profit during the 12-period timeframe in 2022 was \$788,164.

v. "Total Labor" is defined as actual Potbelly Shop-level hourly payroll, estimated salary and bonus for 1 assistant manager based on company average, and Potbelly actual benefits and performance bonuses. It does not include any area or general manager salaries or bonuses. The majority of Potbelly Shops are operated with 1 salaried general manager. However, we expect that a franchisee's Managing Owner will act as "general manager." Each franchisee must determine whether its Managing Owner will receive a regular salary, an owner's draw, or other compensation and, if so, how much.

Of the 373 Potbelly Shops included in the 2022 sample, 177 Potbelly Shops (47%) exceeded the sample's average Total Labor expenses of \$346,186 during the 12-period timeframe in 2022. Median Total Labor expenses during the 12-period timeframe in 2022 was \$341,838.

vi. "Other Operating Expenses" include expenses such as equipment, supplies, cash handling, repairs, maintenance, other outside services, insurance, utilities, and music licenses. Marketing expenses are excluded. Expenses will vary based on local and/or other economic conditions.

Of the 373 Potbelly Shops included in the 2022 sample, 166 Potbelly Shops (45%) exceeded the sample's average Other Operating Expenses of \$174,918 during the 12-period timeframe in 2022. Median Other Operating Expenses during the 12-period timeframe in 2022 was \$168,672.

vii. Of the 373 Potbelly Shops included in the 2022 sample, 147 Potbelly Shops (39%) exceeded the sample's average Occupancy Expenses of \$134,096 during the 12-period timeframe in 2022. Median Occupancy Expenses during the 12-period timeframe in 2022 was \$124,828.

While our objective is to cap occupancy expenses at 10% of sales, there is no assurance that this objective will be achieved at a particular location due to unpredictable sales when the location is selected, varying rent expense in varying geographic and urban/suburban markets, and other operational factors contributing to the success of a Shop at a particular location.

viii. Of the 373 Potbelly Shops included in the 2022 sample, 170 Potbelly Shops (46%) exceeded the sample’s average Shop Profit of \$165,774 during the 12-period timeframe in 2022. Median Shop Profit during the 12-period timeframe in 2022 was \$142,516.

“Shop Profit” is calculated by subtracting Total Labor, Other Operating Expenses, and Occupancy Expenses (as defined in notes v, vi, and vii above, respectively) from Gross Profit. Shop Profit does not take into account any labor costs or other expenses excluded from the definitions of Total Labor and Other Operating Expenses in notes v and vi above and is before interest, taxes, depreciation, and amortization.

ix. The Marketing Expense identifies the dollar amounts a franchisee potentially would have to spend on Marketing (according to Section 9 of the Franchise Agreement) if it achieved the Gross Sales levels represented. These figures do not represent the amounts that affiliate-owned and operated Potbelly Shops spent on Marketing. (Marketing expenses likewise are excluded from “Other Operating Expenses,” as noted in footnote (vi) above.) Marketing Expense includes your Brand Fund contribution of up to 4% of Gross Sales (currently, 3%) and your Local Marketing Spend of 1% of Gross Sales.

x. The Franchise Royalties identify the dollar amounts a franchisee would have to pay us (according to Section 3 of the Franchise Agreement) if it achieved the Gross Sales levels represented. Franchise Royalties are 6% of Gross Sales. Affiliate-owned and operated Potbelly Shops do not pay any royalties.

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The following table shows a profit and loss statement for the 373 affiliate owned Potbelly Shops operated during the 12-period timeframe in 2022 divided by performance:

Performance Ranking	# of Shops	2022 Net Sales	Food and Paper Cost <sup>v</sup>	Labor Cost <sup>vi</sup>	Other Cost <sup>vii</sup>	Occupancy Cost <sup>viii</sup>	Shop Profit <sup>ix</sup>	Marketing Expense at 3%	Royalty
High (75+%) <sup>i</sup>	93	\$1,634,539	\$465,859	\$423,115	\$221,672	\$149,647	\$374,246	\$49,036	\$98,072
Q3 (50-75%) <sup>ii</sup>	94	\$1,234,365	\$354,053	\$360,255	\$186,419	\$132,608	\$201,031	\$37,031	\$74,062
Q2 (25-50%) <sup>iii</sup>	93	\$1,007,852	\$291,994	\$327,526	\$159,713	\$136,052	\$92,567	\$30,236	\$60,471
Low (25-%) <sup>iv</sup>	93	\$735,115	\$216,709	\$273,696	\$131,744	\$118,094	(\$5,128)	\$22,053	\$44,107

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i. High (75+%) Net Sales. Of the 93 Shops in the 75+% performance group, 35 (38%) exceeded the 2022 average Net Sales of \$1,634,539. Median 2022 Net Sales for these 93 affiliate-owned Potbelly Shops during the 12-period timeframe in 2022 was \$1,577,974. The highest Net Sales for any of these 93 affiliate-owned Potbelly Shops during the 12-period timeframe in 2022 was \$2,759,801. The lowest Net Sales for any of these 93 affiliate-owned Shops during the 12-period timeframe in 2022 was \$1,377,272.

ii. Mid High (50-75%) Net Sales. Of the 94 Shops in the 50-75% performance group, 46 (49%) exceeded the 2022 average Net Sales of \$1,234,365. Median 2022 Net Sales for these 94 affiliate-owned Potbelly Shops during the 12-period timeframe in 2022 was \$1,230,387. The highest Net Sales for any of these 94 affiliate-owned Potbelly Shops during the 12-period timeframe in 2022 was \$1,377,184. The lowest Net Sales for any of these 94 affiliate-owned Shops during the 12-period timeframe in 2022 was \$1,106,207.

iii. Mid Low (25-50%) Net Sales. Of the 93 Shops in the 25-50% performance group, 46 (49%) exceeded the 2022 average Net Sales of \$1,007,852. Median 2022 Net Sales for these 93 affiliate-owned Potbelly Shops during the 12-period timeframe in 2022 was \$1,006,169. The highest Net Sales for any of these 93 affiliate-owned Potbelly Shops during the 12-period timeframe in 2022 was \$1,105,886. The lowest Net Sales for any of these 93 affiliate-owned Shops during the 12-period timeframe in 2022 was \$907,828.

iv. Low (25-%) Net Sales. Of the 93 Shops in the 25-% performance group, 51 (55%) exceeded the 2022 average Net Sales of \$735,115. Median 2022 Net Sales for these 93 affiliate-owned Potbelly Shops during the 12-period timeframe in 2022 was \$759,002. The highest Net Sales for any of these 93 affiliate-owned Potbelly Shops during the 12-period timeframe in 2022 was \$906,926. The lowest Net Sales for any of these 93 affiliate-owned Shops during the 12-period timeframe in 2022 was \$360,578.

v. Food and Paper Cost. Of the 93 Potbelly Shops included in the 75+% performance group, 39 (42%) exceeded the sample's average Food and Paper Cost of \$465,859 during the 12-period timeframe in 2022. Median Food and Paper Cost during the 12-period timeframe in 2022 for Potbelly Shops in this performance group was \$452,262. Of the 94 Potbelly Shops included in the 50-75% performance group, 47 (50%) exceeded the sample's average Food and Paper Cost of \$354,053 during the 12-period timeframe in 2022. Median Food and Paper Cost during the 12-period timeframe in 2022 for Potbelly Shops in this performance group was \$353,660. Of the 93 Potbelly Shops included in the 25-50% performance group, 43 (46%) exceeded the sample's average Food and Paper Cost of \$291,994 during the 12-period timeframe in 2022. Median Food and Paper Cost during the 12-period timeframe in 2022 for Potbelly Shops in this performance group was \$291,024. Of the 93 Potbelly Shops included in the 25-% performance group, 47 (51%) exceeded the sample's average Food and Paper Cost of \$216,709 during the 12-period timeframe in 2022. Median Food and Paper Cost during the 12-period timeframe in 2022 for Potbelly Shops in this performance group was \$217,974.

vi. Labor Cost. Of the 93 Potbelly Shops included in the 75+% performance group, 40 (43%) exceeded the sample's average Labor Cost of \$423,115 during the 12-period timeframe in 2022. Median Labor Cost during the 12-period timeframe in 2022 for Potbelly Shops in this performance group was \$415,843. Of the 94 Potbelly Shops included in the 50-75% performance group, 44 (47%) exceeded the sample's average Labor Cost of \$360,255 during the 12-period timeframe in 2022. Median Labor Cost during the 12-period timeframe in 2022 for Potbelly Shops in this performance group was \$357,335. Of the 93 Potbelly Shops included in the 25-50% performance group, 45 (48%) exceeded the sample's average Labor Cost of \$327,526 during the 12-period timeframe in 2022. Median Labor Cost during the 12-period timeframe in 2022 for Potbelly Shops in this performance group was \$324,900. Of the 93 Potbelly Shops included in the 25-%

performance group, 46 (49%) exceeded the sample's average Labor Cost of \$273,696 during the 12-period timeframe in 2022. Median Labor Cost during the 12-period timeframe in 2022 for Potbelly Shops in this performance group was \$272,090.

vii. Other Cost. Of the 93 Potbelly Shops included in the 75+% performance group, 37 (40%) exceeded the sample's average Other Cost of \$221,672 during the 12-period timeframe in 2022. Median Other Cost during the 12-period timeframe in 2022 for Potbelly Shops in this performance group was \$214,455. Of the 94 Potbelly Shops included in the 50-75% performance group, 42 (45%) exceeded the sample's average Other Cost of \$186,419 during the 12-period timeframe in 2022. Median Other Cost during the 12-period timeframe in 2022 for Potbelly Shops in this performance group was \$184,824. Of the 93 Potbelly Shops included in the 25-50% performance group, 40 (43%) exceeded the sample's average Other Cost of \$159,713 during the 12-period timeframe in 2022. Median Other Cost during the 12-period timeframe in 2022 for Potbelly Shops in this performance group was \$156,982. Of the 93 Potbelly Shops included in the 25-% performance group, 47 (51%) exceeded the sample's average Other Cost of \$131,744 during the 12-period timeframe in 2022. Median Other Cost during the 12-period timeframe in 2022 for Potbelly Shops in this performance group was \$132,239.

viii. Occupancy Cost. Of the 93 Potbelly Shops included in the 75+% performance group, 34 (37%) exceeded the sample's average Occupancy Cost of \$149,647 during the 12-period timeframe in 2022. Median Occupancy Cost during the 12-period timeframe in 2022 for Potbelly Shops in this performance group was \$135,233. Of the 94 Potbelly Shops included in the 50-75% performance group, 35 (37%) exceeded the sample's average Occupancy Cost of \$132,608 during the 12-period timeframe in 2022. Median Occupancy Cost during the 12-period timeframe in 2022 for Potbelly Shops in this performance group was \$122,007. Of the 93 Potbelly Shops included in the 25-50% performance group, 34 (37%) exceeded the sample's average Occupancy Cost of \$136,052 during the 12-period timeframe in 2022. Median Occupancy Cost during the 12-period timeframe in 2022 for Potbelly Shops in this performance group was \$124,960. Of the 93 Potbelly Shops included in the 25-% performance group, 47 (51%) exceeded the sample's average Occupancy Cost of \$118,094 during the 12-period timeframe in 2022. Median Occupancy Cost during the 12-period timeframe in 2022 for Potbelly Shops in this performance group was \$119,319.

ix. Shop Profit. Of the 93 Potbelly Shops included in the 75+% performance group, 42 (45%) exceeded the sample's average Shop Profit of \$374,246 during the 12-period timeframe in 2022. Median Shop Profit during the 12-period timeframe in 2022 for Potbelly Shops in this performance group was \$365,103. Of the 94 Potbelly Shops included in the 50-75% performance group, 44 (47%) exceeded the sample's average Shop Profit of \$201,031 during the 12-period timeframe in 2022. Median Shop Profit during the 12-period timeframe in 2022 for Potbelly Shops in this performance group was \$191,394. Of the 93 Potbelly Shops included in the 25-50% performance group, 47 (51%) exceeded the sample's average Shop Profit of \$92,567 during the 12-period timeframe in 2022. Median Shop Profit during the 12-period timeframe in 2022 for Potbelly Shops in this performance group was \$95,357. Of the 93 Potbelly Shops included in the 25-% performance group, 49 (53%) exceeded the sample's average Shop Profit of (\$5,128) during the 12-period timeframe in 2022. Median Shop Profit during the 12-period timeframe in 2022 for Potbelly Shops in this performance group was \$3,873.

The following table shows a profit and loss statement for the 7 affiliate owned Potbelly Shops operated during the 12-period timeframe in 2022 at airport locations:

# of Shops	2022 Net Sales <sup>i</sup>	Food and Paper Cost <sup>ii</sup>	Labor Cost <sup>iii</sup>	Other Cost <sup>iv</sup>	Occupancy Cost <sup>v</sup>	Shop Profit <sup>vi</sup>	Marketing Expense at 3%	Royalty
7	\$1,965,468	\$549,767	\$475,725	\$168,611	\$348,040	\$423,325	\$58,964	\$117,928

i. Of the 7 affiliate-owned Potbelly Shops operated at airport locations, 4 (57%) exceeded the 2022 average Net Sales of \$1,965,468. Median 2022 Net Sales for these 7 affiliate-owned Potbelly Shops during the 12-period timeframe in 2022 was \$1,973,533. The highest Net Sales for any of these 7 affiliate-owned Potbelly Shops during the 12-period timeframe in 2022 was \$3,048,183. The lowest Net Sales for any of these 7 affiliate-owned Shops during the 12-period timeframe in 2022 was \$1,124,956.

ii. Of the 7 affiliate-owned Potbelly Shops operated at airport locations, 3 (43%) exceeded the 2022 average Food and Paper Cost of \$549,767. Median 2022 Food and Paper Cost for these 7 affiliate-owned Potbelly Shops during the 12-period timeframe in 2022 was \$531,548.

iii. Of the 7 affiliate-owned Potbelly Shops operated at airport locations, 3 (43%) exceeded the 2022 average Labor Cost of \$475,725. Median 2022 Labor Cost for these 7 affiliate-owned Potbelly Shops during the 12-period timeframe in 2022 was \$471,883.

iv. Of the 7 affiliate-owned Potbelly Shops operated at airport locations, 3 (43%) exceeded the 2022 average Other Cost of \$168,611. Median 2022 Other Cost for these 7 affiliate-owned Potbelly Shops during the 12-period timeframe in 2022 was \$154,677.

v. Of the 7 affiliate-owned Potbelly Shops operated at airport locations, 3 (43%) exceeded the 2022 average Occupancy Cost of \$348,040. Median 2022 Occupancy Cost for these 7 affiliate-owned Potbelly Shops during the 12-period timeframe in 2022 was \$324,158.

vi. Of the 7 affiliate-owned Potbelly Shops operated at airport locations, 2 (29%) exceeded the 2022 average Shop Profit of \$423,325. Median 2022 Shop Profit for these 7 affiliate-owned Potbelly Shops during the 12-period timeframe in 2022 was \$382,175.

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 by contacting Adiya Dixon, Potbelly Franchising, LLC, 111 North Canal

Street, Suite 325, Chicago, Illinois 60606, (312) 951-0600, the Federal Trade Commission, and the appropriate state regulatory agencies.

**Item 20**  
**OUTLETS AND FRANCHISEE INFORMATION**

All year-end numbers appearing in the tables below are as of December 31 in each year. The “Company-Owned” outlets referenced in tables 1 and 4 below are owned by one or more of our affiliates.

Table No. 1

**Systemwide Outlet Summary**  
**For years 2020 to 2022**

Column 1 Outlet Type	Column 2 Year	Column 3 Outlets at the Start of the Year	Column 4 Outlets at the End of the Year	Column 5 Net Change
Franchised	2020	46	46	0
	2021	46	46	0
	2022	46	45	-1
Company- Owned	2020	428	400	-28
	2021	400	397	-3
	2022	397	384	-13
Total Outlets	2020	474	446	-28
	2021	446	443	-3
	2022	443	429	-14

Table No. 2

**Transfers of Outlets from Franchisees to New Owners (other than the Franchisor)**  
**For years 2020 to 2022**

Column 1 State	Column 2 Year	Column 3 Number of Transfers
All States	2020	0
	2021	0
	2022	0

Column 1	Column 2	Column 3
State	Year	Number of Transfers
Total	2020	0
	2021	0
	2022	0

Table No. 3

**Status of Franchised Outlets  
For years 2020 to 2022**

Col. 1	Col. 2	Col. 3	Col. 4	Col. 5	Col. 6	Col. 7	Col. 8	Col. 9
State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations – Other Reasons	Outlets at End of the Year
Arkansas	2020	2	0	0	0	0	0	2
	2021	2	0	0	0	0	0	2
	2022	2	1	0	0	0	0	3
California	2020	1	0	1	0	0	0	0
	2021	0	0	0	0	0	0	0
	2022	0	0	0	0	0	0	0
Florida	2020	1	0	0	0	0	0	1
	2021	1	1	0	0	0	0	2
	2022	2	1	0	0	0	0	3
Illinois	2020	2	0	0	0	0	0	2
	2021	2	0	0	0	0	0	2
	2022	2	0	0	0	0	0	2
Indiana	2020	1	0	0	0	0	0	1
	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
Iowa	2020	3	0	0	0	0	0	3
	2021	3	0	0	0	0	0	3
	2022	3	0	0	0	0	0	3

Col. 1	Col. 2	Col. 3	Col. 4	Col. 5	Col. 6	Col. 7	Col. 8	Col. 9
State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations – Other Reasons	Outlets at End of the Year
Kentucky	2020	3	0	0	0	0	0	3
	2021	3	0	0	0	0	0	3
	2022	3	0	0	0	0	0	3
Michigan	2020	1	0	0	0	0	0	1
	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
Minnesota	2020	4	0	0	0	0	0	4
	2021	4	0	0	0	0	1	3
	2022	3	0	1	0	0	0	2
Mississippi	2020	1	0	0	0	0	0	1
	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
Missouri	2020	5	0	2	0	0	0	3
	2021	3	0	0	0	0	0	3
	2022	3	0	0	0	0	0	3
Nebraska	2020	3	0	0	0	0	0	3
	2021	3	0	1	0	0	0	2
	2022	2	0	1	0	0	0	1
Nevada	2020	0	1	0	0	0	0	1
	2021	1	1	0	0	0	0	2
	2022	2	0	0	0	0	0	2
North Carolina	2020	5	2	0	0	0	0	7
	2021	7	1	0	0	0	0	8
	2022	8	0	0	0	0	0	8
North 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
South	2020	1	0	0	0	0	0	1



Col. 1 State	Col. 2 Year	Col. 3 Outlets at Start of Year	Col. 4 Outlets Opened	Col. 5 Termina- tions	Col. 6 Non- Renewals	Col. 7 Reacquired by Franchisor	Col. 8 Ceased Opera- tions – Other Reasons	Col. 9 Outlets at End of the Year
Dakota	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
Tennessee	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	6	0	0	0	0	0	6
	2021	6	0	1	0	0	0	5
	2022	5	0	0	0	0	0	5
Virginia	2020	5	0	0	0	0	0	5
	2021	5	0	0	0	0	0	5
	2022	5	0	0	0	0	0	5
Totals	2020	46	3	3	0	0	0	46
	2021	46	3	2	0	0	1	46
	2022	46	1	2	0	0	0	45

Table No. 4

**Status of Company-Owned Outlets  
For years 2020 to 2022**

Col. 1 State	Col. 2 Year	Col. 3 Outlets at Start of the Year	Col. 4 Outlets Opened	Col. 5 Outlets Reacquired From Franchisee	Col. 6 Outlets Closed	Col. 7 Outlets Sold to Franchisee	Col. 8 Outlets at End of the Year
Arizona	2020	12	0	0	2	0	10
	2021	10	0	0	0	0	10
	2022	10	0	0	0	0	10
Colorado	2020	13	0	0	2	0	11
	2021	11	0	0	0	0	11

Col. 1 State	Col. 2 Year	Col. 3 Outlets at Start of the Year	Col. 4 Outlets Opened	Col. 5 Outlets Reacquired From Franchisee	Col. 6 Outlets Closed	Col. 7 Outlets Sold to Franchisee	Col. 8 Outlets at End of the Year
	2022	11	0	0	0	0	11
District of Columbia	2020	22	0	0	0	0	22
	2021	22	0	0	0	0	22
	2022	22	0	0	1	0	21
Illinois	2020	108	3	0	0	0	111
	2021	111	0	0	0	0	111
	2022	111	0	0	2	0	109
Indiana	2020	9	0	0	0	0	9
	2021	9	0	0	0	0	9
	2022	9	0	0	0	0	9
Kansas	2020	4	0	0	0	0	4
	2021	4	0	0	1	0	3
	2022	3	0	0	0	0	3
Kentucky	2020	1	0	0	0	0	1
	2021	1	0	0	0	0	1
	2022	1	0	0	0	0	1
Maryland	2020	29	1	0	0	0	30
	2021	30	0	0	2	0	28
	2022	28	0	0	1	0	27
Massachusetts	2020	7	0	0	1	0	6
	2021	6	0	0	0	0	6
	2022	6	0	0	0	0	6
Michigan	2020	32	0	0	2	0	30
	2021	30	0	0	0	0	30
	2022	30	0	0	0	0	30
Minnesota	2020	21	0	0	1	0	20
	2021	20	0	0	0	0	20
	2022	20	0	0	0	0	20
Missouri	2020	1	0	0	0	0	1

Col. 1 State	Col. 2 Year	Col. 3 Outlets at Start of the Year	Col. 4 Outlets Opened	Col. 5 Outlets Reacquired From Franchisee	Col. 6 Outlets Closed	Col. 7 Outlets Sold to Franchisee	Col. 8 Outlets at End of the Year
	2021	1	0	0	0	0	1
	2022	1	0	0	0	0	1
New Jersey	2020	1	0	0	0	0	1
	2021	1	0	0	0	0	1
	2022	1	0	0	1	0	0
New York	2020	14	0	0	1	0	13
	2021	13	0	0	0	0	13
	2022	13	0	0	4	0	9
Ohio	2020	17	0	0	1	0	16
	2021	16	0	0	0	0	16
	2022	16	0	0	0	0	13
Oklahoma	2020	2	0	0	1	0	1
	2021	1	0	0	0	0	1
	2022	1	0	0	0	0	1
Oregon	2020	6	0	0	1	0	5
	2021	5	0	0	0	0	5
	2022	5	0	0	0	0	5
Pennsylvania	2020	2	0	0	1	0	1
	2021	1	0	0	0	0	1
	2022	1	0	0	0	0	1
Texas	2020	73	0	0	11	0	62
	2021	62	0	0	0	0	62
	2022	62	0	0	4	0	58
Utah	2020	3	0	0	2	0	1
	2021	1	0	0	0	0	1
	2022	1	0	0	0	0	1
Virginia	2020	22	0	0	1	0	21
	2021	21	0	0	0	0	21
	2022	21	0	0	0	0	21

Col. 1 State	Col. 2 Year	Col. 3 Outlets at Start of the Year	Col. 4 Outlets Opened	Col. 5 Outlets Reacquired From Franchisee	Col. 6 Outlets Closed	Col. 7 Outlets Sold to Franchisee	Col. 8 Outlets at End of the Year
Washington	2020	12	0	0	2	0	10
	2021	10	0	0	0	0	10
	2022	10	0	0	0	0	10
Wisconsin	2020	17	0	0	3	0	14
	2021	14	0	0	0	0	14
	2022	14	0	0	0	0	14
Totals	2020	428	4	0	32	0	400
	2021	400	0	0	3	0	397
	2022	397	0	0	13	0	384

**Table No. 5**

**Projected Openings as of December 31, 2022**

Column 1 State	Column 2 Franchise Agreements Signed But Outlets Not Opened	Column 3 Projected New Franchised Outlets In The Next Fiscal Year	Column 4 Projected New Company- Owned Outlets In The Next Fiscal Year
Florida	0	4	0
Illinois	0	1	0
New York	1	1	0
North Carolina	1	3	0
South Dakota	0	1	0
Tennessee	0	1	0
Total	2	11	0

Exhibit J-1 lists our franchisees and Area Developers (operational and non-operational) and the addresses and telephone numbers of their Shops as of December 31, 2022. Exhibit J-2 lists the names, city and state, and current business telephone numbers (or, if unknown, the last known home telephone or other contact numbers) of the franchisees who had outlets terminated, canceled, or not renewed, or who otherwise voluntarily or involuntarily ceased to do business under a Franchise Agreement, from January 1, 2022 to December 31, 2022, or who did not communicate with us within 10 weeks of this disclosure document's original issuance date. This list includes franchisees that transferred their Shops to third parties. If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system.

During the last 3 fiscal years, no current or former franchisees have signed confidentiality clauses restricting them from discussing with you their experiences as a franchisee in our franchise system. There are no trademark-specific franchisee organizations associated with the Potbelly franchise system.

**Item 21**  
**FINANCIAL STATEMENTS**

Exhibit G contains (1) our audited financial statements as of December 25, 2022, December 26, 2021, and for the years ended December 25, 2022, December 26, 2021 and December 27, 2020, and (2) our unaudited and unreviewed interim financial information as of and for the quarter ended March 26, 2023.

**Item 22**  
**CONTRACTS**

The following contracts/documents are exhibits:

- (a) Franchise Agreement — Exhibit B
- (c) Area Development Agreement – Exhibit C
- (d) Principal’s Agreement — Exhibit D
- (e) Lease Rider/Collateral Assignment of Lease — Exhibit E
- (f) Franchisee Representations — Exhibit H
- (g) State Riders to Franchise Agreement — Exhibit I
- (h) Form of General Release — Exhibit K
- (i) Asset Purchase Agreement — Exhibit L

**Item 23**  
**RECEIPTS**

Our and your copies of the Franchise Disclosure Document Receipt are located at the last 2 pages of this disclosure document.

**EXHIBIT A**

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

**EXHIBIT A**

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

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

If a state is not listed, we have not appointed an agent for service of process in that state in connection with the requirements of the franchise laws. There may be states in addition to those listed below in which we have appointed an agent for service of process.

There also may be additional agents appointed in some of the states listed.

**California**

Commissioner of the Department of  
Financial Protection and Innovation  
Toll Free: 1 (866) 275-2677

***Los Angeles***

Suite 750  
320 West 4<sup>th</sup> Street  
Los Angeles, California 90013-2344  
(213) 576-7500

***Sacramento***

2101 Arena Boulevard  
Sacramento, California 95834  
(916) 327-7585

***San Diego***

1455 Frazee Road, Suite 315  
San Diego, California 92108  
(619) 610-2093

***San Francisco***

One Sansome Street, Suite 600  
San Francisco, California 94104-4428  
(415) 972-8565

**Hawaii**

(for service of process)  
Commissioner of Securities  
Business Registration Division  
Department of Commerce  
and Consumer Affairs  
335 Merchant Street, Room 205  
Honolulu, Hawaii 96813  
(808) 586-2722

(for other matters)  
Commissioner of Securities  
Business Registration Division  
Department of Commerce  
and Consumer Affairs  
335 Merchant Street, Room 205  
Honolulu, Hawaii 96813  
(808) 586-2722

**Illinois**

Illinois Attorney General  
500 South Second Street  
Springfield, Illinois 62706  
(217) 782-4465

## **Indiana**

(for service of process)  
Indiana Secretary of State  
201 State House  
200 West Washington Street  
Indianapolis, Indiana 46204  
(317) 232-6531

(state agency)  
Indiana Secretary of State  
Securities Division  
Room E-111  
302 West Washington Street  
Indianapolis, IN 46204  
(317)232-6681

## **Maryland**

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

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

## **Michigan**

Corporations Division  
Franchise  
P.O. Box 30054  
Lansing, MI 48909  
(517) 373-7117

## **Minnesota**

Minnesota Department of Commerce  
85 7th Place East, Suite 280  
Saint Paul, MN 55101  
(651) 539-1600

## **New York**

(for service of process)  
Attention: New York Secretary of State  
New York Department of State  
One Commerce Plaza  
99 Washington Ave., 6th Floor  
Albany, New York 12231-0001  
(518) 473-2492

(for other matters)  
NYS Department of Law  
Investor Protection Bureau  
28 Liberty Street, 21<sup>st</sup> Floor  
New York, New York 10005  
(212) 416-8236

## **North Dakota**

(state agency)  
North Dakota Securities Department  
600 East Boulevard Avenue State Capitol  
14<sup>th</sup> Floor  
Bismarck, North Dakota 58505-0510  
(701) 328-2910

(for service of process)  
Securities Commissioner  
600 East Boulevard Avenue State Capitol  
14<sup>th</sup> Floor  
Bismarck, North Dakota 58505-0510  
(701) 328-2910

## **Oregon**

Oregon Division of Finance and Corporate  
Securities  
350 Winter Street NE, Room 410  
Salem, Oregon 97301-3881  
(503) 378-4387

## **Rhode Island**

Securities Division  
Department of Business Regulations  
1511 Pontiac Avenue  
John O. Pastore Complex-Building 69-1  
Cranston, RI 02920  
(401) 462-9500



**South Dakota**

Department of Labor and Regulation  
Division of Securities  
124 S. Euclid, 2<sup>nd</sup> Floor  
Pierre, SD 57501  
(605) 773-4823

**Virginia**

(for service of process)  
Clerk, State Corporation Commission  
1300 East Main Street  
First Floor  
Richmond, Virginia 23219  
(804) 371-9733

(for other matters)  
State Corporation Commission  
Division of Securities and Retail  
Franchising  
1300 East Main Street  
Ninth Floor  
Richmond, Virginia 23219  
(804) 371-9051

**Washington**

(for service of process)  
State of Washington  
Department of Financial Institutions  
Securities Division  
150 Israel Road SW  
Tumwater, Washington 98501

(for other matters)  
Department of Financial Institutions  
Securities Division  
P. O. Box 9033  
Olympia, Washington 98507-9033  
(360) 902-8760

**Wisconsin**

Commissioner of Securities  
Wisconsin Department of Financial  
Institutions  
4822 Madison Yards Way, North Tower  
Madison, Wisconsin 53705  
(608) 266-8557

**EXHIBIT B**  
**FRANCHISE AGREEMENT**

**POTBELLY FRANCHISING, LLC**  
**FRANCHISE AGREEMENT**

*Franchisee Name:*

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*Agreement Date:*

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*Shop Address:*

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EXHIBIT A – LISTING OF OWNERSHIP INTERESTS

EXHIBIT B – CONDITIONAL ASSIGNMENT OF TELEPHONE NUMBER(S)

GUARANTY AND ASSUMPTION OF OBLIGATIONS

**POTBELLY FRANCHISING, LLC**  
**FRANCHISE AGREEMENT**

This Franchise Agreement (**the “Agreement”**) is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ (**the “Effective Date”**) (regardless of the dates of, but only upon, the parties’ full signatures) by and between **POTBELLY FRANCHISING, LLC**, an Illinois limited liability company with its principal business address at 111 North Canal Street, Suite 325, Chicago, Illinois 60606 (**“we,” “us,” or “our”**), and \_\_\_\_\_, whose principal business address is \_\_\_\_\_ (**“you” or “your”**).

1. **INTRODUCTION, ACKNOWLEDGMENTS, AND GRANT OF FRANCHISE.**

A. **INTRODUCTION.**

(1) We and our affiliates have developed (and continue to develop and modify) a system for constructing, operating, identifying, and promoting Shops under the POTBELLY SANDWICH SHOP® trademark and related commercial symbols (**collectively, the “Marks”**) that prepare and sell sandwiches, soups, salads, shakes, desserts, and other food and beverage products (**collectively, the “Products”**). We have developed a franchise opportunity for Shops that sell the Products, use the Marks, and use our and our affiliates’ distinctive business formats, methods, procedures, signs, designs, layouts, standards, and specifications (**collectively, the “Branded System”**), all of which we and our affiliates may improve, further develop, and otherwise periodically modify. Shops preparing and selling the Products, operating under the Branded System, and using the POTBELLY SANDWICH SHOP® Mark as their primary trade identity are referred to collectively in this Agreement as **“Potbelly Shops.”**

A Potbelly Shop’s Products are prepared according to specific recipes, standards, and procedures and use high quality ingredients, including certain proprietary items (**collectively, “Potbelly Trade Secret Products”**) and other ingredients (not constituting Potbelly Trade Secret Products) that are branded and/or packaged exclusively for Potbelly Shops (**collectively, “Potbelly Branded Products”**). (Potbelly Branded Products also are defined to include non-food products that are branded and/or packaged exclusively for Potbelly Shops.)

(2) The Marks have gained and will continue to gain public acceptance and goodwill, and new trademarks, service marks, and commercial symbols may be created, used, and licensed for Potbelly Shops. Our affiliate owns the Marks, the Confidential Information (defined in Section 6 below), and all aspects of the Branded System (**collectively, the “Intellectual Property”**) and has licensed the Intellectual Property to us to use in our Potbelly Shop franchise program.

(3) We grant franchises to operate a Potbelly Shop using the Intellectual Property and offering the Products and services we require and authorize (**the “Franchise System”**).



(4) As a Potbelly Shop franchisee, you must comply with this Agreement and all mandatory standards, specifications, operating procedures, and rules (**collectively, “System Standards”**) that we periodically prescribe for Potbelly Shops.

(5) You have applied for a franchise to operate a Potbelly Shop.

**B. ACKNOWLEDGMENTS.**

You acknowledge:

(1) That you have independently investigated the Potbelly Shop franchise opportunity and recognize that, like any other business, the nature of a Potbelly Shop will evolve and change over time.

(2) That an investment in a Potbelly Shop involves business risks that could result in the loss of a significant portion or all of your investment.

(3) That the business abilities and efforts of your owners and other principals, management, and staff are vital to your success.

(4) That attracting and retaining customers for your Potbelly Shop require you to make consistent marketing and promotional efforts, to sell high quality Products, to provide a high level of customer service, and to adhere strictly to our System Standards. You are committed to maintaining System Standards.

(5) That you have not received from us, and are not relying upon, any representations or guarantees, express or implied, of the potential volume, sales, income, or profits of a Potbelly Shop (except as provided in a financial performance representation included in Item 19 of our Franchise Disclosure Document), that any information you have acquired from other Potbelly Shop franchisees regarding their sales, income, profits, or cash flows was not information obtained from us, and that we make no representation about that information’s accuracy.

(6) That in all of their dealings with you, our officers, directors, employees, and agents act only in a representative, and not in an individual, capacity and that business dealings between you and them as a result of this Agreement are deemed to be only between you and us.

(7) That you have represented to us, to induce our entry into this Agreement, that all statements you made and all information you gave us are accurate and complete and you made no misrepresentations or material omissions in obtaining the Franchise.

(8) That you and your guarantors have received as one document at one time a copy of the form of this Agreement, the exhibits hereto, and the applicable complete Franchise Disclosure Document not less than fourteen (14) days prior to the earlier of: (i) the date on which this Agreement or any other agreement relating thereto was executed, and (ii) the payment of any consideration by or on behalf of you relating to this Agreement,

and the franchise associated therewith (except, where applicable, any deposit permitted under applicable law).

(9) That you have read this Agreement and our Franchise Disclosure Document and understand and accept that this Agreement's terms are reasonably necessary for us to maintain high, uniform quality and service standards at each Potbelly Shop and to protect and preserve the goodwill of the Marks.

(10) That we may restrict your sources of Potbelly Trade Secret Products, Potbelly Branded Products, and other items, as provided in various sections of this Agreement.

(11) That we have not made any representation, warranty, or other claim regarding the Potbelly Shop franchise opportunity, other than those in this Agreement and our Franchise Disclosure Document, and that you have independently evaluated the franchise opportunity, including by using your own business and legal advisors, and have relied solely upon those evaluations in deciding to sign this Agreement.

(12) That you have had the opportunity to ask any questions you have, and to review any appropriate materials of interest to you, concerning the Potbelly Shop franchise opportunity.

(13) That you have had the opportunity, and we have encouraged you, to have this Agreement and all related agreements and materials given or made available to you reviewed by your attorney.

(14) That you have a net worth that is sufficient to invest in the Potbelly Shop franchise opportunity and will have sufficient funds to meet all of your obligations under this Agreement.

C. **ENTITY REQUIREMENTS.**

As a corporation, limited liability company, or general, limited, or limited liability partnership (**each, an "Entity"**), you agree and represent that:

(1) You have the authority to sign, deliver, and perform your obligations under this Agreement and all related agreements and are duly organized or formed and validly exist in good standing under the laws of the state of your incorporation or formation;

(2) Your organizational documents, operating agreement, or partnership agreement, as applicable, will recite that this Agreement restricts the issuance and transfer of certain ownership interests in you, and all certificates and other documents representing ownership interests in you will bear a legend (the wording of which we may specify) referring to those restrictions;

(3) Exhibit A to this Agreement completely and accurately identifies all of your owners and their interests in you as of the Effective Date;

(4) Each of your owners during the Term must sign a Guaranty and Assumption of Obligations, in the form attached at the end of this Agreement, undertaking personally to be bound, jointly and severally, by all provisions in this Agreement and any ancillary agreements between you and us. Subject to our rights and your obligations under Section 12, you and your owners agree to sign and deliver to us revised Exhibits A to reflect any permitted changes in the information that Exhibit A now contains;

(5) You must appoint and maintain throughout this Agreement's term a shareholder, member, or partner, depending on the Entity, to be your "**Managing Owner**," responsible for overseeing and supervising operation of the Shop (defined in Subsection D below). The Managing Owner as of the Effective Date is identified in Exhibit A. If your Managing Owner is not involved in the Shop's on-site, day-to-day operation, you also must appoint a "**Head of Operations**," defined as an individual whom you hire to manage the Shop on-site on a day-to-day basis (or, if you operate more than one (1) Potbelly Shop, to oversee management and operation of all your Potbelly Shops), who reports to the Managing Owner, and who is eligible to participate in a long-term incentive plan (e.g., cash bonus or equity grant). We must approve your proposed Head of Operations, who must sign the form we require undertaking personally to be bound, jointly and severally, by the non-monetary obligations in this Agreement. You may replace the Head of Operations as you deem appropriate, although a replaced Head of Operations must relinquish any ownership interest in you, a replacement Head of Operations must satisfactorily complete our training requirements, and you must identify for us and we first must approve any new or replacement Head of Operations. A Head of Operations may not at any time transfer his or her ownership interest in you except to you or any of your then-existing owners. The Head of Operations as of the Effective Date, if applicable, is identified in Exhibit A. If your Managing Owner transfers his or her ownership interest in you during this Agreement's term, you agree to appoint a new Managing Owner (whom we must approve), and to have that new Managing Owner attend and satisfactorily complete the training we require for Managing Owners (the length and substance of which may depend on whether you operate only the Shop or operate multiple Potbelly Shops), within the timeframe we specify. Employees at the Shop are your employees and will be under your control in implementing and maintaining System Standards at the Shop; and

(6) The Shop and other Potbelly Shops, if applicable, will be the only business you operate (although your owners may have other, non-competitive business interests if they do not conflict with your obligations under this Agreement).

#### D. **GRANT OF FRANCHISE.**

You have applied for a franchise to operate a Potbelly Shop at \_\_\_\_\_ (the "**Site**"). (If you have not found a location for your Shop as of the Effective Date, the Site will be identified after you do so, as provided in Subsection 2.A. below.) Subject to this Agreement's terms, we grant you a franchise (the "**Franchise**") to operate a Potbelly Shop (the "**Shop**") at the Site, and to use the Franchise System in its operation, for a ten (10) year term beginning on the Effective Date (the "**Term**"). The Term is subject to earlier termination under Section 14. You agree to operate the

Shop in compliance with this Agreement for the entire Term unless this Agreement is properly terminated under Section 14. You may use the Site during the Term only for the Shop. You agree at all times faithfully, honestly, and diligently to perform your obligations under this Agreement and to use best efforts to promote the Shop. You may not engage in any delivery or catering activities away from the Site, or take customer orders “on-line” (*i.e.*, through the System Website or any other Electronic Media), unless and until we require you to do so or notify you in writing that you may do so (although we have no obligation to allow such activities by a certain date or at all). If we require or allow you to engage in any or all of these activities, you must comply with all System Standards for such activities, including without limitation, making available the Products identified as appropriate for delivery, using only the delivery service provider(s) we specify in writing for your Shop, and limiting the delivery services to any delivery area we specify to you in writing. You acknowledge and agree that any delivery and/or catering area we specify is not exclusive and we may engage, and/or allow other franchisees and third parties to engage, in any activities we desire within the delivery area without any restrictions (including allowing other Potbelly Shops and delivery service providers to provide delivery services in the delivery area). You further acknowledge and agree that any delivery area we specify is nothing more than the geographic boundaries in which you may deliver those Products approved for delivery from the Shop, and no other rights are granted to you whatsoever.

E. **RIGHTS WE RESERVE.**

Your rights under this Agreement are non-exclusive. That means that we (and any affiliates that we periodically have) retain the right during the Term to engage in any and all activities that we (and they) desire, at any time or place, whether or not those activities compete with your Shop. These unlimited rights include the right:

(1) To construct, develop, and operate, and grant to others the right to construct, develop, and operate, Potbelly Shops anywhere we want and on any terms and conditions we deem appropriate.

(2) To offer and sell Products and other items identified by the Marks or any other trademarks or service marks to any customers, wherever located or operating, and through any distribution channels (including, but not limited to, the Internet, grocery, specialty, and other retail stores, food trucks, and other points of distribution), wherever located or operating.

(3) To construct, develop, and operate, and grant to others the right to construct, develop, and operate, any types of stores or other foodservice businesses under any trademarks and service marks anywhere we want and on any terms and conditions we deem appropriate.

(4) To acquire the assets or ownership interests of one or more businesses providing products and services the same as or similar to those provided at Potbelly Shops, and franchising, licensing or creating similar arrangements with respect to these businesses once acquired, wherever these businesses (or the franchisees or licensees of these businesses) are located or operating;

(5) To be acquired (whether through acquisition of assets, ownership interests or otherwise, regardless of the form of transaction), by a business providing products and services similar to those provided at Potbelly Shops, or by another business; and

(6) To engage in all other activities this Agreement does not expressly prohibit.

F. **THE EXERCISE OF OUR JUDGMENT.**

We have the right to develop, operate, and change the Branded System and the Franchise System in any manner this Agreement does not specifically prohibit. Whenever this Agreement reserves our right to take or withhold an action, or to grant or decline to grant you the right to take or omit an action, we may, except as this Agreement specifically provides, make our decision or exercise our rights based on information then available to us and our judgment of what is best for us, Potbelly Shop franchisees generally, or the Franchise System when we make our decision, whether or not we could have made other reasonable or even arguably preferable alternative decisions and whether or not our decision promotes our financial or other individual interest.

G. **MODIFICATION OF FRANCHISE SYSTEM.**

Because complete and detailed uniformity under many varying conditions might not be possible or practical, we specifically reserve the right and privilege, as we deem best, to vary System Standards for, and to provide different levels of service to, any franchisee based upon any conditions or factors that we consider important to that franchisee's successful operation. You have no right to require us to grant you a similar variation or accommodation or to provide the same level of service.

2. **SITE SELECTION/SHOP CONSTRUCTION AND DEVELOPMENT.**

A. **SITE SELECTION.**

If you have not yet secured a location for the Site as of the Effective Date, then within one hundred eighty (180) days after the Effective Date you agree to purchase, or sign a lease or sublease for, a suitable location for the Shop within the following non-exclusive geographic area: \_\_\_\_\_  
\_\_\_\_\_. You agree to obtain our written acceptance of the Shop's proposed location before signing any lease, sublease, or other document for the site. We will use reasonable efforts to help analyze your market area, to help determine site feasibility, and to assist in designating the location, although we will not conduct site selection activities for you. It is your responsibility to find a Site that satisfies our site selection criteria, unless we waive those criteria in a particular situation. We will not unreasonably withhold our acceptance of a Site that meets our criteria for demographic characteristics; traffic patterns; parking; character of neighborhood; competition from, proximity to, and nature of nearby businesses; other commercial characteristics; and size, appearance, and other physical characteristics. We will spend the time and effort, and incur the expense, reasonably required to consider sites you propose. We will accept or refuse your proposed Site within thirty (30) days after we receive the complete site report and other materials we request. After you find and secure the location, we will insert its address into Subsection 1.D. above, and it will be the Site.

If no Site is found by you and accepted by us within one hundred eighty (180) days after the Effective Date, then either we or you may terminate this Agreement upon written notice. In that event, we will (except as provided in the following sentence) return to you all but Eight Thousand Dollars (\$8,000) of the initial franchise fee if you sign our then-current form of general release of claims. However, if you signed this Agreement in conjunction with an Area Development Agreement we signed with you (or your affiliate) granting multi-Shop development rights and the full initial franchise fee due for the Shop already has been paid to us, we will not return to you any portion of that initial franchise fee if we terminate this Agreement because you fail to find an acceptable location for the Shop within the timeframe required under this Agreement or the Area Development Agreement.

You acknowledge and agree that, if we recommend or give you information regarding a location proposed for the Site, that is not a representation, promise or warranty of any kind, express or implied, of the location's suitability for a Potbelly Shop or any other purpose or that the Shop will achieve a certain sales volume or a certain level of profitability at the Site. Similarly, our approval of a site and our rejection of other sites is not a representation, promise or warranty of any kind, express or implied, that an approved site will have a higher sales volume or be more profitable than a site which we did not approve. Our recommendation indicates only that we believe the location meets our then-acceptable criteria, unless we waive those criteria in a particular situation. Applying criteria that have appeared effective with other locations and sites might not accurately reflect the potential for all locations and sites, and demographic and/or other factors included in or excluded from our criteria could change, altering the potential of a location and site. The uncertainty and instability of these criteria are beyond our control, and we are not responsible if a location and site we recommend fail to meet your expectations. You acknowledge and agree that your acceptance of the Franchise was or will be based on your own independent investigation of a location's suitability for the Site. We are relying on your knowledge of the real estate market in your area and your ability to find a suitable location.

**B. LEASE OR PURCHASE OF SITE.**

We have the right to accept or refuse to accept the terms (including, but not limited to, lease or sublease payments or purchase price) of any lease, sublease or purchase agreement proposed for the Site (the "**Real Estate Agreement**") before you sign it. You must send us for review and comment a copy of the proposed final form of Real Estate Agreement before you sign it. We also may request, and you must send to us, for review and comment earlier drafts of the proposed Real Estate Agreement. You may not sign the Real Estate Agreement unless and until we have reviewed and accepted its final form and notified you in writing that you may sign it. If you sign the Real Estate Agreement before we send you that notice, we will terminate this Agreement.

The Real Estate Agreement must contain the terms and provisions we reasonably require. If you lease the Site, we may require that (i) the lease be collaterally assigned to us (with the lessor's prior written consent) by a lease rider and/or collateral assignment agreement in form and substance reasonably acceptable to us in order to secure your performance of each and every liability and obligation to us under this Agreement, and (ii) the lease contains the provisions we require for site leases for Potbelly Shops.

You acknowledge that our review and acceptance of the Real Estate Agreement are not a guarantee or warranty, express or implied, of the successful operation or profitability of a Potbelly Shop at the Site. Our review and acceptance indicate only that we believe the Real Estate Agreement's terms meet our then-current criteria for a Potbelly Shop, unless we waive those criteria in a particular situation. Applying criteria appearing effective with other sites might not accurately reflect the potential for all sites, and demographic and/or other factors included in or excluded from our criteria could change, altering a site's potential. The uncertainty and instability of these criteria are beyond our control, and we are not responsible if the Site we accepted or will accept fails to meet your expectations. You acknowledge that your acceptance of the Franchise was based on your own independent investigation of, or intent to investigate independently, the Site's suitability for the Shop.

If you lose the right to occupy the Site without your fault, or if the Site is destroyed, condemned, or otherwise rendered unusable, you may relocate the Shop to a new site acceptable to us. Any relocation will be at your sole expense, and we may charge you twenty percent (20%) of our then-current initial franchise fee for new franchisees for our involvement in the relocation process. If you choose to relocate, whether during the Term or in connection with your acquisition of a successor franchise (see Section 13 below), you agree, as a condition of that relocation, and within the timeframe we specify and at your own expense, to take all action we require to de-brand and de-identify the Shop's former Site so that it no longer is associated in any manner (in our opinion) with the Franchise System.

### C. SHOP CONSTRUCTION AND DEVELOPMENT.

You are responsible for constructing and developing the Shop. We will give you template plans and drawings ("**Plans**") for a Potbelly Shop's physical structure, exterior elements, and interior layout. The Plans will include mandatory and suggested standards and specifications for, among other things, size, dimensions, design, image, decor, fixtures, equipment, signs, furnishings, and color scheme. However, the Plans might not reflect the requirements of any federal, state, or local law, code, or regulation, including those arising under the Americans with Disabilities Act (the "**ADA**") or similar rules governing public accommodations for disabled persons. You must prepare, using our approved architectural and design services vendor, a Site survey and all required construction plans and specifications to suit the Site and make sure these plans and specifications comply with our requirements, the ADA and similar rules, other applicable ordinances, building codes, permit requirements, and Lease requirements and restrictions. You must send us for review and acceptance your Site survey and construction plans and specifications before you either submit them for permitting or begin constructing the Shop and all revised or "as built" plans and specifications during construction. Because our review is limited to ensuring your compliance with our design and layout requirements, we might not assess compliance with federal, state, or local laws and regulations, including the ADA. Such compliance is your responsibility.

Before you begin the Shop construction process, you must identify for us your proposed general contractor. That general contractor must have sufficient experience (in our opinion) constructing similar types of commercial restaurant properties. We must accept your proposed general contractor in writing before you may hire the general contractor for the Shop's

construction. You may not hire any general contractor we reject. We may inspect the Site during the Shop construction and development process. You (and not we) are responsible for the performance of architects, contractors, and subcontractors you hire to construct, develop, and maintain the Shop and for ensuring that sufficient insurance coverage is in place during the construction process.

You must do the following, at your own expense, to construct, develop, and begin operating the Shop:

- (1) secure all financing required to construct, develop, and operate the Shop;
- (2) obtain all required zoning, building, utility, sign, health, sanitation, business, and other permits and licenses;
- (3) build out the Shop's space and decorate the Shop according to approved plans and specifications;
- (4) obtain all customary contractors' sworn statements and partial and final lien waivers for construction, remodeling, decorating, and installation services;
- (5) purchase or lease, and install, all required fixtures, furniture, furnishings, signs, vehicles (if we require or allow you to provide delivery and catering services from your Shop), and equipment (including required computer, point-of-sale, and other electronic information systems and all equipment components and software necessary for you to accept and process our gift, loyalty and rewards cards and participate in our gift card, customer loyalty, rewards, affinity, and similar programs) (**collectively, "Operating Assets"**); and
- (6) purchase an opening inventory of required, authorized, and approved Potbelly Trade Secret Products and Potbelly Branded Products from us, our affiliates, or other designated sources and other products, materials, and supplies from approved and designated sources.

D. **OPERATING ASSETS.**

You must use in operating the Shop only those Operating Assets that we designate or approve for Potbelly Shops as meeting our standards and specifications for quality, design, appearance, function, and performance. You may not install or use any unauthorized Operating Assets at the Shop. You agree to place or display at the Shop (interior and exterior) and on delivery/catering vehicles (if applicable) only the signs, emblems, lettering, logos, and display materials we periodically approve. You must purchase or lease approved brands, types, and models of Operating Assets only from suppliers we designate or approve (which may include and/or be limited to us and/or our affiliates).



E. **COMPUTER SYSTEM.**

You agree to obtain and use the computer hardware and software we specify, including required computer, point-of-sale, and other electronic information systems, a high-speed Internet connection, and all equipment components and software necessary for you to accept and process our gift, loyalty and rewards cards and participate in our gift card, customer loyalty, rewards, affinity, and similar programs (**the “Computer System”**). We may modify the Computer System’s specifications and components. Our modification of the Computer System’s specifications, and/or other technological developments or events, might require you to purchase, lease and/or license new or modified computer hardware and/or software and to obtain service and support for the Computer System. Although we cannot estimate the future costs of the Computer System or required service or support, and although these costs might not be fully amortizable over the remaining portion of the Term, you agree to obtain the computer hardware and software comprising the Computer System (and additions and modifications) and required service or support. Within ninety (90) days after we deliver notice to you, you must obtain the Computer System components we designate and ensure that your Computer System, as modified, is functioning properly. We have no obligation to reimburse you for any Computer System costs. You may not use any unapproved computer software or security access codes. You must give us all security access codes, although we will not have any access to employee- or employment-related information for your Shop’s employees.

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, on your signing the software license agreement or similar document, or otherwise agreeing to the terms (for example, by acknowledging your consent to and accepting the terms of use of a click-through or other shrink-wrapped license agreement), we and our affiliates prescribe to regulate your use of, and our and your respective rights and responsibilities with respect to, the software or technology. We and our affiliates may charge you up-front and ongoing weekly, monthly, or other fees for any required or recommended proprietary software or technology licensed to you and for other maintenance, support, and access services we provide during the Term.

Despite the fact that you must buy, use, and maintain the Computer System according to our standards and specifications, you have sole and complete responsibility for: (1) the acquisition, operation, maintenance, and upgrading of the Computer System; (2) the manner in which your Computer System interfaces 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) complying at all times with the most current version of the Payment Card Industry Data Security Standards. You must provide us with, at a minimum, your annual Attestation of Compliance (“AOC”) demonstrating that you have completed all of the necessary actions to be PCI compliant. The Computer System must permit twenty-four (24) hours per day, seven (7) days per week electronic communications between you and us, including access to the Internet and our then-current System Website and Intranet (if applicable). We always will have unlimited, independent access to the Computer System, although we will not have any access to employee- or employment-related information for your Shop’s employees.

You hereby consent to us obtaining, using and disclosing to third parties (including, without limitation, prospective franchisees, financial institutions, legal and financial advisors), for any purpose or as may be required by law, any financial or other information contained in or resulting from information, data, materials, statements and reports received by us or disclosed to us, whether by means of the Computer System or otherwise, in accordance with this Agreement. You will obtain such consents from third parties, including your customers, as are necessary in order to give effect to the foregoing.

F. **SHOP OPENING.**

You agree not to open the Shop for business to the public until:

(1) we notify you in writing that the Shop meets our standards and specifications (although our acceptance is not a representation or warranty, express or implied, that the Shop complies with any engineering, licensing, environmental, labor, health, building, fire, sanitation, occupational, landlord's, insurance, safety, tax, governmental, or other statutes, rules, regulations, requirements, or recommendations and is not a waiver of our right to require continuing compliance with our requirements, standards, and policies);

(2) required training (described in Subsection 4.A. below) is satisfactorily completed by all attendees;

(3) you have paid the initial franchise fee and other amounts then due to us and key suppliers;

(4) you obtain, and upon request send us copies of, all required licenses and permits; and

(5) you give us certificates for all required insurance policies.

You agree to comply with these conditions and open the Shop for business within three hundred sixty (360) days after the Effective Date (**the "Required Opening Date"**) (unless an earlier date is specified in an Area Development Agreement to which we and you (or your affiliate) are parties). We may terminate this Agreement if you fail to open the Shop for business by the Required Opening Date. If you begin operating the Shop before we notify you in writing that it meets our standards and specifications (as required in subparagraph (1) above), you must pay us Five Thousand Dollars (\$5,000) for each day the Shop operates without our acceptance. Alternatively, we may terminate this Agreement.

3. **FEES.**

A. **INITIAL FRANCHISE FEE.**

You agree to pay us a nonrecurring and, except as specifically provided in this Agreement, nonrefundable initial franchise fee of Forty Thousand Dollars (\$40,000). This fee must be paid,

and is fully earned by us, when you sign this Agreement. We will credit toward the initial franchise fee any deposit you previously paid under an Area Development Agreement, if applicable.

**B. ROYALTY FEE.**

You agree to pay us on Wednesday of each week (or, if applicable, on the next banking business day), in the manner provided in Subsection 3.J. below, a Royalty Fee (the “**Royalty**”) equal to six percent (6%) of the Shop’s Gross Sales (defined in Subsection D below) during the preceding week ending on Sunday (although we may change the day on which the week is deemed to end). The Royalty is not in exchange for any particular products, services, or assistance but instead is solely in consideration of our granting you the Franchise.

**C. ADVERTISING AND DEVELOPMENT FUND CONTRIBUTION.**

You agree to contribute to the Brand Fund (as defined in Subsection 9.B below) in the amounts that we prescribe at any time and from time to time. You agree to contribute three percent (3.0%) of the Shop’s Gross Sales (defined in Subsection D below), payable in the same manner as the Royalty. As set forth in Subsection 9.B below, we may, upon ninety (90) days’ prior notice to you, increase the Brand Fund contribution by up to an additional one percent (1%) of the Shop’s Gross Sales for a total of up to four percent (4%) of the Shop’s Gross Sales. The Brand Fund contributions will be administered and used as set forth in Subsection 9.B below.

**D. DEFINITION OF “GROSS SALES”.**

As used in this Agreement, the term “Gross Sales” means all revenue that you derive from operating the Shop, whether from cash, check, credit and debit card, barter exchange, trade credit, or other credit transactions, and also includes all proceeds from business interruption insurance, but (1) excludes all federal, state, and municipal sales, use, or service taxes collected from customers and paid to the appropriate taxing authority, (2) excludes revenue you derive from selling or issuing Potbelly gift, loyalty, or rewards cards (although revenue you derive from selling Products to customers who use those cards for payment is included in Gross Sales), and (3) is reduced by the amount of any documented refunds and credits the Shop in good faith gives to customers (if those amounts originally were included in calculating Gross Sales). If the Shop’s cash receipts or other revenue-in-hand for any reason is less than the sales reflected on the Shop’s point-of-sale system (for example, due to employee theft or other loss), “Gross Sales” will be deemed to mean the higher amount shown on the point-of-sale system.

**E. DIGITAL TECHNOLOGY FEE.**

You agree to pay us a digital technology fee in the amount of \$0.10 per transaction processed through our online order system (the “**Digital Technology Fee**”) to cover the costs of enhancements to our digital technology and maintenance. You must pay the Digital Technology Fee in the same manner as the Royalty. We reserve the right to change the amount of the Digital Technology Fee described in this Section at any time upon notice to you.

F. **OPERATING AND PEOPLE SYSTEMS FEE.**

You agree to pay us an operating and people systems fee of \$99 per month (the “**Operating and People Systems Fee**”) to cover the costs of systems and tools to increase efficiency of labor management and Shop operation. You must pay the Operating and People Systems Fee in the same manner as the Royalty. We reserve the right to change the amount of the Operating and People Systems Fee described in this Section at any time upon notice to you.

G. **SUBLEASE ADMINISTRATIVE FEE.**

If we sublease the Premises to you, then we may charge you a sublease administrative fee of up to one percent (1%) of the rent payable by you under the sublease (the “**Sublease Administrative Fee**”). You must pay the Sublease Administrative Fee in the same manner as the Royalty. We reserve the right to change the amount of the Sublease Administrative Fee described in this Section at any time upon notice to you.

H. **LATE FEES AND INTEREST.**

You agree to pay us a One Hundred Dollar (\$100) late fee for each required payment not made on or before its original due date and for each payment not honored by your financial institution. (You also must reimburse our bank charges for your dishonored payments.) This late fee is not interest or a penalty but compensates us for increased administrative and management costs due to your late payment. In addition, all amounts you owe us that are more than seven (7) days late will bear interest, accruing as of their original due date, at one and one-half percent (1.5%) per month or the highest commercial contract interest rate the law allows, whichever is less. We may debit your EFTA (defined below) automatically for late fees and interest. This Subsection is not our agreement to accept any late payments or our commitment to extend credit to, or otherwise finance your operation of, the Shop.

I. **APPLICATION OF PAYMENTS.**

We may, despite your designation, apply any of your payments to any of your past due indebtedness to us and our affiliates. We may set off any amounts you or your owners owe us or our affiliates against any amounts that we or our affiliates owe you or your owners. You may not withhold payment of any amounts you owe us or our affiliates due to our alleged nonperformance of any of our obligations under this Agreement.

J. **METHOD OF PAYMENT.**

Before your Shop opens for business, you must sign and deliver to us the documents we require to authorize us to debit your business checking or other bank account automatically for the Royalty, the Brand Fund contribution (defined in Subsection 9.B. below), and other amounts due under this Agreement or in connection with the Shop’s operation, including amounts due for your purchases of Potbelly Trade Secret Products, Potbelly Branded Products, other items, and services from us, our affiliates and/or unaffiliated vendors (the “**Electronic Funds Transfer Account**” or “**EFTA**”). We will debit your EFTA for the Royalty and Brand Fund contribution by the close of

business on each Wednesday (or, if applicable, on the next banking business day) on account of the previous week's Gross Sales. We will debit the EFTA for other amounts you owe us, our affiliates and/or unaffiliated vendors on the day we specify. We may require you to pay for purchases electronically (and to initiate the electronic payment process) before we prepare for shipment and send you Potbelly Trade Secret Products, Potbelly Branded Products, and other items you order. You agree to deposit funds into the EFTA to cover our withdrawals and to report your Gross Sales as we require.

If you fail to report the Shop's Gross Sales, we may debit your EFTA for one hundred twenty percent (120%) of the last Royalty and Brand Fund contribution we debited (together with the late fee and interest noted in Subsection 3.H. above). If the amounts we debit from your EFTA are less than the amounts you actually owe us (once we have determined the Shop's actual Gross Sales), we will debit your EFTA for the balance on the day we specify. If the amounts we debit exceed the amounts you actually owe us, we will credit the excess against the amounts due the following week.

We may require you to pay any amounts due to us and our affiliates under this Agreement, or otherwise due in connection with your Shop's operation, other than by automatic debit (*e.g.*, by check or wire transfer) whenever we deem appropriate, and you must comply with our payment instructions. While we may, as noted above, debit the EFTA for amounts you owe unaffiliated vendors, we generally intend to do so only if you fail to pay those vendors as required.

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

##### A. **TRAINING.**

##### (1) **Initial Training.**

(a) You acknowledge that, before you signed this Agreement, we trained your Managing Owner in our Project Planning training module. Now that you have signed this Agreement, we will conduct a training program for your Managing Owner, Head of Operations (if your Managing Owner is not involved in the Shop's on-site, day-to-day operation), and General Manager (the person you designate as your most senior leader if your Managing Owner or Head of Operations, as applicable, is not involved in the Shop's on-site, day-to-day operation) and up to two (2) key-holding supervisory employees (also called "shift leaders") at no additional charge. If you meet our preferred franchisee profile, our training program is scheduled to be: (i) approximately eight (8) to ten (10) weeks for your Managing Owner or Head of Operations, as applicable (if you have a Head of Operations, your Managing Owner's training will be six (6) days), and General Manager; and (ii) approximately six (6) weeks for the two (2) key-holding supervisory employees (although training may be longer or shorter depending on our opinion of the attendees' skills and experience). Training of your Managing Owner (or Head of Operations, as applicable), General Manager, and at least one (1) key-holding supervisory employee must occur before your Shop opens. Training of the one (1) additional key-holding supervisory employee may occur

before or after your Shop opens (as we mutually agree). However, if his or her training is after your Shop opens, the training must be started within eight (8) weeks after opening. Training focuses on our philosophy, System Standards, and the material aspects of operating a Potbelly Shop, excluding aspects relating to labor relations and employment practices. It is held at (i) a designated training facility of our choice at our corporate headquarters and/or at an operating Potbelly Shop, or (ii) your Shop if we agree that training of the one (1) additional key-holding supervisory employee will be after your Shop opens, or (iii) a combination of both locations (your Shop and our corporate headquarters and an operating Potbelly Shop).

If this is your second or subsequent Potbelly Shop, our training program (for the duration described above) is mandatory for your General Manager (because your Managing Owner or Head of Operations, as applicable, will not be involved in the Shop's on-site, day-to-day operation) and two (2) key-holding supervisory employees. In that situation, your General Manager and the two (2) key-holding supervisory employees must attend and satisfactorily complete the training program before the Shop opens. If you elect to train a third key-holding supervisory employee, such training may occur before or after your Shop opens (as we mutually agree) but, if it is to occur after the Shop opens, must be started within eight (8) weeks after opening.

Required training attendees must satisfactorily complete the full training program for their respective roles and pass applicable operations and proficiency tests. You must pay all travel and living expenses, wages, and workers' compensation insurance costs that your attendees incur during training. You must substitute for your General Manager or key-holding supervisory employees if they are not qualified to hold their positions and pay our then-current fee to train their replacements.

Our training program may include a "train the trainer" module so that your senior-level personnel can learn how to train your other employees. If we determine that your Managing Owner (or Head of Operations, as applicable) cannot satisfactorily complete initial training (and he or she, or a replacement, cannot satisfactorily complete a repeat training program), we may terminate this Agreement. The initial franchise fee is not refundable. After the initial training, your Shop always must have on staff at least three (3) fully trained, certified key-holding supervisory employees, including a Managing Owner (or Head of Operations, as applicable) or a General Manager (if your Managing Owner or Head of Operations, as applicable, is not involved in the Shop's on-site, day-to-day operation), so that the quality of the Products and the Potbelly brand is maintained. If a certified key-holding supervisory employee leaves your employment for any reason, you must appoint and begin training a replacement key-holding supervisory employee within thirty (30) days.

(b) Your Managing Owner (or Head of Operations, as applicable) may request additional or repeat training at the end of the initial training program if he or she does not feel sufficiently trained to operate a Potbelly Shop. We and you will jointly determine the duration of any additional training, which is subject to our personnel's availability. You must pay our then-current charges for additional or repeat training. However, if your Managing Owner (or Head of Operations, as applicable) satisfactorily completes our initial training program, and does not expressly inform us at the end of the program that he or she does not feel sufficiently trained to operate a Potbelly Shop, he or she will be deemed to have been trained sufficiently to operate a Potbelly Shop.

(c) When the Shop is ready to open for business, we will send an "opening team" to the Shop for at least five (5) days but potentially up to twelve (12) days, as we deem best under the circumstances, to assist with the grand opening process (typically starting before and continuing after opening) and to help train your supervisory employees on our philosophy and System Standards and not matters relating to labor relations and employment practices. We will pay for the opening team's wages and travel, hotel, and living expenses during this grand opening period. If you request, and we agree to provide, additional or special guidance, assistance, or training during this opening phase in order to protect our brand quality, excluding training relating to labor relations and employment practices, you must pay our personnel's daily charges (including wages) and travel, hotel, and living expenses. (If this is your second or subsequent Potbelly Shop, we need not provide our full opening team on-site assistance because you already will have experience operating a Potbelly Shop.)

(d) All Shop employees in customer contact positions must be able to speak, read, write, and understand the English language fluently so they can pass the portions of our training program (which is conducted in English) related to their positions and communicate clearly with customers and other third parties.

(2) **Ongoing Training.** We may require your Managing Owner (or Head of Operations, as applicable), General Manager, and other supervisory employees to attend and complete satisfactorily up to eight (8) days of supplemental training during each year of the Term at the times and locations we designate. We may charge reasonable registration or similar fees for these courses. Besides attending supplemental training, at least one of your representatives (whom we approve) must, at our request, attend an annual convention of all Potbelly Shop franchisees for up to three (3) days at a location we designate. You must pay our then-current convention fee and all costs to attend.

If you choose during the Term to designate a new Managing Owner (or Head of Operations, as applicable) or General Manager or to hire new Shop key-holding supervisory employees, each must satisfactorily complete, within the timeframe we specify, our then-current training program for his or her position. Your trained personnel may provide this training if we previously have certified them to do so. Otherwise, training must be completed at our designated training Shop. We may charge reasonable fees for this

training. You must pay all travel and living expenses incurred during all training courses and programs. Any specific ongoing training or advice we provide does not create an obligation (whether by course of dealing or otherwise) to continue providing that specific training or advice, all of which we periodically may discontinue and modify. You must relieve any of your personnel, who we reasonably believe do not satisfy our minimum qualifications for the positions they hold, from performing their duties at the Shop, in which case you must hire replacement personnel and arrange for their training (typically within thirty (30) days).

**B. GENERAL GUIDANCE.**

We may advise you periodically regarding the manner in which, based on your reports or our evaluations and inspections, operations at the Shop promote and enhance the quality of the Potbelly brand. We may provide recommendations to you with respect to:

- (1) standards, specifications, and operating procedures and methods that Potbelly Shops use;
- (2) purchasing required and authorized Operating Assets, Potbelly Trade Secret Products, Potbelly Branded Products, and other items and arranging for their distribution to you;
- (3) advertising and marketing materials and programs;
- (4) supervisory employee training; and
- (5) administrative, bookkeeping, accounting, and inventory control procedures.

We may provide recommendations to you in our operations manual (“**Operations Manual**”); in bulletins or other written materials; by Electronic Media and Intranet; by telephone consultation; and/or at our office or the Shop. If you request and we agree to provide, or we believe you need, additional or special guidance, assistance, or training during the Term, excluding aspects relating to labor relations and employment practices, as those are solely your responsibility as the employer, you agree to pay our then applicable charges, including our personnel’s daily charges (including wages) and travel, hotel, and living expenses. “Electronic Media” means the Internet, the World Wide Web, or any other similar proprietary or common carrier electronic delivery system, including an Intranet, and materials (such as CD ROMs and USB data storage devices) facilitating the electronic communication of information. An “**Intranet**” means an internal network that we design and administer for the Potbelly system through which members of the Potbelly system may, in compliance with our terms of use and other System Standards (see Subsection 9.F. below), communicate with each other and through which we may circulate updates to the substance of the Operations Manual and other Confidential Information. We have no obligation to maintain the Intranet indefinitely and may dismantle it at any time without liability to you.



C. **OPERATIONS MANUAL.**

We will give you access during the Term to one (1) copy of our Operations Manual, which may consist of and is defined to include audio, video, computer software, other Electronic Media and/or written and other tangible materials. The media and materials comprising the Operations Manual contain System Standards, information on your other obligations under this Agreement, and various recommendations. We may modify the substance of the Operations Manual periodically to reflect changes in System Standards and your other operating requirements. For purposes of this Agreement, all written instructions or communications we or our affiliates provide to all, or a substantial number of, Potbelly Shop franchise owners concerning aspects or modifications to the Branded System shall be deemed part of the Operations Manual. You agree to keep your access codes to, the information in, and the tangible materials comprising the Operations Manual current and in a secure location at the Shop. Only your Managing Owner (or Head of Operations, as applicable), General Manager, and other certified key-holding supervisory employees may have access to the Operations Manual (unless we agree otherwise in writing). We must know the identities of all people with access to the Operations Manual. For purposes of enforcing our rights or your obligations, our master version of the Operations Manual controls in case of a dispute over its contents. You agree that the Operations Manual's contents are confidential. You may not at any time copy, duplicate, record, or otherwise reproduce any part of the Operations Manual (except as we allow for training and operating purposes).

We may, at our option, post some or all of the substance of the Operations Manual on the Intranet, which is deemed to be part of the Operations Manual. If we do so, you must monitor and access the Intranet for updates to the substance of the Operations Manual and System Standards. Any passwords or other digital identifications necessary to access the Operations Manual on the Intranet will be a part of Confidential Information (defined in Section 6 below). We may require you to return a portion or the entire copy of the Operations Manual given to you in paper or other tangible form after we post some or all of the substance of the Operations Manual on the Intranet. If your copy of or access to the Operations Manual is lost due to your own fault, you must reimburse us for all costs we incur to give you a replacement copy or enable you to regain access.

D. **DELEGATION OF PERFORMANCE.**

We have the right to delegate the performance of any portion or all of our obligations under this Agreement to third-party designees, whether they are our affiliates, agents, or independent contractors with whom we contract to perform these obligations. If we do so, the third-party designees must perform the delegated functions for you in compliance with this Agreement.

5. **MARKS.**

A. **OWNERSHIP AND GOODWILL OF MARKS.**

Our affiliate has licensed us to use the Marks in franchising, developing, and operating Potbelly Shops. Your right to use the Marks is derived only from this Agreement and is limited to your operating the Shop during the Term in compliance with this Agreement and all System Standards. Your unauthorized use of the Marks is a breach of this Agreement and infringes our

and our licensor's rights in the Marks. Your use of the Marks and any goodwill established by that use are exclusively for our and our licensor's benefit. This Agreement does not confer any goodwill or other interests in the Marks upon you (other than your right to operate the Shop in compliance with this Agreement). All provisions of this Agreement relating to the Marks apply to any additional proprietary trade and service marks we authorize you to use. You may not at any time during or after the Term contest or assist any other person in contesting the validity, or our and our licensor's ownership, of the Marks.

**B. LIMITATIONS ON YOUR USE OF MARKS.**

You agree to use the Marks as the Shop's sole identification, except that you must identify yourself as its independent owner, operator, and manager in the manner we prescribe. You may not use any Mark (1) as part of any corporate or legal business name, (2) with any prefix, suffix, or other modifying words, terms, designs, or symbols (other than logos we license to you), (3) in offering or selling any unauthorized services or products, (4) as part of any domain name, homepage, electronic address, or otherwise in connection with Electronic Media (except as provided in Subsection 9.F. of this Agreement), or (5) in any other manner we have not expressly authorized in writing. If we discover your unauthorized use of the Marks, we may require you to destroy all offending items (with no reimbursement from us).

You may not use any Mark in advertising the transfer, sale, or other disposition of the Shop or an ownership interest in you without our prior written consent, which we may grant or deny as we deem best. You must display the Marks prominently as we prescribe at the Shop and on vehicles, apparel, forms, advertising and marketing, supplies, and other materials we designate. To the extent you use any Mark in employment-related materials, you must include a clear disclaimer that you (and only you) are the employer of employees at the Shop and that we, as the franchisor of Potbelly Shops, and our affiliates are not their employer and do not engage in any employer-type activities for which only franchisees are responsible, such as employee selection, promotion, termination, hours worked, rates of pay, other benefits, work assigned, discipline, adjustment of grievances and complaints, and working conditions. You must obtain an acknowledgment (in the form we specify or approve) from all Shop employees that we and our affiliates are not their employer. You must give the notices of trade and service mark registrations we specify and obtain any fictitious or assumed name registrations required under applicable law.

**C. NOTIFICATION OF INFRINGEMENTS AND CLAIMS.**

You agree to notify us immediately of any apparent infringement or challenge to your use of any Mark, or of any person's claim of any rights in any Mark or any confusingly similar trademark, and not to communicate with any person other than us, our licensor, and our respective attorneys, and your attorneys, regarding any infringement, challenge, or claim. We and our licensor may take the action we deem appropriate (including no action) and control exclusively any litigation, U.S. Patent and Trademark Office proceeding, or other proceeding concerning any Mark. You agree to sign any documents and take any other reasonable action that, in the opinion of our and our licensor's attorneys, are necessary or advisable to protect and maintain our and our licensor's interests in any litigation or Patent and Trademark Office or other proceeding or

otherwise to protect and maintain our and our licensor's interests in the Marks. We will reimburse your costs for taking any requested action.

**D. DISCONTINUANCE OF USE OF MARKS.**

If it becomes advisable at any time in our opinion for us and/or you to modify, discontinue using and/or replace any Mark and/or to use one or more additional, substitute, or replacement trade or service marks together with or instead of any previously designated Mark, you agree to comply with our directions within a reasonable time after we deliver notice to you. We and our licensor need not reimburse your direct expenses for changing the Shop's signs, your lost revenue due to any modified or discontinued Mark, or your expenses in promoting a modified or substitute trademark or service mark. Our rights in this Subsection D apply to any and all of the Marks (and any portion of any Mark) this Agreement authorizes you to use. We may exercise these rights at any time and for any reason, business or otherwise, we think best. You acknowledge both our right to take this action and your obligation to comply with our directions.

**E. INDEMNIFICATION FOR USE OF MARKS.**

We agree to reimburse you for all damages, claims, and expenses you incur or for which you are liable in any proceeding challenging your right to use any Mark under this Agreement, provided your use has been consistent with this Agreement, the Operations Manual, and System Standards communicated to you and you have timely notified us of, and comply with our directions in responding to, the proceeding. At our option, we may defend and control the defense of any proceeding arising from your use of any Mark under this Agreement.

**6. CONFIDENTIAL INFORMATION.**

We and our affiliates possess (and will continue to develop and acquire) certain confidential information, some of which constitutes trade secrets under applicable law (**the "Confidential Information"**), relating to developing and operating Potbelly Shops, including (without limitation):

- (1) site selection criteria;
- (2) specifications for Potbelly Trade Secret Products and Potbelly Branded Products;
- (3) training and operations materials, manuals, and software;
- (4) methods, formats, standards, specifications, systems, procedures, Product preparation techniques, sales and marketing techniques, knowledge, and experience used in developing and operating Potbelly Shops;
- (5) marketing and advertising programs and materials for Potbelly Shops;
- (6) identity of suppliers of Operating Assets, Potbelly Trade Secret Products, Potbelly Branded Products, and other items and services;

(7) computer software or similar technology that is proprietary to us, our affiliates, or the Franchise System, including, without limitation, digital passwords and identifications and any source code of, and data, reports, and other printed materials generated by, the software or similar technology;

(8) knowledge of the operating results and financial performance of Potbelly Shops other than the Shop;

(9) customer and member solicitation, communication and retention programs, along with data and information used or generated in connection with those programs;

(10) all data and other information generated by, or used in, the operation of the Shop, including customer names, addresses, phone numbers and other information supplied by any customer (such as credit card information or personal information), and any other information contained at any time and from time to time in the Computer System or that visitors to the Shop (including you and your personnel) provide to the System Website;

(11) graphic designs and related intellectual property; and

(12) future business plans relating to Potbelly Shops and the Potbelly franchise opportunity, including expansion and development plans.

You acknowledge and agree that you will not acquire any interest in Confidential Information, other than the right to use it as we specify during the Term while operating the Shop, and that Confidential Information is proprietary, includes our and our affiliates' trade secrets, and is disclosed to you only on the condition that you agree, and you hereby do agree, that you:

(a) will not use Confidential Information in any other business or capacity;

(b) will keep confidential each item deemed to be a part of Confidential Information, both during and after the Term;

(c) will not make unauthorized copies of any Confidential Information disclosed via Electronic Media or in written or other tangible form;

(d) will adopt and implement reasonable procedures to prevent unauthorized use and disclosure of Confidential Information, including, without limitation, restricting its disclosure to Shop personnel and others needing to know the Confidential Information to operate the Shop and using non-disclosure agreements with those having access to Confidential Information. We have the right to review and pre-approve the forms of non-disclosure agreements you use and to be a third-party beneficiary of those agreements with independent enforcement rights. You must keep copies of those agreements and send them to us upon request. Our right to review and pre-approve them is solely to ensure that you adequately protect Confidential Information. Under no circumstances will we control the

forms or terms of employment agreements you use with Shop employees or otherwise be responsible for your labor relations or employment practices; and

(e) will not sell, trade or otherwise profit in any way from the Confidential Information (including by selling or assigning any customer names, addresses, phone numbers, e-mail contact information, or related data), except using methods that we may have authorized or approved in our sole judgment.

Confidential Information does not include information, knowledge, or know-how that you can demonstrate lawfully came to your attention before we disclosed it to you; that, when we disclosed it to you, already had lawfully become generally known in the sandwich preparation or frozen confection categories of the foodservice industry through publication or communication by others (without violating an obligation to us or our affiliates); that, after we disclose it to you, lawfully becomes generally known in the sandwich preparation or frozen confection categories of the foodservice industry through publication or communication by others (without violating an obligation to us or our affiliates); or that you independently develop without access to or reliance on our Confidential Information. However, if we include any matter in Confidential Information, anyone who claims that it is not Confidential Information must prove one of the exclusions in this paragraph.

All ideas, concepts, techniques, and materials relating to a Potbelly Shop, whether or not protectable intellectual property and whether created by or for you or your owners or Shop employees, must be promptly disclosed to us and will be deemed to be our and our affiliates' sole and exclusive property, part of the Franchise System, and works made-for-hire for us and our affiliates. To the extent any item does not qualify as a "work made-for-hire" for us and our affiliates, by this paragraph you assign ownership of and all related rights to that item to us and our affiliates, hereby waive all moral rights in that item, and hereby agree to take whatever action (including signing assignment or other documents) we request to evidence our and our affiliates' ownership or to help us and our affiliates obtain intellectual property rights in the item.

## 7. **EXCLUSIVE RELATIONSHIP.**

You acknowledge that we have granted you the Franchise in consideration of and reliance upon both your agreement to deal exclusively with us in the sandwich preparation and frozen confection categories of the foodservice industry. You therefore agree that, during the Term, neither you, any of your direct or indirect owners, nor any of such owners' spouses will:

(a) have any direct or indirect controlling interest as an owner – whether of record, beneficial, or otherwise – in a Competitive Business (defined below), wherever located or operating;

(b) have any direct or indirect non-controlling interest as an owner – whether of record, beneficial, or otherwise – in a Competitive Business, wherever located or operating (except that less than a two percent (2%) equity ownership interest in a Competitive Business whose stock or other forms of ownership interest are publicly traded on a recognized United States stock exchange will not violate this clause);

- (c) perform services as a director, officer, manager, employee, consultant, representative, or agent for a Competitive Business, wherever located or operating;
- (d) divert or attempt to divert the Shop's business or customers to a Competitive Business; or
- (e) engage in any other activity that might injure the goodwill of the Marks and Franchise System.

The term "Competitive Business" means (i) any fast-casual restaurant that derives more than twenty percent (20%) of its revenue from the sale of (a) baked, oven-style, conveyor oven-style, or un-baked "sub-style" sandwiches, submarine, hoagie, Italian beef, or hero-type sandwiches, pita sandwiches, flatbread sandwiches, or cheese-steak sandwiches, or (b) smoothies, milkshakes, ice cream, and other frozen confection items, or (ii) any business granting franchises or licenses to others to operate the type of business specified in clause (i) (other than a Potbelly Shop operated under a franchise agreement with us). Competitive Business for purposes of this Agreement shall include, but not be limited to, Blimpie, Corner Bakery Café, Firehouse Subs, Jersey Mike's, Jimmy John's, McAlister's Deli, Panera Bread, Quizno's, Schlotzky's, Subway, Tropical Smoothie Café and Which Wich.

Your officers, directors, Heads of Operations, General Managers, and key-holding supervisory employees must sign reasonable noncompetition covenants appropriate for their positions to protect Confidential Information and the competitiveness of Potbelly Shops. We have the right to review and pre-approve the forms of non-competition covenants you use and to be a third-party beneficiary of those covenants with independent enforcement rights. You must send us copies upon request. Under no circumstances will we control the forms or terms of employment agreements you use with Shop employees or otherwise be responsible for your labor relations or employment practices. To give effect to your obligations in this Section 7, you acknowledge that neither you, any of your direct or indirect owners, nor any of such owners' spouses will seek to violate this Section 7 directly or through any other person (as defined in Subsection 17.L.) with whom you or any of the other restricted parties are acting in concert or participating in connection with the prohibited activities. We may enforce this Section 7 by taking action against you, the other restricted parties, and all other persons with whom you are acting in concert or participating in connection with the prohibited activities.

You must disclose to us in writing the specific details of any investment in any other restaurant or food-related business or franchise held by you, any of your owners, or any of your or your owners' spouses.

## 8. **SYSTEM STANDARDS.**

### A. **COMPLIANCE WITH SYSTEM STANDARDS.**

You acknowledge and agree that operating and maintaining the Shop in compliance with System Standards are essential to preserve the goodwill of the Marks and all Potbelly Shops. Therefore, you agree to operate and maintain the Shop at all times in compliance with all System

Standards, as we periodically issue, modify, and supplement them, even if you believe that a System Standard, as originally issued or subsequently modified, is not in the Franchise System's or the Shop's best interests. Although we retain the right to establish and periodically modify System Standards, you retain the right to control, and responsibility for, the Shop's management and operation and implementing and maintaining System Standards at the Shop. System Standards may regulate any and all of the following:

(1) the Shop's design, layout, decor, appearance, and lighting; periodic maintenance, cleaning, and sanitation; periodic remodeling, painting, and decorating; replacing obsolete or worn-out improvements and Operating Assets; and using interior and exterior signs, emblems, lettering, and logos. (If the appearance or condition of the Shop or Operating Assets does not at any time meet our standards, we will notify you and identify the action you must take to correct the deficiency. If you fail to correct the deficiency within thirty (30) days after we deliver notice, we may enter the Shop and take the required action for you, in which case you must immediately reimburse all of our costs and pay us our then-current per-day fee.);

(2) types, models, and brands of required Operating Assets, Potbelly Trade Secret Products, Potbelly Branded Products, other food and beverage products, and supplies and minimum standards and specifications you must satisfy;

(3) required and/or authorized Products, Potbelly Trade Secret Products, Potbelly Branded Products, and services; unauthorized and prohibited food and beverage products and services; and purchase, storage, preparation, handling, and packaging procedures and techniques, and inventory requirements, for Products, Potbelly Trade Secret Products, and Potbelly Branded Products. We always have the right to approve or disapprove in advance all items and services to be used or sold by the Shop. We may withdraw our approval of previously authorized Products and services;

(4) designated and approved suppliers of Operating Assets, Potbelly Trade Secret Products, Potbelly Branded Products, and other items and services. In the case of Potbelly Trade Secret Products and Potbelly Branded Products, suppliers will be limited to us, our affiliates and/or other specified exclusive sources, and you must acquire Potbelly Trade Secret Products and Potbelly Branded Products during the Term only from us, our affiliates and/or the other specified exclusive sources at the prices we or they decide to charge. We and our affiliates may mark up and profit on the sale of such goods and services. (We restrict your sources of Potbelly Trade Secret Products and Potbelly Branded Products to protect trade secrets and other intellectual property rights, assure quality, assure a reliable supply of products meeting our standards, achieve better terms of purchase and delivery service, control usage of the Marks by third parties, and monitor the manufacture, packaging, processing, and sale of these items.)

In the case of Operating Assets, services, and items other than Potbelly Trade Secret Products and Potbelly Branded Products, suppliers may at our option be limited to us, our affiliates and/or other specified exclusive sources, in which case you must (at our direction) acquire such Operating Assets, other items, and services (including gift, loyalty, rewards,

and affinity card processing services, quality assurance services, music network provider services, “mystery” and “secret” shopper services, and consumer satisfaction survey processes) during the Term only from us, our affiliates and/or the other specified exclusive sources at the prices we or they decide to charge. We have the absolute right to limit the suppliers with whom you may deal;

(5) supply and supplier approval procedures and criteria for items and services you need to operate your Shop but that we allow you to obtain from sources other than us, our affiliates and/or other specified exclusive sources. If you want the Shop to use any product brand, ingredient, supply, or service we have not yet approved as meeting our minimum standards and specifications, or to buy any item or service from a supplier we have not yet approved or designated, you first must notify us and, at our request, submit samples and other information we require to determine whether the item, service, or supplier meets our standards and specifications. We may inspect the proposed supplier’s facilities and charge you or the supplier a reasonable fee for the inspection and evaluation. We need not approve your request and do not intend to approve a request if we already have designated specific items, services and/or suppliers or otherwise have restricted the supply system. We also have the right to re-inspect any supplier’s products, services, and facilities and to revoke our approval of any item, service, or supplier;

(6) terms and conditions of the sale and delivery of, and terms and methods of payment for, Potbelly Trade Secret Products, Potbelly Branded Products, and other items and services you obtain from us and affiliated and unaffiliated suppliers. This includes our and our affiliates’ right to establish an electronic product ordering system and require your payment electronically before we prepare for shipment and send you Potbelly Trade Secret Products, Potbelly Branded Products, and other items you order. We and our affiliates have the right not to sell you any Potbelly Trade Secret Products, Potbelly Branded Products, or other items and not to provide you with services, or to do so only on a “cash-on-delivery” or other basis, if you are in default under any agreement with us or our affiliates (and have been notified of that default in writing but have failed to cure that default within the required timeframe, if applicable). You may not use any unapproved products as replacements;

(7) our and our affiliates’ right (without liability) to consult with your suppliers about your account status with them and to advise those suppliers and others with whom you, we, our affiliates, and other franchisees deal that you are in default under any agreement with us or our affiliates (but only if we have notified you of that default in writing and you have failed to cure that default within the required timeframe, if applicable);

(8) our and our affiliates’ right to receive payments, rebates, or other material consideration from suppliers on account of their actual or prospective dealings with us, our affiliates, you, and other franchisees and to use all amounts received without restriction for any purposes we and our affiliates deem appropriate (unless we and our affiliates agree otherwise with the supplier);



(9) sales, marketing, advertising, and promotional programs and materials and media used in these programs. You must participate in, and comply with the requirements of, any special promotional programs we implement;

(10) using and displaying the Marks at the Shop and on vehicles, apparel, paper and plastic products, forms, and other materials;

(11) issuing and honoring/redeeming gift certificates, coupons, and gift, loyalty, rewards and affinity cards and administering gift card and other customer loyalty, rewards, affinity, and similar programs. You must participate in, and comply with the requirements of, our gift card and other customer loyalty, rewards, affinity, and similar programs (including our issuing and honoring/redemption procedures and giving us all customer-specific information you receive or generate from operating the Shop, which customer-specific information we will be deemed to own). We may keep any prepaid amounts that are not used by customers to the extent allowed by applicable law;

(12) staffing the Shop as necessary to operate the Shop in compliance with System Standards and employee dress and appearance. However, you have sole responsibility and authority for your labor relations and employment practices, including, among other things, employee selection, promotion, termination, hours worked, rates of pay, other benefits, work assigned, discipline, adjustment of grievances and complaints, and working conditions. You must communicate clearly with Shop employees in your employment agreements, human resources manuals, written and electronic correspondence, paychecks, and other materials that you (and only you) are their employer and that we, as the franchisor of Potbelly Shops, and our affiliates are not their employer and do not engage in any employer-type activities (including those described above) for which only franchisees are responsible. Shop employees are under your control at the Shop;

(13) days and hours of operation (including your obligation to operate the Shop every day of the week except as we otherwise allow);

(14) using proprietary software, the System Website, and Intranet;

(15) participating at your own expense in our market research and testing and in product and service development programs;

(16) your complying with our customer complaint resolution procedures and our commitment to a 100% customer satisfaction policy and reimbursing us promptly if we resolve a customer complaint because you fail to do so as or when we require;

(17) your participating as we require (including by paying required dues and expenses) in any franchisee advisory or other councils we establish for the Franchise System;

(18) accepting credit and debit cards, other payment systems, and check verification services;

(19) bookkeeping, accounting, data processing, and recordkeeping systems and forms; formats, content, and frequency of reports to us of sales, revenue, product mix, financial performance, and condition; and giving us copies of tax returns and other operating and financial information for the Shop, but excluding employee- and employment-related information;

(20) types, amounts, terms, and conditions of insurance coverage required for the Shop; our and our affiliates' protection and rights under insurance policies as additional named insureds for claims arising from the Shop's operation; required and impermissible insurance contract provisions; assignment of policy rights to us; periodic verification of insurance coverage; our right to obtain insurance coverage for the Shop at your expense if you fail to do so; our right to defend claims; and similar matters relating to insured and uninsured claims;

(21) catering and delivery services and on-line customer ordering (to the extent we require or allow you to engage in these activities), including utilizing only the delivery service provider(s) we specify in writing for your Shop;

(22) your complying with our quality assurance, "mystery shop," and music network programs, including using and paying our designated third-party service providers;

(23) to the extent allowed by applicable law, your participating as we require in discount programs, giveaways, brand initiatives and other promotions. You acknowledge and agree that periodic discounts, giveaways, brand initiatives and other promotions are an integral part of the System. Therefore, you agree to offer and participate in such discounts, giveaways, brand initiatives and other promotions at your sole cost and expense, in accordance with our specifications. You further agree to honor the discounts, giveaways, brand initiatives and other promotions offered by other Potbelly Shop franchise owners under any such program we establish, as long as such compliance does not contravene any applicable law, rule or regulation;

(24) to the extent allowed by applicable law, the minimum, maximum, and other prices for the Shop's Products, including restrictions on your use of coupons and other Product price discounting practices. This includes (without limitation) prescribing the maximum and/or minimum retail prices which you may charge customers for the products and/or services offered by the Shop; recommending retail prices; advertising specific retail prices for some or all products or services sold at the Shop; to engage in marketing, promotional and related campaigns which you must participate in and which may directly or indirectly impact your retail prices; and, otherwise mandating, directly or indirectly, the maximum and/or minimum retail prices which the Shop may charge the public for the products and services it offers. We may engage in any such activity either periodically or throughout the Term. Further, we may engage in such activity only in certain geographic areas (cities, states, regions) and not others, or with regard to certain subsets of franchisees and not others. You acknowledge that the prices we prescribe or suggest may or may not

optimize the revenues or profitability of the Shop and you irrevocably waive any and all claims arising from the establishment or suggestion of the Shop's retail prices;

(25) use of social media in connection with your Shop's operation or otherwise referencing the Potbelly System ("social media" includes personal blogs, common social networks like Facebook and Instagram, professional networks like LinkedIn, live-blogging tools like Twitter, virtual worlds, file, audio and video-sharing sites, and other similar social networking or media sites or tools); and

(26) any other aspects of operating and maintaining the Shop that we determine are useful to preserve or enhance the efficient operation, image, or goodwill of the Marks and Potbelly Shops.

System Standards we prescribe and communicate to you in any of the media and materials comprising the Operations Manual are part of this Agreement as if fully set forth within its text. All references to this Agreement include all System Standards as periodically modified.

You acknowledge how important it is for you to operate the Shop in full compliance with this Agreement and our System Standards. You further acknowledge that your deviation from any contractual requirement, including any System Standard, is a violation of this Agreement and will trigger incalculable administrative and management costs for us to address the violation (separate and apart from any damages your violation might cause to the Potbelly System, our business opportunities, and the goodwill associated with the Marks). Therefore, you agree that, to compensate us for our incalculable administrative and management costs due to your operational violations, you must pay us Two Hundred Fifty Dollars (\$250) for each deviation from a contractual requirement, including any System Standard, cited by us (**the "Non-Compliance Fee"**). (The Non-Compliance Fee does not apply to payment defaults for which we may charge late fees and interest under Subsection 3.H. above.) We and you deem the Non-Compliance Fee to be a reasonable estimate of our administrative and management costs and not a penalty. We may debit your EFTA for Non-Compliance Fees or set off monies otherwise due and payable to you to cover the payment of Non-Compliance Fees. We must receive the Non-Compliance Fee within five (5) days after we notify you that we are charging it due to your violation. We need not give you a cure opportunity before charging the Non-Compliance Fee. Charging the Non-Compliance Fee does not prevent us from seeking to recover damages to the Potbelly System, our business opportunities, or the goodwill associated with the Marks due to your violation, seeking injunctive relief to restrain any subsequent or continuing violation and/or formally defaulting you and terminating this Agreement under Section 14.B.

**B. MODIFICATION OF SYSTEM STANDARDS.**

We periodically may modify System Standards, which may accommodate regional or local variations, and these modifications may obligate you to invest additional capital in the Shop and/or incur higher operating costs. You agree to implement any changes in System Standards within the reasonable time period we request, whether they involve refurbishing or remodeling the Shop, buying new Operating Assets, adding new Products and services, or otherwise modifying the nature of the Shop's operations, as if they were part of this Agreement as of the Effective Date.

However, (1) except for changes in the Computer System, the Shop's exterior and interior signage (including menu-boards), and kitchen equipment (including conveyor ovens and coolers/freezers) (the amounts for and timing of which are not limited), (2) except for expenditures required by the Lease, sublease or applicable law (the amounts for and timing of which are not limited), and (3) except as provided in Section 12.C.(11) in connection with a transfer, we will not obligate you to invest in capital modifications more than once during any seven (7) year period during the Term to change the Shop's flooring, wall treatments, lighting fixtures, and other structural elements.

C. **COMPLIANCE WITH APPLICABLE LAWS AND GOOD BUSINESS PRACTICES.**

At all times during the Term, you must secure and maintain all licenses, permits, and certificates required for the Shop's operation and operate the Shop in full compliance with all applicable laws, ordinances, and regulations, including government regulations relating to occupational hazards, health, environment, employment, workers' compensation and unemployment insurance, and withholding and payment of federal and state income taxes, social security taxes, and sales and service taxes. Your advertising and promotion must be completely factual and conform to the highest standards of ethical advertising. The Shop must in all dealings with customers, suppliers, us, and the public adhere to the highest standards of honesty, integrity, fair dealing, and ethical conduct. You agree not to engage in any business or advertising practice that could injure our business and the goodwill associated with the Marks, the Branded System, and other Potbelly Shops. You must notify us in writing immediately if (a) any legal charge is asserted against you or the Shop (even if there is no formal proceeding), (b) any action, suit, or proceeding is commenced against you or the Shop, (c) you receive any report, citation, or notice regarding the Shop's failure to comply with any licensing, health, cleanliness, or safety standard, or (d) any bankruptcy or insolvency proceeding or an assignment for the benefit of creditors is commenced by or against you or the Shop.

9. **MARKETING.**

Potbelly Shops must engage in, and prepare materials for, various marketing, advertising, customer relationship management ("**CRM**"), public relations, and brand building and protection activities and programs we deem appropriate to enhance the Potbelly brand (**collectively**, "**Marketing**"). We describe this Marketing below. Besides the market introduction program described in Subsection 9.A., you must pay us, at the same time and in the same manner as the Royalty, the Brand Fund contribution described in Subsection 9.B. You also have the local Marketing obligations (including area brand cooperatives) described in Subsections 9.C. and D. Your total required Marketing obligations under Subsections 9.B., 9.C., and 9.D. will not exceed five percent (5%) of the Shop's Gross Sales.

A. **MARKET INTRODUCTION.**

You must conduct a market introduction program for your Shop in compliance with our guidelines beginning before and continuing six (6) months after the Shop opens for business. You must spend on this program, which we will help you develop, at least Twenty-Five Thousand Dollars (\$25,000), as we deem best based on your particular market. You must send us a written

introductory marketing program, which shows how you intend to spend this money, at least ninety (90) days before your Shop opens. At our request, you must pay us the anticipated costs of the market introduction program, which we then will spend on your behalf.

**B. BRAND FUND.**

Recognizing the value of advertising and marketing to the goodwill and public image of Potbelly Shops, we have established a brand fund (the "**Brand Fund**") for the advertising, marketing, and public relations programs and materials we deem appropriate. You agree to contribute to the Brand Fund the amounts we require as set forth in Subsection 3.C above.

You currently must contribute to the Brand Fund three percent (3%) of the Shop's Gross Sales for Marketing. Potbelly Shops owned and operated by us and our affiliates are not obligated to contribute to the Brand Fund. We may designate a separate entity as we deem appropriate in our sole discretion to operate and administer the Brand Fund. Any such entity will have all of the rights and duties as specified in this Section. We will direct all Marketing that the Brand Fund finances, with sole control over the creative concepts, graphics, materials, media, and endorsements used and their geographic, market, and media placement and allocation. The Brand Fund may pay for creating, preparing, and producing marketing, advertising and public relations materials and concepts; developing, implementing, operating, and maintaining a System Website, an Intranet, and/or related strategies; and administering national, regional, multi-regional, and local Marketing, including, without limitation, purchasing advertising (including digital media/marketing), conducting research, using agencies and other advisors to provide assistance, and supporting public relations, market research, and other advertising, promotion, and marketing activities. We have the right to collect for deposit into the Brand Fund any advertising, marketing, or similar allowances paid to us by suppliers who deal with Potbelly Shops and with whom we have agreed that we will so deposit these allowances. (These payments are different from those which are not designated by suppliers to be used exclusively for advertising or similar purposes, and which we and our affiliates therefore may use for any purposes we and they deem appropriate, as provided in Subsection 8.A above.)

We may, upon ninety (90) days' prior notice to you, increase your required Brand Fund contribution by up to an additional one percent (1%) of the Shop's Gross Sales for a total of up to four percent (4%) of the Shop's Gross Sales. Your minimum required expenditures under this Section 9.B and under Sections 9.C. and 9.D. below will not exceed, in the aggregate, five percent (5%) of the Shop's Gross Sales.

We will account for the Brand Fund separately from our other monies (although we have no obligation to keep Brand Fund contributions in a separate bank account) and not use the Brand Fund for any of our general operating expenses. However, we may use the Brand Fund to pay for expenses we incur in activities reasonably related to directing the Brand Fund and its programs, including, without limitation, conducting market research, public relations, creating, preparing, and producing advertising, promotion, CRM, graphic design, and marketing materials, collecting and accounting for Brand Fund contributions, and taxes we must pay on Brand Fund contributions we receive; reasonable salaries and benefits of personnel who manage and administer the Brand Fund; a management fee for us (or an affiliate); the Brand Fund's other administrative costs; travel

expenses of personnel while they are on Brand Fund business; meeting costs; overhead relating to Brand Fund business; and franchisee conferences.

The Brand Fund is not our asset. Although the Brand Fund is not a trust, we will hold all Brand Fund contributions for the contributors' benefit and use contributions only for the purposes described in this Subsection. We do not owe any fiduciary obligation to you for administering the Brand Fund or any other reason. The Brand Fund may spend in any fiscal year more or less than the total Brand Fund contributions in that year, borrow from us or our affiliates (paying reasonable interest) to cover deficits, pay back outstanding principal amounts borrowed in prior years from us or third parties, or invest any surplus for future use. If we spend less than the total of all Brand Fund contributions received during any fiscal year, we may accumulate the sums for use in later years. We will use all interest earned on Brand Fund contributions to pay costs before using the Brand Fund's other assets. At the end of our fiscal year, we will determine whether there are unused Brand Fund contributions and, if so, either roll over those unused contributions for use during the following fiscal year or return those unused contributions to the Brand Fund's contributors in proportion to their respective contributions during the preceding fiscal year.

We will prepare an annual, unaudited statement of Brand Fund collections and expenses and either give you a copy of the statement upon written request or post the statement on the Intranet. We may have the Brand Fund audited annually, at the Brand Fund's expense, by an independent certified public accountant we select. We may incorporate the Brand Fund or operate it through a separate entity whenever we deem appropriate. The successor entity will have the rights and duties specified in this Subsection.

We intend the Brand Fund to maximize recognition, and enhance system protection, of the Marks and increase patronage of Potbelly Shops. Although we will try to use the Brand Fund to develop Marketing materials and execute Marketing activities and programs benefiting all Potbelly Shops, we need not ensure that Brand Fund expenditures in or affecting any geographic area are proportionate or equivalent to Brand Fund contributions by Potbelly Shops operating in that geographic area or that any Potbelly Shop benefits directly or in proportion to its Brand Fund contributions from the development of Marketing materials or the execution of Marketing activities and programs. The Brand Fund will not be used principally to develop materials and programs to solicit franchisees. However, media, materials, and programs, including the System Website, prepared using Brand Fund contributions may describe our franchise program, reference the availability of franchises and related information, and process franchise leads.

We have the right, but no obligation, to use collection agents and institute legal proceedings at the Brand Fund's expense to collect Brand Fund contributions. We also may forgive, waive, settle, and compromise all claims by or against the Brand Fund. Except as expressly provided in this Subsection, we assume no direct or indirect liability or obligation to you for collecting amounts due to, maintaining, directing, or administering the Brand Fund.

We may at any time defer or reduce a Potbelly Shop franchise owner's contributions and, upon thirty (30) days' prior written notice to you, reduce or suspend Brand Fund contributions and operations for one or more periods of any length and terminate (and, if terminated, reinstate) the Brand Fund. If we terminate the Brand Fund, we will at our option spend all remaining Brand Fund

monies on permitted Marketing or distribute all unspent monies to Brand Fund contributors in proportion to their respective Brand Fund contributions during the preceding fiscal year.

C. **YOUR LOCAL MARKETING.**

Except as provided below, you must spend a minimum of one percent (1%) of the Shop's Gross Sales each year of the Term to market and promote your Shop locally (the "**Local Marketing Spend**"). You must, by the deadlines we specify, present to us annually (or on the quarterly or other basis we specify) for our prior written approval your plan for use of the Local Marketing Spend in the upcoming year (or quarter or other timeframe). You may engage only in the Shop-level advertising, marketing, and promotion activities, and use only the materials and media, we pre-approve. If you use an advertising or media agency, you may use either any agency we use or another agency you select but that we pre-approve in writing after you send us the information we reasonably request about the agency. We may approve or disapprove that agency as we deem best. We may rescind our approval of the agency (1) immediately if we determine that it no longer meets our brand standards or brand approval requirements or (2) any time, and for any or no reason, upon ninety (90) days' prior written notice to you.

You must send us, at the time and in the manner we prescribe (including with receipts), an accounting of your actual expenses for Shop-level advertising, marketing, and promotion for the period we specify. We may designate during the Term which expenses will, or will not, count toward your Local Marketing Spend.

Your local Marketing must follow the pre-approved plan and our guidelines. All Marketing materials you develop for your Shop must contain notices of the System Website's domain name in the manner we designate. Except as described below in connection with the System Website, you may not develop, maintain, provide mutual links to, or authorize any website mentioning or describing you or the Shop or displaying any of the Marks. Your Marketing must be completely clear, factual, and not misleading and conform to both the highest standards of ethical Marketing and the Marketing policies we periodically prescribe.

Before you use them, you must send us or our designated agency for pre-approval samples of all Marketing materials we have not prepared or approved within the previous one (1) year period. If you do not receive written disapproval within fifteen (15) days after we or our designated agency receives the materials, they are deemed to be disapproved. You may not use any Marketing materials that we have not approved or have disapproved. You must cease using any materials we previously approved within thirty (30) days after we notify you that they no longer may be used. Your minimum required expenditures under Sections 9.B, 9.C., and 9.D. will not exceed, in the aggregate, five percent (5%) of the Shop's Gross Sales.

D. **AREA BRAND COOPERATIVE.**

If the general market area in which the Shop is located encompasses (in our opinion) at least three (3) Potbelly Shops (including your Shop and other Potbelly Shops owned by franchisees, us, or our affiliates) and we believe that collaborative brand building activities among all franchisees (and us and our affiliates) in that area are appropriate to promote Potbelly Shops,

you agree at our request to form a cooperative or collaborative brand building association (**an “Area Cooperative”**) with other franchisees and us and/or our affiliates to advertise, market, and promote collectively Potbelly Shops in that general market area. We will control the Area Cooperative’s organization, formation, and governance, including preparation of bylaws. The Area Cooperative will begin operating on the date we specify. The Area Cooperative’s members will include all Potbelly Shops operating in that area. If an Area Cooperative has been established as of the Effective Date for the general market area in which the Shop is located, you automatically become a member of that Area Cooperative when you sign this Agreement (although voting rights and contributions do not begin until your Shop opens and begins operation).

Each Area Cooperative will be organized and governed in a form and manner, and begin operating on a date, that we determine in advance. Each Area Cooperative’s purpose is, with our approval, to administer advertising programs and develop promotional materials for the area the Area Cooperative covers.

If an Area Cooperative is or has been established, you agree (1) to join, participate in, sign the documents we require to become a member of, and actively support the Area Cooperative in compliance with its governing documents, and (2) to contribute a specific percentage of the Shop’s Gross Sales to the Area Cooperative. The maximum Area Cooperative contribution during a fiscal period may not exceed the then-currently-designated Local Marketing Spend. Area Cooperative contributions will be credited toward your Local Marketing Spend (but not toward the Brand Fund contribution). If Potbelly Shops operated by us and our affiliates are members of the Area Cooperative, they will contribute a proportionate amount of their Gross Sales to the Area Cooperative’s expenses.

The Area Cooperative must, by the deadlines we specify, present to us annually (or on the quarterly or other basis we specify) for our prior written approval its plan for use of Area Cooperative contributions in the upcoming year (or quarter or other timeframe). The Area Cooperative will present a Marketing plan having the approval of at least fifty-one percent (51%) of the Potbelly Shops that are members of the Area Cooperative. After we have approved the plan, the Area Cooperative may propose for our prior written approval a change in the percentage of Gross Sales to be contributed by Potbelly Shops for the plan. If we approve that change (although we have no obligation to do so), the Area Cooperative may implement that change only if at least seventy percent (70%) of the Potbelly Shops that are members of the Area Cooperative vote for the change. (As noted above, your minimum required expenditures under Sections 9.B., 9.C., and 9.D. will not exceed, in the aggregate, five percent (5%) of the Shop’s Gross Sales. We may, upon ninety (90) days’ prior notice to you, adjust the percentages among the various required expenditures throughout the Term.)

Each Potbelly Shop in the Area Cooperative will have one (1) vote regarding the Area Cooperative’s administration, contributions, operation, and expenditures. If the Area Cooperative’s members cannot agree on any aspect of the Area Cooperative’s administration, contributions, operation, or expenditures and the disagreement continues for twenty (20) days after written notice to us that a disagreement exists, we have the authority to resolve the matter. Our decision will be final and binding on all Area Cooperative members. In any event, we may,



whenever we deem best, control the operation, contributions, expenditures, and all other aspects of the Area Cooperative.

You agree to send us and the Area Cooperative any reports we require. The Area Cooperative will operate only to advertise, market, and promote Potbelly Shops located in the Area Cooperative's general market area. The Area Cooperative and its members may not use any Marketing plans or materials without our prior written consent, and all activities must comply with our guidelines.

E. **SYSTEM WEBSITE.**

We have established a system website (1) to advertise, market, and promote Potbelly Shops and the Products (and/or the Potbelly Shop franchise opportunity), (2) through which to operate on-line product ordering and other fulfillment systems, and (3) for any other purposes we consider appropriate or necessary for Potbelly Shops, the Products or the Franchise System (the "**System Website**"). We will create a separate interior webpage (accessible only through the System Website which we control) which references your Shop. You must give us the information we request in order for us to create your interior webpage on the System Website. By giving us the information, you represent that the information is accurate and not misleading and does not infringe any other party's rights. We will own all intellectual property and other rights in the System Website, your interior webpage, and all information they contain (including, without limitation, the log of "hits" by visitors and any personal or business data that visitors supply).

We will control, and may use Brand Fund contributions to develop, maintain, operate, update, and market, the System Website, including your interior webpage. We will update the information on your interior webpage, if any, or add information we approve as frequently as we deem appropriate. You must notify us whenever any information on your interior webpage changes or is not accurate. You must pay our then-current fee for us to create an interior webpage for your Shop or as we otherwise require to maintain and operate the System Website's various features and functions (if, or to the extent, the Brand Fund does not pay for these costs). We have sole control over all information on the System Website, including your interior webpage.

We will maintain your interior webpage only while you are in substantial compliance with this Agreement and all System Standards. If you are in material default of any obligation under this Agreement or System Standards, we may, in addition to our other remedies, temporarily suspend your interior webpage until you fully cure the default. We will permanently terminate interior webpage upon this Agreement's expiration or termination.

All Marketing materials you develop for the Shop must contain notices of the System Website's domain name(s) in the manner we designate. You may not develop, maintain, link to, or authorize any other website mentioning or describing you or the Shop or displaying any of the Marks.

F. **INTRANET.**

We may, at our option, establish and maintain an Intranet. We will establish System Standards for the Intranet's use. These System Standards will address, among other things, (1) restrictions on using abusive, slanderous, or otherwise offensive language in electronic communications, (2) restrictions on communications among franchisees endorsing or encouraging breach of any franchisee's franchise agreement, (3) confidential treatment of materials we transmit via the Intranet, (4) password protocols and other security precautions, (5) grounds and procedures for our suspending or revoking a franchisee's access to the Intranet, and (6) a privacy policy governing our access to and use of electronic communications that franchisees post on the Intranet. We expect to adopt and adhere to a reasonable privacy policy. However, as the Intranet's administrator, we have the right to access and view any communication posted on the Intranet. You acknowledge that the Intranet and all communications posted to it are our property, free of any privacy or privilege claims that you or any other person may assert.

After we notify you that the Intranet has become functional, you must buy and install all necessary additions to the Computer System, as provided in Subsection 2.E. above, and establish and continually maintain electronic connection with the Intranet allowing us to send messages to and receive messages from you. Your obligation to maintain connection with the Intranet applies during the entire Term (unless we dismantle the Intranet or suspend your access). You must contribute reasonable amounts on an annual, quarterly, monthly, or other basis toward the cost of developing and maintaining the Intranet. If you fail to pay when due any required amount, or fail to comply with any Intranet System Standard, we may (in addition to any other rights we reserve in this Agreement, including those under Subsection 3.H.) temporarily suspend your access to any so-called chat room, bulletin board, list-serve, or similar feature the Intranet includes until you fully cure the breach.

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

In order to assure consistency and reliability with respect to the various forms of financial reporting you must make to us, you agree to establish and maintain at your own expense a bookkeeping, accounting, and recordkeeping system conforming to the requirements and formats we require from time to time. The records and information contained in this system will not include any records or information relating to Shop employees, as you control exclusively your labor relations and employment practices. During the Shop's first year of operation, you must use an outsourced accounting service we specify to ensure your preparation of required reports and financial statements accurately and in our desired format. If, after that first year, you choose to use an accounting firm that we have not specified, that firm must accept electronic files prepared in accordance with our Franchise Data Exchange documentation. If you do not comply with our accounting, recordkeeping, and reporting obligations any time after the Shop's first year of operation, we once again may require you to use a specified outsourced accounting service. You must use a Computer System to maintain sales data and other information and to generate the reports we require. You agree to give us in the manner and format we periodically prescribe:

(a) weekly reports of the Shop's Gross Sales, discounts, net sales, product mix, transaction count, average ticket, and productivity;

(b) within fifteen (15) days after the end of each fiscal month or other accounting period, the operating statements, unaudited financial statements, statistical reports, and other information we request regarding you and the Shop covering the previous fiscal month or other accounting period and the fiscal year-to-date;

(c) within forty-five (45) days after the end of each fiscal year, annual profit and loss and source and use of funds statements and a balance sheet for the Shop as of the end of that fiscal year (all unaudited);

(d) within forty-five (45) days after the end of each fiscal year, an annual budget for the current fiscal year; and

(e) within fifteen (15) days after our request, exact copies of federal and state income tax returns, sales tax returns, purchase records, and other forms, records, books, and information we periodically require regarding the Shop and the Franchise (other than employee records for Shop employees, as you control exclusively your labor relations and employment practices).

The “fiscal year” period referenced in clauses (b) and (c) will be our then-current fiscal year, which generally begins and ends other than on a calendar-year basis. The “fiscal month” or other “accounting period” referenced in clause (b) means the monthly period we designate in the Operations Manual or otherwise communicate to you (currently a 4-, 4-, 5-week accounting period). It generally is different from a calendar-month period. Your monthly and annual reports must align with our fiscal periods. You must certify and sign, or otherwise validate, each report and financial statement in the manner we prescribe. We may disclose data derived from these reports. We also may, as often as we deem appropriate (including on a daily, continuous basis), independently access the Computer System and retrieve all information regarding the Shop’s operation (other than Shop employee records, as you control exclusively your labor relations and employment practices).

You agree to preserve and maintain all records in a secure location at the Shop during the Term and for at least five (5) years after their preparation (or longer if required by law), including, but not limited to, sales checks, purchase orders, invoices, check stubs, sales tax records and returns, cash receipts and disbursement journals, and general ledgers. We may require you to prepare audited financial statements annually during the remaining portion of the Term if (i) we ever send you formal notice of default regarding your failure to comply with your reporting or payment obligations, (ii) you understate the Shop’s Gross Sales three (3) times or more over an eighteen (18) fiscal-month period by more than two percent (2%) on each occasion (whether or not we send you formal notice of default), or (iii) you understate the Shop’s Gross Sales by more than five percent (5%) on any one occasion (whether or not we send you formal notice of default).

11. **INSPECTIONS AND AUDITS.**

A. **OUR RIGHT TO INSPECT THE SHOP.**

To determine whether you and the Shop are complying with this Agreement and all System Standards, we and our designated agents and representatives (including quality assurance auditors and “mystery” or “secret” shoppers) may at any time and without prior notice to you:

- (1) inspect the Shop;
- (2) photograph the Shop and observe, video, and monitor (electronically or otherwise) its operation for consecutive or intermittent periods we deem necessary;
- (3) remove samples of any Products and supplies (including Potbelly Trade Secret Products and Potbelly Branded Products);
- (4) interview the Shop’s supervisory personnel and customers; and
- (5) inspect and copy any books, records, and documents regarding the Shop’s operation that we maintain the authority to control and/or remedy (i.e., excluding records relating to labor relations and employment practices, as you control exclusively labor relations and employment practices for Shop employees).

You agree to cooperate fully with us and our agents and representatives in these activities. We may hire outside consultants and vendors to perform certain types of audits. If we exercise any of these rights, we will not interfere unreasonably with the Shop’s operation. If we (or our agents or representatives) inspect the Shop and determine that it is not operating in compliance with this Agreement and all System Standards, and we then must re-inspect the Shop to determine whether you have corrected the operating deficiencies, we may require you to pay us up to Two Thousand Five Hundred Dollars (\$2,500) for each follow-up inspection of the Shop after the first follow-up inspection. You agree to present to your customers the evaluation forms we periodically prescribe and to participate and/or request your customers to participate in any surveys performed by or for us. We agree to share the survey results with you. You acknowledge that any evaluation or inspection that we or our designated agents or representatives conduct is conducted in order to protect our interests in the Branded System and Marks and is not intended to exercise, and does not constitute, in whole or in part, control over the day-to-day operation of the Shop and you agree to never contend otherwise.

B. **OUR RIGHT TO AUDIT.**

We may at any time during your business hours, and without prior notice to you, examine your and the Shop’s business, bookkeeping, and accounting records, sales and income tax records and returns, and other records (other than those records that we have no authority to control and/or remedy, such as the employee records of Shop employees, as you control exclusively your labor relations and employment practices). You must cooperate fully with our representatives and independent accountants in any examination. We may require you to send records off-site for our

review. If an examination discloses an understatement of the Shop's Gross Sales, you must pay us, within fifteen (15) days after receiving the examination report, the Royalty, Brand Fund contribution, and other monies due on the understated amount, our late fee, and interest on the understated amount from the date originally due until the date of payment. Furthermore, if an examination is necessary due to your failure to furnish reports, supporting records, or other information as required, or if our examination reveals a Royalty or other understatement exceeding two percent (2%) of the amount you actually reported to us for the period examined, you must reimburse our costs for the examination, including, without limitation, the charges of attorneys and independent accountants and our employees' travel expenses, room and board, and compensation. These remedies are in addition to our other remedies and rights under this Agreement and applicable law.

12. **TRANSFER.**

A. **BY US.**

You acknowledge that we maintain a staff to manage and operate the Franchise System and that staff members can change as employees come and go. You represent that you have not signed this Agreement in reliance on any particular owner, director, officer, or employee remaining with us in that capacity. We may change our ownership or form and/or assign this Agreement or any interest therein and any other agreement to a third party without restriction or notice to you. After our assignment of this Agreement to a third party who expressly assumes this Agreement's obligations, we no longer will have any performance or other obligations under this Agreement. That assignment will constitute a release and novation with respect to this Agreement, and the new owner-assignee will be liable to you as if it had been an original party to this Agreement. Specifically and without limiting the foregoing, you agree that we may sell our assets (including this Agreement), the Marks, or the Franchise System to a third party; offer our ownership interests privately or publicly; merge, acquire other business entities, or be acquired by another business entity; and/or undertake a refinancing, recapitalization, leveraged buyout, or other economic or financial restructuring.

B. **BY YOU.**

You understand and acknowledge that the rights and duties this Agreement creates are personal to you (and your owners) and that we have granted you the Franchise in reliance upon our perceptions of your (and your owners') collective character, skill, aptitude, attitude, business ability, and financial capacity. Accordingly, neither this Agreement (or any interest in this Agreement), the Shop or substantially all of its assets, an ownership interest in you (regardless of its size), a controlling ownership interest in an Entity with an ownership interest in you, nor actual management control of the Shop's operation may be transferred without our prior written approval, which we will not unreasonably withhold or delay if (assuming we do not exercise our right of first refusal under Subsection 12.G. below, if applicable) the transfer conditions contained in this Section 12 are satisfied. A transfer of the Shop's ownership, possession, or management control, or substantially all of its assets, may be made only with a transfer of this Agreement. Any transfer without our required approval is a breach of this Agreement and has no effect, meaning that you

(and your owners) will continue to be obligated to us for all of your obligations under this Agreement.

In this Agreement, the term “transfer” includes a voluntary, involuntary, direct, or indirect assignment, sale, gift, or other disposition of any interest in:

- (1) this Agreement;
- (2) you;
- (3) the Shop or substantially all of its assets or its management control; or
- (4) your owners (if they are Entities).

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

- (a) transfer of ownership of capital stock, a partnership or membership interest, or another form of ownership interest;
- (b) merger or consolidation or issuance of additional securities or other forms of ownership interest;
- (c) any sale of a security convertible to an ownership interest;
- (d) transfer of an interest in you, this Agreement, the Shop or all or substantially all of its assets, or your owners in a divorce, insolvency, or Entity dissolution proceeding or otherwise by operation of law;
- (e) if one of your owners, or an owner of one of your owners, dies, a transfer of an interest in you, this Agreement, the Shop or substantially all of its assets, or your owner by will, declaration of or transfer in trust, or under the laws of intestate succession; or
- (f) pledge of this Agreement (to someone other than us) or of an ownership interest in you or your owners as security, foreclosure upon the Shop, or your transfer, surrender, or loss of the Shop’s possession, control, or management. You may grant a security interest (including a purchase money security interest) in the Shop’s assets (not including this Agreement) to a lender financing your acquisition, development and/or operation of the Shop without obtaining our prior written approval. You may not pledge this Agreement (to someone other than us), an ownership interest in you (regardless of its size), or a controlling ownership interest in an Entity with an ownership interest in you unless, as a condition of that pledge, the pledgee agrees not to exercise its secured party rights without first satisfying any conditions we reasonably impose at that time to ensure the Shop’s continued operation in compliance with this Agreement and all System Standards and no violation of any material provision of this Agreement, including, but not limited to, Section 7 above.

C. **CONDITIONS FOR APPROVAL OF TRANSFER.**

If you (and your owners) are in substantial compliance with this Agreement, then, subject to this Section 12's other provisions (including our right of first refusal under Subsection 12.G. below, if applicable), we will approve a transfer satisfying all of this Subsection's requirements. We have the right to pre-approve the transfer of a non-controlling ownership interest in you or your owners (determined as of the date on which the proposed transfer will occur) other than to a Head of Operations. We expect to approve such a transfer if the proposed transferee and its direct and indirect owners (if the transferee is an Entity) are of good character and meet our then applicable standards for Potbelly Shop franchisees (including no ownership interest in or performance of services for a Competitive Business), the new owner signs our Guaranty and Assumption of Obligations, and you pay us a transfer fee of Five Hundred Dollars (\$500), which is due when you request transfer approval and is nonrefundable whether or not the transfer actually occurs.. If the new owner of the non-controlling ownership interest (i) fails for any reason to sign the Guaranty and Assumption of Obligations, or (ii) would violate the Guaranty and Assumption of Obligations immediately upon its signing because of certain activities in which the new owner then engages or has engaged, or (iii) has engaged in any dishonest, unethical, immoral, or similar conduct as a result of which his or her association with you and the Shop could, in our reasonable opinion, have a material adverse effect on the goodwill associated with the Marks, the proposed transfer to the new owner may not take place despite anything to the contrary contained in this Section 12.

If the proposed transfer is of this Agreement or a controlling ownership interest in you or in an Entity owning a controlling ownership interest in you, or is one of a series of transfers (regardless of the time period over which these transfers take place) in the aggregate transferring this Agreement or a controlling ownership interest in you or in an Entity owning a controlling ownership interest in you, then all of the following conditions must be met before or concurrently with the proposed transfer's effective date:

(1) the transferee has the necessary business experience, aptitude, and financial resources to operate the Shop, completes our then-current form of franchise application, and otherwise is qualified under our then-existing standards for the approval of new franchisees or of existing franchisees interested in acquiring additional franchises (including the transferee and its affiliates are in substantial operational compliance, at the time of the application, under all other franchise agreements for Potbelly Shops to which they then are parties with us);

(2) you have paid all Royalties, Brand Fund contributions, and other amounts owed to us, our affiliates, and third-party vendors; have submitted all required reports and statements; and have not violated any material provision of this Agreement or any other agreement with us during both the sixty (60) day period before you requested our consent to the transfer and the period between your request and the transfer's proposed effective date;

(3) neither the transferee nor its owners or affiliates have an ownership interest (direct or indirect) in or perform services for a Competitive Business, wherever located or operating;

(4) the transferee's managing owner (or head of operations, as applicable) and key-holding supervisory employees, including general manager (if different from your Managing Owner or Head of Operations, as applicable, and key-holding supervisory employees), satisfactorily complete required training within the timeframe we specify;

(5) the transferee has the right to occupy the Shop for the expected franchise term (whether by Lease assignment or sublet);

(6) any applicable agency or host or authority with jurisdiction over the Shop (such as an airport or an educational institution, if any) approves the transfer of this Agreement to the transferee;

(7) the transferee must (if the transfer is of this Agreement), or you must (if the transfer is of a controlling ownership interest in you or in an Entity owning a controlling ownership interest in you), sign our then-current forms of franchise agreement and related documents ("related documents" include the Guaranty and Assumption of Obligations), any and all of the provisions of which, including the Royalty and Brand Fund contribution, may differ materially from any and all of those contained in this Agreement, provided, however, that the term of the new franchise agreement signed will be equal to this Agreement's unexpired Term;

(8) you or the transferee pays us a transfer fee equal to (a) fifty percent (50%) of our then-current initial franchise fee charged to new franchisees if the transferee is not then an existing Potbelly Shop franchisee, or (b) twenty percent (20%) of our then-current initial franchise fee charged to new franchisees if the transferee is then an existing Potbelly Shop franchisee. Under both (a) and (b), one-half (½) of the transfer fee is due to us when you request transfer approval and is not refundable, whether or not the transfer actually occurs. No transfer fee is due if, upon a spouse's death, that spouse's interest in this Agreement and the Shop, or ownership in you, is transferred to the surviving spouse;

(9) you (and, if applicable, your transferring owners) sign our then -current form of general release of any and all claims against us and our owners, affiliates, officers, directors, employees, and agents (except for our indemnification obligations under Subsection 16.D. below);

(10) we accept the transferee's capital structure and the proposed purchase price and payment terms to satisfy us that they are not likely to affect adversely the transferee's operation of the Shop;

(11) if you or your owners finance any part of the purchase price, you and/or your owners agree that (a) the transferee's obligations under promissory notes, agreements, or security interests reserved in the Shop are subordinate to the transferee's obligation to



pay Royalties, Brand Fund contributions, and other amounts due to us, our affiliates, and third-party vendors and otherwise to comply with this Agreement, and (b) you must obtain our pre-approval and satisfy any conditions we then reasonably impose in order to take back the Shop upon the transferee's default under any seller-financing documents (you do not under any circumstances have the automatic right to take back the Shop upon the transferee's default);

(12) (a) you have corrected existing Shop deficiencies of which we have notified you on a punch-list or in other communications, and/or (b) the transferee agrees (if the transfer is of this Agreement) to upgrade, remodel, and refurbish the Shop, irrespective of the limitations in Section 8.B. above (which will not apply in the transfer context), according to our then-current requirements and specifications for Potbelly Shops within the time period we specify following the transfer's effective date (we will advise the transferee, before the transfer's effective date, of the specific actions it must take and the time period within which it must do so);

(13) you and your transferring owners (and your owners' spouses) will not, for two (2) years beginning on the transfer's effective date, engage in any of the activities proscribed in Subsection 15.D. below; and

(14) you and your transferring owners will not directly or indirectly at any time or in any manner (except with respect to other Potbelly Shops you lawfully own and operate) identify yourself or themselves in any business as a current or former Potbelly Shop or as one of our franchisees; use any Mark, any colorable imitation of a Mark, or other indicia of a Potbelly Shop for any purpose; or utilize for any purpose any trade name, trade or service mark, or other commercial symbol suggesting or indicating a connection or association with us.

You acknowledge that we have legitimate reasons to evaluate the qualifications of potential transferees and to analyze and critique the terms of their purchase contracts with you and that our contact with potential transferees to protect our business interests will not constitute improper or unlawful conduct. You expressly authorize us to investigate any potential transferee's qualifications, to analyze and critique the proposed purchase terms, to communicate candidly and truthfully with the transferee regarding your operation of the Shop, and to withhold consent to economically questionable transactions. You waive any claim that the action we take in good faith to protect our business interests in connection with a proposed transfer constitutes a breach of contract or tortious interference with contractual or business relationships. We have the sole right to determine whether the transfer conditions above have been satisfied. We may review all information regarding the Shop you give the proposed transferee, correct any information we believe is inaccurate, and give the proposed transferee copies of any reports you have given us or we have made regarding the Shop. In addition, you agree to reimburse us, upon our demand at any time before or after the intended effective date of the proposed transfer, for any costs we incur in connection with any proposed transfer that is subject to the immediately preceding conditions (1) through (14), regardless of whether the proposed transfer actually transpires.

D. **TRANSFER TO A WHOLLY-OWNED CORPORATION OR LIMITED LIABILITY COMPANY.**

Despite Subsection C above, if you are in substantial compliance with this Agreement, you may transfer this Agreement to another Entity conducting no business other than the Shop and, if applicable, other Potbelly Shops, in which your current owners maintain management control, and of which you and/or your current owners own and control one hundred percent (100%) of the equity and voting power of all issued and outstanding ownership interests, provided that all of the Shop's assets are owned, and the Shop's business is conducted, only by that single Entity. The Entity must expressly assume all of your obligations under this Agreement. Transfers of ownership interests in the Entity are subject to Subsections B and C above. You will remain liable under this Agreement as if the transfer to the Entity did not occur. You must immediately give us all information regarding the Entity that we request and pay us with your transfer request (before the transfer will be deemed effective) a Five Hundred Dollar (\$500) transfer fee.

E. **DEATH OR DISABILITY.**

(1) **Transfer Upon Death or Disability.** Upon your Managing Owner's death or disability, the Managing Owner's executor, administrator, conservator, guardian, or other personal representative must transfer the Managing Owner's ownership interest in you to a third party (which may be the Managing Owner's heirs, beneficiaries, or devisees). That transfer must be completed within a reasonable time, not to exceed nine (9) months from the date of death or disability, and is subject to all of the terms and conditions in this Section 12. Failure to transfer the Managing Owner's ownership interest in you within this time period is a breach of this Agreement. The term "disability" means a mental or physical disability, impairment, or condition that is reasonably expected to prevent or actually does prevent the Managing Owner from fulfilling his or her responsibilities as Managing Owner.

(2) **Operation Upon Death or Disability.** Upon the Managing Owner's death or disability, a new Managing Owner must be appointed and satisfactorily complete our required training program for Managing Owners within thirty (30) days. If the Shop is not being managed properly (in our judgment) any time after the Managing Owner's death or disability, we may, but need not, assume the Shop's management (or appoint a third party to assume its management). If we assume the Shop's management (or appoint a third party to do so), the manager will not exercise direct or indirect control over the working conditions of the Shop's employees, except to the extent such indirect control is related to our legitimate interest in protecting the quality of the Products and the Potbelly brand. All funds from the Shop's operation while it is under our (or the third party's) management will be kept in a separate account to which all expenses will be charged. We may charge you (in addition to the Royalty, Brand Fund contribution, and other amounts due under this Agreement) the manager's then-current daily salary plus our direct expenses while the Shop is under our (or the third party's) management. We (or a third party) have a duty to use only reasonable efforts and, if we are not grossly negligent and do not commit an act of willful misconduct, will not be liable to you or your owners for any debts, losses, lost or reduced profits, or obligations the Shop incurs, or to any of your creditors for any products, other assets, or services the Shop purchases, while we (or a third party) manage it.

F. **EFFECT OF CONSENT TO TRANSFER.**

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

G. **OUR RIGHT OF FIRST REFUSAL.**

If you, one of your owners, or the owner of a controlling ownership interest in an Entity with an ownership interest in you at any time determines to sell or transfer (i) an interest in this Agreement and the Shop or (ii) an ownership interest in you or a controlling ownership interest in the Entity with an ownership interest in you (except to or among your current owners or between a current owner and his or her immediate family member, which are not subject to this Subsection) in a transaction that otherwise would be allowed under Subsections 12.B. and C above, you (or your owners) must obtain from a responsible and fully disclosed buyer, and promptly send us, a true and complete copy of a bona fide, signed written offer (which may include a letter of intent) relating to an interest in you (or in the Entity with an ownership interest in you) or in this Agreement and the Shop. The offer must include details of the proposed sale's payment terms and the financing sources and terms for the proposed purchase price. To be a valid, bona fide offer, the proposed purchase price must be in a dollar amount, and the proposed buyer must submit with its offer the transfer fee referenced in Subsection 12.C.(7) above and an earnest money deposit equal to five percent (5%) or more of the offering price.

The right of first refusal process will not be triggered by a proposed transfer that would not be allowed under Subsections B and C above and therefore could not proceed. We may require you (or your owners) to send us copies of any materials or information sent to the proposed buyer or transferee regarding the possible transaction. We have the unrestricted right to assign this right of first refusal to a third party, who then will have the rights described in this Subsection.

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

- (1) we may substitute cash for any form of payment proposed in the offer (such as ownership interests in a privately-held Entity);
- (2) our (or our designee's) credit will be deemed equal to the credit of any proposed buyer (meaning that, if the proposed consideration includes promissory notes, we or our designee may provide promissory notes with the same terms as those offered by the proposed buyer);
- (3) we will have up to sixty (60) additional days to close the transaction after delivering the ROFR Exercise Notice;

(4) we must receive, and you and your owners must make, all customary representations and warranties given by the seller of the assets of a business or the ownership interests in an Entity, as applicable, including, without limitation, representations and warranties regarding:

(a) ownership and condition of and title to ownership interests and/or assets;

(b) your and your owners' authorization to sell, as applicable, any ownership interests or assets without violating any law, contract, or requirement of notice or consent;

(c) liens and encumbrances relating to ownership interests and/or assets;

(d) validity of contracts and the liabilities, contingent or otherwise, of the Entity whose assets or ownership interests are being purchased; and

(e) indemnities for all actions, events, and conditions that existed or occurred in connection with the Shop before the closing of our purchase; and

(5) if the price offered to you or your selling owner(s) for the interest proposed to be transferred includes all or a portion of the transfer fee referenced in Subsection 12.C.(7) above, we or our designee may reduce the purchase price we must pay (if we exercise the right of first refusal) by the amount of that transfer fee (or portion of the transfer fee).

Once you or your selling owner(s) submits the offer and related information to us triggering the start of the thirty (30) day decision-period referenced above, the offer is irrevocable for that thirty (30) day period. This means that we have the full thirty (30) days to decide whether to exercise the right of first refusal and may choose to do so even if you or your selling owner(s) changes your, his, her, or its mind during that period and prefers after all not to sell the particular interest that is the subject of the offer. You and your selling owner(s) may not withdraw or revoke your offer for any reason during the thirty (30) days, and we (or our designee) may exercise the right to purchase the particular interest in accordance with this Subsection's terms.

If we exercise our right of first refusal, you and your selling owner(s) agree that, for two (2) years beginning on the closing date, you and they will be bound by the non-competition covenant contained in Subsection 15.D. below.

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

not be allowed under Subsections B and C above, you (or your owners) may not move forward with the transfer at all.

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

#### H. **PUBLIC OFFERINGS.**

You (and your owners) may not, without our prior written consent (which we may grant or withhold for any or no reason), attempt to raise or secure funds by selling or offering to sell any ownership interest in you or in an Entity with an ownership interest in you (including, without limitation, common or preferred stock, bonds, debentures, membership interests, or general or limited partnership interests), regardless of its size, in a public offering for which a registration statement must be filed with the Securities Exchange Commission or with any similar state regulatory authority having jurisdiction over the sale of securities where registration is required as a condition of the sale of securities in that state. If we choose to consent to that transaction, then in addition to all other conditions we may require you to satisfy (as provided in this Section 12 and elsewhere in this Agreement), we may require you to pay us at least Ten Thousand Dollars (\$10,000), or any greater amount of which we advise you, plus our out-of-pocket expenses, to review the offering materials prepared for the transaction. However, our review will be only to ensure your appropriate use of the Marks and your accurate description of our and your relationship and respective rights and obligations under this Agreement. Our review will not opine on the transaction's substantive aspects or the legal adequacy of the offering materials.

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

##### A. **YOUR RIGHT TO ACQUIRE A SUCCESSOR FRANCHISE.**

When this Agreement expires:

(1) if you (and each of your owners) have substantially complied with this Agreement, and operated the Shop in substantial compliance with System Standards, during the Term; and

(2) if you (and each of your owners) are, both on the date you notify us in writing of your election to acquire a successor franchise (as provided in Subsection 13.B. below) and on the date on which the successor franchise term is scheduled to commence, in substantial compliance with this Agreement and all System Standards; and

(3) provided you maintain possession of the Site and agree (regardless of cost) to remodel and/or expand the Shop, add or replace improvements and Operating Assets,

and otherwise modify the Shop as we require to comply with System Standards then applicable for new Potbelly Shops;

you may acquire, at our option, (i) one successor franchise to operate the Shop as a Potbelly Shop for a term commencing immediately upon the expiration of this Agreement and expiring ten (10) years from that date, or (ii) a first successor franchise to operate the Shop as a Potbelly Shop for a term commencing immediately upon the expiration of this Agreement and expiring five (5) years from that date. (We need not grant you a successor franchise if you cannot maintain possession of the Site and therefore would need to secure a substitute site for the Shop.) To evaluate whether you have “substantially complied” with this Agreement, and operated the Shop in substantial compliance with System Standards, during the Term, we may consider the grade your Shop received on each Annual Shop Review we performed during the Term. If your Shop did not receive our minimum required passing grade on the Annual Shop Review during three (3) consecutive fiscal years, or during any five (5) fiscal years (whether or not consecutive), of the Term, that means you did not “substantially comply” with this Agreement, regardless of the quality of the Shop’s operation at any other time (including the final one (1) or two (2) years of the Term). In that case, we need not, as provided below, grant you a successor franchise, whether or not we had, or chose to exercise, the right to terminate this Agreement during the Term under Subsection 14.B.

You must sign the franchise agreement we then use to grant franchises for Potbelly Shops (modified as necessary to reflect that it is for a successor franchise), any and all of the provisions of which, including the Royalty and Brand Fund contribution, may differ materially from any and all of those contained in this Agreement. If your successor franchise is for a ten (10) year term, you must pay us a successor franchise fee equal to twenty-five percent (25%) of our then-current initial franchise fee for new franchisees. If your successor franchise is for a five (5) year term, your successor franchise fee will be twelve and one-half percent (12.5%) of our then-current initial franchise fee for new franchisees.

If we choose to grant you a first five (5) year successor franchise under clause (ii) above, you will have the right to acquire a second successor franchise to operate the Shop as a Potbelly Shop, the term of which will commence immediately upon the expiration of the first successor franchise term and expire five (5) years from that date, if you have complied as of the end of the first successor franchise term with the same conditions for a successor franchise grant as those described in this Section 13 with respect to the first successor franchise grant. Otherwise, you will have no right to acquire a second successor franchise. In connection with your acquisition of a second successor franchise, you must sign the franchise agreement we then use to grant franchises for Potbelly Shops (modified as necessary to reflect that it is for a second successor franchise, including that no further successor franchises will be granted), any and all of the provisions of which, including the Royalty and Brand Fund contribution, may differ materially from any and all of those contained in this Agreement and the franchise agreement you sign in connection with your acquisition of the first successor franchise.

If you (and each of your owners) did not substantially comply with this Agreement during the Term or are not, both on the date you notify us in writing of your election to acquire a successor franchise and on the date on which the successor franchise term is scheduled to commence, in substantial compliance with this Agreement and all System Standards, you acknowledge that we

need not grant you a successor franchise, whether or not we had, or chose to exercise, the right to terminate this Agreement during the Term under Subsection 14.B.

**B. GRANT OF A SUCCESSOR FRANCHISE.**

You agree to give us written notice of your election to acquire a successor franchise no more than two hundred seventy (270) days and no less than one hundred eighty (180) days before this Agreement is scheduled to expire. We will give you written notice of our decision (“**Our Notice**”):

- (1) to grant you a successor franchise;
- (2) to grant you a successor franchise on the condition that you correct existing deficiencies of the Shop or in your operation of the Shop; or
- (3) not to grant you a successor franchise based on our determination that you and your owners have not substantially complied with this Agreement during the Term or were not in substantial compliance with this Agreement and all System Standards on the date you gave us written notice of your election to acquire a successor franchise.

We will not unreasonably withhold or delay our consent to a successor franchise if the conditions specified in this Section 13 have been satisfied. If applicable, Our Notice will:

- (a) describe the remodeling, expansion, improvements and/or modifications required to bring the Shop into compliance with then applicable System Standards for new Potbelly Shops; and
- (b) state the actions you must take to correct operating deficiencies and the time period in which you must correct those deficiencies.

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

If Our Notice states that you must cure certain deficiencies of the Shop or its operation as a condition to a successor franchise, we will give you written notice of our decision not to grant you a successor franchise, based upon your failure to cure those deficiencies. If you fail to notify us of your election to acquire a successor franchise within the prescribed time period, we need not grant you a successor franchise.

**C. AGREEMENTS/RELEASES.**

If you satisfy all of the other conditions for a successor franchise (whether this relates, if applicable, to the first or second successor franchise), you and your owners must sign the forms of franchise agreement and any related documents we then customarily use to grant franchises for Potbelly Shops (modified as necessary to reflect that it is for a successor franchise), any and all of

the provisions of which, including the Royalty and Brand Fund contribution, may differ materially from any and all of those contained in this Agreement and, if applicable, the franchise agreement you sign in connection with your acquisition of the first successor franchise. You and your owners further agree to sign our then-current form of general release of any and all claims against us and our owners, affiliates, officers, directors, employees, agents, successors, and assigns (except for our indemnification obligations under Subsection 16.D. below). We will consider your or your owners' failure to sign these agreements and releases and deliver them to us for acceptance and countersigning (together with the successor franchise fee) within the timeframe we specify to be your election not to acquire a successor franchise.

14. **TERMINATION OF AGREEMENT.**

A. **BY YOU.**

If you and your owners are fully complying with this Agreement and we materially fail to comply with this Agreement and do not correct the failure within thirty (30) days after you deliver to us written notice of the material failure or, if we cannot correct the failure within thirty (30) days, do not give you within thirty (30) days after your notice reasonable evidence of our effort to correct the failure within a reasonable time (which may extend beyond that thirty (30) days), you may terminate this Agreement effective an additional thirty (30) days after you deliver to us written notice of termination. (The time period during which we may cure any alleged material default after your delivery of notice is called the "Cure Period.") However, if we send you written notice during the Cure Period indicating that either (1) we do not agree that we have materially failed to comply with this Agreement or (2) we have fully corrected the failure, then you may not terminate this Agreement. If you disagree with our position and still wish to terminate this Agreement, you must commence an arbitration proceeding seeking a declaration of your right to terminate this Agreement.

This Agreement will remain in full force and effect during the arbitration proceeding (unless we terminate it under Subsection 14.B. below). If the arbitrator determines that we are in material default, or that we did not fully correct a material default, we will have an additional thirty (30) days following the arbitrator's ruling to correct the failure. If we fail to do so, you may terminate this Agreement immediately upon delivery of written notice.

Your termination of this Agreement other than according to this Subsection 14.A. will be deemed a termination without cause and a breach of this Agreement.

B. **BY US.**

We may terminate this Agreement, effective upon delivery of written notice of termination to you, if:

- (1) you (or any of your owners) have made or make any material misrepresentation or omission in acquiring the Franchise or operating the Shop;



(2) you do not locate, and sign a Real Estate Agreement for, an acceptable location for the Site within one hundred eighty (180) days after the Effective Date;

(3) your Managing Owner (or Head of Operations, as applicable), General Manager, and/or your key-holding supervisory employee(s) do not satisfactorily complete the initial training program;

(4) you do not open the Shop for business on or before the Required Opening Date, or you open the Shop for business before we notify you in writing that the Shop meets our standards and specifications;

(5) you (a) abandon the Shop, meaning that you have deserted, walked away from, or closed the Shop under circumstances leading us to conclude that you have no intent to return to the Shop, regardless of the number of days passing since the apparent abandonment, or (b) fail actively and continuously to operate the Shop (a failure to operate the Shop for over five (5) consecutive days will be deemed a default under this clause (b), except where closure is due to fire, riot, flood, acts of terrorism, or natural disaster and you notify us within five (5) days after the particular occurrence to obtain our written approval to remain closed for an agreed upon amount of time as is necessary under the circumstances before you will be required to re-open);

(6) you surrender or transfer control of the Shop's operation without our prior written consent;

(7) you or any of your owners is or has been convicted by a trial court of, or pleads or has pleaded guilty or no contest to, a felony, crime involving moral turpitude, or any other crime which we reasonably believe adversely affects the Branded System's reputation or the goodwill associated with the Marks;

(8) you fail to maintain required insurance coverage and do not correct the failure within ten (10) days after we deliver to you written notice of that failure;

(9) you fail to maintain any licenses or permits required to operate the Shop, as a result of which you are legally obligated to cease operations, and you fail to secure those licenses and permits within the timeframe mandated by law;

(10) you or any of your owners engages in any dishonest, unethical, immoral, or similar conduct as a result of which your (or his or her) association with the Shop (or the owner's association with you) could, in our reasonable opinion, have a material adverse effect on the goodwill associated with the Marks;

(11) you, any of your owners, or the owner of a controlling ownership interest in an Entity with an ownership interest in you makes or attempts to make an unauthorized assignment of this Agreement, the Shop, an ownership interest in you, or a controlling ownership interest in an Entity with an ownership interest in you, interferes with our right of first refusal under Subsection 12.G., or violates Subsection 12.H.;

- (12) you lose the right to occupy the Site due to your Lease or sublease default;
- (13) you lose the right to occupy the Site (but not because of your Lease or sublease default), or the Shop is damaged to such an extent that you cannot operate the Shop at the Site over a thirty (30) day period, and you fail both to relocate the Shop to a substitute site we accept and to begin operating the Shop at that substitute site within one hundred eighty (180) days from the first date on which you could not operate the Shop at the Site;
- (14) you (or any of your owners) knowingly make any unauthorized use or disclosure of any part of the Operations Manual or any other Confidential Information;
- (15) you make any representation or warranty on our behalf that has not been specifically authorized in writing by us;
- (16) you violate any health, safety, or sanitation law, ordinance, or regulation, or operate the Shop in an unsafe manner, and do not begin to cure the violation immediately after delivery of notice (from us or any government agency) and correct the violation within the timeframe mandated by us or, if applicable, the law or government agency;
- (17) you fail to pay us (or our affiliates) any amounts due under this Agreement or otherwise and do not correct the failure within ten (10) days after we deliver to you written notice of that failure;
- (18) you fail to pay any vendors to the Franchise System (other than us and our affiliates) any amounts due for your purchases from them and do not correct the failure within thirty (30) days after the vendor delivers to you written notice of that failure, unless (a) you are in good faith contesting your liability for those amounts, (b) you tell us in writing the reason for your non-payment, and (c) we agree that you have a legitimate reason for the non-payment (although we may, but have no obligation to, pay the vendor by debiting your EFTA);
- (19) you fail to pay when due any federal or state income, employment, service, sales, or other taxes due on the Shop's operation, unless you are in good faith contesting your liability for those taxes or you have received an extension from the applicable government agency of the time within which to make payment;
- (20) you understate the Shop's Gross Sales (a) three (3) times or more during a thirty-six (36) fiscal-month period by more than two percent (2%) on each occasion or (b) by more than ten percent (10%) on any one occasion;
- (21) you interfere with our right to inspect the Shop, or observe or videotape its operation, as provided in Section 11;
- (22) the Shop fails three (3) quality assurance audits during a twelve (12) consecutive fiscal-month period;

(23) you (or any of your owners) (a) fail on three (3) or more separate occasions within any twelve (12) consecutive fiscal-month period to comply with this Agreement, whether or not we notify you of the failures, and, if we do notify you of the failures, whether or not you correct the failures after our delivery of notice to you; or (b) fail on two (2) or more separate occasions within any six (6) consecutive fiscal-month period to comply with the same obligation under this Agreement, whether or not we notify you of the failures, and, if we do notify you of the failures, whether or not you correct the failures after our delivery of notice to you;

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

(25) you or any of your owners fail to comply with Section 19 of this Agreement, or your or any of your owners' assets, property, or interests are blocked under any law, ordinance, or regulation relating to terrorist activities;

(26) your Shop does not receive our minimum required passing grade on the Annual Shop Review during three (3) consecutive fiscal years, or during any five (5) fiscal years (whether or not consecutive), of the Term;

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

(28) we have sent a notice of termination under any other franchise agreement for a Potbelly Shop between you (or any of your affiliates) and us, regardless of the reason for such termination.

C. **OUR ALTERNATE REMEDIES UPON YOUR DEFAULT.**

In addition to, and without limiting, our other rights and remedies under this Agreement, any other agreement or applicable law, upon the occurrence of any event giving rise to our right to terminate this Agreement under the preceding Subsection B, we may instead elect, at our sole option and upon delivering you written notice, to take any or all of the following actions without terminating this Agreement:

(1) temporarily remove information concerning the Shop from any website or extranet operated for the network Potbelly Shops, and/or restrict your or the Shop's participation in other programs or benefits offered on or through any such website or extranet;

(2) require you to engage a third party accounting firm we approve to conform to the bookkeeping, accounting, reporting and recordkeeping system requirements and formats we prescribe;

(3) require you to pay us Five Hundred Dollars (\$500) for each day the condition giving rise to our right to terminate continues to exist to help offset our increased administrative expenses associated with your failure to comply with the terms of this Agreement;

(4) suspend your and the Shop's right to participate in any advertising, marketing, promotional, or public relations programs that we or the Brand Fund provide, authorize, or administer; or

(5) assume, or appoint a third party to assume, management of the Shop in the manner provided in Subsection 14.F below.

**D. CROSS DEFAULT.**

Any default or breach by you (or any of your owners), or your affiliate (or any of your owner's affiliates) of any other agreement with us or our affiliate will be considered an event of default under this Agreement, and any default or breach by you (or any of your owners) of this Agreement will be considered an event of default or breach by you under any and all agreements between us or our affiliate and you (or any of your owners), or your affiliate (or any of your owner's affiliates). If the nature of the default under any other agreement would have been considered an event of default under this Agreement, then we or our affiliate will have the right to terminate all other agreements between us or our affiliate and you (or any of your owners), or your affiliate (or any of your owner's affiliates) in accordance with the termination provisions of this Agreement.

**E. FAILURE TO CURE MAY BE DEEMED TERMINATION BY YOU.**

Your failure to cure timely any breach by you of this Agreement about which we have provided you notice (and opportunity to cure, if applicable) pursuant to Subsection B above, including but not limited to your failure to pay overdue Royalties, Brand Fund contributions, or any other amounts due and owing to us or our affiliates under this Agreement, may be irrevocably deemed a unilateral rejection and termination by you of this Agreement and all related agreements between you and us or our affiliates, even if we ultimately issue a formal notice of such termination, and you shall never contend or complain otherwise.

**F. ASSUMPTION OF MANAGEMENT.**

We have the right (but no obligation), under the circumstances described below, to assume the Shop's management (or to appoint a third party to assume its management) for any time period we deem appropriate. If we (or a third party) assume the Shop's management under clause (2) below, the manager will not exercise direct or indirect control over the working conditions of the Shop's employees, except to the extent such indirect control is related to our legitimate interest in

protecting the quality of the Products and the Potbelly brand. In addition, if we assume the Shop's management (or appoint a third party to do so), you must pay us (in addition to the Royalty, Brand Fund contributions and other amounts due under this Agreement) the manager's then-current daily salary plus our direct expenses for up to sixty (60) days after we assume management. We (or the third party) will have a duty to use only reasonable efforts and, if we are not grossly negligent and do not commit an act of willful misconduct, will not be liable to you or your owners for any debts, losses, lost or reduced profits, or obligations the Shop incurs, or to any of your creditors for any supplies, products, or other assets or services the Shop purchases, while we (or the third party) manage it. If we (or a third party) assume the Shop's management under clauses (1) or (3) below, we (or the third party) may retain all, and need not pay you or otherwise account to you for any, Gross Sales generated while we (or the third party) manage the Shop.

We (or a third party) may assume the Shop's management under the following circumstances: (1) if you abandon or fail actively to operate the Shop; (2) if you fail to comply with this Agreement, including any System Standard, and do not cure the failure within the time period we specify in our notice to you, but only for as long as it takes us, using reasonable commercial efforts, to correct the failure that you failed to cure; or (3) if this Agreement expires or is terminated and we are deciding whether to exercise our option to purchase the Shop's assets under Subsection 15.E. below. Exercising our management rights will not affect our right to terminate this Agreement under Subsection 14.B. above.

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

A. **PAYMENT OF AMOUNTS OWED TO US.**

(1) You agree to pay us within fifteen (15) days after this Agreement expires or is terminated, or on any later date we determine the amounts due to us, the Royalties, Brand Fund contributions, late fees and interest, and other amounts owed to us (and our affiliates) that then are unpaid. If we terminate this Agreement on any ground specified under Section 14.B., or if you terminate this Agreement without cause, before the Term's scheduled expiration date, you also will be liable to us for lost future royalties to which we would have been entitled, but for the termination, had you operated for the remaining portion of the Term in compliance with this Agreement.

(2) If this Agreement is terminated before its Term expires pursuant to Subsections 14.B, 14.D, or 14.E above, then you acknowledge and confirm that we will suffer and incur substantial damages because this Agreement did not continue for the Term's full length. Accordingly, you agree to pay us for all damages, costs, expenses, attorneys' and experts' fees directly or indirectly related thereto, including, without limitation, lost Royalties, lost Brand Fund contributions, lost profits, loss of goodwill and damage to our Marks and reputation, lost opportunities, travel and personnel costs, expenses that we may incur in developing or finding another franchisee to develop a new Potbelly Shop at the site, and any other lost payments or benefits we would have received for the balance of the Term after the effective date of termination (collectively, "**Brand Damages**"). You further acknowledge and agree that your obligation to pay Brand

Damages resulting from early termination shall be in addition to (not in lieu of) your post-termination obligations to pay other amounts due as of the date of termination (as contemplated under the preceding Subsection (1) above) and to otherwise comply with the entirety of Section 14 hereof, and that the Brand Damages shall not be deemed a penalty for early termination but instead reasonable compensation to us for your failure to perform under this Agreement during the remainder of the Term.

(3) Your foregoing payment obligations arising under Subsections (1) and (2) above will give rise to, and remain until paid in full, a lien in our favor: (i) against any and all assets, property, furnishings, equipment, signs, fixtures and inventory owned by you or the Shop at the time of termination or expiration; and (ii) against any payment obligation you may allege we have to you, any of your money we are holding, or any other amounts of yours which are otherwise in our possession on or after the effective date of termination or expiration. Our rights and your obligations under this Subsection shall survive termination or expiration of this Agreement until they are satisfied or later expire by their terms.

**B. MARKS.**

When this Agreement expires or is terminated:

(1) you may not directly or indirectly at any time or in any manner (except with other Potbelly Shops you lawfully own and operate) identify yourself in any business as a current or former Potbelly Shop or as one of our current or former franchisees; use any Mark, any colorable imitation of a Mark, or other indicia, trade dress, or distinguishing features of a Potbelly Shop for any purpose; or use for any purpose any trade name, trade or service mark, or other commercial symbol indicating or suggesting a connection or association with us;

(2) you agree to discontinue the use of any website and social media used in connection with the Shop or otherwise referring to the Marks or Potbelly Shops;

(3) you agree, within fifteen (15) days, to cancel all fictitious or assumed name or equivalent registrations covering your use of any Mark;

(4) if we do not have or do not exercise an option to purchase the Shop's assets under Subsection E below, you agree, at your own cost and without any payment from us for such items, to deliver to us, to make available to us for pick-up, or to destroy (at our option), in any case within twenty (20) days, all signs, sign-faces, sign-cabinets, Marketing materials, forms, and other materials we request containing any Mark or otherwise identifying or relating to a Potbelly Shop. If you fail to do so voluntarily when we require, we and our representatives may enter the Shop at our convenience and remove these items without liability to you, the landlord, or any other third party for trespass or any other claim. You must reimburse our costs of doing so;

(5) if we do not have or do not exercise an option to purchase the Shop's assets under Subsection E below, you agree, within the timeframe we specify and at your own expense, to take the closing, de-identification, and de-branding steps, and make the alterations to the Shop's trade dress, interior design, menu-board placement, and equipment and furniture layout and configuration, we specify in our Operations Manual (or otherwise then communicate to you) to distinguish the Shop clearly from its former appearance and from other Potbelly Shops in order to prevent public confusion and protect the Marks and our Branded System. If you fail to do so voluntarily when we require, we and our representatives may enter the Shop at our convenience and take this action without liability to you, your landlord, or any other third party for trespass or any other claim. We need not compensate you or the landlord for any alterations. You must reimburse our costs of de-identifying the Shop; and

(6) you agree, within fifteen (15) days, to notify the telephone company and all telephone directory publishers (both web-based and print) of the termination or expiration of your right to use any telephone, facsimile, or other numbers and telephone directory listings and email addresses associated with any Mark; to authorize, and not to interfere with, the transfer of these numbers and directory listings to us or at our direction (including pursuant to a Conditional Assignment of Telephone Number(s), in the form attached as Exhibit B, previously signed by you); and/or to instruct the telephone company to forward all calls made to your numbers to numbers we specify. If you fail to do so, we may take whatever action and sign whatever documents we deem appropriate on your behalf to effect these events.

C. **CONFIDENTIAL INFORMATION.**

When this Agreement expires or is terminated, you must immediately cease using any of our Confidential Information (including computer software or similar technology and digital passwords and identifications we have licensed to you or that otherwise are proprietary to us or the Franchise System) in any business or otherwise and return to us all written or tangible copies of the Operations Manual and any other confidential materials to which we gave you access. You may not sell, trade, or otherwise profit in any way from any Confidential Information after the expiration or termination of this Agreement.

D. **COVENANT NOT TO COMPETE.**

Upon

- (1) our termination of this Agreement according to its terms and conditions,
- (2) your termination of this Agreement without cause, or
- (3) expiration of this Agreement (if we offer, but you elect not to acquire, a successor franchise, or if we do not offer you a successor franchise because you failed to satisfy the conditions for a successor franchise set forth in Section 13),

you and your owners agree that neither you nor they will have any direct or indirect (*e.g.*, through a spouse, sibling, child, or parent) interest as an owner (whether of record, beneficial, or otherwise), investor, partner, director, officer, employee, consultant, representative, or agent in any Competitive Business (defined in Section 7 above) located or operating:

- (a) at the Site or within seven (7) miles of the Site;
- (b) within five (5) miles of any other Potbelly Shop in operation or under construction on the Effective Date and still in operation on the effective date of termination or expiration; or
- (c) within five (5) miles of any other Potbelly Shop in operation or under construction on the later of the effective date of the termination or expiration of this Agreement or the date on which the restricted person begins to comply with this Subsection.

You and each of your owners will be bound by these competitive restrictions for two (2) years beginning on the effective date of this Agreement's termination or expiration. However, if you or any of your owners do not begin to comply with these competitive restrictions immediately, the two (2) year restrictive period for the non-compliant party will not start to run until the date on which that party begins to comply with the competitive restrictions (whether or not due to the entry of a court order enforcing this provision). The running of the two (2) year restrictive period for a restricted person will be suspended whenever that restricted person breaches this Subsection and will resume when that person resumes compliance. These restrictions also apply after transfers, as provided in Subsection 12.C.(12) above. You and your owners expressly acknowledge that you possess skills and abilities of a general nature and have other opportunities for exploiting these skills. Therefore, our enforcing the covenants made in this Subsection will not deprive you or your owners of your personal goodwill or ability to earn a living.

To give effect to the obligations above, you and your owners agree that neither you nor they will seek to violate this Subsection 15.D. through any other person with whom you or they are acting in concert or participating in connection with the prohibited activities. We may enforce this Subsection 15.D. by taking action against you, your owners, and all other persons with whom you or your owners are acting in concert or participating in connection with the prohibited activities.

**E. OUR RIGHT TO PURCHASE SHOP'S ASSETS.**

During the Term, if there is a proposed transfer of the Shop and this Agreement, substantially all of the Shop's assets, an ownership interest in you, or a controlling ownership interest in an Entity with an ownership interest in you, Section 12 will apply to the proposed transfer. However, under the circumstances listed below, we have the right to acquire the Shop's assets upon the termination or expiration of this Agreement. This Subsection 15.E. survives the termination or expiration of this Agreement.



(1) **Exercise of Option.**

Upon

- (a) our termination of this Agreement according to its terms and conditions,
- (b) your termination of this Agreement without cause, or
- (c) expiration of this Agreement (if we offer, but you elect not to acquire, a successor franchise, or if we do not offer you a successor franchise because you failed to satisfy the conditions for a successor franchise set forth in Section 13),

we have the option, exercisable by giving you written notice (a “**Purchase Notice**”) before or within thirty (30) days after the date of termination or expiration, (i) to purchase the Shop’s assets and (ii) to exercise the rights under subparagraph (2) below. We have the unrestricted right to assign this purchase option and our rights under subparagraph (2) to another party.

We (and our assignee) are entitled to all customary warranties and representations in our asset purchase, including, without limitation, representations and warranties as to authorization; non-contravention of laws or contract; ownership and condition of and title to assets; liens and encumbrances on assets; validity of contracts and agreements; liabilities affecting the assets, contingent or otherwise; and indemnities for all actions, events, and conditions that existed or occurred in connection with the Shop before the closing of our purchase.

(2) **Right to Occupy Site.**

If you or your affiliate leases the Site, you or your affiliate agrees (at our option) within sixty (60) days after we deliver to you a Purchase Notice:

- (a) to assign the Lease for the Site to us; or
- (b) to sublease the Lease for the Site to us for the remainder of the Lease term on the same terms (including renewal options) as the Lease.

(3) **Purchase Price.**

The purchase price for the Shop’s assets will be their fair market value, although fair market value will not include any value for:

- (a) the Franchise or any rights granted by this Agreement;
- (b) goodwill attributable to our Marks, brand image, and other Intellectual Property; or
- (c) participation in the network of Potbelly Shops.

We may exclude from the assets purchased any Operating Assets or other items that are not reasonably necessary (in function or quality) to the Shop's operation or that we have not approved as meeting System Standards; the purchase price will reflect these exclusions. We will identify the exclusions in the Purchase Notice. We and you must work together in good faith to agree upon the assets' fair market value within fifteen (15) days after we deliver a Purchase Notice. If we and you cannot agree on fair market value within this fifteen (15) day period, fair market value will be determined by the appraisal process described in subparagraph (4) below.

(4) **Appraisal.**

If we and you cannot agree on the assets' fair market value, fair market value will be determined by one (1) independent accredited appraiser upon whom we and you agree, who, in conducting the appraisal, will be bound by the criteria specified in subparagraph (3). You and we agree to select the appraiser within fifteen (15) days after we deliver our Purchase Notice (if we and you have not agreed on fair market value before then). You and we will share equally the appraiser's fees and expenses. The appraiser must complete his or her appraisal within twenty-one (21) days after his or her appointment. The purchase price will be the appraised value. If we and you cannot agree on the appraiser, he or she will be chosen by the American Arbitration Association.

(5) **Closing.**

We (or our assignee) will pay the purchase price at the closing, which will take place not later than forty-five (45) days after the purchase price is determined, although we (or our assignee) may decide after the purchase price is determined not to purchase the Shop's assets. We may set off against the purchase price, and reduce the purchase price by, any and all amounts you and your owners owe us and our affiliates. At the closing, you must deliver instruments transferring to us (or our assignee):

- (a) good and merchantable title to the assets purchased, free and clear of all liens and encumbrances (other than liens and security interests acceptable to us), with all sales and other transfer taxes paid by you;
- (b) all of the Shop's licenses and permits that may be assigned or transferred; and
- (c) the Lease assignment or sublease, as applicable.

If you cannot deliver clear title to all of the purchased assets, or if there are other unresolved issues, we (or our assignee) and you will close the sale through an escrow. You and your owners agree to sign general releases, in a form satisfactory to us, of any and all claims against us and our owners, affiliates, officers, directors, employees, agents, successors, and assigns. If we exercise our rights under this Subsection 15.E., you and your owners agree that, for two (2) years beginning on the closing date, you and they will be bound by the non-competition covenant contained in Subsection 15.D. above.

F. **CONTINUING OBLIGATIONS.**

All of our and your (and your owners') obligations expressly surviving this Agreement's expiration or termination will continue in full force and effect after and notwithstanding its expiration or termination and until they are satisfied in full.

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

A. **INDEPENDENT CONTRACTORS.**

You and we understand and agree that this Agreement does not create a fiduciary relationship between you and us, that you and we are and will be independent contractors, and that nothing in this Agreement is intended to make either you or us a general or special agent, joint venturer, partner, or employee of the other for any purpose. Nor are we the employer or joint employer of the Shop's employees. You agree to identify yourself conspicuously in all dealings with customers, suppliers, public officials, Shop personnel, and others as the Shop's independent owner, operator, and manager under a franchise we have granted and to place notices of independent ownership on the forms, business cards, stationery, advertising and marketing, and other materials we periodically require. We and our affiliates will not exercise direct or indirect control over the working conditions of Shop personnel, except to the extent such indirect control is related to our legitimate interest in protecting the quality of the Products or the Potbelly brand. We and our affiliates do not share or codetermine the terms and conditions of employment of Shop employees or affect matters relating to the employment relationship between you and Shop employees, such as employee selection, promotion, termination, hours worked, rates of pay, other benefits, work assigned, discipline, adjustment of grievances and complaints, and working conditions. To that end, you agree to identify yourself conspicuously in all dealings with Shop personnel as the employer of such personnel and that we, as the franchisor of Potbelly Shops, and our affiliates are not their employer and do not engage in any employer-type activities for which only franchisees are responsible, such as employee selection, promotion, termination, hours worked, rates of pay, other benefits, work assigned, discipline, adjustment of grievances and complaints, and working conditions. You also must obtain an acknowledgment (in the form we specify or approve) from all Shop employees that we and our affiliates are not their employer.

None of your employees or other personnel will be considered to be our employees or personnel. Neither you nor any of your employees or personnel whose compensation you pay may in any way, directly or indirectly, expressly or by implication, be construed to be our employee or personnel for any purpose, most particularly with respect to any mandated or other insurance coverage, tax or contributions, or requirements pertaining to withholdings, levied or fixed by any city, state, provincial, or federal governmental agency. We will not have the power to hire or fire your employees or personnel. You expressly agree, and will never contend otherwise, that our authority under this Agreement to certify certain of your employees or personnel for qualification to perform certain functions for the Shop does not directly or indirectly vest in us the power to hire, fire or control any such employee. You acknowledge and agree, and will never contend otherwise, that you alone will exercise day-to-day control over all operations, activities and elements of the Shop and that under no circumstance shall we do so or be deemed to do so. You further acknowledge and agree, and will never contend otherwise, that the various requirements,

restrictions, prohibitions, specifications and procedures of the Branded System which we are required to comply with under this Agreement, whether set forth in the Operations Manual or otherwise, do not directly or indirectly constitute, suggest, infer or imply that we control any aspect or element of the day-to-day operations of the Shop, which you alone control, but only constitute standards you must adhere to when exercising your control of the day-to-day operations of the Shop.

**B. NO LIABILITY FOR ACTS OF OTHER PARTY.**

We and you may not make any express or implied agreements, warranties, guarantees, or representations, or incur any debt, in the name or on behalf of the other or represent that our relationship with you is other than franchisor and franchisee. We will not be responsible for any damages to any person or property directly or indirectly arising out of the Shop's operation or the business you conduct under this Agreement.

**C. TAXES.**

We will have no liability for any sales, use, service, occupation, excise, gross receipts, income, property, employment, or other taxes, whether levied upon you or the Shop, due to the business you conduct (except for our own income taxes). You must pay these taxes and reimburse us for any taxes we must pay to any taxing authority on account of either your operation or payments you make to us (except for our own income taxes). Without limitation of the foregoing, you agree to pay us an amount equal to all federal, state, local, and foreign (i) sales, use, excise, privilege, occupation, or any other transactional taxes, and (ii) any other taxes or similar exactions no matter how designated (excluding only taxes imposed on us for the privilege of conducting business and calculated with respect to our net income, capital, net worth, gross receipts, or some other basis or combination thereof, but not excluding any gross receipts taxes imposed on us for your payments intended to reimburse us for expenditures incurred for your benefit and on your behalf) that are imposed on us or required to be withheld by you in connection with the receipt or accrual of service fees, royalties, or any other amounts payable by you to us under this Agreement. Any additional required payment pursuant to the preceding sentence must be made in an amount necessary to provide us with after-tax receipts (taking into account any additional payments required under this Agreement) equal to the same amounts we would have received under the provisions of this Agreement had such additional tax liability or withholding not been imposed or required.

**D. INDEMNIFICATION.**

You agree to indemnify and hold harmless us, our affiliates, and our and their respective owners, directors, officers, employees, agents, successors, and assignees (the "Indemnified Parties") against, and to reimburse any one or more of the Indemnified Parties for, all Losses (defined below) incurred as a result of a claim threatened or asserted or inquiry made formally or informally, or a legal action, investigation, or other proceeding brought, by a third party and directly or indirectly arising out of the Shop's operation; the business you conduct under this Agreement; your noncompliance or alleged noncompliance with any law, ordinance, rule, or regulation, including any allegation that we or another Indemnified Party is a joint employer or

otherwise responsible for your acts or omissions relating to the Shop's employees; or your breach of this Agreement. You also agree to defend the Indemnified Parties (unless an Indemnified Party chooses to defend at your expense as provided in the following paragraph) against any and all such claims, inquiries, actions, investigations, and proceedings, including those alleging the Indemnified Party's negligence, gross negligence, willful misconduct, and willful wrongful omissions. However, you have no obligation to indemnify or hold harmless an Indemnified Party for any Losses to the extent they are determined in a final, unappealable ruling issued by a court or arbitrator with competent jurisdiction to have been caused solely and directly by the Indemnified Party's negligence, willful misconduct, or willful wrongful omissions, so long as the claim to which those Losses relate is not asserted on the basis of theories of vicarious liability (including agency, apparent agency, or joint employment) or our failure to compel you to comply with this Agreement.

You agree to give us and the Indemnified Parties written notice of any action, suit, proceeding, claim, demand, inquiry or investigation that could be the basis for a claim for indemnification by any of the Indemnified Parties within three (3) days of your actual or constructive knowledge of it. The Indemnified Parties shall have the right, in their sole discretion to: (i) retain counsel of their own choosing to represent them with respect to any claim; and (ii) control the response thereto and the defense thereof, including the right to enter into settlements or take any other remedial, corrective, or other actions. You agree to give your full cooperation to the Indemnified Parties in assisting the Indemnified Parties with the defense of any such claim, and to reimburse the Indemnified Parties for all of their costs and expenses in defending any such claim, including court costs and reasonable attorneys' fees, within ten (10) days of the date of each invoice delivered by the Indemnified Parties to you enumerating such costs, expenses and attorneys' fees.

For purposes of this indemnification and hold harmless obligation, "Losses" include all obligations, liabilities, damages (actual, consequential, or otherwise), and reasonable defense costs that any Indemnified Party incurs. Defense costs include, without limitation, accountants', arbitrators', attorneys', and expert witness fees, costs of investigation and proof of facts, court costs, travel and living expenses, and other expenses of litigation, arbitration, or alternative dispute resolution, regardless of whether litigation, arbitration, or alternative dispute resolution is commenced. Each Indemnified Party, with its own counsel and at your expense, may defend and otherwise respond to and address any claim threatened or asserted or inquiry made, or action, investigation, or proceeding brought (instead of having you defend it with your counsel, as provided in the preceding paragraph), and, in cooperation with you, agree to settlements or take any other remedial, corrective, or other actions, for all of which defense and response costs and other Losses you are solely responsible (except as provided in the last sentence of the preceding paragraph).

Your obligations in this Section will continue in full force and effect subsequent to and notwithstanding this Agreement's expiration or termination. An Indemnified Party need not seek recovery from any insurer or other third party, or otherwise mitigate its or their Losses, in order to maintain and recover from third parties fully a claim against you under this Section. You agree that a failure to pursue a recovery or mitigate a Loss will not reduce or alter the amounts that an

Indemnified Party may recover from you under this Section. Your or any of the other Indemnified Parties' undertaking of defense and/or settlement will in no way diminish your obligation to indemnify us and the other Indemnified Parties and to hold us and any of the Indemnified Parties harmless.

17. **ENFORCEMENT.**

A. **SEVERABILITY AND SUBSTITUTION OF VALID PROVISIONS.**

Except as expressly provided to the contrary in this Agreement, each section, paragraph, term, and provision of this Agreement is severable, and if, for any reason, any part is held to be invalid or contrary to or in conflict with any applicable present or future law or regulation in a final, unappealable ruling issued by any court, agency, or tribunal with competent jurisdiction, that ruling will not impair the operation of, or otherwise affect, any other portions of this Agreement, which will continue to have full force and effect and bind the parties. If any covenant restricting competitive activity is deemed unenforceable by virtue of its scope in terms of area, business activity prohibited and/or length of time, but would be enforceable if modified, you and we agree that the covenant may be “blue penciled” or reformed and then enforced to the fullest extent permissible under the laws and public policies applied in the jurisdiction whose law determines the covenant’s validity. If any applicable and binding law or rule of any jurisdiction requires more notice than this Agreement requires of this Agreement’s termination or of our refusal to grant a successor franchise, or some other action this Agreement does not require, or if, under any applicable and binding law or rule of any jurisdiction, any provision of this Agreement or any System Standard is invalid, unenforceable, or unlawful, the notice and/or other action required by the law or rule will be substituted for the comparable provisions of this Agreement, and we may modify the invalid or unenforceable provision or System Standard to the extent required to be valid and enforceable or delete the unlawful provision entirely. You agree to be bound by any promise or covenant imposing the maximum duty the law permits that is subsumed within any provision of this Agreement, as though it were separately articulated in and made a part of this Agreement.

B. **WAIVER OF OBLIGATIONS.**

We and you may in writing unilaterally waive or reduce any contractual obligation of or restriction upon the other, effective upon delivery of written notice to the other or another effective date stated in the waiver notice. Any waiver granted is without prejudice to any other rights we or you have, is subject to continuing review, and may be revoked at any time and for any reason effective upon delivery of ten (10) days’ prior written notice.

We and you will not waive or impair any right, power, or option this Agreement reserves (including, without limitation, our right to demand strict compliance with every term, condition, and covenant or to declare any breach to be a default and to terminate this Agreement before the Term expires) because of any custom or practice varying from this Agreement’s terms; our or your failure, refusal, or neglect to exercise any right under this Agreement or to insist upon the other’s compliance with this Agreement, including, without limitation, any System Standard; our waiver of or failure to exercise any right, power, or option, whether of the same, similar, or different nature, with other Potbelly Shops; the existence of franchise agreements for other Potbelly Shops

containing provisions differing from those contained in this Agreement; or our acceptance of any payments due from you after any breach of this Agreement. No special or restrictive legend or endorsement on any check or similar item given to us will be a waiver, compromise, settlement, or accord and satisfaction. We are authorized to remove any legend or endorsement, which then will have no effect.

Neither we nor you will be liable for loss or damage or be in breach of this Agreement if our or your failure to perform obligations results from: (1) compliance with the orders, requests, regulations, or recommendations of any federal, state, or municipal government; (2) acts of God; (3) fires, strikes, embargoes, war, acts of terrorism or similar events, or riot; or (4) any other similar event or cause. Any delay resulting from these causes will extend performance accordingly or excuse performance, in whole or in part, as may be reasonable, except that these causes will not excuse payment of amounts owed at the time of the occurrence or payment of Royalties, Brand Fund contributions, and other amounts due afterward.

**C. COSTS AND ATTORNEYS' FEES.**

If we incur costs and expenses to enforce our rights or your obligations under this Agreement because you have failed to pay when due amounts owed to us, to submit when due any reports, information, or supporting records, or otherwise to comply with this Agreement, you agree to reimburse us for all costs and expenses we incur, including, without limitation, reasonable accounting, attorneys', arbitrators', and related fees. Your obligation to reimburse us arises whether or not we begin a formal legal proceeding against you to enforce this Agreement. If we do begin a formal legal proceeding against you to enforce this Agreement, the reimbursement obligation applies to all costs and expenses we incur preparing for, commencing, and prosecuting the legal proceeding and until the proceeding has come to a complete end (including appeals and settlements).

**D. YOU MAY NOT WITHHOLD PAYMENTS DUE TO US.**

You may not withhold payment of any amounts owed to us or our affiliates due to our alleged nonperformance of our obligations under this Agreement or for any other reason. You specifically waive any right you have at law or in equity to offset any monies you owe us or our affiliates or to fail or refuse to perform any of your obligations under this Agreement. You agree to submit all claims, unless otherwise resolved by our and your mutual agreement, to arbitration as provided in Subsection 17.F. below.

**E. RIGHTS OF PARTIES ARE CUMULATIVE.**

Our and your rights under this Agreement are cumulative, and our or your exercise or enforcement of any right or remedy under this Agreement will not preclude the exercise or enforcement of any other right or remedy we or you are entitled by law to enforce.

F. **ARBITRATION.**

You and we agree that all controversies, disputes, or claims between us and our affiliates, and our and their respective owners, shareholders, officers, directors, partners, members, managers, agents and/or employees, and you (and/or your owners, guarantors, affiliates and/or employees) arising out of or related to:

- (1) this Agreement or any other agreement between you and us or you and our respective affiliates;
- (2) our relationship with you;
- (3) the scope and validity of this Agreement or any other agreement between you (or your owner) and us (or our affiliate), or any provision of any such agreements, and the validity and scope of the arbitration obligation under this Subsection, which the parties acknowledge is to be determined by arbitrators and not a court; or
- (4) any System Standard;

must be submitted for binding arbitration, on demand of either party, to the American Arbitration Association ("AAA"). The arbitration proceedings will be conducted by one (1) arbitrator if the amount of the claim is Seven Hundred Fifty Thousand Dollars (\$750,000) or less, or three (3) arbitrators if the amount of the claim is more than Seven Hundred Fifty Thousand Dollars (\$750,000). If there is one (1) arbitrator, the arbitrator shall be appointed by the AAA. If there are three (3) arbitrators, the claimant shall appoint one (1) arbitrator in its notice of arbitration and statement of claim; the respondent shall appoint one (1) arbitrator in its statement of defense, and the third arbitrator, who shall act as the Chairman, shall be appointed by the two (2) arbitrators appointed by the parties within thirty (30) days of the appointment of the second arbitrator. If any arbitrators are not appointed within these time periods, the AAA shall make the appointments. Except as this Subsection 17.F. otherwise provides, the arbitration proceedings will be conducted according to the then current commercial arbitration rules of the AAA. All proceedings, including the hearing, will be conducted at a suitable location that is within ten (10) miles of where we have our principal business address when the arbitration demand is filed. The arbitrators will have no authority to select a different hearing locale other than as described in the prior sentence. All matters relating to arbitration will be governed by the Federal Arbitration Act (9 U.S.C. §§ 1 *et seq.*). Except as expressly provided otherwise in the remainder of this Section 17, judgment upon the arbitrator(s)' award may be entered in any court of competent jurisdiction.

The arbitrators have the right to award or include in their award any relief which they deem proper, including, without limitation, money damages (with interest on unpaid amounts from the date due), specific performance, injunctive relief, and attorneys' fees and costs for us (consistent with our rights under Subsection 17.C. above), provided that the arbitrators may not declare any Mark generic or otherwise invalid or, except as expressly provided in Subsection 17.I. below, award any exemplary, punitive, treble, or other forms of multiple damages against the other (you and we hereby waive to the fullest extent the law permits, except as expressly provided in Section 17.I. below, any right to or claim for any exemplary, punitive, treble, or other forms of multiple damages against the other). All aspects of the arbitration, including statements made and



documents produced within the arbitration, will be confidential in nature and will not be admissible in any subsequent legal proceeding.

Except as expressly limited by Subsection 17.K. below, you and we will be bound by the provisions of any limitation on the time period in which claims must be brought under applicable law or this Agreement, whichever expires earlier. In any arbitration proceeding, each party must submit or file any claim constituting a compulsory counterclaim (as defined by the United States Federal Rules of Civil Procedure) within the same proceeding as the claim to which it relates. Any claim not submitted or filed as required is forever barred. The arbitrators may not consider any settlement discussions or offers made by either party. We reserve the right, but have no obligation, to advance your share of the costs (excluding attorneys' fees) of any arbitration proceeding in order for the proceeding to take place and by doing so are not deemed to have waived or relinquished our right to seek the recovery of these costs under Subsection 17.C. above.

You and we agree that pre-hearing discovery will be limited to requests for, and exchange of, documents relevant to the dispute and five (5) depositions per side, including expert and opinion witnesses. No deposition may exceed eight (8) hours without the parties' agreement or the arbitrators' order. Any party has the right to file pre-hearing motions to dispose of some or all of the claims.

You and we agree that arbitration will be conducted on an individual basis, and not on a joint, collective, or class-wide basis, and that an arbitration proceeding between us and our affiliates, and our and their respective owners, shareholders, members, partners, officers, directors, managers, agents and/or employees, and you (and/or your owners, guarantors, affiliates and/or employees) may not be consolidated or joined with any other arbitration proceeding between us and any other person. Despite the foregoing or anything to the contrary contained in this Subsection 17.F. or Subsection 17.A., if any court or arbitrator determines that all or any part of the preceding sentence is unenforceable with respect to a dispute that otherwise would be subject to arbitration under this Subsection, then all parties agree that this arbitration clause will not apply to that dispute and the dispute will be resolved in a judicial proceeding in a court permitted under Subsection 17.H. of this Agreement and in accordance with this Section 17 (excluding this Subsection F.).

Despite your and our agreement to arbitrate, each has the right to seek temporary restraining orders and temporary or preliminary injunctive relief from a court of competent jurisdiction, provided, however, that each must contemporaneously submit its dispute for arbitration on the merits as provided in this Subsection.

This Subsection's provisions are intended to benefit and bind certain third-party non-signatories (*i.e.*, our and our affiliates' respective owners, officers, directors, agents and/or employees and your owners, guarantors, affiliates and/or employees). This Subsection continues in full force and effect after and notwithstanding this Agreement's expiration or termination.

G. **GOVERNING LAW.**

**ALL MATTERS RELATING TO ARBITRATION WILL BE GOVERNED BY THE UNITED STATES FEDERAL ARBITRATION ACT (9 U.S.C. §§ 1 ET SEQ.). EXCEPT TO**

**THE EXTENT GOVERNED BY THE FEDERAL ARBITRATION ACT, THE UNITED STATES TRADEMARK ACT OF 1946 (LANHAM ACT, 15 U.S.C. SECTIONS 1051 ET SEQ.) OR OTHER FEDERAL LAW, THIS AGREEMENT, THE FRANCHISE, AND ALL CLAIMS ARISING FROM THE RELATIONSHIP BETWEEN US AND YOU WILL BE GOVERNED BY THE LAWS OF THE STATE OF ILLINOIS, WITHOUT REGARD TO ITS CONFLICT OF LAWS RULES, EXCEPT THAT ANY ILLINOIS LAW REGULATING THE OFFER AND SALE OF FRANCHISES OR GOVERNING THE RELATIONSHIP OF A FRANCHISOR AND ITS FRANCHISEE WILL NOT APPLY UNLESS ITS JURISDICTIONAL REQUIREMENTS ARE MET INDEPENDENTLY WITHOUT REFERENCE TO THIS SUBSECTION.**

**H. CONSENT TO JURISDICTION.**

**SUBJECT TO THE ARBITRATION OBLIGATIONS IN SUBSECTION F ABOVE AND THE PROVISIONS BELOW, YOU AND YOUR OWNERS AGREE THAT ALL ACTIONS ARISING UNDER THIS AGREEMENT OR OTHERWISE AS A RESULT OF THE RELATIONSHIP BETWEEN YOU AND US MUST BE COMMENCED IN THE STATE OR FEDERAL COURT OF GENERAL JURISDICTION LOCATED CLOSEST TO WHERE WE HAVE OUR PRINCIPAL BUSINESS ADDRESS AT THE TIME THE ACTION IS COMMENCED, AND YOU (AND EACH OWNER) IRREVOCABLY SUBMIT TO THE JURISDICTION OF THOSE COURTS AND WAIVE ANY OBJECTION YOU (OR THE OWNER) MIGHT HAVE TO EITHER THE JURISDICTION OF OR VENUE IN THOSE COURTS. NONETHELESS, YOU AND YOUR OWNERS AGREE THAT WE MAY ENFORCE THIS AGREEMENT AND ANY ARBITRATION ORDERS AND AWARDS IN THE COURTS OF THE STATE IN WHICH YOUR SHOP IS LOCATED.**

**I. WAIVER OF EXEMPLARY DAMAGES AND JURY TRIAL.**

**EXCEPT FOR OUR AND YOUR OBLIGATION TO INDEMNIFY THE OTHER FOR THIRD-PARTY CLAIMS UNDER SUBSECTION 16.D., WE AND YOU (AND YOUR OWNERS) WAIVE TO THE FULLEST EXTENT THE LAW PERMITS ANY RIGHT TO OR CLAIM FOR ANY EXEMPLARY, PUNITIVE, TREBLE, AND OTHER FORMS OF MULTIPLE DAMAGES AGAINST THE OTHER AND AGREE THAT, IN THE EVENT OF A DISPUTE BETWEEN US AND YOU, THE PARTY MAKING A CLAIM WILL BE LIMITED TO EQUITABLE RELIEF AND TO RECOVERY OF ANY ACTUAL DAMAGES IT SUSTAINS.**

**WE AND YOU IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM, WHETHER AT LAW OR IN EQUITY, BROUGHT BY EITHER OF US. WE AND YOU EACH ACKNOWLEDGE THAT WE AND YOU MAKE THIS WAIVER KNOWINGLY, VOLUNTARILY, WITHOUT DURESS, AND ONLY AFTER CONSIDERATION OF THIS WAIVER'S RAMIFICATIONS.**

J. **BINDING EFFECT.**

This Agreement is binding upon us and you and our and your respective executors, administrators, heirs, beneficiaries, permitted assigns, and successors in interest. Subject to our right to modify the Operations Manual and System Standards, this Agreement may not be modified except by a written agreement signed by both our and your duly-authorized officers that is specifically identified as an amendment to this Agreement.

K. **LIMITATIONS OF CLAIMS.**

Except for the parties' indemnification obligations under Subsection 16.D., claims arising from your unauthorized use of our and our affiliate's intellectual property, and claims arising from your non-payment or underpayment of amounts you owe us, any and all claims arising out of or relating to this Agreement or our relationship with you will be barred unless a legal proceeding (in the required or permitted forum) is commenced within two (2) years from the date on which the violation, act, or conduct giving rise to the claim occurs, regardless of when the party asserting the claim knew or should have known of the facts giving rise to the claim.

L. **LIMITED LIABILITY FOR OUR RELATED PARTIES.**

You agree that no past, present or future director, officer, employee, incorporator, member, partner, stockholder, subsidiary, affiliate, owner, entity under common control, ownership or management, vendor, service provider, agent, attorney or representative of ours will have any liability for (i) any of our obligations or liabilities relating to or arising from this Agreement; (ii) any claim against us based on, in respect of, or by reason of, the relationship between you and us, or (iii) any claim against us based on any alleged unlawful act or omission of ours.

M. **COVENANT OF GOOD FAITH.**

If applicable law implies a covenant of good faith and fair dealing in this Agreement, the parties hereto agree that the covenant will not imply any rights or obligations that are inconsistent with a fair construction of the terms of this Agreement. Additionally, if applicable law will imply the covenant, you agree that: (i) this Agreement (and the relationship of the parties hereto that is inherent in this Agreement) grants us the judgment to make decisions, take actions and/or refrain from taking actions not inconsistent with our explicit rights and obligations under this Agreement that may favorably or adversely affect your interests; (ii) any judgment we exercise will be based on our assessment of our own interests and balancing those interests against the interests of our franchise owners generally, and specifically without considering your individual interests or the individual interests of any other particular franchise owner; (iii) we will have no liability to you for the exercise of our judgment in this manner, so long as the judgment is not exercised in bad faith; and (iv) in the absence of bad faith, no trier of fact in any arbitration or litigation will substitute its judgment for our judgment so exercised.

N. **CONSTRUCTION.**

The preambles and exhibits are a part of this Agreement which, together with System Standards and other obligations contained in the Operations Manual (which we may periodically modify, as provided in this Agreement) or otherwise communicated to you, constitutes our and your entire agreement, and there are no other oral or written understandings or agreements between us and you, and no oral or written representations by us, relating to the subject matter of this Agreement, the franchise relationship, or the Shop (any understandings or agreements reached by you and us, or any representations made by us, before this Agreement are superseded by this Agreement). You may not rely on any alleged oral or written understandings, agreements, or representations not contained in this Agreement. However, nothing in this Agreement or any related agreement is intended to disclaim our representations in our Franchise Disclosure Document. We may rely on representations you made in your franchise application materials and any representations document or similar questionnaire you and/or your owners signed before signing this Agreement to confirm and acknowledge your understanding of the risks of entering into this Agreement and the absence of any improper or misleading statements made by us.

Any policies we periodically adopt and implement to guide us in our decision-making are subject to change, are not a part of this Agreement, and are not binding on us. Except as expressly provided in this Agreement, nothing in this Agreement is intended or deemed to confer any rights or remedies upon any person or legal entity not a party to this Agreement. Except where this Agreement expressly obligates us reasonably to approve or not unreasonably to withhold our approval of any of your actions or requests, we have the absolute right to refuse any request you make or to withhold our approval of any of your proposed, initiated, or completed actions requiring our approval. The headings of the sections and paragraphs are for convenience only and do not define, limit, or construe the contents of these sections or paragraphs.

References in this Agreement to “we,” “us,” and “our,” with respect to all of our rights and all of your obligations to us under this Agreement, include any of our affiliates with whom you deal. The term “affiliate” means any person or entity directly or indirectly owned or controlled by, under common control with, or owning or controlling you or us. For purposes of determining affiliation, “control” means the power to direct or cause the direction of management and policies. If two or more Entities at any time are the owners of the Franchise and the Shop, their obligations and liabilities to us will be joint and several. References to “owner” mean any person holding a direct or indirect ownership interest (whether of record, beneficial, or otherwise) or voting rights in you or an Entity with an ownership interest in you (or a transferee of this Agreement and the Shop or an ownership interest in you or an Entity with an ownership interest in you), including, without limitation, any person with a direct or indirect interest in you (or a transferee), this Agreement, the Franchise and/or the Shop and any person who has any other legal or equitable interest, or the power to vest in himself or herself any legal or equitable interest, in their revenue, profits, rights, or assets.

References to a “controlling ownership interest” in you or one of your owners (if an Entity) mean the percent of the voting shares or other voting rights resulting from dividing one hundred percent (100%) of the ownership interests by the number of owners. In the case of a proposed transfer of an ownership interest in you or one of your owners, whether a “controlling ownership

interest” is involved must be determined both immediately before and immediately after the proposed transfer to see if a “controlling ownership interest” will be transferred (because of the number of owners before the proposed transfer) or will be deemed to have been transferred (because of the number of owners after the proposed transfer). “Person” means any natural person, corporation, limited liability company, general or limited partnership, unincorporated association, cooperative, or other legal or functional entity. Unless otherwise specified, all references to a number of days means calendar days and not business days. The term “Shop” includes all the assets of the Potbelly Shop you operate under this Agreement, including its revenue and the Lease. The words “include” and “including” are meant to be illustrative and not exhaustive and are deemed to be read in all cases as “including, without limitation” and/or “including but not limited to.” This Agreement may be signed in multiple copies, each of which will be deemed an original.

**O. MULTIPLE FORMS OF AGREEMENT.**

You acknowledge and agree that there may be more than one form of franchise agreement in effect between us and our various Potbelly Shop franchise owners; those other agreements may contain provisions that may be materially different from the provisions contained in this Agreement; and you are not entitled to rely on any provision of any other agreement with other Potbelly Shop franchise owners whether to establish course of dealing, waiver, or estoppel, or for any other purpose.

**18. NOTICES AND PAYMENTS.**

All written notices, reports, and payments permitted or required to be delivered by this Agreement or the Operations Manual will be deemed delivered:

- (a) at the time delivered by hand;
- (b) in the case of the Royalty and other amounts due, at the time we actually receive payment via the EFTA;
- (c) one (1) business day after transmission by facsimile (if the sender has confirmation of successful transmission) or electronic mail;
- (d) one (1) business day after being placed in the hands of a nationally recognized commercial courier service for next business day delivery; or
- (e) three (3) business days after placement in the United States Mail by Registered or Certified Mail, Return Receipt Requested, postage prepaid.

Any notice to us must be sent to the address specified on the first page of this Agreement, although we may change this address for notice by giving you fifteen (15) days’ prior notice by any of the means specified in subparagraphs (a) through (e) above. Any notice we send you may be sent to the one (1) person identified on Exhibit A at the email or postal address specified on Exhibit A. You may change the person and/or address for notice only by giving us fifteen (15) days’ prior notice by any of the means specified in subparagraphs (a) through (e) above.

Any required report we do not actually receive during regular business hours on or before the date due (or postmarked by postal authorities at least two (2) days before then for reports unrelated to payments due under this Agreement) will be deemed delinquent.

19. **COMPLIANCE WITH ANTI-TERRORISM LAWS AND OTHER LAWS.**

You and your owners agree to comply, and to assist us to the fullest extent possible in our efforts to comply, with all applicable legislation, laws, regulations, rules, ordinances, administrative orders, decrees and policies of any court, arbiter, government, governmental agency, department, or similar organization that are in effect from time to time pertaining to: (a) the various anti-terrorism, economic sanctions, and anti-money laundering and narco-trafficking laws, regulations, orders, decrees and guidelines of the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"), (b) the USA PATRIOT Act (Title III of Pub. L. 107-56, signed into law October 26, 2001), as amended, (c) the provisions of United States Executive Order 13224, (d) the U.S. Prevention of Corruption Act 1988, (e) the U. S. Foreign Corrupt Practices Act, 15 U.S.C. Section 78dd-2, (e) relevant multilateral measures such as the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the UN Convention Against Corruption, (f) bribery and anti-corruption laws, (g) the laws against money laundering, and (h) the laws against facilitating or supporting persons who conspire to commit these and other crimes against any person or government. You immediately shall notify us in writing if a potential violation of any of the foregoing legislation, laws, regulations, rules, ordinances, administrative orders, decrees and/or policies has occurred or is suspected to have occurred. You immediately shall provide us with copies of any communication to or from any such agency, government, or commission that relates to or affects this Agreement, the Shop, or the Marks. Any failure to comply with this Section by you or your owners, or any blocking of your or your owners' assets under any of such laws, legislation, regulations, orders, decrees and/or policies shall constitute good cause for immediate termination of this Agreement, as provided in Subsection 14.B (22) above.

20. **ELECTRONIC MAIL.**

You acknowledge and agree that exchanging information with us by e-mail is efficient and desirable for day-to-day communications and that we and you may utilize e-mail for such communications. You authorize the transmission of e-mail by us and our employees, vendors, and affiliates ("**Official Senders**") to you during the Term.

You further agree that: (a) Official Senders are authorized to send e-mails to those of your employees as you may occasionally authorize for the purpose of communicating with us; (b) you will cause your officers, directors, and employees to give their consent to Official Senders' transmission of e-mails to them; (c) you will require such persons not to opt out or otherwise ask to no longer receive e-mails from Official Senders during the time that such person works for or is affiliated with you; and (d) you will not opt out or otherwise ask to no longer receive e-mails from Official Senders during the Term.

The consent given in this Section 20 shall not apply to the provision of notices by either party under this Agreement pursuant to Section 18 using e-mail unless the parties otherwise agree in a written document manually signed by both parties.

21. **ELECTRONIC SIGNATURES.**

The counterparts of this Agreement and all ancillary documents executed or delivered in connection with this Agreement may be executed and signed by electronic signature by any of the parties to this Agreement, and delivered by electronic or digital communications to any other party to this Agreement, and the receiving party may rely on the receipt of such document so executed and delivered by electronic or digital communications signed by electronic signature as if the original has been received. For the purposes of this Agreement, electronic signature means, without limitation, an electronic act or acknowledgement (e.g., clicking an “I Accept” or similar button), sound, symbol (digitized signature block), or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

**IN WITNESS WHEREOF**, the parties have signed and delivered this Agreement on the dates noted below, to be effective as of the Effective Date.

**POTBELLY FRANCHISING, LLC**, an  
Illinois limited liability company

**FRANCHISEE**

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

\_\_\_\_\_  
[Name of Franchisee]

Name: \_\_\_\_\_  
[Print Name]

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

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

Name: \_\_\_\_\_  
[Print Name]

**DATED:** \_\_\_\_\_

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

**DATED:** \_\_\_\_\_

**EXHIBIT A**

**TO THE FRANCHISE AGREEMENT  
BETWEEN POTBELLY FRANCHISING, LLC**

**AND \_\_\_\_\_  
DATED \_\_\_\_\_, 20**

**Effective Date: This Exhibit A is current and complete  
as of \_\_\_\_\_, 20**

**You and Your Owners**

1. **Formation and Principals**. You were incorporated or formed on \_\_, under the laws of the State of \_\_\_\_\_. You confirm that you have not conducted business under any name other than your corporate, limited liability company, or partnership name. The following is a list of your managing members, directors, and officers, as applicable, as of the effective date shown above:

<b><u>Name of Each Managing Member/Director/Officer</u></b>	<b><u>Position(s) Held</u></b>
_____	_____
_____	_____
_____	_____
_____	_____

2. **Owners**. The following list includes the full name of each person who is one of your owners (as defined in the Franchise Agreement), or an owner of one of your owners, and fully describes the nature of each owner's interest (attach additional pages if necessary).

	<b><u>Owner's Name</u></b>	<b><u>Percentage/Description of Interest</u></b>
(a)	_____	_____
(b)	_____	_____
(c)	_____	_____
(d)	_____	_____



3. **Name and Address of Person to Receive Notices for Franchisee.**

(a) Name: \_\_\_\_\_

(b) Postal Address: \_\_\_\_\_  
\_\_\_\_\_

(c) E-mail Address: \_\_\_\_\_

4. **Identification of Managing Owner.** Your Managing Owner as of the Effective Date is \_\_\_\_\_ (must be one of the individuals listed in paragraph 2 above). You may not change the Managing Owner without our prior written approval.

5. **Identification of Head of Operations.** Your Head of Operations as of the Effective Date is \_\_\_\_\_.

**POTBELLY FRANCHISING, LLC,**  
an Illinois limited liability company

**FRANCHISEE**

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

\_\_\_\_\_  
[Name of Franchisee]

Name: \_\_\_\_\_  
[Print Name]

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

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

Name: \_\_\_\_\_  
[Print Name]

**DATED:** \_\_\_\_\_

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

**DATED:** \_\_\_\_\_

**EXHIBIT B**

**TO THE FRANCHISE AGREEMENT  
BETWEEN POTBELLY FRANCHISING, LLC**

**AND \_\_\_\_\_ DATED \_\_\_\_\_, 20\_\_**

**CONDITIONAL ASSIGNMENT OF TELEPHONE NUMBER(S)**

This Assignment relates to *[name of Franchisee]*: \_\_\_\_\_

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

Telephone and Facsimile Number(s) *[all numbers to be inserted after Franchisee obtains phone service]*: \_\_\_\_\_

For valuable consideration, the Franchisee identified above (“**Franchisee**”) assigns and transfers to POTBELLY FRANCHISING, LLC, an Illinois limited liability company (“**Company**”), all of Franchisee’s rights and interests in each and all of the telephone numbers that Franchisee has obtained and/or will obtain for its Potbelly Shop (**the “Numbers”**). Franchisee authorizes Company to file this Assignment with the telephone company that issued the Numbers to establish Company’s claim to, and right to designate the user of, the Numbers. Franchisee acknowledges that Company may insert the Numbers into the space above as soon as they have been identified and that Franchisee need not re-sign or initial this Assignment after the Numbers have been inserted in order for this Assignment to be in full force and effect. By signing below, Franchisee intends that this Assignment be fully enforceable immediately according to its terms. Franchisee irrevocably appoints Company as Franchisee’s agent and attorney-in-fact to (i) sign and deliver any Transfer of Service Agreement or comparable document the telephone company requires to transfer the rights in the Numbers from Franchisee to Company or its designee, and (ii) cancel and revoke any call-forwarding or similar instructions Franchisee has issued to the telephone company with respect to any of the Numbers, with full power to sign Franchisee’s name and otherwise to act in Franchisee’s name, place and stead. Franchisee agrees to reimburse Company for the full amount of any local service and long distance charges the telephone company requires Company to pay to obtain the Numbers. Franchisee represents and warrants to Company that Franchisee will obtain the Numbers in its own name and will be the person of record the telephone company will recognize as registered user or “owner” of the Numbers until Company exercises its right under this Assignment.

\_\_\_\_\_  
FRANCHISEE NAME

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

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

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

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

Exhibit B-1

## GUARANTY AND ASSUMPTION OF OBLIGATIONS

**THIS GUARANTY AND ASSUMPTION OF OBLIGATIONS** is given this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_.

In consideration of, and as an inducement to, the execution of that certain Franchise Agreement (**the “Agreement”**) on this date by POTBELLY FRANCHISING, LLC (**“us,” “we,” or “our”**), each of the undersigned personally and unconditionally (a) guarantees to us and our successors and assigns, for the term of the Agreement (including extensions) and afterward as provided in the Agreement, that \_\_\_\_\_ (**“Franchisee”**) will punctually pay and perform each and every undertaking, agreement, and covenant set forth in the Agreement (including any amendments or modifications of the Agreement) and (b) agrees to be personally bound by, and personally liable for the breach of, each and every provision in the Agreement (including any amendments or modifications of the Agreement), including (i) monetary obligations, (ii) obligations to take or refrain from taking specific actions and to engage or refrain from engaging in specific activities, including, but not limited to, the non-competition, confidentiality, and transfer requirements, and (iii) the enforcement and other provisions in Sections 17, 18, and 19 of the Agreement, including the arbitration provision.

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

Each of the undersigned waives: (i) all rights to payments and claims for reimbursement or subrogation that any of the undersigned may have against Franchisee arising as a result of the undersigned’s execution of and performance under this Guaranty, for the express purpose that none of the undersigned will be deemed a “creditor” of Franchisee under any applicable bankruptcy law with respect to Franchisee’s obligations to us; and (ii) acceptance and notice of acceptance by us of his or her undertakings under this Guaranty, all presentments, demands, and notices of demand for payment of any indebtedness or non-performance of any obligations hereby guaranteed, protest, notices of dishonor, notice of default to any party with respect to the indebtedness or nonperformance of any obligations hereby guaranteed, and any other notices and legal or equitable defenses to which he or she may be entitled.

We have no present or future duty to the undersigned under this Guaranty, and each of the undersigned waives any right to claim or assert any such duty or obligation and to discover from us or require us to disclose to the undersigned any financial or other information concerning Franchisee, any other guarantor, or any collateral securing any of Franchisee's obligations to us.

If we are required to enforce this Guaranty in a judicial or arbitration proceeding, and prevail in such proceeding, we are entitled to reimbursement of our costs and expenses, including, but not limited to, reasonable accountants', attorneys', attorneys' assistants', arbitrators', and expert witness fees, costs of investigation and proof of facts, court costs, other litigation expenses, and travel and living expenses, whether incurred prior to, in preparation for, or in contemplation of the filing of any such proceeding. If we are required to engage legal counsel in connection with any failure by the undersigned to comply with this Guaranty, the undersigned must reimburse us for any of the above-listed costs and expenses we incur even if we do not commence a judicial or arbitration proceeding.

**IN WITNESS WHEREOF**, each of the undersigned has affixed his or her signature on the same day and year as the Agreement was signed.

<b>GUARANTOR(S)</b>	<b>PERCENTAGE OF OWNERSHIP IN FRANCHISEE</b>
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %

**EXHIBIT C**

**AREA DEVELOPMENT AGREEMENT**

**POTBELLY FRANCHISING, LLC**

**POTBELLY SANDWICH SHOP  
AREA DEVELOPMENT AGREEMENT**

---

DEVELOPER

---

AREA

**POTBELLY FRANCHISING, LLC**  
**POTBELLY SANDWICH SHOP**  
**AREA DEVELOPMENT AGREEMENT**

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EXHIBIT A – TERM AND DEVELOPMENT AREA

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## POTBELLY FRANCHISING, LLC

### POTBELLY SANDWICH SHOP AREA DEVELOPMENT AGREEMENT

This Potbelly Sandwich Shop Area Development Agreement (this “Agreement”) is made and entered into by and between Potbelly Franchising, LLC, an Illinois limited liability company with its principal business address at 111 North Canal Street, Suite 325, Chicago, Illinois 60606 (“Franchisor,” “we” or “us”), and \_\_\_\_\_, a(n) \_\_\_\_\_ with its principal address at \_\_\_\_\_ (“Developer” or “you”), as of the date signed by us and set forth opposite our signature on this Agreement (the “Effective Date”).

#### 1. INTRODUCTION.

**1.01 Potbelly Sandwich Shops.** We and our Affiliates own, operate and franchise Potbelly Shops (defined below in Section 1.04), which prepare and sell sandwiches, soups, salads, shakes, desserts, and other food and beverage products (collectively, the “Products”). We have developed a franchise opportunity for Potbelly Shops that sell the Products, use the Marks, and use our and our Affiliates’ Branded System, all of which we and our Affiliates may improve, further develop, and otherwise periodically modify.

**1.02 Your Acknowledgments.** You have read this Agreement and our Franchise Disclosure Document. You understand the terms of this Agreement and accept them as being reasonably necessary to maintain the uniformity of our high quality standards at all Potbelly Shops in order to protect and preserve the goodwill of the Marks and the integrity of the Branded System. You have conducted an independent investigation of the business contemplated by this Agreement and recognize that the restaurant industry is highly competitive, with constantly changing market conditions. You recognize that the nature of Potbelly Shops may change over time, that an investment in Potbelly Shops involves business risks and that the success of the venture is largely dependent on your own business abilities, efforts and financial resources. You have not received or relied on: (a) any guaranty or assurance, express or implied, as to the revenues, profits or success of the business venture contemplated by this Agreement; or (b) any promises that any parent company or Affiliate will back us up financially or otherwise guarantee our performance.

**1.03 Your Representations.** You and your Owners, if applicable, represent and warrant to us that: (a) neither you nor any of your Owners have made any untrue statement of any material fact or have omitted to state any material fact in obtaining the rights granted hereunder; (b) neither you nor any of your Owners have any direct or indirect legal or beneficial interest in any business that may be deemed a Competitive Business, except as otherwise fully and accurately disclosed in your franchise application submitted to us; and (c) the execution and performance of this Agreement will not violate any other agreement to which you or any of your Owners may be bound. You recognize that we have approved your franchise application in reliance on all of the statements you and your Owners have made in connection therewith.

**1.04 Certain Definitions.** The terms listed below have the meanings which follow them and include the plural as well as the singular. Other terms are defined elsewhere in this Agreement in the context in which they arise.

“Affiliate” - Any person or entity that directly or indirectly owns or controls the referenced party, that is directly or indirectly owned or controlled by the referenced party, or that is under common control with the referenced party. The term “control” means the possession, directly or indirectly, of the power to

direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise.

“Competitive Business” - Any (i) any fast-casual restaurant that derives more than 20% of its revenue from the sale of (a) baked, oven-style, conveyor oven-style, or un-baked “sub-style” sandwiches, submarine, hoagie, Italian beef, or hero-type sandwiches, pita sandwiches, flatbread sandwiches, or cheese-steak sandwiches, or (b) smoothies, milkshakes, ice cream, and other frozen confection items, or (ii) any business granting franchises or licenses to others to operate the type of business specified in clause (i) (other than a Potbelly Shop operated under a franchise agreement with us). Competitive Business for purposes of this Agreement shall include, but not be limited to, Blimpie, Corner Bakery Café, Firehouse Subs, Jersey Mike’s, Jimmy John’s, McAlister’s Deli, Panera Bread, Quizno’s, Schlotzky’s, Subway, Tropical Smoothie Café, and Which Wich.

“Confidential Information” - Our proprietary and confidential information relating to the development and operation of Potbelly Shops, including: (1) site selection criteria and layouts, designs and other plans and specifications for Potbelly Shops; (2) ingredients, recipes and related information concerning any food items we authorize; (3) training and operations materials and manuals; (4) methods, formats, specifications, standards, systems, procedures, food preparation techniques, sales and marketing techniques, knowledge, and experience used in developing and operating Potbelly Shops; (5) marketing, promotional and advertising research and programs for Potbelly Shops; (6) identity of suppliers, and knowledge of specifications and pricing for authorized food products, materials, supplies and equipment, we authorize; (7) any computer software or similar technology which is proprietary to us or the Branded System, including, without limitation, digital passwords and identifications and any source code of, and data, reports, and other printed materials generated by, the software or similar technology; (8) knowledge of operating results and financial performance of Potbelly Shops, other than Potbelly Shops you own; (9) graphic designs and related intellectual property; (10) customer solicitation, communication and retention programs, along with data and information used or generated in connection with those programs; (11) all data and other information generated by, or used in, the operation of your Potbelly Shops, including customer names, addresses, phone numbers, pricing and other information supplied by any customer (such as credit card information or personal information), and any other information contained at any time and from time to time in the computer hardware and/or operating software (including point-of-sale equipment and software) we specify for use at your Potbelly Shops or that visitors to your Potbelly Shops (including you and your personnel) provide to the Website (defined below) for the network of Potbelly Shops; (12) future business plans relating to Potbelly Shops and the Potbelly Sandwich Shop® franchise opportunity, including expansion and development plans; and (13) any other information that we reasonably designate as confidential or proprietary.

“Development Business” – The entity and business you conduct under this Agreement for development of Potbelly Shops, including all assets of the development business (if any) and all rights and obligations under this Agreement.

“Potbelly Shops” - Shops we or any of our Affiliates own, operate or franchise that use the Marks and Branded System.

“Franchise Disclosure Document” – The most recent version of franchise disclosure document for Potbelly Shops that we or our designee delivered to you, your Owners, and/or your authorized representative.

“Immediate Family” – Spouse, legally-recognized domestic partners, parents, siblings, and children, whether natural or adopted, including any particular member thereof as may be referenced individually.

“Marks” – All trademarks, service marks, trade dress, and other commercial symbols that we currently authorize, or may in the future authorize, to identify, promote, and operate Potbelly Shops and/or any services or products offered by Potbelly Shops.

“Owner” - Each person or entity that has a direct or indirect legal or beneficial ownership interest in you, if you are a business corporation, partnership, limited liability company or other legal entity.

“Branded System” - The distinctive business formats, methods, procedures, signs, designs, layouts, standards, and specifications, and the Marks, all of which we may improve, further develop, or otherwise modify at any time and from time to time.

“Website” - An interactive electronic document contained in a network of computers linked by communications software, including, without limitation, the internet and World Wide Web home pages.

## **2. DEVELOPMENT RIGHTS.**

**2.01 Term.** Unless sooner terminated in accordance with Section 8, the term of this Agreement (the “Term”) starts on the Effective Date and expires on the expiration date set forth in Exhibit A. You have no right to renew or extend your rights under this Agreement.

**2.02 Development Fee.** In consideration of our execution of this Agreement, you agree to pay us a development fee equal to the sum of \$40,000 for your first Potbelly Shop and \$20,000 times the aggregate number of additional franchised Potbelly Shops which you are required to establish and operate pursuant to this Agreement (the “Development Fee”). The Development Fee is payable in full when you sign this Agreement and will be fully earned when paid. You recognize that we have incurred administrative and other expenses in relation to this Agreement, and that our development opportunities have been lost or curtailed as a result of the territorial rights granted to you in this Agreement. Therefore, we will not refund the Development Fee in whole or in part, under any circumstance.

The Development Fee will be applied against the initial franchise fee that will be payable under the franchise agreements for each of your Potbelly Shops (each, an “Initial Franchise Fee”). Each Initial Franchise Fee will be reduced by the amount of the Development Fee you paid for that Potbelly Shop, that is, by \$40,000 for your first Potbelly Shop and by \$20,000 for your second and subsequent Potbelly Shops. The Initial Franchise Fee against which the Development Fee will be credited will be our then-current Initial Franchise Fee for each Potbelly Shop opened under this Agreement. You will pay the remaining balance (if any) of the Initial Franchise Fee for each Potbelly Shop to be opened pursuant to this Agreement on the date you sign the franchise agreement for the Potbelly Shop.

**2.03 Development Rights.** During the Term, and provided you and your Affiliates are in compliance with this Agreement and all other agreements with us or any of our Affiliates (including franchise agreements signed pursuant to this Agreement), then we will:

(a) grant to you, in accordance with Section 3, at least that cumulative number of franchises for Potbelly Shops set forth in Exhibit B, all of which are to be located within the geographical area described in Exhibit A (the “Development Area” or “Area”); and

(b) neither operate (directly or through an Affiliate), nor grant any third party the right to operate, any Potbelly Shop located within the Development Area, except for:

(1) Potbelly Shops you will develop pursuant to this Agreement for which you or your Affiliate will sign future franchise agreements for each such location;

(2) Potbelly Shops already open (or under commitment to open) as of the Effective Date;

(3) Potbelly Shops or other restaurants using any part or all of the Branded System and/or Marks at “Non-Traditional Venues” within the Development Area, such as hospitals or medical centers, airports, public or private schools, universities or college campuses, airport terminals, train or bus stations, convention centers, exhibition halls, amusement parks, fairgrounds, sports arenas, military bases, state or national parks, hotels, lodges, country clubs, social clubs, resorts, casinos, theaters, food trucks, or any other similar site or venue that generates customer flow that is independent from the general customer traffic flow of the surrounding area (collectively, “Non-Traditional Venues”);

(4) restaurants that we purchase (or as to which we purchase the rights as franchisor) that are part of another franchise system or chain, regardless of whether such restaurants are converted to operate using any of the Marks and/or any or all of the Branded System or whether such restaurants operate under other trademarks, service marks or trade dress and/or use other operating systems; or

(5) restaurants operated, licensed, or franchised by another business in the Development Area that may acquire us or our Affiliates (whether through acquisition of assets, ownership interests, or otherwise, regardless of the form of transaction) and may provide products and services similar to those provided by Potbelly Shops, including the operation, licensing, or franchising of Competitive Businesses, in the Development Area.

**2.04 Development Obligations.** You agree to exert your best efforts to fully develop the market potential for Potbelly Shops in the Development Area. Without limiting the foregoing, you agree to open and operate in the Development Area, in accordance with and pursuant to franchise agreements you or your Affiliates will sign, the incremental and total cumulative number of Potbelly Shops set forth in Exhibit B by the corresponding dates and timelines set forth therein (collectively, Exhibit B is referred to as the “Development Schedule”). In addition to our other rights and remedies under this Agreement and applicable law, we may delay your development of additional Potbelly Shops within the Area for the time period we deem best if we believe in our sole judgment, that you (or your Affiliate) are not yet operationally, managerially, or otherwise prepared, due to the particular amount of time that has elapsed since you (or your Affiliate) developed and opened your most recent Potbelly Shop, to develop, open and/or operate the additional Potbelly Shops in full compliance with our standards and specifications. We may delay additional development for the time period we deem best as long as the delay will not in our reasonable opinion cause you to breach your development obligations under the Development Schedule (unless we are willing to extend the Development Schedule proportionately to account for the delay).

**2.05 Failure to Fulfill Development Obligations.** If you fail to adhere to the Development Schedule in Section 2.04 and Exhibit B by either: (1) failing to meet the requirements for the incremental number of Potbelly Shops to be developed (and opened under franchise agreements) during the development period, (2) failing to meet the lease control dates or number of new leases under control, or (3) failing to meet the requirements for the cumulative number of Potbelly Shops developed (and operating under franchise agreements) by the end of the development period, then this will constitute a material breach of this Agreement, which, unless you cure it as provided in Section 8.02 of this Agreement, will result in this Agreement being terminated immediately.

Termination of this Agreement for this reason will not be a termination (constructive or otherwise) of any franchise agreement(s) entered into by you and us under which you have already commenced the operation of the franchised Potbelly Shops covered by the franchise agreement(s) if you have fully performed and otherwise been in compliance with all of your obligations under the franchise agreement(s) in question. You will lose both the right to develop the undeveloped Potbelly Shops in the Development Area and the

Development Fee attributable to the undeveloped Potbelly Shops, and we may operate or franchise Potbelly Shops within the undeveloped balance of the Development Area without in any way being in violation of this Agreement. This remedy of ours will be in addition to whatever other remedies we may have at law or in equity.

YOU ACKNOWLEDGE AND AGREE THAT TIME IS OF THE ESSENCE UNDER THIS AGREEMENT AND THAT YOUR RIGHTS UNDER THIS AGREEMENT ARE SUBJECT TO TERMINATION (WITHOUT ANY CURE OPPORTUNITY) IF YOU DO NOT FULLY COMPLY STRICTLY WITH THE DEVELOPMENT OBLIGATIONS PROVIDED IN THE DEVELOPMENT SCHEDULE. WE MAY ENFORCE THIS AGREEMENT STRICTLY.

**2.06 Reservation of Rights.** Except as expressly provided in this Agreement with respect to the Development Area, we and all of our Affiliates (and our respective successors and assigns, by purchase, merger, consolidation or otherwise) retain all of our rights and discretion with respect to the Marks, the Branded System and Potbelly Shops anywhere in the world, and the right to engage in any business whatsoever, including the right to: (a) construct, develop and operate, and grant others the right to construct, develop and operate, Potbelly Shops anywhere we want and on any terms and conditions we deem appropriate; (b) offer and sell products and other items identified by the Marks or any other trademarks or service marks to any customers, wherever located or operating, and through any distribution channels (including, but not limited to, the Internet, grocery, specialty, and other retail stores, food trucks, and other points of distribution), wherever located or operating; (c) construct, develop, and operate, and grant to others the right to construct, develop, and operate, any types of stores or other foodservice businesses under any trademarks or service marks anywhere we want and on any terms and conditions we deem appropriate; (d) acquire the assets or ownership interests of one or more businesses providing products and services the same as or similar to those provided at Potbelly Shops, and franchising, licensing or creating similar arrangements with respect to these businesses once acquired, wherever these businesses (or the franchisees or licensees of these businesses) are located or operating; (e) the right to acquire the assets or ownership interests of one or more businesses providing products and services the same as or similar to those provided at Potbelly Shops, and franchising, licensing or creating similar arrangements with respect to these businesses once acquired, wherever these businesses (or the franchisees or licensees of these businesses) are located or operating (including in the Development Area); (f) be acquired (whether through acquisition of assets, ownership interests or otherwise, regardless of the form of transaction), by a business providing products and services similar to those provided at Potbelly Shops, or by another business; and, (g) engage in all other activities this Agreement does not expressly prohibit.

### **3. GRANT OF FRANCHISES.**

**3.01 Site Selection Assistance.** We will furnish you with our standard site selection criteria for Potbelly Shops, as we may establish at any time and from time to time. We also will provide such on-site evaluation of sites proposed pursuant hereto as we deem necessary or appropriate. We will not conduct site selection activities for you. In granting you the development rights under this Agreement, we are relying on your knowledge of the real estate market in the Area and your ability to locate and access sites.

**3.02 Applications for Franchises.** We will grant franchises to you for the operation of that cumulative number of Potbelly Shops set forth in Exhibit B and located within the Development Area, subject to the following conditions:

(1) You must submit to us, in accordance with procedures we establish from time to time, a complete application for a franchise and site application form for each site for a Potbelly Shop that you propose to develop and operate and that you in good faith believe to conform to our then current standard site selection criteria for Potbelly Shops. Such site application shall include a description of each proposed site, including

a summary of traffic patterns; parking; character of neighborhood; competition from, proximity to, and nature of other businesses, along with a letter of intent or other evidence confirming your favorable prospects for obtaining the proposed site.

(2) We will accept or reject each site for which you submit to us complete applications in accordance with Section 3.02(1) and, if we accept such site, we will do so by delivering our standard franchise site package. Our site acceptance letter, duly executed by us, is the exclusive means by which we accept a proposed site, and no other direct or indirect representation, approval or acceptance, whether in writing or verbally, by any of our officers, employees or agents, shall be effective or bind us. We will use all reasonable efforts to make a site acceptance decision and, if the site is accepted, deliver a site acceptance letter to you, within 30 days after we acknowledge receipt of the complete site report and any other materials we have requested. In deciding whether to accept or reject a site you propose, we may consider such factors as we, in our sole discretion, deem appropriate, including the general location and neighborhood, demographic information, traffic patterns, access, visibility, location of other restaurants and food establishments (including other Potbelly Shops) and size, condition, configuration, appearance and other physical characteristics of the site. However, we have the absolute right not to accept any site not meeting these criteria. You acknowledge and agree that, if we suggest, approve, or give you information—regarding a site, our action is not a representation or warranty of any kind, express or implied, of the site’s suitability for a Potbelly Shop or any other purpose. We do not represent that we, or any of our Affiliates, owners, employees or agents, have special expertise in selecting sites. Our action indicates only that we believe that the site meets our then acceptable criteria and not that a Potbelly Shop will be profitable or successful at the site. Applying criteria that have appeared effective with other sites and premises might not accurately reflect the potential for all sites and premises, and demographic and/or other factors included in or excluded from our criteria could change, altering the potential of a site and premises. The uncertainty and instability of these criteria are beyond our control, and we are not responsible if a site and premises we suggest or approve for the location of a Potbelly Shop fails to meet your expectations. Accordingly, you acknowledge and agree that your decision to develop and operate a Potbelly Shop at any site is based solely on your own independent investigation of the suitability of the site for a Potbelly Shop.

(3) We also may require that you and your Owners furnish us financial statements (historical and pro forma), statements of the sources and uses of capital funds, budgets and other information regarding yourself, your Owners and the development and operation of any Potbelly Shop you propose, as well as any then-existing Potbelly Shops you and your Affiliates own. All such information shall be verified by you and your Owners as being complete and accurate in all respects, shall be submitted to us in accordance with our requirements and will be relied on by us in determining whether to grant a franchise for the proposed Potbelly Shop. We may refuse to grant you a franchise for a Potbelly Shop if you fail to demonstrate sufficient financial and management capabilities to properly develop and operate the proposed Potbelly Shop and the then existing Potbelly Shops you and your Affiliates own. We will evaluate such financial and management capabilities in accordance with standards we use to establish Potbelly Shops in other comparable market areas.

(4) Upon our acceptance of a proposed site, and provided you have demonstrated the requisite financial and management capabilities, all as above required, if you have not yet signed a franchise agreement for that Potbelly Shop, then you agree within the time period we specify (but no later than the date specified in the Schedule) to sign a franchise agreement (and related documents) for that Potbelly Shop and to pay us the remaining portion of the initial franchise fee due thereunder.

(5) You must request not less than 60 days before you plan to execute a franchise agreement for the franchise to be conveyed, and we will deliver to you, a copy of our then-current applicable Potbelly Shop Franchise Disclosure Document, including our then-current applicable Potbelly franchise agreement (collectively, the "Disclosure Document"). Promptly upon receipt of the Disclosure Document, you must acknowledge receipt by executing the Receipt form prescribed in the Disclosure Document and promptly

returning the Receipt to us. We will offer you a franchise to operate a Potbelly Shop at the proposed site by delivering to you our then-current form of standard franchise agreement, together with all standard ancillary documents (including exhibits, riders, collateral assignments of leases, Owner guarantees and other related documents) that we then customarily use in granting franchises for the operation of Potbelly Shops in the state in which the Potbelly Shop is to be located, modified so that the Initial Franchise Fee will be reduced by the amount of the Development Fee you paid for that Potbelly Shop as provided in Section 2.02. The franchise agreement must be executed by you and your Owners and returned to us not earlier than 7 days and not later than 21 days after we deliver it to you, with payment of the initial fees required thereunder. If we do not receive the fully executed franchise agreement and payment of the required initial franchise fee due thereunder, we may revoke our offer to grant you a franchise to operate a Potbelly Shop at the proposed site and may revoke our acceptance of the proposed site.

(6) We have the right to accept or refuse to accept the terms (including, but not limited to, lease payments or purchase price) of any lease or purchase agreement proposed for a site (the “Real Estate Agreement”) before you sign it. You must send us for review and comment, a copy of the proposed final form of Real Estate Agreement before signing it. We also may request, and you must send us, for review and comment, earlier drafts of the proposed Real Estate Agreement. You (or your Owner or Affiliate) may not sign the Real Estate Agreement unless and until we have reviewed and accepted its final form and notified you in writing that it may be signed. If you (or your Owner or Affiliate) sign the Real Estate Agreement before we send that notice, we may revoke our offer to grant you a franchise to operate a Potbelly Shop at the proposed site and may revoke our acceptance of the proposed site.

The Real Estate Agreement must contain the terms and provisions we reasonably require. If you lease the site, we may require that (i) the lease be collaterally assigned to us (with the lessor’s advance written consent) by a lease rider and/or collateral assignment agreement in form and substance reasonably acceptable to us in order to secure your performance of each and every liability and obligation to us under our franchise agreement, and (ii) the lease contain the provisions we require for site leases for Potbelly Shops.

#### **4. YOUR ORGANIZATION AND MANAGEMENT.**

**4.01 Organizational Documents.** If you are, or at any time become, a business corporation, partnership, limited liability company or other legal entity, you and each of your Owners represent, warrant and agree that: (a) you are duly organized and validly existing under the laws of the state of your organization, and, if a foreign business corporation, partnership, limited liability company or other legal entity, you are duly qualified to transact business in the state in which the Development Area is located; (b) you have the authority to execute and deliver this Agreement and to perform your obligations hereunder; (c) you have provided to us true and complete copies of your articles of incorporation, partnership agreement, bylaws, subscription agreements, and all other then current documents relating to your ownership, organization, capitalization, management and control, any or all of which documents we may require to recite (or be amended to recite) that the issuance, transfer or pledge of any direct or indirect legal or beneficial ownership interest is restricted by the terms of this Agreement; (d) your activities are restricted to those necessary solely for the development, ownership and operation of Potbelly Shops in accordance with this Agreement and any other agreements entered into with us or any of our Affiliates; and (e) all certificates representing direct or indirect legal or beneficial ownership interests in you, whether now or hereafter issued, must bear a legend in conformity with applicable law reciting or referring to such restrictions.

**4.02 Disclosure of Ownership Interests.** You and each of your Owners represent, warrant and agree that Exhibit C is current, complete, and accurate as of the Effective Date. You agree to furnish promptly to us all information necessary to revise or amend that Exhibit C (as thereafter revised and signed

by you) so that Exhibit C is at all times current, complete and accurate. We may require (at our option) that each person who is or becomes an Owner (and each of their spouses) execute an agreement, in a form we prescribe, undertaking to be bound jointly and severally by the terms of this Agreement. Each Owner must be an individual acting in his individual capacity, unless we waive this requirement.

**4.03 Approved Affiliates.** If your Owners establish a new legal entity to operate one or more of the Potbelly Shops to be developed pursuant to this Agreement and that new legal entity's ownership is completely identical to your ownership, that legal entity automatically will be considered an "Approved Affiliate" without further action. However, if the new legal entity's ownership is not completely identical to your ownership, you first must seek our approval for that new entity to operate the proposed Potbelly Shop as an Approved Affiliate. We may refuse any such request if you and/or your Owners do not own and control at least 75% of the new entity's ownership interests and retain management control of the Potbelly Shop proposed to be owned by the new entity.

## **5. RELATIONSHIP OF THE PARTIES.**

### **5.01 Independent Contractors.**

Neither this Agreement nor the dealings of the parties pursuant to this Agreement shall create any fiduciary relationship or any other relationship of trust or confidence. Franchisor and Developer, as between themselves, are and shall be independent contractors. Nothing contained in this Agreement, or arising from the conduct of the parties hereunder, is intended to make either party a general or special agent, joint venturer, partner or employee of the other for any purpose whatsoever. You must conspicuously identify yourself in all dealings with customers, lessors, contractors, suppliers, public officials, personnel and others as the owner of development rights granted hereunder and must place such other notices of independent ownership on such forms, business cards, stationery, advertising and other materials as we require at any time and from time to time.

You may not make any express or implied agreements, warranties, guarantees or representations or incur any debt in our name or on our behalf or represent that the relationship of the parties hereto is anything other than that of independent contractors. We will not be obligated by or have any liability under any agreements made by you with any third party or for any representations made by you to any third party. We will not be obligated for any damages to any person or property arising directly or indirectly out of the operation of your business hereunder.

We and you acknowledge and agree that this Agreement (and the relationship of the parties which arises from this Agreement) grants us the right to make decisions, take actions and/or refrain from taking actions not inconsistent with your explicit rights and obligations hereunder that may affect favorably or adversely your interests. You understand and agree that we may operate and change the Branded System and our business in any manner that is not expressly and specifically prohibited by this Agreement. Unless expressly provided otherwise in this Agreement, we may make any decision, or exercise any of our rights and/or discretion under this Agreement, according to our judgment of what is in the best interests of us, our Affiliates, the Branded System, or the network of Potbelly Shops, without regard to: (a) whether other reasonable or even arguably preferable alternative decisions or actions were feasible; (b) whether our decision or action promotes our financial or other individual interest; (c) whether our decision or action applies differently to you and any one (1) or more other franchisees; or (d) whether our decision or the exercise of our rights is adverse to your individual interests or the individual interests of any other particular franchisees. We will have no liability to you for any such decision or exercise of our rights.

**5.02 Indemnification.** You agree to indemnify, defend, and hold harmless us, our Affiliates, and our and their respective owners, shareholders, members, directors, officers, employees, agents,



successors, and assignees (the “Indemnified Parties”) against, and to reimburse any one or more of the Indemnified Parties for, all claims, obligations, and damages directly or indirectly arising out of the development of Potbelly Shops under this Agreement, your business activities conducted under or arising from this Agreement, or your breach of this Agreement. You also agree to defend the Indemnified Parties (unless an Indemnified Party chooses to defend at your expense as provided in the following paragraph) against any and all such claims, inquiries, actions, investigations, and proceedings, including those alleging the Indemnified Party’s negligence, gross negligence, willful misconduct, and willful wrongful omissions. However, you have no obligation to indemnify or hold harmless an Indemnified Party for any claims, obligations, and damages to the extent they are determined in a final, unappealable ruling issued by a court or arbitrator with competent jurisdiction to have been caused solely and directly by the Indemnified Party’s gross negligence, willful misconduct, or willful wrongful omissions, so long as the claim to which those obligations and damages relate is not asserted on the basis of theories of vicarious liability (including agency, apparent agency, or joint employment) or our failure to compel you to comply with this Agreement.

For purposes of this indemnification, “claims” include all obligations, damages (actual, consequential, or otherwise), and costs that any Indemnified Party reasonably incurs in defending any claim against it, including, without limitation, reasonable accountants’, arbitrators’, attorneys’, and expert witness fees, costs of investigation and proof of facts, court costs, travel and living expenses, and other expenses of litigation, arbitration, or alternative dispute resolution, regardless of whether litigation, arbitration, or alternative dispute resolution is commenced. Each Indemnified Party may defend any claim against it at your expense and agree to settlements or take any other remedial, corrective, or other actions.

This indemnity will continue in full force and effect subsequent to and notwithstanding this Agreement’s expiration or termination. An Indemnified Party need not seek recovery from any insurer or other third party, or otherwise mitigate its losses and expenses, in order to maintain and recover fully a claim against you under this subparagraph. You agree that a failure to pursue a recovery or mitigate a loss will not reduce or alter the amounts that an Indemnified Party may recover from you under this subsection.

**5.03 Marks.** You acknowledge that we own the Marks and that you are not granted the right under this Agreement to use the Marks. Your right to use the Marks arises solely from franchise agreements that you will enter into with us for the opening and operation of Potbelly Shops. You may not use any Mark (or any abbreviation, modification or colorable imitation) as part of any corporate or legal business name or in any other manner (including as an electronic media identifier, such as a web site, web page, or domain name) not explicitly authorized in writing by us.

**5.04 No Subfranchising and Sublicensing Rights.** This Agreement does not give you any right to franchise, license, sublicense, or sublicense others to operate Potbelly Shops. Only you (and/or your Approved Affiliates) may construct, develop, open and operate Potbelly Shops pursuant to this Agreement.

## **6. RESTRICTIVE COVENANTS.**

**6.01 Confidential Information.** We will disclose parts of our Confidential Information solely for your use in the operation of the business contemplated by this Agreement. The Confidential Information is proprietary and includes our trade secrets. During and after the Term: (a) you may not use the Confidential Information in any other business or capacity (as you hereby acknowledge that such prohibited use would be an unfair method of competition); (b) you must exert your best efforts to maintain the confidentiality of the Confidential Information, regardless of its format or medium of transmission to you; (c) you may not make unauthorized copies of any portion of the Confidential Information; and (d) you must implement all commercially reasonable procedures we prescribe at any time and from time to time to prevent unauthorized use or disclosure of the Confidential Information, including requiring your managers and assistant managers, and any other of your personnel who attends training or who has the ability to

access our Confidential Information, to sign nondisclosure agreements in a form we prescribe or approve and delivering those agreements to us.

**6.02 In-Term Covenants.** You acknowledge that we have granted you development rights in the Development Area in consideration of, and reliance upon, your agreement to deal exclusively with us. You therefore agree that, during the Term and any successor franchise term, neither you, any of your Owners, nor any of your or your Owners' spouses will:

(a) have any direct or indirect controlling interest as an owner – whether of record, beneficial, or otherwise – in a Competitive Business, wherever located or operating;

(b) have any direct or indirect non-controlling interest as an owner – whether of record, beneficial, or otherwise – in a Competitive Business, wherever located or operating (except that less than a two percent (2%) equity ownership interest in a Competitive Business whose stock or other forms of ownership interest are publicly traded on a recognized United States stock exchange will not violate this clause);

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

(d) divert or attempt to divert any actual or potential business or customer of any Potbelly Shop to a Competitive Business;

(e) divert or indirectly loan any money or other thing of value to, or guarantee any other person's loan to, any Competitive Business or any owner, director, officer, manager, employee or agent of any Competitive Business, wherever located or operating; or

(f) engage in any other activity that might injure the goodwill associated with the Marks and Branded System.

**6.03 Procurement of Additional Covenants.** You agree to require and obtain the execution of a non-disclosure and non-competition agreement, as we may require at our sole discretion, from all of the following persons:

(a) Before employment or any promotion, any manager of your activities in the Development Area, any personnel you employ who have received or will receive training from us, and all other persons to whom you grant access to Confidential Information; and

(b) If you are a business entity, all Owners having direct or indirect legal or beneficial ownership interests in you; all of your officers, directors and managers; and, all persons possessing equivalent positions in any business entity which directly or indirectly owns and/or controls you.

You shall procure all such Nondisclosure and Non-Competition Agreements required by this subsection no later than ten (10) days following the Effective Date (or, if any individual or entity attains any status identified above after the Effective Date, within ten (10) days after such individual or entity's attains such status) and shall furnish to us copies of all executed Nondisclosure and Non-Competition Agreements within ten (10) days following their execution.

## 7. ASSIGNMENT.

**7.01 Assignment By Franchisor.** We may change our ownership or form and/or assign this Agreement or any interest therein and any other agreement to a third party without restriction or notice to you. After our assignment of this Agreement to a third party who expressly assumes this Agreement's obligations, we no longer will have any performance or other obligations under this Agreement. That assignment will constitute a release and novation with respect to this Agreement, and the new owner-assignee will be liable to you as if it had been an original party to this Agreement. Specifically, and without limiting the foregoing, you agree that we may sell our assets (including this Agreement), the Marks, or the Branded System to a third party; offer our ownership interests privately or publicly; merge, acquire other business entities, or be acquired by another business entity; and/or undertake a refinancing, recapitalization, leveraged buyout, or other economic or financial restructuring.

**7.02 No Assignment By Developer.** You and your Owners acknowledge that we are granting you development rights under this Agreement based on our perception of your and your Owners' individual and collective character, skill, business acumen, financial capability and ability to develop (and to operate under franchise agreements) future Potbelly Shops according to our standards. These rights are personal to you and your Owners. Therefore, neither you nor your Owners may assign this Agreement, any of your ownership interests, any interest in the Development Business, any development rights to a Potbelly Shop, or any other right granted to Developer under this Agreement. Any assignment by your or your Owners in violation of this Section 7 will be null, void and of no force or effect. Notwithstanding the foregoing, we will not unreasonably withhold or delay approval of an assignment that arises pursuant to Subsections 7.03 or 7.04 below.

**7.03 Assignment to a Newly Formed Entity.** We will not unreasonably withhold or delay our consent to your assignment to another entity that you form solely for the convenience of entity ownership, providing that at least the following conditions are met (in addition to any additional conditions we may then require):

1. The entity is newly formed and the requirements of Section 4 above (entitled "Your Organization and Management").
2. Each individual involved in the new entity has the same proportionate ownership interest in the new entity as he or she had in the Development Business before the assignment.
3. You and the new entity sign an agreement with us under which you and the new entity are jointly and severally liable for all the obligations under this Agreement and bound by all the terms, conditions and covenants of this Agreement.

**7.04 Assignment Upon Death or Disability.** Upon your death or disability, you, or your managing Owner's executor, administrator, conservator, guardian, or other personal representative must transfer you, or your managing Owner's, ownership interest in you to a third party (which may be your heirs, beneficiaries, or devisees). That transfer must be completed within a reasonable time, not to exceed nine (9) months from the date of death or disability and is subject to all the terms and conditions applicable to transfers in this Section. Failure to transfer your, or your managing Owner's, interest in you within this time period, is a breach of this Agreement. The term "disability" means a mental or physical disability, impairment, or condition that is reasonably expected to prevent or actually does prevent you, or your managing Owner, from fulfilling his or her responsibilities as managing Owner.

## **8. TERMINATION OF THE AGREEMENT.**

**8.01 Immediate Termination.** You are in material breach of this Agreement, and we may deem this Agreement terminated immediately and without providing additional notice to you, at our sole determination, if you become insolvent by reason of your inability to pay your debts as they mature; if you are adjudicated bankrupt or insolvent; if you file a petition in bankruptcy, reorganization or similar proceeding under the bankruptcy laws of the United States or have such a petition filed against you which is not discharged within thirty (30) days; if a receiver or other custodian, permanent or temporary, is appointed for your business, assets, or property; if you request the appointment of a receiver or make a general assignment for the benefit of creditors; if a final judgment against you in the amount of twenty-five thousand dollars (\$25,000) or more remains unsatisfied of record for thirty (30) days or longer; if your bank accounts, property or accounts receivable are attached; if execution is levied against your business or property; if suit is filed to foreclose any lien or mortgage against any of your assets and such suit is not dismissed within thirty (30) days; if you voluntarily dissolve or liquidate or have a petition filed for corporate or partnership dissolution and such petition is not dismissed within thirty (30) days; or if your assets, property or interests are “blocked” under any law or regulation relating to terrorist activities or if you are otherwise in violation of any such law or regulation.

**8.02 Termination Upon Notice.** In addition to our right to terminate pursuant to other provisions of this Agreement or under applicable law, we may terminate this Agreement, effective upon delivery of notice of termination to you:

- (a) if you fail to meet any part of the Development Schedule;
- (b) if you or any of your Owners or Affiliates make an unauthorized transfer or assignment of the Development Rights;
- (c) if you or any of your Owners or Affiliates make any material misstatement or omission in the application for the development rights conferred by this Agreement or in any other information provided to us, or are convicted of, or plead no contest to, a felony or other crime or offense that we reasonably believe may adversely affect the goodwill associated with the Marks;
- (d) if you or any of your Owners or Affiliates make any unauthorized use or disclosure of the Confidential Information;
- (e) if you or any of your Owners or Affiliates fail to comply with any other provision of this Agreement and do not correct such failure within thirty (30) days after written notice of such failure to comply is delivered to you;
- (f) if you or any of your Owners engage in any dishonest, unethical, immoral or similar conduct as a result of which your (or his or her) association with the Potbelly Shops or Branded System (or the Owner’s association with you) could, in our reasonable opinion, have a material adverse effect on the goodwill associated with the Marks;
- (g) if any franchise agreement between us and you (or your Affiliate) for a Potbelly Shop is terminated by us in compliance with its terms or by you (or your Affiliate) for any (or no) reason, even if that other franchise agreement was not signed pursuant to your rights under this Agreement;
- (h) if you or any of your Owners or Affiliates are in breach of any franchise agreement or other agreement with us or our Affiliates such that we or our Affiliates have the right to terminate the franchise agreement or such other agreement, whether or not we or they elect to exercise such right of termination;

(i) if you fail to pay any vendors with respect to the Development Business (other than us and our Affiliates) any amounts due for your purchases from them; or

(j) if we determine that any applicable federal or state legislation, regulation or rule, which is enacted, promulgated or amended after the Effective Date, may have an adverse effect on our rights, remedies or discretion in franchising Potbelly Shops.

We have no obligation whatsoever to refund any portion of the Development Fee upon any termination, except that we will refund the unapplied portion of the Development Fee paid pursuant to Section 2.02 only in the event of a termination pursuant to Section 8.02(j).

**8.03 Alternative Remedy Upon Default.** In addition to, and without limiting, our other rights and remedies under this Agreement, any other agreement or applicable law, upon the occurrence of any event giving rise to our right to terminate this Agreement under the preceding Subsections 8.01 and 8.02, we may instead elect, at our sole option and upon delivering providing you written notice, to (1) operate or grant franchises to operate Potbelly Shops within the Development Area, in which case the restrictions on us or our Affiliates under Section 2 above will not apply to the Development Area; (2) grant you an extension under the Development Schedule for such time period and for a nonrefundable extension fee equal to the balance of the Initial Franchise Fees for the number of Potbelly Shops remaining to be opened under the Development Schedule; and/or (3) temporarily or permanently reduce the size of the Development Area, in which case the restrictions on us or our Affiliates under Section 2 above will not apply in any geographic area removed from the preceding territorial boundaries.

**8.04 Cross-Default.** Any default or breach by you (or any of your Owners) or your Affiliate (or any of your Owner's Affiliates) of any other agreement with us or our Affiliate will be considered an event of default under this Agreement, and any default or breach by you (or any of your Owners) of this Agreement (except for a default as a result of your failure to comply with the Development Schedule set forth in Exhibit B) will be considered an event of default or breach by you under any and all agreements between us or our Affiliate and you (or any of your Owners) or your Affiliate (or any of your Owner's Affiliates). If the nature of the default under any other agreement would have been considered an event of default under this Agreement, then we or our Affiliate will have the right to terminate all other agreements between us or our Affiliate and you (or any of your Owners) or your Affiliate (or any of your Owner's Affiliates) in accordance with the termination provisions of this Agreement.

## **9. EFFECT OF TERMINATION AND EXPIRATION.**

**9.01 Continuing Obligations.** All obligations under this Agreement which expressly or by their nature survive the expiration or termination of this Agreement shall continue in full force and effect until they are satisfied in full or by their nature expire.

**9.02 Post-Term Covenants.** For a period of two (2) years, starting on the effective date of termination or expiration of this Agreement, you and your Owners are prohibited from directly or indirectly (such as through an Immediate Family member) owning a legal or beneficial interest in, or rendering services or giving advice to: (a) any Competitive Business operating within the Development Area; (b) any Competitive Business operating within a radius of five (5) miles of any Potbelly Shop (whether franchised or Affiliate or company-owned), whether in operation or under construction on the effective date of termination or expiration; or (c) any entity which grants franchises, licenses or other interests to others to operate any Competitive Business. You acknowledge that we have a protectable legal interest in the Branded System, customers of Potbelly Shops and the goodwill associated with the Marks and that the non-competition covenants contained in this Section and Section 6.02 are necessary elements to their protection

and are an integral part of this Agreement. You and each of your Owners expressly acknowledge the possession of skills and abilities of a general nature and other opportunities for exploiting such skills, so that enforcement of the covenants contained in this Section will not deprive you of your personal goodwill or ability to earn a living. If you fail or refuse to abide by any of the foregoing covenants, and we obtain enforcement in a judicial or arbitration proceeding, the obligations under the breached covenant will be tolled during the period(s) of time that the covenant is breached and/or we seek to enforce it, and will continue in effect for a period of two (2) years after the date of order enforcing the covenant.

## **10. MISCELLANEOUS.**

**10.01 Severability and Substitution of Provisions.** Except as expressly provided to the contrary in this Agreement, each section, paragraph, term, and provision of this Agreement is severable, and if, for any reason, any part is held to be invalid or contrary to or in conflict with any applicable present or future law or regulation in a final, unappealable ruling issued by any court, agency, or tribunal with competent jurisdiction, that ruling will not impair the operation of, or otherwise affect, any other portions of this Agreement, which will continue to have full force and effect and bind the parties. If any covenant restricting competitive activity is deemed unenforceable by virtue of its scope in terms of area, business activity prohibited and/or length of time, but would be enforceable if modified, you and we agree that the covenant may be “blue penciled” or reformed and then enforced to the fullest extent permissible under the laws and public policies applied in the jurisdiction whose law determines the covenant’s validity. If any applicable law requires a greater prior notice of the termination than is required hereunder, a different standard of “good cause” to terminate this Agreement or the taking of some other action not required hereunder, the prior notice, the “good cause” standard and/or the other action required by such law shall be substituted for the comparable provisions hereof. You agree to be bound by any promise or covenant imposing the maximum duty the law permits that is subsumed within any provision of this Agreement, as though it were separately articulated in and made a part of this Agreement.

**10.02 Waiver of Obligations.** We and you may by written instrument unilaterally waive or reduce any obligation of the other under this Agreement. Any waiver granted by us shall be without prejudice to any other rights we may have, will be subject to continuing review by us and may be revoked, in our sole discretion, at any time and for any reason, effective upon delivery to you of ten (10) days’ prior written notice. You and we shall not be deemed to have waived any right reserved by this Agreement or be deemed to have modified this Agreement by virtue of any custom or practice of the parties at variance with it.

**10.03 Exercise of Rights of Parties.** The rights of Franchisor and Developer hereunder are cumulative and no exercise or enforcement by Franchisor or Developer of any right or remedy hereunder shall preclude the exercise or enforcement by Franchisor or Developer of any other right or remedy hereunder which Franchisor or Developer is entitled to enforce by law. If Developer commits any act of default under this Agreement for which Franchisor exercises its right to terminate this Agreement, Developer shall pay to Franchisor all actual, consequential, special and incidental damages Franchisor incurs as a result of the premature termination of this Agreement, regardless of whether or not such damages are reasonably foreseeable. Developer acknowledges and agrees that the proximate cause of such damages sustained by Franchisor is Developer’s act of default and not Franchisor’s exercise of its right to terminate. Notwithstanding the foregoing, and except as otherwise prohibited or limited by applicable law, any failure, neglect, or delay of a party to assert any breach or violation of any legal or equitable right arising from or in connection with this Agreement, shall constitute a waiver of such right and shall preclude the exercise or enforcement of any legal or equitable remedy arising therefrom, unless written notice specifying such breach or violation is provided to the other party within twelve (12) months after the later of: (a) the date of such breach or violation; or (b) the date of discovery of the facts (or the date the facts could have been discovered, using reasonable diligence) giving rise to such breach or violation.

**10.04 Costs of Enforcement.** If we incur costs and expenses to enforce our rights or your obligations under this Agreement because you have failed to comply with this Agreement, you agree to reimburse us for all costs and expenses we incur, including, without limitation, reasonable accounting, attorneys', arbitrators', and related fees. Your obligation to reimburse us arises whether or not we begin a formal legal proceeding against you to enforce this Agreement. If we do begin a formal legal proceeding against you to enforce this Agreement, the reimbursement obligation applies to all costs and expenses we incur preparing for, commencing, and prosecuting the legal proceeding and until the proceeding has come to a complete end (including appeals and settlements).

**10.05 Injunctive Relief.** We, as an alternative or supplement to arbitration pursuant to Sections 10.06, may obtain in any court of competent jurisdiction any injunctive relief, including temporary restraining orders and preliminary injunctions, against conduct or threatened conduct for which no adequate remedy at law may be available or which may cause us irreparable harm. We may seek and obtain such injunctive relief, without bond, but upon notice as required under applicable rules, in addition to such further and other relief as may be available at equity or law, and your sole remedy in the event of the entry of such injunction, shall be its dissolution, if warranted, upon hearing duly had (all claims for damages by reason of the wrongful issuance of any such injunction being expressly waived hereby). You and each of your Owners acknowledge that any violation of Sections 6 or 9.02, or any other breach of your obligations concerning the proprietary nature of the Confidential Information or the Branded System, would result in irreparable injury to us for which no adequate remedy at law may be available. Accordingly, you and each of your Owners consent and agree to the issuance of an injunction prohibiting any conduct in violation of any of those sections and agrees that the existence of any claim you or any of your Owners may have against us, whether or not arising from this Agreement, shall not constitute a defense to the enforcement of any of those Sections.

**10.06 Arbitration.** We and you agree that all controversies, disputes, or claims between us and our Affiliates, and our and their respective shareholders, officers, directors, agents, and/or employees, and you (and/or your Owners, guarantors, Affiliates, and/or employees) arising out of or related to:

- (1) this Agreement or any other agreement between you and us or your or our respective Affiliates
- (2) our relationship with you; or
- (3) the scope and validity of this Agreement or any other agreement between you and us or any provision of such agreements (including the validity and scope of the arbitration obligations under this Section 10.06, which the parties acknowledge is to be determined by an arbitrator and not a court);

must be submitted for binding arbitration, on demand of either party, to the American Arbitration Association ("AAA"). The arbitration proceedings will be conducted by one (1) arbitrator if the amount of the claim is Seven Hundred Fifty Thousand Dollars (\$750,000) or less, or three (3) arbitrators if the amount of the claim is more than Seven Hundred Fifty Thousand Dollars (\$750,000). If there is one (1) arbitrator, the arbitrator shall be appointed by the AAA. If there are three (3) arbitrators, the claimant shall appoint one (1) arbitrator in its notice of arbitration and statement of claim; the respondent shall appoint one (1) arbitrator in its statement of defense, and the third arbitrator, who shall act as the Chairman, shall be appointed by the two (2) arbitrators appointed by the parties within thirty (30) days of the appointment of the second arbitrator. If any arbitrators are not appointed within these time periods, the AAA shall make the appointments. Except as this Section 10.06 otherwise provides, the arbitration proceedings will be conducted according to the then current commercial arbitration rules of the AAA. All proceedings, including the hearing, will be conducted at a suitable location that is within ten (10) miles of where we have our principal business address when the arbitration demand is filed. The arbitrators will have no authority to select a different hearing locale other than as described in the prior sentence. All

matters relating to arbitration will be governed by the Federal Arbitration Act (9 U.S.C. §§ 1 *et seq.*). Except as expressly provided otherwise in the remainder of this Section 10, judgment upon the arbitrator(s)' award may be entered in any court of competent jurisdiction.

The arbitrators have the right to award or include in their award any relief which they deem proper, including, without limitation, money damages (with interest on unpaid amounts from the date due), specific performance, injunctive relief, and attorneys' fees and costs for us (consistent with our rights under Section 10.04 above), provided that the arbitrators may not declare any Mark generic or otherwise invalid or, except as expressly provided in Section 10.10 below, award any exemplary, punitive, treble, or other forms of multiple damages against the other (you and we hereby waive to the fullest extent the law permits, except as expressly provided in Section 10.10 below, any right to or claim for any exemplary, punitive, treble, or other forms of multiple damages against the other). All aspects of the arbitration, including statements made and documents produced within the arbitration, will be confidential in nature and will not be admissible in any subsequent legal proceeding.

Except as expressly limited by Section 10.11 below, you and we will be bound by the provisions of any limitation on the time period in which claims must be brought under applicable law or this Agreement, whichever expires earlier. In any arbitration proceeding, each party must submit or file any claim constituting a compulsory counterclaim (as defined by the United States Federal Rules of Civil Procedure) within the same proceeding as the claim to which it relates. Any claim not submitted or filed as required is forever barred. The arbitrators may not consider any settlement discussions or offers made by either party. We reserve the right, but have no obligation, to advance your share of the costs (excluding attorneys' fees) of any arbitration proceeding in order for the proceeding to take place and by doing so are not deemed to have waived or relinquished our right to seek the recovery of these costs under Section 10.04 above.

You and we agree that pre-hearing discovery will be limited to requests for, and exchange of, documents relevant to the dispute and five (5) depositions per side, including expert and opinion witnesses. No deposition may exceed eight (8) hours without the parties' agreement or the arbitrators' order. Any party has the right to file pre-hearing motions to dispose of some or all of the claims.

You and we agree that arbitration will be conducted on an individual basis, and not on a joint, collective, or class-wide basis, and that an arbitration proceeding between us and our Affiliates, and our and their respective owners, shareholders, members, partners, officers, directors, managers, agents and/or employees, and you (and/or your Owners, guarantors, Affiliates and/or employees) may not be consolidated or joined with any other arbitration proceeding between us and any other person. Despite the foregoing or anything to the contrary contained in this Section 10.06 or Section 10.01, if any court or arbitrator determines that all or any part of the preceding sentence is unenforceable with respect to a dispute that otherwise would be subject to arbitration under this Section, then all parties agree that this arbitration clause will not apply to that dispute and the dispute will be resolved in a judicial proceeding in a court permitted under Section 10.07 in accordance with this Section 10 (excluding this Section 10.06).

Despite your and our agreement to arbitrate, each has the right to seek temporary restraining orders and temporary or preliminary injunctive relief from a court of competent jurisdiction, provided, however, that each must contemporaneously submit its dispute for arbitration on the merits as provided in this Section.

This Section's provisions are intended to benefit and bind certain third-party non-signatories (*i.e.*, our and our Affiliates' respective owners, officers, directors, agents and/or employees and your Owners, guarantors, Affiliates and/or employees). This Section continues in full force and effect after and notwithstanding this Agreement's expiration or termination.



**10.07 Jurisdiction and Venue.** SUBJECT TO THE ARBITRATION OBLIGATIONS IN SECTION 10.06 ABOVE AND THE PROVISIONS BELOW, YOU AND YOUR OWNERS AGREE THAT ALL ACTIONS ARISING UNDER THIS AGREEMENT OR OTHERWISE AS A RESULT OF THE RELATIONSHIP BETWEEN YOU AND US MUST BE COMMENCED IN THE STATE OR FEDERAL COURT OF GENERAL JURISDICTION LOCATED CLOSEST TO WHERE WE HAVE OUR PRINCIPAL BUSINESS ADDRESS AT THE TIME THE ACTION IS COMMENCED, AND YOU (AND EACH OWNER) IRREVOCABLY SUBMIT TO THE JURISDICTION OF THOSE COURTS AND WAIVE ANY OBJECTION YOU (OR THE OWNER) MIGHT HAVE TO EITHER THE JURISDICTION OF OR VENUE IN THOSE COURTS. NONETHELESS, YOU AND YOUR OWNERS AGREE THAT WE MAY ENFORCE THIS AGREEMENT AND ANY ARBITRATION ORDERS AND AWARDS IN THE COURTS OF THE STATE OR STATES IN WHICH YOU ARE DOMICILED OR YOUR DEVELOPMENT BUSINESS OPERATES.

**10.08 Governing Law.** ALL MATTERS RELATING TO ARBITRATION WILL BE GOVERNED BY THE UNITED STATES FEDERAL ARBITRATION ACT (9 U.S.C. §§ 1 ET SEQ.). EXCEPT TO THE EXTENT GOVERNED BY THE FEDERAL ARBITRATION ACT, THE UNITED STATES TRADEMARK ACT OF 1946 (LANHAM ACT, 15 U.S.C. SECTIONS 1051 ET SEQ.) OR OTHER FEDERAL LAW, THIS AGREEMENT, THE FRANCHISE, AND ALL CLAIMS ARISING FROM THE RELATIONSHIP BETWEEN US AND YOU WILL BE GOVERNED BY THE LAWS OF THE STATE OF ILLINOIS, WITHOUT REGARD TO ITS CONFLICT OF LAWS RULES, EXCEPT THAT ANY ILLINOIS LAW REGULATING THE OFFER AND SALE OF FRANCHISES OR GOVERNING THE RELATIONSHIP OF A FRANCHISOR AND ITS FRANCHISEE WILL NOT APPLY UNLESS ITS JURISDICTIONAL REQUIREMENTS ARE MET INDEPENDENTLY WITHOUT REFERENCE TO THIS SECTION.

**10.09 Successors and Assigns.** This agreement is binding on the parties hereto and their respective executors, administrators, heirs, assigns and successors in interest. This agreement is fully transferable by us, whether by operation of law or otherwise, and shall inure to the benefit of any transferee or other legal successor to our interest herein.

**10.10 Waiver of Damages and Jury Trial.** EXCEPT WITH RESPECT TO YOUR OBLIGATION TO INDEMNIFY US FOR THIRD PARTY CLAIMS UNDER SECTION 5.02, AND EXCEPT WITH RESPECT TO THE CONFIDENTIAL INFORMATION IN SECTION 6.01, FRANCHISOR AND FRANCHISEE (AND ITS OWNERS) EACH WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO OR CLAIM FOR ANY EXEMPLARY, PUNITIVE, TREBLE, AND OTHER FORMS OF MULTIPLE DAMAGES AGAINST THE OTHER AND AGREE THAT, IN THE EVENT OF A DISPUTE BETWEEN US AND YOU, THE PARTY MAKING A CLAIM WILL BE LIMITED TO EQUITABLE RELIEF AND TO RECOVERY OF ANY ACTUAL DAMAGES IT SUSTAINS.

**WE AND YOU IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM, WHETHER AT LAW OR IN EQUITY, BROUGHT BY EITHER OF US. WE AND YOU EACH ACKNOWLEDGE THAT WE AND YOU MAKE THIS WAIVER KNOWINGLY, VOLUNTARILY, WITHOUT DURESS, AND ONLY AFTER CONSIDERATION OF THIS WAIVER'S RAMIFICATIONS.**

You agree that, for our Branded System to function properly, we should not be burdened with the costs of litigating system-wide disputes. Accordingly, any disagreement between you (and your Owners) and us shall be considered unique as to its facts and shall not be brought as a class action, and you (and each of

your Owners) waive any right to proceed against us or any of our shareholders, members, Affiliates, officers, directors, employees, agents, successors and assigns by way of class action, or by way of a multi-plaintiff, consolidated or collective action. In any legal action between the parties, the court shall not be precluded from making its own independent determination of the issues in question, notwithstanding the similarity of issues in any other legal action involving us and any other franchisee, and each party waives the right to claim that a prior disposition of the same or similar issues precludes such independent determination.

**10.11 Limitation of Claims.** Except for the parties' indemnification obligations under Section 5.02, claims arising from your unauthorized use of our and our Affiliate's intellectual property, and claims arising from your non-payment or underpayment of amounts you owe us, any and all claims arising out of or relating to this Agreement or our relationship with you will be barred unless a legal proceeding (in the required or permitted forum) is commenced within two (2) years from the date on which the violation, act, or conduct giving rise to the claim occurs, regardless of when the party asserting the claim knew or should have known of the facts giving rise to the claim.

**10.12 Limited Liability for Our Related Parties.** You agree that no past, present or future director, officer, employee, incorporator, member, partner, stockholder, subsidiary, Affiliate, owner, entity under common control, ownership or management, vendor, service provider, agent, attorney or representative of ours will have any liability for (i) any of our obligations or liabilities relating to or arising from this Agreement; (ii) any claim against us based on, in respect of, or by reason of, the relationship between you and us, or (iii) any claim against us based on any alleged unlawful act or omission of ours.

**10.13 Covenant of Good Faith.** If applicable law implies a covenant of good faith and fair dealing in this Agreement, the parties hereto agree that the covenant will not imply any rights or obligations that are inconsistent with a fair construction of the terms of this Agreement. Additionally, if applicable law will imply the covenant, you agree that: (i) this Agreement (and the relationship of the parties hereto that is inherent in this Agreement) grants us the judgment to make decisions, take actions and/or refrain from taking actions not inconsistent with our explicit rights and obligations under this Agreement that may favorably or adversely affect your interests; (ii) any judgment we exercise will be based on our assessment of our own interests and balancing those interests against the interests of our Potbelly Shop developers and franchise owners generally, and specifically without considering your individual interests or the individual interests of any other particular Potbelly Shop developer or franchise owner; (iii) we will have no liability to you for the exercise of our judgment in this manner, so long as the judgment is not exercised in bad faith; and (iv) in the absence of bad faith, no trier of fact in any arbitration or litigation will substitute its judgment for our judgment so exercised.

**10.14 Construction.** The language of this Agreement shall be construed according to its fair meaning and not strictly for or against any party. The introduction, personal guarantees, exhibits and riders (if any) to this Agreement are a part of this Agreement, which constitutes the entire agreement of the parties. Except as otherwise expressly provided herein, there are no other oral or written agreements, understandings, representations or statements between us and you relating to the subject matter of this Agreement that either party may or does rely on or that will have any force or effect, except that nothing in this Agreement shall disclaim or require you to waive reliance on any representation we made in our most recent Franchise Disclosure Document (including that document's exhibits and amendments) delivered to you or your representative. Nothing in this Agreement is intended or shall be deemed to confer any rights or remedies on any person or legal entity not a party hereto. This Agreement shall not be modified except by written agreement signed by both parties.

Any policies we periodically adopt and implement to guide us in our decision-making are subject to change, are not a part of this Agreement, and are not binding on us. Except where this Agreement expressly obligates us reasonably to approve or not unreasonably to withhold our approval of any of your

actions or requests, we have the absolute right to refuse any request you make or to withhold our approval of any of your proposed, initiated, or completed actions requiring our approval.

The headings of the sections are for convenience only and do not limit or construe their contents. The term “including” shall be construed to include the words “without limitation.” The term “Developer” or “you” is applicable to one or more persons, a business corporation, limited liability company or a partnership and its owners, as the case may be. If two (2) or more persons are at any time Developer hereunder, whether as partners, joint venturers or otherwise, their obligations and liabilities to us shall be joint and several. References to a “controlling interest” in an entity means the percent of the voting shares or other voting rights that results from dividing one hundred percent (100%) of the ownership interests by the number of owners; in the case of a proposed transfer of an ownership interest in you or one of your Owners, the determination of whether a “controlling ownership interest” is involved must be made as of both immediately before and immediately after the proposed transfer to see if a “controlling ownership interest” will be transferred (because of the number of owners before the proposed transfer) or will be deemed to have been transferred (because of the number of owners after the proposed transfer).

This Agreement may be executed in multiple copies, each of which shall be deemed an original. Time is of the essence in this Agreement.

**10.15 Approvals and Consents.** In all cases where our prior consent or acceptance is required and no other method or timing for obtaining such consent or acceptance is prescribed, you must request such consent or acceptance in writing, and we will notify you of our decision within sixty (60) days after receiving your written request and all supporting documentation. Whenever our consent or acceptance is required hereunder, such consent or acceptance must be in writing. If we do not respond in writing to your request within such sixty (60)-day period, the request shall be deemed denied. Our consent to or acceptance of any request by you shall be effective only to the extent specifically stated and shall not be deemed to waive or render unnecessary our consent or acceptance of any subsequent similar request. Except where this Agreement expressly obligates us to reasonably accept or consent to (or not to unreasonably withhold our acceptance or consent regarding) any action or request by you, we have the absolute right for any reason or no reason to withhold our acceptance of or consent to any action by you.

**10.16 Multiple Forms of Agreement.** You acknowledge and agree that there may be more than one form of area development agreement in effect between us and our various Potbelly Shop developers; those other agreements may contain provisions that may be materially different from the provisions contained in this Agreement; and you are not entitled to rely on any provision of any other agreement with other Potbelly Shop developers whether to establish course of dealing, waiver, or estoppel, or for any other purpose.

**10.17 Notices and Payments.** All written notices, reports, and payments permitted or required to be delivered by this Agreement or the operations manual will be deemed delivered: (1) at the time delivered by hand; (2) one business day after transmission by facsimile (if the sender has confirmation of successful transmission) or electronic mail; (3) one business day after being placed in the hands of a nationally recognized commercial courier service for next business day delivery; or (4) three business days after placement in the United States Mail by Registered or Certified Mail, Return Receipt Requested, postage prepaid. No restrictive endorsement on any check or in any letter or other communication accompanying any payment shall bind us, and our acceptance of any such payment shall not constitute an accord and satisfaction. Any notice to us must be sent to the address specified on the first page of this Agreement, although we may change this address for notice by giving you fifteen (15) days’ prior notice by any of the means specified in subparagraphs (1) through (4) above. Any notice we send you may be sent to the address identified on the first page of this Agreement. You may change the person and/or address for

notice only by giving us fifteen (15) days' prior notice by any of the means specified in subparagraphs (1) through (4) above.

**10.18 Compliance with Anti-Terrorism and Other Laws.** You and your Owners agree to comply, and to assist us to the fullest extent possible in our efforts to comply, with all applicable legislation, laws, regulations, rules, ordinances, administrative orders, decrees and policies of any court, arbiter, government, governmental agency, department, or similar organization that are in effect from time to time pertaining to: (a) the various anti-terrorism, economic sanctions, and anti-money laundering and narco-trafficking laws, regulations, orders, decrees and guidelines of the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"), (b) the USA PATRIOT Act (Title III of Pub. L. 107-56, signed into law October 26, 2001), as amended, (c) the provisions of United States Executive Order 13224, (d) the U.S. Prevention of Corruption Act 1988, (e) the U. S. Foreign Corrupt Practices Act, 15 U.S.C. Section 78dd-2, (e) relevant multilateral measures such as the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the UN Convention Against Corruption, (f) bribery and anti-corruption laws, (g) the laws against money laundering, and (h) the laws against facilitating or supporting persons who conspire to commit these and other crimes against any person or government. You immediately shall notify us in writing if a potential violation of any of the foregoing legislation, laws, regulations, rules, ordinances, administrative orders, decrees and/or policies has occurred or is suspected to have occurred. You immediately shall provide us with copies of any communication to or from any such agency, government, or commission that relates to or affects this Agreement, your or your Affiliates' Potbelly Shops, or the Marks. Any failure to comply with this Section by you or your Owners, or any blocking of your or your Owners' assets under any of such laws, legislation, regulations, orders, decrees and/or policies shall constitute good cause for immediate termination of this Agreement.

**10.19 Electronic Mail.** You acknowledge and agree that exchanging information with us by e-mail is efficient and desirable for day-to-day communications and that we and you may utilize e-mail for such communications. You authorize the transmission of e-mail by us and our employees, vendors, and Affiliates ("**Official Senders**") to you during the Term.

You further agree that: (a) Official Senders are authorized to send e-mails to those of your employees as you may occasionally authorize for the purpose of communicating with us; (b) you will cause your officers, directors, and employees to give their consent to Official Senders' transmission of e-mails to them; (c) you will require such persons not to opt out or otherwise ask to no longer receive e-mails from Official Senders during the time that such person works for or is affiliated with you; and (d) you will not opt out or otherwise ask to no longer receive e-mails from Official Senders during the Term.

The consent given in this Section 10.19 shall not apply to the provision of notices by either party under this Agreement pursuant to Section 10.17 using e-mail unless the parties otherwise agree in a written document manually signed by both parties.

**10.20 Electronic Signatures.** The counterparts of this Agreement and all ancillary documents executed or delivered in connection with this Agreement may be executed and signed by electronic signature by any of the parties to this Agreement, and delivered by electronic or digital communications to any other party to this Agreement, and the receiving party may rely on the receipt of such document so executed and delivered by electronic or digital communications signed by electronic signature as if the original has been received. For the purposes of this Agreement, electronic signature means, without limitation, an electronic act or acknowledgement (e.g., clicking an "I Accept" or similar button), sound, symbol (digitized signature block), or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

**10.21 Receipt of Disclosure Document and Agreement.** You acknowledge having received our Franchise Disclosure Document and this Agreement, with all blanks completed, within the time periods required by applicable law.

**IN WITNESS WHEREOF**, the parties have executed and delivered this Area Development Agreement on the day and year first above written.

**FRANCHISOR**

**Potbelly Franchising, LLC,**  
an Illinois limited liability company

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

**DEVELOPER**

If a corporation, partnership, limited liability company or other legal entity:

\_\_\_\_\_  
(Name of corporation, partnership, limited company or other legal entity)

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

If individuals:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

**EXHIBIT A  
TO AREA DEVELOPMENT AGREEMENT**

**TERM AND DEVELOPMENT AREA**

1. The Term expires on the execution date of the last franchise agreement executed pursuant to this Agreement.

2. The Development Area is the geographical area described as follows:

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**FRANCHISOR:**

**Potbelly Franchising, LLC,**  
an Illinois limited liability company

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**DEVELOPER:**

\_\_\_\_\_  
(Name of legal entity)

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

If individuals:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

**EXHIBIT B  
TO AREA DEVELOPMENT AGREEMENT**

**DEVELOPMENT SCHEDULE**

Developer agrees to open \_\_\_\_\_ (\_\_\_\_\_) traditional Potbelly Shops within the Development Area (besides any Potbelly Shops already operating, or for which a franchise agreement has previously been signed for operation of a Potbelly Shop, in the Development Area) according to the following Development Schedule:

<b>Development Period End Date</b>	<b>Incremental Number of Potbelly Shops to be Developed (and Opened under franchise agreements) During Development Period</b>	<b>Cumulative Number of Potbelly Shops Developed (and Operating under franchise agreements) By End of Development Period</b>

**[SIGNATURE PAGE FOLLOWS]**

**FRANCHISOR:**

**Potbelly Franchising, LLC,**  
an Illinois limited liability company

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**DEVELOPER:**

\_\_\_\_\_  
(Name of legal entity)

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

If individuals:

\_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Print Name)



**EXHIBIT C  
TO AREA DEVELOPMENT AGREEMENT**

**DEVELOPER INFORMATION**

1. Form of Entity of Developer.

(a) Corporation or Limited Liability Company. Developer was incorporated on \_\_\_\_\_, 20\_\_\_\_, under the laws of the State of \_\_\_\_\_. It has not conducted business under any name other than its corporate name. The following is a list of all of Developer's directors and officers as of \_\_\_\_\_, 20\_\_\_\_.

<u>Name of Each Director/Officer</u>	<u>Position(s) Held</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

(b) Partnership. Developer is a [general] [limited] partnership formed on \_\_\_\_\_, 20\_\_\_\_ under the laws of the State of \_\_\_\_\_. It has not conducted business under any name other than its partnership name. The following is a list of all of Developer's general partners as of \_\_\_\_\_, 20\_\_\_\_.

<u>Name of each General Partner</u>
_____
_____
_____
_____

2. **Owners.** Developer and each of its Owners represents and warrants that the following is a complete and accurate list of all Owners of Developer, including the full name and mailing address of each Owner, and fully describes the nature and extent of each Owner's interest in Developer. Developer, and each Owner as to her/his ownership interest in Developer, represents and warrants that each Owner is the sole and exclusive legal and beneficial owner of her/his ownership interest, free and clear of all liens, restrictions, agreements and encumbrances of any kind or nature, other than those required or permitted by this Agreement.

<u>Owner's Name and Address</u>	<u>Description of Interest</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

**FRANCHISOR:**

**Potbelly Franchising, LLC,**  
an Illinois limited liability company

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**DEVELOPER:**

\_\_\_\_\_  
(Name of legal entity)

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

If individuals:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

**EXHIBIT D**

**PRINCIPAL'S AGREEMENT**

**POTBELLY FRANCHISING, LLC**  
**PRINCIPAL'S AGREEMENT**

**This Principal's Agreement** (the "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and among **Potbelly Franchising, LLC**, an Illinois limited liability company ("**Potbelly**"), and the owners, directors, and/or officers whose names and signatures appear below (**collectively, the "Principals" or, individually, a "Principal"**).

**RECITALS**

**WHEREAS**, Potbelly has entered into that certain Franchise Agreement dated \_\_\_\_\_, 20\_\_ (**the "Franchise Agreement"**) with \_\_\_\_\_ (**the "Entity"**); and

**WHEREAS**, Potbelly desires to set forth the respective liabilities and responsibilities of each Principal who signs this Agreement.

**NOW, THEREFORE**, in consideration of Potbelly's entry into the Franchise Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. The Recitals are incorporated in this Agreement by this reference.
2. Each of the undersigned Principals individually agrees that:
  - (a) he or she will be personally bound by the following sections of the Franchise Agreement, whether the obligations described in those sections are imposed upon the Entity, its owners, or both, as if he or she were the Franchisee under the Franchise Agreement: Sections 4.C.; 5; 6; 7; 9.E. and F; 12 (if the undersigned Principal is an owner of the Entity); 13.C. (if the undersigned Principal is an owner of the Entity); 15.B., C, and D; 16.B.; 17.A., B, F, G, H, I, J, and K; and 19. Section 17.C., captioned "Costs and Attorneys' Fees," will apply to the undersigned but only to the extent that the undersigned fails to comply with any of the obligations referenced above;
  - (b) the liabilities and obligations arising under subsection (a) are independent liabilities and obligations of each Principal and are not contingent or conditioned upon Potbelly's pursuit of any remedies against the Entity or any other person under the Franchise Agreement; and
  - (c) the liabilities and obligations arising under subsection (a) will not be diminished, relieved, or otherwise affected by any extension of time or credit, the acceptance of any partial payment or performance, or the compromise or release of any claims.

Each of the undersigned Principals waives all rights to payments and claims for reimbursement or subrogation that any of the undersigned may have against the Entity arising as a result of the undersigned's execution of and performance under this Agreement.

3. This Agreement will terminate only upon the termination or expiration of the noted obligations under the Franchise Agreement.

4. Each of the undersigned Principals represents that he or she holds the position in the Entity, or in an owner of the Entity, shown opposite his or her signature below.

5. Each Principal represents that the signatures of all Principals (as defined above) of the Entity appear below or in another original copy of this Agreement (except for those individuals who have signed a Guaranty and Assumption of Obligations attached to the Franchise Agreement) and that the Entity has no other owners, directors, or officers.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the date and year first above written.

**POTBELLY FRANCHISING, LLC**, an  
Illinois limited liability company

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

**[Additional Signature Page Follows]**

**OFFICERS:**

**POSITION**

\_\_\_\_\_  
[Name] / \_\_\_\_\_

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Name] / \_\_\_\_\_

\_\_\_\_\_  
[Signature]

**DIRECTORS:**

\_\_\_\_\_  
[Name]

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Name]

\_\_\_\_\_  
[Signature]

**OTHER:**

**POSITION**

\_\_\_\_\_  
[Name] / \_\_\_\_\_

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Name] / \_\_\_\_\_

\_\_\_\_\_  
[Signature]

**EXHIBIT E**

**LEASE RIDER/COLLATERAL ASSIGNMENT OF LEASE**

**POTBELLY FRANCHISING, LLC**

**LEASE RIDER**

This Lease Rider is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between \_\_\_\_\_ (“Franchisee”) and \_\_\_\_\_ (“Landlord”).

WHEREAS, Potbelly Franchising, LLC (“Potbelly”) and Franchisee have entered into a Franchise Agreement (the “Franchise Agreement”) for the operation of a Potbelly Shop (the “Shop”);

WHEREAS, Franchisee and Landlord propose to enter into the lease to which this Rider is attached (the “Lease”), pursuant to which Franchisee will occupy premises located at \_\_\_\_\_ (the “Premises”) for the purpose of constructing and operating the Shop in accordance with the Franchise Agreement; and

WHEREAS, the Franchise Agreement provides that, as a condition to Potbelly’s authorizing Franchisee to enter into the Lease, the parties must execute this Lease Rider.

NOW, THEREFORE, in consideration of the mutual undertakings and commitments set forth in this Rider and in the Franchise Agreement, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

1. During the term of the Franchise Agreement, Franchisee will be permitted to use the Premises for the operation of the Shop and for no other purpose.
2. Subject to applicable zoning laws and deed restrictions and to prevailing community standards of decency, Landlord consents to Franchisee’s installation and use of such trademarks, service marks, signs, decor items, color schemes, and related components of the Potbelly System as Potbelly may from time to time prescribe for the Shop.
3. Landlord agrees to furnish Potbelly with copies of all letters and notices it sends to Franchisee pertaining to the Lease and the Premises at the same time it sends such letters and notices to Franchisee. Such letters and notices must be sent to 111 North Canal Street, Suite 325, Chicago, Illinois 60606, Attn: General Counsel, or such other address provided to Landlord in writing. Landlord also must disclose to Potbelly, at Potbelly’s request, all sales and other information furnished to the Landlord by Franchisee.
4. Potbelly has the right, without being guilty of trespass or any other crime or tort, to enter the Premises at any time or from time to time (i) to make any modification or alteration it considers necessary to protect the Potbelly System and marks, (ii) to cure any default under the Franchise Agreement or under the Lease, or (iii) to remove the distinctive elements of the Potbelly trade dress upon the Franchise Agreement’s expiration or termination. Neither Potbelly nor Landlord will be responsible to Franchisee for any damages Franchisee might sustain as a result of action Potbelly takes in accordance with this provision. Potbelly will repair or reimburse Landlord for the cost of any damage to the Premises’ walls, floor, or ceiling resulting from Potbelly’s removal of trade dress items and other property from the Premises.



5. If Potbelly cures a default by Franchisee under the Lease, or if Potbelly notifies Landlord that the Franchise Agreement has expired or been terminated (which termination will constitute a non-curable default pursuant to the Lease upon Landlord's receipt of Potbelly's notice thereof), Landlord agrees, upon Potbelly's written request, to assign to Potbelly any and all rights that Landlord may have under the Lease to remove and evict Franchisee from the Premises and will cooperate with Potbelly in order to pursue such action to a conclusion.

6. If Potbelly cures a default by Franchisee under the Lease or notifies Landlord of the expiration or termination of the Franchise Agreement, Potbelly will have the right and option, upon written notice to Landlord, to do the following:

a. Undertake to perform the terms, covenants, obligations, and conditions of the Lease on behalf of Franchisee (notwithstanding any removal or eviction of Franchisee) for a period not to exceed six (6) months from the first date of any cure or notice by Potbelly; or

b. At any time within or at the conclusion of such six (6) month period, assume the terms, covenants, obligations, and conditions of the Lease for the remainder of the term, together with any applicable renewal options. In such event, Landlord and Potbelly will enter into an agreement to document such assumption. Potbelly is not a party to, and will have no liability under, the Lease unless and until said Lease is assigned to, and assumed by, Potbelly as herein provided.

7. If, during the six (6) month period set forth in Section 6(a) above or at any time after the assignment contemplated in Section 6(b), Potbelly notifies Landlord that the franchise for the Shop is being granted to another Potbelly franchisee, Landlord agrees to permit the assignment of the Lease to said franchisee, without any further consent of Landlord being required as a condition thereto and without the payment of any fee or other cost requirement. Thereafter, Potbelly will be released from any and all further liabilities under the Lease. The parties agree to execute any commercially reasonable documents in furtherance of this section.

8. Franchisee will be permitted to assign the Lease to Potbelly or its designee upon the expiration or termination of the Franchise Agreement. Landlord consents to such an assignment and agrees not to impose any assignment fee or similar charge, or to increase or accelerate rent under the Lease, in connection with such an assignment. Landlord also agrees that, notwithstanding any language in the Lease to the contrary, any applicable renewal options will be included in such assignment.

9. In the event Franchisee assigns the Lease to Potbelly or its designee in accordance with the preceding paragraph, the assignee must assume all obligations of Franchisee under the Lease from and after the date of assignment, but will have no obligation to pay any delinquent rent or to cure any other default under the Lease that occurred or existed prior to the date of the assignment.

10. Franchisee may not assign the Lease or sublet the Premises without Potbelly's prior written consent, and Landlord will not consent to an assignment or subletting by Franchisee without first verifying that Potbelly has given its written consent to Franchisee's proposed assignment or subletting.

11. Landlord and Franchisee will not amend or modify the Lease in any manner that could materially affect any of the provisions or requirements of this Lease Rider without Potbelly's prior written consent.

12. The provisions of this Lease Rider will supersede and control any conflicting provisions of the Lease.

13. Landlord acknowledges that Potbelly is not a party to the Lease and will have no liability or responsibility under the Lease unless and until the Lease is assigned to, and assumed by, Potbelly.

14. Franchisee and Landlord acknowledge that Potbelly is an intended third-party beneficiary of this Lease Rider's terms with an independent right to enforce them against Franchisee and Landlord.

**IN WITNESS WHEREOF**, the parties have executed this Lease Rider of the date first above written.

**LANDLORD:**

\_\_\_\_\_

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

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

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

**FRANCHISEE (TENANT):**

\_\_\_\_\_

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

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

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

**POTBELLY FRANCHISING, LLC**  
**COLLATERAL ASSIGNMENT OF LEASE**

**FOR VALUE RECEIVED**, the undersigned (“Assignor”) assigns and transfers to Potbelly Franchising, LLC, an Illinois limited liability company (“Assignee”), all of Assignor’s right and title to and interest as tenant in that certain lease, a copy of which is attached as Exhibit A (the “Lease”), respecting premises commonly known as \_\_\_\_\_. This assignment is for collateral purposes only, and, except as specified in this document, Assignee will have no liability or obligation of any kind whatsoever arising from or in connection with this assignment or the Lease unless and until Assignee takes possession of the premises that the Lease demises according to the terms of this document and expressly assumes the obligations of Assignor under the Lease.

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

Upon Assignor’s default under the Lease or under the franchise agreement for a “Potbelly Shop” between Assignee and Assignor (the “Franchise Agreement”), or if Assignor defaults under any document or instrument securing the Franchise Agreement, or if the Franchise Agreement expires or is terminated, Assignee has the right to take possession of the leased premises and expel Assignor from the premises. In that event, Assignor will have no further right and title to or interest in the Lease and will remain liable to Assignee for all past due rents that Assignee must pay to Lessor to effectuate the assignment this document contemplates.

Assignor agrees that it will not suffer or permit any surrender, termination, amendment, or modification of the Lease without Assignee’s prior written consent. Throughout the term of the Franchise Agreement, Assignor agrees that it will elect and exercise all options to extend the term of or renew the Lease not less than thirty (30) days before the last day upon which the option must be exercised, unless Assignee agrees otherwise in writing. Upon Assignee’s failure to agree otherwise in writing, and upon Assignor’s failure to elect to extend or renew the Lease as required, Assignor hereby appoints Assignee as its true and lawful attorney-in-fact with the authority to exercise the extension or renewal options in Assignor’s name and place for the sole purpose of effecting the extension or renewal.

**ASSIGNOR (INSERT NAME BELOW):**

Dated: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_

a \_\_\_\_\_

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

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

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

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

**CONSENT TO COLLATERAL ASSIGNMENT AND AGREEMENT OF LESSOR**

The undersigned Lessor under the Lease:

(a) Agrees to notify Assignee in writing of both any default by Assignor under the Lease and Assignor's failure to cure such default;

(b) Agrees that Assignee has the right, but not the obligation, to cure any default by Assignor under the Lease within 15 business days after Lessor's delivery under section (a) above of notice of Assignor's failure to cure such default within the time period required by the Lease;

(c) Consents to the Collateral Assignment and agrees that, if Assignee takes possession of the leased premises and confirms to Lessor Assignee's assumption of the Lease as tenant, Lessor will recognize Assignee as tenant under the Lease, provided that Assignee cures within the 15 business-day period noted in section (b) above Assignor's defaults under the Lease; and

(d) Agrees that Assignee may further assign the Lease to or enter into a sublease with a person or entity who agrees to assume the tenant's obligations under the Lease and is reasonably acceptable to Lessor and that, upon such assignment, Assignee will have no further liability or obligation under the Lease as assignee, tenant, or otherwise, other than to certify that the additional assignee or sublessee operates the leased premises as a "Potbelly Shop."

DATED: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_, Lessor

**EXHIBIT F**

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**FRANCHISE OPERATIONS MANUAL  
(1,250 PAGES)**

**No. of Pages**

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Royalty Payment and Accounting	2
Financial Management	4
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Paying Other Fees	5
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Laws Regarding Harassment	3
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Wage and Labor Laws	3
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Personnel Policies	1
Time Reporting	2
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Crisis Management Introduction	1
Employee Safety and Building Security	2
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**Manager Meetings (to be written in the future)**

**Performance Management and People Development (to be written in the future)**

**FRANCHISE OPERATIONS MANUAL  
(1,250 PAGES)**

**No. of Pages**

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**Shop Cleanliness**

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POP-Cleaning the Frontline and Backline Ovens	11
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**Run Great Shifts**

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POP-Testing Your Bread	4
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POP-Operating the TurboChef Oven	12
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POP-Closing the Shop	7
POP-Conserving Energy	4
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**FRANCHISE OPERATIONS MANUAL  
(1,250 PAGES)**

**No. of Pages**

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POP-Working the Dress Station	14
POP-Working the Cash Station	13
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POP-Working the Fronter Position	22
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**FRANCHISE OPERATIONS MANUAL  
(1,250 PAGES)**

**No. of Pages**

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**FRANCHISE OPERATIONS MANUAL  
(1,250 PAGES)**

**No. of Pages**

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**FRANCHISE OPERATIONS MANUAL  
(1,250 PAGES)**

**No. of Pages**

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Job Aid-Branded Procurement Quick Reference Guide	2
Job Aid-Calibrating Food Thermometers	1
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Job Aid-Preparing Chicken Salad and Tuna Salad	1
Job Aid-Preparing Gallons for a Group	1
Job Aid-Processing Vouchers	1
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**FRANCHISE OPERATIONS MANUAL  
(1,250 PAGES)**

**No. of Pages**

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<b>TOTAL NUMBER OF PAGES</b>	<b><u>1,250</u></b>
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**EXHIBIT G**  
**FINANCIAL STATEMENTS**

## Potbelly Franchising, LLC

### Balance Sheet As of March 26, 2023 (unaudited, amounts in thousands)

Accounts Receivable	235
Due from Potbelly Sandwich Works, LLC	10,383
Cash Concentration Receivable	3,196
<b>Total Assets</b>	<b>\$ 13,892</b>
<b>Liabilities and Member's Equity</b>	
Deferred Revenue - current	194
Deferred Revenue - noncurrent	2,232
<b>Total Liabilities</b>	<b>2,426</b>
<b>Member's Equity</b>	
Accumulated Earnings	11,466
<b>Total Member's Equity</b>	<b>11,466</b>
<b>Total Liabilities and Member's Equity</b>	<b>\$ 13,892</b>

**THIS INTERIM FINANCIAL INFORMATION IS PREPARED WITHOUT AN AUDIT OR REVIEW. PROSPECTIVE FRANCHISEES OR SELLERS OF FRANCHISES SHOULD BE ADVISED THAT DELOITTE & TOUCHE LLP OR ANY OTHER CERTIFIED PUBLIC ACCOUNTANT HAS NOT AUDITED OR REVIEWED THESE FIGURES OR EXPRESSED HIS OR HER OPINION WITH REGARD TO THEIR CONTENT OR FORM.**

## Potbelly Franchising, LLC

### Statements of Operations For the Quarter Ended March 26, 2023 (unaudited, amounts in thousands)

	<b>Quarter Ended March 26, 2023</b>
<b>Revenues:</b>	
Franchise royalties and other fees	\$ 836
Initial franchise fees	44
Total revenues	880
<b>Expenses:</b>	
General and administrative expenses remitted to Member	341
Income from operations	539
Interest income, net	15
<b>Net income</b>	<b>\$ 554</b>

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# Potbelly Franchising, LLC

Financial Statements as of December 25, 2022 and  
December 26, 2021, for the Years Ended December  
25, 2022, December 26, 2021 and December 27,  
2020, and Independent Auditor's Report



# POTBELLY FRANCHISING, LLC

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## **INDEPENDENT AUDITOR'S REPORT**

To the Member of Potbelly Franchising, LLC

### **Opinion**

We have audited the financial statements of Potbelly Franchising, LLC (the "Company"), a wholly owned subsidiary of Potbelly Illinois, Inc. (the "Member"), which is a wholly owned subsidiary of Potbelly Corporation, which comprise the balance sheets as of December 25, 2022 and December 26, 2021, and the related statements of operations, member's equity, and cash flows for the years ended December 25, 2022, December 26, 2021 and December 27, 2020, and the related notes to the financial statements (collectively, the "financial statements").

In our opinion, the accompanying financial statements present fairly, in all material respects, the financial position of the Company as of December 25, 2022, and December 26, 2021, and the results of its operations and its cash flows for the years ended December 25, 2022, December 26, 2021, and December 27, 2020, in accordance with accounting principles generally accepted in the United States of America.

### **Basis for Opinion**

We conducted our audits in accordance with auditing standards generally accepted in the United States of America (GAAS). Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audits 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 3, the Company remits payment to the Member for certain expenses incurred by the Member on the Company's behalf. The accompanying financial statements have been prepared from the separate records maintained by the Company and Potbelly Corporation and may not necessarily be indicative of the conditions that would have existed or the results of operations if the Company had operated as an unaffiliated company. 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 financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

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

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

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not absolute assurance

and therefore is not a guarantee that an audit conducted in accordance with GAAS will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with GAAS, we:

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

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

#### **Other Information Included in the Franchise Disclosure Document**

Management is responsible for the other information included in the Franchise Disclosure Document ("FDD"). The other information comprises the information included in the FDD but does not include the financial statements and our auditor's report thereon. Our opinion on the financial statements does not cover the other information, and we do not express an opinion or any form of assurance thereon.

In connection with our audits of the financial statements, our responsibility is to read the other information and consider whether a material inconsistency exists between the other information and the financial statements, or the other information otherwise appears to be materially misstated. If, based on the work performed, we conclude that an uncorrected material misstatement of the other information exists, we are required to describe it in our report.

*Deloitte Touche LLP*

Chicago, Illinois  
May 18, 2023

## Potbelly Franchising, LLC

### Balance Sheets As of December 25, 2022 and December 26, 2021 (amounts in thousands)

	<b>2022</b>	<b>2021</b>
<b>Assets</b>		
Cash	\$ 75	\$ 1,112
Accounts receivable	210	257
Due from Potbelly Sandwich Works, LLC	10,483	9,158
Cash concentration receivable	1,994	-
<b>Total assets</b>	<b>\$ 12,762</b>	<b>\$10,527</b>
<b>Liabilities and member's equity</b>		
Deferred revenue - current	170	183
Deferred revenue - noncurrent	1,680	1,428
<b>Total liabilities</b>	<b>1,850</b>	<b>1,611</b>
Commitments and contingencies (Note 3)		
<b>Member's equity</b>		
Accumulated earnings	10,912	8,916
<b>Total member's equity</b>	<b>10,912</b>	<b>8,916</b>
<b>Total liabilities and member's equity</b>	<b>12,762</b>	<b>10,527</b>

*See notes to the financial statements.*

## Potbelly Franchising, LLC

### Statements of Operations For the Years Ended December 25, 2022, December 26, 2021, and December 27, 2020 (amounts in thousands)

	<u>2022</u>	<u>2021</u>	<u>2020</u>
<b>Revenues:</b>			
Franchise royalties and other fees	\$ 2,797	\$ 2,507	\$ 1,611
Initial franchise fees	354	263	333
<b>Total Revenues</b>	<u>3,151</u>	<u>2,770</u>	<u>1,944</u>
<b>Operating Expenses:</b>			
General and administrative expenses remitted to Member	<u>1,155</u>	<u>455</u>	<u>645</u>
<b>Net Income</b>	<u>\$ 1,996</u>	<u>\$ 2,315</u>	<u>\$ 1,299</u>

See notes to the financial statements.

## Potbelly Franchising, LLC

### Statements of Member's Equity For the Years Ended December 25, 2022, December 26, 2021, and December 27, 2020 (amounts in thousands)

	Member's Equity	Accumulated Earnings	Total
<b>Balance—December 29, 2019</b>	\$ -	\$ 5,302	\$ 5,302
Net income	-	1,299	1,299
<b>Balance—December 27, 2020</b>	-	6,601	6,601
Net income	-	2,315	2,315
<b>Balance—December 26, 2021</b>	-	8,916	8,916
Net income	-	1,996	1,996
<b>Balance—December 25, 2022</b>	<u>\$ -</u>	<u>\$ 10,912</u>	<u>\$ 10,912</u>

*See notes to the financial statements.*

## Potbelly Franchising, LLC

### Statements of Cash Flows For the Years Ended December 25, 2022, December 26, 2021, and December 27, 2020 (amounts in thousands)

	2022	2021	2020
<b>Cash Flows from Operating Activities:</b>			
Net income	\$ 1,996	\$ 2,315	\$ 1,299
Changes in operating assets and			
Receivables	47	(67)	(68)
Deferred revenue	239	(263)	(333)
Due from Potbelly Sandwich Works, LLC	(1,325)	(2,113)	211
<b>Net cash provided by (used in) operating activities</b>	<u>957</u>	<u>(128)</u>	<u>1,109</u>
<b>Cash Flows from Investing Activities:</b>			
Net change in cash concentration receivable	(1,994)	-	-
<b>Net cash used in investing activities</b>	<u>(1,994)</u>	<u>-</u>	<u>-</u>
<b>Net decrease in cash</b>	(1,037)	(128)	1,109
<b>Cash—Beginning of year</b>	1,112	1,240	131
<b>Cash—End of year</b>	<u>\$ 75</u>	<u>\$ 1,112</u>	<u>\$ 1,240</u>

*See notes to the financial statements.*

# POTBELLY FRANCHISING, LLC

## NOTES TO FINANCIAL STATEMENTS

AS OF DECEMBER 25, 2022 AND DECEMBER 26, 2021 AND FOR THE YEARS ENDED  
DECEMBER 25, 2022, DECEMBER 26, 2021, AND DECEMBER 27, 2020

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### 1. ORGANIZATION AND OTHER MATTERS

**Business**—Potbelly Franchising, LLC (the “Company”, “we”, “us”, or “our”) is a single member limited liability corporation and is a wholly owned subsidiary of Potbelly Illinois, Inc. (“Member”), which is in turn a wholly owned subsidiary of Potbelly Corporation, whose principal business is to sell and administer new Potbelly Sandwich Works, LLC (“PSW”) sandwich shop franchises. PSW is also a wholly owned subsidiary of the Member. The first franchise locations administered by the Company opened during February 2011. As of the fiscal year ended December 25, 2022, 45 franchise shops were in operation in 18 states (Arkansas, Florida, Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Mississippi, Nebraska, North Carolina, North Dakota, South Dakota, Tennessee, Texas, Virginia, and Nevada).

**COVID-19**— On January 30, 2020, the WHO announced a global health emergency because of COVID-19 and the risks to the international community as the virus spreads globally. On March 11, 2020, the WHO classified the COVID-19 outbreak as a pandemic, based on the rapid increase in exposure globally. The COVID-19 pandemic significantly impacted economic conditions in the United States where all our shops are located during portions of 2020 and 2021. The availability of COVID-19 vaccines and lifting of local restrictions has resulted in an improvement to our sales since the beginning of the pandemic. We have returned nearly all of our shops to our pre-pandemic operating hours. To the extent there is a resurgence of COVID-19 cases, we will follow guidance from local authorities in determining the appropriate restrictions to put in place for each shop, including mask mandates, hours of operation, and the suspension or reduction of in-shop dining, which could result in lower in-shop dining revenue or higher operating costs.

### 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

**Basis of Presentation**—We have prepared the accompanying financial statements in accordance with accounting principles generally accepted in the United States of America (“U.S. GAAP”).

**Fiscal Year End**—The Company uses a 52/53-week fiscal year that ends on the last Sunday of the calendar year. Fiscal years 2022, 2021 and 2020 consisted of 52-weeks.

**Management Estimates**— The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities as of the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.



**Cash**—The Company maintains its cash in bank deposit accounts that, at times, may exceed federally insured limits; however, the Company does not believe it is exposed to any significant credit risk.

**Receivables**—Receivables consist primarily of initial franchise fees and miscellaneous operating receivables. No allowance was deemed necessary as of December 25, 2022 and December 26, 2021.

**Due From/To Potbelly Sandwich Works, LLC**—The Company collects amounts from franchisees on PSW's behalf, in addition to the expenses to be reimbursed, incurred by PSW on the Company's behalf. The Company also transfers excess cash balances to PSW on a periodic basis.

**Cash Concentration Receivable**— The Company entered into a cash concentration agreement with PSW under which the Company's excess cash balances are swept into the central cash accounts held by PSW. The Company has the right to demand the return of cash, in whole or in part, at its option, as necessary for its operations. The deposit in the PSW cash management pool is considered a receivable from an affiliate.

**Revenue Recognition**— The Company earns an initial franchise fee, a franchise development agreement fee and ongoing royalties, and other fees under the Company's franchise agreements. Initial franchise fees are considered highly dependent upon and interrelated with the franchise right granted in the franchise agreement. As such, these franchise fees are recognized over the contractual term of the franchise agreement. The Company records a contract liability for the unearned portion of the initial franchise fees. Franchise development agreement fees represent the exclusivity rights for a geographical area paid by a third party to develop Potbelly shops for a certain period of time. Franchise development agreement fee payments received by the Company are recorded as deferred revenue on the balance sheet and amortized over the life of the franchise agreement once the shops are opened. Royalties are based on a percentage of sales and are recorded as revenue as the fees are earned and become receivable from the franchisee.

The Company recognized royalty revenue of \$2.8 million, \$2.3 million and \$1.5 million for fiscal years 2022, 2021 and 2020, respectively. The Company recognized initial franchise fee revenue of \$0.4 million, \$0.3 million and \$0.3 million in fiscal years 2022, 2021 and 2020, respectively.

The Company also collects fees from franchisees for advertising, software, and other services. These services are managed and delivered by PSW to all Potbelly shops, including franchise shops. Because the Company is not the primary obligor in these transactions and does not control the services being provided to franchisees, the amounts collected are presented net of the amounts collected and transferred to PSW to deliver the services. The Company is not the primary obligor in these transactions. This accounting policy was adopted in connection with the implementation of the Brand Fund and determined to not have a material impact on the financial statements in both the current and prior years presented.

**Income Taxes**—As a limited liability company, the activity of the Company passes through to, and is included in, the respective tax return of Potbelly Corporation. Accordingly, no benefit or expense for income taxes is recognized in the Company's financial statements.

**Contract Liabilities**—The Company records current and noncurrent contract liabilities for upfront franchise fees. There are no other contract liabilities or contract assets recorded by the Company. The opening and closing balances of the Company’s current and noncurrent contract liabilities from contracts with customers were as follows:

	<b>Current Contract Liability</b>	<b>Noncurrent Contract Liability</b>
	<b>(Thousands)</b>	<b>(Thousands)</b>
Beginning balance as of December 26, 2021	\$ (183)	\$ (1,428)
Ending balance as of December 25, 2022	(170)	(1,680)
Increase/(Decrease) in contract liability	<u>\$ (13)</u>	<u>\$ 252</u>

### 3. COMMITMENTS AND CONTINGENCIES

**Guarantees**—On August 7, 2019, PSW and all related entities named as parties, including the Company, (together, the “Potbelly Loan Parties”) entered into a second amended and restated revolving credit facility agreement (the “Credit Agreement”) with JPMorgan Chase Bank, N.A., which was later amended. The Credit Agreement calls for the Potbelly Loan Parties to guarantee the payment and performance of the obligations under the Credit Agreement and to grant liens on substantially all of the assets of the Company. As of December 25, 2022, the amended Credit Agreement was set to expire on December 31, 2023 and provided, among other things, for a revolving credit facility in a maximum principal amount \$25 million.

As of December 25, 2022, there was \$8.6 million outstanding under the Credit Agreement. There were \$9.9 million outstanding as of December 26, 2021. The Potbelly Loan Parties are currently in compliance with all financial debt covenants.

On January 28, 2022, the Potbelly Loan Parties entered into Amendment No. 6 to the Credit Agreement which, among other things, extends the maturity date from January 31, 2023 to May 31, 2023.

On May 31, 2022, the Potbelly Loan Parties entered into Amendment No. 7 to the Credit Agreement. The Seventh Amendment, among other things extended the maturity date under the Credit Agreement from May 31, 2023 to August 31, 2023.

On September 23, 2022, Potbelly Loan Parties entered into Amendment No. 8 to the Credit Agreement. The Eighth Amendment, among other things extended the maturity date under the Credit Agreement from August 31, 2023 to December 31, 2023.

On February 7, 2023, Potbelly Loan Parties repaid in full and terminated the obligations and commitments under the Credit Agreement. Refer to Note 4 for additional information related to this transaction.

**Related Parties—Shared Service Agreement**—On September 11, 2009, the Company entered into a shared services agreement (the “Service Agreement”) with PSW. The Service Agreement provides for general and administrative services and stipulates that the Company will reimburse PSW for services incurred on the Company’s behalf related to expenses and employees of PSW. These costs and expenses are assessed based upon actual amounts incurred by PSW on behalf of the Company, or based upon an allocation of costs and expenses of PSW determined with respect to the proportion of such items utilized

by the Company. The costs and allocations noted above do not necessarily reflect the costs, which would have been incurred if the Company had obtained the services from unaffiliated third parties or of the actual direct costs of the services. Accordingly, the financial statements contained herein may not be indicative of what the Company's financial position, operating results, changes in members equity, and cash flows would have been if it had been a stand-alone entity during the periods presented.

Payment terms under the Service Agreement are made in a manner and by the dates on which the parties agree. All payments not made within 30 days after the agreed-upon payment date accrue a service charge at an annual interest rate of 18% or the highest commercial contract interest rate the law allows, whichever is less. During fiscal years 2022, 2021 and 2020, no interest expense was reported as payments were made within agreed-upon payment dates. Under the Service Agreement, the Company recognized expense of \$1.2 million, \$0.5 million and \$0.6 million included in operating expenses for the years ended December 25, 2022, December 26, 2021 and December 27, 2020, respectively.

**Related Parties—Due from/to PSW**— The Company had a receivable of \$10.5 million, \$9.2 million from PSW as of December 25, 2022 and December 26, 2021, respectively. The amounts represent net due to/from PSW for amounts collected from franchisees on PSW's behalf, offset by the expenses to be reimbursed, incurred by PSW on the Company's behalf. This amount also represents the amount receivable for excess cash balances transferred to PSW.

**Related Parties—Cash Concentration Receivable**— The Company entered into a cash concentration agreement with PSW on December 21, 2022, under which the Company's excess cash balances are swept into the central cash accounts held by PSW. Balances held by PSW earn an interest rate of LIBOR plus 350 basis points. The Company has the right to demand the return of cash, in whole or in part, as its option, as necessary for its operations. The deposit in the PSW cash management pool is considered a receivable from an affiliate. As of December 25, 2022, the Company had a cash concentration receivable of \$2.0 million.

#### **4. SUBSEQUENT EVENTS**

The Company evaluated subsequent events through May 17, 2023, which is the date the financial statements were available to be issued.

On February 7, 2023 (the "Closing Date"), the Potbelly Loan Parties entered into a credit and guaranty agreement (the "New Credit Agreement") with Sagard Holdings Manager LP as administrative agent (the "Administrative Agent"). The New Credit Agreement provides for a term loan facility with an aggregate commitment of \$25 million (the "Term Loan"). Concurrent with the entry into the New Credit Agreement, the Potbelly Loan Parties repaid in full and terminated the obligations and commitments under our existing senior secured credit facility (the "Former Credit Facility"). The remaining proceeds from the Term Loan will be used to pay related transaction fees and expenses, and for general corporate purposes. The New Credit Agreement is scheduled to mature on February 7, 2028. Loans under the New Credit Agreement will initially bear interest, at the Company's option, at either at the term SOFR plus 9.25% per annum or base rate plus 8.25% per annum.

On March 6, 2023, PSW finalized a multi-unit development agreement along with its first refranchising deal in New York City. This agreement included the refranchise of eight

shops, the ownership of which has been fully transferred to the franchisee on March 6, 2023. As a result, the Company added eight additional shops in the first quarter of 2023.

No other events occurred subsequent to December 25, 2022 that require consideration as adjustments to or disclosures in the financial statements.

\* \* \* \* \*

**EXHIBIT H**

**FRANCHISEE REPRESENTATIONS**

**POTBELLY FRANCHISING, LLC**  
**FRANCHISEE REPRESENTATIONS**

**Important Instructions:** Read this document carefully and do not sign it if it contains anything you think might be untrue. If you sign this document, you are confirming that what it says is true. In addition, if you sign it, we will take actions in reliance on the truth of what it says.

The following franchisee — \_\_\_\_\_  
(the “Franchisee”) — is interested in acquiring a franchise for a Potbelly Shop to be operated at a specific site identified, or to be identified, in the Franchise Agreement (the “Shop”). Each of the undersigned represents that all of the following statements are true:

1. Each of the undersigned has conducted its, his, or her own independent investigation of Potbelly Franchising, LLC (“we,” “us,” or “our”), the Franchise System (as that term is used in our Franchise Agreement), and the risks, burdens, and nature of the business Franchisee will conduct under the Franchise Agreement.

**\*Insert initials into the following blank to confirm this statement: \_\_\_\_\_**

2. Each of the undersigned understands that the business Franchisee will conduct under the Franchise Agreement involves risks and that success or failure will be substantially influenced by the Franchisee’s abilities and efforts and the viability of the Shop’s site.

**\*Insert initials into the following blank to confirm this statement: \_\_\_\_\_**

3. The Franchisee has (through one or more of the undersigned) received and reviewed the Franchise Agreement and each rider, exhibit, and schedule attached to it.

**\*Insert initials into the following blank to confirm this statement: \_\_\_\_\_**

4. The Franchisee understands all of the information contained in the Franchise Agreement and each rider, exhibit, and schedule attached to it.

**\*Insert initials into the following blank to confirm this statement: \_\_\_\_\_**

5. Each of the undersigned understands that the Franchise Agreement we use in the Franchise System likely will change from time to time, meaning that the Franchise Agreement for the Franchisee’s Shop likely will be different from others we sign in the future. The Franchisee will be bound by its own Franchise Agreement, regardless of what our other Franchise Agreements might say.

**\*Insert initials into the following blank to confirm this statement: \_\_\_\_\_**

6. The Franchisee has received ready-to-be-signed copies of the Franchise Agreement and all other related agreements and has had ample opportunity to consult with its, his, or her attorneys, accountants, and other advisors concerning those documents. If we unilaterally made any material changes in the Franchisee’s final, ready-to-be signed copies of the Franchise Agreement and related agreements (other than as a result of negotiations started by the Franchisee), the Franchisee has had copies of those documents in-hand for at least seven (7) calendar days before signing them.

**\*Insert initials into the following blank to confirm this statement: \_\_\_\_**

7. The Franchisee has received a franchise disclosure document (“FDD”) as required by law at least 14 calendar days before both signing the Franchise Agreement or any other binding agreement and paying any consideration to us or our affiliate in connection with this franchise, and has had ample opportunity to consult with its, his, or her attorneys, accountants, and other advisors concerning the FDD.

**[If the Franchisee is based or will operate in Michigan, the Franchisee also has received the FDD at least ten (10) business days before both signing the Franchise Agreement and paying any consideration to us or an affiliate in connection with this franchise.]**

**[If the Franchisee is based or will operate in New York, the Franchisee also has received the FDD at the earlier of our first personal meeting with the Franchisee to discuss the franchise opportunity but at least ten (10) business days before both signing the Franchise Agreement and paying any consideration to us or an affiliate in connection with this franchise.]**

**\*Insert initials into the following blank to confirm this statement: \_\_\_\_**

8. Except as provided in the financial performance representation (“FPR”) appearing in Item 19 of our FDD, we have made no representation, warranty, promise, guaranty, prediction, projection, or other statement, and given no information, as to the future, past, likely, or possible income, sales volume, or profitability, expected or otherwise, of the Shop or any other Potbelly Shop, except: (None, unless something is filled-in here)

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**\*Insert initials into the following blank to confirm this statement: \_\_\_\_**

9. Each of the undersigned understands that:

9.1 Except as provided in our FPR, we do not authorize our officers, directors, or employees to furnish any oral or written representation, warranty, promise, guaranty, prediction, projection, or other statement or information concerning actual or potential income, sales volume, or profitability, either generally or of any Potbelly Shop.

9.2 Actual results vary from unit to unit and from time period to time period, and we cannot estimate, project, or predict the results of any particular Potbelly Shop.

9.3 We have specifically instructed our officers, directors, and employees that, except as provided in our FPR, they are not permitted to make any representation, warranty, promise, guaranty, prediction, projection, or other statement or give information as to income, sales volume, or profitability, either generally or with respect to any particular Potbelly Shop.

9.4 If any unauthorized representation, warranty, promise, guaranty, prediction, projection, or other statement or information is made or given, the undersigned should not (and will not) rely on it and should report it to our management.

**\*Insert initials into the following blank to confirm these statements: \_\_\_\_\_**

10. Before signing the Franchise Agreement and any related agreements, the undersigned Franchisee has had ample opportunity: (A) to discuss the Franchise Agreement, any related agreement, and the business the Franchisee will conduct with its, his, or her own attorneys, accountants, and real estate and other advisors; (B) to investigate all statements and information made or given by us and our officers, directors, employees, and agents relating to the Franchise System, the Shop, and any other subject; and (C) to consult with any other franchisees we periodically have.

**\*Insert initials into the following blank to confirm this statement: \_\_\_\_**

11. Each of the undersigned understands that the Franchise Agreement grants rights for one, and only one, Shop, operated only at the site identified or to be identified in the Franchise Agreement, and that, except to the extent provided in a Development Rights Rider we sign with the Franchisee, we are not granting or promising any “exclusive,” “expansion,” “protected,” “non-encroachable,” or other territorial rights, rights of first refusal, or rights of any other kind for the Shop’s market area or any other existing or potential Potbelly Shop or geographic territory.

**\*Insert initials into the following blank to confirm this statement: \_\_\_\_**

12. Each of the undersigned understands that the Franchise Agreement (including any riders and exhibits) reflects the entire agreement between the parties with respect to the Shop’s development and operation as a franchise and supersedes all prior and other contemporaneous oral or written agreements, statements, representations, and understandings among us, the undersigned,



and the Franchisee, except for representations made by the undersigned in this document and by us in the FDD.

**\*Insert initials into the following blank to confirm this statement: \_\_\_\_**

13. Each of the undersigned understands that, except for our representations in the FDD, nothing stated or promised by us that is not specifically set forth in the Franchise Agreement can be relied upon by the undersigned or the Franchisee.

**\*Insert initials into the following blank to confirm this statement: \_\_\_\_**

14. The only state(s) in which each of the undersigned is a resident is (are):

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**\*Insert initials into the following blank to confirm this statement: \_\_\_\_**

15. Each of the undersigned understands the importance of the Shop's site and location. The undersigned and the Franchisee have had, or will have, ample opportunity and the means to investigate, review, and analyze independently the Shop's site and location, the market area and all other facts relevant to the selection of a site for a Potbelly Shop, and the lease or purchase (as applicable) and related documents necessary to secure possession of or acquire the site.

**\*Insert initials into the following blank to confirm this statement: \_\_\_\_**

16. Each of the undersigned understands that neither our acceptance of any site and location nor our review or acceptance of any lease, purchase, or other terms or documents to secure possession of or acquire a site implies or constitutes any warranty, representation, guarantee, prediction, or projection that the site and location will be profitable or successful or that the lease, purchase, or other terms or documents are on favorable terms, its often being the case that real estate is available only on very tough terms.

**\*Insert initials into the following blank to confirm this statement: \_\_\_\_**

17. Each of the undersigned understands that site selection is a difficult and risky proposition. We have not given (and will not give) any representation, warranty, promise, guaranty, prediction, projection, or other statement or information relied (or to be relied) upon by the undersigned or the Franchisee regarding a site's prospects for success, nearby tenants, or other

attributes. The Franchisee will have any lease, purchase, or other terms and documents to secure possession of or acquire a site reviewed by its, his, or her own attorney and other advisors.

**\*Insert initials into the following blank to confirm this statement: \_\_\_\_**

18. The covenants and restrictions concerning competition contained in the Franchise Agreement are fair and reasonable and will not impose an undue hardship on the undersigned or the Franchisee. Each of them has other considerable skills, abilities, opportunities, and experience in other matters and of a general nature that enable each of them to derive income that is satisfactory to them from other endeavors.

**\*Insert initials into the following blank to confirm this statement: \_\_\_\_**

19. There is no fiduciary or confidential relationship between us and the undersigned or between us and the Franchisee. Each of the undersigned expects us to deal, and will act as if we are dealing, with it, him, or her at arm's length and in our own best interests.

**\*Insert initials into the following blank to confirm this statement: \_\_\_\_**

20. We have advised the undersigned and the Franchisee to consult with their own advisors on the legal, financial, and other aspects of the Franchise Agreement and all other documents signed concurrently with the Franchise Agreement; this document; the Shop; any lease, purchase, or other documents for a site; and the business contemplated. Each of the undersigned has either consulted with such advisors or deliberately declined to do so.

**\*Insert initials into the following blank to confirm this statement: \_\_\_\_**

21. Neither we nor any employee has provided the undersigned or the Franchisee with services or advice that are of a legal, accounting, or other professional nature.

**\*Insert initials into the following blank to confirm this statement: \_\_\_\_**

22. Each of the undersigned confirms that, during its, his, or her investigation of the franchise for the Shop, it, he, or she had no communications with any person who is an officer or director of the Potbelly system except for one or more of the following executives: Robert Wright, Steven Cirulis, Adiya Dixon, Adam Noyes, Lynette McKee, Jeffrey Douglas, Larry Strain, and David Daniels. If any of the undersigned did have communications with any executive of the Potbelly system other than those whose names appear above, the name of each such officer or director appears on the following lines: (None, unless something is filled-in here)

\_\_\_\_\_  
\_\_\_\_\_. For purposes of this representation, an executive does not include a manager or other employee of a corporate-owned

Potbelly Shop with whom the undersigned might have had contact while working at that Shop during the franchise application process.

**\*Insert initials into the following blank to confirm this statement: \_\_\_\_**

23. The statements made in this document supplement and are cumulative to statements, warranties, and representations made in other documents, such as the Franchise Agreement. The statements made in this document or the Franchise Agreement are made separately and independently. They are not intended to be, and will not be, construed as modifying or limiting each other.

**\*Insert initials into the following blank to confirm this statement: \_\_\_\_**

24. Each of the undersigned understands that, in the franchise relationship, we and the Franchisee will be independent contractors. Nothing is intended to make either the Franchisee or us a general or special agent, joint venturer, partner, or employee of the other for any purpose. We and our affiliates will not exercise direct or indirect control over the Shop's personnel except to the extent any indirect control is related to our legitimate interest in protecting the quality of products, service, or the Potbelly® brand. We and our affiliates will not share or codetermine the terms and conditions of employment of the Shop's employees or affect matters relating to the employment relationship between the Franchisee and the Shop's employees, such as employee selection, training, promotion, termination, hours worked, rates of pay, other benefits, work assigned, discipline, adjustment of grievances and complaints, and working conditions. We and our affiliates will not be the employer or joint employer of the Shop's employees. The Franchisee understands its obligation to obtain an acknowledgment (in the form we specify or approve) from all Shop employees that we and our affiliates are not their employer.

**\*Insert initials into the following blank to confirm this statement: \_\_\_\_**

25. Each of the undersigned understands and agrees that all arbitration proceedings, including the hearing, will be conducted at a suitable location that is within ten (10) miles of where we have our principal business address when the arbitration demand is filed.

**\*Insert initials into the following blank to confirm this statement: \_\_\_\_**

26. The President of the United States of America has issued Executive Order 13224 (the "Executive Order") prohibiting transactions with terrorists and terrorist organizations, and the United States government has adopted, and in the future may adopt, other anti-terrorism measures (the "Anti-Terrorism Measures"). We therefore require certain certifications that the parties with whom we deal are not directly or indirectly involved in terrorism. For that reason, the undersigned and the Franchisee hereby certify that neither they nor any of their employees, agents, or representatives, nor any other person or entity associated with the Franchisee, is: (a) a person or

entity listed in the Annex to the Executive Order; (b) a person or entity otherwise determined by the Executive Order to have committed acts of terrorism or to pose a significant risk of committing acts of terrorism; (c) a person or entity who assists, sponsors, or supports terrorists or acts of terrorism; or (d) owned or controlled by terrorists or sponsors of terrorism. The undersigned and the Franchisee further covenant that neither they nor any of their employees, agents, or representatives, nor any other person or entity associated with them, will during the Franchise Agreement term become a person or entity described above or otherwise become a target of any Anti-Terrorism Measure.

**\*Insert initials into the following blank to confirm this statement: \_\_\_\_\_**

\*\*\*\*\*

**The following language applies only to transactions governed by the Washington Franchise Investment Protection Act:**

This Questionnaire does not waive any liability the franchisor may have under the Washington Franchise Investment Protection Act, RCW 19.100, and the rules adopted thereunder.

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**FRANCHISEE**

\_\_\_\_\_  
(Name of Franchisee)

\_\_\_\_\_  
(Signature of Person Binding Franchisee)

\_\_\_\_\_  
(Name and Title Printed)

\_\_\_\_\_  
(Date)

**FRANCHISEE'S PRINCIPALS**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name Printed)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name Printed)

\_\_\_\_\_  
(Date)

**EXHIBIT I**

**STATE ADDENDA AND FRANCHISE AGREEMENT RIDERS**

**ADDENDUM TO**  
**POTBELLY FRANCHISING, LLC**  
**MULTI-STATE FRANCHISE DISCLOSURE DOCUMENT**

The following are additional disclosures for the Franchise Disclosure Document of Potbelly Franchising, LLC required by various state franchise laws. Each provision of these additional disclosures will not apply unless, with respect to that provision, the jurisdictional requirements of the applicable state franchise registration and disclosure law are met independently without reference to these additional disclosures.

**CALIFORNIA**

1. THE CALIFORNIA FRANCHISE INVESTMENT LAW REQUIRES THAT A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE FRANCHISE BE DELIVERED TOGETHER WITH THE DISCLOSURE DOCUMENT.

2. SECTION 31125 OF THE FRANCHISE INVESTMENT LAW REQUIRES US TO GIVE YOU A DISCLOSURE DOCUMENT APPROVED BY THE COMMISSIONER OF BUSINESS OVERSIGHT BEFORE WE ASK YOU TO CONSIDER A MATERIAL MODIFICATION OF YOUR FRANCHISE AGREEMENT.

3. OUR WEBSITE, [www.potbelly.com](http://www.potbelly.com), HAS NOT BEEN REVIEWED OR APPROVED BY THE CALIFORNIA DEPARTMENT OF BUSINESS OVERSIGHT. ANY COMPLAINTS CONCERNING THE CONTENT OF THE WEBSITE MAY BE DIRECTED TO THE CALIFORNIA DEPARTMENT OF BUSINESS OVERSIGHT AT [www.dfpi.ca.gov](http://www.dfpi.ca.gov).

4. Item 3 of the Franchise Disclosure Document is amended to provide that neither the franchisor, nor any person in Item 2 of the Franchise Disclosure Document, is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities Exchange Act of 1934, 15 U.S.C.A. 78a et seq., suspending or expelling such person from membership in that association or exchange.

5. The following sentence is added to the “Remarks” column of the line-item titled “Interest” in Item 6 of the Franchise Disclosure Document: The highest interest rate allowed under California law is 10% annually.

6. The following sentence is added at the end of Item 15 of the Franchise Disclosure Document: We generally do not require a spouse to sign a personal guaranty if he or she has no ownership interest in the franchise.

7. The following paragraphs are added at the end of Item 17 of the Franchise Disclosure Document:

California Business and Professions Code Sections 20000 through 20043 provide rights to franchisees and developers concerning termination, transfer, or

nonrenewal of a franchise. If the Franchise Agreement or Area Development Agreement contains a provision that is inconsistent with the law, the law will control.

The Franchise Agreement and Area Development Agreement provide for termination upon insolvency. This provision might not be enforceable under federal bankruptcy law (11 U.S.C.A. Secs. 101 et seq.). You must sign a release if you renew or transfer your franchise. The California Corporations Code voids a waiver of your rights under the Franchise Investment Law (California Corporations Code 31000 through 31516). Business and Professions Code 20010 voids a waiver of your rights under the Franchise Relations Act (Business and Professions Code 20000 through 20043).

The Franchise Agreement contains a covenant not to compete that extends beyond the termination of the franchise. This provision might not be enforceable under California law.

The Franchise Agreement and Area Development Agreement require binding arbitration at a suitable location that is within ten (10) miles of where we have our principal business address at the time the arbitration demand is filed. You will be required to travel to that location and pay the expenses you incur in any such arbitration proceeding (it is currently in Chicago, Illinois). You are encouraged to consult private legal counsel to determine the applicability of California and federal laws (such as Business and Professions Code Section 20040.5, Code of Civil Procedure Section 1281, and the Federal Arbitration Act) to any provisions of a franchise agreement restricting venue to a forum outside the State of California.

The Franchise Agreement and Area Development Agreement require application of the laws of the State of Illinois. This provision might not be enforceable under California law.

## **ILLINOIS**

The following statement is added to the end of Item 17:

Except for the Federal Arbitration Act that applies to arbitration, Illinois law governs the Franchise Agreement and Area Development Agreement.

## **MINNESOTA**

**Renewal, Termination, Transfer and Dispute Resolution.** The following paragraphs are added at the end of the chart in Item 17 of the Franchise Disclosure Document:



For franchises governed by the Minnesota Franchises Law, we will comply with Minn. Stat. Sec. 80C.14, Subds. 3, 4, and 5 which require, except in certain specified cases, that you be given 90 days' notice of termination (with 60 days to cure) and 180 days' notice for non-renewal of the applicable agreement.

Minnesota Statutes, Section 80C.21 and Minnesota Rule 2860.4400(J) prohibit the franchisor from requiring litigation to be conducted outside Minnesota, requiring waiver of a jury trial, or requiring the franchisee or developer to consent to liquidated damages, termination penalties or judgment notes. In addition, nothing in the Franchise Disclosure Document or agreements can abrogate or reduce any of franchisee's or developer's rights as provided for in Minnesota Statutes, Chapter 80C or franchisee's or developer's rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction.

Any release as a condition of renewal and/or assignment/transfer will not apply to the extent prohibited by applicable law for claims arising under Minn. Rule 2860.4400D.

## **NEW YORK**

1. The following information is added to the Cover page of the Franchise Disclosure Document:

INFORMATION COMPARING FRANCHISORS IS AVAILABLE. CALL THE STATE ADMINISTRATORS LISTED IN EXHIBIT A OR YOUR PUBLIC LIBRARY FOR SOURCES OF 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 THE FRANCHISE DISCLOSURE DOCUMENT IS UNTRUE, CONTACT THE FEDERAL TRADE COMMISSION AND NEW YORK STATE DEPARTMENT OF LAW, BUREAU OF INVESTOR PROTECTION AND SECURITIES, 28 LIBERTY STREET, 21ST FLOOR, NEW YORK, NEW YORK 10005. THE FRANCHISOR MAY, IF IT CHOOSES, NEGOTIATE WITH YOU ABOUT ITEMS COVERED IN THE FRANCHISE DISCLOSURE DOCUMENT, HOWEVER, THE FRANCHISOR CANNOT USE THE NEGOTIATING PROCESS TO PREVAIL UPON A PROSPECTIVE FRANCHISEE TO ACCEPT TERMS WHICH ARE LESS FAVORABLE THAN THOSE SET FORTH IN THIS FRANCHISE DISCLOSURE DOCUMENT.

2. The following is added to 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 or 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 Item 4:

Neither the franchisor, its affiliate, its predecessor,, officers, or general partner during the 10-year period immediately before the date of the offering, circular: (a) filed as debtor (or had filed against it) a petition to start an action under the U.S. Bankruptcy Code; (b) obtained a discharge of its debts under the bankruptcy Code; or (c) was a principal officer Of a company or a general partner in a partnership that either filed as a debtor (or has filed against it) a petition to start an action under

the U.S. Bankruptcy Code or that obtained a discharge of its debts under the U.S. Bankruptcy Code during or within 1 year after that officer or general partner of the franchisor held this position in the company or partnership.

4. The following is added to the end of Item 5:

The initial franchise fee constitutes part of our general operating funds and will be used as such in our discretion.

5. 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.

6. The following language replaces the “Summary” section of Item 17(d), titled “Termination by franchisee”:

You may terminate the agreements on any grounds available by law.

7. The following is added to the end of the “Summary” section of Item 17(j) titled “Assignment of contract by franchisor”:

However, no assignment will be made except to an assignee who in good faith and judgment of the franchisor, is willing and financially able to assume the franchisor’s obligations under the Franchise Agreement or Area Development Agreement.

8. The following is added to the end of the: “Summary” sections of Item 17(v), titled “Choice of forum”, and Item 7(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

## **NORTH DAKOTA**

1. The “Summary” sections of Items 17(c) and 17(m) of the Disclosure Document are amended by adding the following:

However, any release required as a condition of renewal and/or assignment/transfer will not apply to the extent prohibited by the North Dakota Franchise Investment Law.

2. The “Summary” section of Item 17(r) of the Disclosure Document is amended by adding the following:

Covenants not to compete such as those mentioned above generally are considered unenforceable in North Dakota. However, we will seek to enforce them to the extent enforceable.

3. The “Summary” section of Item 17(u) of the Disclosure Document is amended to read as follows:

We and you must arbitrate all disputes at location near our principal business address at the time the arbitration demand is filed (it currently is in Chicago, Illinois); however, to the extent required by the North Dakota Franchise Investment Law (unless such a requirement is preempted by the Federal Arbitration Act), arbitration proceedings will be held at a site to which we and you agree.

4. The “Summary” section of Item 17(v) of the Disclosure Document is amended by adding the following:

To the extent required by the North Dakota Franchise Investment Law, you may bring an action in North Dakota.

5. The “Summary” section of Item 17(w) of the Disclosure Document is amended by adding the following:

Except for federal law. North Dakota law applies.

## **VIRGINIA**

The “Summary” section of Item 17(h) of the Franchise Disclosure Document is amended by adding the following:

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 or Area Development

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.

## **WASHINGTON**

In recognition of the requirements by the Washington Franchise Investment Protection Act and the Rules and Regulations promulgated thereunder (the “**Washington Act**”), the Franchise Disclosure Document, Franchise Agreement and Area Development Agreement of Potbelly Franchising, LLC shall be modified as follows:

The State of Washington has a statute, RCW 19.100.180, which might supersede this Agreement in your relationship with us, including the areas of termination and renewal of your franchise. There may also be court decisions which might supersede this Agreement in your relationship with us, including the areas of termination and renewal of your franchise.

In any litigation, arbitration, or mediation involving a franchise purchased in Washington, the site thereof shall be either in the state of Washington, or in a place mutually agreed upon at that time, or as determined by the judge, arbitrator, or mediator, as applicable.

In the event of a conflict of laws the provisions of the Washington Act, Chapter 19.100 RCW shall prevail.

A release or waiver of rights executed by a franchisee shall not include rights under the Washington 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 Washington Act, or rights or remedies under the Washington Act such as a right to a jury trial, might 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 FOLLOWING PAGES ARE  
STATE-SPECIFIC RIDERS TO THE  
FRANCHISE AGREEMENT**

**RIDER TO THE POTBELLY FRANCHISING, LLC  
FRANCHISE AGREEMENT  
FOR USE IN ILLINOIS**

This Rider (the “Rider”) is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the “Effective Date”) (regardless of the dates of the parties’ signatures) by and between **POTBELLY FRANCHISING, LLC**, an Illinois limited liability company with its principal business address at 111 North Canal Street, Suite 325, Chicago, Illinois 60606 (“we,” “us,” or “our”), and \_\_\_\_\_, whose principal business address is \_\_\_\_\_ (“you” or “your”).

1. Background. We and you are parties to that certain Franchise Agreement dated \_\_\_\_\_, 20\_\_ that has been signed at the same time as this Rider (the “Franchise Agreement”). This Rider forms part of the Franchise Agreement. This Rider is being signed because (a) the offer or sale of the franchise for the Potbelly Shop that you will operate under the Franchise Agreement was made in the State of Illinois and the Potbelly Shop will be operated in Illinois, and/or (b) you are a resident of Illinois.

2. Consent to Jurisdiction. Section 17.H. of the Franchise Agreement is deleted in its entirety and replaced with the following:

In conformance with Section 4 of the Illinois Franchise Disclosure Act, any provision in a franchise agreement that designates jurisdiction and venue in a forum outside of the State of Illinois is void. However, a franchise agreement may provide for arbitration to take place outside of Illinois.

3. Jury Trial Waiver. The following language is added to the end of the second paragraph of Section 17.I. of the Franchise Agreement:

However, this waiver shall not apply to the extent prohibited by Section 705/41 of the Illinois Franchise Disclosure Act of 1987 or Illinois Regulations at Section 260.609.

4. Illinois Franchise Disclosure Act. The following is added as a new Subsection 17.M. of the Franchise Agreement:

17.M. Illinois Franchise Disclosure Act.

In conformance with Section 41 of the Illinois Franchise Disclosure Act, any condition, stipulation, or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of the Act or any other law of Illinois is void. However, that Section shall not prevent any person from entering into a settlement agreement or executing a general release regarding a potential or actual lawsuit filed under any provision of the Act, nor shall it prevent the arbitration of any claim pursuant to the provisions of Title 9 of the United States Code.

5. No Waiver of Disclaimer of Reliance. The following provision is added to the Franchise Agreement:

No statement, questionnaire or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or any other person acting on



behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

**IN WITNESS WHEREOF**, the parties have signed and delivered this Rider on the dates noted below, to be effective as of the Effective Date.

**POTBELLY FRANCHISING, LLC**, an  
Illinois limited liability company

**FRANCHISEE**

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

\_\_\_\_\_  
[Name of Franchisee]

Name: \_\_\_\_\_  
[Print Name]

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

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

Name: \_\_\_\_\_  
[Print Name]

**DATED:** \_\_\_\_\_

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

**DATED:** \_\_\_\_\_

**RIDER TO THE POTBELLY FRANCHISING, LLC  
FRANCHISE AGREEMENT  
FOR USE IN MINNESOTA**

This Rider (the “Rider”) is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the “Effective Date”) (regardless of the dates of the parties’ signatures) by and between **POTBELLY FRANCHISING, LLC**, an Illinois limited liability company with its principal business address at 111 North Canal Street, Suite 325, Chicago, Illinois 60606 (“we,” “us,” or “our”), and \_\_\_\_\_, whose principal business address is \_\_\_\_\_ (“you” or “your”).

1. Background. We and you are parties to that certain Franchise Agreement dated \_\_\_\_\_, 20\_\_ that has been signed at the same time as this Rider (the “Franchise Agreement”). This Rider is annexed to and forms part of the Franchise Agreement. This Rider is being signed because (a) the offer or sale of the franchise for the Potbelly Shop that you will operate under the Franchise Agreement was made in the State of Minnesota and/or (b) the Potbelly Shop will be operated in Minnesota.

2. Agreements/Releases. Sections 12.C.(8), 13.C., and 15.E. of the Franchise Agreement are amended by adding the following:

However, any general release will not apply to the extent prohibited by applicable law with respect to claims arising under Minn. Rule 2860.4400D.

3. Default & Termination. The following language is added at the end of Section 14 of the Franchise Agreement:

Minnesota law provides you with certain termination and non-renewal rights. Minn. Stat. §80C.14 Subds. 3, 4 and 5 require, except in certain specified cases, that you be given 90 days’ notice of termination (with 60 days to cure) and 180 days’ notice for non-renewal of this Agreement.

4. Governing Law/Choice of Forum. The following language is added to the end of Sections 17.G. and 17.H. of the Franchise Agreement:

Minnesota Statutes, Section 80C.21 and Minnesota Rule 2860.4400(J) prohibit the franchisor from requiring litigation to be conducted outside Minnesota, requiring waiver of 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 agreements can abrogate or reduce any of franchisee’s rights as provided for in Minnesota Statutes, Chapter 80C or franchisee’s rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction.

5. Jury Trial Waiver. The second paragraph of Section 17.I. of the Franchise Agreement is deleted to the extent unenforceable under the Minnesota Franchises Law.

6. Limitation of Claims. The following sentence is added to the end of Section 17.K. of the Franchise Agreement:

Minnesota law provides that no action may be commenced pursuant to Minn. Stat. §80C.17 more than three (3) years after the cause of action accrues. Minn. Stat. §80C.17, Subd. 5.

7. No Waiver of Disclaimer of Reliance. The following provision is added to the Franchise Agreement:

No statement, questionnaire or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or any other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

**IN WITNESS WHEREOF**, the parties have signed and delivered this Rider on the dates noted below, to be effective as of the Effective Date.

**POTBELLY FRANCHISING, LLC**, an Illinois limited liability company

**FRANCHISEE**

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

\_\_\_\_\_  
[Name of Franchisee]

Name: \_\_\_\_\_  
[Print Name]

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

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

Name: \_\_\_\_\_  
[Print Name]

**DATED:** \_\_\_\_\_

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

**DATED:** \_\_\_\_\_

**RIDER TO THE POTBELLY FRANCHISING, LLC  
FRANCHISE AGREEMENT  
FOR USE IN NEW YORK**

This Rider (the “**Rider**”) is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the “**Effective Date**”) (regardless of the dates of the parties’ signatures) by and between **POTBELLY FRANCHISING, LLC**, an Illinois limited liability company with its principal business address at 111 North Canal Street, Suite 325, Chicago, Illinois 60606 (“**we,**” “**us,**” or “**our**”), and \_\_\_\_\_, whose principal business address is \_\_\_\_\_ (“**you**” or “**your**”).

1. Background. We and you are parties to that certain Franchise Agreement dated \_\_\_\_\_, 20\_\_ that has been signed at the same time as this Rider (the “Franchise Agreement”). This Rider is annexed to and forms part of the Franchise Agreement. This Rider is being signed because (a) the offer or sale of the franchise for the Potbelly Shop that you will operate under the Franchise Agreement was made in the State of New York and/or (b) you are a resident of New York and the Potbelly Shop will be operated in New York.

2. Transfer by Us. The following language is added to the end of Section 12.A. of the Franchise Agreement:

However, to the extent required by applicable law, no assignment will be made except to an assignee who, in our good faith judgment, is willing and able to assume our obligations under this Agreement.

3. Agreements/Releases. Sections 12.C.(8), 13.C., and 15.E. of the Franchise Agreement are amended by adding the following:

Provided, however, that to the extent required by Article 33 of the General Business Law of the State of New York, 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 the proviso that the non-waiver provisions of GBL 687 and 687.5 be satisfied.

4. Termination by You. The following language is added at the end of Section 14.A. of the Franchise Agreement:

You may terminate this Agreement on any grounds available by law under the provisions of Article 33 of the General Business Law of the State of New York.

5. Governing Law/Choice of Forum. The following language is added to the end of Sections 17.G. and 17.H. of the Franchise Agreement:

However, to the extent required by Article 33 of the General Business Law of the State of New York, this Section shall not be considered a waiver of any right conferred upon you by the provisions of Article 33 of the General Business Law of the State of New York and the regulations issued thereunder.

6. Limitation of Claims. The following sentence is added to the end of Section 17.K. of the Franchise Agreement:

To the extent required by Article 33 of the General Business Law of the State of New York, all rights 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 provision that the non-waiver provisions of GBL Sections 687.4 and 687.5 be satisfied.

7. No Waiver of Disclaimer of Reliance. The following provision is added to the Franchise Agreement:

No statement, questionnaire or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or any other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

8. Application of Rider. There are circumstances in which an offering made by us would not fall within the scope of the New York General Business Law, Article 33, such as when the offer and acceptance occurred outside the State of New York. However, an offer or sale is deemed to be made in New York if you are domiciled, and the franchise will be opened, in New York. We are required to furnish a New York prospectus to every prospective franchisee who is protected under the New York General Business Law, Article 33.

**IN WITNESS WHEREOF**, the parties have signed and delivered this Rider on the dates noted below, to be effective as of the Effective Date.

**POTBELLY FRANCHISING, LLC**, an  
Illinois limited liability company

**FRANCHISEE**

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

\_\_\_\_\_  
[Name of Franchisee]

Name: \_\_\_\_\_  
[Print Name]

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

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

Name: \_\_\_\_\_  
[Print Name]

**DATED:** \_\_\_\_\_

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

**DATED:** \_\_\_\_\_

**RIDER TO THE POTBELLY FRANCHISING, LLC  
FRANCHISE AGREEMENT  
FOR USE IN NORTH DAKOTA**

This Rider (the “Rider”) is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the “Effective Date”) (regardless of the dates of the parties’ signatures) by and between **POTBELLY FRANCHISING, LLC**, an Illinois limited liability company with its principal business address at 111 North Canal Street, Suite 325, Chicago, Illinois 60606 (“we,” “us,” or “our”), and \_\_\_\_\_, whose principal business address is \_\_\_\_\_ (“you” or “your”).

1. Background. We and you are parties to that certain Franchise Agreement dated \_\_\_\_\_, 20\_\_ that has been signed at the same time as this Rider (the “Franchise Agreement”). This Rider is annexed to and forms part of the Franchise Agreement. This Rider is being signed because (a) you are a resident of North Dakota and the Potbelly Shop that you will operate under the Franchise Agreement will be located in North Dakota, and/or (b) any of the franchise offering or sales activity occurred in North Dakota.

2. Releases. Sections 12.A., 12.C.(8), 13.C., and 15.E. of the Franchise Agreement are amended by adding the following:

; provided, however, that such general release shall not apply to the extent prohibited by law with respect to claims arising under the North Dakota Franchise Investment Law.

3. Payment of Amounts Owed to Us. Section 15.A. of the Franchise Agreement is amended by adding the following language:

We and you acknowledge that certain parts of this provision might not be enforceable under the North Dakota Franchise Investment Law; however, we and you agree to enforce the provision to the extent the law allows.

4. Noncompetition. Section 15.D. of the Franchise Agreement is amended by adding the following language:

Covenants not to compete such as those mentioned above are generally considered unenforceable in the State of North Dakota. However, you acknowledge and agree that we intend to seek enforcement of these provisions to the extent enforceable under the law.

5. Arbitration. The following language is added to the end of Section 17.F. of the Franchise Agreement:

However, to the extent required by the North Dakota Franchise Investment Law (unless such a requirement is preempted by the Federal Arbitration Act), arbitration proceedings will be held at a site to which we and you agree.

6. Governing Law. The following language is added to the end of Section 17.G. of the Franchise Agreement:

**NOTWITHSTANDING THE FOREGOING, TO THE EXTENT REQUIRED BY THE NORTH DAKOTA FRANCHISE INVESTMENT LAW, NORTH DAKOTA LAW WILL APPLY TO THIS AGREEMENT.**

7. Consent to Jurisdiction. The following language is added to the end of Section 17.H. of the Franchise Agreement:

**HOWEVER, TO THE EXTENT REQUIRED BY APPLICABLE LAW, YOU MAY BRING AN ACTION IN NORTH DAKOTA.**

8. Waiver of Jury Trial. If and then only to the extent required by the North Dakota Franchise Investment Law, the second paragraph of Section 17.I. of the Franchise Agreement is deleted.

9. Limitation of Claims. Section 17.K. of the Franchise Agreement is amended by adding the following language:

The time limitations set forth in this Subsection might be modified by the North Dakota Franchise Investment Law.

10. No Waiver of Disclaimer of Reliance. The following provision is added to the Franchise Agreement:

No statement, questionnaire or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or any other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

**IN WITNESS WHEREOF**, the parties have signed and delivered this Rider on the dates noted below, to be effective as of the Effective Date.

**POTBELLY FRANCHISING, LLC**, an Illinois limited liability company

**FRANCHISEE**

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

\_\_\_\_\_  
[Name of Franchisee]

Name: \_\_\_\_\_  
[Print Name]

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

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

Name: \_\_\_\_\_  
[Print Name]

**DATED:** \_\_\_\_\_

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

**DATED:** \_\_\_\_\_

**RIDER TO THE POTBELLY FRANCHISING, LLC  
FRANCHISE AGREEMENT  
FOR USE IN WASHINGTON**

This Rider (the “Rider”) is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the “Effective Date”) (regardless of the dates of the parties’ signatures) by and between **POTBELLY FRANCHISING, LLC**, an Illinois limited liability company with its principal business address at 111 North Canal Street, Suite 325, Chicago, Illinois 60606 (“we,” “us,” or “our”), and \_\_\_\_\_, whose principal business address is \_\_\_\_\_ (“you” or “your”).

1. **Background.** We and you are parties to that certain Franchise Agreement dated \_\_\_\_\_, 20\_\_ that has been signed at the same time as this Rider (the “Franchise Agreement”). This Rider is annexed to and forms part of the Franchise Agreement. This Rider is being signed because (a) you are a resident of Washington and/or (b) the Potbelly Shop that you will operate under the Franchise Agreement will be located in Washington and/or (c) any of the franchise offering or sales activity occurred in Washington.

2. **Addition of Paragraphs.** The following is added to the end of the Franchise Agreement:

In recognition of the requirements by the Washington Franchise Investment Protection Act and the Rules and Regulations promulgated thereunder (the “Act”), the Franchise Agreement of Potbelly Franchising, LLC shall be modified as follows:

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 us 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 us including the areas of termination and renewal of your franchise.

In any arbitration or mediation involving a franchise purchased in Washington, the arbitration or mediation site will be either in the state of Washington, or in a place mutually agreed upon at the time of the arbitration or mediation, or as determined by the arbitrator or mediator at the time of arbitration or mediation. In addition, if litigation is not precluded by the Franchise Agreement, a franchisee may bring an action or proceeding arising out of or in connection with the sale of franchises, or a violation of the Washington Franchise Investment Protection Act, in Washington.

A release or waiver of rights executed by a franchisee may not include rights under the Washington Franchise Investment Protection Act or any rule or order thereunder except when executed pursuant to a negotiated settlement after the agreement is in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act, or rights or remedies under the Act such as a right to a jury trial, may not be enforceable.

Transfer fees are collectable to the extent that they reflect the franchisor’s reasonable estimated or actual costs in effecting a transfer.



Pursuant to RCW 49.62.020, a noncompetition covenant is void and unenforceable against an employee, including an employee of a franchisee, unless the employee's earnings from the party seeking enforcement, when annualized, exceed \$100,000 per year (an amount that will be adjusted annually for inflation). In addition, a noncompetition covenant is void and unenforceable against an independent contractor of a franchisee under RCW 49.62.030 unless the independent contractor's earnings from the party seeking enforcement, when annualized, exceed \$250,000 per year (an amount that will be adjusted annually for inflation). As a result, any provisions contained in the franchise agreement or elsewhere that conflict with these limitations are void and unenforceable in Washington.

RCW 49.62.060 prohibits a franchisor from restricting, restraining, or prohibiting a franchisee from (i) soliciting or hiring any employee of a franchisee of the same franchisor or (ii) soliciting or hiring any employee of the franchisor. As a result, any such provisions contained in the franchise agreement or elsewhere are void and unenforceable in Washington.

No statement, questionnaire or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or any other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

**IN WITNESS WHEREOF**, the parties have signed and delivered this Rider on the dates noted below, to be effective as of the Effective Date.

**POTBELLY FRANCHISING, LLC**, an  
Illinois limited liability company

**FRANCHISEE**

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

\_\_\_\_\_  
[Name of Franchisee]

Name: \_\_\_\_\_  
[Print Name]

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

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

Name: \_\_\_\_\_  
[Print Name]

**DATED:** \_\_\_\_\_

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

**DATED:** \_\_\_\_\_

**RIDER TO THE POTBELLY FRANCHISING, LLC FRANCHISE AGREEMENT  
FOR USE IN CALIFORNIA, HAWAII, INDIANA, MICHIGAN, RHODE ISLAND, SOUTH DAKOTA,  
VIRGINIA AND WISCONSIN**

This Rider (the “Rider”) is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the “Effective Date”) (regardless of the dates of the parties’ signatures) by and between **POTBELLY FRANCHISING, LLC**, an Illinois limited liability company with its principal business address at 111 North Canal Street, Suite 325, Chicago, Illinois 60606 (“we,” “us,” or “our”), and \_\_\_\_\_, whose principal business address is \_\_\_\_\_ (“you” or “your”).

1. **Background.** Franchisor and Franchisee are parties to that certain Franchise Agreement that has been signed at the same time as the signing of this Rider (the “Franchise Agreement”). This Rider is part of the Franchise Agreement.

2. **No Waiver of Disclaimer of Reliance in Certain States.** The following provision applies only to franchisees and franchises that are subject to the state franchise disclosure laws in California, Hawaii, Indiana, Michigan, Rhode Island, South Dakota, Virginia or Wisconsin:

No statement, questionnaire or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or any other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

**IN WITNESS WHEREOF**, the parties have executed and delivered this Rider effective on the Effective Date stated in the Franchise Agreement.

**POTBELLY FRANCHISING, LLC**, an  
Illinois limited liability company

**FRANCHISEE**

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

\_\_\_\_\_  
[Name of Franchisee]

Name: \_\_\_\_\_  
[Print Name]

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

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

Name: \_\_\_\_\_  
[Print Name]

**DATED:** \_\_\_\_\_

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

**DATED:** \_\_\_\_\_

**THE FOLLOWING PAGES ARE  
STATE-SPECIFIC RIDERS TO THE  
AREA DEVELOPMENT AGREEMENT**

**RIDER TO THE POTBELLY FRANCHISING, LLC  
AREA DEVELOPMENT AGREEMENT  
FOR USE IN ILLINOIS**

This Rider (the “Rider”) is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the “Effective Date”) (regardless of the dates of the parties’ signatures) by and between **POTBELLY FRANCHISING, LLC**, an Illinois limited liability company with its principal business address at 111 North Canal Street, Suite 325, Chicago, Illinois 60606 (“we,” “us,” or “our”), and \_\_\_\_\_, whose principal business address is \_\_\_\_\_ (“you,” “your” or “Developer”).

1. **Background.** We and you are parties to that certain Area Development Agreement dated \_\_\_\_\_, 20\_\_ that has been signed at the same time as this Rider (the “Area Development Agreement”). This Rider is annexed to and forms part of the Area Development Agreement. This Rider is being signed because (a) any of the offering or sales activity relating to the Area Development Agreement occurred in the State of Illinois and the Development Area under the Area Development Agreement will be located in the State of Illinois, and/or (b) you are a resident of Illinois.

2. **Consent to Jurisdiction.** Section 10.07. of the Area Development Agreement is deleted in its entirety and replaced with the following:

**IN CONFORMANCE WITH SECTION 4 OF THE ILLINOIS FRANCHISE DISCLOSURE ACT, ANY PROVISION IN AN AREA DEVELOPMENT AGREEMENT THAT DESIGNATES JURISDICTION AND VENUE IN A FORUM OUTSIDE OF THE STATE OF ILLINOIS IS VOID. HOWEVER, AN AREA DEVELOPMENT AGREEMENT MAY PROVIDE FOR ARBITRATION TO TAKE PLACE OUTSIDE OF ILLINOIS.**

3. **Jury Trial Waiver.** The following language is added to the end of the second paragraph of Section 10.10. of the Area Development Agreement:

**HOWEVER, THIS WAIVER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY SECTION 705/41 OF THE ILLINOIS FRANCHISE DISCLOSURE ACT OF 1987 OR ILLINOIS REGULATIONS AT SECTION 260.609.**

4. **Illinois Franchise Disclosure Act.** The following is added as a new Subsection 10.22. of the Area Development Agreement:

10.22. **Illinois Franchise Disclosure Act.**

In conformance with Section 41 of the Illinois Franchise Disclosure Act, any condition, stipulation, or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of the Act or any other law of Illinois is void. However, that Section shall not prevent any person from entering into a settlement agreement or executing a general release regarding a potential or actual lawsuit filed under any provision of the Act, nor shall it prevent the arbitration of any claim pursuant to the provisions of Title 9 of the United States Code.

5. **No Waiver of Disclaimer of Reliance.** The following provision is added to the Area Development Agreement:

No statement, questionnaire or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or any other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

**IN WITNESS WHEREOF**, the parties have signed and delivered this Rider on the dates noted below, to be effective as of the Effective Date.

**POTBELLY FRANCHISING, LLC**, an  
Illinois limited liability company

**DEVELOPER**

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

\_\_\_\_\_  
[Name of Developer]

Name: \_\_\_\_\_  
[Print Name]

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

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

Name: \_\_\_\_\_  
[Print Name]

**DATED:** \_\_\_\_\_

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

**DATED:** \_\_\_\_\_

**RIDER TO THE POTBELLY FRANCHISING, LLC  
AREA DEVELOPMENT AGREEMENT  
FOR USE IN MINNESOTA**

This Rider (the “Rider”) is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the “Effective Date”) (regardless of the dates of the parties’ signatures) by and between **POTBELLY FRANCHISING, LLC**, an Illinois limited liability company with its principal business address at 111 North Canal Street, Suite 325, Chicago, Illinois 60606 (“we,” “us,” or “our”), and \_\_\_\_\_, whose principal business address is \_\_\_\_\_ (“you” or “your”).

1. Background. We and you are parties to that certain Area Development Agreement dated \_\_\_\_\_, 20\_\_ that has been signed at the same time as this Rider (the “Area Development Agreement”). This Rider is annexed to and forms part of the Area Development Agreement. This Rider is being signed because (a) any of the offering or sales activity relating to the Area Development Agreement occurred in the State of Minnesota, and/or (b) the Development Area will be located in the State of Minnesota.

2. Termination of Agreement. The following language is added at the end of Section 8 of the Area Development Agreement:

Minnesota law provides you with certain termination and non-renewal rights. Minn. Stat. §80C.14 Subds. 3, 4 and 5 require, except in certain specified cases, that you be given 90 days’ notice of termination (with 60 days to cure) and 180 days’ notice for non-renewal of this Agreement.

3. Governing Law/Consent to Jurisdiction. The following language is added to the end of Sections 10.07. and 10.08. of the Area Development Agreement:

**MINNESOTA STATUTES, SECTION 80C.21 AND MINNESOTA RULE 2860.4400(J) PROHIBIT THE FRANCHISOR FROM REQUIRING LITIGATION TO BE CONDUCTED OUTSIDE MINNESOTA, REQUIRING WAIVER OF A JURY TRIAL, OR REQUIRING THE DEVELOPER TO CONSENT TO LIQUIDATED DAMAGES, TERMINATION PENALTIES OR JUDGMENT NOTES. IN ADDITION, NOTHING IN THE FRANCHISE DISCLOSURE DOCUMENT OR AGREEMENTS CAN ABROGATE OR REDUCE ANY OF DEVELOPER’S RIGHTS AS PROVIDED FOR IN MINNESOTA STATUTES, CHAPTER 80C OR DEVELOPER’S RIGHTS TO ANY PROCEDURE, FORUM, OR REMEDIES PROVIDED FOR BY THE LAWS OF THE JURISDICTION.**

4. Jury Trial Waiver. The second paragraph of Section 10.10. of the Area Development Agreement is deleted to the extent unenforceable under the Minnesota Franchises Law.

5. Limitations of Claims. The following sentence is added to the end of Section 10.11. of the Area Development Agreement:

Minnesota law provides that no action may be commenced pursuant to Minn. Stat. §80C.17 more than three (3) years after the cause of action accrues. Minn. Stat. §80C.17, Subd. 5.

6. No Waiver of Disclaimer of Reliance. The following provision is added to the Area Development Agreement:

No statement, questionnaire or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or any other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

**IN WITNESS WHEREOF**, the parties have signed and delivered this Rider on the dates noted below, to be effective as of the Effective Date.

**POTBELLY FRANCHISING, LLC**, an Illinois limited liability company

**DEVELOPER**

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

\_\_\_\_\_  
[Name of Developer]

Name: \_\_\_\_\_  
[Print Name]

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

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

Name: \_\_\_\_\_  
[Print Name]

**DATED:** \_\_\_\_\_

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

**DATED:** \_\_\_\_\_

**RIDER TO THE POTBELLY FRANCHISING, LLC  
AREA DEVELOPMENT AGREEMENT  
FOR USE IN NEW YORK**

This Rider (the “Rider”) is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the “Effective Date”) (regardless of the dates of the parties’ signatures) by and between **POTBELLY FRANCHISING, LLC**, an Illinois limited liability company with its principal business address at 111 North Canal Street, Suite 325, Chicago, Illinois 60606 (“we,” “us,” or “our”), and \_\_\_\_\_, whose principal business address is \_\_\_\_\_ (“you” or “your”).

1. Background. We and you are parties to that certain Area Development Agreement dated \_\_\_\_\_, 20\_\_ that has been signed at the same time as this Rider (the “Area Development Agreement”). This Rider is annexed to and forms part of the Area Development Agreement. This Rider is being signed because (a) any of the offering or sales activity relating to the Area Development Agreement occurred in the State of New York, and/or (b) you are a resident of New York and the Development Area will be located in New York.

2. Transfer by Us. The following language is added to the end of Section 7.01. of the Area Development Agreement:

However, to the extent required by applicable law, no assignment will be made except to an assignee who, in our good faith judgment, is willing and able to assume our obligations under this Agreement.

3. Termination by You. The following language is added at the end of Section 8 of the Area Development Agreement:

You may terminate this Agreement on any grounds available by law under the provisions of Article 33 of the General Business Law of the State of New York.

4. Governing Law/Consent to Jurisdiction. The following language is added to the end of Sections 10.07. and 10.08. of the Area Development Agreement:

**HOWEVER, TO THE EXTENT REQUIRED BY ARTICLE 33 OF THE GENERAL BUSINESS LAW OF THE STATE OF NEW YORK, THIS SECTION SHALL NOT BE CONSIDERED A WAIVER OF ANY RIGHT CONFERRED UPON YOU BY THE PROVISIONS OF ARTICLE 33 OF THE GENERAL BUSINESS LAW OF THE STATE OF NEW YORK AND THE REGULATIONS ISSUED THEREUNDER.**

5. Limitations of Claims. The following sentence is added to the end of Section 10.11. of the Franchise Agreement:

To the extent required by Article 33 of the General Business Law of the State of New York, all rights 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 provision that the non-waiver provisions of GBL Sections 687.4 and 687.5 be satisfied.



6. No Waiver of Disclaimer of Reliance. The following provision is added to the Area Development Agreement:

No statement, questionnaire or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or any other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

7. Application of Rider. There are circumstances in which an offering made by us would not fall within the scope of the New York General Business Law, Article 33, such as when the offer and acceptance occurred outside the State of New York. However, an offer or sale is deemed to be made in New York if you are domiciled, and the franchise will be opened, in New York. We are required to furnish a New York prospectus to every prospective franchisee and developer who is protected under the New York General Business Law, Article 33.

**IN WITNESS WHEREOF**, the parties have signed and delivered this Rider on the dates noted below, to be effective as of the Effective Date.

**POTBELLY FRANCHISING, LLC**, an Illinois limited liability company

**DEVELOPER**

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

\_\_\_\_\_  
[Name of Developer]

Name: \_\_\_\_\_  
[Print Name]

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

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

Name: \_\_\_\_\_  
[Print Name]

**DATED:** \_\_\_\_\_

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

**DATED:** \_\_\_\_\_

**RIDER TO THE POTBELLY FRANCHISING, LLC  
AREA DEVELOPMENT AGREEMENT  
FOR USE IN NORTH DAKOTA**

This Rider (the “Rider”) is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the “Effective Date”) (regardless of the dates of the parties’ signatures) by and between **POTBELLY FRANCHISING, LLC**, an Illinois limited liability company with its principal business address at 111 North Canal Street, Suite 325, Chicago, Illinois 60606 (“we,” “us,” or “our”), and \_\_\_\_\_, whose principal business address is \_\_\_\_\_ (“you” or “your”).

1. Background. We and you are parties to that certain Area Development Agreement dated \_\_\_\_\_, 20\_\_ that has been signed at the same time as this Rider (the “Area Development Agreement”). This Rider is annexed to and forms part of the Area Development Agreement. This Rider is being signed because (a) you are a resident of the State of North Dakota and the Development Area will be located in the State of North Dakota, and/or (b) any of the offering or sales activity relating to the Area Development Agreement occurred in the State of North Dakota.

2. Arbitration. The following language is added to the end of Section 10.06. of the Area Development Agreement:

However, to the extent required by the North Dakota Franchise Investment Law (unless such a requirement is preempted by the Federal Arbitration Act), arbitration proceedings will be held at a site to which we and you agree.

3. Consent to Jurisdiction. The following language is added to the end of Section 10.07. of the Area Development Agreement:

**HOWEVER, TO THE EXTENT REQUIRED BY APPLICABLE LAW, YOU MAY BRING AN ACTION IN NORTH DAKOTA.**

4. Governing Law. The following language is added to the end of Section 10.08. of the Franchise Agreement:

**NOTWITHSTANDING THE FOREGOING, TO THE EXTENT REQUIRED BY THE NORTH DAKOTA FRANCHISE INVESTMENT LAW, NORTH DAKOTA LAW WILL APPLY TO THIS AGREEMENT.**

5. Waiver of Jury Trial. If and then only to the extent required by the North Dakota Franchise Investment Law, the second paragraph of Section 10.10. of the Area Development Agreement is deleted.

6. Limitations of Claims. Section 10.11. of the Area Development Agreement is amended by adding the following language:

The time limitations set forth in this Subsection might be modified by the North Dakota Franchise Investment Law.

7. No Waiver of Disclaimer of Reliance. The following provision is added to the Area Development Agreement:

No statement, questionnaire or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or any other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

**IN WITNESS WHEREOF**, the parties have signed and delivered this Rider on the dates noted below, to be effective as of the Effective Date.

**POTBELLY FRANCHISING, LLC**, an Illinois limited liability company

**DEVELOPER**

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

\_\_\_\_\_  
[Name of Developer]

Name: \_\_\_\_\_  
[Print Name]

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

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

Name: \_\_\_\_\_  
[Print Name]

**DATED:** \_\_\_\_\_

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

**DATED:** \_\_\_\_\_

**RIDER TO THE POTBELLY FRANCHISING, LLC  
AREA DEVELOPMENT AGREEMENT  
FOR USE IN WASHINGTON**

This Rider (the “Rider”) is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the “Effective Date”) (regardless of the dates of the parties’ signatures) by and between **POTBELLY FRANCHISING, LLC**, an Illinois limited liability company with its principal business address at 111 North Canal Street, Suite 325, Chicago, Illinois 60606 (“we,” “us,” or “our”), and \_\_\_\_\_, whose principal business address is \_\_\_\_\_ (“you” or “your”).

1. **Background.** We and you are parties to that certain Area Development Agreement dated \_\_\_\_\_, 20\_\_ that has been signed at the same time as this Rider (the “Area Development Agreement”). This Rider is annexed to and forms part of the Area Development Agreement. This Rider is being signed because (a) you are a resident of the State of Washington and/or (b) the Development Area will be located in the State of Washington and/or (c) any of the offering or sales activity relating to the Area Development Agreement occurred in the State of Washington.

2. **Addition of Paragraphs.** The following is added to the end of the Area Development Agreement:

In recognition of the requirements by the Washington Franchise Investment Protection Act and the Rules and Regulations promulgated thereunder (the “Act”), the Area Development Agreement of Potbelly Franchising, LLC shall be modified as follows:

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 Area Development Agreement in your relationship with us including the areas of termination and renewal of your franchise. There may also be court decisions which may supersede the Area Development Agreement in your relationship with us including the areas of termination and renewal of your franchise.

In any arbitration or mediation involving a franchise purchased in Washington, the arbitration or mediation site will be either in the state of Washington, or in a place mutually agreed upon at the time of the arbitration or mediation, or as determined by the arbitrator or mediator at the time of arbitration or mediation. In addition, if litigation is not precluded by the Area Development 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 developer 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 or developer, 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 or developer 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 area development agreement or elsewhere that conflict with these limitations are void and unenforceable in Washington.

RCW 49.62.060 prohibits a franchisor from restricting, restraining, or prohibiting a franchisee or developer from (i) soliciting or hiring any employee of a franchisee or developer of the same franchisor or (ii) soliciting or hiring any employee of the franchisor. As a result, any such provisions contained in the area development agreement or elsewhere are void and unenforceable in Washington.

No statement, questionnaire or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or any other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

**IN WITNESS WHEREOF**, the parties have signed and delivered this Rider on the dates noted below, to be effective as of the Effective Date.

**POTBELLY FRANCHISING, LLC**, an  
Illinois limited liability company

**DEVELOPER**

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

\_\_\_\_\_  
[Name of Developer]

Name: \_\_\_\_\_  
[Print Name]

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

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

Name: \_\_\_\_\_  
[Print Name]

**DATED:** \_\_\_\_\_

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

**DATED:** \_\_\_\_\_

**RIDER TO THE POTBELLY FRANCHISING, LLC AREA DEVELOPMENT AGREEMENT  
FOR USE IN CALIFORNIA, HAWAII, INDIANA, MICHIGAN, RHODE ISLAND, SOUTH DAKOTA,  
VIRGINIA AND WISCONSIN**

This Rider (the “Rider”) is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the “Effective Date”) (regardless of the dates of the parties’ signatures) by and between **POTBELLY FRANCHISING, LLC**, an Illinois limited liability company with its principal business address at 111 North Canal Street, Suite 325, Chicago, Illinois 60606 (“we,” “us,” or “our”), and \_\_\_\_\_, whose principal business address is \_\_\_\_\_ (“you” or “your”).

1. **Background.** Franchisor and Franchisee are parties to that certain Area Development Agreement that has been signed at the same time as the signing of this Rider (the “Franchise Agreement”). This Rider is part of the Area Development Agreement.

2. **No Waiver of Disclaimer of Reliance in Certain States.** The following provision applies only to franchisees and franchises that are subject to the state franchise disclosure laws in California, Hawaii, Indiana, Michigan, Rhode Island, South Dakota, Virginia or Wisconsin:

No statement, questionnaire or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or any other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

**IN WITNESS WHEREOF**, the parties have executed and delivered this Rider effective on the Effective Date stated in the Franchise Agreement.

**POTBELLY FRANCHISING, LLC**, an Illinois limited liability company

**DEVELOPER**

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

\_\_\_\_\_  
[Name of Developer]

Name: \_\_\_\_\_  
[Print Name]

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

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

Name: \_\_\_\_\_  
[Print Name]

**DATED:** \_\_\_\_\_

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

**DATED:** \_\_\_\_\_

**EXHIBIT J-1**

**LIST OF FRANCHISEES/AREA DEVELOPERS**

**OPERATIONAL FRANCHISEES:**

Ryan Hamra  
Stove, LLC  
314 S. University  
Suite 160  
Little Rock, Arkansas 72205  
(501) 660-4441

Ryan Hamra  
Stove II, LLC  
401 W. Capitol Avenue  
Little Rock, Arkansas 72201  
(501) 747-1297

Paradies Lagardé  
Tampa International Airport  
4100 George J. Bean Parkway  
Tampa, Florida 33607  
(813) 387-9844

Amer Asmar<sup>1</sup>  
RTA Restaurant Group, LLC  
4736 N. Dale Mabry Highway  
Tampa, FL 33614  
(813) 380-1514

Amer Asmar<sup>1</sup>  
RTA Restaurant Group, LLC  
2520 S. Falkenburg Road  
Tampa, FL 33619  
(813) 384-8818

Jeff Ackerman  
Aloha L'Oven, Inc.  
318 W. Washington Street  
East Peoria, Illinois 61611  
(309) 698-2100

Jeff Ackerman  
Aloha L'Oven, Inc.  
10408 N. Centerway Drive  
Peoria, Illinois 61615  
(309) 240-8332

Justin Umthum  
Lettuce Feed You 1 LLC  
501 East Coliseum Boulevard  
Fort Wayne, Indiana 46825  
(260) 471-3138

Paul Goldammer<sup>1</sup>  
Tor Ingstad  
Iowabelly, LLC  
2310 Lincoln Way  
Ames, Iowa 50014  
(515) 520-8651

Paul Goldammer<sup>1</sup>  
Tor Ingstad  
DT Des Belly, Inc.  
604 Locust Street  
Des Moines, Iowa 50309  
(515) 957-4903

Paul Goldammer<sup>1</sup>  
Tor Ingstad  
West Des Belly, Inc.  
6305 Mills Civic Parkway  
Suite 4200  
West Des Moines, Iowa 50266  
(515) 380-9662

Justin Umthum  
Lettuce Feed You 2 LLC  
302 South 4<sup>th</sup> Street  
Louisville, Kentucky 40202  
(502) 540-1100

Justin Umthum  
Lettuce Feed You 3 LLC  
4023 Summit Plaza Drive  
Louisville, Kentucky 40241  
(502) 420-9616

Justin Umthum  
Lettuce Feed You 3 LLC  
9018 Taylorsville Road  
Louisville, Kentucky 40299  
(502) 290-4820

1/ Denotes franchisee granted multi-unit development rights

Paradies Lagardè  
Potbelly 529 Detroit  
2588 World Gateway Place  
Detroit, Michigan 48242  
(734) 941-3488

Paul Goldammer  
Tor Ingstad  
Katobelly, Inc.  
1859 Madison Avenue  
Mankato, Minnesota 56007  
(507) 388-1860

Erin and William Nystrom  
John and Sandy Rogness  
GRN, LLC  
3811-3944 Marketplace Drive  
Rochester, Minnesota 55904  
(507) 226-8686

Fabian Nelson<sup>1</sup>  
385 Tigers, LLC  
5400 Goodman Road  
Olive Branch, Mississippi 38654  
(662) 890-9899

Todd and Angela Stimson  
STL Sandwich Group, Inc.  
12 S. Bemiston  
Clayton, Missouri 63105  
(314) 202-8001

Todd and Angela Stimson  
STL Sandwich Group, Inc.  
11615 A Olive Boulevard  
Creve Coeur, Missouri 63141  
(314) 991-6800

Todd and Angela Stimson  
STL Sandwich Group, Inc.  
1950 1<sup>st</sup> Capitol Drive  
St. Charles, Missouri 63301  
(636) 757-3690

Craig Frantz  
Kendall Frantz  
Frantz Management Company, LLC  
2056 North 117<sup>th</sup> Avenue  
Suite A-1  
Omaha, Nebraska 68164  
(402) 916-4513

Eric Persson  
Veritasfaytheeleven L.L.C.  
3578 St. Rose Parkway  
Las Vegas, Nevada 89183  
(702) 463-8303

Eric Persson  
Veritasfaytheeleven L.L.C.  
3578 S. Rainbow Boulevard  
Suite 102  
Las Vegas, Nevada 89118  
(702) 555-5555

Mohit Kishore<sup>1</sup>  
Tulshi Bhakar  
GenX Enterprise LLC  
1108 Parkside Main Street  
Cary, North Carolina 28277  
(980) 272-9586

Shakti Patel<sup>1</sup>  
Chirag Patel  
Sunil Patel  
Vipul Patel  
Breaking Bread LLC  
320 S. Tryon Street  
Charlotte, North Carolina 28202  
(980) 226-5324

Shakti Patel<sup>1</sup>  
Chirag Patel  
Sunil Patel  
Vipul Patel  
Breaking Bread II, LLC  
4620 Piedmont Row Drive  
Suite 140  
Charlotte, North Carolina 28210  
(704) 900-8159



Shakti Patel<sup>1</sup>  
Chirag Patel  
Sunil Patel  
Vipul Patel  
Breaking Bread Ballantyne LLC  
11611 N. Community House Road  
Suite A  
Charlotte, North Carolina 28277  
(980) 272-9586

Denard Enterprises, Inc.  
Charlotte Douglas Intl. Airport  
D/E Food Court  
5501 Josh Birmingham Parkway  
Charlotte, North Carolina 28208  
(704) 733-9026

Mohit Kishore<sup>1</sup>  
Tulshi Bhakar  
GenX Endeavors L.L.C.  
6815 Fayetteville Road  
Suite 101  
Durham, North Carolina 27713  
(919) 908-7000

Mohit Kishore<sup>1</sup>  
Tulshi Bhakar  
GenX Ventures L.L.C.  
9662 Chapel Hill Road  
Suite 120  
Morrisville, North Carolina 27560  
(919) 377-1058

Brent Brouse<sup>1</sup>  
Brouse Holdings, LLC  
2515 S. 17<sup>th</sup> Street  
Wilmington, North Carolina 28401  
(910) 769-1144

Tallie Colville  
Robert Ingstad  
Dell Soderstrom  
Colvingsod Concepts, LLC  
4445 17<sup>th</sup> Avenue, South  
Fargo, North Dakota 58103  
(701) 356-1483

Paul Goldammer  
Tor Ingstad  
Siouxbelly, LLC  
2101 West 41<sup>st</sup> Street  
Suite 54  
Sioux Falls, South Dakota 57105  
(605) 367-9000

Chris Maples  
Southwind Holdings, LLC  
220 11<sup>th</sup> Avenue, South  
Nashville, Tennessee 37203  
(615) 454-6001

LaTrelle's Galley, LP  
George Bush Intercontinental  
Airport Houston  
3121 N. Terminal C - 20513  
Houston, Texas 77032  
(281) 230-3458

Kenny McCleskey  
HD Restaurant Management, LLC  
2402 9<sup>th</sup> Street  
Lubbock, Texas 79401  
(806) 747-5667

Kenny McCleskey  
HD Restaurant Management, LLC  
6616 W. Milwaukee Avenue  
Suite 900  
Lubbock, Texas 79424  
(806) 687-4635

Dora & Kase Braun  
Sonja Gutierrez  
B&G Sandwichpartners LLC  
1401 N. Loop 250 W  
Midland, Texas 79707  
(432) 704-5500

Ralph Baig  
Fatimead Enterprise LLC  
14215 FM 2920 Road  
Suite 100  
Tomball, Texas 77377  
(832) 843-6812

David Duke  
John Clark  
Virginia Belly Ventures, LLC  
853 W. Main Street  
Charlottesville, Virginia 22903  
(434) 977-0377

David Duke  
David Krause  
John Clark  
MAD Belly Ventures, LLC  
10921 West Broad Street  
Glen Allen, Virginia 23060  
(804) 747-1782

David Duke  
Duke Belly Ventures, LLC  
1760 E. Market Shops  
Harrisonburg, Virginia 22801  
(540) 442-3255

David Duke  
John Clark  
Richmond Belly Ventures, LLC  
Gateway Plaza  
800 E. Canal Street, Suite 110  
Richmond, Virginia 23219  
(804) 728-1577

David Duke  
Scotts Belly Ventures, LLC  
1400 N. Boulevard  
Richmond, Virginia 23230  
(804) 562-2949

**NON-OPERATIONAL FRANCHISEES:**

Brent Brouse<sup>1</sup>  
PB Mayfaire, LLC  
5818 Parker Farm Road  
Wilmington, North Carolina 28405  
(phone number not yet available)

Salmaan Himani  
LaGuardia Hospitality Group, LLC  
LaGuardia Airport, Flushing, New York  
Concourse E – Connector Level  
TAA #G-2898, Space E3-002  
(phone number not yet available)

1/ Denotes franchisee granted multi-unit development rights

**EXHIBIT J-2**

**FRANCHISEES WHO HAVE LEFT THE SYSTEM  
AS OF DECEMBER 31, 2022**

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

**Minnesota**

Erin Nystrom  
GRN LLC  
Rochester, Minnesota 55902  
(507) 244-0127  
(terminated – still a franchisee)

**Nebraska**

Craig Frantz  
Kendall Frantz  
Frantz Management Company, LLC  
Omaha, , Nebraska 68114  
(402) 884-9947  
(terminated – still a franchisee)

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

**EXHIBIT K**

**FORM OF GENERAL RELEASE**

**POTBELLY FRANCHISING, LLC**

**GRANT OF FRANCHISOR CONSENT AND FRANCHISEE RELEASE**

Potbelly Franchising, LLC (“we,” “us,” or “our”) and the undersigned franchisee, \_\_\_\_\_ ***[insert name of franchisee entity]*** (“you” or “your”), currently are parties to a Franchise Agreement dated \_\_\_\_\_ (the “Franchise Agreement”) for the operation of a Potbelly Shop at \_\_\_\_\_. You have asked us to \_\_\_\_\_ ***[insert relevant detail]***. We currently have no obligation under your Franchise Agreement or otherwise to \_\_\_\_\_ ***[repeat relevant detail]***, or we have the right under the Franchise Agreement to condition our approval on your and your owners signing a release of claims. We are willing to \_\_\_\_\_ ***[repeat relevant detail]*** if you and your owners give us the release and covenant not to sue provided below in this document. You and your owners are willing to give us the release and covenant not to sue provided below in consideration for our willingness to \_\_\_\_\_ ***[repeat relevant detail]***.

Consistent with the previous introduction, you, on behalf of yourself and your successors, heirs, executors, administrators, personal representatives, agents, assigns, partners, owners, directors, officers, principals, employees, and affiliated entities (collectively, the “Releasing Parties”), hereby forever release and discharge us and our parent and other affiliated entities, and our and their respective current and former officers, directors, owners, principals, employees, agents, representatives, successors, and assigns current and former officers, directors, owners, principals, employees, agents, representatives, successors, and assigns (collectively, the “Potbelly Parties”) from any and all claims, damages, demands, debts, causes of action, suits, duties, liabilities, costs, and expenses of any nature and kind, whether presently known or unknown, vested or contingent, suspected or unsuspected (all such matters, collectively, “Claims”), that you and any other Releasing Party now have, ever had, or, but for this Consent, hereafter would or could have against any Potbelly Party (1) arising out of or related in any way to the Potbelly Parties’ performance of or failure to perform their obligations under the Franchise Agreement before the date of your signature below, (2) arising out of or related in any way to our offer and grant to you of your Potbelly Shop franchise, or (3) otherwise arising out of or related in any way to your and the other Releasing Parties’ relationship, from the beginning of time to the date of your signature below, with any of the Potbelly Parties. You, on behalf of yourself and the other Releasing Parties, further covenant not to sue any Potbelly Party on any Claim released by this paragraph and represent that you have not assigned any Claim released by this paragraph to any individual or entity that is not bound by this paragraph.

We also are entitled to a release and covenant not to sue from your owners. By his, her, or their separate signatures below, your owners likewise grant to us the release and covenant not to sue provided above.

\*\*\*\*\*

**The following language applies only to transactions with California franchisees**

**The parties granting the release above acknowledge a familiarity with Section 1542 of the Civil Code of the State of California, which provides as follows:**

**“A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release which, if known by him, must have materially affected the settlement with the debtor.”**

Each party granting the release above recognizes that he, she, or it may have some claim, demand, or cause of action against the released parties of which he, she, or it is unaware and unsuspecting, and which he, she, or it is giving up by signing this release. Each party granting the release above hereby waives and relinquishes every right or benefit which he, she, or it has under Section 1542 of the Civil Code of the State of California, and any similar statute under any other state or federal law, to the fullest extent that such right or benefit may lawfully be waived.

\*\*\*\*\*

POTBELLY FRANCHISING, LLC

\_\_\_\_\_  
*[Name of Franchisee]*

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

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

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

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

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

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

\_\_\_\_\_  
[Name of Owner]

\_\_\_\_\_  
[Signature and Date]

**EXHIBIT L**

**ASSET PURCHASE AGREEMENT**

---

**ASSET PURCHASE AGREEMENT**

**By and Among**

**POTBELLY SANDWICH WORKS, LLC,**

**[BUYER], and**

**[GUARANTOR]**

**Dated as of: [●], 2023**

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Schedule 6.05(a)	Supply Agreements
Schedule 7.01	Retained Employees
Schedule 8.04	Consents and Approvals

### **EXHIBITS**

Exhibit A	List of Shops and Leased Real Property
Exhibit B	Form of Bill of Sale
Exhibit C	Form of General Release

## ASSET PURCHASE AGREEMENT

This **ASSET PURCHASE AGREEMENT** (this “**Agreement**”) is made as of [•], 2023, by and among **POTBELLY SANDWICH WORKS, LLC**, an Illinois limited liability company (“**Seller**”), [•], an [•] (“**Purchaser**”), and [•] (“**Guarantor**”). Seller, Purchaser and Guarantor are sometimes referred to herein individually as a “**Party**” and collectively as the “**Parties**”.

### **RECITALS**

**WHEREAS**, Seller operates the [number of shops] ([•]) “Potbelly Sandwich Shop” restaurants listed on **Exhibit A** (the “**Shops**”);

**WHEREAS**, Seller is the owner of a leasehold interest in each parcel of real estate where the Shops are located as set forth on **Exhibit A** (collectively, the “**Leased Real Property**”);

**WHEREAS**, Seller desires to transfer, assign and sell to Purchaser, and Purchaser desires to acquire and purchase from Seller, all of Seller’s right, title and interest in and to certain of the assets used or to be used exclusively in the operation of the Shops, in each case upon the terms and subject to the conditions set forth in this Agreement and the Ancillary Agreements (except as otherwise indicated, capitalized terms used but not defined in these recitals have the meaning ascribed to such terms in Section 1.01 below or referenced in Section 1.02 below);

**WHEREAS**, at the Closing, Seller, Purchaser and Guarantor shall enter into separate assignments of lease or subleases pursuant to which Seller shall assign the lease for Leased Real Property to Purchaser or sublease the Leased Real Property to Purchaser, each such assignment and/or sublease in form and substance acceptable to the parties thereto (collectively, the “**Assignments**” or “**Subleases**”, as applicable);

**WHEREAS**, in connection with the purchase of the assets described herein, upon the terms and subject to the conditions set forth herein, Purchaser and Guarantor shall execute and deliver to Seller the Franchise Documents at the Closing with respect to the Shops; and

**WHEREAS**, as an inducement for Seller to enter into this Agreement and in light of the indirect benefits that Guarantor anticipates deriving from the transactions contemplated hereby, Guarantor desires to fully and unconditionally guarantee Purchaser’s payment and performance of its obligations under this Agreement upon the terms and subject to the conditions set forth herein.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

## ARTICLE I.

### CERTAIN DEFINITIONS

Section 1.01 **Certain Defined Terms**. For purposes of this Agreement, unless otherwise defined herein, capitalized terms used herein shall have the corresponding meanings set forth below:

“**Action**” means any action, claim, suit, litigation, hearing, complaint or proceeding by or before any Governmental Authority.

“**Affiliate**” means, with respect to any specified Person, any other Person that, at the time of determination, directly or indirectly through one or more intermediaries Controls, is Controlled by, or is under common Control with, such first Person. With respect to any natural person, “Affiliate” includes such Person’s spouse, descendants, parents, and any descendants of such Person’s parents (in each case, whether by blood, adoption or marriage).

“**Ancillary Agreements**” means the Assignments, the Subleases, the Bill of Sale, the General Release, the Confidentiality Agreement, the Development Agreement, the Management Agreement and the Franchise Documents.

“**Bill of Sale**” means a bill of sale and assignment and assumption agreement to be entered into on the Closing Date and effective as of the Effective Time between Seller and Purchaser, substantially in the form attached hereto as **Exhibit B**.

“**Business**” means the business of owning and using the Assets and operating the Shops, in each case, as conducted by Seller as of the date of this Agreement. For the avoidance of doubt, “Business” does not include (a) the ownership or use of any assets or properties of Seller or its Affiliates other than the Assets or (b) the operations or conduct of any business activity by Seller or its Affiliates that does not relate exclusively to the Shops (including any business activity that may relate to, support or benefit one or more Shops, on the one hand, and one or more other System Shops, on the other hand).

“**Business Day**” means any day other than a Saturday, Sunday or other day on which banking institutions in the State of Illinois are required or authorized by Law to be closed.

“**Business Locations**” means the locations of the Leased Real Property.

“**Cash Safe**” means each safe located in a Shop pursuant to which cash from each Cash Bank located in a Shop is swept on a daily basis.

“**Contract**” means any contract, agreement, lease, purchase order, promise, arrangement, understanding, undertaking, indenture, commitment, loan, consent, note or other legally-binding obligation, whether written or oral and whether express or implied.

“**Control**”, “**Controlled**” or “**Controlling**” means, as to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies

of such Person, whether through the ownership of voting securities, by Contract or otherwise. The terms “Controlled by” and “under common Control with” shall have correlative meanings.

“**Development Agreement**” means that certain agreement by and between Seller and Purchaser that shall address Purchaser’s non-exclusive right to develop a certain number of “Potbelly Sandwich Works” restaurants within an agreed geographic area during a limited term, all in form and substance reasonably acceptable to Seller.

“**Environmental Law**” means any law or regulation of a Governmental Authority pertaining to protection of the environment.

“**Fraud**” means, with respect to a Party, an actual and intentional fraud with respect to the making of the representations and warranties by such Party pursuant to Article IV or Article V, as applicable, provided that such actual and intentional fraud shall only be deemed to exist if (i) any representations and warranties made by such Party were actually breached when made, (ii) any of the individuals included in the definition of “Knowledge” had actual knowledge (as opposed to imputed or constructive knowledge), of such breach(es), and (iii) such representation and warranty was made with the express intention that the other Party(ies) rely thereon to its or their detriment.

“**General Release**” means a general release substantially in the form attached hereto as Exhibit C by Purchaser and Guarantor in favor of Seller.

“**Governmental Authority**” means any federal, state, local or foreign government, or subdivision or instrumentality thereof, or any entity, body or authority exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any federal, state, local or foreign government, in each case having jurisdiction over the Person, property or matter in question.

“**Knowledge**” means (a) with respect to Seller, the actual knowledge of the individuals listed on Schedule 1.01(a) without inquiry or investigation and (b) with respect to Purchaser, the actual knowledge of the individuals listed on Schedule 1.01(b) without inquiry or investigation.

“**Law**” means any federal, state, local or foreign law, statute, treaty, code or ordinance, common law or any applicable rule, regulation, guideline, standard, Order or Permit of any Governmental Authority.

“**Liabilities**” means any and all debts, liabilities, expenses, commitments, obligations, duties, responsibilities and actions of any kind, character or description, whether fixed, contingent or absolute, matured or unmatured, accrued or not accrued, asserted or not asserted, known or unknown, disputed or undisputed, joint or several, secured or unsecured, liquidated or unliquidated, determined, determinable or otherwise, whenever or however arising (including any arising out of any Contract, tort, Law or otherwise) and whether or not the same would be required by applicable accounting principles or standards to be reflected in financial statements or disclosed in the notes thereto.

“**Lien**” means any option, mortgage, deed of trust, pledge, hypothecation, lien (statutory or otherwise), charge, security interest or other encumbrance (including any conditional sale or

other title retention agreement and any lease having substantially the same effect as any of the foregoing and any assignment or deposit arrangement in the nature of a security device).

“**Order**” means any order, writ, judgment, injunction, ruling, decree, stipulation, determination or award entered by or with any Governmental Authority.

“**Permit**” means any qualifications, registrations, filings, licenses, Orders, permits, certificates of occupancy, variances, consents, approvals, validations, authorizations, accreditations, certifications, exemptions or waivers made with or issued or granted or otherwise made available by or under the authority of any Governmental Authority or pursuant to any Law.

“**Permitted Liens**” means (i) Liens for taxes or other governmental charges or levies that are not yet due or payable or that are being contested in good faith by appropriate proceedings, (ii) statutory Liens of landlords and Liens of carriers, warehousemen, mechanics, materialmen, repairmen and other Liens imposed by Law for amounts not yet due, (iii) zoning, building and other generally-applicable land-use restrictions, (iv) in the case of Assigned Contracts (or rights or interests therein), Liens arising from the terms of such Assigned Contracts, (v) Liens created by this Agreement or any of the other Transaction Agreements or any of the transactions contemplated hereby or thereby, (vi) Liens created by or arising from actions of Purchaser or any Guarantor, and (vii) other Liens that do not, individually or in the aggregate, materially detract from the value of the Assets or materially interfere with the present use of the Assets in the operation of the Business.

“**Person**” means any natural person, corporation, partnership, joint stock company, joint venture, limited liability company, association, trust, unincorporated organization or other entity, including any Governmental Authority.

“**Pro Rata Share**” means, for any taxes, obligations, expenses and prepayments incurred during, billed for or otherwise relating to a Straddle Period and which are to be apportioned between Seller and Purchaser hereunder, a fraction (i) the numerator of which is the number of days in such Straddle Period that Seller or Purchaser owned and operated the Business, as applicable, and (ii) the denominator of which is the total number of days in the Straddle Period.

“**Purchaser Franchise Agreements**” means the Franchise Documents and any other franchise agreements or similar agreements between or among Purchaser and/or Guarantor, on the one hand, and Seller or any of its current or future Affiliates, on the other hand.

“**Real Property Leases**” means the Contracts set forth on Schedule 1.01(c) pursuant to which Seller, as lessee, has leased from the applicable lessor certain Leased Real Property.

“**Representatives**” means, as to any Person, such Person’s directors, officers, partners, managers, employees, Affiliates, representatives (including financial advisors, attorneys and accountants) or agents.

“**Straddle Period**” means a period of time that commences before and ends after the Closing Date.

“**System Shop**” means any restaurant or other commercial establishment offering food and beverage items at retail that is directly or indirectly owned or operated by (i) Seller or any of its current or future Affiliates, (ii) any other Person pursuant to or in connection with any franchise agreement or similar agreement with Seller or any of its current or future Affiliates or (iii) any joint venture, partnership or similar arrangement in which Seller or any of its current or future Affiliates participates.

“**Transaction Agreements**” means this Agreement, the Ancillary Agreements and any other agreements or instruments to be delivered pursuant hereto or thereto.

Section 1.02 **Table of Defined Terms**. The following capitalized terms shall have the meanings indicated in the corresponding sections of this Agreement listed below:

<b><u>Defined Term</u></b>	<b><u>Where Defined</u></b>
Action	Section 1.01
Affiliate	Section 1.01
Agreement	Preamble
Ancillary Agreements	Section 1.01
Armored Car Service	Section 6.06
Assets	Section 2.02
Assigned Contracts	Section 2.02(b)
Assignments	Recitals
Assumed Liabilities	Section 2.04
Bill of Sale	Section 1.01
Business	Section 1.01
Business Day	Section 1.01
Business Locations	Section 1.01
Cash Bank	Section 3.01
Cash Services Agreement	Section 6.06
Claim	Section 10.05(a)
Claims Notice	Section 10.05(a)
Closing	Section 2.01
Closing Amount	Section 2.05(a)
Closing Date	Section 2.01
Confidentiality Agreement	Section 12.15(a)
Contract	Section 1.01
Controlled	Section 1.01
Controlling	Section 1.01
Damages	Section 10.02
Effective Time	Section 2.01
Employees	Section 7.01
Environmental Law	Section 1.01
Equipment	Section 2.02(a)
ESIGN Act	Section 12.08
Franchise Documents	Section 3.02(a)



**Defined Term**

General Release  
Governmental Authority  
Guaranteed Obligations  
Guarantor  
Hired Employees  
IFF  
Indemnitee  
Indemnitor  
Insurance Certificate  
Inventory  
IRS  
Knowledge  
Law  
Leased Real Property  
Liabilities  
Lien  
Management Agreement  
Order  
Parties  
Permit  
Permitted Liens  
Person  
Personal Property  
Pro Rata Share  
Purchase Price  
Purchaser  
Purchaser Franchise Agreements  
Purchaser Indemnified Parties  
Real Property Leases  
Real Property Taxes  
Representatives  
Retained Assets  
Retained Liabilities  
Seller  
Seller Indemnified Parties  
Shops  
Special Items  
Straddle Period  
Subleases  
Suppliers  
Supply Agreements  
Survival Period  
System Shop  
Third-Party Claim  
Transaction Agreements

**Where Defined**

Section 1.01  
Section 1.01  
Section 12.16(a)  
Preamble  
Section 7.02  
Section 2.05(b)  
Section 10.05(a)  
Section 10.05(a)  
Section 6.09  
Section 3.01  
Section 2.05(d)  
Section 1.01  
Section 1.01  
Recitals  
Section 1.01  
Section 1.01  
Section 6.13  
Section 1.01  
Preamble  
Section 1.01  
Section 1.01  
Section 1.01  
Section 2.02(d)  
Section 1.01  
Section 2.05(a)  
Preamble  
Section 1.01  
Section 10.02  
Section 1.01  
Section 3.03(a)(i)  
Section 1.01  
Section 2.03  
Section 2.04  
Preamble  
Section 10.03  
Recitals  
Section 2.02(c)  
Section 1.01  
Recitals  
Section 6.05(a)  
Section 6.05(a)  
Section 10.01  
Section 1.01  
Section 10.05(b)  
Section 1.01

**Defined Term**  
Transfer Fees

**Where Defined**  
Section 6.02

## ARTICLE II.

### **CLOSING AND RELATED MATTERS**

Section 2.01 **Closing**. The closing of the transactions contemplated by this Agreement (the “**Closing**”) shall occur by electronic delivery of documentation, or by physical exchange of documentation at such location as Seller and Purchaser may mutually agree, (a) at 9:00 a.m., Central Time, on the later of (i) [•] or (ii) the first Business Day that is a Monday following the first date upon which all of the conditions set forth in Article VIII and Article IX have been satisfied or waived in writing (other than those conditions that by their nature are to be fulfilled at the Closing, but subject to the fulfillment or waiver of such conditions) or (b) at such other time, or by such other means, as the Parties may agree in writing (“**Closing Date**”). The Closing shall for all purposes be deemed to be effective at 12:01 a.m., local time at the Business Locations, on the Closing Date (the “**Effective Time**”). At the Closing, the Parties shall make all of the deliveries set forth in Section 2.06, Section 2.07 and Section 2.08. Seller shall be entitled to maintain possession of the Assets and to operate the Shops, in each case for its own account, until the Effective Time. As of the Effective Time, Purchaser shall be entitled to take possession of the Assets and to begin operating the Shops.

Section 2.02 **Assets to be Transferred**. Except as otherwise provided in Section 2.03, on the terms and subject to the conditions of this Agreement, at the Closing and effective as of the Effective Time, Seller shall sell, convey, assign and transfer to Purchaser all of Seller’s right, title and interest in and to the following properties and assets that are used exclusively in connection with the Shops (collectively, the “**Assets**”) free and clear of all Liens except for Permitted Liens:

(a) all of the furniture, trade fixtures and equipment, including, without limitation, ovens, that are owned by Seller and located at a Shop as of the Effective Time (collectively, the “**Equipment**”);

(b) to the extent assignable, the Contracts to which Seller is a party that are in effect as of the Effective Time and that relate exclusively to the Business, including those listed in Schedule 2.02(b) (collectively, the “**Assigned Contracts**”);

(c) the Cash Bank for each Shop and other prepaid and special items listed on Schedule 2.02(c) (collectively, the “**Special Items**”);

(d) the Inventory and all other inventories, supplies and other tangible personal property that are owned by Seller and located in a Shop as of the Effective Time including but not limited to counters, shelving, racks, slat walls, display cases, décor, tables, seating, signs, promotional items and materials, new and unused uniforms, smallwares and office supplies (collectively, the “**Personal Property**”).

Section 2.03 **Retained Assets**. Notwithstanding anything in this Agreement to the contrary, the Assets to be transferred and assigned by Seller to Purchaser hereunder shall exclude

[Form of Asset Purchase Agreement - 2023]

the following (collectively, the “**Retained Assets**”): (a) any tangible assets of Seller that are not located at a Shop at the Effective Time; (b) any intangible assets of Seller that relate to more than just the Shops; (c) any patents, trademarks, copyrights, domain names, social media accounts or other intellectual property owned, under application or licensed by Seller or any of its Affiliates; (d) any owned real property related to the Shops (including any improvements thereon or thereat); (e) other than the Cash Bank included in the Special Items, any cash located at the Shops as of the Effective Time, including any cash in the Cash Safes as of the Effective Time; (f) any receivables related to the operations of the Shops prior to the Effective Time; (g) any deposits related to utility services; (h) any insurance policies, including all of Seller’s rights in and to unearned premiums, refunds, and all claims or possible claims under such policies; (i) any current or historical files or records of Seller; (j) the application software and programs and wireless network software utilized in the point of sale (POS) system, manager’s work station (MWS) and/or training work station (TWS) located in the Shops; (k) warranties and/or service agreements for the maintenance of Equipment located in the Shops, including the cash register system, coin changer, time clock, outside display board and drive-thru audio system except any warranties and/or service agreements that (i) automatically transfer to the Purchaser, as the new owner of the Equipment, (ii) do not require the consent of any third parties and (iii) do not impose any costs or expenses on Seller or its Affiliates (the “**Assignable Warranties**”); (l) any Contracts between Seller, on the one hand, and any Affiliate of Seller, on the other hand; (m) all Contracts that are not Assigned Contracts; (n) the organizational documents, minute books, equity ledgers, tax returns, books of account or other records having to do with the organization or financial performance of Seller and the Shops, (o) all benefit plans and trusts or assets related thereto as well as all employee-related or employee benefit-related files or records other than personnel files of Hired Employees; (p) any other books and records which Seller is prohibited from disclosing or transferring to Purchaser under applicable Law and is required by applicable Law to retain; (q) all rights to any action, suit or claim of any nature available to or being pursued by Seller, whether arising by way of counterclaim or otherwise; and (r) any other items disclosed on Schedule 2.03.

Section 2.04 **Liabilities to be Assumed**. On the terms and subject to the conditions of this Agreement, in partial consideration of the sale, transfer, conveyance and assignment to Purchaser of the Assets, as of the Effective Time, Purchaser shall assume the following debts, liabilities and obligations of Seller and/or its Affiliates (collectively, the “**Assumed Liabilities**”):

- (a) all taxes, assessments and other liabilities of Seller for which Purchaser receives a credit pursuant to Section 3.03;
- (b) the obligations and liabilities of Seller under the Assigned Contracts that accrue or arise from and after the Effective Time;
- (c) to the extent not otherwise covered by Section 2.04(b), the obligations and liabilities of Seller and/or its Affiliates that arise from and after the Effective Time described in Section 6.05(a), Section 6.06, Section 6.09(b) and Section 6.09(c);
- (d) all liabilities and obligations of Seller relating to severance or similar costs associated with terminated employees set forth in Section 7.01; and

(e) all other liabilities and obligations arising out of or relating to Purchaser's ownership or operation of the Business and the Assets on or after the Effective Time.

Except for the above-listed items (a), (b), (c), or (d) or as otherwise provided in this Agreement or any other Transaction Agreement, Purchaser shall not be liable for any debts, liabilities, obligations or taxes of Seller that were incurred or accrued in connection with the operation of the Shops or the ownership or use of the Assets prior to the Effective Time (the “**Retained Liabilities**”). In no event shall Seller be liable for any debts, liabilities, obligations or taxes of Purchaser arising out of or incurred in connection with the operation of the Shops or the ownership or use of the Assets from and after the Effective Time.

#### Section 2.05 **Consideration.**

(a) On the terms and subject to the conditions of this Agreement, and in consideration of the sale, transfer, conveyance and assignment of the Assets, at the Closing, Purchaser shall pay to Seller the following amounts: (i) [•] Dollars (\$[•]) for the Assets (exclusive of the Special Items, and Inventory that are separately listed below); (ii) [•] Dollars (\$[•]) as the estimated value of the Special Items; (iii) [•] Dollars (\$[•]) as the estimated value of the Inventory; and (iv) a Development Fee (as defined in the Development Agreement) of [•] Dollars (\$[•]). The total of the amounts listed in (i), (ii), (iii) and (iv) is [•] Dollars (\$[•]) (collectively, the “**Closing Amount**”). The Closing Amount, as adjusted in accordance with Section 3.03(a), shall constitute the “**Purchase Price**”. The Closing Amount shall be paid to Seller by Purchaser in cash at the Closing.

(b) In addition to the Closing Amount payable pursuant to Section 2.05(a) above, Purchaser shall pay in cash to Seller at the Closing [•] Dollars (\$[•]) as the aggregate of the initial franchise fees due pursuant to the terms and conditions of the Franchise Documents (such amount, the “**IFF**”).

(c) As additional consideration for the transfer of the Assets and in consideration for the grant of franchise rights to operate the Shops, Purchaser and Guarantor shall execute and deliver to Seller at the Closing the General Release.

(d) Within forty five (45) days after the Closing Date, Seller shall deliver to Purchaser a schedule allocating the Purchase Price (including any Assumed Liabilities treated as consideration for the Assets for tax purposes) (the “**Allocation Schedule**”). The Allocation Schedule shall be prepared in accordance with Section 1060 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder. The Allocation Schedule shall be deemed final unless Purchaser notifies Seller in writing that Purchaser objects to one or more items reflected in the Allocation Schedule within thirty (30) days after delivery of the Allocation Schedule to Purchaser. In the event of any such objection, Seller and Purchaser shall negotiate in good faith to resolve such dispute; *provided, however*, that if Seller and Purchaser are unable to resolve any dispute with respect to the Allocation Schedule within thirty (30) days after Purchaser’s objection thereto, such dispute shall be resolved by [•] or, if [•] is unable to serve, another impartial nationally recognized firm of independent certified public accountants mutually appointed

by Seller and Purchaser. The fees and expenses of such accounting firm shall be borne equally by Seller and Purchaser. Seller and Purchaser agree to file their respective Forms 8594 with the Internal Revenue Service and all federal, state and local tax returns in accordance with the Allocation Schedule.

Section 2.06 **Deliveries by Seller.** At the Closing, Seller shall deliver (or cause to be delivered) the following to Purchaser:

- (a) a duly-executed counterpart of each of the Assignments, Subleases and/or Management Agreement, as applicable;
- (b) a duly-executed counterpart of the Bill of Sale;
- (c) a duly-executed counterpart of the General Release;
- (d) a duly-executed counterpart of a closing statement in form and substance satisfactory to Seller, on the one hand, and Purchaser, on the other hand;
- (e) a duly-executed counterpart of the Development Agreement; and
- (f) all such other documents, agreements, instruments, writings and certificates as Purchaser may reasonably request and that are necessary for Seller to satisfy any of its obligations hereunder.

Section 2.07 **Deliveries by Purchaser.** At the Closing, Purchaser shall deliver (or cause to be delivered) the following to Seller:

- (a) the Closing Amount by wire transfer of immediately-available funds in accordance with written instructions provided by Seller prior to the Closing;
- (b) the IFF by wire transfer of immediately-available funds in accordance with written instructions provided by Seller prior to the Closing;
- (c) a duly-executed counterpart of each of the Assignments, Subleases and/or Management Agreement, as applicable;
- (d) a duly-executed counterpart of the Bill of Sale;
- (e) a duly-executed counterpart of the General Release;
- (f) duly-executed Franchise Documents;
- (g) duly-executed electronic funds transfer account debit authorization forms;
- (h) evidence reasonably satisfactory to Seller that Purchaser has complied with its obligations under Section 6.05(a);

- (i) evidence reasonably satisfactory to Seller that Purchaser has complied with its obligations under Section 6.06;
- (j) the Insurance Certificate(s) referred to in Section 6.10;
- (k) a resale certificate(s) in form and substance reasonably satisfactory to Seller regarding the Inventory;
- (l) a duly-executed counterpart of a closing statement in form and substance satisfactory to Seller, on the one hand, and Purchaser, on the other hand;
- (m) a duly-executed counterpart of the Development Agreement; and
- (n) all such other documents, agreements, instruments, writings and certificates as Seller may reasonably request and that are necessary for Purchaser to satisfy any of its obligations hereunder.

Section 2.08 **Deliveries by Guarantor**. At the Closing, Guarantor shall deliver (or cause to be delivered) the following to Seller:

- (a) a duly-executed counterpart of each of the Assignments, Subleases and/or Management Agreement, as applicable, and/or a duly-executed guaranty of same in the form attached thereto;
- (b) a duly-executed counterpart of the General Release;
- (c) a duly-executed counterpart of the Development Agreement;
- (d) duly-executed Franchise Documents; and
- (e) all such other documents, agreements, instruments, writings and certificates as Seller may reasonably request and that are necessary for such Guarantor to satisfy any of his or her obligations hereunder.

### ARTICLE III.

#### **RELATED MATTERS**

Section 3.01 **Physical Inventory and Cash**. On the night immediately preceding the Effective Time, representatives of Seller and Purchaser shall (a) complete a physical inventory of all food, paper inventory, kids' meal premium and cleaning supplies located at the Shops (the "**Inventory**") and complete and sign Seller's standard inventory form and (b) count the cash to be left in the cash bank at each Shop (the "**Cash Bank**"). The value of the Inventory shall be based upon Seller's actual cost of such Inventory and the value of the cash shall be the face amount thereof. For purposes of the Closing, the Inventory and Special Items will be assumed to have a value equal to the amount specified in Section 2.05(a)(iii) and Section 2.05(a)(ii), respectively, which estimated values shall be subject to adjustment following the Closing in accordance with Section 3.03(b).

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Section 3.02 **Franchise Documents.**

(a) At the Closing, Seller will deliver to Purchaser and Guarantor a copy of the Potbelly Franchising, LLC. Unit Franchise Agreement, in its current form, for each Shop, including all addenda thereto (collectively, the “**Franchise Documents**”).

(b) Within seven (7) Business Days following the Closing Date, Seller shall countersign the Franchise Documents delivered by Purchaser and Guarantor at Closing and deliver fully-executed copies thereof to Purchaser.

Section 3.03 **Apportionments.**

(a) On the Closing Date and as of the Effective Time, Purchaser and Seller shall apportion the following taxes, obligations, expenses and prepayments with respect to the Leased Real Property, Business and Assets (subject to subsequent adjustment pursuant to Section 3.03(b)) according to the actual amount attributable to Seller’s and Purchaser’s operation of the Business pre- and post-Closing if readily determinable or each Party’s Pro Rata Share if not so determinable:

(i) the ad valorem taxes, assessments and fees (collectively, the “**Real Property Taxes**”) on such tax-year or fiscal-year basis or other period, as the case may be, as such Real Property Taxes may be levied or assessed, estimated on the basis of the last available tax bill, as set forth in the applicable Lease or Sublease;

(ii) if arrangements cannot be made for separate billing, all utility charges and any other charges that are properly apportionable in accordance with the terms of this Agreement;

(iii) prepayments under the Assigned Contracts assumed by Purchaser and any other prepayments exclusively related to the Shops (including prepaid marketing or other expenses as of the Closing); and

(iv) personal property taxes, if any.

(b) Not later than ninety (90) days following the Closing Date (or if such date is not a Business Day, the immediately-following Business Day), Seller shall prepare and furnish to Purchaser a reconciliation that shall set forth the actual Inventory and Special Item amounts as of the Effective Time and the apportionment of each Party’s Pro Rata Share of all obligations, expenses and prepayments in respect of the Shops as of the Effective Time, including those contemplated by Section 3.03(a) above; provided, however, that to the extent Real Property Taxes or other expenses and charges relating to the ownership and/or occupancy of the Assets and the Leased Real Property are addressed in any Assignment or Sublease, as applicable, such amounts shall be shared as set forth in such Assignment or Sublease. Purchaser shall review such reconciliation and shall notify Seller of any objections to any amounts shown within fifteen (15) days after receipt. If such reconciliation provides that Purchaser owes Seller any amount, then Purchaser shall pay such amount shown as owed to Seller within thirty (30) days after the later to occur of

(i) receipt by Purchaser of the reconciliation, or (ii) the resolution of all objections timely raised by Purchaser to the reconciliation. If such reconciliation provides that Seller owes Purchaser any amount, then Seller shall pay such amount shown as owed to Purchaser within thirty (30) days after the later to occur of (A) receipt by Purchaser of the reconciliation, or (B) the resolution of all objections timely raised by Purchaser to the reconciliation.

(c) In addition to the adjustments and payments contemplated above, Seller and Purchaser agree to make payments to each other on a timely basis with respect to amounts and adjustments not correctly ascertained pursuant to Section 3.03(a) and Section 3.03(b) when the correct amount of any amounts to be adjusted or apportioned pursuant to this Section 3.03 are ascertained.

#### Section 3.04 Cash and Cash Equivalents.

(a) As soon as practicable following the Effective Time, Seller shall cause all cash in the Cash Safes to be removed from the Shops. Purchaser shall not withdraw or remove any cash from any such Cash Safe until Seller has caused such cash to be collected from the Cash Safes. Purchaser shall reasonably cooperate with Seller and its Representatives to facilitate such collection. For the avoidance of doubt, all such cash in the Cash Safes as of the Effective Time shall remain the property of Seller.

(b) With respect to any coupons, gift certificates and gift cards issued for use at the Shops prior to the Effective Time, Purchaser shall honor all such coupons, gift certificates and gift cards presented for payment at the Shops. Following the Effective Time, Purchaser will be required, pursuant to the Franchise Documents, to participate in Seller's gift card program.

### ARTICLE IV.

#### REPRESENTATIONS AND WARRANTIES OF SELLER

Except as disclosed in the corresponding schedules attached hereto (it being understood and agreed by the Parties that disclosure of any item in any such schedule shall be deemed disclosed with respect to each other such schedule to which the relevance of such item is reasonably apparent), Seller hereby represents and warrants to Purchaser the following, as of the date of this Agreement and as of the Closing Date:

Section 4.01 Corporate Organization. Seller is a limited liability company duly incorporated and in good standing under the Laws of the State of Illinois, and is duly qualified and authorized to do business as a foreign corporation in good standing in each other state or states in which any of the Business Locations are located.

Section 4.02 Authority. Seller has full power and authority, in accordance with its articles of incorporation and other organizational documents, to conduct the Business as it is now being conducted, and to enter into and perform its obligations under this Agreement and the other Transaction Agreements and to carry out the transactions contemplated hereby and thereby. All

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corporate action on the part of Seller necessary for the authorization, execution and delivery of this Agreement and the other Transaction Agreements and the performance of all obligations of Seller hereunder and thereunder has been duly taken or will be taken prior to the execution by Seller of each Transaction Agreement.

Section 4.03 **Validity**. This Agreement has been, and the other Transaction Agreements to which Seller is a party when executed and delivered by Seller will be, duly executed and delivered by Seller and, assuming the due execution and delivery of such agreements by the other parties thereto, constitute the legal, valid and binding obligations of Seller enforceable in accordance with their respective terms.

Section 4.04 **No Defaults**. Except as set forth in Schedule 4.04, neither the execution and delivery of this Agreement nor the other Transaction Agreements nor the consummation of the transactions contemplated hereby and thereby will: (a) violate any provision of the articles of incorporation or other organizational documents of Seller; (b) to the Knowledge of Seller, violate, or conflict with, or constitute a default (or constitute an event that, with notice or lapse of time or both, would constitute a default) under, or give rise to any monetary penalty, right of termination, cancellation or acceleration under, any material Contract to which Seller is a party or by which it or any of the Assets may be bound; (c) violate any Law applicable to either Seller or any of the Assets; or (d) require any notice to, filing with, or authorization, consent or approval of any Governmental Authority to be made or obtained by Seller prior to the Closing Date except, in the case of this subsection (d), for such notices, filings, authorizations, consents or approvals as will have been made or obtained, as applicable, on or before the Closing Date.

Section 4.05 **Title to Assets**. Seller has valid title to, or a valid leasehold interest in, all of the Assets, as further described in this Agreement, free and clear of any Liens except Permitted Liens. As of the Effective Time, Seller will convey to Purchaser the Assets free and clear of all Liens except for Permitted Liens.

Section 4.06 **Assigned Contracts and Real Property Leases**. With respect to each Assigned Contract and each Real Property Lease, assuming the due authorization, execution and delivery thereof by the other party or parties thereto, (a) each such Assigned Contract and Real Property Lease is a valid, binding and enforceable obligation of Seller and, to the Knowledge of Seller, each other party thereto, in accordance with its terms and is in full force and effect, and (b) Seller has not received any written notice that it is, and, to the Knowledge of Seller, no other party thereto is, in material default in the performance, observance or fulfillment of any obligation, covenant or condition contained in such Assigned Contract or Real Property Lease. To the Knowledge of Seller, no event or occurrence has transpired that, with the passage of time or giving of notice or both, will constitute a material default under any Assigned Contract or Real Property Lease. At the time of the Closing, Seller shall have made all payments and performed all obligations due through the Closing Date under each Assigned Contract or Real Property Lease.

Section 4.07 **Permits**. As of the date hereof, Seller has all material Permits as are necessary to conduct the Business as presently conducted. All such Permits are valid and in full force and effect. Seller is not the subject of any pending and has not received written notice of any action seeking the revocation, suspension, termination or material modification or impairment of any such Permits.

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Section 4.08 **Compliance with Applicable Law.** As of the date hereof, to the Knowledge of Seller, Seller has received no written notices or communications that (a) it is not in compliance in all material respects with all Laws applicable to the Business including those relating to zoning, health, safety, and employment, or (b) the present operation of the Shops violates any such Laws in any material respect. To the Knowledge of Seller, Seller is in compliance in all material respects with all Laws applicable to Seller's operation of the Shops or ownership or use of the Assets.

Section 4.09 **Litigation.** Except as may be set forth in Schedule 4.09, as of the date hereof, no Action is pending or, to the Knowledge of Seller, threatened against Seller in connection with the Business that, if adversely determined, would have a material adverse effect on the Business. Except as may be set forth in Schedule 4.09, as of the date hereof, there are no Actions pending or, to the Knowledge of Seller, threatened against Seller relating to the Business that are not covered by insurance or as to which an insurer has reserved any right to deny coverage.

Section 4.10 **Brokers and Finders.** Neither Seller nor any of its Representatives has taken any action with respect to any broker or finder that would give rise to any liability on the part of Purchaser or incurred any liability for any brokerage fees, commissions or finder's fees in connection with the transactions contemplated by this Agreement that would give rise to any liability on the part of Purchaser.

Section 4.11 **Environmental Matters.** As of the date hereof, to Seller's Knowledge, Seller has not received any written notice alleging any liability arising out of, based on or resulting from, any violation, or alleged violation, of any Environmental Law with respect to the Leased Real Property. To Seller's Knowledge, Seller has not treated, stored, disposed of, arranged for or permitted the disposal of, transported, handled, released, or exposed any Person to, any substance that has given rise to any liabilities or investigative, corrective or remedial obligations pursuant to any Environmental Law, or that has been determined to be hazardous to human health under applicable Law, with respect to the Leased Real Property

## ARTICLE V.

### **REPRESENTATIONS AND WARRANTIES OF PURCHASER AND GUARANTOR**

Except as disclosed in the corresponding schedules attached hereto (it being understood and agreed by the Parties that disclosure of any item in any such schedule shall be deemed disclosed with respect to each other such schedule to which the relevance of such item is reasonably apparent), Purchaser and Guarantor, jointly and severally, hereby represent and warrant to Seller the following, as of the date of this Agreement and as of the Closing Date:

Section 5.01 **Organization.** Purchaser is a [corporation/limited liability company/limited partnership] duly organized, validly existing and in good standing under the Laws of the State of [•], and is duly qualified and authorized to do business as a foreign limited liability company in good standing in each other state or states in which any of the Business Locations are located, which includes Purchaser's registration in the State of [•] as [•]. If an entity, Guarantor is a [corporation/limited liability company/limited partnership] duly organized, validly existing and in good standing under the Laws of the State of [•].

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Section 5.02 **Authority**. Purchaser and, if an entity, Guarantor, has full power and authority, in accordance with its certificate or articles of incorporation or organization, bylaws, operating agreement and/or other constituent documents, to carry out its business as presently conducted, to enter into and perform its obligations under this Agreement and the other Transaction Agreements and to carry out the transactions contemplated hereby and thereby. All entity actions on the part of Purchaser and Guarantor, if applicable, necessary for the authorization, execution and delivery of this Agreement and the other Transaction Agreements and the performance of all obligations of Purchaser hereunder and thereunder have been duly taken. If Guarantor is an individual person, Guarantor is over the age of eighteen (18) years with the legal capacity to (a) enter into this Agreement and the other Transaction Agreements to which s/he is a party and (b) consummate and perform the transactions contemplated hereby and thereby.

Section 5.03 **Validity**. This Agreement has been, and the other Transaction Agreements will be, when executed and delivered by Purchaser and Guarantor, as applicable, duly executed and delivered by Purchaser and Guarantor and, assuming the due execution and delivery of such agreements by the other parties thereto, constitute the legal, valid and binding obligations of Purchaser and Guarantor enforceable in accordance with their respective terms.

Section 5.04 **No Defaults**. Except as set forth in Schedule 5.04, neither the execution and delivery of this Agreement nor the other Transaction Agreements nor the consummation of the transactions contemplated hereby and thereby will: (a) violate any provision of the articles of organization or other organizational documents of Purchaser; (b) violate, or conflict with, or constitute a default (or constitute an event that, with notice or lapse of time or both, would constitute a default) under, or give rise to any right of termination, cancellation or acceleration under, any Contract to which Purchaser and/or Guarantor is a party or by which Purchaser, Guarantor or any of their respective assets may be bound; or (c) violate any Law applicable to Purchaser, Guarantor or any of their respective assets.

Section 5.05 **Financial Capabilities**. On the date hereof Purchaser has, and on the Closing Date Purchaser will have, sufficient funds to pay the Closing Amount and the IFF due at the Closing in accordance with Section 2.05.

Section 5.06 **Brokers and Finders**. Neither Purchaser nor Guarantor nor any of their respective Representatives has taken any action with respect to any broker or finder that would give rise to any liability on the part of Seller or incurred any liability for any brokerage fees, commissions or finder's fees in connection with the transactions contemplated by this Agreement or the agreements contemplated hereby that would give rise to any liability on the part of Seller.

Section 5.07 **Consents and Approvals**. Except for registrations and approvals required in order for Purchaser to conduct business at the Shops following the Effective Time, no consent, approval or authorization of, or declaration, filing or registration with, any Governmental Authority is required by Purchaser or Guarantor in connection with the execution, delivery and performance of this Agreement or the other Transaction Agreements or the consummation of the transactions contemplated hereby and thereby. Purchaser holds (or at the Closing will hold) all sales tax certificates of authority and other tax registration and certificates required to collect and remit sales tax in connection with the operation of the Shops.

Section 5.08 **Seller Disclosure.** Neither Purchaser nor Guarantor has received or relied upon any representation, warranty or guarantee, whether oral or written or express or implied, as to the potential value, volume, profits or success of the Business or any Shop. Purchaser and Guarantor have previously received a copy of Potbelly Franchising, LLC's current Franchise Documents, including all related disclosures, with Acknowledgment of Receipt attached thereto and have signed, dated and delivered to Potbelly Franchising, LLC such Acknowledgment of Receipt.

Section 5.09 **Knowledge.** To the Knowledge of Purchaser, there are no facts or circumstances relating to Purchaser or Guarantor that would materially adversely affect the ability of Purchaser or Guarantor to perform their respective obligations under this Agreement or the other Transaction Agreements.

## ARTICLE VI.

### **COVENANTS OF THE PARTIES**

#### Section 6.01 **Inspection; Condition of Assets.**

(a) Not later than ten (10) Business Days prior to the Closing Date, Seller shall make each of the Shops available to Purchaser or Purchaser's Representatives for Purchaser's reasonable inspection. Such inspections shall occur on such dates and at such times as Purchaser and Seller may reasonably agree, shall be conducted in a manner such that it does not interfere with the conduct of the Business, and shall be at Purchaser's sole cost. Seller may, in its sole discretion, have a Representative of Seller accompany Purchaser or Purchaser's Representative during any such inspection. Purchaser and Guarantor agree to indemnify and hold Seller harmless from and against any and all Liabilities or Damages resulting from Purchaser's or Purchaser's Representatives' entry into the Shops as provided herein.

(b) In the event that, upon Purchaser's inspection of any Shop, Purchaser determines that there is any material deficiency with respect to the operating condition of the Assets located at such Shop, Purchaser shall provide written notice of the alleged deficiencies to Seller within two (2) Business Days of the date of such inspection. If Seller reasonably determines upon its receipt of such a written notice that the aggregate costs of repairing or replacing the deficient Assets that are located at a particular Shop identified by Purchaser in such written notice would equal or exceed Five Thousand Dollars (\$5,000.00), Seller shall, in its sole discretion, (i) agree to either repair or replace any such deficient Assets, in which case Purchaser shall cooperate with Seller in such repair or replacement, (ii) reduce the Purchase Price to be paid by Purchaser by the reasonable cost of repairing or replacing such deficient Assets, as estimated by Seller, or (iii) terminate this Agreement solely with respect to the affected Shop(s). Notwithstanding the foregoing, in the event Seller elects to terminate this Agreement as provided in the immediately-preceding sentence, Purchaser shall have the option to rescind Seller's termination by delivering written notice to Seller prior to the Closing Date, in which event, (A) Seller's termination notice shall be null and void, (B) this Agreement shall continue in full force and effect and (C) Seller's liability to repair or replace the deficient Assets shall not exceed

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Five Thousand Dollars (\$5,000.00). For the avoidance of doubt, (A) if Seller reasonably determines upon its receipt of such a written notice that the aggregate costs of repairing or replacing the deficient Assets that are located at a particular Shop identified by Purchaser in such written notice would be less than Five Thousand Dollars (\$5,000.00), Seller shall not be responsible for repairing or replacing any such deficient Assets located at such Shop.

(c) Purchaser, at its sole cost and expense, may obtain a title report or other information concerning the status of title to the Leased Real Property. Not later than five (5) Business Days prior to the Closing Date, Purchaser may notify Seller in writing of any defects that render the title unacceptable (together with copies of all relevant documents related thereto). If Seller reasonably determines upon its receipt of such a written notice that the aggregate costs of correcting the defect with respect to any particular parcel of Leased Real Property identified by Purchaser in such written notice would equal or exceed Five Thousand Dollars (\$5,000.00), Seller may at its option: (i) agree to correct the defect, in which case Purchaser shall cooperate with Seller in obtaining said correction; (ii) reduce the Purchase Price by the reasonable cost of correcting the defect; or (iii) terminate this Agreement solely with respect to the affected Shop(s). Notwithstanding the foregoing, in the event Seller elects to terminate this Agreement as provided in the immediately-preceding sentence, Purchaser shall have the option to rescind Seller's termination by delivering written notice to Seller prior to the Closing Date, in which event, (A) Seller's termination notice shall be null and void, (B) this Agreement shall continue in full force and effect and (C) Seller's liability to correct the title defect shall not exceed Five Thousand Dollars (\$5,000.00). If Purchaser fails to notify Seller of any claimed title defects by the date set forth above, Purchaser shall be deemed to have approved title. Purchaser shall pay the cost of all searches, title examinations, and title opinions. Purchaser shall have no rights under this Section 6.01(c) unless the amount required to correct the defect with respect to any particular parcel of Leased Real Property, as reasonably determined by Seller, equals or exceeds Five Thousand Dollars (\$5,000.00), and then only to the extent that Seller does not exercise its option pursuant to subsection (iii) of this Section 6.01(c).

(d) If any of the Assets are destroyed or damaged by fire or other casualty prior to Closing (a "**Casualty Damage**"), Seller shall notify Purchaser within five (5) days of such event. If Seller reasonably determines that the aggregate costs of repairing or replacing a Casualty Damage at a particular Shop would equal or exceed Five Thousand Dollars (\$5,000.00), Seller shall, in its sole discretion, (i) agree to either repair or replace any such Casualty Damage, in which case Purchaser shall cooperate with Seller in such repair or replacement, (ii) assign and transfer to Purchaser on the Closing Date, without warranty or recourse, all of Seller's rights to all of the insurance proceeds paid or payable to Seller on the account of such Casualty Damage, together with the amount of any applicable deductible under Seller's insurance policy, or (iii) remove the Assets associated with the particular Shop from the transaction contemplated under this Agreement. For the avoidance of doubt, if Seller reasonably determines that the aggregate costs of repairing or replacing a Casualty Damage at a particular Shop would be less than Five Thousand Dollars (\$5,000.00), Seller shall not be responsible for repairing or replacing any such Casualty Damage at such Shop and there will be no adjustment to the Purchase Price.

(e) EXCEPT AS EXPRESSLY SET FORTH HEREIN, PURCHASER AND GUARANTOR ACKNOWLEDGE AND AGREE THAT THE ASSETS ARE BEING CONVEYED AND SOLD ON AN “AS IS,” “WHERE IS,” “WITH ALL FAULTS” BASIS IN RELIANCE ON PURCHASER’S AND EACH OF THE GUARANTOR’S OWN INSPECTIONS AND EXAMINATIONS. EXCEPT AS EXPRESSLY SET FORTH IN ARTICLE IV OF THIS AGREEMENT, PURCHASER AND GUARANTOR ACKNOWLEDGE AND AGREE THAT NEITHER SELLER NOR ANY OF ITS AFFILIATES NOR ANY OF THEIR RESPECTIVE REPRESENTATIVES HAS MADE ANY REPRESENTATIONS OR WARRANTIES, DIRECT OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE BUSINESS, THE SHOPS, THE LEASED REAL PROPERTY OR THE ASSETS OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. FURTHER, PURCHASER AND GUARANTOR ACKNOWLEDGE AND AGREE THAT NEITHER PURCHASER NOR GUARANTOR HAS RELIED UPON ANY REPRESENTATIONS OR WARRANTIES (WHETHER EXPRESS OR IMPLIED, INCLUDING FOR A PARTICULAR USE OR PURPOSE AND MERCHANTABILITY) REGARDING THE CONDITION (FINANCIAL OR OTHERWISE) OF THE BUSINESS, THE SHOPS, THE LEASED REAL PROPERTY OR THE ASSETS, EXCEPT IN EACH CASE FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES OF SELLER SET FORTH IN ARTICLE IV OF THIS AGREEMENT. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES OF SELLER SET FORTH IN ARTICLE IV OF THIS AGREEMENT, SELLER EXPRESSLY DISCLAIMS ANY AND ALL OTHER REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED.

Section 6.02 **Transfer Fees**. All sales, transfer, recording, filing and similar taxes and fees (including any penalties or interest) incurred in connection with this Agreement and the transactions contemplated hereby (collectively, the “**Transfer Fees**”) shall be borne by Purchaser. Purchaser shall timely remit to the appropriate Governmental Authority all Transfer Fees, including any sales or transfer tax that may be due at the Closing. The Parties will use commercially reasonable efforts to assist each other in the filing of all necessary tax returns and other documentation with respect to all such Transfer Fees and, if required by applicable Law, will join in the execution of any such tax returns or other documentation. If any Transfer Fees are based on the amount of the Purchase Price or an allocation of the Purchase Price and the Purchase Price or allocation thereof is adjusted after the Closing pursuant to the terms hereof, such Transfer Fees shall be recalculated using the adjusted amounts and Purchaser shall file any required amendments or other documents with the applicable Governmental Authority and, if additional Transfer Fees are due, Purchaser shall timely remit such additional Transfer Fees to such Governmental Authority. Promptly upon the remittance of any Transfer Fees to the applicable Governmental Authority, Purchaser shall provide evidence to Seller reasonably satisfactory to Seller that such Transfer Fees were properly and timely remitted.

Section 6.03 **Expenses**. Except as otherwise expressly provided in this Agreement, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be borne by the Party incurring such costs and expenses, whether or not the transactions contemplated hereby are consummated.

Section 6.04 **Notices.** Between the date hereof and the Closing Date, each Party shall promptly inform the other Parties in writing of the occurrence of any events or the existence of any circumstances, the effect of which would constitute a breach by such Party of any of its covenants or agreements in this Agreement, or which would result in any of its representations or warranties in this Agreement being or becoming untrue or inaccurate.

Section 6.05 **Utilities.**

(a) Schedule 6.05(a) sets forth a list of certain agreements that Seller has entered into with telecommunications suppliers (collectively, the “**Suppliers**”) for telecommunications services with respect to the Shops identified on Schedule 6.05(a) (such agreements, the “**Supply Agreements**”). At or prior to the Closing and effective as of the Effective Time, Purchaser shall enter into such agreements and provide such other documentation as may be reasonably requested or required by the Suppliers in order for Purchaser to assume Seller’s and/or its Affiliates’ rights and obligations arising from and after the Effective Time under such Supply Agreements, in each case to the extent related to such Shops. In furtherance of the foregoing, if any Supplier determines based on its review of Purchaser’s credit that any deposits, letters of credit, guarantees or other security is required in order for Purchaser to undertake the foregoing assumption, Purchaser agrees to provide, or cause to be provided, such deposits, letters of credit, guarantees or other security as may be reasonably required by the Supplier.

(b) Prior to the Closing, Seller and Purchaser shall (i) notify those utility companies that service the Shops that Purchaser shall be responsible for the payment of any and all obligations related to such utility services incurred from and after the Effective Time and (ii) to the extent practicable, cause meters to be read as of the Effective Time (or as soon as reasonably practicable thereafter) to determine the actual amounts attributable to Seller and Purchaser in respect of such utilities for the operation of the Business pre- and post-Closing.

Section 6.06 **Cash Services.** Seller and/or one or more of its Affiliates is currently a party to an agreement with Garda CL Great Lakes, Inc. and/or one or more of its Affiliates (the “**Armored Car Service**”) pursuant to which the Armored Car Service provides certain cash collection services with respect to the Shops (such agreement, the “**Cash Services Agreement**”). At or prior to the Closing and effective as of the Effective Time, Purchaser shall enter into such agreements and provide such other documentation as may be reasonably requested or required by the Armored Car Service in order for Purchaser to assume Seller’s and/or its Affiliates’ rights and obligations arising from and after the Effective Time under such Cash Services Agreement, in each case to the extent related to the Shops. If Purchaser fails to assume such rights and obligations, Purchaser shall reimburse Seller for the costs and fees charged for the termination of the Cash Services Agreement between Seller and the Armored Car Service with respect to the Shops.

Section 6.07 **Conduct of Business Pending the Effective Time.** Seller agrees that from the date hereof until the Effective Time, unless otherwise consented to by Purchaser in writing (which consent shall not be unreasonably conditioned, withheld or delayed) or contemplated or permitted by this Agreement, Seller (a) shall conduct the Business (i) in substantially the same manner as heretofore conducted and (ii) in the ordinary course of business consistent with past

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practice and (b) shall not enter into any Contracts relating exclusively to the Shops except in the ordinary course of business and consistent with past practice.

Section 6.08 **Computer/POS Systems**. Seller will notify its processing agents for credit card, debit card and gift card transactions of the change in ownership of the Shops. Purchaser will obtain and maintain all requisite licenses and services, including for application software and programs and wireless network software, necessary to conduct business at the Shops, including to operate all point of sale systems, manager work stations, and training work stations, all in accordance with the Franchise Documents.

Section 6.09 **Insurance**. Prior to the Closing Date, Purchaser shall procure and maintain in full force and effect in accordance with the terms and conditions of the Franchise Documents, at Purchaser's expense, the following insurance policy or policies in connection with the Shops, or as required by your state, city or municipality by reason of the construction, operation or occupancy of the Shops. Such policy or policies shall be satisfactory to Seller and obtained from reputable insurers having an A.M. Best rating of A-VII or better, and the coverage terms must be as good or better than what is commonly purchased by restaurant owners in your area. Coverage shall include, at a minimum, the following:

- (a) Commercial general liability insurance of \$1 million per occurrence and \$2 million in the aggregate, including \$300,000 in coverage for fire legal liability. Coverage must be primary and non-contributory to any other coverage Seller has, provide waiver of subrogation and there should be at least \$1 million for personal and advertising injury;
- (b) Automobile liability insurance of \$1 million covering bodily injury and property damage for all owned, non-owned, and hired vehicles;
- (c) Umbrella liability insurance of at least \$2 million per occurrence;
- (d) Employment practices liability of at least \$500,000, including third-party liability and endorsement naming Seller as co-defendant;
- (e) Statutory workers' compensation insurance the law requires, including employer's liability for at least \$1 million;
- (f) Property insurance for the replacement cost of your leasehold improvements, equipment, and business personal property;
- (g) Business income and extra expense coverage for not less than 6 months of sales;
- (h) Employee dishonesty insurance of at least \$25,000 and any other insurance required by your lender or landlord; and
- (i) Cyber-security insurance of at least \$1 million limit and PCI Fines and Penalties sub-limit of \$500,000.



Purchaser shall provide to Seller at the Closing one or more certificates (the “**Insurance Certificate**”) evidencing the insurance specified in this Section 6.09 and naming Seller and each of its Affiliates, directors, agents, and employees (as may be specified by Seller) as additional insureds and, in the case of property insurance, such parties shall be named as their interest may appear. All Insurance Certificates shall expressly provide that no less than thirty (30) days’ prior written notice shall be given to Seller in the event of material alteration to, or cancellation of, or non-renewal of the coverages evidenced by such Insurance Certificates.

Section 6.10 **Efforts to Complete Transaction.** After the date hereof until the Effective Time, subject to the terms and conditions of this Agreement, each Party shall use commercially reasonable efforts to take all actions and to do all things necessary or advisable in order to consummate and make effective the transactions contemplated by this Agreement (including satisfaction, but not waiver, of the Closing conditions set forth in Article VIII and Article IX of this Agreement).

Section 6.11 **Misdirected Payments.** To the extent that, after the Effective Time, either Purchaser or Seller shall receive any payments from any third parties (other than the Parties hereto or their respective Affiliates) relating to the Business and attributable to the period prior to (in the case of receipt by Purchaser) or after (in the case of receipt by Seller) the Effective Time, the Party receiving the same shall promptly make delivery thereof to the applicable Party entitled to such payment.

Section 6.12 **Access to Information.** In addition to Potbelly Franchising, LLC’s rights under the Franchise Documents, from and after the Effective Time, Purchaser shall afford Seller and its Affiliates and their respective Representatives with reasonable access to all books and records, at reasonable times and on reasonable notice, relating to the Business or Assets as shall be necessary for Seller’s or its Affiliates’ preparation of any federal, state or local tax returns relevant to Seller’s operation of the Shops or ownership of the Business or Assets, in each case for any periods prior to the Effective Time.

Section 6.13 **Consents and Approvals.** Prior to the Closing, Seller and Purchaser shall use commercially reasonable efforts to obtain duly-executed consents from (a) each counterparty to a Contract that relates exclusively to the Business and for which such consent is required for it to be assigned to Purchaser, (b) each Governmental Authority identified on Schedule 4.04, and (c) each applicable landlord as may be necessary to assign the Real Property Leases or sublease the Leased Real Property under the Real Property Leases for the Locations of the Shops. If Seller is unable to obtain any such consent to assign any Real Property Leases or to sublease thereunder, Seller and Purchaser shall enter into a management agreement whereby Purchaser shall receive the economic benefit of the applicable Shop as if Purchaser were the subtenant under such Real Property Lease (the “**Management Agreement**”).

## ARTICLE VII.

### **EMPLOYEES**

Section 7.01 **Termination of Employees.** At the Closing but effective as of the Effective Time, except for the Persons listed on Schedule 7.01, Seller will terminate all employees of Seller

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then employed at the Shops or whose employment is otherwise primarily related to the Business (collectively, the “**Employees**”). Seller shall be responsible for (a) compliance with all applicable Laws with respect to the employment or termination of all such Employees prior to the Effective Time and (b) the employment-related obligations with respect to Employees prior to the Effective Time including any paid time-off and sick or vacation amounts due or granted by Seller to any Employees prior to the Effective Time as well as any amounts due to any Employees resulting from Seller’s existing 401(k) or stock plans; provided, however, that Purchaser shall reimburse Seller for any severance or similar costs incurred by Seller or its Affiliates as a result of the termination of any such Employees.

Section 7.02 **Hiring of Seller’s Employees.** Except for the Employees listed on Schedule 7.01, prior to the Closing, Purchaser shall offer employment, effective as of the Effective Time, to all Employees. All such offers of employment shall be pursuant to Purchaser’s standard employment practices and policies. Purchaser shall be responsible for compliance with applicable Law with respect to the hiring of such Employees and the subsequent employment of the Employees who accept employment with Purchaser (collectively, “**Hired Employees**”). For the 12-month period following the Effective Time, Purchaser shall provide each Hired Employee with: (i) base salary or hourly wages and target bonus opportunities that are individually no less favorable than each such employee’s base salary or hourly wages and target bonus opportunities provided immediately prior to the Effective Time; and (ii) employee benefits that are no less favorable than the employee benefits provided to such employee immediately prior to the Effective Time. Purchaser shall be responsible for the employment-related obligations with respect to Hired Employees as of the Effective Time, including compensation for services performed for Purchaser from and after the Effective Time (and related employment and withholding taxes), benefits accrued under any Purchaser-sponsored plan or arrangement of Purchaser covering the Hired Employees from and after the Effective Time and workers’ compensation benefits with respect to injuries or incidents occurring from and after the Effective Time. With respect to each Purchaser benefit plan in which Hired Employees may participate, Hired Employees shall be eligible immediately to commence participation in such benefit plans without regard to any eligibility period, waiting period, elimination period, evidence of insurability requirements or pre-existing condition limitations. Purchaser will recognize all service of the Hired Employees with the Seller for all purposes (including for purposes of vesting, eligibility to participate and receive benefits, premium subsidies or credits, and paid time off accruals) under all existing, newly established and future Purchaser benefit plans or any benefit and compensation plans maintained by Purchaser. Purchaser further agrees to waive deductible and out-of-pocket requirements under Purchaser benefit plans that provide group health benefits and otherwise to give credit under the applicable Purchaser benefit plans for amounts paid under a corresponding Seller benefit plan that provides group health benefits, as though such amounts had been paid in accordance with the terms and conditions of the applicable Purchaser benefit plans.

## ARTICLE VIII.

### **CONDITIONS TO OBLIGATIONS OF SELLER**

Each and every obligation of Seller under this Agreement to be performed at the Closing shall be subject to the satisfaction, on or before the Closing Date, of each of the following conditions, unless waived in writing by Seller at its sole discretion.

Section 8.01 **Representations and Warranties True.** The representations and warranties of Purchaser and Guarantor contained herein shall, taken as a whole, be true, complete and accurate in all material respects as of the date of this Agreement and at and as of the Closing Date as though such representations and warranties were made at and as of such date (other than representations and warranties made as of another stated date, which representations and warranties shall have been true, complete and accurate in all material respects as of such date).

Section 8.02 **Performance.** Purchaser and Guarantor shall have performed, delivered and complied with all agreements, obligations and conditions required by this Agreement to be performed, delivered or complied with by Purchaser and/or Guarantor on or prior to the Closing Date.

Section 8.03 **No Injunction, Etc.** On the Closing Date, (a) there shall be no effective Order of any nature issued or threatened by a court or other Governmental Authority of competent jurisdiction directing that any of the transactions provided for herein may not be consummated as so provided or imposing any conditions on the consummation of the transactions contemplated hereby, and (b) no Action shall be pending before any such court or other Governmental Authority seeking such relief.

Section 8.04 **Consents and Approvals.** Each of the consents or approvals set forth on Schedule 8.04 shall have been obtained and shall be in full force and effect.

Section 8.05 **Franchise Approval.** Seller shall have granted to Purchaser and Guarantor the franchise rights to operate the Shops, and Purchaser and Guarantor shall have satisfied all terms, conditions, and requirements pertaining to the granting of such franchise rights.

Section 8.06 **Closing Deliverables.** Seller shall have received all of the deliverables described in Section 2.07 and Section 2.08.

## ARTICLE IX.

### **CONDITIONS TO OBLIGATIONS OF PURCHASER**

Each and every obligation of Purchaser under this Agreement to be performed at the Closing shall be subject to the satisfaction, on or before the Closing Date, of each of the following conditions, unless waived in writing by Purchaser at its sole discretion:

Section 9.01 **Representations and Warranties True.** The representations and warranties of Seller contained herein shall, taken as a whole, be true, complete and accurate in all

material respects as of the date of this Agreement and at and as of the Closing Date as though such representations and warranties were made at and as of such date (other than representations and warranties made as of another stated date, which representations and warranties shall have been true, complete and accurate in all material respects as of such date).

Section 9.02 **Performance**. Seller shall have performed, delivered and complied with all agreements, obligations and conditions required by this Agreement to be performed, delivered or complied with by it on or prior to the Closing Date.

Section 9.03 **No Injunction, Etc.** On the Closing Date, (a) there shall be no effective Order of any nature issued or threatened by a court or other Governmental Authority of competent jurisdiction directing that any of the transactions provided for herein may not be consummated as so provided or imposing any conditions on the consummation of the transactions contemplated hereby, and (b) no Action shall be pending before any such court or other Governmental Authority seeking such relief.

Section 9.04 **Franchise Approval**. Potbelly Franchising, LLC shall have granted to Purchaser the franchise rights to operate the Shops.

Section 9.05 **Closing Deliverables**. Purchaser shall have received all of the deliverables described in Section 2.06.

## ARTICLE X.

### **SURVIVAL OF REPRESENTATIONS; INDEMNIFICATION**

Section 10.01 **Survival**. The representations, warranties, covenants and agreements made by the Parties in this Agreement shall survive the Closing to the extent provided for in this Section 10.01 (the applicable survival period, the “**Survival Period**”).

(a) All of the representations and warranties of Seller contained in this Agreement shall survive the Closing for a period of eighteen (18) months following the Closing Date, except that the representation and warranties of Seller contained in Section 4.11 (Environmental Matters) shall survive the Closing until the expiration of the statute of limitations applicable to the matters covered thereby.

(b) All of the representations and warranties of Purchaser and Guarantor contained in this Agreement shall survive until the expiration or termination of all Purchaser Franchise Agreements or, if earlier, until the latest date permitted by applicable Law.

(c) All covenants and agreements contained in this Agreement that by their terms are to be performed at or after the Closing shall survive the Closing until fully discharged or, if earlier, the latest date permitted by applicable Law. All other covenants or agreements made by the Parties in this Agreement shall not survive the Closing and shall terminate and expire at the Closing.

(d) Upon the expiration of the applicable Survival Period, the representations, warranties, covenants and agreements made by the Parties in this Agreement shall expire, and all claims for any breach of such representations, warranties, covenants or agreements shall be deemed waived unless a Claims Notice with respect to the breach shall have been given to the breaching Party in accordance with Section 10.05(a) or Section 10.05(b) prior to the expiration of such Survival Period, in which event such representations, warranties, covenants or agreements shall survive to the extent of the Claim referred to in such notice until such Claim has been resolved.

Section 10.02 **Agreement of Seller to Indemnify**. Subject to the terms and conditions of this Article X, from and after the Closing, Seller hereby agrees to indemnify, defend and hold Purchaser and Guarantor (collectively, the “**Purchaser Indemnified Parties**”) harmless from and against all demands, claims, actions or causes of action, assessments, losses, damages, liabilities, costs and expenses including interest, penalties and attorneys’ fees and expenses (collectively, “**Damages**”) asserted against, resulting to, imposed upon or incurred by any Purchaser Indemnified Party by reason of or resulting from: (a) the Retained Liabilities; (b) a breach by Seller of any of its representations or warranties contained in Article IV of this Agreement; (c) a breach by Seller of any of its covenants or agreements contained in this Agreement, other than any such covenants or agreements contained in Section 6.08; (d) a breach by Seller of any of its covenants or agreements contained in Section 6.08 to the extent resulting from Seller’s or its Affiliates’ gross negligence or willful misconduct; or (e) the termination by Seller of the employment of any Employees (other than any severance or similar costs resulting from the termination of any such Employees).

Section 10.03 **Agreement of Purchaser and Guarantor to Indemnify**. Subject to the terms and conditions of this Article X, from and after the Closing, Purchaser and Guarantor, jointly and severally, hereby agree to indemnify, defend and hold harmless Seller, its Affiliates and their respective Representatives (collectively, the “**Seller Indemnified Parties**”) from and against all Damages asserted against, resulting to, imposed upon or incurred by any Seller Indemnified Party by reason of or resulting from: (a) the Assumed Liabilities; (b) a breach by Purchaser or Guarantor of any representation or warranty of Purchaser or Guarantor contained in this Agreement; (c) a breach by Purchaser or Guarantor of any covenant or agreement of Purchaser or Guarantor contained in this Agreement; (d) the ownership or use or operation of the Assets or any Shop from and after the Effective Time; (e) the employment or termination of employment of any Hired Employees by Purchaser or its Affiliates; or (f) any Transfer Fees.

Section 10.04 **Limitation of Liability**.

(a) No indemnification by Seller under Section 10.02(b) shall be required to be made:

(i) with respect to Damages resulting from Claims as to which Seller has not received a written Claims Notice in accordance with Section 10.05(a) or Section 10.05(b) within the applicable time period set forth in Section 10.01(a); and

(ii) unless the aggregate amount of Damages sustained by the Purchaser Indemnified Parties with respect to indemnification claims for breaches of

representations and warranties made in Article IV of this Agreement which are subject to indemnification by Seller under Section 10.02(b) hereof exceeds an aggregate threshold of [•] Dollars (\$[•]), and then only with respect to the amount in excess of [•] Dollars (\$[•]) in the aggregate.

(b) In no event shall the aggregate liability of Seller for indemnification under Section 10.02(b) exceed [•] Dollars (\$[•]).

(c) In no event shall the aggregate liability of Seller for indemnification under Section 10.02(d) exceed Five Thousand Dollars (\$5,000.00).

#### Section 10.05 Procedures Relating to Indemnification.

(a) In the event that either a Purchaser Indemnified Party or a Seller Indemnified Party desires to assert a demand, claim or circumstance that, immediately or with the lapse of time, could give rise to a claim (a “**Claim**”) for indemnification pursuant to this Article X, such Person seeking indemnification (the “**Indemnitee**”) shall, as promptly as is reasonably practicable after becoming aware of the demand, claim or circumstance, deliver written notice (such notice, a “**Claims Notice**”) to the Party from whom indemnification is sought (the “**Indemnitor**”); provided, however, that, except as otherwise provided in Section 10.01 or Section 10.06(a), a failure to give such notice shall not affect the Indemnitee’s right to indemnification hereunder except to the extent that the Indemnitor is actually prejudiced thereby. The Claims Notice shall describe the Claim in reasonable detail and shall indicate the amount (estimated, if necessary) and nature of the Damages, and the method of computation thereof, that has been or may be suffered by the Indemnitee and the provisions of this Agreement in respect of which such right of indemnification is sought or arises.

(b) Promptly after receipt from any third-party by an Indemnitee of a notice of any demand, claim or circumstance that, immediately or with the lapse of time, could give rise to a claim or the commencement (or threatened commencement) of any Action or investigation (a “**Third-Party Claim**”) that may result in Damages with respect to which the Indemnitee would be entitled to indemnification pursuant to this Article X, the Indemnitee shall deliver a Claims Notice with respect thereto together with copies of any notices or other documents (including any court papers) received by the Indemnitee relating to such Third-Party Claim; provided, however, that, except as otherwise provided in Section 10.01 or Section 10.06(a), a failure to provide such notice shall not affect the Indemnitee’s right to indemnification hereunder except to the extent that the Indemnitor is actually prejudiced thereby (except that the Indemnitor shall not be liable for any expenses incurred during the period in which the Indemnitee failed to provide such notice).

(c) The Indemnitor shall be entitled to settle or assume and control the defense of any Third-Party Claim at its own expense and by its own counsel. If the Indemnitor elects to settle or defend such Third-Party Claim, it shall notify the Indemnitee of its intent to do so, and the Indemnitee shall cooperate in the settlement of, or defense against, such Third-Party Claim including, if appropriate, making any reasonable counterclaim against such third-party or any cross claim or third-party claim against any Person related to such

Third-Party Claim. Such cooperation shall also include (i) the retention of records and information that are reasonably relevant to such Third-Party Claim, (ii) promptly supplying the Indemnitor with copies of all papers, documents and evidence in the Indemnitee's possession or control and such other information within the Indemnitee's knowledge pertinent to such Third-Party Claims, (iii) making employees available on a mutually-convenient basis to provide additional information and explanation of any information or materials provided hereunder and producing at the appropriate place or places, at reasonable times, such witnesses under the Indemnitee's control as may reasonably be requested by the Indemnitor or its Representatives and (iv) promptly providing written notice of all material developments in connection with any such Third-Party Claims. The Indemnitee shall have the right to employ, at its own expense, separate counsel in the defense of any such Third-Party Claim and participate in the defense thereof (it being understood that the Indemnitor shall control such defense). The Indemnitor shall not settle or compromise any Third-Party Claim without the Indemnitee's prior written consent (which shall not be unreasonably conditioned, withheld or delayed), unless such settlement or compromise (A) includes a complete and unconditional release of the Indemnitee in respect of such Third-Party Claim, (B) does not subject the Indemnitee to any injunctive relief or other equitable remedy and (C) there is no finding or admission of any violation of Law and does not include a statement or admission of fault or culpability by or on behalf of any Indemnitee.

(d) If the Indemnitor either (i) notifies the Indemnitee that it does not intend to settle or assume and control the defense of such Third-Party Claim, or (ii) within a reasonable time after its receipt of any Claims Notice in respect of a Third-Party Claim, fails to notify the Indemnitee of its intent to settle or assume and control the defense of such Third-Party Claim, the Indemnitee shall (upon further notice to the Indemnitor) have the right to undertake the defense of such Third-Party Claim (without impairing or otherwise affecting its rights to obtain indemnification pursuant to this Article X), subject to the right of the Indemnitor to assume the defense of such Third-Party Claim at any time prior to the final settlement or compromise thereof. Whether or not the Indemnitor assumes the defense of a Third-Party Claim, the Indemnitee shall not consent to the entry of any judgment or admit any liability with respect to, or settle, compromise or discharge, such Third-Party Claim without the Indemnitor's prior written consent (which consent shall not be unreasonably conditioned, withheld or delayed).

#### Section 10.06 **Other Indemnification Limits.**

(a) The indemnities provided in this Agreement shall survive the Closing; provided, however, that the indemnities provided under Section 10.02(b), Section 10.02(c), Section 10.02(d), Section 10.03(b) and Section 10.03(c) shall terminate and expire with respect to any representation, warranty, covenant or agreement when such representation, warranty, covenant or agreement terminates pursuant to Section 10.01.

(b) The Parties agree, for themselves and on behalf of their respective Affiliates and their respective Representatives, that the amount of any Damages that are subject to an indemnification obligation under this Article X shall be reduced by any insurance proceeds or indemnity, contribution or other similar payments received by the Indemnitee (after

taking into account any deductibles, copayments or other cost sharing arrangements) on account of such Damages. In the event that the Indemnatee subsequently collects any such insurance proceeds or indemnity, contribution or other similar payments in respect of such Damages after receiving any indemnification payments from the Indemnitor under this Article X, such Indemnatee shall promptly pay over to the Indemnitor the amount of such insurance proceeds or indemnity, contribution or other similar payments actually received by the Indemnatee; provided, however, that in no event shall the Indemnatee be required to pay over to the Indemnitor an amount in excess of the amount previously paid by the Indemnitor to or on behalf of the Indemnatee in respect of such Claim.

(c) The Parties shall cooperate with each other with respect to resolving any Claim with respect to which any Indemnitor is or may be obligated to indemnify any Indemnatee hereunder, including by making commercially reasonable efforts to mitigate or avoid any Damages in connection therewith. In the event that any Party shall fail to make such commercially reasonable efforts to mitigate or avoid any such Damages, then, notwithstanding anything else to the contrary contained herein, the Indemnitor shall not be required to indemnify any Person for any Damages to the extent that such Damages could have reasonably been expected to have been mitigated or avoided had such efforts been made.

(d) Notwithstanding anything to the contrary contained in this Agreement, Seller shall not be liable to any Person (whether in contract, in tort or otherwise) for any consequential, incidental, indirect, special or punitive damages, or any loss of future revenue, income or profits, or any diminution of value or multiples-of-earnings damages relating to a breach or alleged breach hereof, whether or not the possibility of such damages has been disclosed to Seller in advance or could have been reasonably foreseen by Seller.

Section 10.07 **Exclusive Remedy**. If the Closing occurs, this Article X sets forth the sole and exclusive remedy for any breach, inaccuracy, nonperformance or violation of this Agreement regardless of whether a claim or counterclaim is based in tort, contract or any other legal theory, or arises under law or in equity, except for (a) claims or counterclaims of, or causes of action arising from, Fraud and (b) any rights and remedies expressly granted under any Franchise Document or in any other Transaction Agreement. In furtherance of the foregoing, each of the Parties hereby irrevocably waives, from and after the Closing, to the fullest extent permitted under applicable Law, any and all rights, claims, counterclaims and causes of action (other than any claims or counterclaims of, or causes of action arising from, Fraud) it may have against the other Parties arising under or based upon this Agreement or the transactions contemplated hereby, except (i) pursuant to the provisions of this Article X and (ii) any rights and remedies explicitly granted under any Franchise Document or in any other Transaction Agreement.

## ARTICLE XI.

### **TERMINATION**

Section 11.01 **Methods of Termination**. This Agreement may be terminated prior to the Closing:



- (a) By mutual written agreement of the Parties;
- (b) By Seller, if the Closing has not occurred by [•] provided that a default by Seller under this Agreement is not responsible for the Closing not having occurred by such date;
- (c) By Purchaser, if the Closing has not occurred by [•], provided that a default by Purchaser or Guarantor under this Agreement is not responsible for the Closing not having occurred by such date;
- (d) By Seller in writing if Purchaser or Guarantor shall (i) fail to perform any of their respective covenants or agreements contained herein required to be performed by them prior to the date of such termination, or (ii) breach any of their respective representations or warranties contained herein or if any such representations or warranties become inaccurate, in each case so as to cause a condition to the Closing to be incapable of satisfaction, which failure, breach or inaccuracy is not cured within fifteen (15) days after Seller has notified Purchaser in writing of its intent to terminate this Agreement pursuant to this Section 11.01(d); or
- (e) By Purchaser in writing if Seller shall (i) fail to perform any of its covenants or agreements contained herein required to be performed by it prior to the date of such termination, or (ii) breach any of its representations or warranties contained herein or if any such representations or warranties become inaccurate, in each case so as to cause a condition to the Closing to be incapable of satisfaction, which failure, breach or inaccuracy is not cured within fifteen (15) days after Purchaser has notified Seller in writing of its intent to terminate this Agreement pursuant to this Section 11.01(e).

**Section 11.02 Effect of Termination.** If Seller or Purchaser terminates this Agreement pursuant to Section 11.01, (a) this Agreement shall forthwith become null and void and of no further force and effect, (b) the transactions contemplated by this Agreement shall be abandoned without further action by any Party and (c) all rights and obligations of the Parties hereunder shall terminate without any liability of any Party to any other Party; provided, however, that (i) nothing in this Section 11.02 shall relieve any Party hereto from any liability with respect to any willful or intentional breach of this Agreement prior to such termination and (ii) the provisions of Section 6.03, this Section 11.02 and Article XII (other than Section 12.12) shall survive the termination of this Agreement and shall remain in full force and effect.

## **ARTICLE XII.**

### **MISCELLANEOUS PROVISIONS**

**Section 12.01 Amendment and Modification.** This Agreement may be amended, modified and supplemented only by a written instrument executed by each of the Parties.

**Section 12.02 Waivers.** No waiver shall be binding on a Party unless executed in writing by the Party making the waiver. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any

waiver constitute a continuing waiver. The failure by any Party to enforce against another Party any term or provision of this Agreement shall not be deemed to be a waiver of such Party's right to enforce against the other Party the same or any other term or provision of this Agreement in the future.

Section 12.03 **Notices.** All notices, requests, demands and other communications required or permitted by this Agreement shall be in writing and shall be deemed to have been duly given upon (a) actual delivery, if delivered by personal delivery, (b) when sent by electronic mail, on the date of transmission to such recipient if no failure to deliver message is received, (c) one (1) Business Day after deposit with an overnight courier service for next day delivery, with service prepaid, or (d) four (4) Business Days after being mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid.

If to Purchaser or any Guarantor, to:

[•]

or to such other Person or address as Purchaser shall furnish to Seller in writing;

If to Seller, to:

Potbelly Sandwich Works, LLC  
111 N Canal St, Ste 325  
Chicago, Illinois 60606  
Attention: Legal Department  
Email: legal@potbelly.com

or to such Person or address as Seller shall furnish to Purchaser in writing in accordance with this Section 12.03.

Section 12.04 **Assignment.** This Agreement, and all of the provisions hereof, shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns. No Party may assign this Agreement or any of its rights hereunder or delegate any of its obligations hereunder without the prior written consent of the other Parties; provided that Seller may, without the consent of Purchaser or any Guarantor, assign this Agreement or any of its rights hereunder, or delegate any of its obligations hereunder, to any of its Affiliates (provided that Seller remains principally liable for its obligations hereunder) or to any successor in interest (whether by purchase, merger, consolidation, conversion or otherwise) to all or substantially all of the business operations and/or assets of Seller. Any attempt or purported assignment or delegation in contravention of the foregoing shall be deemed void *ab initio*.

Section 12.05 **Governing Law.** THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY, AND ALL CLAIMS AND DEFENSES ARISING OUT OF OR RELATING TO ANY SUCH TRANSACTION OR THIS AGREEMENT OR THE FORMATION, BREACH, TERMINATION OR VALIDITY OF ANY PART OF THIS AGREEMENT, SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF ILLINOIS WITHOUT GIVING

[Form of Asset Purchase Agreement - 2023]

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EFFECT TO ANY CONFLICTS OF LAW PRINCIPLES OF SUCH STATE THAT WOULD APPLY THE LAWS OF ANOTHER JURISDICTION.

Section 12.06 **Jurisdiction**. Each Party to this Agreement hereby irrevocably and unconditionally: (a) submits itself and its property to the exclusive jurisdiction of any federal or state court sitting in the State of Illinois in any action directly or indirectly arising out of or relating to this Agreement, the transactions contemplated by this Agreement, or the formation, breach, termination or validity of this Agreement and agrees that all claims in respect of any such action shall be heard and determined solely in such court; (b) consents that any such action shall be brought in such court and waives any objection that it may now or hereafter have to the venue or jurisdiction of any such action in such court or that such court is an inconvenient forum for the action and agrees not to assert, plead or claim the same; (c) agrees that the final judgment of such court shall be enforceable in any court having jurisdiction over the relevant Party or any of its assets; (d) agrees that service of process in any such action may be effected by mailing a copy of such process by registered or certified mail (or any substantially-similar form of mail), postage prepaid, to such Party at its address as provided in Section 12.03; and (e) agrees that nothing in this Agreement shall affect the right to effect service of process in any other manner permitted by the applicable rules of procedure.

Section 12.07 **Waiver of Jury Trial**. EACH PARTY TO THIS AGREEMENT ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (a) NO OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (b) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (c) IT MAKES THIS WAIVER VOLUNTARILY AND (d) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS OF THIS SECTION 12.07. ANY PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

Section 12.08 **Counterparts**. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but all of which together shall constitute one agreement binding on the parties hereto. Counterparts may be executed by hand or by any electronic signature complying the U.S. federal ESIGN Act of 2000, as amended (the “**ESIGN Act**”). Executed counterparts may be delivered via facsimile, electronic mail or other similar transmission method, and any executed counterpart so delivered shall be valid and effective for all purposes. No party shall raise the use of any electronic signature that complies with the ESIGN Act (including [www.docusign.com](http://www.docusign.com)), or the use of a facsimile machine, electronic mail or other similar transmission method as a means to deliver a signature to this Agreement or

any amendment hereto as a defense to the formation or enforceability of this Agreement and any other Transaction Agreement and each party forever waives any such defense.

Section 12.09 **Interpretation**. Interpretation of this Agreement shall be governed by the following rules of construction: (a) words in the singular shall be held to include the plural and vice versa, and words of one gender shall be held to include the other gender as the context requires; (b) references to the terms Preamble, Recitals, Article, Section, paragraph, Schedule and Exhibit are references to the Preamble, Recitals, Articles, Sections, paragraphs, Schedules and Exhibits to this Agreement unless otherwise specified; (c) references to “\$” shall mean U.S. dollars; (d) the word “including” and words of similar import shall mean “including without limitation,” unless otherwise specified; (e) the word “or” shall not be exclusive; (f) the words “herein,” “hereof,” “hereunder” or “hereby” and similar terms are to be deemed to refer to this Agreement as a whole and not to any specific Section; (g) this Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting or causing any instrument to be drafted; (h) if a word or phrase is defined, the other grammatical forms of such word or phrase have a corresponding meaning; (i) references to any statute, listing rule, rule, standard, regulation or other Law include a reference to (A) the corresponding rules and regulations and (B) each of them as amended, modified, supplemented, consolidated, replaced or rewritten from time to time; (j) references to any section of any statute, listing rule, rule, standard, regulation or other Law include any successor to such section; (k) references to any Person include such Person’s predecessors or successors, whether by merger, consolidation, amalgamation, reorganization or otherwise; (l) references to any contract (including this Agreement) or organizational document are to the contract or organizational document as amended, modified, supplemented or replaced from time to time, unless otherwise stated; (m) the table of contents, headings of the Sections and Articles of this Agreement and table of defined terms in Section 1.02 are inserted for convenience only and shall not constitute a part hereof or affect in any way the meaning or interpretation of this Agreement; and (n) each representation, warranty, covenant, agreement and condition contained in this Agreement and in each of other agreements, documents and instruments contemplated hereby will be deemed to have independent significance.

Section 12.10 **Entire Agreement**. Except for the Ancillary Agreements, this Agreement, together with the Exhibits and Schedules hereto, and the Confidentiality Agreement set forth the entire understanding among the Parties concerning the subject matter of this Agreement and incorporates all prior negotiations and understandings. There are no covenants, promises, agreements, representations, warranties, conditions or understandings, either oral or written, among the Parties or their respective Affiliates relating to the subject matter of this Agreement, other than those set forth herein or in the Ancillary Agreements. No alteration, amendment, change or addition to this Agreement shall be binding upon any Party unless in writing and signed by all the Parties. The submission of any unexecuted copy of this Agreement shall not constitute an offer to be legally bound by any provision of the document submitted, either currently or in the future, and no Party shall be bound by this Agreement until it is fully executed and delivered by all Parties.

Section 12.11 **Third Parties**. Except as specifically set forth or referred to herein, nothing herein expressed or implied is intended or shall be construed to confer upon or give to any Person

other than the Parties hereto and their successors or assigns any rights or remedies under or by reason of this Agreement.

Section 12.12 **Further Assurances**. Subject to the terms and conditions of this Agreement, at any time after the Closing, each Party shall take such further actions and execute such further documents as may be necessary or reasonably requested by another Party in order to effectuate the intent of this Agreement.

Section 12.13 **Schedules**. Matters reflected in the schedules corresponding to the Sections of Article IV and Article V are not necessarily limited to matters required by this Agreement to be so reflected. Such additional matters are set forth for informational purposes and do not necessarily include other matters of a similar nature. No reference to or disclosure of any item or other matter in any such schedule shall be construed as an admission or indication that such item or other matter is material or that such item or other matter is required to be referred to or disclosed in this Agreement or such schedules. Without limiting the foregoing, no such reference to or disclosure of a possible breach or violation of any Contract or Law shall be construed as an admission or indication that a breach or violation exists or has actually occurred.

Section 12.14 **Invalidity**. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced under any Law or as a matter of public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated by this Agreement is not affected in any manner adverse to any Party hereto. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually-acceptable manner in order that the transactions contemplated by this Agreement be consummated as originally contemplated to the greatest extent possible. Nothing in this Section 12.14 shall affect a Party's right to terminate this Agreement pursuant to Section 11.01 of this Agreement.

Section 12.15 **Confidentiality**.

(a) Except to the extent (i) inconsistent with the terms of this Agreement, (ii) disclosure or use of any information subject to the terms of the Confidentiality Agreement (defined below) is reasonably necessary for the performance by a Party of any of their respective obligations under this Agreement or (iii) disclosure or use of any information subject to the terms of the Confidentiality Agreement is necessary in connection with the enforcement of any right or remedy relating to this Agreement, the terms of that certain Confidentiality Agreement dated [●], by and among Seller and Purchaser (the "**Confidentiality Agreement**"), are incorporated into this Agreement by reference and shall continue in full force and effect until the Closing, at which time the confidentiality obligations under the Confidentiality Agreement shall terminate.

(b) Whether or not the Closing occurs, except as otherwise agreed to in writing by the Parties or to the extent necessary to perform its obligations or enforce its rights under this Agreement, each Party hereto shall, and shall cause its respective Affiliates and its and their respective Representatives to, keep confidential the existence and terms of this

Agreement and the transactions contemplated hereby; provided, however, that if Seller or its Affiliates determines that it is required by applicable Law or the rules of any stock exchange on which securities of Seller or any of its Affiliates are listed to make any public announcement or disclosure regarding the transactions contemplated hereby, nothing in the Confidentiality Agreement or this Agreement shall prohibit or restrict Seller and its Affiliates from making any public announcement or disclosure that it determines is necessary or appropriate.

Section 12.16 **Guarantee**.

(a) To induce Seller to enter into this Agreement, Guarantor hereby absolutely, unconditionally and irrevocably guarantees to Seller, as a primary obligor and not merely as a surety, the due and punctual performance and observance of, and compliance with, all covenants, agreements, liabilities, representations and warranties of Purchaser under or arising out of this Agreement from and after the date hereof (all such obligations, the “**Guaranteed Obligations**”). The Guaranteed Obligations hereunder are joint and several. Guarantor further agrees that the Guaranteed Obligations may be amended, modified, extended or renewed, in whole or in part, without notice to or further assent from Guarantor, and that Guarantor will remain bound upon its guarantee notwithstanding any amendment, modification, extension or renewal of any of the Guaranteed Obligations, whether or not any of the foregoing would in any way increase any Guarantor’s obligations hereunder.

(b) The obligations of Guarantor hereunder shall be unconditional and absolute and, without limiting the generality of the foregoing, shall not be released, discharged or otherwise affected, at any time, by: (i) any compromise, waiver or release in respect of any Guaranteed Obligation of Purchaser, by operation of law or otherwise; (ii) any change in the corporate existence, structure or ownership of Purchaser, or any insolvency, bankruptcy, reorganization or other similar proceeding affecting Purchaser or its assets or any resulting release or discharge of any obligation of Purchaser or Guarantor contained in this Agreement; (iii) the existence of any claim, set-off or other rights that any Guarantor may have at any time against Seller or Purchaser, whether in connection herewith or otherwise; (iv) any invalidity or unenforceability of this Agreement relating to or against Purchaser for any reason, or any provision of applicable Law purporting to prohibit the payment or performance by Purchaser at the time and place specified herein of any of the Guaranteed Obligations; or (v) any other act or omission to act or delay of any kind by Purchaser, Seller or any other Person, or any other circumstance whatsoever that might, but for the provisions of this paragraph, constitute a legal or equitable discharge or defense of a guarantor or surety. Guarantor irrevocably waives presentment, demand, protest and notice, as well as any requirement that at any time any action be taken by any Person against Purchaser or any other Person.

(c) Without limitation to the foregoing, Guarantor further agrees that its guarantee is a continuing guarantee of payment and performance of the Guaranteed Obligations when due (whether or not any bankruptcy, insolvency or similar proceeding under applicable Law shall have stayed the accrual or collection of any of the Guaranteed Obligations or operated as a discharge thereof) and not of collection, and waives any right

to require that resort be had by Seller to the Purchaser for the collection and performance of the Guaranteed Obligations. If at any time any payment of any Guaranteed Obligation by Purchaser is rescinded or must be otherwise restored or returned upon the insolvency, bankruptcy or reorganization of Purchaser or otherwise, Guarantor's obligations hereunder with respect to such payment shall be reinstated at such time as though such payment had been due but not made at such time.

(d) Guarantor shall indemnify and reimburse Seller for any and all costs and expenses (including reasonable attorneys' fees) incurred by Seller in enforcing any rights under this Section 12.16.

***[The remainder of this page is intentionally left blank.]***

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be duly executed as of the date first above written.

**SELLER:**

**POTBELLY SANDWICH WORKS, LLC**

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

**PURCHASER:**

[INSERT ENTITY NAME]

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

**GUARANTOR:**

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



## State Effective Dates

The following states have franchise laws that require that the Franchise Disclosure Document be registered or filed with the state, or be exempt from registration: California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington, and Wisconsin.

This document is effective and may be used in the following states, where the document is filed, registered or exempt from registration, as of the Effective Date stated below:

<b>State</b>	<b>Effective Date</b>
California	May 18, 2023, as amended
Hawaii	Pending
Illinois	May 18, 2023, as amended
Indiana	May 18, 2023, as amended
Maryland	Not Effective
Michigan	Pending
Minnesota	Pending
New York	Pending
North Dakota	Pending
Rhode Island	Pending
South Dakota	May 18, 2023, as amended
Virginia	Pending
Washington	Pending
Wisconsin	Pending

Other states may require registration, filing, or exemption of a franchise under other laws, such as those that regulate the offer and sale of business opportunities or seller-assisted marketing plans.

## 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 Potbelly Franchising, LLC offers you a franchise, it must provide this disclosure document to you 14 calendar-days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale. Michigan requires that we give 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. New York and Rhode Island require that we give you this disclosure document at the earlier of the first personal meeting or 10 business days before the execution of the franchise or other agreement or the payment of any consideration that relates to the franchise relationship.

If Potbelly Franchising, LLC does not deliver this disclosure document on time or if it contains a false or misleading statement, or a material omission, a violation of federal law and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580 and the appropriate state agency identified on Exhibit A.

The franchisor is Potbelly Franchising, LLC, located at 111 North Canal Street, Suite 325, Chicago, Illinois 60606. Its telephone number is (312) 951-0600.

The issuance date of this Franchise Disclosure Document is May 18, 2023, as amended June 30, 2023.

The franchise sellers for this offering are Robert Wright, Adiya Dixon, Adam Noyes, Lynette McKee and \_\_\_\_\_ *[blank completed only if applicable]* at Potbelly Franchising, LLC, 111 North Canal Street, Suite 325, Chicago, Illinois 60606, Larry Strain at 19 Jane Road, Marblehead, MA 01945 and (770) 265-1237, and \_\_\_\_\_ *[blank completed only if applicable]*. Its telephone number is (312) 951-0600.

We authorize the respective state agents identified on Exhibit A to receive service of process for us in the particular states. I received a disclosure document from Potbelly Franchising, LLC dated as of May 18, 2023, as amended June 30, 2023, that included the following Exhibits:

- A. List of State Agencies/Agents for Service of Process
- B. Franchise Agreement
- C. Area Development Agreement
- D. Principal's Agreement
- E. Lease Rider/Collateral Assignment of Lease
- F. Operations Manual Table of Contents
- G. Financial Statements
- H. Franchisee Representations
- I. State Addenda and Franchise Agreement/Area Development Agreement Riders
- J-1. List of Franchisees
- J-2. List of Franchisees Who Left the System
- K. Form of General Release
- L. Asset Purchase Agreement

\_\_\_\_\_  
Date

\_\_\_\_\_  
Prospective Franchisee [Print Name]

(Date, Sign, and Return to Us)

\_\_\_\_\_  
Prospective Franchisee [Signature]

*After signing and dating the Receipt, you may return it to us (to the attention of Susan Cory) by sending the original via overnight courier or 1st class mail to our address above, by faxing a copy to (312) 276-4438, or by emailing a scanned copy to [franchise@potbelly.com](mailto:franchise@potbelly.com).*

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- K. Form of General Release
- L. Asset Purchase Agreement

\_\_\_\_\_  
Date

\_\_\_\_\_  
Prospective Franchisee [Print Name]

(Date, Sign, and Keep for Your Own Records)

\_\_\_\_\_  
Prospective Franchisee [Signature]